



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION STAFF REPORT

Meeting: May 23, 2023

Subject

Consider a proposed mixed-use development with 34 residential units, 7,595 sq. ft. commercial space, and the removal and replacement of 51 development trees; and adoption of Mitigated Negative Declaration regarding same. (Application No(s): TM-2021-003, ASA-2021-004, DP-2021-002, U-2021-001, TR-2022-006, EA-2022-005; Applicant(s): Carlson Chan (Prospect Venture LLC); Location: 1655 S. De Anza Blvd., APNs 366-10-061, -126.

Recommended Actions

Staff recommends that the Planning Commission adopt the draft resolutions recommending that the City Council:

1. Adopt the Mitigated Negative Declaration (EA-2022-005);
2. Approve the Development Permit (DP-2021-002);
3. Approve the Architectural and Site Approval Permit (ASA-2021-004);
4. Approve the Use Permit (U-2021-001);
5. Approve the Tentative Map (TM-2021-003)
6. Approve the Tree Removal Permit (TR-2022-006)

Project Data:

General Plan Land Use Designation	Commercial/Office/Residential (South De Anza Special Area). Maximum Residential Density – 5 – 15 DU/acre
Conceptual Plan Area	South Saratoga-Sunnyvale Road Conceptual Zoning Plan
Zoning Designation	P(CG, Res 5-15)
Lot Area	1.68 Acres

	Allowed/Required	Proposed
Maximum units	25	34 (35% density bonus)
Height of Structures	Up to 30 feet	Townhomes – 30 feet
		Mixed Use Building – Approximately 38-feet to top of roof ridge, 52-feet top of elevator tower. (Waiver Requested)
Setbacks		
Front	<i>Average 50 feet from the face of curb, no less than 35 feet.</i>	35 feet from the face of curb (Waiver Requested)
Side	N/A	10 feet
Western (Rear) Property Line	<ul style="list-style-type: none"> • 15–20-feet for 1st story • 30 feet for 2nd story • 50 feet for 3rd story 	<ul style="list-style-type: none"> • 15 feet for 1st story • 30 feet for 2nd story • 50 feet for 3rd story
Southern (Street side) Property Line	<i>25 feet from face of curb</i>	25
Slope Line	1:1	1:1
Parking		
Residential	77 Spaces ¹	68 Spaces
Retail	30 spaces	31 spaces
Total on-site	107 spaces	99 Spaces
Project Consistency with:		
General Plan:	Requested density bonus waivers for height	
Zoning:	Requested density bonus, parking reduction, and waivers for height, and setback	

¹ Parking required for the Residential units per the Municipal Code is 2.8 spaces per townhome unit and 2 spaces per apartment for a total of 77 spaces. However, Density Bonus law (Govt. Code Section 65915(p)), as well as CMC 19.56.040(C) allows applicants to propose different parking standards built into state law by number of bedrooms per unit, ranging between 1 space for studio/one-bedroom units to 2.5 spaces for units with 4 or more bedrooms. In some cases, developments may also propose 0.5 space per bedroom, if the housing development meets certain standards outlined by state law. The applicant is entitled to a parking reduction under State Density Bonus Law and has provided 68 parking spaces, consistent with state law.

Background:

Application Requests

On June 10, 2021, the City received an application from Carlson Chan, Prospect Venture LLC., for construction of a mixed-use development on a combined 1.68 gross-acre development area, currently occupied by a retail center anchored by Coach House Liquors.

The primary components of the project are listed below. The development plans for the project can be found in Attachment 11.²

- Three residential/commercial buildings:
 - Building A, located closest to S. De Anza Blvd, is a three-story building with 23 apartments, and 7,482 square-feet of ground-floor retail/commercial space.
 - Building B, located on the northwest corner of the property, is a three-story townhome structure with four residences.
 - Building C, located closest to Prospect Rd., is a three-story townhome structure with seven residences.
- 5,182 square feet of Residential Common Open Space
- 1,657 square feet of Commercial Common Open Space
- 51 onsite tree replacements for the 51 protected development trees proposed to be removed and/or relocated.
- A vesting tentative map to subdivide the two existing properties into twelve parcels.

The following City permits would be required: Development, Architectural and Site Approval, Use Permit, Tree Removal, and a Vesting Tentative Map. Based on State Density Bonus Law, the applicant is requesting a density bonus, parking reduction, and density bonus waivers for height, and front setback.

² Due to limitations of state law ((Government Code § 65103.5 (SB 1214)), the distribution of copyrighted material associated with the review of development projects is limited. Plans have been emailed under separate cover to allow the Commissioners to review the proposed plans. Commissioners and Councilmembers cannot share plans with outside parties, including community members. The public is able to make an appointment with the Planning Division to view these plans at City Hall.

Site and Location Description

The project site, commonly known as the Coach House Center, is located within the South De Anza Special Area of the General Plan. The shopping center is on an 1.68 gross-acre site bounded by Prospect Road and the City of Saratoga to the south, S. De Anza Boulevard and the City of San Jose to the east, an office development to the north, and a single-family residential neighborhood to the west. (See Figure 1)



Figure 1: Site Location

The adjacent uses are:

- North: office space
- West: single-family residences
- South: gas station, commercial, medical, and single-family residences
- East (across De Anza Boulevard): gas station and other commercial uses

The 11,648 square-foot leasable area of the existing commercial center includes a mix of personal service, restaurant, specialty food, and grocery tenants.

Analysis:

General Plan Compliance

The proposed project consists of a mix of residential and commercial development consistent with the subject site's General Plan Land Use Designation of Commercial/Office/Residential. The General Plan designation allows a maximum density of 15 dwelling units per acre, which would allow 25 units for the 1.68-acre site. The proposed number of units, with the State-mandated density bonus, allows an increase of 35% beyond the General Plan maximum, resulting in an allowance of an additional 9 units for a total of 34 units for the site. The project, with the density bonus, proposes 34 units, as permitted by the State Density Bonus Law.

The General Plan's Community Form Diagram establishes heights and setbacks for development on sites within each of the City's Special Areas. The proposed development in the South De Anza Special Area has a height limit of 30 feet. The applicant has requested a density bonus waiver of the height for Building A. The waiver requests will be discussed in further detail in the Density Bonus Section of this Staff Report.

Staff has evaluated the project's consistency with the General Plan and concludes that based on the conformance with the General Plan Land Use designation for the site and the minimal environmental impacts of the project as analyzed in the Mitigated Negative Declaration Addendum (further discussed in detail in the Environmental Review section of this Staff Report), the proposed project supports several of the City's General Plan goals including:

- **Policy LU-1.3: Land Use in All City-wide Mixed-Use Districts** - Encourage land uses that support the activity and character of mixed-use districts and economic goals.

The development is in a mixed-use district within the South De Anza Special Area which contemplates residential, commercial, and office uses on these parcels. The proposed project has a density within the allowed General Plan density allowance and maintains 7,482 square-feet of commercial space.

- **Policy LU-5.2: Mixed-Use Villages** - Where housing is allowed along major corridors or neighborhood commercial areas, development should promote mixed-use villages with active ground floor uses and public space. The development should help create an inviting pedestrian environment and activity center that can serve adjoining neighborhoods and businesses.

The proposed development is not designated as a neighborhood center in the General Plan. However, the development proposal is along S. De Anza Boulevard which is considered in the General Plan as a major corridor/arterial. Based on the "Mixed-Use Urban Village" guidelines in the General Plan, the site planning for the proposed development locates the retail on the ground floor along S. De Anza Blvd., adjoining an open space area for outdoor seating and gathering. Parking is planned in a podium configuration under the apartments, and not visible from the right-of-way. The setbacks from the single-family neighborhood to the west is consistent with those mandated by the South Saratoga-Sunnyvale Road Conceptual Zoning Plan. The design is high-quality, with pedestrian oriented architecture and planning, and places an emphasis on aesthetics, human scale, and creating a sense of place.

- **Policy LU-22.6: Building Design** - Locate buildings and commercial pads along the street with parking areas to the side and rear. Provide pedestrian scaled elements and active uses including retail, restaurants, and entries along the street. Outdoor plaza and activity areas can be located along the street with sidewalk and street trees to buffer them from through traffic.

In accordance with the "Mixed-Use Urban Village" guidelines in the General Plan, the site planning for the proposed development locates the retail on the ground floor along S. De Anza Blvd., adjoining an open space area for outdoor seating and gathering. Parking is

planned in a podium configuration under the apartments, and not visible from the right-of-way. The setbacks from the single-family neighborhood to the west is consistent with those mandated by the South Saratoga-Sunnyvale Road Conceptual Zoning Plan. The design is high-quality, with pedestrian oriented architecture and planning, and places an emphasis on aesthetics, human scale, and creating a sense of place.

- **Policy LU-22.8: Neighborhood Buffer** - Provide building transitions, setbacks and/or landscaping to buffer development from adjoining single-family residential uses. *The setbacks from the single-family neighborhood to the west is consistent with those mandated by the South Saratoga-Sunnyvale Road Conceptual Zoning Plan.*

- **HE-1.3.4: Flexible Development Standards** - The City recognizes the need to encourage a range of housing options in the community. The City will continue to:
 - Offer flexible residential development standards in planned residential zoning districts, such as smaller lot sizes, lot widths, floor area ratios and setbacks, particularly for higher density and attached housing developments.
 - Consider granting reductions in off-street parking on a case-by-case basis for senior housing.

The proposed project applied under the Density Bonus Ordinance, CMC 19.56 Density Bonus. This ordinance allows for flexibility in design standards, density, and parking. The applicant has requested waivers for front setbacks and height, as well as an alternative to the parking standards mandated by the Density Bonus Ordinance.

- **HE-2.3.7: Density Bonus Ordinance** - The City will encourage use of density bonuses and incentives, as applicable, for housing developments which include one of the following:
 - At least 5 percent of the housing units are restricted to very low-income residents.
 - At least 10 percent of the housing units are restricted to lower income residents.
 - At least 10 percent of the housing units in a for-sale common interest development are restricted to moderate income residents.
 - The project donates at least one acre of land to the city or county large enough for 40 very low-income units; the land has the appropriate general plan designation, zoning, permits, approvals, and access to public facilities needed for such housing; funding has been identified; and other requirements are met. A density bonus of up to 20 percent must be granted to projects that contain one of the following:
 - The project is a senior citizen housing development (no affordable units required).

- The project is a mobile home park age restricted to senior citizens (no affordable units required). For projects that contain on-site affordable housing, developers may request one to three regulatory concessions, which must result in identifiable cost reductions and be needed to make the housing affordable.

The proposed project applied under the Density Bonus Ordinance, CMC 19.56 Density Bonus. The development is proposing 20% of its units (on base density) to be below market, which include 12% of the units as Very Low Income. The applicant has requested waivers for front setbacks and height, as well as an alternative to the parking standards mandated by the Density Bonus Ordinance.

Project Compliances:

The Cupertino Municipal Code sets forth the findings for approval of the various permits necessary to approve the proposed project. These provide a framework for making decisions and facilitating an orderly analysis of the review of a project. Listed below are the findings for the three permits sought by the applicant that the City must make in rendering a decision on this project.

A. Development Permit & Use Permit (CMC 19.156.040)

1. The proposed development and/or use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

The project is consistent with the land use designations in the General Plan, Zoning Ordinance, and the South Saratoga-Sunnyvale Road Conceptual Zoning Plan. It has been designed to be compatible with and respectful of adjoining land uses, including but not limited to wide setbacks from the single-family residences on the western property line, as well as providing landscaping along the building frontages to help mitigate any massing impacts. Further, the City's environmental consultant, Placeworks, prepared an Initial Study titled "1655 South De Anza Boulevard Mixed-Use Project Initial Study, October 2022" which determined that any significant impacts can be reduced to less than significant levels. Pursuant to this determination, a Mitigated Negative Declaration (MND) was prepared, finding that the City can rely on the adopted Environmental Protection Standards (Chapter 17.04) being applied as Conditions of Approval to minimize any impacts in several areas such as Biological Resources, Cultural Resources, Noise etc. The MND further identifies mitigation measures in the areas of Noise and Transportation, to reduce the potential environmental impacts of the project to less than significant levels. Therefore, the project will not be detrimental or injurious to

properties or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.

2. The proposed development and/or use will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan, underlying zoning regulations, and the purpose of this title and complies with the California Environmental Quality Act (CEQA).

The General Plan land use designation for the property is Commercial/Office/Residential. The proposed use is consistent with the General Plan in terms of use, density and slope line setback. The applicant is requesting waivers for height and setback, as well as an alternate parking standard as allowed per the Density Bonus Ordinance (CMC 19.56). The proposed development has met the applicable development standards of the South Saratoga-Sunnyvale Road Conceptual Zoning Plan including rear setbacks adjacent to single-family residential uses. The City's environmental consultant, Placeworks, c prepared an Initial Study titled "1655 South De Anza Boulevard Mixed-Use Project Initial Study, October 2022" which determined that any significant impacts can be reduced to less than significant levels. Pursuant to this determination, a Mitigated Negative Declaration (MND) was prepared, finding that the City can rely on the adopted Environmental Protection Standards (Chapter 17.04) being applied as Conditions of Approval to minimize any impacts in several areas such as Biological Resources, Cultural Resources, Noise etc.. The MND further identifies mitigation measures in the in the areas of Noise and Transportation, to reduce the potential environmental impacts of the project to less than significant levels.

3. The applicant has requested a density bonus. Pursuant to Cupertino Municipal Code Section 19.56.070, before approving an application that includes a request for density bonus, incentive, parking reduction and/or waiver, the decision-making body shall make the following findings, as applicable:

- a) A finding that the residential project is eligible for the density bonus and any incentives, parking reductions or waivers requested.

The application is for a density bonus project that provides for approximately 20% of its base density as Below Market Rate Housing. As 12% of the units on-site will be Very Low Income residents, it is eligible for a 35% density bonus.

- b) A finding that any requested incentive will result in identifiable, financially sufficient, and actual cost based on the financial analysis and documentation provided.

No incentives are requested as part of the project, so the finding is not applicable.

- c) If the density bonus is based all or in part on donation of land, a finding that all requirements included Section 19.56.030C have been met.
The density bonus is not based on the donation of land, so the finding is not applicable.
- d) If the density bonus is based all or in part on the inclusion of a childcare facility, a finding that all requirements included in Section 19.56.030 (D) have been met.
The density bonus is not based on the inclusion of a childcare facility, so the finding is not applicable.
- e) If the density bonus or incentive is based on a condominium conversion, a finding that all the requirements included in Section 19.56.030 (E) have been met.
The density bonus is not based on a condominium conversion, so the finding is not applicable.
- f) If the incentive includes mixed-use development, a finding that all requirements including in Section 19.56.40 (B) (2) have been met.
While the project is a mixed-use development, the density bonus is not based on the mixed-used development as an incentive, so the finding is not applicable.
- g) If a waiver is requested, a finding that that the development standards for which the waivers are requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives or concessions permitted.
The development standards for the front setback, and height would physically preclude the development. These development standard limitations could affect the project by a considerable loss of units, up to 12 units, which many may include those designated as BMR.
- h) If a reduction in off-street parking standards for an eligible housing development is requested.
Since the development is a density bonus application, the Density Bonus Ordinance, allows a maximum off-street parking standard that can be applied to the housing portion of the development, inclusive of handicapped and guest parking, which this project has met.
4. Since the applicable findings required above can be made, the decision-making body may deny an application for a waiver only if one of the following written findings as applicable to each type of application, supported by substantial evidence:

- a) That the incentive or concession, or waiver would have an adverse impact on real property listed in the California Register of Historic Resources; or
There are no affected Historic Resources in the vicinity.
- b) That the incentive or concession, or waiver would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the residential project unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential project was deemed complete; or
The City's environmental consultant, Placeworks, completed the Mitigated Negative Declaration titled "1655 South De Anza Boulevard Mixed-Use Project Initial Study, October 2022" whether the project would create any significant impacts. The result was that the Mitigated Negative Declaration (MND) finds that the City can rely on the adopted Environmental Protection Standards (Chapter 17.04) being applied as Conditions of Approval to minimize any impacts in several areas such as Biological Resources, Cultural Resources, Noise etc.. The MND further identifies mitigation measures in the following two areas, to reduce the potential environmental impacts of the project to less than significant levels.
- c) That the incentive or concession, or waiver is contrary to state or federal law.
The requested waivers are not contrary to state or federal law.

B. Architectural and Site Approval Permit (CMC 19.168.030)

1. The proposed development, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

The project is consistent with the land use designations in the General Plan, Zoning Ordinance, and the South Saratoga-Sunnyvale Road Conceptual Zoning Plan. It has been designed to be compatible with and respectful of adjoining land uses, including but not limited to wide setbacks from the single-family residences on the western property line, as well as providing landscaping along the building frontages to help mitigate any massing impacts. Further, the City's environmental consultant, Placeworks, prepared an Initial Stud titled "1655 South De Anza Boulevard Mixed-Use Project Initial Study,

October 2022" which determined that any significant impacts can be reduced to less than significant levels. Pursuant to this determination, a Mitigated Negative Declaration (MND) was prepared finding that the City can rely on the adopted Environmental Protection Standards (Chapter 17.04) being applied as Conditions of Approval to minimize any impacts in several areas such as Biological Resources, Cultural Resources, Noise etc. The MND further identifies mitigation measures in the following two areas, to reduce the potential environmental impacts of the project to less than significant levels. Therefore, the project will not be detrimental or injurious to properties or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.

2. The proposed development is consistent with the purposes of this chapter, the General Plan, any specific plan, zoning ordinances, applicable planned development permit, conditional use permits, variances, subdivision maps or other entitlements which regulate the subject property including, but not limited to, adherence to the following specific criteria:
 - a. Abrupt changes in building scale should be avoided. A gradual transition related to height and bulk should be achieved between new and existing buildings.

The proposed project is a redevelopment of an existing single story retail building with a new three-story mixed-use apartment and two three story townhome buildings. The adjacent office building to the north of the property is of similar height, while the townhomes are designed with the appropriate landscape setback of 15-feet, with the multi-floor elements setback in accordance with the South Saratoga-Sunnyvale Road Conceptual Zoning Plan. There is also landscaping proposed at the perimeter which will help mask some of the bulk of the proposed buildings.

- b. In order to preserve design harmony between new and existing buildings and in order to preserve and enhance property values, the materials, textures and colors of new buildings should harmonize with adjacent development by being consistent or compatible with design and color schemes, and with the future character of the neighborhood and purposes of the zone in which they are situated. The location, height and materials of walls, fencing, hedges and screen planting should harmonize with adjacent development. Unsightly storage areas, utility installations and unsightly elements of parking lots should be concealed. The planting of ground cover or various types of pavements should be used to prevent dust and erosion, and the unnecessary

destruction of existing healthy trees should be avoided. Lighting for development should be adequate to meet safety requirements as specified by the engineering and building departments and provide shielding to prevent spill- over light to adjoining property owners.

The design quality of the development is consistent with the high-quality standards encouraged by City Staff. The mixed-use building meets the design qualities of a Modern design development. The architectural style is consistent throughout the development. Unsightly uses such as loading, trash pickup, and parking have been placed within the buildings away from view of neighboring uses. Utility installation has been designed to be screened by landscaping and or incorporated into the building design. The final lighting for the development will be reviewed as part of the review of the project construction documents to ensure that they meet safety requirements while avoiding spill-over light to adjacent properties. The windows have been proposed to be consistent with the City's bird safe ordinance as well.

- c. The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures shall minimize traffic hazards and shall positively affect the general appearance of the neighborhood and harmonize with adjacent development.

Signage approval is not included in this application.

- d. With respect to new projects within existing residential neighborhoods, new development should be designed to protect residents from noise, traffic, light and visually intrusive effects by use of buffering, setbacks, landscaping, walls and other appropriate design measures.

The project does abuts an existing single-family residential neighborhood to the west. The townhome buildings have been designed as required by the South Saratoga-Sunnyvale Road Conceptual Zoning Plan. Further, the existing Italian Cypress are conditioned to be maintained, if possible, to provide privacy protection.

C. Tentative Map (CMC 18.16.060)

1. That the proposed subdivision map is consistent with the City of Cupertino General Plan.

The subject property is consistent with the General Plan since the property is permitted to have up to 15 dwelling units an acre and the project qualifies for a density bonus. The

proposed development is consistent with the intent of the policies of the General Plan for a high density mixed-use development on this site.

2. That the design and improvements of the proposed subdivision are consistent with the General Plan and specific plans.

The off-site improvements are consistent with the City's General Plan policies related to pedestrian and bicycle safety etc. by improving Prospect Road, minimizing curb-cuts, and requiring an urban canopy within the public right-of-way. The project is also consistent with the General Plan's design requirements, since the project qualifies for waivers for height and front setback.

3. That the site is physically suitable for the type of development.

The proposed tentative map is compatible with the adjoining land uses and no physical constraints are present that would conflict with anticipated land use development. There are no topographical anomalies that differentiate this property from adjacent properties. The site is located on the valley floor, as well as not listed within any environmentally sensitive zone.

4. That the site is not physically suitable for the proposed density of development.

The subject property is physically suitable in size and shape in conformance to development standards and is appropriately configured to accommodate a multi-unit mixed-used development.

5. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish and wildlife or their habitat.

The design of the subdivision and proposed improvements are not likely to substantially injure fish and wildlife or their habitat because the property is a developed site and located in an urbanized area where residential land use is allowed.

6. That the design of the subdivision or the type of improvements associated therewith are not likely to cause serious public health problems.

The proposed subdivision design and improvements are not likely to cause serious public health problems. The proposed development is consistent with the intent of the policies of the General Plan for a high density mixed-use development on this site, and the on-site and off-site improvements improve neighborhood walkability through improved sidewalk construction with size-appropriate driveway cuts and street and private trees planting.

7. That the design of the subdivision and its associated improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

No easement or right-of-way exists currently that would be impeded or conflict with the proposed subdivision.

D. Tree Removal Permit (CMC 14.18.180)

The approval authority shall approve a tree removal permit only after making **at least one** of the following findings:

1. That the tree or trees are irreversibly diseased, are in danger of falling, can cause potential damage to existing or proposed essential structures, or interferes with private on-site utility services and cannot be controlled or remedied through reasonable relocation or modification of the structure or utility services;

Not applicable.

2. That the location of the trees restricts the economic enjoyment of the property by severely limiting the use of property in a manner not typically experienced by owners of similarly zoned and situated property, and the applicant has demonstrated to the satisfaction of the approval authority that there are no reasonable alternatives to preserve the tree(s).

To accommodate for the new development's structures, walkways and internal street network to public open spaces, the existing trees cannot be preserved in their locations. The applicant proposes replacement trees throughout the site in conformance with the Municipal Code Ordinance requirements and proposes to locate the replacements where tree coverage is needed, while preserving virtually all the trees that are not within the development area of the project site.

3. That the protected tree(s) are a detriment to the subject property and cannot be adequately supported according to good urban forestry practices due to the overplanting or overcrowding of trees on the subject property.

Not applicable.

4. That the mature specimen trees with single trunk between twelve inches DBH and twenty-four inches DBH, or multi-trunk between twenty-four inches DBH and forty-eight inches DBH in R1, A1, A, RHS, and R2 zones will be replaced by planting a replacement tree and/or by contribution to the City's Tree Fund.

Not applicable.

Density Bonus and Waiver Requests

The project includes requests for a density bonus, parking reduction, and two waivers - one for height of Building A, and the second for the front landscape setback required along S. De Anza.

Section 19.56.070 of the City’s Density Bonus Ordinance (“Findings”) requires that, before approving an application which includes a request for a density bonus, waiver or reduction in parking standards, the decision-making body must determine that the proposal is consistent with State Density Bonus Law by making the following findings, as applicable:

1. That the housing development is eligible for the density bonus requested and any incentives or concessions, waivers or reductions in parking standards requested.
2. That the development standard(s) for which the waiver(s) are requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives or concessions permitted, if a waiver is not requested.

The City may not deny a waiver of a development standard that would physically preclude the construction of the project as it is designed, unless the waiver or reduction would have a specific, adverse impact upon health or safety, for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, or would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

Density Bonus

The project is eligible for density bonuses, a parking reduction, and waivers consistent with the City of Cupertino Municipal Code Chapter (CMC) 19.56 *Density Bonus* and State Density Bonus Law. Table 1, below, provides a breakdown of the housing affordability types proposed and their respective percentage of the development:

Income Level	Below Market Rate Units	% of Development Units³
Median Income ⁴	1 unit (20% of affordable units)	4%
Low Income	1 unit (20% of affordable units)	4%

³ Percentages are based on the base density of 15 DU/acre or 25 units, as required by the Density Bonus Law and are consistent with the 20% requirement in the City’s BMR Manual.

⁴ HCD sets the maximum moderate-income limit to equal 120 percent of the county’s AMI, adjusted for family size.

Very Low Income	3 units (60% of affordable units)	12%
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Table 1: Below Market Rate Units as a Percentage of the Development

The project was submitted initially as a preliminary review in January 2020. As such, the development is subject to the 2015 version of the Below Market Rate manual that had a 15% BMR requirement for both rental and ownership projects, or 4 units (2 Very Low Income, 1 Low Income and 1 Median Income). The project is proposing one additional Very Low-Income unit, for a total of 5 BMR units. Since the project is providing 3 Very Low-Income units, or 12% of the development, it is entitled to a 35% Density Bonus under State Law. Therefore, 9 market-rate units are allowed in addition to the base residential yield of 25 units, for a total of 34 units.

Please refer to Attachment 8 for a full description of the Below Market Rate programming of the development. A condition of approval would require that, prior to occupancy, the applicant record a regulatory agreement with the City requiring the designated 1 BMR unit to be for sale to median income households and remain affordable for 99 years, with the 4 BMR rental units be rented to low and very-low-income residents for 99 years.

Density Bonus Parking Reduction

While the Municipal Code requires the project to provide 2.8 parking spaces per townhome and 2 parking spaces per apartment, for a total of 77 residential spaces, projects such as this one which are eligible for a state density bonus are entitled to a reduction of required residential parking.

Under the City’s Density Bonus Ordinance, the maximum off-street parking standards that can be applied to the housing portion of the development, inclusive of handicapped and guest parking, are shown in Table 3, below. These may include tandem and uncovered parking spaces as well. In this case, the City may only require the applicant to provide 68 residential parking spaces under the provisions of state law.

Table 2: Parking Requirements

Building Use	Parking Standards per Density Bonus Law CMC 19.56.040(C)	# of Units or S.f.	Required Spaces	Provided Spaces
Townhomes	Three-bedroom units = 2 onsite spaces/unit	11	22	22
Apartments	2–3-bedroom units = 2 spaces/unit	23	46	46
<i>Sub-total</i>		34	68	68
Retail	1 space per 250 s.f.	7,482 s.f.	30	31

Building Use	Parking Standards per Density Bonus Law CMC 19.56.040(C)	# of Units or S.f.	Required Spaces	Provided Spaces
Total			98	99

While the project site meets the criteria established by the Density Bonus Law, and the project, including its commercial area, is thus only required to provide 98 spaces under State law, the applicant is proposing a total of 99 parking spaces. The applicant is proposing one additional retail parking space than required by the City’s Municipal Code.

Waivers Requested

As a density bonus project, the applicant may submit to the City proposals for an unlimited number of waivers, or reduction of development standards, that would have the effect of physically precluding the construction of the proposed project (Government Code Section 65915(e)). The applicant has requested three (3) waivers as follows:

1. Height: The General Plan’s Community Form Diagram requires that development on these sites be limited to 30 feet. The applicant is requesting a waiver to allow Building A to exceed this height as follows:
 - o 38 feet at the roofline
 - o 52 feet at the elevator tower ⁵
2. Front setback: The South Saratoga-Sunnyvale Road Conceptual Zoning Plan requires a setback from the S. De Anza Boulevard average of 50-feet, with no point less than 35-feet. The applicant is requesting a waiver to allow Building A to have a front setback of 35-feet.

As part of the application, the justification of the waivers (height and front setback) was provided by the applicant in a letter, submitted by Brandon Aioli, of Propriis, dated March 9, 2021 (Attachment 7). This letter states that the waivers are necessary for several reasons:

- Height Waiver: Limiting the building to 30-feet would only allow a two-story development, removing the third floor of apartments, or 12 units. Further, the roof-level is required to provide common open space for the residents of the apartment building.

⁵ Elevator overruns and other mechanical equipment are typically exempt from the height limits of the General Plan if they are centrally located. However, in this case, since the elevator stops on the roof top to provide access to the proposed roof top common open space for the residents of the apartment building, it is counted as height.

- Front Setback Waiver: Exhibits indicate that if the front setback requirement was enforced, the Project would lose approximately three units per floor in Building A for an overall combined total loss of at least 6 units, as well as a further reduction in parking and retail space.

To approve the waivers, the City must find that the development standards for which the waivers are requested would have the effect of physically precluding the construction of the proposed housing development with the density permitted by State density bonus law. In reviewing the justification letters and exhibits, it is evident that imposing the City's height and front setback requirements would physically preclude development of Buildings A as proposed.

It should be noted that under State Density Bonus Law, a city may not deny a proposed project based on the theory that another project, with a similar number of units, might be designed differently and accommodated without waivers of development standards.

Compliance with BMR Unit Comparability & Dispersion Requirements

The BMR Manual requires that the BMR Units:

- Shall be comparable to market rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance and overall quality of construction.
- Size should be generally representative of the unit sizes within the market-rate portion of residential project.
- Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing.

The Affordable Housing Plan, Attachment 8 (as well as sheet A.5.1), shows the proposed unit mix within the three buildings by income level, type, location, and size.

The BMR units on average are the same size and bedroom count as the market-rate units. There is no indication on the plans that the exterior finishes of the BMR units will be any different from the market rate units. As such, it is expected that they will be of the same quality; however, as allowed in the BMR manual, the affordable units may have different interior finishes.

Architecture and Site Design

The project site defers to the development standards of the General Plan, and Planned Development "P" zoning designation. The "P" zoning designation is detailed in Cupertino Municipal Code Chapter 19:80 Planned Development Zones. The "P" zoning designation is intended to provide a means of guiding land development or redevelopment within the city that is uniquely suited for planned coordination of land

uses and land development. While in the Planned Development zoning district, development must adhere to Multifamily (R3) zoning regulations, as an alternative, applicants can apply for a discretionary review of the project and propose alternative standards unique to the site. The project has incorporated open space requirements like those in the Heart of the City Specific Plan, where much of the multifamily development in the city was anticipated and development standards were adopted to accommodate such development. The applicant proposes open space within the project as indicated in the following table, which is beyond the requirements of those standards in the Heart of the City Specific Plan:

Table 3 Open Space Requirements

Type	Heart of the City Standards	Proposed
Common	5,287 sq. ft. (150 sq. ft. per unit, and 2.5% of gross commercial floor area)	6,839 sq. ft.
Private	60 sq. ft./unit and no dimension less than 6 feet	<ul style="list-style-type: none">• Apartments: 73 sq. ft. – 177 sq. ft.• Townhomes: 665 sq.ft. – 690 sq.ft.

The proposed development is a modern design that incorporates high-quality material, as well as architectural variation that reflect a “Contemporary” style, which include fine sand finish stucco, vertical siding long board, and metal guardrails. Buildings have been properly sited to address the street, with the mixed-use building oriented towards S. De Anza Boulevard and townhomes oriented towards Prospect Road or the internal drive private street. The development is additionally reducing the number of driveway curb cuts on its frontage along S. De Anza Blvd and Prospect Rd from two to one. Parking for townhomes has been provided with individual, enclosed garage spaces (some tandem), while parking for the mixed-use building has been provided in both surface level and “podium” type configurations. Overall, the applicant has proposed a project that is appropriate to the location and surrounding context of the site.

The S. Saratoga Sunnyvale Plan requires that there be connections between all the properties between Wildflower Way and Prospect Road whenever it is practicable and desirable to provide direct access to traffic signals for more convenient northbound access on S. De Anza Blvd. To implement this policy, a 1984 Use permit for neighboring property to the north required reciprocal ingress egress as a condition of approval of that permit with the subject property. With this redevelopment, the City has an opportunity to implement this policy direction and create a driveway connection. Due to concerns from the Sheriff’s office, which occupies tenant space in the office building to the north currently, about a connection to public thoroughfare into the parking lot where the Sheriff’s patrol cars are parked, staff is not recommending that the connection be implemented at this time. However, a condition of approval has been added to this

project to require participation in an ingress egress easement and the physical connection with costs evenly split between the two properties, if and when the Sheriff is no longer a tenant at this location.

Tree Removal and Replacement

The development proposes to remove and replace 51 protected development trees, virtually all the trees onsite. Almost all those trees that are impacted are non-native species, particularly the abundant Italian Cypress (36 in total).

The applicant proposes to replace the removed trees with 51 trees (36 24-inch box, and 15 36-inch box trees of various species). There have been comments from neighbors about retaining this privacy screening and as a result, a condition has been added to retain these mature Italian Cypresses along the western property line (trees 24 – 36, 38-40, and 41 – 54 on Sheet L6) as they provide ample privacy protection to the rear yards of the adjoining single-family residences.

Use Permit

The project proposal requires a Use Permit to allow the development of residential units on a non-Housing Element site.

The Housing Element of the City of Cupertino's General Plan: Community Vision 2015 – 2040 does not identify this site as a Priority Housing Site. The General Plan, and CMC Chapter 19.80: Planned Development (P) Zones provide that a residential development not on a Priority Housing Site shall be a conditional use. The applicant proposes to build the project at the maximum allowable density, which is 15 units per acre or 25 units (not counting density bonus units); therefore, the applicant has submitted a Use Permit application.

Vesting Tentative Map

The project is currently two separate parcels. The application for the Vesting Tentative Map (VTM) proposes to subdivide the two separate lots to create twelve parcels. A condition of approval has been added to the VTM that would require dedication of reciprocal easements ensuring cross-access between the parcels, for emergency vehicles and public. The approval of a vesting tentative map confers a vested right to proceed

with development in substantial compliance with the city's ordinances, policies, and standards in effect at the date the city determines the application is complete.

Housing Accountability Act

The Housing Accountability Act (HAA) (Gov. Code, § 65589.5) limits the ability of a city to deny or impose certain conditions on a housing development project when the project complies with applicable, objective general plan, zoning, and subdivision standards and criteria. This project is a “housing development project” under the HAA because it is a mixed-use development consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

When a project complies with objective standards, the HAA allows a city to disapprove the project or to impose a condition that the project be developed at a lower density only if the city finds *both* of the following, supported by a preponderance of the evidence in the record:

1. The project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density; and
2. No feasible method to satisfactorily mitigate or avoid the adverse impact exists.

The project meets all applicable objective zoning, General Plan, and subdivision standards. Based on the record, including the findings in the IS/MND, staff does not believe the above findings can be made with respect to the proposed project.

Signage

Signage details are not included in this permit application. Staff will review the signage proposal with the property owner at the time the applicant applies for a sign permit through the Building Division.

Other Department/Agency Review

The City's Building Division, Public Works Department, Environmental Services Division, Sheriff's Department, Cupertino Sanitary District, and the Santa Clara County Fire Department have reviewed and conditioned the project.

Environmental Review

A Draft Initial Study and Mitigated Negative Declaration (IS/MND) has been prepared for the project (See Attachment 9). The Mitigated Negative Declaration (MND) finds that the City can rely on the adopted Environmental Protection Standards (Chapter 17.04)

being applied as Conditions of Approval to minimize any impacts in several areas such as Biological Resources, Cultural Resources, Noise etc. However, the MND identifies mitigation measures in the following two areas, to reduce the potential environmental impacts of the project to less than significant levels:

- *Transportation:* To reduce Vehicle Miles Traveled (VMT), the project includes a fair share contribution for bike improvements along Prospect Road, preparation of a School Pool, Bicycle, Car Share Program, and Behavioral Intervention Programs.
- *Noise Levels:* Construction shall comply with the Noise Ordinance and best management practices for noise mitigation, and ensure mechanical equipment selected meet the City's noise ordinance.

The mitigation measures are also conditions of approval for this project.

The Notice of Intent (NOI) to adopt a MND was placed in the newspaper. In addition, the NOI was mailed to notify neighbors and interested parties that a Draft MND had been prepared which the City intends to adopt. The 20-day Public Review Period for the Draft MND was between October 14, 2022, and November 2, 2022. Please review the response to comment memo (Attachment 11).

The Environmental Review Committee (ERC) heard the item at its October 20, 2022, and after the public hearing, recommended that the City Council adopt a Mitigated Negative Declaration (EA-2022-005) on a 4-0-1 (Wu absent) vote with the identified mitigation measures (Attachment 1).

Public Outreach and Noticing

The following table is a 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>10 days prior to the hearing</i>)▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>)▪ Public hearing notices were mailed to property owners within 500 feet of the project site (<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 website (<i>one week prior to the hearing</i>)

The applicant has completed community outreach to residents and property owners.

Public Comment

One member of the public commented to staff at the time this staff report being published. Please refer to Attachment 12 to read the full comments. The residents are concerned with privacy intrusion from the townhome portion of the development. Staff has added a condition in the proposed tree removal permit resolution that requests that the applicant maintain the mature Italian Cypresses along the westerly property if grading allows.

Conclusion

Staff recommends approval of the project, as proposed, because the project and its conditions of approval support the findings for approval of the proposed project, consistent with Chapters 14.18, 18.28, 19.56, 19.156, and 19.168 of the Cupertino Municipal Code. With respect to the development's height and front setback, evidence in the record demonstrates that the project meets the standards for granting the waivers under the State Density Bonus Law.

Next Steps

The Planning Commission's recommendation will be forwarded to the City Council for its decision on the project. The City Council's decision will be final unless reconsidered within 10 days of the decision. If the project is approved, the applicant may apply for building permits at that time.

Prepared by: Gian Paolo Martire, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved by: Luke Connolly, Interim Assistant Director of Community Development

ATTACHMENTS:

- 1– Draft Resolution for EA-2022-005
- 2 - Draft Resolution for DP-2021-002
- 3 – Draft Resolution for ASA-2021-004
- 4 – Draft Resolution for U-2021-001
- 5 – Draft Resolution for TM-2021-003
- 6 – Draft Resolution for TR-2022-006
- 7 – Letter from Brandon Airoli, of Propriis dated March 9, 2021
- 8 - BMR Program 1655 S De Anza Blvd Cupertino Project, Brandon Arioli
- 9 – 1655 South De Anza Boulevard Mixed-Use Project Initial Study, Final IS/MND, May 2023

10 - Response to Comment Memorandum, Dated May 15, 2023

11 – Site Plan and Renderings

12– Public Comment