



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 07/10/2019

ITEM NO: 3

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DATE: July 3, 2019  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Architecture and Site Application S-17-047. Project Location: **16 Chestnut Avenue**. Property Owner: Kim Roper. Applicant/Appellant: Bess Wiersema, Studio 3 Design. Project Planner: Erin Walters  
Consider an appeal of a Development Review Committee decision approving a request for demolition of an existing pre-1941 single-family residence and construction of a new single-family residence on property zoned R-1:12. APN 510-40-012.

Deemed complete: May 10, 2019  
Final date to take action: November 10, 2019

**RECOMMENDATION:**

Deny the appeal and uphold the decision of the Development Review Committee (DRC) to approve the application, subject to the recommended conditions of approval.

**PROJECT DATA:**

General Plan Designation: Low Density Residential  
Zoning Designation: R-1:12 - Single-Family Residential, 12,000-square foot lot minimum  
Applicable Plans & Standards: General Plan; Residential Design Guidelines  
Parcel Size: 17,606 square feet

**PREPARED BY:** Erin Walters  
Associate Planner

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

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PROJECT DATA (continued):

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	City of Monte Sereno	NA	NA
South	Residential	Low Density Residential	R-1:8
East	Residential	Low Density Residential	R-1:12
West	Residential	Low Density Residential	R-1:12

CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction or Conversion of Small Structures.

FINDINGS:

- As required, pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, this project is Categorically Exempt, Section 15303: New Construction or Conversation of Small Structures.
- As required by Section 29.10.09030(e) of the Town Code for the demolition of an existing structure.
- As required by the Residential Design Guidelines that 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 17,606-square foot property is located on the north side of Chestnut Avenue (Exhibit 1) and is developed with an existing pre-1941 two-story single-family residence and a detached two-story accessory dwelling unit.

BACKGROUND (continued):

On December 1, 2017, the applicant submitted an Architecture and Site application (S-17-047) for the demolition of an existing pre-1941 single-family residence and construction of a new 3,729-square foot two-story residence with 1,706 square feet of below grade square footage and a 733-square foot attached three-car garage.

On June 27, 2018, the HPC reviewed the applicant's request for demolition of the existing pre-1941 single-family residence and made a recommendation to the Community Development Director that the findings for demolition of a historic structure could be made, Exhibit 6 includes the HPC minutes.

The proposed project meets all technical requirements of the Town Code including parking, setbacks, height, floor area, and building coverage with the exception of meeting the Town's Engineering Design Standards for a driveway approach. The applicant proposes to maintain the existing driveway approach at the southwest corner of the intersection of Chestnut and Hernandez Avenues.

On May 21, 2019, the DRC approved Architecture and Site Application (S-17-047) with a condition of approval requiring the installation of a driveway approach meeting the Town's Engineering Design Standards (Exhibit 14).

On May 31, 2019, the decision of the DRC was appealed to the Planning Commission by the applicant who is requesting removal of the condition of approval requiring the installation of a driveway approach meeting the Town's Engineering Design Standards (Exhibit 16).

PROJECT DESCRIPTION:

A. Architecture and Site Application

Architecture and Site application approval is required to demolish an existing residence and construct a new residence.

B. Location and Surrounding Neighborhood

The subject site is located on the north side of Chestnut Avenue, north of the intersection of Hernandez Avenue and Chestnut Avenue (Exhibit 1). The surrounding properties are one- and two-story single-family residences, with a mix of architectural styles.

PROJECT DESCRIPTION (continued):

C. Zoning Compliance

The property is zoned R-1:12, which permits a single-family residence. The proposed residence is in compliance with parking, setback, height, floor area, and building coverage requirements.

DISCUSSION:

A. Architecture and Site

The applicant is proposing to construct a new two-story single-family residence with 3,729 square feet of living floor area, 1,706 square feet of below grade square footage, and a 733-square foot attached three car garage. The maximum height of the proposed residence is 30 feet, where a maximum of 30 feet is allowed.

The applicant's scope of work/letter of justification is attached in Exhibit 4. The project data sheet is attached in Exhibit 5 for additional information regarding the proposed project.

The site contains an existing two-story residence and a detached greenhouse structure. A detached two-story accessory dwelling unit, a detached shed, and a chicken coop are located over the subject property line and encroach into public right-of-way. The applicant proposes to remove the chicken coop and the green house structures. Two existing wood columns are located at the existing driveway approach and are also located within the public right-of-way. The applicant may choose to retain the columns in the existing location. Per Condition of Approval 37, Exhibit 3, the property owner shall enter into an agreement with the Town for all existing and proposed private improvements located within the Town's right-of-way.

B. Design and Compatibility

The Town's Consulting Architect reviewed the proposed project (Exhibit 7). The Consulting Architect had no issues or concerns and stated that the proposed house is very well designed with an identifiable traditional architectural style and is compatible with the immediate neighborhood. The Consulting Architect had no recommendations for changes.

DISCUSSION (continued):C. Neighborhood Compatibility

The immediate area is made up of one- and two-story single-family residences, including a mix of architectural styles. Based on Town and County records, the surrounding residences range in size from 966 square feet to 3,816 square feet. The floor area ratios (FAR) range from 0.004 to 0.38. The Neighborhood Analysis table below reflects the current conditions of the immediate area:

Neighborhood Analysis						
Address	Floor Area	Garage Floor Area	Gross Lot Area	FAR	Stories	Zoning
20 Chestnut	3,392	400	23,908	0.14	2	R-1:12
50 Chestnut	2,610	360	11,904	0.22	2	R-1:12
48 Chestnut	966	230	8,160	0.12	2	R-1:12
200 Hernandez	1,980	484	49,535	0.04	1	R-1:12
134 Hernandez	3,816	488	43,143	0.09	2	R-1:12
155 Hernandez	2,933	630	7,665	0.38	2	R-1:8
9 Hernandez	2,270	412	11,151	0.20	2	R-1:8
15 Chestnut	1,680	252	9,100	0.18	2	R-1:8
21 Chestnut	1,428	237	7,371	0.19	1	R-1:8
16 Chestnut (Ex)	2,573	0	17,606	0.15	2	R-1:12
<b>16 Chestnut (P)</b>	<b>3,729</b>	<b>733</b>	<b>17,606</b>	<b>0.21</b>	<b>2</b>	<b>R-1:12</b>

The proposed residence would not be the largest home in the immediate area in terms of square footage or floor area ratio (FAR).

D. Tree Impacts

The project site contains fourteen protected trees, one of which is considered a Large Protected Tree, a 63-1/2-inch diameter Coast Live Oak (Tree #6). The applicant is proposing to remove two existing trees, one of which is a dead 12-inch diameter Coast Live Oak (Tree #7), and another which is a multi-trunk 13-inch diameter Chinese Juniper (Tree #4a), which is located within two feet of the existing house to be demolished.

The applicant's arborist reports (Exhibit 8) the health of the large protected Live Oak (Tree #6) to be "poor, evidenced by a relatively thin canopy and slow reaction growth around large wounds. Several girdling roots are present at the base of the trunk." Both the applicant's arborist and the Town's Consulting Arborist have provided specific

DISCUSSION (continued):

recommendations for Tree #6, including setting minimum disturbance distances from the diameter of the trunk (Exhibits 9 and 10).

The applicant's arborist prepared a report for the site and recommendations for the project (Exhibit 9) and the Town's Consulting Arborist peer reviewed the report and provided recommendations (Exhibit 10). In addition, the applicant's arborist prepared a report evaluating the tree impacts to the large protected Live Oak (Tree #6), with four driveway design alternatives (Exhibit 8) and the Town's Consulting Arborist peer reviewed this report (Exhibit 10).

The three driveway alternatives reviewed in the applicant's arborist report include the following:

- Retaining the approximate original footprint of the driveway.  
*This design option would not meet the Town's Engineering Design Standards.*
- Locating the driveway approach along the property's Chestnut Avenue frontage in a location that meets the Town's Engineering Design Standards.  
*This is a preferred driveway approach location per the Town's Engineering Design Standards, however, the proposed location of the garage and driveway in this alternative would not provide adequate backup and turning radius dimensions to protect Tree #6.*
- Locating the driveway approach along the property's Hernandez Avenue frontage.  
*This design option is infeasible due to the existing topographic conditions and constraints along the Hernandez Avenue frontage.*

The applicant has incorporated the Consulting Arborist's recommendations into the final development plans and has provided a compliance memorandum addressing the Town's consulting arborist's peer review recommendations (Exhibit 11).

If the project were approved, tree protection measures would be implemented prior to and during construction. Replacement trees for the removal of protected trees would also be required to be planted pursuant to Town Code.

E. Driveway Approach

The existing driveway approach is located at the southwestern corner of the intersection of Chestnut and Hernandez Avenues. The existing driveway approach location does not meet the Town's Engineering Design Standards for safety.

DISCUSSION (continued):

The Architecture and Site application was reviewed at multiple Staff Technical Review meetings and at each meeting Engineering Staff provided the applicant a deficiency letter that included the requirement to modify the location of the driveway approach to meet the Town's Engineering Design Standards.

The Town's Engineering Design Standards (Section 2.21A) states:

*Corner clearances from access points for all uses fronting a non-arterial or non-collector road shall be a minimum of 50 feet.*

The Chestnut Avenue frontage for the subject property is 200 feet in length, providing opportunities to locate a driveway approach along the frontage. Staff requested that the applicant consider shifting the proposed house footprint to the West on the property to locate the driveway approach on Chestnut Avenue to meet the Town's Engineering Design Standards. Shifting the footprint of the proposed residence to the West would locate the proposed driveway approach, driveway, and grading outside of the protection zone for the Live Oak (Tree #6) recommended by the Town's Consulting Arborist (Exhibit 13). Locating the driveway approach in this location might require removal a 20-inch Oak (Tree #3), rated good, and possibly a 12-inch Linden (Tree #4), rated good/moderate. The joint utility pole may also have to be relocated depending upon the final design.

The applicant chose not to modify the location of the driveway approach to meet the Town's Engineering Design Standards for the following reasons, as outlined in the scope of work/letter of justification, Exhibit 4:

- The driveway relocation meeting Town Standards would require two hard 90 degree turns to enter the proposed new three car garage entering off of Chestnut Avenue per the proposed location of the house;
- The driveway relocation would endanger the health of Live Oak Tree (Tree #6);
- Shifting the house West on the property would reduce the owners' only private area, as the property is surrounded on three sides by streets; and
- Grading required for the relocated driveway would require the garage to be lowered and further impact the tree.

The Architecture and Site application was deemed complete with the exception of the driveway approach location. Staff recommended approval of the Architecture and Site Application to the DRC with required findings and conditions of approval, including Condition of Approval 59:

DISCUSSION (continued):

DRIVEWAY APPROACH: The Owner or Applicant shall install one (1) Town standard residential driveway approach. The driveway shall meet the Town's Engineering Design Standards and be located on Chestnut Avenue at a minimum distance of 50 feet from the nearest curb return at the southwestern corner of Chestnut and Hernandez Avenues (see Section 2.21). The new driveway approach shall be constructed per Town Standard Plans and must be completed and accepted by the Town before a Certificate of Occupancy for any new building can be issued. New concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore.

Intersection corners are an extension of legal crosswalks as indicated in the Vehicle Code, and, as a result, pedestrians use intersection corners in order to cross streets. An intersection corner is typically reserved for pedestrian access and ADA ramps. It should not be occupied by a driveway and used for vehicle access. A vehicle driver backing out of the driveway at an intersection corner is likely to have an obstructed view of pedestrians and turning vehicles at said intersection. Placing, or, in this case, allowing a driveway to remain at an intersection corner could create conflicts and unsafe conditions to continue for both pedestrians and vehicles. In addition, a vehicle backing out of a driveway at an intersection corner would need to back up into and subsequently make a three-point turn in the middle of the intersection, with an obstructed view of intersection traffic and pedestrians. Standard engineering practice does not allow this due to safety concerns.

Additionally, the existing conditions, foliage, and geometry of the intersection create a safety concern, seeing oncoming eastbound Hernandez Avenue traffic, for vehicles exiting the driveway headfirst.

Finally, per Condition of Approval 34, all public improvements, including the driveway approach specified in Condition of Approval 59, shall be made according to the latest adopted Town Standard Plans, Standard Specifications, and Engineering Design Standards.

The Parks and Public Works Department has provided a project information sheet for the project (Exhibit 19).

F. Development Review Committee



The DRC held a public hearing for the Architecture and Site application on May 21, 2019 (Exhibit 14). Written public hearing notices were sent to surrounding property owners and occupants within 300 feet of the subject property.

DISCUSSION (continued):

Elizabeth Jendricks, a resident of the neighborhood for 30 years, spoke in favor of the project with the existing driveway approach location (Exhibit 14).

The DRC found the application was complete and in compliance with the Town Code and Residential Design Guidelines, and approved the project, subject to the recommended conditions of approval.

G. Appeal by Applicant

On May 31, 2019, the decision of the DRC was appealed to the Planning Commission by the applicant, Bess Wiersema, Studio 3 Design (Exhibit 16). The appellant is specifically appealing Condition of Approval 59, provided above.

The appellant/applicant's reasons for not complying with the Town's Engineering Design Standards for the driveway approach with staff responses in *italics* are provided below:

1. Relocating the driveway approach to meet Town Engineering Standards would negatively impact the existing Oak Tree and alter the existing grade beneath the tree, which would require the Oak tree to be removed.

*Response: The subject property has 200 feet of frontage on Chestnut Avenue, which provides opportunities to locate a driveway approach along the frontage without significantly impacting the tree (Exhibit 13).*

2. Relocation of the driveway approach to meet Town Engineering Standards would require the relocation of the existing utilities/joint pole and additional trees along Chestnut Avenue.

*Response: Depending upon the placement of the driveway approach, the joint utility pole may have to be relocated and additional trees along Chestnut Avenue may have to be removed (Exhibit 13).*

The appellant/applicant also provided the following reasons to maintain the existing driveway approach and columns with staff responses in *italics*:

1. Is original to the property and consistent with most other surroundings neighbors;

*Response: The location of the existing driveway approach does not meet the Town's Engineering Design Standards. Discretionary review of a new house requires all public improvements, including the driveway approach, to comply with the latest adopted Town Standard Plans, Standard Specification, and Engineering Design Standards.*

DISCUSSION (continued):

2. Maintains the original character and charm of the neighborhood;

*Response: See response above.*

3. No known accidents due to driveway location, location is not a hazard;

*Response: The absence of known accidents does not conclude traffic safety presently or in the future. Engineering standards are proactive in improving traffic safety and minimizing potential future accidents. Many Town projects are designed and constructed for enhancing traffic safety with or without known accidents.*

4. Is at a safe intersection with stops on all three sides;

*Response: The existing intersection is a safe intersection with a three-way stop. It could be further improved by relocating the driveway approach away from the intersection which would reduce potential conflicts with pedestrians and intersection traffic.*

5. Provides clear site visibility and distance from both exiting the driveway as well as cars entering intersection from adjacent streets and driveways;

*Response: Entering the driveway from eastbound Chestnut Avenue creates limited views of vehicles turning right from Hernandez Avenue. Backing out of the driveway creates obstructed views of pedestrians and vehicles at the intersection. Exiting the driveway headfirst creates limited views of oncoming Hernandez Avenue traffic from the left and Chestnut Avenue traffic from the right.*

6. Maintains existing driveway and grade not to impact Oak tree, keeping tree;

*Response: The 200 feet of frontage along Chestnut Avenue and shifting of the footprint of the proposed residence to the West would provide adequate space to accommodate a driveway approach and driveway that would meet Town Standards without impacting Tree #6.*

7. Easy ingress/egress to property: cars drive around tree and exit forward facing (no need to back-out of driveway);

*Response: Relocating the driveway approach to Chestnut Avenue, a minimum of 50 feet from the intersection, would provide better ingress/egress and would reduce potential conflicts with pedestrians and vehicles at the intersection. It should be noted that*

DISCUSSION (continued):

*although ingress/egress from the existing driveway approach seems easy, the existing condition creates potential conflicts with pedestrians and intersection traffic.*

8. Civil engineering studies and consulting arborist show how maintaining the existing driveway is the best solution for the property and less impactful overall;

*Response: The applicant's civil engineering studies do not consider shifting the footprint of the proposed new residence to the West to accommodate a new driveway approach and a driveway that would meet Town Standards without impacting Tree #6.*

9. Site restraints impose limited alteration modification to the existing residence; and

*Response: The existing driveway approach does not meet the Town's standards. The application is for the construction of a new single-family home. The 200 feet of frontage along Chestnut Avenue and shifting of the footprint of the proposed residence to the West would provide adequate space to accommodate a driveway approach and driveway that would meet Town Standards without impacting Tree #6.*

10. The subject property has three street frontages versus two street frontages.

*Response: See response above.*

On June 28, 2019, the appellant submitted a supplemental information packet providing the history of the application and additional information regarding the request for the appeal of Condition of Approval 59 (Exhibit 17).

H. Legal - Town Attorney

Town Code Section 29.20.710 states:

The Town Engineer shall:

- (1) Prescribe standards for driveway construction.

Town Code Section 23.30.065 states:

All sidewalks, driveways, curbs, and gutters shall be constructed in accordance with specifications, plans, and detailed drawings prepared by and on file with the Town Engineer.

The Town Engineer has prescribed standards for driveway construction that states: "Corner clearances from access points for all uses fronting a non-arterial or non-collector road shall be a minimum of 50 feet."

DISCUSSION (continued):

The U.S. Department of Transportation Manual states that the number and types of conflict points (i.e., the number of locations where the travel paths of two different vehicles may cross) at the intersection of a driveway and a public road influence the safety of motorists and pedestrians. The Manual states it is desirable to minimize the number of conflict points created with existing and future driveways since more conflict points increase the risk of a crash occurring. The number and type of conflict points at a driveway can be managed by limiting both the amount of access allowed at the driveway and the location of the driveway relative to other driveways and the intersection in the area.

In addition, the L.A. Department of Transportation states that basic principle of driveway location planning is to minimize possible conflicts between users of the parking facility and users of the abutting street system. The public interest requires optimum capacity of streets and highways to carry traffic with minimum potential for traffic accidents. The safety of pedestrians must be considered and driveways should be as far from the intersecting street as possible.

Finally, the American Association of State Highway and Transportation Officials Green Book specifically states that: "Driveways should not be situated within the functional boundary of at-grade intersections."

In California, under statutory immunities titled "design immunity," a public entity is generally not liable for injuries caused by a dangerous condition of public property if there is substantial evidence supporting the reasonableness of the plan or design. By following the Town's Code, the Town Engineer's prescribed standards for driveway construction, and the wealth of manuals, policies, and findings throughout the nation that require driveways to be placed away from intersections, the Town will be able to invoke "design immunity" and will not be liable if an accident were to occur at this intersection. On the other hand, if the Town deviates from the prescribed standards for driveway construction, and an accident did occur at this intersection, the Town may be held liable for allowing or creating a dangerous condition in so doing.

If the Planning Commission determines that the existing driveway location is appropriate, findings with substantial evidence shall be entered into the record.

I. CEQA Determination

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction or Conversion of Small Structures, which includes demolition of an existing single-family residence and construction of a new single-family residence in a residential zone.

PUBLIC COMMENTS:

The owners reached out to the neighbors and provided staff with signed letters of support from many of the adjacent neighbors (Exhibit 15). The appellant/applicant circulated a Neighborhood Petition of Support for the project and appeal of Condition of Approval 59 (Exhibit 18). At the time of this report's preparation, the Town has not received any additional public comment.

CONCLUSION:

A. Conclusion

The Town's Engineering Design Standards require corner clearances from access points for all uses fronting a non-arterial or non-collector road to be a minimum of 50 feet. The current driveway approach located at the southwestern corner of the intersection of Chestnut and Hernandez Avenues does not meet the Town's Engineering Design Standards. The applicant's request to approve Architecture and Site application S-17-047 to demolish an existing pre-1941 residence and construction of a new single-family residence is required to be in compliance with the Town's Engineering Design Standards. With the construction of a new residence and the 200-foot street frontage along Chestnut Avenue, there is adequate space to accommodate the required driveway approach and provide protection for the existing large protected Live Oak (Tree #6).

B. Recommendation

Staff recommends that the Planning Commission take the following actions to deny the appeal, uphold the decision of the DRC, and approve the Architecture and Site application:

1. Find 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 or Conversion of Small Structures (Exhibit 2);
2. Make the required findings as required by Section 29.10.09030(e) of the Town Code for the demolition of a single-family residence (Exhibit 2);

CONCLUSION (continued):

3. Make the finding required by the Town's Residential Design Guidelines that the project complies with the Residential Design Guidelines (Exhibit 2);
4. Make the required considerations as required by Section 29.20.150 of the Town Code for granting approval of an Architecture and Site application (Exhibit 2); and
5. Approve Architecture and Site Application S-17-047 with the conditions contained in Exhibit 3 and development plans attached as Exhibit 20.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Deny the appeal and approve the application with additional and/or modified conditions;
3. Grant the appeal and allow the existing driveway approach to remain. If this alternative is implemented, findings with substantial evidence shall be entered into the record; or
4. Deny the Architecture and Site application.

EXHIBITS:

1. Location Map
2. Required Findings and Considerations (one page)
3. Recommended Conditions of Approval (13 pages)
4. Applicant's Scope of Work and Letter of Justification, received December 19, 2019 (14 pages)
5. Project Data Sheet, received April 10, 2019 (two pages)
6. June 27, 2018 Historic Preservation Committee Meeting Minutes (five pages)
7. Consulting Architect Report, received March 12, 2018 (four pages)
8. Applicant's Arborist Report regarding Live Oak (Tree #6), received February 12, 2019 (13 pages)
9. Applicant's Arborist Report, received February 12, 2019 (25 pages)
10. Town's Consulting Arborist Peer Review, received March 7, 2019 (five pages)
11. Applicant's Arborist Response Letter, received April 10, 2019 (three pages)
12. Town's Consulting Arborist Peer Review Letter, received May 1, 2019 (one page)

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**SUBJECT: 16 Chestnut Avenue/S-17-047**

**DATE: July 3, 2019**

13. Town Prepared Site Diagram Overlay (one page)
14. May 21, 2019 Development Review Committee meeting minutes (two pages)
15. Letters of Support from Neighbors, received December 19, 2018 and June 28, 2019 (seven pages)
16. Appellant's Letter, received May 31, 2019 (two pages)
17. Applicant's Supplemental Letter and Exhibits, received June 28, 2019 (22 pages)
18. Neighborhood Petition of Support, received June 28, 2019 (seven pages)
19. Project Information Sheet provided by the Parks and Public Works Department, received July 1, 2019 (three pages)
20. Development Plans received April 10, 2019 (27 pages)