



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 10/09/2019

ITEM NO: 3

DATE: October 4, 2019

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Architecture and Site Application S-18-050. Project Location: **56 Central Avenue**. Property Owner: Andrew and Ashley Bothman. Applicant: Rick Hartman, HOMETEC Architecture. Appellant: Leslie Morley. Project Planner: Jocelyn Shoopman.

Consider an appeal of a Development Review Committee decision approving a request for demolition of a dwelling, construction of a new single-family residence with reduced setbacks, and removal of large protected trees on property zoned R-1:10. APN 529-35-068.

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: General Plan, Residential Design Guidelines, and Hillside Development Standards and Guidelines

Parcel Size: 11,281 square feet

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Low Density Residential	R-1:10
South	Residential	Low Density Residential	R-1:10
East	Residential	Low Density Residential	R-1:10
West	Residential	Low Density Residential	R-1:20

PREPARED BY: Jocelyn Shoopman
Associate Planner

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

CEQA:

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

FINDINGS:

- As required, pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, this project is Categorically Exempt, Section 15303: New Construction or Conversion of Small Structures.
- As required by Section 29.10.09030(e) of the Town Code for the demolition of existing structures.
- As required by Section 29.10.265(3) of the Town Code for granting a reduction in the setbacks for a nonconforming lot.
- As required by the Hillside Development Standards and Guidelines that other than a cut and fill exception, the project complies with the Hillside Development Standards and Guidelines.
- As required by the Residential Design Guidelines that 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 11,281-square foot property is located on the west side of Central Avenue (Exhibit 1) and currently contains a dwelling unit, a gazebo, wood terraces, and retaining walls. The Town approved a Certificate of Compliance in 2013 to recognize three legal lots located at 60 Central Avenue. As part of the approval, a condition required that a deed restriction be recorded on two of the lots, lots 59 and 60 (60 Central Avenue), prohibiting the recording of a Certificate of Compliance on the two lots until any structures which cross lot lines have been removed, or an Architecture and Site approval for the demolition of the existing dwelling and construction of a new single-family residence has been obtained. As of today, neither actions have been taken and a Certificate of Compliance has not been recorded on lots 59 and 60 (60 Central Avenue). A deed restriction was not required, and therefore, the Certificate of Compliance has been recorded on the subject property, lot 61 (56 Central Avenue).

BACKGROUND (continued):

On September 4, 2018, the applicant submitted an Architecture and Site application for the demolition of an existing dwelling, construction of a new 2,665-square foot two-story residence with 1,590 square feet of below grade square footage, a 717-square foot attached garage, and removal of large protected trees.

The proposed project meets all technical requirements of the Town Code including parking, height, floor area, and building coverage with the exception of the required side setbacks. The lot is nonconforming with regards to frontage and the applicant is requesting modification of the required side setbacks through the terms of the Architecture and Site application.

On August 13, 2019, 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.

On August 23, 2019, the decision of the DRC was appealed to the Planning Commission by the adjacent neighbor (appellant), due to concerns regarding the proposed setbacks and privacy (Exhibit 13).

PROJECT DESCRIPTION:

A. Architecture and Site Application

Architecture and Site application approval is required to construct a new single-family residence and to modify the required side setbacks.

B. Location and Surrounding Neighborhood

The subject site is located on the west side of Central Avenue (Exhibit 1). The surrounding properties are one-and two-story single-family residences, with a mix of architectural styles.

C. Zoning Compliance

The property is zoned R-1:10, which permits a single-family residence. The property is located within the Hillside Overlay Area and is subject to the Hillside Development Standards and Guidelines (HDS&G), in addition to the Residential Design Guidelines. The proposed residence is in compliance with parking, height, floor area, and building coverage requirements.

DISCUSSION:

A. Architecture and Site Application

The applicant is proposing to construct a new two-story single-family residence with 2,665 square feet of living floor area, 1,590 square feet of below grade square footage, and a 717-square foot attached garage. The maximum height of the proposed residence is 25 feet, where a maximum of 25 feet is allowed.

Pursuant to Section 29.10.265 (3) of the Town Code, any rule of the zone including front, side, and rear yard requirements, may be modified by the terms of an Architecture and Site approval so that the building and its use will be compatible with the neighborhood.

The existing lot is nonconforming with regards to the frontage. Where the minimum required frontage is 80 feet, the existing frontage is 50 feet. Where the required side setbacks are 10 feet, the applicant is proposing five feet. The lot is narrow with an average slope of 18 and one-half percent and abuts a corridor lot with a twenty-foot wide driveway on the north side. There are multiple existing homes within the immediate area with reduced side setbacks. Two homes in the immediate neighborhood have reduced side setbacks: 67 Central Avenue has a side setback from the fence of four feet per the Letter of Justification, and 64 Central Avenue has a side setback of four feet, eight inches per Town records (Exhibit 6). Two other homes just outside the immediate neighborhood have reduced side setbacks per Town records: 70 Central Avenue has a side setback of five feet, and 71 Central Avenue has a side setback of three feet, six inches (Exhibit 6).

The development plans show a future accessory dwelling unit (ADU) that is proposed on the second story of the residence above the garage (Exhibit 15). The ADU is not a part of the Architecture and Site approval and would require a future submittal for a separate ministerial permit for approval by the Community Development Director. A new ADU on the property would be subject to the requirements contained in Section 29.10.320 of the Town Code. Project information, including the proposed square footage of the home is not inclusive of a future ADU.

The applicant's project description is attached as Exhibit 5. The project data sheet is attached as Exhibit 4 and includes additional information regarding the proposed project.

B. Building Design

The Town's Consulting Architect reviewed the proposed project within the neighborhood context to provide recommendations regarding the building design (Exhibit 8). The site is in a neighborhood of one- and two-story homes, with a mixture of architectural styles on deep lots. In the Issues and Concerns background section of the report, the Consulting Architect

DISCUSSION (continued):

discussed the second-floor building mass and projecting garage. In the Recommendations section of the report, the Consulting Architect made the following recommendations to address consistency with the Residential Design Guidelines:

1. Shift the second-floor building mass and entry roof away from the right side first floor building line;
2. Eliminate the projecting garage element in favor of a simpler form; and
3. Provide a deep inset for the garage doors.

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, including a mix of architectural styles. Based on Town and County records, the residences in the immediate neighborhood range in size from 1,746 square feet to 3,127 square feet. The floor area ratios (FAR) range from 0.11 to 0.33. The table below reflects the current conditions of the immediate neighborhood:

Neighborhood Analysis						
Address	Floor Area	Garage Floor Area	Gross Lot Area	FAR	Stories	Zoning
67 Central	1,746	0	11,250	0.16	1	R-1:10
61 Central	2,284	0	11,250	0.20	1	R-1:10
64 Central	2,044	240	7,350	0.28	1	R-1:10
60 Central	2,289	285	16,957	0.13	2	R-1:10
50 Central	1,792	484	6,000	0.30	1	R-1:10
44 Central	1,200	0	11,280	0.11	1	R-1:10
57 Central	3,127	495	15,000	0.21	1	R-1:10
51 Central	2,474	441	7,500	0.33	2	R-1:10
56 Central (Ex)	1,188	0	11,281	0.11	1	R-1:10
56 Central (P)	2,665	717	11,281	0.21	2	R-1:10

The proposed residence would not be the largest home in the immediate neighborhood in terms of square footage or FAR.

DISCUSSION (continued):

D. Tree Impacts

The project site contains 13 protected trees, with seven protected trees growing on the property boundary or adjacent to the property. The applicant is proposing to remove eight trees, two of which are large protected trees (Trees 526 and 527).

The Town's Consulting Arborist prepared a report for the site and recommendations for the project (Exhibit 9). The Consulting Arborist recommends removal of each of the eight trees due to their suitability for conservation with the proposed project. Of the proposed eight tree removals, two trees are considered to be large protected trees (Trees 526 and 527), which are in fair condition and will be highly impacted by the proposed project. A tree in fair condition has reduced vigor, damage, dieback, or pest problems, at least one significant structural problem, or multiple moderate defects requiring treatment (Exhibit 9).

The Consulting Arborist observed that Tree 521, a Palm tree which is proposed for removal, contained nesting owls. As a result, a focused survey of the Palm tree by a qualified biologist was completed. As part of the inspection, no owl eggs, nestlings, nor any other signs of an active owl nest were observed; however, it appeared that a barn owl had recently roosted in the tree (Exhibit 10). In response to this observation, the dead Palm tree fronds were removed to minimize the potential for barn owls to establish a nest in the Palm tree prior to tree removal. A condition of approval requires a qualified biologist to conduct a pre-construction survey for nesting birds prior to tree removal during nesting season (Exhibit 10).

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 30, 2019 (Exhibit 11). Written public hearing notices were sent to surrounding property owners and occupants within 500 feet of the subject property.

The following neighbors were in attendance and spoke on the item:

- Lesley Morley – 60 Central Avenue (Appellant)
- Susan Branch – 7 Central Court

DISCUSSION (continued):

The neighbors raised concerns regarding the proposed setbacks, tree removals, privacy, height, and a loss of views (Exhibit 11).

The DRC continued the item to the August 13, 2019 meeting to allow the applicant time to work with the neighbors to further address the concerns raised at the meeting.

On August 13, 2019, the DRC held a public hearing for the Architecture and Site application. With additional conditions of approval addressing privacy concerns (Exhibit 3, Conditions 4 through 6), the DRC found that the application was complete and in compliance with the Town Code, Residential Design Guidelines, and HDS&G other than a cut and fill exception for a portion of the rear yard area. Based on the justification prepared by the applicant for the exception requests (Exhibit 7) and per the development plans, the DRC was able make findings to approve the cut and fill exception requests. Based on these findings and determinations, the DRC approved the proposed project, subject to the recommended conditions of approval.

GRADING EXCEPTIONS		
Cut exception to decks/yards	Maximum cut:	4 feet
	Proposed cut:	8 feet, 5 inches
Fill exception to decks/yards	Maximum fill:	3 feet
	Proposed fill:	5 feet

F. Appeal

On August 23, 2019, the decision of the DRC was appealed to the Planning Commission by the adjacent neighbor, Leslie Morley (Exhibit 13). The applicant submitted a response letter to the appeal (Exhibit 14). The specific reasons for the appeal are summarized below, followed by analysis in *italic* font.

“The designed residence is too close to the existing house at 60 Central Avenue. I believe that there are no other properties, except 60 Central Avenue, that have setbacks of five feet or less on Central Avenue on both sides.”

The existing lot is nonconforming with regards to the frontage. The minimum required frontage is 80 feet, whereas, the existing frontage is 50 feet. Where the required side setbacks are 10 feet, the applicant is proposing five feet. The lot is narrow with an average slope of 18 and one-half percent and abuts a corridor lot with a twenty-foot wide driveway on the north side. There are multiple existing homes within the immediate area with reduced side setbacks (Exhibit 6).

DISCUSSION (continued):

“The top of the first floor is seven feet above the master bedroom balcony of my home due to their elevation difference, basement, and ceiling heights. Their house will block my view and morning sun. The building at one point will be three feet from the closest edge of my balcony. It will make my bedroom dark and I will lose privacy for the balcony.”

The development plans include a shadow study (Exhibit 15, Sheet A-10). The DRC approved the Architecture and Site application with additional conditions, including clerestory windows, balcony screening, and landscape screening, to address privacy concerns from the adjacent neighbor.

G. CEQA Determination

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

PUBLIC COMMENTS:

Public comments received between 10:00 a.m., Tuesday, August 13, 2019, and 11:00 a.m., Friday, October 4, 2019, are included as Exhibit 16.

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

CONCLUSION:

A. Conclusion

The proposed project is in compliance with the Town Code, Residential Design Guidelines, and the HDS&G other than a cut and fill exception. The applicant revised the project and agreed to additional conditions to address the concerns of the adjacent neighbor prior to DRC approval.

B. Recommendation

Staff recommends that the Planning Commission take the following actions to deny the appeal, uphold the decision of the DRC, 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 or Conversion of Small Structures (Exhibit 2);
2. Make the required findings as required by Section 29.10.09030(e) of the Town Code for granting approval of the demolition of existing structures (Exhibit 2);
3. Make the finding that the reduced setbacks on a nonconforming lot are appropriate as required by Section 29.10.265(3) of the Town Code (Exhibit 2);
4. Make the finding that a cut and fill exception is appropriate and the project is otherwise in compliance with the Hillside Development Standards and Guidelines (Exhibit 2);
5. Make the finding required by the Town's Residential Design Guidelines that the project complies with the Residential Design Guidelines (Exhibit 2);
6. 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
7. Approve Architecture and Site application S-18-050 with the conditions contained in Exhibit 3 and development plans attached as Exhibit 15.

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;
3. Grant the appeal and remand the application to the DRC with direction for revisions; or
4. Grant the appeal and deny the Architecture and Site application.

EXHIBITS:

1. Location Map
2. Required Findings and Considerations (two pages)
3. Recommended Conditions of Approval (14 pages)
4. Project data sheet (two pages)
5. Project description, received July 11, 2019 (three pages)
6. Letter of justification for reduced setbacks, received August 12, 2019 (eight pages)
7. Letter of justification for exceptions to HDS&G, received May 3, 2019 (one page)
8. Consulting Architect Report, dated November 5, 2018 (seven pages)
9. Consulting Arborist Report, dated October 11, 2018 (36 pages)

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EXHIBITS (continued):

10. Applicant's Biologist Report, received January 23, 2019 (two pages)
11. July 30, 2019 Development Review Committee meeting minutes (three pages)
12. August 13, 2019 Development Review Committee meeting minutes (three pages)
13. Appeal of Development Review Committee received August 23, 2019 (two pages)
14. Applicant's response letter to appeal, received September 9, 2019 (five pages)
15. Development plans, received September 5, 2019 (18 sheets)
16. Additional letter from the appellant, received October 4, 2019 (two pages)
17. Public comments received between 10:00 a.m., Tuesday, August 13, 2019, and 11:00 a.m., Friday, October 4, 2019