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Town Clerk's Office

3-2-23

Council Town of Palm Beach

Re: 125 Worth Avenue ARC-23-022(ZON-23-032)

Dear Mayor and Town Council Members,

I thought this information would be of interest to you in evaluating the accuracy of the application for 125 Worth Avenue. Given the importance of this project, it is crucial that Council has accurate and true information on which to base its decisions.

Further to my ARCOM submission on 2-22-2023 regarding the inaccuracies in this application, I attach a copy of a lawsuit filed in 2019 by the Homeowners of Patjens Lane, Mount Pleasant, S. C. against the Town of Mt. Pleasant because the developer's consultant, Sustainable Settlements, LLC , principal Joshua Martin, created a shared parking plan that did not meet the town's code.

"The parking plan unlawfully "cherry picks" provisions from different sections of the parking regulations in violation of the Town's ordinances. Without this improper cherry picking, the parking plan does not meet the parking requirements for this development."

Both the LOI and Worth Ave. Design Guidelines Justification statement contain inaccurate descriptions in an effort to support compliance with the town code. For instance, pages 9 and 38 of the Design Guidelines describe the subject as a 3-story professional office building. In the Justification Statement, the writer has taken the liberty of improperly rewriting this description by replacing the words "three story" with "four story" and then following it with actual language from the Guidelines, without quotation marks. It appears to be a deliberate effort to alter the language and have it appear authentic.

There are multiple other examples of false and/or misleading descriptions and statements.

Yours truly,


A. Seltzer
44 Cocoanut Row

<p>TOWN OF MOUNT PLEASANT BOARD OF ZONING APPEALS</p> <p>Helen and Jim Berg; Joanne Kirkland; Ashley Magrath; Ben Latimer,</p> <p><i>Appellants/Petitioners,</i></p> <p>v.</p> <p>Town of Mount Pleasant; Town of Mount Pleasant Commercial Design Review Board; Kent Prause, in his capacity as Zoning Administrator for the Town of Mount Pleasant; Town of Mount Pleasant Planning Commission; David Pagliarini, Jim Hinchey, Julia Copeland and Hinchey, Murray & Pagliarini, LLC, all in their capacity as Town Attorney/Corporation Counsel; Jeff Ulma, in his capacity as Director of the Town of Mount Pleasant Planning and Development Department; Michael Robertson, in his capacity as Principal Planner for the Town of Mount Pleasant, and Town of Mount Pleasant Planning Commission,</p> <p><i>Appellees/Respondents.</i></p>	<p>CASE A-1-19</p> <p>APPELLANTS' HEARING BRIEF</p>
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The Appellants respectfully submit this brief into the record for the Board's consideration.

Executive Summary

- I. Town Officials approved a parking plan which does not comply with the Town's ordinances.
- II. The parking plan unlawfully counts parking spaces at the Cassina Group, in violation of the Town's ordinances. Without the improper inclusion of these spaces, the parking plan does not meet the parking requirements for this development.
- III. The parking plan unlawfully "cherry picks" provisions from different sections of the parking regulations, in violation of the Town's ordinances. Without this improper cherry picking, the parking plan does not meet the parking requirements for this development.

- IV. Had the Town's ordinances been applied accurately and lawfully, the parking plan would have been rejected.

Nature of the Appeal

In this matter, the Appellants dispute the validity of numerous decisions by Town Officials relating to approval of the parking plan for the Earls Court CM3 hotel/restaurant project ("Proposed Hotel"). Town officials' duty was to analyze the parking plan under an accurate and lawful application of the Town's parking regulations. Had they done so, the parking plan would have been rejected. At the heart of these officials' error is the erroneous conclusion that the submittals for the Proposed Hotel include a parking plan which meets Zoning Ordinance requirements, and their reliance on the erroneous approval of the parking plan to approve the entire Proposed Hotel project.

Pertinent Facts

On or about November 28th, 2018, the final parking plan for the Proposed Hotel was disclosed to the Town and to the public. Elements of the parking plan surfaced before this date, but the Cassina Lease, an integral and necessary feature of the parking plan, was not made public until the November 28th, 2018, meeting of the DRB. Town attorneys and the Administrator had negotiated and approved the Cassina Lease, and had done so at the DRB's direction: at its October 31st, 2018 meeting, the DRB had correctly recognized that without the Cassina Leases—an essential element of the Parking Plan—no approvals for the Proposed Hotel could be issued.¹ With the Cassina Lease, and the Administrator's approval thereof, in hand at its November 28th, 2018 meeting, the DRB gave preliminary approval to the Proposed Hotel.

¹ DRB members stated, at its October 31st, 2018 meeting, that parking plan approval is within the Planning Commission's rather than the DRB's authority. If true, the Proposed Hotel lacks requisite Planning Commission approval, because the Planning Commission has not reviewed the parking plan in its final form, an additional ground of this appeal.

conventional (as opposed to shared) parking analysis. How do we know? Because the Overlay Parking Rules' reference back to Section 156.172 is triggered only "[i]f shared parking standards cannot be achieved," which is what happened here.

So the Developer's Parking Study admits that its parking plan does not meet shared parking standards; the Developer then takes advantage of the 20% reduction which is available only when the project does not meet shared parking standards...the Developer then takes advantage of the "specific users during certain hours" provision... which only applies when the project does meet shared parking standards. The Developer's analysis is logically absurd, and the Administrator's approval is legally and factually erroneous.

E. The Developer's Parking Study was a post-hoc analysis conducted for the purposes of validating a parking plan already in place, in violation of the ULI Standards, and as a result skipped numerous mandatory steps in a proper ULI parking analysis

The Developer's parking consultant, Sustainable Settlement, is candid about the fact that its analysis is a rote, after-the-fact exercise: the purpose of its work is to take an existing parking plan, and analyze it under ULI Standards "to determine whether shared parking [analysis] can yield a parking reduction greater than 20%," allowed under the Overlay Zoning Rules. (Exhibit #3, p. 9.) In other words, the purposes of the Developer's ULI Study were a) to check the box of a ULI Parking Study required by the ordinance, and b) to see whether by doing so the Developer could get away with even less than 28 parking spaces. This approach stands in stark contrast to the protocol required by ULI Standards for a proper ULI Study.

The ULI Standards prescribe a process consisting of nine analytical steps "which involve developing an understanding of the project before starting analysis, and developing site design and parking management plans that will facilitate shared parking." (ULI Standards, p. 6.) It is only at

the 9th and final step that the consultant should “recommend a parking plan.” (ULI Standards, p. 7.) Of particular note is that the ULI Standards specifically admonish parking consultants not to skip steps 1 through 8, which “are often neglected in many shared parking studies.” (ULI Standards, p. 6.) The Proposed Hotel is a classic example of the ULI Standards’ warning: Sustainable Settlement did not “recommend a parking plan” after careful analysis- it applied the Standards in *post hoc* fashion to a parking plan the Developer had thrust upon it for a rubber stamp. By skipping these mandatory steps in the ULI Standards’ protocol, the Developer once again undermined the notion that its study is “based on ULI standards,” which it is not.

What steps did the Developer’s ULI Study skip? “It is important to...survey existing conditions, local users, and facilities...discuss parking management strategies with all the stakeholders, to ensure that shared parking can occur as assumed in the study phase.” ULI Standards p. 21. The Developer’s ULI Study itself reflects that no stakeholder engagement was performed, no discussion with local users incorporated into the analysis. In fact, all stakeholder input other than the Developer’s has been robustly opposed to the parking plan, which is situated in an area already in the throes of controversy over lack of parking and excessive congestion. Circumstances like these are why the ULI Standards consider these such important steps: a misapprehension of the overall protocol leads to flawed and inadequate parking plans. “[M]isunderstanding the principles of shared parking or rote application of the default values and factors recommended here⁶, absent professional judgment and knowledge regarding the specific local conditions, can result in unrealistic projections. This report’s recommendations should be considered simply a starting point for the analysis of shared parking.” ULI Standards, p. 20. The ULI Standards are explicit about the consequences of ill-considered parking plans: “Insufficient

⁶ The ULI Standards establish a benchmark for approval of shared parking plans which accommodate 85% of the calculated peak parking volume for all uses. ULI Standards, p. 20

parking can result in the intrusion of parking into neighborhoods or adjoining properties, excessive vehicle circulation, and unhappy users.” ULI Standards, p. 1

F. The Parking Plan violates numerous general provisions and principles of the Town’s parking regulations and the ULI Standards

Beyond its failure to pass muster when subjected to close statutory scrutiny, the Parking Plan also violates the spirit and principles set forth throughout the Town’s parking regulations.

Among them:

1. Code of Ordinances Section 156.004(B)- “In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements adopted for the promotion of the public health, safety and welfare.”
2. Code of Ordinances Section 156.004(B)(8) and (10)- The zoning rules are intended “to prevent the overcrowding of land and the undue concentration of population” and “to promote desirable living conditions and the sustained stability of neighborhoods.”
3. Code of Ordinances Section 156.318- “Great care should be taken to create an adequate amount of off-street and on-street parking to serve development areas.”
4. Code of Ordinances Section 156.318- Parking should be hidden between or behind buildings and in parking structures, except as provided elsewhere in this section for single-family residential uses.⁷

A final point illustrates the senselessness of applying Shared Parking analysis to this project, and by extension indicates the wisdom of the Board’s insisting on very strict compliance with the ULI Standards and applicable regulations. Stated simply, the Urban Land Institute pretty clearly did not intend that shared parking be employed to justify reduced parking for a project of

⁷ The Cassina Spaces are in a parking lot which faces directly onto Hibben Street.

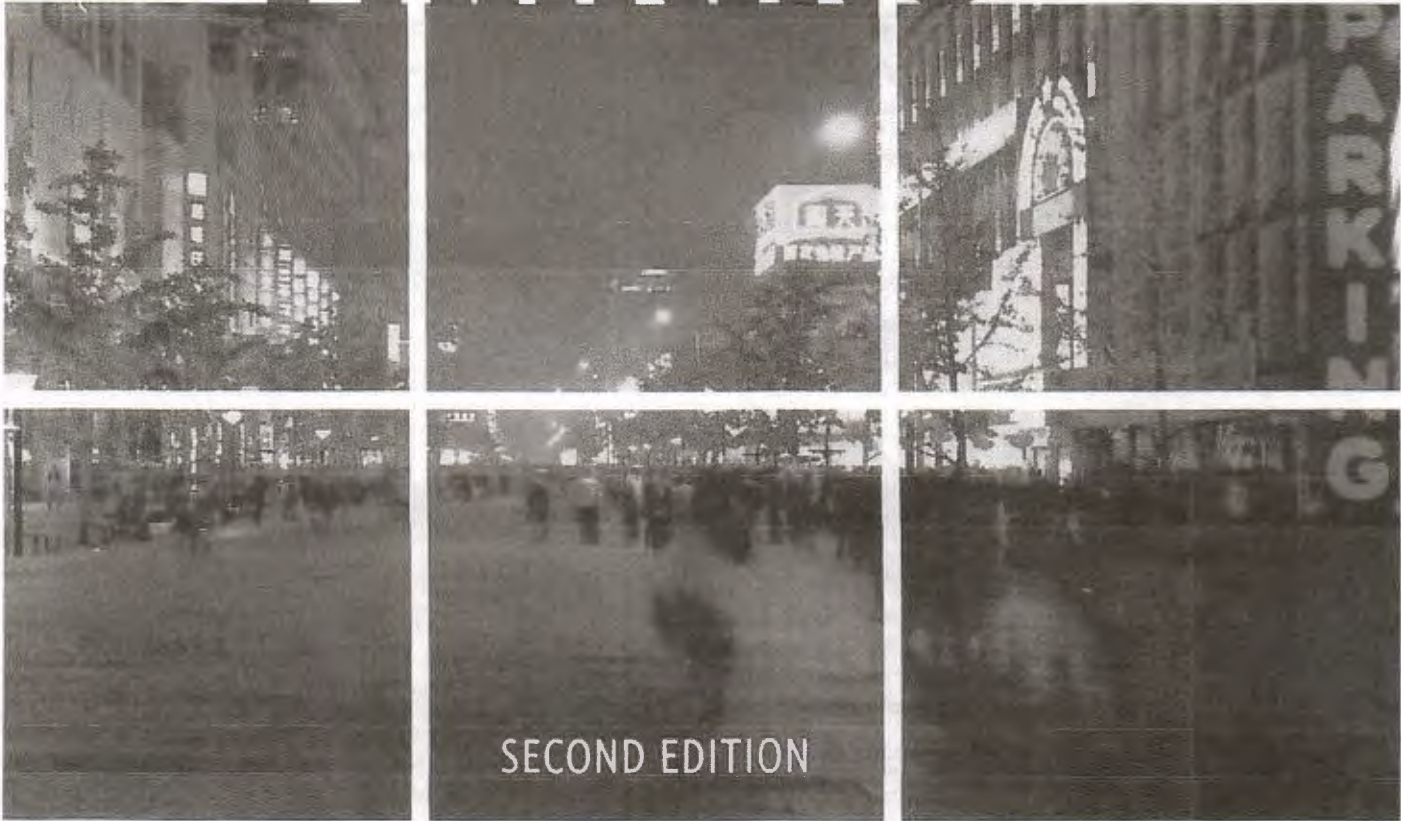
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April 19, 2019
Charleston, South Carolina

SHARED PARKING



Mary S. Smith

 Urban Land
Institute


International Council
of Shopping Centers

EXHIBIT

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About ULI—the Urban Land Institute

ULI—the Urban Land Institute is a nonprofit education and research institute that is supported by its members. Its mission is to provide responsible leadership in the use of land in order to enhance the total environment.

ULI sponsors education programs and forums to encourage an open international exchange of ideas and sharing of experiences; initiates research that anticipates emerging land use trends and issues and proposes creative solutions based on that research; provides advisory services; and publishes a wide variety of materials to disseminate information on land use and development. Established in 1936, the Institute today has more than 26,000 members and associates from more than 80 countries representing the entire spectrum of the land use and development disciplines.

Richard Rosan

President

For more information about ULI and the resources that it offers related to parking and a variety of other real estate and urban development issues, visit ULI's Web site at www.uli.org.

About the International Council of Shopping Centers

Founded in 1957, the International Council of Shopping Centers (ICSC) is the global trade association of the shopping center industry. Its more than 54,000 members in the United States, Canada, and more than 96 other countries include shopping center owners, developers, managers, marketing specialists, investors, lenders, retailers, and other professionals as well as academics and public officials. As the global industry trade association, ICSC links with more than 25 national and regional shopping center councils throughout the world.

Michael P. Kercheval

President

For more information about ICSC and the products and services that it offers, including publications and research data, visit ICSC's Web site at www.icsc.org.

Recommended bibliographic listing:

Smith, Mary S. *Shared Parking*, Second Edition. Washington, D.C.: ULI—the Urban Land Institute and the International Council of Shopping Centers, 2005.

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Shared Parking Principles

A key step in gaining acceptance for shared parking is understanding the factors that result in the reduced need for parking spaces for a particular combination of land uses. Shared parking analysis (see Figure 2-1) provides a systematic way to apply appropriate adjustments. This chapter reviews the factors and adjustments in the same sequence presented in Figure 2-1. The methodology has been modified slightly from that recommended in the first edition of this publication, based on a number of considerations explained below.

Local circumstances, both routine and nonroutine, cause parking generation to vary significantly from any one day to any other day. These circumstances, including competition, strength of tenants, changes in the local economy, and demographics, change over time. The goal of any shared parking analysis is to arrive at a projection of parking needs that is reasonably reliable and consistent with accepted transportation planning principles and practices. The use of 85th percentile conditions rather than average ones has been

incorporated into this book's recommendations, in provide an acceptable level of confidence in the 0.5 percent or even 10 percent change in any one factor. One land use is unlikely to have a significant impact on the bottom line.

Conversely, misunderstanding the principles of shared parking or rote application of the default values as recommended here, absent professional judgment and knowledge regarding the specific local conditions, can result in unrealistic projections. This report's recommendations should be considered simply a starting point for the analysis of shared parking by experienced and knowledgeable professionals.

Step 1: Gather and Review Project

Shared parking analysis entails projecting parking needs for a specific combination of land uses, whether for an individual development project or a parking district or area that includes multiple parking resources. Understanding the precise nature

Parking Analysis For

Earl's Court Mixed-Use Development Mount Pleasant, South Carolina

September 12, 2018

Prepared by:

Sustainable Settlement, LLC

For:

**Earl's Court, LLC
Hibben Street
Mt Pleasant, SC 29464**



Introduction

As a part of the Design Review Board application for the proposed mixed-use development in Mount Pleasant, South Carolina—Earl's Court—by Earl's Court, LLC, Sustainable Settlement has prepared the following parking analysis per the Town of Mount Pleasant Zoning Ordinance. The subject properties included in the proposed Earl's Court mixed-use development are located within the Town of Mount Pleasant's Urban Corridor Overlay District (UC-OD) as described more fully in Section 156.318 of the Town of Mount Pleasant Zoning Code. Please refer to Exhibit A to this document, entitled "Earl's Court Parking Plan", throughout this parking analysis.

Project Overview and Parking Demand

The proposed Earl's Court mixed-use development ("development") includes the following uses:

- Single-family dwelling;
- Accommodations and Lodging; and
- Restaurant/bar/lounge.

More specifically, the development includes the following intensities of the aforementioned uses:

- Two (2) single-family dwellings (labeled as Single-Family on Exhibit A to this document);
- Twenty-five (25) rooms of accommodations and lodging uses (labeled as Inn on Exhibit A to this document); and
- One thousand (1,000) square feet of restaurant/bar/lounge use (labeled as Café on Exhibit A to this document).

Spatially, the aforementioned use intensities are distributed among three parcels within the proposed development area as shown on Exhibit A to this document as follows:

- Parcel CM-1: One (1) single-family dwelling and one (1) room of accommodations and lodging use;
- Parcel CM-2: One (1) single-family dwelling and one (1) room of accommodations and lodging use; and
- Parcel CM-3: Twenty-three (23) rooms of accommodations and lodging uses and one thousand (1,000) square feet of restaurant/bar/lounge use.

In order to determine the minimum number of required parking spaces, one must refer to Sections 156.170 of the Town of Mount Pleasant Zoning Code, *Off-Street Parking and Loading Requirements Purpose*, and 156.171 of the Town of Mount Pleasant Zoning Code, *Schedule of Off-Street Parking Space Requirements*. This schedule calls for the following required parking spaces for each use within the development as follows:

Use Category	Use	Spaces Required	Units of Measure
Residential	Single-family dwelling	1	Dwelling Unit
Commercial	Accommodations and Lodging	1	Guest Room
Commercial	Restaurant, bar, nightclub, lounge, including associated decks and plazas	1	100 square feet

Moreover, Section 156.318, *UC-OD, Urban Corridor Overlay District*, of the Town of Mount Pleasant Zoning Code states the following regarding parking and loading requirements and shared parking for those properties within the Urban Corridor Overlay District (which the development is located within):

“(M) *Parking and loading requirements/on-street parking.* Great care should be taken to create an adequate amount of off-street and on-street parking to serve development areas. The location of parking should facilitate access to new developments, but not use valuable real estate better suited to buildings and public space. Parking should be hidden between or behind buildings and in parking structures, except as provided elsewhere in this section for single-family residential uses.

(1) *Shared parking.*

(a) Required parking shall be calculated utilizing the shared parking standards established by the Urban Land Institute for nonresidential uses; provided, however, no additional parking spaces shall be required for uses conducted in the designated activity zone.

(b) If shared parking standards cannot be achieved, Off-Street Parking and Loading Requirements, §§ 156.170 et seq. of this chapter, shall apply; provided, however, required parking for nonresidential uses may be reduced by 20%.”

The development team completed an Urban Land Institute Shared Parking Model (included in this analysis) which revealed that shared parking beyond a 20% reduction could not be achieved, so the development shall apply the 20% parking reduction for nonresidential uses within the development (per the aforementioned zoning code section). The application of the 20% reduction of parking requirements yields the following parking requirements for the development:

Use Category	Use	Spaces Required	Units of Measure	Units Proposed in Development	Total Number of parking spaces required	Total Number of Parking Spaces with 20% reduction
Residential	Single-family dwelling	1	Dwelling Unit	2	2	2 *reduction not applicable to residential uses
Commercial	Accommodations and Lodging	1	Guest Room	25	25	20
Commercial	Restaurant, bar, nightclub, lounge, including associated decks and plazas	1	100 square feet	1,000 square feet	10	8
Total Number of Spaces for Development (with 20% reduction)						30

Parking Location for Residential Uses

As previously stated, the development includes two single-family dwellings as follows:

- Parcel CM-1: One (1) single-family dwelling; and
- Parcel CM-2: One (1) single-family dwelling.

Each single-family dwelling requires one parking space and each parking space is located on the principal lot of the single-family dwellings (Parcel CM-1 contains one parking space dedicated for the single-family dwelling located on this lot and Parcel CM-2 includes one parking space dedicated for the single-family dwelling located on this lot). These parking spaces are shown on Exhibit A to this document.

Parking Location for Accommodations and Restaurant Uses

As previously stated, the development includes accommodations and restaurant uses within the proposed development area as shown on Exhibit A to this document as follows:

- Parcel CM-1: One (1) room of accommodations and lodging use;
- Parcel CM-2: One (1) room of accommodations and lodging use; and
- Parcel CM-3: Twenty-three (23) rooms of accommodations and lodging uses and one thousand (1,000) square feet of restaurant/bar/lounge use.

Per the reduced parking requirement of the previous section, the Town of Mount Pleasant Zoning Code requires a total of twenty-eight (28) parking spaces.

Of the total twenty-eight spaces, twenty (20) parking spaces required for the accommodations and lodging use (Inn) are located both on-site and off-site as follows:

- Parcel CM-3 (on-site): Twelve (12) parking spaces dedicated to the accommodations use;
- Parcel CM-2 (off-site): One (1) parking space dedicated to the accommodations use;
- Patjens Court (off-site): Six (6) parking spaces dedicated to the accommodations use; and
- 414 Whilden Street (off-site): One (1) parking space dedicated to the accommodations use.

These parking spaces are shown on Exhibit A to this document.

The off-site parking spaces associated with the accommodations and lodging use (Inn) satisfy the following requirements of off-site parking per Section 156.172 of the Town of Mount Pleasant Zoning Code, Application of Parking Requirements, as stated below:

“(3) Off-site parking.

(a) In cases where the required parking space is not located on the same lot as the principal use or as allowed in the public right-of-way, the owner of the lot on which the off-site parking is located must relinquish, through a covenant agreement with the town, their development rights over the property, until such time as parking space is provided elsewhere or on the same premises as the principal use or uses.

(b) The off-site parking area shall be no more than 600 feet from the entrance of the principal use, as measured along the street right-of-way.

Urban Land Institute's Shared Parking Model

As a part of the Design Review Board application for the proposed mixed-use development in Mount Pleasant, South Carolina--Earl's Court mixed-use development--by Earl's Court, LLC, Sustainable Settlement has prepared the following study according to the Urban Land Institute's Shared Parking Model to determine whether shared parking can yield a parking reduction greater than 20% as demanded by the mix of proposed uses at Earl's Court.

The implementation of a shared parking approach at Earl's Court will help the project to achieve the goals of the Town of Mount Pleasant's Urban Corridor Overlay District as well as Comprehensive Plan goals of Livability and Level-of-Service improvements. By avoiding the building of excess parking, the shared parking model will encourage pedestrian circulation between uses as well as mitigating excessive drainage and surface runoff, minimizing the intrusion of parking into green space, and ensuring that it does not encroach upon adjacent neighborhoods.

It is suitable to apply a shared parking approach because it can be assumed both that there are complementary relationships between constituent uses and that those uses will differ in their distribution of demand times of day, week, and year.

Methodology

This study followed the methodology outlined in ULI's Shared Parking, 2nd Edition, by Mary S. Smith ("the ULI model"). This methodology was initially developed by ULI in 1983, but was updated with a second edition in 2005. The methodology is based on empirical data gathered by ULI and confirmed appropriate by the Institute of Transportation Engineers. At its simplest level, the methodology is successful because it models the ability to share parking spaces as the result of two conditions:

- Variations in the accumulation of vehicles by hour, or by season at the individual land uses, and
- Relationships among the land uses that result in visiting multiple land uses on the same auto trip.

The methodology followed as applied to the Earl's Court development is detailed below as follows:

1. Gather and Review Project Data

In order to evaluate parking demand for the mixed-use development as a whole, it is first necessary to identify the type and scale of the constituent uses. Scale may be evaluated differently for each use. For example, the parking requirements for a office would be best calculated using the gross square footage while a public pool would be best calculated using the facility's design occupancy. These use categories are provided in a table the ULI model. The appropriate scale-defining units for each use are the result of the observational precedent studies that produced all standards within the ULI model.

6. Calculate Scenario Requirements

The selected base ratios and appropriate weekday, weekend, time-of-day, and monthly factors were then combined to reflect the full spectrum of scenario requirements at Earl's Court.

7. Recommended Parking Plan

Because this study was undertaken after initial parking design, it was to ensure that the designed parking would be met. Any deficient scenarios would be evaluated qualitatively to determine the real-world likelihood of the particular scenario demand produced by the model for that scenario. If necessary, alterations were made to the parking plan to accommodate deficient scenarios.

Findings

The complete results of this parking analysis can be found in the attached, completed spreadsheets.

Discussion & Conclusion

The results of the parking analysis show that for all scenarios, provided parking will exceed demand. The ULI Shared Parking Model recommends that a parking lot should not exceed between 85% and 95% occupancy (depending on how conservatively figured) or else drivers will perceive the lots to be effectively full since the cost and time spent searching for an empty spot will exceed the usefulness of finding that spot. Provided parking is below this threshold with 28 provided parking spaces in all scenarios and the lots will rarely be perceived full. However, provided parking less than 28 spaces will not meet this threshold. As a result, the ULI shared parking study cannot justify a shared parking factor greater than the 20% reduction as stated in Section 156.318, *UC-OD, Urban Corridor Overlay District*, of the Town of Mount Pleasant Zoning Code, which states the following regarding parking and loading requirements and shared parking for those properties within the Urban Corridor Overlay District (which the development is located within):

“(M) *Parking and loading requirements/on-street parking.* Great care should be taken to create an adequate amount of off-street and on-street parking to serve development areas. The location of parking should facilitate access to new developments, but not use valuable real estate better suited to buildings and public space. Parking should be hidden between or behind buildings and in parking structures, except as provided elsewhere in this section for single-family residential uses.

(1) *Shared parking.*

- (a) Required parking shall be calculated utilizing the shared parking standards established by the Urban Land Institute for nonresidential uses; provided, however, no additional parking spaces shall be required for uses conducted in the designated activity zone.
- (b) If shared parking standards cannot be achieved, Off-Street Parking and Loading Requirements, §§ 156.170 et seq. of this chapter, shall apply; provided, however, required parking for nonresidential uses may be reduced by 20%.”

Given shared parking standards cannot be achieved beyond the 20% reduction, the parking for nonresidential uses should be reduced by 20% per the aforementioned code section and provide a total of twenty-eight (28) spaces for the nonresidential uses of the development.

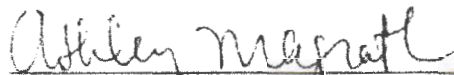
The Homeowners of Patjens Lane
Mount Pleasant, South Carolina 29464

October 23, 2020

The Honorable Will Haynie
Town of Mount Pleasant
Municipal Complex
100 Ann Edwards Lane
Mount Pleasant, South Carolina 29464

Dear Mayor Haynie,

We, the homeowners of all four lots on Patjens Lane, are requesting that the Town transfer its ownership of our small cul-de-sac to us. With the inevitability of the development of the hotel parcel of Earl's Court directly across Whilden Street from us, we expect that hotel and restaurant patrons will find that parking on our street is much more convenient than the hotel's valet service that makes use of remote lots or on-site lifts. The Town's Zoning Administrator has previously confirmed that our street is too narrow for perpendicular parking that conforms to the Town's standards. Regardless of the narrowness of the street, we anticipate that patrons will park on Patjens Lane in whatever manner is most convenient to them, blocking driveways, congesting the street, and creating unsafe conditions. To maintain the tranquil, family-friendly atmosphere of the Old Village Historic District in which our homes are located (and the hotel is not), we ask that the Town transfer its ownership of Patjens Lane to us.



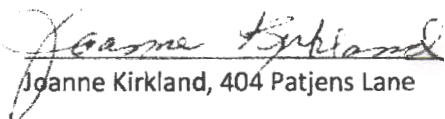
Ashley Magrath, 401 Patjens Lane



James & Helen Berg, 402 Patjens Lane



Ben Latimer, 403 Patjens Lane



Joanne Kirkland, 404 Patjens Lane

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