



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 09/19/2023

ITEM NO: 10

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DATE: September 14, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Consider an Appeal of a Planning Commission Decision to Approve the Demolition of One Existing Office and Four Residential Buildings, Construction of an Assisted Living and Memory Care Facility, Variance from the Maximum Height and Lot Coverage of the Zone, Merger of Four Lots Into One, and Removal of Large Protected Trees on Property Zoned Office. **Located at 15860 -15894 Winchester Boulevard and 17484 Shelburne Way.** APNs 529-11-013, -038, -039, and -040. Architecture and Site Application S-21-008, Conditional Use Permit Application U-21-010, Variance Application V-21-003, Subdivision Application M-22-008, and Mitigated Negative Declaration ND-22-001. An Initial Study and Mitigated Negative Declaration Have Been Prepared for This Project. Applicant/Property Owner: Green Valley Corp. d.b.a. Swenson. Appellant: Eric Hulser. Project Planner: Jennifer Armer.

**RECOMMENDATION:**

Deny an appeal of a Planning Commission decision to approve the demolition of one existing office and four residential buildings, construction of an assisted living and memory care facility, variance from the maximum height and lot coverage of the zone, merger of four lots into one, and removal of large protected trees on property zoned Office.

**BACKGROUND:**

The subject site is the combination of four parcels forming an approximately 1.31-acre site at the intersection of Winchester Boulevard and Shelburne Way (Attachment 1, Exhibit 2). The site is currently developed with three single-family residences; a single-family residential structure which is currently occupied by a commercial construction business; and multiple

**PREPARED BY:** Jennifer Armer, AICP  
Planning Manager

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

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BACKGROUND (continued):

detached accessory structures for a total of nine structures on the site. The existing zoning is Office (O), and the General Plan land use designation is Office Professional.

On October 17, 2017, Town Council approved a previously proposed office building on the site. The office building was not built and those previous approvals have now expired. Because of the extensive input from the public, Planning Commission, and Town Council during that previous planning permit review, the current applicants chose not to return to the Conceptual Development Advisory Committee for any review of the current proposal.

An application has been filed by Jessie Bristow of Swenson Builders requesting approval for demolition of one existing office and four residential buildings and associated detached structures, construction of an assisted living and memory care facility, variance from the maximum height and lot coverage for the zone, merger of four lots into one, and removal of large protected trees.

A Draft Mitigated Negative Declaration (MND) for the project was prepared and circulated for a 20-day public review period from July 1, 2022, through July 21, 2022 (available online at <https://www.losgatosca.gov/DocumentCenter/Index/1823>).

On November 1, 2022, Town Council granted the applicant's request for an exception to the Story Pole Policy to allow an alternative to standard story pole installation to illustrate and provide notice of the proposed project by allowing two rows of orange flags to be installed in place of the standard orange netting.

On April 4, 2023, Town Council granted a second request from the applicant to allow a further exception to the Story Pole Policy to require large signage (but no larger than 32 square feet each) with bright colors that links to a video rendering and also informs residents that the current story poles may not be representative of the final project, with posted signage on each parcel, instead of the two rows of orange flags previously approved.

The new requirements were completed prior to noticing for this hearing. The video rendering is available for viewing online here:

[https://drive.google.com/open?id=1fJyzZYorT0SZynO\\_bkfnDLpiEl812rC&usp=drive\\_fs](https://drive.google.com/open?id=1fJyzZYorT0SZynO_bkfnDLpiEl812rC&usp=drive_fs)

On August 9, 2023, the Planning Commission considered the proposed project (Attachments 1 through 4). The Planning Commission approved the project with two additional conditions requiring a reduction in height and planting of evergreen screening trees (Attachment 5, Conditions 3 and 4).

On August 21, 2023, the Planning Commission decision was appealed by a neighbor (Attachment 6).

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BACKGROUND (continued):

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 appellant meets the requirements.

Pursuant to Town Code Section 29.20.280, the appeal must be heard within 56 days of the Planning Commission hearing and in this case, by October 4, 2023. 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 on the item.

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, or the Planning Commission decision was not supported by substantial evidence in the record as required by Section 29.20.275. If neither is proved, the appeal should be denied. If the appellant meets the burden, the Town 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 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

There are four existing parcels previously approved to be merged into a single 1.3-acre parcel. That planning approval expired, and so the current project includes a new subdivision application to allow for completion of the lot merger.

The proposed project would create a new three-story assisted living and memory care facility totaling 81,633 square feet and consisting of 107 assisted living units and 18 memory care units, with 54 parking spaces (Attachment 1, Exhibits 6 and 12).

The proposed building has a front setback of 25 feet along Winchester Boulevard to the west; a streetside setback of 15 feet along Shelburne Way to the north; a side setback of 13 feet nine inches bordering the multi-family residential to the south; and a rear setback of 20 feet bordering the veterinary hospital and residential to the east.

The proposed 81,633-square foot assisted living and memory care building is proposed to be between 35 feet and 50 feet in height, stepping up with the slope of the lot and down

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DISCUSSION (continued):

toward the adjacent multi-family residential to the south. Materials would consist of sand textured stucco, stucco foam trim, metal railings, Tuscan style columns, and Spanish tile roof. The proposed building materials and colors are provided on Sheet A-6.1 of Attachment 1, Exhibit 12.

The proposed three-story assisted living and memory care building would include a porte-cochere feature at the entrance of the building. The ground floor would include a lobby/lounge area, reception desk area, activity room, wellness center, dining rooms, kitchen, and outdoor courtyards for shared use by the residents and their guests. The ground floor would also include staff offices, 14 assisted living units and 18 memory care units. Below the ground floor, the basement level would include a library, theater, laundry, staff lounge, staff offices, below grade parking garage, and 14 assisted living units. The second floor proposes 53 assisted living units, a lounge, a salon, and housekeeping space. The third floor proposes 26 assisted living units, a fitness room, a lounge, and an outdoor roof deck.

B. Planning Commission

On August 9, 2023, the Planning Commission received the staff report, addendum, and desk item (Attachments 1 through 3), opened the public hearing, and considered testimony from the applicant and the public (Attachment 4). The appellant was present at this meeting and spoke in opposition to the proposed project. After asking questions of the applicant, the Planning Commission closed the public hearing and discussed the project. The Commission voted five to two to approve the project with two additional conditions of approval (Attachment 5).

C. Appeal to Town Council

The decision of the Planning Commission was appealed on August 21, 2023, by an interested person, Eric Hulser (Attachment 6). The specific reasons listed in the appeal form are provided below verbatim, followed by the applicant's response in *italic* font and staff's analysis. The applicant's full response letter to the appeal is included as Attachment 7.

1. Appellant: Town staff were unable to make the required findings for the height and lot coverage variances and recommended denial.

*Applicant: Staff could make the findings for one variance and support (sic) the project. Staff could not make the findings for both variances and requested the Planning Commission to evaluate supporting both variances based on applicant's effort to minimize the impacts of the height variance.*

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DISCUSSION (continued):

Staff analysis: Staff's recommendation to the Planning Commission was for denial of the requested variances, as staff is in most cases working to ensure projects comply with applicable regulations. Planning Commission considered staff's recommendation along with the applicant's justification and explanation of the work they had done to reduce the extent of the requested variances. Based on the record and additional conditions of approval, the Planning Commission found that they could make the findings for the variances and approved the project (Attachment 4).

2. Appellant: The project design, not site constraints, were the driving factor for the variance request.

*Applicant: To have a functional facility based on the permitted use and viability for operation, the proposed project needs adequate units to afford the required state services and support space. Additionally, due to the nature of use, the project needs to maintain safe and functional access, and cannot be stepped with the terrain as would a residential facility. The layout serves to meet ADA and California Accessibility requirements.*

Staff analysis: Planning Commission discussion included consideration of the appropriateness of the use on this site, the constraints that the site placed on the proposed use, and the potential impacts of the use and building on surrounding sites. The Planning Commissioners expressed more concern with the height variance request than with the lot coverage variance request. With the reduced height and privacy screening (as conditioned), the Planning Commission was able to make the findings for the project, including the proposed variances.

3. Appellant: Project site is already developed with several buildings and driveway areas; topography has already been altered to accommodate the development.

*Applicant: We are unsure what point the appellant is trying to make with this comment.*

Staff analysis: There are already some buildings on the site, but there is still approximately 15 feet of elevation change between the corner of Winchester Boulevard and Shelburne Way and a low point of approximately 368 at the opposite corner (Attachment 1, Exhibit 13, Sheet C-1.1).

4. Appellant: Site topography does not present a special circumstance; other properties in the vicinity have similar topography and their development pattern "steps down with the slope."

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DISCUSSION (continued):

*Applicant: The special circumstance is presented due to the proposed use. If the project minimized, the facility would be too small to be a viable operation. The project has made every attempt to meet conforming standards along the addressed site frontage of Winchester Blvd, which we feel is the premier frontage and elevation which has the most visibility along the corridor.*

*Staff analysis: In response to staff comments about the height of the rear of the building, the applicant did step down with the site to reduce the extent of the variance requested (Attachment 1, Exhibit 13, Sheet A-3.0). The project also includes a reduced height along the property line shared with the adjacent residential units in response to the conditions on the previously approved office building.*

5. *Appellant: Planning Commission only considered the site's topography with respect to the purported loss of proposed Regional Housing Needs Allocation (RHNA) housing units if the variance request was denied.*

*Applicant: RHNA was one of multiple considerations for approving the variance with regards to topography. The Planning Commission took into account the proposed use and functionality challenges of the commercial facility as one structure. Individual buildings such as townhomes are easier to accommodate sloping conditions, but the required services and functionality of the proposed use necessitates one building.*

*Staff analysis: The Planning Commission had extensive discussion of multiple factors, see verbatim minutes (Attachment 4).*

6. *Appellant: Planning Commission failed to consider the granting of the variances requested constitutes a granting of special privilege to exceed the O zone height and lot coverage maximums.*

*Applicant: The granting of the Lot Coverage variance was in line with the outlook of the Town's General Plan, and the approval of the variance was utilized by the Town's own mechanisms in place. The height variance was granted not as a special privilege but viewed as difficult circumstance for the establishment of the proposed use. The proposed project made every effort to minimize the impacts of the height variance request. The proposed site grading is actually lower than the existing site grade today, in an effort to compress the building lower and minimize the visual impact of its height to the surrounding neighbors. What the appellant visual sees from their home, would be the same view regardless of the granted height variance, due to their narrow-bound window view. Planning Commission also considered the unrealistic height standard of 35 feet to be limiting in the ability provide any type of new residential use, regardless of facility type.*

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DISCUSSION (continued):

Staff analysis: Planning Commission made the findings as listed in the staff report, though discussion focused mostly on the site constraints.

7. Appellant: Planning Commission failed to consider that granting of the variances could result in precedent setting behavior where similar projects within the O zone may seek similar height and lot coverage exceedances.

Applicant: *The Planning Commission did consider that the granting of the two variances as precedent. The Commission was adamant that they review projects on a case-by-case basis and felt that the approval would not set precedent.*

Staff analysis: The question of precedent setting was specifically discussed and clarified that each proposed project is reviewed based on its unique circumstances.

8. Appellant: Planning Commission erroneously granted these variances based solely on the loss of housing units that would occur if the project was required to conform to the O zone development standards as codified.

Applicant: *The Planning Commission considered multiple factors to grant the variances. They discussed topography, functionality of the proposed use, quality of architecture, the appropriateness of the site location in a transitional neighbor and corridor, and overall need for assisted living, as well as overall housing needs. The Planning Commission also discussed the benefit of having this type of facility in the Town of Los Gatos and the opportunities it provides for community members that are aging into their senior years.*

Staff analysis: Planning Commission made the findings as listed in the staff report. The value of the proposed housing units, and their character in an assisted living facility to serve the Town's senior residents, was an important part of the discussion; however, there was also an acknowledgement that additional housing units could likely be built through a housing development, as mentioned in the applicant's presentation.

The appellant provided additional materials including a powerpoint presentation, survey results, and an additional letter on September 14, 2023, included as Attachment 8.

PUBLIC COMMENTS:

Signage was installed on the site and digital simulation was prepared in compliance with the approved Story Pole Policy exception, and written notice was sent to property owners and tenants within 300 feet of the subject property. Public comments received prior to 11:00 a.m. on Thursday, September 14, 2023, are provided as Attachment 13.

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ENVIRONMENTAL ASSESSMENT:

An Initial Study and Mitigated Negative Declaration (MND) have been prepared for the project by the Town's Environmental Consultant, Raney Planning & Management, Inc. (available online at <https://www.losgatosca.gov/DocumentCenter/Index/1823>). The 20-day public review period began on July 1, 2022, and ended on July 21, 2022. The project will not result in a significant effect on the environment because mitigation measures have been added for Biological Resources; Cultural Resources; Geology and Soils; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Noise; and Transportation, mitigating potential impacts to a less-than-significant level. The Mitigation Monitoring and Reporting Program is provided as Attachment 1, Exhibit 11, and mitigation measures have been included as conditions of approval in Attachment 1, Exhibit 4.

CONCLUSION:

A. Recommendation

For the reasons stated in this report, it is recommended that the Town Council deny the appeal, upholding the Planning Commission's decision to approve the proposed project with additional conditions (Attachment 9).

B. Alternatives

Alternatively, the Town Council could:

1. Adopt a resolution to grant the appeal and remand the application back to the Planning Commission with specific direction (Attachment 10);
2. Adopt a resolution granting the appeal and denying the application (Attachment 11); or
3. Adopt a resolution granting the appeal and approving the application with modifications (Attachment 12); or
4. Continue the application to a date certain with specific direction.

ATTACHMENTS:

1. August 9, 2023, Planning Commission Staff Report, with Exhibits 2 through 14
2. August 9, 2023, Planning Commission Addendum Report, with Exhibit 15
3. August 9, 2023, Planning Commission Desk Item, with Exhibit 16
4. August 9, 2023, Planning Commission Verbatim Minutes
5. August 9, 2023, Planning Commission Action Letter
6. Appeal of the Planning Commission decision, received August 21, 2023
7. Applicant Response Letter
8. Additional Materials Provided by the Appellant



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ATTACHMENTS (continued):

9. Draft Resolution to Deny the Appeal and Uphold the Planning Commission Decision
10. Draft Resolution to Grant Appeal and Remand Project to Planning Commission
11. Draft Resolution to Grant Appeal and Deny Project
12. Draft Resolution to Grant Appeal and Approve the Project with Modifications
13. Public Comment

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