Summary Title: Mings Site and Design Permit Extension

Title: Approval of Record of Land Use Action Approving a Request for Extension of a 2010 Site and Design Review Approval to May 2014 for the Hotel Project at 1700 Embarcadero Road (Mings Site)

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that Council approve the Draft Record of Land Use Action (RLUA, Attachment A) approving a one-year, final extension of Council’s April 12, 2010 Site and Design Review approval for the Ming’s hotel project located at 1700 Embarcadero Road.

Background

On November 4, 2009, in response to a recessionary based decline in development activity, Council adopted an ordinance (Ordinance 5061, Attachment F) allowing extensions of permits approved before June 10, 2010. Council’s adopted Extensions table is below on this page, with table footnotes following:
### Time Extensions for Valid Planning Entitlements

**Effective November 4, 2009**

Table 1 (Revised per COUNCIL action) Time Extension – Permit Life

<table>
<thead>
<tr>
<th>Permit Type</th>
<th>Current Code Requirements</th>
<th>Ordinance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Initial Permit Life</td>
<td></td>
</tr>
<tr>
<td>ARB, DEE, CUP, VAR, IR, HIE, NPE (no automatic for historic incl. potentially eligible)</td>
<td>1 year</td>
<td>1 year after allowed extension 1-year extensions by Director with findings GREEN BUILDING Up to 4 years unless associated with a Vesting Tentative Map</td>
</tr>
<tr>
<td>Site and Design Review (not automatic for historic)</td>
<td>2 years unless associated with a Vesting Tentative Map</td>
<td>0 1 year after allowed extension One extension by Council after PTC - one additional year GREEN BUILDING Up to 4 years unless associated with a Vesting Tentative Map</td>
</tr>
<tr>
<td>Planned Community (not automatic for historic)</td>
<td>Per development schedule</td>
<td>1 year after allowed extension One extension by Council after PTC - one additional year GREEN BUILDING Up to 3 years + timeline in development schedule</td>
</tr>
</tbody>
</table>

1. The ordinance applies to column one permit types valid from ordinance adoption through June 30, 2010.
2. Project applicants must apply for any extension (except automatic) prior to the permit expiration date.
3. Maximum permit life may be acquired through a combination of initial permit life, allowed extensions, additional extensions and automatic extension.

The proposed project received three discretionary permits: a variance allowing the building to vary from “build to” lines; a rezoning from Planned Community (PC) to Commercial Service with Design Review Combining District (CS(D)) by Ordinance and Site and Design review approval. In 2012, staff extended the project’s Variance approval allowing the building to vary from “build-to” lines. Council’s rezoning decision does not require an extension because it is not a PC. The Applicant is requesting an extension of its Site and Design Review Approval which was granted on April 12, 2010. Under Ordinance 5061, Site and Design Review Approval Extensions must be recommended by the PTC prior to Council approval. Council’s approval of the extension would result in a total permit life of four years, with commencement of construction by April 2014.
Existing Site and Context

The project site is located at the intersection of Embarcadero Road and East Bayshore Road. The project site is approximately 2.5 acres and contains a single 15,180 square foot restaurant occupied by Ming's Chinese Cuisine & Bar with associated parking and landscaping. Most of the existing site is paved or occupied by the 25 trees on the site. The site is surrounded by office properties on all sides and across Embarcadero Road and East Bayshore Road. All surrounding properties are zoned ROLM(E)(D)(AD), except for one adjacent Planned Community (PC) zoned property to the east. The Comprehensive Plan designation for the site is Service Commercial. The project site was rezoned to Commercial Service (CS)(D) by Council in April 2010. It had been rezoned previously from LM(D) to Planned Community (PC Ordinance 2378) in 1967 and revised by resolution number 2491 in 1969.

Project Description

The existing Ming’s building will be demolished and replaced with a four story building containing 117,814 square feet containing 147 guest rooms, a restaurant of approximately 5,602 square feet, a small amount of retail (87 square feet), a small gym (541 square feet), one level of underground parking, and a new surface parking lot and landscaping. The maximum height of the building is 50 feet. The building form steps up and back from the corner of Embarcadero Road and East Bayshore Road. Facilities for 166 parking spaces include 90 spaces in one level underground and 76 surface parking spaces, located in front of and around the sides of the building.

The hotel main entrance is accessed via East Bayshore Road and features a cantilevered porte-cochere. Visitors can also take a left when entering the site, to park in front of the restaurant entrance located closer to the intersection of Embarcadero Road and East Bayshore Road. This building corner will open into the central pool courtyard as the building height steps up and back. Garden terraces would be located above the second and third floors. Plan sets are provided to Councilmembers only.

Summary of Land Use Action:

In order to grant such an extension, the City Council must find that the project would not adversely affect public health or safety and would not substantially conflict with any applicable Zoning Code or Comprehensive changes that have been adopted by the City Council since the original application was deemed complete, and may otherwise adjust project conditions to address minor changes. These findings can be made as there have been no substantive zoning changes in this area. The applicant intends to move forward with hotel construction prior to the 2014 expiration of the extended Site and Design Review approval.
Planning and Transportation Commission Review

On March 5, 2013, the Planning and Transportation Commission unanimously (on a 7-0 vote) recommended that Council extend its Site and Design Review Approval one additional year. Meeting minutes are provided as Attachment B to this report.

Policy Implications

This is the only request that has been received, pursuant to Ordinance 5061, for extension of a Council Site and Design Review Approval and the only extension request that has required PTC and Council review and action. Other extensions of Director’s decisions have been approved at the Director’s level and have not required PTC review and Council action.

Comprehensive Plan

The new hotel and restaurant will support the Comprehensive Plan goals, which encourage private property owners to upgrade commercial properties in ways that will support the City’s economic base. The 2010 Council report cited Palo Alto Comprehensive Plan Program Goals L-71 (strengthen identity of important gateways) and Program T-57 (bike path and planting next to Embarcadero), and the 2010 RLUA also cited Goal L-1, Policy L-9, Policy T-1, Policy T-23, Policy B-2 and Goal B-3.

Resource Impact

The applicant will be required to pay development impact fees and other fees in place at the time of building permit issuance. This action does not result in payment of such fees at 2010 levels.

The project will yield the City additional net annual revenues in the form of property taxes, sales taxes, utility user taxes, and transient occupancy taxes, estimated in 2010 in the $570,000 to $697,000 range. One-time revenues would include (2010 estimated) impact fees of approximately $2,204,000.

On the expenditure side, the project’s additional hotel patrons will create additional demand for City services, but these will be offset by the developer impact fees and transient occupancy taxes mentioned above.

Timeline

The applicant notes that investors are poised to begin the project in 2013 and only needed to have the assurance of the extension to move forward.
Environmental Review

A Negative Declaration for this project was adopted by the Council on April 12, 2010.

Courtesy Copies

Stoecker and Northway Architects

Vicky and Wu-Chung Hsiang

Attachments:

- Attachment A: 1700 Embarcadero Road Record of Land Use Action (DOC)
- Attachment B: Planning and Transportation Commission Excerpt Minutes, March 5, 2013 (PDF)
ATTACHMENT A

DRAFT APPROVAL NO. 2013-____

RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO

LAND USE APPROVAL FOR 1700 EMBARCADERO ROAD: FILE

13PLN-00016, EXTENSION OF COUNCIL APPROVAL OF SITE

AND DESIGN REVIEW (Extension of Site and Design
Review Component of FILE 09PLN-00175)

(Stoecker & Northway Architect, Inc, APPLICANT)

On April 8, 2013, the Council approved the requested
Extension of its Site and Design Review Approval for a new four-
story hotel and restaurant, making the following findings,
determination and declarations:

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

A. On November 12, 2010, City Council approved the Site
and Design Review and Variance applications submitted July 29,
2009, by Stoecker & Northway Architects, Inc., on behalf of Wu-
chung Hsiang & Vicky Ching, for construction of a four-story hotel
and restaurant with one level of underground parking and associated
surface parking and landscaping (“The Project”) (Exhibit 1, Record
of Land Use Action 2010-02). A request for extension was filed
January 14, 2013, to extend the Site and Design Review Approval for
an additional, final year, in accordance with Ordinance 5061.

B. The Request for Extension of the Variance to “build-
to” requirements has been granted in accordance with Ordinance
5061.

C. The Planning and Transportation Commission reviewed
the extension request on March 5, 2013, and recommended approval of
the extension.

SECTION 2. Environmental Review. The project was
subject to environmental review under provisions of the California
Environmental Quality Act (CEQA). An Initial Study was completed, a
Draft Negative Declaration was prepared and circulated for this
project in accordance with the CEQA requirements, and a Notice of
Determination was filed at the County of Santa Clara following
Council action on the project applications. Topics discussed in the
review included aesthetics, air quality, noise, and traffic, and
expected impacts were noted as less than significant with
implementation of standard conditions of approval and state and
local requirements.
SECTION 3. Site and Design Review Findings

The following Site and Design Approval Findings were adopted by Council for the prior approval of this project:

1. To ensure construction and operation of the use in a manner that will be orderly, harmonious, and compatible with existing or potential uses of adjoining or nearby sites.

The project is designed for a hotel and related uses and incorporates a site layout that is comparable to the existing building and compatible with surrounding uses. Specifically, the hotel would be located on Embarcadero Road, adjacent to office and automobile sales facilities and the proposed building is situated on the site in a similar manner. City standards and regulations will help to ensure that the use, or operation, of the site would be conducted in a manner that is compatible with the existing uses located in the immediate area. During construction, it is expected that there would be temporary impacts to the area in terms of construction-related noise, dust/debris and traffic. These impacts would be addressed by applicable City construction standards, such as restrictions on hours of construction, the City’s noise ordinance, and the mitigation measures found in the draft Negative Declaration.

2. To ensure the desirability of investment, or the conduct of business, research, or educational activities, or other authorized occupations, in the same or adjacent areas.

This site is designated for Service Commercial land use in the Comprehensive Plan, and is proposed to be rezoned to the Service Commercial zone district. It is surrounded by one and two-story office buildings. The replacement of an existing single story restaurant building with a new four story hotel and restaurant should not reduce the overall functionality of the immediate area.

Hotel and restaurant uses are expressly permitted in the Palo Alto Municipal Code and are consistent with the Comprehensive Plan land use designation and help to support employment uses and revenue generation in the City. The proposed hotel location also provides easy access from State Highway 101.

3. To ensure that sound principles of environmental design and ecological balance shall be observed.

The project would replace a disturbed area on the site, which is currently developed with a restaurant and surface parking lot areas. The project would increase the number of trees on the site and provide for enhanced landscaping and open space and comply with the requirements in the Baylands Master Plan for compatibility with the Palo Alto Baylands. Green building features would be incorporated to achieve LEED Silver compliance. This application was subject to an environmental impact assessment (EIA), and it was
determined that, as detailed in the Negative Declaration, there will be no significant environmental impacts associated with the proposed development.

4. To ensure that the use will be in accord with the Palo Alto Comprehensive Plan.

The Comprehensive Plan designation is Service Commercial per the Palo Alto 1998 - 2010 Comprehensive Plan. The proposed project for rezoning from Planned Community to Service Commercial, and construction of a new hotel and restaurant is consistent with the land use designation. The project is also consistent with The Palo Alto Comprehensive Plan policies related to business and economics. The Comprehensive Plan encourages owners to upgrade or replace existing commercial properties so that these commercial areas are more competitive and better serve the community. The commercial properties could be redesigned to be more attractive and inviting for pedestrians. The applicable Comprehensive Plan policies are incorporated into the Draft Record of Land Use Action.

SECTION 4. Site and Design Approval Granted. Site and Design Approval is granted for the project by the City Council under Palo Alto Municipal Code Section 18.82.070, subject to the conditions of approval in Section ___ of this Record.

SECTION 5. Plan Approval.

The plans submitted for Building Permit shall be in substantial conformance with those plans prepared by Stoecker & Northway Architects, Inc. titled 1700 Embarcadero Road, consisting of ___ pages, dated _______, revised ____ , and received ______, except as modified to incorporate the conditions of approval in Section ___. A copy of these plans is on file in the Department of Planning and Community Development. The conditions of approval in Section ____ shall be printed on the cover sheet of the plan set submitted with the Building Permit application.

SECTION 6. Conditions of Approval.

The same conditions of Council approval in Exhibit 1 shall apply to the extended Approval (Exhibit 2).

SECTION 7. Term of Approval.

Site and Design Approval. In the event actual construction of the project is not commenced within one years of the date of council approval of the requested extension, the approval shall expire and be of no further force or effect, pursuant to Palo Alto Municipal Code Section 18.82.080 and Ordinance 5061.

SECTION 8. Indemnity Clause
PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

APPROVED:

_________________________
City Clerk

____________________________
Director of Planning and Community Environment

APPROVED AS TO FORM:

_________________________
Senior Asst. City Attorney

PLANS AND DRAWINGS REFERENCED:

1. Those plans prepared by _____ titled “______”, consisting of ___ pages, dated _____, (revised _____), and received _____.

Add this
Chair Martinez: Ok. We shall resume the public hearing of Planning Transportation Commission (PTC) and first we’ll start with closing the public hearing on the last item. Let’s open the public hearing on Item Number 3. And this is, I have to recite it now; request for extension of the Council approval of site and design review approval for a hotel at 1700 Embarcadero Road. We’ll begin with a staff report.

Amy French, Chief Planning Official: Yes, thank you. Amy French, Chief Planning Official, once again. Staff does recommend Commission recommend Council approval of the draft Record of Land Use Action, Attachment A. This would allow a one year final extension of the Council’s April 12, 2010 site and design review approval for the Ming’s Hotel project at 1700 Embarcadero Road.

The extension would be in accordance with the ordinance that Council adopted on November 4, 2009, in response to a recessionary based decline in development activity. This ordinance, Ordinance 5061 is Attachment F to the report. The table was included in the body of the report to show you the range of projects, planning entitlements that could be extended through this ordinance. So it allowed for extension of permits approved before June 10, 2010. As you can see we’re near the sunset of this ordinance because this approval that’s being requested to be extended was April of 2010. So we only have a couple of more months where this ordinance is in effect.

So the applicant does have a presentation and there are project plans available, but there are no changes to the projects the applicant will be presenting. You can see the map on the screen there shows the site and the surrounding area context. And staff’s available for questions. So let me call up the applicant’s presentation.

Commissioner Keller: Can I do a point of order please?

Chair Martinez: Commissioner Keller.

Commissioner Keller: Yes. Is this a quasi-judicial item? And if so should we declare any contacts?

Cara Silver, Sr. Assistant City Attorney: Yes, thank you. Cara Silver, Senior Assistant City Attorney. I was going to wait until the end of staff’s presentation and then it would be appropriate to do disclosures. As it is a quasi-judicial item.

Chair Martinez: Fine.

Commissioner Keller: Thank you.
Chair Martinez: Ok, before you begin John. We are as a quasi-judicial item Commission is required to disclose ex-parte communications. And Commissioner Keller, yes?

Commissioner Keller: Yes. I have seen Vicky Cheng at Ming’s several times and she asked about this project and I didn’t talk about the substance of the project, but I did say that it was possible to get an extension and she should talk to the staff about that.

Chair Martinez: So if we’ve eaten at Ming’s. Anyone else? Yes, Commissioner Alcheck.

Commissioner Alcheck: My assumption just off what our Planning staff said is that this is going to be a very similar presentation to the last one. I’m wondering if we anticipate having a lengthy discussion about this project with respect to the extension or if maybe we can forego the representation of the exact same design discussion because this is not, this is sort of just an extension of a permit. I’m wondering if we need to go through that. I’m curious to know if people anticipate having a long discussion?

Chair Martinez: As part of disclosure the applicant did meet me outside and said that he’s amenable to just requesting the extension and not making a presentation. It was at our pleasure which we prefer. And related to that I was going to ask our counsel what’s our purview here?

Ms. Silver: This has been noticed for a very limited purpose. It’s just a request to extend the entitlement permit and the applicant is not asking for any design plans or any additional entitlements at this stage. It’s just a very limited area of inquiry.

Chair Martinez: So can the Commission request changes of the applicant or not? I’m not saying we’re going to do that, I’m just trying to follow with what Commissioner Alcheck has said and kind of limit what we’re focused on.

Ms. Silver: It hasn’t been noticed for any design changes. You can probably put some conditions on the extension request that are not substantive in a way that would elicit public testimony. So we would want to comply with the Brown Act in terms of noticing the public and allowing the public to come out and talk about substantive changes to the overall project. But there could be some sort of ministerial administrative types of conditions that you could consider under this item.

Chair Martinez: Ok and the applicant now. You have up to 30 seconds.

John Northway, Stoecker & Northway: John Northway, Stoecker & Northway. I’m happy to say nothing more except we would like the extension because the financing world has gotten better. And I’m happy for you to vote and we can all go home.

Chair Martinez: Ok Commissioners do you have questions? Commissioner Panelli.

MOTION

Commissioner Panelli: I don’t see anything particularly controversial with this. I don’t think we’ve had any substantive change. Well there’s no change in the project. I don’t think there’s any change in sort of how we want to plan the City. Extending this for another year to me, this
seems almost like a consent vote type item. So I’m going to make the Motion now to, I’m going
to move that we approve the extension.

SECOND

Chair Martinez: Recommend approval of the extension? Ok, we have a Motion to recommend
approval of the one year extension and a second by Vice-Chair Michael. I take it you don’t want
to speak to this Motion, you’re ready to vote?

Commissioner Panelli: The only thing I’m going to say is if anybody’s opposed to this I want to
hear why.

Chair Martinez: Commissioner Alcheck, do you take that challenge? Ok. I did have some
questions of the applicant. What happens after a year? Things do take time. Is there a Plan B?

Mr. Northway: Well in talking with Amy if the year, the year extension as I read in here is final.
And I believe that we would, everything that I’ve been told by the owner is that he has two
people who are ready to finance him and basically they just want to make sure the City approval
is intact. We’re ready to start the construction documents. If for some reason that doesn’t
happen then it’s my understanding we’d have to go back through the site and design process
again, which we don’t want to do. We’re incredibly optimistic that this is going forward. But
you know the world out there and God knows what the sequester will do. So we’re cautiously
optimistic.

Chair Martinez: Ok, before you sit down. You’re aware of the golf course project.

Mr. Northway: Only what I’ve read in the newspaper.

Chair Martinez: Right. And so at a previous hearing the Commission has suggested the hotel at
Ming’s would be a great addition to what’s being planned for the golf course and I think we all
support that. Would that suggest any kind of changes or anything that if you were starting
planning now you would do differently or you believe it just sort of all falls into place?

Mr. Northway: I don’t think it would cause us to make any changes, no. Everyone’s happy with
the design and we’re just getting ready to execute it.

Chair Martinez: Ok, very good. It was really more informational for us than questioning the
logic of it.

Mr. Northway: I’m sure a better golf course might bring in more people to occupy the hotel so
that would be a good thing.

Chair Martinez: Yes. Maybe you don’t have enough rooms. Anyone else, comments?
Commissioner Keller, yes?

Commissioner Keller: So first of all this is exactly the kind of reason why the ordinance that was
for allowing extensions was put into place in 2009 so it’s good to see that this is being used to
good effect. I vaguely remember this as being a hotel that people would stay at for some time
and I’m wondering if there, what we decide in terms of whether the units would qualify or not
towards our, not Below Market Rate (BMR), but towards our Association of Bay Area Governments (ABAG) housing requirements. Are there kitchens or anything like that or what do they qualify?

Mr. Northway: I believe in the language of how this was approved, people can’t stay there for more than 30 days. If they’re there for more than 30 days it questions whether you can collect the hotel occupancy tax. So they are restricted to not, no one can stay for more than 30 days.

Commissioner Keller: Thank you.

Mr. Northway: So I don’t think it would help out with the housing allocation. Amy’s shaking her head, so I think I remembered correctly.

Aaron Aknin, Assistant Director: That is correct. They don’t qualify as a unit under the state, or a housing unit under the State code.

Commissioner Keller: Ok, thank you. Just figured I’d check with that. Thank you.

Chair Martinez: We’ll give them concessions.

Ms. Silver: By the way we did try and HCD rejected that argument, but we tried.

VOTE

Chair Martinez: Anyone else? Ok, we have a Motion to recommend approval of the extension, the one year extension and it’s been seconded by Vice-Chair Michael and all those in favor of the Motion say aye (Aye). Ok. The Motion passes unanimously and thank you all very much. And let me just add for our Assistant Planning Director this doesn’t mean you can add a fourth agenda item last time. We were lucky.

MOTION PASSED (7-0)