

October 19, 2020

Dear Mayor Jensen, Vice Mayor Spector, and Council Members Sayoc and Rennie:

I hope that you will agree with the Planning Commission's reasons for denying the elimination of the underground garage at the North 40. I looked closely at the SummerHill proposal and was very disturbed by many things.

The most discouraging thing about accepting what SummerHill says in the proposal is the inconsistency and unreliability of its numbers. In some places we learn that there will be 330 spaces; in others, 331. In the latest iteration, we find there will be only 319 spaces. In some places, SummerHill uses gross commercial footage for its figures while in others it uses leasable square footage. In its figuring out of how many parking spaces should be provided, it fails to average up when this is what the law requires. By my reckoning, this would add 2 spaces, not the 1 space mentioned in the SummerHill lawyer's letter. By dribs and drabs, SummerHill is removing parking.

On page 763 of the agenda packet, Berliner Cohen claims that "The Commissioner's spreadsheet could not be relied upon by the Commission as constituting substantial evidence, as it was clearly wrong." This is debatable, but by the same token, approval can certainly not be based on the applicant's tables since these contradict each other and thus cannot be relied on as "constituting substantial evidence."

As I've stated elsewhere, I don't understand why the HAA applies to this application since the application does not ask for a change in the amount of housing. In regard to this, I find the following statement completely baffling and wonder if Council members might ask the applicant to clarify how having or removing an underground garage in a commercial area would in any way impact the amount of housing at the North 40. Here is the statement in question:

It is clear from the justification provided by SummerHill that they would incur millions of dollars of additional costs to build the underground parking level that is not required by Town Code. **Imposing such an unnecessary expenditure would thus violate the HAA because it would have the same impact on the ability of the Project to provide housing as reducing the density of the Project would have.**

Another problem is that the applicant fails to show real benefits to eliminating the underground garage. The claim that reduced parking will encourage bicycling or using public transportation seems dubious. Because of the dangerous crossings at Lark and Los Gatos Boulevard and at Samaritan Drive and Los Gatos Boulevard, it seems unlikely that people will want to bike to the North 40 commercial district to shop. Because of the infrequency of bus service along the Boulevard, it seems even less likely that people would use buses to go there.

Further, the so-called benefit that enough or even extra parking would "induce demand" seems inappropriate. A solid amount of parking will help demand for the commercial area—which is

something I would think we would want. Lack of adequate parking will make people avoid the North 40 commercial area, almost guaranteeing that it will fail.

I urge you to deny this application. If Exhibit A provides accurate numbers, this just shows that the application itself contains numbers that are NOT accurate and statements that are false. I also urge you to deny the application based on the fact that there are no real benefits to the public to eliminating the underground garage. I hope you will recall that when you approved the North 40 proposal in 2017, what you approved included the underground garage. You recognized at the time that extra parking is a good thing and that we should avoid the parking problems we face downtown. The extra parking was not a requirement then. If you allow the developer to remove the underground garage, you are saying that a developer can offer all kinds of good things that a community wants but that may not be legally required, just in order to get approval — and then later that same developer can rely on regulations to remove the offering on which approval was based in the first place.

Sincerely,

Barbara Dodson

October 17, 2020

Marcia Jensen, Mayor
and Members of the Los Gatos Town Council
110 E. Main Street
Los Gatos, CA 95030

Request for Modification to an Existing Architecture and Site Application Approval (S-13-090)

Dear Mayor Jensen and Members of the Council:

These are my personal comments and are not meant to represent the views of the Planning Commission.

The applicant's justification for the elimination of the parking garage evolved during the course of three months during which the hearings took place over Zoom. First, the justification was that the parking was not needed because a party backed out. Then the justification was that a lesser number was required but the reason was not stated for this **drastic decrease (28%)** that cannot be explained by the minor change in building configuration (8%). It's not just that the underground parking is being removed, the concern is that with nearly 1/3 less parking, this will have a dramatic impact on the residential and commercial experience, and that is why it is inconsistent with the Specific Plan.

With invaluable input from public correspondence and testimony during the hearings, I put together some tables and discovered the factor driving the lesser number. In the final hearing, the applicant focused on a change in downtown parking requirements (which was adopted by the Town with no discussion about the effect it would have on the North 40).

I believe there is a difference of opinion about which version of downtown parking requirements applies to this application to modify. The Planning Commission voted to deny with a motion that I made which relied on the fact that the parking requirements for those non-Market Hall buildings are specified by an approved A&S. That approved application for those non-Market Hall buildings states their parking requirement at the time the application was deemed complete (8/1/2017). Those requirements are significantly greater than the current requirements.

1. **Parking Deficiency.** The application of the parking requirements specified by the relevant portions of the North 40 Specific Plan would result in a **parking deficiency of 73 spaces** if the underground parking were eliminated. **That is based on an objective standard and is one basis for Planning Commission denial.**
2. **Discrepancies.** With regard to reviewing an application with numerous discrepancies (which was one of the findings regarding objective standards in the motion), I asked this of the Town Attorney:

COMMISSIONER HUDES: I understand. This is really a question I think for the Town Attorney. If we've been presented with documents as part of this application for modification along the course of the three or four meetings that we've had, are we to consider all of that information?

TOWN ATTORNEY SCHULTZ: Yes, you are. That's all part of the record and you should consider it all, and if there are discrepancies between documents you should try to resolve those, and if you can't that could be the basis for your decision for either denial or approval. So yes, all documents that have been submitted for the modification are part of the record and should be taken into consideration.

These discrepancies are still unresolved—the applicant has never reconciled and explained the inconsistencies in their own materials, and staff has not provided its own reconciliation of the inconsistencies; hence the request for an **independent review** of the required and provided parking spaces.

With the applicant declining to allow time for that review to proceed, and staff not performing this analysis, we are left with these inconsistencies in the application that is before the Council. If approved, these inconsistencies will remain and will serve as a source of contention as the project moves forward. **That was another basis for denial based on objective standards.**

3. **Mistaken Calculations.** There were also errors in the basis for rounding up spaces as well as the incorrect use of net versus gross square footage. There are still discrepancies in the documents that are part of this application regarding the count of non-Market Hall parking: 155 in one place 143 in another, and 150 shown on the drawings. These are **objective standards** set forth in the Specific Plan and in Town Zoning Codes. The applicant does not address this in the appeal.
4. **Unsecured Senior Parking.** In addition, only 47 of the 50 required spaces for senior affordable housing are secured, according to the drawings, and the applicant has not addressed this in the appeal. **Another objective measure.**

The motion to deny carried by a 4-2 vote with 1 recusal. Owing to the good work of my fellow Commissioners and advice from the Town Attorney, **absolutely nothing in the motion relied on subjective measures.** The applicant does not address this in the appeal.

Finally, there was something of concern in the dissent from two Planning Commissioners (something I've not seen on any matter in twelve years that I've been participating in Town affairs). The dissent suggests that the discussion of tables, which were about the notes presented during deliberations did not provide fair process and the effect was "confusion and obfuscation." That was certainly not the intent—the intent was to clarify in the face of the discrepancies in the applicant's documents.

The additional tables were necessary because the applicant presented inconsistent and conflicting information including during the September 28, 2020 hearing. In that hearing the applicant presented Exhibit A which still does not specify Residential vs. Commercial "Proposed Parking Provided" (a requirement of the Specific Plan) in the final column, and staff did not present its own analysis of the parking numbers.

The tables were prepared in advance, provided to staff in advance of the hearing, and certain tables were selected for discussion based on the testimony received during the hearing and served as notes for deliberations. It would have been impossible to submit the correct tables prior to the hearing.

There is no deadline for notes used by Planning Commissioners in their deliberations. The public portion of the hearing was re-opened and the applicant was offered the opportunity for a continuance to review the information discussed during deliberations and have an independent review of the tables and numbers that were presented. The applicant declined. Any Planning Commissioner could have asked for a recess or made a motion for a continuance if they felt that they needed more time to analyze information presented during deliberations. They did not. Further, the applicant does not cite this as grounds for appeal.

I've provided more detailed responses in Attachments 23 and 24.

By the way, we've been here before. An action by the Council taken without addressing the issues, errors, and discrepancies resulted in an unhappy outcome for the Town.

I know that the Council will "do the right thing" with information that is provided to it. Thank you for your consideration.

Regards,
Matthew Hudes



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October 8, 2020

VIA E-MAIL

Marcia Jensen, Mayor
And Members of the Town Council
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
council@losgatos.ca.gov

Re: Los Gatos North Forty; Request for Modification to an Existing Architecture and Site Application Approval (S-13-090)
Appeal to City Council; Agendized for October 20, 2020

Dear Mayor Jensen and Members of the Council:

This letter is written on behalf of SummerHill Homes, the Applicant for the above-entitled modification. The Planning Commission denied the application. Its denial was in error, an abuse of discretion, and was not based upon substantial evidence in the record. It also violated the Housing Accountability Act (Govt. Code Sec. 65589.5, the "HAA"). We are very familiar with this Project, as we represented the Applicant in connection with the original denial, the Litigation, and the subsequent approval of the Project.

A short summary of the error of the Planning Commission is that they were properly advised by the Town Attorney that the Application had to be evaluated in accordance with objective standards of review, the definition of which was read to them, and that their discretion was circumscribed by State laws, including the Housing Accountability Act and the Housing Element Law. They were further advised that the Modification complied with all objective parking and other standards of the Town.

Mayor Marcia Jensen
October 8, 2020

The motion for denial was stated to be based upon an erroneous analysis of the parking requirements that had been prepared by one Commissioner. It was not based on the applicable City Zoning Code or any other applicable objective standards. As such the denial is not based on objective standards and is also not supported by substantial evidence in the record.

To explain more fully: we concur with the advice the Commission was given by the Town Attorney that the Housing Accountability Act does apply to the requested modification. There is no question that the HAA applies to the entire Phase 1 Project. In fact, in the Litigation, Judge Takaichi explicitly stated in his opinion that the Project was a "housing development project" within the scope of the HAA.

Because the Project is subject to the HAA, the Town is limited to using only objective criteria in its evaluation of Project applications. As Staff has advised the Commission in the past, Section 65589.5(j) requires that the Application can only be turned down for a violation of objective standards. A recent amendment to the HAA clarified that this requirement also applies to imposing "*any conditions that have the same effect or impact [as reducing density would have] on the ability of the project to provide housing.*" (Govt. Code Sec 65589.5(h)(7).)

That same amendment clarified the meaning of "objective" as follows:

Until January 1, 2025, "objective" means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official. (Govt. Code Sec 65589.5(h)(8).)

It is clear from the justification provided by SummerHill that they would incur millions of dollars of additional costs to build the underground parking level that is not required by Town Code. Imposing such an unnecessary expenditure would thus violate the HAA because it would have the same impact on the ability of the Project to provide housing as reducing the density of the Project would have.

RESPONSE: The costs are not "additional." They are a result of the approved project. Eliminating the parking could have the effect of reducing the cost and increasing the profit of the applicant, but the Town is not requiring the applicant to do anything to incur additional cost. Also, there is no evidence that the parking reduction is the "same impact" as reducing the density. Further, the effect of having less parking would weaken the prospects for acceptable housing: this is the opposite of the goal of the HAA.

Despite being advised of this clear requirement of the law by the Town Attorney, the Planning Commission seemed swayed by subjective opposition to the Application and denied the requested modification in violation of the HAA.

The maker of the motion to deny cited only one allegedly objective standard that he claimed was violated by the Application: he claimed based on his own, idiosyncratic analysis, that the Project was under-parked. However, as other Commissioners noted, and as Staff also stated,

his analysis is incorrect. The Commissioner's spreadsheet could not be relied upon by the Commission as constituting substantial evidence, as it was clearly wrong. Using it as the basis for a motion was thus arbitrary and capricious and an abuse of discretion.

Mayor Marcia Jensen
October 8, 2020

If there is one thing that has been clear throughout this process, it is that the underground parking level is not necessary to provide the amount of parking required by the Town Code. The maker of the motion also gave several other reasons for denial, acknowledging that they were not based on objective planning standards. As such, these simply reveal subjective antagonism to the Application, and must be disregarded.

RESPONSE: This assertion is incorrect. Nowhere in the motion were there any reasons or findings that were not based on objective standards.

We are sure that the Town is aware that the Legislature has amended the HAA several times since this project was initially approved. These amendments have all been aimed at further reducing a city's discretion in deciding on housing development project applications. In addition, the HAA now provides significantly increased exposure for a city that violates its strictures, including additional exposure to fines, penalties, and claims for damages, not to mention attorneys' fees.

If you need additional information or clarification, please feel free to contact the undersigned. We ask that this letter be made part of the official record of proceedings.

Very Truly Yours,

BERLINER COHEN



ANDREW L. FABER

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ALF

cc: Robert Freed
Mike Keaney
Rob Schultz, Esq., Town Attorney
Joel Paulson, Community Development Director
Shelly Neis, Town Clerk

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.

RESPONSE: The additional tables were necessary because the applicant presented inconsistent and conflicting information, including during the 9/28 hearing, and staff had not prepared its own analysis of the parking numbers. The tables were prepared in advance, provided to staff in advance of the hearing, and selected based on the testimony received during the hearing and served as notes for deliberations. There is no deadline for notes used by Planning Commissioners in their deliberations.

The public portion of the hearing was re-opened and the applicant was offered the opportunity for a continuance to review the information discussed during deliberations and to have an independent review of the tables and numbers that were presented. The applicant declined.

Any planning commissioner could have asked for a recess or made a motion for a continuance. They did not.

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.

RESPONSE: This is an incorrect characterization of motion. The motion relied on the drawings which show a gate on A.4 (p.63) that secures access to the 47 spaces on level P-3. There is not a gate or any mechanism to secure the 3 spaces on the other floor. There is no indication that those spaces will be secured. And the applicant did not address any other mechanism of securing these spaces in the appeal despite being raised in the denial.

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.

RESPONSE: We do have a way of knowing. The drawings clearly show that only 47 will be gated. There is no evidence or testimony that the spaces on other floor will be secured. There is no requirement that a question be asked, especially if the drawings are clear. Further, the applicant could have provided additional information on this matter in the appeal, and they have not. There is still no information from the applicant that all parking for senior housing will be secured, as it is required to be.

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

(b) Inaccurate claim: The North 40 specific plan standard commercial parking required is 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.

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.

RESPONSE: Neither a modification A&S nor a building permit have been filed for non-Market hall commercial buildings. Therefore the parking requirements for the non-Market hall commercial buildings are those that were in effect at the time their A&S application was deemed complete which was 8/1/17. And those were presented by the applicant on 8/26/2020 in A.11.

It is absolutely incorrect that this A&S modification application must be evaluated against the building codes that are in effect at the time a building permit is filed. The statement reflects a fundamental misunderstanding that an A&S follows a building permit; in fact, it is the other way around: a modification to the building permit follows a modification to the A&S. Mr. Paulson so stated (p. 55). Mr. Paulson also stated that a modified building permit has not yet been filed for the re-configured building. So the statement that this application (to modify the A&S for the Market Hall only) must be evaluated "against the building codes that are in effect **at the time a building permit is filed**" is not possible since the modified building permit has not been filed yet. It is not possible to evaluate this application for a modification A&S against code requirements of a future building permit.

Further, this application is for parking, which is a **zoning code** requirement, not a **building code** requirement; therefore the building permits and their dates are irrelevant.

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).

RESPONSE: Neither a modification A&S nor a building permit have been filed for non-Market hall commercial buildings. Therefore the parking requirements for the non-Market hall commercial buildings are those that were in effect at the time their A&S application was deemed complete which was 8/1/17. And those were presented by the applicant on 8/26/2020 in A.11.

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.

RESPONSE: The motion found that the application to modify the Market Hall A&S does not meet the parking requirements of the relevant portions of the N40 specific plan.

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 th

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.

RESPONSE: This was not disregarded. The new code does not apply to the A&S application that was deemed complete on 8/1/2017.

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.

RESPONSE: The applicant cited the 2017 parking requirements in this same application (in red ink on A.11). This is an example of the inconsistencies that still exist in this application.

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.

RESPONSE: The non-Market Hall buildings are not the subject of this application, therefore there are not "two conflicting standards." Their parking requirements are specified by their unmodified A&S application that was deemed complete in 2017.

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.)

RESPONSE: This is not contrary--the Town Attorney stated (on P. 10 of the 9/28/20 transcript) : "My opinion is you have to look at it as a whole. You don't get to use the Housing Accountability Act to your advantage and then say that the parking only applies to the Market Hall."

- 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

RESPONSE: The tables were prepared in advance, provided to staff in advance of the hearing, and selected based on the testimony received during the hearing and served as notes for deliberations. There is no deadline for notes used by Planning Commissioners in their deliberations. The public portion of the hearing was re-opened and the applicant was offered the opportunity for a continuance to review the information discussed during deliberations and to have an independent review of the tables and numbers that were presented. The applicant declined. Any Planning Commissioner could have asked for a recess or made a motion for a continuance. They did not.

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.

RESPONSE: The erroneous use of **net** rather than **gross** square footage was made by the applicant in A.11 and other documents that are part of this application. There was opportunity for the applicant and the public to read A.11.

- 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.

RESPONSE: Just as in Downtown, rounding up is required for each separate use, that is each use in each building. Not for each parcel. "The parking requirement for various **uses** in the downtown are as follows" Sec. 29.10.150.(b)(1)

- 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.

RESPONSE: The applicant provided this analysis. Not Staff.

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.

RESPONSE: The applicant was provided an opportunity for a continuance and declined. There is no evidence of intent to cause obfuscation or confusion. To the contrary, the application's inconsistencies required explication. In fact, Vice Chair Janoff identified several inconsistencies that she uncovered in her analysis in her remarks (p. 61 of the transcript.) 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.

RESPONSE: The record shows that there was no assertion, just a question that was raised by Commissioner Tavana which I re-stated and perhaps Staff would be willing to answer: "There's also another question that I have that's not part of the findings but that is something that I think would need to be looked at, and that is whether the EIR is applicable and whether the project meets CEQA requirements" (p. 88)

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