



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/16/2021

ITEM NO: 23

DATE: November 10, 2021
TO: Mayor and Town Council
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of the Community Development Director Determination of Demolition on Property Zoned R-1:8. Located at 33 Walnut Avenue. APN 510-41-007. Building Permit B19-0482. Property Owner/Applicant/Appellant: Jeffrey Siegel. Project Planner: Erin Walters.

RECOMMENDATION:

Deny the appeal of the Community Development Director determination of demolition on property zone R-1:8, located at 33 Walnut Avenue.

BACKGROUND:

The subject property is located 185 feet from the northwest corner of Walnut Avenue and Hernandez Avenue (Attachment 1). The property has frontage on both Walnut Avenue and Wissahickon Avenue. The property contains a pre-1941 single-family residence and a detached garage with a second story accessory dwelling unit (ADU) above. The detached garage and ADU are under construction and are not associated with this appeal.

On August 22, 2018 and May 15, 2019, the Historic Preservation Committee (HPC) reviewed and approved exterior modifications to the pre-1941 structure at 33 Walnut Avenue (Attachments 2 and 3). Per Town Code Section 29.10.020, the scope of work did not result in demolition of the historic structure and was therefore reviewed through a ministerial building permit.

On April 21, 2021, Building Permit B19-0482 was issued for interior and exterior modifications to the subject structure, as approved by the HPC. The property owner, architect, civil engineer,

PREPARED BY: Erin Walters
Associate Planner

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

BACKGROUND (continued):

and contractor submitted a signed Demolition Affidavit acknowledging their understanding of the Town's demolition requirements for a historic structure per Town Code (Attachment 4).

On September 16, 2021, staff was informed by the property owner that the exterior siding had been removed from the front elevation of the house. The owner also inquired about the requirements to replace all of the original siding material to address fire concerns. The Chief Building Official and Planning staff confirmed in the field that more than 25 percent of the exterior wall covering (siding) was removed from the walls facing the public street without notification of or approval by the Community Development Department prior to removal, resulting in an unlawful demolition per Town Code (Attachment 5). On October 7, 2021, a Notice of Unlawful Demolition from the Community Development Director was sent to the property owner (Attachment 6).

On October 11, 2021, the decision of the Community Development Director was appealed by the property owner (Attachment 7). Pursuant to Town Code Section 29.20.255, any interested person as defined in Section 29.10.020 may appeal any decision of the Planning Director including "(4) Determination of an unlawful demolition and/or the penalty and the cost assessment for the unlawful demolition."

Pursuant to Town Code Section 29.20.260, the appellant must file a written notice of appeal with the Planning Director not more than 10 days after the date of mailing of written notification of the Planning Director's decision. The notice shall state clearly the reasons why the appeal ought to be granted. Pursuant to Town Code Section 29.20.265, the appeal should be heard by the Planning Commission. After discussion between the Town Attorney and the appellant, the appellant has chosen to elevate the appeal to be heard directly by the Town Council. Staff is not treating this circumstance as a precedent for future appeals.

DISCUSSION:

A. Project Summary

The subject property is a pre-1941 historic structure. On April 21, 2021, Building Permit B19-0482 was issued for the construction of a new roofed porch, interior remodel and exterior door and window modifications to the pre-1941 structure, as approved by the HPC. During the building permit process, the Town requested a Demolition Affidavit which requires all parties of the project to review the Town's Demolition Code requirements (Attachment 4). The Town Code Section 29.10.020 states that the demolition of a historic structure means:

DISCUSSION (continued):

(1) Removal of more than 25 percent of the wall(s) facing a public street(s) (or a street facing elevation if the parcel is a corridor lot or is landlocked) or 50 percent of all exterior walls; or

(2) Enclosure or alteration (i.e.: new window and/or window relocation) of more than 25 percent of the walls facing a public street (or a street facing elevation if the parcel is a corridor lot or is landlocked) or 50 percent of the exterior walls so that they no longer function as exterior walls; or

All remaining exterior walls must retain the existing exterior wall covering. No new exterior wall covering shall be permitted over the existing exterior wall covering. The following are exempt from this definition:

- a. Replacement. The exterior wall covering may be removed if the covering is not original to the structure.*
- b. Repair. The removal and replacement of in kind non-repairable exterior wall covering resulting in no change to its exterior appearance or historic character if approved by the deciding body.*
- c. Removal. The removal of an addition(s) that is not part of the original structure and which has no historic significance, as determined by the Historic Preservation Committee. Demolition shall be determined by subsections (1) and (2) above for the original structure, where walls enclosed by additions shall be considered as exterior walls.*

All parties must sign the Demolition Affidavit confirming that they have read and understand the Demolition Code requirements. Multiple discussions with the appellant, project architect, and Town staff regarding the Town's demolition thresholds for this historic structure occurred.

The Town Code requires the Demolition Affidavit when the proposed project would result in demolition of more than 40 percent of the existing exterior walls. Even for projects with less than 40 percent demolition, staff requests the Demolition Affidavit be signed to ensure, in the event additional demolition may be required beyond what is shown on the plans, all parties understand the demolition requirements. The Town stamps a notice on the building permit plans referencing that prior to removal of interior or exterior wall coverings to read and review the Town's demolition policy.

The approved Building Permit plans included a demolition plan showing that less than 25 percent of the walls facing the public street and less than 50 percent of all exterior walls would be removed. Town Code specifies all remaining exterior walls must retain the existing exterior wall covering. The approved building permit plans showed shear wall to be placed on the interior walls of the front elevation in order maintain the required exterior

DISCUSSION (continued):

wall covering (siding), so the work would not result in a demolition of a historic structure per Town Code.

On September 16, 2021, staff was informed by the property owner that the historic siding had been removed from the front elevation of the house. The property owner was inquiring about replacing all of the existing siding with an alternative siding material, Hardi-board, due to fire protection concerns. Replacement of historic siding requires review and approval by the HPC and would result in a demolition per the Town Code.

Staff confirmed in the field that more than 25 percent of the exterior wall covering (siding) was removed from the walls facing the public street without notifying the Planning Division prior to removal, therefore resulting in an unlawful demolition per Town Code.

B. Community Development Director Determination of Demolition

On October 7, 2021, the Community Development Director provided a Notice of Unlawful Demolition to the property owner stating that more than 25 percent of the existing wall area (siding) facing a public street had been removed without notifying the Planning Division prior to removal, resulting in an unlawful demolition per the Town Code (Attachment 6). The notice included the following requirements:

i. Unlawful Demolition Penalty Fees

Per Town Code Section 29.10.09030 g.2.b. – If a structure was a historic residence and does not have a Landmark Historic Preservation overlay zone, a fine shall be equal to 10 percent of the building permit evaluation at the time of demolition, as determined by the Planning Director. The Building Permit valuation for B19-0482 is \$78,372.80. The homeowner shall provide payment to the Town for \$7,837.28 withing ninety days of receiving the Unlawful Notice of Demolition (January 5, 2022).

ii. Architecture and Site Application

Per Town Code, the property owner shall apply for an Architecture and Site Application for the technical demolition of an existing pre-1941 single family residence and construction of a new single-family residence. Per Town Code, double application fees are required for work unlawfully completed, $\$11,202.18 \times 2 = \$22,404.36$. Per Town Code, the Architecture and Site application shall be reviewed by the HPC.

DISCUSSION (continued):

iii. Future Building and Engineering Applications associated with the Architecture and Site Application

Per Town Code, double application fees are required for work unlawfully completed which will be determined through the Architecture and Site Application process.

C. Appeal to Town Council

The Community Development Director Determination of Unlawful Demolition was appealed on October 11, 2021, by the property owner, Jeffrey Siegel (Attachment 7).

The appellant has provided the following reasons, in **bold**, of why the appeal should be granted. Staff's response is provided in *italics*.

1. Appellant: The 25 percent rule was unknown to the appellant.

Staff Response: The appellant and appellant's team signed the Demolition Affidavit as part of the Building Permit submittal which references Section 29.10.20.020 of the Town Code concerning the definition of an historic structure and the definition of demolition and Section 29.10.09030 (f) through (l) of the Town Code concerning penalties associated with unlawful demolition (Attachment 6). The approved building permit plans are stamped with a reminder to read and review the Town's Demolition policy prior to the removal of any interior or exterior wall coverings.

2. The 25 percent rule conflicts with Historic Preservation practices.

Staff Response: Section 29.10.20.020 of the Town Code provides a definition of demolition thresholds for historic structures.

3. Technical Demolition is an extreme overkill to a minor infraction and does not take into account the situation context.

Staff Response: Town Code defines a threshold for demolition or "technical demolition" for historic structures. The appellant for the subject property did not follow the approved demolition plan or the approved shear wall plans of the approved building plans. The approved building plans show shear wall to be placed on the interior walls of the front elevation in order to preserve the existing exterior siding. The appellant did not stop work in the field and contact the Planning Division prior to proceeding past the approved demolition plan and unlawfully removed more than 25 percent of the existing siding on the front elevation as shown in photos provided by the appellant (Attachment

DISCUSSION (continued):

5). The appellant did not stop work in the field and make a request to revise the location of the shear wall to be placed on the exterior front elevation.

The reasons presented by the appellant for why the Community Development Director's Determination of Unlawful Demolition appeal should be granted are in conflict with the Town Code's definition of demolition of historic structures and the property owner, architect, civil engineer, and contractor signed the Demolition Affidavit (Attachment 4). The appellant's list of reasons of why the appeal should be granted challenges the existence of a demolition violation (Attachment 7). The appellant's appeal does not discuss penalty fees.

D. Required Findings

Pursuant to Town Code Section 29.20.265 the appeal should be heard by the Planning Commission. After discussion with the Town Attorney and the appellant, the appellant choose to elevate the appeal to be heard by the Town Council. For clarity, "Planning Commission" has been replaced by "Town Council" as the deciding body in the text below.

Pursuant to Town Code Section 29.20.265 (b) for hearings dealing with an appeal of an unlawful demolition and/or the penalty fee for the lawful demolition the Town Council shall do the following:

- (1) The Town Council shall consider any written or oral evidence consistent with its rules and procedures regarding the violation, compliance by the violator or by the real property owner, and the amount of the penalty.
- (2) The Town Council shall make the findings and issue its determination regarding:
 - a. The existence of the violation; and
 - b. The appropriateness of the amount of the penalty fee.
- (3) The Town Council shall issue written findings of each violation. The findings shall be supported by evidence received at the hearing.
- (4) If the Town Council finds by the evidence provided that a violation has occurred, the Town Council shall affirm the decision of the Planning Director.
- (5) If the Town Council finds that no violation has occurred, the Town Council shall state a finding of those facts.
- (6) The Town Council may approve or reduce the amount of the penalty, but not the application penalty fee which is established by resolution.

PUBLIC COMMENTS:

Written notice of the Town Council hearing was sent to property owners and tenants within 300 feet of the subject property. At the time of this report's preparation, the Town has not received any public comment.

CONCLUSION:

A. Recommendation

For the reasons stated in this report, it is recommended that the Town Council uphold the decision of the Community Development Director and adopt a resolution (Attachment 8) denying the appeal with the required findings incorporated in the resolution.

B. Alternatives

Alternatively, the Town Council could:

1. Adopt a resolution to grant the appeal and determine that no demolition violation occurred (Attachment 9) with the required findings incorporated in the resolution; or
2. Continue the application to a date certain with specific direction; or
3. Remand the appeal to the Planning Commission with specific direction.

COORDINATION:

The Community Development Department coordinated with the Town Attorney's Office in review of the appeal.

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA, but is ministerial, therefore no further action is required under CEQA.

Attachments:

1. Location Map
2. Historic Preservation Committee Meeting Minutes for August 22, 2018
3. Historic Preservation Committee Meeting Minutes for May 15, 2019
4. Signed Demolition Affidavit
5. Photos provided by Appellant
6. Notice of Unlawful Demolition
7. Appeal of the Community Development Director Decision, received October 11, 2021
8. Draft Resolution to Deny Appeal and Uphold the Director of Community Development Determination of Demolition
9. Draft Resolution to Grant Appeal and Determine No Demolition Violation