

December 12, 2019

**VIA EMAIL and HAND DELIVERY**

D. Miguel Guerrero, Chair  
and Members of the Planning Commission  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

**Re: Marketplace Redevelopment Project, Parcel B (FDP18-001),  
December 12, 2019 Agenda, Item No. 7.1**

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Dear Chair Guerrero and Members of the Planning Commission:

On behalf of Wareham Development (“Wareham”), we write to respond to the Staff Report (“Staff Report”) prepared for the Parcel B Final Development Plan (the “FDP” or “Project”) proposed by AG-CCRP Public Market, L.P. (“Applicant”). On November 5, 2019, the City Council unanimously embraced revised Project plans, subject to specified conditions, including supplemental review by the Planning Commission. Wareham sincerely appreciates the Applicant’s revisions to the plans and the Council’s endorsement of them. After having reviewed the Staff Report, we write to provide comments designed to ensure that the plans attached thereto (the “Revised Plans”)<sup>1</sup> adequately reflect and incorporate the Council’s direction.

**1. Background**

In response to the City Council’s and Wareham’s concerns with the original Project plans, the Applicant prepared revised Project plans, which it submitted to the City on November 1, 2019. At the November 5, 2019 City Council hearing on Wareham’s appeal of the original FDP plans, the City Council registered its conceptual support of those revised plans subject to various specified conditions. Specifically, the motion made by Councilmember Bauters, seconded by Councilmember Donahue, and approved unanimously by the Council, included, among others that: (1) an additional condition be added requiring City Council approval of the final art plan for the exterior of the building, (2) the Planning Commission review and make recommendations regarding public accessibility to the roof deck/terrace space, and (3) the Commission review and make recommendations regarding moving the trash enclosures from a location outside the building to one inside of it.

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<sup>1</sup> Citations herein to the Revised Plans refer to the Project plans dated December 3, 2019 that are provided as Attachment 3 to the Staff Report.

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## **2. Providing public access to the roof deck/terrace**

Despite the Council's support for making the roof deck/terrace publicly accessible, the Applicant does not propose to provide such access. According to the Staff Report, the Applicant claims that making the roof deck/terrace publicly accessible is logistically infeasible "as it cannot be effectively policed due to its location" and economically infeasible because it would "requir[e] its own elevator and two sets of stairs (and security)" at an estimated cost of approximately \$1.5 million. (Staff Report, p. 11.)

Wareham was conditioned to provide a similar publicly accessible landscaped terrace area as part of its EmeryStation West development. Providing adequate access and security for that terrace has not proven to be logistically infeasible. Further, there does not appear to be any reason why an additional elevator and stairs need to be built to provide access to the roof deck/terrace. The roof deck/terrace could be accessed by the building elevators and stairs. Even if an additional elevator and stairs were required, it could be designed in a way so as to not diminish the step-down in height on the southern portion of the building.

Also, assuming that the estimated additional cost is valid, it does not seem substantial in light of the estimated value of the Project. This is especially true given the reduction in costs associated with the 60 fewer parking spaces provided as part of the Revised Plans. Condition VII.A.11 should be modified to require the Applicant to make the roof deck/terrace publicly accessible as the City Council desired citing it as an amenity for food court patrons.

## **3. Clarifying the scope of the proposed Public Art Plan**

Conditions imposed on the Preliminary Development Plan required that the building be articulated to avoid a box-like structure along the railroad right-of-way. The Applicant made some changes to the building design in that regard and also proposes to provide public art to address this issue. The Revised Plans show the art being placed in an area depicted as the length and height of the parking area. (Revised Plans, Sheet 46.)

While Condition II.B.1 requires that the City Council *review* the proposed art to be installed on the exterior of the building, it does not require Council *approval* of the art, as the Council indicated. The condition should be amended to clearly require the Applicant to: (a) install art on the east and west elevations in the areas depicted within the dashed lines on Sheet 46 of the Revised Plans, (b) provide an equal level of artistic treatment on both the east and west elevations, and (c) secure Council approval of the art. We also note that there are several, seemingly inconsistent conditions regarding art that should be reconciled prior to forwarding the Revised Plans to the City Council. (See Conditions II.B.1, II.C.4, VI.A.4, VII.A.2, and VII.A.10.)<sup>2</sup>

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<sup>2</sup> Conditions II.B.1, II.C.4, and VII.A.2 reference the Development Agreement provision which alternatively allows for payment of an in lieu art fee. Given that the art here will be provided on the building, this provision is not relevant and should not be referenced in the condition.

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**4. Ensuring that trash enclosures will be relocated inside the building**

The Staff Report states that all trash “will be collected and stored inside the building on the ground floor” and that only “staging of trash and parking of the hauler vehicle will occur outside the building.” (Staff Report, p. 11.) The Staff Report references Sheets 23 and 24 of the Revised Plans. However, those sheets and several others (e.g., Revised Plans, Sheets 14-15, 22, 25-27, 47-48, 50-52) continue to show a rectangular object at grade on the Project’s south side. Assuming that this is a trash enclosure, it needs to be removed from the Revised Plans. Condition IV.A.5 similarly needs to be updated to reflect the current plans, and Conditions IV.D.3, VII.A.5.c, and VII.B.4.b. need to be revised to reflect that trash enclosures shall not be located outside the building.

**5. Requiring the valet program to be conducted entirely inside the building**

The Applicant is proposing a valet parking program. The Staff Report and Revised Plans describe and depict an option for valet drop-off spaces along Shellmound Street. (Staff Report, p. 5; Revised Plans, Sheet 25; *see also* Condition VI.C.3.) Given the relatively narrow street width and estimated flow of vehicles, bicyclists, and pedestrians in the vicinity, this does not seem to be a wise or practical proposal. Similar to Stanford Healthcare, the Applicant should be required to conduct valet drop-off and pick-up entirely within the building.

**6. Confirming the height of rooftop elements.**

Condition VII.A.6 states that the building shall have a maximum height of 120 feet “not including parapets or rooftop elements.” Per the City Code, the maximum height of a parapet or rooftop element is 15 to 25 feet, depending upon the applicable height district. (Emeryville Planning Regulations Section 9-4.202(c)(2).) Given that the building is already at the maximum height across most of the site, the condition should limit the height of rooftop elements and parapets to the minimum height necessary, not to exceed 15 feet.

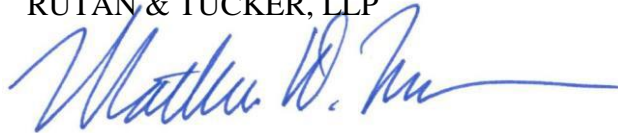
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Thank you for your consideration of Wareham’s comments on this matter. Representatives of Wareham, including the undersigned, will be in attendance at tonight’s meeting. In the meantime, please do not hesitate to contact me, Rich Robbins, or Geoff Sears with any questions regarding this correspondence.

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Very truly yours,

RUTAN & TUCKER, LLP



Matthew D. Francois

cc: Charlie Bryant  
Miroo Desai  
Andrea Visveshwara  
Rich Robbins, *via email only*  
Geoff Sears, *via email only*  
John Gooding, *via email only*