



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/20/2020

ITEM NO: 8

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**DATE:** October 15, 2020  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Consider an Appeal of a Planning Commission Decision Denying a Request for a Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-07-114. Architecture and Site Application S-20-012. Property Owners/Applicant/Appellant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

**RECOMMENDATION:**

Consider an appeal of a Planning Commission decision denying a request for a modification to an existing Architecture and Site application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area (S-20-012) located at 14225 Walker Street.

**BACKGROUND:**

The subject parcel is approximately 1.77 acres, located within the North 40 Specific Plan area west of Los Gatos Boulevard, and is currently vacant (Attachment 1, Exhibit 1). The entire North 40 Specific Plan area is approximately 40 acres bounded by Highway 17, Highway 85, Los Gatos Boulevard, and Lark Avenue.

On June 17, 2015, the Town Council adopted the North 40 Specific Plan, providing more detailed land use and development requirements and guidance for the subject area than occurs in the General Plan. The approval of the North 40 Specific Plan also amended the zoning of the entire area to North 40 Specific Plan.

**PREPARED BY:** JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

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BACKGROUND (continued):

On August 1, 2017, the Town Council adopted a resolution to approve the Phase I Architecture and Site application (S-13-090) and Vesting Tentative Map application (M-13-014) for the construction of a new multi-use, multi-story mixed use development, which includes residential units, a market hall, and on-site and off-site improvements on the southern 20.7 acres of the North 40 Specific Plan area.

On September 4, 2018, the Town Council adopted a resolution to approve a minor amendment to the North 40 Specific Plan to provide the opportunity for Development Agreements as an additional mechanism to achieve the desired community for the North 40 area.

The application for a modification to the existing Architecture and Site application to remove underground parking for construction of the market hall (S-20-012) was considered by the Planning Commission on August 26, 2020, September 9, 2020, September 23, 2020, and September 28, 2020. On September 28, 2020, the Planning Commission denied Architecture and Site application S-20-012. The record associated with the Planning Commission can be found in Attachments 1 through 16 and Attachment 21. On October 1, 2020, the decision of the Planning Commission was appealed to the Town Council by the applicant, Michael Keaney with Summerhill Homes (Attachment 17).

Pursuant to Town Code Section 29.20.280, the appeal must be heard within 56 days of the Planning Commission hearing and in this case by November 23, 2020. The Council must at least open the public hearing for the item, and it may continue the matter to a date certain if the Council does not complete its work on the item.

Pursuant to Town Code Section 29.10.020, any person or persons or entity or entities who can demonstrate that their property will be injured by the decision may appeal to the Town Council any decision of the Planning Commission regarding non-residential and mixed-use projects. Pursuant to Town Code Section 29.20.295, in the appeal, and based on the record, the appellant bears the burden to prove that there was an error or abuse of discretion by the Planning Commission or wherein its decision is not based on substantial evidence in the record as required by Section 29.20.275. If neither is proved, the appeal should be denied. If the appellant meets the burden, the Town Council shall grant the appeal and may modify, in whole or in part, the determination from which the appeal was taken or, at its discretion, return the matter to Planning Commission. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.

DISCUSSION:

A. Project Summary

Architecture and Site application S-13-090 included approval of a multi-story, mixed-use Market Hall with 50 affordable apartments for seniors, 20,700 square feet of retail space, a 2,722-square foot community room, and a four-story parking garage with 303 parking spaces.

The parking garage for the Market Hall consisted of three above grade levels and one below grade level. A total of 303 parking spaces were approved, resulting in an excess of 179 parking spaces over the number required by the North 40 Specific Plan development regulations (Attachment 1, Exhibit 5). The parking requirement is consistent with current commercial parking requirements for the downtown at one parking space per 300 square feet of gross floor area. 129 of the proposed 303 parking spaces were to be located on the below grade level. The applicant is proposing to remove the below grade level and modify the remaining three above grade levels resulting in a total of 176 parking spaces proposed, meeting and exceeding by 52 parking spaces the number required by the North 40 Specific Plan regulations for the Market Hall building.

B. Planning Commission

On August 26, 2020, the Planning Commission considered the application and continued the matter to September 9, 2020 to allow Commissioners to complete a site visit and to allow for additional public comments to be provided. On September 9, 2020, the Commission considered the application and continued the matter to September 23, 2020 to allow the Commissioners and the public additional time to review the project's compliance with the Town's objective standards pursuant to the Housing Accountability Act (HAA).

The issue of the applicability of the HAA and other housing laws became one of the discussion considerations by the Planning Commission. Town Attorney Rob Schultz advised the Commission that because the entirety of the application involves a housing development, housing laws did apply to a modification of the application. As such, the HAA requires housing developments to be approved if they meet all objective standards (see Attachment 8, Exhibit 13).

On September 23, 2020 the Commission continued the matter to a special meeting on September 28, 2020 due to technical errors with the teleconference meeting. On September 28, 2020 the Commission received the staff report, opened the public hearing, and considered testimony from the applicant and the public. After asking questions, the Planning Commission closed the public hearing and discussed the project. After completing its

DISCUSSION (continued):

deliberations, the Commission denied the application (4-2-1, Hanssen and Janoff opposed and Burch recused). Attachments 4, 7, 11, and 16 contain the verbatim minutes.

C. Appeal to Town Council

The decision of the Planning Commission was appealed on October 1, 2020 by the applicant, Michael Keaney with Summerhill Homes (Attachment 17). The appellant provided the reasons for the appeal to the Town Council, wherein the Planning Commission's decision was an error or abuse of discretion and was not supported by substantial evidence in the record, as noted below (verbatim) followed by staff analysis in *italic font*.

In addition, the applicant provided a supplemental letter, as well as the applicant's attorney, concurring with the Town Attorney's analysis of the applicability of State housing laws (see Attachments 22 and 23).

The denial of the requested modification by the Planning Commission was in error and was an abuse of discretion, and their decision is not supported by substantial evidence in the record. The Planning Commission was properly advised by the City Attorney and by staff but ignored this advice in denying the requested modification. They were advised 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. The motion for denial was stated to be based upon an erroneous analysis of the parking requirements that had been prepared by a Commissioner. It was not based on the applicable City Zoning Code or any other application objective standards. As such the denial is not based on objective standards and is also not supported by substantial evidence in the record. Additional reasons for denial were stated that are irrelevant to the scope of permissible analysis by the Planning Commission. Thus, the Planning Commission erred, abused its discretion, and failed to base its decision upon substantial evidence in the record. Its denial was an arbitrary and capricious act, lacking in legal or factual support and should be overturned by the City Council.

*As detailed in the Planning Commission minutes for the September 28, 2020 meeting (Attachment 16), the motion to deny the application was based on the analysis of the parking requirements that had been created by a Commissioner and shared at the meeting (see Attachment 21). The analysis detailed that the modified project would not be in compliance with the total number of parking spaces required for the Transition*

DISCUSSION (continued):

*District by the North 40 Specific Plan development regulations consistent with commercial parking requirements for the downtown at the time the original Architecture and Site application (S-13-090) was approved on August 1, 2017.*

*Based on staff's review of the information created by a Commissioner and shared at the September 28<sup>th</sup> Planning Commission meeting, staff does not concur with the findings of the analysis. Since the approval of the original Architecture and Site application (S-13-090) by the Council on August 1, 2017, Ordinance 2272 was adopted by the Council on April 3, 2018 to amend Section 29.10.150 of the Town Code to revise the required parking requirements for restaurants. Section 2.5.8 (a) of the North 40 Specific Plan states that the number of off-street parking spaces required for a non-residential use shall be consistent with the parking required in the downtown as required within Division 4 of the Zoning Ordinance. Section 29.10.150 (b) (1) of Division 4 of the Zoning Ordinance requires one parking space for each 300 square feet of gross floor area for retail and commercial stores, shops, restaurants, bars, taverns, and nightclubs.*

PUBLIC COMMENTS:

Written notice of the Town Council hearing was sent to property owners and tenants within 300 feet of the subject property. Notice was also published in the Los Gatos Weekly. Given the large amount of public interest, social media messages also welcomed the public to participate in this hearing. Public comments received between 11:01 a.m., September 28, 2020 and 11:00 a.m., October 15, 2020 are included in Attachments 24 and 25.

CONCLUSION:

A. Recommendation

Staff originally recommended approval of the application to the Planning Commission because the proposal is consistent with the objective standards of the North 40 Specific Plan. As Secretary to the Commission, staff would typically recommend that the Town Council uphold the decision of the Planning Commission and adopt a resolution denying the appeal and denying the application (Attachment 18). However, given the applicability of the HAA and Housing Element Law requirements to rely on objective standards and by-right findings respectively, staff recommends that the Town Council take the following action:

Adopt a resolution granting the appeal and approving the application with the required Findings and Considerations (Attachment 20, Exhibit A) and recommended Conditions of Approval (Attachment 20, Exhibit B), determining that the Planning Commission's

CONCLUSION (continued):

decision should be reversed or modified, and finding one or more of the following in accordance with Town Code Section 29.20.275:

- a. There was an error or abuse of discretion by the Planning Commission; or
- b. The Planning Commission's decision is not supported by substantial evidence in the record.

B. Alternatives

Alternatively, the Town Council could:

1. Adopt a resolution denying the appeal and denying the application (Attachment 18).
2. Adopt a resolution to grant the appeal and remand the application back to the Planning Commission for its review and decision (Attachment 19) particularly if the basis for granting the appeal is, in whole or in part, due to information not presented to or considered by the Planning Commission, and finding one or more of the following in accordance with Town Code Section 29.20.275:
  - a. There was an error or abuse of discretion by the Planning Commission; or
  - b. The Planning Commission's decision is not supported by substantial evidence in the record.
3. Continue the application to a date certain with specific direction.

COORDINATION:

The Community Development Department coordinated with the Town Attorney, Parks and Public Works Department, and the Santa Clara County Fire Department in the review of the proposed project.

ENVIRONMENTAL ASSESSMENT:

An Environmental Impact Report (EIR) was prepared and certified for the North 40 Specific Plan on January 5, 2015. No further environmental analysis is required for the proposed removal of the underground parking.

Attachments:

1. August 26, 2020 Planning Commission Staff Report, with Exhibits 1-7
2. August 26, 2020 Planning Commission Addendum, with Exhibit 8
3. August 26, 2020 Planning Commission Desk Item, with Exhibit 9

Attachments (continued):

4. August 26, 2020 Planning Commission Verbatim Minutes
5. September 9, 2020 Planning Commission Staff Report, with Exhibit 10
6. September 9, 2020 Planning Commission Desk Item, with Exhibit 11
7. September 9, 2020 Planning Commission Verbatim Minutes
8. September 23, 2020 Planning Commission Staff Report, with Exhibits 12-14
9. September 23, 2020 Planning Commission Addendum, with Exhibits 15-16
10. September 23, 2020 Planning Commission Desk Item, with Exhibit 17
11. September 23, 2020 Planning Commission Verbatim Minutes
12. September 28, 2020 Planning Commission Staff Report, with Exhibits 12-14
13. September 28, 2020 Planning Commission Addendum, with Exhibits 15-16
14. September 28, 2020 Planning Commission Desk Item, with Exhibit 17
15. September 28, 2020 Planning Commission Desk Item B, with Exhibit 18
16. September 28, 2020 Planning Commission Verbatim Minutes
17. Appeal of Planning Commission decision, received October 1, 2020
18. Draft Resolution to Deny Appeal and Deny Project
19. Draft Resolution to Grant Appeal and Remand Project to Planning Commission
20. Draft Resolution to Grant Appeal and Approve Project, with Exhibits A and B
21. Parking Summary Table Provided by Commissioner Hudes at the September 28, 2020 Planning Commission meeting
22. Letter from the Applicant, received October 14, 2020
23. Letter from Applicant's Attorney Dated October 8, 2020
24. Letter from the Planning Commission Chair and Vice Chair, received October 13, 2020
25. Public Comments received between 11:01 a.m., September 28, 2020 and 11:00 a.m. October 15, 2020