



## COMMUNITY DEVELOPMENT DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Meeting: February 16, 2021

#### Subject

Consider and act on the proposed modification to an existing Use Permit (U-2004-01) to amend the conditions of approval to allow 100% non-retail commercial uses where only 50% are allowed. (Application No(s): M-2020-02; Applicant(s): Catherine Chen; Location: 20130 Stevens Creek Blvd., APN(s): 369-56-001)

#### Recommended Action

The Planning Commission recommends that the City Council approve the project in accordance with the draft resolution (Attachment A).

#### Discussion

#### **Project Data:**

<b>General Plan Designation:</b>	Commercial / Office / Residential
<b>Special Planning Area:</b>	Heart of the City Specific Plan (Central Stevens Creek Boulevard subarea)
<b>Zoning Designation:</b>	P(CG, Res)
<b>Retail/Commercial Building Square Footage:</b>	2,395 Square Feet
<b>Project Consistency with:</b>	
General Plan:	Yes
Zoning:	Yes
Environmental Assessment:	Categorically Exempt per Section 15301 (Class 1) of the California Environmental Quality Act (CEQA). Existing Facilities consisting of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

**Background:**

On March 1, 2005, the City Council approved a Use Permit (U-2004-01) allowing the construction of a mixed-use development (a.k.a. Adobe Terrace) consisting of 2,395 square feet of retail space and 23 residential condominiums, located at 20128 Stevens Creek Boulevard. The property is located in the Central Stevens Creek Blvd subarea of the Heart of the City (HOC) Special Area. The project was approved with a condition that limited the commercial spaces to retail uses. (See Attachment B, City Council Action Letter for U-2004-01, dated March 3, 2005, for the approved conditions.)



**Figure 1 Project Site and Surrounding Land Uses. Blue outline area is the Commercial portion within the Adobe Terrace Development.**

Subsequently, on October 6, 2009, upon a request from the current property owner, the City Council approved a modification (M-2009-07) to the Use Permit to allow the commercial portion to be 50% commercial office and 50% retail, but only as long as the current property owner owned the property. The conditions of

approval require the use of the space to revert to 100% retail use, if property ownership changes. (See Attachment C, City Council Action Letter for M-2009-07, dated October 12, 2009, for the conditions of approval.)

The City Council placed this requirement on the commercial portion of the mixed-use property due to the diminished presence of commercial uses, particularly since the prior use for the site was retail commercial - Adobe Lounge Restaurant. Placement of residential uses upon formerly retail/commercial sites was considered a concern due to loss of sales tax and loss of services to the community.

The applicant, Catherine Chen, located her State Farm Insurance office in the remaining Commercial Office Space while the retail space was leased by Max Muscle, a retail health food store, until 2015 and has since been vacant. Ms. Chen is now requesting that City

Council modify the Use Permit (U-2004-01) a second time to amend the conditions of approval to allow non-retail commercial uses where only 50% is currently allowed and to remove the language which reverts the site back to retail when ownership changes. This request includes allowing both units within the building to be subject to only the limitations of the CG Ordinance and the Heart of the City Specific Plan without being further limited by the conditions of approval of the development, in perpetuity.

Since the Council had originally expressed concern related to the issue and placed the condition requiring the space to revert to retail use upon a change in ownership, the final decision maker on this application will be the City Council, upon recommendation of the Planning Commission.

#### Planning Commission Review

The proposed modification was presented to the Planning Commission at its Regular meeting on January 26, 2021. The Commission received public comments, reviewed the application, as well as the staff report and presentation, and concluded that the proposed modification could be supported. The Planning Commission recommended that the City Council approve the proposed modification with a 4-0-1 vote (absent – Saxena) with Resolution No. 6916 (Attachment D).

#### **Analysis:**

The City has consistently supported commercial projects by requiring uses that would enhance and support quality shopping experiences and healthy retail environments. The City of Cupertino's General Plan encourages uses in the Central Stevens Creek Boulevard Subarea to be a mix of commercial, retail, commercial office, and that the ground floor of buildings along Stevens Creek Boulevard to be activated with pedestrian-oriented, active uses including retail, restaurants, and entries. Further, the Heart of the City Specific Plan (HOC) mandates that "uses that do not involve the direct retailing of goods or services to the general public shall be limited to occupy no more than 25% of the total building frontage along Stevens Creek Boulevard and/or 50% of the rear of the building." This underscores the importance that the City's long-range planning and zoning documents have placed on the protection of retail, commercial, and service uses that enable direct contact with the general public.

Section 1.01.020 (A) of the HOC states that all permitted and conditional uses in accordance with the Zoning Ordinance regulations of the City's General Commercial (CG) zoning district are allowed subject to the direct retailing requirements discussed above. According to the Chapter 19.60 of the Zoning Ordinance, General Commercial (CG) uses include the following:

1. *Retail businesses* (i.e., restaurants, apparel shops and variety stores)

2. *Professional offices* (not more than 25% of a shopping center)
3. *Commercial offices* (i.e., financial institutions, insurance and travel agencies)
4. *Personal service establishments* (i.e., beauty shops and message services)

The CG zoning district and the HOC do not have any limitations on commercial offices, and personal services as they provide direct services to the general public. However, the Use Permit (as modified in 2009) would not allow any personal services in either of the two units within the existing commercial portion of the project, nor would it allow a commercial or professional office within the retail half.

Ms. Chen has submitted justification of the modification in two letters, one submitted by Richard Abdallah, Esq. of Abdallah Law Offices dated October 20, 2020 (Attachment E) and the other by Sean O'Carroll, Senior Managing Director, Newmark Knight Frank, on November 2, 2020 (Attachment F). These letters state that the modification request is warranted for several reasons, including but not limited to the following:

- The retail market has gone through a significant transformation currently, with obstacles that include emergence of e-commerce, the trend toward downsizing of retail space, escalating occupancy costs, regulations and increased minimum wage.
- Retailers look to locate in areas where there is a “synergy” between uses. These retailers look to locate next to other retailers who bring in customers daily with the hope that these costumers will cross shop. This is a standalone building surrounded by residential uses and a title company.
- Although conforming to the City’s Parking Ordinance, there are only nine (9) parking spaces plus one (1) ADA space servicing 2,388 sf of “retail space”, of which three (3) are in the underground parking garage shared with the condominiums. This has dissuaded retail users, particularly restaurant uses. (Attachment G)
- Retailers look for convenient, easy access to a store. The subject location does not have left run egress or ingress which further reduces the pool of potential tenants.

Considering the difficulties of situating retail mid-block on this portion of Stevens Creek Boulevard, and for the reasons stated above, Staff is in general agreement that narrowing the uses to retail only for 50% of the building limits potential commercial tenants which would otherwise be in conformance with the HOC.

### *Environmental Review*

The project is categorically exempt from the requirements of the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.) ("CEQA"), per Section 15301 (Class 1) Existing Facilities consisting of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

### Public Outreach and Noticing

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

<b>Notice of Public Hearing, Site Notice &amp; Legal Ad</b>	<b>Agenda</b>
<ul style="list-style-type: none"><li>▪ Site Signage (<i>14 days prior to the hearing</i>)</li><li>▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>)</li><li>▪ 37 public hearing notices mailed to property owners within 300 feet of the project site (<i>10 days prior to the hearing</i>)</li></ul>	<ul style="list-style-type: none"><li>▪ Posted on the City's official notice bulletin board (<i>one week prior to the hearing</i>)</li><li>▪ Posted on the City of Cupertino's website (<i>one week prior to the hearing</i>)</li></ul>

### Public Comment

Three letters of support have been received as of the date of production of this staff report (February 5, 2021). See Attachment H.

### Fiscal Impacts

Potential loss of a sales tax revenue business.

### Sustainability Impacts

The proposed project would not conflict with the City's Climate Action Plan (CAP).

### Conclusion

As stated previously, because of the difficulty of the site and the changing nature of retail, Staff is in general agreement that limiting uses to retail only for 50% of the building eliminates potential commercial tenants which would otherwise be in conformance with the HOC. However, the City Council had in the original approval, as well as the subsequent modification, made an explicit point that the project site shall retain a retail component, if not now, but if/when the owner/occupier, Ms. Catherine Chen, transfers ownership of the building. The General Plan, specifically Policy LU-8.2 states "Encourage land uses that generate City revenue" and Policy LU-17.1 states that "ground floor of

buildings along the street should be activated with pedestrian-oriented, active uses including retail, restaurants, entries, etc.” Many of the permitted uses in the General Commercial (CG) zoning and HOC, such as a travel agency or hair stylist, would not be considered active uses. Therefore, the City Council could in the alternative deny the modification because the original intent of the Use Permit closely aligned with the General Plan’s vision of Stevens Creek Boulevard.

However, the Planning Commission discussion and subsequent conclusion was that the application can be supported considering the evidence provided by the applicant.

#### Next Steps

The City Council’s decision will be final unless reconsidered within 10 days of the decision. The applicant may apply for building permits at that time.

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Reviewed by: Piu Ghosh, Planning Manager

Albert Salvador, Acting Director of Community Development

Approved for Submission by: Dianne Thompson, Assistant City Manager

#### **ATTACHMENTS:**

- A. Draft Resolution approving the Use Permit Modification (M-2020-002)
- B. City Council Action Letter for U-2004-01, dated March 3, 2005.
- C. City Council Action Letter for M-2009-07, dated October 12, 2009.
- D. Planning Commission Resolution No. 6916
- E. Letter by Richard Abdallah, Esq. of Abdallah Law Offices dated October 20, 2020
- F. Letter by Sean O’Carroll, Senior Managing Director, Newmark Knight Frank, dated November 2, 2020
- G. Floor and Site Plan
- H. Public Comments