



# City of Santa Barbara California

## STAFF HEARING OFFICER STAFF REPORT

**REPORT DATE:** March 9, 2016  
**AGENDA DATE:** March 16, 2016  
**PROJECT ADDRESS:** 3408-3412 State Street (MST2004-00704)

**TO:** Susan Reardon, Senior Planner, Staff Hearing Officer  
**FROM:** Planning Division, (805) 564-5470  
 Beatriz Gularte, Senior Planner *BEG*  
 Kathleen Kennedy, Associate Planner *kkh*

### I. PROJECT DESCRIPTION

This is a request for a two-year extension of the expiration date of the Tentative Map, Condominium Conversion and Modification approved by the City Council on March 27, 2007 for 3408 -3412 State Street. The approved project consists of the conversion of an existing two-story, mixed-use building consisting of commercial office space on the first floor and four two-bedroom apartments on the second floor into five condominium units. The project also includes a modification to allow minor as-built first-floor encroachments into the front yard setback and, as part of the condominium conversion permit, an exception to the physical standard requirements, to allow only one parking space for each residential unit instead of two, for a total of eighteen parking spaces.

The discretionary applications approved for this project are:

1. A Modification to allow encroachments into the front yard setback along State Street (SBMC§28.45.008);
2. A Tentative Subdivision Map for a one-lot subdivision for the conversion of four residential units and one commercial office space into five condominium units (SBMC§27.07); and
3. A Condominium Conversion Permit to convert one commercial space and four residential apartments to five condominium units, including an exception to the parking requirements (SBMC§28.88).

The project was originally approved by the Staff Hearing Officer on July 19, 2006. That approval was appealed to the Planning Commission. On November 2, 2006, the Planning Commission upheld the appeal and denied the project. That denial was appealed to the City Council. On March 27, 2007, the City Council upheld the appeal and approved the project. Following the Council approval, a lawsuit was filed in court challenging the approval. The lawsuit was resolved in favor of the applicant in May 2010.



Vicinity Map – 3408-3412 State Street

## II. SITE INFORMATION

<b>Property Owners:</b>	Robert D. and Deborah D. Hart		
<b>Site Information</b>			
<b>Parcel Number:</b>	053-322-009	<b>Lot Area:</b>	18,025 square feet
<b>General Plan:</b>	Commercial / Medium High Density Residential	<b>Zoning:</b>	C-2/SD-2: Commercial/ Upper State Street Area Overlay
<b>Existing Use:</b>	Commercial and Residential	<b>Topography:</b>	Flat
<b>Adjacent Land Uses</b>			
<b>North</b> – Residential		<b>East</b> – Commercial	
<b>South</b> – Commercial		<b>West</b> – Commercial	

## III. DISCUSSION

According to SBMC §27.07.110.A, B and D, *Expiration and Extension of Tentative Maps*, the approval or conditional approval of a tentative map shall expire twenty-four (24) months from the date the map was approved or conditionally approved. The subdivider may request an extension of the tentative map approval or condition of approval by written application to the Staff Hearing Officer filed with the Community Development Department before the expiration of the tentative map. The Staff Hearing Officer may impose new conditions or revise existing conditions. An extension or extensions of tentative map approval or conditional approval shall not exceed in aggregate three (3) years beyond the expiration of the original twenty-four (24) month period.

The subject tentative map was approved on March 27, 2007, and was set to expire March 27, 2009. Since that approval, the State legislature passed several bills (SB 1185, AB 333, AB 208

and AB 116) that automatically extended the expiration date of tentatively approved subdivision maps. The subject tentative map fit within the criteria for each of the above-referenced bills, and therefore, the map approval was extended by a total of seven years, until March 27, 2016.

A two-year extension is now being requested pursuant to SBMC 27.07.110.D. The proposed new expiration date would be March 27, 2018.

#### Progress To-Date

Final design approval from the Architectural Board of Review was received on May 29, 2007.

Following project approval, the Map was submitted to the Public Works Department on July 19, 2007 (PBW2006-01287). In December 2010, the Map was ready to be recorded pending construction of the storage units for the residential condominiums.

In November 2010, a building permit was issued for the construction of the storage units. No work was performed and the permit expired in 2012. A new building permit application was submitted on February 9, 2016 and the permit was issued on February 22, 2016.

In November 2010, a building permit application was submitted for the condominium conversion. That application expired in August 2012. A new building permit for the condominium conversion is required.

#### **IV. ENVIRONMENTAL REVIEW**

This project continues to be exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines, Section 15301 (Existing Facilities).

#### **V. RECOMMENDATION**

As stated above, following the Council approval, a lawsuit was filed in court challenging the approval. The lawsuit was resolved in May 2010. Although some progress was made following the lawsuit, the economic conditions at the time resulted in the applicant not being able to proceed with the project. The applicant is now in a financial position to proceed and has made progress recently by obtaining a building permit for the construction of the storage units. A final inspection of the storage units must occur prior to the recordation of the Map. The project continues to conform to the City's Zoning and Building Ordinances and policies of the General Plan.

Staff recommends that the Staff Hearing Officer approve the two-year time extension to March 27, 2018, for the Tentative Map, subject to the original conditions of approval included in Exhibit A, as approved by the City Council on March 27, 2007.

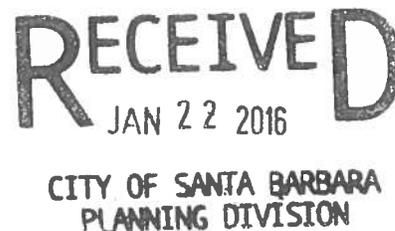
#### Exhibit:

- A. Applicant's letter, dated January 22, 2016, including Attachment A – Resolution No. 042-06

Bob and Debbie Hart  
494 N. La Cumbre Rd.  
Santa Barbara, CA 93110  
805-687-0995

January 22, 2016

Susan Reardon, Staff Hearing Officer  
City of Santa Barbara  
Community Development Department  
630 Garden Street  
Santa Barbara, CA 93101



Hand Delivered

**Re: 3408-3412 State Street (MST 2004-00704) – Request for Two Year Time Extension (SHO Resolution 042-06)**

Dear Ms. Reardon,

We are the property owners of the above referenced property and are submitting this request for an extension of time for our approved subdivision and condominium conversion.

On July 19, 2006 the Staff Hearing Officer approved a Modification, Tentative Subdivision Map and Condominium Conversion Permit for 3408 – 3412 State Street. A copy of the SHO approval resolution (No. 042-06) is attached to this request. The approval is currently set to expire on March 27, 2016.

Following the approval, an appeal of the project was filed. The matter was heard by the Planning Commission and the City Council. The Complainant was not satisfied with the results and filed a lawsuit against the City of Santa Barbara in Superior Court challenging the SHO approval of a modification after the fact. Although we would have liked to have proceeded with the condo conversion process at that time, we were barred due to the lawsuit. After being denied his motion in Superior Court, the complainant asked for a re-hearing. When it was denied, he appealed to the State Court of Appeals. He asked for a re-hearing with them also. He then petitioned the California Supreme Court, which denied his request for a hearing. At every step in the process, he filed his motions on the very last day possible to delay the proceedings. The process took years to come to resolution.

By the time the court process was completed and we were no longer barred from proceeding, the real estate market had taken an economic turn for the worse, and we did not have the funds to complete the process.

We are now in the financial position to build the required storage, completed the condo conversion and record the final map. Therefore, we respectfully request that the City grant this time extension so that we can retain the Approval and complete the project.

Sincerely,

  
Robert D. Hart, Owner

  
Deborah D. Hart, Owner

Attachments: SHO Resolution 042-06 dated July 19, 2006

cc: Kathleen Kennedy (via e-mail)

**EXHIBIT A**



# City of Santa Barbara California

CITY OF SANTA BARBARA STAFF HEARING OFFICER

RESOLUTION NO. 042-06

3408 AND 3412 STATE STREET

MODIFICATION, TENTATIVE SUBDIVISION MAP AND CONDOMINIUM CONVERSION PERMIT

JULY 19 2006

**APPLICATION OF DAVID TABOR, AGENT FOR ROBERT D. AND DEBORAH D. HART, PROPERTY OWNERS, 3408 & 3412 STATE STREET, APN 053-322-009, C-2/SD-2: COMMERCIAL AND UPPER STATE STREET AREA OVERLAY ZONES, GENERAL PLAN DESIGNATION: GENERAL COMMERCE (MST2004-00704)**

The project consists of a proposal to convert an existing two-story, mixed-use building into five condominium units. The existing building consists of 3,436 square feet (net) of office space on the first floor, four (4) two-bedroom apartments on the second floor and eighteen parking spaces. An exception to the physical standard requirements for condominium conversions, to allow only one parking space for each residential unit instead of two, is requested.

The discretionary applications required for this project are:

1. Modification to allow encroachments into the front yard setback along State Street (SBMC§28.45.008);
2. Tentative Subdivision Map for a one-lot subdivision for the conversion of four residential units and one commercial office space into five condominium units (SBMC§27.07); and
3. Condominium Conversion Permit to convert one commercial space and four residential apartments to five condominium units, including an exception to the parking requirements (SBMC§28.88).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15301 (Existing Facilities).

**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 of or in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, July 19, 2006.
2. Site Plans

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

I. Approved the subject application making the following findings and determinations:

A. Front Yard Setback Modification (SBMC§28.45.008)

The modification to allow the first floor additions to encroach into the front yard setback along State Street is consistent with the purposes and intent of the Zoning Ordinance, is necessary to secure an appropriate improvement on a lot, promote uniformity of improvement and prevent unreasonable hardship. The setback of the project is generally consistent with many other buildings on the northerly side of State Street between Las Positas/ San Roque Roads and Ontare Road and the building's second story is set back 26 feet.

B. Exceptions To The Physical Standards For Condominium Conversions (SBMC§28.88.040.N)

The economic impact of meeting the standard of providing two parking spaces per residential unit is not justified by the benefits of doing so and the project includes design features or amenities which offset the project's failure to meet the standard. Additionally, parking demand will be met by sharing commercial spaces for this mixed use project. The project complies with the mixed use parking requirement.

C. Tentative Map (SBMC §27.07.100)

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 condominium conversion and the density of development, and the proposed use is consistent with the vision for this neighborhood of the General Plan. The design of the project is not likely to cause substantial environmental damage, and associated improvements will not cause serious public health problems or conflict with easements, acquired by the public at large, for access through or use of property within the proposed development.

D. Condominium Conversion (SBMC§28.88.120)

1. 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.
2. The proposed conversion is consistent with the General Plan of the City of Santa Barbara.
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.
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.

5. The units have not been "affordable rental units" therefore; affordability restrictions do not apply to the project.
6. The project is exempt from the provisions of Section 28.88.130 because the project consists of fewer than five residential units.
7. 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.

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 owners and occupants 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. **Recorded Agreement.** The following conditions shall be imposed on the use, possession and enjoyment of the Real Property and shall be memorialized in an "Agreement Relating to Subdivision Map Conditions Imposed on Real Property" reviewed and approved as to form and content by the City Attorney, Community Development Director and/or Public Works Director that shall be executed by the Owners concurrent with the Final Map, and recorded by the City prior to issuance of a Certificate of Occupancy for the condominium conversion permit. Said agreement(s) shall be recorded in the Office of the County Recorder:
  1. **Uninterrupted Water Flow.** The Owner shall provide for the uninterrupted flow of water through the Real Property including, but not limited to, swales, natural watercourses, conduits and any access road, as appropriate. The Owner is responsible for the adequacy of any project related drainage facilities and for the continued maintenance thereof in a manner which will preclude any hazard of life, health or damage to the Real Property or any adjoining property.
  2. **Recreational Vehicle Storage Prohibition.** No recreational vehicles, boats or trailers shall be stored on the Real Property.
  3. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan as approved by the Architectural Board of Review (ABR) on April 12, 2004. 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.
  4. **Approved Development.** The development of the Real Property approved by the Staff Hearing Officer on July 19, 2006 is limited to the conversion of one commercial space and four apartments to five 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.

5. **Storm Water Pollution Control Systems Maintenance.** The Owner(s) shall maintain drainage system, storm drain water interceptor and other storm water pollution control devices in accordance with the approved Operations and Maintenance Procedure Plan.
  6. **Required Private Covenants.** Prior to the issuance of a Certificate of Occupancy for any residential condominium unit or the sale of any residential condominium unit within the subdivision, whichever comes first, 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, including the private storm drain system and shared sewer laterals, which methodology shall also provide for an appropriate cost-sharing of such regular maintenance among the various owners of the condominium parcels.
    - b. **Designated Spaces Available for Parking.** A covenant that includes a requirement that all designated parking spaces 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.** A covenant that includes a requirement that adequate space shall be provided and maintained for trash and recycling purposes.
    - 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.
- B. **Public Works Submittal Prior to Final Map Recordation.** Owners shall submit the following or evidence of completion of the following to the Public Works Department prior to the recordation of the Parcel Map.
1. **Building Permit Required for Conversion.** Evidence that a conversion permit has been issued for the conversion of one office space and four apartments to condominiums. Landscape plan shall show restoration of the planter at the southwest corner.
  2. **State Street Public Improvements.** The Owner shall submit building plans for construction of improvements along the subject property road frontage on State

Street. As determined by the Public Works Department, the improvements shall include 14 inch sidewalk expansion across driveway and removal of portion of curb along driveway perpendicular to sidewalk. The building plans shall be prepared by a registered civil engineer or licensed architect and reviewed by the City Engineer.

3. **Final Map Preparation.** Owners shall submit a Final Map to the Public Works Department acceptable for recordation. The Final Map shall be prepared by a licensed land surveyor or registered civil engineer in conformance with current Subdivision Map Act and in conformance with the requirements of the City Survey Control Ordinance.
4. **Dedication.** Dedication of variable width easement to the City for sidewalk purposes as shown on the Tentative Subdivision Map and offered on the Final Map.
5. **Conditions on Plans/Signatures.** All Planning Commission Conditions of Approval shall be provided on a full size drawing sheet as part of the drawing sets. 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.

C. **Prior to Certificate of Occupancy.** Prior to issuance of the Certificate of Occupancy for the condominium conversion permit, the Owners of the Real Property shall submit the following or evidence of completion of the following to the Public Works Department:

1. Recordation of Final Map.
2. Recordation of the Agreement Relating to Subdivision Map Conditions Imposed on Real Property.

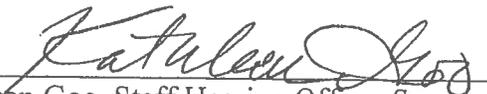
3. Repair any damaged public improvements (curbs, gutters, sidewalks, etc.) subject to the review and approval of the Public Works Department. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of the City Arborist.
4. Public improvements constructed as shown on the building plans.

D. **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.

This motion was passed and adopted on the 19 day of July, 2006 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.

  
\_\_\_\_\_  
Kathleen Goo, Staff Hearing Officer Secretary

  
\_\_\_\_\_  
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 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.
3. **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.
4. **NOTICE OF TENTATIVE SUBDIVISION MAP AND CONDOMINIUM CONVERSIONS TIME LIMITS:**

The Planning Commission's action approving the Tentative Map shall expire two (2) 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 or the provisions of the California Subdivision Map Act.