



**TOWN OF LOS GATOS
POLICY COMMITTEE REPORT**

MEETING DATE: 6/25/2019

ITEM NO:

DATE: JUNE 17, 2019
TO: POLICY COMMITTEE
FROM: LAUREL PREVETTI, TOWN MANAGER
SUBJECT: DISCUSS AND PROVIDE DIRECTION ON THE LAND USE APPEAL PROCESS.

RECOMMENDATION:

Discuss and provide direction on the land use appeal process.

BACKGROUND:

The Policy Committee last considered this matter on December 20, 2018. After discussion, the Committee's direction was to forward a recommendation to the Planning Commission to approve the following proposed modifications to the land use appeal process:

- Include a definition of the term interested person in Town Code Sec. 29.10.020, bifurcating the commercial and residential appeal processes;
- Remove the requirement that the Town Council make one of three findings to modify or reverse the decision of the Planning Commission on any appeal in Town Code Sec. 29.20.295 and Sec. 29.20.300; and
- State that an interested person may appeal the decision by the Planning Director on a Minor Residential Development application to the Planning Commission in Town Code Sec. 29.20.480.

DISCUSSION:

On March 27, 2019, the Commission recommended approval of the proposed amendments to the Town Council with modifications to retain the requirement that the Town Council make one of three findings to modify or reverse the decision of the Commission on any appeal, while modifying the second finding in Section 29.20.300(b)(2) to specify that any new information

PREPARED BY: JOEL PAULSON
Community Development Director

Reviewed by: Town Manager

DISCUSSION (continued):

submitted to the Town Council during the appeal process shall be relative to the same project considered by the Commission, with no design changes.

On May 7, 2019, the Town Council considered the Planning Commission recommendation and introduced an Ordinance effecting amendments to Chapter 29 (Zoning Regulations) of the Town Code, but did not include the Planning Commission's recommended changes to Town Code Section 29.20.295 and 29.20.300 regarding the requirement that the Town Council make one of three findings to modify or reverse the decision of the Planning Commission on any appeal. The Town Council referred discussion of potential amendments to Town Code Section 29.20.295 and 29.20.300 back to the Policy Committee.

Section 29.20.295 and 29.20.300 currently read as follows:

Sec. 29.20.295. - Council hearing.

When hearing the appeal, the Council shall consider the record and such additional evidence as may be offered by anyone and may affirm, modify or reverse, in whole or in part, the determination appealed from, or make and substitute such other determination as is warranted, or may remand to the Planning Commission for further review and determination. The appellant bears the burden of proof before the Council is proving that one or more of the reasons specified in section 29.20.300 exist on the appeal for reversing or modifying the Commission determination. The standards of this chapter governing the discretion of the reviewing body shall apply with equal effect to actions of the Council.

Sec. 29.20.300. - Decision.

- (a) Any decision of the Council modifying, in whole or in part, the order, requirement, decision, determination, interpretation, or ruling appealed from, or making and substituting another decision or determination, requires the concurrence of a majority of the membership of the Council.
- (b) If the Council decides to modify or reverse the decision of the Planning Commission, on any appeal, the resolution shall specify one or more of the following:
 - (1) Where there was error or abuse of discretion on the part of the Planning Commission; or
 - (2) The new information, that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or
 - (3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.
- (c) If the only or predominant reason for modifying or reversing the decision of the Planning Commission is the availability of new information as defined in subsection (b)(2) above, it is the policy of the Town that the application will be returned to the

DISCUSSION (continued):

Commission for review in light of the new information unless the new information has minimal effect on the application.

(d) The decision of the Council upon the appeal will be expressed by a written resolution. The Council will forthwith transmit copies of the resolution to the original applicant, the appellant, and the Planning Commission.

The Policy Committee's previously recommended changes read as follows:

Sec. 29.20.295. - Council hearing.

When hearing the appeal, the Council shall consider the record and such additional evidence as may be offered by anyone and may affirm, modify or reverse, in whole or in part, the determination appealed from, or make and substitute such other determination as is warranted, or may remand to the Planning Commission for further review and determination. ~~The appellant bears the burden of proof before the Council is proving that one or more of the reasons specified in section 29.20.300 exist on the appeal for reversing or modifying the Commission determination.~~ The standards of this chapter governing the discretion of the reviewing body shall apply with equal effect to actions of the Council.

Sec. 29.20.300. - Decision.

(a) Any decision of the Council modifying, in whole or in part, the order, requirement, decision, determination, interpretation, or ruling appealed from, or making and substituting another decision or determination, requires the concurrence of a majority of the membership of the Council.

~~(b) If the Council decides to modify or reverse the decision of the Planning Commission, on any appeal, the resolution shall specify one or more of the following:~~

~~(1) Where there was error or abuse of discretion on the part of the Planning Commission; or~~

~~(2) The new information, that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or~~

~~(3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.~~

~~(c) If the only or predominant reason for modifying or reversing the decision of the Planning Commission is the availability of new information as defined in subsection (b)(2) above, it is the policy of the Town that the application will be returned to the Commission for review in light of the new information unless the new information has minimal effect on the application.~~

~~(d)~~ The decision of the Council upon the appeal will be expressed by a written resolution. The Council will forthwith transmit copies of the resolution to the original applicant, the appellant, and the Planning Commission.

DISCUSSION (continued):

The Planning Commission's previously recommended changes read as follows:

Sec. 29.20.295. - Council hearing.

When hearing the appeal, the Council shall consider the record and such additional evidence as may be offered by anyone and may affirm, modify or reverse, in whole or in part, the determination appealed from, or make and substitute such other determination as is warranted, or may remand to the Planning Commission for further review and determination. ~~The appellant bears the burden of proof before the Council is proving that one or more of the reasons specified in section 29.20.300 exist on the appeal for reversing or modifying the Commission determination.~~ The standards of this chapter governing the discretion of the reviewing body shall apply with equal effect to actions of the Council.

Sec. 29.20.300. - Decision.

- (a) Any decision of the Council modifying, in whole or in part, the order, requirement, decision, determination, interpretation, or ruling appealed from, or making and substituting another decision or determination, requires the concurrence of a majority of the membership of the Council.
- (b) If the Council decides to modify or reverse the decision of the Planning Commission, on any appeal, the resolution shall specify one or more of the following:
 - (1) Where there was error or abuse of discretion on the part of the Planning Commission; or
 - (2) The new information, relative to the same project considered by the Planning Commission, that was submitted to the Council during the appeal process that does not include any design changes and was not readily and reasonably available for submission to the Commission; or
 - (3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.
- ~~(c) If the only or predominant reason for modifying or reversing the decision of the Planning Commission is the availability of new information as defined in subsection (b)(2) above, it is the policy of the Town that the application will be returned to the Commission for review in light of the new information unless the new information has minimal effect on the application.~~
- (d) The decision of the Council upon the appeal will be expressed by a written resolution. The Council will forthwith transmit copies of the resolution to the original applicant, the appellant, and the Planning Commission.

Staff looks forward to the discussion and direction of the Policy Committee for next steps.

PAGE 5 OF 5
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COORDINATION:

The preparation of this report was coordinated with the Town Manager's and Town Attorney's Offices.

