
File #: 21-0797, Version: 1

REPORT TO COUNCIL

SUBJECT

CALL FOR REVIEW OF THE PLANNING COMMISSION DECISION OF JULY 12, 2021

Proposed Project: Related applications on a 2.77-acre site:

SPECIAL DEVELOPMENT PERMIT to redevelop a portion (easterly portion) of an existing shopping center (Fremont Corners) into a mixed-use development with 8,094 square feet of commercial space and 50, 4-story townhome-style condominiums with associated parking and site improvements including common open space.

TENTATIVE MAP to subdivide the lot into 6 lots and 50 condominiums.

Location: 166 E. Fremont Ave. (APN: 309-01-006)

File #: 2020-7525

Zoning: C-1/PD (Neighborhood Commercial/Planned Development)

Applicant/Owner: The True Life Companies/Fremont Corners Inc et al (applicant/owner)

Environmental Review: Class 32 Categorical Exemption (Infill Development)

Project Planner: Shétal Divatia, (408) 730-7637, sdivatia@sunnyvale.ca.gov

SUMMARY OF COMMISSION ACTION

The Planning Commission approved this project on July 12, 2021 with a 6-0 vote (Howe recused). The staff report is included in Attachment 9 and minutes are in Attachment 10. The Planning Commission's decision included 12 modifications to the Conditions of Approval, which are incorporated in Attachment 4. Most of the modifications are clarifications of the geographic extent of requirements. Three conditions were added and relate to design features: use of native tree species, selection of a cool roof design and pre-wiring in the residential garages to allow at least 220-volt capability.

The proposed mixed-use project is located in a portion of a shopping center; the entire shopping center has been designated as Mixed-Use Village Center in the General Plan, which allows residential uses. The project seeks to take advantage of recently adopted State housing legislation that limits a jurisdiction's application of local requirements and standards in areas of the City where General Plan designations permit residential or mixed-use development.

CALL FOR REVIEW

A Call for Review was submitted by Vice Mayor Hendricks and Councilmember Larsson on July 20, 2021, pursuant to Sunnyvale Municipal Code (SMC) Section 19.98.070(e). The City Council hearing is considered to be "de novo," meaning that the City Council is not bound by the Planning Commission decision.

Housing Legislation

The project applicant is utilizing recently adopted housing legislation, specifically the Housing

Accountability Act (HAA), Senate Bill (SB) 330 and California State Density Bonus Law. Together, these bills allow residential development throughout the City based on General Plan designations, even if the zoning has not yet been updated with residential development standards. They also limit the circumstances to deny a housing development project that is consistent with applicable, objective development standards and permit the applicant to propose modifications to applicable standards in exchange for modest amounts of affordable housing.

The California State Density Bonus Law was created to incentivize the construction of affordable units and applies to for-sale housing projects that provide at least 10% of units affordable to moderate income households. At the time this application was determined complete the City requirement for inclusionary Below Market Rate units (SMC Chapter 19.76) was 12.5% of the units. The SMC allows payment of an in-lieu fee for a fractional unit. This 50-unit project would therefore require six affordable units (12%) and payment of an in-lieu fee for a fractional unit (0.5% or 0.25 units). By providing the affordable units required by the SMC, State Density Bonus Law entitles this project to:

- Reduced parking requirements;
- Unlimited waivers (which meet defined parameters);
- One concession; and,
- A density bonus of 8% (4 units).

REDUCED RESIDENTIAL PARKING: The State Density Bonus Law allows parking at a rate of 1.5 parking spaces for two- and three-bedroom units, resulting in a total of 75 required spaces for the residential project, inclusive of guest parking, that may be provided as covered parking, uncovered parking, in tandem spaces, or any combination. This parking ratio is lower than the SMC requirement.

The proposed project provides two tandem parking spaces in individual garages for all 50 condominium units. SMC Section 19.46.040 (b)(1) allows only 50% of the tandem spaces to be counted towards the required parking spaces; the Zoning Code also requires 48 unassigned parking spaces for this project. Therefore, for 25 of the units both of the parking spaces in the individual garages spaces would count toward the minimum SMC requirement (50 parking spaces); for the remaining 25 garages, only one of the spaces would be allowed to count toward the minimum requirement resulting in 75 garage spaces that are considered to satisfy the City's required parking. An additional 25 unassigned surface parking spaces are provided towards the back of the site. A total of 100 residential parking spaces are provided, or 125 including all tandem parking spaces.

	Provided	Allowed/required by Sunnyvale code	State Density Bonus Law
Tandem Garage Spaces	100	50	75
Single garage Spaces		25	
Unassigned spaces for 2-car garage	25	13	0
Unassigned spaces for 1-car garage		35	
TOTAL	125	123	75

Therefore, the project exceeds the reduced State Density Bonus parking requirement and provides an extra 50 parking spaces. The parking standard for Village Centers has not been developed. The LUTE includes this action statement:

LT-3.1b Establish reduced parking requirements for transit, corridor, and village mixed-use developments and for developments with comprehensive TDM programs that are consistent with the City's established goals.

The Downtown area, a higher density part of the City that is close to several public transit options, allows all tandem spaces to be counted toward required parking. Village Centers are envisioned as supportive of a lifestyle with less reliance on a private automobile. If all of the tandem spaces are counted, the proposed parking would satisfy the City's unassigned parking requirement. The project's parking management plan (Condition of Approval BP-23) may provide for a small amount of shared parking between the residential and commercial uses.

WAIVERS: The State Density Bonus Law requires the City to waive or reduce development standards if those standards would physically preclude the construction of the proposed project at the allowed density. There is no limit on the number of waivers that an applicant can request; however, the City is not required to approve a waiver that would (1) have a "specific, adverse impact," upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; (2) have an adverse impact on any real property that is listed in the California Register of Historical Resources; or (3) be contrary to state or federal law.

The applicant has provided a letter (Attachment 6), which provides its justifications for the waivers and concession/incentive. The applicant requests the following nine waivers to accommodate 50 units on the site:

1. **Residential density** - The General Plan allows an average density of 18 dwelling units per acre (du/ac) within the Village Mixed Use designation where a density of 18.09 du/ac units per acre is proposed.

Staff Comment: The concept of average density was established for the Village Center sites to enable a range of densities and product types at a Village Center thus providing flexibility in the development of these sites. Although there are four properties that make up this Village Center location, the proposed project is being developed as a single parcel that could potentially integrate and relate to the other portions of the shopping center when they redevelop in the future. The project proposes 18.09 du/ac which exceeds the prescribed average density; however, the discrepancy is slight, and the City would be required to grant up to four additional units under the Density Bonus Law.

2. **Floor Area Ratio (FAR) for commercial use** - The General Plan requires a minimum of 10% FAR of commercial space for Village Center Mixed Use Developments. The proposed commercial building is proposed at 6.7% FAR. While the outdoor patio is not counted towards the commercial FAR, the commercial building and outdoor patio would account for approximately 10% of the site.

Staff Comment: To comply with the commercial FAR requirement, the commercial component would need to be increased by approximately 3,941 square feet (almost 50% increase). The applicant could expand the existing commercial building to the rear, into the proposed outdoor patio area/public open space. With no other changes, this approach would reduce the amount of total landscaping area to approximately 21%, which would still comply with the minimum 20% required. However, the loss of the outdoor patio and public open space would be inconsistent with other policies in the LUTE such as making a Village Center a place "to enjoy open space and

community near one's home" (LUTE Policy LT-5.2). Although other designs and configurations of the site are theoretically possible to accommodate a 50% larger commercial building (such as placing residential units above the commercial), because the housing laws are relatively new, it's unclear how much discretion the City has to require redesign.

Depending on the range of uses, additional commercial parking spaces could also be required for a larger building, which could reduce the area of the site available for residential units. The total number of required parking spaces would depend on the parking ratio selected for the project, restaurant or shopping center (see more discussion of parking under No. 8, below).

The LUTE includes the following goal, policy and action statement that relate to the provision of commercial:

GOAL LT-5 CREATION, PRESERVATION, AND ENHANCEMENT OF VILLAGE CENTERS AND NEIGHBORHOOD FACILITIES THAT ARE COMPATIBLE WITH RESIDENTIAL NEIGHBORHOODS

- Support the development of Village Centers that create an identity and "sense of place" for residential neighborhoods, provide neighborhood gathering places, and allow a vibrant mix of public, commercial, and residential activities. Through development review and other permitting processes, ensure adequate protection is provided to residential neighborhoods when new uses and development projects are considered.

Policy LT-5.1 Strengthen the image that the community is composed of cohesive residential neighborhoods, each with its own individual character and Village Center; allow change and reinvestment that reinforces positive neighborhood concepts and standards such as walkability, positive architectural character, site design, and proximity to supporting uses.

- *LT-5.1c Allow mixed-use development at appropriate Village Centers while preserving sufficient commercial zoning to serve neighborhood retail and service needs.*

- 3. Front yard setback** - Because the site is zoned C-1 commercial, rather than residential, SMC Section 19.34.030 requires properties in the C-1 zone to meet a minimum of 70-foot front setback. The setback required of a comparable project in a residential zone would be 15-foot minimum and 20-foot average. The new residential building on the west side is deficient with a proposed front setback of 10 feet 9 inches, and the existing setback for the commercial building is 28 feet 8 inches (a legal non-conforming condition).

Staff Comment: Meeting this standard would require the residential building to be set back an additional 59 feet 3 inches. This could be impossible to accommodate without significant re-design and loss of residential units. The LUTE states that *Village Centers will be constructed in accordance with urban design principles and performance standards that support pedestrian activity with buildings close to the street and transit and served by wide sidewalks.*

- 4. Left/west side yard setback** - SMC Section 19.34.110 requires properties in the C-1 zoning district to provide a minimum of 24-foot side yard setback, where 15 feet 7 inches is proposed.

Staff Comment: Meeting this standard would require the residential building to be set back an additional 8 feet 5 inches along the left (west) side. As previously noted, pursuant to State Density bonus law, the site can be considered to have an excess of residential parking spaces; elimination

of some of those parking spaces could be considered if the site were re-designed to meet this zoning standard. The west side of the development is adjacent to another future segment of the Village Center, which is currently a parking lot. Staff considers the reduced setback to be acceptable given the context to the adjacent site.

- 5. Frontage landscaping strip** - SMC Section 19.37.040 (c) requires a 15-foot-wide landscaping strip along the street frontage. The project proposes 10 feet 9 inches in front of the residential building and no landscaping frontage in front of the commercial building (proposed as outdoor dining).

Staff Comment: The landscaping standard would require that the proposed residential building be set back an additional 4 feet 3 inches to meet the 15-foot-wide landscape requirement along the project's Fremont Avenue frontage, which would result in loss of residential units. The proposed patio in front of the commercial building would also need to be reduced or removed to allow for the 15-foot-wide landscaped frontage. Staff finds that the reduced setback and inclusion of the front patio for the commercial use provide features encouraged for Village Centers which activates the street and provides indoor-outdoor use.

- 6. Buffer landscaping strip width** - SMC Section 19.37.040 (b) requires any use in a nonresidential zoning district that abuts a residential zoning district to provide a minimum of 10-foot-wide landscaping buffer strip, where 5 feet is proposed.

Staff Comment: The requirement is for non-residential zoning districts; therefore, it applies to the subject site which has C-1 (Neighborhood Commercial) zoning. The proposed residential uses near the required buffer area which may reduce the need for the standard width landscape buffer. There is no equivalent landscaping buffer required in a residential zoning district that supports this density. To meet the C-1 standards, the project would need to provide an additional 5-foot strip of landscaping along its east and south property lines. While re-design would be needed to fully comply, it would be possible to increase the landscaping strip in some areas at the cost of losing parking spaces. For example, the landscaping strip along the south property line could be increased by removing some or all of the unassigned residential surface parking spaces. Although this would comply with the lower parking ratios allowed by the Density Bonus Law, loss of parking spaces could result in other negative impacts such as residents and guests using commercial parking spaces or parking in surrounding neighborhoods. The tradeoff is an increased buffer to help reduce noise, privacy, and visual impacts to neighbors in exchange for reduced surface guest parking spaces.

- 7. Buffer landscaping planting** - SMC Section 19.37.040 (b) provides that any use in a nonresidential zoning district that abuts a residential zoning district also requires planting of screening trees and shrubs placed along the length of the buffer at intervals not to exceed 20 feet. There are sections of the proposed buffer landscaping area, especially along the east property line, that will not meet this requirement.

Staff Comment: The requirement applies to non-residential zoning districts; the proposed uses near the buffer area of this commercial zoning district are residential and the typical need for landscape buffers may be reduced. Following the Planning Commission hearing staff has considered whether there are options for increasing buffer landscaping through the planting of

trees without reducing the number of parking spaces. One option would be to include triangular landscaping areas between surface parking spaces for planting of trees and shrubs. It is staff's opinion that this would not reduce parking or negatively impact site circulation. Staff has determined that City Council could impose a condition that requires the planting of buffer landscaping trees at least every 20 feet along the east and south property lines by creating triangular planting areas at the property line end of parking spaces.

8. **Compact parking spaces** - SMC Chapter 19.46 does not allow compact parking spaces for non-residential uses. The project includes 19 compact spaces for the commercial building, which is equivalent to 24% of the total number of commercial parking spaces.

Staff Comment: The proposed site layout results in the commercial parking near the commercial use to be compact spaces and not standard spaces. The proposed plan provides 74 parking spaces where a minimum of 73 are required for a restaurant use. If the restaurant were part of a larger shopping center the parking standard would only require 33 parking spaces; however, this would require all of the owners to enter into a reciprocal parking agreement. Parking spaces on the other lot/s would not be as convenient for restaurant patrons on the subject property. One option would be to redesign the compact parking spaces to be parallel or angled; however, this would reduce the number of commercial parking spaces, which could create another site deficiency if the restaurant rate is used. Full compliance of parking space dimensions and the ratio required for restaurants could require more significant re-design in order to shrink the residential portion of the project, resulting in loss of units in favor of more parking spaces.

9. **Parking Lot Shading** - SMC Section 19.46.120 (g) (1) requires projects to provide at least 50% of the parking lot to be shaded within 15 years of tree establishment. The proposed project is expected to shade 30.5% of the parking lot (which includes the parking spaces and their drive aisles).

Staff Comment: Similar to No. 7 above, triangular landscaping areas can be added between parking spaces to accommodate the planting of trees. These trees would help add shade to the parking spaces, considered part of the parking lot. It is unknown how much additional shading could be added; however, any increase would be a benefit to the project and help to reduce the heat island effect. City Council could add the condition as discussed in No. 7 above and articulated below by a draft modification to COA PS-1 c).

CONCESSIONS/INCENTIVES: Under the state Density Bonus Law, the City must grant a request for concessions or incentives (reduction or exemption from a development standard or requirement) unless the City makes a written finding supported by evidence in the record that the requested concession: (1) does not result in identifiable and actual cost reductions; (2) would have a "specific, adverse impact upon health, safety, or the physical environment" or on any real property that is listed in the California Register of Historical Resources and there is "no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households; or (3) would be contrary to state or federal law.

Undergrounding of Utilities. SMC Sections 19.38.090 and 19.38.100 requires existing overhead lines on the project site's south and east property lines to be placed underground. The applicant proposes to use their one incentive/concession under the Density Bonus Law to be relieved of the requirement to underground these existing lines and to maintain existing poles on the site.

Staff Comment: There are existing overhead utilities along the back (south) property line, approximately 300 feet. On the subject property there is one pole which supports electric, telephone and cable services. The lines connect to poles to the immediate east and west of the site. This segment of utility lines includes service drops to the five single-family residential homes to the south. The City would be required to participate in the costs to underground those service drops and undergrounding off-site poles (if needed) located on other private property. Staff acknowledges that undergrounding of existing overhead lines would result in a project cost to the developer. Precise costs are unknown, however based on the pricing of other recent projects the cost could be up to \$480,000 (or \$9,600 per dwelling unit) and City participation in the undergrounding for the service drops to the residences to the south could be up to \$200,000. The Zoning Code addresses the aesthetic need for undergrounding and the General Plan includes policy encouraging undergrounding for safety reasons.

Policy SN-1.8 Maintain lifelines in good operating condition to lessen damage and increase survivability after a major disaster.

- *SN-1.8b* Actively pursue funding for the undergrounding of utilities in accordance with the principals and guidelines of Public Utilities Commission and PG&E Tariff Rule 20-A.

Although undergrounding of utilities clearly has aesthetic and safety benefits, the City does not have a standard or policy that requires undergrounding for purposes of preventing a “significant, quantifiable, direct, and unavoidable impact” to public safety. SMC Section 19.38.095 authorizes the Director of Community Development to enter into deferral agreements and to waive undergrounding requirements if “unreasonable or impracticable.” The health and safety risks of overhead utilities are generally minimal in Sunnyvale given the City’s flat topography and absence of wildfire risks.

STAFF COMMENTS ON CALL FOR REVIEW

Recent changes to the state housing law, particularly the enactment of SB 330 in 2019, which made changes to the Housing Accountability Act, the Density Bonus Law, and the Permit Streamlining Act, severely constrain the City’s discretion to deny the project, or to impose conditions that would reduce the project’s density below the 18 du/ac specified in the LUTE plus any allowable density bonus.

The LUTE anticipated that a Village Center Master plan would be prepared prior to a development application being reviewed, however state laws pre-empt the City’s ability to defer consideration of residential development on a Village Center site, because the LUTE indicates that residential uses are allowed within this designation.

In the above discussion, staff evaluated whether any options exist, consistent with state law, that would result in a project that more closely meets the City’s objective development standards. Regarding the trees along the east and south property lines, City Council may be interested in a revision to a Condition of Approval:

- PS-1. c) Submit a detailed landscaping plan with fast-growing, evergreen screening trees along the east and south property lines. Tree spacing must be at least every 20 feet and must consider the location of existing mature trees that are being maintained and must be placed in areas that maximize privacy screening to adjacent neighbors. As needed to meet minimum tree spacing, parking spaces may be modified to create

planting wells consisting of two adjacent triangular corners of up to three feet along the length and along the width of the parking space.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety. In addition, the agenda and report are available at Office of the City Clerk and on the City's website.

ALTERNATIVES

1. Make the required Findings to approve the California Environmental Quality Act (CEQA) determination that the project is categorically exempt from further environmental review pursuant to CEQA Guidelines Section 15332 as noted in Attachment 5 to the report and uphold the Planning Commission action to approve the Special Development Permit, and Tentative Map subject to the findings in Attachment 3 to the report and recommended Conditions of Approval in Attachment 4 to the report.
2. Make the Findings to approve the California Environmental Quality Act (CEQA) determination that the project is categorically exempt from further environmental review pursuant to CEQA Guidelines Section 15332 as noted in Attachment 5 to the report and approve the Special Development Permit and Tentative Map subject to the findings in Attachment 3 to the report and modified Conditions of Approval.
3. Do not make the required findings and direct staff where changes should be made.
4. Deny the project.

STAFF RECOMMENDATION

Alternative 1: Make the required Findings to approve the California Environmental Quality Act (CEQA) determination that the project is categorically exempt from further environmental review pursuant to CEQA Guidelines Section 15332 as noted in Attachment 5 to the report and uphold the Planning Commission action to approve the Special Development Permit, and Tentative Map subject to the findings in Attachment 3 to the report and recommended Conditions of Approval in Attachment 4 to the report.

Prepared by: Shétal Divatia, Senior Planner

Reviewed by: Noren Caliva-Lepe, Principal Planner

Reviewed by: Andrew Miner, Assistant Director of Community Development

Reviewed by: Trudi Ryan, Director of Community Development

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Noticing and Vicinity Map
2. Project Data Table
3. Recommended Findings
4. Conditions of Approval as approved by Planning Commission
5. CEQA - Class 32 Checklist
6. Letter from Applicant - Justification for waivers and incentives/concessions
7. Project Plans and Views
8. Public Comment Letters (prior to Planning Commission Hearing)

Additional Attachments for Report to Council

9. Report to Planning Commission [21-0715, July 12, 2021] (without attachments)
10. Excerpt of Minutes of the Planning Commission Meeting of July 12, 2021
11. Public Comment Letters (received after Planning Commission Hearing)