

JUN 29 2017

APPEAL FORM

CITY OF SANTA ROSA  
Date Received: CLERK'S OFFICE

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TO THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL:

The above named appellant does hereby appeal the following to the City Council:

The decision of the: (List Board/Commission/Dept./Official) Planning Commission

Decision date: June 22, 2017

Decision: (contract award recommendation; nonresponsive bid, denial, other) Approval of CUP17-031 and finding of exemption

from environmental review under CEQA Guidelines sections 15183 and 15332.

The grounds upon which this appeal is filed are: (List all grounds relied upon in making this appeal. Attach additional sheets if more space is needed.)

1. The proposed off-site parking facility is inconsistent with the Zoning Code, the Downtown Station Area Specific Plan, and the General Plan. See attached sheet for detailed explanation.
2. The project does not qualify for CEQA exemption under CEQA Guidelines sections 15183 and 15332. See attached sheet for detailed explanation.

The specific action which the undersigned wants the City Council to take is: (Attach additional sheets if more space is needed.)

See attached sheet.

Except where an appeal procedure is otherwise provided in the City Code, any person dissatisfied with any final decision of any City commission, board or official may appeal such final decision to the City Council. Only final decisions may be appealed to the City Council. All appeals shall be initiated by filing with the City Clerk a written notice of appeal on a form provided by the City Clerk within 15 days of the date of decision, together with any applicable fees as determined by Council resolution. (Santa Rosa City Code §§ 1-20.010; 1-20.020.)

Ty Hudson Date 6/28/17  
Appellant's Signature

Ty Hudson, Senior Research Analyst  
Name and title (type or print)

## **Statement of grounds for appeal of CUP17-031 and environmental determination for AC Hotel off-site parking**

### **1. The proposed off-site parking facility is inconsistent with the Zoning Code, the Downtown Station Area Specific Plan, and General Plan.**

Our letter dated June 19, 2017, explains the ways in which CUP17-031 is inconsistent with the Zoning Code, the Downtown Station Area Specific Plan, and the General Plan. In short, our letter (which is incorporated herein by reference) argues that the proposed off-site parking facility at 201 Sixth Street is not allowed because (a) commercial parking facility is not an allowed use in the applicable zoning district, and (b) the Zoning Code, Specific Plan, and General Plan all explicitly require any new development on that site to be for residential use. At the Planning Commission hearing on June 22, 2017, and in a memo dated the day before, Planning and Economic Development staff provided a counterargument based on the theory that off-site parking is not a land use subject to the land use permit requirements of Division 2 of the Zoning Code, but rather a “component of site planning and general development regulations as outlined in Division 3.” Based on this theory, the resolution approved by the Planning Commission makes the outlandish claim that “the Zoning Code allows off-site parking facilities in any zoning district.” Staff’s theory is not supported by any provision or definition found in the zoning code, but merely by the appearance of parking requirements alongside requirements for landscaping, fences, and other development characteristics in the same division of the Code. The explicit provisions and definitions of the Zoning Code contradict staff’s argument and support our position that the proposed off-site parking facility is not allowed.

#### *Definitions of “Land Use” and “Parking Facility”*

Off-site parking is governed by section 20-36.070(A)(1) of the Zoning Code: “Required off-street parking shall be located on the same parcel as the uses served; except with Conditional Use Permit approval, parking may be located on a parcel in the vicinity of the parcel served subject to a recorded covenant running with the land, recorded by the owner of the parking facility, guaranteeing that the required parking will be maintained exclusively for the use or activity served for the duration of the use or activity.” The first indication that off-site parking is intended to be treated as a land use is that it requires a Conditional Use Permit. According to section 20-52.050 of the Zoning Code, Conditional Use Permits “provide a process for reviewing land use activities that may be desirable in the applicable zoning district, but whose effect on the site and surroundings cannot be determined before being proposed for a particular location.” In other words, as its name implies, a Conditional Use Permit is a permit that exists specifically for evaluating proposed land uses. Among other things, a Conditional Use Permit requires findings that (a) “The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the City Code” and (b) “The proposed use is consistent with the General Plan and any applicable specific plan.”

Staff may argue that the land use to be evaluated under CUP17-031 the hotel use, not the off-site parking, which is allegedly just a “component” of the project’s site plan. However, the proposed parking facility clearly meets the Code’s definition of the term *Land Use*: “The purpose for which land or a structure is designed, arranged, intended, occupied, or maintained.” The project proposes to design, occupy, and maintain the land at 201 Sixth Street for the purpose of providing valet parking to hotel guests. Many of the other subjects covered by Division 3—“driveways, signs, fences, walls, hillside development, and landscaping areas”—generally do not meet this definition; they are merely physical characteristics of a structure or land use, not land uses (or “purposes”) in and of themselves, which is why they are not present in the land use tables of Division 2. In addition, section 20-21.040 of the Code specifically exempts many of these items, including fences, walls, and driveways, from land use permit requirements, but does not exempt parking.

Furthermore, the proposed off-site parking meets the definition of a specific land use that appears in the land use tables of Division 2: *Commercial Parking Facility*. The Code defines *Parking Facility, Public or Commercial* as “Parking lots or structures operated by the City, or a private entity providing parking for a fee.” Nothing in this definition supports staff’s position that “the *Parking Facility* definition is restricted to a stand-alone, primary land use.” The proposal is obviously a parking lot operated by a private entity, and the applicant stated on the record during the Planning Commission hearing that the proposed hotel would charge a fee for the valet parking operation that would utilize the parking lot. (We would argue that, even if valet parking were “free” to hotel guests, that would simply mean the fee was included in the hotel rate, and the lot would still meet the definition of a commercial parking facility.) *Parking Facility, Public or Commercial* is not an allowed use in the TV-R-SA zoning district where the proposed project is located. As such, the proposal is in direct violation of section 20-21.020(A): “The land use shall be allowed by this Zoning Code in the zoning district applied to the site.”

Staff points out that the required parking spaces included with most projects (such as shopping centers or apartment buildings) are evaluated on the basis of consistency with the required parking ratios, not evaluated as a land use. While it is certainly true that the land use evaluation of such projects focuses on the primary use (i.e., shopping center or apartment building), that can be explained by the fact that, in such cases, the parking qualifies as an accessory use. The term *Accessory Use* is defined as “A use customarily incidental to, related and clearly subordinate to a primary use on the same parcel, which does not alter the primary use nor serve property other than the parcel where the primary use is located.” Section 20-42.030 of the Code sets out the following requirements for accessory uses, among others: (a) “An accessory structure or use is permitted only when it is clearly incidental, subordinate and accessory to the principal use of the same lot, and does not alter the character of the site with respect to the principal use” and (b) “An accessory structure or use shall not be located on a separate lot from the principal use to which it is incidental and subordinate.” Typical on-site parking for a shopping center, apartment building, or, indeed, a hotel would meet these requirements. The proposed off-site parking is arguably “incidental,

subordinate and accessory” to the hotel, but it does not qualify as an accessory use under the Zoning Code because it is not on the same parcel. Staff argues that the proposed parking facility is neither a primary use, nor an accessory use, but rather “ancillary.” This is clever, but “ancillary” is not a defined term in the Zoning Code, and the terms “ancillary parking” and “ancillary off-street parking” appear nowhere in the Code.

In summary, the concept of accessory uses explains why on-site parking is not generally evaluated for compliance with the land use tables in the Code. The proposed parking facility does not qualify as an accessory use because it is not on the same parcel as the hotel. It is clearly a proposed land use, as that term is defined in the Code, and it meets the definition of a particular land use—*Commercial Parking Facility*—that is not allowed in the applicable zoning district. As such, the required finding that “the proposed use is allowed within the applicable zoning district” cannot be made.

#### *Hotel use not allowed at 201 Sixth Street either*

Even if we assume for the sake of argument that the proposed parking facility is merely a component of the larger project (neither a primary nor accessory use), and that parking *per se* should not be evaluated for compliance with the use tables, the proposal is still inconsistent with the Zoning Code’s land use tables. This is precisely what staff argues: “Staff’s recommendation of the approval is based on an analysis of the mixed-use hotel project in its entirety, with the valet parking program representing a component of the project. Just as driveways and landscaped areas associated with a proposed development are not independently assessed for consistency with the General Plan or a specific plan, the off-site parking component was included in an holistic review of the AC Hotel development proposal.” This argument fails on its own terms, because the primary land use proposed by the project, *Lodging-Hotel*, is not an allowed use in the applicable zoning district (TV-R-SA), either. Staff cannot have it both ways; either the parking facility is a land use in and of itself, or it is a component of a hotel project. Either way, it is not allowed on the parcels where it is proposed, and the required finding cannot be made.

#### *Zoning Code, Specific Plan, and General Plan require residential development*

Even if we accepted staff’s theory that off-site parking is somehow exempt from compliance with the land use tables in Division 2 of the Zoning Code, there is an independent reason that the proposal is inconsistent with the Zoning Code, the Specific Plan, and the General Plan. Whether or not off-site parking qualifies as a land use, the proposal evaluated under CUP17-031 is not allowed because it does not involve a residential use. The Zoning Code, Specific Plan, and General Plan all require development on this site to include residential use.

Section 20-22.050(D)(1) of the Zoning Code provides that, in the TV-R zoning district, “each new development shall be a residential project.” Even if off-site parking were somehow not a “land use,” it cannot be argued that the proposal does not involve



*development* of the parcels at 201 Sixth Street. The Code defines *Development* as “any construction activity or alteration of the landscape, its terrain contour or vegetation, including the erection or alteration of structures.” The proposed project would undoubtedly involve construction activity and alteration of the landscape, its terrain contour and vegetation on the parcels in question. The proposed project is not a residential project. As such, it is inconsistent with Section 20-22.050(D)(1). Therefore, the finding that the project “complies with all other applicable provisions of this Zoning Code,” as required by 20-52.050(F)(1), cannot be made.

The same requirement can be found in the Downtown Station Area Specific Plan and the General Plan. Both the Specific Plan and the General Plan assign the parcels in question to the Transit Village Medium land use classification. According to the Specific Plan (page 4-10) and General Plan (page 2-11), “residential uses are required” for projects in the Transit Village Medium land use designation. Our June 19 letter elaborates on the ways in which developing this residential site with a parking facility runs counter to various goals and policies of the Specific Plan and General Plan regarding transit-oriented and pedestrian-friendly development. But the simple sentence “residential uses are required” is enough to establish that the proposed parking facility is inconsistent with the Specific Plan and General Plan. The project proposes to develop parcels classified as Transit Village Medium without a residential use. As such, the required finding that “the proposed use is consistent with the General Plan and any applicable specific plan” cannot be made.

*Is residential development appropriate on the site?*

At the June 22 Planning Commission hearing, City staff and representatives of the applicant argued that the proposed site of the parking facility would not be a good site for residential development. Reasonable people may disagree on this point, but the Conditional Use Permit cannot be granted on that basis. If the City Council believes that the site is more appropriate for commercial development than residential development, there are legislative procedures for amending the Zoning Code, the Specific Plan, and the General Plan. But the project cannot be approved absent those amendments.

## **2. The project does not qualify for exemption from environmental review under CEQA Guidelines sections 15183 and 15332.**

Both of the CEQA exemptions claimed by staff for this project require a project to be consistent with the Zoning Code, Specific Plan, and General Plan. Staff does not dispute this fact. We have explained above and in our July 19 letter how the proposed project is inconsistent with all three. As such, the conclusion that the project does not qualify for the exemptions is straightforward.

Staff’s memo claims that our argument against the exemptions depends on considering the parking facility “in isolation.” The memo goes on to say, “When the off-site parking program is included as a component of the mixed-use hotel project, staff considers the project consistent with the General Plan, the DSASP, and the Zoning Code

and therefore exempt from further environmental review pursuant to the CEQA Guidelines [sections 15183 and 15332].” We have explained above how the project is inconsistent with the Zoning Code, Specific Plan and General Plan regardless of whether the parking facility is evaluated on its own or as a “component” of the hotel project. Neither the staff nor the Planning Commission has the authority to “consider” the project consistent with these codes and policies when it runs directly counter to explicit provisions thereof.

As we stated in our letter, the project’s ineligibility for exemption from CEQA is not a mere technicality. Development of a surface parking lot on a site that the Zoning Code, Specific Plan, and General Plan all reserve for residential development runs counter to goals and policies that the General Plan identifies as contributing to the City’s effort to reduce greenhouse gas emissions. For example, General Plan Policy LU-L-1, which is taken from the Downtown Station Area Specific Plan and included in the General Plan’s Greenhouse Gas Appendix, calls for “land use designations and development standards which will result in a substantial number of new housing units within walking distance of the downtown SMART station site.” The project’s inconsistency with these very land use designations and development standards has the potential to lead to significant environmental impacts, primarily related to reduced capacity for transit-oriented housing development. (It is simply absurd to argue that development of a parking facility on this site, subject to a recorded covenant running with the land that guarantees its use for hotel parking in perpetuity, would not make future residential development on the site significantly less likely.) Staff claims that CEQA does not require these potential impacts to be studied: “There are no exceptions or codified policies in the CEQA Guidelines that state that an exempt project should be reviewed for impacts based on potential alternative land use development.” But we are not arguing for reviewing a project in light of speculative alternatives; we are arguing for reviewing the project in light of existing land use policies, all of which went through their own CEQA review processes.

Fundamentally, this project requires environmental review because it diverges from the development program that was analyzed by the EIRs prepared for the adoption of the Specific Plan and the General Plan. These EIRs analyzed the potential impacts of development consistent with the plan documents for which they were prepared. If the City wishes to approve development that is inconsistent with those plans, further environmental review is required. That is why the exemptions under CEQA Guidelines sections 15183 and 15332 are limited to projects that are consistent with existing zoning codes and General and Specific Plans.

**Requested City Council action:**

1. Deny the Conditional Use Permit for the AC Hotel off-site parking (CUP17-031) based on the finding that the off-site parking is inconsistent with the land use requirements of the Zoning Code, the Downtown Station Area Specific Plan, and the General Plan.
2. Find that the project as proposed does not qualify for exemption from environmental review under CEQA Guidelines sections 15183 and 15332.