



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 12/15/2020

ITEM NO: 8

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**DATE:** December 10, 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.

**RECOMMENDATION:**

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.

**BACKGROUND:**

The subject property is located on the west side of University Avenue (Attachment 1, Exhibit 1) and is developed with the Old Town Shopping Center commercial buildings. The subject vacant 5,337-square foot tenant space is located on the ground floor of the northern building adjacent to the corner of University Avenue and Elm Street. The property abuts commercial properties to the north, south, and east, and a parking lot to the west.

Citing the evolving nature of the traditional banking industry, the applicant requested a zoning consistency determination from the Planning Commission for a bank (Charles Schwab Community Banking and Investment Services) and sought approval of a Conditional Use Permit (CUP) for the use.

**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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BACKGROUND (continued):

On November 11, 2020, the Planning Commission determined that the proposed use is a bank and approved the CUP (Attachment 3).

On November 19, 2020, the decision of the Planning Commission was appealed to the Town Council by the Los Gatos Chamber of Commerce, citing concerns related to the number of Commissioners present at the November 11, 2020 meeting, the Planning Commission's review of public comments, the potential precedent, and the fact that the Planning Commission did not continue the item for further discussion (Attachment 4).

Pursuant to the Town Code, any interested person as defined by Section 29.10.020 may appeal to the Council any decision of the Planning Commission. For commercial projects, this definition includes any person or persons or entity or entities who can demonstrate that their property will be injured by the decision.

Pursuant to Town Code Section 29.20.280, the appeal must be heard within 56 days of the Planning Commission hearing and in this case, by January 6, 2021. The Council must at least open the public hearing for the item, and may continue the matter to a date certain if the Council does not complete its work on the item.

Pursuant to Town Code Section 29.20.295, in the appeal, and based on the record, the appellant 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.

DISCUSSION:

A. Project Summary

The applicant requests a zoning consistency determination for a bank (Charles Schwab Community Banking and Investment Services) and approval of a CUP for the use. The applicant seeks to relocate the existing business from 335 N. Santa Cruz Avenue to the subject site. Traditionally, businesses that provide investment services have been considered office uses and may not be located on the ground floor in the C-2 zone. The applicant has 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

DISCUSSION (continued):

6), all of which describe the proposed use as a bank and cite the evolving nature of traditional banking.

The intent of the C-2 or Central Business District zone is to encourage the continuance of a viable and predominantly pedestrian-oriented business district for the Town. The C-2 zone allows for a wide variety of retail, service, entertainment, and administrative activities, which are necessary to serve a large trading area. An office use is allowed in the C-2 zone and may not be located on the ground floor. A bank use is allowed in the C-2 zone with the approval of a CUP and may be located on the ground floor.

B. Planning Commission

On November 11, 2020, the Planning Commission received the staff report (Attachment 1), opened the public hearing, and considered testimony from the applicant and the public. One member of the public spoke in support of the project and one spoke in opposition. After asking questions of the applicant, the Planning Commission closed the public hearing and discussed the project. The Commission determined that the proposed use is a bank with a 3-1 vote, Commissioner Burch recused. The Commission then approved the CUP for a bank in the C-2 zone with a 3-1 vote, Commissioner Burch recused. Attachment 3 contains the verbatim minutes.

C. Appeal to Town Council

On November 19, 2020, the decision of the Planning Commission was appealed to the Town Council by the Los Gatos Chamber of Commerce (Attachment 4). The appellant provided their reasons for the appeal, which are listed below followed by staff analysis in *italic* font.

1. There were a minimum amount of Planning Commissioners present to constitute a quorum and some of them appeared to not have had the opportunity to review a letter that outlined the damages this approval would do to the surrounding business community.

*Following the November 3, 2020 election, two members of the seven-member Planning Commission were elected to the Town Council and their duties with the Commission ceased. In consideration of this application, Commissioner Burch recused herself leaving four Commissioners and maintaining a quorum.*

*Public comment received before 11:00 a.m., Friday, November 6, 2020 was included with the Planning Commission staff report (Attachment 1, Exhibit 9). Public comment received between 11:01 a.m., December 6, 2020 and 11:00 a.m., December 11, 2020 was*

DISCUSSION (continued):

*included with the Desk Item provided to the Planning Commission (Attachment 2, Exhibit 10).*

2. A precedent would be set by approving a business via conditional use permit that does not align with the prescribed use within the zoning.

*While not a permitted use, a bank is an allowed use with the approval of a CUP in the C-2 zone. The requirement for approval of a CUP allows the Planning Commission to consider whether a proposed use at a particular location is compatible with ordinarily permitted uses. On November 11, 2020, the Planning Commission determined that the proposed use is a bank and approved a CUP for the use at the subject location (Attachment 3). Any additional bank wishing to locate within the C-2 zone in a location where the use does not already exist would require approval of a CUP. Each application is considered on its own merits.*

3. The Planning Commission did not act “in the best faith of the citizens” by continuing this item for further discussion.

*On November 11, 2020, the Planning Commission received the staff report and Desk Item (Attachments 1 and 2), opened the public hearing, and considered testimony from the applicant and the public. One member of the public spoke in support of the project and one spoke in opposition. After asking questions of the applicant, the Commission closed the public hearing and discussed the project. The Commission determined that the proposed use is a bank. The Commission then approved the CUP for a bank in the C-2 zone. Given that the Commission completed its work on this item, there was no need to continue it. Attachment 3 contains the verbatim minutes.*

PUBLIC COMMENTS:

At the time of this report’s preparation, the Town has not received any public comment.

CONCLUSION:

A. Recommendation

For the reasons stated in this report, it is recommended that the Town Council uphold the decision of the Planning Commission and adopt a resolution (Attachment 5) denying the appeal and approving the application with the required findings and considerations (Attachment 5, Exhibit A), conditions of approval (Attachment 5, Exhibit B), and development plans (Attachment 1, Exhibit 7).

CONCLUSION (continued):

B. Alternatives

Alternatively, the Town Council could:

1. Adopt a resolution (Attachment 6) granting the appeal and remanding the application back to the Planning Commission with specific direction;
2. Adopt a resolution granting the appeal and denying the application (Attachment 7); or
3. Continue the application to a date certain with specific direction.

Attachments:

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

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