



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/13/2025

ITEM NO: 1

DATE: May 9, 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 and Site Improvements Requiring a Grading Permit on Vacant Property Zoned HR-1. **Located at 16497 S. Kennedy Road.** APN 532-17-038. Architecture and Site Application S-24-037. Categorically Exempt Pursuant to CEQA Guidelines Section 15303: New Construction or Conversion of Small Structures. Property Owner: Robert Nicol. Applicant: Chris Spaulding. Appellants: Kenneth Miller and Apoorna Bakshi. Project Planner: Jocelyn Shoopman.

RECOMMENDATION:

Adopt a resolution (Attachment 7) denying an appeal of a Planning Commission decision to approve a request to construct a new single-family residence and site improvements requiring a Grading Permit on vacant property zoned HR-1, located at 16497 S. Kennedy Road.

BACKGROUND:

The subject property is located south of Kennedy Road and accessed via Vivian Drive, a private road serving several lots east of the property (Attachment 1). The subject property is vacant and approximately 2.56 acres (111,843 square feet) with an average slope of 45 percent.

On February 27, 2023, the Town approved a Senate Bill 9 (SB 9) Urban Lot Split (ULS) for the property located at 16491 S. Kennedy Road, submitted by the current applicant for this Architecture and Site application. Through the creation of the ULS, the subject property at 16497 S. Kennedy was created. The ULS divided a 4.276-acre lot into two parcels: a 74,531-square foot lot developed with a 6,189-square foot single-family residence and 1,170-square foot garage; and the subject property, a 111,843-square foot vacant lot. The subject property is zoned HR-1 and complies with the minimum lot area and lot width.

PREPARED BY: Jocelyn Shoopman
Senior Planner

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

On June 21, 2024, the applicant submitted an Architecture and Site application for the construction of a single-family residence and associated site grading on the subject vacant property.

On March 26, 2025, the Planning Commission considered the application, including written and verbal public comments, and approved the request (Attachments 1 through 3).

On April 3, 2025, the decision of the Planning Commission was appealed to the Town Council by interested persons, Kenneth Miller, property owner of 16565 Kennedy Road, and Apoorna Bakshi, property owner of 16515 S. Kennedy Road (Attachment 5). On the appeal form, the appellants indicated that there was an error or abuse of discretion by the Planning Commission and the Planning Commission's decision was 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 appellants meet 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 May 21, 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 there was an error or abuse of discretion by the Planning Commission. Pursuant to Town Code Section 29.20.275, in the written appeal, the appellant needs to describe how there was an error or abuse of discretion. "Abuse of discretion" includes: 1) not proceeding in a manner required by law, 2) making an order or decision that is not supported by the findings, or 2) making findings that are not supported by substantial evidence. 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 4,194.2-square foot, two-story residence with an attached two-car garage (Attachment 1). In addition to the 4,194.2 square feet of

countable FAR, the residence includes 800.1 square feet of below-grade square footage. The residence also includes an attached 663.4-square foot garage.

Due to the existing topography of the site, the few areas of the Least Restrictive Development Area (LRDA) are concentrated in the southwest portion of the property, adjacent to existing easements. The proposed residence and attached garage are located outside of the LRDA due to site constraints and placement of the proposed structure adjacent to the existing access off of Vivian Drive (Attachment 1). The front yard area includes the proposed driveway, guest parking spaces, and a firetruck turnaround. The proposed residence would not be visible from any of the Town's established viewing platforms, pursuant to the HDS&G. Within the immediate neighborhood, the proposed project results in the sixth largest residence in terms of total square footage and the fourteenth largest in terms of FAR.

A single-family residence is permitted in the HR-1 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 grading depths, retaining wall heights, retaining wall length, and the LRDA. A full discussion and analysis of the application is provided in the March 26, 2025, Planning Commission Staff Report (Attachment 1).

B. Planning Commission

On March 26, 2025, the Planning Commission received the Staff Report and Desk Item (Attachments 1 and 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 requiring landscape screening, modifications to the windows on the southwest elevation, and modification to the smaller deck along the southwest elevation (Attachment 4, Conditions 3 through 5). The Planning Commission unanimously voted to approve the application. Attachment 3 contains the verbatim minutes.

C. Appeal to Town Council

The decision of the Planning Commission was appealed on April 3, 2025, by interested persons, Kenneth Miller and Apoorna Bakshi (Attachment 5). On the appeal form, the appellants indicated that there was an error or abuse of discretion by the Planning Commission and the Planning Commission's decision was not supported by substantial evidence in the record.

Since the decision of the Planning Commission was appealed, the applicant has proposed the following modifications to the drawings that are also reflected in Attachment 6:

1. A reduction in the size of the windows along the southwest elevation by 20 percent;
2. The removal of the smaller deck, adjacent to the living room/dining room along the southwest elevation;
3. A reduction in the size of the deck, adjacent to the family room along the southwest elevation;
4. The removal of a panel of the glass doors, adjacent to the family room along the southwest elevation;
5. A reduction in the height of the glass doors, adjacent to the family room along the southwest elevation from 16 feet to 12 feet and;
6. The planting of six-foot tall evergreen trees along the entirety of the basement floor.

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 (Attachment 6), and staff's response.

1. Appellant: The height of the structure can be lowered by not placing the garage under the house.

Applicant's Response: The maximum height of the proposed house is less than allowed within the Hillside Development Standards and Guidelines. The proposed residence isn't more than 25 feet high at any location and is not more than 35 feet high from the lowest point to the highest ridge line.

Staff Response: The project is proposing an attached two-car garage that is placed on the first level of the structure. No floor area for the two-car garage is considered to be below-grade square footage.

2. Appellant: The applicant has damaged the integrity of the stone wall.

Applicant's Response: The bolt in the wall has been addressed. The story pole installer is going to install a metal pole in front of the wall on my property and attach the wire to the pole taking the pressure off the historic wall. I will then have the bolt carefully removed after consulting an engineer.

Staff Response: The existing stone wall is located on the adjacent property located at 16575 Kennedy Road.

3. Appellant: The applicant may not utilize the private driveway as a private road.

Applicant's Response: I have never stated the driveway is my driveway or ever told anyone I was going to install a gate and lock. This is an open driveway and has been so since I owned the property. I am not going to install a gate or lock now.

Staff Response: An existing asphalt road traverses the western portion of the property, adjacent to the intersection of S. Kennedy Road and Kennedy Road. Access to the proposed single-family home is proposed off of the existing private road, Vivian Drive.

4. Appellant: The applicant needs to resurface the existing access road, Vivian Drive, from damage incurred from a previous project and the proposed project.

Applicant's Response: *The fire department has made it a requirement to upgrade the road and while this is being done, I will repair the damaged concrete at the bottom of Vivian Drive.*

Staff Response: Vivian Drive is a private road. A condition of approval may be added by the Council that a pre- and post-construction survey shall be completed for Vivian Drive and provided to the PPW inspector to correct any damage caused during the construction.

5. Appellant: The existing Oak trees bordering the subject property should not be damaged by the construction.

Applicant's Response: *All trees will be protected by fencing according to the plans and Hillside Development Standards and Guidelines.*

Staff Response: Condition of Approval 8 requires that all existing trees shown on the plan and trees required to remain or to be planted are specific subjects of approval and must remain on the site.

6. Appellant: Construction traffic may not utilize the private driveway and should utilize the existing access road, Vivian Drive.

Applicant's Response: *All the construction workers will be given appropriate parking instructions, and a sign will also be installed at the upper driveway of the concerned neighbors.*

Staff Response: Condition of Approval 80 states that the applicant shall submit a truck hauling route that conforms to Town of Los Gatos Standards for approval for vehicles larger than a two-axle, six-tire single unit truck size as defined by FHWA Standards. Additionally, the condition states that the Town requires a Haul Permit be issued for any hauling activities and that the applicant shall require contractors to prohibit trucks from using "compression release engine brakes" on residential streets. The haul route for this project, unless otherwise approved by the Town Engineer, shall be: Kennedy Road to Los Gatos Boulevard to Los Gatos-Saratoga Road to Highway 17. A letter from the applicant confirming the intention to use the designated haul route shall be submitted to the Town Engineer for review and approval prior to the issuance of any Town permits.

7. Appellant: No construction traffic should travel on or turn around on the pavement at 16565 Kennedy Road.

Applicant's Response: All the construction workers will be given appropriate parking instructions, and a sign will also be installed at the upper driveway of the concerned neighbors.

Staff Response: A condition of approval may be added by the Town Council that construction traffic shall not travel on or turn around on the pavement at 16565 Kennedy Road.

8. Appellant: There was a failure to conduct a comprehensive privacy impact analysis.

Applicant's Response: No response provided.

Staff Response: During the technical review process, questions by staff regarding privacy concerns were posed to the applicant to which the applicant responded on September 19, 2024, that the neighbors had been consulted with regarding the project.

9. Appellant: The existing access road, Vivian Drive, should be blown or swept of construction debris at the end of each work week.

Applicant's Response: The construction workers will keep the job site clean and will sweep weekly as requested.

Staff Response: Vivian Drive is a private road. A condition of approval may be added by the Council that Vivian Drive is blown and/or swept of construction debris at the end of each work week.

10. Appellant: The applicant should have a bonded payment with the Town for damage that may be caused during construction.

Applicant's Response: No response provided.

Staff Response: Condition of Approval 23 states that an applicant shall indemnify and hold harmless the Town from any claim against the Town related to an approval of a project. Condition of Approval 47 states that the applicant shall enter into a form of security to be determined by the Town Engineer and subject to the approval of the Town Attorney, specifically for the Grading Permit. A condition of approval may be added by the Council that a pre- and post-construction survey shall be completed for Vivian Drive and provided to the PPW inspector to correct any damage caused during the construction.

11. Appellant: The Planning Commission should explain why the Least Restricted Development Area (LRDA) was disregarded for the subject application.

Applicant's Response: No response provided.

Staff Response: Discussion of the applicant's request for an exception from the LRDA was provided in the March 26, 2025, Planning Commission staff report (Attachment 1).

12. Appellant: The Planning Commission should look into the applicant's claim that the proposed structure will protect the hillside embankment.

Applicant's Response: A licensed geotechnical engineer and geologist has been hired, and their formal report will be submitted in mid-May.

Staff Response: The application was reviewed by the Engineering Division and no concerns of destabilization of the hillside embankment were identified.

13. Appellant: The applicant should provide a long, large retaining wall on the lower slope of the hill to protect the neighbors above the subject property.

Applicant's Response: There is a long 75-foot retaining wall being installed to support the driveway which borders both downhill neighbors. Also, the house will be built on piers and not require an additional retaining wall as stated by the person appealing. The new house is all built to the latest structural and geotechnical standards. And the lower level is right down at grade, therefore there is no need for an additional retaining wall.

Staff Response: The applicant is proposing a retaining wall to support the driveway, as well as structural walls as part of the building along the northeastern elevation.

14. Appellant: The planning for a water holding tank should be incorporated in the Architecture and Site application.

Applicant's Response: At this point in time, it doesn't appear water tanks will be required. The only reason they would be if there is inadequate water pressure. With the new water lines being installed to supply the fire hydrant we expect water pressure to be an issue.

Staff Response: The application was reviewed by the Santa Clara County Fire Department. The applicant is proposing the installation of a private fire hydrant; therefore, a water holding tank is not required to be installed at this time.

15. Appellant: Neighbors must be allowed access to the property to complete their own geologic studies.

Applicant's Response: No response provided.

Staff Response: Condition of Approval 62 states that prior to building permit issuance, the applicant's engineering geologist shall submit a geological report of the site, including a comprehensive landslide investigation evaluating the landslide hazard (including seismic) and associated risk to the proposed development.

16. Appellant: The Planning Commission did not have a certified geologist report and therefore plans were approved without a qualified report to advise the Planning Commission.

Applicant's Response: A licensed geotechnical engineer and geologist has been hired, and their formal report will be submitted in mid-May.

Staff Response: Condition of Approval 62 states that prior to building permit issuance, the applicant's engineering geologist shall submit a geological report of the site, including a comprehensive landslide investigation evaluating the landslide hazard (including seismic) and associated risk to the proposed development.

17. Appellant: The topography of the subject property tends to a smaller sized project.

Applicant's Response: No response provided.

Staff Response: The maximum allowable floor area for the property is 6,000 square feet for the residence and 400 square feet for the garage. The applicant is proposing 4,194 square feet of countable FAR for the home on a 111,843-square foot parcel (0.04 FAR).

18. Appellant: The visual materials presented to the Town were incomplete and misleading, and do not represent the actual privacy intrusions posed by the development.

Applicant's Response: I spent time with Apoorva and Rohit reviewing their privacy concerns on April 1, 2025. During this meeting Rohit and I walked to my property to get the vantage points from each of the three floors. As you can see in the photos provided by the appealing party there is a small opening in the very large oak tree that covers and blocks almost all the vantage points coming from my new proposed residence. I have taken their concerns seriously and have addressed them by reducing the window coverage by 20 percent. I have also removed the balcony coming off the living room/dining room. And I have reduced the other balcony to a minimum size. I also removed one large set of glass doors. And I also reduced the 16-foot glass doors to 12 feet in the family room. And lastly, I am going to plant native six-foot-tall evergreen trees along the entire basement floor which will create privacy for both residences on the bottom of my property and the top of the appealing parties.

Staff Response: As part of the applicant's presentation at the March 26, 2025, Planning Commission meeting, images of the building site in context with the adjacent residence located at 16515 S. Kennedy Road were included.

19. Appellant: Reasoning for the proposed number of windows and doors proposed along the southwest elevation is factually incorrect.

Applicant's Response: *No response provided.*

Staff Response: The Planning Commission discussed the proposed windows along the southwest elevation and as a result of the concern identified by the neighbors, added Condition of Approval 3 to meet with the neighbor located at 16515 S. Kennedy Road to select an agreeable tree species and height to be planted in order to achieve privacy between the properties.

20. Appellant: The condition of approval imposed by the Planning Commission regarding window modifications is vague and does not guarantee any tangible privacy protection.

Applicant's Response: *No response provided.*

Staff Response: Condition of Approval 4 states that to the satisfaction of the Director of the Community Development Department, the applicant shall work with staff to reduce the proposed window heights on the southwest elevation or other methods, if possible (Attachment 4).

21. Appellant: Inadequate willingness by the applicant to address privacy concerns.

Applicant's Response: *I spent time with Apoorva and Rohit reviewing their privacy concerns on April 1, 2025. During this meeting Rohit and I walked to my property to get the vantage points from each of the three floors. As you can see in the photos provided by the appealing party there is a small opening in the very large oak tree that covers and blocks almost all the vantage points coming from my new proposed residence. I have taken their concerns seriously and have addressed them by reducing the window coverage by 20 percent. I have also removed the balcony coming off the living room/dining room. And I have reduced the other balcony to a minimum size. I also removed one large set of glass doors. And I also reduced the 16-foot glass doors to 12 feet in the family room. And lastly, I am going to plant native six-foot-tall evergreen trees along the entire basement floor which will create privacy for both residences on the bottom of my property and the top of the appealing parties.*

Staff Response: Condition of Approval 3 states that to the satisfaction of the Community Development Department, the applicant shall meet with the adjacent neighbor to select an agreeable tree species and height, with a preference for native trees (Attachment 4).

22. Appellant: To protect both privacy and safety of the hillside, the applicant should provide a retaining wall at the lower slope of the property that is setback from the property line and masked with foliage.

Applicant's Response: There is a long 75-foot retaining wall being installed to support the driveway which borders both downhill neighbors. Also, the house will be built on piers and not require an additional retaining wall as stated by the person appealing. The new house is all built to the latest structural and geotechnical standards. And the lower level is right down at grade, therefore there is no need for an additional retaining wall.

Staff Response: The applicant is proposing a retaining wall to support both sides of the driveway, which borders the properties uphill and downhill from the subject site. The project was reviewed by the Engineering Division and the need for additional retaining walls was not determined to be required.

23. Appellant: The water tank design and location should be disclosed now for a review of its visual impact.

Applicant's Response: At this point in time, it doesn't appear water tanks will be required. The only reason they would be if there is inadequate water pressure. With the new water lines being installed to supply the fire hydrant we expect water pressure to be an issue.

Staff Response: The application was reviewed by the Santa Clara County Fire Department. The applicant is proposing the installation of a private fire hydrant; therefore, a water holding tank is not required to be installed at this time.

PUBLIC COMMENTS:

Story poles and signage were installed on the site by February 21, 2025, and have been maintained since the March 26, 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, March 26, 2025, and 11:00 a.m., Friday, May 9, 2025, are included as Attachment 8.

ENVIRONMENTAL REVIEW:

The project is Categorical 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 7) 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. March 26, 2025, Planning Commission Staff Report, with Exhibits 1 through 13
2. March 26, 2025, Planning Commission Desk Item, with Exhibit 14
3. March 26, 2025, Planning Commission Verbatim Minutes
4. March 27, 2025, Planning Commission Action Letter with Modified Conditions of Approval
5. Appeal of the Planning Commission Decision, Received April 3, 2025
6. Applicant Response to the Appeal and Modifications to the Plan Set
7. Draft Resolution to Deny Appeal and Approve Project
8. Public comments received between 11:01 a.m., Wednesday, March 26, 2025, and 11:00 a.m., Friday, May 9, 2025