



TO: HONORABLE CITY COUNCIL

FROM: ED SHIKADA, CITY MANAGER

DATE: JUNE 24, 2019

SUBJECT: **AGENDA ITEM NUMBER 35 - PUBLIC HEARING / QUASI-JUDICIAL.** 1700 & 1730 Embarcadero Road [18PLN-00186]: Request for a Zoning Map Amendment, Site and Design Review & Design Enhancement Exception to Allow the Demolition of an Existing 18,000 Square Foot Vacant Restaurant Building and a 15,700 Square Foot Audi Service Building and Construction of two new Automobile Dealerships Totaling 84,900 Square Feet. The Zoning Map Amendment Would Change the Zoning Designation From CS(D) and PC to CS(D)(AD) for both parcels. Environmental Assessment: An Initial Study/Mitigated Negative Declaration was Circulated for Public Comment From March 15, 2019 to April 22, 2019. The Planning and Transportation Commission Reviewed and Made a Recommendation for Approval on March 27, 2019.

Following release of the subject staff report for the June 24th packet, the City Council began receiving emails and heard from residents during oral communication on June 17th expressing concern about the process that resulted in this application being presented to the City Council for review. While discussed somewhat in the Council report, this memorandum provides further detail regarding City Code requirements and the process followed here.

The application for a new dealership on the subject property requires a discretionary application called "site and design review." The process for reviewing this type of application is set forth in Palo Alto municipal code (PAMC) section 18.30(G).055. Applications for site and design review are first reviewed by the Planning and Transportation Commission (PTC). If the PTC recommends against the project, the matter is scheduled for review before the City Council. If the PTC recommends project approval, the application is presented to the Architectural Review Board (ARB). The ARB then makes a recommendation to the City Council on the plans and elevation drawings based on findings set forth in the ARB chapter of the zoning code (PAMC 18.76.020(d)).

The PTC held a public hearing¹ on this project on March 27, 2019. The Commission voted 4-3 in favor of the project. Individual commissioners not voting in favor of the motion to recommend project approval offered one or more of the following dissenting remarks:

- The project is out of scale with the Baylands area;
- The last three applications reviewed by the City to redevelop the subject property has included zoning amendments and that this is not an effective use of zoning;
- The project adds vehicle trips to one of the more congestion intersections in the City;
- The requested zoning amendment is not appropriate for the Baylands area;
- Concern regarding the project's consistency with the Baylands Master Plan and the City's overall sustainability objectives.

During their deliberation, the Commission also discussed lighting and permitted land uses allowed in the service commercial (CS) zoning and whether a different zoning classification was more appropriate near the Baylands.

The ARB reviewed the project on three occasions, including September 20, 2018²; April 4, 2019³; and June 6, 2019⁴.

The ARB similarly discussed the project with respect to the Baylands Master Plan⁵, asked questions about project floor area and deliberated on the overall size and mass of the building. At its third meeting on the project, the ARB's comments focused on building color; parapet material; street trees; curb ramps; landscaping, including a greenscreen wall along rear building elevation; and, perimeter fencing. At the conclusion of their last meeting, the ARB made a recommendation for a fourth meeting.

The zoning code describes the process for applications subject to architectural review, including site and design review.⁶ Section 18.77.070 provides for ARB review in three meetings, with the

¹ March 27, 2019 PTC Staff Report: <https://www.cityofpaloalto.org/civicax/filebank/documents/70015>

March 27, 2019 PTC Minutes: <https://www.cityofpaloalto.org/civicax/filebank/documents/71008>

² September 20, 2018 ARB Staff Report: <https://www.cityofpaloalto.org/civicax/filebank/documents/66721>

September 20, 2018 ARB Minutes: <https://www.cityofpaloalto.org/civicax/filebank/documents/67283>

³ April 4, 2019 ARB Staff Report: <https://www.cityofpaloalto.org/civicax/filebank/documents/70111>

April 4, 2019 ARB Minutes: <https://www.cityofpaloalto.org/civicax/filebank/documents/71282>

⁴ June 6, 2019 ARB Staff Report: <https://www.cityofpaloalto.org/civicax/filebank/documents/71733>

June 6, 2019 ARB Minutes: Not Available

June 6, 2019 ARB Video: <https://youtu.be/iniJm6s27DY?t=180>

⁵ Palo Alto Baylands Master Plan: <https://www.cityofpaloalto.org/civicax/filebank/documents/14882>

⁶ Section 18.77.070(a) states: "The following applications are subject to the review processes set forth in this section:...(1) Any major or minor project requiring architectural review approval, as set forth in Section 18.76.020

intent of providing a streamlined application review process. The code authorizes the planning director to make a decision on a project in advance of the ARB recommendation if it is not made in three meetings. Specifically, the code states: "If the architectural review board continues a minor project more than once, or a major project more than twice, the director may make a decision on the application prior to receiving the final recommendation of the board." (PAMC section 18.77.070(d)(4).) While the procedures for site and design use the word "shall" in conjunction with the ARB's review, the two sections must be read together, or "harmonized," with the result that Section 18.30(G).055(c) is best understood to provide for a mandatory referral to the ARB, where the review proceeds according to the detailed procedures in Section 18.77.070.

After three meetings with the ARB and for a number of reasons explained below, a decision was made to forward this application to the City Council before scheduling further meetings with the ARB.

While individual Board members may not have been prepared to make a recommendation with respect to the project's compliance with applicable findings on June 6th, the direction to the applicant at the third meeting focused mostly on design elements that would not have a material effect to the overall building size, mass or placement on the site. Outstanding concerns could be addressed through conditions of approval that require further ARB review, and a decision on these outstanding issues would be appealable to the City Council.

Concerns expressed regarding the overall mass of the building is something that has been discussed at the PTC and ARB and presented as a policy discussion by staff in its reports to these boards/commissions and to the City Council in the June 24th report. At issue is whether portions of the new car inventory storage constitute floor area or not. The tallest building proposed in this development is 43 feet tall to the top of the parapet. The showroom portion of this structure has an open floor plan design with a vaulted ceiling. Around the periphery of this space are some walkways and rooms that make up portions of a second floor, which counts towards project floor area. However, within the one-story volume of the building is a multi-level automated vehicle parking lift system that moves new car inventory within this space and ultimately to the ground floor showroom. Applying a plain reading standard to the municipal code regulations, staff has concluded that the puzzle lift does not count toward floor area because it is not a floor of the building. Staff recognizes that the City Council may have a different interpretation of this code provision on floor area, and that Council's interpretation will govern. Because determination on this issue may impact the overall size and mass of the project, getting resolution to this aspect of the project and overall compliance with applicable policy documents and zoning requirements is

(Architectural Review); (2) Any project requiring a design enhancement exception; and (3) Other permits and approvals for which such review process is required by the provisions of Title 2, Title 12 or Title 18."

an appropriate next step. Affording the ARB another meeting to comment on exterior design features does not resolve the possible code interpretation issue that may impact the building's overall size and mass.

Moreover, staff considers this action to be appropriate in the context of the municipal code regulations that encourage a streamlined review, and to extent feasible, a predicable process. If the City does not apply the three meeting procedure to site and design applications, there would be no limit to the number of meetings the ARB could request. While a fourth meeting is not unreasonable under certain circumstances, the benefit to hearing the Council's direction on the broader code interpretation issues concerning this project in advance of further ARB meetings is believed by staff to be consistent with City processes. Depending on Council direction, it may also focus the Board's review and enable a timelier resolution to the outstanding design components.

The City Council may decide to proceed along the recommended path and take an action on the project to approve with conditions or direct staff to prepare denial findings. The Council may also choose to defer action and remand the matter back to the ARB. Any of these actions are available to the City Council and permissible in accordance with the municipal code.



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