



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: August 1, 2017

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Appeal Of The Architectural Board Of Review's Denial Of A Short-Term Rental/Hotel At 812 Jennings Avenue

RECOMMENDATION: That Council:

- A. Consider the appeal of John J. Thyne III, on behalf of property owner Joe Armel, of the Architectural Board of Review's denial of an application to convert an existing residential unit to a short-term rental/hotel at 812 Jennings Avenue; and
- B. Direct staff to return to Council with a Decision and Findings resolution reflecting the outcome of the appeal.

EXECUTIVE SUMMARY:

The conversion of an existing residence to a short-term rental/hotel is a change of use from a residential use to a non-residential use for land use purposes and requires compliance with the City's Nonresidential Growth Management Program (GMP). Nonresidential construction projects that involve more than 1,000 square feet of floor area require approval of a Development Plan.

On April 24, 2017, the Architectural Board of Review (ABR) denied the Development Plan application to convert an existing residential unit at 812 Jennings Avenue to a short-term rental/hotel, finding that the project is not consistent with the principles of sound community planning. The project would result in the loss of one housing unit from the City's housing stock. While the conversion of residential units to short-term rentals poses a housing challenge to the City because they decrease available residential housing opportunities for local residents, development trends indicate that the City will likely exceed its quantified objectives for new housing construction during the 2015 to 2023 planning period of the Housing Element of the General Plan.

DISCUSSION:

Project Proposal

The proposal involves converting an existing 1,081 square-foot residence and 197 square-foot garage on a 5,253 square-foot lot to a short-term rental/hotel use. The project site is located in the Lower East neighborhood, in the M-1 (Light Manufacturing) Zone. The General Plan designation for the site is Industrial. The required discretionary applications are a Development Plan to allow the conversion of 1,278 square feet of residential floor area to nonresidential floor area, and design review for exterior alterations. Exterior changes include removing the garage door on the accessory building, adding two uncovered parking spaces, a new three-foot high fence along the front property line, new landscaping, and widening the existing driveway apron.

On April 24, 2017, the ABR denied the application for a Development Plan (3-1 vote) because the Board could not find that the proposed development is consistent with the principles of sound community planning. The ABR stated that, despite the fact that the residential use is legal non-conforming in the M-1 Zone, housing is still a priority, and converting a residential unit to a commercial hotel use would be a loss for the neighborhood and the community at large.

On May 2, 2017, John Thyne III, representing the property owner of the subject site, filed an appeal of the ABR's decision (Attachment 1 – Appeal Letter).

Appeal Issues

The appellant primarily takes issue with the ABR deciding on land use matters such as a Development Plan application and believes that the ABR's action to deny this application in the M-1 Zone is a de facto prohibition of conversion of residential units over 1,000 square feet to short-term rentals/hotels.

ABR's Purview of Development Plan Applications

Since 1989, the City has placed a limitation on nonresidential growth in order to manage development and ensure the community continues to live within its resources. In March 2013, City Council adopted the current Nonresidential Growth Management Plan (GMP) as SBMC Chapter 28.85. Pursuant to Chapter 28.85, Nonresidential Construction Projects, defined as "the construction of new nonresidential floor area or the conversion of existing residential floor area to nonresidential use," are subject to the nonresidential development limitations of the GMP.

The conversion of an existing residence to a short-term rental/hotel is a change from a residential use to a nonresidential use for land use purposes. Thus, it meets the definition of a Nonresidential Construction Project and requires compliance with SBMC Chapter 28.85.

Pursuant to SBMC §28.85.030, all Nonresidential Construction Projects require approval of a Development Plan. The decision-maker for Development Plan applications is determined by the amount of nonresidential floor area involved in the proposal. A proposal to convert more than 1,000 and not more than 3,000 square feet of floor area from a residential to a nonresidential use requires Development Plan approval by either the ABR or the Historic Landmarks Commission (HLC). If such a proposal also requires approval of a discretionary land use permit from the Staff Hearing Officer (SHO), the entire project, including the Development Plan, is decided by the SHO. A nonresidential construction project that involves more than 3,000 square feet of floor area is subject to review by the Planning Commission. In this case, the Development Plan application was reviewed by the ABR because it involves 1,278 square feet of floor area.

The appellant expresses concern in his letter that the review authority for smaller Development Plan proposals places the ABR in a land use role as opposed to a design review role. The intent of having Development Plans involving no more than 3,000 square feet reviewed by design review bodies or the SHO is in recognition of the relatively small amount of nonresidential development proposed, and it streamlines the review process by not requiring Planning Commission review for all Development Plans. Staff assists the design review boards with their review of Development Plan proposals by providing a memorandum that explains the proposal, the purview of the ABR or HLC to consider the Development Plan, and the necessary findings for approval.

In this case, a memo was provided to the ABR on April 24, 2017, with a statement that staff believes the project can be found consistent with the required Development Plan findings, and provided bases for that belief (Attachment 2 – Staff Memo to the ABR).

Denying this Application is a De Facto Prohibition on Short-Term Rental Conversions

SBMC §28.85.040 provides the standard for review for Development Plans, which includes four findings for approval. The ABR denied this application because it could not make the second finding, which states, “The proposed development is consistent with the principles of sound community planning.” The ABR stated that, despite the fact that the residential use is legal non-conforming in the M-1 Zone, housing is still a priority, and converting a residential unit to a commercial hotel use would be a loss for the neighborhood and the community at large (Attachment 3 – ABR Minutes).

The appellant asserts that, given the ABR's reason for denying the project, “there can be no conversion of any residential property to any other use in the City...” The ABR, along with other discretionary decision-making bodies in the City, is asked to use independent judgment in making its decisions and findings. Many factors are considered in making discretionary land development decisions including, but not limited to, site location; scope of proposal; land use and zoning designations; consistency with policies and guidelines; compatibility with surrounding uses; resulting mass, bulk, and scale; and any potential impacts to the environment or surrounding area. Therefore, a particular action on one project does not mandate the same action on another, even if a seemingly similar project.

In this case, staff provided reasons in the memo to the ABR for why this proposal could be found consistent with the principles of sound community planning. Staff relied on the fact that the existing residential use of the property is legal nonconforming in the M-1 Zone; the site's zoning designation allows short-term rentals/hotels; the site is surrounded by industrially zoned properties occupied with a mix of commercial, industrial, and non-conforming residential uses; and that incremental reductions in the City's housing stock (as this proposal would result in the loss of one housing unit) is anticipated over time and is balanced with additional residential units developed over the same time period.

Principles of Sound Community Planning

The Zoning Ordinance does not provide direction as to what, specifically, should be considered when evaluating a project for consistency with "sound community planning." However, consistency with the City's General Plan, as the overall guide for future development in the City, is a reasonable standard for review.

The City's General Plan contains hundreds of policies covering a wide range of topics, from land use and housing, to circulation, resource protection, safety, and noise; it is not reasonable to expect every development project to satisfy all General Plan policies. Generally, staff strives to present to decision-makers projects that can be found consistent with the most applicable policies, and when policies may set out competing or incongruent objectives, a balance is sought to achieve the highest level of compliance possible.

In this case, applicable General Plan policies are found in the Land Use and Housing Elements. Housing Element Policy H13 seeks to preserve and promote non-subsidized affordable rental housing. Housing Element Policy H18 and Land Use Element Policy LG1.2 call for monitoring and reporting the General Plan's effectiveness in meeting its objectives, which is accomplished through the annual Adaptive Management Program report. Specifically, Policy LG1.2 directs monitoring resource capacities and policy effectiveness at intervals commensurate with Housing Element planning periods and adjusting specific housing policies as necessary to further achieve the City's Housing Element goals and requirements. Policy LG8 seeks to preserve and encourage the long-term integrity of light manufacturing uses. To that end, the New Zoning Ordinance (future Title 30 of the SBMC), recently introduced to the City Council, would no longer allow hotels in the M-1 Zone, effective October 1, 2017.

The Housing Element recognizes that the use of residential units as short-term rentals and/or only occupied as second homes poses a housing challenge to the City because these uses decrease available long-term housing opportunities for local residents and contribute to the increase in housing costs. The Housing Element was adopted by City Council in February 2015. Shortly after its adoption, the Council considered whether to amend the Municipal Code to prohibit short-term rentals entirely, or continue to allow them in certain zones, potentially with additional regulations. In June 2015, Council ultimately decided to continue allowing short-term rentals in all zones that allow hotels, subject to

existing land use regulations for such a use. Absent City Council initiating an ordinance amendment to further restrict or prohibit short-term rentals, staff continues to apply existing regulations that allow short-term rentals in certain zones, subject to required land use or zoning approvals. In light of that, on February 7, 2017, staff provided a written summary to the applicant of the necessary steps to seek approval for the subject proposal based on existing regulations (Attachment 4 – Planner Consultation Letter).

Pursuant to Housing Element Policy H18 and state reporting requirements, staff monitors the net housing gains and losses in the City and evaluates progress toward meeting housing goals. State law acknowledges that a community's total housing needs identified (i.e., Regional Housing Needs Assessment) may exceed available resources and the community's ability to satisfy this need. More realistic measures of appropriate housing development are the quantified objectives of a Housing Element, which estimate the number of housing units that are likely to be built, rehabilitated, or conserved/preserved over the Housing Element planning period. The quantified objectives do not represent a ceiling on development, but rather a target for the City to achieve based on needs, resources, and constraints, and accounts for historical residential development trends. The City's quantified objective for new housing construction during the planning period of 2015 to 2023 is a total of 1,208 units, 1,086 of which are targeted at above-moderate income levels.

Between January 2015 and February 9, 2017, 370 above-moderate income units were constructed or issued permits. If that trend continues, the City can expect to see approximately 1,480 new above-moderate residential units by 2023. Another 301 net new market-rate units approved under the Average Unit-Size Density (AUD) Incentive Program as of July 2017 could increase that trend going forward. Furthermore, since implementation of state legislation in January 2017 to ease the regulations for Accessory Dwelling Units (ADUs), the City has received 122 building permit applications for new ADUs. In summary, the City is on target to meet or exceed its Housing Element goals and requirements.

An annual evaluation of the General Plan's effectiveness toward meeting its objectives is reasonable and feasible. If policy shifts or zoning changes need to occur to respond to an undesirable land use or development trend, it is more appropriately addressed as a change in General Plan policy or a zoning map/ordinance amendment, and not on a project-by-project basis.

Traffic Management Strategy

The proposed development is consistent with the City of Santa Barbara Traffic Management Strategy, as expressed in the allocation allowances specified in SBMC § 28.85.050. The proposed development will receive nonresidential square footage allocation from the Minor and Small Addition Floor Area categories.

Development Plan Findings

In order to aid the Council in deciding whether to uphold or deny the appeal, the following required findings are provided as the standard for review. If Council agrees with the ABR in that one or more of the following findings cannot be made, the appeal should be denied, and the ABR's denial of the proposal would stand. If a majority of Council believes all four of the required findings can be made, the appeal should be upheld, and Council may approve or conditionally approve the proposal.

28.85.040 Standards for Review – Development Plans.

The following findings shall be made prior to approving any development plan pursuant to this Chapter:

- A. The proposed development complies with all provisions of this Title; and
- B. The proposed development is consistent with the principles of sound community planning; and
- C. The proposed development will not have a significant adverse impact upon the community's aesthetics or character in that the size, bulk or scale of the development will be compatible with the neighborhood based on the Project Compatibility Analysis criteria found in Sections 22.22.145 or 22.68.045 of this Code; and
- D. The proposed development is consistent with the policies of the City of Santa Barbara Traffic Management Strategy (as approved by City Resolution No. 13-010 dated as of March 12, 2013) as expressed in the allocation allowances specified in SBMC Section 28.85.050.

ATTACHMENTS:

- 1. Letter from John Thyne III, dated May 2, 2017
- 2. Staff Memo to the ABR, dated April 24, 2017
- 3. ABR Minutes, dated April 24, 2017
- 4. Planner Consultation Letter, dated February, 7, 2017

PREPARED BY: Renee Brooke, AICP, City Planner

SUBMITTED BY: George Buell, Community Development Director

APPROVED BY: City Administrator's Office