



City Council Staff Report

From: City Manager

Report Type: CONSENT CALENDAR

Lead Department: Planning and Development Services

Meeting Date: May 15, 2023

Report #:2304-1311

TITLE

QUASI-JUDICIAL. 151 S California Avenue {22PLN-00363}: Ratification of Director's Approval of Waiver from the Retail Preservation Ordinance for an Alternative Viable Use to Allow for a Medical Office Use to Occupy a 3,500 Square Foot Tenant Space. Zone District: CC(2). Environmental Assessment: Exempt from CEQA in Accordance with Guidelines Section 15061(b)(3) and 15301.

RECOMMENDATION

Staff recommends that Council approve the Record of Land Use Action in Attachment B, ratifying the Director's decision approving the subject waiver request.

EXECUTIVE SUMMARY

This report transmits the Planning & Development Services Director's tentative approval for a partial waiver from the retail preservation ordinance adopted by Council on August 24, 2022, for the property located at 151 S California Street.

Pursuant to Section 18.40.180 of the Municipal Code, owners of properties outside the Ground Floor (GF) and Retail (R) combining districts may apply for an adjustment or waiver from ground floor retail protections. This waiver is based on showing that the permitted retail or retail-like use is not viable, that the proposed use will support the purposes of the zoning district and Comprehensive Plan land use designation, and that the proposed use will encourage active pedestrian-oriented activity and connections. Applicants must provide substantial evidence to support their application and bear the burden of proof. The Director renders a tentative decision, which is then placed on the City Council's Consent agenda. The Council may accept this decision on Consent, or alternatively, three council members may pull this item and require a future City Council public hearing.

BACKGROUND

The proposed tenant space is located within an interior courtyard (Unit 101 of Building E) of the Palo Alto Central Mixed-Use Development. A location map is included in Attachment A and the Applicant's Request Letter is included in Attachment C.

In 2004 Council approved a rezoning for 50% of buildings C and D and all of building E to change the zoning designation for all or a portion of these buildings, removing the retail combining district from those specific buildings. This is reflected in Ordinance 4808, which is included in the supporting documentation in Attachment D. This change allowed for office uses on these ground floor spaces, while preserving the retail requirements for frontages along Park Boulevard and California Avenue.

In 2016, Council adopted the retail preservation ordinance codified in 18.40.180 of the municipal code. Because this site was occupied by a retail-like use (eating and drinking) at the time, conversion to an office use on the ground floor was no longer permitted.

Tenant History

The current property owner for this 3,500 square foot tenant space acquired title in 2004 and proposed a restaurant use. From 2004 to 2022, three restaurant uses occupied this tenant space. Two of these restaurant tenants occupied the space (Orchid and China Delight). Although the property owner reports the tenants paid less than half of market rate for rent at the time, both left the site after two years each. Peking Duck occupied the space from 2010 to 2022 but reportedly paid approximately one-third of market rate for rent until 2020 and less than one-tenth market rate for rent between 2020 and 2021. The property owner states that the tenant was ultimately evicted in 2022 for failure to pay rent.

Leasing Efforts

Since April 2021 the owner indicates it has been attempting to lease the space to possible tenants. The supporting documents in Attachment D include a letter from Newmark Properties regarding the efforts to lease the space as well as a summary of 145 perspective tenants that Newmark marketed to but that ultimately indicated that the site would not work for their needs or otherwise stopped responding. These included a range of retail and retail-like uses such as personal service uses as well as eating and drinking uses. The applicant has heard more recently from three interested dental office tenants, but all three indicated that they were reluctant to commit with unknown factors that could be a barrier to their use of the site (i.e. the need for a waiver).

Previous Application

The applicant previously submitted a request in 2019 for a retail waiver request due to economic hardship. Staff denied the request because the site was still occupied and because the applicant failed to provide documentation to support the need for the waiver such as any information about rent reductions, concerns about the existing tenant, and/or efforts to lease the space to a

different retail or retail-like use. The applicant withdrew their application prior to Council ratification of the Director's decision.

ANALYSIS

Since the adoption of the Retail Preservation Ordinance in March 2016, three other waiver requests were granted. It is unclear if this proposed waiver request will encourage others to similarly seek relief from the Retail Preservation Ordinance. The subject waiver approval is not precedent setting, however. Each request received is evaluated on its own merits and is subject to Council acceptance. The future use of the site by a medical office use that complies with the required conditions of approval would comply with applicable zoning regulations and the Comprehensive Plan.

FISCAL/RESOURCE IMPACT

The recommendation in this report has no significant budget or fiscal impacts. The site is currently vacant and therefore is not generating revenue. When it was occupied as an eating and drinking facility, the site generated marginal revenues for the City. Given the significant efforts to lease the space to a new similar tenant that would also generate revenue for the City without success, granting relief from the Retail Preservation Ordinance would have only marginal fiscal impacts on the City and may even result in an unquantifiable benefit to area businesses by avoiding vacancies in this commercial area.

STAKEHOLDER ENGAGEMENT

The Council's approval of this determination, ratifying the Director's decision, is effective immediately and is final. A request to pull this item of consent would result in scheduling a future public Council hearing.

As of the writing of this report, no public comments were received on the proposed project.

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).

ATTACHMENTS

Attachment A: Location Map

Attachment B: Draft Record of Land Use Action 151 S California

Attachment C: Applicant's Request Letter

Attachment D: Supporting documents

Attachment E: 515 S. California Avenue Retail Preservation Waiver Determination 23PLN-00363

APPROVED BY:

Jonathan Lait, Planning and Development Services Director