



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 06/17/2025

ITEM NO: 24

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DATE: June 12, 2025  
TO: Town Council  
FROM: Chris Constantin, Town Manager  
SUBJECT: Consider an Appeal of a Planning Commission Decision Denying a Request to Demolish an Existing Accessory Structure and Construct a New Accessory Structure Exceeding 1,000 Square Feet in Gross Floor Area and Site Improvements Requiring a Grading Permit on Property Zoned HR-2½. **Located at 16511 Cypress Way.** APN 532-24-004. Architecture and Site Application S-24-045. Exempt Pursuant to the CEQA Section 15303(a): New Construction or Conversion of Small Structures. Property Owners: Jackie and Scott Kolander. Applicant: Michael Harris. Project Planner: Suray Nathan.

RECOMMENDATION:

Adopt a resolution denying an appeal of a Planning Commission decision denying a request to demolish an existing accessory structure and construct a new accessory structure exceeding 1,000 square feet in gross floor area and site improvements requiring a Grading Permit on property zoned HR-2½, located at 16511 Cypress Way.

FISCAL IMPACT:

Denying or granting the appeal does not impact the Town's budget.

STRATEGIC PRIORITIES:

The proposed project aligns with the adopted Core Goal of **Community Character** and the **Strategic Priority** to preserve the Town's small-town charm and provide a range of housing opportunities and historic neighborhoods, while diligently maintaining and implementing the Housing Element.

BACKGROUND:

The subject property is located on the south side of Cypress Way, approximately 1.4 miles southeast of Los Gatos Boulevard. All surrounding properties are zoned Hillside Residential and

PREPARED BY: Suray Nathan  
Assistant Planner

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

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developed with single-family residential uses. The property is zoned HR-2½ and has a gross lot size of 54,624 square feet. The average slope of the property is 32 percent, and the resulting net lot size is 21,849 square feet.

On August 30, 2024, the applicant applied for an Architecture and Site Application for a 1,239-square foot detached accessory structure consisting of a three-car garage with a workshop.

On April 23, 2025, the Planning Commission considered the application, including written and applicant's comments (Attachments 2 and 3). The Planning Commission denied the application as described in the Action Letter (Attachment 4) and in Section B below.

On April 30, 2025, the decision of the Planning Commission was appealed to the Town Council by the property owner, Scott Kolander (Attachment 5). The appellant indicated that there was an error or abuse of discretion by the Planning Commission, 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 June 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 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 to demolish an existing detached garage and construct a new 1,239-square foot detached three-car garage with a workshop. The proposed accessory structure would be located at the southeast end of the hillside property. The structure would have a maximum height of 15 feet, the maximum allowed for accessory structures. The project requires exceptions to the Hillside Development Standards and Guidelines (HDS&G) for light

reflectivity value (LRV) exceeding 30 and grading depths with cuts exceeding the maximum allowed for accessory buildings, hardscape, and landscape (Attachment 2, Exhibit 9).

A single-family residence and accessory structures are permitted in the HR-2½ zone. The proposed detached garage is in compliance with the allowable floor area, height, setbacks, and on-site parking requirements. The April 23, 2025, Planning Commission Staff Report (Attachment 2) provides a full discussion and analysis of the application.

B. Planning Commission

On April 23, 2025, the Planning Commission received the staff report (Attachment 2). After receiving the applicant's comments and asking questions of the applicant, the Planning Commission closed the public hearing and discussed the project. The Planning Commission was unable to make the required finding that the project was in compliance with the HDS&G due to the excessive depth of cut needed to construct an expanded garage and voted four to one to deny the application (Attachments 3 and 4).

C. Appeal to Town Council

The decision of the Planning Commission was appealed on April 30, 2025, by the property owner, Scott Kolander (Attachment 5). On the appeal form, the appellant states that there was an error or abuse of discretion by the Planning Commission and the Planning Commission's decision is not supported by substantial evidence in the record. The appellant submitted a letter in support of their appeal (Attachment 5). Below are excerpts from the appellant's letter in italics followed by staff's response.

1. **There was an error or abuse of discretion by the Planning Commission:**

Excerpt from Appellant's Letter: *The existing terrain of the site, current location of the garage, and current site development will not accommodate any rebuild or expansion without a grading exemption to the Hillside Development Standards & Guidelines. The house and garage were built in the 1960s, well before the Hillside Development Standards & Guidelines came into effect. Without the benefit of the current standards in place at that time, the garage was built utilizing cut depths exceeding the current Standards/Guidelines.*

Staff response: The current site conditions will likely accommodate a rebuild of a two-car garage; however, an expanded garage would require grading. The proposed accessory building and associated site grading exceed the maximum allowable cut depths of four feet outside the footprint of a primary residence. The applicant proposes maximum cut depths of 13 feet, six inches, for the accessory building (garage), 11 feet for the hardscape, and seven feet for the landscape. The following table illustrates the proposed cut depths.

<b>Maximum Graded Cuts and Fills Depth</b>				
<b>Site Element</b>	<b>Proposed Cut Depth (Ft)</b>	<b>Max Allowed Cut Depth (Ft)</b>	<b>Fill</b>	<b>Earthwork Cut (CY)</b>
Accessory building	13.5	4	0	122
Hardscape	11	4	0	57
Landscape	7	4	0	236

Excerpt from Appellant's Letter: *Commissioners were not able to visit or view the site, like with all other projects under consideration, because they were unable to find the property or got lost. The on-site visual opportunities and context were not afforded to this project, as with other projects. Internet resources, such as Google Earth, do not provide the same level of in-person visual context. As discussed with staff in preparation for the appeal, the owner has agreed to set a period of time (days) before the meeting by providing access to the gate at the driveway. The owner has dogs and will have them out of the way as well. The personal and visual aspect of the site will clearly illustrate the unique aspect of the site and the limitations with regards to grading cut depths.*

Staff response: Several of the Planning Commissioners disclosed that they were not able to access the site due to difficulty finding the location or a locked gate (Attachment 3). While the Planning Commission handbook discusses site visits as an option, neither the Planning Commission handbook nor the Town Code includes site visits as a requirement.

Excerpt from Appellant's Letter: *Approval or denial of Hillside Development Standards and Guidelines exemptions are not consistent.*

Staff response: An Architecture and Site Application is a discretionary application. At their discretion, the deciding body administers the HDS&G in response to the merits of the application, the unique characteristics of the site, and the justification provided by the applicant.

Excerpt from Appellant's Letter: *The Planning Commission's denial prevents the owner from the opportunity to replace or expand a common accessory structure that exists with most single-family residential properties. The project meets all other Hillside Development Standards and Guidelines, except for grading and LRV.*

Staff response: The Town Code requires that a property with a single-family dwelling provide two parking spaces on site. The site contains an existing 587-square foot two-car garage with an attached 96-square foot shed, providing the required on-site parking. If the existing garage is in need of replacement, the site would likely accommodate a new garage of similar size with little grading impacts. The applicant proposes to demolish the existing two-car garage and construct a new 1,239-square foot, three-car garage and workspace. While the proposed garage would allow the property to continue to provide the required parking on site, the expanded footprint increases the

development intensity on the site and requires exceptions to the grading standards in the HDS&G.

As reflected in their discussion, the Planning Commission was generally supportive of the exception to LRV standards given the limited visibility of the project site.

Excerpt from Appellant's Letter: *Jeffrey Barnett asked Planning staff (after public comment was closed) if the grading limit is 50 cubic yards and the application is for 415 cubic yards and Planning staff confirmed yes. Please note that the Hillside Development Standards & Guidelines does not limit the amount of grading quantity. Rather 50 cubic yards is the threshold where a grading permit is required. This confirmation and line of questioning may have factored into the decision by certain Planning Commission members to deny an exemption for grading.*

Staff response: The appellant/applicant is correct in stating that 50 cubic yards is the threshold for triggering a Grading Permit and that the HDS&G does not provide a nominal limit for cumulative grading quantities. The project includes site improvements outside of the building footprint with grading quantities of 293 cubic yards, requiring approval of a Grading Permit. The project also includes cut depths in excess of the limitations provided in the HDS&G, requiring an exception. The HDS&G includes grading standards such as cut and fill depth limitations to ensure that new construction retains the existing landform of the site and follows the natural contours. Cut and fill depths that exceed the standards are considered contrary to the objectives set forth in the HDS&G.

Excerpt from Appellant's Letter: *Planning Commission's concern about setting new precedence for other projects is not related to the unique and specific conditions of the already developed site.*

Staff response: An Architecture and Site Application is a discretionary process considered on a case-by-case basis. The decision made on one application does not set a precedent for decisions on future applications.

Excerpt from Appellant's Letter: *Planning Commission's concern about safety and stability for exceeding grading cuts is subjective due to the lack of a geotechnical soils report supporting this. A Geotechnical soils report is submitted during the Building plan check, along with grading permits, not during the Planning review; however, it will be made available upon request.*

Staff response: The Planning Commission deliberated on the aesthetics of the proposed cut and grading to the topography, as well as the safety it may pose.

Excerpt from Appellant's Letter: *Maximum grade cuts are based upon the existing terrain, preserving natural features and drainage and utilizing the existing garage*

*location. Note that the garage foundation level is being maintained in the addition thus the noted maximum cut noted in the garage line item.*

*A request for exemption is requested due to existing conditions on site. The garage is maintaining the same pad elevation as the existing removed. Due to the existing site configuration and constraints, cutting an additional 5.5' is necessary to maintain the same pad elevation. Elevating the garage would require significantly more grading and asphalt modifications. The same is true for the additional 7' of cut for the miscellaneous hardscape and additional 3' of cut for the landscaping.*

Staff response: Chapter III, Standard A.1 of the HDS&G notes that cuts and fills in excess of those provided in the following table levels are considered excessive and contrary to the objectives of the HDS&G. Grading should be minimized to the amount necessary to accommodate buildings and to site structures consistent with slope contours. The grading limitations are maximum numbers and may be increased by the deciding body if the project does not meet other grading standards or is not consistent with the goals and objectives of the HDS&G. The maximum allowed cut depth is four feet outside the footprint of a primary residence. The applicant proposes maximum cut depths of 13 feet, six inches, for the accessory building (garage), 11 feet for the hardscape, and seven feet for the landscape.

**Table 1  
 Maximum Graded Cuts and Fills**

<b>Site Element</b>	<b>Cut*</b>	<b>Fill*</b>
House and attached garage	8'**	3'
Accessory Building*	4'	3'
Tennis Court*	4'	3'
Pool*	4'***	3'
Driveways*	4'	3'
Other (decks, yards) *	4'	3'

\* Combined depths of cut plus fill for development other than the main residence shall be limited to 6 feet.

\*\* Excludes below grade square footage pursuant to Section 29.40.072 of the Town Code.

\*\*\* Excludes excavation for pool.

**2. The Planning Commission’s decision is not supported by substantial evidence in the record:**

Excerpt from Appellant’s Letter: *The site is already developed. The garage is being rebuilt in the same location along with the increased area.*

Staff response: The concerns of the Planning Commission were not that the garage was being rebuilt, but that the increase in size of the garage from a 587-square foot two-car garage with an attached 96-square foot shed to a new 1,239-square foot three car garage with a workshop necessitates cuts that exceed the maximum allowed standards in the HDS&G. The applicant proposes maximum cut depths of 13 feet, six inches, for

the accessory building (garage), 11 feet for the hardscape, and seven feet for the landscape, where the maximum allowed depth of cut is four feet.

Excerpt from Appellant's Letter: *The existing garage, built in the 1960's, is showing signs of aging and needs to be addressed. There is efflorescence on the existing CMU retaining wall that is causing oxidation of owner's contents in the garage. Portions of the roof framing show signs of deflection throughout the years and repairs need to be made to prevent future intrusion of insects and invasive organisms.*

Staff response: The condition of the existing garage may justify its demolition and replacement; however, the concern of the Planning Commission was the excessive depth of cut and grading for demolishing the existing 587-square foot two-car garage and attached 96-square foot shed and replacing it with a new 1,239-square foot, three-car garage and workshop. The Planning Commission was unable to make the finding that the project was in compliance with the HDS&G due to excessive cut depths.

Excerpt from Appellant's Letter: *The Town's Architectural project review indicated there were no recommendations for changes.*

Staff response: The Town's Consulting Architect's task is to review the proposed design in terms of its compliance with the Residential Design Guidelines as it pertains to the terrain and the neighborhood context and not deliberate on the exceptions requested by the applicant for the project.

Excerpt from Appellant's Letter: *The existing garage, with relation to the existing slopes, exceeded these current limits when originally built in 1960's. Replacement or increasing area of any size would require an exemption.*

Staff response: The proposed project is reviewed using the current standards stipulated in the HDS&G. The proposed project requires an exception for exceeding the maximum allowed depth of four feet cut. The applicant proposes maximum cut depths of 13 feet, six inches, for the accessory building (garage), 11 feet for the hardscape, and seven feet for the landscape.

Excerpt from Appellant's Letter: *A soils report was not requested during Staff review, which included Public Works Engineering that review grading, drainage and retaining wall configurations during planning, nor requested during the Planning Commission to allow a proper engineering review for the life safety and stability concerns of the Commission members.*

Staff response: A soils report is not needed during the discretionary phase of the project, but would be required by the Town's engineer during the Building Permit phase.

Excerpt from Appellant's Letter: *A follow up question by a commission member was asked if a geotechnical study done to support grading at these levels. The response was*

*yes, a soils report was performed that addresses both grading and foundation. The geotechnical engineer would supply a letter reviewing the structural engineer's foundation design and the civil engineer's grading design indicating substantial conformance with the conditions in the soils report during building plan check and grading permit. Please note that the geotechnical study and subsequent issuance of the soils report performed on June 13, 2024, contains the following:*

- *Analyzes regional setting, geology, landsliding, site, subsurface and ground water;*
- *Laboratory testing for soil and bedrock properties along with moisture content & dry density;*
- *Findings for building site, slope stability and seismicity, including landsliding screening analysis;*
- *Recommendations for garage location, seismic design criteria, earthwork including grading and trenching, foundations, retaining walls, flat work and drainage;*
- *Conditions for plan view to ensure structural and civil design for the above elements are in substantial conformance to the issued soils report; and*
- *Requirements for construction observation.*

Staff response: A geotechnical study was not required during review of the Architecture and Site application, but would be required during review of a Building Permit for the project.

3. **Supporting Elements:** The applicant in the attachment to the appeal also provided supporting arguments to the proposed project, and excerpts are provided below:

Excerpt from supporting elements: *Request for exemption for LRV exceeding 30 was accepted by the commission since the colors, textures and materials will match the primary structure. The structure (1960's) was built well before the Hillside Development Standards & Guidelines for LRV limits were adopted in 2004.*

Staff response: As reflected in their discussion, the Planning Commission was generally supportive of the exception to LRV standards given the limited visibility of the project site.

Excerpt from supporting elements: *There are numerous items that would fall out of compliance and other elements would need to be addressed if the garage were elevated 7'-0" to meet the grading cut length limitations of the Hillside Development Standards & Guidelines.*

- *Modification of the turnaround space in front of the garage to elevate it by 7'-0" and requiring 7'-0" of hardscape fill which exceeds the fill lengths in the Hillside Development Standards & Guidelines;*
- *Retaining walls added that would exceed 5'-0" in height. A stepped approach would interfere with the primary residence;*

- *Modification of the driveway steeper than it currently is, much beyond the 15 degrees allowed by the Hillside Development Standards & Guidelines;*
- *Modification of the access to the primary structure and other portions of the property*
- *The resultant height of the accessory structure would be approximately 7'-0" higher than the primary structure;*
- *Elevation of the accessory structure would increase visibility and may overturn the LRV exemption because of its new prominence and visibility outside of the property;*
- *Fall out of compliance for the building height section in the Hillside Development Standards & Guidelines by being more than 3 feet above the existing grade; and*
- *There are other items within the Hillside Development Standards & Guidelines that would fall out of compliance as a result of lifting the garage structure.*

Staff response: The appellant notes that the expanded garage footprint would require other exceptions to the HDS&G were it modified to meet the grading depth limitations. Outside of the footprint of the existing garage, the site is constrained by sloped terrain and expanded development would require additional exceptions to the HDS&G, which provides that existing natural features, such as existing topography, shall be retained to the greatest extent feasible and integrated into the development project.

Excerpt from supporting elements: *As described by the dissenting Planning Commissioner, Steve Raspe, the project addresses Hillside Development Standards & Guidelines with satisfactory justification for LRV and grading exemptions and addresses County of Santa Clara Fire Department provisions to make the site safer than what currently exists today.*

Staff response: As reflected in their discussion, the Planning Commission was generally supportive of the exception to LRV standards given the limited visibility of the project site. The project was reviewed and approved by the Santa Clara County Fire Department, which approved an Alternate Means/Methods Request (AMMR) for the project. The Planning Commission was unable to make the required finding that the project was in compliance with the HDS&G due to the excessive depth of cut needed to construct an expanded garage and voted four to one to deny the application.

Excerpt from supporting elements: *The proposed project addresses fire-life safety as the site it is classified and located in a Very High Fire Hazard Severity Zone in State of California Responsibility Area as defined by CAL Fire (California Department of Forestry and Fire Protection) with the following provisions and mitigations:*

- *Approved AMMR (Alternate Means/Methods Request) #25-0417:*
  - *Installation of a 5,000 gallon fire water tank;*
  - *Installation and connection of a new wharf fire-hydrant;*
  - *Installation of NFPA 13D fire sprinklers in the garage;*
  - *Installation of 2-hour fire-rated walls between garage and breezeway; and*
  - *Install address signage at Cypress Way fork to accommodate increased visibility for emergency response personnel to effectively locate the property.*

- *Incorporation of State of California Wildland-Urban Interface Guidelines for building construction methods that reduce the hazard of building ignition with the following:*
  - *Exterior cladding with ignition resistant materials (stucco);*
  - *Class A asphalt roof tiles;*
  - *Closed eaves;*
  - *Ember resistant soffit vents;*
  - *Ember resistant ridge vents;*
  - *Ember resistant gable-end vents;*
  - *Metal-cladded door and frame assemblies with tempered glazing;*
  - *Windows double-paned and tempered;*
  - *All doors have perimeter weather stripping; and*
  - *Door bottoms included to reduce ember intrusion.*
  
- *Incorporation of State of California Wildland-Urban Interface Guidelines for defensible space to reduce hazardous vegetation around houses and reduce the potential severity of wildfire exposure with the following methods:*
  - *Zone a- Incorporation of non-combustible surfaces and materials within 5' of the garage. A total of 2 trees have been removed in this zone as well; and*
  - *Zone 1 - Removing a total of 6 trees in this zone to accommodate grading and accommodate a tree canopy fire break along with maintaining ground cover, removing dead weeds and elevating remaining tree canopies to at least 6'-0" clear from the ground.*

Staff response: The project was reviewed and approved by the Santa Clara County Fire Department, which approved an Alternate Means/Methods Request (AMMR) for the project.

Excerpt from supporting elements: *The colors, textures and materials will match the primary structure. The scale of the structure is within zoning height limitations and complies with the Hillside Development Standards. Other attributes are discussed further in detail in the section above including architectural style, height, bulk, scale, roofs, windows, materials, architectural features, privacy, sustainable design and fire-life safety. An exemption has been requested for the LRV exceeding 30 since the intent for the proposed garage assembly is to have the same materials, textures and colors to match the existing residence for what is already established on site.*

- *The colors, textures and materials will match the primary structure;*
- *Exterior cladding is stucco and will match the main residence;*
- *Roof is asphalt shingle tiles and will match the main residence Trim, gutters and fascia will match the main residence;*
- *Doors will match the stucco color; and*
- *Lattice and breezeway wall will match the existing nearby BBQ terrace.*

Staff response: As reflected in their discussion, the Planning Commission was generally supportive of the exception to LRV standards given the limited visibility of the project site. The Planning Commission was unable to make the required finding that the project was in compliance with the HDS&G due to the excessive depth of cut needed to construct an expanded garage and voted four to one to deny the application.

PUBLIC COMMENTS:

Pursuant to Town policy, story poles are not required for this project as it is an accessory structure under 18 feet in height. Written notice was sent to property owners and residents within 500 feet of the subject property. Public comments received by 11:00 a.m., Thursday, June 12, 2025, are included as Attachment 6.

ENVIRONMENTAL REVIEW:

The project is Categorically 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 1) 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 approving the application; or
3. Continue the application to a date certain with other specific direction.

ATTACHMENTS:

1. Draft Resolution to Deny Appeal and Uphold the PC Decision
2. April 23, 2025 Planning Commission Staff Report, with Exhibits 1-9
3. April 23, 2025 Planning Commission Verbatim Minutes
4. April 24, 2025 Planning Commission Action Letter
5. Appeal of the Planning Commission Decision, received April 30, 2025\_Redacted
6. Public comments received by 11:00 a.m., Thursday, June 12, 2025

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