

RESOLUTION NUMBER R-306159

DATE OF FINAL PASSAGE SEPTEMBER 21, 2010

A RESOLUTION GRANTING THE APPEAL AND  
APPROVING TENTATIVE MAP NO. 352761 FOR THE 5TH &  
THORN PROJECT, PROJECT NO. 105703.

WHEREAS, 4th & Thorn, LLC, a California Limited Liability Company and 5th & Thorn, LLC, a California Limited Liability Company, The Barrett Family Trust of 1986, (collectively, Subdividers), J Bejar, LLC (Owner), and S B & O Inc., Engineer, submitted an application to the City of San Diego for a tentative map (Tentative Map (TM) No. 352761), to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development for the 5th & Thorn Project (Project), located on the south side of Thorn Street, between Fourth and Fifth Avenues (including addresses: 403 Thorn Street, 3251 Fourth Avenue, 3225 Fourth Avenue, 3230 Fifth Avenue and 3252 Fifth Avenue; as well as historic structure addresses of 3235 and 3255 Fourth Avenue), and the property is legally described as Lots A thru D and I thru L, Block 385, Horton's Addition, according to Map thereof made by L. L. Lockling in the NP-1 and CV-1 zones of the Mid-City Communities Planned District, the Residential Tandem Parking Overlay Zone and the Transit Area Overlay Zone, within the Uptown Community Plan area; and

WHEREAS, the Map proposes the Subdivision of a 0.92-acre site into three lots for residential/commercial development (100 condominium units comprised of 97 residential and 3 commercial/residential units); and

WHEREAS, a preliminary soils and geological reconnaissance report are waived by the City Engineer pursuant to Subdivision Map Act section 66491(a) and San Diego Municipal Code (SDMC) sections 144.0220(a) and 144.0220(b); and

WHEREAS, the subdivision is a condominium project as defined in California Civil Code section 1351 and filed pursuant to the Subdivision Map Act. The total number of condominium dwelling units is 100; and

WHEREAS, on June 24, 2010, the Planning Commission of the City of San Diego considered TM No. 352761, and pursuant to Resolution No. 4605-PC voted 4-3 to deny the project; and

WHEREAS, on June 30, 2010, Applicant and Subdivider filed an appeal with the City to appeal the Planning Commission decision; and

WHEREAS, the matter was set for public hearing on September 21, 2010, the City Council of the City of San Diego considered TM No. 352761, and pursuant to SDMC section 25.0440, and Subdivision Map Act section 66428, received for its consideration written and oral presentations, evidence having been submitted, and testimony having been heard from all interested parties at the public hearing, and the Planning Commission having fully considered the matter and being fully advised concerning the same; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that it adopts the following findings with respect to TM No. 352761:

**1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan (San Diego Municipal Code § 125.0440(a) and Subdivision Map Action §§ 66473.5, 66474(a), and 66474(b)).** The Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as a TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The Uptown Community Plan designates the proposed 0.92-acre project site for Office/Commercial at 44 to 73 dwelling units per acre (0.46 acres) and Commercial/Residential at 73 to 110 dwelling units per acre (0.46 acres). According to the Residential and Commercial Elements of the community plan, either office, commercial, or residential uses could be allowed on site. The project, consisting of multi-family residential units and “shopkeeper” type commercial uses would be consistent with the existing land use designations. Based on the project acreage and recommended residential density for the project site, 54 to 84 dwelling units would be allowed on site. However, the project would seek a 20 percent affordable housing density bonus for the provision of 5 dwelling units affordable to very low-income households. The provision of affordable units would implement goals and objectives in the Housing Element of the General Plan for the creation and promotion of affordable housing.

A design guideline of the Urban Design Element calls for restoring and adaptively reusing existing structures either by themselves or as elements of larger development projects. Additionally, the Conservation, Cultural and Heritage Resources Element of the community plan states the objective of preserving historic structures at their original location as well as in their historic context whenever possible. The proposed project would implement these policies by preserving two historically designated bungalows located on site. Previously, these structures were used for commercial purposes and would be converted to residential uses as part of the proposed project.

The Project proposes deviations to the development regulations pertaining to traffic visibility areas, street wall heights, street yard requirements, offsetting planes proportions, and transparency requirements. Although the community plan does not provide specific development/design regulations, the proposed project would incorporate several features that would address building bulk, scale, and design to a level that would not conflict with community plan goals, objectives, and recommendations. As proposed, the proposed subdivision and its design are consistent with the policies, goals and objectives of the Uptown Community Plan.

**2. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code (San Diego Municipal Code § 125.0440(b)).** The Project proposes to demolish existing commercial/office structures,

temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The proposed redevelopment would comply with the applicable regulations of the NP-1 and CV-1 zones of the Mid-City Communities Planned District. The intent of the Commercial Village (CV) zones is to provide for pedestrian-oriented districts for commercial, residential, or mixed-use development. It is normally applied in linear areas between commercial nodes. The standards encourage pedestrian activity through the design and location of building frontages and of parking and vehicle access. Incentives are provided for mixed-use development in these areas where transit and services are generally available. The Neighborhood Professional (NP) zones are intended to provide for business and professional offices, certain allied services normally associated with such offices, and residential user. They will generally be located near hospitals or adjacent to major concentrations of commercial activities. The standards are designed to ensure compatibility between office development and existing or new residential development by providing for appropriate setbacks and limitations on floor area and signage. The NP-1 zone encourages a mixture of office and residential use at a high density.

The proposed redevelopment would comply with the applicable regulations of the NP-1 and CV-1 zones of the Mid-City Communities Planned District. The intent of the CV zones is to provide for pedestrian-oriented districts for commercial, residential, or mixed-use development. It is normally applied in linear areas between commercial nodes. The standards encourage pedestrian activity through the design and location of building frontages and of parking and vehicle access. Incentives are provided for mixed-use development in these areas where transit and services are generally available. The NP zones are intended to provide for business and professional offices, certain allied services normally associated with such offices, and residential user. They will generally be located near hospitals or adjacent to major concentrations of commercial activities. The standards are designed to ensure compatibility between office development and existing or new residential development by providing for appropriate setbacks and limitations on floor area and signage. The NP-1 zone encourages a mixture of office and residential use at a high density.

Deviations from development regulations for projects as allowed through the SDP process are consistent with the Land Development Code portions of the SDMC. Strict application of the development regulations regarding street wall, street yard, offsetting plans and transparency would restrict the ability to meet Fire Department requirements, maintain historic designation requirements, provide superior design supported by the community, and conform with additional code requirements regarding transparency. Further, when considering the project as a whole these deviations are minor in scope and the proposed modifications provide for a more attractive design than would be achieved through the strict application of the development regulations.

Therefore, proposed subdivision complies with the applicable zoning and development regulations of the LDC.

**3. The site is physically suitable for the type and density of development (San Diego Municipal Code § 125.0440(c) and Subdivision Map Act §§ 66474(c) and 66474(d)).** The Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as a TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The project site is well suited for the addition of higher density multi-family housing, due to its proximity to existing public transit and established employment, shopping, dining, and entertainment opportunities in the neighborhood. The Fifth Avenue frontage is designated as commercial village zoning, which encourages neighborhood commercial uses. In addition, Balboa Park is located one block to the east. The proposed construction of 100 multi-family dwelling units (three of which are live/work units) would complement the existing mixed-use nature of this area. The General Plan calls for redevelopment, infill and new growth to be focused adjacent to transit stops in compact, mixed-use centers. This project proposal achieves this goal by adding high density, multi-family housing to an existing employment area, connected to transit and recreation. Therefore, the site is physically suitable for the type and density of development proposed.

**4. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat (San Diego Municipal Code § 125.0440(d) and Subdivision Map Act § 66474(e)).** The Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as a TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

An initial Environmental Initial Study (EIS) was conducted for the proposed subdivision in accordance with the California Environmental Quality Act (CEQA) that determined the project could have potential adverse impacts to historical resources (buildings), historical resources (archaeology), and paleontological resources. A Mitigation, Monitoring and Reporting Program (MMRP) has been created for the project with measures that would reduce the potential adverse impacts to below a level of significance. The site contains two designated historic structures (HRB Site No. 828; 3235 and 3255 Fourth Avenue). As documented within the MMRP, these structures are proposed to be removed from the site while subterranean parking is created, then relocated back to the site and incorporated into the full project design. Additional mitigation requirements are incorporated into the project to reduce potential adverse impacts to archaeological and paleontological resources.

The project site is located in an urbanized area and there are no watercourses on site. Accordingly, project implementation would not impact fish or their habitat. Therefore, site is physically suitable for the design and siting of the proposed development and the development would result in minimum disturbance to Environmentally Sensitive Lands. Therefore, the design

of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

**5. The design of the subdivision or the type of improvements will not be detrimental to the public health, safety, and welfare (San Diego Municipal Code § 125.0440(e) and Subdivision Map Act § 66474(f)).** The Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The proposed development is on an existing developed site. The site has been studied for potential historical resource (buildings), archaeological resource and paleontological resource impacts.

Mitigated Negative Declaration No. 105703 has been prepared for the project in accordance with the State CEQA. An MMRP has been prepared and would be implemented which would reduce, to a level below significance, some of the potential impacts identified in the environmental review process.

The project would comply with the development regulations in effect for the subject property as described in SDP No. 352760, and other regulations and guidelines pertaining to the subject property per the SDMC and the Subdivision Map Act. The proposed development would be required to obtain building permits and process all mapping actions to show that all construction would comply with all applicable building and fire code requirements. The project proposes to incorporate sustainable design practices including energy-efficient windows, lighting motion sensors, native landscaping, and energy-efficient mechanical units. The siting of residential infill adjacent to existing transit access and commercial infrastructure encourages walking and reduces the automobile trips that are detrimental to public health and safety. The proposed infill development on a previously-disturbed site protects greenfields and natural resources.

Therefore, proposed development would not be detrimental to the public health, safety, and welfare.

**6. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision (San Diego Municipal Code § 125.0440(f) and Subdivision Map Act § 66474(g)).** The Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The project does not propose to eliminate existing easements, and all development is proposed on private property. The development area is surrounded on three sides by public rights-of-way (Fourth Avenue, Thorn Street, and Fifth Avenue), and project implementation will enhance these rights-of-way by reducing the amount of curb cuts and upgrading the landscape and streetscape, which would improve public access and use of the property. Therefore, design of the subdivision or the type of improvements would not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

**7. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities (San Diego Municipal Code § 125.0440(g) and Subdivision Map Act § 66473.1).** The Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The project proposes to incorporate sustainable design practices including energy-efficient windows, lighting motion sensors, native landscaping, and energy-efficient mechanical units. Additionally, the project proposes to include light colored roofing to decrease heat gain. The design of the proposed subdivision through building materials, site orientation, architectural treatments and the placement and selection of plant materials provide to the extent feasible, for future passive or natural heating and cooling opportunities.

**8. The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources (San Diego Municipal Code § 125.0440(h) and Subdivision Map Act § 66412.3).** The Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

In addition, the Project would help to provide affordable housing opportunities that would promote an economically balanced community. A minimum of five of the proposed dwelling units would be affordable per the Inclusionary Affordable Housing Regulations. A mix of one- and two-bedroom dwelling units would provide a variety of housing options and costs in close proximity to employment and transportation options.

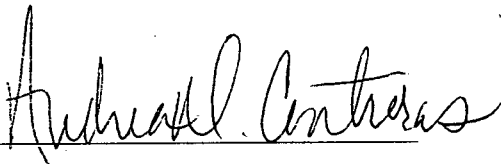
The proposed development would support infrastructure improvements in the community by providing public open space and park improvements through in-lieu fees, public services through development impact fees, and street frontage improvements. The additional customer base supplied by the residential units would assist in the continued viability of the existing retail area, contributing taxes and economic stability to the community. Therefore, the decision maker has considered the effects of the proposed subdivision on the housing needs of the region and

that those needs are balanced against the needs for public services and the available fiscal and environmental resources.

The above findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference; and

BE IT FURTHER RESOLVED, that the appeal c/o Bruce Leidenberger is granted, and Tentative Map No. 352761 is granted to 4th & Thorn, LLC, a California Limited Liability Company and 5th & Thorn, LLC, a California Limited Liability Company, The Barrett Family Trust of 1986, J Bejar, LLC, and S B & O Inc., Engineer, subject to the attached conditions which are made a part of this resolution by reference.

APPROVED: JAN I. GOLDSMITH, CITY ATTORNEY

By:   
Andrea M. Contreras  
Deputy City Attorney

AMC:cw  
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05/04/11 COR COPY 2  
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