

ATTACHMENT NO. 24

June 20, 2018

Dana Amy Sayles, Chair
and Members of the Planning Commission
City of Culver City
9770 Culver Blvd.
Culver City, CA 90232

Re: Brick and Machine (the "Project")
9735 Washington Blvd.
Case No. P2017-0021
Hearing Date: June 27, 2018

Chair Sayles and Members of the Planning Commission:

This office represents Clarett West Development, LLC ("Clarett"), the applicant in the above-referenced case. The purpose of this letter is to present Clarett's proposed conditions of approval relative to parking, and to request that the Planning Commission recommend approval of these proposed conditions in lieu of Condition No. 18 as currently proposed by staff.

Background

In our letter to the Planning Commission dated February 26, 2018, we expressed concerns regarding proposed special Condition No. 18, which currently provides as follows:

18. In addition to the TDM conditions in Condition No. 17, described above, and subject to City Council approval in accordance with CCMC Section 17.320.025 – 'Alternative Parking Provisions', the number of required parking spaces shall be reduced by twenty four (24) parking spaces though the use of an in-lieu fee to be paid by Applicant. The in-lieu fee shall be deposited in a fund administered by the City for the purpose of future development of remote parking facilities outside of the immediate downtown area or other mobility measures as necessary to reduce vehicle trips and traffic congestion that are associated with under parked older

Downtown developments. Subject to approval by City Council resolution, the in-lieu fee: (a) would address the project code required parking shortage; (b) would be based upon a construction contract supplied by the Applicant for cost of the total Project parking and the cost per space, and would be calculated as the cost per space multiplied by the net reduction of twenty-four (24) parking spaces; and (c) would be paid to the City in an amount not less than 2/3 of the cost that would otherwise apply to construct the 24 parking spaces prior to Certificate of Occupancy.

The original staff report in this case estimates that the cost of constructing 24 parking spaces would be approximately \$1,200,000. Thus, Special Condition No. 18, as currently proposed, would require payment in the approximate amount of \$800,000 (the "In-lieu Parking Fee"). The In-lieu Parking Fee would be in addition to the cost of the TDM measures already required by proposed Condition No. 17.

Imposition of Proposed Condition No. 18 would severely impact the economic viability of the proposed Brick and Machine project (the "Project"). At best, Clarett would be required to remove the proposed rooftop restaurant and replace some or all of the proposed ground floor restaurants with specialty retail uses in order to bring the project into strict compliance with the City's parking requirements, thereby avoiding the application of Proposed Condition No. 18. At worst, Proposed Condition No. 18 would render the Project economically infeasible.

Furthermore, Proposed Condition No. 18 is unnecessary because the project will not create or contribute to the need for additional parking facilities in the downtown area. Specifically, as discussed in the staff report, a Shared Parking Demand Study ("Study") was conducted by Crain and Associates. The Study, which analyzed parking reduction and shared parking profiles based on the parking demand ratios and methodology provided in the Urban Land Institute's Shared Parking Handbook, demonstrates that the project's proposed 215 off-street parking spaces will meet the Project's anticipated peak demand of 214 spaces.

As explained in our February 26, 2018 letter to the Planning Commission, the City bears the burden of establishing that (1) Proposed Condition No. 18 has an "essential nexus" with a legitimate government interest that would justify denial of the development permit, and (2) there is a "rough proportionality" between the monetary exaction and the anticipated impact of the proposed development. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 906 (applying to ad hoc monetary exactions the heightened scrutiny tests of *Nollan v. California Coastal Com'n* (1987) 483 U.S. 825 and *Dolan v. City of Tigard* (1994) 512 U.S. 374). In this case, the Study demonstrates that the proposed 215 parking spaces will meet the Project's demand and therefore

will not create a need for new parking in the downtown area. Therefore, the proposed In-Lieu Parking Fee does not satisfy either the "essential nexus" or "rough proportionality" prongs of the applicable legal test.

In short, while we understand the City's desire to generate funds that can be used to develop remote parking facilities or implement mobility measures to reduce vehicle trips and traffic congestion in the downtown area, we submit that Proposed Condition No. 18 would impose burdens on the Project that are not in proportion to its size, scale, or potential impacts.

Proposed Conditions

Since the Planning Commission's February 28, 2018 hearing, Clarett has worked with the Culver City Downtown Business Association (DBA) and other stakeholders in an effort to develop an alternative to Proposed Condition No. 18. Specifically, Clarett has developed proposed conditions that would (1) provide funding for the City's mobility program in an amount that is proportional to the size and potential impacts of the Project and consistent with the mobility fee charged by the City for other recent projects in the vicinity, and (2) would directly address the current shortage of convenient parking for patrons and employees of existing restaurants and stores in the downtown area. A copy of the proposed conditions is attached for your consideration.

The 24 parking spaces that would be provided free of charge to the DBA for use by patrons or employees of businesses in the downtown area under proposed measure no. 2 would constitute a significant public benefit, the value of which can be measured based on the market value of the spaces. Specifically, Clarett estimates that, absent proposed condition no. 2, the 24 parking spaces could potentially generate approximately \$73,000 in parking fee revenues per year. Thus, over the specified ten year period, proposed measure no. 2 would have a value to the public of approximately \$730,000. This would be in addition to the approximately \$136,000 one-time contribution to the City's mobility fund under proposed condition no. 1.

For all of these reasons, we respectfully request that the Planning Commission consider recommending that the attached conditions be imposed in lieu of Proposed Condition No. 18.

Dana Amy Sayles, Chair
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Thank you for your consideration.

Very truly yours,



JOHN M. BOWMAN
Elkins Kalt Weintraub Reuben Gartside LLP

JMB:jmb
Attachment

cc: (Via email)
Sol Blumenfeld, Director of Community Development
Michael Allen, Planning Manager
Jose Mendivil, Associate Planner

PROPOSED MEASURES

1. The Applicant shall contribute to a dedicated mobility fund the amount of \$2.00 per square foot of new development (\$136,006) for City transportation and mobility improvements (which may include biking and pedestrian improvements or micro transit) that the City is currently considering or may consider.
2. A covenant and agreement, on a form provided by the Planning Division and in a form and substance acceptable to the City Attorney, shall be signed by the Property Owner and recorded in the County Recorder's Office, requiring the Property Owner to make twenty-four (24) parking spaces available to the Culver City Downtown Business Association (DBA), at no cost to DBA, for use by patrons or employees of businesses in the downtown area, between the hours of 6:00 p.m. and 11:00 p.m. on weekdays, and between the hours of 5:00 p.m. and 11:00 p.m. on Saturday and Sunday, every day except (i) national holidays; (ii) when the parking area is closed for maintenance, renovation, or repairs; (iii) when the Property Owner elects to use the parking area for private events, provided that such private events shall not exceed fifteen (15) evenings per year; and (iv) when it would be impossible or impractical to make the parking available to the public due to circumstances beyond the Property Owner's control. The covenant and agreement shall run with the land and shall be binding on any subsequent owners, and tenants or occupants of the Property. The covenant and agreement shall expire and have no further force or effect ten (10) years after the date of recordation. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Planning Division.