



City of Ketchum
Planning & Building

IN RE:)	
)	
400 East Ave Offices)	KETCHUM PLANNING AND ZONING COMMISSION
Conditional Use Permit)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
Date: August 8, 2023)	DECISION
)	
File Number: P22-069)	

PROJECT: 400 East Ave Office

APPLICATION TYPE: Conditional Use Permit

FILE NUMBER: P22-069

REPRESENTATIVE: Rich Childress, Point Architects (Architect)

OWNER: East Ave. Investment Properties, LLC

LOCATION: 400 East Avenue – (400 East Avenue Condo Unit 1 21% Commercial and Condo Unit 2 7% Commercial; Ketchum Townsite: Lot 1, Block 45)

ZONING: Community Core – Subdistrict 1 – Retail Core (CC-1)

OVERLAY: None

Regulatory Taking Notice: Applicant has the right, pursuant to section 67-8003, Idaho Code, to request a regulatory taking analysis.

RECORD OF PROCEEDINGS

The City of Ketchum received the application for a Conditional Use Permit on December 8, 2022. Following receipt of the application, staff routed the application materials to all city departments for review. The application was deemed complete on January 24th, 2023. All department comments have been addressed through applicant revision of project plans or were discussed by the Planning & Zoning Commission (the “Commission”).

A public hearing notice for the project was mailed to all owners of property within 300 feet of the project site and all political subdivisions on March 8, 2023. The public hearing notice was

published in the Idaho Mountain Express on March 8, 2023. A notice was posted on the project site and the city's website on March 21, 2023. The project was heard at the March 28, 2023 meeting of the Commission. After considering staff's analysis, the applicant's presentation, and public comment, the Commission denied the Conditional Use Permit application with a vote of 5-0.

BACKGROUND

The Applicant is requesting a Conditional Use Permit (CUP) to establish a private office space in two of the ground floor units in the building located at 400 East Avenue (the "subject property"). The subject property sits at the corner of East Avenue & 4th Street with nearby businesses and locations including Atkinson's Market, Town Square, coffee shops, restaurants, retail and clothing shops. The existing building received design review approval on November 13th, 2001 and was constructed in 2003. As originally approved and constructed, the building has two commercial and one residential unit on the ground floor, two residential units on the second floor, and one residential unit on the third floor for a total of two commercial units and four residential units. Today, the ground floor commercial spaces are vacant.

The subject property is zoned Community Core Subdistrict 1 – Retail Core (CC-1), which allows "Office, business" with ground floor street frontage only through the approval of a Conditional Use Permit. The Ketchum Municipal Code defines "Office, business" as:

"Office, business: An establishment wherein the primary use is the conduct of a business or profession including, but not limited to, accounting, design services, computer software, information systems, engineering, insurance, legal services, management and administration, organization and association offices, psychology, real estate, travel and medical offices. Medical care facilities and hospitals are not included in this definition."

As outlined in the cover letter as part of the project plans, the proposed office space is intended to be a private office space. If approved, the proposed space would consist of multiple office space units, a shared conference/break area and a storage room.

Staff reviewed the application for conformance with the City of Ketchum's zoning regulations including but not limited to uses permitted, parking, and dark skies. During department review, staff asked for additional information regarding the proposed uses to occur within the ground floor suites. The applicants response to the request for additional information was included as an attachment to the staff report. Staff also reviewed the application for conformance with the conditional use permit criteria outline in Section 17.116.030, including conformance with the 2014 Comprehensive Plan, of the Ketchum Municipal Code. Based on review of the proposed application, staff does not believe the proposed office space meets the conditional use permit criteria and does not recommend approval of the application. The application proposes a ground floor private office use that would not contribute towards the goals of the

Comprehensive Plan regarding downtown vibrancy and creating a pedestrian friendly environment.

FINDINGS OF FACT

The Commission, having reviewed the entire project record, provided notice, and conducted the required public hearing, does hereby find that the project does not conform to all applicable standards and criteria as set forth in Chapter 17.116 – *Conditional Uses* and Title 17 – *Zoning Regulations*. The Commission discussed the project’s conformance with the conditional use permit criteria and whether the proposed office space was contextually appropriate. The Commission concurred with staff’s review and found the project to not be in conformance with the conditional use permit criteria. Therefore, the Commission does hereby make and set forth these Findings of Fact, Conclusions of Law, and Decision as follows:

FINDINGS REGARDING CONDITIONAL USE PERMIT CRITERIA

Conditional Use Requirements				
EVALUATION STANDARDS: 17.116.030 and § 67-6512 of Idaho Code				
A conditional use permit shall be granted by the commission only if the applicant demonstrates the following:				
Compliance and Analysis				
Yes	No	N/A	City Code	City Standards and <i>Staff Comments</i>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17.116.030(A)	The characteristics of the conditional use will not be unreasonably incompatible with the types of uses permitted in the applicable zoning district.
			Finding	<i>The Community Core (CC) Zone District is divided into two subdistricts, Retail Core (CC-1) & Mixed Use (CC-2) Subdistricts. The Retail Core intends to be the community’s primary shopping district and provide ground floor storefronts which create an active pedestrian-friendly environment. The Mixed-Use Subdistrict includes many of the same uses seen in the Retail Core but the two subdistricts differ when it comes to office space. While office space is permitted by right in all portions of a building in the Mixed-Use Subdistrict, the Retail Core requires a conditional use permit for office space that is on the ground floor and has street frontage. As further discussed in Criteria 5, office is identified as an appropriate use on upper floors of buildings within the Retail Core land use category. The proposed office space is located on the ground floor with frontage on East Avenue & 4th Street, both highly used pedestrian corridors within Ketchum’s downtown. Frequently visited pedestrian uses in the immediate area include Atkinson’s Market, Town Square, restaurants, coffee shops, and multiple retail and clothing stores making the area a very active pedestrian hub. Other uses which are permitted in the Retail Core include convenience stores, daycare centers, food service, instructional services (music, painting, educational tutoring facilities), personal services (beauty/barber shops, pet grooming, tailors, shoe repair), cultural facilities (museums, libraries, art galleries), medical care facilities, and more. These uses differ from retail but still attract frequent pedestrian activity which help to contribute to the overall pedestrian activity which defines the area. According to the applicant narrative, the proposed office space intends to be used for private business by two clients with few visitors each day. The lack of frequent visitors</i>

				<p>and private nature of the office makes the space not compatible with the surrounding businesses in the immediate area as it creates a gap in pedestrian activity on the block and decreases the connectivity of pedestrian activating uses. The actions, the applicant could take to obtain approval include modifying the office use to one that receives a higher volume of foot traffic or changing the proposed use to one that is permitted in the CC-1 zone as mentioned above.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.116.030(B)	<p>The conditional use will not materially endanger the health, safety and welfare of the community.</p> <p><i>Finding</i> The building and fire department have reviewed the proposed plans for the space. All life safety and building code requirements are being met. Staff does not believe the request meets the policies in the Comprehensive Plan and therefore does not believe the application to support the overall welfare of the downtown and the community. Further discussion regarding whether the request meets the policies of the comprehensive plan is reviewed later in Criteria 5.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.116.030(C)	<p>The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood.</p> <p><i>Finding</i> The proposed use is in a portion of the community core that has fully connected sidewalks providing a pedestrian path from surrounding businesses, transportation stops, and parking areas. The proposed office space does not anticipate frequent visitors, therefore an increase pedestrian and vehicular traffic is not anticipated. Visitors and users of the office space will have access to on street parking or can walk, bike, or bus to the space depending on where they are coming from. Interim Ordinance 1234 exempts on-site parking requirements for the first 5,500 square feet of office space in the Community Core zoning district. The proposed office is space is less than 5,500 square feet and located within the Community Core zoning district, making the proposed use exempt from providing on-site parking.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.116.030(D)	<p>The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts.</p> <p><i>Finding</i> As mentioned above, all departments have reviewed the proposed use including streets, fire, water, wastewater, building and engineering. Additionally, the proposed use is within a commercial building currently served by all other utilities necessary to service the use including electricity, gas, and garbage service with no increase in service levels anticipated with the proposed use.</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17.116.030(E)	<p>The conditional use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this section.</p> <p><i>Finding</i> See Table 1 below</p>

Table 1. Comprehensive Plan Analysis

<p>Land Use Category: <i>Retail Core</i></p> <p>Purpose <i>The community’s primary shopping district is the Retail Core. The Retail Core provides a variety of mixed-use buildings that have ground-floor storefronts. Specialty shops, restaurants, and outdoor seating areas line the sidewalks, creating an active pedestrian-friendly environment. Convenient shopping and dining is served by sidewalks, parking, and bike access. Upper floors include a mix of residential uses and offices.</i></p>
<p>Analysis: The comprehensive plan identifies office as an appropriate use within the retail core but notes that offices should be located on the upper floor of buildings. As outlined in the application narrative, the proposed office space expects to see one to three regular users with few visitors per day. The proposed office space being a private use with a few visitors per day does not achieve the Retail Core’s purpose of creating an active pedestrian-friendly environment. The subject property is located along the 4th Street Heritage Corridor and adjacent to active pedestrian uses such as Atkinson’s Market and Town Square. The 4th Street Heritage Corridor was embarked upon by the City with assistance from the Ketchum Community Development Corporation (KCDC) in 2007. In a newsletter published by the KCDC in April of 2007 the intent of the 4th Street Heritage Corridor was to be, “the pedestrian-priority spine of the city center” and would aid in making “the Downtown core an exciting place to BE, to walk, to meet, and to shop” (KCDC, April 2007). As seen in the floor plans for the proposed office space, portions of the space fronting East Avenue will be used for storage. Locating a storage room in a portion of the building with street frontage reduces the pedestrian activation of the proposed space even further than a private office suite. The proposed office space’s lack of pedestrian activity and private nature does not contribute towards the Retail Core’s goal of creating an active pedestrian-friendly environment.</p>
<p>Comprehensive Plan Value: Vibrant Downtown <i>Our downtown core is critical to the economic health and well-being of Ketchum. It functions as both an economic engine and the symbolic “heart and soul” of the City. We will preserve this vibrant commercial area as a place where local businesses can thrive and where people can congregate. Downtown must be a place that people can reach easily by foot, bike, and transit. We will continue to reinforce the downtown as the City’s primary business district, retail core, and key gathering place for residents and visitors for shopping, dining, and entertainment. Enhancements and efforts to support events, the arts, and Ketchum’s history and culture will make downtown an even greater community asset.</i></p>
<p>Analysis: The proposed use does not support the city’s value of creating a vibrant downtown as it would be a private office space and anticipates few visitors per day to the site. Additionally, Ketchum’s downtown should be a “key gathering place for residents and visitors for shopping, dining, and entertainment”. Instead of using the space to further the goal of downtown being a key gathering space for residents and visitors for shopping, dining, and entertainment, the proposal instead occupies a building with frontage on both 4th Street & East Avenue with two private office suites and storage room which expects very few visitors to visit the site per day. Staff believes the proposal does not reinforce the downtown as the City’s primary retail core, due to the lack of pedestrian activity which would result from a private office space being located on the ground floor as discussed previously.</p>
<p>Policy E-1(b) Downtown as a Major Community Asset and Tourism Attraction <i>The community will strive to maintain a single concentrated commercial and retail core. The City will reinforce the downtown core’s role as a major asset and visitor attraction by encouraging businesses that fit the downtown character and by developing policies, programs, investment strategies, and organizations that help retain downtown businesses.</i></p>
<p>Analysis: While the proposed office space may be appropriate in the Mixed Use Subdistrict where pedestrian activated street fronts aren’t as vital to the purpose of that zoning district, allowing a ground floor private office space in the Retail Core detracts from the pedestrian activation that the area intends to provide. The proposal for a ground floor private office space does not fit the downtown character, particularly the character of the East Avenue & 4th Street</p>

intersection. This intersection is a key pedestrian visited area with Atkinson's Market located across the street and Town Square kitty corner from the subject property. These two sites, including many other businesses around the subject property, help to reinforce the downtown as a vibrant and engaging space where both residents and visitors come to visit and shop. As the subject property is within such an area, any proposed ground floor use should contribute to the downtown being a key provider of commercial & retail space. The proposal of a ground floor private office space, with a storage room having street frontage, does not contribute towards the downtown being a major community asset and tourism attraction.

CONCLUSIONS OF LAW

1. The City of Ketchum is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code and pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code to enact the ordinances and regulations, which ordinances are codified in the Ketchum Municipal Code ("KMC") and are identified in the Findings of Fact and which are herein restated as Conclusions of Law by this reference and which City Ordinances govern the applicant's Design Review application for the development and use of the project site.
2. The Commission has authority to hear the applicant's Conditional Use Permit Application pursuant to Chapter 17.116 of Ketchum Municipal Code Title 17.
3. The City of Ketchum Planning Department provided notice for the review of this application in accordance with Ketchum Municipal Code §17.116.040.
4. The Conditional Use Permit application is governed under Ketchum Municipal Code Chapters 17.116, 17.08, 17.12, 17.18, 17.132.
5. The Conditional Use Permit application does not meet all applicable standards specified in Title 17 of Ketchum Municipal Code.

DECISION

THEREFORE, the Commission **denies** this Conditional Use Permit Application File No. P22-069 this Tuesday, August 8, 2023, subject to the following conditions of approval.

Findings of Fact **adopted** this 8th day of August 2023.

Neil Morrow, Chair
City of Ketchum
Planning and Zoning Commission