

## Location Map



## Background

On November 22, 2016, the Planning Commission was presented with conceptual plans for the currently proposed development where the Commission gave input on the development concept. The Commission was generally in agreement with the development concept and gave the following feedback on the proposal:

- Depot Street elevation seems tall (4 stories).
- This project design has overcome flood zone and parking issues.
- Retail space depth below 60-ft should be acceptable.
- Project provides natural light (reference to parking garage/alley side elevation).
- The proposed height is okay when treated properly.
- Timeless design is good.
- Strategic Economics recommended minimum retail depth of 50 feet on Third Street
- It is a good idea to install the Sunsweet sign but the tall arch sign is more appropriate for a big city like San Jose (e.g. San Pedro square market). Third

Street is a pedestrian gateway which calls for smaller scale and design friendly architecture.

### **Project Description**

The site was used by the Sunsweet Company as a fruit drying facility which ceased operations in 2003. Since then the site has been utilized as a private storage facility and office for Glenrock Developers. Until recently, the site was developed with a 1700 square foot single story office building and several warehouse structures, all but one of which was recently demolished, per a demolition permit issued by the City's Building Division. The site was also issued a grading permit to assist with the preparation of flood plain studies and proposed preparation of a CLOMR (conditional letter of map revision) to FEMA. The subject site has a General Plan designation of Mixed-Use, is zoned CBD, Central Business District and is also zoned Ground Floor Overlay GFO along the East Third Street frontage. The zoning was established as part of the Downtown Specific Plan adopted in November 2009. In the CBD district, commercial development mixed with residential is a permitted use.

The current primary site access is from a driveway on Fourth Street. The new Downtown Garage was recently completed on the east side of the site, with Depot Street improvements installed in 2006 and the along the north side of the site with the East Third Street improvements installed in 2010. Only temporary Sidewalk improvements exist on the East Fourth Street side of the site, in anticipation of the development of this site.

All existing on-site improvements and buildings will be demolished. The final building is scheduled as Phase II of the demolition plan. Existing frontage improvements along East Third Street and Depot Street shall be retained but repaired/replaced as needed. The frontage improvements along East Fourth Street will be completely removed and replaced

The project proposes the development of a five-story building with 83 apartment units, 5760 square feet of retail/restaurant/office space, and a below grade parking level with 120 parking spaces. The apartment units would be located on all floors of the building. The 83-units would include 12 studios (593 sq. ft.), 38 one-bedroom (812-1088 sq. ft.), and 33 two-bedroom apartment units (1152-1342 sq. ft.). The 10 two-bedroom units on the fourth floor would create lofts on the fifth floor.

The proposed project also includes:

- Retail/restaurant space (2611 sq. ft.)
- Office space (3149 sq. ft.)
- Public plaza (2580 sq. ft.)
- Recreation room (2578 sq. ft.)
- Lounge with outdoor deck (472 sq. ft.)
- Gym (975 sq. ft.)
- Bike repair room (278 sq. ft.)

Pet spa (437 sq. ft.)  
Meeting room (547 sq. ft.)  
Storage (3324 sq. ft.)  
Pool (648) sq. ft.  
BBQ area (968 sq. ft.)  
Garden area (936 sq. ft.)

The required minimum setbacks for commercial and mixed use development in the CBD zoning are zero to ten feet for front, zero side and rear. For residential development, the front setback requirement is a six-foot minimum and 15-foot maximum. Side setback for residential development is five feet and rear is ten feet. Fourth floor step-back is required in the CBD zoning district but no minimum setback is specified but the stated purpose is to maintain a “human scale” and provide for adequate solar access to the adjacent street.

The proposed building would front Third Street and would be set back 30 feet from the face of the curb (0 feet at property line), 8-15 feet from Depot, 15 feet from Fourth Street, and 20 feet from the parking garage and commercial gym property line to the west. The second story setback on Third Street is 0 feet with balcony recesses 11-17 feet in depth; third story setback is primarily 40 feet with a 14-foot deep by 31-foot wide, 2-story projection that is setback 26 feet. The three-story wall at the south side of the plaza is setback 40 feet (70 feet from face of curb) from Third Street. The second through fourth story setbacks on Depot Street range from 8-15 feet with 6-foot deep balcony recesses. The fifth-floor loft elements are setback 18 feet. The second through fourth floors are setback 15-18 feet from East Fourth Street. The fifth-floor loft elements are setback 20 feet from East Fourth Street.

The maximum Floor Area Ratio FAR, is 2.25 and the proposed FAR is 1.66.

The maximum height for a four-story building in the CBD zoning district is 55 feet. The majority of the proposed building is four-story (50 feet) with five story (58-60 feet) elements on Depot and East Fourth Streets. The building as currently proposed is three to five feet greater than the 55-foot maximum.

The GFO overlay zoning which applies to the East Third Street frontage requires a minimum commercial building depth of 80 feet by 80 feet on the corner of East Third Street and Depot Street and requires a minimum commercial depth of 50 feet along East Third Street. The depth of the proposed commercial space along East Third Street ranges from 30 to 40 feet in the commercial space on the west side of the plaza. The commercial space on the east side of the plaza is 21-40 feet in depth. The site has 245 lineal feet along East Third which would result in approximately 16,300 square feet of commercial space. If the 2,580 square feet of plaza is subtracted from the 16,300 square feet, a minimum of 13,720 square feet of commercial space should be provided; the proposed 5760 square feet of commercial space is 42 percent of the minimum required.

The project is proposing a total of 5,760 square feet commercial space of which 3,149 square feet (55 percent) is proposed as the project's leasing office. Ground floor office uses in the GFO overlay zone are not a permitted use and require the approval of an Administrative Use permit.

Parking required in the CBD zoning district for commercial development is 2.8 spaces per 1000 square feet and office development requires 4 spaces per 1000 square feet. Residential development with units 600 square feet or less require 1 space per unit, 601-1350 square feet require 1.5 spaces and 1351 square feet or greater require 2 spaces per unit. Twenty-four of the 120 spaces proposed are tandem spaces and four are for the disabled. Based on the unit sizes provided, 119 spaces are required for the residential units. The 3149 square feet of office area requires 13 spaces. In accordance with the Council Resolution 6640, the City will not require parking for new retail space within the downtown due to the existing parking surplus, so no new retail parking is provided. The total required number of parking spaces for the residential units and office space is 132 spaces, a total of 120 spaces are provided in the below grade parking garage. The project is deficient 12 parking spaces. The project may pay an in-lieu fee for the spaces associated with office space.

## **ANALYSIS**

The proposed zoning and development agreement requests were analyzed with respect to consistency with the 1) General Plan; 2) Zoning Ordinance 3) Downtown Specific Plan policies and 4) California Environmental Quality Act.

### **1) General Plan goals and policies**

The site has a land use designation of Mixed-Use which does not have a specified density range. The project site (1.65 acres with 83-units results in a density of 50 dwelling units to the acre).

## **CITY AND NEIGHBORHOOD FORM ELEMENT**

The following City and Neighborhood Form Goals and Policies apply:

### **GOAL CNF-2 An improved, orderly, and efficient pattern of urban development.**

**Policy CNF-2.1 Orderly Development.** Promote the orderly development of the City, with concentric growth and infill of existing developed areas.

### **GOAL CNF-3 A growth management system that maintains a population cap, a metered pace of development, and high level of community amenities, and that is clear, fair, flexible, and streamlined.**

**Policy CNF-3.10 Multi-Family Housing.** Maintain an adequate supply of allotments available for multi-family and affordable housing consistent with the City's adopted Housing Element.

**GOAL CNF-8 A visually attractive urban environment.**

**Policy CNF-8.1 High Quality Design.** Require all development to feature high quality design that enhances the visual character of Morgan Hill.

**Policy CNF-8.2 Design Features.** Encourage design features and amenities in new development and redevelopment, including, but not limited to:

- Highly connected street layouts, supporting multiple paths of travel for all modes.
- Cluster buildings to create useable open space.
- Abundant landscaping.
- Attractive transitions between uses.
- Comfortable pedestrian facilities that promote a high level of pedestrian activity.
- Distinctiveness and variety in architectural design.

**Policy CNF-8.7 Design Sensitivity.** Ensure that new development is sensitive to the character of adjacent structures and the immediate neighborhood.

**Policy CNF-8.12 Visual Impact of Parking.** Require parking areas associated with development to be located and designed to minimize visual impact to the greatest extent feasible. This may include locating parking behind buildings street frontage, below grade, or screening through the use of natural landscaping.

**Policy CNF-8.16 Undergrounding of Utilities.** Require the undergrounding of all utilities, or a deferred improvement agreement, in conjunction with new construction and encourage the undergrounding of existing utilities where feasible.

**GOAL CNF-10 A variety of housing types and densities available to all residents.**

**Policy CNF-10.1 Range of Residential Densities.** Continue to provide for a full range of residential land use densities and building types, within the General Plan and Zoning Ordinance.

**Policy CNF-10.3 Adequate Supply of Multi-Family Housing.** Provide for an adequate supply of multi-family housing, located convenient to shopping, services, and transportation routes.

**Policy CNF-10.6 Density Near Infrastructure.** Encourage higher residential densities at locations where convenient access and adequate infrastructure is readily available.

**GOAL CNF-11 High quality, aesthetically pleasing, livable, sustainable, well-planned residential neighborhoods, well-connected to neighborhood services.**

**Policy CNF-11.2 Well-Designed Residential Neighborhoods.** Design residential neighborhoods so they are distinct and buffered from conflicting nonresidential uses.

**Policy CNF-11.7 Clustering of Residential Units.** Encourage the clustering of residential units to provide open space and recreation areas, and to provide buffer areas between different land uses (e.g., industrial and residential).

**Policy CNF-11.9 Continuous Sidewalks.** Require continuous sidewalks along both sides of the street frontage.

**Policy CNF-11.10 Open Space.** Require new subdivisions to feature integrated common open spaces, parks, and community facilities that serve as social and design focal points. Open spaces should be a close walking distance from all residents and should be large enough to be useful for residents.

**Policy CNF-11.20 Infill Compatibility.** Require residential infill development to complement existing development patterns and minimize impacts on neighboring properties. This may be accomplished by:

- Matching prevailing front and side setbacks on developed blocks.
- Breaking up large buildings into smaller forms reflective of the scale of nearby structures.
- Stepping back upper stories of taller structures.
- Using porches or balconies to counteract the vertical emphasis of taller buildings.
- Using trees and landscaping to soften scale differences, particularly in areas where trees and vegetation are unifying aspects of community character.

The project proposes 83 market rate rental units ranging in size from 593-1342 square feet. The vacancy rate of market rate rental units is less than one-half percent, thus the project will provide additional rental units to a currently underserved market. The proposed units are within walking distance to downtown shopping, restaurants, the Cal Train station and the Community and Cultural Center.

The project site is an in-fill site surrounded by Depot Street and the Cal Train station to the east, East Third Street, residential and commercial uses to the north, East Fourth Street, residential and commercial to the south, and a three-story (40-45 feet in height) City-owned garage and two-story (28 feet in height) commercial gym to the west. The proposed project is primarily four stories (50 feet) with a five story (60 feet) elements on Depot and East Fourth Streets. The project adjacent to the City parking garage provides an appropriate transition in height as the number of stories transition from two, three to five moving west to east on East Third and East Fourth streets. The proposed underground parking minimizes the visual impact of 120 vehicle spaces.

The proximity of the railroad tracks and the adjacent City parking garage present potential use conflicts which include noise, light and privacy. The project is proposed as a “U” shape with the center of the “U” facing the garage. This design shape along with cluster units into a the four to five structure allows for the provision of approximately 18,600 square feet of useable open space within the interior of the project. The “U” shape design also separates most of the building from the adjacent parking garage reducing light and privacy impacts, and positions the building as a noise barrier to the railroad thus reducing the noise impact to the interior open space area.

The fifth floor is stepped back six feet on both the Depot Street and Fourth Street sides of the project. Additional vertical relief is provided through the variation in the building setback, the use of recessed and open balconies and the incorporation of unit entrances along Fourth Street. The third and fourth floors are stepped back 40 feet from property line on the Third Street side of the project.

## NATURAL RESOURCES AND ENVIRONMENT

The following Natural Resources and Environment Goals and Policies apply:

### **GOAL NRE-12 Minimized air pollutant emissions from demolition and construction activities.**

**Policy NRE-12.1 Best Practices.** Requirement that development projects implement best management practices to reduce air pollutant emissions associated with construction and operation of the project.

**Policy NRE-12.2 Conditions of Approvals.** Include dust, particulate matter, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At a minimum, conditions shall conform to construction mitigation measures recommended in the current Bay Area Air Quality Management District CEQA Guidelines.

**Policy NRE-12.3 Control Measures.** Require construction and demolition projects that have the potential to disturb asbestos (from soil or building material) to comply with all the requirements of the California Air Resource Board’s air toxics control measures (ATCMs) for Construction, Grading, Quarrying, and Surface Mining Operations.

These General Plan goals will be met by the project through the compliance with the Downtown Specific Plan EIR mitigation measures.

## SAFETY, SERVICE AND INFRASTRUCTURE

The following Safety, Service and Infrastructure goals and policies apply:

## FLOOD HAZARDS

The Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM)<sup>1</sup> designates project site as Zone AE, which is an area subject to inundation by the one percent annual chance flood event (100-year flood). Per the implementation of the SWPPP and other drainage standards implemented by the City, the project should not significantly increase stormwater flows into the existing system. The project will include its own on-site detention that is required to be sized to maintain pre-development run-off conditions. The on-site detention will. Stormwater runoff from the site would be collected via new two to 12-inch storm drains directed to underground rain tanks be located within the 15-foot landscape setback along Depot Street, that will overflow into the City's existing stormwater system. The rain tanks would regulate stormwater flow into the City's existing stormwater system. Stormwater from the site would be directed to the City's existing 30-inch storm drain on Depot Street. Stormwater would also be directed to bioswales along the property line on Fourth Street to reduce the amount of stormwater runoff collected by the City's stormwater system.

Any on-site systems (retention basins) would be required to be designed to detain a volume of water up to a 25-year storm event while releasing water at a rate reflective of the 10-year predevelopment flow. This design limits stormwater flows off-site to less than 10-year predevelopment flows. The existing public storm water system is already designed to convey a 10-year storm event; therefore, the project should not significantly contribute to any additional flooding during the most frequent events. The final drainage system design for the project would be subject to review and approval by the City of Morgan Hill Public Works Department, who would confirm that the proposed drainage system for the project is consistent with the City's Storm Drainage Master Plan and standard stormwater-related conditions of approval.

### **GOAL SSI-5 The least possible damage to persons and property from flooding.**

**Policy SSI-5.1 Development in Floodways and Floodplains.** Prohibit development in floodways and regulate development in floodplains to minimize flood damage and be consistent with the federal flood insurance program. (South County Joint Area Plan 15.05)

**Policy SSI-5.2 Private Development in Flood-Prone Areas.** If development is allowed in flood-prone areas, provide flood control facilities or appropriate flood-proofing prior to or in conjunction with development at developers' expense. (South County Joint Area Plan 12.05)

**Policy SSI-5.3 Flood Clearance.** Prior to the start of construction, a Flood Clearance shall be obtained from the Floodplain Administrator for the City of Morgan Hill that provides plans drawn to scale showing the nature, location, dimensions, and elevation of the area; existing or proposed structures, fill, storage

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of material, and drainage facilities, and floodproofing provisions. Specifically, the following information shall be required:

- Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures.
- Proposed elevation in relation to mean sea level to which any structure will be floodproofed.
- Appropriate elevation and floodproofing certifications.
- Description of the extent to which any water course will be altered or relocated as a result of the proposed development.

New residential buildings in the 100-year floodplain shall have their lowest floor elevation (excluding garage) floodproofed or raised a minimum of 1 foot above the base flood elevation (BFE). Substantially improved structures within the 100-year floodplain shall meet the same floodplain construction requirements as new buildings.

**Policy SSI-5.5 Off-Site Impacts.** Require all local development to provide appropriate mitigation of off-site flooding impacts, including limiting runoff to predevelopment levels and/or complete solutions to flooding and local drainage problems in the vicinity of the development, using such methods as detention or retention. (South County Joint Area Plan 12.08)

**GOAL SSI-16 Minimized adverse effects on property, natural resources, and ground and surface water quality from stormwater runoff.**

**Policy SSI-16.2 Drainage System Capacity.** Ensure that the level of detention or retention provided on the site of any new development is compatible with the capacity of the regional storm drainage system

The project is proposing to bring the property out of the FEMA flood plain by elevating the site with fill one foot above the FEMA Base Flood Elevation (BFE), which will be memorialized through a FEMA Letter of Map Revision (LOMR). To maintain the FEMA LOMR approval, the perimeter of the project site including the openings leading into the underground parking, must maintain at all times the approved elevation of the LOMR. The project site has a base flood elevation of 347.8. The proposed entry grades leading into the garage opens are required to meet the FEMA base flood elevations.

NOISE

**GOAL SSI-8 Prevention of noise from interfering with human activities or causing health problems.**

**Policy SSI-8.1 Exterior Noise Level Standards.** Require new development projects to be designed and constructed to meet acceptable exterior noise level standards (see Table SSI-1), as follows:  Apply a maximum exterior noise level of 60 dBA Ldn in residential areas where outdoor use is a major consideration (e.g., backyards in single-family housing developments and recreation areas in multi-family housing projects). Where the City determines that providing an Ldn of 60 dBA or lower cannot be achieved after the application of reasonable and

feasible mitigation, an Ldn of 65 dBA may be permitted. □ Indoor noise levels should not exceed an Ldn of 45 dBA in new residential housing units. □ Noise levels in new residential development exposed to an exterior Ldn 60 dBA or greater should be limited to a maximum instantaneous noise level (e.g., trucks on busy streets, train warning whistles) in bedrooms of 50 dBA. Maximum instantaneous noise levels in all other habitable rooms should not exceed 55 dBA. The maximum outdoor noise level for new residences near the railroad shall be 70 dBA Ldn, recognizing that train noise is characterized by relatively few loud events.

**Policy SSI-8.9 Site Planning and Design.** Require attention to site planning and design techniques other than sound walls to reduce noise impacts, including: a) installing earth berms, b) increasing the distance between the noise source and the receiver; c) using non-sensitive structures such as parking lots, utility areas, and garages to shield noise sensitive areas; d) orienting buildings to shield outdoor spaces from the noise source; and e) minimizing the noise at its source.

As stated earlier the project “U” shaped design will reduce the noise impacts to the projects useable outdoor space by creating a barrier between the recreation area and the noise generated by the railroad. The exterior and interior noise levels for units facing the railroad will be reduced but not to the specified levels in Policy SSI-8.1. This impact was acknowledged as a significant unavoidable impact in the approved master EIR. To minimize the impact, project mitigation measures require a design-level acoustical analysis to confirm that the design of residential units is sufficient to reduce interior average noise levels to 45 dBA  $L_{dn}$  or lower, and to reduce interior maximum instantaneous noise levels to 50 dBA  $L_{max}$  or less in bedrooms, and 55 dBA  $L_{max}$  in all other habitable rooms. As part of the design-level acoustical analysis, a qualified acoustical consultant will review final site plans, building elevations, and floor plans prior to construction to calculate expected interior noise levels to determine what, if any, additional noise insulation treatments are necessary. Special building construction techniques (e.g., sound-rated windows and building facade treatments) would be required. These treatments include, but are not limited to, sound-rated windows and doors, sound-rated wall construction, acoustical caulking, insulation, and acoustical vents. Large windows and doors shall be oriented away from the railroad where possible. The specific determination of what treatments are necessary will be conducted on a unit-by-unit basis. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City along with the building plans.

Staff finds the project as proposed consistent with the applicable General Plan goals and policies.

## 2) Zoning

### Zoning Amendment

**Zoning Amendment:** The requested Planned Development zoning designation would allow variation to the development standards of the Central Business District CBD, zoning designation and Ground Floor Overlay GFO designation by allowing for a precise development plan that exceeds the 55 foot maximum height limitation by 3-5 feet, includes only 120 of the required 132 on-site parking spaces, includes a ground floor office use, a 58 percent reduction in the required commercial square footage and a 20-40 foot reduction in the minimum commercial building depths along East Third Street.

The GFO purpose statement tells us “These parcels are required to provide ground floor retail, restaurant and/or entertainment uses with a minimum depth of 60 feet along Third Street (80 feet at intersections).”

The proposed project is located within “Block 4” of the Downtown Core. Page 2-17 of the DTSP describes in detail, the assumptions per block. The summarized expectations for Block 4 are as follows:

- Development on this block should act as a landmark for Downtown and should be more intense than development along adjacent streets.
- The projected redevelopment should include ground-floor retail uses with offices or condominiums/apartments on the upper floor(s). Restaurants with outdoor dining areas and specialty shops are encouraged along Third Street.
- Property owners of smaller parcels are encouraged to combine lots and take advantage of the higher floor area ratio (2.25 FAR for sites of 22,000 square feet or more, rather than the base 2.0 FAR for sites less than 22,000 square feet).
- Four story heights may be proposed on sites of 22,000 square feet or more with a fourth-floor step back.
- Large projected redevelopment sites offer the potential for underground parking.
- The required minimum depth of ground-floor retail is 60 feet along Third Street, and 80 feet at each intersection with Monterey Road and Depot Street (therefore a minimum of 80 feet by 80 feet and a minimum of 6,400 square feet).

The proposed project meets a lot of the “Block 4” expectations by the providing higher density development with a five-story height and underground parking. The density proposed is 50 dwelling units to the acre. The proposed East Third Street frontage provides commercial space along East Third Street with residences above. The commercial space includes a 2580 square foot plaza that will allow a restaurant use to expand out into a plaza area with outdoor dining between the two buildings.

The proposed project falls short of the “Block 4” expectations by:

- Not specifically providing a fourth-floor step back along the Depot Street and East Fourth Street elevations but has instead provided 8-15 foot setbacks along those street frontages;
- Not providing commercial space depths of 50-80 feet;
- Proposing ground floor office space; and
- Providing only 42 percent of the commercial square footage prescribed (16,300 square footage) by the GFO overlay.

The Downtown Specific Plan states, *“To achieve the purpose of the PD overlay district, variations from the standards [of the Downtown Specific Plan] and in Division I of the Morgan Hill Zoning Ordinance may be allowed as long as the variations are consistent with the overall intent, goals, and policies of this Specific Plan.”* Variations can include but are not limited to permitted or conditional uses (consistent with the Plan designation on the site), lot sizes, lot coverage, setback requirements, parking, building height, floor-area ratio (FAR), and density, the City Council determines and finds that, the proposed development will provide substantial compliance with the district regulations and other provisions in this Specific Plan and Division I of the Zoning Ordinance related to the public health, safety and general welfare.

The purpose of the PD overlay district as outlined in the Downtown Specific Plan includes the following:

- Facilitate and promote coordination of design, access, use, and other features associated with development of multiple adjacent properties or large single properties;
- Encourage flexibility of site planning when it will enhance the area in which it is proposed; and
- Allow construction and reservation of housing units for lower income or senior households.

The areas of requested flexibility include:

- Three to five-foot increase to the maximum allowed building height
- A 12-stall reduction in the number of required parking spaces
- A 58 percent reduction in the overall required commercial square footage
- A 30-40-foot reduction in the required commercial space depth
- Inclusion of a ground floor office use on Third Street

Design benefits offered by the project include:

The project site includes three separate parcels that have been aggregated into a single project site. Combining the parcels has allowed for a high-density project with underground parking. Developing the parcels separately would not have produced the same density or the economic viability of underground parking.

The flexibility requested to the building height allows for the fifth-floor loft feature that creates a more visually interesting roof line which is considered a positive design feature. The lack of a fourth story step back on the Depot Street and East Fourth Street has been off-set by the 8-15 setbacks along those frontages.

The vision for Block Four requires ground-floor retail uses with offices or condominiums/apartment on the upper floor(s). The proposed building frontage along East Third Street includes ground floor commercial space with apartment units above. All the commercial space along East Third Street includes the required 14-foot floor to ceiling height which will allow for a wider variety of uses to utilize the commercial buildings however the commercial space should be designed to provide useable minimum depths.

The Downtown Specific Plan accounted for 123,365 square feet of retail and assumed an additional 94,221 square feet of retail space by 2015. All of the new recent development downtown, including the former redevelopment sites, the 3rd Street Garage retail, Barley Place and the Edes Gallery have contributed an increase of 19,968 square feet of new retail space, but substantially short from the vision of the Downtown Specific Plan. The housing development has also not developed as quickly as envisioned by the Plan, with only 499 units of the 739 housing envisioned.

The retail market has changed over the last three years, resulting in a market where rents have tripled (from \$1 per square foot to up to \$3 per square foot) and virtually no vacancy. Retail development is particularly important on 3rd Street as it is the main east west connector for Downtown and the main spine to the parking supply and CalTrain Station.

The residential units within the project range in size from 593 to 1342 square feet and are proposed as market rate rentals. The range in unit sizes provides for affordable housing options within the downtown and will significantly increase the inventory of market rate rental units. The current vacancy rate for market rate rental units is less than one-half percent. The project is providing a use (market rate rentals) that is significantly under-represented in the community.

The project includes numerous amenities and its design shape along with cluster units into a the four to five structure allows for the provision of approximately 18,600 square feet of useable open space within the interior of the project.

### Parking

Each of the residential units will be provided a space within the underground parking structure. Each of the studio and one bedroom units (50) is assigned one space and the 33; two bedroom units are assigned two, so a total of 116 spaces will be used by residents, leaving a total of four unassigned spaces. The project proposal of a ground floor, 3,149 square foot leasing office requires an additional 13 spaces. The applicant's experience with similar leasing offices at larger San Jose apartment projects, are one full time staff person with one to two visitors at one time, mostly on weekends. The

applicant believes three spaces would be sufficient to support the leasing office use. As mentioned earlier in the report, ground floor office uses can only be considered in the GFO overlay zone with the approval of a Downtown Administrative Use Permit.

**Purpose of the Downtown Administrative Use Permit** The purpose of Downtown Administrative Use Permits (DAUPs) is to allow for commercial, professional and medical office uses, live/work, and personal services uses to locate in first floor locations on parcels located in the ground floor overlay district fronting Monterey Road or Third Street, upon a determination that the retail market is not sufficiently strong to accommodate a retail use, and therefore that ground floor office, live/work, or personal service uses may be allowed. Additionally, ground floor personal service uses may be allowed within a tenant space if the use is ancillary to a retail use occupying the same space and will provide a continuity of display window visual interest that includes the retail component.

As an administrative permit process, the Community Development Director is required to make the following findings:

1. The suitability of the site and building for the proposed use;
2. The impact of the use on the surrounding properties, and on the GFO and CBD districts in general.
3. The impact of the use on traffic circulation and planned capacity of the street system.
4. The compatibility of the use and design with adjacent uses within the district and its surroundings;
5. Whether the use will adversely affect the peace, health, safety, morals or welfare of persons residing or working in the vicinity of the use;
6. Whether the use will impair the utility or value of property of other persons located in the vicinity of the site;
7. The applicability and conformity of the use with provisions of Chapter 8.40 (Hazardous Materials Storage) of the Zoning Ordinance as existing or hereafter amended;
8. Review of the building with regard to suitability of design and location to accommodate first floor retail use(s);
9. Review of materials submitted by the applicant and determination that the subject space in the building has been advertised for lease to retail tenants for at least 90 days, but the owner has been unable to locate a suitable retail tenant at market rates;
10. Whether the use will provide a public benefit to the city and its citizens;
11. Vacancy rate for commercial buildings in the Downtown Core; and
12. Whether the use is clearly ancillary to a retail use within the tenant space and will provide a continuity of display window visual that includes the retail component.

Approval of a leasing office at this location would be consistent with findings 1-8 and 10 since the use would not generate significant additional traffic, use hazardous materials or operate in such a manner to disturb or negatively affect adjacent businesses or residents. Finding 12 could be made with the interpretation that the leasing office use is ancillary to the apartment project however an active the display window may be difficult

to achieve with a leasing office. Findings nine and ten are the most difficult to make with a current zero ground floor retail vacancy rate of the downtown. As a compromise, it is recommended that the amount of commercial space devoted to the leasing office be reduced to one third of the westerly commercial space (approx.1,500 square feet). With one full time employee staffing the office and one to two visitors at one time, a 1,500 square foot office space should be sufficient. This approach would eliminate the parking deficiency and leave the potential to two commercial uses to occupy the westerly 3,200 square feet of commercial/retail space in addition to the leasing office use.

### Commercial/Retail Square Footage and Depth

The plan as currently proposed has a lot of positive features however a 40-50 percent reduction to the required 50-foot minimum commercial depth cannot be supported because the Downtown Specific Plan repeatedly includes the 50-foot (80-foot at corner) commercial depth standard as the minimum necessary to produce viable commercial space along East Third Street. Similarly, ICSC has promulgated similar guidelines for interior ceiling heights and retail depths, for Cities to use when approving retail projects, to help ensure that new spaces are usable, and easy to lease and re-lease. To create a 50-foot commercial depth the interior open space area may be able to be reduced by a minimum of 10 feet. With this recommended 10-foot adjustment, the corner retail space would still be 30 feet short (38 percent exception) of the required overall 80-foot by 80-foot commercial minimum at the corner of Depot and East Third but the westerly commercial space would meet the minimum depth of 50 feet. The increase in commercial depth would also increase the overall commercial square footage by approximately 1740 square feet (7500 square feet total) which is 55 percent of the required 13,720 square feet.

In conclusion, the flexibility requested for the ground floor office space and parking can be mitigated by reducing the square footage of the leasing office which would also eliminate the need for the 12-space parking exception. Flexibility with the commercial/retail depths and allowing some ground floor office seems appropriate to encourage more retail space Downtown while recognizing the need of the rental project to have a marketing/leasing presence in a very public, accessible location. The height and fourth floor step back flexibility is mitigated through increased setbacks and a step back provided on the fifth-floor loft elements.

### **3) Downtown Specific Plan Goals, Policies and Actions**

The Morgan Hill General Plan identifies a goal of the Downtown to be “a vibrant, identifiable downtown”. The following land use goals and objectives are to guide public planning and implementation activities.

Applicable Goals and Objectives from the Downtown Plan:

- Encourage a diverse mix of uses emphasizing specialty retail, restaurant, entertainment, residential and commuter-serving uses.

- Emphasize Monterey Road and Third Street as the main commercial spines in Downtown.
- Add a substantial number of residential units in and near Downtown with densities ranging from 18 to 40 or more dwelling units per acre.
- Strengthen downtown through emphasis on the infill development of vacant lots along Monterey Road and Third Street.
- Encourage the conversion of residential uses on side streets between Monterey Road and Depot Street to mixed-use projects consistent with CBD zoning.

Applicable Downtown Specific Plan Policies that help support the plan's goal and objectives:

- Encourage new development to expand pedestrian-oriented uses and amenities, especially along Monterey Road and Third Street.
- Promote high- and medium-density residential units in mixed-use development to increase the Downtown residential population.
- Encourage mixed-use development that accommodates both the retail and residential land uses.
- Promote Transit-Oriented Development along Third and Depot Streets
- Encourage development surrounding Downtown to promote transit-oriented, pedestrian-friendly development that would complement Downtown.

The proposed project implements the Downtown Specific Plan goals, objectives and policies by proposing a high density, mixed-use project on an in-fill site that incorporates, underground parking, compatible height, design and numerous high quality amenities.

**Development Agreement:** The project site is located within the boundaries of Measure A; a voter initiative that exempted 500 residential units in a 20-block area of Downtown from the City's Residential Development Control System. Currently, 260 of the 500 exempt building allotments have been used or reserved by other Downtown projects. The applicant is requesting to utilize 83 of the remaining 239 Measure A exempt building allotments. (With the adoption of Measure S in November of 2016, further Measure A allocations will expire March 1, 2017.)

In order to obtain any of the exempt allotments, Measure A requires a developer to enter into a Development Agreement and "**comply with the Downtown Plan and all applicable rules and regulations in effect at the time of entry into a Development Agreement, including but not limited to applicable zoning and planning documents.**" The developer must also obtain approval of a Design Permit whereby the project design must be found consistent with the design guidelines of the Downtown Specific Plan.

With approval of the proposed PD overlay zoning, the project would comply with the Downtown Specific Plan. While not required by Measure A, the agreement establishes a two-year timeframe to utilize the 83, Measure A allotments. The applicant proposes to commence construction of the project fall 2017 and complete construction by fall 2019.

### **Design Permit Approval**

The plans submitted for the Zoning Amendment application include representative architecture, material samples and landscape plans. The project site plan, building shape and massing are generally consistent with the Design Guidelines for the Downtown Specific Plan. The applicant is required to file a Design Permit application prior to the issuance of a building permit. As part of the Design Permit approval, the project architecture, landscaping and other site design details will be reviewed for consistency with the Downtown Specific Plan Design Guidelines. Due to the size and location of the project, the Design Permit application will be agendaized for Planning Commission review and City Council approval.

### **4) CEQA (California Environmental Quality Act)**

The project is covered by the Downtown Specific Plan Master Environmental Impact Report (MEIR). In accordance with CEQA Section 15179, since the MEIR was adopted more than five years ago (November 2009), the City needs to make the following finding:

- No substantial changes have occurred with respect to the circumstances under which the MEIR was certified, or that there is no new available information, which was not known and could have been known at the time the MEIR was certified.

An Initial Study was completed describes the project and provides analysis whether the implementation of the project would require additional CEQA evaluation. To date, development has been within the projections described in the Master EIR. The Master EIR anticipated a higher number of units completed within the Downtown prior to 2017. Based on the Initial Study, the finding can be made that the project is consistent with the assumptions analyzed in the MEIR. As a condition of approval, the project will be subject to compliance with attached Mitigation, Monitoring and Reporting Program containing the applicable mitigation measures of the Downtown Specific Plan EIR.

### **Community Engagement**

A ten-day notice of the public hearing was published in the December 30, 2016 edition of the Morgan Hill Times and notices were mailed to property owners within 300 feet of the application site.

At the time of time of staff report publication, no correspondence or comments had been received.

### **Conclusion**

The zoning amendment and development agreement applications are consistent with the General Plan and Downtown Specific Plan Goals policies and principles and in substantial conformance with the Zoning Code and Downtown Specific Plan development standard. The project as proposed:

- Creates an active Downtown village through intensifying residential, retail, restaurant and commercial uses, within an urban setting improved with unified landscaping, public and private open space and streetscape improvements; and
- Strengthens Downtown's identity and scale with design and massing that relates to the existing downtown character; and
- Creates a visual and physical link to downtown with landscaping, lighting, commercial frontage, and signage
- The proposed design will encourage and accommodate a wide diversity of uses serving the community which is a specific goal of the Downtown Specific Plan.
- Is in substantial compliance with the CBD zoning and GFO site development standards; and
- Maintains visual consistency as required in the design guidelines and will be visually consistent with the existing and proposed development and reflective of the character of Downtown Morgan Hill.

The requested flexibility will facilitate and promote coordination of design, be visually consistent with the area in which it is proposed and recommended variations are consistent with the overall intent, goals, and policies of the Specific Plan. It is recommended the Planning Commission forward a recommendation of approval subject to the findings and conditions of the attached resolutions, to the City Council for the proposed Development Agreement and PD designation allowing for the following variations:

1. A 30-foot reduction to the required 80-foot by 80-foot minimum corner commercial space depth;
2. One third of the westerly commercial space to be used as a leasing office;
3. A five-foot increase to the maximum 55-foot height limitation; and
4. A 45 percent reduction (6174 square feet) in the required commercial space of 13,720 square feet.

**Attachments:**

1. Zoning Amendment Resolution
2. Development Agreement Resolution
3. Project plans