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March 22, 2023

DELIVERY BY HAND

City of Palo Alto
Department of Planning and Development Services
250 Hamilton Avenue
Palo Alto, CA 94301
Attn: Claire Raybould, AICP
Senior Planner

Re: Application to Preserve Zoning Change Previously Adopted by the City Council

Dear Claire:

This letter accompanies the Planning Review Application filed by our clients, Robert and Peggy Lee, owners of the property known and described as 151 S. California Avenue, Condominium Unit No. E101. The property is located on the ground floor of the Palo Alto Central mixed-use condominium project. The original project plan was created in 1983 with the recordation of the Palo Alto Central East Enabling Declaration and the Condominium Plan attached as Exhibit "A" to the Declaration. I worked with the original owner/developer of the Palo Alto Central project, Bill Cox (now deceased). Bill was a man of many talents. In addition to developing many projects including Palo Alto Central, Palo Alto Plaza and Forest Towers (all mixed residential/commercial projects), he was also a very successful restaurateur, owning and managing at one time: Mustard's in Napa County, Fog City Diner in San Francisco, and Rio Grill in Carmel. Bill wanted to have a restaurant in his new project in Palo Alto and thought that Palo Alto Central would be a good location for it. Perhaps his desire to open a restaurant in Palo Alto caused him to discount the handicap of operating a successful restaurant without visible street frontage. The unit he selected for the restaurant (Unit No. E101) was located on the interior of the ground floor of the main Palo Alto Central building. The initial buyers of Unit No. E101 attempted for many years to operate a restaurant or find a tenant that would operate it as a restaurant. During the 22 years of their ownership, the property went through, among other things, foreclosure, bankruptcy, abandonment, vacation, and change of ownership five or six times. In 2004, the then-owners of the Unit petitioned the City to amend the zoning ordinance to change the zoning from CC(2)(R)(P), that is Community Commercial Combined/Retail Shopping Combining/Pedestrian Combining Classification, to a new zone: CC(2), Community Commercial Combining Classification. The Planning and Transportation Commission

staff recommended approval of an ordinance modifying section 18.43.030 of the ordinance in rezoning portions of Palo Alto Central to allow office uses within the rear 50% of Buildings C and D, and all of Building E. Under the proposal, office use should be allowed as a permitted use within the rear 50% of each Building C and D and within all of Building E. Section 18.46.040 (Retail Shopping Combining District (R) Regulations) would be modified to allow office as a permitted use. In adopting the resolution, the City Council made findings that the amendment was in accord with the purposes of the Palo Alto Comprehension Plan in that retail uses are preserved in the areas of Palo Alto Central facing the pedestrian ways of California Avenue and Park Boulevard and office uses are permitted facing the interior courtyard where they will “contribute to the vitality of the California Avenue commercial area without detracting from the retail and pedestrian-oriented character of the area.”

Our clients acquired title to the unit in 2004. At the time they purchased, the property was vacant and they happened to be able to get a restaurant tenant right away. The remodeling costs spent by the new tenants amounted to \$300,000. That tenant did not make it and sold the restaurant business, together with the 6-year extended lease, after two years. At that time, our clients did not have an office prospect to rent, and the cost to convert the newly remodeled restaurant to an office shell was significant, so they elected to continue trying to make a go of it with a restaurant as a tenant. They have tried ever since to obtain and keep a restaurant operator in the unit, and none of the restaurant operators were successful, including the most recent one, Peking Duck, who has vacated the property and owes unpaid rent of \$250,000.

During those years there were times when the Palo Alto Central East Owners Association complained to the owners about the restaurant operation which caused friction between the other owners of other commercial and residential units in the Palo Alto Central project.

The Palo Alto Central East Commercial HOA Board has asked the City to support the conversion of the restaurant operation into office-type use as they believe it will be an improvement to their HOA community. A copy of their letter dated September 22, 2022 is attached to the Planning Review Application.

The ordinance approving the change in the zoning has never been amended or repealed, and still stands. The City did enact Urgency Interim Ordinance No. 5325 on May 11, 2015, in an effort to prevent conversion of ground floor to office or other non-retail uses which was at that time a trend in the City’s commercial districts. This led to the adoption of Ordinance No. 5407 in 2017 amending section 18.40.180 to state that any ground floor retail or retail-like use permitted or operating as of March 2, 2015 may be replaced only by another retail or retail-like use, as permitted in the applicable district. The ordinance provided for waivers, adjustments and exemptions, the grounds for which included, among other things, economic hardship or a showing that a retail or retail-like use is not viable. Documentation to support a waiver, adjustment or exemption included showing a ten-year history of the site’s occupancy and the reasons for perspective tenants vacating the premises. In adopting that ordinance in 2015, there is no indication in the record that

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any consideration was given to the prior action taken by the City in 2004, and/or the justification for that prior action.

Nothing happened between 2004 and 2017 that would indicate any difference between the situation that existed when the modification of the zoning to permit office use in the subject premises was discussed and considered. Indeed, the same pattern of unsuccessful restaurant operations continued unabated for the entire time up to 2017 and including up until today.

Our clients, Robert and Peggy Lee, applied for a waiver adjustment and exemption in 2020, and the Director of Planning and Development Services denied their application. The finding was that the applicant had provided insufficient evidence to support the assertion that retail or retail-like uses (specifically restaurant operations) were not viable at the site. The Director of Planning and Development Services was of the opinion that insufficient evidence had been shown that retail or retail-like uses are not viable at that site. That finding ignored the almost 40-year history of the owners of the subject property trying in vain to successfully operate a restaurant within Unit No. E101. It's noteworthy that all during that period of time, the owners have leased or attempted to lease the property at a rental per square foot rate which is less than half of the market rate for such space. As part of their application, the owners have attached a letter from Newmark Cornish and Carey, the realtors who have been actively working trying to lease the restaurant space since April of 2019. The realtors had concluded after attempting unsuccessfully to find a tenant that the location of the unit is such that it does not receive the foot traffic and retail synergy or the traffic visibility necessary to successfully operate a restaurant, or for that matter, a "retail-like" use. The realtors concluded that a revision to allow office and medical uses is necessary to render the property "rentable."

We respectfully submit that the conditions that existed in 2004, when Ordinance No. 4848, Section 1 was adopted, are the same today, and that the appropriate and equitable response to our clients' application can and should be either of the following:

1. To adopt a resolution stating that the adoption of Ordinance No. 5407 was not intended to and did not amend or revoke Ordinance No. 4848 which remains in effect; or
2. That based on findings that the applicant has presented sufficient evidence to support an alternative viable active use waiver for medical office.

Very truly yours,


John Paul Hanna
JPH:sm

cc: Peggy Lee (peggylee1628@gmail.com)