



**COUNTY OF SAN MATEO**  
Inter-Departmental Correspondence  
Planning and Building



**Date:** October 16, 2014  
**Board Meeting Date:** November 18, 2014  
**Special Notice / Hearing:** Newspaper/10-Day  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Steve Monowitz, Acting Community Development Director

**Subject:** Public hearing to consider an appeal of the Planning Commission's approval of an Off-Street Parking Exception to allow six on-site parking spaces (with a designated off-site location to accommodate additional parking) where 12 spaces are required, in conjunction with a proposal for a commercial catering business to occupy an existing commercial building, located at 3250 Middlefield Road in the unincorporated North Fair Oaks area of San Mateo County.

**RECOMMENDATION:**

Uphold the appeal and deny the Off-Street Parking Exception based on the findings set forth in Attachment A.

**BACKGROUND:**

Proposal: The applicant, Bay Area Catering and Events (BACE), is proposing to relocate its catering business to an existing commercial building at 3250 Middlefield Road ("project location"). The proposal requires an Off-Street Parking Exception to permit the proposed use with only six on-site parking spaces, where Zoning Regulations Section 6119 requires 12 on-site parking spaces. Pursuant to Zoning Regulations Section 6120, the Planning Commission can grant an exception to the on-site parking requirements in cases of practical difficulties and unusual hardships, subject to certain findings, as detailed below. The applicant proposes to compensate for the lack of on-site parking by designating an off-site parking location at 2949 Edison Way, approximately 1/2 mile from the project site, which would provide 15 employee parking spaces (see Attachments D and E).

The existing two-story commercial building is currently vacant and was previously occupied by a restaurant. BACE proposes to use the first floor of the building for all cooking, food preparation and catering production. The second floor of the building would provide a single office, with the remaining second floor space used as a storage area. The applicant would use the six-space parking area to the rear of the building

primarily for loading and storing BACE's delivery vehicles, and employees would be required to park at the designated off-site location. The project does not include expansion or modification of the existing building, except for interior modifications on the first floor necessary to accommodate the catering business (see Attachment F).

**Planning Commission Action:** The Planning Commission considered this item at two public hearings on August 27 and September 24, 2014. On September 24, the Planning Commission, on a 3 to 2 vote, granted the Off-Street Parking Exception, subject to the findings and conditions, as shown on the Planning Commission's Decision Letter, Attachment B.

**North Fair Oaks Community Council (NFOCC) Action:** The NFOCC considered this item at a special meeting on August 7, 2014. The NFOCC recommended that the Planning Commission deny the Off-Street Parking Exception, citing concerns that the catering business is not neighborhood-serving, would better fit in an industrial setting, would have after-hours deliveries/activities that would impact residential neighbors, would exacerbate parking which is already impacted in this area, and would require extensive conditions to control impacts that would not be enforceable.

## **DISCUSSION:**

### **Off-Street Parking Exception**

Zoning Regulations Section 6119 (*Parking*) sets forth the required number of off-street parking spaces based on the type of use proposed. As shown in the table below, pursuant to Section 6119, the proposed use is required to provide 12 off-street parking spaces.

<b>Zoning Standards</b>	<b>C-1/NFO/DR</b>	<b>Subject Development</b>	<b>Complies?</b>
Minimum Parcel Size	5,000 sq. ft.	5,678 sq. ft.	Yes
Front Setback (Minimum)	0 ft.	0 ft.	Yes
Rear Setback (Minimum)	6 ft.	43 ft. (approx.)	Yes
Side Setback (Minimum)	0 ft.		Yes
Right Side		3 ft.	
Left Side		4 ft.	
Maximum Building Height	30 ft.	27 ft. (approx.)	Yes
Maximum Lot Coverage	80%	46%	Yes
Maximum Floor Area	80%	83.5%*	No**
<p>*Countable floor area excludes non-working areas; all areas of the second floor that are designated as storage, except for the office and bathroom, are considered non-working areas.</p> <p>**The building's floor area is considered a legal non-conforming structure, pursuant to the County Zoning Regulations (Zoning Non-Conformities), Section 6135 (Non-Conforming Structures); floor area limits were not an applicable standard in 1984 under the previous C-1 Zoning Regulations. As such, a non-conforming structure may continue to exist providing all other provisions of this Chapter are met. As previously stated, the project includes no expansion, nor would any interior improvements (as may be necessary to retrofit the first floor for the catering operation) constitute a "Major Repair, Remodel or Upgrade" as defined in Section 6132.9 of these regulations.</p>			

The Zoning Regulations further provide that the required off-street parking spaces be located within 1,000 feet of the building the spaces will serve. Based on the size and configuration of the project site, the applicant is only able to accommodate six parking spaces on the project site. The applicant has proposed to provide 15 additional off-street parking spaces at an off-site location at 2949 Edison Way. However, the proposed off-site parking location is approximately 1/2 mile (or 2,640 feet) from the project site. Therefore, the applicant is unable to provide the required 12 off-street parking spaces within 1,000 feet of the project site.

Accordingly, the applicant requested an Off-Street Parking Exception pursuant to Section 6120, which provides that the Planning Commission may grant exceptions to the parking requirements “in cases of practical difficulties and unusual hardship,” if the Planning Commission finds that:

*Establishment, maintenance and/or conducting of the off-street parking facilities as proposed are as nearly in compliance with the requirements set forth in Section 6119 as reasonably possible.*

Subject to specified conditions of approval, the Planning Commission made this finding and granted the Off-Street Parking Exception on September 24, 2014 (see Attachment B).

#### Appeal of Planning Commission Decision

The Planning Commission decision was appealed to the Board of Supervisors on October 8, 2014 (see Attachment C). The appeal raises a number of issues, which this memorandum will briefly address. The appeal states that the parking exception was based on the provision of off-site parking that is “demonstrably unenforceable” and which fails to provide an adequate enforcement mechanism and fails to address the actual parking needs of the project. As described in the following section, for reasons that have become evident since the Planning Commission’s action, staff agrees that the proposed off-site parking facility will not sufficiently address the parking needs of the applicant as required by the Zoning Regulations. Accordingly, staff has revised its recommendation and now recommends denial of the Off-Street Parking Exception.

Based on this revised staff recommendation, a number of the other issues raised in the appeal are no longer relevant, including those objecting to the process by which the Planning Commission reached its decision. Regardless, staff notes that the Planning Commission followed all applicable legal requirements in its evaluation of the requested Off-Street Parking Exception, and properly based its decision on the criteria set forth in the Zoning Regulations and the evidence presented at the hearings. In addition, staff notes that the appeal inaccurately identifies the proposed off-street parking location, which employees would be able to access without using residential streets.

### Rationale for Staff Recommendation

Staff recommends that the Board of Supervisors deny the Off-Street Parking Exception based on the following new information, which was unavailable at the time of the Planning Commission's decision on September 24.

1. While investigating the issues raised by this appeal, staff has become aware that the applicant is unable to satisfy one of the conditions of approval imposed by the Planning Commission. Condition No. 3 (see Attachment B) requires that "the applicant shall submit evidence that the lease for the off-site parking location at 2949 Edison Way has been secured for a period of not less than five (5) years." However, the owner of the property at 2949 Edison (APN 060-041-110) has listed the property for sale and the property owner has indicated that they will only agree to a month-to-month parking lease that can be terminated upon sale of the property. Based on this information, the applicant will be unable to meet Condition No. 3, which requires a minimum five-year lease.

This condition was critical to the Planning Commission's finding that the proposed off-street parking facilities would be as close to compliance with the zoning requirements as reasonably possible. Without a long-term lease in place, the applicant is unable to demonstrate that the necessary off-site parking spaces will be available for the duration of the operation of the catering business. In the event the owner of the off-street parking location terminates the applicant's lease, there would be no off-street parking facilities available for employees. With no available off-street parking, employees would likely park in public spaces on Middlefield Road and adjacent residential streets. Public parking in this area is already highly impacted. As a result, staff does not consider the proposed project to be "as nearly in compliance" with the parking requirements of Section 6119 as reasonably possible.

2. On October 14, 2014, the Building Inspection Section issued a Stop Work Notice (SWN 2014-00135) for 3250 Middlefield Road (the project site) when it discovered that the applicant had begun construction work on the premises without a building permit. Undertaking construction activities without a building permit violates the County's Building Code and the conditions of approval placed on the project by the Planning Commission (see Condition No. 2 in Attachment B). Due to the outstanding Building Code violation and the violation of the condition of approval, staff recommends denial of the requested exception, on the basis that the applicant's failure to comply with permit requirements raises concerns regarding their ability to abide by the terms of the Off-Street Parking Exception, which are critical to providing the type and amount of parking needed to be as nearly in compliance with parking requirements as reasonably possible.

### **FISCAL IMPACT:**

No fiscal impact to the Planning and Building Department.

.  
. .  
.

**ATTACHMENTS:**

- A. Recommended Finding of Denial
- B. Planning Commission's Decision Letter
- C. Appeal Application, filed on October 8, 2014
- D. Project Area Map
- E. NFO Community Plan Map
- F. Project Site Plan

County of San Mateo  
Planning and Building Department

**RECOMMENDED FINDING FOR DENIAL**

Permit File Number: PLN 2014-00261

Hearing Date: November 18, 2014

Prepared By: Planning Staff

For Adoption By: Board of Supervisors

**RECOMMENDED FINDING**

**Regarding the Off-Street Parking Exception, Find:**

1. That the establishment, maintenance and/or conducting of the off-street parking facilities as proposed are NOT as nearly in compliance with the requirements set forth in Section 6119 as are reasonably possible, as described further below:
  - a. The proposed off-site parking accommodations are impractical and unworkable. Specifically, the applicant cannot demonstrate that access to off-street parking at the proposed 2949 Edison Way site will be available to accommodate BACE employee parking for a minimum of five (5) years. As a result, there is a substantial likelihood that BACE could open for business at 3250 Middlefield Road and subsequently lose its parking lease at 2949 Edison Way, forcing employees to park in spaces on Middlefield Road and in the adjacent residential area, eliminating public parking for nearby businesses, which is already insufficient to serve existing demand.
  - b. The applicant has violated the Building Code and Off-Street Parking Exception Condition No. 2 by beginning construction work on tenant improvements to the building located at 3250 Middlefield Road without a building permit. The presence of this ongoing violation indicates an inability to comply with the conditions required for approval of the Off-Street Parking Exception, and this is critical to providing the type and amount of parking needed to be as nearly in compliance with parking requirements as reasonably possible.