ALLIED
Neighborhoods Association

July 18, 2017

TO: Santa Barbara City Council
RE: Appeal of HLC – Denial of Short Term Rental Application
101 West Anapamu St., MST2017-00121

Mayor and City Council Members:

We urge you to affirm the denial of this project by the HLC and deny the appeal.

Following is the basis for our opposition to the change of use of this residential unit to a Hotel/Short Term Vacation Rental (STR).

In order to obtain a permit to change a use from residential to Hotel/STR, the project must obtain a Development Plan finding that it "*is consistent with the principles of sound community planning*" The Historic Landmarks Commission (HLC) turned down the project because it could not make such a finding.

It is inconceivable to us how this conversion of a residence to a Hotel/STR unit can be deemed consistent with *"sound community planning."*

As rationale for a "sound planning" finding for this project, City Staff cites our General Plan.

Their reasoning seems go like this:

- First, Staff cites the fact that we are on track with the Housing Element's quota for providing new housing, and thus the loss of one unit is inconsequential.

This completely misses our point, which is that **the preservation of even a single housing unit, in terms of current community priorities, trumps the creation of another hotel.** As one HLC Commissioner characterized it, we should not be adding to things we don't need while depleting things that we do need.

In reaction to a severe housing shortage, with current vacancy rates at historic lows, the City has made the creation and preservation of housing stock a top priority. The loss of even a single unit of residential housing in exchange for a hotel unit rings of a blatant inversion of priorities, one that places a higher priority on hotel units than scarce housing.

The Plan's Housing Element can hardly be cited as support for STRs. Its essence is the creation and preservation of residential housing, not justification for the elimination of a unit. Here's what our 2015 Housing Element says about STRs:

> *"The use of residential units as short-term vacation rentals and/or occupied as second homes poses a housing challenge to the city because the use decreases available long-term housing opportunities for local residents as well as contributes to the increase in housing costs".* (p.53)

Does that language sound like support for a finding that this Hotel/STR project constitutes *"sound community planning?"*

It should be noted that the older housing units that we are seeking to protect from conversion contribute to our diversity of housing types, and are generally less expensive than comparable new units. Significantly, the use of residences as a STRs often forces residents from their homes.

- Secondly, Staff cites the Non-Residential Growth Management Ordinance as support for a *"sound community planning"* finding, since that ordinance provides for the creation of additional non-residential development.

This also is an unjustified conclusion. The NRGM Ordinance was adopted not to encourage or enable additional non-residential development, but to regulate and limit it.

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We could not find any support for STRs anywhere else in the General Plan; It appears that the Plan never addressed the impact of what were to become known as STRs - or even provided a definition.

It was argued at one hearing that the HLC and ABR are inappropriate forums for making a "sound community planning" finding.

This required finding was included in the ordinance for good reason. Obviously we want to assure that our review bodies consider the many detailed and technical regulations applicable to the projects before them. But beyond that, we want their decisions to be made in the broader context of the community at large. The intent of the *"sound community planning"* finding is to ensure that review bodies, in addition to matters within their fields of expertise, participate in the big-picture planning process. The *"Sound community planning"* finding is a "fail-safe" device, that seeks to assure that basic, overarching considerations don't go overlooked. We commend the HLC and the Architectural Board of Review for their recognition of this necessity, and hope this Council will uphold their decisions.

Sincerely,

Allied Neighborhoods Association.

INDIVIDUAL POINTS RAISED BY APPLICANT/APPELLANT & RESPONSES

The Applicant (Appellant) cited a number of points and arguments, enumerated below, in support of his appeal, to which we are obliged to respond. (Appellant's contentions are **bolded**; our responses are indented.)

Appellant contends that the STR is not a commercial use and thus not subject to the Non-Residential Growth Management (NRGM) Ordinance.

> There is little question that an STR is a commercial use. It makes a dwelling unit publicly available for short periods for a fee; its renters are solicited in interstate commerce; they generally require commercial insurance, and their expenses qualify as business deductions. – most even take credit cards.

Appellant contends that STRs are not to be treated as hotels, because STRs are not within the definition of hotels nor are they "similar uses".

> The Code definition of "Hotel" includes, "…but is not limited to", inns, bed and breakfasts, hostels, well as "other similar uses." A bed and breakfast, for example, certainly is a "similar use" to an STR, and is defined by the Code as synonymous with "hotel".
>
> By simple syllogism: - if an STR is a "similar use" to a bed and breakfast, and - if a bed and breakfast is synonymous with hotel, - then an STR is a hotel!
>
> The most likely reason that "Short Term Vacation Rental" is not mentioned in the Code is that the term was not in common usage at the time these regulations were enacted. Had the term existed, it would most certainly have been added to this definition of hotel. In any event, the drafters prepared for such a contingency by adding "other similar uses" to the definition.

Appellant argues that the "Conversion Ordinance," exempts single unit projects from the definition of "conversions". Since "there are no other permit requirements" in the City Code regulating operation of a residential unit as an STR, no land use permit is required.

But there <u>are</u> "other permit requirements" applicable to STRs.

> True, being a single unit project exempts it from the Conversion Ordinance. But, that ordinance (§28.88.028) also says, *"No exception…shall affect the applicability of…other applicable ordinances or regulations"*
>
> The regulation that <u>does</u> apply to single unit conversions, is M.C. §28.85: the NRGM Plan. The Code defines the conversion of residential to commercial use as a "non-residential construction project", and the NRGM ordinance requires such projects to obtain approval of a Development Plan. "Development Plan" is included in the definition of a "Land Use Permit".

Appellant notes that the denial of the Project was based purely upon its determination that "conversion" of a residence to an STR is not *"consistent with the principals of sound community planning."* "If the HLC's finding for denial of the Project is upheld, and the City consistently and fairly applies the Zoning Code to all proposals, any existing

property over 1,000 s.f. currently used for long-term residential occupancy may no longer be converted to any other more desirable use permitted under the Code", and this effectively "*amends"* the Municipal Code by altering the way it is applied.

Who says that consistency demands that all future conversion proposals that result in housing loss must be turned down? We are remined by Staff that each land use case is unique, and that different facts or priorities can justify different decisions.

The determination that this conversion did not satisfy the requirement of *"sound community planning"* was based on the balancing of competing considerations - in this case, loss of a rental housing unit while the City is in a housing shortage, versus adding a Hotel/STR. Future applications for conversions of residential use, to other more desirable C-2 permitted uses will certainly involve different facts, considerations and priorities that *could* very well justify sacrificing a housing unit for a Hotel/STR or other C-2 use.

Applicant asserts that the City may not act in an arbitrary and capricious manner when it implements existing Code requirements, nor can it discriminate against one particular permitted land use (a different C-2 use).

A board might legitimately judge that in any application the comparative equities can justify differing conclusions. For example, while a conversion to an Hotel/STR may be deemed by a review board not to justify the *"sound community planning"* finding, conversion of a housing unit to some other more beneficial use very well may.

Appellant contends that the HLC's action to deny the Project is also inconsistent with recent *approvals* of two other similar STR proposals Involving similar facts.

There is no *stare decisis* requirement that review bodies reach the same conclusions in similar cases. There are valid reasons why differing conclusions may be reached in similar cases. For instance: - recognition of earlier procedural errors; - changes in consciousness or evolution of thinking; - changes in review board membership; - or new considerations brought to light by the public. It can't be seriously argued that the disposition of an application binds the review body in all subsequent similar cases. Deciding similar cases and reaching different conclusions doesn't constitute arbitrariness. The members of these bodies are entitled to change their minds.

Appellant points out that the purported *"housing shortage,"* cited by the HLC did not suddenly materialize after its prior approvals of Hotel/STRs.

Of course not. However, an appreciation of its seriousness, or the potential responses to it by the City might certainly have changed.

Appellant contends that the fact that the Zoning Code permits hotels in the C–2 zones supports a finding that they are *"consistent with principles of sound community planning."*

Locating a project in a proper zone does not confer an entitlement; it still must satisfy numerous other regulations, some of which may entail discretionary reviews. Property rights are not vested until the project complies with other applicable regulations.

Appellant objects that "the HLC's concern about negative effects of many Hotel/STR conversions" is speculative and without evidence.

"Sound community planning" should consider not only the effects of a single project but also its potential cumulative effects. There is truth to the adage about *"death by a thousand cuts."* To date there have been 5 residential units converted and 41 units (in 27 projects) in the pipeline, not to mention a reported 800 or so illegal STRs operating in the City, or that the number of permissible conversions is virtually unlimited. There are over 8,900 units currently in our commercial and R-4 zones that are potentially convertible to STRs.

Our General Plan never anticipated the appetite for STRs.