



TOWN OF LOS GATOS
COUNCIL AGENDA REPORT

MEETING DATE: 04/05/2022

ITEM NO: 15

DATE: March 31, 2022
TO: Town Council
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of a Planning Commission Decision Approving a Request for Demolition of an Existing Single-Family Residence and Construction of a New Single-Family Residence to Exceed Floor Area Ratio Standards with Reduced Front and Side Yard Setbacks on Nonconforming Property Zoned R-1D. **Located at 118 Olive Street.** APN 410-15-022. Architecture and Site Application S-21-013. PROPERTY OWNER: Thomas and Meredith Reichert. APPLICANT: Jay Plett, Architect.

RECOMMENDATION:

Deny the appeal of a Planning Commission decision approving a request for demolition of an existing single-family residence and construction of a new single-family residence to exceed floor area ratio standards with reduced front and side yard setbacks on nonconforming property zoned R-1D, located at 118 Olive Street.

BACKGROUND:

The subject property is located on the north side of Olive Street, approximately 138 feet from the intersection with San Benito Avenue (Attachment 1, Exhibit 1). The subject property is approximately 3,680 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 10, 2021, the applicant submitted an Architecture and Site application for a substantial remodel and second-story addition to the existing single-family residence. While processing the application, the applicant determined that full demolition of the existing residence was needed to accomplish the project. The design of the proposed residence did not change once full demolition of the existing residence was proposed.

On October 21, 2021, the application was deemed complete for processing. Project signage

PREPARED BY: Sean Mullin, AICP
Senior Planner

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

BACKGROUND (continued):

and story poles were installed on the subject property and certified by a licensed civil engineer on November 1, 2021. On December 22, 2021, notice cards were mailed to surrounding property owners and occupants as required by the Town Code.

On January 12, 2022, the Planning Commission considered the application and continued the matter to February 9, 2022 (Attachments 1 through 3). The Planning Commission directed the applicant to:

- Continue neighbor outreach efforts and contact neighbors that expressed concerns; and
- Provide a three-dimensional rendering of the proposed residence.

On February 9, 2022, the Planning Commission considered the application, including the applicant's summary of their continued neighbor outreach and a three-dimensional rendering of the proposed residence (Attachments 4 through 6). The Planning Commission approved the application subject to Conditions of Approval (Attachment 7).

On February 22, 2022, the decision of the Planning Commission was appealed to the Town Council by an interested person, Shelli Baker, property owner of 120 Olive Street (Attachment 8). The appellant indicated that the Planning Commission based their decision on incomplete and inaccurate information; that the Planning Commission did not address the concerns of surrounding neighbors; and that pertinent information provided to staff was not forwarded to 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 and in this case, by April 6, 2022. 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 on the item.

Pursuant to Town Code Section 29.20.295, in the appeal, and based on the record, the appellant bears the burden to prove that there was an error or abuse of discretion by the Planning Commission as required by Section 29.20.275. 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

BACKGROUND (continued):

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 814-square foot single-story residence and 253-square foot attached garage (Attachment 1, Exhibit 9) and construction of a new 1,677-square foot two-story residence with a 299-square foot attached garage (Attachment 1, Exhibit 11). The proposed residence would exceed the allowable Floor Area Ratio (FAR). In addition, the proposed residence includes a front setback of 10 feet, where 15 feet is required, and a left-side setback of three feet, where five feet is required. The project includes one off-street parking space, where two spaces are required by the Town Code. Lastly, the project also includes 1,195 square feet of below-grade square footage that would not count towards the allowable floor area pursuant to Town Code.

The subject property is approximately 3,680 square feet and is nonconforming as to size, where 5,000 square feet is required for a parcel in the R-1D zone. A single-family residence is permitted in the R-1D zone. The proposed residence complies with the zoning regulations for height and right-side and rear setbacks. The applicant requests approval to exceed the allowable FAR, reduce the front and left-side setbacks, and an exemption to the requirement to provide two off-street parking spaces. The applicant provided a Letter of Justification discussing these requests (Attachment 1, Exhibit 4). A full discussion and analysis of the application, including the requested exceptions, is provided in the January 12, 2021, staff report to the Planning Commission (Attachment 1).

B. Planning Commission

On January 12, 2022, the Planning Commission received the staff report and addendum report (Attachments 1 and 2), opened the public hearing, and considered testimony from the applicant and the public (Attachment 3). The appellant was present at this meeting and spoke in opposition to the proposed project. After asking questions of the applicant, the Planning Commission closed the public hearing and discussed the project. The Commission voted unanimously to continue the public hearing to a date certain of February 9, 2022, directing the applicant to:

- Continue neighbor outreach efforts and contact neighbors that expressed concerns; and
- Provide a three-dimensional rendering of the proposed residence.

Attachment 3 contains the verbatim minutes of the January 12, 2022, meeting.

DISCUSSION (continued):

On February 9, 2022, the Planning Commission received the staff report and desk item report (Attachments 4 and 5), opened the public hearing, and considered testimony from the applicant and the public (Attachment 6). The appellant was present at this meeting and spoke again in opposition to the proposed project. After asking questions of the applicant, the Planning Commission closed the public hearing and discussed the project. The Planning Commission voted unanimously to approve the application subject to Conditions of Approval (Attachment 7).

Attachment 6 contains the verbatim minutes of the February 9, 2022, meeting.

C. Appeal to Town Council

The decision of the Planning Commission was appealed on February 22, 2022, prior to the 5:00 p.m. deadline, by an interested person, Shelli Baker (Attachment 8).

The appeal states that the Planning Commission based their decision on incomplete and inaccurate information; did not address the concerns of surrounding neighbors; and that pertinent information provided to staff was not forwarded to the Planning Commission (Attachment 8). 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 analysis. The applicant's full response letter to the appeal is included as Attachment 9. Supplemental information provided by the appellant on March 31, 2022, is included as Attachment 10.

1. Appellant: Plans to be revised to include omitted and accurate information and condition of approval added regarding building permit submittal.

Plans are incomplete and do not include: A Construction Management and Job Sequencing Plan, Geotech/Soils Stability Report and peer review, Site Grading Plan and Dewatering Mitigation Plan, stitch pier design for access and soil stability indicating total scope of soils export/import. (Plan currently indicates an obvious error of only 0.9 cubic yards being exported.) Storage/staging areas for lumber, waste containers, toilet, wash out area, and worker parking are also lacking from the plans.

A sampling of omitted dimensions/call outs are: sectionals, rear setback, rear deck elevation and dimensions, and partial west side setbacks ...The plans need to be revised prior to council approval.

Request: Include a condition of approval that any changes to the plans submitted to the building department shall be denied and resubmitted to the planning department and planning commission.

DISCUSSION (continued):

Applicant: Projects in the planning phase do not require construction management, job sequencing plan, geo/soils, peer review site grading/dewatering plan, stitch pier design, staging and storage design, waste containers or parking, unless specifically called out by way of site conditions/zoning. This project was not subject to those during planning review because the conditions do not warrant them at this time, but may be subject to review as part of the building permit process and/or the conditional of planning approval. The Planning and Building Department makes those determinations based on code compliance and site conditions.

All required dimensions were included in the drawings for Planning Department review. Some dimensions which may bring more clarity during the building permit process may have not yet been included, but will likely be part of that process at the appropriate time.

As discussed in both Town Planning Commission meetings, the rear deck elevation is less than required and is a walk-out condition from the ground level of the house, it is not elevated to produce a condition to invade any neighbor's privacy. To further clarify, the elevation of the rear deck is the same height as the existing floor finish of the home or lower as indicated on the Civil drawings. The required rear setback for the home is 20' and this project is in greater compliance than required.

Staff analysis: Sheet C2.0 of the Development Plans includes grading quantities for site work outside of the excavation required for the building (Attachment 1, Exhibit 11). The site grading quantities are evaluated by staff to determine if a Grading Permit will be required at the Building Permit stage of the project. In this case, the project includes less than one cubic yard of site grading, far below the threshold for a Grading Permit of 50 cubic yards. Excavation quantities, which are exempt from a Grading Permit, were not required by the Engineering Division during review of this application. Grading and excavation activities, including the off hauling of spoils, are addressed through Conditions 39, 40, 48, 57, 58, and 64 of the Draft Conditions of Approval (Attachment 7).

The appellant indicates several pieces of information were omitted from the Development Plans submitted with this application. Staff has provided an itemized response to each below. All referenced Draft Conditions of Approval can be found in Attachment 7.

- Construction Management and Job Sequencing Plan: Construction site management plans are not required under the Architecture and Site application, but are required with the materials submitted for a Building Permit as reflected in Conditions 46, 47, and 51 of the Draft Conditions of Approval;
- Geotech/Soils Stability Report and peer review: A Geotechnical report was not required by the Engineering Division under the Architecture and Site application as

DISCUSSION (continued):

- the subject property is not located in a liquefaction zone nor in close proximity to a known fault line. Peer review of a Soils Report is required with the Building Permit as reflected in Condition 20 of the Draft Conditions of Approval;
- Site Grading Plan: A Preliminary grading plan is included in the Development Plans submitted for this application (Attachment 1, Exhibit 11, Sheet C2.0);
 - Dewatering Mitigation Plan: Details for dewatering was not required under the Architecture and Site application and is not typically required under an application for a Building Permit. The Soils Report, submitted for peer review under the Building Permit application, may recommend dewatering procedures depending on the depth of the water table. If recommended, details of dewatering would be required by the Building Division during review of the Building Permit application;
 - Stitch pier design for access and soil stability indicating total scope of soils export/import: Structural details of the stitch pier design are required and will be reviewed under the Building Permit application. As discussed above, site grading quantities were provided, and excavation quantities were not required by the Engineering Division under this application. Grading and excavation activities, including the off hauling of spoils, are addressed through Conditions 39, 40, 48, 57, 58, and 64 of the Draft Conditions of Approval;
 - Storage/staging areas for lumber, waste containers, toilet, wash out area, and worker parking are also lacking from the plans: Construction site management plans are not required under the Architecture and Site application, but are required with the materials submitted for a Building Permit as reflected in Conditions 46, 47, and 51 of the Draft Conditions of Approval;
 - Sectionals (i.e., section drawings): A building section exhibit was included on Sheet A-3 of the Development Plans (Attachment 1, Exhibit 11);
 - Rear setback: The required rear setback was not included on the various Site Plans in the Development Plans (Attachment 1, Exhibit 11). Staff evaluated the project and determined that the proposed residence is located approximately 30 feet from the rear property line where a minimum 20 feet is required by the zone;
 - Rear deck elevation and dimensions: Sheet C2.0 of the Development Plans includes finished elevations of the deck of 393.36 feet to 393.53 feet (sloping away from residence) above the adjacent ground elevation of 392.47 feet. Dimensions of the deck are not included, but because the deck is essentially at-grade, it is allowed anywhere on the property under Section 29.40.070(c) of the Town Code;
 - Partial west side setbacks: West side setbacks are shown and dimensioned on Sheet A-1 of the Development Plans (Attachment 1, Exhibit 11); and
 - Include a condition of approval that any changes to the plans submitted to the Building Department shall be denied and resubmitted to the Planning Department and Planning Commission: The Community Development Department will evaluate

DISCUSSION (continued):

the plans submitted for the Building Permit and any future revisions thereto to determine if they are in substantial conformance with the approved project, as required by Draft Condition of Approval 1. If changes exceed the scope of the approved project, a modification to the approved Architecture and Site application may be required.

2. Appellant: Add street repair condition of approval.

A significant number of trucks and heavy equipment will be necessary to construct the home and off haul dirt associated with the basement. It will be very challenging for the narrow streets to accommodate these trucks and equipment and there will likely be significant damage done.

Request: Add a condition of approval that Olive Street be surveyed before and after construction (e.g. video taken by public works) and that the street, curb, gutter, sidewalk and neighborhood property be repaired to original condition.

Applicant: Projects in the planning phase do not require many of these items, however, there are required Conditions of Approval which are already part of the project: Not listed here, but there are 12 pages of Conditions of Approval of 70 items, all of which occur at the phases of work after Planning Approval.

To note: There have been several construction projects on this block over the last several years, including one which was a completely new build, with a basement.

Staff analysis: The Engineering Division did not require a preconstruction pavement survey for this project. Conditions 33, 35, 44, 45, 46, 47, and 48 of the Draft Conditions of Approval address restoration of public improvements; street and sidewalk closures; construction parking; and hauling of soil.

3. Appellant: New home to comply with minimum 5-foot side yard setbacks OR remove basement from plans.

Safety/Welfare: The stitch piercing necessary to construct a basement will cause excessive ground shaking and potential damage to the adjacent 80 year old home which is situated on a sloped lot with sump pumps underneath. This issue is further compounded by the request for reduced setbacks.

Request: Remove basement or increase setbacks to conforming.

Applicant: Projects in the planning phase do not require means and methods of construction review.

DISCUSSION (continued):

Several homes on this block have less than 3' side yard setback, including the neighbor at 120 Olive. There are also homes with basements in this neighborhood.

Stitch Pier method of construction is an industry accepted means of engineering. This method is used on even smaller 0' lot line properties. The means and methods of construction are not part of the Planning Review Process.

To Note: The soils engineer, structural engineer, architect, contractor, and homeowner all have insurances. The integrity of the design and code compliance is all part of the building permit process and construction inspections, not planning review.

Staff analysis: 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 were compatible with the neighborhood and complied with these requirements. The proposed three-foot side setback is not likely to significantly increase any ground shaking created by stitch pier drilling over what would be experienced with a five-foot side setback.

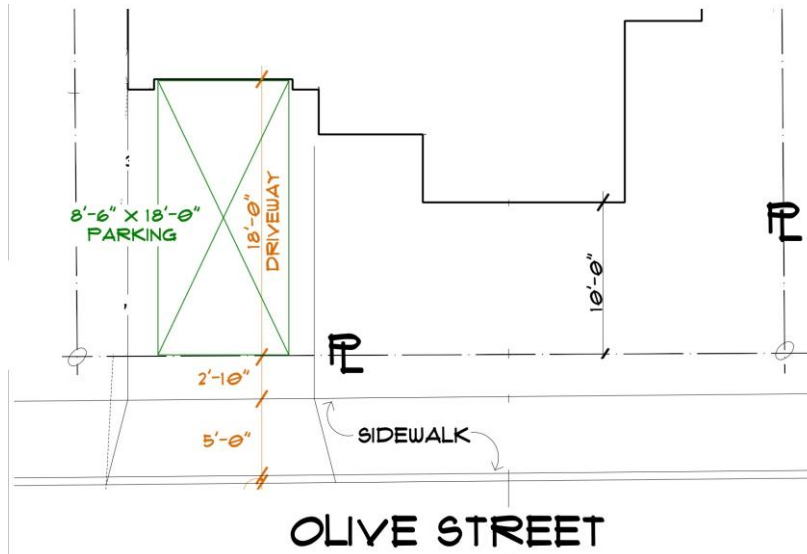
4. Appellant: Minimum 20-foot driveway added to site plan which does not include public right-of-way.

Emergency access: The narrow street width and lack of viable on-site parking will make it more difficult for cars/trucks in general and more importantly emergency vehicles to access the homes on Olive Street.

Request: provide a minimum 20-foot driveway for off-street parking that does not include the public right of way.

Applicant: *The Town requirement for a driveway is not 20', it is 18'. The project site has an 18' driveway to property line and includes than another 2'+ to the public right of way. The project is in compliance with code. Illustrated below:*

DISCUSSION (continued):



To Note: This neighborhood has several driveways which are non-complaint, including several homes with no driveway space to park, in addition to many of the garages being constructed to not actually be able to park a car. The Town Planning Department and Planning Commission specifically reviewed this project in that context as we are adding park-able driveway (code compliant) space and adding a function (code compliant) garage, thus positively impacting to the reduction of off-street parking.

Staff analysis: Staff has provided an itemized response below.

- Driveway: Section 29.10.155 of the Town Code requires driveways to be a minimum of 18-feet in length. Sheet C3.0 of the Development Plans show an existing driveway length of 17.4 feet (Attachment 1, Exhibit 11). The applicant has set the garage door one foot deep into the wall of the new residence, resulting an increased driveway length of 18.4 feet in depth. Neither measurement of driveway length includes any portion of the public right-of-way; and
- Emergency Access: The application carries no requirement to improve the existing conditions of Olive Street. The project includes the creation of a new compliant parking space within the garage of the residence, which can be counted toward the parking requirement for the property. Two additional spaces are being created on the site via the increased-length driveway and the car lift in the garage, although these spaces cannot be counted toward the parking requirement for the property.

DISCUSSION (continued):

5. Appellant: New home not to exceed FAR calculation or basement to be removed from the plans.

The FAR calculations for a non-conforming lot is already adjusted to a higher allowable coverage than conforming lots. The 1195sf basement is in addition to the allowable FAR. Additionally, the use of a basement was established to aid enlarging homes without unnecessarily impacting the neighborhood with excessive and out of scale designs.

Request: Reduce the size of the house to conform to FAR guidelines.

Applicant: This part of the project was specifically reviewed by the Planning Commission and the Planning Department. The drawings provided for planning review purposes in total is a 1195sf basement, but if reviewed against the portions of basement garage space and living area it would actually be less: Basement living: 809sf, Basement Garage: 386. The design of this project is in scale with the neighborhood as reviewed by the Town Design Guidelines, Town Staff, the Town Consulting Architect and Planning Commission. The mass and presence of the home is less than the 3 story home at the corner on 546 San Benito and homes at 125, 127 and 135 Olive as well as being very similar to its direct neighbor at 120 Olive. This is illustrated on Sheet A1.1 on the plans in profile, but was also witnessed by the Town Planning Department and Planning Commission whom all visited the site before unanimously approving the project. To also add, the story poles have been up since October 2021 (and are still up), giving proper notice for all to weigh in.

The above ground massing is consistent with Town code 29.40.072 and was reviewed in such context with the appropriate basement usage. The second story of the project is less than the footprint of the ground floor, bringing scale to the streetscape that blends with the neighborhood pattern as well as having articulation to not be a solid mass block. 61% of the massing is on the ground level and 39% on the second story.

Staff analysis: Section 29.40.255(c) of the Town Code allows for an FAR in excess of what is allowed when the project is found to be consistent with the residential development standards and the lot coverage, setbacks, and FAR of development on surrounding lots. The Planning Commission found that the proposed residence complied with these requirements.

6. Appellant: New home to comply w/ minimum front and side setbacks of 15 and 5 feet respectively.

DISCUSSION (continued):

There are no compelling or inherent constraints that prevent the proposed house from being built with very slight modifications.

Request: Simply repositioning the garage two feet to the east and the house five feet toward the rear of the property allows the house to be built with minimal changes to the design and maintains the overall integrity of the house. These minor alterations also solve the problematic substandard length driveway.

Applicant: These manageable adjustments will eliminate the need for three of the four exceptions/variances and satisfy many of the neighborhood objections and concerns.

This part of the project was specifically reviewed by the Planning Commission and the Planning Department. In fact, the Planning Commission acknowledged the constraints of this property are very tight and believed the work from the Town Architect, Planning Department and Architect of Record did a detailed job to explain why each part of the project warranted its use. Specifically citing the complaint garage and its use of the modified setback to gain compliance was well received to help ease parking concerns while also balancing the needs of the homeowners to gain a livable space inside the house and backyard to suit the needs of growing young families as the live in Los Gatos.

Summary of the direct neighbor's setbacks who exceed allowable:

Address	Side yard	Front yard
110	both sided less than 3'	4'
112	3'	8'9"
120	3' on 2 story home	11'
125	1'	5'
127	1'6"	7'
129	under 2'	
131	under 2'	8'
133	3'	7'

Staff analysis: 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.

7. Appellant: Pertinent information was provided and not delivered to the Planning Commission. Please see attached email from Sean Mullin, Project Planner, and accompanying letter and signature page dated February 7, 2022, from the neighbors.

DISCUSSION (continued):

Applicant: A letter appears to have been inadvertently not included as part of the process, however, during both Planning Commission meetings each of the topics included in this letter were specifically cited and considered during the approval. Including: Planning Commissions acceptable of applicants neighborhood outreach, parking and driveway conditions, setbacks, square footage/FAR, rear deck height and overall height.

Staff analysis: The referenced letter (Attachment 8) from Darren Carroll was hand-delivered to the staff on February 8, 2022, at approximately 11:35 a.m., ahead of the deadline for inclusion in the February 9, 2022, Desk Item to the Planning Commission. Staff inadvertently did not include the letter in the Desk Item, but did include an updated signature page received via email on February 9, 2022 (Attachment 5, Exhibit 18). The author of the letter, as well as several of the signatures of the letter, spoke at both the January 12, 2022, and February 9, 2022, Planning Commission hearings.

PUBLIC COMMENTS:

Story poles and signage have been maintained on the site since the January 12, 2022, 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.

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 11) denying the appeal and approving the application with the required Findings (Attachment 11, Exhibit A), Conditions of Approval (Attachment 11, Exhibit B), and Development Plans (Attachment 1, Exhibit 11).

CONCLUSION (continued):

B. Alternatives

Alternatively, the Town Council could:

1. Adopt a resolution to grant the appeal and remand the application back to the Planning Commission with specific direction (Attachment 12);
2. Adopt a resolution granting the appeal and denying the application (Attachment 13); or
3. Continue the application to a date certain with specific direction.

ATTACHMENTS:

1. January 12, 2022 Planning Commission Staff Report, with Exhibits 1-11
2. January 22, 2022 Planning Commission Addendum Report, with Exhibits 12-13
3. January 12, 2022 Planning Commission Verbatim Minutes
4. February 9, 2022 Planning Commission Staff Report, with Exhibits 14-15
5. February 9, 2022 Planning Commission Desk Item Report, with Exhibits 16-18
6. February 9, 2022 Planning Commission Verbatim Minutes
7. February 10, 2022 Planning Commission Action Letter
8. Appeal of the Planning Commission Decision, received February 22, 2022
9. Applicant's Response to Appeal, received March 21, 2022
10. Supplemental Information from Appellant, received March 31, 2022
11. Draft Resolution to Deny Appeal and Approve Project, with Exhibits A and B
12. Draft Resolution to Grant Appeal and Remand Project to Planning Commission
13. Draft Resolution to Grant Appeal and Deny Project