



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

SPECIAL MEETING DATE: 06/03/2025

ITEM NO: 1

DATE: May 30, 2025
TO: Mayor and Town Council
FROM: Chris Constantin, Town Manager
SUBJECT: Consider a Recommendation by the Planning Commission to Approve Architecture and Site, Conditional Use Permit, and Subdivision Applications to Demolish Existing Commercial Structures, Construct a Multi-Family Live/Work Development (55 Units), a Conditional Use Permit for a Live/Work Development, a Condominium Vesting Tentative Map, Site Improvements Requiring a Grading Permit, and Removal of Large Protected Trees Under Senate Bill 330 (SB 330) on Property Zoned CH:HEOZ. APNs 424-19-048 and 424-19-049. **Located at 15349-15367 Los Gatos Boulevard.** No Additional Environmental Review is Necessary Pursuant to CEQA Guidelines Sections 15162: Subsequent EIRs and 15168: Program EIR, Since the Proposed Project's Environmental Impacts were Adequately Addressed in the 2020 General Plan EIR and/or 2040 General Plan EIR, as Applicable. Architecture and Site Application S-24-015, Conditional Use Permit Application U-24-006, Vesting Tentative Map Application M-24-008. Property Owner: Jonathan Peck. Applicant: City Ventures. Project Planner: Sean Mullin.

RECOMMENDATION:

Staff recommends that the Town Council accept the Planning Commission's recommendation to adopt the draft Resolution (Attachment 2) to approve Architecture and Site, Conditional Use Permit, and Subdivision applications to demolish existing commercial structures, construct a multi-family live/work development (55 multi-family residential units), approve a Conditional Use Permit for a live/work development, condominium vesting tentative map, site improvements requiring a Grading Permit, and removal of large protected trees under Senate Bill 330 (SB 330) on property zoned CH:HEOZ, located at 15349-15367 Los Gatos Boulevard.

PREPARED BY: Sean Mullin, AICP
Planning Manager

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

FISCAL IMPACT:

Approving the Architecture and Site, Conditional Use Permit, and Subdivision applications does not impact the Town's budget.

STRATEGIC PRIORITIES:

The proposed project aligns with the adopted Core Goal of **Community Character** and the Strategic Priority to preserve the Town's small-town charm and provide a range of housing opportunities and historic neighborhoods, while diligently maintaining and implementing the Housing Element.

BACKGROUND:

Senate Bill 330

The Housing Crisis Act of 2019, or SB 330, became effective on January 1, 2020, and will remain in effect until it sunsets on January 1, 2030. SB 330 provides an expedited review process for housing development projects and offers greater certainty by allowing an optional vesting opportunity through the Preliminary Application process. Submittal of a Preliminary Application allows a developer to provide a specific subset of information on the proposed housing development ahead of providing the full amount of information required by the Town for a housing development application. Once the Preliminary Application is "deemed submitted" and payment of the permit processing fee is made, a vesting date is established, freezing the applicable fees and development standards that apply to the project while the applicant assembles the rest of the materials necessary for a full application submittal. Eligible projects are exempt from discretionary review and must be consistent with objective zoning and design standards. The statute requires that a final decision be made in no more than five public hearings, including appeals. The SB 330 preliminary application for this project achieved a vesting date of April 30, 2024. The Town Council meeting of June 3, 2025, is the second public hearing for this application.

State Density Bonus Law

State Density Bonus Law (SDBL) created a mechanism to obtain more favorable development requirements for projects with affordable or senior units. To meet the affordable housing goals, developers are entitled to a density bonus that corresponds to specified percentages of units set aside for very-low, low, or moderate-income households. In addition to the density bonus, SDBL provides three additional benefits for qualifying projects:

1. One or more concessions/incentives that provide cost reductions for the development. Under the law, a concession includes a reduction in site development standards and/or regulations when such regulations potentially make the project economically infeasible for

the developer to build. These can include a reduction in site development standards or modification of zoning or architectural design requirements that exceed minimum building standards. The number of allowed concessions/incentives is determined on a sliding scale based on the percentage of units that will be set aside as affordable units and the household income category of those affordable units.

Concessions/incentives may only be denied if the Town has substantial evidence that the concession/incentive would be contrary to state or federal law; does not result in identifiable and actual cost reductions; or would have a "specific, adverse impact" on public health and safety; or on property listed in the California Register, based on objective standards, which cannot be mitigated. "Objective" standards must be verifiable by reference to an external and uniform benchmark.

2. Waivers are reductions or modifications of any development standards and other regulations that would physically preclude the development of a project at the density permitted and with the allowed incentives or concessions. Development standards include, but are not limited to, height limitations, setback requirements, FAR, open space requirements, or parking requirements that apply to a residential development pursuant to any ordinance, general plan element, policy, resolution, or regulation. There is no limit in the number of waivers an applicant can request through SDBL.

A recent case (*Banker's Hill 150 v. City of San Diego*) held that a city must offer a waiver or reduction of development standards that would have the effect of physically precluding the construction of a development at the density, or with the requested incentives or concessions permitted by the state density bonus law.

Grounds for the denial of a requested incentive or concession are that the requested incentive or concession would have a specific, adverse impact on health or safety which cannot be mitigated; would be contrary to state or federal law; or would have an adverse impact on property listed in the California Register.

3. Reductions in parking requirements provided based on the number of bedrooms in each unit and the type of project.

The proposed project qualifies for a density bonus and the associated benefits under the SDBL, unless the required findings can be made to deny the concessions and waivers.

Housing Accountability Act – Builder's Remedy

The California Legislature adopted the Housing Accountability Act (HAA) to "significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects" [Gov. Code §

65589.5(a)(2)(K)]. It is the policy of the state that the HAA "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." [Gov. Code § 65589.5(a)(2)(L)]. The "Builder's Remedy" provision of the HAA specifically prohibits a local agency from relying on inconsistency with zoning and general plan standards as a basis for denial of a qualifying housing development project unless the agency has adopted a sixth cycle housing element in substantial compliance with State law by January 31, 2023.

The state Housing and Community Development Department (HCD) has opined, and state law has been revised, to provide that agencies do not have the ability to "self-certify" their Housing Elements. In other words, HCD certification is required.

The Town's sixth cycle Housing Element was certified by HCD on July 10, 2024. The preliminary application for this project achieved a vesting date of April 30, 2023, prior to state certification of the Town's Housing Element. Therefore, the project is eligible for the Builder's Remedy; however, the applicant has chosen not to invoke Builder's Remedy. Therefore, this is not a Builder's Remedy project and all deviations from the Town's standards included in the project are requested exclusively through SDBL.

Project Site

The subject property consists of two lots totaling 1.56 acres located on the west side of Los Gatos Boulevard, approximately 160 feet south of the intersection with Garden Lane (Attachment 3, Exhibit 4). The property is a through lot, having frontage on both Los Gatos Boulevard and Garden Lane and the existing commercial developments are accessed from Los Gatos Boulevard. The property is almost completely developed having a variety of trees along the Garden Lane property line and several street trees along Los Gatos Boulevard. The property is relatively flat, with only five feet of elevation change from north to south. The southern lot is developed with the Genuine Automotive service center and the northern lot is developed with a multi-suite commercial building. The property has a General Plan designation of Mixed Use Commercial and is zoned CH:HEOZ, or Restricted Commercial Highway with a Housing Element Overlay Zone (HEOZ). The HEOZ overlay is applied to sites included in the Sites Inventory of the Housing Element and modifies development standards such as density, lot coverage, FAR, and height. The HEOZ became effective on December 21, 2023. The preliminary application under SB 330 was deemed submitted on April 30, 2024, establishing the vesting date for the application. Therefore, the application is subject to the provisions of the HEOZ, including minimum density.

On May 16, 2024, the applicant submitted a formal application, within 180-days of the established vesting date as required by state law.

On February 6, 2025, the applicant submitted application materials that were deemed complete through the Town's technical review process within the timelines prescribed by state

law. On March 5, 2025, the application was deemed consistent with applicable Town standards and ready for consideration through the Town's public hearing process.

The application includes a Vesting Tentative Map, requiring approval by the Town Council pursuant to Town Code Section 29.10.020. The Town Council will render the final decision on the project.

DISCUSSION:

A. Project Summary:

The applicant proposes demolition of all commercial structures and construction of a multi-family live/work development consisting of 55 units distributed among five separate buildings (Attachment 3, Exhibit 16). The applicant submitted a Project Description Letter (Attachment 3, Exhibit 5) and a Letter of Justification (Attachment 3, Exhibit 6) discussing the project. New private alleys would provide circulation through the site, taking access from two locations on the east side of Garden Lane. A third driveway along Garden Lane would provide access to a guest parking area, connecting to the interior of the development through pedestrian pathways. Only pedestrian access from Los Gatos Boulevard will be provided. The proposed project also includes a right-of-way dedication of three feet along the Garden Lane frontage and frontage improvements along Los Gatos Boulevard and Garden Lane. Of the 55 proposed units, 8 units would be designated as Below Market Price units.

Full discussion and analysis of the project is provided in the April 23, 2025, Planning Commission Staff Report included as Attachment 3.

B. Planning Commission:

On April 23, 2025, the Planning Commission received the staff report, the applicant's presentation, and public comments on the proposed project (Attachments 3 through 6). The Planning Commission voted unanimously to forward a recommendation to the Council to approve the project with the recommendation that the applicant work with staff to consider compliance with the recommendations of the Town's Consulting Architect and an adjunct recommendation that the Town Council direct staff to develop a method to study the cumulative impacts of all SB 330 projects, including this project.

Consulting Architect's Recommendations

The Town's Consulting Architect reviewed the proposed project and provided feedback and recommendations (Attachment 3, Exhibit 7). The Consulting Architect noted the challenge posed by the constraints of the site and the need to meet the minimum density applicable to the property with sympathy to the Town's small scale and character. The Consulting

Architect discussed issues and concerns related to guest parking, internal pedestrian circulation, site edge landscaping, façade massing, setbacks along Los Gatos Boulevard, roof slopes, and façade articulation and materials. The Consulting Architect made recommendations on the following topics:

1. Guest parking and internal pedestrian circulation;
2. Los Gatos Boulevard frontage;
3. Garden Lane frontage;
4. Façade roof slopes; and
5. Façade articulation and materials.

The applicant submitted a letter responding to these recommendations and summarizing design changes that were implemented in response prior to the Planning Commission's review (Attachment 3, Exhibit 8).

Following the Planning Commission's recommendation that the applicant further comply with the Town's Consulting Architect's recommendations, the applicant submitted a letter summarizing the changes previously made and detailing additional revisions proposed for Building A as a response to the Planning Commission's recommendation (Attachment 7). The additional revisions include:

- A massing break of 18" between the two facades can be provided which also creates a break in the roof line;
- A secondary option for the deck to allow for a roof in addition to the original trellis can be provided;
- There are small, but intentional changes at the dormer window at the massing break;
- Material changes can be provided so that materials are different between adjacent units; and
- Color variation can be used to add additional individuality for each unit.

Included with Attachment 7 is a sketch showing the proposed revisions to Building A. Staff recommends that the Town Council consider the proposed architectural revisions and, if merit is found with the changes, include the following condition of approval in a motion for approval:

The design revisions included in Attachment 7 to the June 3, 2025, Town Council staff report, shall be implemented prior to issuance of a Building Permit for Building A, located adjacent to Los Gatos Boulevard.

Cumulative Impacts Analysis

On April 23, 2025, the Planning Commission included an adjunct recommendation that the Town Council direct staff to develop a method to study the cumulative impacts of all SB 330

projects, including this project. Staff considered recommending that the Town prepare one Supplemental EIR to the Program EIR for the 2040 General Plan that could be relied upon by projects that are tiering from the 2040 General Plan EIR. However, staff is recommending that each development project continue to examine its own cumulative impacts. This will be done in either the initial study, a negative declaration, a mitigated negative declaration, an Environmental Impact Report (EIR), or a Supplemental EIR.

2040 General Plan EIR

The California Environmental Quality Act (CEQA) defines cumulative impacts as two or more individual actions that, when considered together, are considerable or will compound other environmental impacts. Cumulative impacts are the changes in the environment that result from the incremental impact of development of the proposed project and other nearby projects. For example, the traffic impacts of two nearby projects may be insignificant when analyzed separately but could have a significant impact when analyzed together. Cumulative impact analysis allows an EIR to provide a reasonable forecast of future environmental conditions and can more accurately gauge the effects of a series of projects.

The 2040 General Plan EIR considers cumulative impacts insofar as it considers cumulative development that could occur within the General Plan Area. Therefore, the analysis of project impacts also constitutes the cumulative analysis. In addition to cumulative development within the General Plan Area, the analysis of traffic and related impacts (such as noise) considers the effects of regional traffic growth occurring outside of the General Plan Area. Cumulative impacts are discussed within each topic of Section 4 of the 2040 General Plan EIR, which is available on the Town's website:

<https://www.losgatosca.gov/2138/General-Plan>.

The 2040 General Plan includes analysis and discussion within each topic of the cumulative impacts anticipated from the implementation and build out of the development contemplated by the General Plan. In summary, the cumulative analysis for each topic in the 2040 General Plan EIR concludes that implementation and build out of the General Plan would result in no cumulatively considerable impacts; cumulative impacts that would be less than significant; or cumulative impacts that would be less than significant with implementation of applicable goals, policies, programs, and standards. The analysis for one topic in the EIR, Greenhouse Gas Emissions which are inherently cumulative within the region, concluded that there would be significant and unavoidable cumulative impacts and a Statement of Overriding Considerations was adopted with the General Plan EIR.

Modified Initial Study Checklist

The Modified Initial Study Checklist prepared for this project was completed in March 2025 (Attachment 1). The Modified Initial Study Checklist includes a number of project-level technical studies, including: an Air Quality and Greenhouse Gas Assessment; Biological Site

Assessment Report; Arborist Report; Historic Resources Evaluation; Geotechnical Investigation; Phase I and Phase II Environmental Site Assessment; Noise Assessment; and Transportation Analysis. All technical reports were peer reviewed by the Town or the Town's consultants. The Modified Initial Study Checklist determined that the project's environmental impacts have been considered in the 2040 General Plan EIR that was certified by the Town. In addition, the analysis determined that the proposed project is within the scope of activities evaluated in the 2040 General Plan EIR and the Environmental Analysis for the 6th Cycle Housing Element. As such, this Modified Initial Study Checklist is the appropriate environmental document for the proposed project, pursuant to CEQA Guidelines Section 15168 and no additional environmental review is necessary.

Section XXI of the Initial Study includes a discussion of cumulative impacts resulting from this project and other large projects approved at the time the document was drafted. The Modified Initial Study Checklist notes that the proposed project, in conjunction with other development within the Town, could incrementally contribute to cumulative impacts in the area. However, the proposed project was included in the future development assumptions evaluated in the 2040 General Plan EIR. The 2040 General Plan EIR evaluated the potential growth for up to 3,738 residential units, and the 6th Cycle Housing Element Update included 2,371 units. The proposed project includes 55 residential units and would be consistent with the project site's 2040 General Plan land use designation of Mixed-Use Commercial and its CH:HEOZ zoning designation. Therefore, the proposed project's 55 new residential units were included within the scope of the 2040 General Plan EIR and 6th Cycle Housing Element Update.

As demonstrated in the Modified Initial Study Checklist, the proposed project would be subject to all applicable 2040 General Plan EIR mitigation measures, General Plan policies, Municipal Code standards, and other applicable local and State regulations. The proposed project does not include cumulative impacts that were not analyzed or discussed in the previous EIR. As such, the Initial Study does not include any substantial new information that shows impacts are more severe than previously discussed, and further analysis is not required. Therefore, the proposed project would be consistent with the conclusions of the 2040 General Plan EIR, and is within the scope of activities evaluated in the 2040 General Plan EIR.

ENVIRONMENTAL REVIEW:

The Town Council adopted the 2040 General Plan and certified the 2040 General Plan EIR on June 30, 2022. On April 2, 2024, the Town Council voted to rescind the Land Use Element and Community Design Element of the 2040 General Plan. Therefore, the Town's current General Plan consists of the Land Use Element and Community Design Element of the 2020 General Plan, and the remaining elements of the 2040 General Plan.

CEQA Guidelines Section 15168 provides that a programmatic EIR, in this case, the 2040 General Plan EIR, may serve as the EIR for subsequent activities or implementing actions, provided that it contemplates and adequately analyzes the potential environmental impacts of those subsequent activities. If the Town, as the CEQA Lead Agency, determines, pursuant to Section 15162 of the CEQA Guidelines, no Subsequent EIR would be required, the agency can approve the activity as being within the scope of the project covered by the programmatic EIR, and new environmental documentation would not be required. In addition, as discussed under CEQA Guidelines Section 15168(c)(2), where later activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the programmatic EIR. If additional analysis is required, it can be streamlined by tiering from this programmatic EIR.

In accordance with Sections 15168(c)(2) and 15168(c)(4) of the CEQA Guidelines, a Modified Initial Study Checklist (Attachment 1) was prepared to provide project-level consideration of potential new or more severe significant impacts associated with the proposed project to determine whether the project: 1) is within the scope of activities evaluated in the 2040 General Plan EIR; and 2) would trigger any of the criteria in CEQA Guidelines Section 15162.

The Modified Initial Study Checklist includes a number of project-level technical studies, including: an Air Quality and Greenhouse Gas Assessment; Biological Site Assessment Report; Arborist Report; Historic Resources Evaluation; Geotechnical Investigation; Phase I and Phase II Environmental Site Assessment; Noise Assessment; and Transportation Analysis (Attachment 1). All technical reports were peer reviewed by the Town or the Town's consultants. The Modified Initial Study Checklist determined that the project's environmental impacts have been considered in the 2040 General Plan EIR that was certified by the Town, which remains relevant, and the conditions set forth in Section 15162 are not triggered by the proposed project. In addition, the analysis determined that the proposed project is within the scope of activities evaluated in the 2040 General Plan EIR and the Environmental Analysis for the 6th Cycle Housing Element. As such, this Modified Initial Study Checklist is the appropriate environmental document for the proposed project, pursuant to CEQA Guidelines Section 15168 and no additional environmental review is necessary.

As discussed above, this project is tiering off of the EIR that was prepared for the 2040 General Plan. Because the project is consistent with the height, density, and vehicle trips that were analyzed in the 2040 General Plan, its cumulative impacts were already examined in the 2040 General Plan EIR. That discussion can be found in Section XXI of the Initial Study included as Attachment 1. In addition, the Initial Study that was prepared for this project did not identify any cumulative impacts beyond those discussed in the EIR for the 2040 General Plan.

PUBLIC COMMENTS:

Project identification signage was installed on the Los Gatos Boulevard and Garden Lane street frontages by October 4, 2024, consistent with Town policy. Visual simulations were completed by the Town's consultant and posted to the Town's website by March 20, 2025 (Attachment 3, Exhibit 12). Written notice was sent to property owners and tenants within 1,000 feet of the subject property and notice of public hearing signage was installed on the street frontages by May 12, 2025, in anticipation of the Town Council meeting.

Staff conducted outreach through the following media and social media resources, for both the availability of the visual simulations and notice of the public hearing:

- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account; and
- The Town's NextDoor page.

Public comments received by 11:00 a.m., Friday, May 30, 2025, are included as Attachment 8.

CONCLUSION:

A. Summary

The applicant is requesting approval of Architecture and Site, Conditional Use Permit, and Subdivision applications to demolish existing commercial structures, construct a multi-family live/work development (55 multi-family residential units), approve a Conditional Use Permit for a live/work development, condominium vesting tentative map, site improvements requiring a Grading Permit, and removal of large protected trees under Senate Bill 330 (SB 330) on property zoned CH:HEOZ, located at 15349-15367 Los Gatos Boulevard.

As detailed above, the application was submitted and is being processed under SB 330, and the applicant has requested a number of waivers to Town standards pursuant to SDBL. On April 23, 2025, the Planning Commission forwarded a recommendation of approval to the Town Council with the recommendation that the applicant work with staff to consider compliance with the recommendations of the Town's Consulting Architect and an adjunct recommendation that the Town Council direct staff to develop a method to study the cumulative impacts of all SB 330 projects, including this project.

B. Recommendation

Staff recommends the Town Council adopt the draft Resolution (Attachment 2) to make the required findings and approve the Architecture and Site, Conditional Use Permit, and Subdivision applications subject to the Conditions of Approval (Attachment 2, Exhibit A).

C. Alternatives

Alternatively, the Council can:

1. Approve the applications with additional and/or modified conditions; or
2. Continue the matter with specific direction; or
3. Deny the applications and make the required findings for denial.

ATTACHMENTS:

1. Final Initial Study – March 2025
(available online at <https://www.losgatosca.gov/DocumentCenter/Index/2223>)
2. Draft Resolution making the required findings and approving the applications subject to the Conditions of Approval (included as Exhibit A)
3. April 23, 2025, Planning Commission Staff Report, with Exhibits 2 through 16
4. April 23, 2025, Planning Commission Addendum, with Exhibit 17
5. April 23, 2025, Planning Commission Desk Item, with Exhibit 18
6. April 23, 2025, Planning Commission Verbatim Minutes
7. Applicant's Response to Planning Commission Recommendations
8. Public comments received by 11:00 a.m., Friday, May 30, 2025