



City of Palo Alto

City Council Staff Report

(ID # 8637)

Report Type: Action Items

Meeting Date: 11/7/2017

Summary Title: 999 Alma: Retail Waiver Request

Title: PUBLIC HEARING/QUASI-JUDICIAL. 999 Alma: Council Determination on a Waiver Request From the Retail Preservation Ordinance. Environmental Assessment: Exempt in Accordance With the California Environmental Quality Act (CEQA) Section 15061(b)(3) Guidelines (Continued From October 30, 2017)

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that Council decide on the proposed retail waiver request pursuant to the standards set forth in Palo Alto Municipal Code section 18.40.180(c).

Executive Summary

The long-term leaseholder of 999 Alma is requesting an adjustment from the retail preservation ordinance in accordance with Palo Alto Municipal Code (PAMC) section 18.40.180 (c)(1)(b).¹ Retailer Anthropology vacated the site one year ago and has remained vacant since. The leaseholder reports marketing the availability of the space since December 2015 in anticipation of the retailer leaving for the Stanford Shopping Center.

The building is located at the corner of Alma Street and Addison Avenue and contains approximately 10,000 square feet, which must be used for retail or retail-like uses under the retail preservation ordinance. The leaseholder seeks an adjustment to lease the rear (alley) 5,000 square feet for an office use, while retaining a proportional amount for retail-like uses adjacent to Alma Street, which would include a storefront at the corner at Addison Avenue. Pursuant to PAMC section 18.40.180(c)(3), the Director of Planning and Community

¹ Palo Alto Municipal Code reference:

[http://library.amlegal.com/nxt/gateway.dll/California/paloalto_ca/title18zoning*/chapter1840generalstandardsandexceptions?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:paloalto_ca\\$anc=JD_18.40.180](http://library.amlegal.com/nxt/gateway.dll/California/paloalto_ca/title18zoning*/chapter1840generalstandardsandexceptions?f=templates$fn=default.htm$3.0$vid=amlegal:paloalto_ca$anc=JD_18.40.180)

Environment has referred decision on this request to the Council.

Background

The Council first adopted a retail preservation interim ordinance in May 2015.² The Council later adopted a permanent ordinance to protect ground floor retail and retail-like uses from conversion to office or other nonretail-like uses that is codified in Municipal Code Section 18.40.180.

The initial interim ordinance established certain requirements and included an economic hardship waiver for those property owners that demonstrated the ordinance would effectuate an unconstitutional taking of property. On August 22, 2016, Council considered a formal waiver request from the owner of 100 Addison Avenue; across the street from the subject property. Others with property interests spoke during public comment about challenges they were having leasing their property to retail and retail-like uses; the subject property was one of those mentioned. That evening, Council rejected the formal waiver request being considered, but directed staff to include in the permanent ordinance a less exacting standard to evaluate future waivers.³ This waiver became known as the Alternative Viable Active Use and is now codified in the municipal code. It is under this waiver provision that the subject property owner seeks an adjustment to reduce the amount of retail space that must be retained.

To request the Alternative Viable Active Use waiver or adjustment, an applicant must demonstrate that the required 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 the proposed use will encourage active pedestrian-oriented activity and connections. The applicant bears the burden of presenting substantial evidence that details the factual and legal basis supporting the claim. Evidence is required to demonstrate the viability of existing and future uses on the site, based on both the site characteristics and the surrounding uses; specifically, whether a substitute use could be designed and/or conditioned to contribute to the goals and purposes of the zoning district. The code includes the following examples as evidence to be submitted in support of such a claim:

- A. A 10-year history of the site's occupancy and reasons for respective tenants vacating the site;

² Interim Retail Preservation Ordinance Council Report (5/11/15):
<http://www.cityofpaloalto.org/civicax/filebank/documents/47130>
Codified Retail Preservation Ordinance (3/20/17):
<http://www.cityofpaloalto.org/civicax/filebank/documents/56438>

³ Council transcript available online (starts on page 41):
<http://www.cityofpaloalto.org/civicax/filebank/documents/56647>

- B. A map that indicates all the existing surrounding uses, both residential and non-residential, within one City-block; include the corresponding zone district on the map;

In response to these requirements, the applicant has submitted a letter detailing the specific request to retain 5,000 square feet adjacent to Alma Avenue for retail or retail-like uses while converting the balance of the space (5,000 square feet) to an office use. The applicant's letter indicates that Anthropology occupied the site since 2001 before leaving for the Stanford Shopping Center last year. The applicant also includes a letter from the broker that has been marking the building since December 2015 detailing some of the challenges leasing the space, and a map showing nearby properties and uses. (Attachment A)

The authority to grant a waiver is given to the Director of Planning and Community Environment, subject to review by the City Council. Alternatively, the Director may defer a decision on a waiver request to the Council. This has been the path for the subject application.⁴

Discussion

The subject property is in the South of Forest Avenue Coordinated Area Plan (SOFA II) and is zoned RT-35. This area is described in SOFA II as an area intended to promote the continuation of a mixed use, walkable, area with a wealth of older buildings. There is a recognition that different non-residential uses will become more or less dominant, but the goal of the plan is to make sure that a particularly strong market in one sector does not drive out diversity. It further states that neighborhood serving retail and service uses that serve the residential communities in and near SOFA are particularly valued.

A mix of uses are permitted in the RT-35 zone, including office and retail. Office space is limited to 5,000 square feet per site. Parking for retail uses is one for every 200 square feet of gross floor area and little less for general or medical office (1/250 SF). The subject building is legal nonconforming with respect to parking. However, it is worth noting that the leaseholder has access to 15 parking spaces at 100 Addison Avenue that in the past was used by Anthropology. Residential permit parking restrictions apply along most of Addison Avenue near the subject property and residential cross streets. (Portions of Alma and Addison are not in the RPPP area) The subject property is located one half mile from the Caltrain station.

The applicant's request to use the building for office and retail appears consistent with the comprehensive plan, SOFA II and the implementing zoning regulations, and support the objectives of this area. The introduction of office would not result in an increase in required parking based on existing regulations.

⁴ The Director has made a tentative decision on another pending waiver request; this request was placed on the Council's consent calendar earlier this year and was pulled from consent for a hearing. The hearing is currently scheduled for November 6th.

The applicant has indicated there has been interest for up to 5,000 square feet of the building for use as a yoga studio (commercial recreation) or gym, which would qualify as a retail-like use under the ordinance. Finding another retail or retail-like use to occupy the balance of the space, as reported by the applicant, has been problematic. Accordingly, applicant seeks to use this space for office uses. The Council has previously adopted an interim office cap ordinance that would apply to the subject property. While a general office use greater than 2,000 square feet would be subject to that ordinance, a 5,000 square foot medical use would be exempt from that ordinance's provisions. The applicant's reported preference is for a waiver to allow general office, however, the Council has discretion in reviewing the waiver request to consider other types of nonretail uses defined in the code.

In deciding whether to grant the requested waiver, the Council must determine whether the applicant has met its burden of showing: 1) retail or retail-like uses are not viable for the entirety of the 10,000 square foot property; 2) the proposed use is consistent with zoning and comprehensive plan designations; and 3) the proposed use will encourage active pedestrian-oriented activity and connections. In staff's analysis of this request, the key question for the Council is whether the applicant has sufficiently demonstrated that the entire space cannot be used to sustain a retail or retail-like use. As discussed above, the proposed uses comply with the zoning district or city policies, and because the SOFA II regulations were crafted to encourage pedestrian-oriented uses, proposal's compliance with the SOFA II CAP is likely to meet these goals. If Council is supportive of the adjustment for 5,000 square feet of office at this location, staff recommends Council discuss expectations and possible conditions of where retail would be placed in the building (ie; the front half of the lot adjacent to Alma Street) and whether a requirement for retail or retail-like occupancy prior to the establishment of the office use is appropriate.

Resource Impact

The recommendation in this report has no significant budget or fiscal impacts.

Timeline

Council's decision on this request takes place immediately and is final.

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 will not cause a significant effect on the environment.

Attachments:

Attachment A: Applicant Waiver Request Letter with Attachments (PDF)

Received

JUL 06 2017

Alma Street Partners

Department of Planning
& Community Environment

755 PAGE MILL ROAD • PALO ALTO, CA 94304 • TELEPHONE (650) 856-0926

July 6, 2017

Jonathan Lait
Assistant Planning Director
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

RE: 999 Alma Street Alternative Viable Active Use Waiver Request

Jonathan:

As you know, we have been struggling to lease our building at 999 Alma Street for the past 19 months. Our previous tenant, Anthropologie, had occupied the building since 2001 but moved to the mall last year to take advantage of the high foot traffic that their location on Alma currently lacks. Anthropologie's move was not a surprise because this building is separated from the Palo Alto retail core; the building with its adjacent parking on Addison Avenue forms the southern boundary of the SOFA 2 zoning adjacent to residential lots- five full city blocks away from University Avenue.

When we purchased this building, we knew that Anthropologie's lease was expiring and the location was not ideal for a 10,000-square foot retail user. However, we moved forward with the purchase because the Sofa 2 zoning allows flexibility to have up to 5,000 square feet of office use which could accommodate our company's offices. This would leave a more leasable 5,000 square foot retail space along the Alma frontage.

We have now been marketing the building to retail users for nineteen months at an unpriced rental asking rate. The rental rate was left unpriced to attract all interested groups but we have not received any offers for a whole building user. When we didn't get offers for the whole building we tried to market the spaces to smaller retail tenant but still do not have any offers.

Our building is flanked on both sides by office users; in fact, there are no other retail tenants along Alma Street on the same block. As you will see in a letter from our listing broker and the map showing the surrounding uses, this location is not viable for a retail or retail like use.

We respectfully request permission to use up to 5000sf for our offices as the SOFA 2 zoning allows. Without a tenant, our building is falling into disrepair and we are currently under extreme economic hardship.

We have made every possible attempt to lease our building to retail users but simply stated- nobody wants it. We have included the following exhibits to support our waiver:

- A. Letter from the broker that has been marketing the suite since December 2015
- B. A map showing the surrounding tenants and respective uses.

Sincerely,



Robert Wheatley
Alma Street Partners



Christian Hansen
Alma Street Partners



Josh Shumsky

CA RE License #01883266

July 2nd, 2017

Jonathan Lait
City of Palo Alto Planning Department
285 Hamilton Ave., 1st. Floor
Palo Alto, CA 94301

Re: 999 Alma St. Palo Alto, CA - Retail Leasing Efforts

Dear Jonathan Lait

My name is Joshua Shumsky, and I, along with my colleague Matt Sweeney, have been actively working to lease the ~10,000 S.F. former Anthropologie space at 999 Alma St. in Palo Alto since December of 2015. Matt is a ten year industry veteran specializing in retail leasing and I have been a retail leasing specialist for the last five years, with a prior four and a half years working within the retail companies themselves. Through our leasing of downtown-focused properties in downtown Los Gatos, Mountain View, and the newly created downtown in Cupertino (Main Street Cupertino), we have developed a deep rolodex as well as a strong leasing outreach program to target established and newly expanding retail groups, alike. Needless to say, with the proximity to Downtown Palo Alto as a selling feature, we had every expectation that this location would be a focal point for traditional retail users.

Our marketing efforts began immediately, upon execution of the listing agreement, with a focus on the following items: signage for drive-by traffic, visibility to potential tenants online (Co-Star, Loopnet, Marketing Blasts to the brokerage community and retail users), and finally targeted direct submittals via email as well as phone calls to potential tenants.

Based on the reasonable traffic counts along Alma St. we expected, and did initially receive, strong calls on the space from prospective groups. These calls were primarily informational, and what we determined were that few if any were for retail uses. The majority of the calls were for Office, Fitness or Restaurant space, which are currently not approved within the existing zoning. Furthermore, these prospective users were surprised by the total square footage and were primarily looking for between 1,000 – 2,500 S.F. We did end up receiving one potentially actionable sign call from a Salon user, but upon further investigation the the salon elected to remain at her current location.

Additionally, Matt and I created a robust marketing campaign complete with a marketing brochure, marketing e-blast, and prominent listing placement on both Costar and Loopnet as well as on the Newmark Cornish and Carey website. Our initial focus was to lease the full premises to a single user, in order to preserve the character and charm of the building. The feedback we received from this more robust marketing exposure was also initially strong, and with the available information on the websites the users looking for larger space were able to see the available building and understand that this could be a target opportunity. We did modify the marketing materials to show that the space could be demised to ~5,000 S.F. as we attempted to further expand our net. This was in direct response to many of the initial inquiries we received, which were to understand if the space could be split.

This marketing effort led to a number of tours, which provided direct tenant feedback regarding the trade area, the space itself, and the perceived barriers for these tenants to lease the property. It also helped to validate which tenant groups are actively expanding in today's retail market, and the limited trade areas that premium brands would consider when contemplating growth. With the relocation of Anthropologie (this building's former tenant) as well as North Face there has been a documented flight to "safe" retail zones such as Stanford Shopping Center. While we see that University Avenue has retained its iconic status and restaurant, fitness, and traditional retail users are still focused on expanding into that trade area, that is not the case city wide. The direct feedback we received on 999 Alma was that the location is far enough from the core downtown to not receive the foot traffic and retail synergy that provides, yet it is close enough to have limited drive by traffic and visibility, sitting off of El Camino Real. It has become clear that destination oriented uses are going to be our primary target for this property.

The third and final element of our marketing approach involved direct and targeted submittals to traditional high street retail tenants (Ulta Cosmetics, Beauty Brands, and Z Gallerie), Home Furnishing users (Lay Z Boy, Bassett, and Urban Home), Home Décor (Kohler, Pirch, and Treehouse), and traditional box retail (Petco, DSW, and Performance Bicycles), among others. While a few of these groups took a long look at the site, the general consensus remained, that with the concern about the future of traditional retail in its current form, none were willing to take the risk on the property.

Throughout the process we have worked collaboratively with the properties owners to adjust various marketing elements such as price, and ultimately deciding to focus on a "negotiable" pricing structure which was designed to garner the greatest level of interest, in addition to expanding our targeted user types. This expansion included private education users, which provided the site an additional round of interest. This interest waned upon further investigation due to limited available space for an outdoor play area, reducing the potential number of kids who could attend, and ultimately making the location cost prohibitive.

We have ultimately come to the conclusion that retail tenants do not consider this location viable for their use. The other uses that, via interest and activity, have proven potentially viable for a portion of the property, up to 5,000 S.F. fronting Alma St., would be a fitness or personal services use.

Both Matt and myself appreciate your time in reviewing this letter, and would be happy to address any further questions you may have, upon request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Josh Shumsky', with a long, sweeping underline.

Josh Shumsky

CA RE License #01883266

jshumsky@newmarkccarey.com

T 408.982.8490

EXHIBIT B

