



City of Santa Barbara California

CITY OF SANTA BARBARA STAFF HEARING OFFICER

RESOLUTION NO. 013-10
222 HELENA AVENUE
MODIFICATION AND
COASTAL DEVELOPMENT PERMIT
MARCH 24, 2010

APPLICATION OF SHERRY AND ASSOCIATES ARCHITECTS FOR OWNER, BANKER'S MORTGAGE REALTY ADVISORS, 222 HELENA AVENUE, APN 033-052-020, OC/HRC-2/SD-3 ZONES, GENERAL PLAN DESIGNATION: HOTEL & RELATED COMMERCE II (MST2009-00519)

The proposed project consists of a change of use of the former Living Green tenant space at 222 Helena Avenue to a new bar/restaurant, a new accessible front entry that would result in a net loss of 34 square feet of non-residential floor area, and a new trash enclosure.

The discretionary applications required for this project are:

1. A Modification of the parking requirement to allow less than the required parking spaces (SBMC Subsections 28.90.001.N, 28.90.100.J.16 and 28.92.110.A.1); and
2. A Coastal Development Permit (CDP2010-00002) to allow the proposed development in the Non-Appealable Jurisdiction of the City's Coastal Zone (SBMC §28.44.060).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Guidelines Section 15303 (new construction and conversion of small structures).

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

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

1. Staff Report with Attachments, March 15, 2010.
2. Site Plans
3. Correspondence received in opposition to the project:
 - a. Paula Westbury, 650 Miramonte Drive, Santa Barbara, Ca

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

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

A. Parking Modification (SBMC §28.92.110)

The modification of automobile parking requirements to allow less than the required eight additional parking spaces would not be inconsistent with the purposes and intent

of the Zoning Ordinance and will not cause an increase in the demand for parking space in the immediate area because the restrictions on operational hours and uses on the three parcels provide for the zoning ordinance-required parking for each of the five businesses during the times that they are operating.

The requested modification is not part of the approval of a tentative subdivision map, conditional use permit, development plan, site plan, plot plan, or any other matter which requires approval of the Planning Commission; and if granted, the modification would not significantly affect persons or property owners other than those entitled to notice.

B. Coastal Development Permit (SBMC §28.44.150)

1. The project is consistent with the policies of the California Coastal Act.

As shown in Section VI.B of this Staff Report, the proposed project is consistent with the policies of the California Coastal Act.

2. The project is consistent with all applicable policies of the City's Local Coastal Plan, all applicable implementing guidelines, and all applicable provisions of the Code.

As shown in Section VI.B of the Staff Report, the proposed project is consistent with all applicable policies of the City's Local Coastal Plan, all applicable implementing guidelines and, with the requested parking modification, all applicable provisions of the of the Municipal Code.

II. Said approval is subject to the following conditions:

- A. **Design Review.** The project is 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 Staff Hearing Officer land use condition has been satisfied:

1. **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.

- B. **Recorded Conditions Agreement for APN 033-052-020.** Prior to the issuance of any Public Works permit or Building permit for the project on the Real Property, the Owner shall execute a written instrument, 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 March 24, 2010 is limited to the improvements shown on the plans signed by the Staff Hearing Officer on said date and on file at the City of Santa Barbara. As shown on the plans, the 222 Helena building is limited to a combined total of 36 indoor restaurant and bar seats. Any future addition of seating in the adjacent outdoor patio area is subject to Planning

Division Staff review and may necessitate additional parking and a Coastal Development Permit.

2. **Use and Timing Limitations.** Due to potential parking impacts, uses and times of uses shall be limited consistent with the Parking Study prepared by Associated Transportation Engineers dated January 12, 2010, as follows:

Address	Area/ Seats	Land Use	Parking Requirement	Operational Hours
218 Helena A&C	2,818 sf	Gen. Industrial	1:500sf (6 spaces)	6 AM – 6 PM
219 Anacapa	1,808 sf	Restaurant	4:1,000sf (7 spaces)	6 AM – 6 PM
223 Anacapa	1,823 sf	Commercial	4:1,000sf (7 spaces)	24 Hours
222 Helena	36 seats	Restaurant	1:3 seats(12 spaces)	6 PM – 2 AM
224 Helena	1,229 sf	Storage	1:5000sf (0 spaces)	24 Hours

Prior to initiating a change of use of any tenant space on the Real Property known as APNs 033-052-020, 033-052-012, and 033-052-007, the Owner shall submit a letter to the Community Development Director detailing the proposal, and the Director shall determine the appropriate review procedure and notify the Owner. Any change of use requiring additional parking would require compliance with the Zoning Ordinance Parking Requirements and Staff Hearing Officer or Planning Commission approval of a Coastal Development Permit.

3. **Voluntary Lot Merger or Off-Site Parking Agreement Required.** The Owner shall either: (1) merge the Real Property known as APNs 033-052-020, 033-052-012, and 033-052-007 into one lot, following the procedure in Santa Barbara Municipal Code Chapter 27.30 or (2) provide an off-site parking to meet the parking demand, as determined by the Public Works Director. Any off-site parking agreement shall be prepared consistent with the provisions outlined in SBMC Subsection 28.90.001.R. If the Public Works Director determines that parking demand generated by the project is not met, the project shall be returned to the Staff Hearing Officer for further review and consideration.
4. **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.
5. **Recreational Vehicle Storage Prohibition.** No recreational vehicles, boats, or trailers shall be stored on the Real Property.
6. **Car Wash Prohibition.** Any business whose activity involves washing, steam cleaning, or detailing motor vehicles is prohibited on the subject property.
7. **Tenant Notification.** The Owner shall provide a copy of the recorded conditions agreement to all current and future tenants of the tenant spaces on the Real Property known as APN 033-052-020.

C. **Recorded Conditions Agreement for APNs 033-052-012 & 033-052-007.** Prior to the issuance of any Public Works permit or Building permit for the project on the Real Property, the Owner shall execute a written instrument, 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 on parcels 033-052-020, 012, and 007, and shall include the following:

1. **Use and Timing Limitations.** Due to potential parking impacts, uses and times of uses shall be limited consistent with the Parking Study prepared by Associated Transportation Engineers dated January 12, 2010, as follows:

Address	Area/ Seats	Land Use	Parking Requirement	Operational Hours
218 Helena A&C	2,818 sf	Gen. Industrial	1:500sf (6 spaces)	6 AM – 6 PM
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222 Helena	36 seats	Restaurant	1:3 seats(12 spaces)	6 PM – 2 AM
224 Helena	1,229 sf	Storage	1:5000sf (0 spaces)	24 Hours

Prior to initiating a change of use of any tenant space on the Real Property known as APNs 033-052-020, 033-052-012, and 033-052-007, the Owner shall submit a letter to the Community Development Director detailing the proposal, and the Director shall determine the appropriate review procedure and notify the Owner. Any change of use requiring additional parking would require compliance with the Zoning Ordinance Parking Requirements and Staff Hearing Officer or Planning Commission approval of a Coastal Development Permit.

2. **Tenant Notification.** The Owner shall provide a copy of the recorded conditions agreement to all current and future tenants of the tenant spaces on the Real Property known as APNs 033-052-012, and 033-052-007.

D. **Public Works Requirements Prior to Building 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 Permit for the project.

1. **Helena Avenue Public Improvement Plans.** The Owner shall submit building plans for construction of improvements along the property frontage on Helena Avenue. As determined by the Public Works Department, the improvements shall include new and/or remove and replace to City standards, the following: approximately 40 lf of sidewalk, cracked and or uplifted curbs & gutters, crack seal to the centerline of the street along entire subject property frontage and a minimum of 20 feet beyond the limit of all trenching, preserve and/or reset survey monuments and contractor stamps, supply and install directional/regulatory traffic control signs, and provide adequate positive drainage from site. Any work in the public right-of-way requires a Public Works Permit.

2. **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.
 3. **Approved Public Improvement Plans and Concurrent Issuance of Public Works Permit.** Upon acceptance of the approved public improvement plans, a Public Works permit shall be issued concurrently with a Building permit.
 4. **Voluntary Lot Merger.** If the Owner chooses to merge the Real Property known as APNs 033-052-020, 033-052-012, and 033-052-007 pursuant to Condition B.3, the three lots shall be merged into one (1) lot following the procedure in Santa Barbara Municipal Code Chapter 27.30 and the owner shall provide evidence of completion of the merger prior to issuance of the building permit.
- E. **Community Development Requirements with Building or Public Works Permit Application.** The following shall be submitted with the application for any Building or Public Works permit and finalized prior to Building or Public Works Permit issuance:
1. **Off-Site Parking Agreement.** If the lots known as APNs 033-052-020, 033-052-012, and 033 are not merged, submit an off-site parking agreement to provide off-site parking that complies with the provisions of Subsection 28.90.001.18 of the Santa Barbara Municipal Code. This agreement would be subject to review and approval by the Community Development Director and the City Attorney.
 2. **Tenant Notification.** The Owner shall provide a copy of the notification provided to all existing tenants of the Real Property currently known as APNs 033-052-020, 033-052-012, and 033-052-007 pursuant to Conditions B.7 and C.2.
- F. **Building Permit Plan Requirements.** The following requirements/notes shall be incorporated into the construction plans submitted to the Building and Safety Division for Building 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 A above.
 2. **Emergency Evacuation Plan.** Provide an emergency evacuation plan subject to approval by the Fire Department.
 3. **Parking Lot Improvements.** Plans shall show resurfacing and restriping of the shared parking lot on APNs 033-052-020, 033-052-012 and 033-052-007.
 4. **Trash Enclosure Provision.** A trash enclosure with adequate area for recycling containers (an area that allows for a minimum of 50 percent of the total capacity

for recycling containers) shall be provided on the Real Property and screened from view from surrounding properties and the street.

Dumpsters and containers with a capacity of 1.5 cubic yards or more shall not be placed within five (5) feet of combustible walls, openings, or roofs, unless protected with fire sprinklers.

The trash enclosure shall be accessible and be on an accessible path of travel.

5. **Recyclable Material Use and Collection.** Hotel and restaurant operators shall provide sufficient and appropriate recycling receptacles in each room. Recyclable material and green waste collection and pick-up areas shall be provided on-site for the hotel and restaurant operations. A minimum of 50 percent of the area devoted to holding trash for the project shall be used for recycling purposes.
6. **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., Archaeologist contract submitted to Community Development 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. _____

- G. **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. **Street Sweeping.** The property frontage and adjacent property frontages, and parking and staging areas at the construction site shall be swept daily to decrease sediment transport to the public storm drain system and dust.
 3. **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.
 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.

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.

- H. **Prior to Certificate of Occupancy.** Prior to issuance of the Certificate of Occupancy, the Owner of the Real Property shall complete the following:
1. **Repair Damaged Public Improvements.** Repair any 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.** Complete all public improvements as shown in the improvement/building plans.
- I. **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 APPROVAL TIME LIMITS:

The Staff Hearing Officer's action approving the Parking Modification shall terminate two years from the date of the approval, per Santa Barbara Municipal Code §28.87.360, unless:

1. An extension is granted by the Community Development Director prior to the expiration of the approval; or

2. A Building permit for the use authorized by the approval is issued within and the construction authorized by the permit is being diligently pursued to completion and issuance of a Certificate of Occupancy.
3. The approval has not been discontinued, abandoned or unused for a period of six months following the earlier of (a) an Issuance of a Certificate of Occupancy for the use, or (b) two years from granting the approval.

If multiple discretionary applications are approved for the same project, the expiration date of all discretionary approvals shall correspond with the longest expiration date specified by any of the discretionary applications, unless such extension would conflict with state or federal law. The expiration date of all approvals shall be measured from date of the final action of the City on the application, unless otherwise specified by state or federal law.

NOTICE OF COASTAL DEVELOPMENT PERMIT TIME LIMITS:

Pursuant to Section 28.44.230 of the Santa Barbara Municipal Code, work on the approved development shall commence within two years of the final action on the application, unless a different time is specified in the Coastal Development Permit. Up to three one-year extensions may be granted by the Community Development Director in accordance with the procedures specified in Subsection 28.44.230.B of the Santa Barbara Municipal Code.

This motion was passed and adopted on the 24th day of March, 2010 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

3-26-2010

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.
6. **NOTICE OF APPROVAL TIME LIMITS:** The Staff Hearing Officer's action approving the Performance Standard Permit or Modifications shall expire two (2) years from the date of the approval, per SBMC §28.87.360, unless:
 - a. A building permit for the construction authorized by the approval is issued within twenty four months of the approval. (An extension may be granted by the Staff Hearing Officer if the construction authorized by the permit is being diligently pursued to completion.) or;
 - b. The approved use has been discontinued, abandoned or unused for a period of six months following the earlier of:
 - i. an Issuance of a Certificate of Occupancy for the use, or;
 - ii. one (1) year from granting the approval.