

RESOLUTION NO. 2023-12

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING VARIANCE NO. 2023-02 AS CONDITIONED TO ALLOW MODIFICATION TO FRONT YARD FENCING STANDARDS ALONG THREE FRONTAGES FOR CRISTO REY ORANGE COUNTY HIGH SCHOOL AT THE PROPERTY LOCATED AT 1100, 1020, AND 1102 SOUTH CENTER STREET, AND 2202 AND 2204 WEST MCFADDEN AVENUE, COLLECTIVELY REFERRED TO AS 2204 WEST MCFADDEN AVENUE

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

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

- A. Stephen Holte, President of Cristo Rey Orange County High School (“Applicant”) and Immaculate Heart of Mary Church (“Property Owner”), are requesting approval of Variance No. 2023-02 to allow relief from the maximum permissible height standard of four feet and install a six-foot tall front yard fence along three frontages at 1100, 1020, and 1102 South Center Street, and 2202 and 2204 West McFadden Avenue, collectively referred to as 2204 West McFadden Avenue.
- B. In 1958, the subject site was developed by the Roman Catholic Church with a convent, church facilities, and accompanying catholic school.
- C. Subsequently on June 5, 2000, the Planning Commission conditionally approved CUP No. 2000-05 and Variance No. 2000-03 to allow for expansion of the church and construction of a new church building as well as a 34-percent reduction in required parking and a 45-percent reduction in required parking lot landscaping for Immaculate Heart of Mary Church.
- D. Pursuant to Santa Ana Municipal Code (“SAMC”) Section 41-610.5, walls and fences located within the required front yard are limited to four feet in height.
- E. Pursuant to SAMC Section 41-632, deviations from the permissible fence height standards for commercial properties require approval of a variance. As proposed, the applicant is requesting a six-foot tall fence along South Clara Street and West McFadden Avenue for approximately 500 lineal feet thus requiring approval of the subject variance.

- F. On June 12, 2023, the Planning Commission held a duly noticed public hearing on Variance No. 2023-02 to allow relief from the front yard fence requirements, and exceed the permissible height standards of four-feet for fencing located within the required front yard area.
- G. The Planning Commission determines that the following findings, which must be established in order to grant this Variance pursuant to SAMC Section 41-638, have been established for Variance No. 2023-02 to allow for a six-foot fence in the front required yard area.
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.

The subject site has special circumstances related to the site characteristics and configuration such that strict application of the SAMC zoning code would deprive the subject property of privileges afforded to other properties within the City. Fencing located within the front yard area is limited to four feet on commercially developed properties. The subject site features three front yards that limits the school and church's ability to secure the property with fencing that extends to six feet in height. Properties Citywide typically have one frontage and are able to provide fencing that secures the side yards. Therefore, strict application of the code restricts the properties ability to enclose the site to ensure the safety of the students. Furthermore, the subject request is not uncommon, as schools throughout the City feature similar fences that extend to the requested height.

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

The granting of the variance is necessary for the preservation and enjoyment of the substantial property rights. Strict application of the SAMC would require the applicant to install four-foot fencing around the entirety of the site, which would not afford the school the level security they are holding to establish for the students. As existing, the site is open to the pedestrians and church patrons, which would again not provide the security that is typically exercised by a school. Additionally, any unpermitted chain link fencing would be removed as part of this approval.

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

The granting of the variance will not be detrimental to the public or surrounding properties, as the site presently has noncompliant fencing around portions of the site and where approval of this variance would improve the overall appearance of the property by providing fencing that is in line with the City's Design Guidelines. Furthermore, conditions of approval would ensure landscaping would be planted for screening and to minimize any potential visual intrusion by the fence.

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

The granting of the variance would not adversely affect the City's General Plan. Approval of proposed Variance would be consistent with several goals and policies of the General Plan. Approval of the Variance would enable Cristo Rey Orange County High School to establish the proposed educational program, which supports Goal 2 of the Community Element (CM) providing exceptional, accessible, and diverse educational programs and facilities to meet the community's needs. Furthermore, Policy CM 3.2 supports the creation of healthy neighborhoods by addressing public safety, land use conflicts, hazardous soil contamination, incompatible uses, and maintaining building code standards. In line with this goal, the proposed private school features a front yard on three frontages where a six-foot fence would ensure safety of the students by limiting the access points to the school. An existing five-foot block wall located along South Clara along with a noncompliant chain link fence that will be removed as part of request is also in line with Goal LU 3, which aims to preserve and improve the character and integrity of existing neighborhoods and districts which is achieved by establishing a fence comprised of quality material.

Section 2. In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the project is categorically exempt from further review per Sections 15301 (Class 1 – Existing Facilities) and Section 15314 (Class 14 – Minor Additions to Schools) of the CEQA Guidelines. The project proposes to establish a school with minimal tenant improvements within an existing building previously occupied by a school. As such, a Notice of Exemption, Environmental Review No. 2022-127, will be filed for this project.

Section 3. 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 4. The Planning Commission of the City of Santa Ana after conducting the public hearing hereby approves Variance No. 2023-02, as conditioned in Exhibit A, attached hereto and incorporated herein for the project located at 2204 West McFadden Avenue. This decision is based upon the evidence submitted at the above said hearing, which includes, but is not limited to the Request for Planning Commission Action dated June 12, 2023, and exhibits attached thereto; and the public testimony, all of which are incorporated herein by this reference.


ADOPTED this 12th day of June 2023 by the following vote:

AYES: Commissioners: CARL BENNINGER, MANUEL J. ESCAMILLA, CHRIS LEO, BAO PHAM, ISURI S. RAMOS, ALAN WOO (6)
NOES: Commissioners:
ABSENT: Commissioners: JENNIFER OLIVA (1)
ABSTENTIONS: Commissioners:



Bao Pham
Chairperson

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

By: 

John M. Funk

Chief Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Nuvia Ocampo, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2023-12 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on June 12, 2023.

Date: 6/12/2023

Nuvia Ocampo

Nuvia Ocampo
Recording Secretary
City of Santa Ana

EXHIBIT A

Conditions of Approval for Variance No. 2023-02

Variance No. 2023-02 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 remain in compliance with all conditions listed below throughout the life of the variance. Failure to comply with each and every condition may result in the revocation of the variance.

1. The Applicant must comply with all conditions and requirements of the Development Review Committee for the Development Project (DP) No. 2022-44.
2. The Applicant must comply with all conditions and requirements of CUP No. 2000-05 and VAR No. 2000-03.
3. The proposed facility shall be maintained as per approved plans and any existing landscaping shall be enhanced and well maintained. Any damage to existing structures, walls, parking areas, or landscaping must be repaired.
4. Any amendment to this variance must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or if the variance must be amended.
5. Violations of the Variance, as contained in Section 41-647.5 of the SAMC, will be grounds for permit suspension and/or revocation as described in Section 41-651 of the SAMC.
6. The applicant shall provide a conforming trash enclosure and submit for Planning review prior to final of any building permit or issuance of a Certificate of Occupancy.
7. The applicant shall provide full elevations of the final proposed fencing and landscape improvements for screening prior to final of any Building Permit or issuance of a Certificate of Occupancy.
8. The applicant shall remove any unpermitted shipping containers and unpermitted structures prior to final of any Building Permit or issuance Certificate of Occupancy.
9. Prior to first phase of occupancy and for each phase thereafter, the applicant shall provide a circulation plan and mitigation measure should circulation issues arise and create negative impact for the surrounding community.

10. The applicant shall limit the student parking passes offered to no more than 100 passes.
11. Prior to issuance of the Certificate of Occupancy, the property shall be brought into full maintenance compliance with all applicable SAMC standards. Maintenance shall include, but is not limited to: the repair and upkeep of the property; cleanup of trash and debris; repair and upkeep of any damaged and/or weathered components of the building (e.g., siding, windows, architectural features); repair and upkeep of exterior paint; parking striping, lighting and irrigation fixtures; landscaping and related landscape, furnishing, and hardscape improvements.
12. Prior to issuance of a building permit, a Property Maintenance Agreement shall 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; and
- h) The execution and recordation of the maintenance agreement shall be a condition precedent to the issuance of final approval for any construction permit related to this entitlement.