

APPROVAL NO. 2023-_____

RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO LAND USE ACTION FOR 151 S. California Avenue: RETAIL PRESERVATION WAIVER REQUEST (23PLN-00363)

On _____, 2023, the City Council of the City of Palo Alto Ratified the Director of Planning & Development Services Approval of a Retail Waiver Request for a 3,500 sf tenant space at 151 S. California, allowing for an Alternative Viable Use, Medical Office, making the following findings, determinations and declarations:

SECTION 1. Background. The City Council of the City of Palo Alto (“City Council”) finds, determines, and declares as follows:

- A. The permitted retail or retail-like use is not viable at this time.
- B. The proposed use will support the purposes of the zoning district and Comprehensive Plan land use designation will encourage active pedestrian- oriented activity and connections.
- C. On May 15, 2023, the City Council held considered the matter on its consent calendar, at which time all persons were afforded an opportunity to be heard in accordance with the Palo Alto Municipal Code and the Council’s Policies and Procedures.

SECTION 2. Environmental Review. This determination is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Section 15061(b)(3) of the CEQA Guidelines in that it can be seen with certainty that there is no possibility the decision to waive this property from the city’s retail preservation ordinance would cause a significant effect on the environment. The project is also exempt in accordance with CEQA Guidelines Section 15301 (existing facilities).

SECTION 3. Retail Waiver Request Findings

1. The permitted retail or retail-like use is not viable

The applicant’s supporting documentation shows the site’s 10-year history, documentation of the applicant’s efforts to lease the tenant space, information regarding the former tenant and eviction notice information, information showing significantly reduced rents offered to try to keep a tenant in the space, the surrounding land uses, previous actions and determinations related to this tenant space in accordance with Ordinance 4848, the visibility of the space from the street, and a support letter from the properties’ Home Owners Association. This information is detailed in the administrative record and reflected in the staff report (CMR 2304-1311). This documentation supports the conclusion that a permitted retail or retail-like use is not viable in this space at this time.

2. The proposed use will support the purposes of the zoning district and Comprehensive Plan

The proposed Medical Office use is consistent with the allowed uses within the Community

Commercial comprehensive plan land use designation and is a permitted use for tenant spaces less than 5,000 sf and that do not front California Avenue within the Community Commercial (2) Subdistrict (CC[2]) Zone District.

3. *The proposed use will encourage active pedestrian- oriented activity and connections*

The proposed use encourages active pedestrian-oriented activity and connections that are conducive to retail uses. Specifically, medical office can serve as a draw, bringing users to the commercial district who may then take advantage of other nearby retail or retail-like spaces, such as eating and drinking or other traditional retail uses.

SECTION 4. Retail Waiver Request Granted. A retail waiver request is granted for the project by the *City Council* under Palo Alto Municipal Code Section 18.40.180(c), effective May 15, 2023 and subject to the conditions of approval in Section 5 of this Record of Land Use Action.

SECTION 5. Conditions of Approval.

1. CONFORMANCE WITH APPROVED USE. This approval allows for a waiver from the retail preservation ordinance for the proposed medical office use within a 3,500 sf portion of the existing tenant space, which has been determined to meet the City's criteria as an approved Alternative Active Viable Use and is an otherwise permitted use within the CC(2) zone district for spaces less than 5,000 sf and that do not front California Avenue. Any future use of this tenant space for a land use that does not meet the definition of retail, retail-like, or medical office use, as defined in Chapter 18.04 of the municipal code and that meets the conditions of approval of this waiver would require a subsequent retail preservation waiver.
2. SITE MODIFICATIONS. This project does not include approval of any changes to the building or site. Any future changes to the building or the site would be subject to applicable approvals and permits in conformance with all applicable regulations depending on the scope of the proposed work.
3. SIGNAGE. This approval does not include any signage or modifications to the approved signs on site. New signage or modifications to existing signage would be required to submit for a separate review and approval by the Planning Department.
4. MEDICAL OFFICE USE REQUIREMENTS. To ensure that site modifications and use for any future medical office tenants comply with the requirements in PAMC Section 18.40.180(c)(1)(B) to encourage pedestrian-oriented activity, any medical office use within this space shall include a storefront/entry lobby design that is a minimum 500 sf and that is consistent with a retail environment, such as a reception desk or retail displays and display window. Additionally, medical office uses operating between the hours of 10:00 p.m. and 6:00 a.m. are not permitted.

5. INDEMNITY. To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the “indemnified parties”) from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City for its actual attorneys’ fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its own choice.

6. PERMIT EXPIRATION. The project approval shall be valid for a period of one year from the original date of approval. In the event that the proposed use does not occupy the space within a period of one year within the time limit specified above, the approval shall expire and be of no further force or effect. A written request for a one-year extension shall be submitted prior to the expiration date in order to be considered by the Director of Planning and Development Services.

SECTION 6. Term of Approval. Retail Waiver Request Approval. In the event that the tenant space is not occupied within one year of the date of council approval, the approval shall expire and be of no further force or effect, pursuant to Palo Alto Municipal Code Section 18.77.090. Application for a one-year extension of this entitlement may be made prior to the expiration. A written request for a one-year extension shall be submitted prior to the expiration date in order to be considered by the Director of Planning and Development Services.

PASSED:
 AYES:
 NOES:
 ABSENT:
 ABSTENTIONS:

ATTEST:

 City Clerk

APPROVED:

 Director of Planning and
 Development Services

APPROVED AS TO FORM:

 Assistant City Attorney