



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 13

DATE: February 29, 2024
TO: Town Council
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider the Adoption of a Resolution Denying an Appeal of a Planning Commission Decision that Approved the Demolition of an Existing Single-Family Residence and Construction of a New Single-Family Residence with Reduced Setbacks on a Non-Conforming Property Zoned R-1D. **Located at 212 Thurston Street.** APN 410-15-039. This Project is Categorically Exempt Pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15303(a): New Construction or Conversion of Small Structures. PROPERTY OWNER/APPLICANT: Meleah Guillardo. PROJECT PLANNER: Maria Chavarin

RECOMMENDATION:

Adopt a resolution denying an appeal of a Planning Commission decision to approve the demolition of an existing single-family residence and construction of a new single-family residence with reduced setbacks on property zoned R-1D, located at 212 Thurston Street.

BACKGROUND:

The subject property is located on the north side of Thurston Street between N. Santa Cruz Avenue and Monterey Avenue (Attachment 2, Exhibit 1). The property is 4,671 square feet and is nonconforming as to size, where 5,000 square feet is required for a parcel in the R-1D zone.

On May 8, 2023, the applicant submitted an Architecture and Site application for the demolition of an existing single-family residence, and construction of a new two-story residence with a cellar. The site is developed with a 1,109-square foot single-story residence and a 385-square foot detached garage.

On October 11, 2023, the application was deemed complete. Project signage and story poles were installed on the subject property and certified by a licensed civil engineer on November 7,

PREPARED BY: Maria Chavarin
Assistant Planner

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

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2023. On December 1, 2023, notice cards were mailed to surrounding

BACKGROUND (continued):

property owners and occupants as required by the Town Code. It was discovered that the signage did not contain the Planning Commission meeting date.

On December 13, 2023, the Architecture and Site application was scheduled as an “other business” item for the Planning Commission meeting to open the public hearing and allow for public comments on the matter (Attachment 1). No public comments were received at that time and the item was continued to the January 10, 2024 Planning Commission meeting to allow public notice on the project sign consistent with Town Policy.

On January 10, 2024, the Planning Commission considered the application, including written and verbal public comments (Attachment 2 and 3). The Planning Commission approved the application subject to additional conditions as described in the Action Letter (Attachment 4) and Section B below.

On January 22, 2024, the decision of the Planning Commission was appealed to the Town Council by an interested person, Eric Rafia, property owner of 214 Thurston Street (Attachment 5). The appellant indicated that there was both an error and abuse of discretion and the Planning Commission’s decision is not supported by substantial evidence in the record.

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 6, 2024. 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 Town 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 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 demolition of the existing single-family residence and construction of a new 1,632.7-square foot two-story single-family residence with an 875.5-square foot cellar (Attachment 2, Exhibit 12). Due to the small lot size, the proposed residence would appear larger in bulk and mass in relation to other residences in the immediate neighborhood. In addition, the proposed residence includes a front setback of seven feet, three inches, where 15 feet is required. The project includes retention of an existing one-car garage in the rear corner of the lot and one proposed uncovered on-site parking space to comply with the minimum requirement of two parking spaces.

A single-family residence is permitted in the R-1D zone. The subject property is 4,671 square feet and is nonconforming as to size, where 5,000 square feet is required for a parcel in the R-1D zone. The proposed residence is in compliance with the zoning regulations for floor area, height, and on-site parking requirements. The applicant requests an exception to the front yard setbacks. The applicant provided a Letter of Justification discussing this request (Attachment 2, Exhibits 5 and 6). A full discussion and analysis of the application, including the requested exception, is provided in the January 5, 2024 Planning Commission Staff Report (Attachment 2).

B. Planning Commission

On January 5, 2024, the Planning Commission received the staff report (Attachments 2). After receiving public comment and asking questions of the applicant, the Planning Commission closed the public hearing and discussed the project. Based on the neighbor's concerns, the motion for approval included additional conditions of approval regarding repairs to the existing garage, privacy screening, and window changes (Attachment 4, Conditions 4, 5, and 6). The Planning Commission voted five to one to approve the application, with Commissioner Burnett voting no. Attachment 3 contains the verbatim minutes.

C. Appeal to Town Council

The decision of the Planning Commission was appealed on January 22, 2024, by an interested person, Eric Rafia (Attachment 5).

The appeal states that the Planning Commission based their decision on "setback, condition of approval for existing garage to remain" and "setbacks do not conform to R1-D minimum setback requirements" (Attachment 5). A summary of the specific reasons listed in the appeal form are provided below as verbatim excerpts, followed by the applicant's response in *italic* font and staff's response.

DISCUSSION (continued):

1. Appellant: There was an error or abuse of discretion by the Planning Commission: Setback, condition of approval for existing garage to remain.

Applicant: The adjacent neighbor has appealed the Planning Commission approval of Meleah Gullardo's proposed new home at 212 Thurston Street. In the appeal, he states that there was an error or abuse of discretion by the Planning Commission for the "Setback, condition of approval for existing garage to remain" and that the Planning Commission's decision is not supported by substantial evidence in the record as "Setbacks do not conform to R1-D minimum setback requirements".

For the first part, this neighbor has demanded that the existing detached garage be removed since he first learned of the Ms. Guillardo's plans to build a new home. Attached is the first letter he sent to the Town complaining about the garage. However, the garage is a legal, non-conforming structure that Ms. Guillardo would like to keep and to repair. There is no law or ordinance that requires that this garage be demolished, and the garage was not even part of what was before the Commission. Nevertheless, the Commission addressed the condition of the garage, and at Ms. Guillardo's assent, added the condition of approval that the garage is to be repaired in conjunction with the construction of the house.

Staff response: Sheet A1 of the Development plans identifies the location of the detached garage. The garage is a legal non-conforming structure as to setbacks, which would require five feet from any side or rear property line. The Town records show that on May 11, 1948, an application was filed for the construction of an 18 by 20-foot one-story garage. No plans are available; however, the 1928-1956 Sanborn Fire Insurance Maps show the garage existed. The existing detached garage is not included as part of this Architecture and Site application.

The Planning Commission, after discussing the current state of the garage, and the applicant's plans to make improvements in the future, approved the project with an additional condition requiring repair of the detached garage prior to certificate of occupancy of the main residence. The added condition of approval is addressed through Condition 5, Attachment 4.

At the Planning Commission meeting of January 10, 2024, the Town Attorney clarified for the record that the added conditions of approval related to the maintenance and repair of the garage cannot be imposed on the project since it is not a part of the application; however, since the property owner agreed to the added condition of approval related to the maintenance and repair of the garage during the meeting, the Town can include the added condition.

DISCUSSION (continued):

2. Appellant: The Planning Commission's decision is not supported by substantial evidence in the record: Setbacks do not conform to R1-D minimum setback requirements.

Applicant: For the 2nd part, the Planning Commission spent considerable amount of time during the hearing discussing, taking testimony and asking questions of the neighbors about the proposed reduced front setback of the main house. This is all recorded in the video record of the hearing. Since the property is a substandard lot, the Town Code allows for the reduction of setbacks, per the Commission's discretion. The Commission fully took into account the context of the site, the setbacks of the surrounding structures, the effect on the rear neighbors (were the house to be moved back), and the images of the story poles when viewed from up and down the street.

In conclusion, the Commission did not err or abuse its discretion when it added a condition of approval that the detached garage be repaired concurrently with the construction of the main house. It would have been abuse to force the rebuilding and relocation of the existing garage against the owner's wishes.

Secondly, there is ample evidence in the record that the Commission properly considered the proposed reduced front setback for this home, and that their decision was not made in haste, under subterfuge, or duress.

Staff response: Sheet A1 of the Development plans identify the location of the single-family residence. Currently, the residence is situated three feet, six inches from the front property line. The proposed residence, measured to the stone veneer columns of the front porch, would be situated seven feet, three inches from the front property line where a 15-foot front yard setback is required per the R1-D zoning regulations. In addition, the applicant provided an aerial photo of the neighborhood context showing the current setbacks of residences in the immediate neighborhood (Attachment 2, Exhibit 6).

Section 29.10.265 of the Town Code allows for the modification of any rule of the zone on nonconforming property, including setbacks, when found to be compatible with the neighborhood. The Planning Commission found that the reduced setbacks of the new residence complied with these requirements.

PUBLIC COMMENTS:

Story poles and signage have been maintained on the site since the November 7, 2023, Planning Commission meeting. Written notice of the Town Council hearing was sent to property owners and tenants within 300 feet of the subject property. At the time of this report's preparation, the Town has not received any public comment.

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ENVIRONMENTAL REVIEW:

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act (CEQA), Section 15303(a): New Construction or Conversion of Small Structures.

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 to a date certain with other specific direction.

ATTACHMENTS:

1. December 13, 2024 Planning Commission Staff Report
2. January 10, 2024 Planning Commission Staff Report, with Exhibits 1-12
3. January 10, 2024 Planning Commission Verbatim Minutes
4. January 17, 2024 Planning Commission Action Letter
5. Appeal of the Planning Commission Decision, received January 22, 2024
6. Applicant's Response to Appeal, Received February 20, 2024
7. Draft Resolution to Deny Appeal and Approve Project