



# City of Santa Barbara California

## CITY OF SANTA BARBARA PLANNING COMMISSION

### RESOLUTION NO. 006-24 324 W MONTECITO STREET CONDITIONAL USE PERMIT MARCH 21, 2024

Assessor's Parcel Number: 037-232-018  
Zoning Designation: C-G (Commercial General)  
Application Number: PLN2024-00027  
Applicant: J.K. Mondol, Mondol Development Co.  
Owner: Jonathan Modugno Revocable Trust  
Thomas and Kim Modugno, Trustees

The proposed project involves a change in ownership of Santa Cruz Market, which results in the transfer of the associated ABC license (Type 20) to the new owner. The Type 20 license allows the market to sell alcohol for off-site consumption under the Alcoholic Beverage Control Act. No changes are proposed to the building or existing site.

The discretionary application under the jurisdiction of the Planning Commission at this hearing is:

- A. A Conditional Use Permit to allow for continued sale of alcoholic beverages for off-site consumption with a Type 20 license (SBMC §30.185.075 & SBMC §30.215)

Confirm the Environmental Analyst's determination that the project is exempt from further environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15301, [Existing Facilities].

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

**WHEREAS**, 0 people appeared to speak and the following exhibits were presented for the record:

1. Staff Report with Attachments, March 13, 2024
2. Project Plans
3. Correspondence received:
  - a. David Powdrell
  - b. Anonymous
  - c. Anonymous
  - d. Carter and Wendy Morgan
  - e. Kelley Baeza
  - f. Kimberly De Campos
  - g. Anonymous

- h. Anonymous
- i. Marina
- j. Jess Frank
- k. Anonymous
- l. Mitchell Vance
- m. Robert and Bonnie Moore
- n. Tom Hoffman
- o. Sarah
- p. Michael B. Malone
- q. Peter Overgaag
- r. Janean and Jim Daniels
- s. Anonymous

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

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

A. **ENVIRONMENTAL REVIEW (SBMC §22.100.160.C; CEQA GUIDELINES)**

The determination of exemption, as discussed in the staff report dated March 13, 2024, is appropriate, because Section 15301 allows for operation, permitting, licensing, or minor alteration of existing private structures involving negligible or no expansion of former use. The project qualifies for an exemption from further environmental review under CEQA Guidelines Section 15301, based on the City staff analysis and the CEQA Certificate of Determination on file for this project.

B. **CONDITIONAL USE PERMIT (SBMC §30.185.075 §30.215)**

1. The proposed use is allowed with a Conditional Use Permit within the applicable zone district and complies with all specific requirements for the Conditional Use Permit, as well as all other applicable provisions of this title and all other titles of the municipal code;

*The use of the property as a supermarket with food and beverage retail sales is allowed by right in the Commercial General zone. The purpose of the zone is intended to provide a wide range of commercial uses, serving as the City's major retail, professional, and service zone. Therefore, the supermarket is consistent with the zoning designation.*

2. The proposed use and development is deemed essential or desirable to the public convenience or welfare and is consistent with the General Plan and any applicable specific plan;

*The Conditional Use Permit is specific to the transfer of license or change of ownership as a substantial modification to a Type 20 ABC License for off-sale of alcoholic beverages. There is no proposed change to the use or existing site. Santa Cruz Market is deemed essential or desirable to the public convenience because it provides a variety goods including, but not limited to, fresh produce, meats, and beverages, primarily as a smaller-*

*scale grocery store to the West Beach Neighborhood and is also consistent with the General Plan land use designation of Commercial-Medium High Density Residential which generally applies to commercial neighborhood serving centers historically located within residential areas, and includes allowed uses such as grocery stores and various other neighborhood/commercial serving businesses.*

3. The proposed use and development will not be adverse to the public health, safety, or general welfare of the community, nor materially detrimental to surrounding properties or improvements;

*The proposed use is not changing and will not be adverse to the public health, safety, or general welfare of the community, nor materially detrimental to surrounding properties or improvements, because the off-sale of alcoholic beverages represents only a component of the grocery store, which provides other goods to the West Beach neighborhood. Santa Cruz Market has been in operation on the property since the 1990s, and prior to that another supermarket occupied this location. Santa Cruz Market is in good standing with the City of Santa Barbara, and the Police Department has provided a letter, noting that the license will satisfy the public convenience and necessity.*

4. The total area of the site and the setbacks of all facilities from property and street lines are of sufficient magnitude in view of the character of the land and of the proposed development that significant detrimental impact on surrounding properties is avoided;

*No changes to the site are proposed and setbacks are not applicable in the Commercial General zone. The existing supermarket will remain in its current configuration and therefore there will be no detrimental impact on surrounding properties.*

5. The design and operation of the project and its components, including hours or manner of operation, outdoor lighting and noise generating equipment, will not be a nuisance to the use of property in the area, particularly residential use;

*The design and operation and its components will not be a nuisance to the use of property in the area. Hours and manner of operation will continue per usual, between the hours of 7:30 a.m. and 9 p.m. The site will remain as a neighborhood serving supermarket for the West Beach Neighborhood. The off-site sale of alcoholic beverages complies with the performance and development standards applicable to alcoholic beverage retail establishments, contingent upon the elimination of single-serving beer in containers less than 32 ounces.*

6. Adequate access and off-street parking including parking for guests is provided in a manner and amount so that the demands of the development for such facilities are adequately met without altering the character of the public streets in the area at any time; and

*No changes are proposed to off-street parking, the surface lot shall remain in its existing condition and shall continue to provide parking for patrons of the supermarket. There are no alterations to the character of the public street.*

7. The appearance of the developed site in terms of the arrangement, height, scale and architectural style of the structures, location of parking areas, landscaping, open space and other features is compatible with the character of the area.

*No changes are proposed to the exterior of the building, therefore the appearance of the developed site in terms of arrangement, height, scale and architectural style, location of parking and other features remains compatible with the character of the area, that is comprised of a mix of uses.*

**C. ALCOHOLIC BEVERAGE RETAIL ESTABLISHMENTS**

1. There is no change of use to the existing operational aspects of the supermarket, which currently allows for off-sale of alcoholic beverages as part of the overall goods sold, including fresh produce, meats, and other common goods available at a neighborhood grocery store. Continued operation shall not potentially have a significant adverse effect on the crime rate, based on information provided by the Police Department noting that the licensing will satisfy the public convenience and necessity.
2. The upkeep and operating characteristics of the supermarket are compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood, because the use is not changing, nor are exterior changes to the site or building proposed. The supermarket provides a beneficial neighborhood grocery that serves the Santa Barbara community, particularly the West Beach neighborhood and residents in that area.

**II. Said approval is subject to the following conditions:**

**A. Order of Development.** In order to accomplish the proposed development, the following steps shall occur in the order identified:

1. Record any required documents (see Recorded Conditions Agreement section).
2. Obtain the appropriate license from the California Department of Alcoholic Beverage Control (ABC).
3. Contact City of Santa Barbara Police Department to create a Police Department file for the subject property including agreement to payment of fees for annual inspection services.

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 and Community Development 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 Planning Commission on March 21, 2024, is for a change in ownership of Santa Cruz Market, which results in the transfer of the associated ABC license (Type 20) to the new owner. The Type 20 license allows the market to sell alcohol for off-site consumption under the Alcoholic Beverage Control Act. No changes are proposed to the building or existing site, as described in the Applicant Letter dated March 7, 2024, and as shown on the plans signed by the chairperson of the Planning Commission on said date and on file at the City of Santa Barbara.

- a. Lighting shall comply with the Outdoor Lighting Ordinance (SBMC Chapter 22.75) in order to maintain a safe and secure environment.
  - b. Noise levels generated by the operation of the supermarket shall comply with the City's Noise Ordinance (SBMC Chapter 9.16). Amplified sound at the property line shall not exceed 60 dB(A).
  - c. A change in use or increase in intensity of use related to the off-site sale of alcoholic beverages could have potential land use impacts. Prior to initiating a change of use or an increase in intensity of use, a report shall be submitted by the supermarket to the Community Development Director to determine whether additional City approvals are necessary such as Temporary Use Permits or an Amendment to the Conditional Use Permit, or any other appropriate review procedure.
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. **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.

C. **General Conditions.**

1. **Mandatory Training.** All new store owners and employees shall complete either the Responsible Beverage Service (RBS) Training or the Licensee Education on Alcohol and Drugs program (LEAD) Training within 60 days from the start of their business or employment and are required to carry a valid certification while selling alcoholic beverages. To satisfy this requirement, a certified program must meet the standards of the ABC Responsible Beverage Service Advisory Board or other certifying or licensing body designated by the State of California
2. **Presentation of Documents.** A copy of any City conditions of approval, applicable California Department of Alcoholic Beverage Control conditions and licenses, and any required training requirements, shall be posted in at least one prominent place within the interior of the establishment where it will be readily and legible to the employees and patrons of the establishment; and shall be presented to any City, County, or State enforcement officer or official upon request.
3. **Containers.** The sale, distribution, dispensation, and display of alcoholic beverages is limited to the following type and size of containers. All containers which do not currently meet the type and size of containers shall be removed, specifically single-serve containers of beer available at the supermarket within 30 days of the Planning Commission approval.
  - a. **Wine and Wine Coolers.** Wine must be in a container with a volume of 750 milliliters or greater in size, except multipack containers of wine, and multipack wine coolers containing no more than six percent alcohol by volume. Multipack wine and wine coolers shall not be sold in containers smaller than 12 ounces and in units of less than one four-pack for off-site consumption.
  - b. **Beer, Ale, and Malt Liquor.** Beer, ale, and malt liquor must be in a container with a volume greater than 32 ounces. Multipack beer, ale, and malt liquor in containers

of 32 ounces or less shall not be sold in units less than one three-pack for off-site consumption.

4. **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.
5. **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. 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.
6. **Public Nuisance.** A public nuisance shall be deemed to exist if the following activities are repeated within the premises or in close proximity of the premises from or related to the sale and consumption of alcohol such as: disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, or lewd conduct. The City Administrator may take any action necessary to abate such public nuisance, including but not limited to revocation proceedings.
7. **Reporting.** If the City Administrator or the Chief of Police determine there has been a violation of this chapter or any of the conditions set forth in a conditional use permit issued in compliance with this chapter, a report of those violations shall be presented to the Planning Commission for review that may include the date, time, and specificity of the violations. The Planning Commission shall require an annual review of any new and existing alcoholic beverage retail establishments.
8. **Responsibility to Enforce.** The provisions of this Conditional Use Permit shall be administered and enforced by the City Administrator in conjunction with the Chief of Police. Such officer, or their duly authorized representatives, may enter upon private or public property to examine an alcoholic beverage retail establishment for the purposes of enforcement and regulation of the conditions of approval, performance standards, and other applicable regulations.
9. **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.

III. Said approval is subject to the following time Limits:

- A. The Planning Commission action approving the Conditional Use Permit shall terminate three (3) years from the effective date of the approval, per Santa Barbara Municipal Code §30.205.120, unless:
1. An extension is granted by the Community Development Director prior to the expiration of the approval; or
  2. The City is in receipt of the recorded agreement for the Conditional Use Permit allowing for continued sale of alcoholic beverages for off-site consumption.

This motion was passed and adopted on the 21st day of March, 2024 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 7 NOES: 0 ABSTAIN: 0 ABSENT: 0

I hereby certify that this Resolution correctly reflects the action taken by the City of Santa Barbara Planning Commission at its meeting of the above date.

  
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Mariah Johnson, Commission Secretary

April 18, 2024  
\_\_\_\_\_  
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.**