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A P P E A R A N C E S:

Los Gatos Planning Commissioners:	Emily Thomas, Chair Kendra Burch, Vice Chair Jeffrey Barnett Steve Raspe Joseph Sordi Rob Stump
Town Manager:	Chris Constantin
Community Development Director:	Joel Paulson
Town Attorney:	Gabrielle Whelan
Transcribed by:	Vicki L. Blandin (619) 541-3405

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2 P R O C E E D I N G S:

3  
4 CHAIR THOMAS: We will now move on to the public  
5 hearings, starting with Item 2. Item 2 is to consider a  
6 request for approval to construct a new single-family  
7 residence with a reduced rear yard setback, site  
8 improvements requiring a Grading Permit, and removal of  
9 large, protected trees on a nonconforming vacant property  
10 zoned R-1:20 located at 45 Reservoir Road. APN 529-33-054,  
11 Architecture and Site Application S-22-048. Categorically  
12 exempt pursuant to CEQA Guidelines Section 15303: New  
13 Construction. Property owner is Farnaz Agahian, and the  
14 Applicant is Gary Kohlsaas, Architect, and our project  
15 planner for this is Mr. Mullin.

16  
17 Before we have the Staff Report, can I have a  
18 show of hands of Commissioners who have visited the  
19 property, please? Then are there any disclosures or  
20 recusals?

21 COMMISSIONER BURNETT: Yes, Chair. Thank you. In  
22 order to avoid the appearance of bias, having a friend that  
23 lives on Reservoir Road, I'll have to recuse myself from  
24 this item.

1 CHAIR THOMAS: Okay, thank you. Are you going to  
2 stick around, or are you going to skedaddle? Okay, perfect,  
3 then we will see you in two weeks. Are there any  
4 disclosures? Yes, Commissioner Sordi.

5 COMMISSIONER SORDI: Yes, I probably want to  
6 mention I wasn't here on the Commission for... I think it was  
7 heard once by the Planning Commission, then it went on to  
8 Council and was remanded back, but I have reviewed those  
9 hearings, the minutes, and closely watched the video, so  
10 I'm familiar with the project and all the actions taken. I  
11 did visit the site on Tuesday and started at Rogers Street,  
12 the end of the private road, and went all the way to the  
13 other end, so I have a pretty good sense of things.

15 CHAIR THOMAS: Thank you. Commissioner Stump.

16 COMMISSIONER STUMP: My only clarification would  
17 be that I visited the property in January. I did not do a  
18 revisit.

19 CHAIR THOMAS: Okay, thank you. I have a  
20 disclosure to make that I had an interaction with the  
21 Applicant after the last Planning Commission meeting, but  
22 we didn't talk about the application at all, and I didn't  
23 even know who she was at that point, but just wanted to  
24 disclose that.  
25

1           So, Mr. Mullin, you will be presenting the Staff  
2 Report? Great, so let's hear that, please. Thank you.

3           SEAN MULLIN: Thank you, Chair, and good evening.  
4 Before you this evening is consideration of a request for  
5 construction of a new two-story residence with reduced rear  
6 setbacks at 45 Reservoir Road. The project site is located  
7 east of Reservoir Road and accessed via a private roadway  
8 that bisects the property and serves several lots between  
9 Reservoir Road and Rogers Street.  
10

11           On January 8<sup>th</sup> the Planning Commission considered  
12 the application, including written and verbal public  
13 comments, and approved the request, and on January 17<sup>th</sup> the  
14 decision of the Commission was appealed to the Town  
15 Council. The Council considered the appeal on March 4<sup>th</sup> and  
16 granted the appeal, remanding the matter back to the  
17 Planning Commission with direction to the Applicant to  
18 reduce the building footprint in consideration of the Least  
19 Restrictive Development Area, or LRDA; reduce the volume  
20 and massing of the residence; and additionally, a request  
21 was made that the Planning Commission be provided with more  
22 detailed information regarding the circumstances under  
23 which the denial of a requested exception from the Town's  
24 standards would constitute a regulatory taking.  
25

1           In response to the Town Council's direction, the  
2 Applicant has revised the project to eliminate the  
3 exception request to the side setbacks by reducing the  
4 width of the residence by 2.5' on the right side and from  
5 1'-3' on the left side, reduce the size of the residence by  
6 189 square feet, and reduce the extent of the front porch  
7 to pull it away from the private roadway.

8           The Applicant also provided an updated Letter of  
9 Justification discussing the changes to the project and  
10 addressing each of the requested exceptions.

11           Additionally, a brief discussion on the  
12 regulatory takings issue is included in your Staff Report,  
13 and the Town Attorney is on hand to answer any questions  
14 that you may have.

15           In summary of the revised application, the  
16 Applicant now proposes a 1,593 square-foot residence with  
17 an attached tandem garage in a traditional Mediterranean  
18 style. The residence includes 1,135 square feet of below-  
19 grade square footage and an attached ADU, and as mentioned  
20 previously, consistent with State law, the ADU is not the  
21 subject of this application.

22           Due to the constraints of the site and the  
23 desired architectural program, the project requires the  
24 following exceptions: from the Town Code the required 25'  
25

1 rear setback, a driveway access road width configuration of  
2 the two off-street parking spaces, and the driveway depth;  
3 from the Hillside Development Standards and Guidelines,  
4 grading depths for 4' of cut, retaining wall heights that  
5 should not be taller than 5', buildings should be located  
6 within the LRDA; and finally, from the Hillside Specific  
7 Plan, the requirement for four guest parking spaces.

8           Staff recommends that should the Planning  
9 Commission determine that the revised project meets the  
10 direction provided by the Town Council and finds merit with  
11 the proposed project, the Commission can approve the  
12 project subject to the recommended Conditions of Approval  
13 included with your Staff Report.

14           Staff notes that a Desk Item was distributed  
15 ahead of tonight's meeting, and this concludes my  
16 presentation, and I'm happy to answer any questions.

17           CHAIR THOMAS: Okay, thank you. Are there any  
18 questions for Staff at this time? Seeing none, we'll now  
19 open the public portion of the public hearing on Item 2 and  
20 give the Applicant an opportunity to address the Commission  
21 for up to five minutes.

22           GARY KOHLSAAT: Good evening, everybody. I wanted  
23 to first thank everybody that looked at this project and  
24 sided with us, as well as the people that didn't, and their  
25

1 comments that we got were very productive. As you are  
2 aware, we did not receive Council approval; the appeal was  
3 granted.

4           We met with Mr. Mullin after the meeting and  
5 tried to dissect and distill what went down, and I think  
6 that he summed it up very well, and we took that as our  
7 direction with this new application.

8           The majority of what we are asking tonight are  
9 exceptions, and it's pretty clear, as all of you realized  
10 at our first hearing, that most of these exceptions are  
11 going to happen whether the house is as big as it was  
12 before, or whether it is 800 square feet, so it is  
13 inevitable you're going to have four, if not five, of these  
14 exceptions for any project that is going to be on this lot.  
15 With that, I'd like to just focus on the ones that are  
16 maybe discretionary, if you would accept that term from me.

17           The LRDA is the obvious one, which is going to  
18 happen anywhere, but that is the big one, and the big  
19 reason for that is that the road takes up all of the LRDA.  
20 I just want to make it crystal clear that the road is not  
21 negotiable. The firetruck turnaround is nonnegotiable. We  
22 tried everything we can to reroute that road. It was  
23 brought up at the Council; could we think about rerouting  
24 the road? It's not possible.  
25

1           What we're asking for is an exception to the rear  
2 setback, and as I explained previously, this lot is  
3 substandard, it's 50% of what an R-1:20 lot would be, and  
4 so if you apply the R-1:10 standards, it's a 20' rear  
5 setback. What we're asking for is less than 25', but more  
6 than 20', and it's in the rear, and partly it's because of  
7 the shape of the property that has a pinch to it, has a V  
8 to it, so it pinches our rear setback.

9  
10           If you go to the third slide for me, please,  
11 Sean. The orange portion indicates that the area that we're  
12 asking for on this rear setback exception, you can see it's  
13 very minimal.

14           The next slide, please. This kind of tried to  
15 combine all the exceptions that we are asking for. It has  
16 the firetruck turnaround, which is the fill; the retaining  
17 wall for that is also there; we're out of the LRDA for the  
18 majority of the home; we are doing grading with a cut over  
19 4' in the rear just to get the retaining walls and the dirt  
20 off of the house so we can have a little walkway that goes  
21 around the house; and we are also asking for an exception  
22 on the tandem garage.

23           We were not asking for that exception last time,  
24 but we realized that we could just go ahead and get the... We  
25 were asking for an exception on additional parking space,



1 so now we have the two parking spaces, but they are in  
2 tandem format. We have moved the house away from the road.

3 Our last slide, Sean, is the next one, is kind of  
4 a more graphic image that you can see how far away we  
5 pushed the house back; the entry and everything in doing  
6 that.

7 So, overall, I think that what we've done is we  
8 have reduced the massing, we have reduced the size, and  
9 we've reduced the excavation required for this home. We  
10 have taken to heart what the Council directed us to do, and  
11 we hope that you find these acceptable and supportable.  
12

13 I'm here to answer any questions. I do want to  
14 add that we feel very strongly that putting a house on this  
15 property is a much safer and fire-resistant thing to do  
16 than to leave it vacant. There are trees that are not  
17 healthy, they're only going get worse. We're going to take  
18 all the unhealthy trees down. We're going to plant healthy  
19 trees with the new guidelines, and so this is a positive  
20 for the neighborhood, especially with the firetruck  
21 turnaround.  
22

23 CHAIR THOMAS: Okay, thank you, Mr. Kohlsaas.  
24 Does any Commissioner have a question for the Applicant at  
25 this time? Yes, Commissioner Barnett.

1           COMMISSIONER BARNETT: Good afternoon, sir. Part  
2 of the Appellant's reaction to the proposal was in the  
3 planning plan that there was this fuchsia, which is a  
4 juniper type, and the concern was fire danger.

5           GARY KOHLSAAT: Yes. That has been switched out  
6 to a tree that is in the Town's standards, a native tree.

7           COMMISSIONER BARNETT: Okay, thank you.

8           GARY KOHLSAAT: Thank you for asking about that.

9           CHAIR THOMAS: Commissioner Sordi.

10           COMMISSIONER SORDI: Just a couple of clarifying  
11 questions. I think I heard to you say the rear setback is  
12 now 20'+, and correct me if I'm wrong, I thought when I was  
13 reading the plans prior it was something about 18.5', so  
14 did the rear setback change at all?

15           GARY KOHLSAAT: With my magnifying glass, we are  
16 asking for a rear setback of 19'-7" at the most extreme.  
17 The average is about 22'. Where the required setback in the  
18 R:1-20 is 25', but if you were to apply the R:1-10 setback  
19 standards, which is what we're doing, it would be 20'.  
20

21           COMMISSIONER SORDI: Got it.

22           GARY KOHLSAAT: One of the reasons why we're  
23 asking for that exception is to push the house back as far  
24 as we can off of this road that's kind of given to us.  
25

1 COMMISSIONER SORDI: Right, but it hasn't been  
2 pushed back any farther than it was when the Council saw  
3 it?

4 GARY KOHLSAAT: No, exactly. Correct.

5 COMMISSIONER SORDI: Then I think I heard you say  
6 also that the tandem configuration was not an exception  
7 before, but now is.

8 GARY KOHLSAAT: That's correct. We had 1-7/8. Now  
9 we have a full 40' of depth inside there to get the two  
10 cars. We were concerned about pushing into the rear setback  
11 with that, and when we talked it over with Mr. Mullin we  
12 all decided to let's just ask for a little bit more on the  
13 setback. And this is below ground, by the way; this is an  
14 area that's like in the basement, but it's pushing into the  
15 setback. So, what the exception is is that they're not  
16 side-by-side, they're tandem, but we have two parking  
17 spaces.  
18

19 COMMISSIONER SORDI: Right, that's the only way  
20 you can get two complete parking spaces is tandem.

21 GARY KOHLSAAT: It's the only way we can get the  
22 two.

23 COMMISSIONER SORDI: Okay, thank you.  
24  
25

1 CHAIR THOMAS: Just to clarify, previously they  
2 were asking for an exception with regard to just having one  
3 parking spot, correct?

4 GARY KOHLSAAT: That's correct.

5 CHAIR THOMAS: Okay, thank you. Any other  
6 questions for the Applicant? Okay, thank you. We'll now  
7 take public comment on Item 2, so if you are on Zoom, you  
8 can raise your hand, and if you are in person, when I call  
9 your name please come up and speak into the microphone. Is  
10 there anyone on Zoom?

11  
12 DIRECTOR PAULSON: No one's hand is raised  
13 currently.

14 CHAIR THOMAS: Okay, thank you. I do have a card  
15 for Lee Quintana.

16 LEE QUINTANA: I'd like to start by saying, first  
17 of all, I'm speaking as an individual resident, not as a  
18 member of the Historic Preservation Committee.

19 Secondly, I really believe that the resolution in  
20 the Staff Report did not really reflect the Town Council's  
21 discussion, and I hope that all of you have listened to  
22 that tape, because otherwise you probably don't have the  
23 full flavor of what they were thinking.

24 Having said that, I'm not going to concentrate on  
25 the setbacks or the exceptions, most of them, because this

1 is a bad site and some exceptions need to be made in order  
2 to allow development. However, this is an extremely  
3 constrained site. The maximum allowable square feet are  
4 1,600, given all the constraints of the site, figuring out  
5 the FAR; that's for a site that doesn't have maximum  
6 constraints. This one has everything that would constrain  
7 the site, and so it would call for, naturally, a much  
8 smaller home not maximizing the FAR. It's been reduced a  
9 little bit, but not, I don't think, there are other things  
10 that can be done.

11  
12           Mainly, I want to concentrate on the fact that  
13 Larry Cannon said that the mass and scale was not  
14 compatible with the neighborhood, but to fix it might  
15 require not just tweaks, but some changes, and I would like  
16 to propose a change that, I think, would address the  
17 concern of it not being set back far enough from the street  
18 without necessarily reducing a lot of square footage to the  
19 house itself, and that is drastically reduce the size of  
20 the outdoor foyer entrance or even push it into some of  
21 that round area around the staircase; and number two,  
22 reduce the size of the loggia, or at a minimum remove the  
23 roof from the loggia; that is what gives this house a more  
24 massive look. Without that covering, you would have from  
25 the street a much smaller profile of the house.

1           Let's see if I had anything else to say. I guess  
2 I don't.

3           CHAIR THOMAS: Thank you. Are there any  
4 questions? Commissioner Stump has a question for you.

5           COMMISSIONER STUMP: Obviously, either you did  
6 attend the Council meeting or watched the Council.

7           LEE QUINTANA: I listened to it. I tried to watch  
8 it while I was on my vacation. Unfortunately, I was in one  
9 of the few places in the United States where you couldn't  
10 get Internet.

11           COMMISSIONER STUMP: My question, you sort of  
12 bypassed setbacks. Obviously, the new project, or the  
13 updated project, will comply with side setbacks, but  
14 they're still asking for an exception for the rear setback.  
15 It sounds like you don't think that asking for compliance  
16 to that rear setback would have a beneficial effect on  
17 reducing the mass and scale of this property. Is that your  
18 conclusion?

19           LEE QUINTANA: You know, I'm of mixed feelings on  
20 that. It's such a small deviation that you could say it's  
21 so small, just grant it, or you could say it's so small you  
22 can fix it, so that's at your discretion. I think given  
23 that there are so many problems with this project with  
24 respect to asking for exceptions that we should try to get  
25

1 as many into compliance as is reasonably possible. That's  
2 sort of a non-answer answer.

3 COMMISSIONER STUMP: Thank you.

4 CHAIR THOMAS: Commissioner Barnett and then  
5 Commissioner Sordi.

6 COMMISSIONER BARNETT: Good evening, and we  
7 always appreciate your comments, which are thoughtful. Can  
8 you provide me with a percentage of additional reduction of  
9 the house that would satisfy your concerns about scale and  
10 mass?  
11

12 LEE QUINTANA: This isn't a very good example,  
13 but it is... Basically, for the massing, if you remove the  
14 roof from the loggia and you push back the outside entrance  
15 that looks like it's part of the mass of the house, you  
16 will reduce the visual mass of this house by quite a bit  
17 without having to totally redesign it. I'm sure there would  
18 be some repercussions in that, but I'm not an architect.

19 COMMISSIONER BARNETT: Can I ask a follow-up  
20 question?

21 CHAIR THOMAS: Yes.

22 COMMISSIONER BARNETT: What exactly troubles you  
23 about the mass and the size of the house? Is it it's not  
24 compatible with the neighborhood?  
25

1           LEE QUINTANA: It's just what Larry Cannon said.  
2 He didn't feel that it was compatible with the  
3 neighborhood, and he said that the only way that he saw of  
4 fixing that was to do a major redesign. This is proposing  
5 something that wouldn't cause that to have to happen, that  
6 basically the house would stay the same, but it would be  
7 less massive from the driveway, more in line with how the  
8 other houses on that private road look from the driveway.  
9

10           I would comment that the visual that the  
11 architect provided interestingly had the car on the middle  
12 of the road rather than on the... You know, if one was coming  
13 down the road, you would be on the other side of the road  
14 and you would be closer to the house. My suggestion would  
15 be moving the entrance back more than just 1.5'; it would  
16 be much more visible.

17           COMMISSIONER BARNETT: I see. Thank you for that  
18 response.

19           LEE QUINTANA: If I may, did you get that? I'm  
20 going to sneak this in. I thought it was interesting that  
21 in the packet there was this picture of the remainder of  
22 previous walls. This was of interest to me, being on the  
23 Historic Preservation Committee, because nothing was even  
24 discussed about that as to what was the previous building  
25 that was there that these walls were attached to.



1 CHAIR THOMAS: Are there any other questions?  
2 Commissioner Sordi.

3 COMMISSIONER SORDI: Just one quick question. I  
4 think you quoted the max square footage of the site as  
5 1,600 square feet.

6 LEE QUINTANA: That is the maximum allowed  
7 countable square footage.

8 COMMISSIONER SORDI: Can Staff clarify that,  
9 because I saw 1,656, and I know it doesn't seem like a big  
10 difference, but every square foot seems to count on this  
11 project.  
12

13 SEAN MULLIN: You're correct, it's around 1,656  
14 when adjusted for slope, and the proposal fits within the  
15 maximum.

16 COMMISSIONER SORDI: Okay, thank you.

17 LEE QUINTANA: But it's very close to the max, a  
18 very, very difficult site.

19 CHAIR THOMAS: Are there any other questions for  
20 the speaker? Okay, thank you.

21 LEE QUINTANA: I was just going to try to show  
22 you where I was talking about on the diagram.

23 CHAIR THOMAS: Oh, for the roof covering?  
24

25 LEE QUINTANA: Yes.

1 CHAIR THOMAS: Do we all understand the location?  
2 We have the plans here, so we understand. The second floor,  
3 yes.

4 LEE QUINTANA: And I do want to say that I know  
5 this architect is a very good one, but it's the project  
6 itself that is of concern.

7 CHAIR THOMAS: Thank you. Are there any hands  
8 raised on Zoom?

9 DIRECTOR PAULSON: There are not, Chair.

10 CHAIR THOMAS: Okay. I now invite the Applicant  
11 back up, and you will have an additional three minutes.  
12 Thank you.

13 GARY KOHLSAAT: Thank you. We are not quite sure  
14 what Ms. Quintana is referring to in the architect report  
15 about this house not fitting the site. Correct me if I'm  
16 wrong, but we wouldn't be here if we didn't pass muster  
17 with staff following Mr. Cannon's recommendations. I may be  
18 wrong, but in the past, we wouldn't be here until we worked  
19 all that out, unless we're asking for exceptions.

20 His main comment was that the house was too close  
21 to the street. We have pushed it back, but I also at the  
22 Council showed several examples of driving up Rogers Street  
23 and around even on this Reservoir Road with walls, houses,  
24  
25

1 fences, garages. Next door, the garage is right there. This  
2 is not out of character; this is a very tight site.

3           Also, this site has been reduced from 10,000  
4 square feet to 4,600 square feet to determine the FAR, so  
5 it's a drastic reduction to get the 1,656, and we have made  
6 reductions. We are not seeking the maximum square footage,  
7 and it is a significant difference when you look at the  
8 percentage.

9           The loggia has been one of the biggest elements  
10 of the house from day one. This is their outdoor  
11 entertaining, it has a view, it's not very large, it's like  
12 a living room, it's an outdoor living room, and I don't  
13 believe that the roof of that loggia was cited as a problem  
14 for massing by Mr. Cannon. I don't have the report handy,  
15 but I leave it to you to determine that with or without his  
16 advice. We feel that it is a flat roof, it's going to  
17 provide shade. A lot of time shade and shadow creates  
18 depth, and it also reduces the overall scale.

19           Again, I just want to thank everybody for  
20 considering this. We think we've put together the best  
21 project you're going to find on this site, and I'm happy to  
22 answer any further questions.

23           CHAIR THOMAS: Commissioner Raspe.  
24  
25

1 COMMISSIONER RASPE: Thank you, Chair. First of  
2 all, I want to thank you for going through the process and  
3 heeding and listening to Council and their recommendations,  
4 and coming back to us with your visions. I think it shows  
5 to us a measure of good faith, so I want to say thank you  
6 for your efforts.

7  
8 In your Letter of Justification, I think you  
9 addressed another way of dealing with the massing issue,  
10 which is to further push the residence back into the lot,  
11 and as you indicated, it creates issues vis-a-vis grading  
12 and retaining wall. Can you briefly discuss what the  
13 ramifications would be of pushing the house even further  
14 back?

15 GARY KOHLSAAT: So, you're saying encroaching  
16 more into the rear setback than we're already requesting?

17 COMMISSIONER RASPE: Correct.

18 GARY KOHLSAAT: In order to do that and to make  
19 things work, the house would also have to rise up. As you  
20 go back, you also want to lift the house up, and so we're  
21 still excavating more material. We are creating maybe a  
22 more visible home, so we'd have to look at that very  
23 carefully, because it's going to rise up above some of  
24 those trees. We are skirting the visibility of this. We're  
25 under 25% of visibility, but I'd be very careful about

1 lifting this house up. We would probably lift it up 1' and  
2 move it back 2-3' on the angle; it's a very steep lot. I  
3 don't know if you're going to get much out of it, but  
4 you're really going to start to encroach into the rear  
5 yard. We tried to find the balance.

6 COMMISSIONER RASPE: I believe I asked you this  
7 at the original hearing, but my notes didn't reflect it.  
8 You're internal ceiling heights, could you remind me of  
9 what those are, the 9' or 10' heights?

10 GARY KOHLSAAT: They're 10' and 10'.

11 COMMISSIONER RASPE: 10' and 10'. And in your  
12 estimation, is there any way to reduce those ceiling  
13 heights?  
14

15 GARY KOHLSAAT: It would be very difficult to  
16 achieve even the 9' ceilings when you have HVAC supplying  
17 to the upper floor, so that's a challenge. We don't have a  
18 crawlspace in this house, the lower floor is going to be on  
19 slab, so all of our HVAC is going to be coming through  
20 between the two floors. We have the drop ceilings and  
21 soffits, so effectively we have 9' ceilings in many of the  
22 spaces already. We lower that and we have less than 9'  
23 ceilings, and it's just not today's world; it really isn't.

24 COMMISSIONER RASPE: Thank you. My final  
25 question. I just want to confirm, we know the world of

1 exceptions you're asking for, but you're not asking for  
2 exceptions to FAR, lot coverage, height, any of those.

3 GARY KOHLSAAT: No, none of that.

4 COMMISSIONER RASPE: You're well within...

5 GARY KOHLSAAT: We're well within all of those  
6 limits. Yes, thank you.

7 COMMISSIONER RASPE: Thank you.

8 CHAIR THOMAS: Any other questions for the  
9 Applicant? Commissioner Sordi.

10 COMMISSIONER SORDI: It might be for  
11 Staff/Applicant. I recall just from reviewing some of the  
12 hearing testimony, I think a concern was raised about  
13 safety with respect to all of the trees required; I think  
14 it was 32. Then there was another comment/question about  
15 whether in lieu fees might be an alternative, and I'm  
16 wondering whether there was any progress in that direction?  
17 I know there are a lot of issues about safety and concerns  
18 that were brought up, and bringing so many trees to the  
19 site and having that be a potential fire source.

20 GARY KOHLSAAT: With the updated CAL FIRE  
21 standards that were dropped on us in between our first  
22 application and this application, we have adjusted our  
23 landscape plan and our tree planting plan to reduce several  
24 of the proposed trees, and so we are counting on doing in  
25

1 lieu for the remainder. And all the trees chosen are from  
2 the native list, the Town's list. The reality is every tree  
3 has a chance to catch fire and be a problem, but we are  
4 trying to, again, strike that balance of locating those  
5 trees that do the most bang for the buck as far as  
6 screening between the properties and kind of grounding this  
7 house with also complying with the regulations.

8  
9 COMMISSIONER SORDI: Great, thank you. One other  
10 question, again on the lines of safety, that was brought  
11 up. I heard a little bit of discussion about PG&E and  
12 undergrounding power lines. I was curious to know, I heard  
13 something in the hearing testimony about how the process  
14 was started and stopped somehow, and I just had a question  
15 about whether that effort is part of this project. That's a  
16 roundabout way of asking whether we were improving safety a  
17 little bit by doing the undergrounding, or is the  
18 undergrounding a project that runs the whole length of the  
19 private road? Just a little more information on that.

20  
21 GARY KOHLSAAT: Our first intent was to  
22 underground from the pole on the opposite side of the next-  
23 door neighbor's property all the way across to 26. It was a  
24 substantial cost, hundreds of thousands of dollars, just  
25 not feasible. So, we pivoted and we proposed to do  
overhead, just relocating the lines and the poles, because

1 as you know, the one pole is right in the middle of the  
2 property; it has to move.

3           So, we got approval, PG&E was moving ahead, they  
4 did some work out there and they were about to set the pole  
5 and they said, "We have to take down three trees, one on  
6 47, ours, and one on 36," and our adjacent neighbors  
7 vehemently opposed losing any trees, so we put the brakes  
8 on it. We want to work with everybody.

9           So, we've gone back and forth with PG&E and the  
10 arborist and everybody, and we have designed a way that we  
11 can set one pole to the west property line, which keeps the  
12 line intact so Mary doesn't have to lose any trees. The  
13 lines are exactly how they are. If she would like to  
14 underground from that pole to our property, if she wants to  
15 pay for that, that's on the table, but we are not going to  
16 pay for that, we're just going to start from our property.  
17 We are undergrounding from that pole to our property, and  
18 currently the design has a pole that was going to go across  
19 the other property.  
20

21           We have actually been negotiating with PG&E to  
22 get the whole thing undergrounded, so it starts from our  
23 western property line underground all the way to 26, which  
24 is across that open field next to the road, next to the  
25 property next to us; it would probably be easier on the



1 map. But we are actually going to do the underground all  
2 the way across that as well, and to boot, the two homes  
3 that supply power up our eastern property line, Emily and  
4 Kia, and Irene and Tom, we are undergrounding those. the  
5 current feed that's overhead, that's all underground as  
6 well.

7  
8 COMMISSIONER SORDI: So, the undergrounding, is  
9 that being done at your expense, or is it a PG&E project?

10 GARY KOHLSAAT: A good portion of it is our  
11 expense. The neighbor above us is sharing some of the  
12 expense to underground, because that currently is overhead.  
13 The other neighbor is not taking any share of it at all.  
14 It's a big share on my client already, huge.

15 COMMISSIONER SORDI: Thank you.

16 CHAIR THOMAS: Any other questions for the  
17 Applicant? Okay, thank you. Thank you for explaining that.  
18 I know it's complicated to be working with all of those  
19 parties and PG&E and everything, so thank you for  
20 explaining all that.

21 We will now close the public portion of the  
22 public hearing on Item 2, and I invite Commissioners to ask  
23 questions of Staff, provide comments, or propose a motion  
24 very briefly after I ask and confirm just one question with  
25 Staff.

1           This is a de novo hearing, so we are reviewing  
2 this entire application in front of us again fully,  
3 correct?

4           SEAN MULLIN: That's correct, and with  
5 consideration of the direction provided by the Council.

6           CHAIR THOMAS: Okay, great. So, we just need to  
7 clearly on the record state all of our findings, even if we  
8 are coming to the same conclusion that we did in our first  
9 meeting, so I just ask everyone to do that, please. Now I  
10 invite everyone to discuss, questions for Staff.

11 Commissioner Stump.

12  
13           COMMISSIONER STUMP: There's a paragraph in the  
14 Staff Report that speaks to regulatory taking. My question  
15 there would be under what circumstances as we think about  
16 this project would any further denial of a requested  
17 exception from the Town's standards constitute regulatory  
18 taking?

19           ATTORNEY WHELAN: Thank you. As a general rule,  
20 the imposition of a regulation on a property owner will  
21 constitute a taking if it, 1) does not substantially  
22 advance a legitimate government interest, and 2) the denial  
23 of the requested exceptions leaves the landowners with no  
24 viable economic use of the property.  
25

1           Most of the cases that I've seen find that there  
2 is a regulatory taking when the property value has been  
3 diminished to zero.

4           There is one case that's somewhat analogous,  
5 which is the case of William Haas versus City and County of  
6 San Francisco, and in that case the plaintiff bought a  
7 property intending to build a high-rise development. After  
8 the property owner began construction, the City changed the  
9 height requirement from 300' to 40' and rezoned the  
10 property, and the property value was reduced from \$2  
11 million to \$100,000, and because the regulations were  
12 evenly applied to all properties in the neighborhood, and  
13 because the property owner could still develop the land,  
14 the court did not find that the height restrictions and  
15 rezoning constituted a regulatory taking. So, it's a very,  
16 very high standard to establish that a regulatory taking  
17 has occurred.  
18

19           COMMISSIONER STUMP: Thank you.

20           CHAIR THOMAS: Commissioner Barnett.

21           COMMISSIONER BARNETT: I have a few comments.  
22 Beginning with the lot merger in 2015, apparently the Town  
23 was aware that there would be constraints on this site, and  
24 very difficult ones, and we are here tonight because of the  
25

1 decision that was made in 2015, and I think we have to  
2 accept that reality.

3           If the lot is 50% smaller than the required area  
4 for construction, and with slope and road easement issues,  
5 there have to be exceptions, in my opinion.

6           The Applicant has made good faith changes with  
7 respect to the size of the building and the setbacks,  
8 including the side setbacks now weighing within the code  
9 requirement. The building footprint reduction is, I think,  
10 reasonable. The mass and volume maybe are only 5.4%,  
11 including the ADU, but I think that's reasonable  
12 considering the constraints again.

13           Let me see what else. When I look at the Staff  
14 Report for the January hearing there is an FAR comparison,  
15 and I think that 45 Reservoir Road is very much within the  
16 range of homes, and substantially less than the other two-  
17 story homes.

18           So, I think those are my major comments. I note  
19 that the conditions that we're asked to approve include  
20 Conditions 102-188 in the Exhibit, which are only  
21 addressing County fire requirements, so I think that we're  
22 well protected and that the neighbors are well protected,  
23 given those constraints. Thank you very much.

24           CHAIR THOMAS: Vice Chair Burch.

1           VICE CHAIR BURCH: I might just piggyback on some  
2 of your comments, because I think we're in agreement on  
3 many things.

4           We have to look at these applications on a case-  
5 by-case basis, and I feel like lately we've been seeing a  
6 few more of these. Whether it's the lot merge or lot split,  
7 they're giving us these nonconforming lots that already  
8 come to us basically requiring exceptions just to be able  
9 to build on the property, and I feel like when you look  
10 down this list of exceptions, while it might seem like a  
11 large quantity, when you understand the grading depths and  
12 the retaining walls for the fire turnaround, and that the  
13 road covers most of the LRDA, I don't even know how you get  
14 four guest parking spaces on that road for any of these  
15 homes. When you look at the 25' setback, based on the  
16 amount of safety conversation we had in our first meeting  
17 pushing the house back, I would rather give a bit on the  
18 rear setback and put a little bit of safety to the road.

19           So, when I start going through each of these, to  
20 me there is actually a very practical reason for each of  
21 these. We aren't dealing with some of the exceptions we get  
22 asked for where it's very excessive of the allowable FAR or  
23 height. We aren't getting any of those that we've had to  
24  
25

1 struggle with in the past, so to me, this is a very  
2 practical use of this lot.

3 Council did give two directions. They wanted a  
4 reduction of the building footprint and a reduction in  
5 volume and mass, which when you look at the updated  
6 drawings, has been done. I'd like to point out that Council  
7 didn't give any specific percentages of square-foot numbers  
8 related to that. That's up to us to decide, and I feel like  
9 yes, there are measures taken, so I feel like the  
10 exceptions that are being asked for are not excessive, are  
11 not asking for something that I feel like is going to set a  
12 bad precedent or that we would struggle with.

14 CHAIR THOMAS: Commissioner Stump.

15 COMMISSIONER STUMP: I was the guy at the last  
16 meeting that I guess made the comment that this is too big  
17 a house for too small a lot, and I think we still face that  
18 in some ways. By the way, I don't disagree with the points  
19 that have been brought up here, but I'm reminded of the  
20 specific direction that we received from the Town Council:  
21 reduce the building footprint in consideration of the LRDA,  
22 which we know is a major challenge. Is there just not much  
23 of it? And to reduce the volume and massing of the  
24 residence.  
25

1           So, where does the project stand now? We've  
2 already talked about it. They've reduced what I call  
3 livable square footage by 5.4% to bring it in compliance  
4 with the side setbacks. The front porch wall has been  
5 reduced to pull the house back a little bit from the  
6 roadway; in fact, it went from at one point I think it was  
7 18' and I think it's now gone back to 3'-6", and I would  
8 call that a good start, because again, I think safety still  
9 needs to be an issue here.

10  
11           We also know that whatever gets approved, and  
12 something will be approved, back in January eight  
13 exceptions were requested. If my math is right, and looking  
14 back at the Staff Report, eight exceptions are still being  
15 requested, although you didn't really receive any credit  
16 for the side setbacks, because they were all rolled into  
17 one exception, so anyway, those exceptions continue to be  
18 required and at some point will be needed.

19           My thinking is that the mass and scale of this  
20 house could still be reduced, and how would you do that? By  
21 still pulling it away from the roadway. My concern is that  
22 I don't know that some of these other homes where we say  
23 the neighborhood is built this way. Well, a lot of things  
24 got built 20, 30, 40 years ago that if we had a do over  
25 we'd say don't do that, so I don't think they set

1 precedent. They certainly can be a comparison for us, but I  
2 think the overarching issue needs to be safety.

3           So, one way you would reduce the size of the  
4 house is you say let's stick with the rear setback of 25'.  
5 I don't think that answers the question about how you pull  
6 the house back from the roadway, so I am still of the mind  
7 that the house is too big.

8           As it was, they came forward with a 4,007 square-  
9 foot house. The reduction brings this down to a 3,763  
10 square-foot total livable space, so I'm just trying to  
11 compare apples-to-apples here: it's still a very large  
12 house. The scale and the mass have not been reduced very  
13 much and I'm not sure that it's what the Council directed,  
14 so I will leave it at that. Thank you.

15  
16           CHAIR THOMAS: I have a question for Staff. Are  
17 we allowed to consider the square footage of the ADU in the  
18 overall decision-making of this?

19           SEAN MULLIN: Pursuant to State law, no.

20           CHAIR THOMAS: Okay. So, what is the total  
21 countable square footage of the current proposal?

22           SEAN MULLIN: Countable square footage is 1,593.  
23 That doesn't count the below-grade square footage; it takes  
24 out the garage, because there's a credit that covers that;  
25 but it does not consider the ADU.



1 CHAIR THOMAS: And the max allowed on this is the  
2 1,656?

3 SEAN MULLIN: Correct.

4 CHAIR THOMAS: Okay, thank you for that  
5 clarification. Are there any other comments? Yes,  
6 Commissioner Raspe.

7 COMMISSIONER RASPE: Thank you, Chair. I went  
8 back through our records, and I went back through our  
9 hearing transcript, and first of all it's shocking how much  
10 speaking I actually did at the last meeting, so I apologize  
11 to everybody for that.  
12

13 But at that time, we did an exhaustive, I  
14 thought, review of this project. We went through all the  
15 exceptions on a line-by-line basis, largely at Vice Chair  
16 Burch's thinking, and I thought it was a good way to do it.  
17 I know that this is a de novo review, but I just want to  
18 state for the record, I thought we did a pretty exhaustive  
19 discussion the first time.

20 Now, fast forwarding to tonight, I think my focus  
21 has been on really the Council direction. Those are two  
22 things.

23 That is, first of all the LRDA, and I think we  
24 can all agree, the LRDA is never going to be a perfect  
25 solution there. It is what it is. Given this lot, and given

1 the siting of the road, there's going to be an imperfect  
2 solution, and I think we've got an imperfect solution in  
3 this case, probably closest to the best we're ever going to  
4 see on a building at this site, so to me that's largely  
5 been addressed.

6           The other was reducing the massing, and according  
7 to our notes, the building is now at 1,593 square feet,  
8 which has been reduced by 240 square feet, the footprint  
9 has been reduced by 30 feet, so I think the footprint  
10 massing side of it has been reduced per Council's  
11 direction.

12           Massing can also mean height, and so during my  
13 conversation here with the Applicant I explored two ways to  
14 try to do that, that is, reduce ceiling height or push the  
15 building back on the lot. Neither one of those solves the  
16 problem, and so I don't know how we can reduce the massing—  
17 if we're going to use that word here—any more. The  
18 building, again, 1,593 square feet of countable above-  
19 grade, which doesn't seem to me to be an extraordinarily  
20 large home, given what we're building in Los Gatos.

21           So, in my view, yes, the changes have not been  
22 dramatic from Council's direction, but I'm not sure how  
23 much more we can ask of this Applicant and still retain a  
24 buildable lot here, so I think that the Applicant has  
25

1 addressed the Council's recommendations to the best of  
2 their abilities given the constraints on this lot, and I  
3 would recommend approval of this project.

4           One last comment. I'm looking at the schematics  
5 on the front loggia as a way of kind of breaking up the  
6 façade, and I don't see that it does. The rest of the  
7 building is of an equal height, it doesn't seem to protrude  
8 that much forward, and so somehow redesigning that I don't  
9 think solves a massing issue, it's more design aesthetics,  
10 so I appreciate the comments and the thoughts and the  
11 problem solving on that, I just don't think that particular  
12 solution seems to work. Chair, those are my thoughts.

14           CHAIR THOMAS: Okay, thank you. Commissioner  
15 Sordi.

16           COMMISSIONER SORDI: Obviously, just a really  
17 challenging lot. As a planner, developer, and city plan  
18 checker over the years, I've dealt with hillside conditions  
19 like this a lot and it's just really challenging. We know  
20 for sure that there's going to be a significant portion of  
21 the floor area that's going to be exempt, because you have  
22 to bench this house into the hill, and you're just going to  
23 be caught in a situation where you can keep chipping away  
24 at this thing, but you're going to end up with an unlivable  
25 house.

1           We can try to make it smaller. They've done their  
2 best to make it smaller. Granted, it's not a huge  
3 percentage change, but I just don't know what else you  
4 would do. Again, you almost grab the architect's hand and  
5 you start designing it yourself, and you create something  
6 that's really unlivable for somebody.

7           Also, you have to consider their expense. This  
8 plays a little bit into some of the safety concerns that  
9 came up, but they have to do the fire turnaround as  
10 required by the Fire Department; that's putting them in a  
11 really tough spot because it takes up such a huge portion  
12 of the lot. It also creates a retaining wall in the front  
13 that's extraordinary in size, and they're doing that in  
14 order to do a fire turnaround.

15           Further, on the subject of safety, you've got the  
16 fire turnaround and you're creating that for the entire  
17 neighborhood. There is no fire turnaround now, so it  
18 benefits everybody on this street. You've got a new house  
19 that's going to be WUI protected and it's going to be  
20 beefed up in terms of code.

21           So, from the safety standpoint, I just struggle  
22 with this notion that somehow this is creating a less safe  
23 environment. I really think that they're doing a lot of  
24  
25

1 things to improve the safety of the neighborhood, so I'll  
2 just leave it at that.

3 CHAIR THOMAS: Thank you. I will add some of my  
4 comments, just really pretty much echoing my fellow  
5 commissioners. I went back and also watched the Town  
6 Council meeting and our previous hearing, and I feel like  
7 we did really go through each of the exceptions that were  
8 being asked for, and tried to come up with solutions or  
9 alternatives that were realistic and viable to keep this  
10 lot developable in some way.  
11

12 I still think that a number of these exceptions,  
13 at least three, come with the firetruck turnaround, which  
14 is nonnegotiable in my opinion, because it is required by  
15 County Fire and is necessary to improve safety in the area.

16 And I think, as my fellow commissioners have  
17 said, with the LRDA being such a small space and this lot  
18 having such a unique private road run directly through it,  
19 that they've done the best that they can with this project.

20 I also agree that the Applicant responded well to  
21 the Council's direction, and so I am able to make the  
22 findings that are found in Exhibit 2 and I am ready to  
23 support this project is someone else would like to maybe  
24 propose a motion. Commissioner Barnett.  
25

1 COMMISSIONER BARNETT: I'll start, and see what  
2 needs to be added to it.

3 With respect to Item 2 on our calendar today  
4 concerning 45 Reservoir Road, I move to accept the revised  
5 proposal with the reduced rear yard setback, site  
6 improvements requiring a Grading Permit, and removal of  
7 large, protected trees on the nonconforming lot.

8 I can make all of the findings that are in  
9 Exhibit 2, which is on page 5 of the Staff Report,  
10 including the considerations in paragraph 8, and approve  
11 the Architecture and Site Application S-22-048 with the  
12 conditions in Exhibit 3, and the revised development plans  
13 in Exhibit 10.

14 My motion is based on all the things we've  
15 discussed tonight, the good faith changes made by the  
16 Applicant since it was remanded to us, the recognition of  
17 the difficulties of the site for all the reasons talked  
18 about tonight, and overall the requirement to make this lot  
19 buildable in light of the fact that there was this 2015 lot  
20 merger, which contemplated that there would have to be  
21 exceptions, in my opinion. That's my motion.

22 CHAIR THOMAS: Thank you. Do we have a second?  
23 Vice Chair Burch.

24 VICE CHAIR BURCH: I'll second.

1 CHAIR THOMAS: Thank you. I also just wanted to  
2 add one more comment, because we did not discuss it but it  
3 did come up, and that is that I appreciate the effort to do  
4 the tandem parking, because that was something that was of  
5 a concern to some of the neighbors and we thoroughly  
6 discussed it at the time, so I appreciate the change and  
7 the reconfiguration of that, because I think that it's  
8 important that people aren't parking in this big, beautiful  
9 firetruck turnaround, which I know everyone in the  
10 neighborhood is going to want to do, so thank you very much  
11 for that.  
12

13 Is there any other discussion before I call the  
14 question? Okay, all those in favor, please raise your hand.  
15 Any opposed? So, it passes 5-1 with Commissioner Stump  
16 dissenting. Are there any appeal rights?

17 DIRECTOR PAULSON: Thank you, Chair. There are  
18 appeal rights. Anyone that is not satisfied with the  
19 decision of the Planning Commission can appeal that  
20 decision to the Town Council. Appeal forms are available in  
21 the Clerk's Office and online. There is a fee for filing  
22 the appeal, and the appeal must be filed within ten days.  
23

24 CHAIR THOMAS: Okay, thank you very much.

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