



## COMMUNITY DEVELOPMENT DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Meeting: January 21, 2020

#### Subject

Consider approving a new 155-room seven-story hotel (24-hour operations) with underground parking, event meeting rooms, a ground floor restaurant with separate bar, and a rooftop lounge with separate bar by demolishing a commercial building with an area of 8,323 sq. ft. City Actions would include General Plan Amendments to consider amending Table LU-1 by increasing the development allocation of hotel rooms to 155 hotel rooms in the Homestead Special Area and Figure LU-1 to allow increased heights and reduced building plane within the North De Anza Gateway specific to this development. City permits would include: Development, Architectural and Site Approval, and Use Permits. A Development Agreement is also proposed; (Application No(s): GPA-2018-01, DP-2018-01, ASA-2018-02, DA-2018-01, U-2018-02, EA-2018-03; Applicant(s): Sherly Kwok (De Anza Properties); Location: 10931 N De Anza Blvd.; APN #326-10-061

#### Recommended Actions

That the City Council conduct a public hearing, consider the Planning Commission's recommendation, and:

1. Adopt Resolution No. 19-XX adopting a Mitigated Negative Declaration, mitigation measures, and a Mitigation Monitoring and Reporting Program (Attachment A).
2. Adopt Resolution No. 19-XX approving a General Plan Amendment (Attachment B).
3. Adopt Resolution No. 19-XX approving a Development Permit (Attachment C).
4. Adopt Resolution No. 19-XX approving an Architectural and Site Approval Permit (Attachment D).
5. Adopt Resolution No. 19-XX approving a Use Permit (Attachment E).
6. Introduce and waive the first reading of Ordinance No. 19-XX "An Ordinance of the City Council of the City of Cupertino Approving a Development Agreement for the Development of a New 7-Story, 155 Room Hotel With Associated Site and Landscaping Improvements Located at 10931 N. De Anza Blvd. (APN #326-10-061)" (Attachment F).

## Discussion

### Project Data:

<b>General Plan Designation:</b>	Commercial/Residential		
<b>Special Area:</b>	Homestead Special Area (North De Anza Gateway)		
<b>Zoning Designation:</b>	CG-rg –General Commercial with special development conditions per Ordinance No. 436		
	<b>Existing</b>	<b>Proposed</b>	
<b>Property Area:</b>			
<b>Lot Area</b>	63,787 sq. ft. (1.46 acres)		56,278 (1.29 acres)
<b>Floor Area (sq. ft.)</b>	8,323sq. ft.		130,716 sq. ft.
<b>Floor Area Ratio (sq. ft.)</b>	0.13		2.32
	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>
<b>Building Height:</b>	45 ft.	18 ft.	83 ft.
<b>Setbacks:</b>			
Front	CG ordinance references the General Plan policies. General Plan requires maintaining the primary bulk of building below 1:1 slope line drawn from the arterial/boulevard curb line	Conforms	Ranges from 0.18:1 to 0.22:1 for the sections of the building closest to N. De Anza Blvd and 0.64:1 for the section of the building farthest from N. De Anza Blvd.
Rear	None	~90 ft.	Varies between 21 ft & 43 ft
Side (north)	CG-rg – Ordinance No. 436 requires retention of a three car width driveway along the northern property line ~ 30 ft.	~60 ft.	32 ft. 6 inches
Side (south)	None	~118 ft.	30 ft.
<b>Auto Parking: (Parking Study)</b>	183		217
<b>Bicycle Parking: (1 per 20,000 sf)</b>	7		8
<b>Project Consistency with</b>			

General Plan:	No. Upon adoption of General Plan Amendments, the proposed project will comply.
Zoning:	Yes
Environmental Assessment:	Initial Study / Mitigated Negative Declaration

## **Background:**

### *Application Requests*

The applicant, Sherly Kwok, representing the property owner, De Anza Properties, is requesting permits to allow construction of a hotel on a 1.29-acre site on the Goodyear Tire site by demolishing an existing 8,323-square-foot auto repair center and replacing it with the following improvements (see Attachment L):

- A new seven-story, 155-room hotel;
- New restaurant with separate bar on the ground floor;
- Rooftop lounge with separate bar;
- Conference Meeting Rooms; and
- Updated landscaping along the perimeter of the property, including updated frontage improvements to provide pedestrian accessibility.

The proposed development would require a General Plan amendment, a Development Permit, an Architectural and Site Approval Permit, and a Use Permit and the applicant proposes a Development Agreement.

### *General Plan Authorization*

The applicant submitted a General Plan Amendment Authorization (GPAAAuth-2018-01) application to construct a 155-room hotel. At its January 15, 2019 meeting, the City Council adopted Resolution No. 19-010 by a 4-1 vote authorizing the submission of the application including General Plan Amendments and a Development Agreement. The Development Agreement specifies community benefits including, but not limited to, a one-time Community Amenity Funding payment of \$500,000.

### *Site and Location Description*

The project site is located on the west side of N. De Anza Boulevard between Interstate 280 and Homestead Road, in the North De Anza Gateway within the Homestead Special Area. The General Plan identifies the Homestead Special Area as a major mixed-use corridor that continues to be a predominantly mixed-use area with a series of neighborhood commercial centers and multi-family housing. The land uses allowed along N. De Anza Boulevard, between Interstate 280 and the shared city boundary with

Sunnyvale, include residential and commercial (which allow hotel uses with a Conditional Use Permit) (See Figure 1).

The existing use of the site is a 8,323-square-foot auto repair center, Goodyear Tires. Access to the site is via two driveways from N. De Anza Boulevard, along the north and south property lines, both of which also provide access for the Homestead Shopping center and its loading/service areas, located to the west of the project site. Other surrounding uses include a strip shopping center to the north, a 96-unit, three-story condominium complex to the southwest, the four-story Cupertino Inn (126 rooms) to the south and the 140-unit, three-story, Aviare apartment development to the east. Heights of the various buildings range from one story to four stories up to a maximum height of 45 feet.



**Figure 1 Location of Subject Property**

#### *Planning Commission Recommendation:*

At its December 10, 2019 meeting, the Planning Commission reviewed the Staff Report and application and recommended 4-0-1 (Saxena absent) that the City Council adopt the MND, proposed mitigation measures and a Mitigation Monitoring and Reporting Program and approve the project (Resolution Nos. 6891, 6895, 6894, 6892, 6893, and 6890 available online at [www.cupertino.org/records](http://www.cupertino.org/records)).

#### **Analysis:**

##### *General Plan Compliance*

The proposed use is consistent with the General Plan Land Use Designation of Commercial/Residential. The City's General Plan uses a development allocation system when evaluating development projects. This allows the City flexibility in developing project and site specific mitigation measures when reviewing projects. Currently, there are no hotel rooms available for allocation in the Homestead Special Area in the City's General Plan. Further, the General Plan's Community Form Diagram establishes heights and setbacks for development on sites within each of the Special Areas. The proposed development is in the North De Anza Gateway within the Homestead Special Area, which has a height limit of 45 feet and a 1:1 slope line setback from the curb line.

The applicant has proposed General Plan Amendments to allow the following:

- Increase in the number of hotel rooms available for development (Table LU-1);
- Increase in maximum allowable height (from 45 feet to 85 feet) (Figure LU-1); and
- Reduction in the required building slope line (setback to height ratio) on N. De Anza Boulevard (from 1:1 to a range from 0.18:1 to 0.22:1) (Figure LU-1).

The proposed amendments to the General Plan are indicated in Attachment B (see Exhibit GPA-1.) It should be noted that the General Plan amendments would only apply to the proposed hotel. Should the hotel be demolished to develop a different use in the future, the currently established height limits and slope line would apply.

Upon adoption of the proposed General Plan Amendments to increase the hotel allocation in the Homestead Special Area to 155 hotel rooms, and the height and building plane amendments to 85 feet and 0.18:1 to 0.22:1, respectively, within the North De Anza Gateway, the project will be consistent with the General Plan.

Staff has evaluated the proposed General Plan Amendments and concludes that based on the net positive fiscal impacts of the project (see Attachment G) and minimal environmental impacts of the project, the proposed amendment supports several of the City's other 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.*
- **Strategy LU-9.1.3: Economic Development and Business Retention** - *Encourage new businesses and retain existing businesses that provide local shopping and services, add to municipal revenues, contribute to economic vitality and enhance the City's physical environment.*
- **Policy LU-23.2: Land Use** - *Primarily retail, commercial and residential uses, with some limited quasi-public use. Redevelopment of neighborhood centers should be based on the "neighborhood center" concept discussed earlier in this element.*
- **Policy LU-23.3: Connectivity** - *Homestead Road is envisioned to become a boulevard with bike and pedestrian improvements and new bicycle and pedestrian crossings at De Anza Boulevard, Blaney Avenue, Wolfe Road, and Tantau Avenue. This will provide better access for people moving east/west through the city north of Interstate 280, linking neighborhoods in the western part of the city with Homestead High School, Homestead Square Shopping Center and Apple Campus 2 to the east.*
- **Policy LU-23.4: Building Design** – *Buildings will be located closer to the street with parking mostly to the side and rear. In the case of larger sites, large buildings may be placed behind parking; however a substantial portion of the front of the site should be lined with active uses such as retail/restaurant pads, and plazas. Buildings should include pedestrian oriented elements with entries, retail, lobbies, and active uses along the street. Parking areas along the street will be screened with street trees. Residential buildings will provide stoops*

*and porches along the street and side streets. Taller buildings should provide appropriate transitions to fit into the surrounding area.*

- **Policy LU-23.5: Gateway Concept** – *Building and landscape design should be of high quality and reflect the fact that this area is a gateway into the northern part of Cupertino.*
- **Policy LU-23.6: Neighborhood Buffers** - *Provide building transitions, setbacks and/or landscaping to buffer development from adjoining single family residential uses.*

#### *Zoning Compliance and Conditional Use Permit*

Hotel use is permitted as a conditional use in the General Commercial zone that the property is located within. The applicant has applied for a Use Permit to allow the hotel, associated 24-hour operations, and two separate bars - one at the hotel restaurant on the ground level and one on the rooftop. The proposed use has been evaluated by staff and other City agencies, including the Sheriff's Department.

With the incorporation of standard conditions of approval (see Attachment E), such as 24-hour security surveillance, and ensuring that reimbursements are made in the event more than usual calls are received as a result of operations, the project would be compliant with the City's Zoning Ordinance. The Use Permit contains several conditions of approval related to the operations of the bar, including a condition of approval that provides for review of the permit in the event there are repeated complaints as a result of the operations, which allows the City to modify or revoke the use permit.

In addition, to maintain the net positive fiscal impacts to the City, a condition of approval has been added that reservations longer than 29 days are not allowed, which ensures continued collection of Transient Occupancy Tax (TOT) by the operator and remittance to the City. The condition of approval holds the hotel operator responsible for ensuring implementation of this condition of approval.

#### *Development Regulations*

The project site has a zoning designation of CG-rg, which was adopted by Ordinance No. 436. The ordinance defers to the development standards in the General Commercial Zoning Ordinance (CMC § 19.60.060), except that it establishes a standard requiring a three car width driveway along the northern property line through both this and the Homestead Shopping Center.

The height limit in the General Commercial zone is 30 feet, unless a different height is established in the General Plan. The General Plan identifies the allowed maximum height in the North De Anza Gateway as 45 feet; therefore, structures of up to 45 feet would be compliant with the zoning standards. The proposed seven-story hotel (with four (4) basement parking levels) is proposed to be 83 feet in height. As previously discussed, the

applicant has applied for a General Plan Amendment to accommodate the height of the proposed building. If the General Plan Amendment is adopted, the proposed building would comply with the zoning.

The required front yard setback in a General Commercial zone defers to policies in the General Plan. As described previously, the project is requesting amendments to the required 1:1 slope line from curb along North De Anza Blvd. The proposed amendment to the slope line varies between 0.18:1 and 0.22:1 for sections of the building closest to North De Anza Blvd to 0.64:1 for the section of the building farthest from North De Anza Blvd.

The existing north driveway, which connects to the front parking lot at the Homestead Square Shopping Center, will remain three car widths wide in compliance with the standard established by Ordinance No. 436. "Three car widths" is estimated to be 30 feet, since a travel lane for a single car is 10 feet at a minimum. The proposed driveway is 32 feet 6 inches in width.

There is no side or rear yard setback required in the General Commercial zone unless the property abuts a residential or agricultural residential zone. Because the parcel does not adjoin any residential property, the development setbacks are determined on a case-by-case basis. The proposed rear and side setbacks are adequate to allow access to the neighboring shopping center to the west, and movement within, and through, the site for guests and garbage collection.

#### *Site Planning and Architectural Design*

The proposed hotel faces N. De Anza Blvd and has a prominent pedestrian access along that frontage. Automobile access will be via an existing driveway along the southern property line which would provide access to on-grade and underground parking, and the hotel porte-cochere. The two existing driveways would continue to allow ingress and egress by existing vehicular traffic to and from the loading and service areas behind the Homestead Shopping Center and the parking lot of the shopping center.

The applicant has worked with staff to activate the frontage along N. De Anza Blvd. by:

- Moving ancillary uses such as restrooms away to the interior of the building while a pre-function area, the restaurant, conference room, and other active spaces are now located closer to the street.
- A pedestrian only entrance has been provided along the street.
- Outdoor seating areas will be located along the front of the hotel.
- Parking is located underground to reduce the height of the building.

The proposed design quality of the hotel has been reviewed by staff and the City's architectural consultant. The style and quality of materials, as well as the general layout of the building, appear to be consistent with the recommendations from Staff and the

City's architectural consultant. The massing of the building has been minimized by minimizing the size of the balconies and having varying façade depths.

The edge of the roofline, and the façade balconies, encroach into the public right-of-way along N. De Anza Blvd. A condition of approval of the Development Permit (see Attachment C) requires the developer to enter into an encroachment agreement with the City to allow these features. The encroachment agreement will be limited to the length of time that the hotel is in operation.

#### *Landscaping and Trees*

The applicant is not proposing to remove any of the existing trees onsite. The project proposes a setback of between 15 to 20 feet from the back of the street curb, which would allow for a 5-foot wide sidewalk and 5-10 feet of landscaping/tree planting area. A minimum planting area of five feet is recommended to allow for tree planting and long term health of landscaping. Because the increased height and reduced setback of the proposed building would add significant mass and bulk along N. De Anza Blvd, particularly since other buildings are not as tall or as close to the street, 11 new trees are proposed to be planted along the frontage and northern façade of the building to minimize the visual bulk of the building. These trees will be Protected trees and have been conditioned as such in Attachment D.

#### *Parking*

The City's Municipal Code requires parking to be provided at a rate of one (1) space per hotel employee and one (1) space per room, for a total of 175 parking spaces (155 hotel rooms and 20 employees). The City retained Hexagon Transportation Consultants, Inc., a transportation-engineering firm, to prepare a parking analysis to determine appropriate parking standards for the proposed use, including the publicly accessible rooftop lounge and conference facilities (see Attachment H).

The analysis concluded that the peak hour parking demand for this development would be 183 parking spaces. The applicant has proposed a total of 217 parking spaces onsite, exceeding the estimated parking demand by 34 parking spaces.

#### *Demolition*

The project would involve the demolition of the existing building, which is 8,323 sq. ft. in size. The construction of the project is estimated to take place over a period of approximately two (2) years. The project will be required to comply with the mitigation measures identified in the IS/MND (discussed below in the *Environmental Assessment* section) which would be adopted as conditions of approval (see Attachment A) and the City's demolition and construction requirements (see Attachment C).



### *Signage*

Signage details are excluded from 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 the project and have no objections.

### *Development Agreement*

The applicant is proposing a development agreement (DA) as part of the project, see Attachment F. The DA includes voluntary community amenities offered by the project applicant through the General Plan Amendment Authorization process. These are offered in exchange for certainty regarding regulations, standards, and conditions that will apply to the project during the life of the DA, which has a five (5) year term.

Impact fees that are standard or required, such as housing and school fees, are not included in the consideration of public benefits. Public benefits are characterized as voluntary contributions in excess of required fees. The benefits included in the DA are outlined below. Key contributions include:

1. *Community Amenity Funding*: The Developer agrees to pay the City \$500,000 in installments which may be used in any part of the City to benefit residents, businesses, and visitors, including on projects that will enhance and enrich the experience of the most City residents, retail and restaurant customers, and hotel guests closest to the project. Staff has identified as candidates to receive these funds: local transportation facilities, Transportation Management Association start-up costs, local public art, and landscaping beautification improvements in public parks, parkways, or roadway medians.
2. *Shuttle Service*: The Developer shall provide access to a shuttle service to hotel guests, people traveling to or from the hotel that use the hotel's meeting rooms for functions, and, subject to availability, nearby residents, businesses, and the general public to travel between the hotel and airports and major employment centers.
3. *Meeting Rooms*: The Developer shall allow the City and Cupertino public schools to use the hotel's meeting rooms for official business 12 days per year, subject to availability.
4. *Rooftop Amenity*: The Project shall include an enclosed publicly accessible rooftop amenity including but not limited to outdoor deck seating, bar, or restaurant, not to

exceed the height of any rooftop mechanical equipment enclosure, for as long as the Project is in operation, all or in part, as a hotel.

5. *Minimum Hotel Standard*: The Developer has committed to maintaining the project as an upscale boutique hotel, which means that the hotel will charge higher rates and provide superior amenities to most hotels.

## **Environmental Review**

An Initial Study and Mitigated Negative Declaration (IS/MND) has been prepared for the project (See Attachment I.) The IS/MND identifies mitigation measures to reduce the potential environmental impacts of the project to less than significant levels. The mitigation measures would be adopted and made conditions of approval for this project. The areas in which mitigation measures have been identified are:

- *Air Quality*: Construction shall comply with BAAQMD's best management practices for reducing construction emissions of fugitive dust, and shall ensure construction emissions are reduced.
- *Biological Resources*: The project shall protect nests of raptors and other birds when they are in active use.
- *Cultural and Tribal Resources*: The project shall implement identified measures in the event any cultural or archaeological resources are found on the site. This includes consulting with appropriate tribes as well as an archeologist.
- *Geology and Soils*: The project shall follow the identified measures if paleontological artifacts, such as fossils, are found on the site, which include consulting with a paleontologist.
- *Greenhouse Gas Emissions*: The project shall offset project emissions to below 1,100 MTCO<sub>2</sub>e per year, for a period of 30 years, through purchase of voluntary carbon offsets or forecasted mitigation units (FMUs).
- *Noise*: Construction activities shall comply with the City's Noise Ordinance and best management practices for noise mitigation.
- *Utilities*: Demonstrate to the City of Cupertino and Cupertino Sanitary District that the hotel would not exceed peak wet weather flow capacity of the Santa Clara sanitary sewer system prior to issuance of building permits.

The project does not have any transportation impacts based on the traffic analysis prepared for the project. The analysis indicates that the project would generate a total of 73 net new AM peak hour trips, and a total of 87 net new PM peak hour trips (See Attachment 9: Table 5 - Project Trip Generation Estimates). The results of the level of service analysis show that all five of the study intersections would operate at an acceptable level of service during both the AM and PM peak hours of traffic. The applicant is required to pay the City Transportation Impact Fee (TIF) Program in

compliance with the General Plan and the City Municipal Code Chapter 14.02. In addition, as part of voluntary community benefits described in the *Development Agreement* section above, the applicant has proposed to provide a shuttle service for hotel guests and, subject to availability, for residents, employees of businesses, and the general public, traveling between the hotel and San Jose and San Francisco International Airports and major employment centers, which would alleviate some of the traffic to and from the project.

The Notice of Intent (NOI) to adopt a MND was placed in the newspaper on July 19, 2019. 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. Written comments were invited between June 28, 2019 and July 29, 2019. No comments were received during the 30-day Public Review Period. One comment letter addressing the IS/MND was received in December 2019 after the 30-day Public Review Period (*further discussed below*).

At its August 1, 2019 meeting, the Environmental Review Committee (ERC) recommended that the City Council adopt a Mitigated Negative Declaration (EA-2018-03) with the identified mitigation measures on a 5-0-0 vote (see Attachment J).

#### Public Outreach and Noticing

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

Notice of Public Hearing and Intent, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none"><li>▪ Site Signage (<i>10 days prior to the hearing</i>)</li><li>▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>)</li><li>▪ Public hearing notices were mailed to property owners citywide (<i>10 days prior to the hearing</i>)</li></ul>	<ul style="list-style-type: none"><li>▪ Posted on the City's official notice bulletin board (<i>one week prior to the hearing</i>)</li><li>▪ Posted on the City of Cupertino's website (<i>one week prior to the hearing</i>)</li></ul>

Eight (8) public comments have been received as of the date of production of this staff report (January 7, 2020) (see Attachment J). Three of the comments submitted are in opposition to the project and the proposed General Plan Amendments.

The fourth comment letter, submitted by J. Michael Goolsby, President and CEO of Better Neighborhoods, Inc., dated December 2, 2019, is related to the environmental review. While the comment was received after the close of the 30-day Public Review Period on the MND, it is the City's practice to respond to late comments; therefore, responses to the comment letter have been prepared (see Attachment K)

### Permit Streamlining Act

This application is not subject to the time limits in the Permit Streamlining Act (Government Code Section 65920 *et seq.*) because the proposed General Plan Amendments and Development Agreement are legislative actions.

### Fiscal Impacts

The project will generate net positive fiscal impacts to the City's annual budget due to the collection of Transient Occupancy Taxes. This is estimated to be \$1 - 1.5 million a year. As previously mentioned, to ensure collection of the TOT, a condition of approval has been added that reservations may not be made that exceed 29 consecutive nights of stay.

### Sustainability Impacts

The project will incorporate a green roof on the second floor and is designed to achieve LEED silver. Further, via the City's Zero Waste Policy will require that the project recover and divert at least 65 percent of the construction waste generated by the project.

### Conclusion

Planning Commission recommends approval of the project because the project and conditions of approval address all concerns related to the proposed development and all of the findings for approval of the proposed project, consistent with Chapters 19.144, 19.156, 19.168, and 19.60, of the Cupertino Municipal Code, may be made.

### Next Steps

A second reading of the Ordinance for the DA is currently scheduled for February 18, 2020. The Ordinance will take effect 30 days after the second reading. The Development Agreement will not take effect until the Ordinance takes effect and the Development Agreement is signed by all parties. The General Plan Amendment will take effect 30 days after adoption because it is a legislative action; therefore, the other permit approvals will not take effect until the General Plan Amendment takes effect.

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Prepared by: Gian Paolo Martire, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved by: Benjamin Fu, Director of Community Development

Approved by Submission by: Deborah Feng, City Manager

## **ATTACHMENTS:**

- A – Draft Resolution EA-2018-03 – Mitigated Negative Declaration, mitigation measures, and a Mitigation Monitoring and Reporting Program
- B – Draft Resolution GPA-2018-01 – General Plan Amendment
- C – Draft Resolution DP-2018-01 – Development Permit
- D – Draft Resolution ASA-2018-02 – Architectural and Site Approval Permit
- E – Draft Resolution U-2018-02 – Use Permit
- F – Draft Ordinance DA-2018-01 – Development Agreement between the City and Northwest Properties LP
- G - Fiscal Analysis of the De Anza Hotel GPA Application
- H – Parking Generation Analysis for the Proposed Hotel Located at 10931 N. De Anza Boulevard in Cupertino, CA, dated June 19, 2019
- I - Initial Study/Mitigated Negative Declaration, ERC Recommendation dated August 1
- J – Public Comments
- K – Cupertino De Anza Hotel Project Initial Study and Mitigated Negative Declaration Responses to Comments Memo dated December 4, 2019
- L – Project Plans