



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 10/13/2021

ITEM NO: 2

DATE: October 8, 2021
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Requesting Approval for Subdivision of One Lot into Two Lots on Property Zoned R-1:20. Located at 16466 Bonnie Lane. APN 532-02-053.
Subdivision Application M-21-003. Property Owner: Mish Chadwick.
Applicant: Tony Jeans. Project Planner: Ryan Safty.

RECOMMENDATION:

Consider approval of a request for subdivision of one lot into two lots on property zoned R-1:20, located at 16466 Bonnie Lane.

PROJECT DATA:

General Plan Designation: Low Density Residential
Zoning Designation: R-1:20
Applicable Plans & Standards: General Plan
Existing Parcel Size: 81,857 square feet

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Low Density Residential	R-1:20
South	Residential	Low Density Residential	R-1:20
East	Residential	Low Density Residential	R-1:8, R-1:20
West	Residential	Low Density Residential	R-1:8, R-1:20

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15315: Minor Land Divisions. The project proposes to subdivide one lot into two. No development is proposed at this time.

FINDINGS:

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15315.
- As required by Section 66474 of the Subdivision Map Act.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject property is located on the east side of Bonnie Lane (Exhibit 1), accessed through a 50-foot wide ingress/egress easement connecting to Bonnie Lane. The application proposes to subdivide the existing lot into two lots. Due to the owner's desire to maintain the existing structures on site, the applicant is requesting two lots with an irregular property line configuration. The majority of the structures and improvements on the existing property would be within newly created Parcel 1, while Parcel 2 would be vacant. No construction is proposed with this Subdivision application.

On March 3, 2021, the Conceptual Development Advisory Committee (CDAC) reviewed the proposed subdivision proposal and provided comments on the proposal and questions to the applicant (Exhibit 5). Several neighbors submitted written comments which were included in the CDAC report (Exhibit 4). Four neighbors were present at the CDAC hearing and spoke in opposition to the proposed subdivision concept.

On April 23, 2021, the application submitted a Subdivision application to subdivide the property into two, irregularly shaped lots. The proposed project meets the technical requirements of the Town Code including minimum lot size, minimum street frontage, minimum lot depth, and maximum floor area. All setbacks to the proposed new property line would comply, except that one existing pergola structure will need to be moved to meet setbacks, which is noted on the plans and included as a condition of approval (Exhibit 3). The existing residence has a non-conforming side yard setback along the southern property line, which would not change.

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located on the east side of Bonnie Lane (Exhibit 1), accessed through a 50-foot wide ingress/egress easement connecting to Bonnie Lane. The surrounding properties are low density single-family residences.

B. Project Summary

The applicant is proposing to subdivide the property at 16466 Bonnie Lane from one lot to two irregularly shaped lots.

C. Zoning Compliance

The proposed new lots comply with minimum lot size, street frontage, lot depth, and floor area. The existing residence has a non-conforming side yard setback along the southern property line, which would not change. The existing structures on the site will comply with setback requirements to new property lines, except for the existing pergola adjacent to the pool which will need to be moved prior to recordation of the parcel map, per draft Condition of Approval 4 (Exhibit 3). The applicant provided a Letter of Justification (Exhibit 7) which summarizes compliance with the Town's Zoning Code.

DISCUSSION:

A. Subdivision Analysis

The subject property is 81,857 square feet and contains a 2,704-square foot single-family residence and 518-square foot attached garage on the southern portion of the property, a 2,468-square foot detached accessory structure labeled as a "barn" at the rear of the property, a pool area with associated equipment storage and pergola structure in the center of the property, and a sports court north of the pool area. The property is accessed from a 50-foot wide ingress/egress easement, 20 feet of which is paved, which serves two other properties. Ross Creek runs along the rear of the property, and there is an approximately 20,000-square foot grass field in the "panhandle" portion of the property running north along Ross Creek to the terminus of the Peacock Lane cul-de-sac to the north (Exhibit 10).

DISCUSSION (continued):

The application proposes to subdivide the existing property approximately in half based on square footage, creating two separate lots. The table below summarizes the existing and proposed lot configurations and Zoning Code requirements. The existing and proposed lots comply with minimum lot size, minimum street frontage, and minimum parcel depth. No construction is proposed with this Subdivision application. The future driveway, grading, and construction work would require an Architecture and Site application and environmental review.

	Size	Frontage	Depth
Existing Parcel	81,857 s.f.	263 feet	285 feet
Parcel 1	40,406 s.f.	142 feet	250 feet
Parcel 2	41,451 s.f.	121 feet	265 feet
Minimum Required	20,000 s.f.	100 feet	140 feet

In order to preserve the desired structures on one lot, comply with setbacks, and create a buildable area on the second lot, the proposed new lot line subdividing the property would be irregular with two separate bump-outs and one angle change.

Proposed Parcel 1 would contain the existing residence, detached accessory “barn” structure, and pool area. The applicant proposes to move the existing pergola to meet the required 15-foot side yard setback, which is included as a condition of approval (Exhibit 3). The total existing floor area that would remain on Parcel 1 would be 5,690 square feet, which would comply with the 6,000-square foot maximum for a 40,406-square foot lot with an average slope of 15.3 percent. The existing circular driveway and 20-foot paved portion of the access easement would remain and continue to be used to access Parcel 1.

Proposed Parcel 2 would be vacant after the removal of the existing sports court, as noted in the plans. The applicant has shown a potential building footprint and driveway location on the front half of Parcel 2 to show how setbacks and access could be complied with in the future. The conceptual driveway shown would run across the existing 50-foot ingress/egress easement, but would be separate from the existing 20-foot wide paved driveway serving the three existing properties. The back half of the property would contain the “panhandle” portion that runs along Ross Creek. No conceptual development is shown in the “panhandle” area for the Subdivision application (Exhibit 10).

As part of this Subdivision application, the applicant is proposing a 20-foot strip along the Ross Creek frontage as a private open space easement, for a total area of 10,000 square feet. The proposed parcels would meet the technical requirements of the Zoning Code; however, the proposed configuration is irregular and not consistent with the typical lot configurations in the surrounding neighborhood.

DISCUSSION (continued):

B. Conceptual Development Advisory Committee Review

Due to the irregular configuration of the proposed subdivision, Town Staff advised the applicant to apply for CDAC review prior to submitting their Subdivision application.

On March 10, 2021, the CDAC reviewed the conceptual subdivision proposal. Written public hearing notices were sent to surrounding property owners and occupants within 300 feet of the subject property.

Prior to the hearing, 12 written public comments were submitted by adjacent neighbors and added to the CDAC staff report (Exhibit 4). Additionally, 15 neighbors signed a letter in opposition to the proposed subdivision concept. The neighbors' concerns revolved around the following: buildability of the "panhandle", wildlife and riparian corridor impacts along Ross Creek, unusual lot configuration, impact to rural character of the neighborhood, and previous code complaints on the property.

At the March 10, 2021 CDAC hearing, four neighbors were present to speak in opposition to the project. The neighbors were concerned with the location of the future house on Parcel 2 and potential privacy impacts, the increased density impacting the rural character of the neighborhood, and any development on the panhandle portion of the property. The CDAC members asked questions of the applicant and staff and provided comments and direction to the applicant (Exhibit 5). The CDAC had the following summarized comments and direction for the applicant: concerns with fire danger and suitability of the site for additional development; questioned whether this was the best way to divide the property; and encouraged neighborhood outreach.

Following the direction received from the CDAC members and the concerns raised from the neighborhood, the applicant revised the proposal and submitted the Subdivision application. The applicant's response letter to the CDAC comments is included as Exhibit 8. To address concerns related to future impacts to Ross Creek riparian corridor, the applicant has proposed a 10,000-square foot private open space easement along Ross Creek, at the rear of the property. To address concerns related to privacy impacts of the future residence on Parcel 2, the applicant modified the proposed subdivision line, adding the first bump-out in order to increase the separation between the future residence on Parcel 2 and the neighbor to the north. Additionally, the plans were revised to show that the future driveway to Parcel 2 will not impact the existing 20-foot paved shared driveway within the ingress/egress easement. The applicant has also reached out to the neighborhood through a series of letters, included as Exhibit 11.

DISCUSSION (continued):

C. Neighbor Concerns

Following CDAC review and the applicant's neighborhood outreach efforts, several letters have been submitted to the public record in opposition to the project (Exhibit 13). The applicant's responses to these comments are provided as Exhibit 12.

The first point of contention in the letters questions the legality and approved use of the detached accessory "barn" structure. Town staff responded that the "barn" structure was approved as detached accessory living space without a kitchen or cooking facility, and the previous remodel of that structure was approved through Building Permit B16-0878. These communications resulted in a Code Enforcement Case being opened on the subject property to inspect whether a cooking facility was installed without permits. The Code Enforcement Officer confirmed that a cooking facility was installed without permits. The owner remedied the Code Enforcement Case by removing the existing stove and 220 outlet from the existing structure and removing the existing electrical wire connected to the electrical panel. The electrical permit for this work (E21-203) was approved and inspected by the Building Department on September 9, 2021, which closed the Case.

The public comment letters also questioned and raised concerns regarding the following: CEQA review of the project related to biological impacts along Ross Creek riparian corridor and development located in the Wildland Very High Fire Hazard Area; lot frontage compliance; arborist review; Hillside Development Standards and Guidelines compliance; and the history of illegal commercial uses associated with the property. The Town Attorney responded in writing to each of these concerns, included as Exhibit 6. A response letter to the Town Attorney's letter was then submitted on August 9, 2021, further questioning the Town's definition of "lot frontage" and "street".

As noted in Exhibit 6, Town Code defines both "lot frontage" and "street," provided below.

Lot frontage means the property line of a lot abutting on a street, which affords access to a lot other than the side line of a corner lot.

Street means any thoroughfare for the motor vehicle travel which affords the principal means of access to abutting property, including public and private rights-of-way and easements.

The proposed lots would have 142 feet and 121 feet of frontage along the existing 50-foot wide ingress/egress easement, and therefore comply with Town Code.

DISCUSSION (continued):

The Town Attorney has provided the following information below to further clarify the environmental review concern.

The Subdivision Map Act (SMA) does not contain a requirement for environmental review. Instead, one must do an analysis under the California Environmental Quality Act (CEQA) to determine whether and to what degree a CEQA analysis must be done for a subdivision application. In this case, staff has relied on a Categorical Exemption pursuant to the California Environmental Quality Act, Section 15315: Minor Land Divisions. The project proposes to subdivide one lot into two and no development is proposed at this time.

In addition to the Categorical Exemption for Minor Land Divisions, the Planning Commission can also rely on State CEQA Guidelines Section 15061(b)(3). The Common Sense Exemption applies when an action or project can be seen with certainty that there is no possibility that the activity may have a significant impact on the environment. Again, the project proposes to subdivide one lot into two and no development is proposed at this time. Also, environmental review will be done if an Architecture and Site application is filed.

Finally, Planning Commission can also rely on CEQA Guidelines Section 15183 which allows for a streamlined environmental review process for projects which are consistent with the development density established by existing zoning, community plan, or general plan policies. Again, the project proposes to subdivide one lot into two and no development is proposed at this time and the project is currently consistent with the development density established by existing zoning and General Plan policies.

Mr. Lippe's letter alleges that, "the Town cannot make a CEQA determination regarding the subdivision application considered in isolation from the proposed new residence. Doing so would unlawfully 'piecemeal' the CEQA determination". Generally, impermissible piecemeal review occurs when a large project is chopped into many little ones—each with a minimal potential impact on the environment or requiring only a ministerial permit—which cumulatively may have significant consequences (*Planning & Conservation League v. Castaic Lake Water Agency* [2009] 180 Cal.App.4th 210, 235). The piecemeal rule against segmenting does not, however, mean that every activity related to a proposed project must be included in a single CEQA document. Rather, the California Supreme Court held that related actions only had to be included in a CEQA document when they were reasonably foreseeable, but not when they were remote and speculative (*Laurel Heights Improvement Association v. Regents of the University of California* 47 Cal. 3d 376). In *Laurel Heights*, the Supreme Court noted that the level of CEQA analysis required in any particular case depends on many factors, including the nature of the project, the directness or indirectness of the contemplated impact, the ability to forecast the actual effects the project will have on the physical environment, whether future effects will themselves require analysis under CEQA, and whether the effects will be felt outside of the project area.

DISCUSSION (continued):

Contrary to Mr. Lippe's letter, there is no "proposed new residence". The project proposes to subdivide one lot into two lots and no development is proposed at this time. Under such circumstances, it would be impossible to specify the precise development that will eventually occur and the impacts that would result therefrom. As mentioned, environmental review will be done if an Architecture and Site application is filed and such an application is not considered ministerial. Therefore, the Town is not piecemealing the project as alleged by Mr. Lippe.

D. Environmental Review

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15315: Minor Land Divisions. The project proposes to subdivide one lot into two. No development is proposed at this time.

PUBLIC COMMENTS:

Written notice of the Planning Commission hearing was sent to neighboring property owners and occupants. Public comments are provided in Exhibit 13. The applicant's responses are included as Exhibit 12.

CONCLUSION:

A. Summary

The applicant is requesting approval of a Subdivision application to subdivide one lot into two lots at 16466 Bonnie Lane. The proposed configuration of the two lots would be irregular and not consistent with the surrounding neighborhood lot pattern. The application complies with the technical requirements of Town Code. No construction is proposed with this application. None of the findings from Section 66474 of the SMA could be made to deny the application (Exhibit 2).

B. Recommendation

Based on the analysis above, staff recommends approval of the Subdivision 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 15315: Minor Land Divisions (Exhibit 2);

CONCLUSION (continued):

2. Make the findings as required by Section 66474 of the Subdivision Map Act (Exhibit 2); and
3. Approve Subdivision application M-21-003 with the conditions contained in Exhibit 3 and the development plans in Exhibit 10.

C. Alternatives

Alternatively, the Commission can:

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

EXHIBITS:

1. Location Map
2. Required Findings
3. Recommended Conditions of Approval
4. March 10, 2021 Conceptual Development Advisory Committee report packet
5. March 10, 2021 Conceptual Development Advisory Committee meeting minutes
6. Town Attorney response letter to public comment, dated June 22, 2021
7. Project Description and Letter of Justification, received July 22, 2021
8. Applicant's response to Conceptual Development Advisory Committee recommendations, received July 22, 2021
9. Pictures of subject property, received July 26, 2021
10. Subdivision Plans, received July 29, 2021
11. Summary of neighborhood outreach, received August 6, 2021
12. Applicant's response to public comments, received September 10, 2021
13. Public Comments received prior to 11:00 a.m., Friday, October 8, 2021