



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 06/11/2025

ITEM NO: 2

DATE: June 6, 2025
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider a Request for Approval to Construct a New Single-Family Residence with a Reduced Rear Yard Setback, Site Improvements Requiring a Grading Permit, and Removal of Large Protected Trees on a Nonconforming Vacant Property Zoned R-1:20. **Located at 45 Reservoir Road.** APN 529-33-054. Architecture and Site Application S-22-048. Categorically Exempt Pursuant to CEQA Guidelines Section 15303: New Construction. Property Owner: Farnaz Agahian. Applicant: Gary Kohlsaat, Architect. Project Planner: Sean Mullin.

BACKGROUND:

On January 8, 2025, the Planning Commission considered the application, including written and verbal public comments, and approved the request (Exhibit 4, Attachments 1 through 4).

On January 17, 2025, the decision of the Planning Commission was appealed to the Town Council by an interested person, Mary J. Vidovich, property owner of 47 Reservoir Road (Exhibit 4, Attachment 5). On the appeal form, the appellant indicated that there was an error or abuse of discretion by the Planning Commission.

On March 4, 2025, the Town Council discussed the item and received public testimony (Exhibits 4 through 7). The Town Council directed staff to prepare a resolution granting the appeal of a decision of the Planning Commission, and remanding the application back to the Planning Commission with specific direction including the following:

1. Reduce the building footprint in consideration of the least restrictive development area (LRDA); and
2. Reduce the volume/massing of the residence.

Additionally, the Mayor asked that the Planning Commission be provided with more detailed information regarding the circumstances under which the denial of a requested exception from Town standards will constitute a regulatory taking.

PREPARED BY: Sean Mullin, AICP
Planning Manager

Reviewed by: Community Development Director

On March 18, 2025, the Town Council passed and adopted Resolution 2025-009 granting the appeal of the decision of the Planning Commission approving a request to construct a new single-family residence with reduced side and rear yard setbacks, site improvements requiring a grading permit, and removal of large protected trees on a nonconforming vacant property zoned R-1:20, and remanding the application back to Planning Commission with specific direction as described above (Exhibit 8).

DISCUSSION:

In response to the Town Council's direction, the applicant submitted a Letter of Justification detailing the revisions to the project (Exhibit 9) and revised development plans (Exhibit 10). A summary of the applicant's response to the Town Council's direction follows.

1. Reduce the building footprint in consideration of the (LRDA):

The LRDA on the subject property is concentrated in the southern (rear) portion of the property and the area of the existing private road (Exhibit 10, Sheet A-3). The LRDA at the rear of the lot is further constrained with the majority of it being located with the required rear setback of 25 feet and side setbacks of 15 feet. This leaves a very limited area of LRDA outside of the required setbacks.

Due to these constraints, the applicant continues to pursue an exception to the rear yard setbacks, proposing a minimum rear setback of 19 feet, seven and one-half inches, where 25 feet is required. Staff notes that this minimum setback occurs at one location at the center of the rear of the residence and the proposed setback increases moving away from this point in either direction.

In their letter responding to the Council's direction included in Exhibit 9, the applicant notes the following:

- The portion of the proposed residence projecting into the setback would not be visible from the road;
- The minimum setback is exacerbated by the acute angle of the lot shape;
- There will still be plenty of distance to the rear fence;
- The proposed siting of the residence moves it away from the road and allows more of the residence to be located within the LRDA; and
- Moving the residence back further would further increase the amount of grading and trigger another retaining wall height exception.

2. Reduce the volume/massing of the residence:

The subject property is zoned R-1:20, which requires a minimum lot size of 20,000 square feet; a lot width of 100 feet; and minimum setbacks of 30 feet in the front, 25 feet in the rear, and 15 feet on the sides. The subject property was the product of a 2015 merger of six lots into three lots. What resulted was a lot that is nonconforming with an area of 10,000 square feet and a width of 83 feet. In addition to these nonconforming characteristics, the lot is further burdened with a private access road that bisects the property near the middle. As a result, the building envelope is limited to the southern portion of the property, south of the private road, with a very limited area of LRDA outside of the required setbacks.

In response to the Council's direction to reduce the volume/massing of the residence, the applicant reduced its width by two and one-half feet on the west side and one to three feet on the east side. The revised residence now meets the required side setbacks eliminating the need for an exception to the side setback requirements. As a result, the gross size of the narrowed residence is reduced by 244 square feet (including the ADU). The applicant also pulled back the front porch wall by two and one-half feet, reducing its footprint by 30 square feet and increasing the distance between the porch and the private road from 18 inches to three and one-half feet. The following table summarizes the revisions to the gross floor area from the original proposal to the revised proposal.

Floor Area						
	Original Proposal			Revised Proposal		
	Non-Exempt Floor Area*	Exempt Floor Area	Total	Non-Exempt Floor Area*	Exempt Floor Area	Total
Lower Floor	313	1,287	1,600	321	1,135	1,456
Main Floor	1,327	0	1,327	1,272	0	1,272
Garage Floor	163+63	338	564	147+75	352	574
Total	1,866	1,625	3,491	1,815	1,487	3,302
ADU	516	0	516	461	0	461
* Non-Exempt Floor Area includes above grade square footage and portions of below grade square footage projecting beyond the enclosed building footprint above.						

3. Information regarding regulatory taking:

Included in the adopted Resolution from the Council, the Mayor requested that the Planning Commission be provided with more detailed information regarding the circumstances under which the denial of a requested exception from Town standards will constitute a regulatory taking. In response to this request, the Town Attorney provides the following information and will be available at the Planning Commission meeting on June 11, 2025, to answer any questions.

A land use regulation that goes too far is a regulatory taking. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). A regulation goes too far and constitutes a per se taking when the regulation deprives the property owner of all economically viable use of the property, *Lucas v. South Carolina Coastal Council*, 505 U.S. 1002, 1013 (1992). A regulation that leaves the property owner with some economically viable use of the property may still be a taking. The determination of whether such a regulation is a taking is on a case-by-case basis and depends on three factors: (1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation has interfered with the property owner's investment-backed expectations; and (3) the character of the government action, *Penn Cent. Transp. Co v. City of New York*, 438 U.S. 104, 124 (1978).

4. Exceptions:

In addition to the response to the direction from the Town Council, the applicant also provided an additional discussion of and justification for the requested exceptions. As listed below, the revised project requires approval of the following exceptions to the Town Code, HDS&G, and HSP. The previously requested exceptions to the side setback exception and dimensions for required parking spaces have been eliminated with the revised project. The exceptions in *italics* would likely be required for any single-family residence developed on the existing lot.

- Required 25-foot rear setback (Town Code);
- Tandem configuration of the two off-street parking spaces (Town Code);
- Driveway depth of at least 18 feet in length (Town Code);
- Four guest parking spaces shall be provided (HSP);
- *Driveway/access road with a minimum width of 18 feet (Town Code);*
- Grading depths shall not exceed four feet of cut (HDS&G);
- *Grading depths shall not exceed three feet of fill (HDS&G);*
- *Retaining wall heights should not be higher than five feet (HDS&G); and*
- *Buildings shall be located within the LRDA (HDS&G).*

PUBLIC COMMENTS:

The installed story poles were not updated to reflect the revised plans. The reduce massing of the residence is summarized above and in the applicant's letter. The project sign was updated to provide the June 11, 2025, hearing date with the Planning Commission. Written notice was sent to property owners and tenants located within 500 feet of the subject property. At the time of drafting the report no public comments have been received.

CONCLUSION:

A. Summary

The applicant submitted a response letter summarizing the revisions to the project (Exhibit 9) and revised development plans (Exhibit 10) in response to the Town Council's direction provided at the March 4, 2025, Town Council meeting.

B. Recommendation

Should the Planning Commission determine that the revised project meets the direction provided by the Town Council and find merit with the proposed project, the Commission can take the actions below to approve the Architecture and Site application:

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 15303: New Construction (Exhibit 2);
2. Make the finding as required by Section 29.10.265 of the Town Code to allow exceptions to rear setback, driveway/access road width, and driveway depth on a nonconforming property (Exhibit 2);
3. Make the finding as required by Section 29.10.150 (h)(2) of the Town Code to allow an exception to parking requirements when a lot does not have adequate area to provide parking as required;
4. Make the finding that the project complies with the objective standards of Chapter 29 of the Town Code (Zoning Regulations) except for the rear setback, driveway/access road width, parking configuration, and driveway depth (Exhibit 2);
5. Make the finding that the project is in compliance with the Residential Design Guidelines for single-family residences (Exhibit 2);
6. Make the finding that due to the constraints of the site, exceptions to grading depths, retaining wall heights, and buildings located outside of the Least Restrictive Development Area (LRDA) are appropriate, and the project is otherwise in compliance with the applicable sections of the Hillside Development Standards and Guidelines (Exhibit 2);
7. Make the finding that other than an exception to the guest parking requirement, the project complies with the Hillside Specific Plan (Exhibit 2);
8. 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
9. Approve Architecture and Site Application S-22-048 with the conditions contained in Exhibit 3 and the revised development plans in Exhibit 10.

C. Alternatives

Alternatively, the Planning Commission can:

1. Continue the matter to a date certain with specific direction; or
2. Approve the application with additional and/or modified conditions; or
3. Deny the application.

EXHIBITS:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. March 4, 2025, Town Council Staff Report with Attachments 1 through 7
5. March 4, 2025, Town Council Addendum Report with Attachment 8
6. March 4, 2025, Town Council Desk Item Report with Attachment 9
7. March 4, 2025, Town Council Meeting Minutes
8. March 18, 2025, Town Council Resolution 2025-009
9. Applicant's Letter of Justification
10. Revised Development Plans