



City of Santa Barbara California

CITY OF SANTA BARBARA STAFF HEARING OFFICER

RESOLUTION NO. 025-09
416 AND 418 MONTGOMERY STREET
TENTATIVE SUBDIVISION MAP AND
CONDOMINIUM CONVERSION PERMIT
APRIL 8, 2009

**APPLICATION OF DAVE TABOR, AGENT, FOR DAN SECORD, PROPERTY OWNER,
416 & 418 MONTGOMERY STREET, 025-393-003, R-2 ZONE, GENERAL PLAN
DESIGNATION: RESIDENTIAL 12 UNITS PER ACRE (MST2008-00131)**

The project consists of a proposal to convert two existing, one-story residential units to condominium units on an 8,598 square foot lot in the Mission Area Special Design District. The unit at 418 Montgomery Street is a 1,346 square foot three-bedroom unit. The unit at 416 Montgomery Street is a 1,063 square foot two-bedroom unit. An existing, detached 360 square foot two-car garage will remain. The proposal includes the addition of exterior storage spaces for each unit and two uncovered parking spaces (one for each unit) along the private alley off of Montgomery Street.

The discretionary applications required for this project are:

1. A Tentative Subdivision Map for a one-lot subdivision to create two (2) residential condominium units (SBMC 27.07 and 27.13);
2. A Condominium Conversion Permit to convert two (2) existing residential units to two (2) condominium units (SBMC § 28.88).

WHEREAS, the Staff Hearing Officer has held the required public hearing on the above application, and the Applicant was present.

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

1. Staff Report with Attachments, April 1, 2009.
2. Site Plans

NOW, THEREFORE BE IT RESOLVED that the City Staff Hearing Officer:

- I. Approved the application making the following findings and determinations:
 - A. **Tentative Subdivision Map (SBMC §27.07.100)**

The proposal is two convert two existing residential units into condominiums; therefore, the Tentative Subdivision Map is consistent with the General Plan and the Zoning Ordinance of the City of Santa Barbara. The site is physically suitable for the proposed development, the project is consistent with the provisions of the Municipal Code and the General Plan and the proposed use is consistent with the vision for this

neighborhood of the General Plan as shown in Sections V and VII.C. of the Staff Report dated April 1, 2009. The design of the project will not cause substantial environmental damage, and associated improvements will not cause serious public health problems. The project includes design features which offset the projects failure to meet the standard by providing a private outdoor space in the front yard, and provides adequate open space on the site.

B. Exception to the Outdoor Living Space Physical Standard for Condominium conversion (28.88.040.L)

The project includes design features which offset the projects failure to meet the standard by providing adequate open area on the site and a private outdoor space for the front unit in the front yard.

C. Condominium Conversion (SBMC §28.88.120)

1. With the approval of the Exception to the Outdoor Living Space Physical Standard above, all provisions of the Condominium Conversion Ordinance are met and the project will not be detrimental to the health, safety, and general welfare of the community as indicated in the Zoning Consistency chart in Section V and VII.B. of the written staff report dated April 1, 2009.
2. The proposed conversion is consistent with the General Plan of the City of Santa Barbara and with the density requirement of its Land Use Element as discussed in Section VII.C. of the written staff report dated April 1, 2009.
3. The proposed conversion will conform to the Santa Barbara Municipal Code in effect at the time the application was deemed complete, except as otherwise provided in the Condominium Conversion Ordinance because no modifications are requested and it meets the requirements of the R-2 Zone.
4. The overall design (including project amenities) and physical condition of the conversion will result in a project, which is aesthetically attractive, safe, and of quality construction. Several upgrades are proposed to enhance the existing structures as described in Section VII.B. of the Staff Report written April 1, 2009, which include two uncovered parking spaces, trash/recycling enclosures, additional storage space, upgrading walkways, new fencing and landscaping along the street and alley frontage, and upgrades to the foundation and exterior paint and siding.
5. The units have not been "affordable rental units"; therefore, affordability restrictions do not apply to the project. The applicant provided a rental history summary demonstrating that the units have not been affordable rental units within the last four years.
6. The Applicant has not engaged in coercive retaliatory action regarding the tenants after the submittal of the first application for City review through the date of approval. The units are currently being rented by family members of the owner.

7. The owner notified the tenants about the condominium conversion proposal and informed the tenant of their rights pursuant to SBMC §28.88. There is a letter in the file demonstrating the appropriate tenant notification.
8. The project is exempt from the provisions of Section 28.88.130 because the project consists of fewer than five units.

II. Said approval is subject to the following conditions:

In consideration of the project approval granted by the Staff Hearing Officer and for the benefit of the owner(s) and occupant(s) of the Real Property, the owners and occupants of adjacent real property and the public generally, the following terms and conditions are imposed on the use, possession, and enjoyment of the Real Property:

- A. **Notice of Approval of Condominium Conversion.** Owner shall provide evidence of delivery of written notice of the condominium conversion approval to the Community Development Department within 15 days of the approval of said conversion. The content of such notice shall include an explanation of any conditions of approval that affect the tenants.
- B. **Design Review.** The project is subject to the review and approval of the Architectural Board of Review (ABR). The ABR shall not grant preliminary approval of the project until the following Staff Hearing Officer land use conditions have been satisfied.
 1. **Useable Common Open Space.** Adequate usable common open space shall be provided in a location accessible by all units within the development.
 2. **Screened Check Valve/Backflow.** The check valve or anti-backflow devices for fire sprinkler and/or irrigation systems shall be provided in a location screened from public view or included in the exterior wall of the building.
 3. **Physical Elements Report Requirements.** All requirements listed in the physical elements report that result in exterior changes shall be subject to ABR review.
 4. **Trash Enclosures Provision.** A trash enclosure(s) with an area for recycling containers shall be provided on the Real property and screened from view from surrounding properties and the street.
 5. **Lighting.** Exterior lighting, where provided, shall be consistent with the City's Lighting Ordinance. No floodlights shall be allowed. Exterior lighting shall be directed toward the ground.
 6. **Parking.** Confer with Transportation Department staff to study the uncovered parking space for unit 418 to reduce encroachment into the open yard as much as possible and still meet the minimum size required for uncovered parking spaces.

- C. **Recorded Conditions Agreement.** Prior to the issuance of any Public Works permit or Building permit for the project on the Real Property, the Owner shall execute an "Agreement Relating to Subdivision Map Conditions Imposed on Real Property," which shall be 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 April 8, 2009 is limited to the conversion of two (2) residential units to two (2) condominium units and the improvements shown 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 provide for the uninterrupted 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. 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 intended to intercept siltation and other potential pollutants (including, but not limited to, hydrocarbons, fecal bacteria, herbicides, fertilizers, etc.) in a functioning state (and in accordance with the Operations and Maintenance Procedure Plan approved in accordance with the Storm Water Management Plan BMP Guidance Manual). 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 applicant shall submit a repair and restoration plan to the Community Development Director to determine if an amendment or a new Building 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. **Required Private Covenants.** The Owners shall record in the official records of Santa Barbara County either private covenants, a reciprocal easement agreement, or a similar agreement which, among other things, shall provide for all of the following:
 - a. **Common Area Maintenance.** An express method for the appropriate and regular maintenance of the common areas, common access ways, common utilities and other similar shared or common facilities or improvements of the development, which methodology shall also provide for an appropriate cost-sharing of such regular maintenance among the various owners of the condominium units.
 - b. **Parking Spaces Available for Parking.** A covenant that includes a requirement that all parking spaces (both covered and uncovered) be kept open and available for the parking of vehicles owned by the residents of the property in the manner for which the parking spaces were designed and permitted.
 - c. **Landscape Maintenance.** A covenant that provides that the landscaping shown on the approved Landscaping Plan shall be maintained and preserved at all times in accordance with the Plan.
 - d. **Trash and Recycling.** Trash holding areas shall include recycling containers with at least equal capacity as the trash containers, and trash/recycling areas shall be easily accessed by the consumer and the trash hauler. Green waste shall either have containers adequate for the landscaping or be hauled off site by the landscaping maintenance company. If no green waste containers are provided for common interest developments, include an item in the CC&Rs stating that the green waste will be hauled off site.
 - e. **Covenant Enforcement.** A covenant that permits each owner to contractually enforce the terms of the private covenants, reciprocal easement agreement, or similar agreement required by this condition.
- D. **Public Works Submittal Prior to Parcel Map Approval.** The Owner shall submit the following, or evidence of completion of the following, to the Public Works Department for review and approval, prior to processing the approval of the Final/Parcel Map and prior to the issuance of any permits for the project:
 1. **Parcel Map.** The Owner shall submit to the Public Works Department for approval, a Parcel Map prepared by a licensed land surveyor or registered Civil Engineer. The Parcel Map shall conform to the requirements of the City Survey Control Ordinance.
 2. **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 will prepare said agreement for the Owner's signature.

3. **Required Private Covenants.** The Owner shall submit a copy of the draft private covenants, reciprocal easement agreement, or similar private agreements required for the project.
 4. **Drainage and Water Quality.** Project drainage shall be designed, installed, and maintained such that stormwater runoff from the first inch of rain from any storm event shall be retained and treated onsite in accordance with the City's NPDES Storm Water Management Plan (SWMP). Runoff should be directed into a passive water treatment method such as a bioswale, landscape feature (planter beds and/or lawns), infiltration trench, etc. Project plans for grading, drainage, stormwater treatment methods, and project development, shall be subject to review and approval by City Building Division and Public Works Department. Sufficient engineered design and adequate measures shall be employed to ensure that no significant construction-related or long-term effects from increased runoff, erosion and sedimentation, urban water pollutants, or groundwater pollutants would result from the project. The Owner shall maintain the drainage system and storm water pollution control methods in a functioning state.
 5. **Montgomery Street Public Improvements.** The Owner shall submit building plans for construction of improvements along the property frontage on Montgomery Street. Any work in the public right-of-way requires a Public Works Permit. As determined by the Public Works Department, the improvements shall be the following:
 - a. Supply and install one Dome style residential standard street light, final placement to be determined by the Public Works Department and the appropriate design review board, coordinate with City staff to retire light standard on existing utility pole, preserve and/or reset survey monuments and contractor stamps, supply and install directional/regulatory traffic control signs per 2006 MUTCD w/CA supplements, and provide adequate positive drainage from site.
 - b. Adjust the height of the north sidewalk transition to make it consistent with the grade of the alley and sloped so as not to exceed ADA requirements.
- E. **Public Works Requirements Prior to Building/Condominium Conversion Permit Issuance.** The Owner shall submit the following, or evidence of completion of the following to the Public Works Department for review and approval, prior to the issuance of a Building/Condominium Conversion Permit for the project.
1. **Submittal for Recordation of Parcel Map and Agreements.** Owner shall submit application for approval and recordation of the Parcel Map to the Public Works Department.

- F. **Community Development Requirements with Building/Condominium Conversion Permit or Public Works Permit Application.** The following shall be submitted with the application for any Building/Condominium Conversion Permit or Public Works Permit and finalized prior to issuance of any Building/Condominium Conversion or Public Works Permit:
1. **Notice of Vacation of Unit.** Each non-purchasing tenant that is not in default shall have not less than 180 days from the date of notice of the intent to convert is served pursuant to Government Code section 66427.1 before the Owner may terminate the tenancy.
 2. **Park Commission Tree Removal Approval.** Submit to the Planning Division verification of approval from the Park Commission for the removal of the Yucca tree in the front yard.
- G. **Building/Condominium Conversion Permit Plan Requirements.** The following requirements/notes shall be incorporated into the construction plans submitted to the Building and Safety Division for Building/Condominium Conversion Permits:
1. **Design Review Requirements.** Plans shall show all design, landscape and tree protection elements, as approved by the Architectural Board of Review, outlined in Section B above.
 2. **Physical Elements Report.** All elements in the Physical Elements Report that have five or fewer years of life remaining shall be repaired or replaced and shown on the plans.
 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.
 4. **Conditions on Plans/Signatures.** The final Staff Hearing Officer Resolution shall be provided on a full size drawing sheet as part of the drawing sets. Each condition shall have a sheet and/or note reference to verify condition compliance. If the condition relates to a document submittal, indicate the status of the submittal (e.g., Final Map submitted to Public Works Department for review). A statement shall also be placed on the above sheet as follows: The undersigned have read and understand the above conditions, and agree to abide by any and all conditions which is 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.

H. **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.

1. **Sandstone Curb Recycling.** Any existing sandstone curb in the public right-of-way that is removed and not reused shall be salvaged and sent to the City Corporation Annex Yard.
2. **Construction Hours.** Construction (including preparation for construction work) is prohibited Monday through Friday before 7:00 a.m. and after 5:00 p.m., and all day on Saturdays, Sundays and holidays observed by the City of Santa Barbara, as shown below: (look at longer or shorter hours and Saturday construction, depending on project location)

New Year's Day	January 1st*
Martin Luther King's Birthday	3rd Monday in January
Presidents' Day	3rd Monday in February
Cesar Chavez Day	March 31st
Memorial Day	Last Monday in May
Independence Day	July 4th*
Labor Day	1st Monday in September
Thanksgiving Day	4th Thursday in November
Following Thanksgiving Day	Friday following Thanksgiving Day
Christmas Day	December 25th*

*When a holiday falls on a Saturday or Sunday, the preceding Friday or following Monday, respectively, shall be observed as a legal holiday.

When, based on required construction type or other appropriate reasons, it is necessary to do work outside the allowed construction hours, contractor shall contact the Chief of Building and Safety to request a waiver from the above construction hours, using the procedure outlined in Santa Barbara Municipal Code §9.16.015 Construction Work at Night. Contractor shall notify all residents within 300 feet of the parcel of intent to carry out night construction a

minimum of 48 hours prior to said construction. Said notification shall include what the work includes, the reason for the work, the duration of the proposed work and a contact number that is answered by a person, not a machine.

3. **Existing Tree Preservation.** The existing tree shown on the approved Tentative Subdivision Map to be saved shall be preserved and protected and fenced three feet outside the dripline during construction.
4. **Unanticipated Archaeological Resources Contractor Notification.** Prior to the start of any vegetation or paving removal, demolition, trenching or grading, contractors and construction personnel shall be alerted to the possibility of uncovering unanticipated subsurface archaeological features or artifacts associated with past human occupation of the parcel. If such archaeological resources are encountered or suspected, work shall be halted immediately, the City Environmental Analyst shall be notified and the applicant shall retain an archaeologist from the most current City Qualified Archaeologists List. The latter shall be employed to assess the nature, extent and significance of any discoveries and to 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 Environmental Analyst grants authorization.

- I. **Prior to Certificate of Occupancy for the Condominium Conversion Permit.** Prior to issuance of the Certificate of Occupancy for the Condominium Conversion Permit, the Owner of the Real Property shall complete the following:
 1. **Repair Damaged Public Improvements.** Repair any damaged public improvements (curbs, gutters, sidewalks, roadways, etc.) subject to the review and approval of the Public Works Department per SBMC §22.60.090. 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 building plans, including utility service undergrounding and installation of street trees.
 3. **Physical Elements Report Completion.** All elements in the Physical Elements Report that have five or fewer years of life remaining shall be repaired or replaced.
 4. **Evidence of Private CC&Rs Recordation.** Evidence shall be provided that the private CC&Rs required in Section C have been recorded.

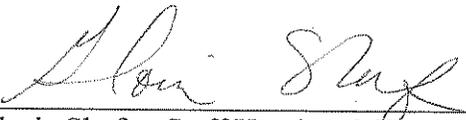
5. **Parcel Map Approved.** The Parcel Map shall be approved by City Council and recorded.
 6. **Exclusive Right to Purchase (Right of First Refusal).** Owner shall provide evidence of the extension to each tenant household of an exclusive right to purchase in accordance with the provisions of Section 66427.1(d) of the Government Code.
- J. **After Certificate of Occupancy:** The following conditions shall be completed after issuance of the Certificate of Occupancy for the Condominium Conversion Permit has been completed.
1. **Parcel Map Recordation.** The Parcel Map shall not be recorded until the Certificate of Occupancy for the Condominium Conversion Permit has been issued. The following shall be provided prior to Map recordation.
 - a. **Notice of Department of Real Estate Report.** Owner shall submit evidence showing that written notification has been submitted to each tenant household that an application for a public report has been submitted to the California Department of Real Estate within 10 days of the submission of such application.
 - b. **Notice of Parcel Map Approval.** Owner shall submit evidence that written notice of approval of the Parcel Map has been provided to each tenant household within 10 days of such approval.
- K. **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 the City Council denial of the appeal and approval of 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.

NOTICE OF TENTATIVE SUBDIVISION MAP (INCLUDING NEW CONDOMINIUMS AND CONDOMINIUM CONVERSIONS) TIME LIMITS:

The Staff Hearing Officer's action approving the Tentative Map shall expire three (3) years from the date of approval. The subdivider may request an extension of this time period in accordance with Santa Barbara Municipal Code §27.07.110.

This motion was passed and adopted on the 8th day of April, 2009 by the Staff Hearing Officer of the city of Santa Barbara.

I hereby certify that this Resolution correctly reflects the action taken by the city of Santa Barbara Staff Hearing Officer at its meeting of the above date.



Gloria Shafer, Staff Hearing Officer Secretary

4-21-2009
Date

PLEASE BE ADVISED:

1. This action of the Staff Hearing Officer can be appealed to the Planning Commission or the City Council within ten (10) days after the date the action was taken by the Staff Hearing Officer.
2. If the scope of work exceeds the extent described in the Modification request or that which was represented to the Staff Hearing Officer at the public hearing, it may render the Staff Hearing Officer approval null and void.
3. If you have any existing zoning violations on the property, other than those included in the conditions above, they must be corrected within thirty (30) days of this action.
4. Subsequent to the outcome of any appeal action your next administrative step should be to apply for Architectural Board of Review (ABR) approval and then a building permit.
5. **PLEASE NOTE: A copy of this resolution shall be reproduced on the first sheet of the drawings submitted with the application for a building permit.** The location, size and design of the construction proposed in the application for the building permit shall not deviate from the location, size and design of construction approved in this modification.