



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: January 13, 2021

Subject

Consider a development proposal to demolish and existing commercial building and construct a new nine (9) unit single-family home development including one (1) home containing an Accessory Dwelling Unit (ADU). (Application No(s): EA-2020-001, Z-2020-001, DP-2020-001, TM-2020-001, ASA-2020-003, and U-2020-001; Applicant(s): Alan Enterprise LLC; Location: 22690 Stevens Creek Boulevard; APN#s 341-14-066, 342-14-104 & 105)

Recommended Actions

The Planning Commission recommends that the City Council:

1. Adopt Resolution No. 22-_____ adopting the Mitigated Negative Declaration (EA-2020-001) (Attachment A);
2. Introduce and conduct the first reading of Ordinance No. 22-_____, "An Ordinance of the City Council of the City of Cupertino approving the Rezoning of three parcels from Planned Development Zoning with General Commercial uses (P(CG)) to Planned Development Zoning with General Commercial and Residential uses (P(CG, Res))" (Z-2020-001) (Attachment B);
3. Adopt Resolution No. 22-_____ approving the Development Permit (DP-2020-001) (Attachment C);
4. Adopt Resolution No. 22-_____ approving the Architectural and Site Approval (ASA-2020-003) (Attachment D);
5. Adopt Resolution No. 22-_____ approving the Use Permit (U-2020-001) (Attachment E); and
6. Adopt Resolution No. 22-_____ approving the Tentative Map (TM-2020-001) (Attachment F).

Discussion

Project Data:

General Plan Land Use Designation	Commercial/Residential	
Neighborhood Area	Inspiration Heights	
Zoning Designation	P (CG) Planned Development Zoning with General Commercial Uses	
Gross Lot Area	0.78 acres	
Net Lot Area (after dedications)	0.63 acres	
	Allowed/Required	Proposed
Residential Density	15 du/acre	11.5 du/acre
Height of Structures	Up to 30 feet	29 feet 10.5 inches
Setbacks		
<i>Stevens Creek Blvd.</i>		
<i>Front* (north)</i>	N/A	5'7"
<i>Side* (west)</i>	N/A	12'5"
<i>Side* (east)</i>	N/A	10'1"
<i>Rear*</i>	N/A	29'
<i>Foothill Blvd.</i>		
<i>Front* (east)</i>	N/A	5'7"
<i>Side* (north)</i>	N/A	10'
<i>Side* (south)</i>	N/A	29'
<i>Rear* (west)</i>	N/A	81'9"
Vehicle Parking (2.8 spaces/DU)	26	26
Project Consistency		
General Plan Land Use Designation	Yes	
Zoning:	Yes, with Zoning Map Amendment	
Environmental Assessment	Initial Study with a Mitigated Negative Declaration	

* The site is located in a Planned Development (P) zoning district. Chapter 19.80 of the Municipal Code allows the establishment of specific development standards and regulations with the approval of definitive plans for a site.

Background:

Application Requests

The applicant, Alan Enterprises, is requesting permits to allow the construction of single-family townhomes on a 0.63-acre site currently occupied by a commercial building. The project would demolish the existing commercial building and construct a nine (9) residential unit development including one (1) residential unit containing an accessory dwelling unit (ADU).

The following City permits would be required: Zone Map Amendment, Development Permit, Architectural and Site Approval, and Use Permit. A Vesting Tentative Map is proposed to divide the property from three (3) parcels to ten (10) parcels consisting of the nine (9) homes and one (1) common parcel. In addition, prior to approval of the permits, the City would need to adopt the Mitigated Negative Declaration as the appropriate environmental document for the project.

Site and Location Description

The project is located at the intersection of Stevens Creek Boulevard and Foothill Boulevard in the Inspiration Heights neighborhood area of the General Plan.

The property is bounded by Stevens Creek Boulevard to the north, South Foothill Boulevard to the east, Camino Vista Drive to the west and residential single-family homes to the south. Other surrounding land uses include an office development and a town home development across Stevens Creek Boulevard to the north, a Veterinary Clinic and single family uses to the north east, a gas station and single family residential uses across S.

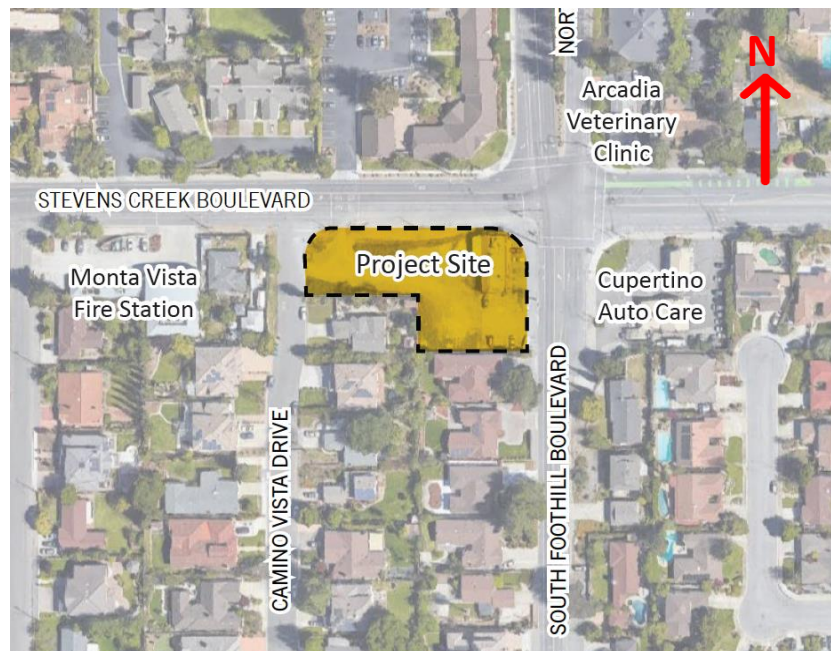


Figure 1: Project Location

Foothill Boulevard to the east, and single family homes and the Monta Vista Fire Station across Camino Vista Drive to the west (see Figure 1).

The site has gross area of 0.78 acres, which after required dedications to accommodate required infrastructure and frontage improvements along Stevens Creek Boulevard and Foothill Boulevard, will have a net site area of 0.63 acres. The existing commercial building measures approximately 2,500 square feet.

Analysis:

General Plan and Zoning Compliance

The General Plan's Community Form Diagram (Figure LU-2) establishes several development standards in the City, including height and density. The proposed site has a maximum height of 30 feet and the project has a proposed density of 11.5 dwelling units per acre (less than the maximum density of 15 dwelling units per acre.)

The applicant has also applied for a Zone Map Amendment (Z-2020-001) to allow development of a residential uses on the site. It should be noted that the General Plan allows residential uses on the site. Additionally, because the project was not listed as a Priority Housing Site in the City's *General Plan: Community Vision 2015-2040* (General Plan), per the requirements of the General Plan and the Municipal Code, the project is required to obtain a Use Permit (U-2020-001) as part of the entitlement process.

Staff evaluated the project's consistency with the General Plan and concluded that based on the site's General Plan Land Use Designation (*Commercial/Residential*), the proposed Zoning Map Amendment, consultation with Economic Development staff, and the analysis of the Initial Study Mitigated Negative Declaration (*further discussed in detail in the Environmental Review section of this Staff Report*), the proposed project supports several of the City's other General Plan goals including:

- **Policy LU-2.2: Pedestrian-oriented Public Spaces** - *Require developments to incorporate pedestrian-scaled elements along the street and within the development such as parks, plazas, active uses along the street, active uses, entries, outdoor dining and public art.*
- **Policy LU-3.1: Site Planning** - *Ensure that project sites are planned appropriately to create a network of connected internal streets that improve pedestrian and bicycle access, provide public open space and building layouts that support city goals related to streetscape character for various Planning Areas and corridors.*
- **Policy LU-3.3: Building Design** - *Ensure that building layouts and design are compatible with the surrounding environment and enhance the streetscape and pedestrian activity.*
- **LU-3.3.1: Attractive Design** - *Emphasize attractive building and site design by paying careful attention to building scale, mass, placement, architecture, materials, landscaping, screening of equipment, loading areas, signage and other design considerations.*

- **LU-3.3.5: Building Location** - *Encourage building location and entries closer to the street while meeting appropriate landscaping and setback requirements.*
- **Policy LU-3.4: Parking** - *In surface lots, parking arrangements should be based on the successful operation of buildings; however, parking to the side or rear of buildings is desirable. No visible garages shall be permitted along the street frontage. Above grade structures shall not be located along street frontages and shall be lined with active uses on the ground floor on internal street frontages. Subsurface/deck parking is allowed provided it is adequately screened from the street and/or adjacent residential development.*
- **Policy LU-27.2: Relationship to the Street**: *Ensure that new development in and adjacent to neighborhoods improve the walkability of neighborhoods by providing inviting entries, stoops and porches along the street frontage, compatible building design and reducing visual impacts of garages.*
- **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.*

Some members of the community have voiced their concern about the lack of commercial space in the proposed development. While there are some policies in the General Plan that encourage mixed-use development at the site, upon review of the project application, staff determined that this proposed project at this location in balance is consistent with the General Plan Land Use Designation of “Commercial/Residential” that allows for commercial, residential, or a mixed-use residential commercial project. the lack of retail as a substantial component being included in this mixed-use area with commercial zoning (*Strategy LU-1.3.1: Commercial and Residential Uses*) and as referenced in the “Neighborhood Commercial centers” concept discussed in the General Plan on page LU-18 has been cited as cause for concern.

Strategy LU-1.3.1 requires the City to “review the placement of commercial and residential uses” based on certain criteria including “1. All mixed-use areas with commercial zoning will require retail as a substantial component. The North De Anza Special Areas is an exception.” In this case, the property allows residential uses in the General Plan designation; therefore, regardless of the zoning of the property, residential uses must be allowed on the site at a density allowed in the General Plan.

The Neighborhood Commercial centers¹, identified in the Community Form Diagram in Figure LU-2 of the General Plan, include the Bateh Brothers site. The General Plan states that Residential uses in a “Neighborhood Commercial center” *should* be designed on the “mixed-use village concept discussed in this Element.” The “mixed-use village” concept highlights several aspects of development such as parcel assembly and discouraging parcelization, layout with an internal street grid using transect planning, uses allowed, open space requirements and architecture. However, these are permissive and not binding requirements.

The developer, upon staff’s request, considered the inclusion of a small commercial space and another with a live work unit in the development in an early preliminary proposal. However, citing the added cost of providing underground parking, viability of the commercial space and loss of residential units of the kind that he wished to develop (attached single family units) as being deterrents to the development of his project, the developer proceeded with an application for an all residential project.

Therefore, upon review of the proposal, as required by the General Plan, based on the information from the developer, consultation with Economic Development staff and the non-mandatory, permissive language of the General Plan, it was determined that inclusion of commercial space at this site would not be required, and that in balance the proposal was in compliance with the General Plan.

Should the proposed project be approved, nine (9) units would be allocated from the neighborhood development allocation.

Development Regulations

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 of the City that is uniquely suited for planned coordination of land uses and land development. While in the Planned Development zoning district, development has to adhere to Multifamily (R3) zoning regulations, as an alternative, applicants can, in conjunction with a rezoning application, apply for a discretionary review of the project and propose alternative standards unique to the site. Once established, the development

¹ Note that these are distinct from the “neighborhood commercial” land use designation identified in Appendix A of the General Plan. The “neighborhood commercial” land use designation only applies to a small part of the Monta Vista Village Special Area.

standards approved as part of the definitive plan for the project become the zoning requirements for the site.

The applicant has proposed the alternative standards for the project as indicated below:

	Setbacks								Private Open Space	Height of Structures
	Stevens Creek Blvd.				Foothill Blvd.					
	Front* (north)	Side* (west)	Side* (east)	Rear*	Front* (east)	Side* (north)	Side* (south)	Rear* (west)		
Allowed/ Required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Up to 30 feet
Proposed	5'7"	12'5"	10'1"	26.7'	5'7"	10'	29'	81'9"	115 sq. ft. to 639 sq. ft.	29 feet 10.5 inches

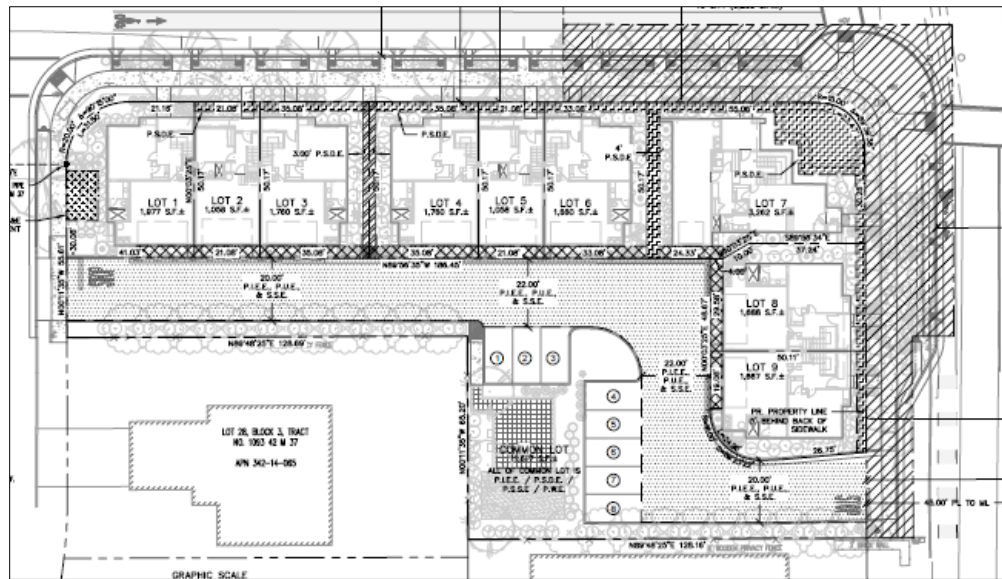
** The site is located in a Planned Development (P) zoning district. Chapter 19.80 of the Municipal Code allows the establishment of specific development standards and regulations with the approval of definitive plans for a site.*

The proposed project provides three (3) different unit models in four (4) separate buildings. The project has been designed to place the proposed structures closer to Stevens Creek Boulevard and South Foothill Boulevard due to the abutting single family residential uses to the south. This has allowed for setback to the closest residential properties to the rear to be between 26 feet 7 inches and 29 feet. There is a 13 to 14 foot setback proposed between the three buildings fronting Stevens Creek Boulevard and a 10-foot setback between the corner building and the building fronting S. Foothill Boulevard. There are no interior setbacks proposed for the units that are side by side.

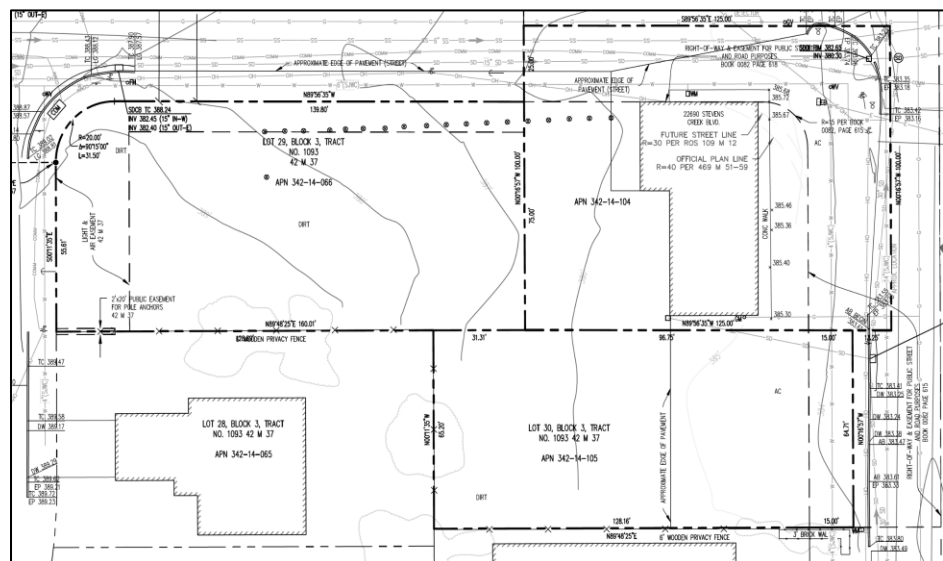
Because the project will require significant right-of-way dedication to the City, the project incorporates smaller setbacks along the street perimeter. By providing the right-of way dedication, the project is able to incorporate a detached sidewalk, and landscape improvements along the perimeter of the property. (see Figure 2 and 3 below.)

While the setback from the property line is 5'7" along Stevens Creek Boulevard and S. Foothill Boulevard, setback from the face of curb will be 20'2" from Stevens Creek Boulevard and 26'8" from South Foothill Boulevard. Similarly, while the setback from the property line along Camino Vista Drive is 12'5", the setback from the face of curb is 23'1".

To accommodate different engineering standards, the project proposes a new natural grade as part of the grading plan that would establish a lower natural grade. Natural grade may be established (or reestablished, as in this case) as part of an approved grading plan that is part of a subdivision map approval. Building height will be measured from this new natural grade and will remain below the allowed maximum height of 30'.



**Figure 3:
Proposed Lot
Configuration**



**Figure 2: Existing
Lot Configuration**

The project has incorporated open space requirements for those in the Heart of the City Specific Plan. These requirements were adopted to ensure that attached multi-family units (such as those envisioned to be primarily developed in the Heart of the City Special Area) had adequate open space when considering quality of life of the new residents. Since the proposal is for attached units, these are considered adequate for this project. The applicant proposes open space within the project as indicated in the following table:

	Heart of the City Requirements	Proposed
Common Open Space	1,350 sq. ft. (150 sq. ft. per unit)	1,475 sq. ft.
Private Open Space	60 sq. ft./unit and no dimension less than 6 feet	115 sq. ft. – 639 sq. ft.

There are three-unit types located in the project as shown in the following table:

Unit Type	# of Bedrooms	No. of units
Type 1	4 BR	6
Type 2	4 BR	2
Type 3	3 BR plus an Accessory Dwelling Unit	1
Total units		9

Site Planning and Architectural Design

The site provides vehicle access via Foothill Boulevard (to the east) and Camino Vista Drive (to the west) and, as described earlier, creates a larger physical separation from the abutting residences. All the units have access from a direct pedestrian connection to the public sidewalk and some also have an internal entrance through the garage of each unit. The site also incorporates guest parking as required by the City's parking ordinance.

As shown in the figure below, the project proposes common outdoor space for residents and guests at the rear of the property. Additionally, the project incorporates tree canopy throughout the perimeter of the site. At the street frontages, the applicant has worked with City staff to create a walkable frontage by providing a detached sidewalk with trees on either side. Along the rear of the property, adjacent to the single-family residences, the applicant has incorporated Saratoga Laurel trees to screen the development.

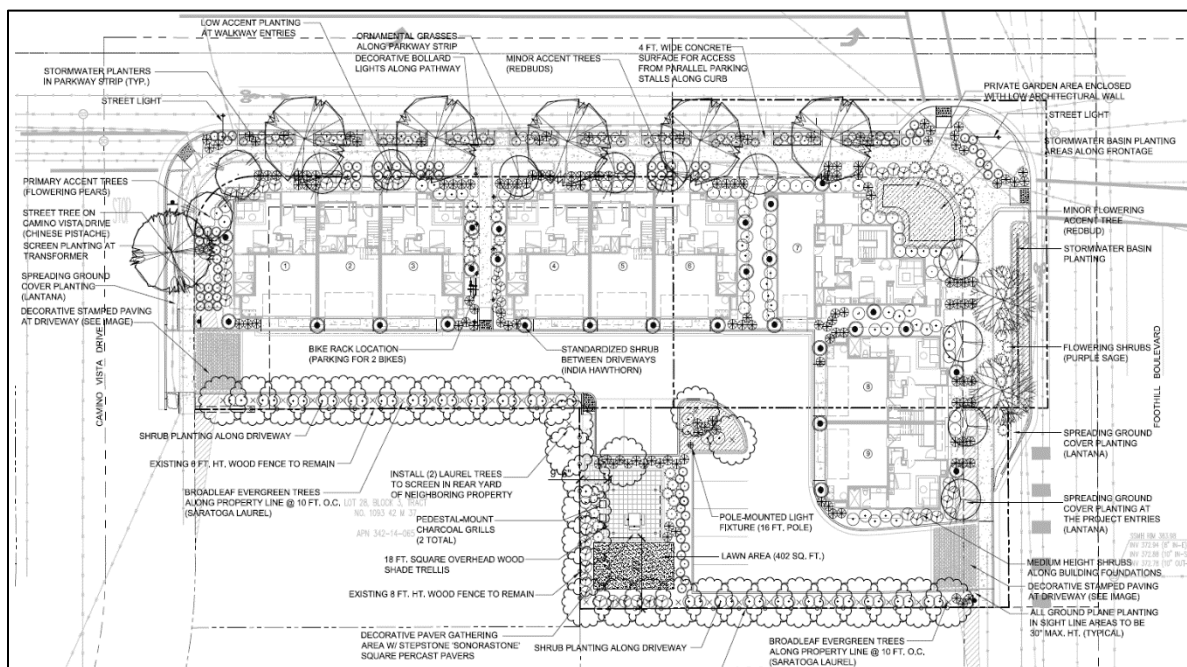


Figure 4: Proposed Landscape Plan

By integrating projecting and recessed wall planes, wall height variation, and roofline variation, the applicant has worked to reduce the massing of the individual buildings. The applicant has introduced different projections along the building frontage that help to reduce the massing of the structure. The applicant has incorporated horizontal masking elements on the first floor of all units, stone materials around the first-floor walls near front doors, and additional horizontal elements added at the second floor of units along Foothill Boulevard.

Traffic, Circulation and Parking Analysis

As part of the environmental analysis, traffic impacts of the proposed projects were evaluated. These impacts were found to be less than significant because the projects would generate 1,744 fewer daily vehicle trips and 3,262 fewer daily Vehicle Miles Traveled (VMT). Additionally, the project would not generate a demand for transit that would exceed the capacity of the system. Coupled with the project being consistent with adopted policies, plans, or programs regarding pedestrian and bicycle facilities that project would have a less than significant impact.

The proposed project development has been parked to meet the City's parking requirements found in Chapter 19.124: Parking Regulations. The nine (9) small lot single-family homes are parked at a parking ratio of 2.8 parking spaces per unit. Two (2) of the spaces are to be located within an enclosed garage, and 0.8 spaces may be open. This has been provided with each unit containing a two (2) car garage and eight (8) open spaces. One of the units is providing two tandem garage spaces while the other units have two side by side parking spaces.

There is no required bicycle parking for the small lot single-family homes.

Vesting Tentative Map

The project proposes ten (10) separate parcels to be created from the three (3) existing parcels. Nine (9) lots for the proposed residential units, and one (1) common lot. A condition of approval has been added to the Tentative Map to require reciprocal access throughout the site and a formation of a property owner's association to aid maintenance of the driveway aisle and common areas.

Below Market Rate Units

The project would provide 15% Below Market Rate (BMR) units consistent with the City's BMR Manual when the project was submitted. To be consistent with the 15% BMR requirements, the applicant would provide one for sale. One (1) for sale unit would be provided to a median income household. The unit must be affordable for 99 years.

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, Cupertino Sanitary District and the Santa Clara County Fire Department have reviewed and conditioned the project.

Project History

On May 7, 2020 the applicant submitted an application that was deemed complete on July 13, 2021 and evaluated in the Draft Initial Study and Mitigated Negative Declaration. The Final Draft of the Initial Study and Mitigated Negative Declaration is attached, see Attachment 7.

Housing Accountability Act

The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

Subdivision (j) of the HAA also requires the local agency to identify and provide written documentation of the reasons why a proposed housing development is inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other provision within 30 days of the date that the application for the housing development project is determined to be complete if the housing development project contains 150 or fewer housing units.

The proposed project has been determined to comply with applicable, objective general plan and zoning standards, including maximum height, density, minimum setbacks, useable common and private open space, and number of parking spaces. Thus,

subdivision (j) of the Housing Accountability Act applies. Staff is not aware of any basis to make the findings listed above.

Environmental Review

A Draft Initial Study and Mitigated Negative Declaration (IS/MND) has been prepared for the project (See Attachment 7.) The Mitigated Negative Declaration (MND) identifies mitigation measures in the following areas, to reduce the potential environmental impacts of the project to less than significant levels:

- *Air Quality:* Construction shall comply with BAAQMD's recommendations 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 in active use.
- *Cultural and Tribal Resources:* The project shall incorporate mitigations in the event any cultural resources or archaeological are found on site. This includes consulting with a tribal representative as well as paleontologist.
- *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.
- *Geology and Soils:* The project shall incorporate mitigation in the event any fossil-bearing deposits are discovered on-site.
- *Utilities:* Demonstrate to the City and Cupertino Sanitary District that the project would not exceed peak wet weather flow capacity of the Santa Clara sanitary sewer system.

As part of the environmental analysis, Staff consulted with the Tamien Nation per the regulations of Assembly Bill 52. As a result of the consultation, Staff updated to the Cultural and Tribal Resources mitigation to include tribal consultation. After the Planning Commission hearing, the Tamien Nation representative contacted the City to request that mitigation measure be modified to be specific to the Tamien Nation. This edit has been made to the Mitigated Negative Declaration and the resolutions.

The mitigation measures have been added as condition 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 July 16, 2021 and August 5, 2021.

The Environmental Review Committee (ERC) heard the item at its October 28, 2021 and after the public hearing, recommended that the City Council adopt a Mitigated Negative Declaration (EA-2020-001) on a 5-0-0 vote with the identified mitigation measures.

Public Outreach and Noticing

The following table is a brief 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 300' 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>)

Public Comment

The following comments from one individual were received on the project so far:

- Retain commercial uses on the site
- Do not add any residential uses on the site
- Concerns about traffic and existing traffic violations in the area
- Rise in crime
- Concerns about construction impacts

Planning Commission Meeting:

At the Planning Commission meeting, the following subjects were discussed:

- Outreach
- Lack of commercial space incorporated in the project
- Preference vs. requirement of a mixed-use commercial/residential project due to the subjectivity of the language in the General Plan
- Support of the for-sale units proposed

The Planning Commission recommended that the City Council approve the project and adopted the associated resolutions and ordinance in a 4-1-0 (Wang no) vote.

Sustainability Impact

No sustainability impacts.

Fiscal Impact

No fiscal impact.

Conclusion

Planning Commission recommends approval of the project since 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 19.156, 19.168, 19.48, and 14.18 of the Cupertino Municipal Code, may be made.

Next Steps

If Council adopts the Planning Commission recommendation, the project will be approved contingent on the second reading of the Zoning Ordinance amendment (see Resolution Z-2020-001). All approvals granted by the City Council in conjunction with the zoning map amendment will be effective 30 days after the second reading of the ordinance. Council may also choose to deny the project, continue the hearing, or take other action permissible under the Municipal Code.

Prepared by: Erick Serrano, Senior Planner
Piu Ghosh, Planning Manager

Reviewed by: Benjamin Fu, Director of Community Development

Approved for Submission by: Diane Thompson, Assistant City Manager

ATTACHMENTS:

- A. Draft Resolution for EA-2020-001
- B. Draft Ordinance for Z-2020-001
- C. Draft Resolution for DP-2020-001
- D. Draft Resolution for ASA-2020-003
- E. Draft Resolution for U-2020-001
- F. Draft Resolution for TM-2020-001
- G. Initial Study/Mitigated Negative Declaration
- H. Environmental Review Committee Recommendation
- I. Project Plans