

IRMA Glidden

From: Jay <garsurg@comcast.net>
Sent: Thursday, July 06, 2017 3:17 PM
To: City Clerk
Subject: Garfinkle Family subission for July 18th Council meeting
Attachments: Garfinkle Family's appeal of Planning Board Decision related to business operations at 1200 Park Street.docx; Exhibit A Parking Survey for 1200 Park St 2017.pdf; Exhibit B Discussion of History and Facts.docx; Exhibit C Discussion of general due process .docx

Good afternoon,

Please find attached four documents that we would ask be included in the packet of information being distributed to the Mayor and members of the City Council for their July 18th meeting.

The first document includes introductory comments. We ask that the other three be identified as attachments to the first as they explain and provide documentation related to the points made in the first.

If there are problems with the transmission or questions related to our request, please don't hesitate to call me at 510-521-5071 (land Line) or at 510-421-5071 (cell). Of course, email will also work but it may not be as efficient given the time constraints for completing this process.

We would appreciate receiving electronic in addition to hard copies of the packet being sent to the Council.

Please send copies to the following:

Jay Garfinkle
352 Capetown Drive
Alameda, CA 94502
garsurg@comcast.net

Benjamin Garfinkle
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Oakland, CA 94610
bgarfinkle@clampswing.com

R. Kingsbury Lane
36 Nicholl Avenue
Point Richmond, CA 94801
rklane@pacbell.net

Thank you very much for your patience and assistance.

Jay Garfinkle

To the Honorable Mayor and members of the City Council of the city of Alameda

July 6, 2017

Ladies and gentlemen,

This letter and its attachments are being submitted on behalf of the Garfinkle Family, the owners of the property located at 1200 Park Street, in support of our appeal of the Planning Board's decision to revoke the Conditional Use Permit attached to the business operations at 1200 Park Street.

As I'm sure you are aware the Planning Board, in a 4-3 vote taken on May 8, 2017 determined to revoke the Conditional Use Permit that has been attached to our property since 1979. While there had been a number of hearings related to the CUP beginning most recently in 2015 the first formal Notice of Violation was sent to our tenant on January 19, 2017. This notice alleged violation of condition #3 based on the staff's observation of our tenant's employee retrieving customer cars on Park Avenue and driving them to 1200 Park Street. It should be noted, however, that Condition #3 states **only** that "Applicant's **business vehicle(s)** shall be stored on the site, not on adjacent residential streets." There was no such notice given with regard to any of the other conditions.

There has been some discussion regarding the definition of the term, but it was subsequently agreed by the Planning Director and members of the Planning Board that business vehicle(s) refers to vehicles owned by our business tenant and that there is absolutely no reference to customer cars in Condition #3.

The hearing that was held, presumably in response to this notice of violation of Condition #3, resulted in a 4-3 decision to revoke the CUP without there being

provided any documentation that the conditions of the CUP had, in fact been violated.

The timing of this revocation is significant in that our tenant's lease will expire on July 31st, and we are in contract with the tenant's former Corporate Franchisor to purchase the property and continue to operate a Big O Tire business there. The Corporation that owns Big O Tires is aware of the controversy related to the CUP and has repeatedly offered and guaranteed to the Staff and to the Planning Board, itself, that they are willing to comply fully with the terms of the CUP and have even proposed and offered to accept and comply with an additional condition that will subject them to monetary penalties should they be found to be in violation of the conditions.

While this has been a long and drawn out process held primarily in the formal setting of Planning Board hearings we believe that it would be in the best interests of everyone involved, if the issues could be discussed in a less rigid setting and mutually agreeable solutions could be found. Some members of the Planning Board suggested that there are probably solutions available but then inexplicably voted to revoke without ever allowing the parties to consider and find such solutions. And we believe that this process would be far preferable to the precipitous revocation of the CUP as has been proposed.

We are appealing the Planning Board's revocation decision of May 8th and requesting that the Big O Corporation be permitted to operate their tire business at 1200 Park Street subject to their full compliance with the current CUP or, possibly, a modified version to be developed over the ensuing twelve months.

We are attaching three documents to this communication:

Exhibit 1 is the photographic documentation of the availability of parking in the vicinity of 1200 park Street.

Exhibit 2 is a more detailed discussion and history of the factors related to the CUP process as it they have evolved to date.

Exhibit 3 includes a discussion of the legal aspects of the CUP process that has been taking place to date.

Respectfully,

Jay Garfinkle,

Representing the Garfinkle Family

Declaration of
Al Wright, Photographer

I, Al Wright, hereby declare that:

I am Al Wright, an Alameda professional photographer with my long time studio located at 1205 Park Street, Alameda.

In the middle of May, 2017, I was commissioned by Ben Garfinkle, on behalf of the Garfinkle Family Trust, to perform a representative Parking Survey with photographs for their property at 1200 Park Street (Big O Tires). I am acquainted with the Garfinkle family by way of having been a tenant of theirs in the past.

The purpose of my Parking Survey, a true and correct copy of which is attached hereto as group Exhibit "A" ("Project"), was and is to show the availability of parking during the Big O business hours in the vicinity of 1200 Park, both in the commercial zone and the surrounding residential neighborhood. The geographic area covered is the few metered parking spaces on the east side of Park Street directly in front of the Big O Tire location, San Jose Avenue from Park Street to Regent Street, including the six (6) metered spaces on San Jose right at Park Street, and both sides of Park Avenue around Jackson Park from Encinal Avenue down to the south end of the park.

The agreed schedule for the Project was to take a sample of available parking four (4) times a day (at approximately 9:30 a.m.; 11:30 a.m.; 2:00 p.m.; and 4:30 p.m.) on six (6) separate days.

On May 16th at approximately 9:30 a.m. I did a trial run to get an idea of how much time it would take to complete a segment of the assignment. That trial run on May 16th is included in Exhibit A, otherwise Exhibit A shows that the Project included taking the sampling at the four (4) different times on six (6) days; Tuesday, May 30; Wednesday, May 31; Saturday, June 3; Monday, June 5; Wednesday, June 7; and Saturday, June 10 for a total sampling of twenty-five (25) samples of the available parking.

Note: No sampling was done on Thursday or Friday of either week since the Park Avenue area is posted for street sweeping on those days.

I declare under penalty of perjury that the foregoing is true and correct of my own personal knowledge, and that if called upon to confirm these statements, can competently do so.

Executed on July 5, 2017, at Alameda, California.



Al Wright

Exhibit “A”

Parking Availability around Big O Tires

Day	Date	Time	San Jose Park St-Park Ave		San Jose Park Ave- Regent	Park Ave	Total
			Meter	Non			
Tue	5/16	9:30	2		6	16	24
Tue	5/30	9:30	4	1	10	27	42
Tue	5/30	11:30	1		6	10	17
Tue	5/30	2:00	1		7	16	24
Tue	5/30	4:30	4		7	20	31
Wed	5/31	9:30	1	1	11	24	37
Wed	5/31	11:30	2		8	21	31
Wed	5/31	2:00	1	3	9	18	31
Wed	5/31	4:30	4	1	11	15	31
Sat	6/03	9:30	5		11	41	57
Sat	6/03	11:30			8	24	32
Sat	6/03	2:00	2		2	4	8
Sat	6/03	4:30	2	2	11	38	53
Mon	6/05	9:30	3	1	14	18	36
Mon	6/05	11:30	6		14	7	27
Mon	6/05	2:00	4	2	15	12	33
Mon	6/05	4:30	5	1	11	22	39
Wed	6/07	9:30	4		10	16	30
Wed	6/07	11:30	2		10	12	24
Wed	6/07	2:00	3	1	14	10	28
Wed	6/07	4:30	4	1	7	21	33
Sat	6/10	9:30	1	1	2	42	46
Sat	6/10	11:30			6	23	29
Sat	6/10	2:00			8	19	27
Sat	6/10	4:30	4	3	1	25	33
AVERAGES			2.6	0.7	8.8	20	32.1



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IMG_9310



IMG_9311



IMG_9312



IMG_9313



IMG_9314



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IMG_9320

5/16/17 0930 am, 24 total spaces, 16 on Park Ave, 2 metered on San Jose, 6 San Jose betw Park St & Regent



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IMG_9322



IMG_9323



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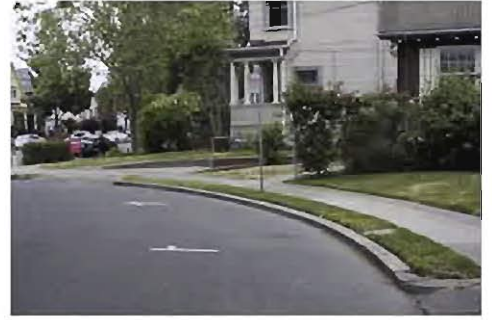
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5/30/17 1130 am, 17 total spaces, 10 on Park Ave, 1 metered on San Jose, 6 San Jose betw Park St & Regent



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5/30/17 1400 pm, 24 total spaces, 16 on Park Ave, 1 metered on San Jose, 7 San Jose betw Park St & Regent



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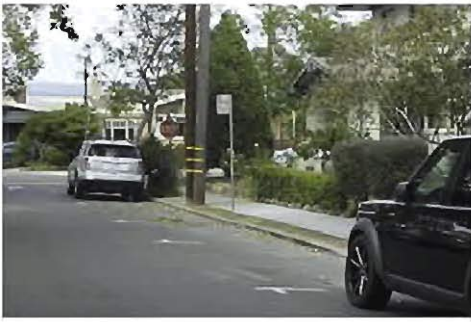
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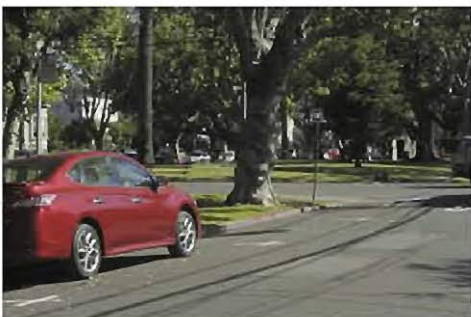
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5/31/17 0930 am, 37 total spaces, 24 on Park Ave, 1 metered on San Jose, 12 San Jose betw Park St & Regent



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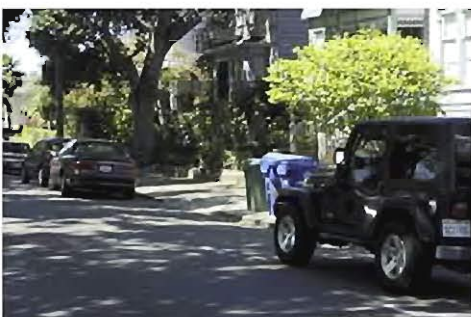
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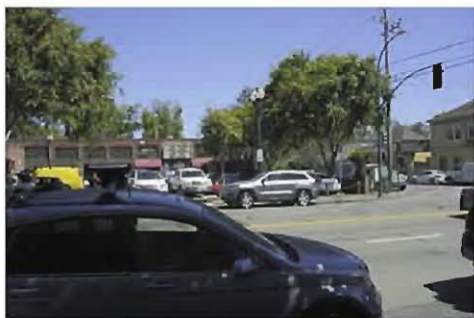
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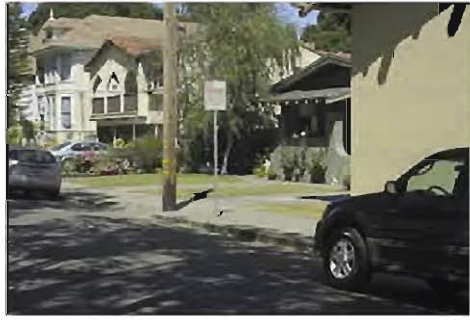
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5/31/17 1630 pm, 31 total spaces, 15 on Park Ave, 4 metered on San Jose, 12 San Jose betw Park St & Regent



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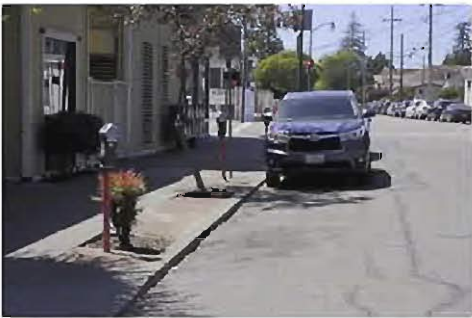
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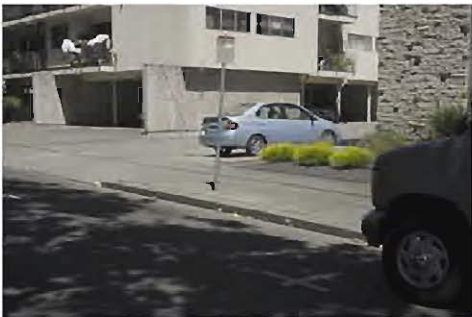
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6/05/17 1130 am, 27 total spaces, 7 on Park Ave, 6 metered on San Jose, 14 San Jose betw Park St & Regent



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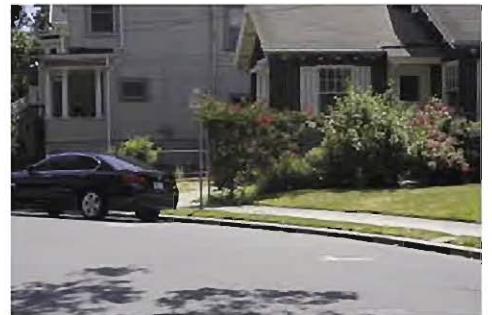
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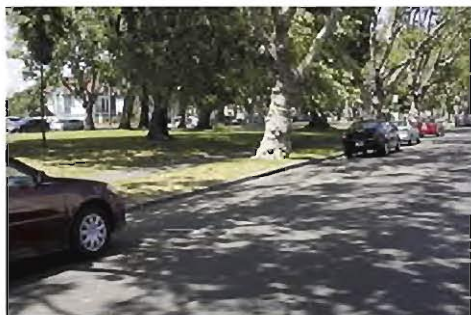
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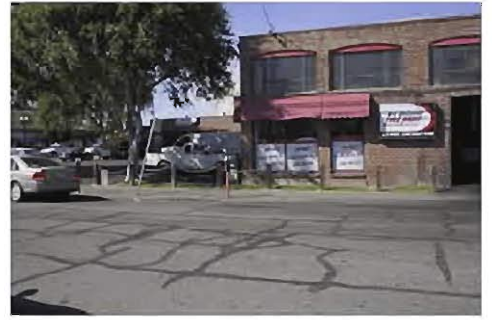
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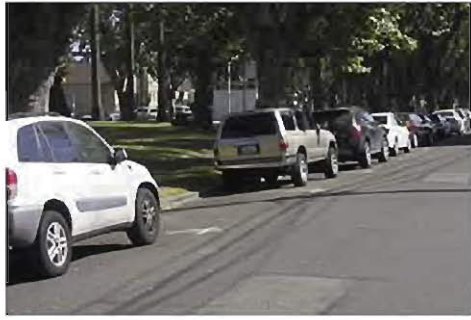
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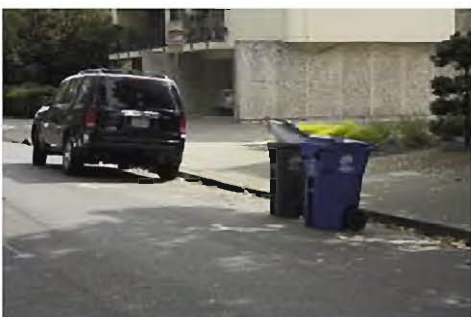
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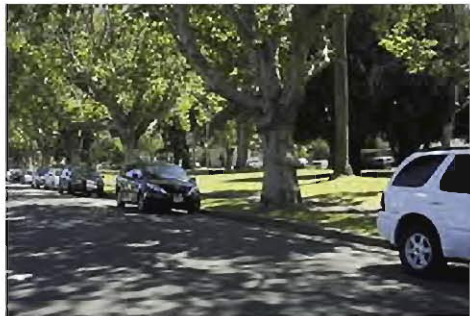
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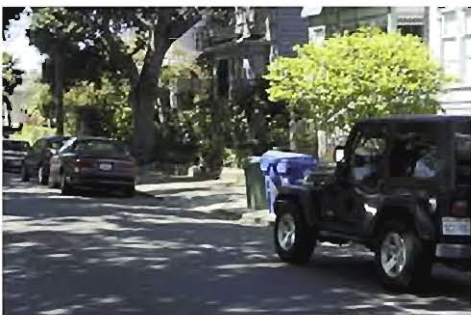
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6/07/17 1130 am, 24 total spaces, 12 on Park Ave, 2 metered on San Jose, 10 San Jose betw Park St & Regent



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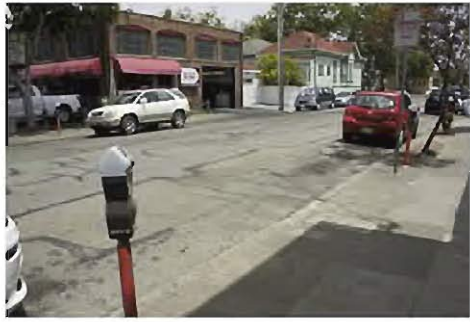
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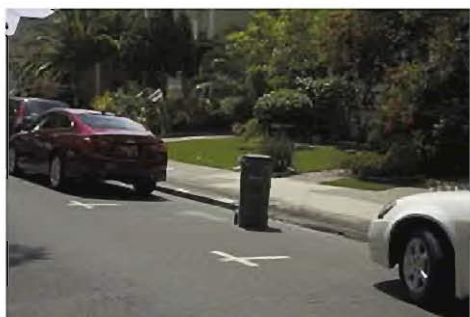
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6/07/17 1430 pm, 28 total spaces, 10 on Park Ave, 3 metered on San Jose, 15 San Jose betw Park St & Regent



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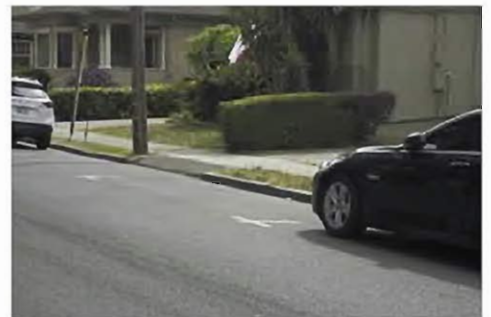
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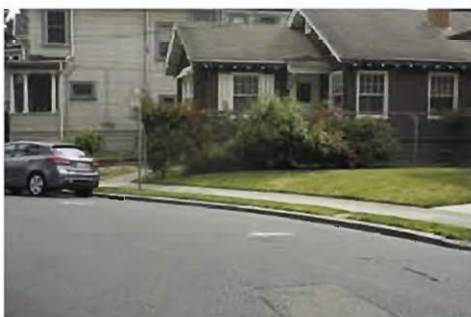
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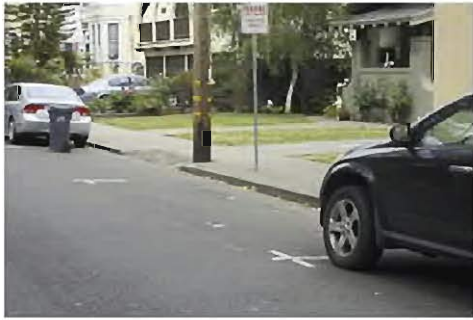
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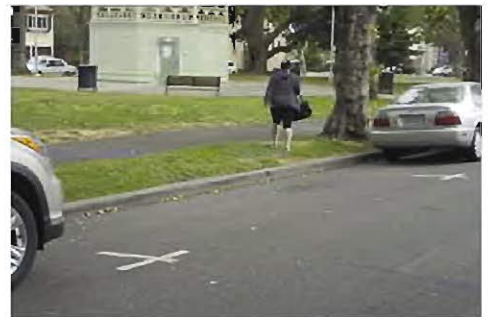
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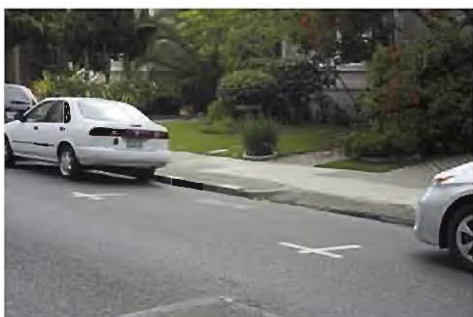
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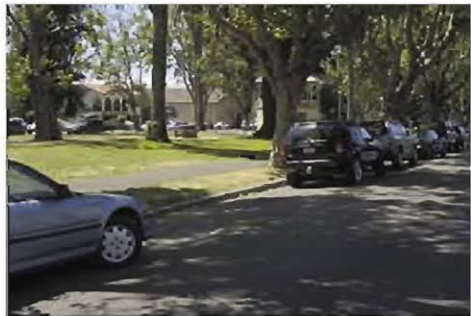
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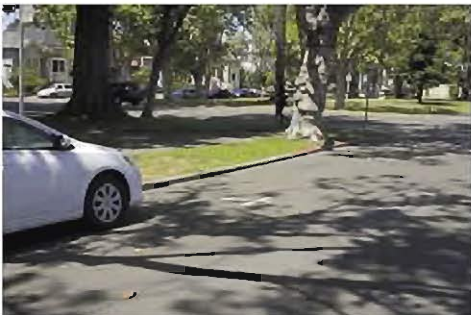
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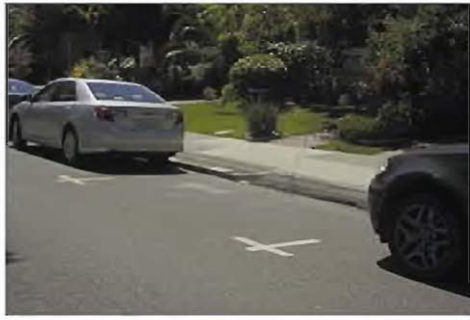
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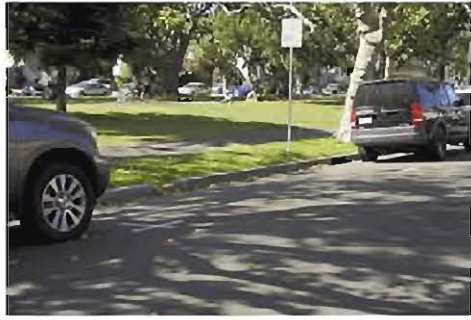
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Exhibit B

Discussion of the history and facts related to the CUP attached to the business operations at 1200 Park Street

Automotive repair related use since about 1928 when a Standard Oil of California, now Chevron, first leased the property to use as a service station. The Wrenhouse, a separate automotive repair business leased the brick building from 1970 through 1979. Standard Oil left in 1978 and the Wrenhouse moved out in 1981 or 82. At some point the zoning had changed and the operations at 1200 Park Street became designated as Permitted Non-Compliant. When the entire property was leased to a Big O franchisee in 1981 or 82 the Conditional Use Permit that had previously been granted for the continued operation of the Wrenhouse in 1979 as UP 79-8. At that time they were asking that in addition to repairing cars that they be permitted to sell and install tires. Their CUP therefore apparently carried forward to permit the operation of Big O's sales and repair business.

That permit, however, was time limited, and in mid-1988 the City directed the business operator to submit a new permit application. An application was then submitted and Resolution 1926 resulted in UP 88-36 being issued in January 1989.

During the evaluation of the new application a neighbor submitted a photo showing the company's truck to be parked on Park Avenue. And apparently because of this, Condition #3 which stated that "The applicant's business vehicle(s) shall be stored on the site, not on adjacent residential streets." was incorporated into the new CUP. It's important to note that this addressed only the company's truck and/or other vehicles owned by the company. It did not address any other vehicles such as either employee or customer vehicles.

Condition #2 was added in 1988 and this stated that "Within 60 days of the approval of this permit, applicant shall find an alternative long-term parking site

for customer cars, as well as for employees. Leasing arrangements shall be reviewed and approved by the Planning Director.” It should be noted that in **PB 15-23** which was adopted in November 2015 the final sentence of Condition #2 read that “Once a site has been secured the applicant shall notify the Community Development Department that **this condition has been fulfilled.**” There was no indication given that the site had to actually be used, just acquired. Presumably, this was put in place in anticipation that use of the site might eventually become necessary. And this is entirely consistent with what we had been told initially by the Planning director. Acquisition was necessary, but use was not required.

For reasons not known by the undersigned, neither the business operator nor subsequent Planning Directors followed up on the requirement to locate an alternate parking site. And when we first became aware of this issue personally in 2014 we questioned the Planning Director about Condition #2. He stated that this had been an unusual requirement at that time and didn’t understand why Condition #2 had been added. He also indicated that he had observed that there was adequate parking in the vicinity and that an alternate site was really not necessary and probably wouldn’t be used. He went on to say, in response to my questions, that the business owner doesn’t have to actually use the site but that the CUP requires that they make arrangements for one. And it is this specific condition that his department is being asked to enforce. It should be noted that while the Planning Director denies having made these statements they are entirely consistent with the above mentioned wording of PB-15-23 which indicates that securing the property satisfies condition #2. One can argue *intent*, but the language is quite clear and specific.

The above conversations were repeated once or twice over the next several months, and we sent a message in January 2017 asking that he confirm our previous discussions and understanding related to the actual use not being required. He declined to respond to this request for confirmation.

Regardless of whether he did or didn’t make such statements it should be noted that the business owner, now known as Big Discount Tire Pros, has acquired a new site at 1835 Oak Street and is using it to park customer cars waiting to be

picked up after the tire changes and/or other work has been completed. In view of this, the business operations at 1200 Park Street are now definitely in compliance with Condition #2, even for those who believe that the “intent” of this condition requires actually using the new location in order to be in compliance. And it is the curing of this condition that was required to be accomplished in order to prevent revocation, despite the fact that the City never issued a Notice of Violation of Condition #2.

To summarize: 1) The business owner has acquired, **and is using,** an alternate site for *long-term* parking in compliance with Condition #2. 2) He is not parking his company’s business vehicle on the residential streets and is therefore in compliance with Condition #3.

The above discussion addresses some aspects of the history of the site and actual facts related to the succession of use permits

Please note that while there have recently been complaints related to customer and employee cars on the commercial and residential streets in the vicinity of 1200 Park Street such activity is not specifically prohibited by any of the conditions in any of the relevant use permits, including the most recent iteration of UP 88-36 which was enacted in 2015. The latter is the Permit that was made subject to revocation by a 4/3 vote of Planning Board on May 8, 2017. And it is this potential revocation that we are appealing.

The tire business has been in operation at 1200 park Street since 1979. That’s thirty eight years. And with the exception of the four or five complaints related to parking space availability and the complaint regarding the business vehicle’s being parked on Park Avenue which were expressed during the 1988/89 CUP evaluation process there were no documented complaints submitted by any of the residential neighbors or commercial neighbors related to parking in the vicinity of 1200 Park Street until a lone commercial neighbor raised the issue in 2013 by means of a complaint lodged with the Planning Department.

We, the owners of the property, were not made aware of the issue related to the CUP until sometime in late 2013 or 2014 when we were asked by our tenant to

agree to requesting amendment of the Conditional Use Permit, especially as it related to the parking issues. We are longtime residents of Alameda and well aware of the neighborhood around 1200 Park Street and were not aware that anyone was experiencing a shortage of available parking spaces. Even so, we made focused observations and concluded that there was ample parking in the vicinity. In light of these observations we supported the application to amend the CUP.

Over the next several months, stretching now to over three years, we became aware of a number of factors related to the issue. First and foremost was that the matter had evidently been initiated by a lone commercial neighbor, Mr. Art Thoms, owner of the Washboard Laundromat located across the street from 1200 Park Street. Reportedly, he had been engaging in a long running dispute with our tenant, the Big O franchisee, over the use of the three parking spaces immediately adjacent to his laundromat business. He subsequently filed complaints with the City requesting or demanding that the CUP for Big O's operations be revoked. Discussions between the City and the attorneys representing the laundromat and Big O dragged on for several months and eventually the application for amendment and the challenge to the CUP based on allegations of non-compliance made it to a Planning Board hearing in July 2015.

In the meantime, Mr. Thoms, circulated petitions among his patrons, his commercial neighbors, and neighboring residents to document support for his complaint. Remember. There had been no complaints from any of these people since the most recent previous ones in 1988. That's over twenty-five years without any documented complaints from either the residential or the commercial neighbors of 1200 Park Street.

The Planning Board was not persuaded by either side in the dispute and the issue was continued to the November 9, 2015 Planning Board hearing at which time **Resolution PB-15-23**, as mentioned above was adopted. It was also decided that the issue would be revisited in one year.

It should be noted that as early as the July 2015 hearing, members of the Planning Board were requesting that surveys of the parking availability be done so

that they wouldn't have to rely on anecdotal reports as the basis for their decisions. And to this date, no such studies have been carried out by City staff. On the other hand, we, the owners of 1200 Park Street have conducted two photographically documented studies. The first was done on a random basis and documented the availability of fifteen to fifty available spaces during the hours of Big O's operations. The second study was performed on a predetermined schedule by a professional photographer. This latter study covered predetermined times on Mondays thru Saturdays during Tire Pros' hours of operation. Thursdays and Fridays were excluded in order to avoid distortion of the data related to street sweeping restrictions. This study documented the availability of an average of thirty two available spaces in the vicinity of 1200 Park Street. These include metered as well as non-metered spaces on Park Street, San Jose, and Park Avenue.

We understand that it is the perception of the residents around Jackson Park that parking has been increasingly impacted over the years. Our observations, however, have shown that even if this is true, there remain ample available spaces for their use during Big O/Tire Pros' hours of operation.

It should also be noted that Big O is not the only business whose customers and employees use Park Street, San Jose, and Park Avenue for their vehicle parking. There are a number of other commercial enterprises in the vicinity of 1200 Park Street whose customers and employees also park in the residential neighborhood. In fact, this is the case in virtually every residential neighborhood that abuts on the City's commercial districts. This is true in areas around the business at Encinal at Chestnut and around Lincoln at St. Charles. And let's not forget the unbelievable parking congestion in the neighborhood surrounding Alameda Hospital and along Webster Street.

We understand that the people who live across the street from the park may feel put upon by the customers and employees from the adjacent commercial activities. But compare the abundance of parking along Park Avenue with those blocks of Walnut and Willow where the residents have no parking on either side of the street. None at all.

While the neighbors in the vicinity of 1200 Park Street have reported that the parking situation has become increasingly impacted we would ask that the Council also consider the growth of other nearby business activities with more customers and employees parking in the vicinity, more people dropping off their cars by the park so they can catch buses to San Francisco and elsewhere, more residents with cars, more living units with multiple cars, and probably other factors. We believe, therefore, that it would be incorrect and inappropriate, for neighborhood residents, the Planning Board, and the City Council to attribute any perceived or actual increasing parking congestion in the vicinity of Jackson Park to be solely or primarily attributable to the operations of the tire business located at 1200 Park Street. And if we are able to conclude our sale of the property to Big O Corporation to operate a new store at this location, their demand for overflow parking will be less than half of what the current operator has historically used given that there will then be two separate business operations splitting the population of customers between them.

Respectfully,

Jay Garfinkle,

Representing the appellant owners.

Overview of Due Process Violations and other Issues to be Noted:
Owner/ Appellant Argument In Support of Retention of the
Conditional Use Permit by Robert Lane, Counsel for
Owner/ Appellant

The primary issue before the Planning Board was whether there was a negative impact on the parking in the areas, both commercial and residential, of the Big O Tire business at 1200 Park Street, Alameda.

Owner/ Appellant strongly believes that their rights of Due Process were trampled by a slim 4-3 majority of the Planning Board ("PB"). The PB failed to follow its own rules, failed to insist that City Planning Staff ("Staff") do the study (garner evidence) that it was charged to do, and failed to acknowledge the total lack of evidence that would support revocation of this Conditional Use Permit ("CUP"). Ironically, even that one-vote majority was concerned that the basis for the Staff's recommendation of revocation would not hold up to scrutiny since the recommendation was and is based on wrong reasoning, that of an alleged violation of "business vehicles" being parked in the adjoining residential neighborhood, Condition #3 to the CUP. The acting assistant City Attorney was questioned as to whether "business vehicle" included "customer or employee cars" in the definition but he gave no confirmation one way or the other, saying only, in essence, that the actual written basis did not matter and could be justified by what the Board felt was the "intent". The PB justifying their position on a misplaced reliance on some vague notion of "intent" gives no notice to the CUP holder of the specific basis of the alleged "violation" and is thus a violation of due process. Without further specifics, the four-member majority took "intent" to be good enough to justify prospective revocation of the CUP at the end of the current Lessee/Operator's lease, which "prospective revocation" ignores another material issue, that being that the CUP runs with the land not the operator! Revocation cannot be "prospective".

We remain a nation of laws and the conditions to the CUP, which have the effect of "laws", are very specific. The basis for the PB's

revocation is solely based on Condition #3, the parking of “business vehicles” in the surrounding neighborhood:

“Applicant’s business vehicles(s) shall be stored on the site, not on adjacent residential streets.”

We know that that Condition #3 is solely “business vehicles” and not “customer or employee cars” because that specific issue was raised in the PB meeting of January 30, 1989, when photographs were produced evidencing the Big O name-on-the-side “business vehicle” parked in the neighborhood. That issue, of whether “business vehicles” are “customer or employee cars” has been resolved. They are separate and not to be definitionally comingled.

Staff wishes to unilaterally expand the definition of “business vehicle” without the authority of this body to do so. Further, Staff has no foundation, no evidence of a negative impact on parking by the Big O operation during business hours or otherwise. As the findings state in PB Resolution No. PB-17-07 at page 3, Staff was “directed (at the November 28, 2016 meeting) to monitor operations at the property and return at a future date with a report on use permit compliance.” No such study (“report”) was ever made and during the PB meeting of May 8, 2017, Mr. Thomas, the head of Staff, was asked whether that study had been done. His answer was “NO”. Thus, there is no foundation for a finding of non-compliance with the CUP since there is no evidence of a Condition #3 violation, nor is there even an allegation that a “business vehicle” has been parked in the neighborhood. Due Process has not been afforded the Appellant.

Even if, arguendo, the PB was within its rights to unilaterally (and without notice) expand the definition of a “business vehicle” to include “customer and employee cars”, there is no foundational evidence for that finding either since Staff failed to monitor the business after being directed to monitor that business in November 2016. That monitoring would have been from November, 2016 through the next PB hearing which occurred on May 8, 2017. The PB

has not only failed to follow its own laws and rules (specific conditions) but it fails to acknowledge that their Staff has not done the job it was directed to do, which job the Appellant believes would have proved that there is no negative impact on parking resulting from the Big O Tire operation. In the absence of the Staff having performed a study of the parking situation, the Appellant has done so, and the Appellant's proof that there is no shortage of parking in the area of 1200 Park Street is found in the Parking Survey which accompanies this submission; see the Declaration of Al Wright, Photographer with observational and photographic proof attached. Further supporting Appellant's position that there is ample parking in the area, Andrew Thomas, head of Staff, reported at the May 8, 2017 hearing that: "Every time I observed it, they (the Operator of 1200 Park Street) were able to find a parking space..."

Since this Hearing before the Council is under the Council's power of conducting a hearing de novo, this Council should resist the temptation of remanding the matter with instructions to the PB, and find that the Resolution of the PB, Resolution No. PB-17-07 was ill founded (that the PB failed to abide by its own rules or to enforce its own directives) and that the conditions of the CUP are thus not in violation; and that the use is in compliance.

In the event the Council has continuing concerns regarding the CUP, this Council can condition the CUP as it reasonably sees fit. Big O Tire, the franchisor and buyer of this property is and has been most cooperative throughout this process, including engaging with Staff to resolve any concerns and thus should be afforded the opportunity to abide by the CUP. As an Owner/User Big O Tires has the ability, financial strength, and motivation to resolve any concerns that the City and community may have.

It should be noted that a compatible use is going in across the street at 1125 Park Street, where an Auto Zone store is in process of being installed (it has its own parking lot).

Four additional matters should be stated for the record: (1) To the extent that a parking concern remains in peoples' minds, it can be implied that the problem, if any, is being created by the current operator, knowing that their former franchisor is the buyer of the property and intends to compete; (2) With the current operator moving to Oak Street and Big O Tires as an Owner-User at 1200 Park Street, the market (traffic) will be split, thereby reducing rather than increasing any future parking concern; (3) The City's tax income from this business, apart from real property taxes, is estimated to be in the realm of One Hundred Thousand Dollars (\$100,000.00) per year based on information provided by the City's Finance Director; and (4) The currently operative Resolution, PB-15-23 as well as the previous Resolution of January 30, 1989 both were passed by the PB by unanimous votes and both specifically stated that the "use" at 1200 Park Street was "compatible".

Finally, there is the Due Process matter of proper "Notice". From the outset the City has failed to give proper notice to the Owner/ Appellant in this matter.

Item	Date	Owner is told	Source of notice
Neighbors Petition	8/2/16	10/11/16	No official notice, City Staff casual conversation
1 st Notice of Violation	1/19/17	2/1/17	Mr. Thomas by email
2 nd Notice of Violation	2/27/17	5/4/17	Staff Report, Exhibit 1 for 5/8 PB mtg
Notice of PB mtg moved from 3/28 to 4/24/17		3/7/17	No official notice, City Staff in a casual conversation
Notice of PB mtg, moved from 4/24 to 5/8/17		4/15/17	No official notice, Rick O'Neil of Big O when asked if he knew mtg date

On May 2nd we learned from Mr. Thomas that all of our official notices were being returned by the Post Office because, as is City practice, they get mailed to the Property address and not to the address of the Property Owner. When the notices were returned, Staff made no effort to re-mail these notices to the Owner nor otherwise contact us despite emails and phone calls between all of

the parties. When we requested that notices be sent to the Owner's address as the County does when it mails property tax statements, we were told that what the City does it is legally required to do and they have no plans to change this policy. After a further discussion with the City by this office, notice of the July 18th hearing was given to this office just this last week. Staff should be instructed to change their procedure so the Owners are assured they are getting proper and timely notices. Failure to give us timely notice has interfered with our efforts to timely respond. California real property law concerning notices to the proper parties states that if the sender has actual knowledge of a different address , other than the property itself, that would more likely reach the proper party, then that address must be used; see California Civil Code §2924, et seq. also concerning potential loss of property rights.

This Overview will be augmented with further back up prior to the Hearing.

Thank you for your consideration,
Robert Lane, Counsel for Owner/ Appellant