

EXHIBIT F – RESPONSE TO SPECIAL USE PERMIT APPEAL

Section 1 - Introduction

Following the approval of the project (SP20-016) by the Director of Planning, Building and Code Enforcement on March 23, 2022, Shehana Marikar, and other neighbors on behalf of the Hamann Park neighborhood, filed a request to appeal the Planning Director’s decision on account of the project (permit appeal) and the Determination of Consistency with the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration (environmental determination appeal).

The letter and staff responses to the concerns raised in the Special Use Permit appeal are discussed in below. These include:

- Consistency with the General Plan and Winchester Boulevard Urban Village land use designation of Neighborhood/Community Commercial.
- Consistency with applicable General Plan policies
- Side setback requirements
- Compatibility of building height
- Fire Safety
- Building Division project review
- Pedestrian Safety
- Passenger pick up/drop off operations
- Lack of parking
- Trash pick up operations
- Security concerns
- Traffic congestion

Each comment in the letter has been named so that comments can be cross-referenced with responses. Following this list, the text of the communication is re-printed, followed by the corresponding response.

Authors

Author Code

Gaz Salihue and Shehana Marikar; Tom and Gail Morman; Hal Stone; Jeffrey and Jacqueline Williams; Brian and Helen Matsumoto; Mike and Galina Drabkin; Mabel Chen

.....GROUP

Gaz Salihue & Shehana

Marikar.....SALIHUE/MARIKAR

Jeffrey & Jackie

Williams.....WILLIAMS

Mabel Cheng.....CHENG

Brian and Helen

Matsumoto.....MATSUMOTO

Tom and Gail
Morman.....MORMAN
Mike and Galina
Drabkin.....DRABKIN

Section 2 – Response to Appeal of Director Approval

Group

The April 1, 2022 comment letter from Gaz Salihue and Shehana Marikar; Tom and Gail Morman; Hal Stone; Jeffrey and Jacqueline Williams; Brian and Helen Matsumoto; Mike and Galina Drabkin; Mabel Cheng referred to as GROUP herein.

GROUP Comment-1

4/1/2022

To: San Jose Planning Commission

Subject: Appeal of Special Use Permit

Appeal of Planning Director Hearing: Wednesday, March 23, 2022

Agenda Item #4 (SP20-016) 1212-1224 S. Winchester Blvd, San Jose

Dear Mr. Chairperson and Members of the San Jose Planning Commission:

We are residents of the Hamann Park neighborhood that would be impacted by this project. Many of us worked with the City in developing the Winchester Boulevard Urban Village Plan and were supportive of this engagement. We are aware of the City's economic goals and tax base objectives and very much support the City's efforts to attain some balance in the tax base/services delivery.

We also support hotel development, but this site stands out as inappropriate. This site has smaller, shallow parcels that will have a negative environmental impact on the neighborhood.

Our concerns with many of the Municipal Code Findings listed below are addressed in the attached documents.

Per San Jose Municipal Code 20.100.820 Findings:

- A. In addition to any findings required by any other section of this title, the director, planning commission or city council as appropriate, may issue a special use permit only if all the following findings are made:
 - 1. The special use permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies; and
 - 2. The special use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and
 - 3. The special use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and
 - 4. The proposed use at the location requested will not:
 - i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or

- iii. Be detrimental to public health, safety, or general welfare; and
- 5. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and
- 6. The proposed site is adequately served:
 - i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - ii. By other public or private service facilities as are required.
- 7. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.
- B. The director, planning commission, or city council as appropriate, shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate such findings.

We appreciate your consideration of this matter and look forward to a positive response to our objections to insufficient findings for the hotel permit in our neighborhood. We hope to participate in a process that results in an appropriate development that fulfills the vision of the Winchester Boulevard Urban Village, a project that meets the City's economic and tax base growth objectives, an acceptable outcome for the Developer and the creation of appropriate smaller commercial businesses with a strong connection to, and provide services and amenities for, the community.

Sincerely,

Gaz Salihue & Shehana Marikar
Mabel Cheng
Mike & Galina Drabkin
Brian & Helen Matsumoto
Tom & Gail Morman
Hal & Susan Stone
Jeffrey and Jacqueline Williams

GROUP Response-1

This comment is an introductory statement regarding the permit appeal on the basis that the project does not meet the findings required for the issuance of a Special Use Permit. This comment does not raise any new issues with respect to the analysis of the project with regards to conformance with the General Plan, Winchester

Boulevard Urban Village Plan, Zoning Code, Design Guidelines, or applicable City Council policies. Therefore, no further response is required.

Gaz Salihue and Shehana Marikar (SALIHUE/MARIKAR)

The April 1, 2022 comment letter from Gaz Salihue and Shehana Marikar is referred to as SALIHUE/MARIKAR herein.

SALIHUE/MARIKAR Comment– 1

Special Use Permit (page 3)

Attractive City Policy CD-1.1:

Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.

The construction of a 6 story project adjacent to a residential neighborhood does not enhance or develop community character.

SALIHUE/MARIKAR Response-1

The project would allow the redevelopment of two single-family residences currently used for commercial purposes. The project conforms with the applicable design guidelines of the Winchester Boulevard Urban Village Plan and Commercial Design Guidelines as outlined in the Project Analysis section of the staff report and Special Use Permit Resolution. The maximum height of 65 feet (to the top of roof) conforms with the allowable height of the Winchester Boulevard Urban Village Plan, while maintaining the required setback and stepback requirements.

SALIHUE/MARIKAR Comment-2

Compatibility Policy CD-4.9:

For development subject to design review, ensure the design of new or remodeled structures is consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).

Analysis: The project would facilitate the redevelopment of an underutilized site with a commercial land use designation. The hotel is designed to be compatible with the established neighborhood to the east as well as the commercial corridor along South Winchester Boulevard. The building massing is oriented towards South Winchester Boulevard. The building is set back 20 feet from the rear property line. Additionally, the building would incorporate a stepback at a height of 35 feet to reduce shadows and maintain the privacy of the adjacent residences. Blank walls would be mitigated with

variations in color and materials as well as the addition of landscaping to the perimeter of the site. Materials would be varied, including natural wood paneling, architectural glazing, white sand stucco, and exposed gray concrete. The project would also include a 49 percent parking reduction and alternative parking arrangement (vehicle stackers). The parking reduction would be supported by a TDM plan to reduce vehicle trips and encourage multimodal transportation.

This proposed 6 story structure is not consistent or complementary with the surrounding neighborhood especially in building scale in terms on the surrounding one and two story single family homes. The planning staff have repeatedly ignored our concerns as the family that lives in the single family residence north of the proposed project with a mere 5 foot side setback. This setback is in violation of the **San Jose Municipal Code 20.40.270 - Side setback - Exceptions, interior lot. *Notwithstanding the provisions of Section 20.40.200, in the CP commercial district, a building side setback shall be required for interior lots on that side of each such lot which abuts on the side of a lot situated in a residence district, in which case the side setback requirements shall be a minimum of ten feet.***

The comments by the planning department staff in their analysis talks about the 20 foot setback from the residences to the east of the project and the stepback at 35 feet to reduce shadows on the same residences but there are no mitigation measures for the shadow that will be cast on the property to the north in the autumn and winter months.

SALIHUE/MARIKAR Response-2

Development standards such as heights, setbacks, and stepbacks are set by the approved Winchester Boulevard Urban Village Plan. As proposed, the project is consistent with the applicable height, setback, and stepback requirements of the urban village plan. The Winchester Boulevard Urban Village Plan allows a maximum height of 65 feet at the subject site, not including architectural projections. Architectural projections such as stairwell and elevator shafts may extend up to ten feet above the top of roof. As shown on the plan set, the architectural projections of the building would extend up to nine feet and six inches above the top of the roof. Therefore, the total project height of 74 feet, 6 inches would conform with the allowable height of 75 feet. The property adjacent to the subject site to the north is designated Neighborhood/Community Commercial on the General Plan and Winchester Urban Village land use plans. The property to the south is designated Public/Quasi-Public on the General Plan and Winchester Boulevard Urban Village land use plans. Pursuant to the Urban Village plan, a side setback is only required if the adjacent properties are designated either Urban Residential or Residential Neighborhood. As neither properties adjoining the property to the north or south are designated Urban Residential or Residential Neighborhood, the side setbacks of 5 and 6 feet conform with the required side setbacks. Additionally, as part of the City's efforts to comply with SB1333, the subject site to the north would be rezoned to a conforming commercial zoning district to the Neighborhood/Community Commercial land use designation. While the project is required to incorporate a rear

stepback, there are no side stepback requirements for new projects within the urban village.

SALIHUE/MARIKAR Comment–3

Special Use Permit (Page 4)

4. Winchester Boulevard Urban Village Conformance

Land Use Designation

The Winchester Boulevard Urban Village was adopted by City Council on August 8, 2017 (Resolution No. 78306). The subject site has a land use designation of Neighborhood/Community Commercial on the land use plan of the Winchester Boulevard Urban Village. This designation is applied to smaller, shallow parcels fronting Winchester Boulevard and abutting single-family residences. Given the size of the parcels, parking requirements in the zoning code and the urban design step down policies, these properties are appropriate for the location of smaller commercial businesses. Neighborhood/Community Commercial uses should have a strong connection to, and provide services and amenities for, the community. These uses should be designed to promote this connection with an appropriate urban form that supports walking, transit use and public interaction. Also, this designation supports the neighborhood servicing retail and small businesses along Winchester Boulevard.

Land use designation of Neighborhood/Community Commercial is supposed to be for small commercial businesses that would serve the surrounding community. This hotel does not fit the land use designation for this location based on the Winchester Urban Village Plan.

SALIHUE/MARIKAR Response- 3:

The Neighborhood/Community Commercial land use designation supports a broad range of commercial activity and is not exclusive to the kinds of commercial uses described in the land use designations in the General Plan and Winchester Boulevard Urban Village Plan. A hotel is a commercial use that may serve local areas by providing accommodations for visiting families, friends, and workers in the surrounding area. The City has historically approved hotels with Neighborhood/Community Commercial land use designations in Urban Villages, including those in City Council District 1 (Hampton Inn on South De Anza Boulevard, Aloft Hotel on Moorpark Avenue).

SALIHUE/MARIKAR Comment-4

Special Use Permit (Page 8)

Structures

- *Transitions between existing and new buildings should be gradual. The height and mass of new projects should not create abrupt changes from those of existing buildings.*

There is no gradual change in height or mass associated with this project. When one single story and one two story building is replaced with a six story building that does create a huge and abrupt change for the neighborhood of mostly residences.

SALIHUE/MARIKAR Response–4:

The project does incorporate the required setback at the rear of the site in order to comply with Figure 5-3 found on page 64 of the Winchester Boulevard Urban Village Plan. The rear of the building would be set back a minimum of 20 feet from the residential area to the east. Additionally, the building would incorporate a setback at a height of 35 feet so as not to intercept the 45-degree daylight plane in order to reduce shadows and maintain the privacy of the adjacent residences.

SALIHUE/MARIKAR Comment–5

- *Loading areas, access and circulation driveways, trash, and storage areas and rooftop equipment should be located as far as possible from adjacent residences and should never be located next to residential properties without fully mitigating their negative effects.*

Analysis: *The rear of the building would be set back 20 feet from the residential area to the east. Additionally, the building would incorporate a setback at a height of 35 feet to reduce shadows and maintain the privacy of the adjacent residences. Blank walls would be mitigated with variations in color and materials as well as the addition of landscaping to the perimeter of the site. Materials would be varied, including natural wood paneling, architectural glazing, white sand stucco, and exposed gray concrete. All loading and trash facilities would be located in an enclosed loading and service area located at the southern end of the building along South Winchester Boulevard.*

Based on the project diagrams (Appendix A Project Plans) trash facilities are located to the north of the proposed project adjacent to a single-family residence. There are no mitigation measures in place for trash facilities that would be located adjacent to a single-family residence with a 5 foot setback. There are health and hygiene concerns that have not been addressed by the planning staff about the placement of trash facilities adjacent to a residence. How large are the dumpsters that would need to be rolled out to the street for trash pick up? What are the mitigation measures for the noise created by rolling the dumpster to the street for trash pick up? Is there sufficient setback to roll these dumpsters out? Would they impede the fire hose paths that are to be located on the property? We would urge the Planning Commission to follow up on all of these issues before letting this project move forward as proposed.

SALIHUE/MARIKAR Response-5:

The project includes a fully enclosed, 13-foot by 8-foot, trash area at the north side of the building. There is a minimum 6-foot-wide pathway for trash and recycle receptacles to be rolled out of the trash enclosure and onto the street for curbside

pick-up. As conditioned in the Special Use Permit, the trash area would be required to be screened from view, covered, and maintained to discourage illegal dumping. As the trash area would be fully enclosed, it would not conflict with the ability for emergency services to access the side and rear areas of the property when necessary. Any noise from rolling dumpsters would be temporary and would only occur on days/times where trash pick-up would occur.

SALIHUE/MARIKAR Comment–6

Special Use Permit (Page 9)

Landscaping.

- All areas not covered by structures, service yards, walkways, driveways, and parking spaces should be landscaped.
- The perimeter of the site should be landscaped to provide parking lot screening, a buffer for adjacent uses, and an attractive view from the street.
- A mixed planting of trees, shrubs, and groundcover in the area between buildings and the sidewalk should be included

Analysis: The project includes a detailed landscaping plan. Nine existing trees would be preserved on-site. An additional 46 new trees would be planted on site. Street trees would be planted along the project frontage along Winchester Boulevard and trees would be planted along the perimeter of the site to further soften the transition between the existing residences and the hotel.

The setback to the north is 5 feet and 6 feet to the south. So the analysis provided by the planning department staff is either inaccurate or misleading as there is no space for trees. None of the project drawings show trees along the north and south of the proposed project. There is no softening of a transition especially for the single-family residence to the north of the hotel.

SALIHUE/MARIKAR Response–6:

Landscaping and planting of trees would only occur at the (rear) eastern and front (western) ends of the project site. The side setback areas would be paved walkways. As previously stated, there are no required setbacks at the sides of the property. Additionally, as previously discussed, there are no required setbacks at the sides of the property.

SALIHUE/MARIKAR Comment-7

10. Special Use Permit Findings Chapter 20.100 of Title 20 of the San José Municipal Code
d. The proposed use at the location requested will not:

- Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or*

Can the city guarantee this hotel project would not impact the peace, health, safety, morals or welfare of persons residing or working in the surrounding area? It is a monumental claim considering the multiple concerns that have been brought by the neighbors about the negative impacts of this project in terms of peace, health, safety and welfare of the surrounding community.

ii. Impair the utility or value of property of other persons located in the vicinity of the site;

What metrics were used by the city staff to make this arbitrary judgment? Did the city staff consult with an expert in this area to make this conclusion? If so, we would like to see those reports. It is a bold statement made with no facts or figures to back it up.

iii. Be detrimental to public health, safety, or general welfare; and

The traffic that this hotel would create is a public safety issue for the pedestrians and bicyclists who use Winchester Blvd. The inadequate parking at the hotel will create overflow of vehicles to the surrounding neighborhood and impact public safety of the students at Castlemont Elementary and residents alike.

SALIHUE/MARIKAR Response-7:

A hotel is an authorized use under the General Plan land and Zoning. Hotels are commercial uses which are intended to serve people visiting from outside the area. Hotel patrons are generally only present at the hotel during early morning and evening hours to sleep. With the exception of the small terrace on the sixth floor, facing South Winchester Boulevard, there are no outdoor uses that would negatively impact the surrounding properties. Overall, the Transportation Analysis concluded that operation of the parking lifts could momentarily block on-site circulation within the parking garage, however this blockage was determined not to substantially impact the pinch point of the project's interface with the public right-of-way. On-site circulation blockage would not cause negative impacts to the emergency access to and around the site, pedestrian circulation, bicycle circulation, traffic safety, or delivery access since any temporary blockage would be within the parking garage. The project is conditioned to install visible and audible signals at the garage entrances to alert pedestrians and bicyclists of vehicles exiting the parking garage. Additional pedestrian, bicycle and transit analysis is included under the Local Traffic Analysis (LTA). As noted in the LTA section of the Transportation Analysis, all of the roadways in the vicinity of the project site have sidewalks on both sides of the street, except a short segment on the east side of Winchester Boulevard, along the frontages of the project site and one adjacent property to the north. The project would install a 20-foot sidewalk along its frontage on Winchester Boulevard. The Urban Design Framework for the Winchester Urban Village contains features that strengthen the connectivity to and from Winchester Boulevard, including several potential mid-block crossings (proposed at least every 300 feet). Although a mid-block crossing is identified south of Fireside Drive, it has not been identified as a

project component, as it is beyond the project site and scope. This aside, the Transportation Analysis would not be affected because it properly accounts for the vehicle miles traveled (VMT) generated by the project. The mid-block crossing will be analyzed with future redevelopment near the crossing.

SALIHUE/MARIKAR Comment-8

10. Special Use Permit Findings. Chapter 20.100 of Title 20 of the San José Municipal Code

e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

Analysis: As discussed above, the project site is adequate in size and shape to accommodate the development features in order to integrate the hotel use with the surrounding area as well as the planned uses and building forms as envisioned in the South Winchester Urban Village Plan.

The proposed site is not adequate considering it lacks the minimum 10 foot side setback required to the single-family residence to the north, as required in the **San Jose Municipal Code 20.40.270** – Side setback - Exceptions, interior lot.

SALIHUE/MARIKAR Response-8:

As shown in the project plans and outlined in the project analysis in the Special Use Permit Resolution, the project does meet all minimum required heights, setbacks, parking and loading, utility and service areas, and landscaping. As previously discussed, a minimum 10-foot side setback is not required for the subject site, pursuant to the approved Winchester Boulevard Urban Village plan.

SALIHUE/MARIKAR Comment-9

17.12.120 - Local Amendments to the 2019 California Fire Code.

The provisions of this Chapter shall constitute local amendments to the cross-referenced provisions of the 2019 California Fire Code and shall be deemed to replace the cross-referenced sections of the 2019 California Fire Code with the respective provisions set forth in this Chapter.

Findings

The amendments set forth in 17.12 are reasonably necessary because of the following local geological, topographical and climatic conditions:

- I.* The City of San José is located within a very active seismic area. Severe seismic action could disrupt communications, damage gas mains, cause extensive electrical hazards, and place extreme demands on both private fire protection systems and equipment. The

limited and widely dispersed resources of the Fire Department could result in failure to meet and provide the fire protection and life safety needs of the community.

- II. The local geographic, topographic and climatic conditions pose an increased hazard in the acceleration, spread, magnitude, and severity of potential fires in the City of San José, and may cause disruptions in operation of private fire protection systems and equipment and delayed fire response time, allowing for further fire growth and spread.

The lack of a report from the San Jose Fire Department prior to the approval of the Special Use Permit, shows the disregard of the Planning Department in terms of the safety of the surrounding residences and the larger community. Considering the local geography and San Jose being a very active seismic area.

SALIHUE/MARIKAR Response-9:

As discussed in the Transportation/Traffic Section 4.17 of the IS/MND, the project would not result in inadequate emergency access. The project includes aerial access for fire apparatus vehicles at the project frontage on South Winchester Boulevard, 29.2 feet from the proposed building. The California Fire Code requires a distance between 15 to 30 feet. Final plans would be reviewed by the City prior to the issuance of Building Permits to ensure that the project adheres to all California Fire Code requirements. Please note, Building Permits would not be issued for projects that do not comply with any applicable Fire and Building Code requirements. Additionally, staff confirmed with Fire Department staff that project may proceed to a hearing prior to the approval of Fire Variance. See the attached correspondence, dated September 22, 2021, between Planning staff and the Fire Department in Attachment A below.

Jeffrey and Jackie Williams (WILLIAMS)

The April 1, 2022 comment letter from Jeff and Jackie Williams is referred to as WILLIAMS herein.

WILLIAMS Comment-1

April 1, 2022

Subject: Appeal of Special Use Permit

Regarding: Planning Director Hearing of Wednesday March 23, 2022,

Agenda Item #4 (SP20-016) 1212-1224 South Winchester Boulevard Hotel Project

Dear Members of the Planning Commission:

We are submitting this letter of appeal on behalf of the residents of the Hamann Park neighborhood that would be impacted by this proposed hotel. Please note that in submitting this appeal we strongly support one of the key tenets of the Winchester Boulevard Urban Village Plan that “New development within the Urban Village should be

well integrated within, and respectful of, and compatible with adjacent existing neighborhoods”.

The lack of parking and whether the project is truly in compliance with the City of San Jose Parking Code (Special Use Permit, Page 6) are significant areas of concerns for us. We are specifically concerned that the calculation for the reduction in the required off-street vehicle parking spaces, referred to in the Project documents as the “TDM Reduction Request”, has not received the appropriate amount of independent analysis and verification. Up until now the Planning Department has relied on the Developer’s representation in the project’s Operations Plan to corroborate the number of workers on-site that was used in the TDM Reduction calculation. However, we have made the Planning Department aware on more than one occasion (See Attached Letters) that the Developer’s Operations Plan 1) does not include a shuttle driver (that is listed in the planning documents), 2) only includes one valet, not the 2-3 valets Hexagon indicated would be required to mitigate traffic issues, 3) the total number of housekeepers included (6) which industry experts have told us is insufficient to support this 119 room hotel and 4) the shifts for the housekeeping staff were set to keep workers on-site during any shift to no more than ten, which was clearly stated by the Developer in the Operations Plan, and is not reflective of hotel industry operating norms and standards. Therefore, we strongly believe the Developer’s Operations Plan as submitted understates the number of workers onsite. If that is the case, **the submitted TDM Reduction calculation of 49% is incorrect.**

The gist of the responses we have received addressing the Operations Plan deficiencies noted above have been that the Planning Department solely relies on the Developer’s representations and that there is a TDM Plan in place. Even after being made aware of our concerns, they have not addressed the fundamental question - Is the number of workers on-site that was used for the TDM Reduction calculation correct?

As stated in Section 20.90.220 of the San Jose Parking Code a TDM Reduction Request can be "up to fifty percent". (49% would then be the maximum allowable) So, if the TDM Reduction calculation is greater than the amount allowable under the Code the project could not be approved. However, if the TDM Reduction request is 21% to 49%, then a TDM Plan is required for the project to be approved. Therefore, following the Parking Code requirements, the required first step is that a TDM Reduction calculation be completed to determine if the project qualifies for a reduction in the required off street parking spaces.

Only then if the project does qualify for a reduction in the required off-street vehicle parking spaces, a TDM Plan has to be developed and implemented that mitigates the project’s reduced amount of parking. The TDM Plan outlines the mitigation actions that deal with the parking and transportation issues resulting from projects with a 21% to 49% TDM Reduction Request and only comes into play after the TDM Reduction calculation is completed. The TDM Plan actions should not be taken into account when determining the maximum number of workers on-site during any shift when the TDM Reduction calculation is prepared. For example, even if a valet, housekeeper or shuttle driver is dropped off to

work his/her shift, they are on-site and should be included in the TDM Reduction calculation. A worker physically at the hotel during any shift is a worker on-site, and all workers on-site should be counted when preparing the TDM Reduction calculation. Not counting them would be akin to saying that since a hotel guest may arrive in an Uber, the number of hotels rooms used in the TDM Reduction calculation could be reduced.

So, we ask - Doesn't the Planning Department have a fiduciary responsibility to the citizens of San Jose to thoroughly investigate our concerns with the deficiencies in the Developer's Operations Plan to ensure that the TDM Reduction request calculation is accurate and in compliance with the City of San Jose Parking Code prior to approving this project?

We request the Planning Commission delay the approval of the Special Use Permit for this project and require that the Planning Department complete a thorough and independent analysis of the validity and accuracy of the Developer's Operations Plan. We also request that the results of analysis be presented to the neighborhood and the Planning Commission before any decision is made to approve any permit related to this project.

We appreciate your attention to these concerns.

Respectfully,

Jeffrey Williams

Jacqueline Williams

WILLIAMS Response-1:

The General Plan, Winchester Boulevard Urban Village Plan, and Zoning Code support maximizing parking reductions and encouraging the use of alternative modes of transit, especially in areas designated as Urban Villages. Generally, the Zoning Code would require 129 vehicle parking spaces for this project. Pursuant to Section 20.90.220 of the San José Municipal Code, a parking reduction of up to 50 percent of the required parking spaces may be permitted for sites within a Growth Area with the implementation of a TDM Plan. The project would provide 66 vehicle parking spaces with the implementation of a TDM Plan to allow for an approximately 49 percent parking reduction. A TDM Plan, dated January 27, 2021, was prepared by Hexagon Transportation Consultants, Inc, which reviewed the possibility of an approximately 49 percent parking reduction. In addition to providing the required bicycle parking spaces, showers, and lockers, the project would also implement additional TDM measures in accordance with Section 20.90.220 of the San José Municipal Code. The TDM Plan identifies viable alternatives to traditional driving practices that will support guests who arrive by other means than by private car, such as hotel guest shuttle and bicycle, car-share vehicles, and bicycle parking as well as hotel employees who would receive financial incentives for walking or bicycling to work and free VTA Smart Pass cards. The project's parking garage includes a location for valet vehicle queuing and the ground

floor has a loading space for delivery trucks. As a Condition of Project Approval, the project would implement the TDM plan and any violation of the TDM plan would be subject to revocation, suspension, or modification of the permit.

Mike and Galina Drabkin (DRABKIN)

The April 1, 2022 comment letter from Mike and Galina Drabkin is referred to as DRABKIN herein.

April 1, 2022

To: San Jose Planning Commission

Subject: Appeal of Special Use Permit

Regarding: Planning Director Hearing of Wednesday March 23, 2022,

Agenda Item #4 (SP20-016) 1212-1224 South Winchester Boulevard Hotel Project

Dear Members of the Planning Commission:

We are the residents of the Hamann Park neighborhood that would be impacted by this project. Many of us worked with the City in developing the Winchester Boulevard Urban Village Plan and were supportive of this engagement. We are aware of the City's economic goals and tax base objectives, and very much support the City's efforts to attain some balance in the tax base/services delivery.

We request the Commission's attention to review several problematic aspects of the Special Use Permit, which was approved last week for demolition and subsequent construction at this site. We appeal to the Commission to properly and promptly address these issues before considering any additional permit requests for this site. These issues were raised in writing and in public comments at the Director's hearing reference above.

DRABKIN Comment-1**Special Use Permit – General Plan Conformance**

Attractive City Policy CD-1.1 (page 3) talks about design controls, applied to all development projects, for "enhancement and development of community character."

The great majority of it consists of one- and two-story single-family homes and two-story apartment buildings. The tallest structure in the immediate vicinity of the proposed project is the 3-story office building at 1245 Winchester Blvd. Hamman Park is a residential neighborhood, whose residents are frequently seen enjoying a leisurely walk or a bicycle ride through our streets. Often, these folks are accompanied by a small child or a pet. Both the award-winning Castlemont elementary school and Monroe middle school are located within a couple of minutes' walks from the project site. Many of the homeowners have lived in this neighborhood for decades.

Given the above, it is extremely difficult to understand how a 6-story hotel would enhance the character of this neighborhood. Quite the opposite, the increased noise and traffic, associated with hotel operations would negatively affect its peace and serenity. With availability of parking not currently an issue in this neighborhood, the residents and their guests would be unduly challenged to find parking spaces due to hotel guests and employees, using the same streets for free and convenient parking. Add to that the fact that as a business, the hotel does not have any connection to the community, and it becomes apparent that the community character indeed will *not* be enhanced by this project.

DRABKIN Response-1:

See SALIHUE/MARIKAR Response-1, SALIHUE/MARIKAR Response-2, and SALIHUE/MARIKAR Response-3 above.

DRABKIN Comment-2

Special Use Permit – Special Use Permit Findings

Comment: Section 10(d) talks about what the proposed use (i.e. the Hotel) will NOT do, such as “adversely affect the peace, health, safety, morals, or welfare”; “impair the utility or value of property”; and “be detrimental to public health, safety, or general welfare” of the residents in the surrounding area. The Planning Department’s analysis that follows more or less just repeats these points, without providing any explanation of how these conclusions were arrived at.

The Hamman Park neighborhood residents strongly disagree with the above statements. In fact, it is precisely because we feel our quality of life, our safety, and values of our homes will be negatively affected by the Winchester Hotel, we have been expressing our opposition to this project for the last two years. The City needs to substantiate these claims by doing proper research and analysis, in order to convince the residents, if the community’s support indeed matters to the City.

DRABKIN Response-2

See SALIHUE/MARIKAR Response-7 above.

DRABKIN Comment-3

Question raised at the 3/23 Planning Director’s Hearing

Why weren’t Hexagon Consultants’ Traffic Analysis and TDM reports updated after several changes to the project plans, especially to the ground floor plan?

This question was not satisfactorily addressed at the 3/23 hearing. Dr. Askari’s only response was that Hexagon already performed 2 years’ worth of studies, probably implying that they’ve done enough work, and no further analysis is needed. In addition, he mentioned that the hotel operator will probably use outside companies to bring employees to the site and pick them up, and further, he mentioned likely use of QR codes for Uber services and

self-driving cars in the future, alluding that this is the vision of the City Council for San Jose 10 years down the line.

Leaving aside the futuristic projections, the issue here is that when some of the main project documents, used to estimate the degree of the project's impact on the community, are not based on the latest available project plans, the validity of the entire project is brought into question. We urge the Planning Commission to insist that Hexagon or a similar entity complete the studies, using the current project plans.

DRABKIN Response-3:

The Transportation Analysis, dated June 18, 2020 (Appendix H of the IS/MND), prepared by Hexagon Transportation Consultants, states that the loading zone may have to be moved on-site per the City's discretion. As noted in the comment, the loading and delivery zone was moved on-site and is adjacent to the driveway entrance to the underground garage. As discussed in the Transportation/Traffic Section 4.17 of the IS/MND, vehicles exiting the project site driveway on South Winchester Boulevard would be able to see approaching traffic on northbound South Winchester Boulevard at least to Payne Avenue located approximately 450 feet to the south. Therefore, the Transportation Analysis concludes that the project driveway on South Winchester Boulevard would meet the American Association of State Highway Transportation Officials minimum stopping sight distance standards. The recommendation to have the project include visible and/or audible warning signals at the garage entrances to alert pedestrians and bicyclists of vehicles exiting the parking garage, is also being incorporated into the project.

Additionally, the project is required to implement a Transportation Demand Management (TDM) program that includes the following recommended measures to meet requirements outlined in Section 20.90.220 of the Zoning Ordinance for a reduction in required parking exceeding twenty percent:

- Bicycle Parking
- On-site bicycles for guest use
- Guest shuttle services
- On-site access to car-share vehicles for employees and guests
- Free annual Santa Clara Valley Transportation Authority (VTA) Smart Passes for employees
- Financial incentives for employees who bike or walk to work
- On-site TDM coordinator and services

Implementation of the measures outlined above would ensure the project meets the provisions for vehicle parking reduction. A Condition (#8) to the Special Use Permit resolution has been added requiring the applicant to provide an off-site parking arrangement, should the project fail to maintain the required Transportation Demand Management (TDM) Plan. Any off-site parking arrangement would be reviewed for consistency with Chapter 20.90 of the Zoning Code, as amended. If an

off-site parking arrangement cannot be found, the permit may be subject to revocation, suspension, or modification of the permit in accordance with Section 20.100.350 of the Zoning Code until the issue is rectified.

DRABKIN Comment-4

At the 3/23 Planning Director' Hearing I specifically asked, but never received an answer, to the following question:

Where would the REPLACEMENT PARKING be in case that the project fails to maintain a TDM program? Why is that location has not been made public?

Hexagon TDM Plan, dated January 27, 2021, page 12:

e. For any project that requires a TDM program:

ii. The decision maker for the project application also shall first find that the project applicant will provide **replacement parking** either on-site or off-site within reasonable walking distance for the parking required if the project fails to maintain a TDM program.

At the 3/23 Planning Director' Hearing I specifically asked, but never received an answer to the following question: **No dedicated Uber drop-off spot(s) indicated on the plans. Why is this issue not being addressed? I would like to know where the car sharing services will be picking up and dropping off passengers. Where would these vehicles be located on-site? In addition, I would like to know where would Guest shuttle park?** See the requirement from page 13 of Hexagon TDM study (currently, there is no location indicated on the project plans).

Hexagon TDM Plan, dated January 27, 2021, page 13:

On-Site Car-Share Program (Guests)

The proposed project would provide **on-site** access to a car-sharing service such as Zipcars for hotel employees and guests. Vehicles will be located **on-site** allowing hotel employees and guests to come and go at their convenience. Vehicles can be reserved prior to visiting the hotel.

I would very much appreciate the answers to the above questions, as those issues will affect the Winchester Hotel project. If not addressed, the above-mentioned problems will negatively affect the parking situation in the surrounding neighborhood, as overflow cars, ride-share services, and shuttles will all vie for spots on the adjacent streets.

DRABKIN Response-4:

A Condition (#8) to the Special Use Permit resolution has been added requiring the applicant to provide an off-site parking arrangement, should the project fail to maintain the required Transportation Demand Management (TDM) Plan. The off-site parking arrangement would be reviewed for consistency with Chapter 20.90 of the Zoning Code, as amended. If an off-site parking arrangement cannot be found, the permit may be subject to revocation, suspension, or modification of the permit in accordance with Section 20.100.350 of the Zoning Code until the issue is rectified.

Project pick-up and drop off would occur entirely within the parking garage. There is a dedicated turn around space at the furthest point of the garage from the entrance.

Brian and Helen Matsumoto (MATSUMOTO)

The April 1, 2022 comment letter from Brian and Helen Matsumoto is referred to as MATSUMOTO herein.

MATSUMOTO Comment-1

April 1, 2022

To: San Jose Planning Commission

Subject: Appeal of Special Use Permit Appeal

Appeal of Planning Director Hearing: Wednesday, March 23, 2022
Agenda Item #4 (SP20-016) 1212-1224 S. Winchester Blvd, San Jose

Dear Honorable Chair and San Jose Planning Commission Members:

I would like to call attention to Fire Safety and related concerns. Fire safety and mitigation is of utmost importance to the community with regards to any proposed project at the 1212-1224 S Winchester Blvd address. On page 27 of the 'SP20-016 SPECIAL USE PERMIT_approved_Planning Director Hearing_03.23.2022' document, item 39, Bureau of Fire Department Clearance for Issuing Permits, states: Prior to the issuance of a Building Permit, the project must comply with the California Fire Code as adopted or updated by the city.

In the Planning Director Public Hearing meeting on March 23, 2022 for SP20-016, it was clearly stated that a Fire Variance is necessary for this project.

However the fire safety plan / Fire Variance is only considered at the building permit approval phase. According to OSHA, "The options available for attacking a fire increase when a building's perimeter becomes more accessible to fire apparatus...ideally the full perimeter would be accessible; however, this is not always feasible." Developments on appropriately sized lots along Winchester have clearly marked fire lanes for fire truck access: A Grace Subacute, 1250 S. Winchester; Lynhaven Apartments, 919 S. Winchester; Villa Cortina, 801 S. Winchester. As noted, the North and South access of this project is 5'6" and 6' 0" respectively. Fire-fighting with the aid of a truck is limited to frontal aerial coverage. A fire at the mid to lower levels in the rear of the building will not be accessible with only frontal aerial coverage. Are the side setbacks of 5' or less sufficient for fire fighters to navigate with ladders and devices from the front access to the back of the structure? Also, the access would need to be maintained to always be clear.

In addition, the document “1) Initial Study_1212-1224 S Winchester Blvd Hotel PROJECT” dated May 2021, on page 148, section 4.15.4, discusses the Impact for the need of new or physically altered fire protection facilities.

It is stated, paragraph 1, “The proposed project would replace two commercially-used buildings with a 119-guestroom hotel. Development of the site would incrementally increase the need for fire protection services but would not significantly impact the response time or require construction of new facilities.”

Paragraph 2, “Construction of the proposed project would be required to comply with applicable **Fire Code standards**”. However, the Fire Variance has not been submitted to be approved yet. The community has raised concerns in regards to the fire-fighting capabilities especially in the rear of the bldg.

Paragraph 3, “The General Plan EIR evaluated the need for **new fire stations** with buildout of the General Plan and concluded that implementation of the general plan would result in an increase in calls for fire protection services but would not result in the need for construction of fire stations in excess of those **currently planned**.” This clearly outlines that additional fire stations are **currently planned** to support this project and others in the Urban Village Plan. As this is a necessary step for a comprehensive fire safety and protection, the additional fire stations will need to be in service and functional prior to any high rise construction project. Commencement and completion of a high rise project without the necessary number of fire fighting facilities/stations, would place not only the project but also the surrounding neighborhoods at risk. This will result in a gross negligence for fire safety.

As fire safety is a concern not only for the occupants/guests in this project but also for the general public. Fire safety is also an integral part of the General Plan EIR. The Fire Variance should be addressed and made public as part of the initial design and **prior** to the Special Use Permit approval. This would allow for corrections to address any building design deficiencies related to the project and necessary access surrounding the building for fire fighting equipment.

In addition we believe that the **currently planned** additional fire stations need to be addressed and made public as to the scheduled timeline of when these are to be operational. This is essential to provide the additional fire fighting capabilities with the increase in building size of this project from the current existing two smaller structures.

Respectfully,
Brian and Helen Matsumoto

Matsumoto Response-1:

See SALIHUE/MARIKAR Response-9 above

Tom and Gail Morman (MORMAN)

The March 31, 2022 comment letter from Tom and Gail Morman is referred to as MORMAN herien.

Comment MORMAN - 1

To: San Jose Planning Commission Chair Rolando Bonilla,
Vice Chair George Casey and Planning Commission Members
Subject: Appeal of Planning Director Hearing: Wednesday, March 23, 2022
Agenda Item #4 (SP20-016) 1212-1224 S Winchester Blvd, San Jose

Dear Mr. Bonilla and Planning Commission Members

Addressing the Draft Special Use Permit SP20-016,
Item 3: **General Plan Conformance**

- 1) “The project site has an Envision San Jose 2040 General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial.” P2, Draft Special Use Permit
- 2) Winchester Urban Village Plan: **Neighborhood/Community Commercial Land Use Designation** (3.3-1): “**This designation is applied to smaller, shallow parcels fronting Winchester Boulevard and abutting single-family residences. Given the size of the parcels, parking requirements in the zoning code and the urban design step down policies, these properties are appropriate for the location of smaller commercial businesses. Neighborhood/Community Commercial uses should have a strong connection to, and provide services and amenities for, the community. These uses should be designed to promote this connection with an appropriate urban form that supports walking, transit use and public interaction. Also, this designation supports the neighborhood servicing retail and small businesses along Winchester Boulevard.**”
- 3) Winchester Urban Village Plan: **Urban Village Commercial** Land Use Designation (3.3-1) “The Urban Village Commercial Land Use designation is applied to properties on Winchester Boulevard and Moorpark adjacent to, and on the south side of Interstate 280. This area was identified as an opportunity for new commercial development that could build off the success in the adjacent Santana Row/Valley Fair Urban Village. **This designation supports commercial activity that is more intensive than that of the N/CC land use designation. Appropriate uses in this designation include a variety of commercial uses, mid-rise office buildings and hotels...**”

- 4) The **Staff Analysis** states (p3, Draft Special Use Permit): The site is in close proximity to Santana Row, a large employment and shopping destination located to the north of the subject site. **The hotel use would provide a necessary service for existing and future demand from business travelers and visitors.**
- 5) We concur with the Staff Analysis that hotel use would do exactly that, which is why **the hotel belongs where the land use designation is Urban Village Commercial Land.**
- 6) **We wholeheartedly support the Envision San Jose 2040 General Plan and the Winchester Urban Village Plan.** We ask that the Neighborhood/Community Commercial Land Use designation be implemented so that the land use conforms to the Winchester Boulevard Urban Village Plan (p19, 3.3-1)
---**“appropriate for the location of smaller commercial businesses”**
---**“uses should have a strong connection to, and provide services and amenities for, the community”**
---**“These uses should be designed to promote this connection with an appropriate urban form that supports walking, transit use and public interaction”**
---**“this designation supports neighborhood servicing retail and small businesses along Winchester Boulevard.**

MORMAN Response-1

See SALIHUE/MARIKAR Response-3 above.

Mabel Cheng (CHENG)

The April 1, 2022 comment letter from Mabel Cheng is referred to as Cheng herein.

April 1, 2022

To: San Jose Planning Commission

Subject: Appeal of Special Use Permit

Ref. Planning Director Hearing on Wednesday March 23, 2022, Agenda Item #4 (SP20-016)
1212-1224 S. Winchester Blvd., San Jose

Dear Members of the Planning Commission:

We are the residents of the Hamann Park neighborhood that would be impacted by this project. Many of us worked with the City in developing the Winchester Boulevard Urban Village Plan and were supportive of this engagement. We are aware of the City's economic

goals and tax base objectives, and very much support the City's efforts to attain some balance in the tax base/services delivery.

We request the Commission's attention to review several problematic aspects of the Special Use Permit, which was approved last week for demolition and subsequent construction at this site. We appeal to the Commission to properly and promptly address these issues before considering any additional permit requests for this site. Let us draw your attention to the topics listed on the following pages, according to the sections of the Special Use Permit. These issues were raised during the meeting referenced above, but were not directly or adequately addressed. Most importantly, the current project plans are in violation of municipal code 20.40.270.

We appreciate your attention to these concerns.
Mabel Cheng, 1235 Redoaks Dr, San Jose

CHENG Comment-1

Special Use Permit, Facts and Findings (numbering corresponds to that of the SUP)

- 5. Municipal code 20.40.270 - Side setback

Please reference the following municipal codes:

- Municipal code 20.40.200 - Development standards
Table 20-100
Zoning district CP (Commercial Pedestrian)
Minimum setback, side, interior:
none; or as established in approved Urban Village Plan
- Municipal code 20.40.270 - Side setback - Exceptions, interior lot.
Notwithstanding the provisions of Section 20.40.200, in the CP commercial district, a building side setback shall be required for interior lots on that side of each such lot which abuts on the side of a lot situated in a residence district, in which case the side setback requirements shall be a minimum of ten feet.

The project site and the residential property to the north are both interior lots, which means one side faces the street, and the other 3 sides are shared with neighboring properties. Municipal code 20.40.270 clearly requires a side setback of at least 10 ft between a commercial building and a neighboring residential property line. However, the project plans currently indicate a side setback of only 5 ft 6 in. This inconsistency needs to be addressed immediately. Correction of this oversight will also improve the fire department access to the side and rear of the building.

CHENG Response-1:

The property adjacent to the subject site to the north is designated Neighborhood/Community Commercial on the General Plan and Winchester Urban Village land use plans. The property to the south is designated Public/Quasi-Public

on the General Plan and Winchester Boulevard Urban Village land use plans. Pursuant to the Urban Village plan, a side setback is only required if the adjacent properties are designated either Urban Residential or Residential Neighborhood. As neither properties adjoining the property to the north or south are designated Urban Residential or Residential Neighborhood, the side setbacks of 5 and 6 feet conform with the required side setbacks are adequate. Additionally, in accordance with Senate Bill 1333 (SB1333), the property to the north would be required to be rezoned to a commercial zoning district that conforms with the Neighborhood/Community Commercial land use designation. As part of the City's efforts to comply with SB1333, the subject site to the north would be rezoned to a conforming zoning district to the Neighborhood/Community Commercial land use designation.

CHENG Comment-2

(9. Site Development Permit Findings:)

9a. "the hotel would be consistent with the General Plan and Winchester Boulevard Urban Village Land Use Designation of Neighborhood Community Commercial."

We take issue with the claim that the hotel would be consistent with the Winchester Urban Village NCC land use. The proposed hotel would not "have a strong connection to, and provide services and amenities for, the community."

CHENG Response-2:

See SALIHUE/MARIKAR Response-3 above.

CHENG Comment-3

9b. "The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project"

The hotel plans do not conform with the minimum 10 ft required side setback on the north side of the property facing residential homes per municipal code 20.40.270.

CHENG Response-3:

See CHENG Response- 1 above.

CHENG Comment-4

9e. "The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood."

Comment: We strongly disagree that a 6-story hotel located 5.5 ft from a single-story residential home can be deemed "aesthetically harmonious" and "compatible with the character of the neighborhood."

CHENG Response-4:

The project complies with all height, setback, and stepback requirements as required by the Winchester Boulevard Urban Village Plan. The subject site is located within the Winchester Urban Village which allows for a maximum height of 65 feet (75 feet with architectural projections such as elevator shafts and mechanical equipment). The project's maximum height of 74 feet, 6 inches complies with the maximum allowable height of the Urban Village. The project does incorporate the required stepback at the rear of the site in order to comply with Figure 5-3 found on page 64 of the Winchester Boulevard Urban Village Plan. The rear of the building would be set back a minimum of 20 feet from the residential area to the east. Additionally, the building would incorporate a stepback beginning at a height of 35 feet so as not to intercept the 45-degree daylight plane in order to reduce shadows and maintain the privacy of the adjacent residences. While staff is sensitive to the resident concerns regarding the height and setbacks of the building, this is also the first development of its kind in this part of the Urban Village.

CHENG Comment-5

9g. "trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood."

- Due to the inadequate building setback on the north side of the planned hotel, in violation of municipal code 20.40.270, there is no room for a commercial trash collection service vehicle. Thus there would be an unsightly, malodorous dumpster positioned at the curb one day per week in a Commercial Pedestrian zone. At best, this is certainly not an "upgrade to the appearance of the neighborhood". At worst, this may be a safety issue, should it interfere with automobile, bicycle, and/or pedestrian traffic.
- City dumpster trucks have lifting forks positioned at the front of the truck. When the dumpster is in proper position to be lifted by the truck driving northbound on Winchester Blvd., the dumpster will be occupying one of the 3 active driving lanes (post-expansion). Weekly positioning of the trash dumpster in an active lane of Winchester Blvd. would be in direct violation of municipal code 13.24.010, which concerns removal of obstructions.
- Winchester Blvd. is designated to be a Grand Boulevard in the Winchester Urban Village Plan, which requires:
 - High standards of design, cleanliness, landscaping, gateways, and wayfinding
 - If there are conflicts, transit has priority

Locating a dumpster in the vehicle roadway, on a Grand Boulevard, near an Active Node of the Winchester Urban Village, does not satisfy high standards of design.

- Further, there are logistical issues with rolling a heavy dumpster into the street. Project plans indicate no ramp at the sidewalk. Rolling a dumpster over a standard-height curb would (1) generate loud dumpster noises during overnight hours, which would create a public nuisance, and (2) endanger the employee(s) tasked to do so.

CHENG Response-5:

The trash bin storage location would be hidden from public view in accordance with the Winchester Boulevard Urban Village Plan. Per the Hotel Operations Plan, the trash bins will be wheeled out to South Winchester Boulevard for garbage collection. The trash bin staging on Winchester Boulevard will be temporary and as conditioned in the project permit, bins will be returned to the trash enclosure following garbage collection. Furthermore, the project permit (which runs with the land) will include an anti-litter condition of approval which requires the site and the surrounding area be maintained free of litter, refuse and debris.

CHENG Comment-6

9h. *“Traffic access, pedestrian access, and parking are adequate.”*

Traffic access for pick-up, drop-off, and regular guest use is solely accessible via the valet-only parking garage. This will be a bottleneck during peak hours, and will endanger the safety of pedestrians along Winchester. The claim that parking is adequate is not justifiable. The developer has not provided a realistic staffing and parking plan for the hotel. For example, it is not reasonable to expect that a security contractor’s employer will drop off and pick up a security guard for every hotel shift, in order to avoid the need to provide adequate parking for such employees.

CHENG Response-6:

As shown on the project plans, the valet queuing space is located over 80 feet from the garage entry at the sidewalk, and therefore, should a queue of cars form for valet services, they would queue within the garage. Upon guest arrival hotel staff will greet the guest and park the hotel guest’s vehicle. Upon departure, hotel valet staff will then retrieve the guest’s vehicle. The Delivery and Loading zone is located adjacent to the garage entry. Per the Transportation Analysis, the project would not have a significant transportation/traffic impact. Based on the Operations Plan provided, a security guard would be provided on site. The hotel would also provide security cameras on site. If the provision of a additional security guard requires additional parking, the applicant may be required to amend their Transportation Demand Management Plan with a Special Use Permit Amendment. Additionally, a

security guard is not a Zoning Ordinance requirement for the use and operation of a hotel.

CHENG Comment-7

(10. Special Use Permit Findings)

10.2.ii. "The proposed use at the location requested will not... Impair the utility or value of property of other persons located in the vicinity of the site."

Simply stating that "the project would not impair the utility or value of property... in the vicinity of the site" is, on its face, not credible. This cannot simply be stated without substantiation or justification. The negative impact of this project on the fair market value of adjacent homes should be determined by a neutral assessor who is neither employed by the hotel nor the pro-business City planners, and injured parties should be justly compensated. As part of assessing the fair market value impact on adjacent homes, planners should render realistic views of the hotel from the backyards, pools, patios, dining rooms and upstairs bedrooms of these adjacent properties.'

CHENG Response-7

A hotel, by nature, would not be detrimental to the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area. As previously discussed, the project conforms with all height, setback, stepback, parking, circulation, and noise requirements. The City has consistently approved the construction and use of hotels, including those within Urban Villages, without detriment to the surrounding neighborhood. Hotels are commercial uses which are intended to serve people visiting from outside the area. Hotel patrons are generally only present at the hotel during early morning and evening hours to sleep. With the exception of the small terrace on the sixth floor, facing South Winchester Boulevard, there are no outdoor uses that would negatively impact the surrounding properties.

CHENG Comment-8

10.e. "The proposed site is adequate in size to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area"

This would only be true if the property were larger and/or the hotel were smaller.

CHENG Response-8

As discussed in the project analysis, the project does conform with the required height, setback, parking, loading, and landscaping standards for a project within the CP Commercial Pedestrian Zoning District and within the Winchester Boulevard Urban Village.

CHENG Comment-9

10g. “Demolition of the existing commercial structures and the construction of the hotel project would not have an unacceptable negative affect on adjacent property or properties as it complies with the General Plan, Zoning Ordinance, and Urban Village use, standards and policies.”

Comment: The claim that there would be no unacceptable negative vibration effect on adjacent properties stands in stark contradiction with IS/MND section 4.13.6b, which plainly states that expected vibration levels at adjacent residential structures due to demolition and construction would exceed the City’s 0.2 inch per second PPV limit by more than a factor of 6. As the owner of one of said adjacent residential structures, we find this completely "unacceptable".

Further, building plans show excavation to a depth of at least 14’ 6” **on** the northern and southern property lines. This does not even include additional excavation to lay footings and drive pilings to support the building foundation structural members. Typically, such concrete retaining walls require additional excavation outside of the final retaining wall to position temporary concrete forms during construction. How would the builder propose to perform these excavations inside the boundary of the neighboring property? How does the City justify disturbing the soil that supports the neighboring residential home at 1204 S. Winchester to this extent? How does the City propose to guarantee that the foundation and structure of this home will not incur substantial damage as a result of demolition and construction activities? We understand that this residence includes a basement, which would make it especially susceptible to damages from vibration and adjacent excavation.

We will recommend that the property owner at 1204 S. Winchester respond to project-related property permissions with the following levels of hospitality:

- Pre-demolition structural inspections and subsequent follow-up inspections to assess damages to their home resulting from construction-related activity should be welcomed.
- Any workers or machines that trespass onto the property for the purpose of excavation and construction should be escorted off the premises by local law enforcement.
- If any property damages are incurred during demolition or construction, a cease and desist letter should be delivered to the foreman on site immediately.

CHENG Response-9:

This comment is related to the appeal of the Environmental Determination, not the Special Use Permit. This comment is addressed in the Response to the Environmental Determination Appeal.

CHENG Comment-10

Special Use Permit Condition, Page 17, Item 5, Conformance to Plans: *“The development of the site and all associated development and improvements shall conform to ... the San José Building Code (San José Municipal Code, Title 24).”*

Please ensure that approved plans are in compliance with all municipal codes prior to issuing associated demolition or construction permits.

CHENG Response-10:

The approved plans were reviewed for consistency with applicable codes and requirements. If the project moves forward to the building permit process, the project would be reviewed for compliance with applicable Building, Fire, and other applicable requirements. This is the case across all projects in the City. Please note, Building Permits would not be issued for projects that do not comply with applicable Building, Fire and other Code requirements.

CHENG Comment-11

Special Use Permit Condition, Page 19, Item 13, Conformance with Municipal Code. *“No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.”*

Project plans are currently in violation of municipal code 20.40.270 (Side setback - Exceptions, interior lot). Please ensure that approved plans are in compliance with all municipal codes prior to issuing associated demolition or construction permits.

CHENG Response-11:

See CHENG Response-1 above.

CHENG Comment-12

Special Use Permit Condition, Page 19, Item 18, Refuse. *“All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.”*

Due to insufficient side setback, which is not in conformance with municipal code 20.40.270 (Side setback - Exceptions, interior lot), the current hotel design will not "effectively screen from view" the trash dumpster at the curb on trash day. Thus, the hotel developer's refuse plan will not satisfy this condition which is required by the City Special Use Permit. See also item 9g above regarding other inadequate aspects of the refuse plan for the proposed hotel.

CHENG Response- 12:

See CHENG Response-1 and CHENG Response-5 above.

CHENG Comment-13

Page 27, Item 39, Bureau of Fire Department Clearance for Issuing Permits. "Prior to the issuance of a Building Permit, the project must comply with the California Fire Code as adopted or updated by the city."

In light of the expected variances required to comply with fire code, we request that the City defer issuance of (1) this Special Use Permit, (2) the demolition permit, and (3) the construction permit, until the fire department has thoroughly reviewed and responded to the design proposal.

CHENG Response-13:

See SALIHUE/MARIKAR Response-9 above.

CHENG Comment-14

Page 27, Item 40, Building Division Clearance for Issuing Permits, Construction Plan Conformance. *"Prior to the issuance of any Building permit... a project construction plan conformance review by the Planning Division is required."*

Comment: We believe that this plan conformance review should be brought forward and conducted as early as possible. The hotel project plans are currently in violation of municipal code 20.40.270 (Side setback - Exceptions, interior lot). Plan modifications to correct this violation will reduce the footprint of the proposed hotel, and most likely reduce the number of guest rooms. The current 119 room hotel proposal is already believed to be near or below the minimum number of guest rooms for economic viability (the developer has stated that this threshold is approximately 120 rooms). Further reduction will likely cause potential investors to lose interest, which will result in a failed major project at the key southern Active Node of the Winchester Urban Village. The City should consider completion of this plan conformance review a high priority, for the purpose of risk reduction for the Winchester Urban Village Plan.

CHENG Response-14:

See CHENG Response-10 above.

Attachment A: Fire Department Correspondence

Re: File No. SP20-016 - Winchester Hotel Project

Atienza, Manuel <Alec.Atienza@sanjoseca.gov>

Wed 9/22/2021 8:31 AM

To: Sabatelli, Gordana <Gordana.Sabatelli@sanjoseca.gov>

Ok, thanks Gordana. I will go ahead and get this ready for hearing then. Thanks again.

Kind Regards,
Manuel (Alec) Atienza
Planner | Planning Division | City of San Jose
200 E. Santa Clara Street, 3rd floor

From: Sabatelli, Gordana <Gordana.Sabatelli@sanjoseca.gov>

Sent: Tuesday, September 21, 2021 6:36 PM

To: Atienza, Manuel <Alec.Atienza@sanjoseca.gov>

Subject: RE: File No. SP20-016 - Winchester Hotel Project

Hi Alec,

I am OK for project to go to hearing.
I revised the required FF, it is reduced. I stamped fire layout plan and emailed to civil. I left fire review open so we can keep project moving thru planning review. If variance is not resolved before hearing, we can carry it over to building plan review.

Regards,

Gordana Sabatelli
Associate Engineer
SJFD – Bureau of Fire Prevention
200 E Santa Clara St, 2nd Flr. Tower
San Jose, CA 95113
Phone: 408-535-5686
Email: gordana.sabatelli@sanjoseca.gov

From: Atienza, Manuel <Alec.Atienza@sanjoseca.gov>

Sent: Tuesday, September 21, 2021 3:51 PM

To: Sabatelli, Gordana <Gordana.Sabatelli@sanjoseca.gov>

Subject: File No. SP20-016 - Winchester Hotel Project

Hi Gordana,

I took over this project from Michelle Flores. The applicant is pushing for a hearing date soon but I see that the Fire Department process is still open in Amanda. I saw there was a note in Amanda regarding the number of hydrants. I have also attached the most recent plan set. Is there anything else that the applicant needs to do for Fire prior to moving to Planning approval? Let me know. Thank you.

Kind Regards,
Manuel (Alec) Atienza
Planner | Planning Division | City of San Jose

3/23/2022

Mail - Atienza, Manuel - Outlook

200 E. Santa Clara Street, 3rd floor