



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 03/08/2023

ITEM NO: 4

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DATE: March 3, 2023  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Appeal of a Santa Clara County Fire Department Decision Denying a Request for an Exception to the State Minimum Fire Safe Regulations on Property Zoned HR-5. **Located at 144 Wood Road.** APN 510-47-045. Building Permit Application B22-0025. PROPERTY OWNERS/APPELLANTS: Omari and Kavita Bouknight. PROJECT PLANNER: Sean Mullin.

RECOMMENDATION:

Grant an appeal of a Santa Clara County Fire Department (SCCFD) decision denying a request for an exception to the State Minimum Fire Safe Regulations on property zoned HR-5 located at 144 Wood Road.

PROJECT DATA:

General Plan Designation: Hillside Residential  
Zoning Designation: HR-5  
Applicable Plans & Standards: General Plan; Hillside Development Standards and Guidelines  
Parcel Size: 0.68 acres (29,632 square feet)

CEQA:

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction.

PREPARED BY: Sean Mullin, AICP  
Senior Planner

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Reviewed by: Santa Clara County Fire Department, Planning Manager, Community Development Director, and Town Attorney

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FINDINGS:

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction.
- Granting the appeal meets the intent of providing defensible space consistent with the Fire Safe Regulations.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject property is located on the north side of Wood Road, approximately 1,663 feet from the intersection of Wood Road and South Santa Cruz Avenue (Exhibit 1). The subject property is undeveloped and approximately 0.68 acres (29,632 square feet) with an average slope of 35.1 percent.

On January 27, 2021, Architecture and Site application S-21-003 was submitted to the Town proposing construction of a new single-family residence and site improvements requiring a Grading Permit on the vacant parcel. Through the technical review process, staff representatives of Town departments, which include Community Development (Planning and Building Divisions), Parks and Public Works (Engineering Division), and the SCCFD, reviewed several iterations of the project plans and met with the project team to discuss submittal deficiencies on March 3, 2021; May 19, 2021; and June 6, 2021. Following the June 6<sup>th</sup> meeting, only deficiencies from the SCCFD remained and all other Town departments deemed the application complete for processing. In coordination with the SCCFD, the project team revised the project plans to address water supply comments and the SCCFD deemed the plans complete for processing on June 22, 2021 (Exhibit 4h). Public Resources Code 4290 (PRC 4290) and the Fire Safe Regulations were not applicable to the subject property at the time of the SCCFD review and comments or conditions related to PRC 4290 were not provided at that time.

On July 28, 2021, the Planning Commission considered the application and continued it to a date certain with direction to evaluate options to reduce the height and visibility of the residence and to clarify whether a right-of-way exists on the subject property.

On August 25, 2021, the Planning Commission considered the application again, including the project team's response to direction provided at the previous meeting. The Planning Commission approved the application subject to conditions of approval. No appeals were received, and the conditions of approval became final with the adoption of the August 25, 2021, Planning Commission meeting minutes on September 8, 2021 (Exhibit 4k).

BACKGROUND (continued):

On October 15, 2021, the property owners submitted an application for Building Permit B21-1015 for construction of retaining walls adjacent to the new driveway serving the proposed residence. Town staff reviewed and approved the Building Permit for the retaining walls on January 1, 2022, and the permit is ready to be issued.

On January 10, 2022, Building Permit B22-0025 for construction of the new residence was submitted to the Town. To date, Town staff has reviewed three iterations of the project materials and comments were provided to the property owners on March 17, 2022, July 1, 2022, and December 1, 2022. As of December 1, 2022, Planning, Building, and Engineering have approved the Building Permit application and comments from the SCCFD remain outstanding.

As detailed below, the property owners filed a request for an exception to the Fire Safe Regulations on December 13, 2022 (Exhibit 4r). On January 18, 2023, the SCCFD denied the exception request based on two outstanding deficiencies: road grades and turnarounds (Exhibit 4s). On February 1, 2023, the property owners appealed the decision of the SCCFD to the Planning Commission (Exhibit 4).

APPEAL:

The property owners are appealing the decision of the SCCFD denying a request for an exception to the Fire Safe Regulations.

A. Background on PRC 4290 and the Fire Safe Regulations

In 1991, the Board of Forestry (BOF) adopted PRC 4290 (Exhibit 5) requiring that the BOF establish minimum fire safety standards applicable to lands located in the State Responsibility Area (SRA) and as of July 1, 2021, within lands classified and designated as Very High Fire Hazard Severity Zones (VHFHSZ) within the Local Responsibility Area (LRA) (Exhibit 6). The Fire Safe Regulations (Exhibit 7) as adopted by the BOF establish the minimum wildfire protection standards for building and construction related to:

- Road standards and fire equipment access;
- Standards for signs identifying streets, roads, and buildings;
- Minimum private water supply reserves for emergency fire use; and
- Fuel breaks and greenbelts.

Section §1270.06 (a) of the Fire Safe Regulations outlines a process allowing applicants to request exceptions to the regulations where it is shown that the exceptions provide the same practical effect as the Fire Safe Regulations (Exhibit 7). In Los Gatos, exception requests are considered by the SCCFD. As defined in the Fire Safe Regulations, same

APPEAL (continued):

practical effect means an exception or alternative with the capability of applying accepted wildland fire suppression strategies and tactics, and provisions for fire fighter safety, including:

- a. Access for emergency wildland fire equipment;
- b. Safe civilian evacuation;
- c. Signing that avoids delays in emergency equipment response;
- d. Available and accessible water to effectively attack wildfire or defend a structure from wildfire; and
- e. Fuel modification sufficient for civilian and fire fighter safety.

Pursuant to Section §1270.06 (c) of the Fire Safe Regulations, when an exception is not granted, the applicant may file an appeal to be heard by the local jurisdiction who can establish or utilize an existing appeals process (Exhibit 7). Consistent with the Town Code, an appeal of a SCCFD denial of an exception request to the Fire Safe Regulations is considered by the Planning Commission.

Pursuant to the Fire Safe Regulations, the Planning Commission may grant the appeal upon making the findings that the decision meets the same intent of providing defensible space consistent with the regulations. Section §1271.00 defines defensible space as:

The area within the perimeter of a parcel, development, neighborhood or community where basic wildland fire protection practices and measures are implemented, providing the key point of defense from an approaching wildfire or defense against encroaching wildfires or escaping structure fires. The perimeter as used in this regulation is the area encompassing the parcel or parcels proposed for construction and/or development, excluding the physical structure itself. The area is characterized by the establishment and maintenance of emergency vehicle access, emergency water reserves, road names and building identification, and fuel modification measures.

**B. SCCFD Review of the Building Permit Applications**

As outlined above, on October 15, 2021, the property owners submitted an application for Building Permit B21-1015 to construct retaining walls adjacent to the new driveway serving the proposed residence. The SCCFD issued comments in a letter dated November 2, 2021 and has indicated to staff that it was at this time that it was recognized that the requirements of PRC 4290 would apply to the construction of the residence. The SCCFD issued revised comments for approved Architecture and Site application S-21-003 to identify the obligation to comply with PRC 4290. The SCCFD further indicates when the comment letter was issued on November 2, 2021, they did not have knowledge that the Planning Commission had already approved the Architecture and Site application on August

APPEAL (continued):

25, 2021. In staffs' view, since the Architecture and Site application had already been approved nearly 10 weeks prior to receiving the revised comment letter from the SCCFD, modification of the conditions of approval for this application was not possible and the comments related to PRC 4290 were attributed to the pending Building Permit (B21-1015).

On January 10, 2022, the property owners submitted an application for a Building Permit for construction of the new residence. Following their initial review of the Building Permit application (B22-0025), the SCCFD issued comments related to PRC 4290, the Fire Safe Regulations, and other SCCFD standards in a letter dated February 3, 2022. Through coordination with the SCCFD and project revisions, the property owners resolved a number of the initial comments related to the Fire Safe Regulations. In the most recent comment letter dated November 30, 2022, the SCCFD identified three provisions of the Fire Safe Regulations to which the application was deficient: road grades; corner radii; and turnarounds (Exhibit 8). The property owners and the SCCFD continued to coordinate to find remedies to the outstanding comments through multiple meetings, production of additional materials, and plan revisions through November 2022. This coordination also included an operational assessment conducted by the SCCFD on November 4, 2022, where a fire apparatus was driven up Wood Road beyond the subject property to the terminus near 138 Wood Road. The fire apparatus successfully conducted a turnaround at the terminus and descended Wood Road to S. Santa Cruz Avenue. The fire apparatus site visit was made under clear, dry weather conditions, and therefore made no assessment of the ability to safely navigate the road in inclement weather. In November 2022, the SCCFD informed the property owners that a request for an exception to the regulations would be required, due to road grades and distance to turnarounds exceeding what is allowed under the Fire Safe Regulations. The property owners filed an exception request on December 13, 2022 (Exhibit 4r). On January 18, 2023, the SCCFD denied the exception request based on two outstanding deficiencies: road grades and turnarounds (Exhibit 4s). On February 1, 2023, the property owners appealed the decision of the SCCFD to the Planning Commission (Exhibit 4).

1. Road Grades

Section §1273.03 of the Fire Safe Regulations states that (a) "at no point shall the grade for all roads and driveways exceed 16 percent," and (b) "the grade may exceed 16 percent, not to exceed 20 percent, with approval from the local authority having jurisdiction and with mitigations to provide the same practical effect."

The section of Wood Road between S. Santa Cruz Avenue and the proposed driveway does not meet the Fire Safe Regulations for grades. The SCCFD, being the "local authority," has a standard detail and specification for roadways (A-1) stating that roadways are not to exceed grades of 15 percent (Exhibit 9). As an alternative and with

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the goal of providing the same practical effect as the Fire Safe Regulations, the SCCFD suggested that the appellants include details in their exception request demonstrating whether this section of Wood Road conformed to the SCCFD standard details and specifications for driveways (D-1) (Exhibit 10). The D-1 specifications state that "When approved by the Fire Code official, grades up to 20 percent may be allowed. In no case shall the portion of driveway exceeding 15 percent gradient be longer than 300-feet in length. For longer driveways, there shall be at least 100-feet of driveway at 15 percent or less gradient between each 300-foot section that exceeds 15 percent."

Exception Request

The appellants' exception request included that a survey of Wood Road leading from S. Santa Cruz Avenue to the subject property was prepared and submitted to the SCCFD (Exhibit 4r). The survey divided this portion of Wood Road into seven straight path sections showing grades ranging from 10.00 percent to 19.43 percent (Exhibit 4u). The appellants indicate that since portions of the road exceed 16 percent, but do not exceed 20 percent, an exception should be granted based on the mitigations outlined in their request related to existing pavement surfacing that prevents slippage, provision of a new turnout at the new driveway, and by not installing driveway gates at the new driveway so that no obstructions are encountered for the turnout.

SCCFD Response to Exception Request

In their letter denying the exception request, the SCCFD indicates that a road profile (Exhibit 4v) created at their request for this section of Wood Road is not consistent with the seven road sections included in the exception request (Exhibit 4s). The road profile shows that approximately 370 feet of this portion of Wood Road exceeds 20 percent slopes and, while the exception request offers mitigation in the form of a new turnout, no specific mitigation for these excessive slopes has been provided. Since this section of Wood Road does not meet the alternative specifications offered under SCCFD Standard D-1, the same practical effect was not achieved.

Appeal

In their appeal, the appellants recognize that the road profile shows slopes along this section of Wood Road of up to 21.8 percent and that reengineering of the sections of the road to below 16 percent is not feasible due to existing conditions, requirement to lengthen the roadway, additional curves needed, property ownership complications, and significant costs (Exhibits 4t and 4w). The appellants also indicate that a road/driveway is located approximately 920 feet up from the intersection with S. Santa Cruz Avenue that can act as an additional turnout providing additional support to fire

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apparatus along the roadway. Lastly, the appellants referenced the operational assessment conducted in November 2022 as further justification for granting of the appeal, but makes no reference to weather conditions at the time of operation.

2. Turnarounds

Section §1273.05 of the Fire Safe Regulations states that (a) “turnarounds are required on driveways and dead-end roads” and (d) “each dead-end road shall have a turnaround constructed at its terminus. Where parcels are zoned for five (5) acres or larger, turnarounds shall be provided at a maximum of 1,320-foot intervals” (Exhibit 7).

Wood Road is a dead-end road, and the Fire Safe Regulations limit the length of dead-end roads to no more than 2,640 feet for roads that serve parcels zoned between five and 20 acres. Wood Road complies with this regulation. The existing turnaround at the terminus of Wood Road is well beyond 1,320 feet from S. Santa Cruz Avenue and does not comply with this regulation.

Exception Request

The appellants’ exception request proposes a new turnout at the base of the proposed driveway (Exhibit 4r). This turnout would be located approximately 1,633 feet from S. Santa Cruz Road. The proposed turnout provides space for apparatus to stage off the roadway, but does not provide space for apparatus to turn around. The exception request also references the operational assessment conducted in November 2022 as further justification for granting the exception, but makes no reference to weather conditions at the time of operation.

SCCFD Response to Exception Request

In their letter denying the exception request, the SCCFD recognizes that the dead-end road serves parcels zoned for between five and 20 acres and that the road length complies with Fire Safe Regulations (Exhibit 4s). The SCCFD letter also recognizes the existing turnaround at the terminus of Wood Road and that a compliant turnout is proposed by the appellants on their property at the base of the proposed driveway. The location of this turnout would be 1,633 feet from S. Santa Cruz Avenue. Because the turnout does not provide the same functions as a turnaround and it exceeds the maximum interval distance of 1,320 feet, the exception request was denied. Staff notes that the slope of Wood Road where the proposed driveway would take access is 17 to 18 percent. The SCCFD Standard D-1 for turnarounds limits slopes within the turnaround area to no more than five percent in any direction. Therefore, introduction of a compliant turnaround at the base of the proposed driveway would not be possible.

APPEAL (continued):

*Appeal*

In their appeal, the appellants indicate that the provision of a new compliant turnout at the base of the proposed driveway aligns with the overall intent of the Fire Safe Regulations (Exhibit 4t). The appellants note that an additional turnaround will be constructed on the subject property at the top of the proposed driveway, as is required by the California Fire Code due to the driveway length exceeding 150 feet in length. The turnaround at the top of the driveway would be located approximately 1,800 feet from S. Santa Cruz Avenue and is required even in the absence of PRC 4290 being applicable. Lastly, the appellants referenced the operational assessment conducted in November 2022 as further justification for granting the appeal, but makes no reference to weather conditions at the time of operation.

3. General Appeal Points

In addition to the appellants' justification for their appeal as it relates to road grades and turnarounds, the appellants assert in a letter accompanying their appeal that the inclusion of new conditions and potential reengineering of Wood Road related to PRC 4290 and the Fire Safe Regulations after the final conditions were approved by the Planning Commission is a violation of the Permit Streamlining Act and would constitute a taking under the Fifth Amendment to the United States Constitution (Exhibit 4c). At this time, the SCCFD has not imposed a requirement to reengineer Wood Road, but has denied an exception request based on the existing grades of the road and the distance to the existing turnaround. A component of the appellants' justification for granting the appeal explores what would be needed from an engineering perspective to make this portion of Wood Road comply with the Fire Safe Regulations.

*Permit Streamlining Act Argument*

The Permit Streamlining Act requires that public agencies notify applicants within 30 days of application submission whether or not the application is complete. Because the appellants have an approved Planning application, this issue is moot. The appellants have objected to the application of the Fire Safe Regulations after they obtained Planning application approval. The Planning application Condition of Approval #100 states that the SCCFD "review shall not be construed to be an approval of a violation of the provisions of the California Fire Code or of other laws or regulations of the jurisdiction." Restated, this condition requires conformance with the regulations of entities having jurisdiction over the property, including the BOF, which requires conformance with PRC 4290 and the Fire Safe Regulations. It is staff's opinion that the Fire Safe Regulations apply to the Building Permit applications.



APPEAL (continued):

*Takings Argument*

In staff's view, imposing a requirement to reengineer and lengthen this portion of Wood Road would constitute an unconstitutional taking. When reviewing "ad hoc" (uncodified) exactions such as this, courts will consider the connection between what is being required and the impacts of the project. In the Dolan decision, the United States Supreme Court discusses the required degree of connection between the exaction imposed and the projected impacts of the proposed development (Dolan v. City of Tigard, 512 U.S. 374 (1994)). The Dolan court held that a city must demonstrate a "reasonable relationship" between the conditions imposed on a development permit and the development's impacts. In evaluating a "takings" claim, a court must first determine whether an "essential nexus" exists between the "legitimate state interests" and the permit condition. If it finds that a nexus exists, the court must next find that the required exaction is "roughly proportional" to the projected impacts of the private development.

A Feasibility Study prepared by the appellants' civil engineer explored what would be required to comply with the slope and turnaround requirements of the Fire Safe Regulations (Exhibit 4w). The report recognizes that slope is a simple function of the elevation difference between two fixed points divided by the length of the road, in this case the proposed driveway and the intersection of Wood Road and S. Santa Cruz Avenue. The report concludes that it would not be possible to reduce the slope of this section of Wood Road to 16 percent within the existing right of way. An additional 198 linear feet of roadway would be required to comply with the 16 percent limitation and would require Wood Road to be completely reconfigured and reconstructed. If the slope of the road were to be reduced, existing driveways might not have feasible points of connection to Wood Road. Additional land would need to be acquired to provide the space needed for the turnaround and to provide space for the switchback horizontal curves that would be required to increase the length of the road to reduce the slope. With these limitations in mind, the report estimates that the cost of reengineering Wood Road to comply with the Fire Safe Regulations would exceed \$1,000,000, which does not include the costs of property acquisition.

In staff's view, requiring one property owner to reengineer a public road serving 13 homes at an estimated cost exceeding \$1,000,000 in order to reduce the slope of the roadway and add a turnaround is not "roughly proportional" to the impacts of the proposed single-family home. Further, this cost estimate does not take into account the costs associated with any needed property acquisition, negotiation of easements, or existing driveway disruptions; therefore, the true cost is likely much higher than the provided estimate. In addition, it is not physically possible to reengineer the road to reduce the slope because the road would need to be lengthened within its route by

APPEAL (continued):

adding switchbacks and turns, which would interfere with existing intersections and driveways. As a result, in staff's view, imposing such an exaction would result in an unconstitutional "taking" and staff does not recommend that the Town impose this requirement.

4. Staff's Analysis

With regards to the road grades and turnarounds, while this section of Wood Road does not comply with the Fire Safe Regulations and an exception could not be granted by the SCCFD as discussed above, there is no feasible or reasonable remedy available to address the deficiencies of the road. Reducing the slope of the road and introducing turnarounds at compliant intervals to meet the Fire Safe Regulations would require lengthening and reengineering portions of the road to create numerous switchbacks. Any reengineering of the road could result in rendering existing driveways unable to connect to Wood Road. The existing topography, private property ownership, and construction costs of such an endeavor represent insurmountable practical barriers to achieving this goal. The operational assessment performed in November 2022 demonstrated the ability of fire apparatus to service the road in its current condition under ideal weather conditions. The appellants have provided information confirming that the roadway surface meets minimum load requirements (Exhibit 4I) and propose to make emergency access and egress improvements by constructing a turnout at the base of their driveway. While not meeting the statutory requirements of the Fire Safe Regulations, the demonstrated serviceability of Wood Road, along with the incremental emergency access and egress improvements of a new turnout offered by the appellants, meet the intent of providing defensible space consistent with the Fire Safe Regulations. Therefore, staff recommends that the Planning Commission grant the appeal of the denial of the exception request and make the required findings set forth in Exhibit 2.

PUBLIC COMMENTS:

Public comments received by 11:00 a.m., Friday, March 3, 2023, are included as Exhibit 11.

CEQA DETERMINATION:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction.

CONCLUSION:

A. Summary

The property owners request that the Planning Commission grant their appeal of a SCCFD decision denying a request for an exception to the Fire Safe Regulations related to road grades and turnarounds on property zoned HR-5 located at 144 Wood Road.

B. Recommendation

Based on the analysis above, staff recommends that the Planning Commission grant the appeal of the SCCFD's decision denying a request for an exception to the Fire Safe Regulations by taking the following actions:

1. Make the finding that the proposed project is Categorically Exempt, pursuant to the adopted Guidelines for the implementation of the California Environmental Quality Act, Section 15303: New Construction (Exhibit 2); and
2. Make the finding pursuant to 14 CCR Section §1270.06 of the Fire Safe Regulations that granting the appeal of the Santa Clara County Fire Department's decision denying a request for an exception to the Fire Safe Regulations meets the intent of providing defensible space consistent with the Fire Safe Regulations as provided in the Statement of Reasons included in Exhibit 2 and subject to the Condition of Approval included in Exhibit 3.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction; or
2. Grant the appeal with additional and/or modified conditions; or
3. Deny the appeal.

EXHIBITS:

1. Location Map
2. Required Findings and Statement of Reasons
3. Recommended Conditions of Approval
4. Appeal Package
  - a. Appeal Form
  - b. Project Plans – Architecture and Site Application
  - c. Planning Commission Written Description of Project, dated January 30, 2023
  - d. Recorded Easements Benefitting 144 Wood Road
  - e. Addresses Along Wood Road
  - f. Community Development Department - Development Review Application Package
  - g. Staff Technical Review Meeting Agenda, May 19, 2021
  - h. SCCFD Review Letter (Architecture and Site Application), June 22, 2021
  - i. Project Sign for Architecture and Site Application
  - j. Planning Commission Action Letter, August 25, 2021
  - k. Planning Commission Approval of Meeting Minutes with Final Conditions of Approval
  - l. Supplemental Geotechnical Letter, dated July 16, 2022
  - m. Appellants' Notes of Meeting with Staff, January 10, 2023
  - n. County of Santa Clara, Department of Planning and Development Memorandum, dated November 16, 2021
  - o. Office of the County Counsel, County of Santa Clara Memorandum, dated September 26, 2022
  - p. Appellants' Summary of Takings Case Law
  - q. Appellants' Summary of Application Timeline
  - r. Property Owners' Exception Request to the Fire Safe Regulations, dated December 13, 2022
  - s. SCCFD Denial of Property Owners' Exception Request to the Fire Safe Regulations, dated January 18, 2023
  - t. Appellants' Letter of Justification for Appeal, dated January 30, 2023
  - u. Topographic Survey of Wood Road
  - v. Road Profile of Wood Road
  - w. Feasibility Study of Wood Road Improvements by Hanna-Brunetti
  - x. County of Santa Clara, Department of Planning and Development Memoranda, dated August 3, 2022, July 19, 2022, and August 2, 2022
5. Public Resources Code 4290
6. Fire Hazard Severity Zones Map
7. Fire Safe Regulations
8. SCCFD Review Letter (Building Permit Application), dated November 30, 2022
9. SCCFD Standard Detail A-1, Fire Department Apparatus Access
10. SCCFD Standard Detail D-1, Specifications for Driveways, Turnarounds, and Turn Outs
11. Public Comments received by 11:00 a.m., Friday, March 3, 2023