

**PLANNING COMMISSION MINUTES OF SEPTEMBER 22, 2008**

**2008-0637- Downtown Sunnyvale Mixed Use, LLC** [Applicant/Owner]: Application for a revised site plan that includes the proposed location of an additional level of parking in the Block 6 area (Washington Ave. and Sunnyvale Ave.) of the Sunnyvale Town Center Redevelopment project. The property is located at **2502 Town Center Lane** (project is generally bounded by Iowa Avenue to the south, Sunnyvale Avenue to the east, Washington Avenue to the north, and Mathilda Avenue to the west.) in the DSP-18 (Downtown Specific Plan Block 18) Zoning District. (APN: 209-34-009, 010, 015, 016, 017, 018 and 209-35-001, 005, 007, 010, 011, 012) SL

**Hanson Hom**, Director of Community Development, presented the staff report. He said tonight's project is the consideration of allowing a fifth level of parking structure on the garage. He said the garage was previously approved to be four stories and the applicant is requesting an additional one story to respond to a requirement from Macy's, should additional parking be required in the future. Mr. Hom said, due to the critical nature of the garage issue, the approval of the fifth level would allow the signing of this agreement between the developer and Macy's to be completed on a timely basis. Mr. Hom addressed the revised site plans provided to the Commission this evening that show the proposed fifth level and discussed some of the details and changes from what was originally provided in Attachment C of the report. Mr. Hom said staff is recommending approval of the fifth level as staff feels the project is consistent with the general massing and architecture of the overall Town Center Development. He said that he realizes that the architectural design needs to be further discussed and that it needs to be considered with the proposed hotel structure and retail buildings. He said the detailed architecture review will occur at the October 13, 2008 Planning Commission meeting. Mr. Hom said staff recommendation is to approve the Special Development Permit (SDP) for the fifth level subsequent to further architectural review.

**Chair Rowe** disclosed she met with the developer today.

**Vice Chair Chang** disclosed he met with the developer today.

**Comm. Klein** discussed with staff the setback of the fifth floor. Mr. Hom said the fifth floor is setback from the hotel, is not stepped back on Sunnyvale Avenue or Murphy Avenue, and is stepped back on Washington Avenue. Comm. Klein asked staff about parking estimates and what is being considered in this proposal. Comm. Klein commented that in August 2007 that 5,434 parking spaces were approved and what is listed in these plans is about two hundred parking spaces shorter than what was approved. Comm. Klein asked staff about

the changes in the number of parking spaces. Mr. Hom said that this agreement is really a contingency for Macy's. Mr. Hom said the parking numbers continue to evolve and that based on staff's running tally of the parking, the applicant is meeting the total parking requirement for the project. Mr. Hom said that one of the items that would need to be clarified for the October 13, 2008 Commission meeting is why the applicant's total parking supply shows the 5,200 parking spaces range. Comm. Klein asked if the Commission approves the fifth level, how that affects the number of parking spaces. Mr. Hom said that staff would have the full parking analysis available for the October 13<sup>th</sup> Commission meeting. He explained that if for some reason the applicant's numbers are short and the fifth level is needed to meet the numbers, which staff thinks is not the case, the applicant can be required to make up the deficiency. Comm. Klein further discussed the parking situation with staff and that the October 13<sup>th</sup> Commission meeting would allow further opportunity to look at the full parking analysis. Comm. Klein confirmed with staff that tonight's action is whether to allow the fifth level on the parking garage and that the architectural details are subject to review on October 13<sup>th</sup>. Comm. Klein said the report indicates that this will provide additional parking to existing downtown businesses within the proximity of Murphy Avenue. Comm. Klein asked if the parking for the Town Center is available for patrons of other locations to park i.e. Murphy Street. Mr. Hom said that part of the agreement is that all three parking structures constructed for the project need to be available for public parking whether the public shops within the Town Center project, or comes to visit the Murphy Avenue establishments.

**Comm. Sulser** disclosed that he met with the developer today. He asked staff, if the Commission approves the fifth level tonight and the architecture on the four story parking garage on October 13, 2008, and at a later date the construction of the fifth level is exercised, does the fifth level come back to the Planning Commission for architectural review. Mr. Hom said that the Planning Commission will be considering the architectural plans for the entire Block 6 area on October 13<sup>th</sup>. Comm. Sulser asked staff who would be the party to exercise whether the fifth level would be constructed. Mr. Hom said if staff determines that the fifth level is not needed to meet the parking requirement for the project then Macy's would be the party to decide whether to exercise the option to build the fifth level.

**Comm. Hungerford** said if it is assumed that the fifth level is not needed to meet the parking requirements, is the reason the approval is being sought tonight is because certain things need to be built into the parking garage structure to assure that the four level structure could support a fifth level. Mr. Hom said yes, and that due to a timeliness issue the developer had already chosen to build the four level structure so it could receive a fifth level if needed. Mr. Hom said that approval is being sought this evening due to a planning deadline this week to wrap up an easement agreement with Macy's. Comm. Hungerford confirmed with

staff that the parking structure is being engineered to support a fifth floor if needed, regardless of the outcome this evening as the plans are already completed. Comm. Hungerford asked if there is some kind of objective criteria that would be used to evaluate whether the fifth floor needs to be built rather than just at Macy's discretion. Mr. Hom said staff hopes to present the objective criteria to the Planning Commission on October 13<sup>th</sup>. Comm. Hungerford asked that if in the future Macy's decides they need to build out the fifth floor, will they need to prove that through a parking evaluation or assessment. Mr. Hom said it is his understanding that Macy's would need to provide some type of substantiation for the need for the parking. Comm. Hungerford said that at the September 22, 2008 Planning Commission meeting that a citizen commented about the danger of Caltrain riders parking all day for free in the downtown parking structures. Comm. Hungerford asked if any thought had been given to limiting the amount of time a person can park. Mr. Hom said that is a concern of both the City and the developer as the parking is meant for customers and employees unless some special arrangement were made with Caltrain for excess parking spaces. Mr. Hom said there has been some discussion regarding placing time limits on the parking and to encourage the use of parking lots for customers and employees only. Mr. Hom said time limit parking would be part of future discussions regarding signing and enforcement.

**Comm. Travis** disclosed he met with the developer regarding the project.

**Comm. McKenna** commented that she did not meet with the developer. She asked staff if the hotel is six levels commenting the hotel looks more than one story taller than the proposed five level garage. Mr. Hom said the proposal is for the hotel to be six levels and said that it is probably the perspective of the drawings as the fifth level of the garage is an open deck and the parking structure is really at the fourth level directly next to the hotel. Comm. McKenna discussed the height of the hotel and the height of the parking structure with staff explaining that the hotel is proposed to be approximately 75 feet high and the parking structure is proposed to be approximately 55 feet high including the five level parking garage if approved. Comm. McKenna said that it is evident that an approval is necessary to move forward with the Macy's agreement, that the garage would not be built unless necessary, and that the necessity would be determined by parking calculations, which she feels is adequate.

**Chair Rowe** opened the public hearing.

**Jeff Warmoth**, of Sand Hill Property Company representing the Project Developer, said that their architects will be attending the October 13, 2008 meeting and will be able to answer architectural questions at that time. Mr. Warmoth assured the Commission that the developer has reviewed the parking

study and that the project meets the parking requirements without the fifth level parking deck. He said none of the fifth level parking spaces are needed to be counted towards the project parking requirements. He said the fifth level parking is an issue that came up with the involved parties while in negotiations with Macy's. Mr. Warmoth explained that there are four property owners within the boundaries of Block 18. He said the property owners are Sand Hill Property Company, the City of Sunnyvale, Macy's, and Target. He discussed that these parties operate under an agreement signed in 1978 and they are currently on Version 43, or 44. Mr. Warmoth said these agreement documents must be signed. He said many hours of work have led to multiple versions of the agreement. He said at end of day, both Target and Macy's have to approve the agreement and sign. He said Macy's thinks that there may be a need for additional parking in the future and requires that the agreement include accommodations for additional parking. Mr. Warmoth said that if Macy's determines additional parking is needed then the developer will have to build it. He said there would be a test at that point and an independent analysis would be done to make sure there is truly a need for more parking. Mr. Warmoth said the developer has designed the parking garage structurally to fully operate levels one through three while building level five, if needed. He said even the fourth level would only be shut down for a short time for certain portions of the construction. He said there is significant expense associated with building structural elements that may or may not ever use. He said, if in the future it is determined that the fifth level should be added, that the current plans need to include planning for the addition now in order to not shut the parking garage down during construction. Mr. Warmoth said that assuming that the Commission is in support of the application tonight and the application on October 13<sup>th</sup>, that what will be submitted is a garage design to be five full stories. Mr. Warmoth referred to the revised plans provided this evening and described in detail the height of the proposed parking garage and height of the individual levels. Mr. Warmoth said that he is available to answer questions.

**Comm. Hungerford** confirmed with the applicant that what is proposed to be built right now would be the entire parking garage up to the 4th floor. Mr. Warmoth said the fifth level would not be poured unless it was determined in the future by Macy's that the fifth floor was needed, or if the City of Sunnyvale decided now that they would like a fifth level to be constructed.

**Chair Rowe** commented that it is 55 feet to the 3 ½ foot railing on the fifth level and asked how many feet more is it to the top of the pillars. Mr. Warmoth said it would probably add another 4 ½ feet, but the architect would have to confirm that.

**Joe Antuzzi**, a member of the public, said he is representing the Downtown Association and is the owner of Il Postale Restaurant. He said that a committee

was formed with the Downtown Association regarding all parking in downtown. He said it was a pleasant surprise that the developers were planning to build a fifth floor on the parking garage. He said they would like to see the fifth floor built as they are leery of parking consultants. He said they believe this project will be very successful and the business owners are hoping when the existing parking lots go away that the patrons will begin using the existing underground parking. He said that every study shows that the underground parking garage has adequate parking, but the unfortunate thing is that people are not parking there. He said signage is very important. He said he has owned his restaurant for 13 years and the area has been under construction most of that time. He said the downtown merchants have repeatedly been told that they would reap the benefits of the various construction projects yet they have seen very little of the benefits. He commended the developers and Devcon for running a good project. He said that the merchants do not want to see this project be built and then be so successful that the fifth level needs to be added and parking is lost while the fifth floor is being constructed. He said he hopes the City will decide to have the fifth level added now. He said this is an immense project. He said the parking and the Caltrain potential problems with parking need to be looked at. He commented that surface parking still needs to be visible. Mr. Antuzzi said if people come into downtown and see no cars that patrons think there is no parking. He reiterated the importance of signage.

**Anne Dugan**, a Sunnyvale resident, business owner, and member of the Sunnyvale Downtown Association spoke in support of the fifth level project. She said she would like to see the fifth level constructed now, and it is disheartening to think that once the Town Center project is completed that there might be additional construction. She said the residents are tired of many construction projects. She said she has spoken with people from nearby cities and that she has been asked if Sunnyvale is open yet, which a perception that downtown Sunnyvale is not even viable. She said once the new downtown is completed it will be great, and to tear it up again would be a big mistake. She said that she does think the fifth floor is necessary and she said she does not know if the parking requirements take into account patrons who would be visiting the historical downtown.

**Maria Pan**, a Sunnyvale resident and neighbor that lives across from a City parking lot said she is not opposed to the fifth level of parking, but feels that Macy's contingency plan has assumption that people do not have reservations about parking in a multi-level parking garage. She commented that she thinks some people may have a fear of multi-level parking garages because of possible earthquakes, muggings, or theft etc. She suggested that there may be alternatives to bring people into downtown area including possible shuttle buses from and to the Community Center, or the newly approved Safeway area. She

said that she thinks a shuttle from certain locations would reduce the stress level that some persons might have regarding multi-level garages.

**Chair Rowe** asked staff how many elevators are in this parking garage. Mr. Hom said he believes there are three elevators with Mr. Warmoth confirming that there are a number of elevators around the perimeter of the parking structure.

**Comm. McKenna** asked staff if there are an equal number of stairwells to elevators. Mr. Hom said the applicant confirms that there are three stairwells. Mr. Hom added that there are existing fire codes that this structure would need to comply with.

**Chair Rowe** asked staff to comment about the public's statement about possible shuttles from other areas. Mr. Hom said that he would suspect that the shopping center owner and tenants might be reluctant for their parking to be used for shuttle parking into the downtown and he doubts that this arrangement could be facilitated. Ms. Pan commented that possibly shuttles could run on the weekends.

**Mr. Warmoth** provided a clarification about the height of the pillars on the fifth floor of the garage and commented that they would add 3 1/2 feet at the top. He said there was a comment about who would use the top floor. He said that the four owners of the project site will jointly develop rules and regulations for each of the four parking lots. He said the primary users of the top floor would probably be employees who need to park all day and valet parking for the hotel. He said, regarding the elevators, that there are three, fast elevators, and a goal of the overall shopping district is to always have the elevator experience be a positive one. He commented about the Target garage and said that a ramp will be provided from Sunnyvale Avenue to an upper level of that garage for those who do not want to go to the two lower levels. He commented that people prefer to be at the surface level or above in garages. He said they will paint and lamp the garages to make them clean, open, safe environments.

**Comm. Hungerford** commented that it is worth exploring going ahead and building the fifth level now. He commented about possible alternatives i.e. landscaping, for making the fifth level more attractive so upper story hotel users would have a better view to look at. He discussed the possible environmental benefits of including landscaping which would absorb less heat than concrete. Comm. Hungerford asked the applicant if landscaping had been considered. Mr. Warmoth said that at the October 13, 2008 meeting the architects can address areas that may be landscaped. Mr. Warmoth further discussed the parking decks and other alternatives that may also be considered including possible solar panels. Mr. Warmoth said that the garages are being built to support solar panels if that alternative is chosen. Mr. Warmoth said that even if landscaping is not

included on the fifth floor that the hotel users will have a nice view to look out over.

**Chair Rowe** asked Mr. Warmoth further about the solar panels and asked if these panels would be angled or flat and would cars be able to park under them. Mr. Warmoth said he has only seen the conceptual brochure, but the panels were designed to be angled. He said that it is still a bit of a frontier figuring out what it means to park cars under solar panels. He added that if the solar panel design allows for cars to park under them then patrons would probably be more willing to park on the top level on hot days. He reiterated that they are building the garages for the future to be able to include the solar panels if that can be worked out.

**Chair Rowe closed the public hearing.**

**Comm. Sulser moved for Alternative 1 to approve the Special Development Permit for revisions to the site plan with the amended conditions. Vice Chair Chang seconded the motion.**

**Comm. Sulser** said as the project has gone on he has had some concern about how much height and density there should be on the edges of the project. He said he thinks this revision is reasonable as constituents have consistently said they want more parking within the downtown core and he does not think the extra level is out of scale with the hotel.

**Vice Chair Chang** said he would be supporting the motion. He said the height of the structure is within the guidelines and this is an important request due to the ownership that Macy's and Target have. He said the findings show that the request meets the guidelines and this would provide additional parking spaces. He said the architectural design that will be reviewed on October 13<sup>th</sup> Planning Commission meeting will provide additional clarification and hopefully beautify the parking structure.

**Comm. Klein** said he would be supporting the motion. He said his thinking is slightly mixed due to the issue of extra parking, but since this is a contingency for Macy's that he fully approves and hopes the project is successful and not over parked. He said that he worries about the height of the project with 55 feet tall structures going 500 feet down Sunnyvale Avenue with residential right across the street. He said in general he thinks this is a good addition. He said he understands that the downtown businesses need and want additional parking, but what it looks like visually matters. He said he looks forward to seeing the actual number of parking spaces for the project now versus what was initially approved. He said that this looks like the fifth level would be something built at a later date if needed. He said he is happy that this fifth level is not being built

immediately which would increase the height for no reason. Comm. Klein said, for now, this is a needed addition to the project.

**Comm. Travis** said he would be supporting the motion. He said he does have some concerns about the project review on October 13<sup>th</sup>. He said during the recent State of the City event Comm. Klein was standing near the 3-dimensional model of the project and giving virtual tours to citizens who asked about the project. Comm. Travis said one of the largest concerns that he heard people discussing was where the parking is and whether the project would be under parked. He said having a contingency plan in place to quickly add more parking if needed is good. He said he thinks this is a good addition to the project.

**Comm. Hungerford** offered a friendly amendment regarding the recommended Conditions of Approval. He said he would like to add a condition that there be objective criteria used when determining whether the fifth floor be built on the garage. He said it might be something like "If a parking analysis performed by two independent professionals show that a fifth level on the parking garage is necessary then the project could go forward." He said there should be objective criteria to govern whether the fifth floor is built rather than just leaving it up to the private owner's decision. He said there is nothing to guide that discretion as it is set out in the current conditions. Comm. Klein asked Comm. Hungerford what he proposes the City's role is as part of this process. Comm. Hungerford said that he does not want to mess up a private agreement and just wants to make sure that the analysis is legitimate and done by independent third parties. **Kathryn Berry**, Senior Assistant City Attorney, said that right now staff thinks the project will meet the requirement for downtown parking, and asked for clarification about his friendly amendment. He said he was trying to make sure that the justification for putting on the fifth floor has to be more than just an opinion of Macy's and some guide for governing the situation. He said he is comfortable with the provision in the agreement requiring justification be made for building the fifth level, but he would like something reflected in the conditions about the provision in the agreement. Comm. Hungerford further discussed with Mr. Hom this issue including that the developer would probably not agree to build the fifth level unless the Macy's could justify the need. Comm. Sulser said, though he is sympathetic to the friendly amendment, that he would not accept it as he feels amendment would complicate the negotiations with Macy's. Vice Chair Chang commented that he thinks the developer said that a different company would do the analysis and he does not feel that the friendly amendment is needed on the current motion. Comm. Hungerford said that he still thinks it is needed to formalize this is a requirement. Comm. Klein further discussed this issue with Comm. Hungerford.

**Comm. McKenna** said three parties are interested in working on the parking issue. She said one of the parties believes that there may not be enough parking

and that it will cost about \$5 million to put in 250 parking spaces. She said that she cannot believe that the other two parties would just accept the third parties decision on a whim without good evidence. She said there would be negotiations between the three parties and the two parties working with the third party would have to come to an agreement. She said listening to the public this evening that it is evident that the public wants adequate parking and would like to see the fifth level built now.

**Comm. Hungerford** said that Comm. McKenna makes a good point that the cost alone of the development should prevent the interested parties from building the fifth level on a whim. Comm. Hungerford asked who has the primary financial responsibility with staff answering, that would be the developer. Comm. Hungerford confirmed with the developer that the developer would not be able to veto the decision if Macy's deems the fifth level is needed.

**Chair Rowe** said she would be supporting the motion. She said her major concern was how and when it would be built and about creating more construction and dust just after the downtown opened. She said she will just have to let the forthcoming study and Community Development settle that for us.

**ACTION: Comm. Sulser made a motion on 2008-0637 to approve the Special Development Permit for revisions to the site plan with the amended conditions. Vice Chair Chang seconded. Motion carried, 6-1, Comm. Hungerford dissenting.**

**APPEAL OPTIONS: This action is final unless appealed to the City Council no later than October 7, 2008.**