



City of Palo Alto

City Council Staff Report

(ID # 8088)

Report Type: Consent Calendar

Meeting Date: 6/12/2017

Summary Title: 260 California Avenue - Protege Restaurant

Title: QUASI-JUDICIAL: 260 California Avenue [16PLN-00289]: Request for a Hearing on the Tentative Approval of a Conditional Use Permit to Allow the Sale of Beer, Wine, and Liquor in Conjunction With a Restaurant and Referral of Director's Action to the City Council of an Architectural Review Application for an Outdoor Seating Area Pursuant to PAMC 18.40.170. Environmental Assessment: Exempt From the Provisions of the California Environmental Quality Act (CEQA) per Guideline Section 15301 (Existing Facilities)

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that Council take the following action(s):

1. Find the proposed project exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15301 of the CEQA Guidelines, and
2. Adopt the draft Record of Land Use Action in Attachment B, approving the proposed conditional use permit for alcohol sales, and approving the architectural review for an outdoor seating area in conjunction with a restaurant subject to findings and conditions of approval

NOTE: If this item is pulled from Consent (three Councilmember votes required), it will be noticed for a public hearing on June 27 or 28, 2017.

Executive Summary

The applicant requests approval of an architectural review permit for an outdoor seating area and a conditional use permit to allow alcohol sales in conjunction with a new restaurant at 260 California Avenue. The proposed restaurant is located on the ground floor of an existing mixed-use building. The Conditional Use Permit and Architectural Review were approved by planning staff on behalf of the Director of Planning and Community Environment on April 6, 2017. The tentative approval letter and conditions are included in Attachment C of this report.

In accordance with the local zoning ordinance, the Planning and Community Environment Department (PCE) received a request for hearing on both applications. The request for hearing was filed based on concerns that the project did not meet the city's floor area and parking requirements. The gross floor area concern was validated and staff attempted to remedy the compliance issue by re-issuing an approval letter conditioning the project to comply with the city's floor area requirements. This solution, however, was not satisfactory to the hearing requestor.

The hearing for the conditional use permit was scheduled before the Planning and Transportation Commission (PTC), which forwards a recommendation of conditional approval to the City Council. The request for hearing on the architectural review permit was reviewed by the Architectural Review Board (ARB) with a recommendation for conditional approval.

Consistent with Palo Alto Municipal Code Section 18.40.170, the Director of Planning and Community Environment is forwarding the recommendation of the ARB to the City Council for final action concurrent with the Council's action on the CUP. The Council may elect to approve the CUP and ARB applications on consent or, if three Councilmembers agree, schedule the matter for a public hearing. If pulled from consent, staff recommends the hearing be scheduled for June 27 or 28, 2017.

As documented in the proposed Record of Land Use Action (Attachment B), the project has been conditioned to comply with applicable gross floor area requirements and already meets required parking.

Background:

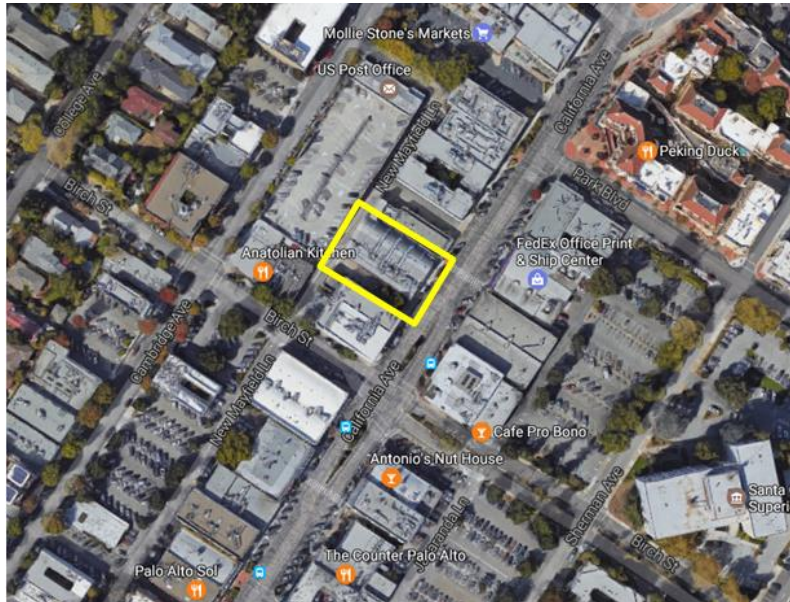
Owner:	260 Cal Partners, LLC
Architect:	Keith Morris / Studio KDA
Representative:	Mark Conroe
Legal Counsel:	None Identified

Property Information

Address:	260 California Avenue
Neighborhood:	California Avenue Business District
Lot Dimensions & Area:	13,509 square feet
Housing Inventory Site:	Not applicable
Located w/in a Plume:	Yes, COE Plume
Protected/Heritage Trees:	Yes, in City sidewalk fronting property

Historic Resource(s):	Not a historic resource
Existing Improvement(s):	3-story mixed use building with basement garage; 37 feet in height; c. 2015
Existing Land Use(s):	Ground floor retail/restaurant shell / 2 nd and 3 rd floor office space
Adjacent Land Uses & Zoning:	Northeast: CC(2)(R)(P) (California Avenue Business District) Northwest: PC-4172 (Parking Garage) Southeast: CC(2)(R)(P) (California Avenue Business District) Southwest: CC(2)(R)(P) (California Avenue Business District)

Aerial View of Property:



Source: Google Maps

Land Use Designation & Applicable Plans

Zoning Designation:	CC(2)(R)(P)
Comp. Plan Designation:	CC (Regional/Community Commercial)
Context-Based Design Criteria:	Not applicable
Downtown Urban Design Guide:	Not applicable
South of Forest Avenue Coordinated Area Plan:	Not applicable
Baylands Master Plan:	Not applicable
El Camino Real Design Guidelines (1976 / 2002):	Not applicable
Proximity to Residential	Not applicable

Uses or Districts (150'):
Located w/in the Airport
Influence Area: Not applicable

Prior City Reviews & Action

City Council: None

PTC: Conditional Use Permit reviewed by the Planning and Transportation Commission (PTC) on May 31, 2017

HRB: None

ARB: Minor Architectural Review reviewed by the Architectural Review Board (ARB) on June 1, 2017

Director: Tentative Approval of Conditional Use Permit and Minor Architectural Review on April 6, 2017

Discussion

The subject application is a request for a Conditional Use Permit (CUP) for alcohol sales in conjunction with a proposed restaurant and a minor architectural review approval for a proposed outdoor seating area. The restaurant occupies a ground floor lease area in an existing mixed-use building at 260 California Avenue.

Requests to sell alcohol for on- or off-sale consumption requires a CUP and are subject to the following findings:

- *The proposed use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.*
- *The proposed use will be located and conducted in a manner in accord with the Palo Alto Comprehensive Plan and the purposes of the Zoning Ordinance.*

Planning staff evaluates these requests and makes a tentative decision, which any person may challenge and request a hearing before the PTC. The Commission’s review of an application is similarly subject to the same findings above and based upon the evidence in the administrative record and testimony received at the hearing. The Commission’s recommendation on the project is forwarded to the City Council and placed on the consent calendar where three or more council members may request a hearing on the application. Conditions may be imposed on the project to ensure compliance with the code, including the findings, and other applicable city policy documents.

Staff recommended findings and conditions of approval are included in the draft Record of Land Use Action (RLUA) in Attachment B. Conditions that have been revised since the tentative approval are included in bold font in the draft RLUA.

In addition to the CUP request, an application for a minor Architectural Review (AR) was filed and approved by the Director's designee. The planning department also received a hearing request for the AR application, which was heard by the ARB on June 1, 2017. The ARB recommends conditional project approval.

Both applications require Council approval, which can be granted by accepting the item on the consent calendar. Typically, the Director of Planning and Community Environment would decide on the minor AR application, which could then be appealed by an interested party. However, due to the Council's upcoming break, it is anticipated that the AR application, if appealed, could not be heard by the City Council within 45-days as required in the municipal code. For this reason, and to efficiently process the application, the PCE Director is deferring action on the AR application so that the Council may consider both applications at once. The authority to defer is set forth in Palo Alto Municipal Code Section 18.40.170. Three or more councilmembers may pull the item from the consent calendar to schedule the CUP and AR applications for hearing; in this event, the matter would be scheduled for June 27 or 28, 2017.

The requests for hearings on the CUP and minor AR were based on concerns that the proposed outdoor dining area exceeded the permitted floor area and resulted in a parking deficiency. The hearing request letters are included in Attachment E and additional correspondence is included in Attachment F. A description of the gross floor area and parking issues is addressed below.

Gross Floor Area

Since receiving the hearing requests, staff determined that an error had been made by not including the restaurant's proposed covered outdoor service area towards the gross floor area for the building. The outdoor seating area proposed for the restaurant would be located beneath a glass canopy cover and building eave, and in accordance with Section 18.04.030 of the Municipal Code, such covered service areas are included in the gross floor area.

The hearing requestor also questioned the extent of the outdoor seating area as shown on the project plans, indicating that the plans understated the size of the area by not including covered areas in front of the building entrance and to the left of the building door. While the code does not specifically define the term "covered outdoor service area," staff understands the term to include areas for tables, seating, and the space needed to access such seating. The service area would not include areas where customers cannot be served, and therefore, the areas immediately in front and to the left of the building entrance do not meet the intent of the term. The covered outdoor seating area shown in the project plans does not account for the building eave and is slightly more than 150 square feet. The revised conditions of approval

include a provision to clarify the extent of the area with the plans submitted for building permit.

Furthermore, the building's original entitlement excluded from the calculation of gross floor area, several storage areas in the basement parking garage. At the time of the building's entitlement in April 2013, these storage areas were incorrectly considered accessory to the parking facility and exempted from gross floor area. Under a plain reading of the code, these storage areas should have counted toward gross floor area. To remedy this condition the PTC imposed a condition requiring the removal of the fenced-off storage areas from the garage, which has been incorporated into the RLUA. This condition was reiterated by the ARB in their recommendation of approval of the outdoor seating component of the project. An FAR diagram submitted by the applicant on May 31, 2017 clarifies the gross floor area inclusions and exclusions for the building, and demonstrates how gross floor area is calculated for this project. This FAR diagram, and the associated allocations of common areas in the building for the restaurant and retail use, is referenced in the conditions of approval for the project.

The hearing requestor also requested information on the parking for the building and the proposed use. The existing building was approved on April 22, 2013 with 97 parking spaces; 41 parking spaces onsite and an additional 56 spaces provided through payment into the California Avenue Parking Assessment District. The request to intensify the retail to restaurant use requires two additional parking spaces. The applicant proposes to meet this demand by adding mechanical parking lifts that would be used by the office tenant occupying the building. The City Council amended PAMC 18.54.020(b) to address and specifically authorize mechanical lifts under certain circumstances; use of the proposed lifts would comply with those recently adopted regulations.

Planning and Transportation Commission and Architectural Review Board Review

The Commission and Board reviewed the project on May 31 and June 1, respectively; draft minutes are available for the PTC and included with report (Attachment H). ARB minutes are not yet available.

Both the Commission and Board supported the restaurant project and found it to be an appropriate use along California Avenue. At times, board- and commission-members delved into the code language to parse to specific meaning, others considered it unfair to audit the floor area at this point several years from when the building permit was issued, and others questioned the property owner as to the intended use of the space and whether it was known during the entitlement process if a restaurant was planned at the site and why parking was not accounted for then. Staff also acknowledged that some decisions regarding floor area made when the project was entitled would have different conclusions if processed today, given Council's direction to follow the plain reading of the code to counter earlier, more liberal interpretations. However, at the end of their respective deliberations, while members

expressed an interest for additional parking in this parking deficient area, on balance they found the project in compliance with the code and added conditions to address some of the floor area concerns expressed by the hearing requestor. Not all issues appeared satisfactorily addressed to the hearing requester, however, and at the time of this report, staff understands there is an outstanding concern regarding floor area as it relates to the proper delineation of office to restaurant area in the building's lobby (a discrepancy of approximately 70 square feet). If this area were applied to the restaurant, it would require an additional parking space that could be provided with additional parking lifts. The Commission and Board both considered this issue and declined to accept the argument that a portion of this common building area should be allocated toward the restaurant.

Part of the challenge related to this project is that the code does not provide any guidance as to the proper delineation of common space in buildings. In the past, the city has used different methods, but none of these are based on written language in the code. As part of the next annual code update, staff anticipates returning to the PTC to address the delineation of common space floor area in future projects.

Policy Implications

As indicated in the draft RLUA, the proposed project is consistent with the Comprehensive Plan and with the draft, revised conditions of approval, the project is consistent with the applicable development standards in the Municipal Code.

Resource Impacts

None. The proposed project would allow for establishment of a new restaurant in an existing commercial district.

Environmental Review

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. Specifically, the project is categorically exempt from the provisions of CEQA per Section 15301 (Existing Facilities).

Attachments:

Attachment A: Location Map (PDF)

Attachment B: Draft RLUA, Findings, and Conditions (DOCX)

Attachment C: Staff Tentative Approval Letter (PDF)

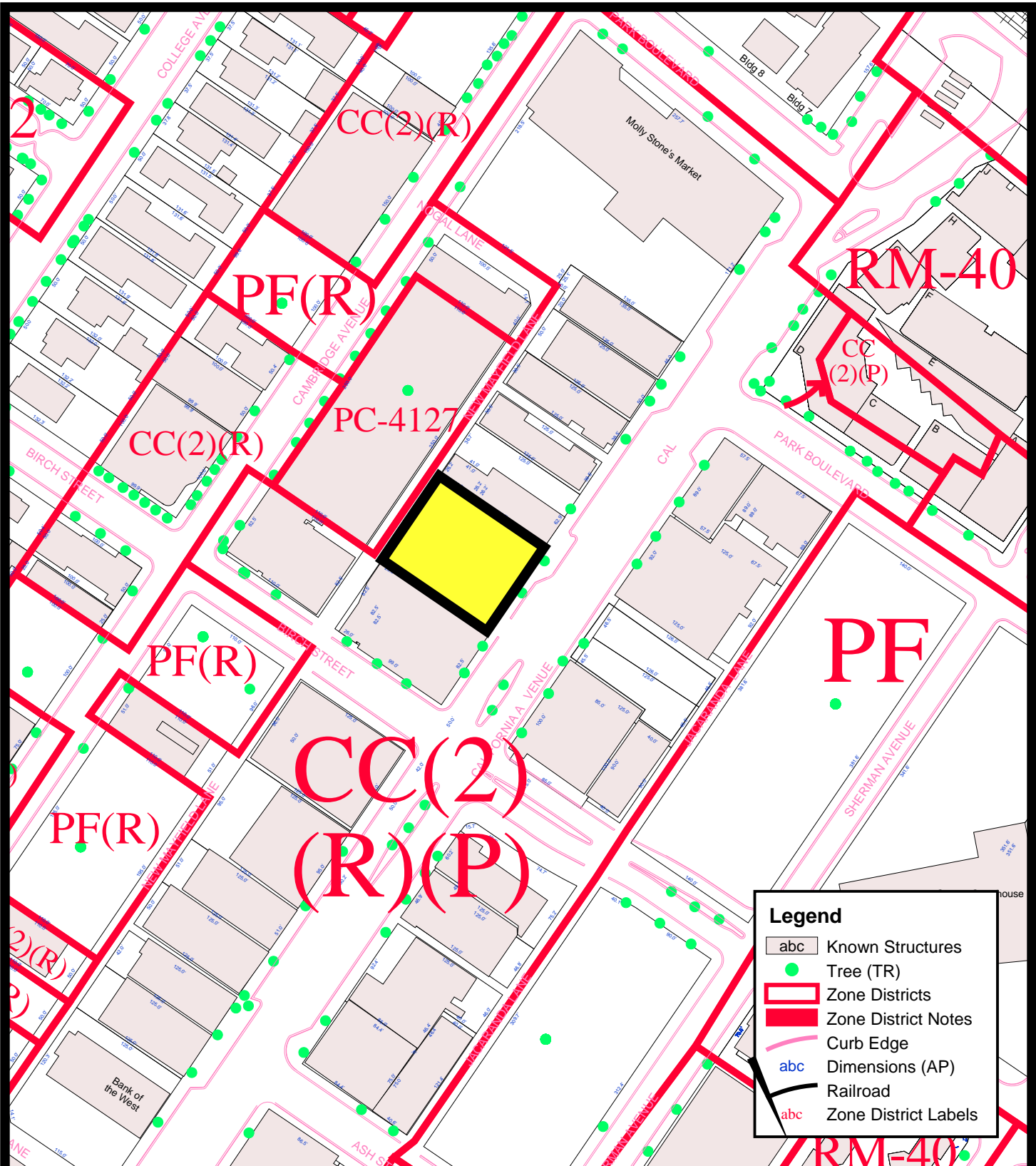
Attachment D: CC(2) Zoning Comparison Table (DOCX)

Attachment E: CUP and AR Hearing Request Letters (PDF)

Attachment F: Correspondence (PDF)

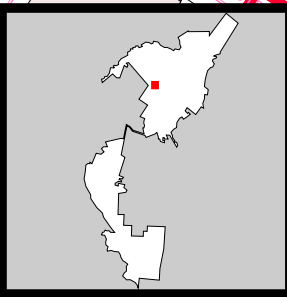
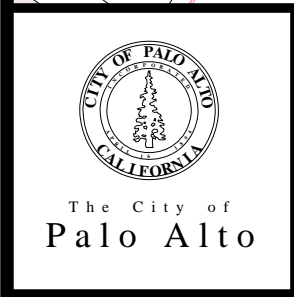
Attachment G: CC Project Plans (DOCX)

Attachment H: Draft Minutes PTC 05.31.17 (260 California Ave Excerpt) (PDF)



Legend

- abc Known Structures
- Tree (TR)
- ▭ Zone Districts
- ▭ Zone District Notes
- Curb Edge
- abc Dimensions (AP)
- Railroad
- abc Zone District Labels



260 California Avenue

This map is a product of the
City of Palo Alto GIS

Attachment B

Draft

ACTION NO. 2017-_____

RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO LAND USE ACTION FOR 260 CALIFORNIA AVENUE: CONDITIONAL USE PERMIT AND ARCHITECTURAL REVIEW (16PLN-00289)

On June 12, 2017, the Council of the City of Palo Alto approved the minor Architectural Review and Conditional Use Permit applications for outdoor dining area and provision for alcohol sales and service in conjunction with a new restaurant in the CC(2)(R)(P) Zoning District, making the following findings, determination and declarations:

SECTION 1. Background.

The City Council of the City of Palo Alto (“City Council”) finds, determines, and declares as follows:

- A. A conditional use permit and minor architectural review were tentatively approved with conditions by Planning staff on behalf of the Director of Planning and Community Environment on April 6, 2017.
- B. A timely request for hearings were received on April 19, 2017 due to concerns regarding the gross floor area of the building and outdoor dining area, and parking associated with the proposed restaurant use.
- C. The Planning and Transportation Commission (Commission) reviewed and recommended approval of the Conditional Use Permit on May 31, 2017 subject to the conditions contained in this document.
- D. The Architectural Review Board (ARB) reviewed and recommended approval of the outdoor seating area on June 1, 2017.
- E. In accordance with PAMC 18.40.170, the Planning Director deferred approval of the minor architectural review to the City Council so the Council could act on both applications at one time.

SECTION 2. Environmental Review.

The proposed project has been determined to be Categorical Exempt per Section 15301 of the California Environmental Quality Act (Existing Facilities).

SECTION 3. Conditional Use Permit Findings

Conditional Use Permit approval is based on the findings indicated under PAMC Section 18.76.010:

1. *The proposed use, at the proposed location, will not be detrimental or injurious to property or*

Attachment B

improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.

The sale of beer, wine, and liquor with a permitted eating and drinking service is a compatible use in the California Avenue area. The proposed ancillary alcohol service will be conducted within an existing building and in a dedicated outdoor seating area that will not be injurious to property or improvements in the vicinity or detrimental to the public health, safety, general welfare, or convenience.

2. *The proposed use will be located and conducted in a manner in accord with the Palo Alto Comprehensive Plan and the purposes of the Zoning Ordinance.*

The restaurant use, with the ancillary alcohol service, is compatible with the site's land use designation of Neighborhood Commercial and with its CC(2)(R)(P) zoning designation. Eating and drinking establishments will serve to enliven the mix of businesses along California Avenue and contribute to the area's economic vitality.

SECTION 4. Architectural Review Findings

Architectural Review approval is based on the findings indicated under PAMC Section 18.76.020

1. *The design is consistent with applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides.*

The restaurant use, with the proposed outdoor seating area, is compatible with the site's land use designation of Neighborhood Commercial and with its CC(2)(R)(P) zoning designation. Eating and drinking establishments will serve to enliven the mix of businesses along California Avenue and contribute to the area's economic vitality.

2. *The project has a unified and coherent design, that:*
 - a. *creates an internal sense of order and desirable environment for occupants, visitors, and the general community,*
 - b. *preserves, respects and integrates existing natural features that contribute positively to the site and the historic character including historic resources of the area when relevant,*
 - c. *is consistent with the context-based design criteria of the applicable zone district,*
 - d. *provides harmonious transitions in scale, mass and character to adjacent land uses and land use designations,*
 - e. *enhances living conditions on the site (if it includes residential uses) and in adjacent residential areas.*

Attachment B

The proposed outdoor seating area would be located adjacent to the building at 260 California Avenue, and would provide desirable street-front activation for the proposed restaurant use. The outdoor seating area would be compatible with the surrounding land uses in the California Avenue Business District, and would enhance the conditions on the site by providing a covered seating area for restaurant patrons.

- 3. The design is of high aesthetic quality, using high quality, integrated materials and appropriate construction techniques, and incorporating textures, colors, and other details that are compatible with and enhance the surrounding area.*

The outdoor seating area furniture consists of metal chairs and tables, as well as clay planter boxes that would define the space. The muted, earth tone colors proposed for the outdoor furniture are of high aesthetic quality and would be compatible with the surrounding urban environment.

- 4. The design is functional, allowing for ease and safety of pedestrian and bicycle traffic and providing for elements that support the building's necessary operations (e.g. convenient vehicle access to property and utilities, appropriate arrangement and amount of open space and integrated signage, if applicable, etc.).*

The outdoor seating area would support and enhance the proposed restaurant use. The seating area would provide at least eight (8) feet of clearance on the public side walk fronting the site to allow for pedestrian flow. This requirement would ensure that the abutting public and private areas are compatible and function properly.

- 5. The landscape design complements and enhances the building design and its surroundings, is appropriate to the site's functions, and utilizes to the extent practical, regional indigenous drought resistant plant material capable of providing desirable habitat that can be appropriately maintained.*
- 6. The project incorporates design principles that achieve sustainability in areas related to energy efficiency, water conservation, building materials, landscaping, and site planning.*

The outdoor seating area would be defined by the use of movable clay planters. The planters would include euonymus japonicus shrubs, which are considered low water-use and drought tolerant. Once established, this species requires little maintenance beyond annual pruning.

SECTION 5. Conditions of Approval.

Planning

- 1. CONFORMANCE WITH PLANS.** Except as modified by these conditions of approval, development and operation shall conform to the approved plans entitled, "Protégé Restaurant, 260 California

Attachment B

Avenue, Palo Alto, CA 94301”, stamped as received by the City on April 5, 2017, and with the floor area calculations and common space allocations as depicted in the exhibit entitled “260 California, Floor Area Calculations”, stamped as received by the City on May 31, 2017. The approved plans are on file with the Planning Department, 250 Hamilton Avenue, Palo Alto, CA, 94301. The plans submitted for building permit shall incorporate the following changes:

- a. The existing chain link fencing in the basement garage area shall be removed to the extent necessary to comply with the FAR development standard.
2. **PARKING LIFTS.** The project plans include the use of puzzle-style mechanical parking lifts to provide additional parking spaces in the on-site parking garage in compliance with PAMC Section 18.52.040, Table 2. The lifts shall provide independently-accessible spaces, and provide sufficient vertical clearance to accommodate a mid-sized sports utility vehicle. The property owner shall ensure that the lift system is installed and operated in compliance with PAMC Section 18.54.020(b), pertaining to mechanical lifts.
3. **USE AND OCCUPANCY PERMIT.** A valid Use and Occupancy permit issued by the Development Services Department is required for the Protégé restaurant. Prior to issuance of a building permit, the applicant shall provide calculations of the gross floor area of the building that demonstrate compliance with the FAR development standard per PAMC Section 18.04.030(a)(65). The building gross floor area, which includes the existing basement storage areas and proposed covered outdoor dining areas, shall be adjusted as needed to achieve compliance with this standard.
4. **APPROVAL LETTER.** This Record of Land Use Action, including the Conditions of Approval, shall be printed on the plans submitted for building permit review, as applicable.
5. **RESTAURANT USE.** This conditional use permit allows the sale of beer, wine, and liquor service, in conjunction with a restaurant use, to be located within an existing building and dedicated outdoor seating area. A full service food menu shall be provided during all business hours.
6. **KITCHEN FACILITIES.** Suitable kitchen facilities shall be maintained for the eating and drinking establishment.
7. **SIGNAGE.** This approval does not include new signage or adjustments to existing signage.
8. **INTENSIFICATION.** Any intensification of use shall require an amendment to the Conditional Use Permit and any other entitlements as specified in the Palo Alto Municipal Code.
9. **EXPIRATION.** The project approval shall be valid for a period of one year from the original date of approval. In the event a building permit(s) is not secured for the project within the time limit specified above, the approval shall expire and be of no further force or effect.

Attachment B

10. **GENERAL OPERATION.** This conditional use permit allows indoor and outdoor sales and service of alcohol in conjunction with a restaurant use. The consumption of beer, wine and liquor shall be consistent with the established hours of operation and permitted functions of the restaurant. A full service menu selection shall be available during all operating hours.
11. **ENTERTAINMENT.** This permit does not allow any operations associated with a nightclub-type use and live entertainment shall not be permitted. There shall be no live entertainment, live music dancing or other amusement facilities or devices. An amendment to this use permit shall be required to permit these uses at the restaurant.
12. **CODE COMPLIANCE.** The current and proposed uses shall be comply with all applicable City codes, including Titles 9 (Public Peace, Moral and Safety) and 15 (Uniform Fire Code) of the Palo Alto Municipal Code and Titles 4 (Alcoholic Beverage Business regulations) and 19 (Public Safety) of the State of California Administrative Code.
13. **AGREEMENT.** The consumption of alcoholic beverages under this use permit shall be deemed an agreement on the part of the applicant, their heirs, successors, and assigns to comply with all terms and conditions of this Conditional Use Permit.
14. **NUISANCES AND NOISE.** The business shall be operated in a manner to protect any nearby residential properties from excessive noise, odors, lighting or other nuisances from any sources during the business hours. Noise levels emanating from the restaurant use shall not exceed the maximum level established in the PAMC Chapter 9.10.
15. **REVOCATION OR MODIFICATION OF APPROVALS:** The director may issue a notice of noncompliance for any failure to comply with any condition of this permit approval, or when a use conducted pursuant to a Conditional Use Permit is being conducted in a manner detrimental to the public health, safety and welfare.
16. **PLANNING FINAL INSPECTION.** A Planning Division Final inspection will be required to determine substantial compliance with the approved plans prior to the scheduling of a building final inspection. Contact your Project Planner, Graham Owen, to schedule this inspection.
17. **INDEMNITY:** To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the “indemnified parties”) from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City for its actual attorneys’ fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its own choice.

Attachment B

18. LANDSCAPE MAINTENANCE: All landscape material shall be well maintained and replaced if necessary, to the satisfaction of the Urban Forester and Director of Planning.

PUBLIC WORKS

19. TABLES, CHAIRS, AND PLANTERS: Restaurant tables, chairs, and planters may be placed on the sidewalk in the public right-of-way if the restaurant owner first applies to the Planning Division for architectural review and, upon approval, applies for and receives an encroachment permit from Public Works at the Development Center. An 8-ft wide pedestrian pathway clear of all obstructions, including the tables, chairs, and planters, must be maintained along the frontage.

FIRE

20. FIRE SPRINKLER COVERAGE. Fire sprinkler protection is required under any covered outside seating areas.

SECTION 6. Term of Approval.

Conditional Use Permit and Architectural Review Approval. In the event actual construction of the project is not commenced within twelve months of the date of council approval, the approval shall expire and be of no further force or effect, pursuant to Palo Alto Municipal Code Section 18.77.090.

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

APPROVED:

City Clerk

Director of Planning and
Community Environment

APPROVED AS TO FORM:

Senior Asst. City Attorney



PLANNING & COMMUNITY ENVIRONMENT

CITY OF
**PALO
ALTO**
250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301
650.329.2441

April 6, 2017

Mark Conroe
260 Cal Partners, LLC
3609 Buchanan Street
San Francisco, CA 94123

Subject: 260 California Avenue [16PLN-00289]; Conditional Use Permit and Architectural Review

Dear Mr. Conroe:

The application referenced above was conditionally approved by the Director of Planning and Community Environment. The approval was granted pursuant to the Palo Alto Municipal Code (PAMC) Section 18.77. This determination is based on the review of all information contained within the project file, all public comments received, and the review of the proposal in comparison to applicable zoning and municipal code requirements.

PROJECT DESCRIPTION: Request for a Conditional Use Permit to allow the sale of beer, wine, and liquor in conjunction with a new full service restaurant, and Architectural Review of seating and planters in an outdoor dining area. Environmental Assessment: Exempt from the provisions of the California Environmental Quality Act per Section 15301. Zoning District: CC(2)(P).

This Director's decision shall become final fourteen (14) calendar days from the postmark date of this mailing (or on the next business day if it falls on a weekend or holiday) unless a request for hearing is filed pursuant to PAMC Section 18.77.060. The request for hearing shall be in writing and submitted to the Planning Division, prior to the end of the business day of the fourteenth day. If a hearing is not requested the Director's decision will become final. A Conditional Use Permit that has not been used for any period of one (1) year or more shall become null and void (PAMC 18.77.100).

Should you have any questions regarding the Director's decision, please do not hesitate to contact me at graham.owen@cityofpaloalto.org or by calling (650) 329-2552.

Sincerely,

Graham Owen
Associate Planner

Attachments: Findings and Conditions of Approval

ARCHITECTURAL REVIEW FINDINGS

1. The approval is based upon the finding that the proposed façade improvements comply with the design guidelines adopted by the Architectural Review Board, and that the applicable Findings set forth in PAMC 18.76.020(d) have been met.
2. The approval of this project shall be subject to the attached conditions of approval.

CONDITIONAL USE PERMIT FINDINGS

Conditional Use Permit approval is based on the findings indicated under PAMC Section 18.76.010:

1. *The proposed use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.*

The sale of beer, wine, and liquor with a permitted eating and drinking service is a compatible use in the California Avenue area. The proposed ancillary alcohol service will be conducted within an existing building and in a dedicated outdoor seating area that will not be injurious to property or improvements in the vicinity or detrimental to the public health, safety, general welfare, or convenience.

2. *The proposed use will be located and conducted in a manner in accord with the Palo Alto Comprehensive Plan and the purposes of the Zoning Ordinance.*

The restaurant use, with the ancillary alcohol service, is compatible with the site's land use designation of Neighborhood Commercial and with its CC(2)(P) zoning designation. Eating and drinking establishments will serve to enliven the mix of businesses along California Avenue and contribute to the area's economic vitality.

CONDITIONS OF APPROVAL

Planning

1. **CONFORMANCE WITH PLANS.** Except as modified by these conditions of approval, development and operation shall conform to the approved plans entitled, "Protégé Restaurant, 260 California Avenue, Palo Alto, CA 94301", stamped as received by the City on April 5, 2017. The approved plans are on file with the Planning Department, 250 Hamilton Avenue, Palo Alto, CA, 94301.
2. **PARKING LIFTS.** The project plans include the use of puzzle-style mechanical parking lifts to provide four (4) additional parking spaces in the on-site parking garage. The lifts shall provide independently-accessible spaces, and provide sufficient vertical clearance to accommodate a mid-sized sports utility vehicle.
3. **USE AND OCCUPANCY PERMIT.** A valid Use and Occupancy permit issued by the Building Department is required for the Protégé restaurant.
4. **APPROVAL LETTER.** This approval letter, including the Conditions of Approval, shall be printed on the plans submitted for building permit review, as applicable.
5. **RESTAURANT USE.** This conditional use permit allows the sale of beer, wine, and liquor service, in conjunction with a restaurant use, to be located within an existing building and dedicated outdoor seating area. A full service food menu shall be provided during all business hours.
6. **KITCHEN FACILITIES.** Suitable kitchen facilities shall be maintained for the eating and drinking establishment.
7. **HOURS.** Alcohol services shall not be served beyond the hours of operation. The use is allowed to operate from 6:00 a.m. to 10:00 p.m. per Zoning Code Section 18.16.040(b). All clean up or set up activities shall be conducted within these approved business hours.
8. **SIGNAGE.** This approval does not include new signage or adjustments to existing signage.
9. **INTENSIFICATION.** Any intensification of use shall require an amendment to the Conditional Use Permit and any other entitlements as specified in the Palo Alto Municipal Code.
10. **EXPIRATION.** The project approval shall be valid for a period of one year from the original date of approval. In the event a building permit(s) is not secured for the project within the time limit specified above, the approval shall expire and be of no further force or effect.
11. **GENERAL OPERATION.** This conditional use permit allows indoor and outdoor sales and service of alcohol in conjunction with a restaurant use. The consumption of beer, wine and

liquor shall be consistent with the established hours of operation and permitted functions of the restaurant. A full service menu selection shall be available during all operating hours.

12. **ENTERTAINMENT.** This permit does not allow any operations associated with a nightclub-type use and live entertainment shall not be permitted. There shall be no live entertainment, live music dancing or other amusement facilities or devices. An amendment to this use permit shall be required to permit these uses at the restaurant.
13. **CODE COMPLIANCE.** The current and proposed uses shall be comply with all applicable City codes, including Titles 9 (Public Peace, Moral and Safety) and 15 (Uniform Fire Code) of the Palo Alto Municipal Code and Titles 4 (Alcoholic Beverage Business regulations) and 19 (Public Safety) of the State of California Administrative Code.
14. **AGREEMENT.** The consumption of alcoholic beverages under this use permit shall be deemed an agreement on the part of the applicant, their heirs, successors, and assigns to comply with all terms and conditions of this Conditional Use Permit.
15. **NUISANCES AND NOISE.** The business shall be operated in a manner to protect any nearby residential properties from excessive noise, odors, lighting or other nuisances from any sources during the business hours. Noise levels emanating from the restaurant use shall not exceed the maximum level established in the PAMC Chapter 9.10.
16. **REVOCATION OR MODIFCATION OF APPROVALS:** The director may issue a notice of noncompliance for any failure to comply with any condition of this permit approval, or when a use conducted pursuant to a Conditional Use Permit is being conducted in a manner detrimental to the public health, safety and welfare.
17. **INDEMNITY:** To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City for its actual attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its own choice.

PUBLIC WORKS

18. **TABLES & CHAIRS:** Restaurant tables and chairs may be placed on the sidewalk in the public right-of-way if the restaurant owner first applies to the Planning Division for architectural review and, upon approval, applies for and receives an encroachment permit from Public Works at the Development Center. To obtain an encroachment permit, a scaled site plan must be provided showing the proposed locations of the tables and chairs and any other existing obstructions on the sidewalk, such as street trees, signs, power poles, streetlights, newsracks, bike racks, benches, planters, pots, etc. An 8-ft wide pedestrian pathway clear of

all obstructions, including the tables and chairs, must be maintained along the frontage. The restaurant owner will be required to provide an insurance certificate and pay a one-time fee.

FIRE

19. FIRE SPRINKLER COVERAGE. Fire sprinkler protection is required under any covered outside seating areas.

ATTACHMENT D
ZONING COMPARISON TABLE
260 California Avenue, 16PLN-00289

Table 1: COMPARISON WITH CHAPTER 18.16 (CC(2) DISTRICT)
Exclusively Non-residential Development Standards

Regulation	Required	Existing	Proposed
Minimum Site Area, width and depth	No Requirement	13,509 sf	No change
Minimum Front Yard	0-10 feet to create an 8-12 foot effective sidewalk width ^{(1), (2), (8)}	0 feet	No change
Rear Yard	No Requirement	0 feet	No change
Interior Side Yard (right)	No Requirement	0 feet	No change
Street Side Yard (left)	No Requirement	0 feet	No change
Min. yard for lot lines abutting or opposite residential districts or residential PC districts	10 feet ⁽²⁾	Not applicable	Not applicable
Build-to-lines	50% of frontage built to setback	77%	No change
Max. Site Coverage	No Requirement	Unknown	Unknown
Max. Building Height	37 feet ⁽⁴⁾	37 feet	No change
Max. Floor Area Ratio (FAR)	2.0:1 (27,018 sf)	27,343 sf	26,847 sf with revised Conditions of Approval
Daylight Plane for lot lines abutting one or more residential zone districts other than an RM-40 or PC Zone	None ⁽⁶⁾	Not applicable	Not applicable

- (1) No parking or loading space, whether required or optional, shall be located in the first 10 feet adjoining the street property line of any required yard.
- (2) Any minimum front, street side, or interior yard shall be planted and maintained as a landscaped screen excluding areas required for access to the site. A solid wall or fence between 5 and 8 feet in height shall be constructed along any common interior lot line..
- (4) As measured to the peak of the roof or the top of a parapet; penthouses and equipment enclosures may exceed this height limit by a maximum of five feet, but shall be limited to an area equal to no more than ten percent of the site area and shall not intrude into the daylight plane.
- (6) The initial height and slope shall be identical to those of the most restrictive residential zone abutting the site line in question.
- (7) 25 foot driveway access permitted regardless of frontage, build-to requirement does not apply to CC district.
- (8) A 12 foot sidewalk width is required along El Camino Real frontage

**Table 2: CONFORMANCE WITH CHAPTER 18.52 (Off-Street Parking and Loading)
for Office and Restaurant Uses**

Type	Required	Existing	Proposed
Vehicle Parking	1 space per 310 sf for office: 74 spaces 1 space per 155 sf for restaurant: 25 spaces Total: 99 spaces	41 spaces on site, 56 spaces in Assessment District, Total of 97 spaces	99 spaces
Bicycle Parking	1 per 3,100 sf for office (40% long term and 60% short term): 7 spaces 1 per 1,500 sf for restaurant (no class requirement): 3 spaces Total: 10 spaces	10 spaces (6 long term, 4 short term)	No change
Loading Space	1 space for 10-99,999 sf for office 0 loading spaces for 0 - 4,999 sf of restaurant	1 space	No change

April 19, 2017

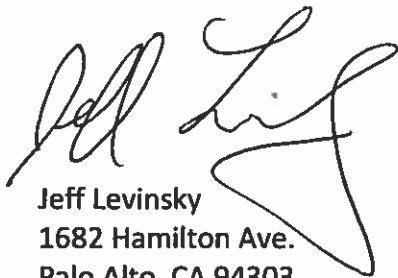
I would like to request a hearing for the Conditional Use Permit referenced in the April 6, 2017 letter from Graham Owen for 260 California Avenue, Palo Alto, CA.

The covered outdoor customer seating area in the plans appears to be floor area, per §18.04.030(a)(65)(A)(vii), which says that Gross Floor Area includes, "Permanently roofed, but either partially enclosed or unenclosed, building features used for sales, service, display, storage or similar use." Adding 150 sq. ft. of such floor area exceeds the building's limit of 2.0 FAR.

Furthermore, the 150 sq. ft. size of the outdoor area appears to be understated. If you consider all three permanent coverings (2nd floor overhang, glass panels, and top roof piece) that extend over the proposed outdoor seating area and include the outdoor entrance area that will be used by restaurant staff serving outdoor customers, the covered square footage is approximately 344 sq. ft. Thus the building is further over its legal FAR and also underparked by one space, even after the addition of the lifts.

Please note that this is not an objection to the restaurant nor to outdoor seating. Rather, the intent is to ensure the plans comply with the city's FAR and parking laws. The California Avenue area already has a critical shortage of parking and we should not make it worse for other businesses that are properly parked.

Respectfully,



Jeff Levinsky
1682 Hamilton Ave.
Palo Alto, CA 94303
650 328-1954
jeff@levinsky.org

Received

APR 19 2017

Department of Planning
& Community Environment

April 19, 2017

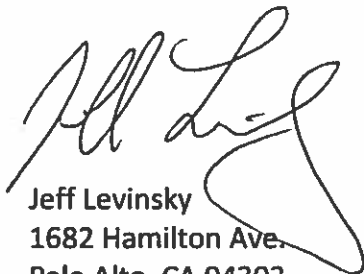
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Please note that this is not an objection to the restaurant nor to outdoor seating. Rather, the intent is to ensure the plans comply with the city's FAR and parking laws. The California Avenue area already has a critical shortage of parking and we should not make it worse for other businesses that are properly parked.

Respectfully,



Jeff Levinsky
1682 Hamilton Ave.
Palo Alto, CA 94303
650 328-1954
jeff@levinsky.org

Received
APR 19 2017
Department of Planning
& Community Environment

From: Owen, Graham
To: ["Jeff Levinsky"](#); ["Paul Machado"](#); ["Neilson Buchanan"](#)
Subject: 260 Cal Ave - Meeting Followup
Date: Thursday, May 11, 2017 12:54:00 PM
Attachments: [image001.png](#)
[260 California Avenue - ARB Approved Plans.pdf](#)
[DRAFT REVISED CONDITIONS OF APPROVAL.docx](#)

Hi Jeff, Paul, and Nielsen,

I've looked into the questions that were outstanding from our meeting last week, and have the following responses. I hope I've addressed everything, but if anything remains please let me know.

Bicycle Parking: I've reviewed the project with the Transportation Division, and the section of the code that you've referenced (18.54.060) contains standards for bicycle parking that is a component of a new building, addition, or change in use requiring the provision of additional bicycle parking spaces per Section 18.52.060. The project would dedicate these areas for bicycle parking in excess of the minimum required number of bicycle spaces, and therefore this section does not apply. As we discussed in the meeting, another option would be to remove the existing chain link fences entirely. From the City's perspective, it would be preferable for the project to dedicate these areas for bicycle parking in order to encourage cycling for the office and restaurant employees, rather than revert these areas to interstitial garage space which would be exempt but, due to the design of the garage, would serve no function. The applicant has indicated their willingness to do either, and I've amended the conditions of approval to allow for either scenario.

Code Enforcement: As a condition of approval, the City will reserve the right to inspect the garage areas for conformance with the bicycle parking conversion requirement and the lift operation. This condition has been added in the attached draft (Condition #17).

Parking Assessment Spaces: The original development was credited with 56 parking spaces in the assessment district (see attached ARB plans). This number is associated with the most recent assessment of the site prior to the redevelopment, and is shown in the approval for the building. With the expiration of the assessment district the City considers the site to remain credited for these 56 spaces, and the intensification of the use from retail to restaurant requires additional parking for the delta.

Planters: The planters are permitted to encroach into the sidewalk, and this allowance has been added to the Public Works condition of approval requiring an encroachment permit. As I had assumed in our meeting, Public Works will indeed require that the planters be rolled indoors at the end of each evening.

Seating area: The area in front of and to the immediate left of the front door is not considered a service area as there is no proposed seating. As you referenced in the meeting, Section 12.12.020 of the Municipal Code permits encroachments for the eating areas of eating and drinking establishment uses. Public Works handles encroachment permits and has their own language to describe the areas that are permitted encroachments, and they are not equivalent to the covered service areas that Planning defines for the purpose of determining the Gross Floor Area of the site.

Regardless, the draft revised conditions of approval include a provision to explicitly allow no more than 150 square feet of covered outdoor service area, which will be clarified on the building permit plans to include the areas under both the glass cover and the red roof eave at the top of the building.

I have included a second draft revision to the Conditions of Approval here for your review, which captures the added condition for garage and lift inspections, and affirms that planters are permitted encroachments. If you wish to withdraw the hearing requests please let me know and we will issue the revised approval letter accordingly.

Best,
Graham



Graham Owen | Associate Planner | P&CE Department
250 Hamilton Avenue | Palo Alto, CA 94301
D: 650.329.2552 | E: graham.owen@cityofpaloalto.org

Please think of the environment before printing this email – Thank you!

From: [Jeff Levinsky](#)
To: [Owen, Graham](#)
Cc: [Neilson Buchanan](#); [Paul Machado](#)
Subject: Re: 260 California Avenue Status Request
Date: Wednesday, May 03, 2017 7:58:51 AM
Attachments: [1998-1999 92-13 Assessment Roll.pdf](#)

Hi Graham:

Thanks again for meeting with us yesterday.

As you requested, please find attached a city record for the California Avenue Assessment District. There's an entry for 260 Cal Ave on the top of PDF page 6 (document page 3). It shows that the property was required to have 62 spaces in 1968 but was providing 54 (via an adjacent lot, per our research), and so only had to pay for 8 spaces.

In 1986, it was providing just 5 spaces and thus needed to pay for 57 spaces. It then adjusted a bit again in 1987 (more intense use?) and again in 1995. The final numbers of needing 62 and having just 6 equals the 56 spaces you are crediting the building with.

There's also an entry at the bottom of the prior page for the vacant lot -- which didn't have to provide any parking.

If you skim through the report, you'll see many other such examples of buildings whose contribution to the assessment district varied over the years.

Since the City credits 260 Cal Ave with 56 spaces when for many years it paid for fewer spaces, my question is where is the policy that governs how many spaces to credit it with? Would a building that paid for many spaces in most years but just a few in the final year only get credit for the few? That doesn't seem fair. So I was hoping to find our City has a written policy that addresses all this.

For the Downtown Assessment District, the Municipal Code actually dictates what report to use to determine how many spaces to credit a building with. That rule had a problem that we protested and staff and the Council fixed a few years ago. There's nothing in the Code though for Cal Ave.

Thanks,

Jeff

From: Owen, Graham
To: ["Jeff Levinsky"](#)
Subject: RE: 260 California Avenue Status Request
Date: Monday, May 01, 2017 3:59:00 PM
Attachments: [image001.png](#)

Hi Jeff,

That's fine, I'll see you tomorrow at noon. Our conference room is on the 5th floor of City Hall, so just check in with our receptionist Phyllis Davis when you arrive.

Best,
Graham

From: Jeff Levinsky [<mailto:jeff@levinsky.org>]
Sent: Monday, May 01, 2017 2:55 PM
To: Owen, Graham
Subject: Re: 260 California Avenue Status Request

Hi Graham:

No -- let's go ahead and meet at noon tomorrow. It's certainly not necessary from our perspective that the applicant be present. We would really like to discuss the issues with you and I'd hope you could convey to the applicant anything relevant that arises.

Thanks very much,

Jeff

----- Original Message -----

From: [Owen, Graham](#)
To: [Jeff Levinsky](#)
Sent: Monday, May 1, 2017 2:50 PM
Subject: RE: 260 California Avenue Status Request

Hi Jeff,

Thanks. I've checked with the applicant and they can make a meeting on Wednesday or Thursday afternoon. I'm looking at the meeting room schedules and 4pm or 5pm on Wednesday or Thursday could work. Would either day/time work for you and the others with PAN?

Best,
Graham

From: Jeff Levinsky [<mailto:jeff@levinsky.org>]
Sent: Monday, May 01, 2017 9:26 AM
To: Owen, Graham
Subject: Re: 260 California Avenue Status Request

Hi Graham:

That sounds fine. Tomorrow at noon sounds best -- I checked and I think one or more other PAN people involved in the hearings request can be there then as well.

Jeff

----- Original Message -----

From: [Owen, Graham](#)
To: [Jeff Levinsky](#)
Sent: Monday, May 1, 2017 9:17 AM

Subject: RE: 260 California Avenue Status Request

Hi Jeff,

I'm happy to meet, it might make sense for the applicant to be there as well so everyone can be on the same page. Are there any times that work best for you? I could do tomorrow at 12pm or 4pm, Wednesday at 9am or 12pm, or Thursday at 12pm or 4pm.

Thanks,

Graham

From: Jeff Levinsky [<mailto:jeff@levinsky.org>]

Sent: Friday, April 28, 2017 11:10 AM

To: Owen, Graham

Subject: Re: 260 California Avenue Status Request

Hi Graham:

Thanks for the note. I do have a bunch of questions and remaining concerns. The draft revised conditions don't seem adequate and others neighborhood leaders involved with this agree. Would it be possible to meet with you next week to review the plans and issues in more detail? If so, please let me know what times might be possible. And I may try to bring along another person as well.

Thanks again,

Jeff

----- Original Message -----

From: [Owen, Graham](#)

To: [Jeff Levinsky](#)

Sent: Thursday, April 27, 2017 2:42 PM

Subject: RE: 260 California Avenue Status Request

Hi Jeff,

Just following up to see if you had any questions and if the draft revised conditions are satisfactory.

Thanks,

Graham

From: Owen, Graham

Sent: Tuesday, April 25, 2017 2:31 PM

To: 'Jeff Levinsky'

Subject: RE: 260 California Avenue Status Request

Hi Jeff,

Please see my responses to your questions below in red and the attached parking/FAR calculation sheet for reference. Let me know if you have any questions regarding this. If you would like to withdraw the appeal we will issue revised conditions of approval for the project to reflect the changes below. I have included a draft of the revised conditions here for your reference, with the changes in bold to conditions #2 and #3.

Best,

Graham

From: Jeff Levinsky [<mailto:jeff@levinsky.org>]

Sent: Thursday, April 13, 2017 8:43 PM

To: Owen, Graham; Neilson Buchanan; Paul Machado; Rebecca Sanders

Subject: Re: 260 California Avenue Status Request

Hi Graham:

Thanks very much for sending us the materials and offering to answer questions. I do have a few questions:

1. Item 2 in the conditions of approval does not state that the puzzle lifts must remain in proper working condition. Furthermore, there is no provision for what happens if they are not working. Will the restaurant cease operating

until the lifts are repaired?

If need be there is a code enforcement process for bringing an applicant into compliance. If it is determined that the lift is not functioning we would inform the applicant of the violation of the required parking, and provide a timeframe for bringing the lift system back on line. To ensure compliance, we will clarify in Condition #2 that the lifts must be maintained in proper working condition.

2. The lifts are to be located in the publicly-accessible rear parking area. Is the intent that the customers of the restaurant will park in the puzzle lift system? Your letter says the lifts will be, "independently-accessible spaces that can be used by the building tenants or restaurant customers" The city in general has frowned on retail usage of puzzle lifts. Furthermore, the ground floor parking area is currently only for the office tenants.

I've spoken with the applicant on this to get further clarity on the use of the proposed lift system, and it makes the most sense for it to be used by the building employees rather than customers.

3. Condition 7 on page 3 of the conditions of approval seems to limit all restaurant activities, not just alcohol service, to operating from 6 am to 10 pm. Is that the intent?

Yes, these are the permitted hours of operation for the restaurant proper, although the applicant has indicated that they would open at lunch (11:30am – 2:30pm) and dinner (5:30pm – 10:00pm) only. If the restaurant wishes to extend these permitted hours to allow late night operations, they would need to amend the CUP through a new planning application.

4. Has the city recently denied any conditional use permit requests for restaurant alcohol use? If so, on what grounds did the city deny the permits?

I don't believe that we have denied any alcohol-related CUPs in the past few years, but we actually don't get that many alcohol applications to begin with. We certainly look at the specific circumstances of each proposed site and use when evaluating the applications, and request changes to proposals to ensure that the findings can be met.

5. The plans and parking analysis state that there will be 150 square feet of restaurant out in front. Municipal Code §18.04.030(a)(65)(A)(vii) says that Gross Floor Area includes, "Permanently roofed, but either partially enclosed or unenclosed, building features used for sales, service, display, storage or similar use." The 150 square feet appear to be under the overhang of the second floor, which extends for over 5 feet, and having customer seating there definitely seems to be sales and service activities. So that 150 square feet seems to qualify as Gross Floor Area. Doesn't that extra 150 square feet of Gross Floor Area then put the building over its 2.0 FAR limit?

I've looked into this and you are correct, the outdoor seating area counts towards GFA. I had incorrectly considered this area as counting towards parking but not towards GFA. This 150 SF of outdoor seating is offset by 172 SF of area in the trash/recycling room on the first floor, which was included in the GFA for the building's original entitlement but should have been excluded. However, there are currently caged-off areas in the garage which are used for storage, and as these areas are not used for parking they also count towards GFA. The original entitlement plans for the building showed these storage areas, and it had been our interpretation at that time that such areas were considered accessory to parking and therefore excluded from GFA. We no longer interpret the code in this fashion, and as a result, most of these storage areas will need to be converted to an excluded function in order to fit under the 2.0:1 FAR. I will issue a revised approval letter with the attached draft conditions to ensure that these storage areas may only be used for bicycle parking, which the applicant has agreed to and is exempt from GFA. The applicant had previously proposed to use 430 SF of basement storage area, which had been counted towards their GFA and parking, and this area will be reduced to 232 SF through the revised conditions of approval. As a result of this smaller

storage area for the restaurant, the total number of required additional spaces would drop from 4 to 2.

6. Furthermore, the 150 square foot number appears to understate the actual covered area being added in front of the restaurant in both depth and width:

- o **Depth:** In addition to the overhang, there are permanent overhead glass plates above the area and a red outrigger on the top of the building. The latter appears to extend out for about 3 feet beyond the second floor overhang, so much of the outdoor seating area will be under it.

- o **Width:** The plans show the 150 square feet excluding an area in front of the restaurant entrance. But that area will be traversed by restaurant staff serving customers sitting outside. Hence, it is part of the service area of the restaurant and thus constitutes gross floor area as well. That widens the outdoor area to about 43 feet.

Using the revised numbers, the covered outdoor area is then roughly 344 square feet of Gross Floor Area. Doesn't that put the building even further over its 2.0 FAR limit?

The 150 SF of covered service area does need to be parked. See Section AB in sheet A300 of the project plans for clarity on the extent of the outdoor seating area. The area to the left of the seating area is indeed covered but isn't part of the service area, so there is no need to provide parking for these areas. Tables and chairs are not proposed in the area in front of the door and would not be considered service area. To ensure that there is no confusion on this, the conditions of approval will be revised to specifically allow no more than 150 SF of outdoor seating.

7. Gross Floor Area for restaurant use needs to be parked. Based on the prior point, the plans should show approximately 344 rather than 150 square feet of outdoor area in the parking calculation. Doesn't that mean the building needs another parking space and the current proposal leaves it underparked?

See above.

8. Does the city have a formal written policy as to how to treat parking requirements for new and rebuilt square footage in the California Avenue Assessment District? I could not find any such policy.

Please see section 18.52.060 of the Municipal Code for more information on parking requirements in the Cal Ave Assessment District.

9. Because the Director's decision entails both a Conditional Use Permit and an Architectural Review, should I request a hearing for each of them if I wish to protest the above issues? Any guidance would be appreciated. For example, do all the parking and FAR issues fall under the Architectural Review?

10. Does the city have any official forms I should use to request the hearing(s)?

Thank you again,

Jeff Levinsky

1682 Hamilton Ave.

Palo Alto, CA 94303

650 328-1954

----- Original Message -----

From: [Owen, Graham](#)

To: [Jeff Levinsky](#) ; [Neilson Buchanan](#) ; [Paul Machado](#) ; [Rebecca Sanders](#)

Sent: Thursday, April 6, 2017 6:00 PM

Subject: RE: 260 California Avenue Status Request

Mr. Levinsky,

I wanted to update you on the application for the Protégé Restaurant at 260 California Avenue. The applicant has proposed to add the four parking spaces required to convert the existing retail space to a restaurant in their garage through the use of "puzzle"-style mechanical parking lifts. The lift system specifications are included in the revised plan set

(page 9), and allow for independently-accessible spaces that can be used by the building tenants or restaurant customers. Given this change to the plans we have tentatively approved the CUP/ARB application, and I have attached the approval letter, conditions, and revised project plans in this email for your reference. If you have any questions let me know.

Thanks,
Graham



Graham Owen | Associate Planner | P&CE Department
250 Hamilton Avenue | Palo Alto, CA 94301
D: 650.329.2552 | E: graham.owen@cityofpaloalto.org

Please think of the environment before printing this email – Thank you!

From: Owen, Graham

Sent: Monday, December 12, 2016 4:40 PM

To: 'Jeff Levinsky'; Neilson Buchanan; Paul Machado; Rebecca Sanders

Subject: RE: 260 California Avenue Status Request

Mr. Levinsky,

I have received your messages and will respond to your query once I have finished reviewing the project.

Thank you,

Graham



Graham Owen | Associate Planner | P&CE Department
250 Hamilton Avenue | Palo Alto, CA 94301
D: 650.329.2552 | E: graham.owen@cityofpaloalto.org

Please think of the environment before printing this email – Thank you!

From: Jeff Levinsky [<mailto:jeff@levinsky.org>]

Sent: Friday, December 09, 2016 3:03 PM

To: Hernandez, Victoria; Neilson Buchanan; Paul Machado; Rebecca Sanders; Owen, Graham

Subject: Re: 260 California Avenue Status Request

Hi Everyone:

It's been two days and we haven't heard back from Graham, so I left a voice message for him as well just now.

Jeff

650 328-1954

----- Original Message -----

From: [Hernandez, Victoria](#)

To: [Jeff Levinsky](#)

Cc: [Neilson Buchanan](#) ; [Paul Machado](#) ; [Rebecca Sanders](#) ; [Owen, Graham](#)

Sent: Wednesday, December 7, 2016 4:37 PM

Subject: RE: 260 California Avenue Status Request

Dear Jeff,

I am writing to let you know that the application for 260 California Avenue has been reassigned to a different Planner, Graham Owen. I have included Graham's contact information below and have copied him in this e-mail. Please direct any questions or concerns you may have to Graham.

Graham Owen | Associate Planner | P&CE Department
250 Hamilton Avenue | Palo Alto, CA 94301
D: 650.329.2552 | E: graham.owen@cityofpaloalto.org

Thank you,

Victoria Hernandez | Associate Planner | P&CE Department
250 Hamilton Avenue | Palo Alto, CA 94301
T: 650.329.2662 | E: victoria.hernandez@cityofpaloalto.org

From: Jeff Levinsky [<mailto:jeff@levinsky.org>]
Sent: Tuesday, November 29, 2016 5:24 PM
To: Hernandez, Victoria
Cc: Neilson Buchanan; Paul Machado; Rebecca Sanders
Subject: 260 California Avenue Status Request

Dear Ms. Hernandez:

I'm writing to you on behalf of the PAN (Palo Alto Neighborhoods) Zoning Committee, which looks at zoning issues and violations on behalf of Palo Alto residents.

We'd like to know the status and city's position on the use of the ground floor of 260 California Avenue as a restaurant. We are aware that a restaurant application has been filed with the city. However, restaurant use of the retail space on the building's ground floor in addition to the building's other office use appears to require more parking than the building has provided onsite and via payment into the assessment district. Hence, we don't understand why the restaurant application is proceeding at all. Can you explain?

Furthermore, we see that an Architectural Review of outdoor seating has been requested. Can you tell us if that will be before some or all of the Architectural Review Board? And when is that review scheduled for?

As you likely know, the California Avenue area already has an extreme parking shortage, leading to complaints from both existing merchants and nearby residents. Therefore, any new use on California Avenue that fails to comply with legal parking requirements is of grave concern.

We look forward to your reply.

Thanking you in advance,

Jeff Levinsky

Chair, PAN Zoning Committee

Attachment G

Project Plans

Hardcopies of project plans are provided to Council Members. These plans are available to the public online and by visiting the Planning and Community Environmental Department on the 5th floor of City Hall at 250 Hamilton Avenue.

Directions to review Project plans online:

1. Go to: <https://paloalto.buildingeye.com/planning>
2. Search for “**260 California Avenue**” and open record by clicking on the green dot
3. Review the record details and open the “more details” option
4. Use the “Records Info” drop down menu and select “Attachments”
5. Open the attachment named “**260 Cal, updated restaurant plans, 4.5.17**”.

1 4. PUBLIC HEARING / QUASI-JUDICIAL. 260 California Avenue [16PLN-00289]: Request
2 for a Hearing on the Tentative Approval of a Conditional Use Permit to Allow the
3 Sale of Beer, Wine, and Liquor in Conjunction With a Restaurant With an Outdoor
4 Seating Area. Environmental Assessment: Exempt From the Provisions of the
5 California Environmental Quality Act (CEQA) in Accordance With Guideline Section
6 15301 (Existing Facilities). Zoning District: CC(2)(R)(P). For More Information, Please
7 Contact the Project Planner Graham Owen at graham.owen@cityofpaloalto.org
8

9 Acting Chair Waldfogel: Let's come back into order and we'll move on to Agenda Item Number
10 4, a public hearing, quasi-judicial on 260 Cal Ave. permit request.

11
12 Graham Owen, Project Planner: Alright, thank you. My name is Graham Owen. I'm the Project
13 Planner that has been working on the City side on this application. This is an application for a
14 Conditional Use Permit (CUP) to permit alcohol sales in conjunction with a restaurant. It's a
15 restaurant that would occupy a tenant space in the mixed-use building at 260 California Avenue
16 which was recently built.

17
18 The application for the CUP was also filed in conjunction with a minor architectural review
19 application for an outdoor seating area immediately in front of the building and in front of the
20 tenant space. So the application was originally submitted last year and was tentatively
21 approved by staff in April of this year, April 6th. On April 19th we received a request for a
22 hearing on both the CUP application as well as the minor architectural review. So the Planning
23 and Transportation Commission (PTC) purview is for the CUP component of the project while
24 the Architectural Review Board (ARB) is the hearing body for the minor architectural element.

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1 But having said that the reasons for the hearing requests are not related as far as we know to
2 the to the alcohol requests. They are more to do with questions about the gross floor area of
3 the site as well as parking. So I think that the my presentation as well as the applicants and the
4 hearing requestors will most likely focus on those issues as opposed to the alcohol.

5
6 This is a site plan showing the basic layout of the site in relation to California Avenue which is
7 down to the bottom of the screen as well as the adjacent properties on either side. So the
8 space that's shown in hatch is the area that would provide alcohol service. So that would
9 include the outdoor seating area that you see at the very bottom of the space as well as the
10 indoor seating area and then the other functional areas of the restaurant would be back of
11 house essentially. So there's no alcohol served in those areas. Here's a diagram of the outdoor
12 seating area. This has been refined since this slide has been prepared. This is a component of
13 the April 6th plans that you have in front of you. So if you have any questions about those
14 plans and the revisions that have been made since that time I'm happy to go into detail about
15 that.

16
17 So the key considerations as I mentioned the reasons for the hearing request had to do with
18 gross floor area as well as parking which is inherently tied to gross floor area. So the when we
19 were when we received the hearing request we determined after the letter was sent that there
20 had been an error with staffs calculation of the gross floor area of the site and with regards to

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1 the outdoor seating area. So outdoor seating is if it's covered it's considered a service area and
2 so staff incorrectly discounted that area from the gross floor area of the building.

3
4 So with that inclusion as well as an inclusion for some areas that are in the some existing
5 storage areas that are in the basement garage that put the building over the 2:1 Floor Area
6 Ratio (FAR) which is permitted in the CC2 zoning district. So in order to remedy that situation
7 while also retaining the outdoor seating area staff looked at two different particular options for
8 getting the project in compliance with the FAR standard that we have for the CC2. Those would
9 involve either removing the chain link fencing that exists down in the garage storage area which
10 distinguishes the exempt areas which are for garage vehicles, vehicle parking, from the areas
11 that are used for storage which are not considered a garage function. The other idea is to allow
12 the chain link fences to remain, but to have them be dedicated exclusively for bicycle storage
13 and bicycle parking which is considered an exempt, exempt from the gross floor area
14 calculation.

15
16 Just so you know the addition of or the intensification of the use from retail which was the
17 original plan for the for this project back in 2012 and 2013 when it was originally entitled for
18 retail to restaurant requires the addition of more parking given the intensification of the
19 parking ratio. So this proposal would include the provision of two additional spaces above what
20 is currently existing on the site so that you have two additional spaces. Both would be provided

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1 by puzzle style parking lifts. And there's a cut sheet of those of the proposed parking lift system
2 in your plans.

3
4 So just to let you know I did include an at places memo this afternoon. We received a letter
5 from the hearing requester this morning detailing a couple of additional concerns that they had
6 about staff's inclusions and exclusions of floor area and their effect on the project. So in
7 relation or in response to that letter we have revised the or modified the conditions of approval
8 to specifically ensure that we had gross floor area calculations at the building permits stage that
9 would ensure that the project remains compliant with the FARs standard. The applicant was
10 able to provide a gross floor area calculation diagram which you have in front of you today and
11 I'd be happy to go into detail about those specifics, but it does show a compliant project from
12 an FAR standpoint. But I believe though the applicant will, would be able to provide additional
13 details on this so you can feel free to ask them questions as well as myself.

14
15 Commissioner Lauing: Where was the cut sheet for the lift? Is it in this?

16
17 Mr. Owen: It's in the project plans. So it would be the last sheet on the project plans.

18
19 Commissioner Lauing: Sorry, we're just trying to keep up with you.

20

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1 Mr. Owen: Yeah, sure. And so with this the gross floor area calculations that you have before
2 you I believe the applicant will can provide a little bit more detail in particular going over which
3 areas get included and which get accounted to each of the uses office and restaurant. Because
4 there are some common areas where there are some questions. So with that at this point we
5 are recommending approval or we recommended the PTC recommend approval of the CUP to
6 the City Council with a determination that the project is compliant with the municipal code.

7
8 Jonathan Lait, Assistant Director: And Chair if I may I wanted to make a couple of comments.
9 One I believe staff has reviewed the plans here and based on the information that's provided
10 we we're we agree with the allocation of floor area.

11
12 Acting Chair Waldfoegel: Ok.

13
14 Mr. Lait: And the distribution of that floor area to the different uses. So two other comments.
15 Yes that we've reviewed. Yes. And so two comments, Chair. One, I in consultation with the
16 City Attorney we're we think actually that while this is not technically an appeal that the appeal
17 procedures that are set forth in the PTC rules of orders might be a good model for to follow for
18 this particular case since it is the only opportunity for a request of hearing. So in that context
19 we would recommend that you hear from the requestor, the hearing requestor first and give

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1 that the hearing requestor 15 minutes to speak and then the applicant can then speak. And I
2 believe it's also for 15 minutes. So we'd recommend that you follow that model.

3

4 Acting Chair Waldfogel. So we'll start with Mr. Levinsky and then (interrupted)

5

6 Mr. Lait: Correct.

7

8 Acting Chair Waldfogel: And then give the applicant time to respond (interrupted)

9

10 Mr. Lait: Right [unintelligible].

11

12 Acting Chair Waldfogel: Move on to public hearing.

13

14 Mr. Lait: That's correct.

15

16 Acting Chair Waldfogel: Ok.

17

18 Mr. Lait: And before we do any of that public testimony this is a quasi-judicial item so we would
19 ask that the Commission share any disclosures that you've had regarding the project.

20

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1 Acting Chair Waldfogel: Ok. Why don't we go ahead with the disclosures first? I can disclose
2 that I met with Mr. Levinsky. I met with Mr. Conroe, Mark Conroe, and I met with and I believe
3 he also had Anthony, I will butcher the name, Secviar on the phone as well. Was I close? So
4 that's my disclosure.

5
6 **[Unidentified Man]**: I'm sorry just to be clear for disclosures you need to include the contacts
7 that you have and if you learned anything that was not in the record what you learned.

8
9 Acting Chair Waldfogel: I met with Mr. Levinsky at the site. We walked the site. He discussed
10 various conditions that are consistent with the note that he's subsequently provided. And
11 conversation with Mr. Conroe I think is consistent with the staff representations in the staff
12 reports.

13
14 Acting Vice-Chair Monk: I received an e-mail from Mr. Levinsky a couple days ago and I did
15 meet with him at the site. He went over the three areas of concern that were addressed in the
16 memo he sent late this afternoon. I was not influenced in any way by our discussion; it just
17 became very apparent to me that this was more of an enforcement and policy type issue as
18 opposed to anything having to do with an alcohol license. I got a call today from the owner of
19 the building, Mark Conroe. He was calling to ask if I had any questions. He gave me a brief
20 history of the project and all of the efforts that were made to resolve all of the issues that were

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1 raised by Mr. Levinsky. He indicated that he had attempted to meet Mr. Levinsky, but he that
2 Mr. Levinsky had no interest in meeting him in person. What did I learn that was not in the
3 record? There wasn't anything that I learned that was not already in the record.

4
5 Commissioner Summa: I was contacted by Mr. Levinsky and I met with him basically to hear his
6 the his concerns that were expressed in the e-mail that he sent, letter he sent today. And so
7 yeah it was there was different information from his point of view than was in the staff report
8 and I was not contacted by any of the other people mentioned.

9
10 Commissioner Gardias: Yes, so I also talk with Mr. Levinsky and the discussion was about the
11 areas that were the calculation of the areas we reviewed the square footage of the common
12 area which I'm not sure if it's in the documents, but this was provided as 280 square feet (sf).
13 And we discussed the different [quote] paragraph applications to this issue. Thank you.

14
15 Acting Vice-Chair Waldfogel: Great, thank you. Why don't we move on then to Mr. Levinsky.
16 Fifteen minutes.

17
18 Acting Vice-Chair Monk: So we're going to give you 15 minutes. Do you want us to give a verbal
19 warning at any point in time?

20

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1 Jeff Levinsky: Sure, sure.

2

3 Acting Vice-Chair Monk: Like what at what juncture would you like that, like a minute or two to
4 wrap up or?

5

6 Mr. Levinsky: Sure.

7

8 Acting Vice-Chair Monk: Ok.

9

10 Mr. Levinsky: And we're right at nine o'clock on the clock so I'm cool. Alright, thank you. Good
11 evening everyone. Let's see, I'm going to first talk in general terms and then I'm going to
12 update my talk because of the rapid changing plans that you have before you. Although I
13 would like to make one comment I did not do not recall a request to meet that I did not
14 accommodate. I did meet yesterday with the restaurant owners and have had subsequent
15 discussion with [them as well]. The as you've heard just in your last item we do have a parking
16 crisis in Palo Alto. We have many under parked buildings, we're missing hundreds of parking
17 spaces, and that's a burden to everybody: commuters, business owners, customers, and nearby
18 residents and it shifts the cost from the building owner to everyone else. And so we look at
19 each building and worry that it if it isn't correctly parked that it just makes things worse.

20

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1 I sent you in the letter today that there were three areas of concern. I believe I'm correct in
2 saying that the first one has been accepted by the applicant so that they are now counting the
3 trash room and that cuts out a whole bunch of my slides. We'll all get home a little earlier. The
4 way they handle the parking for that is that they reduced the basement storage it appears on
5 the plans, but I do want to mention that there are some other numbers on the plans that I don't
6 understand yet; for example, the restaurant space seems to have increased and other numbers
7 seem to have decreased. So these plans have numbers that are quite different than the
8 numbers that I received last from the City just weeks ago for this building. So I'm not sure all
9 the details are yet worked out.

10

11 The two other areas though remain. One is the treatment of common areas and how they are
12 assigned and I'll get that has been updated as well. And finally we get to the issue of the
13 outdoor area that the City has agreed as you as Graham spoke to count part of that area, but
14 not to count all the area that I think it should. And so that remains an issue for discussion.

15

16 Just to put this in context this building as the plans were approved by the City had
17 approximately allowed the building to not park three parking spaces. And if you take that you
18 multiply that across all 116 commercial buildings in the Cal Ave. area that's 348 unparked cars.

19 By contrast the entire Evergreen Park Residential Preferential Parking (RPP) program is only
20 supposed to accommodate 250 cars. So this kind of action of allowing a building not to provide

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1 the full parking if turned into a precedent would create problems potentially even larger than
2 the ones we are ready grappling with solving.

3

4 As for the trash room many of you have already heard my arguments or read about it I'm just
5 going to flip right through this because they have agreed to count the trash room as part of the
6 gross floor area of the building. So that all goes. Now let me come to the common area. The
7 concern about common areas was whether they are properly allocating all the common areas
8 between the restaurant which is on the ground floor and the two square two floors of offices
9 above. There's a reason to give more of the common area to the office and that is that in this
10 particular zone the office needs only half as much parking per square foot as the restaurant.
11 The more common area that's office the fewer parking spaces you need basically. So this shows
12 you the different common areas. They are mapped out just very quickly. There's equipment
13 room, on the left side equipment room elevator, stairs, and a the lobby and on the other side is
14 electrical room, a trash room, stairs, and a changing room.

15

16 Now when the ARB approved these plans back in 2012 they assigned the plan showed one third
17 of the common area for the trash room, electrical, and equipment utility rooms being assigned
18 to the restaurant and that's I think because there were three floors and they figure the
19 restaurants one floor so ok, one out of three. They did not assign the stairs elevator or lobby in
20 those plans at all to the restaurant. And in reading through the ARB discussion and so forth

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1 they believed that the bike parking was probably going to be on the ground floor and there was
2 no mention of any storage for the retail in the basement. So I think it made more sense from
3 their perspective that that was an acceptable assignment.

4
5 In the 2017 plans that we first saw what was done was well the trash room was exempted.

6 That's now been taken care of, but all the other spaces were assigned to the office, every single
7 last square foot. As some of you have heard directly from me that did not seem plausible that
8 the restaurant wouldn't use the electrical, it wouldn't use the utility rooms. The changing room
9 when you're a bike commuter and you come you need the changing room to change and
10 shower and so forth. However, the plans that were arrived today still do not assign and I
11 actually went ahead here and filled this in. The new the middle column there new 2017 plans
12 are as today what they've done is they've taken my suggestion for a 14 percent split. That's 14
13 percent is based that the restaurant is 14 percent of the non-common area in the building and
14 the office the other 86 percent. So they assigned 14 percent of the trash room, electrical room,
15 equipment and utility rooms, and changing rooms to the restaurant, but they still did not assign
16 any of the stairs, elevator, and lobby to the restaurant. And I think that's still an error and let
17 me try to explain why. Oh by the way it adds up to just 87 sf and my apologies to all the people
18 here if I didn't do the math right at the last moment, but I was rushing to do it for this moment.

19

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1 So what this means is that the elevators, the stairs, and the lobby are still not in any way being
2 assigned to the restaurant. Now there's the plans show that the restaurant's going to be using
3 storage in the basement and the bike storage is going to be in the basement as well the all-day
4 bike storage as well as and now they're going to be talking about possibly putting more in the
5 basement. So how the restaurant employees will bike and get into the basement and out
6 without using the elevators or the stairs is a mystery. How they will use the storage in the
7 basement without using the elevators or the stairs is a mystery.

8

9 And the lobby is not only the way you get to the elevator and the closer flight of stairs, but also
10 and this was actually in the ARB discussion that the lobby is a way you get from the rear of the
11 building which is where the public garage is on Cambridge through to the front of the building.
12 So customers of the restaurant would likely be able to use the lobby to get to the restaurant.
13 Based on that I would recommend what I call the fair policy which is assigning 14 percent to all
14 those areas. I have to tell you in looking at this sheet I have a explanation for why they didn't
15 do that. They are at 99.48 parking spaces. If they were to assign just a little bit of these
16 remaining spaces over to the restaurant it would put them above 99.48 and they would need
17 another parking space. So I believe that might be the explanation, but you'll be able to ask
18 about that as well.

19

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1 Let me talk a little also about the outdoor area which remains an issue. In the plans that still
2 shown as 150 sf. Now originally the City wasn't counting this as gross floor area at all, but as
3 Graham explained they are now counting willing to count 150 sf of it. What I've shown you
4 here on the plans is where the front of the restaurant is it's the big glass wall there is a property
5 line which is where the sidewalk is separated from the property. There's going to be temporary
6 movable barriers that surround part of the area there and inside that are going to be tables and
7 chairs and where the restaurant will be operating outdoors. Now the code says that
8 permanently roofed, but either partially enclosed or an enclosed building features used for
9 sales, service, display storage or similar uses are floor area.

10

11 So the City has agreed to count sort of the part that's over on the right and say that's floor area,
12 but not to count the area over on the left as floor area. But if you think about it when how are
13 the customers in that outdoor seating area going to get served? The staff from the restaurant
14 is going to come out the door and they're going to take menus and drinks and food to the
15 customers. They're going to go through this area. They're going to go through it to clean up
16 and such, by the way customers entering from outside are going to need to go through that
17 area. So really that area is part of the service area of the restaurant. You can't say that just
18 because there's no tables or chairs in a part of a restaurant it's still not part of the operation of
19 the restaurant.

20

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1 The staff report invents a new term. They say well the code does not specifically defined the
2 term covered outdoor service area. Well, that term isn't even the code so I'm not sure why
3 they asked that question, but then they say staff understands the term to include areas for
4 tables, seating, and the space needed to access such seating. Well I just showed you. The
5 route taken by the service to access the seating isn't being counted as floor area, but it should
6 be even by their statement.

7

8 There's another odd thing about this and those who visited the site with me were shown this.
9 They part of their eating area is going to be out on the sidewalk. The City that's public property
10 that's our property not theirs; why do they get to do that? Well, there is a specific exemption
11 and that is that outdoor eating areas of eating and drinking establishments are allowed to be
12 out on the sidewalk, but that leads to this sort of Alice in Wonderland paradox which is that
13 that area in front is eating area for the purposes of the sidewalk encroachment, but the City is
14 saying it's not a eating area when it counts up the FAR. I don't think that's a good way to make
15 law that the same area is half it [unintelligible] both eating area and not eating at the same
16 time. In my letter I called that Schrödinger's café and it's a bad precedent and it would allow
17 restaurants to enclose more and more sidewalk without counting it towards FAR and frankly it
18 makes our laws look rather absurd.

19

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1 I had some simple recommendations. The first one you can I think ignore because the applicant
2 has agreed to disallow the to give up on the trash room exemption. I still believe that it makes
3 sense to assign the common areas proportionally to the restaurant and I believe it that all the
4 covered outdoor usage by the restaurant should count as floor area. With that with the
5 understanding I believe that the restaurant can then to revise their plans to conform to the FAR
6 limits and to the parking rules and they can go ahead. I don't think they need to wait around. I
7 think that all of this could be expedited very quickly and they could emerge with their
8 restaurant and be in operation as quickly as possible. So I'm happy to answer any questions I
9 guess that come up later, but I've ended early and I think that's a good thing. Thank you.

10

11 Acting Chair Waldfogel: Great, thank you. Would Mr. Conroe or anybody on your team choose
12 to like to speak?

13

14 Mark Conroe: Honorable members of the PTC, City staff, ladies and gentlemen, my name is
15 Mark Conroe; I'm here I'm the developer of the building, the original developer. I'm also one of
16 the owners of the building. I'm here to represent the applicant tonight. What I'll do is make
17 some opening remarks and then address Mr. Levinsky's allegations.

18

19 We have spent the past four years trying to find the right tenet for this long dormant space.
20 The building construction was done about two and a half years ago. Two years ago we found

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1 Protégé. They offer something unique to Palo Alto and this area of the San Francisco Bay Area.
2 City zoning and smart urban planning encourages active pedestrian oriented ground floor uses.
3 Protégé is such a use. We started the approval process for Protégé with the City about 18
4 months ago. Protégé submitted their completed application about nine months ago. We've
5 been unfairly caught up in a political crossfire between Mr. Levinsky and the City. We are being
6 used by Mr. Levinsky as his whipping boy or battering ram to promote his political agenda. The
7 stated purpose of this hearing tonight is to review the CUP related to the liquor license;
8 however, as you heard from staff that's not at all what's happening. Instead we're going
9 through a private audit.

10
11 Over the past several months we've tried to reach out I've tried to reach out to Mr. Levinsky
12 and understand his issues and address them. I reached out to him by phone two months ago
13 and never got a response. Since all interaction with Mr. Levinsky was going through Planning
14 staff I told the staff member times specifically in writing on March 3rd, March 6th, March 22nd,
15 April 25th, May 1st, and May 3rd that I wanted to meet with Mr. Levinsky and anybody else
16 who had an issue so I could understand their concerns and avoid unnecessary delays. I never
17 heard back regarding a meeting with Mr. Levinsky or from Mr. Levinsky. The only time there
18 was any attempt to meet was on Monday, May 1st at 2:28 p.m. The City staff sent me an e-
19 mail asking if I could meet less than 24 hours later. I responded within six minutes to this email
20 saying that I wasn't available the next day given less than one day's notice, but I could meet any

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1 other day that week, Wednesday, Thursday or Friday and I'd clear off my schedule. A couple
2 days later I was then told by staff that they decided to meet with Lewinsky anyway and
3 "Unfortunately they, Mr. Levinsky, were indifferent about meeting your team due to the nature
4 of their concerns which were code and policy related." I have copies of the six emails if you like
5 to review them.

6
7 The situation is straightforward. We are parking, we are two parking spaces short of the 99
8 spaces required for a restaurant. We have 97. Represented [unintelligible] two percent
9 shortfall. We've agreed to provide these spaces. We've also addressed all the concerns raised
10 by City staff including a couple hours ago we got a whole new set of claims from Mr. Levinsky
11 and so we quickly at staff's request produced the exhibit you see in front of you and changed
12 the allocation based on either us voluntarily trying to remove issues off the table or City staff in
13 the case of the trash room asking us to remove it.

14
15 We are FAR compliant and we are parking compliant. It should be noted that even though in
16 2,000, even though our 2013 ARB approval included approval of our garage storage spaces we
17 have agreed to rip these out. All of the storage spaces include any replacement storage space
18 in the FAR calc to placate Mr. Levinsky. In addition even though we question whether every
19 restaurant in Palo Alto is providing parking for it's covered outdoor dining area I'd say a policy
20 that's a little known we're doing so. We're being held to standard with respect to the garage

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1 storage and outdoor dining areas that likely few if any other restaurants in Palo Alto are abiding
2 to or abiding by.

3
4 Finally, Mr. Levinsky a couple weeks ago questioned the area calc for the restaurant area itself.
5 We voluntarily had our architect of record field measure the space and recently to confirm its
6 actual gross floor area and we adjusted our calculations and FAR calculation to include the
7 actual number to confirm we're in compliance. In summary we're meeting code and all of the
8 requirements requested by the Planning Department. We've been responsive and sincere in all
9 our interactions. We have also tried to address what we understand to be Mr. Levinsky's
10 concerns as they evolved over time. All the unnecessary delays and foot dragging has cost us
11 over \$100,000. We need to simply move forward with replacing an abandoned storefront with
12 a vibrant pedestrian oriented use. We ask that you allow this application to move forward
13 tonight. Thank you.

14
15 Two other quick points; I would like to walk you through the calculations quickly and maybe it
16 would help Mr. Levinsky understand what's occurred because it's not too terribly complicated.
17 And also we have some 10 letters of support from long time Palo Alto residents, long time
18 business owners, long time and major retail tenants on California Avenue who are our
19 neighbors. And Mr. Kelly is one of the owners of Protégé. We'll submit them as part of the
20 record and a few minutes.

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2 So I'd like to walk through the area calcs and FAR calcs and parking calcs and address any
3 questions you have. So in simple form what you see and it's the copy you have in front of you is
4 going to be easier to see than the one up on the board because the colors are not unfortunately
5 very readable on the board. But simple form there's four floors. Two of the floors are the
6 upper office. Those haven't changed and those are in blue. The garage space that's shown in
7 grey is the exempt area. What's shown in dark grey are the current storage spaces that were
8 part of the ARB approval that we're removing. The only space that were to remain part of the
9 FAR calc has been noted a number of times is the essentially new storage space being used by
10 the restaurant which is shown in purple.

11

12 The then there's the ground floor. The ground floor is relatively straightforward and as you can
13 see just visually if you look at the one in front of you the again the grey area is exempt parking
14 area and then the purple area is the restaurant are. Those are not the controversial or the
15 parts that are questioned by Mr. Levinsky. The other areas are the pink rooms or red rooms
16 which are we're now including and allocating to both users. One's an electrical room, one's a
17 trash room and recycling and compost room all in one, and one's the utility room which has a
18 shower in it. Those we're allocating on a pro rata basis. The 14 percent actually wasn't it
19 happens to be that Mr. Levinsky is number, but it actually is just simply taking the area of each

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1 of those spaces over the total is probably how he reached it, arrived at it also. I wasn't aware of
2 his he was looking for 14 percent.

3

4 So then it gets down to the relatively small spaces you see in other colors so let me explain
5 those. There's two other colors. There's yellow and there's green. The green areas are the
6 spaces being used exclusively by the office and we'll talk about Mr. Levinsky's contention here
7 in a second, but basically it's the elevator, the stairs to the upper floors, and the office lobby.
8 And then there's yellow areas. Yellow areas are shared areas between the garage exit, basically
9 garage stairs and the upper floor stairs. So those are allocated evenly to those two uses 50
10 percent each since they're well probably used more by the office upstairs since there's two
11 floors upstairs, but we in Mr. Levinsky's favor did a 50-50 split.

12

13 So bottom line is we walked through every space on the ground floor and I've shown you how
14 it's allocated. If you step back and say ok just for fun how does this compare with the ARB
15 numbers? They're actually slightly higher, about 100 sf higher. So why would I be adding
16 square footage to my detriment? It's because it's real and it's actual. That was explained
17 simply because the City Building Department right before we finished the building decided to
18 change the exiting out the back of the building because they weren't happy with how the door
19 was opening. So we had about 100 sf of corridor space to exit. Otherwise the numbers are
20 exactly as [in the AR] building on all the floors.

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2 So let's talk about his the points he's raised. Again, he seems very interested in legislating how
3 we're allocating common area in our building. I think if he asks staff what they'll say is they're
4 not in the business of allocating who's using what room, but the reason Mr. Levinsky is so
5 interested in and as he stated is to try to drive up the parking ratio. The parking ratio is roughly
6 double for retail, a restaurant I should say, as it is for office. So the more you allocate to
7 restaurant the higher the parking ratio be. And so the lobby and the elevator he says that
8 should be allocated to the restaurant. The fact is the restaurant has its own exit on the outside
9 the building. They don't have card access to the lobby. It's controlled certainly after hours
10 means at 5:00 p.m. so there's no opportunity for restaurant users who may decide to park on
11 the blocks behind the building to come through the lobby. They would have to come around
12 the building like most buildings. And so simply put the elevator and the office lobby are for the
13 office tenet; period, end of story. So it for him to get interested in legislating that which staff
14 hasn't run down, gone down that rabbit hole, but apparently Mr. Levinsky wants you to.

15

16 And as part of the stairs, the stairs are handled. He was incorrect in stating that they're not
17 being handled pro rata. We basically it's a very [diminished] amount, but if you look at the
18 parking area which is dedicated to the office in the basement and you take the 160 feet out of
19 that little less than 13,000 and say I want to charge you pro rata for your share of the stair and
20 the bike room there again the tenant is about that office tenant it's about 10 times larger, a

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1 little bit less than that, 8 times larger than the restaurant, but you say ok I'm a charge for one
2 eighth of the 30 square foot bike room and plus your storage area and take that ratio to 13,000
3 feet you'll get about three sf. We've included that in the 160 so they are paying their fair share
4 of using that stair to get to the bike room and to the their storage space.

5

6 As far as outdoor dining this one is the most maybe frustrating and simple. We are in the
7 simplest terms saying that we will abide by using 100 square, 150 sf of outdoor dining period,
8 end of story no matter how you use it. There is a there is an exhibit I and Graham I may need
9 your help here to go to the next slide, but I'm technology... No, I just actually want to go there's
10 it's just that slide shows the outer dining. And basically all that you need to do is shift it over
11 five feet to incorporate the door which is Mr. Levinsky's point. When you walk out the door the
12 architect inexplicably left the small walkway a couple feet not crosshatched and I just said just
13 move it over so it actually from the time you exit the building for outdoor dining and while you
14 walk around to serve people that's all in the 150 sf so we're totally compliant. So there's no I
15 mean by definition we're going to do that. So this is just if you that's the 150 sf in blue and the
16 green part which is what Mr. Levinsky pointed out was not in the crosshatch area, the 150,
17 which is true. It wasn't an insidious plan it was just an error by the architect and we're more
18 than happy to right size it and just move the box over. We would trim it down and just make it
19 so it's a 150 sf. So simple, simply put we're going to only have 150 sf of outdoor covered dining
20 area to comply with FAR and to properly park the project.

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Acting Vice-Chair Monk: You just have one more minute left.

Mr. Conroe: Ok, and that's all I have. I'm happy to answer any questions on these calculations, but it's all the numbers basically tie out except for the noted 100 or 99 sf, 98 sf to the to the numbers on the ARB original approval. So thank you very much. And I'm available answer questions at any time.

Acting Chair Waldfogel: Great, thank you. Let's move on to the public hearing. How many speakers do we have?

Acting Vice-Chair Monk: Eight.

Acting Chair Waldfogel: We have eight speakers (interrupted)

Mr. Lait: I think some of those might be part of the applicant team actually.

Acting Chair Waldfogel: I'm sorry.

Acting Vice-Chair Monk: Ok, so I'll read you the speakers. We've got (interrupted)

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Acting Chair Waldfogel: Hold on just a second. So we've published five minutes per speaker, if the speakers can manage to do it in fewer than that that would be great, but no obligation.

Acting Vice-Chair Monk: So the first is Christian Pease followed by Paul Machado and then Mike Anderson. And let me just reset this.

Paul Machado: Paul Machado, Christian left. So he couldn't stay.

Acting Vice-Chair Monk: Oh, I didn't know that. Sorry. Ok.

Mr. Machado: Ok.

Acting Vice-Chair Monk: You still get five minutes.

Mr. Machado: Ok. As background when the building at 260 Cal Ave. was to be approved a neighbor of mine approached, appealed the project and he declared it to be grossly under parked and said the project was given credit for spaces that actually didn't appear, they didn't exist. Although my neighbor's statements were true the project was approved as it was

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1 compliant with the law. Now again there is a question about the building being compliant with
2 the law, mainly the FAR requirements and therefore parking requirements for the restaurant.

3
4 I became concerned when the applicant replied to a citizen query about the FAR and said it
5 turns out the restaurant tenant is not using the elevator, utility room, electrical room and the
6 recycling room is exempt hence all the common areas are accommodated for in the office area.

7 I didn't understand how that could be correct and I asked that that be corrected. It seems
8 nonsensical to me. I've no complaint with the two young restaurateurs that I've met. I would
9 hope that this restaurant could open as soon as possible. I understand it's a big burden for
10 them. I want to thank Graham Owen. He met with us and tried to answer all of our questions,
11 but we worked hard in Evergreen Park for RPP very recently and it may not sound much, but if
12 it's one or two or three parking spaces it's a big deal. And if that's the only thing that's stopping
13 this restaurant from opening then I hope it's settled tonight. Thank you.

14

15 Acting Vice-Chair Monk: Mike Anderson followed by Anthony Secviar.

16

17 Mike Anderson: Hello, my name is Mike Anderson. I've lived in midtown Palo Alto for 35 years.
18 Some of you know me because of my service on different nonprofit boards in town. I'd like to
19 thank the Commission for all the time you guys spend on all these matters. I know it's a

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1 thankless job and I'd like to thank you. I've dedicated most of my time to the nonprofit world
2 and not in public service like you, but thank you for your service.

3
4 My parents had a restaurant when I was a kid and I grew up around the restaurant business. It
5 wasn't a very fancy restaurant, but it was all we had and I was indoctrinated at a very young
6 age. I've always been interested in the culinary arts, but my career took me a different
7 direction and I've never really had the time, chance to kind of delve back into it. I met Anthony
8 and Dennis about a year and a half ago. And I was really moved by their idea for what they
9 wanted to do for a restaurant in Palo Alto because not only did they want to bring some of the
10 finest culinary arts to bear in Palo Alto, but they really had a commitment to teaching young
11 people about the culinary arts. They talked to me about how they had been mentored during
12 their careers and how they wanted to mentor other people and I felt that this was a very
13 important thing for our community because I think that one of the things that you can never
14 have enough of is well trained citizens.

15
16 Anthony and Dennis are just regular guys. They're restaurant guys. All of the things that we're
17 talking about tonight are not in their stratosphere so to speak. They're not things that they
18 deal with. They've tried to be straight up and get their project approved. When they first came
19 to me and asked me to invest in their project I told them that Palo Alto is notoriously tough to
20 get a project approved in. I had no idea that it was going to be this tough. I did decide to make

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1 an investment in their restaurant and I did it because I believed in them and I believed in
2 Protégé and what Protégé was trying to do. It's a small business. They're trying to create a
3 small business, create jobs for people, train people at a very high level. That's what they're
4 trying to do and they've come to our community. They've moved their families down here.
5 They've been unemployed pretty much for 18 months as they're going through this process and
6 I think some to sometimes we miss the personal element of this and the personal cost that
7 people go through just to get a restaurant approved in Palo Alto. That's all they're trying to do,
8 open a restaurant, create jobs, create a dynamic environment on Cal Avenue where we've
9 invested \$7 million of taxpayer monies for the very purpose of creating a vibrant neighborhood.
10 I've been here for 35 years. I've seen California Avenue on the decline at times. Many vacant
11 spaces, many underutilized spaces. To me it's exciting that we have the opportunity to have
12 people like this willing to come to our community and create a small business and actually
13 employ people and train people.

14
15 The appellant has a point of view. He's made that very clear. And I actually may not disagree
16 with his actual global point of view, but I do disagree with this kind of nitpicking approach, the
17 death by a thousand cuts, the constant stream of comments coming in, and I believe that the
18 rules and regulations and codes of this City should be interpreted by City staff. We've had the
19 Planning Director opine on this and give us her opinion on what we should do. I think we
20 should follow those recommendations. I think we should support our staff and most

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1 importantly I think we should support this restaurant and recommend that the City Council
2 approve it. Thank you very much.

3

4 Acting Chair Monk: Anthony Secviar followed by Dennis Kelly and then Dan Rose.

5

6 Mr. Lait: So Chair and I'm sorry just before the speaker begins. With the restaurant, right? So I
7 don't know if there is any time left on the... so this is part of the applicant team. This is the
8 restaurant owners coming to speak and so we had talked about a 15 minute allocation for the
9 applicant team.

10

11 Acting Chair Monk: So 15 for...?

12

13 Mr. Lait: No, no. You... [Unintelligible-Many people speaking off mike at once].

14

15 Anthony Secviar: We certainly hope so. I'll push. Good evening, Commissioners; My name is
16 Anthony Secviar. I am the co-owner of Protégé the project on 260 Cal Avenue. I'd like to take
17 the opportunity to read a summary of my experience with this project and obviously this will
18 not speak to the technicals and the specifics that have been discussed tonight, but I do think it's
19 relevant in regards to a sense of urgency that we feel a need for a conclusion in this process.
20 My partner Dennis and I decided to make Palo Alto our home for Protégé and have spent the

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1 better part of the past three years scouting for a location, planning our design, and applying for
2 permits. It is our dream to own and operate a world class neighborhood restaurant in the heart
3 of Silicon Valley. After 10 months of delays relating to our permits to say I am frustrated and
4 confused is but the tip of an iceberg. I have three children and together with my wife who stays
5 at home and raises our children left a lucrative and successful position in Southern California
6 soon after filing for permits last August. We had saved enough money to support our family for
7 the expected three month permit approval process and I wake up today nearly 10 months from
8 filing and I'm here talking to you. We have had no income. We have not pulled any investor
9 money to support ourselves. We do not have any outside support financially. We are not part
10 of a corporation. We are not part of a restaurant group. We are simply two guys with a vision
11 and a desire to open a great restaurant in Palo Alto.

12
13 We decided to open in Palo Alto for a number of reasons the most obvious being the affluence
14 of the demographic, the cultural diversity, and the density of the population, but where that
15 what really appealed to me was this sense in feeling of entrepreneurship that Palo Alto has
16 historically embraced. And what I intuitively assumed was a community that would open me
17 with open arms has not proven to be completely true. Although everyone we have met in this
18 community has been very supportive and excited to see our restaurant open the permitting
19 process I have experienced has been frustrating, confusing, and anything but smooth and
20 welcoming. While I am sensitive to the due process and respect the need to make sure we are

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1 up to code we have had multiple planners assigned to our project and while we have spent
2 incredible amount of time and money to make necessary changes to appease both the
3 residents in opposition and the City these changes have only lead to additional issues and
4 further delays. Time and time again we have made changes and received positive and
5 optimistic reports from the City only to be let down after additional requests and delays. We
6 have done everything and agreed to everything the City has asked of us and to finally receive
7 permit approval and to ultimately have this arduous process be appealed is devastating both
8 mentally and financially.

9
10 I have met with Mr. Levinsky and those in opposition and heard their issues firsthand
11 concerning our permits and our project. I'm sure he believes that he's doing a service to the
12 City by auditing every decision the department makes and I certainly commend him for his
13 diligence, but it's my opinion that his interpretation of the zoning code is not in line with that of
14 the City. And his issues are to do with process my opinion is halting every project the City
15 approves is hardly the best avenue to invoke positive change. Having us as a willing small
16 business addition stuck in neutral so he can have a voice in how the City handles code and
17 policy seems to be unfair and it is doing our City more harm than good. I have to imagine that
18 there are more suitable forums for Mr. Levinsky to address his concerns with City policy.

19

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1 We are up to code in as far as the Department of Planning the only resource we have that can
2 lawfully tell us we are in code or out of code and we should not be held hostage in order to
3 provide a forum to debate the City's policies and how they uphold, how you uphold and
4 enforce the laws. We should not suffer simply because Mr. Levinsky does not trust the City to
5 do its job. We are up to code and should be allowed to open our business and we feel the
6 addition of an owner operated restaurant where the both of us as partners will be hands on in
7 every aspect of this project will be a great addition to a budding culinary scene here in Palo Alto
8 and humbly, humbly ask you to grant us permission and recommend us move forward with our
9 dream. Thank you.

10

11 Acting Vice-Chair Monk: Dennis Kelly. And just to expedite if we could have Dan Rose's kind of
12 come up to start afterwards.

13

14 Acting Chair Waldfogel: Mr. Kelly you're also part of the applicant group.

15

16 Dennis Kelly: Yes.

17

18 Acting Chair Waldfogel: Can I mean I want to give you a chance to talk, but maybe can you just
19 if it's possible to be brief that would be fantastic.

20

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1 Mr. Kelly: [Unintelligible] I do want to submit them if I can. There are 10 letters. I was going to
2 read a couple. I will not, but these are letters from residents and business owners in Palo Alto.
3 So I'd like to submit those for the record if I could. Yeah and I think really think that everything I
4 really wanted to say has been said. I won't take a lot of your time. I mean on a personal level I
5 did leave the French Laundry after more than a decade to move to Palo Alto, to return to Palo
6 Alto. I was a resident from 1993 to 1999. I worked at a local restaurant and I fell in love with
7 the community and I wanted to come back and serve it and I convinced my partner that this
8 was the area to do it. We heard about the revitalization on California Avenue and we were
9 excited about the proximity to Caltrain and we decided that this was the right area. And
10 honestly we really do want to serve this community. We're excited to be here and we hope
11 you'll give us that opportunity. I won't take any more of your time. Thank you.

12
13 Acting Chair Waldfogel: Thank you.

14
15 Dan Rose: I also keep my remarks brief because it's getting late. Like Mr. Anderson I'm an
16 investor in the restaurant. I've known these gentlemen for a year and a half. I've had them
17 cook for me multiple times. Mr. Kelly is one of 200 master sommeliers in the world. Mr.
18 Secviar is I believe going to be considered one of the top chefs in the world very, very shortly
19 after opening Protégé. I say that having eaten at most of the top restaurants in the world. If
20 we don't allow this restaurant to go through we lose an opportunity to have a landmark in Palo

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1 Alto that will become synonymous with the City over the next decade or two. I've been at
2 Facebook for 11 years. I think Facebook is also synonymous with Palo Alto and I would put this
3 restaurant in that same category. I hope you will help us get this through and I think there's a
4 lot of empathy here for what these two gentlemen have gone through to try to make this
5 happen. Thank you.

6

7 Acting Vice-Chair Monk: So we've got Reed Gaither and then is Neilson Buchanan still... Yeah
8 and that's the last one after Neilson. Oops, sorry.

9

10 Reed Gaither: Alright. So Reed Gaither. I live actually down the road from Paul who spoke
11 earlier. He is a neighbor. I'm on Stanford Avenue about three blocks from the restaurant. I
12 have nothing really to do with any of these people here, I've just heard the story living in Palo
13 Alto. I've got friends on both sides of the aisle so to speak. Paul walks by my house every day
14 and I see all these people at schools and various functions around town.

15

16 I commend folks who worry about parking. I live here; I've been on that street for 19 years.
17 We all care about parking. I get it. This is not the way to fight the parking issue this is it's a
18 tragedy to take what people want to do with passion to create jobs and take a parking issue
19 and make it their problem. This is not their problem. This is our city problem. There are a lot
20 of things we can do to fix it, but shutting down every development and every piece of progress

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1 in our town is the wrong way to do it. Paul has told me that's his plan to stop everything. Say
2 no to everything. That's not a plan. That's disruption. It doesn't help anybody.

3
4 So I live in a neighborhood. I'm very proud of all the money we spent. I know it was hard for
5 the town to get behind spending \$7 million renovating our town. It's great. There are a lot of
6 complaints that California Avenue is a unique opportunity for our town and it's becoming a
7 magnet. People come here and they go to dinner they go wow I've never, I never knew this is
8 here. It's better than University Avenue. There are people walking around town, wide
9 sidewalks. It's terrific and I knew the people that took over Town & Country. I met him at a
10 party once and he said we never would have done without an anchor like Trader Joe's. Never
11 would have signed that deal and renovated that spot which now is incredible and most of you
12 probably remember it 20 years ago it was pretty derelict. So was California Avenue.

13
14 So here we go we've already spent the \$7 million and these guys come along and they want to
15 open a restaurant and we're I think quibbling over a couple of parking lots and I'm not trying to
16 disrespect the code. I get that, but now it's down to interpretation and there's no fine line
17 here. And you have a chance to get an anchor restaurant that will bring people from
18 everywhere. And no one has even made mention of the fact that they're a block from the train
19 station. There are 200 empty spots every night down there. If anyone walks around there
20 night there are plenty of spots where they're located. So those are kind of my basic comments.

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1 We spent a lot in California Avenue. There's a minor grey area here. There's a bigger issue that
2 folks want to fight, let him fight it somewhere else. This is not the place to do it.

3
4 I'll also note that so I go down I eat lunch and dinner down there three, four, five times a week.
5 That spot's been vacant a long time. There's another spot right next to it vacant. People notice
6 this. It doesn't look good. It's not good for anybody down there. It's not good for the retailers
7 that are struggling and I think we need to take those factors into consideration in addition to a
8 parking spot. Thanks very much.

9
10 Acting Vice-Chair Monk: I mean I announced Neilson Buchanan so if he's here come on up.
11 Let's go.

12
13 Neilson Buchanan: Thank you. I'd like to refresh your memory about history, recent history. I
14 had no involvement with the City until about 2011 and that's when the first fiasco over permit
15 parking was launched by the City and failed upon launch. And only because of resident hard
16 working scrabbling for details did permit parking ever come alive and now we've got several
17 permit parking programs going. And it's attention to detail caused change to happen. In the
18 course of this planning exceptions/exemptions, all kinds of loopholes have been closed by the
19 City Council, but in each case it took a dedicated hard working residents putting up silly details
20 for the City Council to adjudicate. And tonight you have a chance to adjudicate what has now

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1 been simplified to some very simple issues and, but these are very important details. It has
2 nothing to do with children. It has nothing to do with investment. Investors take risk and
3 you're not here to mitigate the risk they're taking. You are to adjudicate the merits of this
4 because these little exceptions/exemptions have resulted in hundreds of parking space
5 exemptions/exceptions. That's the reason the neighborhoods are full of nonresident vehicles.

6

7 So this is and above all let me say it's not the residents that I think are really most harmed by
8 this, it's the other merchants who are now going to scramble for scarce parking permits. So this
9 is all part of a ball of wax that is made worse by those tiny little exceptions. And I have great
10 empathy towards the business side of this, but the fact of it is these people who just made
11 statements really are not aware of all the hard work of eliminating exceptions and exemptions
12 and we haven't even begun to deal with the parking assessment district. That's the hottest
13 potato in town. Castilleja is a good example of when things got bad enough something had to
14 give and now we're in the unenviable situation of trying to figure out what's best for Castilleja.
15 In attention to detail for the parking at Castilleja now has resulted in a rift in the neighborhood.

16 So tonight don't compound the problem, adjudicate this question, make a decision, and let's
17 move on. But I think there's a real clear cut decision. Somebody's got to make it and don't skip
18 over it like it has been in the past. City Council has been responsible for staff making all these
19 exceptions. Now is the time to look at it afresh and if necessary the Council can take a look at
20 it. Thank you.

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Acting Chair Waldfogel: Great, thank you. That completes... yes?

Mr. Lait: No, I'm sorry. I would just suggest I mean we kind of had a an applicant rebuttal I would just I think it be appropriate to afford Mr. Levinsky an opportunity to provide rebuttal (interrupted)

Acting Vice-Chair Monk: If he has something new to say otherwise I don't (interrupted)

Mr. Lait: Well I think your code provides for a three minute rebuttal (interrupted)

Acting Chair Waldfogel: Yeah.

Mr. Lait: And we've been following the appeal procedure.

Acting Chair Waldfogel: Ok, so let's follow that procedure. Do you have anything that you'd like to add?

Mr. Levinsky: Thank you. I appreciate the applicant's explanation for some of the decisions that were made. I do want to say on a personal note that I am saddened by the amount of personal

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1 invective that has been leveled in this session and I don't think that Paul Machado has likely
2 ever said anything like that he wants to shut down every project. I know Paul pretty well and I
3 think many people in this community do and I don't think that I think there may be some grave
4 misunderstanding. I would like to say for myself personally I did not receive multiple requests
5 to meet with the owner through the City as stated and that there was no we were offered a
6 spot as I've explained to the owners. We were offered a spot to meet and that we checked our
7 schedules and it worked for us and we went ahead and met. And that we were unaware I think
8 that the owner was actually going to be invited or be part of that in any way.

9
10 At any rate I do think that the remaining issue first of all the 150 sf if the if that means all the
11 outdoor seating area and service area that's great if that can be accommodated in 150 sf. So I
12 think that would resolve that issue if that can be said. I think the City might want to alter its
13 conditions to make that clearer than it has been in the past. I think the remaining issue I think
14 many of you picked up on it is how the stairs and elevators are allocated. And I don't
15 understand exactly if the storage space is going to not require any elevator access how people
16 go down, but in talking with people who are responsible for running restaurants is my
17 understanding that storage space is pretty important and that would be used frequently if it is.
18 So I think we were told they wouldn't have access to the lobby, but then some of the lobby
19 space is in yellow that the so how that works exactly might be explained. So with that let me
20 wrap it up and thank you for your attention.

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Acting Chair Waldfogel: Great, thank you very much. So with that we'll close the public hearing. I believe that there are still some nagging questions about what the numbers really are and rather than asking you to answer those right this second if you don't have the... do you have them available right now?

Mr. Owen: Are you talking about the FAR figures? Because we do have those with this submittal right here that was in the at places memo.

Acting Chair Waldfogel: So this is the definitive?

Mr. Owen: This is what the architect of record has provided us today and this would be the this reflects the breakdown that we're that the applicant (interrupted)

Acting Chair Waldfogel: Why don't we start over here and then so I think we just answer the question that we do have that information, but why don't we start with Commissioner Rosenblum?

Commissioner Rosenblum: So I think that we're down to just a couple of pretty small issues, so one is the treatment of the outdoor area. So fortunately we still have this graphic up and there

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1 that initially there was misrepresentation of the nature of the outdoor area. They've now
2 shown that it is exactly this 150 feet. With this definition is there still a discrepancy around the
3 treatment of surface area versus outdoor seating area or does staff feel that this is been
4 satisfied? Is this now a clear issue in staff's mind?

5

6 Mr. Owen: With the FAR diagram that you have that shows right there the 150 sf and yes we're
7 satisfied with that. You have the area that's beyond the property line that's not covered and
8 that wouldn't meet our definition of gross or excuse me, of a covered service area. So for the
9 purposes of including the tabled the areas versus the areas that are in front of the door our
10 interpretation has been that if you're not being served then it's not service area. So the area
11 that you need for ingress/egress in front of the door it doesn't meet our interpretation.
12 However, there's nothing in the code that specifies what covered outdoor service area is so this
13 is where we are with that. So the 150 sf is yeah, sure.

14

15 Mr. Lait: I'm sorry. So just to be a little more succinct the diagram there in what looks like it's a
16 yellow highlighted area that shows ingress/egress we do not count that. We've not counted as
17 far as I know toward service area. So if you exclude that and the balance of the area is 150 sf.
18 We believe that that is consistent with what we understand is being proposed.

19

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1 Commissioner Rosenblum: Ok. I'm personally comfortable with the interpretation in the sense
2 that what you're concerned about with parking is the intensity of use so i.e. does this allow you
3 to seat more people? And so for a wait station that so the same number of waiters are there
4 whether or not they have that as a prep area or ingress/egress from parking standpoint it
5 should be unchanged. The second question or second issue is treatment of a lobby. Since
6 there is no entrance to the restaurant from the lobby and that the lobby is for business use the
7 fact that in theory someone could cut through even though it's a manned structure and has
8 certain hours it doesn't feel to me to be compelling reason to start to allocate portions of the
9 lobby to the restaurant. In terms of the stairs I wanted to ask staff about this, I just want to
10 make sure I'm interpreting this correctly. Let's say that the staircase goes up from the
11 basement to the top floor and that the only use for the restaurant would therefore be someone
12 parking downstairs and using the stairs or staff using the stairs. And so you're allocating a
13 portion of just the basement to the first floor, correct?

14
15 Mr. Owen: It's more allocating the garage function to that hallway. So if you're looking at the
16 specific staircase that's adjacent to the at grade parking space what's been shown here is that
17 the area that where you'd be surfacing from the below grade area to at grade that's basically
18 required access to get out of the building. That has no function in those grey areas unrelated to
19 the parking use basically. So for that purpose it's we consider it garage. It's exempt from floor
20 area.

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Commissioner Rosenblum: I'm not sure [unintelligible].

Mr. Owen: [Unintelligible] does that answer your question? Sorry.

Commissioner Rosenblum: No, I think it might have been a different answer to a different question although maybe I'm just not understanding this correctly. So there's a total area that's taken up by a stairwell and then that's been allocated to office use versus restaurant use. In calculating the amount that is relevant for the restaurant use I would assume it's only the bottom flight of stairs, not the entire staircase which would go up to the upper floors and only from the garage to the first floor. And then you take allocation of that based on the expected traffic from the restaurant use. Is that correct?

Mr. Owen: That's correct, yes.

Commissioner Rosenblum: Ok.

Mr. Lait: Right, but I don't believe we're counting any area any stairway area toward the restaurant and the reason being for that is our parking the gross floor area definition exempts parking facilities that are ancillary in supporting the use. And so our read of this is that a

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1 subterranean parking facility necessarily needs to have egress and in fact two points of egress
2 (interrupted)

3

4 Commissioner Rosenblum: Ok.

5

6 Mr. Lait: From that and so we consider that exit path to get outside of the building which is the
7 same path that somebody would take if they're occupying the restaurant as exempt from floor
8 area.

9

10 Commissioner Rosenblum: I see. Ok, so I didn't, so your answer was the right answer to my
11 question. It seemed to me that the applicant was doing an allocation that resulted in like three
12 square feet from the stairs and that I was trying to interpret that and I understand, but you're
13 saying that there's no reason to even include any square feet. That it all should be exempt.

14

15 Mr. Lait: For the restaurant.

16

17 Mr. Owen: For the restaurant, correct. Yeah, once you start going above the at grade area so
18 going up towards the office then it would count towards the office because it has a function
19 unrelated to parking at that point.

20

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1 Commissioner Rosenblum: Ok. And then there was an issue on the trash room which seems to
2 have been resolved.

3

4 Mr. Owen: Correct.

5

6 Commissioner Rosenblum: Ok. So to my mind we've resolved so the allocation disputes I'm
7 comfortable with. If we go through area by area and the lobby area, the stairwells, etcetera I
8 don't see an issue. And therefore the calculation on the at place is memo should hold and
9 therefore it should be compliant. So I personally think that the applicant has now answered all
10 questions, but I wanted to make sure if staff believes that all questions have now been
11 answered.

12

13 Mr. Lait: Yeah. So during the public testimony Graham and I were just double and triple
14 checking the numbers and what we find is that the project as presented here meets the
15 standards. So the they're two parking spaces short for the restaurant conversion if you add all
16 the 14 percent allocations and there is no standard in the code for how you do that. And in the
17 past we've taken it by floor, we've taken it we've divided it in half, we've taken the percentage,
18 the proportional share. So we just need to pick one and so if you use that proportional
19 allocation this plays out the way it is here at 99.48 parking spaces being required. That actually

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1 rounds down to 99 pursuant to the code. And so they're deficient two spaces which they're
2 proposing to use with the parking lifts.

3

4 Commissioner Rosenblum: Puzzle lifts.

5

6 Mr. Lait: The only other piece I would add is that the lobby if one found that the lobby should
7 be proportionally allocated that would add another 68 roughly square feet.

8

9 Commissioner Rosenblum: Yeah.

10

11 Mr. Lait: And that would trip another parking space.

12

13 Commissioner Rosenblum: Put them over the, yeah. Ok, so then I'm satisfied. I just want to
14 make a quick statement which is that I do think we always want to consider the public interest
15 in any project. And there's a clear desire to develop Cal Ave. which is why we spent the \$7
16 million. It's a long term project. This is exactly in keeping with the purpose of that project.
17 Having an empty space is exactly anti public interest. We get lots of input from resident
18 stakeholders with the subject line assault on neighborhood quality of life which often is
19 equated parking, but there's also a neighborhood quality of life with having a great restaurant
20 or having a street to walk down without empty spaces. So I think we're always trying to

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1 balance these two things. In this case it seems to me that this is compliant, but in addition to
2 that there's a strong interest in having a vibrant space in a place that we're trying to develop.
3 So I hope that residents take those two factors into consideration, but at any rate I have no
4 further questions.

5

6 Commissioner Summa: Ok, well I have a bunch of questions. So since outdoor seating is
7 considered FAR if it's covered and staff agrees with that inside a restaurant there are many
8 areas that exist where they don't increase the number of clients being served because you need
9 to move through the space to serve. You need to move around. I don't under... it seems the
10 intention of the code is to include outdoor seating under a permanent roof area as FAR and I
11 don't see to look at the areas you need to get through it to serve people their food in one case
12 there's no question about it and here you're saying no. So I would recommend including the
13 entire area outside that is under the roof. And the first time I looked at this project I assumed
14 they were going to put because of the heat lamps that extend under the basically under the
15 there's two more heat lamps under the overhang that extend towards the main lobby entrance.
16 I assumed they were going to use that area, but I guess not.

17

18 So I have also a question about the storage area left in the basement. I'm very concerned
19 about two aspects of this project with regards to how well it works for the restaurant client and
20 before I go any further I want to preface my comments with I really hope this restaurant gets

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1 approved and gets approved quickly. I think that probably the appellant if that's what we call
2 Mr. Levinsky can't be blamed for the 10 or 18 months of delays and approving it. I heard both
3 so I don't know which it is because his involvement was very recent. So I did find that to be a
4 bit hyperbolic.

5

6 So with regards to the storage area in the basement how much of that, a lot of it has now been
7 removed, right? We're down to 163 sf or something like that. How much of that storage area
8 was the restaurant relying on so they could operate efficiently? And I don't know if the and do
9 they have enough left?

10

11 Mr. Lait: I'm sorry. So if we're going to have testimony we need to have it at the microphone.

12

13 Mr. Secviar: So I'm sorry. Can you hear me?

14

15 Commissioner Summa: Yeah.

16

17 Mr. Secviar: The original plan was some a little bit over 400 sf and we've limited that based on
18 the opposition's arguments and to get into FAR. We're now at 160 as you mentioned. The
19 minimum for dry storage is 100 so we're right at the limit of our capacity as far as being

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1 efficient and in code with the Health Department as far as dry storage is concerned. But we're
2 right on the limit.

3

4 Commissioner Summa: Ok. So you feel that it's you can still operate your restaurant efficiently?

5

6 Mr. Secviar: I do. I feel the outcome of the argument has made what we had was 400 sf which
7 would made it more 1) a more efficient working business, 2) a better working environment for
8 our employees, and 3) a better experience for our guests. What we have now is 160 and then
9 just barren concrete that we can't use. Otherwise we could have been using, paying taxable
10 rent on. So I think the solution it doesn't no one has a win there. It doesn't increase use. It
11 doesn't add parking. It doesn't take away parking, but it's just now it's empty space because
12 someone had an argument about it. I don't think it's the best outcome. I think we can live with
13 it and we've made multiple compromises that we'll have to live with, but we would prefer 400
14 square feet. Does that answer the question?

15

16 Commissioner Summa: Ok. And when the building plans were approved in 2013 did those plans
17 include a ventilation system for the hood system in the and in the rest in the retail area and did
18 it also include a grease trap in the retail for the retail area?

19

20 [Man]: Yes and yes.

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Commissioner Summa: Ok. So what that indicates to me is that it was built to be a restaurant not general retail and should in 2013 I think everybody would have been served better if it had been parked for a restaurant use. So that's one thing to consider. Another thing for me to consider is that if merely adding more lifts could satisfy both parties which the applicant has already agreed to do and we really count the exterior space accurately and we could also provide more storage why not add more lifts to this project to make it better for everyone and make it compliant from everyone's point of view?

And I still don't understand why the stairway isn't necessary? Is it the case that the restaurant tenant will never be able to use the elevator, they won't have access? And they still have to get things up and down to whatever storage space they have. So that allocation doesn't seem quite correct to me. On the other hand I understand that the code is very vague about these allocations. So maybe one thing we should do is recommend a code change that includes accurate proportional allocation of these common spaces.

So... also another aspect of this to me is that this is a brand new building and to start out with a brand new building that's having that's causing these questions to arise is kind of unfortunate. We have plenty of old buildings that are tricky with regards to our present code, but I think this one could have I think it's a little disappointing that it didn't that there were all these questions

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1 about the uses. So I would recommend that it probably needs one more parking lift as is and
2 that some consideration should be given to the adding more parking lifts and adding more
3 storage space in the basement for the restaurant in the right ratio. I find it a little
4 dissatisfactory to diminish the efficiency of the restaurant when it has already been established
5 that the building owner would add lifts to resolve the issues.

6
7 I had a question about the loading. You indicate that the loading space need has been provided
8 and I assume by that you're talking about using the alley as a loading zone.

9
10 Mr. Owen: So the ARB submittal and then this submittal as well have an area that's adjacent to
11 the transformer. So that's the area that would be providing the loading.

12
13 Commissioner Summa: Ok. And so when, ok, so when that is loading there would be less
14 access. When there is a vehicle using that as a loading zone is there is still an open lane for in
15 the alley? I know that's in our vehicle code. So there's is enough room there for another
16 vehicle to pass? Just regular sized vehicle?

17
18 Mr. Lait: So this we didn't reevaluate all the entitlements for when the project was first
19 [unintelligible]. We were just looking at the discrete outdoor dining and the alcohol use. So I
20 don't know that we got the plans to (interrupted)

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Commissioner Summa: So staff doesn't want to (interrupted)

Mr. Lait: We weren't prepared tonight to talk about the entitlement of the building from many years ago.

Commissioner Summa: Ok. Then one last question is in the conditions of approval and it's Condition 7 which limits the restaurant from to operate after 10:00 p.m. including all clean up and set up activities should be conducted in the business hours. I don't know if the restaurant owners agreed to this. My sister is an executive chef of a large restaurant group on the East Coast and if you have to cease all operations at 10:00 p.m. you probably have to quit letting people in and serving people and taking orders at 7:30 because it takes hours to clean up afterwards. So I don't think that that condition of approval is at all appropriate for the restaurant. And in fact I think, I could be wrong, staff can answer this, but I think the zoning code section that's cited refers to CS and CN zone and this is in CC. And also it does not this location is not within 50 feet of a residential zone. So I would suggest that that is not in the interest of the restaurant at all. As a matter of fact I don't think the restaurant can operate for one day closing that early and I also don't think it's the right it's in the zone. I mean it's in the code. I don't think it's a right code place.

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1 Mr. Lait: So the zoning for the property is CC2.

2

3 Commissioner Summa: Correct.

4

5 Mr. Lait: With a couple one or two overlays [are] retail and so forth. And the section that we're
6 talking about is CC2. And it's a reference to (interrupted)

7

8 Commissioner Summa: It specifically says within if there's a residential use within 50 feet and
9 then it goes on to define the 6:00 to 10:00 thing for CN and CS unless I read that incorrectly, but
10 in any case the restaurant can't operate with that restriction. So... I mean maybe I'm reading it
11 wrong. No. I don't think there's a residential use within 50 feet and I don't think we really
12 mean to say to the restaurant you have to be done taking orders, serving, and all your cleanup
13 and any prep you need to do for the next day by 10:00 p.m.

14

15 Mr. Lait: Yeah.

16

17 Commissioner Summa: I mean that would be like they can have lunch. I'm assuming they're
18 open for dinner.

19

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1 Mr. Lait: So, right. I think you're right and we're I'm not seeing that the same language that's
2 written in the condition. So what we would suggest is that we just match the language as
3 provided in the code.

4

5 Commissioner Summa: Well I think since the goal of everybody in this room right now is to get
6 this restaurant open as quickly as possible. I think we should make sure that the language
7 about the hours reflects the real need of the restaurant.

8

9 Mr. Lait: And there's two, I mean we're not able to change the standard of the code at least
10 through the current process that we have. And it does talk about late night uses and activities
11 and it sets forth the regulations and it restricts business operation between the hours of 10:00
12 p.m. and 6:00 a.m. And so that's the where such uses abut residential so if it doesn't abut
13 residential then it doesn't apply.

14

15 Commissioner Summa: Ok.

16

17 Mr. Lait: Ok. And then the next one does deal with the CN and the CS and so that does not
18 apply. And then the other reference is to well, it's not, that's not even referenced. So
19 (interrupted)

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1 Commissioner Summa: Right.

2

3 Mr. Lait: If it's so I hear your point. If it's not applicable we're not going to, we wouldn't require
4 it.

5

6 Commissioner Summa: Ok. Ok, so I think that sums up in summary though I would like to say
7 that I think there has been there was a little, there was a lot of hyperbole on the part of some
8 of the speakers. It wasn't really justified this evening and I think the fact that so many
9 accommodations have been made to Mr. Levinsky's rather recent request for a hearing has
10 improved the project for everyone. I'm hoping we can further improve it by increasing the
11 storage space and adding lifts in the garage proportionally to accommodate everybody. Thank
12 you.

13

14 Acting Vice-Chair Monk: Sure. I guess I'd like to start by just acknowledging Mr. Levinsky for his
15 diligence in looking at the code, in looking at this project. While the applicant does take issue
16 with his attention to the project I think he does provide a very valuable guidance to the staff
17 and now to us and how we should be looking at projects that come before us. Based on his
18 outreach to staff he did find some questions as to how the code had been interpreted at the
19 time the plan was approved and so from that standpoint I am grateful to him and his colleagues
20 for their attention to the project. I reviewed all of the letters that were exchanged. They were

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1 all included in our packet between Mr. Levinsky and Mr. Owen the Planner. It appeared to me
2 that every question that Mr. Levinsky had was responded to sufficiently. It appeared to me that
3 the code was complied with and in areas where there was a question about it it looked to me
4 that the applicant made the appropriate concessions in order to meet code compliance.

5

6 I also wanted to acknowledge that we received a lot of letters in support of this project. And in
7 fact the applicant or whatever we're referring to Mr. Levinsky as tonight doesn't disagree that
8 this license should be granted. We're here tonight for this granting of an alcohol license, but
9 yet we're talking about square footage.

10

11 It's already been discussed tonight about the vibrancy and the desire to have ground floor
12 spaces utilized that we're not seeing empty buildings and that we're having a vibrant
13 community and that's reflected by people sitting outside enjoying themselves and having meals
14 outdoors. I think that we when we're looking at the code we need to be compliant with our
15 code, but we also need to look at our overreaching policy issues and determine whether or not
16 we're applying a strict application of the code or if we're looking at it in a way that would
17 balance a policy of encouraging robust areas and supporting kind of our California lifestyle of
18 eating outside and also with our California plan.

19

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1 So in my view the CPU, C... CUP. Oh, I wrote it down wrong in my notes. That's why I kept
2 getting confused. It does have some things that I would like to talk about later on, but based
3 according to our packet on Page 105 it's pretty infrequent that we receive requests for
4 restaurant alcohol use and they don't typically get denied. According to the packet eating and
5 drinking establishments contribute to both the neighborhood liveliness as well as our areas
6 economic vitality. So my view is that in both the Comp Plan as well as our the sites land use
7 designation for neighborhood commercial CC2P zoning designation to encourage the ground
8 floor pedestrian oriented uses I believe it's a comparable use in the Cal Ave. area. And I
9 recommend to City Council to approve the CUP. Based on the materials presented tonight and
10 through our packet the applicant and also with what staff has indicated based on inquires
11 Commissioner Rosenblum, sorry, I always get that wrong, the applicant does appear to meet all
12 of the code and all the requirements particularly with FAR and parking. I would encourage
13 Council to have this proceed to the Consent Calendar without any further delay so that this
14 restaurant can get opened.

15
16 I do have some differences of opinion in regards to the interpretation of the code in regards to
17 the outdoor patio and the code section referring to permanent roofed areas that staff has
18 agreed that that area that we're talking about outside that's subject to the 150 square foot.
19 When I read the code to me a roof provides some sort of shelter, protection, things of that
20 nature. When I went and saw this site with Mr. Levinsky and I looked up I don't even know how

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1 high up it was, I think it was close to 30-40 feet. I don't even know how high up this thing was,
2 but it looked to me like very much an architectural design. It did not look to me to have the
3 intended purpose of providing any sort of protection or roofing of any manner. And I believe
4 that in the moving documents that Mr. Levinsky provided he also references another awning of
5 some sort that's even higher up. So I think that I would like to ask Council to consider if they...
6 what is it that consists of a roof? I think in this case that there could be a finding that this area
7 outside really isn't underneath anything that's covered and that it wouldn't be subject to the
8 rules regarding the floor area, the ground floor area.

9
10 The code specifically says that it's a permanently roofed area that is a feature used for sales and
11 so I don't think that this building was built with that [is what I look] looks to me as an aesthetic
12 overhang to be used for the purpose of sales. So in two regards I don't think that it qualifies as
13 a roof under the code section. And that's why I have a difference of opinion with Mr. Levinsky
14 and apparently the staff as well. I bring this up because in the event that we find that there is
15 some sort of problem with the numbers that were presented tonight that might be something
16 that Council could consider an evaluation of in order to bring this building in compliance with
17 the code.

18
19 In addition I saw that the applicant made an agreement tonight about the area around the
20 garbage and likewise the storage area. I think the storage area in the parking structure in the

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1 event that again it's determined at a later point in time that we're that the applicant is
2 exceeding the square footage then I would advocate that the storage area could be considered
3 an accessory to parking and then therefore excluded from the gross floor area.

4

5 In regards to the CUPs in general I they do look a bit mismatched with what the application
6 was. I saw a lot of provisions in there and Commissioner Summa alluded to one of them so I
7 won't iterate it, but I agree that ten o'clock closing and bringing everything inside seems
8 arbitrary. Things like that, no new signage, business hours, no entertainment, all these other
9 things seemed a little bit excessive so I'm hoping that those will be dealt with internally with
10 staff. What I'd like to leave the Council thinking about are couple things: does our building code
11 match our current community vision or vision for the future? Should we allow some more
12 flexibility in allowing variances to achieve greater community goals when there isn't any harm
13 or any safety standards that are being violated? In this instance here it appears that there
14 might be a conflict between overreaching policy and our code depending on how you review
15 the code.

16

17 I suggest we schedule a discussion or the Council have a discussion about outdoor dining and
18 parking provisions and consider whether or not that should be excluded from gross floor area.

19 Mr. Levinsky brings up a good point that we want some consistency and reliance on codes in
20 the future and so I think having some discussion on that would be helpful.

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2 Finally, Mr. Levinsky he also expressed concern about the enforcement of the CUPs. To that I
3 would recommend that the Council consider whether it should direct staff to undertake a study
4 of whether or not our CUPs are being complied with and to what extent and if not is their harm
5 being caused by lack of compliance? Are we losing any collection of fees, things of that nature
6 and undertake an analysis of why and what we can do to enforce the CUPs. That's all for now.
7 Thank you.

8

9 Acting Chair Waldfogel: Great. I guess Commissioner Lauing.

10

11 Commissioner Lauing: Ok, thanks. So just to check the numbers from the memo this is kind of
12 picking up on what Commissioner Rosenblum said. So the memo that we got from Mr. Levinsky
13 dated today had the trash room, common areas, and new outdoor areas. From what I'm
14 understanding the unaccounted gross floor area in number one is gone. The 172 is gone,
15 correct? And the outdoor area you believe is gone as well this incremental 115?

16

17 Mr. Owen: Correct, yes.

18

19 Commissioner Lauing: Alright. And then so the only question in my mind is if you feel that there
20 is some obligation to share any of the common area and I'm hearing no.

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Mr. Owen: Yeah, that's correct; so some of it is being shared currently. So with these, with the allegations that you see here there's no code provision that says that they must be allocated in a certain way. Just and we see it as Jon has indicated we see it done in different ways from different sites around the City.

Commissioner Lauing: Ok. And is the tenant paying for any common area other than the minor stuff that's shared it sounds like no, correct? Ok. I mean it's usually in the numbers when you're doing a leasing and if they're not paying for any common area that's kind of a material point. I think this is just such a fantastic project and we're going to get this thing done one way or another, right? On the other hand there are regulations here to be... you've got to be in compliance with regulations so that's what we're trying to do here. I think that it's really unfortunate it's taking this long to get there, but that's probably a discussion for another night of what can we do internally so that somebody who has a great project like this doesn't have to go through 9 or 10 months of pain. That's bad. That's not what that message should be coming to potential entrepreneurs who are building world class restaurants which this is certain to be. So we got to work on that one no question.

Also concerned a little bit about the timeline which I again, it's late I want to get into that, but it does seem like I heard sort of 18 months and then 9 months that it was approved so something

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1 happened in that nine months which sounds like it was the developer discussing things with the
2 City was, but that was before some of the objections came up or it was when some of the
3 objections were coming up. And then the hearing came out and then there was an appeal
4 which is again perfectly legal and should be part of process. So just as a as an important
5 footnote let's have another discussion about how we can cram some of these things down.

6
7 So I'm seeing that all of these issues have been addressed from the City's point of view and I
8 think from basically from testimony's point of view. I always I just wanted to make one other
9 comment to Commissioner [Note-Acting Vice-Chair] Monk. Whatever kinds of changes that we
10 make to regulations we can maybe we should at the end of the day in this case it still comes
11 down to there's a parking area ratio that ties to FAR and in this case as Commissioner Summa
12 said the developer could do anything, just add some more parking spaces and they'll be all
13 kinds of room for storage and all kinds of room for other stuff. So that's a business decision
14 that I think is being made over here apart from the current or future regulations. So they've got
15 to work that one out. So at this point in time literally the owner/developer could say well let's
16 put in one more parking space and that would solve storage problems and everything else. I
17 think I got that math right. So that might be something that you know should be considered
18 now in the context of getting this thing across the line.

19

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1 One detail question, when this was approved in 2013 I know you've got notice here of 97
2 spaces, 41 onsite 56 provided through payment to California Avenue Parking Assessment
3 District. Ok. So in an incremental situation like this is it an option to make a payment to the
4 California Parking Assessment District instead of lifts?

5

6 Mr. Owen: Not any longer, no.

7

8 Commissioner Lauing: Ok, and so the reverse of that question I think is also yes which is that it
9 is legal to have these lifts in lieu of parking spaces when it changes from retail designation to
10 restaurant designation?

11

12 Mr. Owen: Correct.

13

14 Commissioner Lauing: Ok, ok. So to add more parking space to get more storage area and
15 other areas including outside seating area you would have to add one parking space?

16

17 Mr. Owen: The outdoor dining area at 150 sf and the parking issue ratio for a restaurant is 155
18 so essentially yes.

19

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1 Commissioner Lauing: Right. So again I would put that out there that that's a business decision
2 that can be discussed between the tenant and a landlord, but it seems like adding one more
3 parking space to your point is solves a lot of problems for everybody and gives them a better
4 space for as the restaurant owner said for clients as well as service people and employees. I
5 would encourage folks to look at that. It seems to me that however that we we've gotten
6 there, maybe in the laborious kind of process, but what you're saying is that we are now right
7 on the 27,018 FAR that is the lid for this project.

8
9 Mr. Lait: They're like within 90 sf of it.

10
11 Mr. Owen: Ok 100 so 171.

12
13 Commissioner Lauing: I mean I that it so in that regard for where we are tonight with the
14 exception that I would strongly encourage more parking to be added to address the issue then I
15 would certainly I would support moving forward with it with the changes that have been made.
16 Your witness.

17
18 Commissioner Gardias: Thank you, your honor. So couple of the miracle items, questions. With
19 this current count they pretty much they owe one more parking space, right? Well, now hold
20 on a second, two, but two this is what already has been agreed upon.

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Mr. Owen: They're required to have two additional.

Commissioner Gardias: Exactly, but with those two are when they account for 150 sf as well as the storage area, right?

Mr. Owen: Correct.

Commissioner Gardias: But then if we start considering some other items like the lobby area which I think was 68 sf so usage of that at 14 percent would automatically triggered the third stop, right?

Mr. Owen: Correct.

Commissioner Gardias: So let me ask you the question like this: a if I look at this if you could just help me with the calculations, if we include expanding of the service area and adding another 150, another 200 sf so pretty much the restaurant would utilize the space in front of the entire façade, building. Would this one stall, one additional third stall allow them to utilize the entire front of the building or it would trigger another for (interrupted)

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1 Mr. Owen: They would be if they used the entire frontage of the building in front of the
2 restaurant then that would add an additional say 300 sf or so give or take and that would put
3 them over (interrupted)

4

5 Commissioner Gardias: Let's remove the entrances to the building, right? Because there is a
6 lobby.

7

8 Mr. Owen: Correct. [Unintelligible].

9

10 Commissioner Gardias: So would it trigger the fourth stall requirement?

11

12 Mr. Owen: The problem is you do run up against the 2:1 FAR before you had the parking even.
13 So those outdoor seating areas if you were to extend those and have tables/chairs out in front
14 of the entire lot or the entirety of the restaurant frontage (interrupted)

15

16 Commissioner Gardias: No, I totally understand. It would go total over FAR, right? I totally get
17 it, but the question is that if we just look at the parking requirements would it trigger additional
18 forth stall?

19

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1 Mr. Lait: No. And I say that because we don't count when you're using that calculation I believe
2 your counting area that is in the public right of way. And we don't assign parking for outdoor
3 dining (interrupted)

4

5 Commissioner Gardias: No, I'm only using the area under overhang, that glass overhang.

6

7 Mr. Lait: Right, that's only 150 sf.

8

9 Commissioner Gardias: No, no. I'm not talking about this what's already being accounted for,
10 I'm talking about the area that's to the left of it.

11

12 Mr. Lait: So the where the yellow is?

13

14 Commissioner Gardias: No.

15

16 Mr. Lait: Or the arrows, beyond the arrows?

17

18 Commissioner Gardias: That's I'm talking about the area to the left.

19

20 Mr. Lait: The whole other section?

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Commissioner Gardias: Yes. The whole area.

Mr. Lait: That is (interrupted)

Commissioner Gardias: This would be another 300 sf, right?

Mr. Owen: I don't know if we have the exact numbers on it, but if you included for example all the areas that are between the area that they're showing is 150 sf on this slide all the way to the planters for example so that area in front of the door where you have ingress/egress that would probably bring another 80-90 sf or so, if that's what you're talking about.

Commissioner Gardias: I'm sorry where are they? The planters? I'm talking about the entire area in front of the building except of the area in front of the lobby and some entrances. What I'm saying the question is very simple, how much how many square feet it would be added approximately... No, let me rephrase it. Would addition would utilization of the entire area in front of the entire restaurant would trigger the fourth stall?

Mr. Owen: Certainly, yeah. It would, but they're not proposing it.

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1 Commissioner Gardias: It's regarding if they would go over FAR.

2

3 Mr. Owen: Yes, correct. They do, they'd go well over FAR so it would trigger additional spaces,
4 but it would be a moot point because they wouldn't be in compliance.

5

6 Commissioner Gardias: We sure?

7

8 Mr. Owen: Yeah. If it's that entire space right there (interrupted)

9

10 Commissioner Gardias: Yeah, the reason that I can tell you what's the reason, right? Because I
11 just I found it that it's inconceivable that such a restaurant would be limited with this 150 sf of
12 the service area in front of the building based on a variety of factors and I just don't want to get
13 into the history, right? If there is this is business and then if you we want to have truly great a
14 dining California Avenue we would like to just have them just do business fully as opposed to
15 just restrict them based on that the economic technicalities. So if that is if they would if that
16 expansion would still require them just to add one more third parking stall which is which
17 already originates within the utilization of some other common areas like the lobby I would
18 propose to simply require them to add three more parking, three parking stalls and then allow
19 them to expand the business along the entire facade. Ok, that was my proposal.

20

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1 And just one very quick comment, so in terms of the calculation of how much of the common
2 area I think that in the lack of guidance, prescribed guidance in the municipal code, best
3 practice should take over. So if there was consistent allocation of the common area toward
4 either retail or office that practice should be applied to this calculation and I understand that
5 you don't have this at this moment, but pretty much somebody may request it and they may
6 audit us based on this argument and this is legitimate argument from the auditor's perspective.
7 That if you don't have prescribed regulations show me your best practice and then pretty much
8 if your best practice would be in conflict with either excluding or including that common area
9 we would be pretty much in violation of our own practices. Thank you.

10

11 Acting Chair Waldfogel: Thank you. Sometimes it's an advantage to go last. I've heard a lot of
12 things that I agree with, a couple things that I'm not sure about. I tend to agree with
13 Commissioner Gardias' comments. I mean the building is built. It's possible that mistakes were
14 made along the way in how things were counted. I'm not persuaded that some of these
15 technical adjustments are really that material. I am more convinced on the question that it
16 looks like it was slightly under parked for restaurant from inception. And I think there's an
17 object lesson for us in this that as we look at buildings if it says even if the application says retail
18 we may want to ask a few more questions along the way or we may just want to adjust the
19 code so that retail and restaurant have the same parking requirement. But I think that this it's

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1 sad that the very first tenant in this ground floor space is triggering this debate. That makes me
2 very unhappy about something about the process, something about the way the codes work.

3
4 That said if it were possible to accommodate restaurant use across the entire facade in
5 exchange for maybe a little bit more parking if the applicant were interested in that I would
6 support that. I'd like to ask a legal question which is: we just recently approved parking lifts. I
7 believe we did not approve parking lifts for restaurant and retail use. This parking requirement
8 is being triggered by a conversion to restaurant use so is a parking lift a correct remedy for the
9 for this causation?

10
11 Mr. Lait: We believe so because we're looking at parking for the entire site. The majority of the
12 site is office and so it's the aggregate that we're looking at.

13
14 Acting Chair Waldfogel: Ok, I'll take your word for it that's what the code says.

15
16 Mr. Lait: The code doesn't, the code speaks to into the circumstances in which you can use lifts
17 and it identifies office spaces as one of those land uses that permit it and the collection of land
18 uses on the site include the restaurant and the office. So the parking for the site is provided
19 parking for both land uses.

20

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1 Acting Chair Waldfogel: Ok, so I shouldn't really lean on this causation question. It's really that
2 there's a causation, but then the remedy is in the totality of the box so to speak.

3

4 Mr. Lait: Yes.

5

6 Acting Chair Waldfogel: So anyway that's... As I said I would support that. I would support
7 things that make the restaurant work whether it's a little bit more seating space or more
8 efficient storage space or whatever these things are. I would support these as long as we can
9 remedy them appropriately with parking and be a little less focused on whether we possibly go
10 a few feet above on FAR because the building is built. Ok, anyone else want to comment? Do
11 we have a Motion or? Sorry, Commissioner Rosenblum.

12

13 Commissioner Rosenblum: Yeah, I like this direction, but I also have to say that I kind of fear
14 that we're just going to just delay the process even more. I actually 100 percent agree with
15 Commissioner Gardias' area of inquiry so if we could add another lift that would add two net
16 spaces and therefore be able to exploit the entire front of the building for outdoor seating
17 thereby in line with what we want on Cal Ave., world class restaurant that can actually expand
18 and sufficient parking. Wouldn't everybody be happy, but then I get queasy and think oh God,
19 now we're going to like reapply for something and get exceptions and exemptions. And so I'm
20 wondering if it has to be one or the other? If you can divide this into parts, which is I would

-
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1 make a Motion to approve as given the changes that have been presented to us today in the at
2 places memo. And then they could still at a later time apply for an exemption to expand. And
3 then that would be an FAR exemption and that the quid pro quo would be adding more
4 parking. That would benefit the neighborhood by being over parked at that point, but I fear
5 adding exemptions and stuff at this point will add to the length of the process. But I have to say
6 I agree with the spirit of what's being proposed, but I just had one quick question for the
7 applicant who's still here. We talked about adding a space. Has that been considered and
8 rejected? That seems to be the most obvious way of cutting.

9
10 Mr. Conroe: I was hoping someone would ask me that question. The unfortunately the way the
11 code's written you can only use puzzle lifts which require two at a time. You can only buy them
12 two at a time. You can't buy them one at a time. So if you do vertical tandems that allows you
13 to buy one at a time. That's actually originally proposed those and they staff kabashed it so
14 because they want independent access. So the punchline is you can only add two at a time.
15 There's also some structural other constraints that made it apart from economics or anything
16 else adding more puzzle lifts, but if you add them you buy them two at a time.

17
18 Commissioner Lauing: You going to make that Motion because I would second it?

19

-
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1 Acting Vice-Chair Monk: I just had a question. What exemptions are they asking for because I
2 haven't...?

3
4 Commissioner Rosenblum: They're not. I'm just saying. I'm saying that my comment was that I
5 completely agree with Commissioner Gardias and I believe Acting Chair Waldfogel agrees with
6 this thrust that, but it would require I think a exemption that it would be over FAR. They would
7 then have covered service area that would be in excess and therefore they would be in
8 violation of FAR and yada yada. But it's a so anyway that if we went that route then it would
9 require a slightly different process; a variance, sorry. Yeah. Can I make the Motion or?

10
11 Acting Chair Waldfogel: I'm sorry, but do you have a comment?

12
13 Mr. Lait: Yeah, well regarding the Motion. I just wanted to remind the Commission that we had
14 a memo that we transmitted and so if you are making a Motion for approval we'd suggest that
15 you include this with the omission of Condition Number 7 which has to do with the hours of
16 operation. We're not finding residential uses within 50 feet of the site. And even if there are
17 this code provision still prevails and it doesn't really need to be in these conditions of approval.
18 And as you're thinking about your Motion where staff is right now we're this is sort of our
19 baseline without all my scribbles on here. And so this assumes the a prorated allocation of 14
20 percent for the common areas. It does not include a prorated allocation for the lobby space.

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1 That's obviously been a point of conversation for the Commission. If you end up going that way
2 there's an additional parking space that would be required and you just heard the testimony a
3 moment ago from the property owner about how that gets arranged. But this is if you can
4 make, if you're heading toward approval if you can use this as the basis for our starting point in
5 our memo that would be helpful.

6

7 MOTION

8

9 Commissioner Rosenblum: So I would make a Motion that PTC recommends the CUP be
10 granted upon the area usage as represented in the at places that was provided to us today.

11

12 SECOND

13

14 Commissioner Lauing: Second.

15

16 Commissioner Rosenblum: Yeah so removing 7 from staff report in the conditions of approval.

17

18 Acting Chair Waldfogel: If you'd like to well we have a second. So we have a Motion and
19 second. If you'd like to make a let's follow Chair Alcheck's process. Why don't you make an
20 Unfriendly Amendment, we get a second, we'll take a vote on it and go for it.

-
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UNFRIENDLY AMENDMENT #1

Commissioner Summa: So I would like to make an amendment that we include the one extra space based on the allocation including the lobby which I believe the lobby is going to be open during regular business hours and people will be entering the restaurant from the likely from the big parking lot behind the building through the lobby and it just include, it just requires one more puzzle lift and if you have to buy them in pairs you get an extra one. I don't think it puts an undue burden on the property owner and I think it adds value and I think it's fair. Is that acceptable?

Commissioner Rosenblum: I don't accept it, but I don't have to. You just need to find a second.

SECOND

Commissioner Gardias: I will second it, but I would like to also add to it. I have since I second it I have this right to expand it.

[Man]: You know it's late.

-
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1 Commissioner Gardias: Well, sorry sometimes we're stuck here till midnight. So welcome back
2 to 2016.

3
4 Mr. Lait: So if I just procedurally just to help. In the past I think what the Commission has done
5 is there's been a first a second and you can rather than tangle that one up which you'll need the
6 original makers support for that you want to vote on that one and then go on to your additional
7 Unfriendly Amendment and try to get a second for that. You're going to need a, you're going to
8 need support anyways because you'll need support from the Motion maker.

9
10 Commissioner Gardias: Sorry, you've lost me here.

11
12 Mr. Lait: You're going to need so whatever your amendment is that you're contemplating
13 you're going to need the support of least one other Commissioner.

14
15 Commissioner Gardias: Yes.

16
17 Mr. Lait: And so for some for clarity I would suggest the Commission make a vote on this one
18 Unfriendly Amendment now since you have a first and a second and then you can make your
19 Unfriendly Amendment, get a second on that and then you can vote on that. Actually that's
20 how I think the Chair has done it in the past. You're going to try (interrupted)

-
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SECOND TO UNFRIENDLY AMENDMENT #1 WITHDRAWN

Commissioner Gardias: [Unintelligible] understand. Let me think about this because there is a different way of also addressing this. So let me maybe withdraw my second. I will approach it differently.

Acting Chair Waldfogel: Ok, so do we have a second? Apparently not. Ok, so let's hear the alternate.

Commissioner Gardias: So I'd like to just make a substantive Motion.

Mr. Lait: To Motion or...

Commissioner Gardias: Yes.

Mr. Lait: Ok, Substitute Motion.

SUBSTITUTE MOTION

-
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1 Commissioner Gardias: Substitute Motion to add third, to request third parking stall and allow
2 the business to operate and allow the service area to expands to the entire span of the facade.

3

4 Commissioner Lauing: No, needs a second. Needs a second.

5

6 Acting Chair Waldfoegel: Yeah, needs a second.

7

8 Commissioner Gardias: Needs, I'm looking for a second, yes.

9

10 Commissioner Summa: And the reason I'm not going to second that is because I do not I believe
11 they would need a variance to achieve that to exceed the FAR and it's not on, it wasn't
12 agendized tonight. The applicant didn't even ask for it. So I think you're over complicating
13 things. So I can't.

14

15 Commissioner Gardias: So let me just if I may ask applicant, would the applicant be just I know
16 that we have a Motion on the floor, but just let me ask you from your perspective because you
17 should have been asked this question. Would you consider such arrangement that to pay more
18 because it would cost you more for additional parking space in exchange for the right to
19 operate along the entire front elevation?

20

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1 Mr. Conroe: I agree with the Commissioner who made the comment that it's going to torture
2 the process and it's going to expose us to more risk and a lot more delay because there will be
3 appeals on the variance. So we absolutely do not want a variance under any circumstance.
4 And as I said before there is a question of the feasibility of adding any more parking and that's
5 why we're trying to keep to two spaces. So if we had if you added allocation of lobby as an
6 example and that added 40 feet or something we would reduce the garage storage by 40 feet.
7 So we'd have 40 feet less and as you heard that doesn't help the restaurant, but we will be
8 adding just two spaces and we will be in compliance and we will stay in compliance with the
9 FAR and the parking and we'll just the right size things to make the numbers work which is what
10 we've done all along. Thank you.

11
12 Commissioner Gardias: Thank you very much for the...

13
14 Mr. Lait: So just so I'm not hearing a second to that Motion, but... Ok and that was a Substitute
15 Motion and so just so the Commission is just so we all understand what we're saying here. That
16 scenario that was described would not require a variance. There is based on the sheet, the
17 basis that we're working from here, there is room to more outdoor dining area in the front if
18 you accept the proportional allocations that we've talked about. And but it does require
19 additional parking. And it would require a total of 100 and... 100.35 parking spaces which
20 would be rounded down to 100. But that said, it's not the proposal that's before the

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1 Commission tonight and it does not preclude the applicant for at some point in the future if
2 they decide that they want to extend their outdoor dining area from coming to the Planning
3 Department outside of a discretionary process and saying other than ARB and seeking to
4 amend the approval. So that option still exists whether they choose to do it at some point near
5 or in the future.

6

7 SUBSTITUE MOTION FAILED

8

9 Acting Chair Waldfogel: Ok, ok. Well, I think that we're back to the original Motion then.
10 Original Motion with a second. Do we have any other amendments anyone would like to
11 propose? Yes.

12

13 Acting Vice-Chair Monk: I just have one comment that I want to get on the record and a
14 Possible Amendment. I just want to make their recommendation that all applicants allocate the
15 common areas as they see fit so long as they remain within their FAR. As far as the Motion at
16 hand I want to look at Item Number 10 where it says it expires in one year. What happens in a
17 year?

18

19 Mr. Owen: So if I can answer that question typically we have that one year provision so that it's
20 a timeframe after the project is entitled to the point where they apply for a building permit. So

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1 if they haven't applied for and secured a building permit within one year's time then we they
2 would either need to request an extension which is an administrative process or it would lapse.

3

4 Acting Vice-Chair Monk: Ok, so that doesn't apply to the license?

5

6 Mr. Lait: [Well, to the alcohol license]. That's a separate issue. It's just this entitlement for the
7 CUP.

8

9 Acting Vice-Chair Monk: Ok.

10

11 Mr. Lait: Based on what I'm hearing from the applicant their I don't think we're going to be
12 waiting a year for them to pull their permits.

13

14 Acting Chair Waldfogel: Great.

15

16 Mr. Lait: Permits are, have been issued the and the permit has been implemented or active
17 then the entitlement goes in perpetuity.

18

19 Acting Vice-Chair Monk: Thank you.

20

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1 Mr. Lait: Or until otherwise the use is abandoned or something.

2

3 Acting Chair Waldfogel: Ok, any further discussion? Yes.

4

5 UNFRIENDLY AMENDMENT #2

6

7 Commissioner Gardias: Yes. I'd like to make a Motion. I mean I'm sorry I would like to make a

8 Unfriendly Amendment. And I'd like to make Friendly [Note-Unfriendly] Amendment exactly as

9 Commissioner Summa stated it so pretty much there would be a third plane requirement of a

10 third parking stall.

11

12 SECOND

13

14 Commissioner Summa: I'll second that.

15

16 Acting Chair Waldfogel: Ok, we have a Motion [Note-Unfriendly Amendment] and a second.

17 Would you like to speak to the Motion?

18

19 Commissioner Gardias: Yes. I mean pretty much that the reason is like this that if we just if this

20 is approved as is it just opens the door to variety of different interpretations and then it will

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1 create a domino effect on some other restaurants and then variety of interpretations and we'll
2 just allow the other applicants to push against the limit and then point at this project and then
3 a request more FAR without that would be unparked. So I think that pretty much as is it would
4 create the risk for the City because it would cost ultimately taxpayer more money for garages
5 like we would be building very soon in the California Avenue area. That's the reason.

6

7 Acting Chair Waldfogel: Would you like to speak to your second? Anyone else?

8

9 Commissioner Lauing: What's the wording of the Motion [Note-Unfriendly Amendment]? I'm
10 not sure I understand.

11

12 Commissioner Rosenblum: From a process standpoint I'm a little confused because I didn't get
13 a chance speak to my Motion which is the original Motion and now we have an amendment.
14 So should we talk about the original Motion and what the language is and then what's being
15 proposed I believe is an amendment that says and they have to add additional parking, right? Is
16 that correct?

17

18 Commissioner Gardias: That's correct, yes.

19

-
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1 Commissioner Rosenblum: Ok, so the original Motion is that we approve the CUP for the
2 alcohol license for this building with the staff's conditions of approval minus Item 7 having to do
3 without hours. And then there is an Unfriendly Amendment with the second that suggests they
4 need to add an additional two tandem mechanical parking spaces I believe. No, because they
5 come in pairs.

6
7 Mr. Lait: I think that's the result (interrupted)

8
9 Commissioner Rosenblum: They need to add one space and then they have to figure how to do
10 it.

11
12 Mr. Lait: Right. I think that's the result. The Unfriendly Amendment is to (interrupted)

13
14 Commissioner Rosenblum: Is to add one.

15
16 Mr. Lait: Count the lobby space at a 14 percent proportional area which would result in the
17 additional parking space.

18
19 Commissioner Rosenblum: So can I can speak to my initial Motion?
20

-
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1 Acting Chair Waldfogel: Yes, please.

2

3 Commissioner Rosenblum: Is that where we are? Ok, so I we've talked here about the same
4 precedent and we have an applicant that has I believe at least it satisfied, so I am satisfied that
5 the applicant has fulfilled the requirements for the CUP. I believe they've gone through each
6 common space which was after they made concession on the storage and trash areas was the
7 last remaining issue. The argument really comes down to will people use the lobby or not? Will
8 people use the elevator or not? And so we're down to the percentage of people passing
9 through the lobby. And given the hours of the lobby, the position of the lobby, and the fact
10 there's no door from the restaurant to the lobby I think that the applicant has demonstrated
11 that it's not that their calculation and allocation is proper. So it holds up to both common sense
12 and the code. And so I think that the precedent for us to say well, it'd be good to have another
13 space there is also it's not great. And like I said I think we're trying to balance a public interest
14 of having a great restaurant in a place that we're trying to develop for great restaurants against
15 further holding up the process. So to me the applicant's demonstrated and the logic holds.
16 We've pressed on this I think pretty diligently. So my Motion is that they fulfill the
17 requirements and that this is aligned with the public interest and the City's interest.

18

19 Commissioner Lauing: So as the second?

20

-
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1 Acting Chair Waldfogel: I'm sorry.

2

3 Commissioner Lauing: As the second can I just comment?

4

5 Acting Chair Waldfogel: Yes, please.

6

7 Commissioner Lauing: So I agree with the comments of the maker of the Motion. I think that
8 the appeal was perfectly legal and appropriate. There were a couple mistakes that happened
9 to be made, mistakes made, are made on the part of the City and then there was a negotiation
10 on the part of the developer which is appropriate. And staff is telling us with all of their wisdom
11 and experience that they have now hit the number of the fair FAR. Personally I would like them
12 to add another space as I spoke to earlier, but I don't think we should legislate that at this point
13 in the process. So I would continue to support the Motion.

14

15 Acting Chair Waldfogel: Great.

16

17 Mr. Lait: So just one last thing so that we can minimize any confusion at Council when this goes
18 on June 12th I believe. There is a if you can look at the sheet that was presented here on the
19 existing plan for the basement. There are four dark grey shaded boxes. The one on the lower
20 left is the bicycle parking. That one would stay. That's all these are existing. And so the other

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1 three boxes need to be removed. And the question that we identified in the staff report was do
2 we require the removal of the chain link fence and have that base be part of the just the open
3 air parking subterranean garage or do we consider those bicycle parking and exempt from the
4 code because they're otherwise that's exempt from the accessory parking use. So if the
5 Commission could provide some clarification as to your interest on approaching that issue.

6

7 Acting Chair Waldfoegel: Commissioner Rosenblum since you made the original Motion I'll give
8 you the first whack at this one.

9

10 Commissioner Rosenblum: Yeah, I mean I think it's a bit, I mean again we should have
11 addressed this in the beginning, right? And so now it's a bit weird for me to shoehorn it into a
12 Motion and frankly I'm indifferent, but it seems most logical thing to do is remove the chain link
13 fence and then they can if they choose to put in bicycle parking in a certain subset of that area
14 then that would be logical. But it seems like just designating all of it bicycle parking whether or
15 not it's a good place for bicycles whether or not they have enough bicycles to park doesn't
16 seem great. And so it seems like the most logical thing is to remove the chain link fence and
17 make it part of the garage and therefore fulfill the requirement. So that would be my like quick,
18 my hot take.

19

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1 Acting Chair Waldfogel: Let me just ask a point of clarification. If the chain link fence is
2 removed does it become functional space in any fashion or is it just dead space?

3

4 Mr. Owen: The effect is that it's just reverted to exempt garage space. So it wouldn't serve a
5 function. It would just be (interrupted)

6

7 Acting Chair Waldfogel: So we wouldn't (interrupted)

8

9 Mr. Owen: Interstitial space in the garage.

10

11 Acting Chair Waldfogel: No parking program available. So we're not I mean we're not creating
12 anything. I mean we're just taking something away.

13

14 Mr. Owen: Correct.

15

16 Acting Chair Waldfogel: Yeah. So does that affect your feeling about that?

17

18 Commissioner Rosenblum: No because then they could put a bike rack. I do expect that they
19 would probably put a bike rack in part of it. Yeah, I think that there could certainly be uses, but
20 it's I think hard to sit here right now and say 100 percent of that space needs to be used for

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1 bicycle parking. I think that once it's open and that the expectation is that should be used for
2 something, but it's no longer appropriate as a closed off storage area, it's no longer a
3 (interrupted)

4
5 Acting Chair Waldfoegel: I'm just wondering whether we have any interest in this at all? I mean
6 if it remains a closed off storage area does that make any difference? Do we have an interest?
7 If we have an interest then we should enforce it.

8
9 Commissioner Lauing: Eventually It could be electric bikes, maybe motorcycles?

10
11 Mr. Lait: So that Motion that you were? Were you amending your Motion?

12
13 Commissioner Rosenblum: Yes. So then if we need to consider this as well?

14
15 Mr. Lait: Yeah.

16
17 AMENDED MOTION

18

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1 Commissioner Rosenblum: Then the Motion would say and the storage spaces as identified on
2 this exhibit and so you should give it [marks] shall have the chain link fence removed and it shall
3 be part of the garage area.

4

5 Mr. Lait: Yeah.

6

7 Acting Chair Waldfogel: Ok, so we have we have an Amended Motion with a second. Any
8 further discussion or additional... Yes.

9

10 Commissioner Gardias: I just want a clarification, right, because just chain link is being removed,
11 but then besides of this removal there was a certain purpose of this area utilization. It was I
12 believe that was intentionally considered for restaurant storage. Is this right?

13

14 Mr. Lait: [Unintelligible] though. The restaurant storage area would stay.

15

16 Commissioner Gardias: No, no. But I'm talking about this shaded areas where that are...

17

18 Mr. Lait: Not all that storage area (interrupted)

19

20 Commissioner Gardias: [unintelligible] today.

-
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Mr. Lait: Yeah, not (interrupted)

Commissioner Gardias: We going to remove the fence, right, and then, but then in original intention, original purpose of this area was related to the restaurant?

Mr. Owen: The portion that you see that's so you see the area that's in purple in the garage. So the area just beneath that most of that area was originally going to be for the storage. The 430 sf of storage.

Commissioner Gardias: Of the restaurant.

Mr. Owen: Right. The other two areas were not.

Commissioner Gardias: Yeah so it's hard [for me] I mean if there was an original intention of the restaurant to use it for a storage, right, I just I cannot foresee that suddenly the restaurant with storage needs will suddenly that this needs will suddenly evaporate, right? So for this result I just I believe that sooner or later the space in the garage may be utilized regardless of some access requirement or some inspection requirements that we may place upon this upon the restaurant owner to comply with this. There is a great possibility that within time it will pretty

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1 much be neglected and utilized with original purpose because if they needed the space they
2 will find the space. So for this reason I think that it should be considered as in addition to the
3 lobby area as part of the common area that would be counted toward the parking stall.

4

5 Mr. Lait: So unless that's made into an amended Motion I think you can call for (interrupted)

6

7 Acting Chair Waldfogel: Right, well so there a second? Is so the Motion is to count that as?

8

9 Commissioner Gardias: To include it in the proportion of the common area.

10

11 Acting Chair Waldfogel: Ok and...

12

13 UNFRIENDLY AMENDMENT #3

14

15 Commissioner Gardias: Yeah, to include it in the proportion of the common area that would be
16 allocated toward the restaurant. Include that shaded area below this purple rectangle as the
17 count toward the common area that will be proportionally allocated at the 14 percent rate
18 toward the restaurant use.

19

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1 Mr. Lait: Right. So if I can just so I think we're hearing clearly from the applicant that they're
2 going to work with the 160 sf. I mean if add more square footage to count toward storage they
3 need to add another parking space. They've told us that that's two tandem parking spaces.
4 We've heard that the property owner is not that's not the application that's before you. It's not
5 their request. They don't want to do that. If we find out later that the restaurant is operating
6 and is using this as storage area there's a remedy, remove it or seek the necessary approvals to
7 extend the storage. Nothing here prevents the applicant, property owner, restaurant tenat
8 from coming back and saying we need more storage and we recognize that we need to provide
9 the additional lifts and staff this is what we need to do. So there's room for flexibility on this in
10 the future if needed.

11
12 Acting Chair Waldfogel: Ok, so do we have a second?

13
14 Commissioner Summa: Second for what now?

15
16 Acting Chair Waldfogel: Second for an amendment to count the storage space as part of the
17 common space attributed to the restaurant.

18
19 Commissioner Lauing: The ex-storage space.

20

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1 UNFRIENDLY AMENDMENT #3 FAILED

2

3 Acting Chair Waldfogel: Ex-storage space. Ok, no second. Sorry. Ok, so we have a Motion on
4 the floor with a second. Any further discussion, any other comments? And [I'll just] say I will
5 support this. I'm a little unhappy that we find ourselves in this situation with this building that
6 this change in use is triggering so much complexity that we should have anticipated this earlier
7 in the process and we should just look at our processes going forward. But in this case I don't
8 think that that's something that we should necessarily lay on the applicant. So anyhow we have
9 a Motion on the floor, second. All in favor?

10

11 Mr. Owen: Oh, just to be clear we should probably [think of the] Motion on the previous
12 amendment. I'm sorry a vote on the previous amendment. [unintelligible-crosstalk off mike]

13

14 Mr. Lait: Oh, right, right, right, right. So right. You had the Motion and (interrupted)

15

16 Acting Chair Waldfogel: Ok, sorry about that.

17

18 Mr. Lait: Commissioner Summa (interrupted)

19

20 Acting Chair Waldfogel: We're all getting anxious now.

-
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Mr. Lait: You seconded the Motion to count a lobby. So (interrupted)

Acting Chair Waldfogel: Ok, yeah so we have it we have an Unfriendly Amendment to add to count what is it, part of the lobby?

Commissioner Summa: That the lobby be added to the proportional (interrupted)

Acting Chair Waldfogel: Yeah.

Commissioner Summa: Accounting which would trigger (interrupted)

[Man]: Right.

VOTE

Acting Chair Waldfogel: Ok, so we have that Unfriendly Amendment with a second. All in favor?
All opposed? Ok, so that one loses 2-4.

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1 UNFRIENDLY AMENDMENT #2 FAILED (2-4-0-1, Commissioners Gardias and Summa for, Chair
2 Alcheck absent)

3

4 Mr. Lait: With Commissioners Gardias and Summa against or for.

5

6 VOTE

7

8 Acting Chair Waldfogel: Commissioners... yes, Commissioners Gard, yes. Oh now we go back to
9 the original Motion. Are we good now? Ok, Motion on the floor. So all in favor? All opposed?
10 Any abstentions? So we have one abstention, Commissioner Gardias, otherwise the Motion
11 carries. Do you want to count?

12

13 MOTION PASSED (5-0-1-1, Commissioner Gardias abstained, Chair Alcheck absent)

14

15 Acting Chair Waldfogel: Ok, great. It's getting late.

16

17 Mr. Lait: But that item's done.

18

19 Acting Chair Waldfogel: That item is done.

20

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