

Appeal Overview 40 Main

City Council Meeting

April 9, 2019



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Overview

- Question on Appeal
- Procedure
- Due Process



Question on Appeal

- Does the proposed project qualify for SB 35?
 - In other words, is it a project that meets the statutory requirements for SB 35?
- Appeal is de novo



Due Process

- Procedural due process requires that the hearing be conducted before a *reasonably impartial, noninvolved reviewer*.
- This means Council should remain open to deciding the appeal either way until the close of the public hearing.
- Council should make ex parte disclosures (i.e. disclose site visits, outside meetings, etc.)



Procedure

- *Step 1:* Staff presents report (10 minutes)
 - Questions allowed (no opinions)
- *Step 2:* Ex Parte Disclosures
- *Step 3:* Public Hearing Opened
 - Appellant presents (10 minutes)
 - Public Comment
 - Appellant Rebuttal (5 minutes)
- *Step 4:* Public Hearing Closed
- *Step 5:* Council deliberations and direction



Los Altos City Council

40 Main Street

Tuesday, April 9, 2019

*Los Altos City Attorney's Office &
Community Development Department*



40 Main Street



COUNCIL CONSIDERATION

- Appeal of Staff's determination that the project at 40 Main Street does not qualify for streamlined processing under SB 35
- This is not a hearing on the merits of the project. The subject of the appeal is whether the project qualifies for SB 35

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STAFF'S REASONS FOR DENIAL

- Project exceeds objective 35% density bonus increase standard
- Project does not comply with objective standards for parking areas
- Development does not comply with 2/3 residential requirement
- Project conflicts with objective standards of Downtown Design Guidelines
- Base density not demonstrated

Project application remains incomplete – inadequate to complete assessment of project and health/safety issues

40 Main Street



EXISTING CONDITIONS

- 6,950 square foot lot;
- General Plan Designation – Downtown Commercial (DC);
- CRS/OAD Zone District – Commercial Retail Sales/Office;
- 1-Story commercial office building;
- 2,127 square feet of existing space;
- Driveway access between Main Street and Public Plaza 10

40 Main Street



PROPOSED PROJECT

- Five-story mixed use building with two underground levels.
- Office space on the first level.
- Fifteen residential rental units on levels two to five.
- Two of the fifteen residential rental units proposed as below market rate (BMR) units.
- Top of roof deck is at 56'6"; highest point on building is 66'4".
- Two levels of underground parking accessed by a single vehicle lift from Parking Plaza Ten.
- Total of eighteen parking spaces with storage areas provided on the two underground parking levels.

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SB 35 - Streamlined ministerial approval for projects that meet State standards and local objective development standards

Standards Include:

- Project be at an infill location (at least 75% of surrounding properties developed)
- General plan and zoning designations provide for residential or mixed use.
- At least two-thirds of square footage of development designated for residential
- SB 35 removes a City's ability to require a conditional use permit for qualifying developments

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SB 35 - Streamlined ministerial approval for projects that meet State and local objective development standards.

- Local jurisdiction must determine whether a project is eligible for SB 35 within 60 days of application submittal
- If the project is eligible, the jurisdiction's design review and public oversight must be completed within 90 days from application submittal
- Review and oversight is ministerial.
- Compliance with objective development & design standards required.

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Density bonus units, concessions/incentives, waivers, & parking

- Seven additional market rate units proposed, in addition to base density of eight units – 15 total
- 2 units proposed as affordable to low income households
- Concession/waiver for an additional 26'6" over the maximum permitted building height of 30' - 56'6" to top of roof deck
- Parapets and other structures at roof extend up to 66' 4"
- Roof structures occupy 4.4%, code limits to 4%
- One parking space per residential unit imposed by SB 35

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Project exceeds objective 35% density bonus increase standard

- Base project assumes 8 units, 2 of which are required BMR units (low income)
- Density Bonus regulations grant a 35% increase to base unit count (+3)
- Applicant seeks to add 7 units for a total of 15 units (87.5% increase), significantly higher than the objective standard.
- Such increased density is at the City Council's discretion

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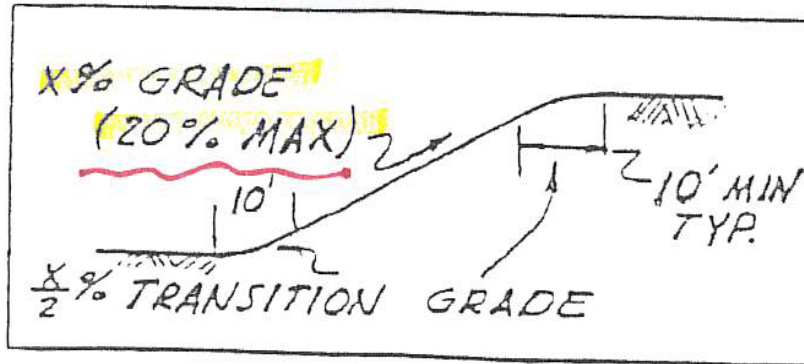
Project does not comply with objective standards for parking areas

- Municipal Code Section 14.74.200 N., requires that off-street parking areas be in accordance with the minimum standards shown on the drawing labeled “Parking Standards Exhibit A”.
- Exhibit A provides no standards or allowances for a vehicle lift system.
- Exhibit A provides detail of standards for ramps providing access/egress to parking
- Width of lift opening is 9’, less than required for drive aisles in Exhibit A
- Clearance to lift does not provide vertical clearance of 8’2”, CBC section 1109A.4

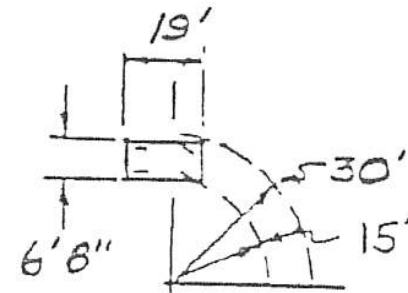
40 Main Street



RAMP DETAIL



FROM PARKING STANDARDS EXHIBIT 'A'



DSD
2-27-AB

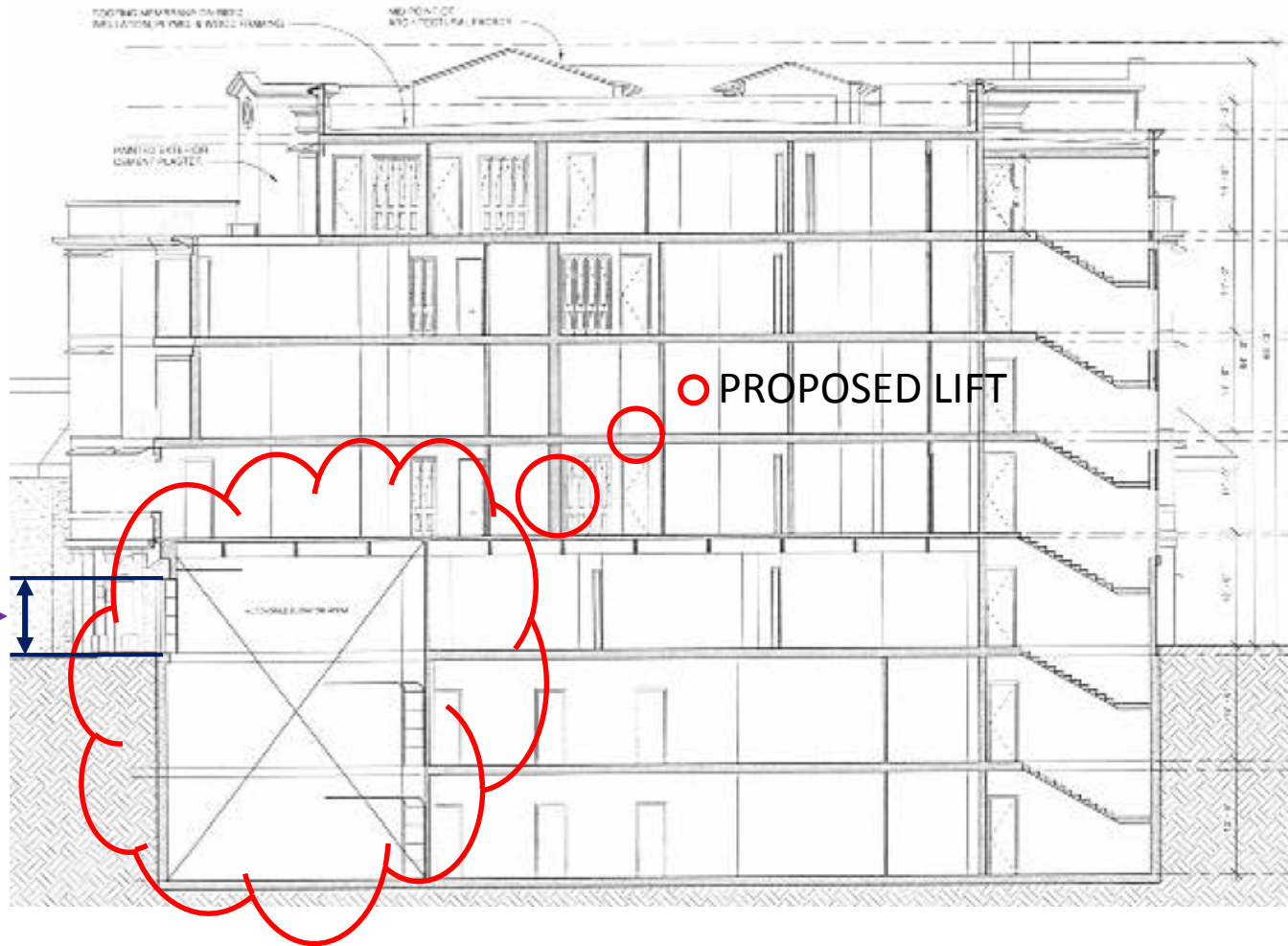
MIN. RIGHT TURN RADIUS
(PASSENGER VEHICLES)

ENGINEERING DEPT.
CITY OF LOS ALTOS
SANTA CLARA COUNTY, CALIFORNIA

PARKING STALL
STANDARD DESIGN

DRAWN	K.E.F.
CHECKED	D.S.B.
APP.	
DATE	2 JULY 69
SCALE	1" = 50'
DRAW. NO.	

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8'2" Req.
7'10" Proposed

PROPOSED LIFT

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Development does not comply with 2/3 residential requirement of SB 35

- Two-thirds of the development's square footage must be for residential
- Total of all five floor levels plus two subgrade parking levels = approx. 42,276 square feet
- 28,184 square feet of the total development (two-thirds) required for housing
- 22,821 square feet for housing proposed, which is less than 2/3 of development's square footage.

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Project conflicts with objective standards of Downtown Design Guidelines

3.2.1 b) Break larger building into smaller components

- One large multi-story structure with uniform materials, finishes, and trim and not divided to appear like smaller individual buildings

3.2.2 b) Relate the façade designs to adjacent structures

- Proposed structure does not relate well to adjacent structures and is disruptive to streetscape and presents a façade not in harmony with adjacent buildings and the pedestrian nature of this portion of Main Street.

3.2.7 b) Avoid architectural styles and monumental building elements that do not relate to the small human scale of Downtown Los Altos

- At five stories and a height of 66'4", the project does not relate well to the small Pedestrian scale of Downtown Los Altos

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3.2.1 b) *Break larger building into smaller components*



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3.2.2 b) *Relate the façade designs to adjacent structures*



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3.2.7 b) *Avoid architectural styles and monumental building elements that do not relate to the small human scale of Downtown Los Altos*



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3.2.7 b) *Avoid architectural styles and monumental building elements that do not relate to the small human scale of Downtown Los Altos*



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Base Case

- Applicant assumes base density of site is 8 residential units (3-story mixed use project)
- Two of the proposed units to be BMR (lower income households)
- One level of sub-grade parking with 8 spaces, one of which is an accessible space
- Use of a vehicle lift system proposed
- Parking in compliance with “Parking Standards Exhibit A” not demonstrated
- Submittal inadequate to complete assessment if base density is eight units

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Housing Accountability Act

- Appeal also asserts that the State Housing Accountability Act (Gov. Code Section 65589.5) “requires the City to approve the Project.”
- Under the Housing Accountability Act, a determination of conflicts with objective standards is based on standards in effect at the time a project application is determined or deemed “complete,” rather at the time of application submittal under SB 35.
- Application has been deemed complete, so the Housing Accountability Act does not apply.

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CONCLUSION - STAFF'S REASONS FOR DENIAL

- Project exceeds objective 35% density bonus increase standard
- Project does not comply with objective standards for parking areas
- Development does not comply with 2/3 residential requirement
- Project conflicts with objective standards of Downtown Design Guidelines
- Base density not demonstrated

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Recommendation

Conduct a public hearing on the appeal. Close the public hearing and after considering the full record before the Council, provide direction to staff to return at the next regular City Council meeting with a resolution granting or denying the appeal and making appropriate findings.

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QUESTIONS - ?

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