



DEPARTMENT OF COMMUNITY DEVELOPMENT
PLANNING DIVISION

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PLANNING COMMISSION STAFF REPORT

Agenda Date: February 14, 2017

SUBJECT

Modification to a Use Permit (29-U-84) including consideration of removal of a deed restriction that limits the use of the property. (Application No. M-2017-01; Applicant: Keith Fichtner (Kingsmill Group); Owner: 19900 Stevens Creek Blvd. LLC; Location: 19900 Stevens Creek Boulevard; APN: 369-05-038)

RECOMMENDED ACTION:

That the Planning Commission approve the Modification (M-2017-01) in accordance with the draft resolution (Attachment 1).

DISCUSSION:

Application Summary:

Modification to a Use Permit (29-U-84) to remove a deed restriction that limits the use of the property to a retail furniture store.

Project Data:

General Plan Designation	Office/Commercial/Residential
Special Planning Area	Central Stevens Creek Sub-area of the Heart of the City Special Planning Area
Zoning Designation	P (CG, Res)
Project Building Area	26,239 Square Feet (No change)
Project Consistency With:	
General Plan	Yes
Zoning	Yes
Environmental Assessment	Categorically Exempt

Background:

The project site is located at the southern side of Stevens Creek Boulevard, between South Blaney Avenue and South Portal Avenue. The property is located within the Central Stevens Creek Sub-area of the Heart of the City Special Planning Area. The site is surrounded to the north by primarily commercial and office uses (Cort Furniture, Pacific Workplaces, Travigne retail), to the south by single family residential uses, to the east by a condominium complex (Portal Plaza) and to the west by commercial uses (Arya Restaurant and a gas station.)

A 1,700 s.f expansion of the existing building was approved on November 30, 1984 (29-U-84); however, since there was a deficiency in the number of off-street parking spaces required for a General Commercial use as required by the City's Parking Ordinance, conditions of approval were added to restrict the use to furniture retail operators and to provide at least 78 parking spaces (Conditions 18 and 19 of Resolution 2600) (See Attachment 2). The conditions were required because it was determined that a furniture use, which includes warehousing of furniture, does not generate the same parking demand as other types of General Commercial operations. The deed restriction was appropriately recorded prior to final occupancy of the building (Attachment 3).

Applicant Request(s):

At this time, Keith Fichtner, representing the Kingsmill Group, has submitted an application requesting removal of the previous condition of approval requiring the property owner to record a deed restriction on the parcel limiting the use to furniture retail sales (Attachment 4).

Analysis:

Scandinavian Furniture is the sole tenant of the building and will be vacating the site shortly. The deed restriction on the property limits the marketability of the site to only furniture uses. In order to allow another type of general commercial operation, the deed restriction needs to be removed. Removal of the deed restriction will require compliance with parking requirements, in accordance with Cupertino Municipal Chapter 19.124: *Parking Regulations*.

The property owner received approval of Architectural and Site Approval (ASA-2016-13) and Tree Removal Permit (TR-2016-35) to allow parking lot modifications, landscape improvements, and the removal and replacement of twenty-one protected development trees to increase the parcel's parking count to conform to retail standards at an Administrative Hearing on November 10, 2016 (see Table below).

	No. of spaces
Required for General Commercial (1/250sf) uses	105
Current Spaces on site	78
Proposed/Approved (ASA-2016-13, TR-2016-35)	107

Since the recently approved plans provide the adequate amount of parking for general commercial uses, the proposed modification to the Use Permit may be approved. However, since the improvements associated with the permits approved in 2016 have not been completed, the

draft resolution includes a condition of approval that requires completion of the improvements and final inspections for the permits prior to removal of the deed restriction.

If the property owner applies for other commercial uses, he/she will have to comply with Cupertino Municipal Chapter 19.124: *Parking Regulations* in addition to receiving appropriate permits for the change of use, if required.

It should be noted that the applicant has applied for a General Plan Amendment Authorization (GPAAuth-2016-01) to allow incubator or medical office uses at the site. The item will be heard by the City Council on February 21, 2017. Should the Council authorize staff to proceed working on the project, the subsequent applications including related parking requirements will be presented to the Planning Commission and City Council at a future date.

ENVIRONMENTAL ASSESSMENT:

The development permit is categorically exempt from the California Environmental Quality Act (CEQA) per sections 15301 (Existing Facilities) because the proposed modification occurs within an existing facility that is consistent with the General Plan.

PUBLIC NOTICING & OUTREACH:

The following table is a brief summary of the noticing done for this project:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none">▪ Site Signage (<i>14 days prior to the hearing</i>)▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>)▪ Notices mailed to property owners adjacent to the project site (300 foot) (<i>10 days prior to the hearing</i>)	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (<i>one week prior to the hearing</i>)▪ Posted on the City of Cupertino's Web site (<i>one week prior to the hearing</i>)

PERMIT STREAMLINING ACT:

This project is subject to the Permit Streamlining Act (Government Code Section 65920 – 65964). The City has complied with the deadlines found in the Permit Streamlining Act.

Project Received: January 5, 2017

Deemed Complete: January 24, 2017

Since this project is Categorically Exempt, the City has 60 days (until March 24, 2017) to make a decision on the project. The Planning Commission's decision on this project is final unless appealed within 14 calendar days of the decision.

CONCLUSION

Staff recommends approval of the modification since the conditions of approval address all concerns related to the development and all of the findings for approval of the modification, consistent with Chapter 19.168 of the Cupertino Municipal Code, may be made.

NEXT STEPS

All approvals granted by the Planning Commission shall go into effect after 14 days. Should the project be approved, the Planning Commission's decision on this modification is final unless an appeal is filed within 14 calendar days of the date of the mailing of the decision.

Upon approval, the applicant will be able to submit building permit drawings to enable construction to commence. These approvals expire on February 13, 2019, at which time the applicant may apply for a one-year extension.

Prepared by: Gian Paolo Martire, Associate Planner

Reviewed by: Piu Ghosh, Principal Planner

Approved by: Benjamin Fu, Assistant Director of Community Development

Aarti Shrivastava, Assistant City Manager

ATTACHMENTS:

- 1 – Draft Resolution for M-2017-01
- 2 – Use Permit Resolution No. 2600 for 29-U-84
- 3 – Deed Restriction No. 8605849
- 4 – Letter from Keith Fichtner
- 5 – Approved Site Plan (ASA-2016-13, TR-2016-35)