

To: Santa Cruz City Council via City of Santa Cruz City Clerk

From: Laurel and Cleveland Area Neighbors, via appointed representative, Laura Livingston

Contact Email: foodbinproject@gmail.com

Date: January 29, 2024

Re: Notice of Appeal of Planning Commission Decision regarding Proposed Development 1130/1132 Mission Street, Project # CP23-0103

NOTICE OF APPEAL

The Laurel/Cleveland Neighborhood, which includes residents on several neighboring streets, hereby appeals the City Planning Commission's 1/18/24 approval of Proposed Development: 1130/1132 Mission Street, Project # CP23-0103. We request that the City Council approve this appeal and direct city staff to work with the developers and the neighborhood to modify the findings, waivers, and conditions of approval to ensure that this development is in compliance with the General Plan and the intent of State Law, and does not adversely affect or further degrade, adjacent properties and the surrounding neighborhood. We support adding housing at this location and believe that this mixed-use project can be modified to mitigate neighborhood concerns.

24.04.183 Notice of Appeal: Identify the section of this title or part of the General Plan, which the appellant contends has been violated. State how and why the action appealed violates the sections identified.

We contend that this project violates several sections of the General Plan. Additionally, several of the waivers, findings, and conditions of approval that were presented to and approved by the Planning Commission are inconsistent with, violate, and/or do not fully comply with adopted City zoning ordinances, CEQA, and the City's extensive public outreach and community-based planning efforts, including the Mission Street Urban Design Plan, as summarized below and described in Attachment 1 to this notice.

Violations

Several findings made by the Planning Commission (findings numbers 8, 9, 10, 11, 12, 15, 18, and 19) to justify this development were erroneous or otherwise flawed.

- 1) General Plan violations include, but are not limited to:
 - a) Base building FAR calculations possibly exceeded 24.10.750
 - b) Mobility Development Policy M3.2.11
 - c) Community Design CD3.3
- 2) City Zoning Ordinance - Section: 24.08.050
- 3) City Zoning Ordinance - Section 24.08.430
- 4) California Environmental Quality Act - Section 24.08.2220

Waivers

We request that City Council deny the following waivers:

1. Waiver 1- Height: The proposed five story, 61' building exceeds the city's approved maximum height of 40' and three stories and is not required to meet density bonus requirements
2. Waiver 2- FAR: The Base Density Calculations did not meet the MXMD FAR limit of 1.75.
3. Waiver 3- Setbacks: Deny waiver for reduced set-backs from the CC zone and Mission Street Urban Design Plan as it is not required to meet density bonus requirements

Requested Additional Conditions of Approval

The Conditions of approval passed by the Planning Commission are insufficient and we request additional conditions be placed on this development to address impacts on neighbors, incompatibility with the neighborhood and character of Mission Street. In order to mitigate impacts on the neighborhood, we request the following:

1. Building to be limited to 4 stories and 60 residential units;
2. Require privacy enhancements (such as opaque coverings) for all neighborhood-facing windows and terraces that extend 60" up from the finished floor;
3. Implement terrace curfew from 10pm to 7am;
4. Relocate the rooftop terraces on the Mission Street side, not towards the residential neighbors unless privacy screens or curfews are in place;
5. Require off-street loading and unloading zones for commercial vehicles;
6. Prohibit on-street parking permits for residents, employees, and customers;
7. Define noise levels and include limitations in the Management manual;
8. Condition 28 - add "and collection practices";
9. Condition 40 - Include screening of the west rooftop terrace area from neighbors;
10. Condition 41 - add "and murals";
11. Condition 56 - Neighborhood representatives request a copy of the final Management Plan when submitted to the Planning director prior to the building permit issuance.

Additional Suggested Solutions

1. Update the permit parking system in nearby neighborhoods to restrict use by residents, employees, and customers of 1130/1132 Mission St.
2. Make Laurel Street one-way out to Mission, as on Olive and Trescony streets for the approval of CVS and PAMF clinic buildings.
3. Turn Laurel Street into a bike boulevard and one-way street, this will support the stated goal of encouraging and increasing the use of bicycles and walking. By making Laurel one way, there would be sufficient space to add bike lanes. This will help to preserve "the character of the Laurel Street Craftsman neighborhood."
4. Implement enhanced traffic calming. Planting more trees and a narrower road will further enhance the biking and walking character of the street which is an essential goal of the overall development.

Respectfully submitted,

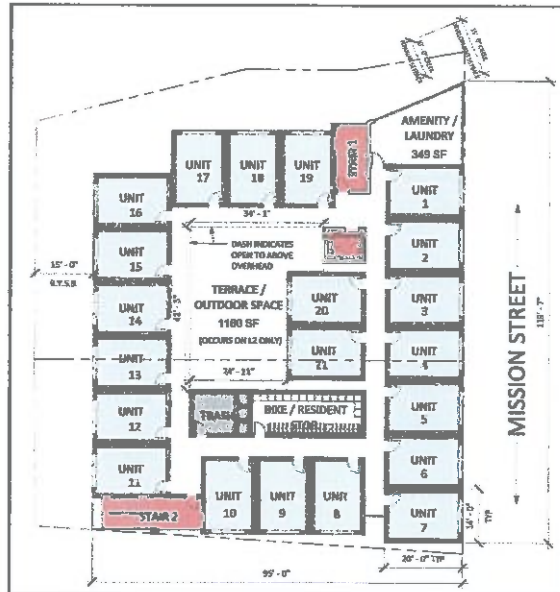
Laura Livingston on behalf of the Laurel/Cleveland Neighborhood

Attachment 1: Discussion of Violations

1. General Plan Violations:

Overall, we are very concerned that the proposal is not consistent with CC (Community Commercial) Zone District Regulations. We are not opposed to the adopted, well vetted, Community Commercial district policies, which allow a maximum height of three stories and 40 feet and reasonable setbacks from creeks and adjacent residential properties. The height waiver to 4 stories appears to be allowable and reasonable due to density bonus law. The setback waivers are not required and inconsistent with what is required (see Waivers below) for other developments and ADUs in the neighborhood.

- a) Zoning Section 24.10.750 District Regulations: MXMD FAR Limit for Density Bonus base building exceeded: zoning requires the base building upon which the density bonus depends to be compliant with the general plan. 24.22.370 defines FAR as *The gross floor area of all buildings on a lot, divided by the net lot area.* The MXMD designation under the general plan requires a FAR of 0.75 - 1.75. Assuming a usable lot size of 11,182 (from the Jan 18 2024 Planning Commission Agenda Report) this allows a maximum building floor area of 19,569 square feet (1.75 x 11,182), or 6,522 square feet per floor, assuming 3 floors total. A 6,522 square foot building would be approximately 81 feet per side. The proposed building is 95' along Laurel St and 119' along Mission St (per diagram) at its longest point. Even using the most generous assumptions for floor area result in a base building in excess of 25,000 square foot total with a resulting base FAR above 2.2. No baseline calculations for FAR were included in the applicant's submittals. The base building may not be compliant with the general plan, potentially making the density bonus calculations invalid.



- b) General Plan Mobility Development Policy M3.2.11: Improve traffic flow and safety and reduce impacts on arterial streets by limiting driveways, mid-block access points, and intersections; removing on-street parking; clustering facilities around interconnected parking areas; providing access from side streets; and other similar measures."

The proposed project does not include any improvements to traffic flow and safety; it will greatly impact the current residential parking in our streets because there are no clustering facilities around interconnected parking areas; and traffic safety will be negatively impacted by increased truck traffic, traffic backing up as cars jockey for parking, and the lack of parking areas for Food Bin customers and new residents to use, other than the Laurel Street neighborhood. Additionally, the traffic study woefully underestimates the number of cars and trips that will be taken by employees and customers of the grocery store and residents and their visitors.

- c) *Community Design CD3.3 – Encourage the assembly of small parcels along transit corridors to achieve pedestrian-oriented development compatible with neighborhoods.*

This development is not compatible with the immediately adjacent properties (all of which are residential) nor the neighborhood. The immediately adjacent residential buildings are dwarfed by this building and no other buildings on this section of Mission Street exceed three stories.

2. City Zoning Ordinance - Section: 24.08.050

Criteria 1. The proposed structure or use conforms to the requirements and the intent of this title, and of the General Plan, relevant area plans, and the Coastal Land Use Plan, where appropriate;

Criteria 2. That any additional conditions stipulated as necessary in the public interest have been imposed."

Criteria 3. That such use or structure will not constitute a nuisance or be detrimental to the public welfare of the community."

This project does not conform to several requirements of the Zoning Ordinance and General Plan as outlined throughout this appeal, especially related to *height, setbacks, and traffic.*

No conditions have been imposed that will eliminate negative impacts to surrounding residential uses. This project brings a lot of negative consequences upon the neighborhood, without doing anything to improve the neighborhood. The developer should be subject to additional conditions to spread the impact of the new building to all parties.

Reference 'Requested Additional Conditions of Approval' in the appeal for proposed solutions.

3. City Zoning Ordinance - Section 24.08.430: Land Use Permits and Findings

Criteria 2. "For nonresidential projects, the project's location, size, height, operations, and other significant features and characteristics are compatible with and do



not adversely affect or further degrade adjacent properties, the surrounding neighborhood”

This project’s size, height, operation, and characteristics will adversely affect and degrade adjacent properties and the neighborhood. The proposed development and existing conditions of approval fail to mitigate these impacts.

The immediate adjacent properties and surrounding residential neighborhoods are single family homes. The project adversely affects the surrounding neighborhood with nearby neighbors losing significant amounts of sunlight and privacy. We find that the non-residential part of this mixed-use project will also adversely affect and degrade the neighborhoods by the substantial increase of commercial use.

We request mitigations for what will be an increase in the number of commercial delivery trips. Already, large trucks regularly cause a safety hazard, blocking traffic and passing through our neighborhoods. There are no mitigations in the proposed development for delivery truck parking for off-loading. Currently, Laurel Street lanes are blocked near Mission Street several times a day (see image for the status of Laurel St during typical morning rush-hour traffic). It is not uncommon for Laurel Street to be blocked to 1 lane for an hour or more. Additional garbage truck noise and traffic will also be generated by this development and should be mitigated to provide sufficient space on the property for these trucks.

Additionally, the proposed garage parking lacks sufficient parking for non-EV or Accessible cars for Food Bin customers.

The impacts on our adjacent residential neighbor’s existing solar equipment because of the shading that this five story building will cast.

The Planning Commission Report failed to mention that none of the existing commercial buildings surrounding the site are 5 stories, plus have rooftop equipment. There is a one story building, formally Emily’s, and 2- story buildings, presently Copal restaurant and formally Twice as Nice are on the adjacent street corners. There are no 5 story buildings on Mission Street.

Criteria 6. “Where a site plan abuts, or is in close proximity to, uses other than that proposed, the plan shall take into account its effect on other land uses. Where a nonresidential use abuts or is in close proximity to a residential use, the effect of the site plan should maintain the residential quality of adjacent or nearby areas.”

The January 18, 2024 Planning Commission Report asserts that “Commercial uses surround the site, with the exception of residential uses to the west and across the creek to the north”. We contest this finding. It is the other way around, this area is mostly residential, with the exception of a few commercial uses along Mission Street and should be noted as such. The proposed project is at the end of Land Use Designation Zone MXMD and is adjacent to Regional Visitor Commercial Zone which is zoned for even lower height limits and has existing two story buildings. The residential quality as it pertains to Section 24.08.430 - 6, should not be dismissed.

Criteria 7. “To the extent feasible, the orientation and location of buildings, structures, open spaces and other features of the site plan maintain natural resources including significant trees

and shrubs, minimize impacts to solar access of adjacent properties, and minimize alteration of natural landforms; building profiles, location, and orientation must relate to natural landforms.”

This project fails to conform to this criteria because it does not minimize its impact on the solar access to adjacent properties. The residential neighbor at 1212 Laurel St’s solar system will be 37 feet from the western wall of the project building. The building will be 61 feet high, creating a 58 degree angle from the solar system to the top of the project building. The Sun’s noon zenith only exceeds 58 degrees between April 2nd and September 11th, and then only momentarily, which makes the resident’s significant investment in solar a loss.

Criteria 9. *“The site plan shall reasonably protect against external and internal noise, vibration and other factors which may tend to make the environment less desirable. The site plan should respect the need for privacy of adjacent residents.”*

We find that the effect on the residential neighborhoods that surround this proposed 5 story building will profoundly affect both the neighborhood noise levels and our privacy. An individual 60 feet above ground will be able to see down into the private backyards, windows, and skylights of dozens of single family homes, and no conditions have been made to maintain the privacy of these existing residents. Additionally, we find that currently there are no mitigations included for building equipment noises, residential terrace use noises, or for site construction noises for this project.

4. California Environmental Quality Act

a) Trip Generation Analysis: Traffic Impact Fee

We find that the Trip Generation Study report dated August 26, 2023 is greatly flawed as follows:

The trip generation report is substantially low. The traffic in our neighborhood is heavily influenced by the seasonal return of the UCSC students during the school year in which traffic substantially increases throughout the Westside neighborhoods, as does the traffic on Laurel Street. The report dated August 26, 2023 by Hexagon Transportation Consultants states that the analysis was conducted on *August 23, 2023 which is more than a month before students begin the fall session* which is September 28th. Currently the Food Bin is very popular with the UCSC students and therefore the report is not an accurate portrayal of Trip Generation and a new report should be submitted *while UCSC is fully in session*. We reject the findings in this report because of when the study was conducted.

The traffic study states on page 3.174 of the Commission Report that *“peak hour traffic generated by the existing buildings was estimated based on driveway counts conducted...”*. Laurel Street is currently used for customer parking for the Food Bin as it is more convenient at times to park on Laurel Street than to navigate pulling in and out of the Food Bin parking lot, therefore, having only driveway counts in this report and to not include the Laurel Street parking use, we think the trips generated are not accurate and falls short of what actually happens.

This study does not include additional trips from 1130 Mission St residents (assuming no change in the parking permit program), their guests, or package deliveries. Because the date of the report was done when UCSC was out of session and because Laurel Street has been used as parking for Food Bin customers, we request a new study to accurately reflect Trip Generation for this new project and for recalculating the Traffic Impact Fees.

- b) Watercourse Development Permit: 24.08.2220 requires the City to "protect existing biological values of the watercourse corridor such as shade provision, water temperature maintenance, nutrient filtering, wildlife movement corridors, unimpeded fish movement, and wildlife habitat."

Other developments proposed by residents along Laurel Creek and other riparian corridors have been rejected for not providing a sufficient setback. We request that the city more seriously consider the impact on birds and other wildlife of such a high structure and the amount of shade cast on the creek and reject the request for a Watercourse Development Permit.

It is unclear how this project meets the following CEQA criteria due to impacts on Laurel Creek, traffic and possibly noise from rooftop space. "The project site has no value as habitat for endangered, rare, or threatened species." It is hard to imagine that replacing one story buildings with five story buildings will have no impact on the Laurel Creek habitat. We will submit a second opinion from another biologist by 2/23/2024 for review by City planning, but the compressed time requirements for the appeal did not permit this to be included with the appeal.

5. Waivers Discussion

Waiver 1 - Height: The base building used for density calculations includes 20 units per floor for the residential floors 2 and 3, for a total of 40 units. The project can meet its density bonus requirements (60 units) by adding one more floor for a total of 3 residential floors and 60 total units.

The regulation below is from SB330 and was referenced in the January 18, 2024 Planning Commission Report which stated that disapproving the project or conditioning it would only be allowed due to *adverse impact upon the public health or safety*. We argue that this clause would only apply if the project cannot be completed at a lower density:

65589.5 (j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse

impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

Per this interpretation, we argue that the following justification (A) is only required when the city's conditions cause the project to be developed at a lower density. Reducing the project from 5 floors to 4 floors would not trigger this requirement as the number of units / density would not change.

Additionally, since the base building was shown to support 20 units per floor without setbacks, we argue that the waivers for setbacks are also capable of being disapproved without impact to project viability.

We strongly feel that the density bonus is good, and should be implemented, but it should be implemented in keeping with the existing general plan as much as possible. To do otherwise would continue to reinforce bad precedence.

Waiver 2- FAR: As noted above, we contend that the Base Density Calculations did not meet the MXMD FAR limit of 1.75.

Waiver 3 - Setback: per the discussion above, set backs waivers were not used when designing the base building, and are not required for the project to be built at the state required density.



LAURA LIVINGSTON:
FOR LAUREL / CLEVELAND
NEIGHBORS