



City of Santa Barbara California

CITY OF SANTA BARBARA STAFF HEARING OFFICER

RESOLUTION NO. 024-21
241 SAN CLEMENTE STREET
MODIFICATION AND COASTAL DEVELOPMENT PERMIT
MAY 19, 2021

**APPLICATION OF TOM OCHSNER, AGENT FOR DAVID & PAT WADORS,
241 SAN CLEMENTE ST., APN 045-151-005, E-3/S-D-3 (ONE-FAMILY RESIDENTIAL/
COASTAL OVERLAY) ZONE, GENERAL AND COASTAL LAND USE PLAN
DESIGNATION: LOW DENSITY RESIDENTIAL, 5 DWELLING UNITS/ACRE (PLN2020-
00615)**

The project consists of constructing a new detached two-story building at the rear of the property, comprised of a 250-square-foot Accessory Dwelling Unit (ADU) at the second story, and 234-square-foot storage area below. The site is currently developed with a 998-square-foot single-unit residence with a 261-square-foot attached one-car garage.

The discretionary applications required for this project are:

- A. A Modification to grant relief from the Parking standards, allowing for the existing nonconforming condition of one covered parking space to continue for the existing primary residence (SBMC §28.92.110); and
- B. A Coastal Development Permit (CDP2021-00006) to allow the proposed development in the Non-Appealable Jurisdiction of the City's Coastal Zone (SBMC §28.44.060).

Pursuant to SBMC §28.44.110, when a proposed development involves the addition of an Accessory Dwelling Unit to an existing single-family residence, the application shall be reviewed by the Staff Hearing Officer without a public hearing in accordance with subdivision (j) of Government Code Section 65852.2. The Staff Hearing Officer shall not issue a decision on the application until at least ten (10) calendars days after notice has been provided to the public. The Staff Hearing Officer may receive and consider written comments from the public, but without a public hearing. The decision will be the final action of the City. The requested Modification requires a public hearing, and the decision is appealable to the Planning Commission.

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

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

Staff Report with Attachments, May 12, 2021.

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. PARKING MODIFICATION (SBMC §30.250.030.B)

The Parking Modification will not be inconsistent with the purposes and intent of the Zoning Ordinance and will not cause an increase in the demand for parking space or loading space in the immediate area. State Legislation allows for an ADU to be constructed with no parking provided the site is within ½-mile of public transit, based on the determination that a relatively small unit located within close proximity to transit will not create additional parking demand. In addition there is no parking demand associated with the storage space proposed at the ground level of the new building. The additions to the primary residence, permitted under BLD2020-02150 did not trigger the nonconforming parking to be brought up to current standards, as the addition was under 50 percent of the existing net floor area. Therefore, the relatively minor addition does not increase the parking demand for the primary residence.

B. COASTAL DEVELOPMENT PERMIT (SBMC §28.44.150)

1. The Accessory Dwelling Unit is consistent with the policies of the California Coastal Act, as described in section VI.C of the staff report dated May 12, 2021. The proposal will not result in any adverse effects related to coastal resources, including public views, public access to the coast, and coastal bluff erosion. The proposed development is located within an existing developed area that is able to accommodate it, and both parking and open space minimum requirements will be maintained for the primary residence.
2. The Accessory Dwelling Unit is consistent with all applicable policies of the city's local coastal plan, including the coastal land use plan, all applicable implementing guidelines, and all applicable provisions of the code, as described in section VI of the staff report dated May 12, 2021. The proposed two-story building comprised of an Accessory Dwelling Unit and storage area below is compatible with surrounding neighborhood development, will not impact any public views or public access to the coast as the building is located at the rear of the property, and is not located on a coastal bluff or any visual, biological, or archaeological sensitivity area.

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. Order of Development.** In order to accomplish the proposed development, the following steps shall occur in the order identified:
1. Obtain the required design review approval for the covered balcony located at the second-story of the Accessory Dwelling Unit.
 2. Submit an application for and obtain a Building Permit (BLD) to demolish any structures / improvements and/or perform rough grading. Comply with condition E “Construction Implementation Requirements.”
 3. Record any required documents (see Recorded Conditions Agreement section).
 4. Permits.
 - a. Submit an application for and obtain a Building Permit (BLD) for construction of approved development and complete said development.
 - b. Submit an application for and obtain a Public Works Permit (PBW) for all required public improvements and complete said improvements.

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, 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 May 19, 2021 is limited to construction of a new detached two-story building at the rear of the property, comprised of a 250-square-foot (net) Accessory Dwelling Unit at the second story, and 234-square-foot (net) storage area below. The Staff Hearing Officer approval includes a Parking Modification to allow for the nonconforming condition of one covered parking space for the primary residence to continue and a Coastal Development Permit to allow the proposed development in the Non-Appealable Jurisdiction of the Coastal Zone.
2. **Accessory Dwelling Unit Covenant.** The Owner shall provide evidence of recordation of the written instrument(s) that includes all requirements of Accessory Dwelling Units required at the time of building permit plan check. These conditions may include, but are not limited to:
 - a. The accessory dwelling unit shall not be sold separately from the primary residential unit.
 - b. The accessory dwelling unit shall not be rented for less than 31 days.

Planning staff will give the owner the most up-to-date template at the time of building permit plan check. Recordation will be required prior to the issuance of any building permits.

3. **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.
- C. **Requirements Prior to Permit Issuance.** The Owner shall submit the following, or evidence of completion of the following, for review and approval by the Department listed below prior to the issuance of any permit for the project. Please note that these conditions are in addition to the standard submittal requirements for each department.
1. **Public Works Department.**
 - a. **Water Rights Assignment Agreement.** The Owner shall assign to the City of Santa Barbara the exclusive right to extract ground water from under the Real Property in an *Agreement Assigning Water Extraction Rights*. Engineering Division Staff prepares said agreement for the Owner's signature.
 2. **Community Development Department.**
 - a. **Recordation of Agreements.** The Owner shall provide evidence of recordation of the written instrument that includes all of the Recorded Conditions identified in condition B "Recorded Conditions Agreement" to the Community Development Department prior to issuance of any building permits.
 - b. **Conditions on Plans/Signatures.** The final Resolution shall be provided on a full size drawing sheet as part of the drawing sets. The following statement shall be placed on the plans and signed prior to issuance of and permits: The undersigned have read and understand the required conditions, and agree to abide by any and all conditions which are 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. _____

D. 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, including demolition and grading.

1. **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, telephone number, construction 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. Said sign shall not exceed six feet in height from the ground if it is free-standing or placed on a fence. It shall not exceed six square feet if in a single family zone.
2. **Construction Storage/Staging.** Construction vehicle/ equipment/ materials storage and staging shall be done on-site. No parking or storage shall be permitted within the public right-of-way, unless specifically permitted by the Public Works Director with a Public Works permit.
3. **Unanticipated Archaeological Resources Contractor Notification.** Standard discovery measures shall be implemented per the City master Environmental Assessment throughout grading and construction: 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. If such archaeological resources are encountered or suspected, work shall be halted immediately, the City Environmental Analyst shall be notified and the Owner 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.

A final report on the results of the archaeological monitoring shall be submitted by the City-approved archaeologist to the Environmental Analyst within 180 days of completion of the monitoring and prior to any certificate of occupancy for the project.

- E. 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 public improvements (curbs, gutters, sidewalks, roadways, etc.) or property damaged by construction subject to the review and approval of the Public Works Department per SBMC §22.60. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of a qualified arborist.
 2. **Complete Public Improvements.** Public improvements, as shown in the public improvement plans or building plans, shall be completed.
- F. General Conditions.**
1. **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. This includes, but is not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.), the 1979 Air Quality Attainment Plan, and the California Code of Regulations.
 2. **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. All buildings, roadways, parking areas and other features shall be located substantially as shown on the plans approved by the Planning Commission / Staff Hearing Officer.
 - c. 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.
 3. **Litigation Indemnification Agreement.** In the event the Staff Hearing Officer approval of the Modification 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. TIME LIMITS

A. NOTICE OF MODIFICATION APPROVAL TIME LIMITS:

The Staff Hearing Officer action approving the Modification 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. A Building permit for the use authorized by the approval is issued and the construction authorized by the permit is being diligently pursued to completion and issuance of a Certificate of Occupancy.

B. NOTICE OF COASTAL DEVELOPMENT PERMIT TIME LIMITS:

The Staff Hearing Officer action approving the Coastal Development Permit shall expire two (2) years from the date of final action upon the application, per Santa Barbara Municipal Code §28.44.230, unless:

1. Otherwise explicitly modified by conditions of approval for the coastal development permit.
2. A Building permit for the work authorized by the coastal development permit is issued prior to the expiration date of the approval.
3. The Community Development Director grants an extension of the coastal development permit approval. The Community Development Director may grant up to three (3) one-year extensions of the coastal development permit approval. Each extension may be granted upon the Director finding that: (i) the development continues to conform to the Local Coastal Program, (ii) the applicant has

demonstrated due diligence in completing the development, and (iii) there are no changed circumstances that affect the consistency of the development with the General Plan or any other applicable ordinances, resolutions, or other laws.

C. NOTICE OF TIME LIMITS FOR PROJECTS WITH MULTIPLE APPROVALS (SBMC §28.87.370/30.205.120):

1. If a project requires multiple discretionary permits or approvals, the expiration date shall be measured from date of final action of the City on the longest discretionary approval permit or approval related to the application (excluding design review approval), unless otherwise specified by State or federal law.

This motion was passed and adopted on the 19th day of May, 2021 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, Commission Secretary



Date

PLEASE BE ADVISED:

1. This action of the Staff Hearing Officer can be appealed to the Planning Commission 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 and/or Coastal Development Permit requests 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 **Single Family Design Board (SFDB)** 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.