



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/04/2025

ITEM NO: 11

DATE: February 27, 2025
TO: Town Council
FROM: Chris Constantin, Town Manager
SUBJECT: Consider an Appeal of a Planning Commission Decision to Approve 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 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 Kohlsaar, Architect. Appellant: Mary J. Vidovich. Project Planner: Sean Mullin.

RECOMMENDATION:

Adopt a resolution (Attachment 6) denying an appeal of a Planning Commission decision to approve 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 vacant property zoned R-1:20, located at 45 Reservoir Road.

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 parcels 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

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Planning Manager

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

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the subject vacant property.

On January 8, 2025, the Planning Commission considered the application, including written and verbal public comments, and approved the request (Attachments 1 through 4).

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 (Attachment 5). On the appeal form, the appellant indicated that there was an error or abuse of discretion by the Planning Commission.

Pursuant to the Town Code, any interested person as defined by Section 29.10.020 may appeal to the Council any decision of the Planning Commission. 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 March 5, 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 by the Planning Commission, or the decision was not supported by substantial evidence in the record. 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 1,640-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 12). In addition to the 1,640 square feet countable toward the floor area ratio (FAR), the residence includes 1,287 square feet of below-grade square footage. The residence includes an attached 564 square-foot garage in a tandem configuration. The proposed garage includes 338 square feet of below grade square footage that does not count toward FAR. The garage also includes other areas that do count toward FAR: 163 square feet of above grade square footage; and 63 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 12). 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 is in compliance with the zoning regulations for allowable floor area, height, and on-site parking 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, driveway depth, grading depths, retaining wall heights, and least restrictive development area (LRDA). A full discussion and analysis of the application is provided in the January 8, 2025, Planning Commission Staff Report (Attachment 1).

B. Planning Commission

On January 8, 2025, the Planning Commission received the Staff Report and Desk Item (Attachment 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 four to two to approve the application. Attachment 3 contains the verbatim minutes.

C. Appeal to Town Council

The decision of the Planning Commission was appealed on January 17, 2025, by an interested person, Mary J. Vidovich (Attachment 5). On the appeal form, the appellant indicated that there was an error or abuse of discretion by the Planning Commission based on the following:

- Side and rear setbacks have been violated;
- Removal of protected mature oaks;
- Too many trees are being destroyed; and
- Some proposed plants are fire hazards.

Included with the appeal form were several exhibits supporting the main appeal points and raising additional points. A summary of the specific reasons listed in the appeal form and exhibits is provided below followed by staff's response.

1. Appellant: There was an error or abuse of discretion by the Planning Commission as the side and rear setbacks have been violated. Exhibit A included with the appeal documents provides the development standards in the R-1 zone.

Staff Response: The applicant requested an exception to the required setbacks for the nonconforming property under Section 29.10.265 (3) of the Town Code, providing evidence and justification for the request. The Planning Commission was able to make the findings to grant the exception and approve the project. A full discussion of the proposed setbacks is included in the January 8, 2025, Planning Commission Staff Report (Attachment 1).

2. Appellant: There was an error or abuse of discretion by the Planning Commission as the project includes the removal of protected oaks and too many trees are being destroyed. Exhibit C included with the appeal documents provides information from the Town's Tree Protection Ordinance and notes, documents, and pictures related to tree removal carried out by the previous property owner. Exhibit D includes excerpts from the Arborist Report prepared for the project.

Staff Response: The development plans were reviewed by the Town's Consulting Arborist who inventoried 18 protected trees within the project area and made recommendations for their preservation (Attachment 1, Exhibit 8). The project proposes the removal of 10 protected trees to accommodate the new residence. The Landscape Plans indicate that 32 new trees will be planted on site to offset the proposed tree removal. The Planning Commission was able to make the findings for the project, including the proposed tree removal, and approved the project.

3. Appellant: There was an error or abuse of discretion by the Planning Commission as the project includes proposed plants that are fire hazards. Exhibit B included with the appeal documents includes excerpts from the Hillside Development Standards and Guidelines related to plants to avoid due to fire hazard.

Staff Response: The proposed trees in question are located at the base of the proposed retaining wall. The applicant indicated that the tree species, Thuja Green Giant, were selected for their fast-growing nature and slender form, given the limited space available for screening plantings. The January 8, 2025, Planning Commission Staff Report notes that the selected trees are located greater than 30 feet from the residence and would not be consistent with the Hillside Development Standards and Guidelines requirement that plant species in this zone be native and indigenous. Staff included a Condition to revise this species to be consistent with this requirement. The Planning Commission received feedback from the applicant who wished to keep the species as proposed because they could not find a viable alternative given the planting constraints. The Planning Commission discussed the issue and chose not to modify the conditions in their approval of the project. The approved conditions require that the plans be revised

such that all landscape species to be consistent with the Hillside Development Standards and Guidelines. Prior to the issuance of a Building Permit, the Thuja Green Giant trees at the base of the retaining wall will need to be replaced in response to this Condition.

4. Appellant: Exhibit E included with the appeal documents provides Town Code Section 24.10.080 – Town Initiated Parcel Mergers. Notes on the exhibit question the legality of the lot and whether there was a public hearing for the lot merger.

Staff Response: The Town issued Certificates of Compliance recognizing the legality of six underlying lots at 60 Rogers Street in 2015. A lot merger application was approved by the Development Review Committee at a duly noticed meeting on June 2, 2015. This lot merger combined the underlying lots into three lots: 55 and 60 Rogers Street; and 45 Reservoir Road. The approved lot merger was initiated by the property owner and was not initiated by the Town. Section 24.10.080 of the Town Code is not relevant and the 2015 lot merger is not the subject of this application.

5. Appellant: Exhibit F included with the appeal documents provides excerpts from the Town’s Consulting Architect report for the proposed project.

Staff Response: The Consulting Architect raised a concern related to the close proximity of the proposed resident to the private road. The Consulting Architect recognized that there may be little viable alternatives, and that the configuration may be acceptable given the private access road. The applicant responded to this concern, noting that the property shape and access through the lot is highly unusual and creates an undue hardship on the allowable building envelope that cannot be overcome, and that the road has been moved away from the building envelope as much as possible. The Planning Commission evaluated this issue in their deliberation and ultimately approved the project.

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, January 8, 2025, and 11:00 a.m., Thursday, March 4, 2025, are included as Attachment 7.

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 and adopt a resolution (Attachment 6) 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. January 8, 2025, Planning Commission Staff Report, with Exhibits 1 through 12
2. January 8, 2025, Planning Commission Desk Item, with Exhibit 13
3. January 8, 2025, Planning Commission Verbatim Minutes
4. January 8, 2025, Planning Commission Action Letter with Conditions of Approval
5. Appeal of the Planning Commission Decision, received January 17, 2025
6. Draft Resolution to Deny Appeal and Approve Project
7. Public comments received between 11:01 a.m., Wednesday, January 8, 2025, and 11:00 a.m., Thursday, February 27, 2025