

*Saltair Neighbors
Brentwood Residents Coalition
Brentwood Homeowners Association
11847 Gorham Homeowners Association*

June 7, 2010

West Los Angeles Area Planning Commission
200 North Spring Street, Room 272
Los Angeles, CA 90012

Hearing Date: June 16, 2010
Case No. ZA 2009-3722 (CUB)(ZV)
CEQA: ENV-2009-3723-MND
Location: 11925-11927 West Montana Avenue,
11906-11928 West San Vicente Boulevard
Fig & Olive

Re: Letter in Support of Appeals

Dear Commissioners:

The four appeals filed in this matter demonstrate that the Zoning Administrator erred in granting Applicant Fig & Olive a conditional use permit for the service of alcoholic beverages (“CUB”) because: (1) the area is oversaturated with alcohol-serving restaurants; (2) the mandated findings for issuance of a CUB cannot be satisfied; (3) the mitigated negative declaration failed to identify or mitigate the project’s likely adverse environmental impacts, in violation of CEQA; and (4) the Applicant lacks adequate parking because (i) the off-site parking garage is outside the 750-foot limit, in violation of Municipal Code Section 12.21.A(4)(g) and (ii) the parking garage is already dedicated under a previously recorded covenant for general public parking exclusively and is therefore not available to satisfy the Applicant’s code-required parking.

The CUB must also be rejected because (1) a Mini-Shopping Center conditional use permit (“CUP”) was not issued prior to consideration of the CUB for the tenant’s use of property within the Mini-Shopping Center, in violation of both Municipal Code, which requires a CUP for use of the property as a Mini-Shopping Center, and CEQA, which precludes the piecemealing into two separate “projects” the approval of the requisite Mini-Shopping Center CUP and the tenant’s CUB; and (2) the CUB was issued without review by the San Vicente Design Review Board, despite changes to the Mini-Shopping Center’s exterior design, open space areas, and (on- and off-site) parking areas, in violation of the San Vicente Scenic Corridor Specific Plan.

Moreover, even apart from the impropriety of issuing a CUB, this particular CUB imposes “conditions” that not only fail to mitigate the project’s adverse impacts, they exacerbate the impacts and, in some cases, violate code. The Zoning Administrator erred by imposing these deficient conditions and by failing to impose many of the conditions recommended by the Los Angeles Police Department (“LAPD”) and local residents, which would have mitigated some of the adverse impacts. While these mitigation measures are not sufficient to protect the community from the project’s likely adverse impacts, and therefore would not have justified issuance of a CUB, they would nevertheless have provided some relief for the project’s impacts, unlike the facially deficient conditions specified in the CUB.

A. The CUB Was Improperly Issued Before The Mini-Shopping Center CUP

A CUP is required for the conversion of an existing structure into a Mini-Shopping Center, unless the net increase in floor area is *less than 20%*. LAMC Section 12.22.A.23(c)(1)(i).¹ On October 7, 2009, the West Los Angeles Area Planning Commission (the “Commission”) found that (1) “two lots are tied as one;” (2) “there is a mini-shopping center affidavit filed on the subject property;” (3) “plans have been seen² showing a second structure;” and (4) “this second structure will result in an increase in floor area on the overall site *greater than 20%*.” *Case No. DIR 2008-5036-BSA-1A, attached as Exhibit 2*. A CUP is therefore required as a condition precedent to the issuance of a building permit. No CUP, however, has been sought nor obtained. A CUB for a restaurant on the property is therefore premature and should be denied on that basis.

1. The mandated findings for a Mini-Shopping Center CUP must be made *before* a Mini-Shopping Center tenant becomes eligible for a CUB

The discretionary findings required for a Mini-Shopping Center CUP include findings that (1) the proposed use of the property is consistent with public welfare and safety and (2) the access, ingress and egress to the Mini-Shopping Center will not constitute a traffic hazard or cause significant traffic congestion or disruption of vehicular circulation on adjacent streets. *LAMC Section 12.24.W.27(b)(1) & (2)*. These mandated findings require detailed consideration of traffic-related impacts likely to result from issuance of a Mini-Shopping Center CUP. This particularized inquiry cannot be made in a vacuum. The ZA must account for the traffic-related impacts of the particular types of business that will be operating in the proposed Center, and the mix of businesses, because those details

¹ Cited portions of the Los Angeles Municipal Code are attached as Exhibit 10.

² The plans were *approved* by the Director of Planning, the San Vicente Design Review Board and the West Los Angeles Area Planning Commission under DIR 2008-4174-DRB-SPP.

will impact any consideration of the mandated findings. In doing so, the ZA must also consider the traffic and parking impacts in light of a comprehensive traffic study provided either by LADOT or a licensed traffic engineer. *LAMC Section 12.24.W.27(b)(1) & (2)*.

Fig & Olive has placed the cart before the horse by seeking an alcohol license for a restaurant within a Mini-Shopping Center *before* the use of the landlord's property as a Mini-Shopping Center has been approved through the mandated CUP process. The purpose of requiring a CUP for a Mini-Shopping Center is to avoid piecemeal approvals for the Center's individual business tenants' on collective impacts, especially parking and traffic impacts. Unless and until a CUP has been issued allowing use of the property as a Mini-Shopping Center, and imposing carefully-tailored conditions, no permits may properly be issued for individual business uses.

Thus, the discretionary Mini-Shopping Center CUP determination will require a Zoning Administrator to consider the likely traffic impacts, including the potential impacts of tenant Fig & Olive. The CUP determination must therefore account for the traffic impacts of the proposed 158-seat destination restaurant without any on-site parking, the necessity for valet parking at an off-site public parking garage, the displacement of 60 vehicles from the public parking garage – forcing those drivers into the residential neighborhoods looking for scarce parking, and the circulation problems triggered by the shuttling of vehicles back-and-forth between the Mini-Shopping Center and the off-site garage through residential and commercial streets.

The adverse environmental impacts of the valet parking necessitated by the lack of on-site parking is evident upon consideration of the possible valet routes between the proposed restaurant and the off-site parking garage, which are diagramed in *Exhibit 1*, attached. The shortest valet routes between the restaurant and garage require drivers to negotiate the already congested streets with multiple left turns through over-burdened intersections, some of which are quite dangerous. The safest driving route, however, requires a 1.2 mile circulation along several residential streets and the San Vicente Business District, thereby shifting the burden of the proposed intensified use onto the surrounding neighbors and the often gridlocked Business Corridor.

2. CEQA precludes piecemeal environmental review

CEQA also precludes deferring environmental analysis of the Mini-Shopping Center project until after CUBs are issued for restaurants that will be operating within the Mini-Shopping Center. Environmental review of impacts likely to result from issuance of *both* the Mini-Shopping Center CUP and the CUB must be analyzed simultaneously – not separately. CEQA mandates that environmental review cannot be piecemealed by:

(1) ***deferring review*** of anticipated environmental impacts until after permits or approvals are issued, which diminishes the influence that environmental review will have on the governmental decision-maker, transforming environmental review into a “*post hoc* rationalization” of the prior agency action. *Sundstrom v. Co. of Mendocino*, 202 Cal.App.3d 296, 307 (1988);

(2) ***defining a project too narrowly***, effectively “chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences.” *Planning and Conservation League v. Castaic Lake Water Agency*, 180 Cal.App.4th 210, 234-235 (2009); or

(3) ***failing to consider the cumulative impacts*** of the specific project “in conjunction with other closely related past, present and reasonably foreseeable probable future projects,” which is necessary because “consideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services.” *San Joaquin Raptor/ Wildlife Rescue Center v. County of Stanislaus*, 27 Cal.App.4th 713, 739-740 (1994).

Thus, under CEQA, the likely environmental impacts of approving the Mini-Shopping Center by issuance of a CUP must be considered *now* – at “the earliest feasible stage in the planning process.” *Sundstrom*, 202 Cal.App.3d at 307. And the environmental impacts of the Mini-Shopping Center cannot be considered in isolation from the likely impacts of all the businesses that will operate within the proposed Mini-Shopping Center. *San Joaquin Raptor*, 27 Cal.App.4th at 739-740; *Planning and Conservation League*, 180 Cal.App.4th at 234-235.

Yet, at the CUB hearing, the ZA stated that she would not consider the traffic or parking impacts of Fig & Olive’s planned use of the off-site parking garage (the “Gorham Garage”): “Despite notifying the audience that the location and instrument of the off-site parking were not before the Zoning Administrator, it remained the main point of contention raised by the community.” *See ZA 2009-3722(CUB)(ZV)*, p. 16. The ZA therefore ignored substantial evidence of the likely traffic impacts, including the expert report of traffic engineer David Shender that a comprehensive traffic study was required due to the increased demand on the local infrastructure and the safety hazards created by the valet routes and loading/unloading area. *See Appeal filed by 11847 Gorham Homeowners*

Association, attaching Jan. 7, 2010 Report of David S. Shender, P.E. (Linscott Law & Greenspan). While the ZA narrowly construed her role, vis-à-vis the CUB application, there is no question that the proper environmental review under CEQA precludes this type of piecemeal project approval.

If the Applicant and other Mini-Shopping Center tenants are allowed to obtain individual discretionary use approvals, like Fig & Olive's CUB, without *prior* environmental review of the entire Mini-Shopping Center project, then the award of individual tenant/business permits would allow "bureaucratic and financial momentum' to build irresistibly behind a proposed project, 'thus providing a strong incentive to ignore environmental concerns.'" *Save Tara v. City of West Hollywood*, 45 Cal.4th 116, 357-359 (2008) (quoting *Laurel Heights Improvement Assoc. v. Regents of Univ. of California*, 47 Cal.3d 376, 395 (1988)). In sum, the prior agency approvals would likely transform the deferred Mini-Shopping Center CUP determination into a "*post hoc* rationalization" of the prior discretionary approvals. *Riverwatch v. Olivenhain Mun. Water Dist.*, 170 Cal.App.4th 1186, 1207 (2009) (quoting *Laurel Heights*, 47 Cal.3d at 394).

This Commission previously recognized in its October 2009 findings that such piecemeal consideration of this Mini-Shopping Center project is improper – stating that the approved plans for the entire Mini-Shopping Center (including both buildings) are part of *a single project* for purposes of CEQA review. *Exhibit 2 (Case No. DIR 2008-5036-BSA-1A)*. The CUP and CUB cannot be considered separately, nor can the CUB be issued *before* the CUP without environmental review of the entire project, because these are one in the same "project." Piecemealing this project into two separate projects and deferring consideration of the environmental impacts of the Mini-Shopping Center would therefore violate CEQA.

3. Issuance of a CUB before the Mini-Shopping Center CUP subverts both the CUP process and CEQA

If Fig & Olive's CUB is approved *before* the Mini-Shopping Center CUP, then the Mini-Shopping Center owner could likewise lease tenant space in its second building (not yet built, but already approved) to another large-scale destination restaurant and again provide off-site parking in the Gorham Garage. This new use would be granted under the same piecemealed analysis as utilized by the City, with no environmental review of the entire project unless and until a CUP application is finally filed – which would be long after the individual use permits are issued. Given the Planning Department's (improper) determination that building permits may be issued prior to the grant of a Mini-Shopping Center CUP, both of these large restaurants would likely already be constructed and open to the public by the time the CUP application process begins. By that time, "financial and bureaucratic momentum" would effectively assure issuance of a Mini-Shopping

Center CUP allowing the restaurant uses to continue, regardless of the significant environmental impacts. *See Tara*, 45 Cal.4th at 358-359.

Indeed, the City has already been moved by such financial and bureaucratic momentum to allow a tenant of the un-permitted Mini-Shopping Center, “lululemon athletica,” to open for business without first requiring the property owner to obtain the required Mini-Shopping Center CUP. Significantly, lululemon is not simply a retail store, it offers the use of the premises to the general public for physical exercise and sports activities (Exhibit 3), which is an intensified “health club” use that requires additional parking under Municipal Code Section 12.21.A.4(c)(2). The combined traffic, parking and other impacts of Fig & Olive, lululemon, and the Mini-Shopping Center’s other planned uses must be considered through the Mini-Shopping Center CUP/environmental review process *before* the individual tenant businesses are permitted.

For these reasons, the CUB must be rejected as premature. The Applicant and property owner must **first** (or concurrently) file a Mini-Shopping Center CUP application so that the entire project’s likely environmental impacts may be considered, as mandated by CEQA, not piecemealed into separate proceedings.

B. The ZA Improperly Adopted The BCC’s Privately-Negotiated Conditions Instead Of The Conditions Proposed By The LAPD And Gorham Residents

The Zoning Administrator, in setting forth conditions mitigating the impacts of the proposed alcohol-serving restaurant, ignored many of the conditions recommended by the Los Angeles Police Department (“LAPD”), which are attached as Exhibit 4, and those requested by the 11847 Gorham Homeowners Association (the “Gorham Residents”), which are attached as Exhibit 5. Instead, the ZA adopted conditions that were privately negotiated by the Brentwood Community Council (“BCC”) Land Use Committee and the Applicant, in a private meeting conducted at the home of the BCC Chair, outside the presence of the public and after the public hearing conducted by the ZA. These privately-negotiated conditions are grossly inadequate to protect against the project’s likely adverse environmental impacts, and some of the conditions violate code.

C. The CUB “Conditions” Are Not Only Inadequate To Mitigate The Project’s Likely Impacts, They Exacerbate Those Adverse Impacts

CUB Condition No. 8

CUB Condition No. 8 degrades the character of the surrounding residential community by (1) allowing alcohol to be sold at any time during the restaurant’s 8 am to 11 pm hours of operation; (2) setting an 11 pm closing time during weeknights, which is the latest closing time that the ZA is authorized to permit under Municipal Code requirements for Mini-Shopping Centers; and (3) permitting the restaurant to seat patrons on outdoor patios across the street from a residential neighborhood.³ Condition No. 8 thereby allows that which the LAPD and the Gorham Residents had sought to prevent and, with respect to the outdoor patios, Condition No. 8 allows that which the Specific Plan prohibits.

Hours. The LAPD asked that the restaurant be required to terminate alcohol sales by 10 pm Sunday through Thursday nights and the Gorham Residents asked that the restaurant be required to close by 10 pm on Sunday through Thursday nights. *See LAPD Condition No. 2 and Gorham Residents Condition No. 5b.* These proposed conditions reflect the concern that allowing restaurant operations and the sale of alcohol past 10 pm on weeknights would disrupt the peace and tranquility of the residential neighborhoods in proximity to the restaurant, the off-site parking garage, and the surrounding residential streets where restaurant patrons will also be parking. The ZA improperly ignored these legitimate concerns by allowing the restaurant to continue selling alcohol until the Municipal Code’s Mini-Shopping Center closing time of 11 pm. Condition No. 8 should have provided for a 10 pm closing time during weeknights, which is consistent with the two neighboring alcohol-serving restaurants, Vicente and Early World, which close at 10 pm and 9 pm respectively, and to avoid setting an 11 pm weeknight closing-time precedent for the block.

Patio. The LAPD also proposed that “[t]here shall be no outdoor patio or lounge areas.” *LAPD Condition No. 37.* The purpose of this proposed Condition is also to protect the peace and tranquility of the surrounding residential neighborhood. The patio spaces are oriented towards the residential units on Montana Ave., not towards the San Vicente commercial corridor, so noise and light from patio service will likely impact the

³ *ZA Condition No. 8* provides: “Approved herein is the sale and dispensing of a full line of alcoholic beverages for on-site consumption, in conjunction with a 3,900 square-foot restaurant seating 158 patrons with hours of operation of 8:00 a.m. to 11:00 p.m., daily. The patio will close at 10:00 p.m. daily.”

residents. The LAPD's proposed Condition precluding patio service is consistent with the San Vicente Specific Plan Guidelines, which only permit patios oriented towards San Vicente Blvd. or within courtyards. *Specific Plan Guidelines Section II.A.1 & B.1.*

The ZA's Condition, however, permits outdoor patios oriented towards the residential neighbors.⁴ The Specific Plan Guidelines requirement that non-courtyard patios be oriented towards San Vicente, not towards residential streets, is consistent with the Brentwood-Pacific Palisades Community Plan. Community Plan Objective 1-3 is to "preserve and enhance" the "distinct residential character and integrity of the existing residential neighborhoods." To achieve that Objective, Section II.A.3 of the Specific Plan Guidelines specify that "[b]uilding layouts should respect the privacy of adjacent residents and protect the residents from noise," including music, talking, the clash of dishes, and other sounds incident to outdoor patio dining.

Outdoor open spaces, which include outdoor dining areas (Specific Plan §9.B.1f), must therefore be "oriented towards San Vicente Boulevard," and are also "expected to be well-defined, coherent components of the site design, and not to be viewed as left over space." *Specific Plan Guidelines, § II.B.1.* By orienting outdoor dining patios towards Montana Ave., across the street from long-established multi-family residential units, Fig & Olive's patios – which were not disclosed in the approved plans for this site (DIR 2008-4174-DRB-SPP) – degrade the character of the adjacent residential neighborhood. Thus, the ZA's action, in failing to honor the Specific Plan and the LAPD's proposed Condition, would establish a precedent that might be used throughout the Corridor – resulting in the further commercialization of the San Vicente adjacent residential areas. No patio dining should have been permitted.

Design Review Is Required. The Condition also violates Municipal Code by allowing outdoor dining patios that were not approved by the San Vicente Design Review Board ("DRB").

The role of the DRB is to evaluate "the placement of mass, form, and spatial elements and overall quality of the design of proposed projects" based on standards specified in specific plans. *LAMC Section 16.50.A.* No building permit may be issued in a specific plan area unless the Planning Director has reviewed and approved the project after consideration of the DRB's recommendation. *LAMC Section 16.50.D(b).*

⁴ Both *ZA Condition No. 8* and *BCC Condition No. 7* provide for outdoor dining patios directly across the street from multi-family residences on Montana Ave. and next to the on-site parking area.

The San Vicente Corridor Specific Plan clarifies the DRB's role by specifying that it "shall review and approve the use of open space areas and sidewalks," and outdoor dining patios are defined to constitute an "open space" amenity. *Specific Plan, §9.B.1 & 2*. The Design Overlay Plan Approval for this project, which was approved on December 15, 2008 after DRB review, encompassed the design of all of the proposed structures, driveways, parking areas and open areas on the property. *DIR 2008-4174-DRB-SPP*. The Director's findings approving the plans, after DRB review, specified in the Plan Approval, that "[a]ny subsequent change to the project shall require review by the Director of Planning and referral by the Design Review Board." *DIR 2008-4174-DRB-SPP, p. 3, ¶19*.

The Applicant, however, subsequently decided to modify its previously-approved plans by adding outdoor dining patios that were not presented to the DRB for evaluation and recommendation as required by §9.B.1 of the Specific Plan. There is no exception to the Specific Plan requirement that would permit the Applicant to avoid DRB review. While the Municipal Code allows "a minor modification" of an approved plan without DRB review (LAMC §16.50.E.5), the Specific Plan, which explicitly requires DRB review of open space areas, supersedes conflicting requirements under the Municipal Code (Specific Plan §2). Further, even apart from the Specific Plan's express language, the Applicant's proposed modification of the open space areas, to make room for two outdoor patio dining areas, is not a "minor" modification to the project's design, it is a significant change in the outdoor design elements that cannot be permitted absent DRB review.

CUB Condition No. 9

The LAPD recommended that "a 6 month review/inspection will be conducted to ensure permittee's compliance with all operating conditions." *LAPD Condition No. 9*. Given the LAPD's expertise in matters concerning public safety and disturbances of peace and tranquility, its recommendation deserved deference. The Gorham Residents also requested interim review of the Applicant's compliance by asking the ZA to require a Plan Approval within 6 to 8 months after the restaurant begins operations. *Gorham Residents Condition No. 5b*. Given the obvious risks faced by the Gorham Residents as a result of the restaurant's plan to shuttle all of its patron and employee vehicles between the restaurant and their residential building, the Gorham Residents' request should have been given special consideration.

The ZA, however, ignored both the LAPD's recommendation and the Gorham Residents' request by issuing a 3-year grant, with no interim Plan Approval or review/inspection. This Condition thereby fails to reflect the legitimate concerns of the impacted community members, the recommendation of the LAPD, and the magnitude of

the project in light of the inadequate infrastructure. At the very least, the restaurant should have been required to apply for Plan Approval within one year of opening.

CUB Condition No. 17

The LAPD recommended that the premises not be used for private parties. *LAPD Condition No. 19*. Private parties cause traffic problems because guests arrive and depart at the same times, causing traffic congestion and disturbing the peace and tranquility of the neighboring residents. Experience demonstrates that private parties in a large restaurant like Fig & Olive create significant impacts for the surrounding residential areas. That is why the LAPD recommended that private parties not be permitted.

But CUB Condition No. 17 would allow up to six “private dinners” per year “if LAPD states in writing that it has no objection to such private dinners.”⁵ The qualification that the LAPD must sign-off on such private parties will simply put pressure on the responsible LAPD officer – whoever that may be – to approve requests for parties because the ZA, by delegating future authority to approve private dinners to the LAPD on an ad hoc basis, has implicitly deemed the parties to impose insignificant burdens on the community. The Condition is further defective because (1) it substitutes the term “private dinners” for “private parties,” without explaining the difference, if any; and (2) the limit of 6 “private dinners” per year is unenforceable because, as a practical matter, there is no mechanism for keeping track of the number of parties. There is simply no way that anything other than a flat prohibition against private parties can be enforced.

In any event, the LAPD has already put in writing its determination that private parties should not be permitted. CUB Condition No. 17 ignores that fact and improperly creates ambiguity despite the LAPD’s clearly stated position. The ZA should have adopted LAPD Condition No. 19: “Applicant shall not allow the premises to be used for private parties.”

⁵ *ZA Condition 17 and BCC Condition 9*: “There shall be no private parties when the restaurant is closed to the public, but there may be up to six per year private dinners when the restaurant is closed to the public, if LAPD states in writing that it has no objection to such private dinners.”

CUB Condition No. 36

This Condition, providing that 60 parking spaces in the Gorham Garage be reserved exclusively for the restaurant's use, fails to mitigate the harm caused by the restaurant's lack of on-site parking. The Condition actually makes the problem worse.⁶

First, Condition No. 36 not only commandeers the 39 parking spaces required for the restaurant by Municipal Code, it also takes an additional 21 public parking spaces for the restaurant's exclusive use. In doing so, a total of 60 "public" parking spaces will be sacrificed to make space for the new restaurant – thereby displacing those who have relied and those who would have relied on the public parking in the future. The Gorham Garage was supposed to handle the parking burdens created by (1) businesses directly to the north of the parking garage in the daytime and (2) local residents' overnight parking.

Second, Condition No. 36 makes the traffic impact worse by requiring a total of 60 employee and patron vehicles to make the additional trip between valet stand and the remote parking garage. The valet route doubles the impact on the traffic infrastructure and spreads the burden to the residential communities along the valet routes. By displacing 60 public parking spaces in the Garage, instead of the code-required 39 restaurant spaces, the Condition exacerbates the traffic burden created by the restaurant's lack of on-site parking, in violation of Goal 13 of the Brentwood-Pacific Palisades Community Plan.⁷

⁶ *ZA Condition No. 36 and BCC Condition No. 2*: "60 parking spaces shall be provided for only restaurant patrons and employees at the public parking garage at 11835-11837 - 11847 Gorham Avenue. Prior to the effectiveness of the grant, the Zoning Administrator shall be provided evidence that a Covenant has been recorded by the owner of the garage, Brentwood Gorham Parking, LLC as Covenantor and owner of the garage space, and Four Sided Properties, LLC as Covenantee and owner of the property at 11906 San Vicente Boulevard, providing for 52 Code-required covenanted parking spaces, including 39 specifically assigned for the restaurant, which are included in the 60 parking spaces required by this Condition. Failure to maintain this Covenant with these terms shall be deemed as non-compliance with this Condition and grounds for potential revocation of this grant."

⁷ Goal 13 concerns circulation of traffic. Under Policy 13-1.2, "[n]ew development projects shall be designed to minimize disturbances to existing traffic flow with proper ingress and egress to parking." This requires new developments to incorporate "adequate driveway access to prevent auto queuing." *Id.* Further, Policy 13-1.5 provides that "[n]ew development projects shall provide mitigation for project traffic impacts and density increases shall be contingent upon adequate transportation system capacity." Thus, the Program Note states that a "decision maker shall adopt a finding which addresses the availability of infrastructure as part of any decision relating to an increase in permitted density or traffic impacts." *Id.*

Further, there is no evidence that (1) the Gorham Garage has the capacity for the ZA-mandated 60 parking spaces; (2) there is capacity to satisfy the Mini-Shopping Center's required parking for its other tenants; or (3) there is capacity to accommodate mandated Mini-Shopping Center parking in addition to the Garage's other lessees or whether a Shared Parking variance is necessary due to the Garage's evening/overnight parking requirement.

CUB Condition No. 38

This is another "condition" that increases instead of mitigates the adverse environmental impacts. The ZA ignored the Gorham Residents' requested Condition 5(d)(iii) that an attendant be on duty "during all hours the garage is open to customers and staff of the restaurant." Instead of requiring an attendant "during all hours that the garage is open," an attendant is only required when "the restaurant is open."⁸

The Gorham Residents, who live in the building where the off-site parking is to be provided, are legitimately concerned about noise and disruption before the restaurant opens to the public and after it closes. The restaurant is required to provide free parking to all of its employees and those employees will arrive between one hour and two hours before the 8 am opening and will leave the Garage between one to two hours after closing time. Further, many patrons will remain in the restaurant to finish their meals and drinks after the official closing time, which is simply when the doors close. But there will be no attendant on duty as the late-night patrons and employees retrieve their vehicles since the attendant may leave at the restaurant's closing time. Consequently, the metal gate will be opened and closed as each vehicle enters and departs the lot – instead of remaining open while an attendant is on duty. The ZA, in not requiring that the attendant remain on duty while employee vehicles (and those of late-night patrons) are in the Garage, simply ignored the Gorham Residents' concerns.

Further, Condition No. 38 violates Code by allowing the parking attendants to leave the Gorham Garage while it is still being used by restaurant patrons and employees. Under the Municipal Code and the Development Standards for the Mini-Shopping Center Commercial Corner Development Covenant, tandem parking is not permitted except for (1) public parking garages where parking attendants must remain on site "at all times the garage or area is open for use" [*LAMC Section 12.21.A.5(b)(1)*] or (2) the parking spaces

⁸ *ZA Condition No. 38 and BCC Condition No. 4*: "An attendant shall be at the public parking garage at 11835-11837 – 11847 Gorham Ave. at all times that the restaurant is open."

are reserved exclusively for residential uses [*Exhibit 6 (Mini-Shopping Center Covenant at § 12.22.A.23(a)(4)(i))*].

The Gorham Garage has always closed to the public at 6 pm, at which time it becomes available for the exclusive use of the local community's evening/overnight parking needs. For that reason, the Zone Variance granted for the Gorham Garage provides that a parking attendant is not required during evening hours when the garage is available only to residential users. *Exhibit 7 (Case No. ZA 98-0570(ZV)(YV)(SPR) (Nov. 12, 1998))*. But Condition No. 38 would allow the restaurant's employees and lagging patrons to use the Gorham Garage for parking without a parking attendant on duty. This violates both the Mini-Shopping Center Covenant and Municipal Code and creates safety risks for those walking down the dark alley to retrieve their vehicles from the distant and unattended parking garage.

CUB Condition No. 39

The Gorham Residents requested that the ZA impose very specific noise mitigation measures to counteract the noise and vibrations from opening and closing the Gorham Garage gate during the restaurant's proposed use of the Gorham Garage. The Gorham Residents asked that (1) a new, quiet gate be installed and that (2) the gate remain open (with an on-site attendant for security purposes) "during all hours the garage is open to customers and staff of the restaurant." *Gorham Residents Condition No. 5d(i), (ii)*. This is a reasonable mitigation measure given the restaurant's unprecedented plan to provide off-site restaurant parking in a residential building.

The request was completely ignored by the ZA. Instead of requiring that a new, quiet gate be installed as a condition of the proposed intensified use of the garage, especially during evening hours, the ZA required only that (1) the gate remain open "at all times that the restaurant is open" – again ignoring employee usage before and employee and lagging patron usage after hours – and (2) "the gate shall be maintained in a silent operating condition," which is a purely subjective and therefore unenforceable "condition."⁹ In doing so, the ZA failed to mitigate the impact on the Gorham Residents by requiring a new, quieter gate or any other mitigation measures that would reduce the existing noise and vibration problem with the gate, which, as the testimony demonstrated, is not and never has been "maintained in a silent operating condition."

⁹ *ZA Condition No. 39 and BCC Condition No. 5*: "The gate at the entrance to the public parking garage at 11835-11837 – 11847 Gorham Ave. shall remain open at all times that the restaurant is open, and the gate shall be maintained in a silent operating condition."

CUB Condition No. 40a

The ZA imposed the unenforceably vague Condition that the restaurant have a sufficient number of valets so that patrons do not have to wait more than 8 minutes for their vehicles.¹⁰ First, the 8 minute wait time permitted by the Condition stands as compelling evidence that the valet-parking plan is improper. An average vehicle-return goal of 8 minutes demonstrates that the vehicles are parked too far away from the restaurant. Second, this is another “Condition” that, as a practical matter, is simply not enforceable. The Condition raises questions that are not answered by the ZA. Is the 8 minutes an average, a per se limit, or a mean? How many vehicles per 100 must be delivered within the 8 minute window? How many vehicles can be delivered outside the 8 minute limit without triggering the requirement for an additional valet? Who will be responsible for determining whether this requirement is satisfied? How will non-compliance be proven to the satisfaction of the enforcement agency? The questions themselves demonstrate that this “Condition” means nothing and, therefore, cannot be enforced.

CUB Condition No. 40b

The LAPD recommended that if a CUB is granted, despite LAPD’s opposition, the restaurant be required to provide its patrons with free valet parking.¹¹ Free valet parking encourages patrons to use the valet parking provided, instead of taking up public street parking on San Vicente or street parking within the surrounding residential neighborhoods. The special inducement of free valet parking is necessary because of the size and destination character of the restaurant, the disincentive created by the long wait time due to the remote location of the off-site garage, and the proximity of residential street parking.

The ZA ignored the need to protect the surrounding residential communities against the likely adverse impacts of the restaurant’s decision not to provide on-site parking. Instead of requiring the restaurant to provide parking to its patrons at no cost, the Condition allows patrons with validations to be charged a sum “not to exceed the average valet fee in the Brentwood San Vicente Boulevard area.”¹² This lack of specificity renders the

¹⁰ *ZA Condition No. 40a and BCC Condition No. 6a*: “The number of valets shall be sufficient so that patrons do not have more than an 8 minute wait for their vehicles.”

¹¹ *LAPD Condition No. 38 provides*: “Valet parking shall be provided, free of charge, during all hours of operation.”

¹² *ZA Condition No. 40b and BCC Condition No. 6b provides*: “A validation system that allows restaurant patrons to valet park for up to 3 hours at a cost not to exceed the average valet fee in the Brentwood San Vicente Blvd. area.”

Condition unenforceable. While there is little enforcement of CUB conditions in the area, even for violations of clearly-defined conditions, there is no likelihood that the enforcement agency would cite the restaurant for non-compliance for charging more than “the average valet fee in the Brentwood San Vicente Boulevard area,” whatever that means.

The ZA completely ignored the obvious merit of LAPD’s request that valet parking be provided at no charge. In setting the maximum valet fee at “the average valet fee in the Brentwood San Vicente Boulevard area,” the ZA should have, but did not consider the substantial economic benefit achieved by the owner of the Mini-Shopping Center by developing the entire property without making space for on-site parking. A decision was made by the developer of the Mini-Shopping Center to maximize leasable space by providing no room for on-site parking sufficient to accommodate its tenants’ patrons. And costs were saved by not providing underground parking, as is provided in other local Mini-Shopping Centers. Despite the business decision not to accommodate its own tenants’ parking demands, the ZA has effectively shifted the cost of inadequate parking to the general public by allowing the tenants and/or landlord to charge the “going rate” for valet parking – thereby encouraging patrons to take up scarce street parking and circulate through the residential neighborhoods in search of parking.

Finally, even apart from the economics of the property owner’s cost-benefit decision not to provide space for on-site parking, the ZA failed to quantify “the average valet fee in the Brentwood San Vicente Boulevard area” or even provide a mechanism for calculating that fee. First, the ZA should have specified that the “average valet fee” must be based on the fee charged for *restaurants located within Mini-Shopping Centers*, which is the relevant category for comparison. Second, the actual average price should have been specified to provide sufficient direction for enforcement. In Case No. ZA 2007-2005 (CUB), attached as Exhibit 8, Zoning Administrator Dan Green considered a restaurant within a Mini-Shopping Center (located at 11650-11652 San Vicente Blvd.), and, based on the specific facts presented by that restaurant at that location – not on an “average valet fee” – found the proper valet fee to be (1) one hour free with validation for the restaurant and 45 minutes free with validation for the retail businesses; and (2) \$1.50 per ½ hour (with validation) up to a maximum of \$12.00. This is the type of specificity required for proper enforcement and protection of the community.

CUB Condition No. 40c

LADOT has determined that the restaurant cannot place a valet station for loading and unloading on the property due to the lot’s substandard design. Yet the ZA imposed the following Condition: “Subject to LADOT approval, if required, valet parking customer

drop-off and pick-up shall only be on the property at 11918 San Vicente Boulevard and not be permitted on either San Vicente Boulevard or Montana Avenue.”¹³

This Condition, by requiring that the valet stand be placed on the property, implies (correctly) that placement of a valet stand on San Vicente Blvd. or Montana Ave. would create significant adverse traffic impacts. (*Attached as Exhibit 9 are email communications from David Shender, Linscott, Law & Greenspan, Engineers, describing the traffic impacts.*) But the apparent “requirement” that the valet stand be sited on the property, not on San Vicente or Montana, does not apply unless LADOT approves the placement of a valet stand on the property – which LADOT has already stated that it cannot approve due to the substandard lot design. *Exh. 9.*

The ZA should not therefore have included in Condition 40c the qualifying language: “Subject to LADOT approval, if required.” The Applicant should have been required to situate the valet stand on the property, without qualification. If LADOT does not permit the placement of a valet stand on the property without reconfiguration of the property, then no valet service can be provided unless and until an LADOT-certified on-site valet station is provided. And without valet service or on-site parking, there is no parking, which precludes operation of any businesses within the Mini-Shopping Center.

Further, the necessity for a physical redesign of the parking lot/driveway, to accommodate an on-site valet station, would trigger mandatory review by the San Vicente Design Review Board. This type of modification involves “site planning,” which is explicitly within the DRB’s purview. “Site planning” is defined to involve the “proper placement of structures, open spaces, parking and pedestrian and vehicular circulation on the site.” *Specific Plan Guidelines, § II.* Similarly, the Applicant must seek DRB approval for design elements of on-site and off-site parking/driveway areas and structures. The DRB’s design review must consider (1) “pedestrian access between parking areas and project uses,” which must be “inviting, spacious and direct;” (2) the design of parking areas, which should be “open to natural light and air and in all cases are to be well-lit with proper directional signage;” (3) vehicular circulation, which should be designed “to minimize pedestrian and vehicular conflicts.” *Specific Plan Guidelines, § II.C.3-6 & §II.D.2-3.* Thus, DRB review of the driveway and parking design elements is required before a building permit may properly issue.

Thus, Condition No. 40c should have been drafted to state: “(1) Valet parking customer drop-off and pick-up shall only be on the property at 11918-11920 San Vicente Boulevard and not be permitted on either Montana Avenue or San Vicente Boulevard;

¹³ ZA Condition No. 40c and BCC Condition No. 6c.

and (2) DRB approval of the modified driveway/parking lot/valet station is required before a building permit may issue.”

CONCLUSION

The Commission should grant the appeals and find that the CUB should not have been issued based on the following findings:

1. The proposed alcohol-serving restaurant, Fig & Olive, is to be located in an area that is already oversaturated with alcohol-serving restaurants and the addition of the Applicant’s self-described “destination” restaurant (without any on-site parking) would impair the local-serving character of the San Vicente Corridor, to the detriment of the Brentwood community’s quality of life and in violation of the policies and objectives stated in the Brentwood-Pacific Palisades Community Plan, at pp. I-3, I-4, III-4, Plan Objective 1-3, Policy 1-3.3, and the San Vicente Specific Plan Guidelines, p. 7.

2. The Mitigated Negative Declaration for the Applicant’s project fails to identify or mitigate the project’s potentially significant adverse environmental impacts, especially the traffic- and parking-related impacts, in violation of CEQA.

3. The mandated findings for granting a CUB were not and on this record cannot be made.

4. The Applicant lacks code-required parking because (i) the off-site public parking garage is more than 750 feet away from the restaurant in violation of Municipal Code Section 12.21.A(4)(g); and (ii) the entitlement documents for the off-site public parking garage preclude use of the garage to satisfy the Applicant’s code-required parking.

5. The Applicant is required to apply for and obtain a Mini-Shopping Center CUP before a CUB can be issued. The Zoning Administrator’s CUB determination is therefore premature because no such CUP has been applied for or issued. *LAMC* § 12.22.A.23(c)(1)(i); § 12.24.W.27(b)(1) & (2).

6. Further environmental review must be conducted in conjunction with the CUP proceedings, during which detailed parking and traffic plans must be submitted and considered by the Zoning Administrator, supported by a comprehensive traffic and parking study. *LAMC* § 12.24.W.27(b)(1) & (2); *Community Plan Goal 13, Objective 13-1, Policy 13-1.2 & 13-1.5; Goal 15, Objective 15-1, Policy 15-1.1.*

7. The Applicant must submit to review before the San Vicente Design Review Board (1) any changes to the approved design (*DIR 2008-4174-DRB-SPP*),

including any change of the open space areas, the addition of patios, removal of landscaping, redesign of parking lot or driveway areas, any on-site valet station; (2) any off-site parking garage; and (3) the pedestrian access between off-site parking and the Mini-Shopping Center. *LAMC Section 16.50; Specific Plan, § 9.B.2; Specific Plan Guidelines, §§ II.A.1 & .4; II.B.1 & II.C.1 -6.*

The Zoning Administrator's determination is *also* deficient for inclusion of the following conditions, which exacerbate instead of mitigate the project's adverse impacts: Condition Nos. 8, 9, 17, 36, 38, 39, 40a, 40b and 40c. Instead of these inadequate conditions, the Zoning Administrator should have included the following conditions, which were proposed by the LAPD and the Gorham Residents:

1. *LAPD No. Condition 36:* There shall be at least one uniformed state-licensed guard on the premises from 6:00 P.M. to one-half after closing Sunday through Thursday and two uniformed state licensed security guards on the premises on Friday and Saturday.¹⁴
2. *LAPD Condition No. 37:* There shall be no outdoor patio or lounge areas.
3. *LAPD Condition No. 38:* Valet parking shall be provided, free of charge, during all hours of operation.
4. *LAPD Condition No. 19:* Applicant shall not allow the premises to be used for private parties.
5. *LAPD Condition No. 22:* Entertainment provided shall not be audible beyond the area under the control of the Applicant.
6. *Gorham Residents Condition No. 5b:* Closing time: Restaurant should close by 10 PM Sunday through Thursday and 11 PM Friday and Saturday, rather than just stopping alcohol sales at those times.
7. *Gorham Residents Condition No. 5c:* Closing time: Parking garage at 11847 Gorham should close to restaurant customers and staff by 11 PM Sunday through Thursday, and midnight Friday and Saturday. This is one hour after the restaurant closing time.

¹⁴ The Mitigated Negative Declaration states that the Applicant should provide "security guard patrol throughout the project site if needed" and that any such security measures "shall be approved by the Police Department prior to the issuance of building permits." *ENV-2009-3723-MND, p. 2, § XIII(b)(1)*. The Police Department, by recommending LAPD Condition No. 36, effectively determined that the specified security measures were needed.

8. *Gorham Residents Condition No. 5d. Off-site parking operation at Gorham parking location:*

Gorham Residents Condition No. 5di: Applicant to install new, quiet vehicle gate.

Gorham Residents Condition No. 5dii: Vehicle gate needs to be kept open during all hours the garage is open to customers and staff of the restaurant.

Gorham Residents Condition No. 5diii: Attendant required at parking garage during all hours the garage is open to customers and staff of the restaurant.

Gorham Residents Condition No. 5div: Vehicle keys to be kept at garage location, to be able to quickly silence errant alarms, etc.

Gorham Residents Condition No. 5di: Restaurant customers and staff, including valet staff, must be quiet and non-disruptive to neighborhood residents at all times.

Gorham Residents Condition No. 5dvi: Valet and restaurant staff shall not use radios (two-way or otherwise), walkie talkies or cell phones while in the parking garage or within 20 feet of the 11847 Gorham building.

9. *Gorham Residents Condition No. 5e:* Vehicle noise: Install rubberized asphalt surface at alley, from Westgate Ave. to Gorham Ave.

10. *Gorham Residents Condition No. 5g:* Vehicle safety: Remove existing signage directing motorists on Gorham to access the parking garage by entering the alley from Gorham.

11. *Gorham Residents Condition No. 5b:* Plan Approval: Require Applicant to file a Plan Approval application no sooner than 6 months, and no later than 8 months, after commencing operation. Such Plan Approval to include public notice to 500' radius and public hearing, to evaluate compliance with Conditions of Approval and gather new information. Zoning Administrator to have authority to amend, add or delete Conditions necessary, and to set further Plan Approval hearings.

The Zoning Administrator should have also included the following additional conditions:

1. Valet parking customer drop-off and pick-up shall only be on the property at 11918-11920 San Vicente Boulevard and not be permitted on either San Vicente Boulevard or Montana Avenue.

2. Design Review Board approval of the modified driveway/parking lot/valet station and open spaces is required before a building permit may issue.
3. No after-hours use of the restaurant, including private parties or promotional events, are permitted.
4. No commercial filming shall be permitted at the restaurant, including no “reality television” or other types of commercial filming may be conducted on the premises.

Thank you for your consideration,

Donald G. Keller
Brentwood Homeowners Association

Elin Schwartz
Saltair Neighbors

Wendy-Sue Rosen
Tom Freeman
Brentwood Residents Coalition

Debbie Simmons
Fred Freeman
11847 Gorham Homeowners Association

Brentwood Homeowners Association consists of approximately 3,500 single family residences in an area of the Brentwood Community bounded by Chalon Rd. on the north, Barrington Ave. and the 1-405 on the east, Canyon View Drive on the west, and San Vicente Blvd. on the south. The subject property is immediately adjacent to this area and described on the Brentwood-Pacific Palisades Community Plan.

Saltair Neighbors is an ad hoc committee, initiated by Councilman Bill Rosendahl, to represent the concerns of the residents of Saltair Avenue, Saltair Terrace, Saltair Place, Oceano Place, and Oceano Drive in regards to business development on San Vicente Boulevard.

Brentwood Residents Coalition is a grass roots, non-profit advocacy group whose purposes are to preserve and enhance the environment and quality of life in Brentwood, to protect the integrity of residential neighborhoods, to assist with planning, to uphold zoning and municipal codes, to encourage traffic safety, and to educate the public on issues that affect quality of life and the environment.

11847 Gorham Homeowners Association is an association representing the 63 homeowners of the Westgate condominiums located at the intersection of Gorham and Westgate Avenues in Brentwood. The public parking garage referred to in action ZA-2009-3722-CUB-ZV is located within the 11847 Gorham Homeowners Association property.