



Meeting Date: 06/08/10

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input checked="" type="checkbox"/> Public Hearing (Info/Consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Hollie L. King, AICP, Contract Planner *HLK* Agenda Item No. K-1

Reviewed By: City Manager *[Signature]* City Attorney *SMT* Finance *[Signature]* Other (Specify) _____

DATE: May 27, 2010

TO: City Council

FROM: Susan L. Martin, AICP, Planning Manager *SML*
Development Services Department

SUBJECT: Planning and Zoning Permit No. 10-670-01 amending a Development Agreement for property located at 705-711-747 Oxnard Boulevard and known as the Colonial Mixed-Use Building. Filed by Mike Sanchez

RECOMMENDATION

That the City Council approve the first reading by title only and subsequent adoption of an ordinance approving and authorizing the Mayor to execute the First Amendment to the Development Agreement for the Colonial Mixed-Use Building.

DISCUSSION

On September 23, 2008, the City Council approved a three-story mixed-use building with commercial and condominium uses located on a vacant 2.18 acre site at the southwest corner of Oxnard Boulevard and Roderick Avenue. The commercial component of the project and parking would be at ground-level and the residential component of the project would be located on the second and third floors.

On May 26, 2010, the Planning Manager approved a Minor Modification (PZ 10-140-13) to Special Use Permit No. 07-500-18 to allow certain modifications for the project. These included: Reducing the retail/commercial space from 15,960 s.f. to 14,538 s.f.; increasing the number of residential units from 40 to 44; increasing the affordable housing from 6 to 7 units; increasing the amount of open space by seven percent; increasing the number of parking spaces by seven spaces; and installation of a tot-lot. These changes to the development are substantially in conformance with the original project and could be considered administratively with a minor modification. The Planning Manager also approved a one-year time extension (PZ 10-180-02) for Special Use Permit No. 07-500-18.

The Development Agreement entered into by the City and the original developer, Aldersgate Investment, LLC, on October 7, 2008, for the project as it was initially proposed (Ordinance 2786) must be amended to reflect the changes to the project. The Amendment would also update the Development Agreement to reflect the new developer/owner as Colonial House, LLC.

FINANCIAL IMPACT

The project has not been constructed as of this date. The financial impacts would be the same as those noted for the original project approval on September 23, 2008: Prior to the issuance of Building/Grading Permits, the applicant is to pay a tree replacement fee of \$28,831.00 to the City or an equivalent amount is to be invested in landscaping beyond code-required landscaping, or a combination of both that equals the tree. The developer will pay traffic impact fees to off-set impacts on local roads, Quimby fees for off-site impacts on City parks, and Art in Public Places in-lieu fees to provide for future public art displays. This project will result in various financial benefits to the City including additional property taxes.

Attachments

- #1- Vicinity Map
- #2- City Council Ordinance (Development Agreement Amendment)
- #3- Development Agreement Amendment for Recordation
- #4- Development Agreement dated October 7, 2008
- #5- Minor Modification/Time Extension Approval Letter

Note: Attachment #4 has been provided to City Council under separate cover. Copies are available for review at the Help Desk in the Library after 6:00 p.m. on the Thursday prior to the Council meeting and at the City Clerk's Office after 8:00 a.m. on Friday prior to the Council meeting.



Vicinity Map



ATTACHMENT 1
PAGE 1 OF 1

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO.

ORDINANCE OF THE CITY OF OXNARD ADOPTING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE COLONIAL MIXED-USE BUILDING (PZ 10-670-01), ORIGINALLY ENTERED INTO WITH ALDERSGATE INVESTMENT, LLC.

WHEREAS, Government Code sections 65864 et seq. authorize the City Council to adopt and amend development agreements; and

WHEREAS, the City Council provided notice in accordance with Government Code section 65867 of its intent to consider an application for Planning and Zoning Permit No. 10-670-01, filed by the Mike Sanchez, to amend Development Agreement A-7112, approved on October 7, 2008, by Ordinance No. 2786 for the project known as the Colonial Mixed-Use Building; and

WHEREAS, the City Council for the City of Oxnard has held a public hearing concerning the Development Agreement Amendment for the Colonial Mixed-Use Building; and

WHEREAS, the City Council finds that the content of the Development Agreement Amendment is consistent with the *2020 General Plan*, City Council Resolution 8139 (authorizing development agreements), and California Government Code sections 65864 et seq; and

WHEREAS, pursuant to Section 15164 of the CEQA Guidelines, an Addendum to MND #08-02 was prepared for the modification of the project; and

NOW, THEREFORE, the City Council of the City of Oxnard does ordain as follows:

Part 1. The First Amendment to the Development Agreement for the Colonial Mixed-Use Building (A-7112), which has been provided to the City Council with the agenda report in this matter is hereby adopted.

Part 2. The Mayor is hereby authorized and approved to execute on behalf of the City the First Amendment to the Development Agreement for the Colonial Mixed-Use Building.

Part 3. Within fifteen days after passage, the City Clerk shall cause this ordinance to be published in a newspaper of general circulation within the City. Ordinance No. _____ was first read on June 8, 2010, and finally adopted on _____, 2010, to become effective thirty days thereafter.

AYES:

NOES:

ATTACHMENT 2
PAGE 1 OF 2

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Oxnard
305 West Third Street
Oxnard, California 93030
Attn: City Clerk

No fee is required. Recorded for the
benefit of the City of Oxnard pursuant
to Section 6103 of the Government
Code.

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

A-7112

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "Amendment") is made in Ventura County, California as of _____, 2010, by and between the **CITY OF OXNARD**, a municipal corporation of the State of California (the "City") and **COLONIAL HOUSE, LLC.**, a Limited Liability Company ("Colonial House").

RECITALS

A. The City and Aldersgate Investment, LLC entered into that certain Development Agreement dated October 7, 2008, (the "Development Agreement") adopted by Ordinance No. 2786 (Agreement No. A-7112), for the development of a three-story mixed use building on property located at 705-711-747 Oxnard Boulevard (the "Property").

B. Subsequently, the Property was sold by Aldersgate Investment, LLC to Colonial House, LLC and with that sale, Aldersgate Investment, LLC assigned certain rights, duties, and obligations related to the property including all its interest in the Development Agreement.

C. Colonial House is seeking to amend the Development Agreement to reflect a minor modification to the Special Use Permit (PZ 10-140-13) that was approved for the project on May 26, 2010.

D. The City and Colonial House each mutually desire to obtain the binding agreement of one another to permit and ensure that the Property is developed strictly in accordance with the provisions of the Development Agreement and as amended by this Amendment.

E. On June 8, 2010, the City Council held a duly noticed public hearing on this Amendment in accordance with Government Code section 65868.

ATTACHMENT 3
PAGE 1 OF 4

F. In accordance with Government Code sections 65868 and 65867.5, the City Council has found that this Amendment is consistent with the City's 2020 General Plan.

G. Pursuant to Section 15164 of the CEQA Guidelines, an Addendum to MND #08-02, dated May 26, 2010 was prepared for the minor modification for the project.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into the operative provisions of this Amendment by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged the City and Colonial House, agree as follows:

Section 1. The following sentence is added to the end of Section 1.1 of the Development Agreement:

“Notwithstanding the foregoing or anything to the contrary contained herein, the term “Applicable Rules” shall also include the provisions of Ordinance No. _____, enacted by the City on June _____, 2010, which amends the project description for the Project.”

Section 2. Section 1.2 of the Development Agreement is hereby amended to read:

“Developer” means Colonial House, LLC., and any subsequent transferees or assignees.”

Section 3. Section 1.7 of the Development Agreement is hereby amended to read:

“Project” means the development of the Property (as defined below) into a mixed-use development of 14,538 square feet of commercial/retail use and forty-four apartments/condominiums in accordance with the Project Approvals.”

Section 4. Section 1.8 of the Development Agreement is hereby amended to read:

“Project Approvals” means the following land use actions approved by the City: PZ No. 07-500-18 (Special Use Permit), PZ No. 10-140-13 (Minor Modification), PZ 07-570-06 (Zone Change), and PZ No. 08-300-05 (Tentative Map).

Section 5. Section 2.2.3 is added to the Development Agreement to read as follows:

“2.2.3 City Council Action for Amendment. The City Council on June 8, 2010, after conducting a duly noticed hearing, adopted Ordinance _____, to become effective thirty days thereafter, approving the First Amendment to this Agreement, finding that its provisions are consistent with the City’s General Plan and authorizing its execution.”

Section 6. Miscellaneous Provisions

(a) Entire Agreement. Except for the Development Agreement, which this Amendment amends, this Amendment represents the entire agreement between the parties with respect to the subject matter hereof and supercedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Amendment.

(b) Section Headings. The section headings contained in this Amendment are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(c) Counterparts. This Amendment and any modifications hereto may be executed in any number of counterparts with the same force and effect as if executed in the form of a single document.

(d) Waiver. No waiver of any provision of this Amendment shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

(e) Severability. If any part of this Amendment is declared invalid for any reason, such invalidity shall not affect the validity of the remainder of the Amendment or the Development Agreement that it amends. The other parts of this Amendment and the Development Agreement that it amends shall remain in effect as if this Amendment had been executed without the invalid part. The parties intend and desire that the remaining parts of this Amendment and the Development Agreement that it amends continue to be effective without any part or parts that have been declared invalid. If, for any reason, the Amendment does not take effect, then the provisions of the Development Agreement shall remain in full force and binding upon the parties to the Development Agreement.

(f) No Reliance on Other Parties. All parties to this Amendment declare that, prior to the execution of this Amendment, they have informed themselves of sufficient relevant data, either through experts or other sources of their own selection, and have sought and obtained legal counsel, in order that they might intelligently exercise their own judgment in evaluating the contents of this Amendment and making the decision to execute it. The parties each represent and acknowledge that in executing this Amendment, they do not rely on and have not relied on any representation or statement not set forth herein made by any other party to this Amendment or their representative legal counsel with regard to the subject matter, basis or effect of this Amendment.

(g) Construction. The provisions of this Amendment shall be liberally construed to effectuate its purpose. The language of this Amendment shall be construed according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Amendment and has had its legal counsel review it. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural and vice versa.

(h) Successors and Assigns. This Amendment shall be binding on and shall inure to the benefit of the parties and their respected legal representatives, successors, and assigns.

(i) Governing Law. The validity and interpretation of this Amendment shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws.

(j) Authorizations. All individuals executing this and other documents on behalf of the parties certify and warrant that they have the capacity and have been duly authorized to so

execute the documents on behalf of the entity so indicated. Each signatory shall also indemnify the other parties to this Amendment and hold it harmless from any and all damages, costs, attorneys' fees, and other expenses, if the signatory is not so authorized.

(k) Effective Date. After this Amendment has been signed by authorized representatives of each of the parties hereto, this Amendment shall become effective on the date on which the ordinance approving this Amendment becomes operative under Government Code section 36937.

(l) Definitions. All terms not specifically defined in this Amendment shall have the meanings ascribed to them in the Development Agreement, as previously amended.

(m) Impact of this Amendment on Development Agreement. Unless otherwise specifically amended by this Amendment, all provisions of the Development Agreement shall remain in full force.

(n) Recordation of this Amendment. Pursuant to Government Code section 65868.5, the City Clerk shall record a copy of this Amendment in the Official Records of the County within ten (10) days after the mutual execution of this Amendment.

IN WITNESS WHEREOF, the parties to this Amendment have each executed this Amendment as of the date first written above.

COLONIAL HOUSE, LLC.,
a Limited Liability Company

CITY OF OXNARD, a municipal corporation
of the State of California

By: _____

By: _____

Name: _____

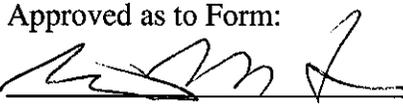
Dr. Thomas E. Holden, Mayor

Title: _____

Approved as to Form:

Approved as to Form:

By: _____



Counsel for Developer:
Stuart A. Comis
Schröder Comis Nelson and Kahn LLP
300 Esplanade Drive, Suite 1170
Oxnard, CA 93036

Alan Holmberg, City Attorney

ATTEST:

Daniel Martinez, City Clerk



Development Services Department
Planning Division
214 South C. Street • Oxnard, CA 93030 • (805) 385-7858 • Fax (805) 385-7417

May 26, 2010

Mike Sanchez
Coastal Architects
505 South "A" Street
Oxnard, CA 93030

RE: *Colonial Mixed-Use Project*
Minor Modification (PZ 10-140-13) to Special Use Permit No. 07-500-18
Time Extension (PZ 10-180-02) to Special Use Permit No. 07-500-18
Southwest Corner of Oxnard Blvd. and Roderick Avenue

The City of Oxnard has reviewed your request to modify the above-referenced special use permit. The requested minor modification includes a reduction in the amount of commercial/retail square footage and an increase in the number of residential units. The City has also reviewed your request for a time extension of one-year for the above referenced Special Use Permit.

Existing Land Use: The project site is currently vacant except for the remains of a brick chimney and fireplace that was part of the old Colonial House Restaurant.

General Plan & Zoning Conformity: The project site has a General Plan designation of Central Business District (CBD) and the approved project is consistent with the goals and policies of the CBD designation. CBD consists of an area of relatively intense retail and office land uses in the core area of the City's downtown area. The project site is located on the north end of the downtown area, bounded by Roderick Avenue, A Street, and Oxnard Blvd. The designation allows for higher density residential uses (up to 39 dwelling units per acre) such as apartment and condominium projects.

The approved project for the site changed the zone district to the Commercial General with a Planned Development Overlay (C-2-PD). The project met all the minimum standards with the approval of the Special Use Permit (PZ 07-500-18) approved by City Council on September 23, 2008 and with the minor modification the project would comply with the approved standards.

Environmental Determination: In accordance with Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, an addendum was prepared for the previously adopted MND for the project. In accordance to Section 15164 of the CEQA Guidelines, an addendum is the appropriate environmental document when there are only minor changes or additions to a project and no conditions exist that would trigger a subsequent MND.

Background: On September 23, 2008 the City Council approved entitlements to develop the subject site with a three-story mixed-use building with commercial and condominium uses. The approval included a special use permit, zone change from C-2 to C-2-PD (PZ 07-570-06), a tentative map for merger and condominium purposes (PZ 08-300-05), and a Development Agreement between the applicant and the City. The approved project for the vacant 2.18 acre site consisted of 15,960 s.f. of commercial space and 40 residential units.

Analysis: The requested minor modification proposes about a nine percent decrease in the commercial component of the project (to 14,538 s.f.) and a ten increase (to 44 units) to the residential component. The request is within the guidelines for consideration of a minor modification, and can be considered administratively.

As part of the request, the applicant is changing the mix of the residential units. Changes include reducing the square footage of the approved units and adding four-bedroom units to the project. The reduction in square footage of the units still meet the planned residential group standards including minimum square footage, storage space, parking, and open space. The open space component is being increased by seven percent with more common areas and a tot-lot. The community center is moving from the first floor to the second floor for the better use for the residents. The elevations of the structure only have minor changes based on the modified design of the structure.

The changes to the approved special use permit are summarized as follows:

Special Use Permit (PZ 07-570-06)	Minor Modification (PZ 10-140-13)
Commercial Space: 15,960 s.f.	Commercial Space: 14,538 s.f.
40 Residential Units: 8 one-bedroom units (1,224 s.f. ea.) 12 two-bedroom units (1,512 s.f. ea.) 20 three-bedroom units (1,812 s.f. ea.)	44 Residential Units: 8 one-bedroom units (730 s.f. ea.) 16 two-bedroom units (919 s.f. ea.) 12 three-bedroom units (1,204 s.f. ea.) 8 four-bedroom units (1,445 s.f. ea.)
Affordable Units: 6 one-bedroom units for sale	Affordable Units: 7 one-bedroom units for rent
Parking: 61 shared spaces (for guest parking/commercial spaces) 73 secured residential parking Total: 134 spaces (22 off-site spaces also provided)	Parking: 61 shared spaces (for guest parking/commercial spaces) 80 secured residential parking Total: 141 spaces (22 off-site spaces also provided)
Community Room: First Floor	Community Room: Second Floor
Open Space: 26,629 s.f. (27.9%)	Open Space: 32,881 s.f. (34.5%)
Playground: None	Playground: Tot-lot with play structure

The applicant intends to record the tentative map for condominium purposes to merge the three lots and eventually to be able to sell the residential units. A Development Agreement (DA) will need to be amended by the City Council subsequent to the Minor Modification approval to revise the project description in the DA (A-7112) approved on October 7, 2008 by City Council.

The Planning Division approves the requested minor modifications, based upon the following findings and subject to compliance with the following conditions:

FINDINGS

1. The minor modification is consistent with the 2020 General Plan, the land use and zone designations on the property with the approved zone change for the project (PZ 07-570-06), and Planning and Zoning Permit No. 07-500-18.
2. An addendum to the MND has been prepared for the project under Section 15164 of the California Environmental Quality Act (CEQA) Guidelines.

CONDITIONS

1. Applicant shall obtain a building permit for any new construction authorized by this permit.
2. Before the City issues building permits, Developer shall include a copy of this approval letter with all sets of construction documents and specifications for the project.
3. Prior to issuance of building permits, Applicant shall pay a document imaging fee for the Planning files in an amount calculated by Planning staff at the time of building permit review based on fees then in effect.
4. Except as modified by this request, all permit conditions for the project of shall remain in full force and effect. These include conditions listed for PZ 07-500-18 (Special Use Permit), PZ 07-570-06 (Zone Change), and PZ 08-300-05 (Tentative Subdivision Map).
5. This minor modification shall automatically become null and void 24 months from the date of this approval, unless Applicant has diligently developed the proposed project, as shown by the issuance of a grading, foundation, or building permit and the construction of substantial improvements.

This letter serves as official approval of your minor modification request, and pertains only to those modifications described herein. Enclosed are two sets of the approved plans, for your use and/or your records.

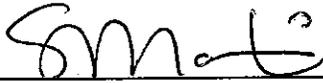
May 26, 2010

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This letter also serves as official approval of the one-year time extension request. The Special Use Permit (PZ No. 07-500-18) will expire on **September 23, 2011** unless diligently developed the proposed project, as shown by the issuance of a grading, foundation, or building permit and the construction of substantial improvements. Any subsequent time extension requests shall be submitted to the Planning Division as a Major Modification to the approved permit, along with the necessary fees, and considered by the Planning Commission.

If you have any questions about this approval, please call Hollee L. King, AICP, at (805) 385- 7952.

5/26/10
Date


Susan L. Martin AICP
Planning Manager

Attachment: MND Addendum to MND#08-02

cc: Matthew Winegar, AICP, Development Services Director
Stephen Fischer, Assistant City Attorney

