

City of Santa Barbara California

CITY OF SANTA BARBARA STAFF HEARING OFFICER

RESOLUTION NO. 097-07

623 E. ORTEGA STREET

MODIFICATION, TENTATIVE SUBDIVISION MAP AND CONDOMINIUM CONVERSION PERMIT

NOVEMBER 7, 2007

APPLICATION OF JESSICA GRANT, PENFIELD & SMITH, AGENT FOR AARON GOLDSCHMIDT AND JAMES JOHNSON, 623 E. ORTEGA STREET, APN 031-103-014, R-3, LIMITED MULTIPLE-FAMILY RESIDENCE ZONE, GENERAL PLAN DESIGNATION: RESIDENTIAL, 12 UNITS/ACRE (MST2007-00125)

This item was continued from the October 24, 2007 Staff Hearing Officer hearing. The project consists of a proposal to convert an existing three unit apartment building into three condominium units on a 7,000 square foot lot. Six uncovered parking spaces currently exist onsite. A new attached three-car carport with roof deck is proposed.

The discretionary applications required for this project are:

1. Modification to allow less than the required 10% open space (SBMC§28.21.080);
2. Tentative Subdivision Map for a one-lot subdivision for the conversion of three residential units into condominium units (SBMC Chapter 27.07); and
3. Condominium Conversion Permit to convert three residential units into three (3) condominium units (SBMC Chapter 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 neither in favor of nor in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, October 17, 2007.
2. Staff Report Memo with Attachments, November 7, 2007.
3. Site Plans
4. Correspondence received in opposition to the project:

Paula Westbury, 650 Miramonte Drive, Santa Barbara, CA 93109

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

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

A. Modification of 10% Open Space Requirement (SBMC§28.21.080)

The Modification request to allow less than the required 10% open space is consistent with the purposes and intent of the Zoning Ordinance and is necessary to secure an appropriate improvement on a lot.

B. Tentative Subdivision 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.

C. 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 conforms to the density requirement of the Land Use Element of the General Plan.
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 four 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.** Prior to approval and recordation of the Parcel Map, the Owner shall execute an "Agreement Relating to Subdivision Map Conditions Imposed on Real Property". This Agreement shall be recorded in the Office of the County Recorder and shall include the following provisions:
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.
 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 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.
 4. **Storm Water Pollution Control and Drainage Systems Maintenance.** Owner shall maintain the drainage system, including any storm water pollution control devices, in a functioning state and in accordance with the Operations and Maintenance Procedure Plan approved by the Building Official, in consultation with the Parks and Recreation Department Creeks Division. Should any of the project's drainage system (including any storm water pollution control devices) fail, Owner shall make any necessary repairs to the system and restore any eroded area. Prior to the commencement of any repair or restoration work, Owner shall submit a repair and restoration plan to the Community Development Director to determine if the proposed work requires an amendment to this approval or a Building permit.
 5. **Approved Development.** The development of the Real Property approved by the Staff Hearing Officer on November 7, 2007 is limited to the conversion of three residential units to condominiums 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.
 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 parcels.
 - b. **Garages Available for Parking.** A covenant that includes a requirement that all garages be kept open and available for the parking of vehicles owned by the residents of the property in the manner for which the garages 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. Design Review.** The following items are subject to the review and approval of the Architectural Board of Review (ABR). ABR shall not grant preliminary approval of the project until the following conditions have been satisfied.
1. **Physical Elements Report Requirements.** All requirements listed in the physical elements report that result in exterior changes shall be subject to ABR review.
 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.
- C. Building Permit Plan Requirements.** The following requirements shall be incorporated into the construction plans submitted to the Building and Safety Division with applications for building permits. All of these construction requirements shall be carried out in the field and completed prior to the issuance of a Certificate of Occupancy or Final Approval:
1. **Design Review Requirements.** Plans shall show all design and landscape elements, as approved by the Architectural Board of Review.
 2. **Trash and Recycling.** 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.

3. **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., Parcel 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:

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Property Owner		Date
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Contractor	Date	License No.
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Architect	Date	License No.
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Engineer	Date	License No.

- D. **Community Development Requirements Prior to Building or Public Works Permit Issuance.** The following shall be finalized prior to, and/or submitted with, the application for any Building or Public Works permit:

1. **Contractor and Subcontractor Notification.** The Owner shall notify in writing all contractors and subcontractors of the site rules, restrictions, and Conditions of Approval. Submit a copy of the notice to the Planning Division.

- E. **Public Works Requirements Prior to Building or Public Works Permit Issuance.** The following shall be finalized prior to, and/or submitted with, the application for any Building or Public Works permit:

1. **Drainage Calculations.** The Owner shall submit drainage calculations prepared by a registered civil engineer or licensed architect demonstrating that the new development will not increase runoff amounts above existing conditions for a 25-year storm event. Any increase in runoff shall be retained on-site.
2. **East Ortega Street Public Improvement Plans.** The Owner shall submit building plans for construction of improvements along the property frontage on East Ortega Street. As determined by the Public Works Department, the improvements shall include new and/or remove and replace to City standards,

the following: approximately twenty five (25) l.f. of sidewalk, driveway apron modified to meet Title 24 requirements, approximately fifteen (15) l.f. curb and gutter, street tree grate, asphalt concrete, 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, underground service utilities (*SBMC*§22.38.125 and §27.08.025), public drainage improvements with supporting drainage calculations and/or hydrology report for installation of (drainage pipe, curb drain outlets, slot/trench drain, drop inlet, detention, erosion protection (provide off-site storm water BMP plan), etc.), preserve and/or reset survey monuments and contractor stamps, and provide adequate positive drainage from site. Any work in the public right-of-way requires a Public Works Permit.

- F. 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. **Construction Parking/Storage/Staging.** Construction parking and storage shall be provided as follows:
 - a. During construction, free parking spaces for construction workers and construction shall be provided on-site or off-site in a location subject to the approval of the Public Works Director. Construction workers are prohibited from parking within the public right-of-way, except as outlined in subparagraph b. below.
 - b. Parking in the public right of way is permitted as posted by Municipal Code, as reasonably allowed for in the 2006 Greenbook (or latest reference), and with a Public Works permit in restricted parking zones. No more than three (3) individual parking permits without extensions may be issued for the life of the project.
 - c. Storage or staging of construction materials and equipment within the public right-of-way shall not be permitted, unless approved by the Transportation Manager.
 2. **Construction Best Management Practices (BMPs).** Construction activities shall address water quality through the use of BMPs, as approved by the Building and Safety Division.
 3. **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), 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.
 4. **Graffiti Abatement Required.** Owner and Contractor shall be responsible for removal of all graffiti as quickly as possible. Graffiti not removed within 24 hours of notice by the Building and Safety Division may result in a Stop Work

order being issued, or may be removed by the City, at the Owner's expense, as provided in SBMC Chapter 9.66.

5. **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.

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 Environmental Analyst grants authorization.

6. **Removal or Relocation of Public Facilities.** Removal or relocation of any public utilities or structures must be performed by the Owner or by the person or persons having ownership or control thereof.

G. 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 Parcel Map:

1. **Certificate of Occupancy/Final Approval for Physical Standards Building Permit.** Owner shall complete all necessary work in order to comply with the Physical Standards for Condominium Conversions specified in SBMC § 28.88.040 of the Municipal Code and receive a certificate of occupancy or final approval for such work.
2. **Issuance of Condominium Conversion Building Permit.** Evidence that a conversion permit has been issued by the Community Development Department for the conversion of the three residential units to three condominiums.

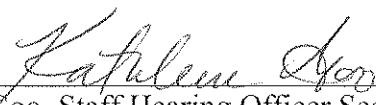
3. **Parcel Map.** The Owner shall submit a Parcel Map prepared by a licensed land surveyor or registered Civil Engineer to the Public Works Department for review and approval. The Parcel Map shall conform to the requirements of the City Survey Control Ordinance.
 4. **Water Rights Assignment Agreement.** 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*. Public Works Engineering Division Staff will prepare said agreement for the Owner's signature.
 5. **Required Private Covenants.** The Owner shall submit a copy of the recorded private covenants, reciprocal easement agreement, or similar private agreements required for the project.
 6. **Land Development Agreement.** If the public improvements have not been completed prior to the submittal of the Parcel Map for review and approval, Owner shall submit an executed "Agreement for Land Development 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.
- H. **Prior to Final Inspection Sign-off of Community Development Condominium Conversion Permit.** Prior to a Final Inspection sign-off for the condominium conversion permit issued by the Building and Safety Division, the Owners of the Real Property shall submit the following or evidence of completion of the following to the Community Development Department:
1. **Recordation of Parcel Map.**
 2. **Recordation of the Agreement Relating to Subdivision Map Conditions Imposed on Real Property.**
 3. **Recordation of Private Covenants.**
 4. **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.
 5. **Complete Public Improvements.** Public improvements, as shown in the improvement/building plans, including utility service undergrounding and installation of street trees.

- I. Prior to Final Inspection Sign-off of Community Development Condominium Conversion Permit.** Prior to Final inspection sign-off for the condominium conversion permit issued by the Building and Safety Division, Owner shall comply with the tenant protection provisions of the Condominium Conversion Ordinance (SBMC Chapter 28.88) (including adjustments to the tenant assistance specified in Subsection 28.88.100.G as specified below) and shall submit the following or evidence of completion of the following to the Community Development Department:
1. **Notice of Approval of Conversion.** Owner shall deliver written notice to each tenant household within 15 days of the approval of the conversion. The content of such notice shall include an explanation of any conditions of approval that affect the tenants.
 2. **Notice of Final Map.** Owner shall deliver written notice to each tenant household of the approval of the final map within 10 days of such approval.
 3. **Notice of Department of Real Estate Report.** If a public report is required by the Subdivided Lands Act (projects of 5 or more condominium units), Owner shall deliver written notice to each tenant household that an application for a public report has been submitted with the California Department of Real Estate within 10 days of the submission of such application.
 4. **Exclusive Right to Purchase (Right of First Refusal).** Prior to issuance of a Final Approval on the Conversion Permit, Owner shall provide evidence of the extension of an exclusive right to purchase in accordance with the provisions of Section 66427.1(d) of the Government Code.
 5. **Notice of Vacation of Unit.** Each non-purchasing tenant household that is not in default shall have not less than 180 days from the date of approval of the conversion in which to find substitute housing and to relocate. This 180-day period may be extended in special cases, as specified in Subsection 28.88.100.E of the Municipal Code.
 6. **Tenant Displacement Assistance.** In the place of the moving expenses specified in Subsection 28.88.100.G of the Santa Barbara Municipal Code, Owner shall provide each tenant household with displacement assistance in accordance with the provisions of Chapter 28.89. Evidence of compliance with this condition shall be submitted prior to the issuance of a Final Approval for the conversion permit.
- J. Litigation Indemnification Agreement.** In the event the Staff Hearing Officer 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.

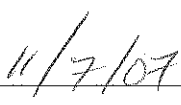
Applicant/owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of the City Council denial of the appeal and approval of the Project. These commitments of defense and indemnification 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 7th day of November, 2007 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. 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.
4. **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.
5. **NOTICE OF MODIFICATION, TENTATIVE SUBDIVISION MAP AND CONDOMINIUM CONVERSION TIME LIMITS:**

The Staff Hearing Officer's action approving the Modification, Tentative Subdivision Map and Condominium Conversion 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.