



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 08/09/2023

ITEM NO: 2

DATE: August 4, 2023
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of a Community Development Director Decision to Deny a Tree Removal Permit on Property Zoned R-1:8. **Located at 16496 Hilow Road.** APN 532-04-072. Categorically Exempt Pursuant to CEQA Guidelines Section 15304: Minor Alterations to Land. Tree Removal Permit T23-089. Property Owner/Applicant/Appellant: Kim and Nico Hailey. Project Planner: Ryan Safty.

RECOMMENDATION:

Consider an appeal of a Community Development Director decision to deny a Tree Removal Permit on property zoned R-1:8, located at 16496 Hilow Road.

PROJECT DATA:

General Plan Designation: Low Density Residential
Zoning Designation: R-1:8
Applicable Plans & Standards: General Plan, Zoning Regulations
Parcel Size: 11,109 square feet
Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Low Density Residential	R-1:8
South	Residential	Low Density Residential	R-1:8
East	Residential	Low Density Residential	R-1:8
West	Residential	Low Density Residential	R-1:8

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15304: Minor Alterations of Land.

FINDINGS:

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15304: Minor Alteration of Land.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

On May 17, 2023, the Parks and Public Works Department received a Tree Removal Permit application (Exhibit 4) to remove two large Redwood trees in the front yard of 16496 Hilow Road. The trees are approximately 120 feet tall and are located approximately eight feet from the front of the residence, as noted in the application form. The trees are considered protected trees per Town Code Section 29.10.0960, thus requiring approval of a Tree Removal Permit prior to removal. The property owner requested removal of the trees based on safety concerns associated with their height and location in close proximity to the foundation of the home. The Town Arborist, Rob Moulden, conducted an inspection of the property and the trees, and denied the Tree Removal Permit application on June 12, 2023, as, "both trees are healthy [and] root damage is minor," (Exhibit 4). Mr. Moulden also noted that the trees are under 100 feet in height and are approximately 15 feet from the foundation. No visible damage to the foundation, or to the six-foot deep porch located in between the trees and the foundation, was evident during the site inspection. The Town Arborist directed the owners to conduct structural pruning instead.

On June 13, 2023, the property owners appealed this Tree Removal Permit denial to the Planning Commission (Exhibit 5).

DISCUSSION:

A. Appeal Analysis

The property owner appealed the denial of their Tree Removal Permit as they feel the tree is damaging their foundation and has outgrown the property. Specifically, the appeal mentions that the trees are over 120 feet tall and only eight feet from their foundation, and the appeal packet includes additional evidence to support that assertion.

DISCUSSION (continued):

The property owners provided a receipt for foundation repair and an invoice statement from a design group showing that engineering inspections and foundation work occurred on the residence in 2015; however, the receipts are not accompanied by a report, so it is unclear what foundation work occurred and what caused the damage. Additionally, a termite inspector looked at the property in May of 2023 and noted vertical foundation cracking, and pictures of this foundation cracking are included in the appeal packet (Exhibit 5). No documentation or report from the termite inspector was provided, and it is not clear what caused the foundation cracking identified in the image in Exhibit 5.

The appeal letter also notes that the tree roots have damaged sewer pipes and that this is expected to continue. There is also concern related to the height and weight of the tree limbs, and potential safety concerns or property damage associated with windstorms.

In addition to structural and utility concerns, the trees are noted to have diminished the use of the front yard as the roots are up to one-foot in diameter and have lifted the hardscape and damaged the driveway. The solar panels are substantially blocked by the trees, and the owners feel that the value of the property has been reduced significantly by the overgrown trees.

Lastly, the appeal letter quotes Town Code Section 29.10.0950 (Tree Protection – Intent): “It is the intent of this division to regulate the removal of trees within the Town in order to retain as many trees as possible consistent with the purpose of this section and the reasonable use of private property.”

In order for the Town to approve a protected Tree Removal Permit, one or more of the following findings in Town Code Section 29.10.0992 must be made:

1. The tree is dead, severely diseased, decayed, or disfigured to such an extent that the tree is unable to recover or return to a healthy and structurally sound condition.
2. The tree has a tree risk rating of Extreme or High on the ISA Tree Risk Rating Matrix as set forth in the ISA Tree Risk Assessment Best Management Practices, or successor publication.
3. The tree is crowding other protected trees to the extent that removal or severe pruning is necessary to ensure the long-term viability of adjacent and more significant trees.
4. The retention of the tree restricts the economic enjoyment of the property or creates an unusual hardship for the property owner by severely limiting the use of the property in a manner not typically experienced by owners of similarly situated properties, and the applicant has demonstrated to the satisfaction of the Director or deciding body that there are no reasonable alternatives to preserve the tree.

DISCUSSION (continued):

5. The tree has, or will imminently, interfere with utility services where such interference cannot be controlled or remedied through reasonable modification, relocation, or repair of the utility service or the pruning of the root or branch structure of the tree; or where removal or pruning is required by a public utility to comply with California Public Utility Commission (CPUC) or Federal Energy Regulatory Commission (FERC) rules or regulations.
6. The tree has caused or may imminently cause significant damage to an existing structure that cannot be controlled or remedied through reasonable modification of the root or branch structure of the tree.
7. Except for properties within the hillsides, the retention of the protected tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five (25) percent.
8. The removal of the tree is unavoidable due to restricted access to the property.
9. The removal of the tree is necessary to repair a geologic hazard.
10. The removal of the tree and replacement with a more appropriate tree species will enhance the Town's urban forest.
11. The removal of the tree is necessary to conform with the implementation and maintenance of Defensible Space per Chapter 9 - Fire Prevention and Protection per direction by the Fire Chief or his/her designee.

Based on the additional information provided in the appeal packet, it appears Findings 4, 5, or 6 are most applicable in this case.

B. Environmental Review

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15304: Minor Alteration of Land.

PUBLIC COMMENTS:

Written notice 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.

CONCLUSION:

A. Summary

The property owners are appealing the denial of a Tree Removal Permit application for the removal of two large Redwood trees in the front yard of 16496 Hilow Road. When appealing the decision, the property owners provided additional documentation to support making the required findings in Town Code Section 29.10.0992 to grant the appeal and approve the Tree Removal Permit.

B. Recommendation

Staff recommends that the Planning Commission consider the additional information provided in the appeal packet and determine if any of the required findings in Town Code Section 29.10.0992 can be made to approve the permit. If the Planning Commission determines that one of the findings can be made to approve the permit, it should take the following actions to grant the appeal and approve the Tree Removal Permit:

1. Find that the proposed project is categorically exempt pursuant to the adopted Guidelines for the implementation of the California Environmental Quality Act, Section 15304: Minor Alterations of Land (Exhibit 2);
2. Make one of the findings as required by Section 29.10.0992 of the Town Code for approval of a Tree Removal Permit; and
3. Grant the appeal and approve the Tree Removal Permit T23-089 with the conditions contained in Exhibit 3.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Deny the appeal and uphold the Community Development Director decision to deny the Tree Removal Permit; or
3. Grant the appeal with additional and/or modified conditions of approval.

EXHIBITS:

1. Location Map
2. Required Findings if Appeal is Granted
3. Recommended Conditions of Approval if Appeal is Granted
4. Tree Removal Permit, received May 17, 2023
5. Appeal Packet, received June 13, 2023

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