



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/05/2025

ITEM NO: 18

DATE: July 31, 2025
TO: Mayor and Town Council
FROM: Chris Constantin, Town Manager
SUBJECT: **Consider an Appeal of a Planning Commission Decision to Approve Construction of a New Single-Family Residence with Reduced Rear Yard Setbacks, Site Improvements Requiring a Grading Permit, and Removal of Large Protected Trees on Vacant Property Zoned R-1:20. Located at 45 Reservoir Road. APN 529-33-054. Architecture and Site Application S-22-048. Categorically Exempt Pursuant to CEQA Guidelines Section 15303: New Construction or Conversion of Small Structures. Property Owner: Farnaz Agahian. Applicant: Gary Kohlsaas, Architect. Project Planner: Sean Mullin.**

RECOMMENDATION: Adopt a resolution (Attachment 10) denying an appeal of a Planning Commission decision to approve a request to construct a new single-family residence with reduced rear yard setbacks, site improvements requiring a Grading Permit, and removal of large protected trees on vacant property zoned R-1:20, located at 45 Reservoir Road.

FISCAL IMPACT:

Not applicable. Considering approval or denial of an appeal does not in itself result in an additional cost. Depending on the action taken, additional cost may incur.

STRATEGIC PRIORITIES:

Not applicable.

PREPARED BY: Sean Mullin, AICP
Planning Manager

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

BACKGROUND:

The subject property is located east of Reservoir Road and accessed via a private road serving several lots between Reservoir Road and Rogers Street (Attachment 1, Exhibit 1). The subject property is undeveloped and approximately 0.23 acres (10,000 square feet) with an average slope of 28 percent. In 2015, the Town issued Certificates of Compliance for six lots and approved a lot merger to combine the six lots into three lots. The three separate lots include 55 and 60 Rogers Street, and the subject property at 45 Reservoir. The subject property is zoned R-1:20 and nonconforming as to size and width.

On November 17, 2022, the applicant submitted an Architecture and Site application for the construction of a two-story single-family residence with a cellar and associated site grading on the subject vacant property.

On January 8, 2025, the Planning Commission considered the application, including written and verbal public comments, and approved the request.

On January 17, 2025, the decision of the Planning Commission was appealed to the Town Council by an interested person, Mary J. Vidovich, property owner of 47 Reservoir Road. On the appeal form, the appellant indicated that there was an error or abuse of discretion by the Planning Commission.

On March 4, 2025, the Town Council discussed the item and received public testimony (Attachment 1, Exhibits 4 through 7). The Town Council directed staff to prepare a resolution granting the appeal of a decision of the Planning Commission, and remanding the application back to the Planning Commission with specific direction, including the following:

1. Reduce the building footprint in consideration of the least restrictive development area (LRDA); and
2. Reduce the volume/massing of the residence.

Additionally, the Mayor asked that the Planning Commission be provided with more detailed information regarding the circumstances under which the denial of a requested exception from Town standards will constitute a regulatory taking.

On March 18, 2025, the Town Council passed and adopted Resolution 2025-009 granting the appeal of the decision of the Planning Commission approving a request to construct a new single-family residence with reduced side and rear yard setbacks, site improvements requiring a grading permit, and removal of large protected trees on a nonconforming vacant property zoned R-1:20, and remanding the application back to Planning Commission with specific direction as described above (Attachment 1, Exhibit 8).

The June 11, 2025, Planning Commission Staff Report (Attachment 1) provides a detailed summary of the applicant's response to the Town Council direction, including the following:

- Additional justification for the building footprint located outside the LRDA; and
- Revisions made to reduce the volume/massing of the residence through reducing the width of the residence to adhere to the required side setbacks, reducing the gross residence size by 244 square feet (including the ADU), and reducing the porch footprint by 30 feet.

Additionally, the June 11, 2025, Planning Commission Staff Report provided the Commission with additional information regarding regulatory takings. The Planning Commission considered the revised application, including verbal public comments, and approved the project (Attachments 3 and 4).

On June 23, 2025, the decision of the Planning Commission was appealed to the Town Council by an interested person, Mary J. Vidovich, property owner of 47 Reservoir Road (Attachment 5). On the appeal form, the appellant indicated that the decision of the Planning Commission is not supported by substantial evidence in the record.

Pursuant to Town Code Section 29.20.275, any interested person, as defined by Section 29.10.020, may appeal to the Council any decision of the Planning Commission. The notice of appeal must state specifically how there was an error or abuse of discretion by the Planning Commissioner or how the Planning Commission's decision was not supported by substantial evidence in the record. (Demonstrating that a decision was not supported by substantial evidence in the record is one way of establishing an abuse of discretion.) For residential projects, an interested person is defined as "a person or entity who owns property or resides within 1,000 feet of a property for which a decision has been rendered and can demonstrate that their property will be injured by the decision." The appellant meets the requirements.

Pursuant to Town Code Section 29.20.280, the appeal must be heard within 56 days of the Planning Commission hearing, in this case by August 18, 2025. The Council must at least open the public hearing for the item and may continue the matter to a date certain if the Council does not complete its deliberations.

Pursuant to Town Code Section 29.20.295, in the appeal and based on the record, the appellant bears the burden to prove that either there was an error or abuse of discretion (which includes making a decision that was not supported by substantial evidence in the record) by the Planning Commission. If neither is proved, the appeal should be denied. If the appellant meets the burden, the Council shall grant the appeal and may modify, in whole or in part, the determination from which the appeal was taken or, at its discretion, return the matter to the Planning Commission. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.

DISCUSSION:

A. Project Summary

The applicant proposes construction of a new 1,593-square-foot, two-story residence with an attached two-car garage in a tandem configuration and an attached accessory dwelling unit (ADU) (Attachment 1, Exhibit 10). In addition to the 1,593 square feet countable toward the floor area ratio (FAR), the residence includes 1,135 square feet of below-grade square footage. The residence includes an attached 574-square-foot garage in a tandem configuration. The proposed garage includes 352 square feet of below grade square footage that does not count toward FAR. The garage also includes other areas that do count toward FAR: 147 square feet of above grade square footage; and 75 square feet of below grade square footage that extends beyond the footprint of the residence above. These areas are within the 400 square feet allowed for a garage on the property. An attached ADU is included on the second story of the residence. Consistent with state law, the ADU will be processed with a separate ministerial Building Permit, which is not the subject of this application. Much of the proposed residence would be located outside of the LRDA due to site and access constraints. The proposed residence, absent the ADU, would not be visible pursuant to the Hillside Development Standards and Guidelines (HDS&G), as only 22 percent would be visible from the viewing area located at Los Gatos-Saratoga Road (Highway 9) and Highway 17 (Attachment 1, Exhibit 10). Within the immediate neighborhood, the proposed project results in the seventh largest residence in terms of total square footage and the third largest in terms of FAR.

A single-family residence is permitted in the R-1:20 zone. The proposed residence complies with the zoning regulations for allowable floor area and height requirements for the property. The project requires a Grading Permit for site improvements with earthwork quantities exceeding 50 cubic yards. The project also requires exceptions to setbacks, road width, parking configuration, driveway depth, grading depths, retaining wall heights, and LRDA. A full discussion and analysis of the application is provided in the June 11, 2025, Planning Commission Staff Report (Attachment 1).

B. Planning Commission

On June 11, 2025, the Planning Commission received the Staff Report and Desk Item (Attachments 1 and 2). After receiving public comment and asking questions of the applicant, the Planning Commission closed the public hearing and discussed the project. The Planning Commission voted five to one to approve the application. Attachment 4 contains the verbatim minutes.

C. Appeal to Town Council

The decision of the Planning Commission was appealed on June 23, 2025, by an interested person, Mary J. Vidovich (Attachment 5). The appellant indicated that the Planning Commission decision is not supported by substantial evidence. The appellant's reasoning is provided below, followed by the applicant's and property owner's response (Attachments 6 and 7), and staff's response.

1. Appellant: The Town Council told the applicant to reduce volume and massing and reduce the building footprint in consideration of the LRDA. The applicant did not follow directions. Too big for the lot.

Applicant Response: The applicant provided a detailed response, which is included as Attachment 6. In summary, the applicant vehemently disagrees with this opinion and contends the Planning Commission exercised careful consideration of the revised design, approved the project five to one, and noted that they did indeed follow the directives of the Town Council. Additionally, the applicant states that this revised design reflects the directives handed down by the Council, coordinated with staff, and overwhelmingly approved by the Planning Commission. In fact, several commissioners cited that the reductions were rather significant (in effect) and appreciated. This project will fill a vacant piece of land, provide a firetruck turnaround that benefits the entire neighborhood, and ultimately make the area safer by building a WUI approved, fire hardened residence and ADU.

Staff Response: Regarding reductions in volume and massing, the subject property is zoned R-1:20, which requires a minimum lot size of 20,000 square feet; a lot width of 100 feet; and minimum setbacks of 30 feet in the front, 25 feet in the rear, and 15 feet on the sides. The subject property was the product of a 2015 merger of six lots into three lots. What resulted is a lot that is nonconforming with an area of 10,000 square feet and a width of 83 feet. In addition to these nonconforming characteristics, the lot is further burdened with a private access road bisecting the property. As a result, the building envelope is limited to the southern portion of the property, south of the private road, with a very limited area of LRDA outside of the required setbacks.

In response to the Council's direction to reduce the volume/massing of the residence, the applicant reduced its width by two and one-half feet on the west side and one to three feet on the east side. The revised residence meets the required side setbacks, eliminating the need for an exception to the side setback requirements. As a result, the gross size of the narrowed residence is reduced by 244 square feet (including the ADU). The applicant also pulled back the front porch wall by two and one-half feet, reducing its footprint by 30 square feet and increasing the distance between the porch and the private road from 18 inches to three and one-half feet. The following table summarizes

the revisions to the gross floor area from the original proposal to the revised proposal.

Floor Area Comparison								
	Original Proposal			Revised Proposal				
	Non-Exempt Floor Area*	Exempt Floor Area	Total	Non-Exempt Floor Area*	Exempt Floor Area	Total	SF Change	% Change
Lower Floor	313	1,287	1,600	321	1,135	1,456	-144	-9.0%
Main Floor	1,327	0	1,327	1,272	0	1,272	-100	-7.5%
Garage Floor	163+63	338	564	147+75	352	574	+10	+1.8%
Total	1,866	1,625	3,491	1,815	1,487	3,302	-189	-5.4%
ADU	516	0	516	461	0	461	-55	-10.7%
* Non-Exempt Floor Area includes above grade square footage and portions of below grade square footage projecting beyond the enclosed building footprint above.								

Regarding reductions in building footprint in consideration of the LRDA, the LRDA on the subject property is concentrated in the southern (rear) portion of the property and the area of the existing private road (Attachment 1, Exhibit 10, Sheet A-3). The LRDA at the rear of the lot is further constrained, with most of it being located within the required rear setback of 25 feet and side setbacks of 15 feet. This leaves a very limited area of LRDA outside of the required setbacks.

Due to these constraints, the applicant continues to pursue an exception to the rear yard setbacks, proposing a minimum rear setback of 19 feet, seven and one-half inches, where 25 feet is required. Staff notes that this minimum setback occurs at one location at the center of the rear of the residence, and the proposed setback increases moving away from this point in either direction.

In their letter responding to the Council's direction included in Attachment 1, Exhibit 9, the applicant notes the following:

- The portion of the proposed residence projecting into the setback would not be visible from the road;
- The minimum setback is exacerbated by the acute angle of the lot shape;
- There will still be plenty of distance to the rear fence;
- The proposed siting of the residence moves it away from the road and allows more of the residence to be located within the LRDA; and
- Moving the residence back further would further increase the amount of grading and trigger another retaining wall height exception.

The following Lot Coverage Comparison table provides an evaluation of the change in the projects lot coverage from the original proposal to the revised proposal.

Lot Coverage Comparison				
	Original Proposal	Revised Proposal	Change (SF)	Change (%)
Residence + Garage + ADU	2,195	2,057	-138	-6.2%
Patios + Balconies (Outside residence footprint)	148	118	-30	-20.2%
TOTAL	2,343	2,175	-168	-7.2%

2. Appellant: On the date of the first meeting, the neighbor Baratzadeh spoke in favor of the building permit being approved. Undisclosed was that the Baratzadehs had a vested interest in the approval due to the fact that they needed electrical through and underneath (underground) of the contiguous property of 45 Reservoir Road's approval, for their pool. The Baratzadehs' contiguous property address is 60 Rogers Road, we believe. Emily Baratzadeh is a licensed real estate salesperson with Coldwell Banker.

Property Owner's Response: The property owner provided a detailed response, which is included as Attachment 7. In summary, the property owner indicates that the appeal includes statements that are both false and misleading, which misrepresent the facts and unfairly harm the reputations of others. Additionally, the property owner indicates that the appellant's claim is entirely unfounded, and the neighbor's pool project is completely independent of their property and has been in use since March 2025.

Staff Response: Any existing or potential private party agreements between neighbors have no bearing on the application being considered by the Town.

On July 30, 2025, the appellant submitted additional information regarding their appeal. This letter is included as Attachment 8. This additional information was provided to the applicant, and the applicant has provided letter in response (Attachment 9).

PUBLIC COMMENTS:

Story poles and signage were installed on the site by November 21, 2024, and have been maintained since the January 8, 2025, Planning Commission meeting. Written notice of the Town Council hearing was sent to property owners and tenants within 500 feet of the subject property. Public comments received between 11:01 a.m., Wednesday, June 11, 2025, and 11:00 a.m., Thursday, July 31, 2025, are included as Attachment 11.

ENVIRONMENTAL REVIEW:

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. Recommendation

For the reasons stated in this report, it is recommended that the Town Council uphold the decision of the Planning Commission to approve the application and adopt a resolution (Attachment 10) denying the appeal.

B. Alternatives

Alternatively, the Town Council could continue the application to a date certain and:

1. Provide direction to staff to prepare a resolution to grant the appeal and remand the application back to the Planning Commission with specific direction;
2. Provide direction to staff to prepare a resolution granting the appeal and denying the application; or
3. Continue the application with other specific direction.

ATTACHMENTS:

1. June 11, 2025, Planning Commission Staff Report, with Exhibits 1 through 10
2. June 11, 2025, Planning Commission Desk Item
3. June 11, 2025, Planning Commission Action Letter with Conditions of Approval
4. June 11, 2025, Planning Commission Verbatim Minutes
5. Appeal of the Planning Commission Decision, received June 23, 2025
6. Applicant's response to the appeal
7. Property owner's response to the appeal
8. Letter from Appellant, received July 30, 2025
9. Applicant's response to the appeal
10. Draft Resolution to Deny Appeal and Approve Project
11. Public comments received between 11:01 a.m., Wednesday, June 11, 2025, and 11:00 a.m., Thursday, July 31, 2025