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Via Personal Delivery & Email

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Re: *Appeal of Planning Case PR-2021-001026*
(MCUP and Design Review for 10030 Indiana Avenue)
Our File No.: 1665-001

Dear Mr. Norton and Ms. Osorio,

This office represents Gustav G. Kuhn doing business as Arlington Business Plaza ("ABP"). ABP hereby appeals the November 30, 2022 decision of the Development Review Committee ("Committee") on Planning Case PR-2021-001026. The Committee granted a minor conditional use permit ("MCUP") permitting the establishment of a yard for outdoor storage of recreational vehicles at 10030 Indiana Avenue by Steve Richardson of Richardson's RV. The MCUP was granted in error for a number of reasons. ABP requests that Planning Commission revoke the MCUP for the reasons stated herein. In the alternative, the MCUP should be modified as requested herein.

The Minor Conditional Use Permit Application Should Be Rejected Because It Fails to Meet the Requirements of the Applicable Zoning Code Provisions

The MCUP for operating an outdoor storage yard on the Property can only be granted if:

from the facts available in the application and determined by investigation, all of the following written findings can be made:

- A. The proposed use is substantially compatible with other uses in the area, including factors relating to the nature of its location, operation, building design, site design, traffic characteristics and environmental impacts.
- B. The proposed use will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to the environment or to the property or improvements within the area.
- C. The proposed use will be consistent with the purposes of the Zoning Code.

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- D. The proposed use is in conformance with specific site location, development and operation standards as may be established in the Zoning Code for the particular use.

Zoning Code § 19.730.040.

Outdoor storage yards are further regulated by Section 19.285.010 of the Zoning Code, which provides: “The purpose of regulating outdoor storage yards is *to ensure compatibility of such uses with surrounding uses and properties* and *to avoid any impacts associated with such uses*.”

The proposed recreational vehicle (“RV”) storage yard fails all of these tests: (a) it is not substantially compatible with surrounding uses because there are no outdoor storage yards in this area, which is predominantly indoor commercial space; (b) it will detract from the commercial character of the surrounding area and unfairly penalize incumbent business owners and investors; (c) Richardson’s site plan cannot meet the Zoning Code’s requirements for outdoor storage yards due to inadequate screening; and (d) the proposed use is not consistent with the City’s general plan.

First, the proposed RV yard is not substantially compatible with surrounding uses because there are no RV storage yards—and virtually no outdoor storage of any kind—in this area, which is predominantly indoor commercial space. In response to ABP’s concerns on this issue, the Committee concluded—wrongly—that “the proposed outdoor storage yard and office is compatible with the variety of uses surrounding the project site[.]” (Report, p. 5 [Response to Concern No. 1].) Yet the only example of an ostensibly similar use the Committee could cite was the self-storage facility to the west of the Richardson property at 10090 Indiana Avenue. (*Id.*) However, this self-storage facility is clearly not outdoor storage. Instead, it has rows of indoor storage buildings accessible by outdoor drive corridors. Of the hundreds of self-storage units on that property, which presumably contain tens of thousands of stored items, not one stored item is visible from the street or any neighboring property.

Second, the proposed RV storage yard will detract from the commercial character of the surrounding area and unfairly penalizes incumbent business owners and investors. Richardson’s site plan fails to avoid these impacts. As ABP has stated in its previous letters, even if *minimum* screening requirements are met, the outdoor storage would be visible from the upper-floor windows and walkways of two adjacent building sites on ABP’s property. Tenants will be much less likely to rent space in these buildings, as opposed to space in other nearby parcels that do not have unsightly adjacent outdoor storage areas—to wit, none of the surrounding areas have adjacent outdoor storage. The Report fails to confront this obvious problem with the proposed use. (*See* Report, p. 6 [Responses to Concern Nos. 2, 3].) The Committee attempts to paper over this issue by insisting that since the proposed RV storage yard represents *a* use of otherwise vacant property for ostensibly commercial reasons, it necessarily will “spur the economic revitalization of the neighborhood.” Under this interpretation of “economic revitalization,” any conceivable commercial or industrial use of a parcel would count, even if such use would economically *devitalize* the commercial prospects for many of the longtime incumbent property owners in the area, and, indeed, for the area overall.

Third, the proposed RV storage yard should be rejected because Richardson's site plan fails to meet the Zoning Code's requirements for outdoor storage yards due to inadequate screening. Specifically, "[s]torage shall be visually screened **from all adjacent building sites and public streets and alleys** by a solid masonry wall **of a height sufficient to screen all materials stored outdoors** or by a building." (Emphasis added.) Mr. Richardson's most recent proposal opts to use a 10-foot high metal fence and trees as visual screening instead of masonry. Landscaping for screening is permitted by the Code, but only "provided that the required visual screening is achieved." Zoning Code § 19.285.040(A). Such screening must be "established at or before the time any area is used for outdoor storage." *Id.*, § 19.285.040(B).

In response to ABP's concerns on the screening issue, the Committee stated that the Richardson proposal provided "several site improvements to provide effective screening of the outdoor storage area to the adjacent building" owned by ABP and used by its tenants. However, the proposed methods of achieving "effective screening" will not effectively screen the outdoor storage yard from ABP's property. Furthermore, the ten foot metal fence that was added to Richardson's revised June 2022 site plan fails to cure the inadequate screening. The adjacent building sites on ABP's property sit at a higher elevation than the proposed outdoor RV storage yard. A 10-foot metal fence would not adequately screen the outdoor parking of RVs from patrons standing outside the adjacent commercial office buildings, let alone tenants and visitors located on the second floor of these buildings looking toward the unsightly outdoor RV storage.

Additionally, the Italian Cypress trees included on Richardson's revised June 2022 site plan appear to have been included to provide additional screening for the second story users of 10020 Indiana Avenue as required by Zoning Code § 19.285.040(A). This landscape screening is ineffective for multiple reasons. The plan calls for 24" box Italian Cypress trees planted 72" on center, and the Committee's report has increased these trees to 36" box. A 36" box Italian Cypress is typically about 12 feet tall and one foot wide at its base. Italian Cypress grow about three feet in height per year, and a mature Italian Cypress will grow to about 40 to 50 feet tall and up to three feet wide at the base. The diameter of an Italian Cypress narrows from its base to its top where it is only about a narrow point. Planting 36" box Italian Cypress as a visual screen will take years to mature. Even at maturity, Italian Cypress planted at 72" on center will have gaps of at least three to five feet in between each tree. And planting Italian Cypress only along the 10020 Indiana Avenue building will not visually screen the outdoor storage of RVs on the Richardson Property from both the 10000 Indiana Avenue and 100020 Indiana Avenue buildings. For Italian Cypress to even have a chance to provide adequate visual screening of the RVs planned to be stored on the Richardson property, they would need to be much more mature and planted right next to each other so that they have a chance of growing together. Alternatively, Richardson's proposed landscape screen should instead use a different mature tree variety that is conducive to providing privacy at tall heights, like Podocarpus or Ficus trees, and the landscape screen should be planted at least from the front of the storage yard all the way to the back of 10000 Indiana Avenue in order to provide adequate visual screening to the adjacent building sites as required by Zoning Code § 19.285.040(A). However, even with the use of a more effective tree variety, Richardson should not be able to have outdoor storage on his property until the visual screening is achieved as required by Zoning Code § 19.285.040(B), which could take three to 10 years after planting.

Fourth, the proposed use is not consistent with the City's general plan. A city's land use decisions must be consistent with the policies expressed in its general plan. *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 570 (1990); *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531, 536 (1990); Cal. Gov. Code § 65860. "[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." *Citizens of Goleta Valley*, 52 Cal. 3d at 570.

The proposed RV lot and its steel stand-alone carport and house-office are not consistent with the policies and objectives set forth in the Riverside General Plan 2025 (amended August 2019) for the Arlington South neighborhood (the "Riverside General Plan") where the subject property is situated. Objective LU-40 is to "[r]einforce Arlington South's historic development patterns[.]" The proposed RV lot would run counter to decades of historic development patterns, one specific example of which is the City shutting down Richardson's prior use of this parcel as an unpermitted RV storage lot. Policy LU-40.2 is to "[e]ncourage owners of industrial properties to keep those properties in industrial use in a manner that would benefit the community as a whole." As set forth throughout this letter and our prior letters, the proposed RV lot would be a *detriment* to the local community—not a benefit. Objective LU-41 is to "[s]pur the economic revitalization of the neighborhood." Lowering real estate prices and rents by using the property as an RV lot will do the opposite. Policy LU-41.2 is to "[e]nsure that commercial properties are well maintained and compatible with adjacent residential land uses." Mr. Richardson's proposed RV lot is not likely to be well maintained if history is any guide.

There are at least three more examples why Richardson's proposed plans for the Richardson Property have various architectural design deficiencies that violate the above-cited California law and the Riverside General Plan. First, the plans include a 63-foot by 23-foot covered carport parking area. This carport appears to be a bare steel building shell with a corrugated sheet metal roof and no architectural design features to make it compatible with any of the neighboring developed commercial properties. Second, the proposed use of the existing house as an office facility includes no architectural design features that make it compatible with the buildings developed in the entire neighborhood. No underground utilities are proposed, and the building will continue to look like a house after completion of the project. Finally, the parking design for the office use is poor: if one car is parked adjacent to the existing house, it will encourage visitors to park in the parking lot on the ABP property at 10020 Indiana Avenue. Many people connected with the Richardson Property already use the ABP property for parking and view the lot as available for "public use." Richardson has done nothing to cure this improper use, and the proposed development of the Richardson Property will only continue the improper use. The proposed parking on the Richardson Property must be designed to mitigate this chronic problem. The developers of commercial properties in the neighborhood have had to comply with all of the foregoing requirements that Richardson is attempting to escape, which is unacceptable.

The Minor Conditional Use Permit Application Should Be Rejected Because the Project Is Not Categorically Exempt from Further CEQA Review

The Committee incorrectly concluded this project is categorically exempt from further review under California Environmental Quality Act (CEQA). CEQA applies to discretionary

projects undertaken by private parties. Indeed, the issuance of a conditional use permit for a site-specific development proposal is a “project” under CEQA. Pub. Resources Code, Sections 21000 et seq.; 14 Cal. Code Reg Section 15378(a)(3); *Madrigal v. City of Huntington Beach*, 147 Cal.App.4th 1375 (2007). Under CEQA, an environmental impact report (EIR) is required whenever it can be fairly argued based on substantial evidence that the project may have significant environmental impact. Pub. Resources Code, Section 21151; *American Canyon Community United for Responsible Growth v. City of American Canyon*, 145 Cal.App.4th 1062 (2006). A “significant effect on the environment” under CEQA is a substantial or potentially substantial adverse change in the physical conditions existing within the area affected by the project. Pub. Resources Code, Sections 21060.5, 21068; *California Farm Bureau Federation v. California Wildlife Conservation Bd.*, 143 Cal.App.3th 173 (2006). A project will normally have a significant effect on the environment if it will cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system. There is a low threshold requirement under CEQA for preparation of an environmental impact report, and preference for resolving doubts in favor of environmental review. Cal. Pub. Res. Code 21000 et seq.; 14 CCR Section 15064(f); *Mejia v. City of Los Angeles*, 130 Cal.App.4th 322 (2005).

Here, the Committee incorrectly determined that this project is categorically exempt from further CEQA review. Categorical exemptions to CEQA are construed narrowly and will not be unreasonably expanded beyond their terms. Pub. Resources Code 21084, 14 Cal. Code Reg. 15300 et seq.; *California Farm Bureau Federation v. California Wildlife Conservation Bd.*, 143 Cal.App.4th 173 (2006). The Committee incorrectly relies on the following exemptions: Section 15301 (Existing Facilities), Section 15303 (New Construction or Conversion of Small Structures, and Section 15332 (In-Fill Development Projects). As summarized below, the Committee has not established any of the categorical exemptions apply to the Richardson Project.

Existing Facilities (14 Cal. Code Regs. § 15301). The Committee’s reliance on the “existing facilities” exemption is incorrect because the outdoor storage of RVs and trailers at the Richardson Project *is not* merely the continued operation of past activity. The Richardson Project represents a new and expanded use of the property. The proposed use includes the addition of forty-five paved parking stalls for RV and trailer parking. Moving RVs in and out of the property is not the same level of use as existing vacant dirt. Furthermore, the significant storage of RVs presents a new risk of potential leaks from oil, brake fluid, transmission fluid or other motor vehicle liquids. The Richardson Project is a material increase in use, and an entirely different and new use, of the property.

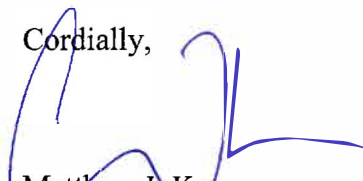
New Construction or Conversion of Small Structures (14 Cal. Code Regs. § 15303). The “new construction or conversion of small structures” exemption also fails to justify approving outdoor RV and trailer storage without CEQA review. This project does not merely involve the conversion of the house into an office building, or some other similar “new construction or conversion of small structures”. The Richardson Project primarily involves converting a large area of vacant dirt into a paved outdoor commercial storage area for large RVs and trailers. This is not the type of “conversion of small structures” that can support an exemption under Section 15303.

In-Fill Development Projects (14 Cal. Code Regs. § 15332). The project also fails to meet the conditions described in Section 15332, for “in-fill development projects”. For example, the project is not consistent with the applicable general plan designation and all applicable plan policies and applicable zoning designations and regulations – as explained above and in our prior correspondence. (See, Section 15332, subpart (a)). Additionally, approval of the Richardson Project would have a significant effect relating to traffic, noise, and air quality. (See, Section 15332, subpart (d).) Specifically, the proposed use involves many RVs moving in and out of the property as required for inventory control. The project involves 45 parking stalls for RVs and trailers. The flow of inventory in and out of the storage lot is unrestricted by the conditions of approval for the project. The staff report merely confirms the storage is “as required for inventory control.”

The constant moving in and out of RVs is a feature of this project that distinguishes it from any other project in the surrounding area because there are no other outdoor RV storage yards or other businesses that involve multiple large RVs moving in and out of an outdoor storage space. The proposed use for temporarily storing RV inventory will have a significant effect on the environment because it will cause an increase in traffic which is substantial in relation to the existing traffic load and capacity on Indiana Avenue. The impact the Richardson Project will have on traffic, noise or air quality was not studied as part of Richardson’s minor CUP application or the City’s approval. At a minimum, the minor CUP application should be denied pending completion of an EIR and traffic study.

Thank you for considering these important issues. Please provide Mr. Kuhn and my office with written notice of any meeting where this project will be considered, and a copy of any written staff report related to the project. In the meantime, please do not hesitate to contact the undersigned if you have any questions or would like to discuss further.

Cordially,



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