



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
STAFF REPORT**

MEETING DATE: 03/27/2019

ITEM NO: 3

---

DATE: MARCH 22, 2019

TO: PLANNING COMMISSION

FROM: JOEL PAULSON, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: ARCHITECTURE AND SITE APPLICATION S-18-033, CONDITIONAL USE PERMIT APPLICATION U-18-010, SUBDIVISION APPLICATION M-18-004, AND NEGATIVE DECLARATION ND-19-001. PROJECT LOCATION: 258 UNION AVENUE. PROPERTY OWNER: CASHMERE BOUQUET 1031 LLC. APPLICANT: EW REAL ESTATE, LLC  
REQUESTING APPROVAL TO CONSTRUCT A MIXED-USE COMMERCIAL BUILDING WITH THREE ATTACHED MULTI-FAMILY CONDOMINIUMS, SIX DETACHED SINGLE-FAMILY CONDOMINIUMS, AND ALTERNATING USE OF PARKING ON PROPERTY ZONED C-1. APN 527-44-012 AND 013.

DEEMED COMPLETE: FEBRUARY 28, 2019  
FINAL DATE TO TAKE ACTION: AUGUST 28, 2019

RECOMMENDATION:

Approval, subject to recommended conditions.

PROJECT DATA:

General Plan Designation:	Neighborhood Commercial
Zoning Designation:	Neighborhood Commercial, C-1
Applicable Plans & Standards:	General Plan; Commercial Design Guidelines; Residential Design Guidelines
Parcel Size:	32,708 square feet

PREPARED BY: JOCELYN SHOOPMAN and JENNIFER ARMER, AICP  
Associate Planner Senior Planner

---

Reviewed by: Planning Manager and Community Development Director

---

PROJECT DATA (Continued):

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Multi-Family Residential	City of San Jose	
East	Single-Family Residential	Low Density Residential	R-1:8
South	Office	Office Professional	O
West	Shopping Center	Neighborhood Commercial	C-1

CEQA:

It has been determined that this project will not have a significant impact on the environment. Adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program to mitigate potential impacts to a less than significant level is recommended.

FINDINGS:

- As required by CEQA for adopting the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
- As required by Sections 29.20.190 (a) and 29.10.150 (e) of the Town Code for granting a Conditional Use Permit.
- As required by Housing Element Policy HOU-8.1 for new housing developments of three units or more.
- That the proposed project complies with the Commercial Design Guidelines.
- That the proposed project complies with the Residential Design Guidelines.
- As required by Section 66474 of the Subdivision Map Act if the Planning Commission denies the Subdivision application.

CONSIDERATIONS:

- As required by Section 29.20.150 of the Town Code for granting approval of an Architecture and Site application.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject property is located on the east side of Union Avenue, south of Los Gatos-Almaden Road (Exhibit 2). The lot is approximately 32,708 square feet. A commercial building on the property was demolished in 2001 and the site has since remained vacant. The former

BACKGROUND (Continued):

commercial building was last occupied by a restaurant. A previous proposal for eight single-family detached condominiums on the site was considered by the Planning Commission and Town Council at multiple meetings which took place between December 11, 2013 and June 16, 2015.

On February 25, 2015, the Planning Commission approved the proposal with modified conditions of approval. The decision of the Planning Commission was appealed by a member of the public on March 23, 2015. On June 16, 2015, the Town Council granted the appeal of a decision of the Planning Commission and remanded the project back to the Planning Commission with direction. A modified proposal was not submitted by the previous applicant for the Planning Commission's consideration and the application expired.

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject site is located on the east side of Union Avenue, south of Los Gatos-Almaden Road (Exhibit 2). The abutting property to the north contains a townhouse development that is in the City of San Jose. An office building abuts the site to the south and behind the site to the east are single-family residences. Across the street to the west is the Downing Center which includes retail, restaurant, office, bank, and personal service uses. The project site and the shopping center are zoned C-1. The residences behind the site are zoned R-1:8 and the adjacent office building is zoned O. The properties on the other side of the office building, further to the south, are duplexes that are zoned RD.

B. Project Summary

The applicant is proposing to merge the two parcels, and construct a mixed-use commercial building with three attached multi-family condominiums on the northern portion of the site, and six detached single-family condominiums with a private driveway on the southern portion of the site (Exhibit 13). While the property is not being subdivided into individual lots, a Subdivision application is required for the creation of five or more condominium units. The Conditional Use Permit (CUP) also includes a proposal for alternating use of parking.

C. Zoning Compliance

An office use is a permitted use in the C-1 zone, though a new office building requires a CUP. A residential use is permitted as a conditional use, when part of a mixed-use project. The proposed project would comply with setbacks, height, and lot coverage for the C-1

zone. The CUP application includes a request for alternating use of parking in order to meet the on-site parking requirements.

DISCUSSION:

A. Conditional Use Permit

The proposed project includes a CUP application for three reasons. The proposed project includes a new office building and multi-family residential (in a mixed-use project), which are both allowed in the C-1 zone with an approved CUP. The project also includes a request for shared parking between the 11 parking spaces required for the office building and three guest parking spaces required for the attached multi-family residential units. In order to grant approval for a CUP for the proposed project, the deciding body must make the required findings:

1. The proposed use of the property is essential or desirable to the public convenience or welfare;
2. The proposed use will not impair the integrity and character of the zone;
3. The proposed use would not be detrimental to public health, safety or general welfare; and
4. The proposed use of the property is in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code.
5. The alternating use of parking spaces will not result in the effective provision of fewer off-street parking spaces than required by Town Code.

In regard to the first finding, the proposed use would be considered desirable in that project provides additional diversity to the Town's housing stock, as discussed in the General Plan's Housing Element. As required by finding two, the proposed application would not impair the integrity and character of the zone as the proposed project is a combination of commercial and residential uses consistent with surrounding uses and meets the development standards of the zone including setbacks, building height, and setbacks. In regard to the third finding, the proposed use would not be detrimental to public health, safety or general welfare. In regard to the fourth finding, the proposed use would be in harmony with the General Plan and Town Code as discussed above and addressed in Sections C of this report. In regard to the final finding, the alternating use of parking spaces will not result in the effective provision of fewer off-street parking spaces than required by Town Code as discussed in Section D of this report.

B. Design and Compatibility

The Town's Architectural Consultant reviewed the proposed project to provide recommendations regarding the architecture and neighborhood compatibility (Exhibit 9).

DISCUSSION (Continued):

The Consulting Architect made 10 recommendations for changes, which are summarized below along with the applicant's response to each recommendation in *italics* (Exhibit 10).

1. Relocate the entry to the first-floor office to a street-facing facade.

*The applicant responded that the location of the entry to the commercial office is located appropriately, facing the surface parking lot to the rear of the property.*

2. Relocate the front entries to the attached multi-family residential units in the mixed-use building to more convenient locations, if possible.

*The applicant responded that the entries will be safer and more private when located on a private lane, rather than along Union Avenue.*

3. Provide modular pavers to the auto court driveway to provide a better pedestrian link between the street and the residential unit entries.

*The applicant added modular pavers to the entrance of the auto court driveway for the detached single-family homes, in addition the applicant also added modular pavers to the entrance of the surface parking lot for the mixed-use building.*

4. Relocate the front entry to units 1 and 6 to a street-facing facade to be consistent with Residential Design Guidelines 3.6.1 and utilize generous entry porches as were proposed on the last development proposal for this site.

*The applicant responded that the entries will be safer and more private when located on a private lane, rather than along Union Avenue. The applicant also responded that the street facing facades include a variety of materials (stucco, lap siding, board and batten siding, and stone) as well as many plane changes and window enhancements.*

5. Address the issue of the two-story walls facing the adjacent single-family homes to the rear of the property.

*A gable roof element was implemented to the side facing elevations of units 3 and 4 that are adjacent to the detached single-family homes to the rear. The applicant responded that the gable roof element would reduce the mass of a two-story façade. In addition, the applicant modified the windows of the side facing elevations with transom windows to reduce potential privacy concerns.*

DISCUSSION (Continued):

6. Reconsider the use of glass paneled garage doors.

*The applicant modified the glass paneled garage doors with solid garage doors.*

7. Address the conditions where material changes are made in the same plane or at outside corners on both portions of the development and address the issue of stone used only on the front facades of the single-family detached homes. This may require some simplification of the palette of siding materials and/or some additional facade plane changes.

*The applicant responded that all material changes occur at an inside corner or against a portion of a furred-out wall. The proposed stucco elements are furred-out two inches from the lap siding or board and batt siding to create a base element. Lastly, the applicant responded that the use of stone or brick is only proposed on the front elevations, as well as wrapping along the side elevations where appropriate, as it is consistent with the style of architecture proposed for the project.*

8. Request more information on the window types, materials, and details for both portions of the project to allow staff sufficient information to determine if the proposal meets the Residential Design Guidelines.

*Metal clad casement, single hung or fixed windows are proposed by the applicant.*

9. Request more information on the site fencing to allow staff sufficient information to determine if the proposal meets the Residential Design Guidelines.

*The applicant is proposing a six-foot high wood fence between the mixed-use building and the proposed detached single-family homes.*

10. Explore ways to make the common open space on the site more usable.

*The applicant modified the proposal to create a new entry from the surface parking lot for the mixed-use building to the common open space along the rear of the property to allow for a more user-friendly entrance.*

C. Open Space

The Town Code requires that each ground floor unit provide a minimum of 200 square feet of private open space in the form of a single enclosed patio or deck and a minimum of 120 square feet of private open space in the form of a balcony for each unit above the ground

DISCUSSION (Continued):

floor. In addition to the private open space requirements, 100 square feet of community open space per unit is required for condominiums. A 2,033-square foot community open space area is proposed in the rear of the site, in excess of the 900 square feet required by the Town Code. The private yard sizes are as follows:

Unit	Private Open Space Required	Private Open Space Provided
1	200 square feet	219 square feet
2	200 square feet	248 square feet
3	200 square feet	263 square feet
4	200 square feet	263 square feet
5	200 square feet	248 square feet
6	200 square feet	219 square feet
7A	120 square feet	124 square feet
7B	120 square feet	122 square feet
7C	120 square feet	122 square feet

D. Parking and Traffic

The proposed project includes a 2,511 square foot office building and nine residential units, six of which are detached single-family condominiums. The parking requirements are summarized in the table on the following page.

Use	Unit	Rate	Spaces Required	Spaces Provided
Office	2,511 sq. ft.	1/235 sq. ft.	11 spaces	11 spaces
Detached Single-Family Residential	6 units	2 per unit	12 spaces	12 spaces
Attached Multi-Family Residential	3 units	2 per unit plus up to 1 guest parking space per unit	9 spaces	7 spaces
Total			32 spaces	30 spaces

The proposed application for a CUP includes a request for authorization for alternating uses of the parking spaces onsite per Town Code Section 29.10.150 (e). Specifically, the applicant's justification letter (Exhibit 5) describes how the use of parking for the office use during business hours will not conflict with the use of guest parking in the evenings on weekdays and all day on weekends.

DISCUSSION (Continued):

Pursuant to the Town's Traffic Impact Policy, the traffic generation associated with the former use of a site is factored in when determining the traffic impact of a proposed development. A traffic impact analysis was not required because the former use (high turnover restaurant and bar) generated more average daily trips than the proposed office use and nine residential units.

Staff in the Parks and Public Works Department prepared a Project Information Sheet for the project (Exhibit 12), with responses to a number of the common questions that are asked about this proposal.

E. Below Market Price (BMP) Unit

Unit 7C, one of the three proposed attached multi-family residential units has been designated as a BMP unit. The proposed unit is 990 square feet and includes two bedrooms and two bathrooms. As required by the BMP Guidelines, the unit will be a low-income unit (80 percent of the median area income). Conditions 4 and 5 pertain to the provision and sale of the BMP unit (Exhibit 4).

F. Trees

The Town's Consulting Arborist reviewed the proposed project and provided an arborist report dated July 21, 2018 (Exhibit 7). The report identified 15 protected trees on the project site and abutting properties. A total of six trees on the subject property are proposed for removal, including trees 1, 3, and 4 that will be removed because they are already dead. The applicant has provided a response letter (Exhibit 8) addressing the concerns and questions in the Consulting Arborist's report regarding ownership of trees on abutting properties.

G. Housing Accountability Act

The applicant has invoked the provisions of the Housing Accountability Act (HAA). The HAA requires local governments to approve any "housing development project," including specified mixed-use projects, if they comply with "applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete..." The applicant's "project is within the statutes definition of a housing development project."



DISCUSSION (Continued):

Subdivision (3)(j)(1) and (2) of Section 65589.5 reads:

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development 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. As used in this paragraph, a "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 the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

The HAA does not define the term "objective standard." The following are definitions of the term found within two dictionaries:

1. Law Dictionary: A standard that is based on factual measurements, in the absence of a biased judgement or analysis.
2. Business Dictionary: Benchmark, criteria, or model based on verifiable measurements or bias free (neutral) analysis and judgment.

Objective standards are quantifiable or numerical standards, against which anyone evaluating a project against the objective standards would arrive at the same conclusion. Examples of objective standards include building height, setbacks, and open space requirements. The HAA requires the Planning Commission to consider the project under the HAA and requires the Planning Commission to make a very specific set of findings if a project is to be denied. In order to deny a project, the Planning Commission must cite specific written objective standards and/or policies and cannot deny the project for subjective reasons such as, neighborhood character, or aesthetics. As explained in *Honchariw v. County of Stanislaus* (2011)200 Cal.App.4th 1066, 1074-7, the HAA was intended to "take away an agency's ability to use what might be called a 'subjective' development 'policy'."

DISCUSSION (Continued):

H. Environmental Review

An Initial Study and Mitigated Negative Declaration (Exhibit 1) have been prepared for the project by the Town's Environmental Consultant, EMC Planning Group Inc. (available online at [www.losgatosca.gov/258Union](http://www.losgatosca.gov/258Union)). The 20-day public review period began on January 18, 2019 and ended on February 7, 2019. The project will not result in a significant effect on the environment because mitigation measures have been added for Air Quality, Biological Resources, Geology and Soils, Hazardous Materials, Noise, and Transportation, mitigating potential impacts to a less-than-significant level. The Mitigation Monitoring and Reporting Program is provided as Exhibit 11.

PUBLIC COMMENTS:

The applicant has conducted neighborhood outreach and has provided a summary which is included as Exhibit 6. Other public comments are included as Exhibit 14.

CONCLUSION:

A. Summary

The applicant is proposing to merge the two parcels, construct a mixed-use commercial building with three attached multi-family condominiums on the northern portion of the site, and six detached single-family condominiums with a private driveway on the southern portion of the site. The CUP also includes a proposal for alternating use of parking.

B. Recommendation

Based on the analysis above, staff recommends approval of the Architecture and Site application, Conditional Use Permit application, and Subdivision application subject to the recommended conditions of approval (Exhibit 4). If the Planning Commission finds merit with the proposed project, it should:

1. Adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (Exhibit 1 and 11);
2. Make the findings required granting a Conditional Use Permit (Exhibit 3);
3. Make the findings required by Housing Element Policy HOU-8.1 for new housing developments of three units or more (Exhibit 3);
4. Make the finding that the project complies with the Commercial Design Guidelines (Exhibit 3);

CONCLUSION (Continued):

5. Make the finding that the project complies with the Residential Design Guidelines (Exhibit 3); and
6. Make the required considerations as required by Section 29.20.150 of the Town Code for granting approval of an Architecture and Site application (Exhibit 3); and
7. Approve Architecture and Site Application S-18-033, Conditional Use Permit U-18-010, and Subdivision Application M-18-004 with the conditions contained in Exhibit 4 and the development plans in Exhibit 13.

C. Alternatives

Alternatively, if the Commission has concerns with the proposed project, it can:

1. Approve the applications with additional and/or modified conditions of approval;
2. Continue the applications with direction to a date certain; or
3. Deny the applications.

EXHIBITS:

Previously received under separate cover:

1. Mitigated Negative Declaration

Received with this Staff Report:

2. Location Map (one page)
3. Required Findings and Considerations (two pages)
4. Recommended Conditions of Approval (24 pages)
5. Project Description/Letter of Justification, received October 3, 2018 (four pages)
6. Applicant's Summary of Outreach to Neighbors (one page)
7. Consulting Arborist's Report (37 pages), dated July 21, 2018
8. Applicant's response to Consulting Arborist's Report (four pages), received February 21, 2019
9. Consulting Architect's Report (eight pages), received August 3, 2018
10. Applicant's Response to Consulting Architect's Report (three pages), received February 21, 2019
11. Mitigation Monitoring and Reporting Program (nine pages)
12. Project Information Sheet, prepared by the Parks and Public Works Department (two pages)
13. Development Plans, received February 28, 2019 (53 sheets)
14. Public Comments received by 11:00 a.m. Friday, March 22, 2019

Distribution:

EW Real Estate LLC, 2470 S. Winchester Blvd, Suite D, Campbell, CA 95008

***This Page  
Intentionally  
Left Blank***