



## COMMUNITY DEVELOPMENT DEPARTMENT

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### PLANNING COMMISSION STAFF REPORT

Meeting: November 23, 2021

#### Subject

Consider a development proposal to demolish an existing commercial building and residential unit, remove and replace four (4) protected trees, and construct a mixed-use development consistent of 18 units (five apartments, five single-family homes, and eight townhomes), and 4,500 square feet of commercial space. ( Application No(s): EA-2018-06, Z-2018-02, DP-2018-07, TM-2018-04, U-2018-04, ASA-2018-09, TR-2018-39; Applicant(s): Dan Shaw (SCR Enterprises); Location 10625 South Foothill Boulevard; APN#s 342-16-087, -088)

#### Recommended Actions

Staff recommends that the Planning Commission adopt the draft resolutions (Attachments 1-7), recommending that the City Council:

1. Adopt the Mitigated Negative Declaration (EA-2018-06);
2. Approve the Zoning Map Amendment (Z-2018-02);
3. Approve the Development Permit (DP-2018-07);
4. Approve the Tentative Map (TM-2018-04)
5. Approve the Architectural and Site Approval (ASA-2018-09);
6. Approve the Use Permit (U-2018-04);
7. Approve the Tree Removal Permit (TR-2018-39);

#### Discussion

#### **Project Data:**

<b>General Plan Land Use Designation</b>	Commercial/Residential
<b>Neighborhood Area</b>	Inspiration Heights
<b>Zoning Designation</b>	P (CG) Planned Development Zoning with General Commercial Uses
<b>Net/Gross Lot Area</b>	1.378 acres/1.546 acres

	Allowed/Required	Proposed
<b>Residential Density</b>	15 du/acre	12.98 du/acre
<b>Height of Structures</b>	Up to 30 feet	30 feet
<b>Setbacks</b>		
<i>Front*</i>	N/A	0'
<i>Side*</i>	N/A	13'2"
<i>Side*</i>	N/A	10'
<i>Rear*</i>	N/A	6'
<b>Parking Auto</b>		
<i>Residential (Townhomes)</i>	37	37
<i>Residential (Apartments)</i>	10	10
<i>Commercial</i>	18	18
<i>Total</i>	65	65
<b>Bicycle Parking</b>		
<i>Class I</i>	3	5
<i>Class II</i>	5	18
<i>Total</i>	8	23
<b>Project Consistency</b>		
General Plan Land Use Designation	Yes	
Zoning:	Yes, with Zone 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

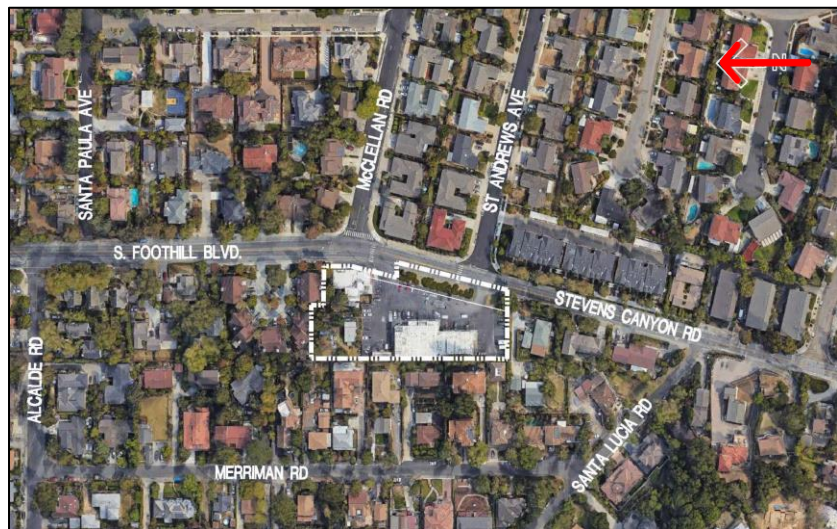
The applicant, Dan Shaw of SCR Enterprises, is requesting permits to allow the construction of a mixed-use development on a 1.378 net acre site currently occupied by a commercial shopping building and a residential unit. The project would demolish an existing commercial building and residential unit, remove and replace four (4) protected

trees, and construct a mixed-use development consistent of 18 units (five apartments, five single family homes, and eight townhomes), and 4,500 square feet of commercial space.

The following City permits would be required: Zone Map Amendment, Development Permit, Architectural and Site Approval, Tree Removal, and Use Permit. A Vesting Tentative Map is proposed to divide the property from two parcels to 15 parcels for 13 homes, on mixed-use parcel, and a common parcel. Prior to approval of permits, the City has to also adopt a Negative Declaration as the appropriate environmental review for the project pursuant to state law.

#### *Site and Location Description*

The project site is known as Canyon Crossings (formerly Foothill Market) located in the Inspiration Heights neighborhood area of the General Plan. The shopping center is on approximately 1.546 gross acres located on South Foothill Boulevard/Stevens Canyon Road. The surrounding land uses include a townhome development to the north, duplexes and rowhomes to the east and single family homes to the south and west (see Figure 1). The existing commercial and residential buildings (13,225 square feet) are currently vacant.



**Figure 1: Project Vicinity**

#### **Analysis:**

##### *General Plan and Zoning Compliance*

The proposed use is consistent with the General Plan Land Use Designation of Commercial/Residential. The applicant has applied for a Zone Map Amendment (Z-2018-02) to allow for a mixed-use development. The City's General Plan and Planned Development zoning designation allows flexible development standards in developing projects and site-specific regulations when reviewing projects. Additionally, because the project was not listed as a Priority Housing Site in the City's *General Plan: Community Vision 2015-2040* (General Plan), the project is required to obtain a Use Permit (U-2019-04) as part of the entitlement process.

The General Plan's Community Form Diagram establishes several development standards in the City, including height and density. The proposed development has a maximum height of 30 feet and a maximum density of 15 dwelling units per acre.

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, the proposed Zone Map Amendment, and 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-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.*
- **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.*
- **Goal LU-26** – *Retain commercial areas adjacent to neighborhoods and retrofit or encourage redevelopment as neighborhood centers in a pedestrian-oriented and bike-friendly environment.*
- **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.*

Should the proposed project be approved, 17 units would be allocated from the neighborhood development allocation. No commercial space will be allocated because of the existing commercial buildings.

#### *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 apply for a discretionary review of the project and propose alternative standards. Once established the development 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 in the following tables in this section:

	Required	Proposed
<b>Front Setback along Foothill Blvd. and Stevens Canyon Blvd. *</b>	N/A	0
<b>Side Setback (North)*</b>	N/A	13'2
<b>Side Setback (South)*</b>	N/A	10'
<b>Rear Setback *</b>	N/A	6'
<b>Private Open Space*</b>	60 square feet per unit	60 square feet unit minimum
<b>Height</b>	30'	30'

*\* 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 project proposes several different building types and models with varying sizes, setbacks and heights. The mixed-use commercial and residential building is located at the front property line with a proposed front setback of zero (0) feet. To the rear and sides of the building are two drive aisles providing access to the site and residential units. The building has a height of 29'11", consistent with the maximum height of 30'.

The following table indicates the setbacks, heights and the private open space for the residential units in the development:

	Front	Rear	Right Side	Left Side	Height	Private Open Space (square footage)
Unit 1	14'10	13'2"	4'5"	0'	28'8"	555
Unit 2	14'10	15'4"	0'	0'	28'8"	461
Unit 3	14'10	15'5"	6'0	0'	28'8"	591
Unit 4	16'6"	12'6.5"	0'	6'0	29'4.5"	496
Unit 5	16'6"	12'6.5"	6'0	0'	29'4.5"	496
Unit 6	15'8"	13'11.5"	0'	6'2"	29'4.75"	377
Unit 7	15'8"	12'11.5"	0'	6'2"	29'4.75"	350

	<b>Front</b>	<b>Rear</b>	<b>Right Side</b>	<b>Left Side</b>	<b>Height</b>	<b>Private Open Space (square footage)</b>
Unit 8	15'8"	11'11.5"	0'	6'2"	29'4.75"	324
Unit 9	15'7"	11'0"	0'	6'2"	29'4.75"	297
Unit 10	15'6"	10'0"	0'	5'7"	29'4.75"	254
Unit 11	14'0"	10'	0'	11'3.5"	28'8.75"	363
Unit 12	14'0"	11'10"	0'	0'	28'8.75"	356
Unit 13	14'0"	11'9"	5'10"	0'	28'8.75"	422
Mixed Use Building	0'	0	0	0	29'11.75"	61 - 147

The project has drawn from the open space requirements in the Heart of the City Specific Plan for the proposed project. Therefore, the applicant proposes open space within the project as indicated in the following table:

	<b>Heart of the City Requirements</b>	<b>Proposed</b>
<b>Common Open Space</b>		
<i>Residential</i>	2,700 sq. ft. (150 sq. ft. per unit )	2,990 sq. ft.
<i>Commercial</i>	112.5 sq. ft. (2.5% of 4,500 sq. ft.)	1,657 sq. ft.
<b>Private Open Space</b>	60 sq. ft./unit and no dimension less than 6 feet	Varies by unit (see Table above)

#### *Site Planning and Architectural Design*

The proposed development is located where Foothill Boulevard transitions into Stevens Canyon Road. The project has one frontage along Foothill Boulevard/Stevens Canyon, and proposes two driveways leading to the public right of way.

The project proposes a prominent plaza at the entrance. With the prominent plaza the project creates an active space for the site and commercial component. The applicant proposes different site furniture such as tables, benches, and planters to enhance the area. The development frontage is bookended by prominent planting areas to help transition the area from residential to commercial, and to partially screen parking facilities from the right of way. Parking toward the public right of way is to ensure ease of access for potential commercial users. The site also incorporates different paving materials near active pedestrian uses to help users be aware of the active uses.

The mixed-use building uses prominent corners, contrasting materials, and a metal cap to help break the massing of the proposed building. While only a portion of the building

contains a commercial component at the ground floor (the other portion leads to the underground garage), the use of aluminum storefront windows throughout the frontage aids in developing a pedestrian scaled environment.

The site uses similar colors, materials, and architectural styles to connect the mixed-use building to those of the single-family residences.

Landscaping of the site incorporates various types of ground cover and plantings. Proposed plantings are to be of low water use. Along the perimeter where the proposed homes abut existing single-family homes, the project incorporates privacy plantings to screen views into adjacent properties. The proposed plantings are *Pittosporum tenuifolium*.

#### *Tree Removal and Replacement*

The development proposes to remove and replace four (4) protected development trees. The trees identified for removal would be directly impacted by development and would require removal. The trees proposed for removal are one persimmon tree (12"DBH), one oak (16"DBH), one palm tree (16"DBH), and one redwood (52"DBH).

The applicant is proposing to replace the removed trees with six (6) 24" box Coast Live Oak and one (1) 36" box Coast Live Oak consistent with the City's requirements. Additionally, the applicant proposes an additional nine (9) trees throughout the site as well as various plantings throughout the site. The replacement trees and all vegetation in the development will be protected.

#### *Traffic, Circulation and Parking Analysis*

As part of the environmental analysis, traffic impacts of the proposed project were evaluated. These impacts were found to be less than significant based on generating 132 fewer daily vehicle trips, 31 fewer daily Vehicle Miles Traveled (VMT), and 11,209 fewer annual VMT than the existing use. 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 development has been parked to meet the City's parking requirements found in Chapter 19.124: Parking Regulations, see the table below.

	Auto Parking		Bicycle Parking	
	Required	Proposed	Required	Proposed
<i>Small Lot Single-Family Homes</i>	37 total	37 total	None	None

	Auto Parking		Bicycle Parking	
	Required	Proposed	Required	Proposed
<i>(2 enclosed plus 0.8 open spaces per unit)</i>				
<i>Apartments (2 spaces per unit)</i>	10	10	Class I - 3	Class I - 5
<i>Commercial (1 space per 250 sq. ft.)</i>	18	18	Class II - 5	Class II - 18

There is no required bicycle parking for the small lot single-family homes. However, a total of three (3) Class I and five (5) Class II bicycle parking facilities are required for the proposed mixed-use building. The project has met the requirement by provide a total of five (5) Class I and 18 Class II bicycle parking facilities.

#### *Vesting Tentative Map*

The project proposes 15 separate parcels to be created from the two existing parcels. Lots 1 – 13 acres to be occupied by the townhomes, Lot 14 is to be the mixed-use commercial residential building, and Lot 15 is the common parcel to provide access throughout the site. 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.

#### *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 a total of three (3) units, two (2) for sale units and one (1) apartment. One (1) for sale unit would be provided to a moderate income household, and the other to a median income household. The apartment is to be provided to a very-low income household. The units 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.

#### *Project History*

On September 14, 2018 the applicant submitted an application that was deemed complete on January 6, 2021. The project was evaluated in the Draft Initial Study and Mitigated Negative Declaration. The Initial was heard before the Environmental Review Committee on October 28, 2021 where the Committee recommended adoption of the Initial Study and Mitigated Negative Declaration with a 5-0-0 vote, see Attachment 8.



*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.

*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 9.) 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.

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 March 25, 2021 and April 13, 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-2018-06) on a 5-0-0 vote with the identified mitigation measures with the identified mitigation measures (Attachment 1 and 8).

### 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"> <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 within 300' of the project site (<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>

### Public Comment

No public comments have been provided

### Conclusion

Staff recommends approval of the project since the project and conditions of approval address all concerns related to the proposed development and all findings for approval of the project, consistent with Chapter 14.18, 18.28, 19.156, 19.168 of the Cupertino Municipal Code, could be made.

### 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. The applicant may apply for building permits at that time.

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Prepared by: Erick Serrano, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved by: Benjamin Fu, Director of Community Development

### **ATTACHMENTS:**

- 1 – Draft Resolution for EA-2018-06
- 2 – Draft Resolution for Z-2018-02
- 3 – Draft Resolution for DP-2018-07
- 4 – Draft Resolution for TM-2018-04
- 5 – Draft Resolution for ASA-2018-09
- 6 – Draft Resolution for U-2019-04
- 7 – Draft Resolution for TR-2018-39
- 8 – Initial Study/Mitigated Negative Declaration
- 9 – Environmental Review Committee Recommendation
- 10 – Project Plans