



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 12/15/2020

ITEM NO: 8

DESK ITEM

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DATE: December 15, 2020  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Deny an Appeal of a Planning Commission Decision Approving a Request for a Zoning Consistency Determination and a Conditional Use Permit (U-20-009) for a Bank (Charles Schwab Community Banking and Investment Services) on Property Zoned C-2:LHP:PD Located at 35 University Avenue. APN 529-02-044. Property Owner: SRI Old Town, LLC. Applicant: Amber DeMaglio. Project Planner: Sean Mullin.

**REMARKS:**

The following discussion includes several questions asked by Council Members and staff's response in *italics*.

- What are the updated appeal criteria?

*Pursuant to updated Town Code Section 29.20.020, an interested person for non-residential projects is any person or persons or entity or entities who can demonstrate that their property will be injured by the decision.*

*Pursuant to updated Town Code Section 29.20.295, in the appeal and based on the record, the appellant (interested person) bears the burden to prove that there was an error or abuse of discretion by the Planning Commission or wherein its decision was not supported by substantial evidence in the record as required by Section 29.20.275. If neither is proved, the appeal should be denied. If the appellant meets the burden, the Town Council shall grant the appeal and may modify, in whole or in part, the determination from which the appeal was taken or, in its discretion, return the matter to Planning Commission. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.*

**PREPARED BY:** SEAN MULLIN, AICP  
Associate Planner

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

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REMARKS (continued):

- What is the definition of a bank? Does the Town use the dictionary definition if there is no Code definition?

*The Town Code does not include a definition of a bank. Traditionally, businesses that provide investment services have been considered office uses by the Town. The applicant provided a Project Description (Attachment 1, Exhibit 4), Letter of Justification (Attachment 1, Exhibit 5), and a letter speaking to zoning consistency (Attachment 1, Exhibit 6), all of which describe the proposed use as a bank and cite the evolving nature of traditional banking. This application was forwarded to the Planning Commission to determine if the proposed use is considered a bank.*

*Staff has reviewed the municipal codes of several neighboring jurisdictions and provides the following definitions of “bank” to aid in this discussion:*

<i>Campbell</i>	<i>Not defined.</i>
<i>Cupertino</i>	<i>"Banks" means financial institutions including federally-chartered banks, savings and loan associations, industrial loan companies, and credit unions providing retail banking services to individuals and businesses. This classification does not include payday lending businesses or check cashing businesses.</i>
<i>Gilroy</i>	<i>"Bank" means financial institutions including federally chartered banks, savings and loan associations, industrial loan companies, and credit unions providing retail banking services to individuals and businesses. This classification of bank does not include payday lending businesses or check cashing businesses, and as a result, the establishment, expansion, or relocation of such businesses is prohibited.</i>
<i>Los Altos</i>	<i>"Banks (commercial)" means financial institutions including federally-chartered banks, savings and loan associations, industrial loan companies, and credit unions providing retail banking services to individuals and businesses. This classification does not include payday lending businesses or check cashing businesses, and as a result, the establishment, expansion, or relocation of such businesses is prohibited.</i>
<i>Los Altos Hills</i>	<i>Not defined.</i>
<i>Milpitas</i>	<i>Not defined.</i>
<i>Monte Sereno</i>	<i>Not defined.</i>
<i>Morgan Hill</i>	<i>Banks and Financial Institutions. A financial institution providing retail banking services. Includes only those institutions serving walk-in customers or clients, including federally chartered banks, savings associations, industrial loan companies, and credit unions providing retail banking services to individuals and businesses. This classification expressly excludes payday lending businesses or check cashing businesses, and as a result, the establishment, expansion, or relocation of such businesses is prohibited.</i>

REMARKS (continued):

<i>Mountain View</i>	<i>Banks and financial services. Financial institutions, including banks and trust companies; lending and thrift institutions, credit agencies; brokers and dealers in securities and commodity contracts; security and commodity exchanges; holding (but not predominantly operating) companies; and other investment companies; vehicle finance (equity) leasing agencies. See also "Automatic teller machine."</i>
<i>Palo Alto</i>	<i>Not defined.</i>
<i>San Jose</i>	<i>"Retail Bank" refers to commercial and non-profit banks and credit unions which are primarily focused on in-person customer services such as, checking and savings accounts, mortgages, personal loans, and debit or credit card services.</i>
<i>Santa Clara</i>	<i>Not defined.</i>
<i>Saratoga</i>	<i>Not defined.</i>
<i>Sunnyvale</i>	<i>Not defined.</i>

- Can the Council debate the bank determination of the Planning Commission or is that issue resolved?

*Yes, the Council may debate the determination of the Planning Commission that the proposed use is a bank as this is a de novo hearing.*

- What is the rubric for determining an appropriate use?

*The Town Code indicates that there are uses which can be specified for each zone which, in practically all instances, will be mutually compatible. In addition, there are other uses which might be compatible with ordinarily allowed uses if properly located and regulated. These are called conditional uses. They are listed in Section 29.20.185. However, the listing of a conditional use does not indicate that the use must be allowed. There will be locations or instances where a specified conditional use is inappropriate in a zone regardless of the extent of regulation if the findings can be made.*

*Sec. 29.20.190. - Findings and decision for Conditional Use Permits.*

- a) The deciding body, on the basis of the evidence submitted at the hearing, may grant a conditional use permit when specifically authorized by the provisions of this chapter if it finds that:*

- 1) The proposed uses of the property are essential or desirable to the public convenience or welfare;*
- 2) The proposed uses will not impair the integrity and character of the zone;*
- 3) The proposed uses would not be detrimental to public health, safety or general welfare;*

REMARKS (continued):

- 4) *The proposed uses of the property are in harmony with the various elements or objectives of the general plan and the purposes of this chapter.*
  - 5) *A hazardous waste facility proposal is subject to the California Health and Safety Code, Article 8.7, Section 25199—25199.14 and shall be consistent with the Santa Clara County Hazardous Waste Management Plan.*
- How broadly do we view new information that was not available at the Planning Commission hearing? In other words, is there a low bar for sending things back to the Commission?

*Section 29.20.295 of the Town Code states:*

*“If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.”*

*In the context of the updated Ordinance language discussion, “information not presented to or considered by the Planning Commission” anticipated instances with a significant change in the project description from what was presented to the Planning Commission.*

ATTACHMENTS:

Previously received with the Staff Report:

1. November 11, 2020 Planning Commission Staff Report, with Exhibits 1 through 9
2. November 11, 2020 Planning Commission Desk Item, with Exhibit 10
3. November 11, 2020 Planning Commission Verbatim Minutes
4. Appeal of Planning Commission decision, received November 19, 2020
5. Draft Resolution to Deny an Appeal and Approve the Project, with Exhibits A and B
6. Draft Resolution to Grant an Appeal and Remand the Project to Planning Commission
7. Draft Resolution to Grant an Appeal and Deny the Project

ATTACHMENTS (continued):

Previously received with the Addendum:

8. Applicant letter to the Town Council received December 14, 2020