

Dissenting opinion for the North 40 Planning Commission Decision of September 28, 2020

**Existing Architecture and Site Application S-13-090, located at 14225 Walker Street.
APN 424-56-017. Architecture and Site Application S-20-012**

The Planning Commission motion to deny the modification of Existing Architecture and Site Application S-13-090 to remove underground parking for the Market Hall in the North 40 Specific Plan Area passed 4-2 on September 28, 2020, with the Planning Commission Chair and Vice Chair voting against the denial.

It is highly likely that as a matter of personal opinion, nearly all, if not all members of the Planning Commission agree with the Town residents that Summerhill Homes should build the underground parking garage as a matter of good faith and other reasons as well. However, the Commission is charged to look at the law as a quasi-judicial body for which law in this case is primarily the Town commercial parking code contained in 29.10.150(b) which is what the North 40 Specific Plan references as its standard for parking. This section of the Town code is the standard for downtown commercial parking. There are some additional issues involved in this hearing, but the issues were described in detail by the Town Attorney in a written memo before the September 28 hearing (intended for September 23). As a result of this direction by the Town Attorney, it is clear that the Commission was to only make findings based on objective standards, not based on subjective standards, personal opinions, nor based on public opinion.

As the two dissenting votes, the Planning Commission Chair and Vice Chair assert that the Planning Commission motion for denial was based on incorrect and misleading application of Town objective standards as well as confusing and incorrect analysis presented in the form of spreadsheet tables by the maker of the motion during the meeting after public discussion was closed. The Chair and Vice Chair along with staff, challenged this information, as incorrectly and inconsistently applying the Town parking standards.

The tables, which were the basis of the motion to deny, were submitted by the maker of the motion on the day of the hearing after the deadline for the desk item and were not viewed or reviewed by the Commission, staff or the applicant until after the public hearing was closed, only minutes before the motion to deny was made.

Two findings and a comment were made in the motion for denial and supported by the tables. Each is discussed and refuted below.

PC Motion FINDING 1: The maker of the motion found the application was not in compliance with the North 40 Specific Plan parking requirements which were based on Town Code 29.10.150 (b). Reference was also made to a lack of findings for an Architecture and Site Application approval, but this part of the motion also referred to the Town Code parking requirement 29.10.150 (b).

NOTE: 29.10.150 (b) covers the parking requirements for downtown, which is the objective standard required for commercial parking in the North 40 Specific Plan, as mentioned in the introduction of this dissent.

The table provided by the maker of the motion during the hearing, used to support the motion to deny, is reproduced below.

Table 1: Maker of the Motion’s Parking Analysis using 2017 Code

Transition District A, B, C	Required	Provided	Over/(Under)
Affordable Senior (including guest)	50	47	(3)
Residential	19	19	0
Commercial	323	253	(70)
Total	392	319	(73)

The highlighted numbers are an incorrect application of the current objective standard of Town Code Section 129.10.150 (b).

There are two inaccurate claims based on this table and therefore the related finding in the motion to deny is incorrect.

- (a) Inaccurate Claim: Affordable senior parking—50 required, 47 provided, 3 under.

Rebuttal:

The applicant is providing 50 parking spaces for 49 units (plus one manager unit for a total of 50 units). The requirement in the North 40 Specific Plan for this affordable senior housing is for ½ space for each resident and ½ guest space for each resident for a total of 50 parking spots. As an aside, there are many residents in Town who do not feel that 50 spots are enough, but the non-profit partner, Eden Housing, has continually maintained that they operate 36 similar facilities throughout the Bay Area and this amount of parking suffices for this application. However, that is not the issue for this motion.

The maker of the motion asserted that because 3 spaces of the 50 are not shown on the drawings supplied by the applicant as being on the same floor of the parking garage as the other 47, they will not be secured for the residents to use, therefore they cannot be counted.

However, this assertion was made without discussing this with the applicant or staff to determine how the parking would be managed. Therefore, it is not a valid finding as it is

not based on fact. We have no way of knowing whether or not the applicant and the manager of the affordable housing (Eden Housing) have a way to secure the other 3 spaces without submitting this question in a public hearing and asking for a response. And we have no way of knowing whether the applicant will install all 50 spaces on the gated floor of the parking structure. Therefore, it was incorrect to deduct these 3 spaces.

Further, there is no requirement in the North 40 Specific Plan to secure the parking for the affordable housing units, so it was incorrect to deduct any of the spaces provided for purposes of contributing to the motion to deny. While it is in the best interest of the applicant and their partner, Eden Housing, to ensure that those spaces are available for the residents and the residents' guests and not the general public, it is not an objective standard requirement. This could be made a condition of approval if the Council so desires during the appeal hearing.

- (b) Inaccurate claim: The North 40 specific plan standard commercial parking required is 323 vs. 285 that the applicant stated in their application of 8/26/2020.

Rebuttal:

The motion to deny claims the applicant is 70 spaces under the 323 required.

As explained by staff on multiple occasions during the meeting, each application must be evaluated on its own for parking and other code requirements against ***the building codes that are in effect at the time a building permit is filed***. Nonetheless, the maker of the motion presented the table on the next page, with now-superseded 2017 parking requirements, to calculate the number of parking spaces required.

Table 2: Applicant’s Estimated Square Footage using 2017 Parking Space Factors

Modified A&S Exhibit A 9/23	Market	Retail	Restaurant	Bar/Tavern	Community Room	Total
Factor	1:300sf	1:300sf	1:100 *	1:75 *	1:590sf	
Market Hall	20760				2772	23532
Other Commercial		24611	12591	2916		
Total	20760	24611	12591	2916		63650
Calc. Spaces Required	69.73	82.04	125.91	38.88	4.70	320.72
Net Spaces Required	70	83	126	39	5	323
Market Hall	75		Non-market hall	248		323

NOTE (*): The “Factor” for restaurants and bars in this table was based on the applicant’s estimate at the time (2017) of how many parking spaces would be needed converting hypothetical seats to square footage and is not something that has been used in our parking code. In other words, it was not a standard even in 2017 as the standard was based on the number of seats when the application was first approved.

All of the highlighted numbers are incorrect because the maker of the motion applied a double standard, suggesting that the Commission:

- Apply the current Town Code 29.10.150 (b) to the Market Hall
- Apply the Town Code 29.10.150 (b) from 2017 to the remainder of the commercial sites (since the applicant was not proposing a change to these commercial pads).

The maker of the motion did not find that the application for the Market Hall on a stand-alone basis did not meet the parking requirements. The applicant and staff have continued to maintain that the applicant is exceeding the requirement for the Market Hall by 52 spaces even after removal of the underground parking.

Instead, the maker of the motion said that because the Housing Accountability Act applied to this entire project as was ruled by the State in their lawsuit against the Town that the Town should look at this application for the Market Hall in conjunction with the

entire Phase I project, including the remaining commercial pads, which at this time, do not have a commercial developer in place to build them out.

What the maker of the motion chose to disregard is that the Town Code for commercial parking for restaurants and bars (Section 129.10.150(b)) was changed in 2018 from using seats as the methodology for determining parking spaces to using gross square footage as the methodology. This was done for a variety of reasons including community vitality across the Town. So as of 2018, all of these commercial spaces have an objective parking standard of 1 space for every 300 gross square feet. This is the only applicable parking standard, and it is the objective standard the applicant used in the data they presented and that staff used in their report.

This change in the parking code for restaurants and bars benefits not only Summerhill Homes for this application but all restaurant and bar owners in Town and it has been doing so for over 2 years.

Despite the assertion by the Town Attorney, the Community Development Director, and the Chair and Vice Chair of the Planning Commission that it was improper to apply two conflicting standards to the same application and that further, the applicant can only be held accountable to the standard at the time of application, the motion proceeded.

Following, we present Table 3 using the maker of the motion’s data, but correctly applying the current Town code Section 29.10.150 (b).

Table 3: Applicant’s Estimated Square Footage and Current Parking Space Factors

Modified A&S Exhibit A 9/23/2020	Market	Retail	Restaurant	Bar/Tavern	Community Room	Total
Factor	1:300	1:300	1:300	1:300	1:590	
Market Hall	20760				2772	23532
Other Commercial		24611	12591	2916		
Total	20760	24611	12591	2916		63650
Calc. Spaces Required	69.73	82.04	41.97	9.72	4.70	
Net Spaces Required	70	83	42	10	5	210
Market Hall	75		Non-market hall	135		210

The revised number for the “Other Commercial” based on the current estimates for square footage and applying the current parking standard in 29.10.150 (b) which standard (downtown parking) is cross referenced in the North 40 Specific Plan is **113**

spaces fewer than what would have been required in 2017 before the code changed (total 323 in the motion but actually 210 per current code). Coincidentally, this is nearly equivalent to the 124 spaces eliminated by eliminating the underground parking garage, further underscoring the applicant’s assertion that the underground structure is not needed.

Here we restate the table supplied by the maker of the motion showing the applicant meets The Town’s parking standard using the 1 space for every 300 sq ft. for commercial space.

Table 4: Table 1 Parking Analysis Restated using Current Code

Transition District A, B, C	Required	Provided	Over/(Under)
Affordable Senior (including guest)	50	50	0
Residential	19	19	0
Commercial	210	253	43
Total	279	322	43

The applicant clearly meets the requirement for parking in the Market Hall on a standalone basis (exceeding it by 52 spaces) and as shown above meets the parking required in the overall Transition District (exceeding it by a proposed 43 spaces).

PC Motion FINDING 2: The maker of the motion found that the applicant’s numbers were inconsistent with previous submissions and were confusing. The four specific issues stated in the motion relative to inconsistency included:

- Use of gross vs. net square footage (the maker of the motion asserted that net square footage was used in some documents supplied by the applicant when gross square footage is required).
- Not rounding up to the next whole number (required by code).
- 3 senior spaces not secured.
- Housing Accountability Act—must use the parking standards for the entire district vs. just the Market Hall as the number of residential units is not more than 2/3 of the Market Hall. (Note: This is contrary to what staff including the Town attorney have advised.)
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Response to the above four issues.

- Gross square footage for commercial is required by code. However, no one, not staff, the applicant, nor the Commission, was given an opportunity to address this assertion by studying the data and reaching a conclusion, but the estimated differential is approximately 15% more square footage for gross square footage vs. net. This amount translated to parking spaces required would not affect the applicant's compliance, but more important, the applicant should have had the opportunity to respond to the spreadsheet data supplied by the maker of the motion.
- Not rounding to the whole parking space is a difference of one parking space, 331 versus 330 according to the applicant's data, which was not disputed. And while the excess parking proposed proves this concern to be a non-issue, it was held up as an example of how the applicant included inconsistent or misleading information.
- The question of why secured residential parking spaces cannot be grounds for denying the application was discussed earlier.
- Staff analysis of parking required, using current code, shows that for the Market Hall independently OR for the entire Transition District, the applicant exceeds the objective standard of the number of parking spaces required.

As a final comment on "inconsistencies" and "confusion", it could be argued that when two pages of tables are presented for the first time at a point in the meeting when public comment has closed, providing the applicant no opportunity to respond, this in itself creates confusion and obfuscation. And, as was stated previously, the Planning Commission Chair and Vice Chair pointed out the did not tables did not reflect current parking code (Section 129.10.150 (b)) and were themselves misleading.

PC Motion final COMMENT: The maker of the motion asserted that the Environmental Impact Report (EIR) that was certified for this project may need to be revisited. This was not a finding, but rather a comment.

The question posed was that the parking might have changed enough to invalidate part of the Environmental Impact Report that was certified as part of the project approval. However, this was not a finding for denial of the application so will not be discussed further except to state that recent case law in California (2018) has ruled that "parking impacts, in and of themselves, are exempt from CEQA review". (*Residents for Responsible Development v. City of Covina*, Case No. B279590). For those that are not familiar, CEQA stands for the California Environmental Quality Act which provides a process/law for assessing and mitigating possible environmental impacts from a development project.

In conclusion, the writers of this memo assert that the Planning Commission's denial of this application was based on the incorrect application of current Town codes. Further, the last-minute submission of spreadsheet tables presented as "Correct" obscured fact by incorrectly

applying outdated Town code. Finally, it is important to add that there is no question that the concerns of residents were heard and acknowledged; there simply have not been any current objective standards identified as of this writing that would support a valid finding to deny this application, as much as we all would like Summerhill to build the underground parking for multiple reasons.

Respectfully,

Melanie Hanssen
Chair, Planning Commission

Kathryn Janoff
Vice Chair, Planning Commission