

RESOLUTION NO. 2021-04

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF SANTA ANA APPROVING MINOR EXCEPTION NO. 2021-02 AS CONDITIONED TO ALLOW CONSTRUCTION OF A SEVEN-FOOT HIGH FRONT YARD FENCE ON THE PROPERTY LOCATED AT 1201 EAST FOURTH STREET

BE IT RESOLVED BY THE ZONING ADMINISTRATOR OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The Zoning Administrator of the City of Santa Ana hereby finds, determines, and declares as follows:

- A. Mike Rowland representing Chilly Willy Desserts ("Applicant") is requesting approval of Minor Exception No. 2021-02 to allow the construction of a seven-foot high fence in the required front-yard setback at the property located at 1201 East Fourth Street.
- B. Pursuant to Santa Ana Municipal Code ("SAMC") Section 41-632(a)(3)(i), approval of a minor exception is required to allow construction of a fence taller than four (4) feet along an arterial street in the front-yard setback if a property is zoned Urban Neighborhood 2 under the Transit Zoning Code (SD-84).
- C. Minor Exception No. 2021-02 came before the Zoning Administrator of the City of Santa Ana on October 20, 2021, for a duly noticed public hearing.
- D. For Minor Exception No. 2021-02, the Zoning Administrator of the City of Santa Ana determines that the following findings have been established as required by SAMC Section 41-638(a)(2):
 1. That because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive the subject property of privileges not otherwise at variance with the intent and purpose of the provisions of this chapter.

There are special circumstances applicable to the subject property related to the location and surroundings. The industrial building is located along Fourth Street, an arterial street, adjacent to other industrial uses. Additionally, because of the industrial nature of the area, other properties provide safety fencing along the perimeters to increase the security of the site and its occupants. The site has operated as an industrial use since 1946 with several processing and manufacturing uses. However, in 2020, Chilly Willy Desserts submitted an application to operate a dessert business, and since then, the property has been broken into, costing the owner tens of

thousands of dollars in repairs and loss of operating time. Additionally, there are several other properties along Fourth Street, including the property directly to the south that have a fence over four feet in height on the property line. Conditions have been added to rehabilitate the existing landscaping to soften the height of the fence in the front yard. Therefore, the fence will not be out of character or scale with the surrounding properties.

2. That the granting of a minor exception is necessary for the preservation and enjoyment of one or more substantial property rights.

Granting the minor exception is necessary for the preservation and enjoyment of substantial property rights as approval of this minor exception maintains the rights of the property owner and employees to safely and freely utilize the property. Recently, the property has experienced burglary and vandalism incidents. After careful consideration of the options, the owner decided to install a seven-foot high fence in the front yard to secure the property. The view of the industrial building will not be obstructed as the fence has been designed to maintain visibility into the site as required by the Police Department. The applicant is requesting seven feet in height even though there are numerous properties in the vicinity, with similar uses, that have fences exceeding seven feet in height.

3. That the granting of a minor exception will not be materially detrimental to the public welfare or injurious to surrounding property.

The granting of this minor exception will not be detrimental to the public or surrounding properties. The fence will be designed to provide a 25-foot visibility triangle for the portion of the fence in the southwest corner, meeting the City Standards for anything above 30-inches in the visibility triangle. Conditions have been added that the fence along the Fourth Street frontage should be pushed back closer to the building. This would allow for vehicle access to the parking lot and provide access for the refuse truck to provide service for the pick-up of trash. Finally, the decorative design of the fence will complement the industrial building.

4. That the granting of a minor exception will not adversely affect the General Plan of the City.

The project is consistent with the General Plan as the proposed minor exception is consistent with Goal 2.0 of the Urban Design Element, which states that developments should be proportionally and aesthetically related to its district setting. Specifically, Goal 2.7 of the Urban Design Element states that projects must exhibit a functional, comfortable scale in relation to the neighborhood. This

proposed seven-foot high fence is in scale with existing fencing and structures in the project site's vicinity. Landscaping will be enhanced to soften the height and appearance of the fence in the front yard.

- E. This project was reviewed in accordance with the Guidelines for the California Environmental Quality Act (CEQA). The project is exempt from further review pursuant to CEQA Guidelines Section 15303, which pertains to New Construction or Conversion of Small Structures. This Class 3 exemption applies to accessory (appurtenant) structures, including fences. Based on this criteria and staff analysis, Categorical Exemption Environmental Review No. 2021-96 will be filed for this project.

Section 2. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 3. The Zoning Administrator of the City of Santa Ana after conducting the public hearing hereby approves Minor Exception No. 2021-02 as conditioned in Exhibit A, attached hereto and incorporated herein for the project located at 1201 East Fourth Street. This decision is based upon the evidence submitted at the above hearing, which includes, but is not limited to: The Request for Zoning Administrator Action dated October 20, 2021, and exhibits attached thereto; and, the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 20th day of October, 2021.

Ali Pezeshkpour
Ali Pezeshkpour, AICP
Zoning Administrator

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: John M. Funk
John M. Funk
Sr. Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Sarah Bernal, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2021-04 to be the original resolution adopted by the Zoning Administrator of the City of Santa Ana on October 20, 2021.

Date: 10-20-2021

Sarah Bernal
Recording Secretary
City of Santa Ana

EXHIBIT A

Conditions of Approval for Minor Exception No. 2021-02

Minor Exception No. 2021-02 is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with all applicable sections of the Santa Ana Municipal Code, the California Administrative Code, the California Building Standards Code and all other applicable regulations.

The Applicant must comply in full with each and every condition listed below prior to exercising the rights conferred by this minor exception.

The Applicant must remain in compliance with all conditions listed below throughout the life of the minor exception. Failure to comply with each and every condition may result in the revocation of the minor exception.

A. Planning Division

1. All proposed site improvements must conform to the plan attached to this minor exception, except as modified in the conditions of approval.
2. Any amendment to this minor exception must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or if the minor exception must be amended.
3. If site is completely redeveloped or if improvements to the site occur beyond those listed under Section 41-2002 of the Santa Ana Municipal Code, the fence will need to be removed. **(Added by Zoning Administrator on October 20, 2021)**
4. Outdoor storage is not allowed unless in full accordance with Section 41-2002 of the Santa Ana Municipal Code. **(Added by Zoning Administrator on October 20, 2021)**
5. The proposed fence shall be painted black to match the existing wrought iron fences present at adjacent properties. The fence shall be maintained in good condition and any damage to the fence will need to be addressed within 24 hours of the damage.
6. The applicant shall obtain a building permit as necessary for the proposed seven-foot high fence. The portion of the fence along the Fourth Street frontage will need to be setback as needed to meet all safety design measures; allowing full-use of the parking area and to allow trash vehicle access to service the site. The final fence design will need to meet all safety requirements for visibility, including those stated in the Santa Ana Municipal Code Sections 36-45 to 36-47 (Corner Obstructions to Vision) and all Orange County Fire Authority and Public Works Agency, Waste

Management requirements. (Modified by Zoning Administrator on October 20, 2021)

7. The manual gate located adjacent to the residential property to the north shall be replaced with a fixed fence and the existing landscape planter will be extended towards the north property line. At minimum, the additional landscape planter shall match the existing landscape width. Applicant shall reconstruct concrete curb, gutter, and sidewalk per Public Works Agency Standards.
8. Prior to the final inspection of the fence, the existing landscape planters shall be rehabilitated with new landscaping materials. The landscaping being installed must include shrubs and ground cover to soften the height of the fence.
9. Prior to issuance of a building permit, a Property Maintenance Agreement must be recorded against the property. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained. Applicant (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a Maintenance Agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The Maintenance Agreement shall contain covenants, conditions and restrictions relating to the following:
 - (a) Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);
 - (b) Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses);
 - (c) Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;
 - (d) Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about the property; the proper and

timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);

(e) If Applicant and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the Maintenance Agreement and both shall be jointly and severally liable for compliance with its terms.

(f) The Maintenance Agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties, obligations and responsibilities set forth under the Maintenance Agreement.

(g) The Maintenance Agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City.