



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 06/26/2024

ITEM NO: 3

DATE: June 21, 2024

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Requesting Approval for Technical Demolition of a Contributing Single-Family Residence and Construction of a New Single-Family Residence to Exceed the Floor Area Ratio (FAR) Standards and Requiring a Variance to Side Yard Setback Requirements Located in the Almond Grove Historic District on Property Zoned R-1D:LHP. **Located at 123 Wilder Avenue.** APN 510-18-008. Architecture and Site Application S-23-039 and Variance Application V-24-001. Categorically Exempt Pursuant to CEQA Guidelines Section 15301: Existing Facilities. Property Owner: Boguslaw Marcinkowski and Brygida Sas-Marcinkowski. Applicant: Jose De La O. Project Planner: Sean Mullin.

**RECOMMENDATION:**

Consider approval of a request for technical demolition of a contributing single-family residence and construction of a new single-family residence to exceed the floor area ratio (FAR) standards and requiring a Variance to side yard setback requirements located in the Almond Grove Historic District on property zoned R-1D:LHP, located at 123 Wilder Avenue.

**PROJECT DATA:**

General Plan Designation: Medium Density Residential

Zoning Designation: R-1D:LHP

Applicable Plans & Standards: General Plan; Residential Design Guidelines

Parcel Size: 6,226 square feet

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Medium Density Residential	R-1D:LHP
South	Residential	Medium Density Residential	R-1D:LHP
East	Residential	Medium Density Residential	R-1D:LHP
West	Residential	Medium Density Residential	R-1D:LHP

**PREPARED BY:** Sean Mullin, AICP  
Senior Planner

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Reviewed by: Planning Manager and Community Development Director

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CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act (CEQA), Section 15301: Existing Facilities.

FINDINGS:

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act (CEQA), Section 15301: Existing Facilities.
- As required by Section 29.10.09030(e) of the Town Code for the demolition of an existing residence.
- The project meets the objective standards of Chapter 29 of the Town Code (Zoning Regulations) except the requests to exceed the FAR standards and reduce the required side setback.
- As required by Section 29.40.075(c) of the Town Code for granting approval of an exception to the FAR standards.
- As required by Section 29.20.170 of the Town Code for granting a Variance application.
- 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 west side of Wilder Avenue approximately 310 feet north of the intersection with Bean Avenue in the Almond Grove Historic District (Exhibit 1). The property is approximately 6,226 square feet and is developed with an existing 2,225-square foot, two-story residence with a 470-square foot detached garage (Exhibit 4). The immediate neighborhood is comprised of one- and two-story residences.

In September 2023, it was brought to the Town's attention that work had occurred on the residence without the required permits. Staff was able to observe that siding had been removed and replaced on the sides and rear of the residence (Exhibit 5). Additionally, some removal of the siding had occurred on the front of the residence. Section 29.10.020 defines

BACKGROUND (continued):

*demolition (historic structure)* as removal or enclosure of the exterior wall covering on more than 25 percent of the walls facing a public street or 50 percent of all exterior walls. When a project on a historic resource exceeds these limitations, the result is a technical demolition. The extent of siding removal on the subject residence constitutes a technical demolition since it was observed that the existing siding had been completely removed from the rear and side elevations and portions of the front elevation. New cementitious horizontal siding had been installed on portions of the side and rear elevations. On September 26, 2023, a Stop Work Notice was issued by the Town for unlawful technical demolition related to removal of the siding on the residence.

On October 5, 2023, the applicant was informed of the unlawful demolition. On October 22, 2023, the applicant filed an Architecture and Site application for the project. During technical review of the application, staff identified that the project would also require approval of an exception to the FAR standards since the existing residence exceeds the allowable FAR for the property and a Variance to the required side setbacks since the residence is located three feet, six inches from the side property line where five feet is required. The pending Architecture and Site and Variance applications and future Building Permits are remedies for these circumstances.

On December 20, 2023, the Historic Preservation Committee (HPC) considered the request and forwarded a recommendation of approval to the Planning Commission with the following conditions (Exhibit 6):

- Replace the installed horizontal cementitious lap siding with wood shingle siding to match what was removed;
- The existing ornate shingle pattern in the front gable end shall be replicated in the north facing gable end; and
- The new windows shall match the windows they are replacing. Full details of the new wood windows shall be provided to the Town to ensure in-kind replacement.

The project is being considered by the Planning Commission due to the request to exceed the maximum allowable FAR and the request for a Variance to the required side setback for a single-family dwelling in the Almond Grove Historic District.

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located on the west side of Wilder Avenue approximately 310 feet north of the intersection with Bean Avenue in the Almond Grove Historic District (Exhibit 1).

PROJECT DESCRIPTION (continued):

The property is approximately 6,226 square feet and is developed with an existing 2,225-square foot, two-story residence that is noted as a contributor to the historic district and a 470-square foot detached garage (Exhibit 4). The immediate neighborhood is comprised of one- and two-story residences.

B. Project Summary

The application includes technical demolition of the existing single-family residence through removal and replacement of the existing shingle siding (Exhibit 9). The project also requires approval of an exception to the FAR standards and a Variance to the required side setback. The residence exceeds the allowable FAR by 108 square feet. In addition, the residence includes a side setback of approximately three feet, six inches, where five feet is required. The existing structure would remain and no additional square footage is proposed.

C. Zoning Compliance

The subject property is approximately 6,226 square feet, where a minimum lot size of 5,000 square feet is required for a parcel in the R-1D zone. A single-family residence is permitted in the R-1D zone. The proposed residence complies with the zoning regulations for height. The applicant requests approval to exceed the allowable FAR for the residence and a Variance to the Town Code for the required side setback.

DISCUSSION:

A. Architecture and Site Analysis

The applicant proposes technical demolition of the existing single-family residence through removal and replacement of the existing shingle siding (Exhibit 9). As noted above, much of the existing shingle siding has already been removed without the benefit of permits. Prior to its removal, shingle siding covered all elevations of the residence (Exhibit 4). The removal of siding on the side and rear elevations constitutes a technical demolition under the Town Code. As a result of the technical demolition of the contributing residence, the Town Code requires approval of an Architecture and Site application for a new single-family residence.

The applicant proposes removal of the remaining existing shingle siding on portions of the front elevation, as well as the installed cementitious horizontal siding on the side and rear elevations (Exhibits 7 and 9). Shingle siding on the front elevation would be either stripped and repainted or replaced in-kind. New shingle siding would be installed on all elevations to match the residence prior to the unpermitted work. The ornate pattern of the shingles in

DISCUSSION (continued):

the front-facing gable end would be replicated in both the front- and north-facing gable ends. Additionally, ten existing single-hung wood windows would be replaced in-kind with single-hung, dual pane wood windows at the front of the house, located on the front and side elevations (Exhibit 9, Sheet A-2). Lastly, the existing board and batten siding on the detached garage would be replaced in-kind.

The applicant provided photos showing termite damage and rot in the existing wood shingle siding and windows on the residence, and the board and batten siding on the garage (Attachment 8).

The project also requires approval of an exception to the FAR standards, discussed in Section B below, and a Variance to the required side setbacks, discussed in Section D below. The residence exceeds the allowable FAR by 108 square feet. In addition, the residence includes a side setback of approximately three feet, six inches, where five feet is required. The existing structure would remain, and no additional square footage is proposed. The applicant provided a Letter of Justification summarizing the project (Exhibit 7).

B. Neighborhood Compatibility

Pursuant to Section 29.40.075 of the Town Code, the maximum FAR for the subject property is 0.34 (2,117 square feet). The existing residence to be restored has an FAR of 0.36 (2,225 square feet), exceeding the maximum allowable floor area by 108 square feet. The table below reflects the current conditions of the residences in the immediate area and the proposed project.

**Immediate Neighborhood Comparison**

Address	Zoning	House SF	Garage SF	Total SF	Site SF	Building FAR	Exceed FAR?
127 Wilder Ave.	R-1D:LHP	1,215	0	1,215	6,134	0.20	No
131 Wilder Ave.	R-1D:LHP	1,563	382	1,945	6,118	0.26	No
122 Wilder Ave.	R-1D:LHP	1,912	559	2,471	5,597	0.34	No
124 Wilder Ave.	R-1D:LHP	1,108	408	1,516	5,611	0.20	No
134 Wilder Ave.	R-1D:LHP	2,270	0	2,270	6,650	0.37	Yes, by 9 sf
128 Wilder Ave.	R-1D:LHP	1,975	484	2,459	6,134	0.32	No
115 Wilder Ave.	R-1D:LHP	968	0	968	6,872	0.14	No
121 Wilder Ave.	R-1D:LHP	1,692	220	1,912	6,103	0.28	No
114 Wilder Ave.	R-1D:LHP	2,340	513	2,853	5,366	0.44	Yes, by 478 sf
<b>123 Wilder Ave. (E &amp; P)</b>	<b>R-1D:LHP</b>	<b>2,225</b>	<b>470</b>	<b>2,695</b>	<b>6,226</b>	<b>0.36</b>	<b>Yes, by 108 sf</b>

DISCUSSION (continued):

Based on Town and County records, the residences in the immediate neighborhood range in size from 1,108 square feet to 2,340 square feet and building FARs range from 0.14 to 0.44. The applicant is proposing a 2,225-square foot residence and a 470-square foot detached garage on a 6,226-square foot parcel. The proposed residence would be the third largest in terms of square footage and FAR in the immediate neighborhood.

Section 29.40.075(c) of the Town Code states that the deciding body may allow a FAR in excess of the maximum allowed FAR if the following findings can be made:

1. The design theme, sense of scale, exterior materials, and details of the proposed project are consistent with the provisions of the landmark and historic preservation overlay zone and the adopted residential development standards; and
2. The lot coverage, setbacks, and FAR of the proposed project is compatible with the development on surrounding lots.

Exhibit 7 contains the applicant's Letter of Justification indicating that the residence is existing, and the project does not include additional proposed floor area. While being considered a new residence under the Architecture and Site application, the proposed project would restore the existing residence to its appearance before the unpermitted work took place. No additional massing or floor area is proposed. On December 20, 2023, the HPC considered the project for compatibility with the Almond Grove historic District and for consistency with the Residential Design Guidelines. The HPC forwarded a recommendation of approval to the Planning Commission with conditions.

As provided above, the proposed residence would not be the only residence in the immediate neighborhood to exceed allowable FAR. The residence would not be the largest in the immediate neighborhood in terms of floor area or FAR. Since the residence is existing and is being considered under this Architecture and Site application due to the removal of existing siding resulting in a technical demolition, the existing massing, setbacks, and lot coverage would continue to be compatible with the development on surrounding properties.

C. Building Design

The applicant proposes to replace the siding on the residence in-kind, installing new wood shingle siding on all elevations. The ornate shingle pattern present in the front-facing gable end would be restored and repeated in the north-facing side gable end. Ten existing windows would be replaced in-kind, with no change in appearance. Lastly, the existing board and batten siding on the detached garage would be replaced in-kind. All work would maintain the existing appearance of the residence.

DISCUSSION (continued):

On December 20, 2023, the HPC considered the request and forwarded a recommendation of approval to the Planning Commission with the following conditions (Exhibit 6):

- Replace the installed horizontal cementitious lap siding with wood shingle siding to match what was removed;
- The existing ornate shingle pattern in the front gable end shall be replicated in the north-facing gable end;
- The new windows shall match the windows they are replacing. Full details of the new wood windows shall be provided to the Town to ensure in-kind replacement.

The current project plans respond to all the recommendations from the HPC.

D. Variance – Setbacks

The applicant is requesting a Variance from Section 29.40.740 of the Town Code for the required side setback in the R-1D zone.

Pursuant to Town Code, the required side setback in the R-1D zone is five feet. The existing residence is sited square to the front property line and street and the majority of the residence complies with all setback requirements. Due to the angled side property lines, several corners along the left side of the residence project into the required setback as the residence steps into the property. These portions project approximately one-foot, six inches into the required left side setback resulting in a setback of three feet, six inches from the property line.

As required by Section 29.20.170 of the Town Code, the Planning Commission, on the basis of the evidence submitted at the hearing, may grant a Variance if it finds that:

1. Because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under identical zone; and
2. The granting of a variance would not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone which such property is situated.

Regarding the first finding, the subject property includes parallel front and rear property lines connected by angled side property lines. When siting a residence square to the front property line, the angular nature of the side property lines causes the side setback area to continually traverse toward the residence as it moves into the property. The subject

DISCUSSION (continued):

residence attempts to address this constraint by stepping the footprint of the structure toward the centerline of the property along the left side property line. The result is not completely successful in meeting the required left side setback as three corners of the residence project into the required setback area, producing a left side setback of three feet, six inches where five feet is required. While other properties in the immediate neighborhood have similar configurations, several are developed with residences with reduced side setbacks.

With regards to the second finding, a review of Town permit records shows that at least three of the nine other properties in the immediate neighborhood include a residence with side setbacks that do not meet the requirement of the zone. Granting the Variance would not constitute a grant of special privilege to the subject property and would be consistent with the limitations of other properties in the immediate neighborhood.

As indicated in the applicant's Letter of Justification, the project would not add floor area or change the existing setbacks (Exhibit 7). The project is considered a new residence under this application since the unpermitted removal of the existing siding resulted in a technical demolition. The proposed project would restore the existing residence to its former appearance and the existing setbacks would not change and would remain compatible with the immediate neighborhood where it has been located since the early 1900s.

E. CEQA Determination

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Sections 15301: Existing Facilities. While the proposed removal of siding qualifies as a technical demolition, it is not considered a new structure for the purposes of CEQA.

PUBLIC COMMENTS:

Project signage was installed on the site by June 3, 2024, in anticipation of the June 26, 2024, Planning Commission hearing. 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 applicant proposes approval of an Architecture and Site application for technical demolition of a contributing single-family residence and construction of a new single-family residence to exceed the floor area ratio (FAR) standards and requiring a Variance to side yard setback requirements located in the Almond Grove Historic District. The applicant has responded to all recommendations of the HPC, who forwarded a recommendation of approval for the project. The proposed FAR exceedance and the Variance to the side setback are consistent with the immediate neighborhood.

B. Recommendation

Based on the analysis above, staff recommends approval of the Architecture and Site application and Variance application subject to the recommended conditions of approval (Exhibit 3). If the Planning Commission finds merit with the proposed project, it should:

1. Make the finding that the proposed project is Categorically Exempt, pursuant to the adopted Guidelines for the implementation of the California Environmental Quality Act, Section 15301: Existing Facilities (Exhibit 2);
2. Make the finding as required by Section 29.10.09030(e) of the Town Code for the demolition of an existing structure (Exhibit 2);
3. Make the finding that the project complies with the objective standards of Chapter 29 of the Town Code (Zoning Regulations) except the request to exceed the FAR standards and the required side setback (Exhibit 2);
4. Make the findings as required by Section 29.40.075(c) of the Town Code for granting approval of an exception to the FAR standards (Exhibit 2);
5. Make the required findings as required by Section 29.20.170 of the Town Code for granting a Variance (Exhibit 2);
6. Make the finding required by the Town's Residential Design Guidelines that the project complies with the Residential Design Guidelines (Exhibit 2);
7. Make the considerations as required by Section 29.20.150 of the Town Code for granting approval of an Architecture and Site application (Exhibit 2); and
8. Approve Architecture and Site Application S-23-039 and Variance Application V-24-001 with the conditions contained in Exhibit 3 and the Development Plans in Exhibit 9.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction; or

CONCLUSION (continued):

2. Approve the applications with additional and/or modified conditions; or
3. Deny the applications.

EXHIBITS:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Photos of Residence Prior to Unpermitted Work
5. Photos of Current State of the Residence
6. Historic Preservation Committee Action Letter, December 20, 2023
7. Letter of Justification
8. Applicant's Photos of Damage
9. Development Plans