



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 08/23/2023

ITEM NO: 3

DATE: August 18, 2023
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of a Development Review Committee Decision to Approve Construction of a New Single-Family Residence for Lot B On Property Zoned R-1:10. **Located at 16220 Harwood Road, Lot B.** APN 567-18-076. Categorically Exempt Pursuant to CEQA Guidelines Section 15303: New Construction. Architecture and Site Application S-22-036. Property Owner: Majid Mohazzab. Applicant: Cherine Bassal. Appellant: Douglas McCracken. Project Planner: Jocelyn Shoopman.

RECOMMENDATION:

Deny the appeal and uphold the decision of the Development Review Committee (DRC) to approve the application, subject to the recommended conditions of approval.

PROJECT DATA:

General Plan Designation: Low Density Residential
Zoning Designation: R-1:10, Single-Family Residential
Applicable Plans & Standards: Town Code, General Plan, and Residential Design Guidelines
Parcel Size: 11,810 square feet
Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Low Density Residential	R-1:8 and R-1:10
South	Residential	Low Density Residential and Hillside Residential	R-1:10 and HR-1
East	Residential	Low Density Residential	City of San Jose
West	Residential	Low Density Residential	R-1:10

PREPARED BY: Jocelyn Shoopman
Associate Planner

Reviewed by: Planning Manager

CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction.

FINDINGS:

- Pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, this project is Categorically Exempt, Section 15303: New Construction.
- The project meets the objective standards of Chapter 29 of the Town Code (Zoning Regulations).
- The project complies with the Residential Design Guidelines.

CONSIDERATIONS:

- As required by Section 29.20.150 of the Town Code for granting approval of an Architecture and Site application.

ACTION:

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

BACKGROUND:

The subject property is located on the east side of Harwood Road, adjacent to the intersection of Harwood Road and Belwood Gateway (Exhibit 1). The site is developed with a vacant commercial building previously occupied as a school.

On October 13, 2020, the DRC approved a subdivision of the approximate, 34,676-square foot lot into three lots.

On June 28, 2022, the applicant submitted an Architecture and Site application for the construction of a new 3,100-square foot two-story residence with a 530-square foot attached garage. Two additional Architecture and Site applications for Lots A and C were also submitted.

The proposed project meets all technical requirements of the Town Code including setbacks, parking, height, floor area, and lot coverage.

On July 11, 2023, the DRC approved the Architecture and Site application with additional conditions to address privacy concerns from the adjacent neighbor as detailed in the Discussion section of this report. The DRC also approved the two Architecture and Site applications for Lots A and C at the same meeting.

BACKGROUND (continued):

On July 20, 2023, the decision of the DRC to approve the new home on Lot B was appealed to the Planning Commission by the adjacent neighbor (appellant), due to concerns regarding privacy and views (Exhibit 10).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located on the east side of Harwood Road, adjacent to the intersection of Harwood Road and Belwood Gateway (Exhibit 1). The property is developed with a vacant commercial building previously occupied by a school. The surrounding properties are comprised of single-family homes.

B. Project Summary

The applicant proposes construction of a new two-story single-family home with an attached garage. The proposed residence would be 3,100 square feet with a 530-square foot attached garage. The project plans in Exhibit 13 show a future Junior Accessory Dwelling Unit (JADU), which is not a part of this Architecture and Site application because it cannot be reviewed through a discretionary application in accordance with State ADU law.

C. Zoning Compliance

A single-family residence and garage are permitted in the R-1:10 zone. The proposed residence is in compliance with all applicable zoning regulations including floor area, height, setbacks, lot coverage, and parking.

DISCUSSION:

A. Architecture and Site Application Analysis

The applicant is proposing to construct a new two-story single-family residence with 3,100 square feet of living floor area and a 530-square foot attached garage. The maximum height of the proposed residence is 28 feet, seven inches, where a maximum of 30 feet is allowed. The applicant provided a Letter of Justification detailing the proposal, which is included as Exhibit 4.

The development plans show a future JADU that is proposed to be contained within the first floor of the residence and is not being reviewed with this application per State law, and does not count towards the maximum allowed floor area for the site (Exhibit 13). The JADU

DISCUSSION (continued):

is not a part of the Architecture and Site approval and would require a future submittal for a separate ministerial permit. A new JADU on the property would be subject to the requirements contained in Section 29.10.320 of the Town Code.

B. Building Design

The applicant proposes construction of a new-story single-family home with an attached garage in a traditional architectural style. Proposed exterior materials include smooth stucco, composition shingle roofing, carriages style garage doors, and aluminum windows (Exhibit 5).

The Town's Consulting Architect reviewed the project on July 20, 2022 (Exhibit 6). In the report, the Consulting Architect noted that the site is located in an established neighborhood with a mix of one- and two-story homes designed in traditional architectural styles, and that the proposed house is simple and well designed to fit into the immediate neighborhood.

The Consulting Architect identified five concerns with the original design and made five recommendations for modifications. The Consulting Architect made the following recommendations to address consistency with the Residential Design Guidelines (RDG):

1. Add a trellis over the garage consistent with Residential Design Guideline 3.4.1;
2. Eliminate the second-floor balcony or as a minimum fill in the balcony railing area with wall on all three exposed sides;
3. Continue the divided lite windows and projecting wall trim around all sides of the house;
4. Utilize true or simulated divided lites to be consistent with Residential Design Guideline 3.7.4; and
5. Reevaluate the wall materials for the homes on all three parcels, and consider some additional diversity of materials (e.g., using different materials on at least one of the homes or explore the use of a mix of materials).

The applicant revised the project to incorporate each of the recommendations prior to DRC approval.

C. Neighborhood Compatibility

The immediate neighborhood is made up of one- and two-story single-family residences. Based on County records, the residences in the immediate neighborhood range in size from 2,346 square feet to 3,348 square feet. The floor area ratios (FAR) range from 0.21 to 0.33. The proposed residence would be 3,100 square feet (0.26 FAR) with a 530-square foot

DISCUSSION (continued):

attached garage. Pursuant to Town Code Section 29.40.075, the maximum allowed FAR for the net lot area of 10,011 square feet, after the removal of the corridor portion of the lot, is 0.31 (3,103 square feet) with a maximum allowed garage size of 861 square feet. The table on the following page reflects the current conditions of the homes in the immediate neighborhood.

Address	Zoning	House	Garage	Lot Size	House FAR	No. of Stories
101 Almond Blossom Ct.	R-1:10	3,348	618	10,122	0.33	2
103 Almond Blossom Ct.	R-1:10	2,544	651	10,183	0.25	2
105 Almond Blossom Ln.	R-1:10	2,756	611	11,793	0.23	2
103 Almond Blossom Ln.	R-1:10	2,596	629	10,682	0.24	2
107 Sebastian Ct.	R-1:10	3,089	630	11,401	0.27	2
102 Sebastian Ct.	R-1:10	2,989	630	10,188	0.29	2
16224 Harwood	R-1:10	2,925	552	9,876	0.30	2
16226 Harwood	R-1:10	2,804	473	13,463	0.21	2
16228 Harwood	R-1:10	2,346	466	9,998	0.23	2
189 Belwood	R-1:10	2,448	440	11,473	0.21	2
103 Belvale	R-1:10	2,448	440	11,753	0.21	2
16220 Harwood, Lot A	R-1:10	3,444	495	11,647	0.30	2
16220 Harwood, Lot B (Proposed)	R-1:10	3,100	530	11,810	0.26	2
16220 Harwood, Lot C	R-1:10	3,363	810	11,219	0.30	2

The proposed residence would not be the largest home in the immediate neighborhood in terms of square footage or FAR. The proposed two-story residence would not be the first two-story in the neighborhood, and at a proposed height of 28 feet, seven inches it would not be the tallest (Sheet A1.3, Exhibit 13).

D. Trees

The Town's Consulting Arborist prepared a report for the site and recommendations for the project (Exhibit 7). The Consulting Arborist recommends removal of six trees contained on the property due to their suitability for conservation with the proposed project. Of the six protected trees proposed to be removed, five are in very poor or poor condition.

A tree in poor condition has a declining appearance with poor vigor, abnormal foliar color, size or density with potential irreversible decline, at least one significant structural problem, or multiple moderate defects that cannot be corrected and failure may occur at any time.

DISCUSSION (continued):

A tree in very poor condition has poor vigor and is dying with little foliage in irreversible decline, and severe defects with the likelihood of failure being probable or imminent (Exhibit 7).

If the project is approved, tree protection measures would be implemented prior to and during construction. Replacement trees would also be required to be planted pursuant to the Town Code.

E. Development Review Committee

The DRC held a public hearing for the Architecture and Site application on July 11, 2023. Written public hearing notices were sent to surrounding property owners and occupants within 300 feet of the subject property. The following neighbors were in attendance and spoke on the item:

- Douglas McCracken (Appellant);
- Sally Jones; and
- Nancy Durrett.

The neighbors in attendance at the meeting raised concerns regarding the proposed architecture, setbacks, height, floor area, privacy, and traffic generation (Exhibit 9).

The DRC found that the application was complete and in compliance with the Town Code and Residential Design Guidelines. Based on the findings and determinations, the DRC approved the proposed project, subject to modified conditions of approval in response to the concerns raised by the neighbors (Exhibit 3). The DRC approval included the addition of condition #5:

5. PRIVACY: To the satisfaction of the Community Development Director, the applicant shall provide privacy screening through all of the following methods: trees, lattice for the second story balcony, and clerestory windows on the second-floor rear elevation, when not required as an egress window by Building Code.

F. Appeal

On July 20, 2023, the decision of the DRC was appealed to the Planning Commission by the adjacent neighbor, Douglas McCracken (Exhibit 10). The appellant provided additional information for the appeal in Exhibit 11. The applicant submitted a response letter to the appeal in Exhibit 12. An abbreviated summary of the reasons for the appeal are provided below, followed by analysis in *italic* font.

DISCUSSION (continued):

- At the DRC meeting, the three Architecture and Site applications were treated as a single application. The format did not allow for the community to property comment and provide input on all three properties.

At the discretion of the Chair of the DRC, the three applications were discussed as a single item and the time limits for public comments were extended from three minutes to five minutes for each speaker.

- During the DRC meeting, the community raised a question as to why the houses were not considered as a single-story house. Approximately, 40 percent of the Belwood/Belgatos homes are single-story.

The RDG states that the greatest attention and appropriateness of design proposals will be given to the immediate neighborhood. The RDG interprets the immediate neighborhood to be the five homes across the street and the two homes on either side of the subject property. The homes along Almond Blossom Lane are comprised of two-story homes, while the homes along Harwood Road are comprised of both single-story and two-story homes. Based on the consideration of the immediate neighborhood, the proposal would not create the first two-story home. Additionally, the applicant has provided a response letter to the appeal, provided as Exhibit 12 stating that there are existing two-story homes adjacent to Lot B and that the proposed house on Lot B complies with the maximum height and is within the height range of other two-story homes in the neighborhood.

- Lot B is the only flag lot in the Belwood/Belgatos neighborhood. All other properties in the neighborhood have a minimum front setback of 25 feet, plus a street between it and the adjacent property.

On October 13, 2020, the DRC approved a subdivision of the approximate, 34,676-square foot lot into three lots. The DRC found that no findings could be made deny the application as required by Section 66474 of the State Subdivision Map Act. Additionally, the property located at 16226 Harwood Road is considered to be a flag lot. An appeal of the decision of the DRC was not received for the Subdivision application by the Town. The proposed Architecture and Site application complies with the minimum required 25-foot front setback, with a proposed setback of 36 feet, three inches. Additionally, the applicant has provided a response letter to the appeal, provided as Exhibit 12 stating that there is another flag lot in the immediate neighborhood, located at 16226 Harwood Road. The applicant states that Lot B will have its own access to the property, unlike the adjacent parcel located at 16226 Harwood which shares access with the adjacent properties.

DISCUSSION (continued):

- While the Town Code and State law allows for a JADU to be permitted separately, it is illogical to not consider the entire structure when considering the Residential Design Guidelines.

The development plans show a future JADU that is proposed to be contained within the first floor of the residence and is not being reviewed with this application per State law and does not count towards the maximum allowed floor area for the site. A JADU may not be considered as part of the Architecture and Site application, which is a discretionary action. The JADU would require a future submittal for a separate ministerial permit. A new JADU on the property would be subject to the requirements contained in Section 29.10.320 of the Town Code. Additionally, the applicant has provided a response letter to the appeal, provided as Exhibit 12 stating that they have the right to add an ADU to the property based on State law.

- The Town is allowing the third largest structure on the most constrained lot in the neighborhood. There are two other larger structures within the development on Lot A and Lot C.

The proposed residence is in compliance with all applicable zoning regulations including floor area, height, setbacks, lot coverage, and parking. Within the immediate neighborhood, the residence located at 101 Almond Blossom Court is larger in square footage at 3,348 square feet. Additionally, the homes located at 101 Almond Blossom Court, 107 Sebastian Court, 102 Sebastian Court, and 16224 Harwood Road have floor area ratios greater than the proposed residence, as reflected on page five of the staff report. Additionally, the applicant has provided a response letter to the appeal, provided as Exhibit 12 stating that there are several homes in the immediate neighborhood that are close to or more than 3,000 square feet in size and the proposed home for Lot B is in context with the size of other homes within the immediate neighborhood.

- The story poles for Lot A and Lot C have been removed and the overpowering of the three total structures using minimal setbacks in the R-1:10 zone will not be viewable for Planning Commissioner's site visit. Views of the east and west hills will be blocked by the development.

An appeal of the Architecture and Site application for Lot A and Lot C was not received by the Town during the appeal period. As a result, the story poles for each lot have been removed as required by the Story Pole Policy. The residence for Lot B proposes an approximate front setback of 36 feet, three inches, a right-side setback of 11 feet, a left-side setback of 17 feet, and a rear setback of between 20 feet and 23 feet, six inches. The minimum required setbacks for the R-1:10 zone are 25 feet for the front, 10 feet for

DISCUSSION (continued):

the side, and 20 feet for the rear. Pursuant to the RDG, views are not a protected right. Additionally, the applicant has provided a response letter to the appeal, provided as Exhibit 12 stating that the proposal for Lot B complies with all Town Code regulations for the R-1:10 zone.

- The community is concerned that by ignoring the total size of the structures being proposed that the Town is setting a precedent for future developers in the Belwood/Belgatos neighborhood. The goal of affordable housing can be achieved with a single-story home. The neighbors do not believe that the proposed solution of lattice and trees will mitigate the privacy issues due to the sheet size of the structure and use of minimum setbacks.

Pursuant to State law, a JADU may not be considered as part of a discretionary action. The Town's ADU Ordinance provides regulations for the maximum size of a JADU based on State law. The maximum allowable floor area for the proposed residence, complies with Section 29.40.075 of the Town Code, which is not applicable to a future JADU. The applicant proposes a 3,100-square foot residence, whereas the maximum allowable floor area is 3,103 square feet. The development plans show a future 500-square foot JADU that is proposed to be contained within the first floor of the residence and is not being reviewed with this application per State law (Exhibit 13). The immediate neighborhood is made up of one and two-story single-family residences. The proposed residence would not be the largest home in the immediate neighborhood in terms of square footage or FAR and is in compliance with all applicable zoning regulations including floor area, height, setbacks, lot coverage. Additionally, the applicant has provided a response letter to the appeal, provided as Exhibit 12 stating that the height of the appellant's home is taller than the home proposed on Lot B and that there are several windows overlooking Lot B and other neighboring residences. The applicant states that the proposed second floor windows for Lot B are approximately 60 feet away from the appellant's backyard and approximately 90 feet from the residence, and the proposal for Lot B includes trees to be planted to provide additional privacy.

PUBLIC COMMENTS:

Public comments received between 10:00 a.m., Tuesday, July 11, 2023, and 11:00 a.m., Friday, August 18, 2023, are included as Exhibit 14.

Story poles and the project sign including the hearing date, contact information, project description, and front elevation, were installed on the site; and the written notice of the DRC public hearing was sent to neighboring property owners and occupants. Following the appeal, written notice of the Planning Commission hearing was sent to neighboring property owners

PUBLIC COMMENTS (continued):

and occupants, the story poles have remained in place, and the project sign has been updated to reflect the appeal hearing before Planning Commission.

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. Summary

The appellant is requesting that the Planning Commission reconsider the DRC's decision to approve construction of a new-story residence and attached garage on property zoned R-1:10, located at 16220 Harwood Road, Lot B due to privacy and view concerns.

B. Recommendation

For the reasons stated in this report, staff recommends that the Planning Commission take the following actions to deny the appeal, uphold the decision of the Development Review Committee, and approve the Architecture and Site application:

1. Find that the proposed project is categorically exempt pursuant to the adopted Guidelines for the implementation of the California Environmental Quality Act, Section 15303: New Construction (Exhibit 2);
2. Make the finding that the project complies with the objective standards of Chapter 29 of the Town Code (Exhibit 2);
3. Make the finding required by the Town's Residential Design Guidelines that the project complies with the Residential Design Guidelines (Exhibit 2);
4. Make the required considerations as required by Section 29.20.150 of the Town Code for granting approval of an Architecture and Site application (Exhibit 2); and
5. Approve Architecture and Site Application S-22-036 with the conditions contained in Exhibit 3 and Development Plans in Exhibit 13.

CONCLUSION (continued):

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Deny the appeal and approve the application with additional and/or modified conditions; or
3. Grant the appeal and deny the Architecture and Site application.

EXHIBITS:

1. Location Map
2. Required Findings
3. Recommended Conditions of Approval
4. Letter of Justification
5. Color and Material Board
6. Consulting Architect's Report
7. Consulting Arborist's Report
8. Neighbor's Contacted
9. July 20, 2023, Development Review Committee meeting minutes
10. Appeal of Development Review Committee, July 20, 2023
11. Additional Appellant Information
12. Applicant's Response to Appeal
13. Development Plans
14. Public Comments Received by 11:00 a.m., Friday, August 18, 2023

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