



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 10/25/2023

ITEM NO: 2

DATE: October 20, 2023
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of a Development Review Committee Decision to Approve a Lot Line Adjustment Application in Accordance with California Government Code Section 66412(d) for Three Adjoining Lots on Property Zoned R-1:20. Located at 17200 Los Robles Way. APNs 532-36-075, -076, and -077. Lot Line Adjustment Application M-23-001. Statutorily Exempt from CEQA as a Ministerial Approval in Accordance with Public Resources Code Section 21080(b)(1) (CEQA Statute) and CEQA Guidelines Section 15268. Application is Only for Ministerial Approval of a Lot Line Adjustment Pursuant to Section 66412(d) of the Subdivision Map Act.
Property Owners: Daran Goodell, Trustee and Mark Von Kaenel.
Applicant: Tony Jeans. Appellant: Alison Steer. Project Planner: Ryan Safty.

RECOMMENDATION:

Deny the appeal and uphold the decision of the Development Review Committee (DRC) to approve the application, subject to the required determinations (Exhibit 2) and recommended conditions of approval (Exhibit 3).

BACKGROUND:

The subject parcels are located at the terminus of Los Robles Way and Worcester Lane (Exhibit 1). The lot line adjustment proposes to take three adjacent parcels and reconfigure their lot lines. The existing lot configuration has several non-conformities, all of which would be remedied with the proposed lot line adjustment; a legal, non-conforming front setback on Parcel 1 is allowed under current Town Code, as discussed in the DRC Report (Exhibit 4) and in the applicant's Letter of Justification (Exhibit 6). There is an existing residence on Parcel 1 (APN 532-36-076) that would remain, and the other two parcels are vacant. No new construction is proposed with the application.

PREPARED BY: Ryan Safty
Associate Planner

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

BACKGROUND (continued):

The current lot line adjustment application (M-23-001) seeks to cure the absence of certain factual information and presence of certain procedural flaws in the Town's original approval of Lot Line Adjustment Application M-20-012. A detailed history of application M-20-012 is provided in Exhibit 4, and a summary of the action items and dates are provided below:

- On November 11, 2020, the applicant submitted their previous lot line adjustment application (M-20-012) for the three parcels;
- On February 23, 2021, the applicant submitted Certificate of Compliance applications to verify the legality of Parcels 2 and 3;
- On May 25, 2021, the DRC approved the Certification of Compliance applications, which verified the legality of Parcels 2 and 3;
- On July 13, 2021, the DRC approved Application M-20-012;
- On July 22, 2021, the decision of the DRC was appealed to the Planning Commission by adjacent neighbors;
- On September 8, 2021, the Planning Commission denied the appeal and approved Application M-20-012;
- On September 20, 2021, the decision of the Planning Commission was appealed to the Town Council by adjacent neighbors;
- On December 7, 2021, the Town Council made a motion to uphold the decision of the Planning Commission and adopted a resolution denying the appeal and approved Application M-20-012; and
- On March 1, 2022, a resident challenged the Town's approval of Application M-20-012 by seeking a writ of administrative mandate to overturn the Town's approval.

In the course of the litigation, it became apparent that the Town had relied on the Subdivision Map Act's requirements regarding the approval of a tentative map instead of the Subdivision Map Act's requirements regarding a lot line adjustment [Government Code Section 66412(d)]. At the same time, the applicant for Application M-20-012 submitted a new application (Application M-23-001) for review in accordance with Government Code section 66412(d) (Exhibits 6 and 7).

In light of all of this, the Town requested a stay from the court to allow the Town to process Application M-23-001 in accordance with the Subdivision Map Act's requirements regarding lot line adjustments as set forth in Government Code Section 66412(d). The stay was granted.

A detailed staff report for Application M-23-001 (Exhibit 4) was prepared in advance of the DRC hearing which: summarizes the application request; provides a detailed background of the application beginning in 2020; specifies how the project is ministerial under the California Environmental Quality Act (CEQA) and therefore compliant with CEQA; and analyzes how each

BACKGROUND (continued):

of the required considerations for approval of Application M-23-001 are met in accordance with Subdivision Map Act requirements as set forth in Government Code Section 66412(d).

On August 15, 2023, the DRC opened the public hearing, listened to public testimony, and approved Lot Line Adjustment Application M-23-001 based on the information provided in the Report to the DRC, the draft conditions of approval, and in accordance with the required determinations provided in California Government Code Section 66412(d) (Exhibit 4). The meeting minutes are provided as Exhibit 5.

Pursuant to Town Code Section 29.20.257, any interested person as defined by Town Code Section 29.10.020 may appeal to the Planning Commission any decision of the DRC. 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.

On August 22, 2023, the decision of the DRC was appealed to the Planning Commission by an adjacent neighbor (Exhibit 8). The applicant has responded to the appeal letter, provided as Exhibit 9.

DISCUSSION:

A. Project Summary

The subject parcels are located at the terminus of Los Robles Way and Worcester Lane (Exhibit 1). The lot line adjustment proposes to take three adjacent parcels and reconfigure their lot lines. The existing lot configuration has several non-conformities, all of which would be remedied with the proposed lot line adjustment; a legal, non-conforming front setback on Parcel 1 is allowed under current Town Code, as discussed in the DRC Report (Exhibit 4) and in the applicant's submittal package (Exhibits 6 and 7). There is an existing residence on Parcel 1 (APN 532-36-076) that would remain, and the other two parcels are vacant. No new construction is proposed.

B. Lot Line Adjustment Review Process

Applications for lot line adjustments are ministerial in nature, but are required by Town Code Section 29.20.745(9) to go before DRC for approval.

DISCUSSION (continued):

The required determinations for approval of a lot line adjustment application pursuant to Government Code Section 66412(d) are: that the new lot line adjustment is between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created; and that the parcels resulting from the lot line adjustment will conform to the local general plan, any specific plans, any applicable coastal plan, and zoning and building ordinances (Exhibit 2). A detailed analysis showing compliance with each required determination is also provided in Exhibit 4.

C. Appeal Analysis

The appellant's reasoning is provided below, with applicant's responses in *italic* font, followed by staff analysis below each section of the appeal letter.

1. Appellant: The DRC's conclusion, at the urging of staff, that approval of this application is a ministerial act is legally erroneous because the DRC must exercise considerable judgment to ensure the lot line adjustment is consistent with all aspects of the Town's General Plan, Hillside Specific Plan and all applicable Hillside Development Standards and Guidelines. This approval is unlike a typical ministerial act where the responsible agency merely uses a pre-defined checklist to ensure the project is consistent with a set of well-established standards [...]. Moreover, staff's position that lot line adjustment approvals are per se ministerial is clearly erroneous in light of CEQA Guideline Section 15305, which provides that lot line adjustment approvals are exempt from CEQA under some circumstances. If, as staff contends and the DRC apparently accepted, lot line adjustment approvals are per se ministerial, Section 15305 is completely pointless and nonsensical because ministerial acts are not subject to CEQA at all, and therefore there would be no point in adopting a guideline to exempt them from CEQA [...]. The fact that under Section 15035, lot line adjustments between four or fewer lots with average slopes greater than 20 percent are not exempt from CEQA review is further persuasive evidence that approval of a lot line adjustment on parcels with greater than 20 percent slopes require exercise of discretion.

Applicant: *Pursuant to Government Code Section 66412(d), a lot line adjustment "between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created" is exempt from the Subdivision Map Act and review under CEQA. Approval of such a lot line adjustment is ministerial in nature.*

DISCUSSION (continued):

Staff analysis: As noted in the DRC Report (Exhibit 4), the CEQA Determinations Section on pages four and five explains staff's limitations in reviews of lot line adjustments in accordance with the required provisions and considerations of California Government Code Section 66412(d). The Town is relying on Public Resources Code Section 21080(b)(1) (CEQA statute) and CEQA Guidelines Section 15268, both of which provide that ministerial projects are exempt from the requirements of CEQA. The courts have determined that lot line adjustments pursuant to Government Code Section 66412(d) are ministerial approvals.

Additionally, CEQA Guideline Section 15268 provides that the determination of what is "ministerial" can most appropriately be made by the public agency involved and that this determination can be made on a case-by-case basis, and the California courts have determined that the Subdivision Map Act statute exempts from discretionary reviews, exactions, and conditions those lot line adjustments that fit the specifications of Government Code section 66412(d). The Town's review is expressly limited to determining whether the resulting lots will conform to the local general plan, any applicable specific or coastal plan, and building and zoning ordinances, which is a prototypical ministerial approval process, and, in this case because no other land use approvals are being sought by the applicant, involves only a ministerial action. Here, the lot line adjustment is simply: moving the existing lot lines between three existing, legal lots; is not creating any new additional lots; is removing existing non-conformities, and is not proposing any other land use approvals. On that basis, the lot line adjustment action by the Town is ministerial in nature.

The California Public Resources Code statute setting forth CEQA and dictating that ministerial projects are not subject to CEQA "trumps" any CEQA Guideline providing to the contrary. The California Government Code statute setting forth the Subdivision Map Act and its provisions regarding lot line adjustments, and the California Appellate courts determining those lot line adjustments to be ministerial in character "trumps" any CEQA Guidelines providing to the contrary. The fact that CEQA Guideline Section 15305 provides an exemption for certain minor alterations in land use limitations does not provide contrary or controlling evidence that the CEQA statute and Guidelines do not apply to "ministerial projects." CEQA Guideline Section 15305 does not provide contrary or controlling evidence that the Government Code provisions containing the Subdivision Map Act and its lot line adjustment requirements [Government Code section 66412(d)] do not describe a wholly ministerial process. As noted in Exhibit 4, Government Code Section 66412(d) and previous case law provides that this lot line adjustment application is ministerial and not subject to CEQA.

DISCUSSION (continued):

2. Appellant: Town is required to analyze the proposed lot line adjustment's consistency with goals and policies of the General Plan including land use element (LU 6.4) which "prohibit uses that may lead to the deterioration of residential neighborhoods, or adversely impact the public safety or the residential character of a residential neighborhood." The Town has conducted no such analysis, and in any event, a finding that the lot line adjustment is, or is not, consistent with LU 6.4 necessarily requires an exercise of discretion.

Applicant: The application does not request the approval of any new homes nor development of the three (3) parcels. As such, it is premature to consider issues relating to development of the parcels. For instance, Appellant's reference to LU 6.4 is misplaced, as there is no proposed change of use or development of the parcels before the Town, there is no need to conduct any analysis under LU 6.4.

Staff analysis: No new land uses are proposed with this lot line adjustment application, and no development or construction is proposed. If development or construction activities and/or proposed land uses are proposed in the future, they would need to comply with the General Plan. As noted in Condition of Approval #5 of Exhibit 3, "Notice is hereby given to the Property Owners that any proposed disruption, development, or other related construction on, adjacent to, or related to the Adjusted Parcels shall require environmental review to determine appropriate CEQA compliance, review for General Plan, Specific Plan, Zoning, and Building Ordinance compliance, and an Architectural and Site Application approval with the Community Development Department of the Town, with related findings, considerations, and conditions of approval in compliance with applicable Town Code."

3. Appellant: Similarly, the Town has failed to analyze the potential impacts associated with the proposed cul-de-sac or its consistency relative to the Hillside Development Standards which also changes principal means of access to parcels 2 and 3 [...]. It is important to note, moreover, that regardless of whether the lot-line adjustment could be approved without compliance with CEQA, the Town must analyze the environmental impacts associated with the proposed access driveway to parcels 2 and 3, which is an essential part of the proposed lot line adjustment.

DISCUSSION (continued):

Applicant: The access at Worcester Lane has always been available to the property and this will not change with this lot line adjustment. The owners are offering to dedicate to the Town an appropriate easement for a cul-de-sac area at the terminus of Worcester Lane to satisfy ingress/egress to parcels 2 and 3 from this location and meet the Town's frontage requirements. This area has been identified on the plans based on a Town standard hillside cul-de-sac. According to the Town's staff report submitted to the DRC, Town Code Section 29.40.400 does not mandate that the cul-de-sac street frontage be along a paved roadway. This application does not request approval of plans to develop the cul-de-sac easement area. Thus, the Town need not analyze potential impacts associated with the cul-de-sac area.

Staff analysis: As noted in Condition of Approval #2 in Exhibit 3, the property owners have proposed to make irrevocable offers of dedication of easement to the Town to satisfy Town Zoning Code provisions regarding frontage. The provisions from Government Code Section 66412(d) regarding lot line adjustments authorizes the Town to impose conditions of approval to ensure Zoning Code compliance and consistency. However, construction of the cul-de-sac is not proposed or required, and Condition of Approval #5 makes clear that any and all disruption, development, construction, including future construction of the cul-de-sac, would require a discretionary Architecture and Site Application with environmental review to determine appropriate CEQA compliance, and review for General Plan, Specific Plan, Zoning, and Building Ordinance compliance. Again, no construction of any kind is proposed with this lot line adjustment application.

As a part of this lot line adjustment application review, Town staff has reviewed the cul-de-sac area delineated in Exhibit 7 that is offered as a dedication of easement to the Town and has confirmed that a cul-de-sac meeting the Town's required cul-de-sac dimensions would fit in this location. Again, no construction or development is being proposed. Any future construction and grading associated with this cul-de-sac would require a Town approved Architecture and Site Application, which would first require CEQA compliance before approval or denial.

In order to avoid confusion and clarify the intent of the condition for the cul-de-sac dedication, staff is recommending a revision to drafted Condition of Approval #2 in Exhibit 3. Staff is recommending a revision because the last two sentences are unnecessary. If the lot line adjustment is denied, the conditions of approval will not exist. The proposed amended condition language is shown in strikethrough text in Exhibit 3 and copied below.

DISCUSSION (continued):

2. CUL-DE-SAC DEDICATIONS: To ensure the consistency of the Approval of the New Lot Line Adjustment Application (M-23-001) with the Zoning Ordinance of the Town Code, within ninety (90) days of the Approval Date, the property owners (individually, "Property Owner," collectively, "Property Owners") of Adjusted Parcels 2 and 3 shall make irrevocable offers of dedication of easement to the Town of the "Cul-De-Sac Area" for right-of-way purposes (as that Cul-De-Sac Area is specifically delineated in the New Lot Line Adjustment Application (M-23-001) materials), and to the satisfaction of the Town Engineer, to ensure compliance with the minimum Town street frontage standards for cul-de-sacs. Within thirty (30) days of such Property Owners dedication, the Town Engineer shall accept such dedication(s) on behalf of the Town. ~~Should the Approval be placed before the Town Council for consideration and action on appeal, the Town Council shall determine whether or not to confirm such acceptance of such dedication in addition to considering the merits of the appeal. Failure of the Town Council to confirm acceptance of such Cul De Sac Area dedications, and/or approval of such appeal by the Town Council, shall void the Approval.~~
4. Appellant: To the extent the lot line adjustment creates a new buildable parcel from an unbuildable parcel [and not just moving lines around on paper as was mentioned at the DRC meeting (minute 6:20)], the Town is required to but has thus far failed to carefully review the consistency of the newly configured parcels with the Town's General Plan. Approval of the lot line adjustment will most likely result in the siting of up to two new dwellings on parcel 2, which is more than capable of creating ecological and visual impacts to neighboring properties (General Plan CD 6.4).

Applicant: *In the plans, we have limited the details to the proposed lot configurations requested for the lot line adjustment, while providing sufficient information to analyze the adjusted parcels for compliance with applicable Town and State law [...]. This application does not request the approval of any new homes nor development of the three (3) parcels. As such, it is premature to consider issues relating to development of the parcels [...].*

Staff analysis: As noted on pages six and seven in the DRC Report (Exhibit 4), the proposed lot line adjustment is in conformance with the General Plan. Specifically, the proposed lot line adjustment complies with the density allowance for properties with a Low Density Residential General Plan Land Use Designation and General Plan Community Design Goal CD-2, which states, "To limit the intensity of new development to a level that is consistent with surrounding development and with the Town at large."

DISCUSSION (continued):

The application is for a lot line adjustment between three existing, legal parcels. No construction or grading is proposed. It is important to note that, although both the General Plan and Zoning Ordinance specify how land may be developed, they do so in different ways. The General Plan has a long-term outlook. It identifies the types of development that will be allowed, the spatial relationships among land uses, and the general pattern of future development. Zoning regulates development through specific standards such as lot size, building setbacks, and allowable uses. Development must not only meet the specific requirements of the Zoning Ordinance, but also the broader policies set forth in the General Plan. Again, no development is proposed; any future proposed use and/or development would need to comply with all the provisions of the then-applicable General Plan.

The appeal states that the project would not comply with General Plan Policy CD.4, which requires that, "New homes shall be sited to maximize privacy, livability, protection of natural plant and wildlife habitats and migration corridors, and adequate solar access and wind conditions. Siting should take advantage of scenic views but should not create significant ecological or visual impacts affecting open spaces, public places, or other properties." Again, no construction is proposed; no new homes are proposed. This General Plan policy is not relevant to a lot line adjustment application.

5. Appellant: The Town's General Plan 2040 website specifically states the adopted plan "does not allow new housing potential in the Very High Fire Hazard Severity Zones" which is where this land is located. Increasing density increases fire risk to the neighborhood. The Town must consider whether this proposed lot line adjustment is consistent with the Town's policy of not increasing density in Very High Fire Hazard Severity Zones.

Applicant: Additionally, the Town need not consider whether the proposed lot line adjustment is consistent with the Town's policy of not increasing density in the Very High Fire Hazard Severity Zones, as there is no increase in density with this application. This application preserves the status quo (three single-family residential parcels) and leaves the determination of appropriate countermeasure for fire hazard safety to a subsequent Architecture and Site Application, which would be reviewed by Santa Clara County Fire Department as well as the building department.

DISCUSSION (continued):

Staff analysis: This is not an excerpt from the General Plan. Instead, it is an introductory statement on the Los Gatos 2040 General Plan website. The full quote is, “The adopted 2040 General Plan retains the Town’s Low Density neighborhoods as is, allows more housing in High (formerly known as Medium) Density Residential (i.e. small, multi-unit housing), does not allow new housing potential in the Very High Fire Hazard Severity Zone, and focuses the majority of the growth in the Community Growth Districts with mixed use and higher density developments.” The excerpt regarding no new housing potential in the Very High Fire Hazard Severity Zone is simply stating that the Town is proposing to increase allowed densities in certain areas of the Town in order to meet the State’s required housing numbers, and that the Town is not proposing to increase allowable densities in the Very High Fire Hazard Severity Zone. This is not saying that existing parcels cannot be developed in the Very High Fire Hazard Severity Zone. Additionally, allowed densities are listed in the Land Use Element of the General Plan, and the 2040 Land Use Element is on hold and is not currently in effect.

6. Appellant: Today Parcel 2 is not buildable, is landlocked, does not conform to minimum parcel size, cannot be accessed by vehicular or safety equipment (there’s a house/pool in the way, which according to the staff report will remain), and due to the steepness of the slope is outside of the LRDA (Least Restrictive Development Area) where no turnaround could be built, nor does it meet slope stability standards, yet the Town refuses to consider this land for merger per Municode Section 24.10.080.

Applicant: *It should also be noted that there are three (3) original existing parcels and there will remain three (3) parcels. Consideration of the lot line adjustment application is mandatory under controlling law, whereas the Town’s consideration of merger is permissive. For instance, Municipal Code Section 24.10.080, which addresses parcel mergers, specifies the Town “may” initiate a merger. There is no requirement that the Town initiate such a merger. Moreover, there is no showing that the three (3) parcels would meet the requirements of a merger under Section 24.10.080. As a result, there is no “intensification of use” or “increasing density” associated with this application, as the appellant suggests.*

Staff analysis: Town Code Section 24.10.080 states that, “The Town may initiate a merger of a parcel [...]” if all the requirements of the controlling law (the Subdivision Map Act) are met. Several things bear mentioning: (1) Town Code Section 24.10.080 does not require (it is not mandatory, there is no “shall”) the Town to initiate the merger of any or all parcels in the Town that may qualify for merger, it permits such review (it is permissive, it uses the word “may”) if the Town wishes to do so. The Town choosing not to commence a merger in the present case is not a challengeable nor appealable act; (2) the Subdivision Map Act does require the Town to act upon a lot line

DISCUSSION (continued):

adjustment application submitted, such as the one present here. The Map Act provisions regarding lot line adjustments use the word “shall,” and shall is mandatory; and (3) once the lot line adjustment is acted upon, as it must be under controlling law, no grounds for permissive Town merger will be present. In other words, the applicant came to the Town with a lot line adjustment application to remedy the non-conforming situations associated with these parcels. The Town is required to act upon the lot line adjustment application pursuant to the Subdivision Map Act; the Town is not required to commence a merger proceeding to determine which if any of the parcels in question can legally be merged, and merger is legally not available to the Town once the lot line adjustment is submitted, acted upon, and approved.

PUBLIC COMMENTS:

At the time of preparation of this report, no public comment has been received.

ENVIRONMENTAL REVIEW:

The lot line adjustment approval is Statutorily Exempt from CEQA as a ministerial approval in accordance with Public Resources Code section 21080(b)(1) (CEQA statute) and CEQA Guidelines Section 15268, both of which provide that ministerial projects are exempt from the requirements of CEQA, and Government Code Section 66412(d) regarding lot line adjustments, which Government Code Section 66412(d) has been determined to describe a ministerial approval. The application is only for ministerial approval of a lot line adjustment pursuant to Section 66412(d) of the Subdivision Map Act. Refer to pages four and five of the DRC Report (Exhibit 4) for more information.

CONCLUSION:

A. Summary

The appellant is requesting that the Planning Commission reconsider the DRC’s decision to approve Lot Line Adjustment Application M-23-001 in accordance with Government Code Section 66412(d) of the Subdivision Map Act for three adjoining lots on property zoned R-1:20, located at 17200 Los Robles Way.

CONCLUSION (continued):

B. Recommendation

For the reasons stated in this report, staff recommends that the Planning Commission make a motion to confirm the following determinations and actions to deny the appeal, uphold the decision of the DRC, and approve Lot Line Adjustment Application M-23-001 for consideration under Section 66412(d) of the Subdivision Map Act:

1. Find that approval of the lot line adjustment application is a ministerial project approval under CEQA (Exhibit 2);
2. Find that the required determinations regarding compliance with Section 66412(d) of the Subdivision Map Act are hereby adopted and confirmed (Exhibit 2); and
3. Approve Lot Line Adjustment Application M-23-001, superseding the Town's approval of the previous lot line adjustment application (M-20-012), with the modified Draft Conditions of Approval contained in Exhibit 3, the diagram showing existing and proposed parcel configurations in Exhibit 7, and all other related materials and attachments.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Deny the appeal and approve the application with additional and/or modified conditions;
3. Grant the appeal and remand the application to the DRC with direction for revisions; or
4. Grant the appeal and deny Lot Line Adjustment Application M-23-001.

EXHIBITS:

1. Location Map
2. Required Determinations Pursuant to Government Code Section 66412(d)
3. Recommended Conditions of Approval with Staff Edits
4. August 15, 2023 Development Review Committee Report and Desk Item
5. August 15, 2023 Development Review Committee Meeting Minutes
6. Applicant's Letter of Justification, received June 2, 2023
7. Diagram of Existing and Proposed Parcel Configurations, received August 9, 2023
8. Appeal of Development Review Committee, received August 22, 2023
9. Applicant's Response to Appeal, received October 16, 2023