Location:	**1205 Franklin Street (406 12th Street)** - *Note: Located in the Black Arts Movement and Business District per Resolution 85958 but not in the adopted Black Arts Movement and Business District Arts and Culture Combining Zone.*
Assessor's Parcel Number:	**002 005100400**
Proposal:	Convert the 2nd and 3rd floor office spaces.
Applicant:	John Kevlin c/o Reuben, Junius & Rose, LLP
Contact Person / Phone Number	John Kevlin / (415) 567-9000
Owner:	TC I 1205 Franklin, LLC
Case File Number:	**PLN25051**
Planning Permits Required:	Major Variance to allow a Self- or Mini-Storage Industrial Activity
General Plan:	Central Business District
Zoning:	Downtown District General Commercial Zone (D-DT-C)
Proposed Environmental Determination:	State CEQA Guidelines Section 15270: Projects which are disapproved.
Historic Status:	Pantages-Hipppordrome Theatre Building/Tribune Press Building; Potentially Designated Historic Property; OCHS Rating Dc1+; Downtown Historic API Contributor; National Register Downtown Historic District Contributor; and determined eligible for the National Register as a Downtown Historic District Contributor.
City Council District:	2
Finality of Decision:	Appealable to City Council within 10 days.
For Further Information:	Contact case Planner Heather Klein at (510)238-3659 or hklein@oaklandca.gov

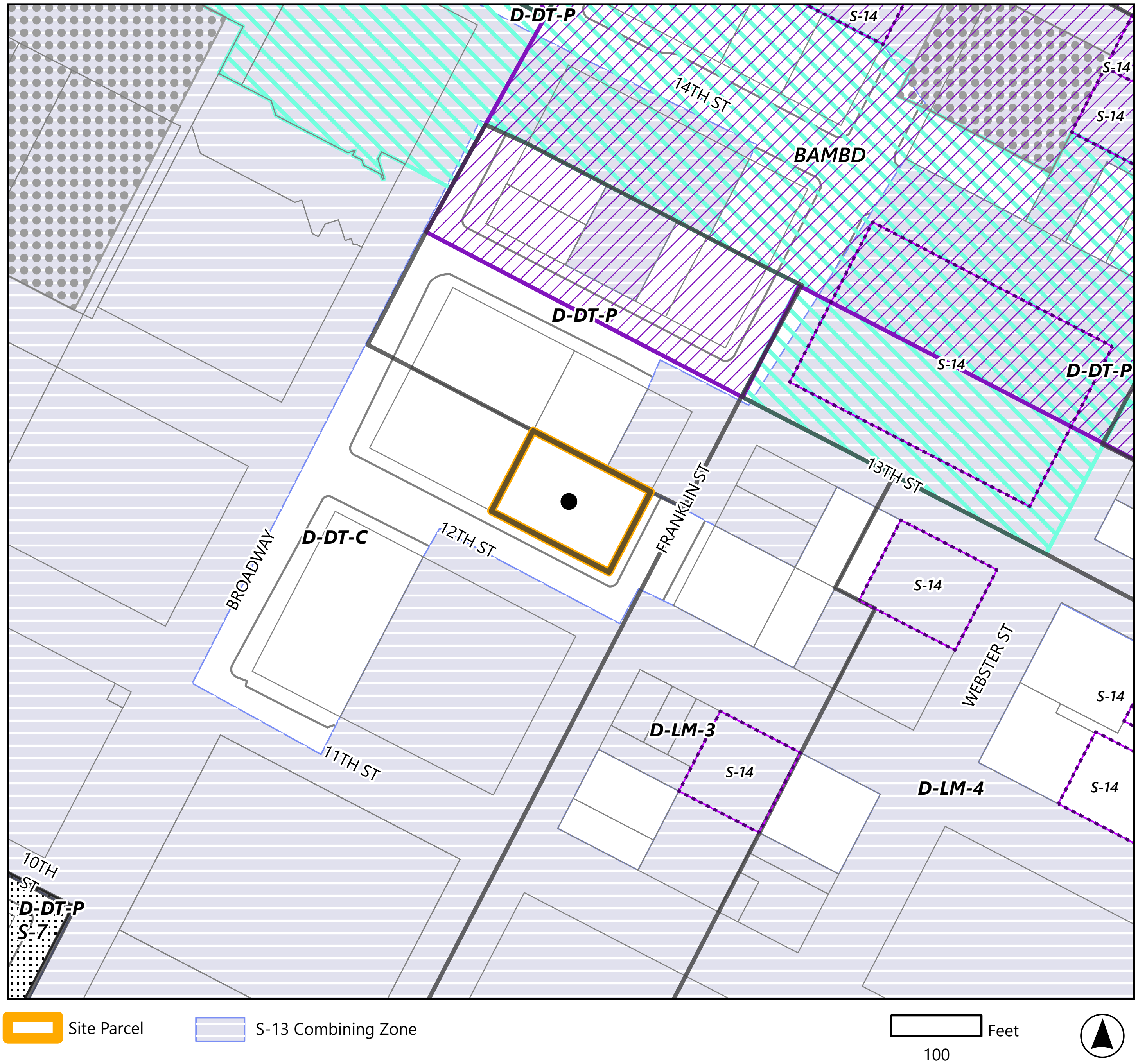
SUMMARY

The Project Applicant submitted a Planning application on March 17, 2025 to convert 7,482 square-feet of office space on the 2nd and 3rd floors of the existing building at 1205 Franklin Street to a self-storage, a Self- or Mini-Storage Industrial Activity (***Attachment B***).

The Project Site is in the Downtown District General Commercial Zone ("D-DT-C"). Per Planning Code Section 17.101K.050(B) and Table 17.101K.01, a Self- or Mini-Storage Industrial Activity is prohibited in the D-DT-C Zone. As such, a Major Variance would be required to allow an activity type which is prohibited. Major Variances require consideration by the Planning Commission, and specific findings need to be made for their approval.

Self- or Mini-Storage Industrial Activities "consist of storage in small individual spaces, on average of 400 square feet or less that are exclusively and directly accessible to a specific tenant, offered on a monthly or other limited basis, and available to the general public." The Self- or Mini-Storage Industrial activity type was created in 2008 as part of the industrial zoning update to conform the Planning Code with the Land Use and Transportation Element ("LUTE") of the General Plan adopted in 1998. Self-storage is not considered a commercial activity per the Planning Code, or an active or pedestrian-friendly use based on their general operating characteristics including:

CITY OF OAKLAND PLANNING COMMISSION



Case File: PLN25051
Appellant: John Kevlin c/o Tidewater
Address: 1205 Franklin Street (406 12th Street)
Base Zone(s): D-DT-C
Combining Zone(s): n/a

Date Exported: 6/12/2025

- low employment,
- limited use of the space since the items placed in these units are not frequently needed or accessed, and
- limited street front or pedestrian activity since they typically have a warehouse appearance with no windows or blocked-off windows, and no visible activity from the outside to the inside of the facility.

Staff has reviewed the proposal and has found that it does not meet the applicable General Plan or Specific Plan objectives or policies, or the required Major Variance Findings (***Attachment A)*** as detailed in the staff report below. Therefore, staff recommends denial of the Project.

BACKGROUND

Project Site

The subject building at 1205 Franklin Street was built in 1912 as a theater (Pantages-Hippordrome Theatre) and remodeled in 1946 into a newspaper printing plant (Tribune Press Building).

In 2004, an application for Regular Design Review and a Major Variance was submitted (Case File VM04060) for rehabilitation of the exterior historic façade and to allow conversion of 45,300 square feet of the previous industrial area, located in the interior 'core' portion of the building, to self-storage. The proposal included retention of the retail spaces at the ground level along 12th and Franklin Streets and the office spaces along the perimeter of the building on the second and third floors. Those permits were approved by the Planning Commission on April 7, 2004, with recommendations made by the Landmarks Preservation Advisory Board ("LPAB") (***Attachment C***). The approved building permit plans show storage space occupying approximately:

- 16,500 square-feet in the basement,
- 4,500 square-feet on the ground floor surrounded by 3,500 square-feet of retail space,
- 7,900 square-feet on the 2nd floor surrounded by 4,000 square-feet of office space,
- 8,000 square-feet on the 3rd floor surrounded by 4,000 square-feet of office space, and
- 8,600 square-feet on the 4th floor in the penthouse area (***Attachment D***).

On April 6, 2022, the Project Applicant submitted a Planning application (PLN220069), to convert approximately 3,900 square feet of drive aisle on the ground floor, 975 square-feet of ground floor retail space, 3,818 square-feet of office space on the 2nd floor office, and 3,664 square-feet of office space on the 3rd floor to a Self- or Mini-Storage Industrial Activity. The project was heard at a publicly noticed meeting before the Planning Commission on October 4, 2023. The Planning Commission denied the proposal, and it was not appealed (***Attachment E***).

Industrial Zoning Update

In 2007, staff began a zoning update process to achieve consistency between the Planning Code and the industrial and transportation objectives and policies in the LUTE. This update included revisions to the Manufacturing Activities in the Planning Code to include additional activity types. One of these changes was to create the Warehousing, Storage, and Distribution Industrial Activities category and a sub-Activity for Self- or Mini-Storage, where previously this use would likely have been under the Transport and Warehousing Commercial Activity. The new industrial zoning regulations were adopted by City Council in June of 2008 per Ordinance C.M.S. 12875.

PROPERTY AND SURROUNDING AREA DESCRIPTION

The proposed Project site is located in Downtown Oakland at the corner of 12th and Franklin Streets within an existing, three-story building with a two-story penthouse above. The building is a contributor to the National Register Downtown Historic District, an Area of Primary Importance ("API"). It is considered a Potentially Designated Historic Property ("PDHP") with an Oakland Cultural Heritage Survey rating of Dc1+ and is determined eligible for the National Register as a contributor to the Downtown Historic District. The project is also located in the area defined as the Black Arts Movement and Business District per Resolution 85958 but not in the newly adopted Black Arts Movement and Business District Arts and Culture Combining Zone.

The surrounding area includes 2- to 16-story buildings which are a mix of historic and contemporary architecture. These buildings include office, retail, personal service, and banking with residential uses on the upper floors in several buildings.

PROJECT DESCRIPTION

The current proposal is different from the previous project (Case File PLN220069) since the conversion of the ground floor retail space was removed.

Now the proposal is only to convert approximately 7,482 square-feet of office space on the 2nd and 3rd floors to self-storage (***Attachment B***). Specifically,

- 3,818 square-feet of office space on the 2nd floor, and
- 3,664 square-feet of office space on the 3rd floor.

Plans show that the storage units on the 2nd and 3rd floors would be placed away from the windows so that a 5' walkway could be provided between the units and interior façade of the building. No changes are proposed to the exterior of the building.

GENERAL PLAN ANALYSIS

Land Use and Transportation Element

The Project site is located in the "Central Business District" land use classification of the General Plan's Land Use and Transportation Element (LUTE). The intent of the Central Business District classification is "to encourage, support, and enhance the downtown as a high-density mixed use urban center of regional importance and a primary hub for business, communications, office, government, high technology, retail, entertainment and transportation is northern California." The desired character and uses "includes a mix of large-scale offices, commercial, urban (high-rise) residential, institutional, open space, cultural, educational, arts, entertainment, service, community facilities, and visitor uses."

The LUTE also notes that "[t]he Central Business District classification allows an exciting mix of urban residential living combined with a wide range of business operations. The Downtown should be the focus of high density and intensity activities that can take advantage of the transportation infrastructure and communications network." Furthermore, "[k]ey components of the vision for Downtown are support for growth in office activity and increasing the population through new Downtown housing. Expanding the number of downtown residents will also support employment and will enhance Downtown as a seven-days a week, 24- hour-a-day destination."

The LUTE Downtown Goals include the following:

• To promote downtown Oakland's position as a dynamic economic center for the region.
• To serve as a primary communications, office, government, high technology, retail, entertainment, and transportation hub for Northern California.
• To become a premier location in the region for urban residential living, by building upon existing neighborhoods, and by promoting and expanding a pedestrian-friendly, diverse and exciting range of housing, social, cultural, and arts opportunities.
• To further develop, support, revitalize, and promote the district, attractive urban character of each of the downtown districts, and to respect historic resources.

Applicable LUTE Objectives and Policies include the following:

Policy D5.1 Encouraging Twenty-Four Hour Activity. Activities and amenities that encourage pedestrian traffic during the work week, as well as evenings and weekends should be promoted. The Conditions of Approval for the existing mini-storage in the building core limits hours of operation to the time period from 8am to 8 pm per Condition of Approval #30. Other businesses envisioned in the DOSP as outlined below could have expanded hours.

Policy N11.3 Requiring Strict Compliance with Variance Criteria. As variances are exceptions to the adopted regulations and undermine those regulations when approved in large numbers, they should not be granted lightly without strict compliance with defined conditions, including evidence that hardship will be caused by unique physical or topographic constraints and the owner will be deprived privileges enjoyed by similar properties, as well as the fact that the variance will not adversely affect the surrounding area nor will it grant special privilege to the property. In those instances where large numbers of variances are being requested, the City should review its policies and regulations ant determine whether revisions are necessary.

As the Project would not result in active uses, increased jobs, and twenty-four-hour activity, it is inconsistent with the General Plan LUTE policies and intended vision for Downtown. This is further discussed in the *Key Issues* section below.

Environmental Justice Element Compliance

In 2023, the City of Oakland adopted updated General Plan Housing and Safety Elements and created a new Environmental Justice ("EJ") Element, as part of Phase 1 of the General Plan Update. The guiding principle of the General Plan Update is to further the City's mission to "integrate, on` a Citywide basis, the principle of 'fair and just' in all the City does in order to achieve equitable opportunities for all people and communities."1 In service of that mission, each of the new and updated General Plan Elements was supported by a thorough racial equity impact analysis to guide its development. Both the Safety and Environmental Justice Elements prioritize policies to reduce the risks and harmful impacts to the city's most vulnerable and frontline communities face, whether the risks are from daily exposure to pollution or from structural disasters. The Housing Element includes racially equitable housing policies that protect tenants, address patterns of segregation by fostering inclusive neighborhoods, and provides housing options for Oaklanders of all incomes, prioritizing preservation and production for those with the greatest need.

Staff is recommending denial of the Major Variance. With the 2nd and 3rd floor office spaces retained, the following policies are implemented.

*EJ-7.1 Complete Neighborhoods***.** Promote "complete neighborhoods" where residents have safe and convenient access to goods and services on a daily or regular basis that address unique neighborhood needs,

[1] Oakland Municipal Code Section 2.29.170.1

and support physical activity, including walking, bicycling, active transportation, recreation, and active play.

*EJ-8.4 Community Partners***.** Partner with community-based organizations that have relationships, trust, and cultural competency with target communities as to support engagement for local initiatives and issues. Seek opportunities to support community partners in these efforts such as by providing technical assistance, data, meeting spaces, funding and other support services as feasible.

Commercial spaces accessible and affordable to a range of businesses will be retained. Community-based organizations could also use these offices for meeting spaces or other support services for downtown and the rest of the city.

H-2.14 Storage Lockers for Unsheltered Residents. Provide secure storage lockers for the unsheltered residents of downtown places where they can access them.

During the adoption of the Downtown Oakland Specific Plan, the goods and services identified as being needed most were grocery stores and retail. Mini-storage was not an identified as a necessary goods and service business. Finally, the project is not providing these mini-storage spaces for unsheltered residents but for current and future occupants of downtown residential buildings and other businesses. The project is not expected to meet this policy.

DOWNTOWN OAKLAND SPECIFIC PLAN AND ZONING TEXT ANALYSIS

Downtown Oakland Specific Plan

The project site is in the Downtown Oakland Specific Plan ("DOSP"). The DOSP and the corresponding Zoning text amendments were adopted by the Oakland City Council in July of 2024.

The DOSP had extensive input from residents and businesses over its nine years of public review (2015-2024), and was the subject of over 20 public hearings. The DOSP Character Map, which implements the vision of the Downtown Plan and identifies the type of environment envisioned for each downtown neighborhood, district and corridor, has the Project Site located in the Central Core. Per the land use and character map in the DOSP, the site is also located in the Downtown Core III: Pedestrian District, which prioritizes pedestrian-oriented and active ground floor uses.

The Future Vision of the Central Core area "continues to be a hub for people of all ages, cultures, and incomes to meet, work, and live. New mixed-use development offers affordable and mixed-income housing options, a variety of workplaces, and neighborhood-serving commercial uses. Local and Black-owned businesses, including a vibrant entertainment scene, thrive in the Black Arts Movement and Business District, which influences the design of public art, signage, shopfronts, and streetscape design (particularly along 14th Street), providing a distinct identity."

The DOSP also notes that "Based on feedback collected during the Specific Plan process, "affordable arts & culture space" was identified as a priority community-benefiting use for Jack London, KONO, and the Central Core," and that "Affordable commercial & neighborhood retail space was also identified as a priority use for the Central Core, Uptown, Chinatown, and Old Oakland."

The relevant DOSP strategies and policies to the Project include:

Economic Opportunity Outcome E-2: Downtown provides a variety of spaces for businesses and community organizations, including spaces that are affordable and accessible.

Economic Strategy- Incentivize retention and growth of commercial and industrial spaces suitable and affordable for makers, artisans, artists and the arts.

Economic Opportunity Policy E-2.3 Develop and continually update requirements and/or incentives for new development to provide affordable space for arts, community service/ nonprofit organizations, and small, local, culturally specific businesses.

Culture Keeping – C1.6 Preserving/Adapting Historic Buildings: Adopt regulations that help preserve and adapt historic buildings downtown, in order to help retain and create new spaces for arts and culture uses.

Culture Keeping Outcome C-3 Oakland's artists and creative community are able to find workspaces, performance spaces, and galleries in downtown that they can access and afford and see their work integrated into the built environment and public domain.

Land Use Outcome LU-1 Development and design serve Oakland's diverse needs, contribute to improved conditions for all, and enhance downtown and its neighborhoods' authentic, creative, and dynamic local character.

ZONING ANALYSIS

The Project Site is in the D-DT-C Zone. "The intent of the D-DT-C Zone is to create, maintain, and enhance areas of Downtown appropriate for a wide range of ground-floor commercial activities. Upper-story spaces are intended for a wide range of commercial and residential activities."

In each zone, the Planning Code describes the activities which are permitted outright, conditionally permitted and prohibited. Per Planning Code Section 17.101K.050(B) and Table 17.101K.01, Self- or Mini-Storage Industrial Activity is prohibited in the D-DT-C Zone. Per Planning Code Section 17.148.020, a Major Variance is required to allow activity types which are prohibited, and per Section 17.148.040, this permit necessitates consideration by the Planning Commission.

Staff has reviewed the proposal, and a self-storage activity, above, does not meet the intent of the D-DT-C Zone as the upper spaces will not be used for a commercial or residential activity. Staff has included the Findings for a Major Variance later in this report. As detailed in ***Attachment A***, staff has not been able to make the required Findings.

ENVIRONMENTAL DETERMINATION

Staff evaluated the Project and determined that the Project is not approvable based on the General Plan's objectives and policies, the Specific Plans' policies, the intent of the D-DT-C Zoning and the project's inability to meet the Major Variance Findings. Staff recommends denial of the Project. Pursuant to the California Environmental Quality Act ("CEQA") Section 15270, projects which are disapproved will not result in a significant physical impact on the environment and are not subject to further environmental review.

KEY ISSUES

2004 Major Variance Approval

As noted above, a Major Variance was approved by the Planning Commission in 2004 to allow the interior of the building to be converted to self-storage. In the staff report, the planner noted several reasons for recommending approval of the 2004 proposal (***Attachment C***).

First, the self-storage use was not aligned with the LUTE policies that call for pedestrian-oriented uses even though the use was located on the interior of the building in its "core". However, that concern was addressed by the retention of exterior perimeter uses, which included first floor retail and second and third floor office space. Both uses would promote pedestrian activity, create synergy with other commercial businesses and services, and therefore, strengthen the vitality of this area. Furthermore, providing retail and office spaces that wrap the storage use along the street frontages would create pedestrian-friendly transparent façades and serve to cloak the self-storage activity.

Second, the 2004 proposal included a major rehabilitation of a historic building that had been vacant for 12 years and of which a majority of the historic character defining features had been removed. As such, the building was at risk for demolition. Permitting the 2004 proposal, reusing and rehabilitating the historic resource, met several other important LUTE and Historic Preservation Element goals and policies, including providing incentives for reuse. On balance, the 2004 proposal was a creative solution that advanced City policies related to preservation while providing those active spaces.

Third, the original design of the building as a theater with an auditorium penthouse, along with the change to the industrial use, presented constraints to its reuse potential, especially given the building's historic status. The 2004 staff report noted that "the interior core five floors do not (in most cases) align with the original three floors of the three-story commercial street frontage perimeter space," and that "adjusting the floor levels to be at the same level as the perimeter would require significant building structural renovations." The 2004 staff report presented this misalignment of floors as a practical difficulty and unnecessary hardship.

Fourth, the 2004 proposal would provide retail and office street frontage/perimeter uses and the exterior rehabilitation would most visibly and positively impact the surrounding area and strengthen everyday vitality in this area.

In sum, the 2004 proposal met numerous General Plan policies, most importantly those regarding putting a vacant historic resource back into productive use and providing pedestrian-oriented uses and activity at the ground floor and upper floor perimeters to strengthen the vitality of the area while also providing a service to the community. This was seen as an appropriate adaptive re-use addressing the constraints of the building and possible demolition of a historic building.

Applicant's Proposed 2022 Major Variance Findings

The Applicant submitted a Major Variance application to convert all three ground floor retail spaces, plus the 2nd and third floor offices to self/mini-storage in 2022 (Case File PLN220069). The Applicant's reasons for the Planning Commission to approve the Major Variance includes the small, ground floor spaces with no kitchen or bathrooms, the long-standing vacancy of these spaces, and the fact that the project will provide a service that meets the neighborhood needs. Staff reviewed the proposal and recommended denial of the project as it would detract from an active pedestrian-oriented experience, would be inconsistent with the draft DOSP intent, character and policies, and, most importantly, the required Major Variance Findings could not be met. The Planning Commission, at its October 4, 2023 meeting, agreed with staff and denied the proposal. (***See Attachment E***). It was not appealed.

Applicant's Proposed 2025 Major Variance Findings

The Applicant's current proposal eliminates conversion of the ground floor retail spaces so only the 2nd and 3rd floor spaces are affected. The Applicant's reasons for the Planning Commission to approve the Major Variance include:

1. A financial hardship due to the physical layout of the office spaces. Specifically, it is it is not programmatically feasible to retain either office space while converting the remaining of the floors to Self/Mini Storage.
2. There have been long-standing vacancies within the building as well as significant vacancies in Oakland more broadly. The upper-floor vacant office spaces generate no business tax revenue, and this is a hardship for the owner/operator.
3. The proposal will be complementary to the units being proposed and built downtown.
4. The project is consistent with the General Plan.

Staff disagrees that that these are acceptable reasons to grant the Major Variance Findings and do not believe that, overall, the project is consistent with the General Plan or DOSP.

First, the original 2004 Project Applicant proposed retention of the buffer of retail and office spaces around the core mini-storage, and they did not see it as a hardship in developing the proposal or its future operation **(See Attachment F**). These perimeter office uses were noted in the 2004 proposal as important in meeting the overall LUTE policies, improving vitality in the area, and as a significant reason for granting the previous Major Variance. Specifically, the 2004 staff report presented this misalignment of the interior “core” floors as a practical difficulty and unnecessary hardship. The fact that an office and retail buffer would be maintained around the core mini-storage was a Finding to approve the 2004 Variance, and adopted as a requirement per Condition of Approval #33.

All the spaces are of an adequate size. The spaces are almost 20’ wide by 65’ and almost 20’ by 150’ and 1,272 and 2,546 square-feet. The sizes of these spaces likely make them affordable to the types of businesses that the DOSP envisioned including artists, non-profits, community service businesses incubators, or ‘pop-up” uses which have smaller staff and occupancy needs. Staff is again unclear why the physical layout of these spaces is a hardship. While, they don’t have kitchens, they do have access to stairs, the elevator, bathrooms natural light with the windows, and are of an adequate width and size for a small business. These have been viable commercial spaces as several have been rented, and are likely affordable specifically because they are not class A office spaces. Conversion of these would be inconsistent with the DOSP.

Second, the vacancy of these spaces (3-5 years) is not an adequate reason for granting a Major Variance, and not all the spaces are currently vacant. As opposed to a Conditional Use Permit which would sunset if not in active use, this mini-storage use could be retained for the very long term given the low operating cost and historic nature of the building. While the pandemic did result in the loss of retail and reduction in the need for office spaces, this proposal would not strengthen the vitality of the area or help retain or support other businesses. Also, it is contrary to LUTE policies and the zoning for the Project site. The loss of business tax generation for a limited period should not be the reason for granting a Major Variance when doing so would be contrary to legislative requirements for the Project site. Further, no evidence has been submitted of the Applicant/Owner actively looking for tenants, community groups, non-profits or other businesses noted in the DOSP and not being able to find any entity to lease the space. Again, the Applicant seems to imply that staff should approve Major Variances solely if a space has been vacant for several years. This is not a Finding required for a Major Variance approval and would be precedent-setting for the city at large.

Third, while the proposal could provide storage for existing and future units and businesses downtown, however, as noted in the DOSP Analysis above, the project would not be meeting the policies and goals of providing accessible and affordable office spaces to businesses, community organizations, makers, artisans, artists and the arts. This use was not identified as a necessary good and service in the dozens of meetings with the community to prepare and adopt the DOSP which was nine years in the making. Finally, there are more appropriate places in the City for these uses. The Housing and Business Mix Zones, Commercial Industrial Mix -1 and -2 Zones, and IG Zone, which are located approximately two miles away.

Fourth, staff doesn’t agree that the Project is generally consistent with the General Plan. The building is no longer abandoned and is no longer at risk for demolition. The Project doesn't implement the EJ Element policy related to providing storage downtown to unsheltered persons. The application of the LUTE policies regarding vacant or underutilized buildings do not apply to these individual spaces. To apply those policies in this way would be a major precedent for other vacant office spaces in Downtown. This is further discussed in the Findings below.

CONCLUSION

The 2004 Project included the buffer of office space around the central core of mini-storage in their original proposal. "The strategic objectives of the redevelopment project are to restore the historical building that has served as a centerpiece to the Oakland downtown, to extend the commercial opportunities available in downtown Oakland across Broadway and to efficiently utilize the interior core of the building" In addition, the original Applicant noted "MPF envisions a lively street-oriented retail hub encasing the corner of 12th Street and Franklin. Above which perimeter office will nestle behind the rehabilitated historical structure. Having the office buffer was an important component of the original plan and one of the reasons from the LPAB and Planning Commission for granting the Major Variance in 2004. The proposal to convert the whole building to mini-storage would now negate that 2004 Finding for approval.

The Applicant argues that without approval of the Major Variance to allow self-storage, the office spaces will remain vacant, and this is a hardship. The argument that some use of the space even one that is prohibited is better than nothing or that the short-term gain of revenue, both for the Applicant and City, over visions established in our long-term planning documents is short sighted and precedent setting for the City for any number of uses that shouldn't be located where potentially proposed.

The General Plan, and now the DOSP, are the guiding development intentions of the City in downtown. While some policies in the documents might conflict with each other or provide a menu of uses or a range of allowable development, it is the purpose of the Planning Code to implement these plans with more specific, and detailed requirements. The Planning Code allows a Major Variance process to address these specifics knowing that the General Plan policies can be general or generally applied. However, the Major Variance Findings are meant to address very specific and very unique situations, not general ones such as economic factors, the size of the space, or the lack of amenities to lure tenants. In other words, a Major Variance is not meant to completely stand in the place of a legislative General Plan Amendment or Rezoning, which requires City Council approval to change the General Plan or Zoning requirements.

Fundamentally, what is at issue is the interpretation of the General Plan and the DOSP's visions and policies regarding what the City's neighborhoods, districts, and streets should look and feel like compared to the adopted Zoning requirements. In this instance, the Project conflicts and is inconsistent with the vibrancy and activity expected of a Downtown site as discussed in the staff report and Findings. Therefore, the Project should be denied.

RECOMMENDATIONS:

1. Affirm staff's environmental determination, and
2. Deny the Major Variance based on the attached Findings;

or

ALTERNATIVELY:

1. Provide staff will the general reasoning that each Major Variance Finding can be met; and
2. Direct staff to return with those Findings, Conditions of Approval and a revised environmental determination.

Prepared by:

HEATHER KLEIN
Planner IV

Reviewed by:

ROBERT MERKAMP
Zoning Manager

Approved for forwarding to the
City Planning Commission:

EDWARD MANASSE
Deputy Director
Bureau of Planning

ATTACHMENTS:

A. Findings
B. Project Plans and Findings for Support
C. VM04060 Planning Commission Staff Report
D. 2004 Approved Building Permit Plans
E. 2022 Staff Report and Decision Letter
F. January 30, 2004 email from Madison Park Financial to Joann Pavlinec

ATTACHMENT A: FINDINGS

This proposal fails to meet all the required findings under Section 17.148.050A (Variance Findings) of the Oakland Planning Code (OMC Title 17) as set forth below and which are required to approve your application. Required findings are shown in **bold** type; reasons the proposal fails to satisfy them are shown in normal type.

17.148.050A Variance Findings

1. **That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.**

   Staff cannot make this Finding:

   The Applicant is requesting a Major Variance for a Self- Mini Storage Industrial Activity on the 2nd and 3rd floor office spaces. The Finding for a Major Variance is that the regulation results in a practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design.

   There is no practical difficulty or unique hardship here due to topographical or physical circumstance. The site is flat and covered by an existing building. Yes, the upper floor office spaces don't have in-suite kitchens or bathrooms and are on the smaller side, and have less than ideal access. However, they are also the kind of spaces that newer businesses, non-profits and other incubators would be interested in given the location downtown, near BART, City buildings, and other businesses. Businesses have occupied those spaces since the conversion from a theater showing that they are viable and could be occupied in the future.

   The 2004 original proposal included to conversion of the inner core to storage with perimeter retail and office uses. So, the 2004 Applicant didn't see the size or location of these spaces as creating a hardship. In fact, including them was strategic intent. This decision was not appealed, and the use of the retail and office spaces for a non-storage use was not seen as a "hardship" till now. Market and economic conditions are not a hardship and applying this standard to Major Variance requests is a dangerous precedent for all the City's vacant commercial spaces especially since, unlike Conditional Use Permits, they cannot be sunset-ed.

   The building is a PDHP, a contributor to the Downtown Historic API and a contributor to the National Register Downtown Historic District. Again, however, there is no unique physical circumstance or condition of design along the perimeter spaces. The 2004 application noted that "[t]he original design program for a theater, a large voluminous open space set back from the street frontage offered flexible space when the building was remodeled to a newspaper printing plant. It appears that this industrial use took advantage of the core's open space by inserting floors that met the functional height requirements for machinery, used by the Tribune press, and its operations, rather than aligning with the floor heights of the three-story commercial street frontage of the building. Currently the interior core five floors do not (in most cases) align with the original three floors of the three-story commercial street frontage perimeter space."

   In sum, requiring the floors to "line-up" for a larger tenant would have been costly, might have affected the historic character, and/or resulted in the building staying vacant and further deteriorating. As such, the conversion of the "inner core" was seen as acceptable due to a unique condition of design. However, this condition does not apply to the smaller perimeter spaces. Again, these have been viable commercial spaces over the years, and other smaller spaces are currently occupied. Temporary and continually fluctuating market conditions should not be considered a hardship and doing so could have major precedent implications. For example, the Applicant did previously want to convert the ground floor spaces. If these spaces continue to be vacant, either due to the lack of tenants or just the cost they are asking to lease the space, using this same logic the Applicant could ask a future Planning Commission for permission to convert those spaces too resulting in inactive, dead, pedestrian spaces in the Downtown Core for likely the lifespan of that building.

2. **That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.**

   Staff cannot make this Finding:

   The owners of similarly zoned Downtown properties have not been granted Major Variances for a Self- Mini Storage Industrial Activity since the 2004 project based on a staff permitting analysis.

   The previous 2004 Variance was only granted because the activity was in the core of the building (theater area), and the core wasn't viable for other uses due to the changes in floor levels. The previous 2004 Findings stated "[t]he Tribune Press building has remained vacant for twelve years and the current Owner/Applicant has wrestled with the reuse constraints over the past several years, exploring options for reuse with permitted uses. The currently proposed creative solution of storage, which requires the Major Variance, is not dependent on continuous, aligned floor heights and therefore permits the economic reuse of the building as designed. In addition, this proposal benefits the City by retaining an existing abandoned historic resource that would be reused, rather than demolished."

   However, this condition does not apply to the smaller perimeter spaces and allowing the conversion, again, would be a dangerous precedent for other Downtown vacant commercial spaces as noted above.

3. **That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.**

   Staff can make this Finding:

   The Variance if granted for the office space will likely not adversely affect the character, livability, and appropriate development of the building, the abutting properties and the surrounding area since the exterior of the building is not changing, the self/mini- storage use already exists in the building core, and the design of the spaces would retain some activity at the front façade.

4. **That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.**

   Staff cannot make this Finding:

The Variance would constitute a grant of special privilege inconsistent with the purpose of the Zoning regulations. While the D-DT-C Zone allows for a range of wide range of commercial and residential activities on upper floors, the proposal is not for either of these but an industrial activity.

The previous 2004 Variance was only granted because the activity was located in the core of the building, it wasn't viable for other uses due to the changes in floor levels, and the storage would provide the economic feasibility to ensure the rehabilitation of the historic "abandoned" building. These conditions do not apply to the current, fully rehabilitated building. Furthermore, industrial spaces, both permitted and conditionally permitted are located less two miles away from the Downtown and can support the anticipated new residential units.

5. **That the elements of the proposal requiring the variance (e.g., elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050**

   This Finding is not applicable.

   The proposal is to convert the 2nd and 3rd floor office spaces to a Self- or Mini-Storage Industrial Activity and does not involve changes to the exterior of the building which would require Regular Design Review.

6. **That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.**

   Staff cannot make this Finding:

   As noted throughout the report, the project doesn't conform in all significant respects to the General Plan and Specific Plans.

   Again, the General Plan is envisioning the Downtown to be vibrant, and pedestrian-oriented with increased activities that the proposal is inconsistent with such as LUTE *Policy D5.1 and Policy N11.3 and EJ Element Policies 7.1, EJ-8.4 and H-2.14.*

   The DOSP envisions the area to be filled with vibrant pedestrian-oriented and affordable spaces for all ages, cultures, and incomes to meet, work, and live, and includes a variety of cultural and art space for performances spaces, galleries and pop-ups and workplaces for community organizations and neighborhood-serving commercial uses, all in order to create a thriving, walkable urban area, with an intense mix of uses. The proposal is inconsistent with *Economic Opportunity Strategy, Economic Opportunity Outcome E-2, Economic Opportunity Policy E-2.3, Culture Keeping Outcome C-3, Culture Keeping* -1.6, and *Land Use Outcome LU-1.*

   Finally, the Applicant cited numerous policies in their Findings submittal including those related to providing amenities to supporting the office and residential uses Downtown. However, Policy I/C1.8 and Policy I/C1.9, Objective I/C3, Objective I/C4, Policy I/C4.1, Objective D9, and Policy N1 are not applicable as Downtown is not an industrial area, is not in a Housing and Business Mix Zone and Self- Mini Storage is not a commercial but now an industrial land use activity. There are other more appropriate spaces for this use. Objective T2 would not be implemented as the project would not be mixed-use; furthermore, self-storage is generally not a transit-oriented activity. Objective D5 would not be implemented as self-storage is not an active use as the whole point of the use is to store items not typically used. Another, more active use, like retail or office would better implement this policy. Again, the building is largely in productive use and is not abandoned.

It is not appropriate to apply Policy D6.2 regarding reuse of abandoned buildings to this Major Variance request especially after a vacancy of only three- to five years.

While the project would expand private business and provide a service, again, this is not necessary within the Downtown Core as part of the granting of a Major Variance, as these services are available less than two miles away. These services were not identified as necessary in the DOSP preparation meetings with the community.

7. **For proposals involving one (1) or two (2) residential dwelling units on a lot: That, if the variance would relax a regulation governing maximum height, minimum yards, maximum lot coverage or maximum floor area ratio, the proposal also conforms with at least one of the following additional criteria:**

   a. **The proposal when viewed in its entirety will not adversely impact abutting residences to the side, rear, or directly across the street with respect to solar access, view blockage and privacy to a degree greater than that which would be possible if the residence were built according to the applicable regulation and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height; or**

   b. **Over sixty percent (60%) of the lots in the immediate vicinity are already developed and the proposal does not exceed the corresponding as-built condition on these lots and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height. The immediate context shall consist of the five (5) closest lots on each side of the project site plus the ten (10) closest lots on the opposite side of the street (see illustration I-4b); however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any decision on any variance.**

   This Finding is not applicable.

   The Project does not involve one or two residential dwelling units on a lot, but the conversion of the 2nd and 3rd floors to a Self- or Mini-Storage Industrial Activity which is prohibited in the D-DT-C Zone.