



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 03/19/2024

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DATE: March 14, 2024  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Introduce an Ordinance, Titled “An Ordinance of the Town Council of the Town of Los Gatos Amending the Zoning from C-1 (Neighborhood Commercial) to RD (Residential Duplex) for Properties **Located at 15025, 15026, 15039, 15040, 15053, 15054, 15066, 15067, 15080, and 15081 Downing Oak Court.**” APNs 523-41-024, -033, -025, -032, -026, -031, -030, -027, -029, and -028. Exempt pursuant to CEQA Guidelines 15061 (b)(3): Review for Exemption. Zoning Amendment Application Z-24-002. Applicant: Town of Los Gatos. Project Planner: Sean Mullin.

**RECOMMENDATION:**

Introduce an Ordinance, titled “An Ordinance of the Town Council of the Town of Los Gatos Amending the Zoning from C-1 (Neighborhood Commercial) to RD (Residential Duplex) for Properties Located at 15025, 15026, 15039, 15040, 15053, 15054, 15066, 15067, 15080, and 15081 Downing Oak Court” (Attachment 1).

**BACKGROUND:**

Downing Oak Court is located on the west side of Union Avenue approximately 830 feet south of Los Gatos-Almaden Road (Attachment 2, Exhibit 1). 10 properties are located along Downing Oak Court. Four are developed with residential duplexes and six with multi-family residential buildings (four to six units each). The adjoining commercial property to the north is the location of the Downing Oak Shopping Center and is designated Neighborhood Commercial and zoned C-1 (Attachment 2, Exhibits 3 and 4). The adjoining residential properties to the east and west, along Union and Pinehurst Avenues, are developed with residential duplexes, and are designated Medium Density Residential and zoned RD. The adjoining residential properties to the south along Lynn Avenue are developed with single-family residences and are designated Low Density Residential and zoned R-1:8.

**PREPARED BY:** Sean Mullin, AICP  
Senior Planner

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

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BACKGROUND (continued):

The Downing Oak Court properties were under County jurisdiction prior to 1978. The following table summarizes the evolution of the Downing Oak Court properties.

<b>Date</b>	<b>Action</b>
March 5, 1962	Record of survey showing the area of the subject properties as a portion of a larger 7.310-acre parcel (Attachment 2, Exhibit 6).
April 21, 1975	Ordinance 1212 adopted by the Town Council rezoning the area of the subject properties as C-1, Neighborhood Commercial (Attachment 2, Exhibit 7).
April 26, 1978	Downing Oak Subdivision recorded with the County, creating the 10 subject properties and the Downing Oak Court right-of-way (Attachment 2, Exhibit 8).
August 21, 1978	Resolution 1978-134 adopted by the Town Council approving annexation, into the Town, of the subject 10 properties and the Downing Oak Court right-of-way (Attachment 2, Exhibit 9).
October 16, 1978	Resolution 1978-167 adopted by the Town Council approving annexation into the Town of the areas surrounding the Downing Oak Subdivision to the north, west, and south (Attachment 2, Exhibit 10).
1978	The "build date" reported by the County Assessor for the 10 buildings on the Downing Oak Court properties.

Based on the summary above, it appears that the subdivision, annexation, and construction of the 10 buildings on Downing Oak Court occurred in close succession and likely with overlapping timelines. Building permits for the structures would have been issued by the County prior to construction when the land was still in the jurisdiction of the County. When the Downing Oak Court properties were annexed into the Town in 1978, the C-1 rezoning was not corrected to reflect the residential duplex and multi-family residential uses. This resulted in the current C-1 zoning that is not consistent with the Medium Density Residential land use designation or the duplex/multi-family uses on the properties.

The General Plan land use designation for the properties is Medium Density Residential, both in the 2040 General Plan Land Use Element, adopted by Town Council on June 30, 2022 (currently suspended pending the results of a referendum), and in the 2020 General Plan Land Use Element that governs during the suspension period.

California Government Code Section 68560 requires that the Town's Zoning Ordinance be consistent with the adopted General Plan and requires that the Zoning Ordinance be amended in the event that it is not consistent with the General Plan (Attachment 2, Exhibit 11).

Consistent with California Government Code Section 68560, the proposed zone change would

BACKGROUND (continued):

rezone the 10 properties on Downing Oak Court from C-1 (Neighborhood Commercial) to RD (Residential Duplex) to be consistent with the General Plan.

On February 14, 2024, the Planning Commission considered the proposed rezoning and forwarded a recommendation of approval to the Town Council and recommended future consideration of an amendment to the General Plan land use designation to allow high-density residential on the subject properties. The February 14, 2024 Planning Commission Staff Report and verbatim minutes are included as Attachments 2 and 3.

DISCUSSION:

A. Rezone

The proposal would change the zoning of the subject properties from C-1 (Neighborhood Commercial) to RD (Residential Duplex). The C-1 zone is intended for retail, service, and administrative activities which are oriented to the day-to-day needs of the residents of the Town. The C-1 zone does not allow for stand-alone residential uses. The RD zone is intended for low-density, multiple-dwelling areas compatible with single-family dwelling areas. The RD zone provides for the following uses:

- Single-family dwelling.
- Two-family dwelling.
- Family daycare home.
- Residential care facility, small family home.

The properties on Downing Oak Court were rezoned C-1 in 1975, prior to the completion of the subdivision, annexation, and multi-family structures in 1978. The existing duplex and multi-family residential development was approved by the County prior to annexation and subdivision. At the time of subdivision with the development already underway, the gross density was 11.6 dwelling units per acre (inclusive of the dedicated rights-of-way), and the net density was 14.7 dwelling units per acre (excluding the dedicated rights-of-way). The existing duplex and multi-family residential development on each of the 10 properties became legal nonconforming upon annexation into the Town with the continuation of the C-1 zoning, which does not allow for residential uses. The gross overall density of the subdivision complies with the Medium Density Residential General Plan land use designation of five to 12 dwelling units per acre, while the net overall density exceeds this range, as do the densities of six of the 10 properties. The following table summarizes the existing development for each property.

DISCUSSION (continued):

Address	Lot Size (Square Feet)	Lot Size (Acre)	Dwelling Units	Density (du/acre)
15025	10,454	0.24	4	16.7
15039	10,454	0.24	4	16.7
15053	10,454	0.24	4	16.7
15067	10,890	0.25	4	16.0
15081	12,632	0.29	6	20.7
15080	13,068	0.30	6	20.0
15066	9,583	0.22	2	9.1
15054	9,583	0.22	2	9.1
15040	10,019	0.23	2	8.7
15026	9,583	0.22	2	9.1

The properties are surrounded by commercial, low density single-family residential, and medium-density duplex residential uses; no high-density residential uses are adjacent to the properties. The proposed zone change to RD would be consistent with the existing Medium Density Residential land use designation and would not require an amendment to the General Plan. The RD zoning would allow the four properties developed with duplexes to become conforming, while the remaining six would remain legal nonconforming. Town Code Section 29.10.195 allows for nonconforming residential uses to continue interminably. Additionally, should a nonconforming multi-family building be destroyed (such as by fire), Section 29.10.260 allows the nonconforming multi-family dwelling to be reconstructed on the same foundation, with the same number of units, in substantially the same manner as it existed before its destruction. Therefore, the zone change from C-1 to RD will not result in additional burden on the property owners relative to the nonconforming status of the structures. Conversely, the zone change to RD would clear the way for accessory residential uses, including Accessory Dwelling Units (ADUs), consistent with that zone that are currently not allowed by State law under the commercial zoning.

Rezoning the properties to RD would remove the commercial zoning from the properties developed with residential uses, avoid spot zoning, and bring the Zoning Ordinance in line with the General Plan land use designation consistent with State law.

B. Planning Commission

At its February 14, 2024 meeting, the Planning Commission included an additional recommendation to the Council for future consideration of an amendment to the General Plan land use designation to allow high-density residential uses on the subject properties (Attachment 3). This would be accomplished through a General Plan amendment to change the land use designation of the Downing Oak properties to High Density Residential, which

DISCUSSION (continued):

allows for 12 to 20 dwelling units per acre. If the land use designation were changed to High Density Residential, a subsequent zone change to R-M:12-20 (Multiple-family residential, 12 to 20 dwelling units per net acre) would be required to comply with State law. A future General Plan amendment and associated rezoning would bring five of the six multi-family properties into conformance as it relates to density. One property would exceed the allowable density by 0.7 dwelling units per acre and four properties would not achieve the minimum density of 12 dwelling units per acre.

PUBLIC OUTREACH:

On December 15, 2023, the Town contacted all Downing Oak Court property owners and occupants, as well as those within 300 feet, to inform them that the Town intended to rezone the subject properties and that a stakeholders meeting would be held in January. On January 24, 2024, a stakeholders meeting was held at Union Middle School. Several attendees joined staff to discuss the rezoning and ask questions.

In preparation for the March 19, 2024, Town Council meeting, notice was sent to all Downing Oak Court property owners and occupants, as well as those within 300 feet. Public comments received prior to 11:00 a.m., Thursday, March 14, 2024, are included as Attachment 4.

ENVIRONMENTAL ASSESSMENT:

The proposed zone change is exempt pursuant to CEQA, Section 15061(b)(3), because it can be seen with certainty that it will not significantly affect the physical environment.

CONCLUSION:

Staff recommends that the Town Council introduce the Draft Ordinance rezoning the properties on Downing Oak Court from C-1 (Neighborhood Commercial) to RD (Residential Duplex) by taking the following steps:

1. Make the finding that the proposed zone change is exempt pursuant to CEQA, Section 15061(b)(3), because it can be seen with certainty that it will not significantly affect the physical environment in that it aligns the regulations with the existing land use and no additional development is proposed at this time (Attachment 1); and
2. Make the required finding that the proposed zone change is consistent with the General Plan and its elements in that the proposed zoning is consistent with the existing General Plan land use designation (Attachment 1); and
3. Introduce, by title only, "An Ordinance of the Town Council of the Town of Los Gatos Amending the Zoning from C-1 (Neighborhood Commercial) to RD (Residential Duplex) for

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CONCLUSION (continued):

Properties Located at 15025, 15026, 15039, 15040, 15053, 15054, 15066, 15067, 15080, and 15081 Downing Oak Court.”

ALTERNATIVES:

Alternatively, the Town Council could:

1. Introduce the Draft Ordinance with modifications; or
2. Continue this item to a date certain with specific direction to staff; or
3. Refer this item back to the Planning Commission with specific direction; or
4. Take no action, leaving the zoning of the subject properties unchanged.

COORDINATION:

The Community Development Department coordinated with the Town Attorney’s Office in the review of the proposed project.

Attachments:

1. Draft Ordinance for the Zone Change, with Exhibit A
2. February 14, 2024, Planning Commission Staff Report with Exhibits
3. February 14, 2024, Planning Commission Verbatim Minutes
4. Public Comments Received Prior to 11:00 a.m., Thursday, March 14, 2024