

Attachment to Initiation of Appeal

Citizens Against Market Place Apartment/Condo Development (“CAMPAD”) hereby appeals the Planning Commission’s February 16, 2023, approval of DP 2022-0007 (demolition and construction development permit), MJ 2022-0005 (major subdivision), UP 2022-0004 (use permit for Starbucks), AR 2022-032 (architectural review), (TRP 2022-032 (tree removal permit) and ENVR 2022-0004 (CEQA compliance) for 130 Market Place (APN 213-701-002).

The Commission was required to determine that the proposed development would be consistent with the General Plan, compliant with the Zoning Ordinance, “compatible with existing and future land uses in the vicinity[,]” and “would not be detrimental to the . . . welfare of the persons residing or working in the subject neighborhood[.]” (Muni. Code § D6-28(F),(G).)

The Commission erred in making the above approvals because:

1. General Plan Policy 4.6-I-26 explicitly requires a master plan in connection with the proposed activity and no master plan is included as a condition of approval. A reasonable person could not conclude that the project is compliant with this condition since there is no master plan. (Cf. Gov. Code, § 65589.5(f)(4).) This condition is not barred by SB 330 because the City is “not barred from imposing conditions of approval that do *not* reduce density.” (*California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 850 (emphasis in original).)
2. The proposed project does not satisfy the requirements for a horizontal mixed use project as specified in General Plan pages 4-23 and 4-24 and 4.6-I-23, and Zoning Ordinance Sections D2-12(A) and D2-15(B) and Appendix A.
3. The proposed project, which destroys significant, critical, centrally-located and prime retail and replaces it with 40 market-rate single-family condominiums, is not consistent with the General Plan Policies 3.1-G-1, 4.6-I-16, 4.6-I-17, 4.6-I-20, 4.6-I-21 and 5.6-G-2.
4. The proposed project does not meet the Zoning Ordinance definition of “proposed project” (p. 8-33), which does “not include the alteration of any portion of an existing structure other than an addition[.]” because the application does not propose any addition to the commercial component of the mixed use project (Starbucks).
5. The Commission was required to consider whether the application complied with the objective requirements for minimum site unit density and mixed use because on October 4, 2022 staff accepted the Commission’s direction to provide the applicant written notice of such inconsistencies in accordance with the procedures of SB 330 and the applicant was present at the hearing, thereby receiving actual notice of such direction, yet later met with staff with the result that staff issued an ultra vires letter contrary to the direction of the Commission. The applicant should be deemed to have received the deficiency letter dictated by the Commission as the timeline of events indicates the applicant may have been involved in frustrating issuance of that letter and thus would have “unclean hands.”

6. Condition 59, requires approval of regional utility providers, including waste storage facility districts, but does not specify ACI of San Ramon, or other trash pickup service provider. Such provider's confirmation of commitment to provide service, including that

1/2

vehicle access and receptacle placement and enclosure design standards are in fact adequate, is necessary for the good functioning of the mixed use development and the public welfare.

7. As noted in the points above, "the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans" (Gov. Code, § 66474(b)) and the subdivision should not have been approved.
8. The proposed project does not qualify for an infill exemption to CEQA review under title 14 of the Code of Regulations ("CEQA Guidelines"), section 15332 because:
 - a. As noted above, the project is not "consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations."
 - b. "Approval of the project" would result in "significant effects relating to traffic, noise, air quality, or water quality" because the elimination of a 55,635 square feet of commercial space (out of ~185,000 square feet of existing tenant space), including a building designed for a full-service grocery store, would result in significant traffic/air quality impacts due to increasing vehicle miles travelled by residents driving to more distant grocery stores or other commercial services that can no longer be offered at the site after the commercial square footage has been demolished and replaced with condominiums. The VMT analysis in the staff reports focused on reduction of traffic to and from the subject site and did not consider the consequences of elimination of the commercial square footage in this easily accessible location.
 - c. The "project site" (see CEQA Guidelines, § 15378(a) (defining "project")) is "more than five acres" because the proposed development is occurring on 3.91 acres and a reciprocal commercial parking easement will cover additional acres of parking in the adjacent shopping center in which vehicle activity related to the commercial elements of the mixed use development will also occur.
 - d. The project will result in "unusual circumstances." (CEQA Guidelines, § 15300.2(c).) Such circumstances necessitating consideration include the
demolition of 55,635 square feet of retail despite the known significant vehicular outflow from the City caused by retail leakage and growing need for future local retail capacity detailed in the The Natelson Dale Group, Inc., Retail Development Opportunity Analysis (May 23, 2022).

Zoning Ordinance Section D7-9 allows for initiation of an appeal within 10 days “by the applicant or any interested person.” CAMPAD is an unincorporated association of City residents dedicated to preserving the character of the City and protecting scarce, community-serving retail. CAMPAD has actively commented and engaged with staff regarding the application. CAMPAD is “an interested person” with standing to bring an appeal. This appeal is timely filed with the City Clerk on February 27, 2023, along with a check for the filing fee of \$2,500.

Please confirm acceptance of this appeal by return email to Ariel Strauss, astrauss@greenfirelaw.com.