

*City of Albany*  
**Planning and Zoning Commission**  
**Staff Report**

**Meeting Date:** May 27, 2008

**Prepared by:** \_\_\_\_\_

**Agenda Item:** 5c

**Reviewed by:** \_\_\_\_\_

**Subject:** **1100 Portland Avneue and 701-705 San Pablo Avenue Planning Application 07-083. Condominium Conversion.** A request for approval of a Condominium Conversion to allow 12 existing apartment units and two retail commercial spaces to be converted into condominiums.

**Applicant/  
Owner:** Sarah Woodard

**Recommendation**

Staff recommends that the Planning and Zoning Commission approve the request to allow 12 existing apartment units and commercial retail spaces to be converted into condominiums.

**Previous Action**

The applicants received planning approval in 2001 and completed construction in 2003.

**Project Description**

The applicant is requesting approval to allow twelve apartment units and two commercial retail spaces to be converted into condominiums. The subject property is a 10,000sq.ft. lot with 2,545sq.ft. of retail space and twelve residential units that vary between 980sq.ft. and 1,325sq.ft. Each unit has two off-street parking spaces; however, each there is a shared parking agreement with the commercial retail units. The applicant is proposing to maintain all parking "as is." The condominium conversion would include improvements to the units to meet building code for requirements for individually owned units; however, no major exterior changes will result from the conversion. The subject building received planning approval in 2001 and completed construction in 2003. (See attachment 5 for staff report from project approval dated February 27, 2001.)

**Background on Application**

The application was submitted on October 26, 2007, an incomplete letter was mailed on November 17, 2007 and the application was deemed complete on April 8, 2008 after a re-submittal was received on May 24, 2008.

**Environmental Analysis**

Staff has determined that the proposed project is categorically exempt from the requirements of CEQA per Section 15301, "Existing Facilities" of the CEQA Guidelines, which exempts division of existing multi-family residents into common interest ownership.

## Identification of Key Issues

### Condominium Conversion

The subject property is a corner lot located between Kains Avenue (to the east), San Pablo Avenue (to the west), and Portland Avenue (to the north). The project was approved prior to the rezone from C-2 (Commercial) to SPC (San Pablo Commercial). The project conforms to and was approved with the formerly adopted planning and zoning code. The current planning and zoning code was approved in 2004.

The building is legal nonconforming with the current code in that twenty-four off-street parking spaces would be required for the residential units and six off-street parking spaces would be required for the commercial retail space. There are twenty-four parking spaces provided and a shared parking agreement with the residents and commercial space. Also, the building has a maximum height of 38'-6" where the current maximum height permitted in the SPC district is 38'. There is not rear yard daylight plane, which would also be required under current code. Municipal Code Section 20.44, "Nonconforming Uses, Structures, and Lots" states that "Any lawful use of land and/or structure existing or under construction at the time of adoption of this Chapter may be continued even if such use does not conform with the provisions of the district in which it is located, and shall not be expanded or modified except as provided for in this subsection.

A statement of improvements (attachment 4, section 10) and a pest control report (attachment 4, section 6) have been submitted and which include a number of recommendations for improvements to be made. A structural report is typically required; however, considering the recent completion of the project staff has waived the requirement assuming building code compliance. Staff is recommending a condition of approval (condition 3) that the applicant comply with all the recommendations as set forth in the and the pest control reports. Staff, which included the planning staff and building inspector, made a site visit to view both the interior and exterior of the property. The Building Inspector had no concerns or recommendations for improvements for the site.

In regards, to noise, an acoustical report is typically required; however, considering the recent completion of the project staff has waived the requirement assuming building code compliance. Noise levels for exterior noise levels were not tested; however, staff believes that again, because of its recent completion of construction that it is highly unlikely that exterior noise levels are exceeded.

In regards to open space, the current zoning code requires 200sq.ft. of open or 100sq.ft. of private open space per unit. A 2,752sq.ft. courtyard has been provided for the tenant, which means that the open space is legal nonconforming in that it does not provide the 4,800sq.ft. of common open space required by the current code for twenty-four residential units.

Design improvements can be reviewed with condominium conversion applications. In this case, however, staff does not believe any aesthetic changes are needed for the building. The building has a master sign program and the building is still in good aesthetic condition.

Affordability

The City's Affordable Housing Ordinance (Section 20.40) requires that one affordable unit be provided. The applicant is aware of the requirement and is in agreement to provide the one unit. The City Attorney is currently away so is not available to review the draft affordable housing agreement, essentially the same affordable housing agreement approved for one other project that was required to provide affordable units. The City Council is required to approve the affordable housing agreement; however, it is procedurally consistent and appropriate for the Planning and Zoning Commission to review and recommend approval or denial of the agreement.

**Conclusion**

The proposed project maintains the nonconforming structure and multi-family and commercial retail uses. To date, the city has approved two condominium projects, both of which were for four units, both of which are located on Stannage Avenue. Finally, there are a number of revisions/additions to the CC&Rs (attachment 4, section 10) staff believes are appropriate and have been added as condition of approval number 12. Staff also recommends two project-specific conditions of approval: 1) The final CC&Rs are subject to review and approval by the City staff and attorney; 2) The applicant shall return to a public hearing of both the Planning and Zoning Commission and the City Council for review and approval of the affordable housing agreement.

The following are the requirements for approval of a condominium conversion, followed by the applicant's response/solution to the requirement:

**For Condominium Approval, Physical: Section 20.60.060:**

*A. Compliance with Applicable Codes and Additional Standards.*

- 1) *Utilities:* The apartments already have shared meters utilities. The HOA shall be responsible for all utility allocation among the units as well as payment for utilities. A condition of approval has been added (condition 4) requiring that the project meet all requirements for utilities.
- 2) *Fire Prevention:* A condition of approval has been added (condition 5) requiring that the project meet all fire prevention requirements, which will include fire alarms be installed.
- 3) *Exits:* The structure's exits, exit ways and appurtenances shall conform to the standards set forth in Chapter 8 of the City Housing Code and Chapter 33 of the City Building Code (condition 6).
- 4) *Sound Transmission.*
  - a) *Shock Mounting of Equipment:* There are no permanent mechanical equipment, such as motors, compressors, pumps and compactors so shock mounting of equipment is not an issue of concern.
  - b) *Noise Standards:* The structure shall conform to all interior and exterior sound transmission standards of California Building Code.

- 5) *Private Storage Space*: 200 cubic feet of waterproof, lockable storage space has been provided for each unit on the first floor (diagram found in attachment 4, section 11), which complies with storage spaces requirements.
- 6) *Landscape Maintenance*: A condition of approval has been included (condition 9) requiring that all landscaping shall be restored as necessary and maintained to achieve a high degree of appearance and quality and that a landscape maintenance agreement among the owners shall be included in the CC&Rs for the development.
- 7) *Useable Open Space*: The Condominium Conversion ordinance states “a multifamily dwelling which does not provide reasonable private and common outdoor usable open space may be considered to be ineligible for conversion.” The standard zoning ordinance requirement for a twenty-four unit project would be 4,800 feet of shared usable open space (this requirement could be reduced with private open space, but this alternative is not applicable to this application). A 2,752sq.ft. courtyard has been provided for the tenant. Thus, the proposed conversion is legal non-conforming with respect to this requirement.

**For Condominium Approval, Non-Physical: Section 20.60.060:**

- A. *General Plan Conformity*: The General Plan designation for the subject property is Commercial. Policy LU 1.2: states that a goal is to “Establish Zoning standards for areas designated Planned Residential Commercial (PRC) to encourage, but not necessarily require, that redevelopment of underutilized commercial areas include a mix of residential and commercial uses.

GOAL LU 2: Encourage and upgrade commercial and mixed residential-commercial use development along San Pablo Avenue in order to expand the City’s economic base, to increase housing opportunities, and to foster transit-oriented development along this major transit corridor.

The General Plan’s Housing Element includes goals and programs that encourage preservation of rental housing. Housing Element Policy HE 1.2 states “Continue to limit conversion of existing multi-family residential units to condominiums. Limited equity cooperatives and other innovative housing proposals which are affordable to low and moderate income households are encouraged.” This policy has been implemented in the zoning ordinance with an annual limitation on the conversion of rental units, and the proposed conversion complies with the annual limitation (see paragraph C. below).

The project proposed project complies with all three of these general plan policies. It provides a mixed-use development that is located along a street with transportation and retail options. Approval of the condominium conversion will not decrease the number of units in the city but will increase the number of owner-occupied units.

11. *Impact on Senior Citizen, Disabled and Low/Moderate Income Tenants*: There are currently tenants on the site. The applicant intends to sell only four units in the near future. All tenants will be

offered first rights to refusal. A condition of approval has been added requiring that future tenant relocation plans shall be reviewed and approved by planning staff prior to implementation.

- B. *Annual Limitation:* The city has received one other condominium conversion application in the calendar year 2007 for 4 units; therefore, the number of condominium conversions exceeding the 3% of the City's total multi-family rental housing is not a concern.

### **Conditions of Approval**

1. The applicant must address and resolve all Planning, Building and Engineering concerns prior to the recordation of a final map.
2. The project shall conform to the applicable standards of the City's Building and Housing Code and Fire Prevention Code.
3. The applicant must comply with all recommendations set forth in the structural evaluation prepared by Portland Gardens, LLC., date-stamped October 23, 2007 and May 24, 2008, and the pest control report prepared by Mitts Termite Control, date stamped March 26, 2007.
4. Related to utilities: 1) The HOA shall be responsible for all utility allocation among the units as well as payment for utilities; 2) A water shut-off valve shall be provided for each unit.
5. Related to Fire Prevention: a) the project is required to be reviewed by the Fire Department. All requirements set forth by the Fire Department must be met prior to final building inspection; b) each unit shall have smoke detectors of products of combustion other than heat, conforming to the current Fire Prevention Code standards, mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms for sleeping purposes; c) All fire hydrants, fire alarm system, portable fire extinguishers and other fire protective appliances shall be retained in an operable condition at all times, d) any other requirements set forth by Fire Department.
6. The structure's exits, exit ways and appurtenances shall conform to the standards set forth in the Building and Housing Code and Fire Prevention Code.
7. The structure shall conform to all interior and exterior sound transmission standards of the California Building Code. If these standards cannot be met, the applicant is required to notify potential buyers of the noise deficiency within these units
8. Prior to recording the final tract map, the applicant shall submit, for approval of the City Engineer:
  1. C C & Rs and a Condominium Map: The applicant shall submit the proposed C C & Rs for the project as well as acceptable proof of the filing of the condominium map for the project. The C C & Rs shall be recorded concurrently with the Final Tract Map (Code Sec. 20-8.3I) and shall include the following provisions:
    - a) Membership in the Association is mandatory for all owners.

- b) The Association has the obligation to maintain common areas in compliance with City standards as well as all City Conditions of Approval, which shall be incorporated into the C C & Rs.
  - c) The Association has the obligation to enforce of all the provisions of the C C & Rs. The City shall be named as a third party beneficiary to the C C & Rs, with the right, but not the obligation to enforce the Common Area maintenance responsibilities of the Association.
  - d) The Association shall obtain approval from the City of Albany before any modifications or termination of the C C & Rs.
  - e) Required storage space and required parking shall be permanently and specifically assigned to particular units within the projects. Owners shall maintain the storage and parking areas for their intended use, and may not sub-lease individual storage or parking spaces.
  - f) The City shall have the right of immediate entry to all common areas at all times for the purpose of preserving health, safety, and public welfare.
  - g) A landscape maintenance agreement among the owners shall be included in the CC&Rs for the development.
9. The final CC&Rs are subject to review and approval by the City staff and attorney.
10. The applicant shall return to a public hearing of both the Planning and Zoning Commission and the City Council for review and approval of the affordable housing agreement.
12. Future tenant relocation plans shall be reviewed and approved by planning staff prior to implementation.

**UAttachments:**

- 1. Application and all relative documents
- 2. Staff Report and Minutes from February 27, 2001