Brettle, Jessica

From: Leslie Mills <casamills@gmail.com>
Sent: Monday, September 14, 2020 3:33 PM
To: Council, City
Subject: Re: Your e-mail to City Council was received
Attachments: Summary Points 233_235 University Wall Removal rev 2.pdf

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To City Council Members
In the interest of Councils time I have summarized the issues for item 3 on the consent calendar for Sept. 21, 2020 on the attached. I am available for questions any time. Thank you for your consideration.
Leslie Mills
233/235 University Owner

On Mon, Aug 24, 2020 at 2:28 PM Council, City <city.council@cityofpaloalto.org> wrote:

> Thank you for your comments to the City Council. Your e-mail will be forwarded to all seven Council Members and a printout of your correspondence will also be included in the next available Council packet.
>
> If your comments are about an item that is already scheduled for a City Council agenda, you can call (650) 329-2571 to confirm that the item is still on the agenda for the next meeting.
>
> If your letter mentions a specific complaint or a request for service, we'll either reply with an explanation or else send it on to the appropriate department for clarification.
>
> We appreciate hearing from you.

Subject: 233/235 URM Wall Removal – Sept. 21, 2020 Consent calendar item #3
Date: September 14, 2020

Dear Council members,

On June 29, 2020, Jonathan Lait, Director of Planning, issued an Interpretation Related to Seismic Rehabilitation and Floor Area Bonuses that directly relates to our proposed and entitled project at 233/235 University Avenue, the Mills Florist Building. This Interpretation was appealed on July 13, 2020. Although we previously responded with a detailed rebuttal to the appeal, in consideration of Council's time, we have summarized below the reasoning to deny the appeal and ask that the Council allow us to proceed with our project which is now 5 years in the making.

1. **Public Safety.** For reasons related to a previous City Council sentiments as detailed below, the Planning Department currently has an unwritten provision to retain at least two walls of a Unreinforced Masonry (URM) structure in order to qualify for the Seismic Square footage Bonus in Chapter 18.18.070. Requiring any part of a URM building to remain seems contradictory to the City's objective: public safety. The fact is that a new building constructed to current code is seismically much safer than one that is seismically upgraded. Such upgrades are merely a way of <u>reducing</u> the chance of <u>full</u> building collapse in an earthquake. Our sole objective of this project is to resolve the URM seismic issues by building a safe building. Retaining two of the URM Walls in order to receive the Seismic Bonus is contrary to the purpose of the project. The effort, in our case, to undermine and re-support the 12" thick 20 foot high brick walls resting on an 7 foot high, unreinforced, structurally deficient concrete wall is dangerous in itself, and in the end will not be as structurally sound as a new wall. Both the Director of Planning and the Chief Building Official reviewed the facts in detail as related to retaining these two URM walls and made the informed decision that the walls should be removed in the interest of public safety.

2. **Purpose and Historical Application of Municipal Code Chapter 16.42 "Seismic Hazards Identification Program" and Chapter 18.18.070 "Floor Area Bonuses".**

   a. In 1986, to comply with the State Law, the City adopted *Municipal Code Chapter 16.42, Seismic Hazards Identification Program*. The purpose of the chapter, as stated in the code, is to "<u>reduce the likelihood of the loss of life due to URM building damage caused by earthquakes</u>" by identifying URM buildings within the City and requiring owners to provide Engineering reports with seismic recommendations.

   b. In addition to the above Program, Fred Herman, former CPA Building Official, was instrumental in creating Chapter 18.18.070 of the Municipal Code, establishing a floor area bonus program to incentivize building owners to address seismic safety concerns as recommended in their Engineer's Report. By providing owners with bonus square footage, the intent is to help offset the cost of seismic improvements with the future potential income from the additional space.

   c. Under Fred Herman's direction (author of the Floor Area Bonus program), 50 buildings received the floor area bonus of which 16 were completely demolished and replaced with new construction. The appeal makes the unsubstantiated claim that these 16 cases (11 per the appeal), which accounted for 32% of the URM "Rehabilitations" at that time, were mistakes. Fred Herman's preference was to remove URM buildings so as to <u>eliminate</u> potential building failure versus <u>reduce</u> the chance of building failure. This practice was employed for 28 years and touted as one of the most successful programs in the Country. It should also be noted that at that time the bonus square footage was exempt from parking fees. This exemption was removed in 2014 and the current in-lieu parking fees for the 2500 square foot bonus is just over $1 Million ($400/sf). This greatly diminishes the value of the seismic bonus and impacts the financial burden on our project which is too small for onsite parking.

3. **2014 Unwritten Interpretation of Chapter 18.18.070.**

   a. In 2014, in an effort to reduce the surge in downtown commercial development at the time, the appellant, Karen Holmen, who was Mayor at that time, pushed for a reinterpretation of the Floor Area Bonus program by focusing on the word "Rehabilitation" and not on the intent of the ordinance: Public Safety. The appellant cited the staff report from 12/7/2015, wherein it was suggested that the wording of Chapter 18.18.070 be changed to reflect Council's sentiment at that time and not allow demolished buildings to qualify for the bonus square footage. This proposed revision was categorized as "Tier 2", meaning it was controversial and required further review. The fact remains that this revision was never adopted. As a result of the sentiment at that time, Planning began requiring 50% of the building to remain (i.e. keeping 2 of 4 walls) to receive the seismic bonus, but nowhere in the code is this stated.

   b. Is it logical to grant a square footage bonus incentive for owners doing a seismic upgrade, which merely "reduces" the chances of building damage during an earthquake and thereby loss of life, versus those owners of removing the potential hazard entirely by constructing a new building? The fact is a new building constructed to current code is seismically safer than one with seismic upgrades which are held to a lesser standard. Fred Herman recognized this when overseeing the program. In the interest of public safety, it seems that the City's preference would be to remove potentially hazardous URM buildings entirely when possible.

4. **Qualification of 233/235 University for Bonus Square Footage.** The ordinance has a very clear process in order to receive the bonus square footage. The Code states that "the seismic rehabilitation shall conform to the analysis standards referenced in Chapter 16.42" which required URM building owners to submit an engineering report to the City in 1986 detailing recommended actions. To receive the bonus square footage, Owners must comply with the recommendations in their Engineer's report. In the case of the 233/235 University building, the report submitted in 1986 and accepted by the City, was in the form of a letter, wherein the Engineer stated:

   > *"In my opinion, any proposed scheme of reconstruction to meet the requirements of the Seismic Hazard Reduction Program would involve such extensive reworking of the existing structural components as to make complete replacement a more logical course of action."*

   Therefore, the demolition of the building as recommended in the Engineer's report would qualify for the seismic rehabilitation bonus as per the Code. Additionally, in May of this year the Chief Building Official requested an analysis of the demand/capacity ratio as described in the Code, which was provided by Hohbach-Lewin Engineers and re-confirmed the 1986 engineer's recommendation.

Based on the above, we hope that the Council can come to the conclusion to deny the appeal. However, if Council finds it necessary to further analyze the logic above we would respectfully ask that our project be allowed to proceed and be awarded the square footage bonus based on our compliance with the ordinance as stated in paragraph 4 and as recommended by the Director of Planning.

Respectfully,
Leslie Mills, Rodney Mills, and Susan Mills-Diggle
Owners

233/235 University - Proposed Building to Reuse Existing Brick