



City of Santa Barbara California

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 018-16

200 HELENA AVENUE

SUSPENSION OF STAFF HEARING OFFICER'S APPROVAL
DEVELOPMENT PLAN AND COASTAL DEVELOPMENT PERMIT

JULY 14, 2016

SUSPENSION BY THE PLANNING COMMISSION OF THE STAFF HEARING OFFICER'S APPROVAL OF THE APPLICATION OF MATTHEW BEAUSOLEIL, AB DESIGN STUDIO INC., ARCHITECT FOR FUNK ZONE PARKING, LLC; 200 HELENA AVENUE; APN 033-052-018; OC/SD-3 (OCEAN-ORIENTED COMMERCIAL/ COASTAL OVERLAY ZONES, GENERAL PLAN DESIGNATION: HOTEL AND RELATED COMMERCE II, LOCAL COASTAL PLAN DESIGNATION: HOTEL AND RELATED COMMERCE (MST2015-00289)

The project consists of the demolition of the existing 1,663 square foot one-story commercial building (of which 900 square feet is legally permitted) and 147 square foot detached shed (demolition permit issued April 14, 2016; BLD2016-00716), and construction of a new two-story 2,355 net square foot building with a roof deck. Maximum building height would be 27 feet, 3 inches. Nine parking spaces are proposed with access from Yanonali Street, and a valet parking lot of approximately 3,400 square feet is proposed with access from Helena Avenue.

The discretionary applications required for this project are:

1. A Coastal Development Permit (CDP20015-00010) to allow the proposed development in the Non-Appealable Jurisdiction of the City's Coastal Zone (SBMC §28.44.060); and
2. A Development Plan to allow the construction of approximately 1,308 square feet of net new nonresidential development (SBMC Chapter 28.85).

The project activity is within the scope of the 2011 General Plan and the Program EIR analysis for the General Plan. No further environmental document is required for this project pursuant to the California Environmental Quality Act (Public Resources Code §21083.3 and Code of Regulations §15183). City Council environmental findings adopted for the 2011 General Plan remain applicable for this project.

The Staff Hearing Officer approved the project at a public hearing on June 8, 2016. The Staff Hearing Officer's decision was suspended at the request of a Planning Commissioner in accordance with SBMC §28.05.020. The Planning Commission reviewed to affirm, reverse, or modify the decision of the Staff Hearing Officer after conducting a public hearing.

WHEREAS, the Planning Commission has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, no one appeared to speak in favor of the application, and or in opposition thereto, and the following exhibits were presented for the record:

1. Staff Memorandum with Attachments, July 7, 2016 2016
2. Site Plans

NOW, THEREFORE BE IT RESOLVED that the City Planning Commission:

- I. Upheld the decision of the Staff Hearing Officer making the findings and determinations as outlined in Staff Hearing Officer Resolution No. 038-16:
 - A. **ENVIRONMENTAL REVIEW (CEQA Guidelines §15183)**
 1. The project qualifies for an exemption from further environmental review under CEQA guidelines section 15183, based on City staff analysis and the CEQA Certificate of Determination on file for this project.
 - B. **COASTAL DEVELOPMENT PERMIT (SBMC §28.44.150)**
 1. The project is consistent with all applicable policies of the City's Local Coastal Plan, all applicable implementing guidelines, and all applicable provisions of the Code because it has been sensitively designed with respect to mountain views and, as conditioned, will provide adequate parking to meet its demand, as described in Sections VI.A and VI.B of the Staff Report.
 2. The project, as conditioned, is consistent with the policies of the California Coastal Act because it does not impact public access or sensitive habitat and provides an appropriate development and use in a developed area of the City, as described in Section VI.C of the Staff Report.
 - C. **DEVELOPMENT PLAN (SBMC §28.85.040)**
 1. The proposed development complies with all provisions of the Zoning Ordinance, including the Non-Residential Growth Management Program requirements, because the project is consistent with the development standards for the OC Zone as shown in Section VI.A of the Staff Report, and is using the Minor and Small Additions allocated to the site.
 2. The proposed development is consistent with the principles of sound community planning. The documents that guide development in this area are the Local Coastal Plan, Zoning Ordinance, and the City's design review guidelines. The project is consistent with applicable regulations, goals and policies of these documents, as discussed in Section VI of the Staff Report.
 3. The proposed development will not have a significant adverse impact upon the community's aesthetics or character in that the size, bulk or scale of the development will be compatible with the neighborhood based on the Project Compatibility Analysis criteria found in Section 22.68.045 of this Code, as determined by the Architectural Board of Review on February 16, 2016 and as described in Section VIII of the Staff Report. As a standard condition of approval, the project will return to the ABR for further review and consideration of Project Design and Final Approvals.
 4. The proposed development is consistent with the policies of the City of Santa Barbara Traffic Management Strategy as expressed in the allocation allowances specified in SBMC Section 28.85.050, as discussed in Section VI of the Staff Report.

- II. Said approval is subject to the following revised conditions of Staff Hearing Officer Resolution 038-16:
- A. **Order of Development.** In order to accomplish the proposed development, the following steps shall occur in the order identified:
1. Obtain all required design review approvals.
 2. Record any required documents (see Recorded Conditions Agreement section).
 3. Pay Land Development Team Recovery Fee (30% of all planning fees, as calculated by staff) at time of building permit application.
 4. Permits.
 - a. Submit an application for and obtain a Building Permit (BLD) for construction of approved development and complete said development.
 - b. Submit an application for and obtain a Public Works Permit (PBW) for all required public improvements and complete said improvements.
- Details on implementation of these steps are provided throughout the conditions of approval.
- B. **Recorded Conditions Agreement.** The Owner shall execute a *written instrument*, which shall be prepared by Planning staff, reviewed as to form and content by the City Attorney, Community Development Director and Public Works Director, recorded in the Office of the County Recorder, and shall include the following:
1. **Approved Development.** The development of the Real Property approved by the Staff Hearing Officer on June 8, 2016 is limited to a two-story building of approximately 2,355 net square feet of building area with a 9-space parking lot, 4 bicycle parking spaces and a separate valet parking lot, as described in the Applicant Letter dated May 26, 2016 and as shown on submitted exhibits and on the plans signed by the Staff Hearing Officer on said date and on file at the City of Santa Barbara.
 2. **Uninterrupted Water Flow.** The Owner shall allow for the continuation of any historic flow of water onto the Real Property including, but not limited to, swales, natural watercourses, conduits and any access road, as appropriate.
 3. **Recreational Vehicle Storage Prohibition.** No recreational vehicles, boats, or trailers shall be stored on the Real Property.
 4. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan approved by the Architectural Board of Review (ABR). Such plan shall not be modified unless prior written approval is obtained from the ABR. The landscaping on the Real Property shall be provided and maintained in accordance with said landscape plan, including any tree protection measures. If said landscaping is removed for any reason without approval by the ABR, the owner is responsible for its immediate replacement.
 5. **Storm Water Pollution Control and Drainage Systems Maintenance.** Owner shall maintain the drainage system and storm water pollution control devices in a functioning state and in accordance with the Storm Water BMP Guidance Manual and Operations and Maintenance Procedure Plan approved by the Creeks Division. Should any of the project's surface or subsurface drainage structures or storm water pollution control methods fail to

capture, infiltrate, and/or treat water, or result in increased erosion, the Owner shall be responsible for any necessary repairs to the system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the Owner shall submit a repair and restoration plan to the Community Development Director to determine if an amendment or a new Building Permit and Coastal Development Permit is required to authorize such work. The Owner is responsible for the adequacy of any project-related drainage facilities and for the continued maintenance thereof in a manner that will preclude any hazard to life, health, or damage to the Real Property or any adjoining property.

6. **Areas Available for Parking.** All parking areas and access thereto shall be kept open and available in the manner in which it was designed and permitted.
7. **Use Limitations Due to Parking.** Due to potential parking impacts, uses with a parking requirement of more than one space per 250 square feet (per the City's Parking Ordinance) are not permitted without further environmental, coastal and/or Staff Hearing Officer review and approval. This means that restaurants, wine bars, tasting rooms, etc., that are typically parked at a greater ratio of one parking space per three seats would not be allowed without additional analysis and potentially an amendment to the Coastal Development Permit, regardless of how many seats are shown on the tenant improvement plan. The intent is to do a realistic analysis of the number of seats/patrons that are likely to be in the tenant space. In doing the analysis, staff shall at a minimum consider the use, size, occupancy, layout and configuration of the tenant space. Prior to initiating a change of use (as determined by the Zoning Division) or change to the site layout, the Owner shall submit a letter to the Community Development Director detailing the proposal, and the Director shall determine the appropriate review procedure and notify the Owner.
8. **Roof Deck.** Due to potential traffic and/or parking impacts, use of the roof deck other than by employees occupying the on-site tenant space(s), is not permitted without further environmental, coastal and/or Staff Hearing Officer review and approval, to be determined by the Community Development Director. The roof deck as proposed shall not be used as commercial outdoor dining, as a separate business operation, as an extension of the business operation of a tenant, as an event space, or leased out to another user separate from the tenants occupying the building without formal approval by the City, as described above. Prior to initiating a change of use, the Owner shall submit a letter to the Community Development Director detailing the proposal, and the Director shall determine the appropriate review procedure and notify the Owner.
9. **Valet Parking Lot.**
 - a. Valet parking is only allowed in the designated valet parking area and no maneuvering or queuing related to valet operations is allowed within the right-of-way. However, if the City adopts an ordinance that allows valet parking operations within the right-of-way, the owner or tenant(s) may propose valet parking operations within the right-of-way in a manner consistent with such ordinance.
 - b. Use of the valet parking area by off-site users shall be subordinate to use of the lot as required parking for on-site users, as required by the Zoning Ordinance. Should the use of the site require more parking than is provided in the nine-space parking

lot, the additional required parking shall be provided on site subject to approval of the revised parking design by the Transportation Division. The area available for the valet parking use shall be adjusted in order to accommodate the additional required parking. Only parking areas deemed to be excess shall be available as valet parking to off-site users.

- c. A Building Permit is required for the valet drop-off site at the time of Building Permit review for the project. The drop-off site shall meet all applicable Planning, Building & Safety, and Transportation Division requirements, including, but not limited to, the number of required parking spaces, ADA loading and parking requirements, and consistency with the Parking Design Standards. If the valet drop-off site changes to a different location in the future, a new building permit will be required for the new drop-off location.
10. **Gates.** Any gates that have the potential to block access to any designated commercial space shall be locked in the open position during business hours.
- C. **Design Review.** The project, including public improvements, is subject to the review and approval of the Architectural Board of Review (ABR). The ABR shall not grant project design approval until the following Staff Hearing Officer land use conditions have been satisfied.
1. **Screened Backflow Device.** The backflow device(s) for fire sprinklers, pools, spas and/or irrigation systems shall be provided in a location screened from public view or included in the exterior wall of the building, as approved by the ABR.
 2. **Location of Dry Utilities.** Dry utilities (e.g. above-ground cabinets) shall be placed on private property unless deemed infeasible for engineering reasons. If dry utilities must be placed in the public right-of-way, they shall be painted "Malaga Green," and if feasible, they shall be screened as approved by ABR.
 3. **Trash Enclosure Provision.** A trash enclosure with adequate area for recycling containers (an area that allows for a minimum of 50 percent of the total capacity for recycling containers) shall be provided on the Real Property and screened from view from surrounding properties and the street.

Dumpsters and containers with a capacity of 1.5 cubic yards or more shall not be placed within five (5) feet of combustible walls, openings, or roofs, unless protected with fire sprinklers.
 4. **Valet Parking Area Landscaping.** Pursuant to the Waterfront Area Design Guidelines and SBMC §28.90.050.3 & 4, additional landscaping and/or trees shall be added to the valet parking area to screen the parking area from the public street and surrounding properties, provide a buffer between the building and parking area, and to break up the expanse of paving.
- D. **Requirements Prior to Permit Issuance.** The Owner shall submit the following, or evidence of completion of the following, for review and approval by the Department listed below prior to the issuance of any permit for the project. Some of these conditions may be waived for demolition or

rough grading permits, at the discretion of the department listed. Please note that these conditions are in addition to the standard submittal requirements for each department.

1. **Public Works Department.**

- a. **Approved Public Improvement Plans.** Public Improvement Plans as identified in conditions D.1.d “Helena Avenue Public Improvements” and D.1.e “Yanonali Street Public Improvements” shall be submitted to the Public Works Department for review and approval. Upon acceptance of completed public improvement plans, a Building permit may be issued if the Owner has bonded for public improvements and executed the *Agreement to Construct and Install Improvements (Not a Subdivision)*.
- b. **Dedication(s).** Easement described as follows, subject to approval of the easement scope and location by the Public Works Department:
 - (1) All street purposes along Helena Avenue and Yanonali Street intersection fronting subject property in order to establish a 4 foot by 4 foot pedestrian access ramp landing in the public right-of-way.
- c. **Water Rights Assignment Agreement.** The Owner shall assign to the City of Santa Barbara the exclusive right to extract ground water from under the Real Property in an *Agreement Assigning Water Extraction Rights*. Engineering Division Staff prepares said agreement for the Owner’s signature.
- d. **Helena Avenue Public Improvements.** The Owner shall submit Public Works plans for construction of improvements along the property frontage on Helena Avenue. Plans shall be submitted separately from plans submitted for a Building Permit, and shall be prepared by a licensed civil engineer registered in the State of California. As determined by the Public Works Department, the improvements shall include new, and/or remove and replace to City standards, the following: approximately 82 linear feet of 6-foot wide sidewalk and minimum 4-foot wide parkway; 1 Commercial driveway apron modified to meet Title 24 requirements with a maximum width of 20 feet; 20 linear feet of curb and gutter; 1 super diagonal access ramp with 4-foot by 4-foot landing to possibly include the dedication of easement to meet maximum ramp slope of 8.33% with the existing 8-inch curbs; cross gutter to minimum at center-line of Helena Avenue; crack seal to the centerline of the street along entire subject property frontage and slurry seal a minimum of 20 feet beyond the limits of all trenching; connection to City water and sewer mains and utilities; public drainage improvements with supporting drainage calculations and/or hydrology report for installation of drainage pipe; preserve and/or reset survey monuments; protect and relocate existing contractor stamps to parkway; supply and install directional/regulatory traffic control signs per the CA MUTCD during construction; new street trees and tree grates per the Parks and Recreation Commission (if applicable); and provide adequate positive drainage from site. Any work in the public right-of-way requires a Public Works Permit.
- e. **Yanonali Street Public Improvements.** The Owner shall submit Public Works plans for construction of improvements along the property frontage on East

Yanonali Street. Plans shall be submitted separately from plans submitted for a Building Permit, and shall be prepared by a licensed civil engineer registered in the State of California. As determined by the Public Works Department, the improvements shall include new, and/or remove and replace to City standards, the following: 50 linear feet of 6-foot wide sidewalk and minimum 4-foot wide parkway; 1 Commercial driveway apron modified to meet Title 24 requirements with a maximum width of 20 feet; 12 linear feet of faux sandstone curb and 3-foot wide concrete gutter; crack seal to the centerline of the street along entire subject property frontage and slurry seal a minimum of 20 feet beyond the limits of all trenching; connection to City water and sewer mains and utilities; public drainage improvements with supporting drainage calculations and/or hydrology report for installation of drainage pipe; preserve and/or reset survey monuments; protect and relocate existing contractor stamps to parkway; supply and install directional/regulatory traffic control signs per the CA MUTCD during construction; new street trees and tree grates per the Parks and Recreation Commission (if applicable) and provide adequate positive drainage from site. Any work in the public right-of-way requires a Public Works Permit.

- f. **Haul Routes Require Separate Permit.** Apply for a Public Works permit to establish the haul route(s) for all construction-related trucks with a gross vehicle weight rating of three tons or more entering or exiting the site.
 - g. **Construction-Related Truck Trips.** Construction-related truck trips for trucks with a gross vehicle weight rating of three tons or more shall not be scheduled during peak hours (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.) in order to help reduce truck traffic on adjacent streets and roadways.
 - h. **Agreement to Construct and Install Improvements.** The Owner shall submit an executed *Agreement to Construct and Install Improvements*, prepared by the Engineering Division, an Engineer's Estimate, signed and stamped by a registered civil engineer, and securities for construction of improvements prior to execution of the Agreement.
2. **Community Development Department.**
- a. **Recordation of Agreements.** The Owner shall provide evidence of recordation of the written instrument that includes all of the Recorded Conditions identified in condition B "Recorded Conditions Agreement" to the Community Development Department prior to issuance of any building permits.
 - b. **Drainage and Water Quality.** The project is required to comply with Tier 3 of the Storm Water BMP Guidance Manual, pursuant to Santa Barbara Municipal Code Chapter 22.87 (treatment, rate and volume). The Owner shall submit drainage calculations prepared by a registered civil engineer or licensed architect demonstrating that the new development will comply with the City's Storm Water BMP Guidance Manual. Project plans for grading, drainage, stormwater facilities and treatment methods, and project development, shall be subject to review and approval by the City Building Division and Public Works Department. Sufficient engineered design and adequate measures shall be employed to ensure that no

unpermitted construction-related or long-term effects from increased runoff, erosion and sedimentation, urban water pollutants, or groundwater pollutants would result from the project.

- c. **Archaeological Monitoring Contract.** Submit a contract with an archaeologist from the most current City Qualified Archaeologists List for monitoring during all ground-disturbing activities associated with the project, including, but not limited to, grading, excavation, trenching vegetation or paving removal and ground clearance in the areas identified in the Phase 1 Archaeological Resources Report prepared for this site by Brent Leftwich, dated February 2016. The contract shall be subject to the review and approval of the Environmental Analyst.

The archaeologist's monitoring contract shall include the provisions identified in condition D.2.d "Requirement for Archaeological Resources" below.

- d. **Requirement for Archaeological Resources.** The following information shall be printed on the site or grading plans:

If archaeological resources are encountered or suspected, work shall be halted or redirected immediately and the Planning Division shall be notified. The archaeologist shall assess the nature, extent, and significance of any discoveries and develop appropriate management recommendations for archaeological resource treatment, which may include, but are not limited to, redirection of grading and/or excavation activities, consultation and/or monitoring with a Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List, etc.

If the discovery consists of possible human remains, the Santa Barbara County Coroner shall be contacted immediately. If the Coroner determines that the remains are Native American, the Coroner shall contact the California Native American Heritage Commission. A Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Planning Division grants authorization.

If the discovery consists of possible prehistoric or Native American artifacts or materials, a Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Planning Division grants authorization.

- e. **Design Review Requirements.** Plans shall show all design, landscape and tree protection elements, as approved by the appropriate design review board and as outlined in Section C "Design Review," and all elements/specifications shall be implemented on-site.
- f. **Conditions on Plans/Signatures.** The final Resolution shall be provided on a full size drawing sheet as part of the drawing sets. A statement shall also be placed on the sheet as follows: The undersigned have read and understand the require conditions, and agree to abide by any and all conditions which are their usual and

customary responsibility to perform, and which are within their authority to perform.

Signed:

Property Owner Date

Contractor Date License No.

Architect Date License No.

Engineer Date License No.

E. **Construction Implementation Requirements.** All of these construction requirements shall be carried out in the field by the Owner and/or Contractor for the duration of the project construction, including demolition and grading.

1. **Construction Contact Sign.** Immediately after Building permit issuance, signage shall be posted at the points of entry to the site that list the contractor(s) name, contractor(s) telephone number(s), construction work hours, site rules, and construction-related conditions, to assist Building Inspectors and Police Officers in the enforcement of the conditions of approval. The font size shall be a minimum of 0.5 inches in height. Said sign shall not exceed six feet in height from the ground if it is free-standing or placed on a fence. It shall not exceed 24 square feet in a multi-family or commercial zone.
2. **Sandstone Curb Recycling.** Any existing sandstone curb in the public right-of-way that is removed and not reused shall be carefully salvaged and delivered to the City Corporation Annex Yard on Yanonali Street.
3. **Construction Storage/Staging.** Construction vehicle/ equipment/ materials storage and staging shall be done on-site. No parking or storage shall be permitted within the public right-of-way, unless specifically permitted by the Public Works Director with a Public Works permit.
4. **Construction Parking.** During construction, free parking spaces for construction workers shall be provided on-site or off-site in a location subject to the approval of the Public Works Director.
5. **Air Quality and Dust Control.** The following measures shall be shown on grading and building plans and shall be adhered to throughout grading, hauling, and construction activities:
 - a. During construction, use water trucks or sprinkler systems to keep all areas of vehicle movement damp enough to prevent dust from leaving the site. At a minimum, this should include wetting down such areas in the late morning and after work is completed for the day. Increased watering frequency should be required whenever the wind speed exceeds 15 mph. Reclaimed water should be used

whenever possible. However, reclaimed water should not be used in or around crops for human consumption.

- b. Minimize amount of disturbed area and reduce on site vehicle speeds to 15 miles per hour or less.
- c. If importation, exportation and stockpiling of fill material is involved, soil stockpiled for more than two days shall be covered, kept moist, or treated with soil binders to prevent dust generation. Trucks transporting fill material to and from the site shall be tarped from the point of origin.
- d. Gravel pads shall be installed at all access points to prevent tracking of mud onto public roads.
- e. After clearing, grading, earth moving or excavation is completed, treat the disturbed area by watering, or revegetating, or by spreading soil binders until the area is paved or otherwise developed so that dust generation will not occur.
- f. The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holiday and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the Air Pollution Control District prior to land use clearance for map recordation and land use clearance for finish grading of the structure.
- g. All portable diesel-powered construction equipment shall be registered with the state's portable equipment registration program OR shall obtain an APCD permit.
- h. Fleet owners of mobile construction equipment are subject to the California Air Resource Board (CARB) Regulation for In-use Off-road Diesel Vehicles (Title 13 California Code of Regulations, Chapter 9, § 2449), the purpose of which is to reduce diesel particulate matter (PM) and criteria pollutant emissions from in-use (existing) off-road diesel-fueled vehicles. For more information, please refer to the CARB website at www.arb.ca.gov/msprog/ordiesel/ordiesel.htm.
- i. All commercial diesel vehicles are subject to Title 13, § 2485 of the California Code of Regulations, limiting engine idling time. Idling of heavy-duty diesel construction equipment and trucks during loading and unloading shall be limited to five minutes; electric auxiliary power units should be used whenever possible.

F. **Prior to Certificate of Occupancy.** Prior to issuance of the Certificate of Occupancy, the Owner of the Real Property shall complete the following:

1. **Repair Damaged Public Improvements.** Repair any public improvements (curbs, gutters, sidewalks, roadways, etc.) or property damaged by construction subject to the review and approval of the Public Works Department per SBMC §22.60. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of a qualified arborist.
2. **Complete Public Improvements.** Public improvements, as shown in the public improvement plans or building plans, shall be completed.

3. **Archaeological Monitoring Report.** A final report on the results of the archaeological monitoring shall be submitted to the Planning Division within 180 days of completion of the monitoring or prior to the issuance of the Certificate of Occupancy, whichever is earlier.
4. **New Construction Photographs.** Photographs of the new construction, taken from the same locations as those taken of the story poles prior to project approval, shall be taken, attached to 8 ½ x 11” board and submitted to the Planning Division.

G. **General Conditions.**

1. **Compliance with Requirements.** All requirements of the city of Santa Barbara and any other applicable requirements of any law or agency of the State and/or any government entity or District shall be met. This includes, but is not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.), the 1979 Air Quality Attainment Plan, and the California Code of Regulations.
2. **Approval Limitations.**
 - a. The conditions of this approval supersede all conflicting notations, specifications, dimensions, and the like which may be shown on submitted plans.
 - b. All buildings, roadways, parking areas and other features shall be located substantially as shown on the plans approved by the Staff Hearing Officer.
 - c. Any deviations from the project description, approved plans or conditions must be reviewed and approved by the City, in accordance with the Planning Commission Guidelines. Deviations may require changes to the permit and/or further environmental review. Deviations without the above-described approval will constitute a violation of permit approval.
3. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors (“City’s Agents”) from any third party legal challenge to the City Council’s denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively “Claims”). Applicant/Owner further agrees to indemnify and hold harmless the City and the City’s Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant/Owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of being notified of a lawsuit regarding the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City’s sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City’s Agents from independently defending any Claim. If the City or the City’s Agents decide to independently defend a Claim, the City and the City’s Agents shall bear their own attorney fees, expenses, and costs of that independent defense.

This motion was passed and adopted on the 14th day of July, 2016 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 6 NOES: 0 ABSTAIN: 0 ABSENT: 1 (Lodge)

I hereby certify, after video review, that this Resolution correctly reflects the action taken by the city of Santa Barbara Planning Commission at its meeting of the above date.



Julie Rodriguez, Planning Commission Secretary



Date

PLEASE BE ADVISED:

THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) CALENDAR DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.