

TO: Foster City Council and Staff

RE: Appealing the 8/15/24 decision of the Foster City Planning Commission regarding agenda item 5.1 – the proposed 770 square foot addition, driveway relocation, construction of a new/additional driveway and other changes as described by the Planning staff to the 1-story Eichler at 106 Challenge Court in Foster City.

This appeal is being made by Nancy E Harmon and William H Borter, trustees of the Borter/Harmon Family Trust which is the owner of 104 Challenge Court.

The specific items being appealed is the applicant's plan to 1) eliminate well over 80% of the portion of the shared driveway that exists on the property of 106 Challenge Court, thus causing, in the words of the report from Traffic Patterns "significant parking, access, and circulation impacts to 104 Challenge Court." Additionally, Traffic Patterns finds that the templates used in the applicant's study were "incorrectly applied" and do not reflect current best practices. This is further detailed in the full report from Traffic Patterns, which is already on file. 2) The threatened but so far unshown and ill-defined new fence along the property line in the middle of the shared driveway. We contend that not yet showing the new fence on the plans is calculated to mislead the Planning Commission and the City Council regarding the severity of the potential for harm to the owners of 104 Challenge Court.

Also already on file are all written statements from the owners of 104 Challenge Court submitted prior to the Planning Commission meetings of 9/7/2023 and 8/15/2024. Additional copies of our comments are attached. Much can also be gleaned from all materials already submitted to the Planning Commission by the applicant; particularly the photographs and drawings showing current home and proposed plans.

There are multiple bases for this appeal:

- The applicant has served us with a lawsuit regarding both our property rights and that lawsuit has not been decided. To proceed with their project at this time could result in the need to deconstruct the entire portion of the addition that would replace their portion of the shared driveway.

- As is shown on countless photographs submitted by the applicant, this shared driveway is currently significantly smaller than other driveways in the neighborhood and if the project and new fence are allowed, 104 will have a completely substandard driveway as a result – far smaller than legally allowed. At it's current 18', it is already nonconforming. The applicant is proposing , after all is said and done, in our being left with merely a 9' wide driveway.

- The applicant has repeatedly asserted that they have "considered" many other options for their design, but has not been required to provide detail of them or why they would select the one that ensures ongoing harm in the most extreme way. It is apparent from studying the architectural drawings that there are multiple options for allowing the full 770 square foot addition without eliminating the shared portion of the driveway. We have suggested several options including expanding the entire side of the house to the legal limit rather than just the very front and rearmost sections, using more of the rear yard rather than loading so much into the driveway area, putting the new offices above the current structure, and on 8/15, Commissioner Haddad had another excellent idea regarding flipping the current design. This being one of the largest lots in Foster City, there is no doubt of there being options where neither party is harmed and the applicant achieves their full 770 square foot addition.

- On 8/15, the applicant showed a photo of our contractor's truck and a pile of dirt on our side of the shared driveway and stated that the truck was parked like that "every day for nearly a year", implying if

they could get in and out of their garage, we should be able to do likewise. The only time a pile of dirt was in that position was for a 2-3 day project long after the extended back yard project. I just learned from our contractor that the applicant asked him to move the truck because his wife couldn't get into and out of their garage with it in that position. The garage at 106 Challenge Court does not have the center post restricting access that the garage at 104 Challenge has, which further impacts accessibility. Regardless, one of the owners of 106 Challenge Court needed the full width of the driveway to access the garage compelling the conclusion that it is a shared driveway, intended for the mutual benefit of both properties and thus, a less impactful design of the addition should have been required.

The relief sought is to require the applicant to present a design that meets their size needs without impacting the neighboring property in the way their current does.

As mentioned to Helen Gannon when the appeal forms were picked up on 8/19, we will be out of the country the entire month of September on a trip planned since last year. It is our understanding that this appeal will not take place during our absence and is likely to be on the agenda of the 2nd City Council meeting in October of 2024.

Attachment 1: Harmon-Borter comments to the Planning Commission for 9/7/23 meeting

Attachment 2: Harmon-Borter comments to the Planning Commission for the 8/15/24 meeting

Ladies and Gentlemen – First of all we would like to thank the Patels for the changes they have already been willing to make in their expansion plans – moving the commercial office entrance away from the edge of our fence/property line and notching the front corner of the addition. Several items, both primary and peripheral, are still at issue:

1. Hammerhead driveway and parking studies

We also appreciate that the City staff sought a review of the Patels' parking study with the result that Traffic Patterns Company's report states that the original report was not conducted using engineering best practices and *would* result in a *significant* negative circulation impact for 104 Challenge. A traffic engineer I consulted privately concurs with the findings of Traffic Patterns Company.

I concur with a suggestion made to me that we request that Story Poles be erected and strung with the extruded plastic netting that will clarify how all added/expanded walls (including the extension of the side gate/wall) and the roof overhang truly affect our accessibility. We request that this be done right away for the benefit of staff, the commissioners and ourselves.

The textbook definition of a hammerhead driveway is one that provides a T-shaped, 3-point turn-around space for emergency and other vehicles. As stated in T. Jack Foster's book, "The Development of Foster City", a standard lot was adopted as 65' x 95' or 6175 square feet. Our discussions with construction and real estate industry professionals point to using a hammerhead driveway as an effective way to allow a larger residence footprint on a smaller lot since the necessity for safe and effective circulation is shared.

2. Lot size considerations

The lot at 106 Challenge is 8712 square feet, or 2537 square feet or 41% larger than a standard Foster City lot. That being true, how can it possibly be legitimate to eliminate our access to safe entrance and egress to add a mere 551 square feet which is only 6% of the lot size? As a Regional Director in the Construction Information Group at McGraw-Hill for over 15 years, I managed a number of architects who were consultants to the rest of our team. They taught me many things. One of the most important was that there are always multiple solutions to an architectural problem. We contend that, given the right incentive, their architect should be able to provide these 551 square feet in another configuration. NOTE: I have since tried to locate Ms. Amatuni in AIA or CSI listings and tried to find a website for her so I could determine if she appears to have ever redesigned an Eichler. I can find neither. professional with a full understanding of planned communities in general and Foster City specifically.

3. Uniqueness of Foster City and its Eichlers

T. Jack Foster and Joe Eichler got along for many reasons, including their belief in openness and easy accessibility to outdoor spaces. Both men were determined to give Foster City a "Sense of Place", so that no matter what you were viewing, you knew you were in Foster City. T. Jack Foster Sr. was so determined to bring this to reality, he was involved in the design of everything down to the street lights, the curve of the bridges, and the fire hydrant design. Eichler's homes are characterized by large expanses of glass away from the street, post and beam construction and open floorplans. Almost never were windows facing the street. It finally dawned on me that is why this proposed addition looks so out of place. On a cul-de-sac consisting of all the original Eichler model homes like Challenge Court, I believe there is great value in maintaining these key design criteria. This design, with windows facing the street, no beams out to the street edge of the façade, and a lack of openness due to eliminating the shared driveway are very out of place and will eliminate the symmetry found among all other houses on Challenge Court. Unfortunately, it will quite obviously "not belong". Maybe this no longer matters to the Commission, I don't know. I am hoping that at least several members still value the

uniqueness of what we enjoy here and wish to maintain it. Once the Story Poles have been erected, I hope that staff and all commissioners will make a site visit to consider these items.

4. Home resale price/value considerations

I asked two very respected and very experienced realtors to review the architectural plans and offer their expert opinions about what the construction of the front 551 square foot addition would mean for us when we sell 104 Challenge. Emails from Susan Lindstrom and Chris Eckert are attached for your review. There is no way to calculate *exactly how much* negative effect this would have on reselling our property, but there is carefully considered opinion that that would be the case.

Let's say you're working with a realtor to find a 4/2 Eichler. You are presented two: one with an easily accessible driveway/garage configuration. The next one requires you to drive into an alley snug up against the side of the neighbor's house and make a sharp turn to get to the garage – so no easy accessibility. With all other things being equal, which one do you prefer and on which one will you likely make a far more attractive offer?

5. Easements

I and several others have searched for hammerhead/shared driveway easements being called out – in title searches, with the County reviewing documents before Foster City was incorporated, with the County Appraiser, with the oldest subdivision maps, and more. No one can find ANY easements (driveways, utilities, nothing). We discussed this situation with Todd Foster, who feels that easements for a hammerhead driveway like the one shared between 104 and 106 Challenge Court definitely should have been recorded. So far, it appears that somehow slipped through the cracks during the transition between the county and the newly incorporated city.

At the very least, after living in 104 Challenge Court for over 37 years and using the entire hammerhead driveway to safely enter and exit the property, we are led to believe that, if necessary, a case can be made for an implied easement by existing use, which is legal in the state of California. As you all know, an implied easement by existing use is an easement that grants rights based on the previous use of that land for a specific purpose. For an implied easement to be granted, we understand we only need to be able to prove that we were previously permitted to use the land for that specific purpose.

In Conclusion

Ladies and Gentlemen, we do not wish to keep the Patels from having those extra 551 square feet of space. We just don't believe it is acceptable or advisable to do so in the manner they are proposing.

TO: Foster City Planning Commission and Planning Staff

FROM: Nancy Harmon and William Borter of 104 Challenge Court

RE: Staff Report and other documents submitted in preparation for 8/15/24 Open Meeting

There are two parts to these remarks. I: We believe several inadvertent typos/errors were made in the minutes. We would appreciate them being corrected before the meeting. II: Additional information and comments.

I: Issues with the minutes:

In the Neighbor Notifications section:

-It is stated that we did not return our Neighbor Notification form to staff. That is incorrect. It was dated 1/27 and was delivered to the front desk at the Planning Department, where we were able to ask several procedural questions. We are happy to provide a copy of these materials upon request.

In the BACKGROUND section – paragraph 2:

-the Kimley-Horn study used a full-sized SUV, not a “large van” which implies a commercial size vehicle.

-The Kimley-Horn report absolutely did not demonstrate that both garage stalls and surface stalls could be accessed from a reverse entry *in a single movement*. As a matter of fact, the Traffic Patterns study clarifies that the Kimley-Horn vehicle turning templates are drawn in segments and do not represent continuous vehicle movements. The recommendations from Traffic Patterns are in fact two fold: 1) the 552 sq. ft front addition WILL negatively impact access to the garage and driveway of 104 Challenge and 2) Kimley-Horn incorrectly applied the vehicle turning templates in their report.

BACKGROUND – paragraph 4:

-Your minutes report that the applicant *agreed to placing temporary boundaries (story poles) up as well as increasing the size of the driveway to provide better vehicle maneuverability*. In every subsequent contact with the Patels and their attorney, they have been unwilling to do this or approve this being done. In fact, in an apparent effort to intimidate, their attorney continues to assert that they wish to build a new fence between the properties but no plans to this effect have been submitted to Foster City.

Under ANALYSIS of the rear elevation:

-Item 1 says that the 552' addition is in *the rear* of the plan. It is not. It is in the front and is the portion of the project being contested because it blocks our ability to safely enter and exit our garage. Elsewhere in your minutes, this is described accurately.

In the copies of internal emails between staff:

-Ray Towne states the applicant is “willing to dedicate the driveway access easement”. There are no easements anyone has been able to locate to our knowledge. If the City IS aware of same, we would like to be given the details.

- Laura Galli states that "the easement the applicant would be acquiring would be negotiated between them and the adjacent property owner." Each time we have brought up the topic of easements, the Patels have insisted that easements are totally unacceptable.

- Ray Towne further wonders if bollards are needed to guard against a different vehicle (like the aforementioned camper) with a larger turning radius potentially causing damage to the structure at 106 Challenge Court. If we can come to terms with the Patels that we will retain access to approximately 5-6 feet over the property line so we can properly access our driveway and garage bays, we are comfortable putting it in writing that we will not attempt to store a camper in our driveway, thus eliminating the possibility of it causing damage. Again, the story poles would have clarified how few feet would have made us feel like we could approve the project without reservation.

II: And now on to our further/current comments to the Planning Commission and staff:

Among the report on Public Comments during the 9/7/23 meeting, we find two of particular import:

-Commissioner Jagtiani asked if the Patels' consultant would have different conclusions if he were to have prepared the report for residents of 104 Challenge Court. Given that the Patels' consultant chose not to reply, we can only assume the answer would have been "yes".

-Commissioner Pedro asked Mr. Rodriguez of Traffic Patterns about the impact on 104 Challenge Court if best practices are not followed. Mr. Rodriguez restated that the impact on 104 Challenge Court would be significant.

Regarding the true property line:

Early on, before our survey was completed, Mrs. Patel claimed that their survey showed the true property line is 6" closer to our house than the current placement of the fence and implied that the entire fence would have to be moved. Our survey was ordered to check the validity of this claim. Our survey shows that the current fence sits directly on top of the property line, and extends through the center of the driveway out to the street thus negating the earlier intimidation attempt.

Regarding story poles:

Our desire for the story poles would clarify exactly where the proposed walls of the 552 sq. ft. addition would lie as well as the length and height of the mysterious new wall threatened but not shown on official plans.

Our thinking was that such story poles would enable us to clarify just HOW untenable this plan would be – *or not*. It would give a basis for asking that the Patels consider merely a few feet of adjustment which could easily be achieved by pulling in the driveway side of the expansion and adding those very few feet elsewhere.

In addition, we made it clear to the Patels during our face-to-face meeting after the 9/7/23 PC meeting that we would be happy to approve any effort to put the new offices over the garage or even over the back portion of the house *without regard to windows that would overlook any part of our property*.

When we requested clarification of the issue of story poles and new fencing from their attorney, we were ignored and served with a lawsuit. A copy of all of this correspondence and of the lawsuit will be submitted upon request.

The only conclusion we have for their refusal to do what your minutes say they agreed to is that the extent of the hardship to us would then be impossible to deny and that the wholly tenable solution of adjusting the width of the addition into the driveway and shifting the placement of that exact amount of space would be shown as a simple alternative, as would putting the new office space atop the existing structure. Even a cursory look at the proposal

for that (right) side of the house (Figure3) which abuts our property shows that the same square footage is easily achieved by expanding the whole right side of the house to the 5' setback limit (rather than leaving the large cutout shown midspan), adjusting the wall placement between rooms and adding another couple of feet onto the rear addition. Given how simple a solution this would have been, one could easily conclude that the intent with this design was to inflict as much hardship as possible.

It should be noted that if such adjustments were made so that we could continue to utilize enough of the shared driveway to properly access our garage bays, there would likely be no further need to adjudicate our desire to establish formal easements.

Regarding Mr. Patel's latest statement to the Commission and Planning Staff:

-His 9/14 proposal that purports to remedy the issue actually does nothing of the kind since it does nothing to improve the turning radius into our garage bays, which is, as we reminded their attorney, our ONLY remaining issue. This had been an issue from the beginning and not an additional one as he implies.

-Mr. Patel's attempts to make his request for us to eliminate 9' of our front lawn sound like a sincere and legitimate solution are ridiculous on their face even if they do offer to pay a portion. This would do absolutely nothing to increase access to the garage bays. His geometry is off. The 9 additional feet would need to be taken off of their front yard to be of any benefit in this regard. Likewise, his folksy attempts to lecture us about the sales price of 1191 Balclutha versus 644 Matsonia are totally spurious since there is no way to ascertain what else affected the transactions – for example, one home may have been updated while the other had not. His assertion that “this clearly shows that having a hammerhead driveway is a negative thing” is not supported by facts.

-Not mentioned by Mr. Patel is the timeline is our attempt to come to some sort of compromise acceptable to both families via mediation, requested by our attorney and held on 3/21/24 at ADR Services in San Francisco with the Honorable George Hernandez, retired presiding Judge of the Alameda County Superior Court serving as Mediator. While we came with several suggestions and ideas, the only response was a full-throated NO with no countering suggestions from the Patels. In other words, we do not believe that in this or many other instances, the Patels operate in good faith.

-Now the Patels claim via their attorney that we must approve not only the project as presented to the City, but also approve a new fence – implied to be through the center of the driveway down to the sidewalk BUT will not answer any clarifying questions about its placement or height nor approve the story poles to prove their full intent. *We were told that we are to give our approval for the new fence to their attorney, not to the City. Since this wall has not been submitted to the City as part of the project, it feels very much like another attempt at intimidation, much like the spurious survey claim and their attempt to make us give up by filing a lawsuit.*

-We would appreciate hearing how the Planning Commission could consider ruling on this proposal as long as a lawsuit against us is in play. Please let us know why that would be appropriate.

Ladies and Gentlemen, in closing, since there are clearly other workable options for the Patels that do not block access to our garage bays nor require us to destroy our front yard and since the Traffic Patterns report clarifies the artifice of the Kimley-Horn report, we ask that the Commission not vote to approve this project until the issue of continued shared use of a portion of both driveways is solved.