



MEETING DATE: 08-6-2007

AGENDA ITEM:

9

COUNCIL AGENDA REPORT

DATE: JUNE 26, 2007
TO: MAYOR AND TOWN COUNCIL
FROM: ORRY P. KORB, TOWN ATTORNEY
SUBJECT: ADOPT RESOLUTION GRANTING AN APPEAL OF A PLANNING COMMISSION DECISION DENYING MODIFICATION OF AN APPROVED ARCHITECTURE & SITE APPLICATION RELATING TO GRADING AND LANDSCAPE IMPROVEMENTS ON PROPERTY ZONED HR-2 1/2. ARCHITECTURE & SITE APPLICATION S-02-066. APN 537-24-013. PROPERTY LOCATION: 15350 SUVIEW DRIVE. PROPERTY OWNER/APPLICANT/APPELLANT: CHARLES HACKETT.

RECOMMENDATION:

Adopt resolution granting an appeal of the Planning Commission's decision to deny modification of an approved Architecture & Site application relating to grading and landscape improvements on property zoned HR-2 1/2.

DISCUSSION:

On June 18, 2007, Council decided to grant an appeal of a Planning Commission decision denying modification of an approved Architecture & Site application relating to grading and landscape improvements on property zoned HR-2 1/2, and to have the application remanded to the Planning Commission for review. The attached resolution finalizes that decision.

Attachment: Proposed Resolution

Distribution: Bob Steuer, 1133 Fairview Avenue, San Jose, CA 95125
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PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

Reviewed by: [Signature] Town Manager, Assistant Town Manager, Clerk, Finance, Community Development

Rev: 8/1/07 2:31 pm

Reformatted: 7/19/99

**RESOLUTION**

**RESOLUTION GRANTING AN APPEAL OF A PLANNING COMMISSION DECISION  
DENYING MODIFICATION OF AN APPROVED ARCHITECTURE & SITE  
APPLICATION RELATING TO GRADING AND LANDSCAPE IMPROVEMENTS ON  
PROPERTY ZONED HR-2 ½**

**APN: 537-24-013  
ARCHITECTURE AND SITE APPLICATION: S-06-066  
PROPERTY LOCATION: 15350 SUVIEW DRIVE  
PROPERTY OWNER/APPLICANT/APPELLANT: CHARLES HACKETT**

**WHEREAS:**

A. This matter came before the Town Council for public hearing on June 18, 2007, and was regularly noticed in conformance with State and Town law.

B. Council received testimony and documentary evidence from the applicant/appellant and all interested persons who wished to testify or submit documents. Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report dated June 14, 2007, along with subsequent reports and materials prepared concerning this application.

C. The applicant/appellant is requesting an appeal of a Planning Commission decision to deny a request for modifications to an approved Architecture and Site application related to grading and landscape improvements on property zoned HR-2 ½..

D. On August 22, 2001, the applicant/appellant originally secured approval for a new hillside home and pool on the subject property; however, construction did not commence before the architecture and site approval expired on August 22, 2003. The Planning Commission approved a new Architecture & Site application for the same construction on May 26, 2004, and construction began in July 2004. Since that time, applicant/appellant has made certain improvements on the property without prior planning approvals, for which the applicant/appellant now seeks approval.

E. The application was considered and denied by the Planning Commission on September 13, 2006. The applicant/appellant appealed this decision on September 22, 2006. On October 16, 2006, the Town Council considered the appeal, and continued the matter to allow the applicant additional time to address the Planning Commission's concerns. On January 16, 2007, the Town Council granted the applicant/appellant's appeal and remanded the Architecture and Site application to the Planning Commission for review. The remand was based on the introduction of new information that was not available to the Commission at the time the application was denied. The Council also stated that the Commission did not support its decision to deny the application with clearly articulated findings.

F. On March 28, 2007, the Planning Commission considered the information submitted by the applicant and asked questions of the applicant/appellant and staff before continuing the application to April 11, 2007. On April 11, 2007, the Commission received public testimony and discussed each of the applicant/appellant's requested items. The Commission granted a partial approval, remanded one item for further analysis, and denied the remainder of the requested modifications. The applicant/appellant appealed the Commission's decision on April 20, 2007.

G. The applicant/appellant claims that the Planning Commission erred or abused its discretion in that there was insufficient evidence to support its findings, and that the Commission added introduced new items without prior notice to the applicant/appellant.

H. The decision of the Planning Commission with regard to the pergola, entry wall B and the terraced retaining walls is reversed.

I. Council finds as follows:

i. Pursuant to Town Code section 29.20.300 that the appeal raises 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; to wit, the interpretation of the Hillside Development Guidelines regarding granting exceptions, grading and constructing retaining walls.

ii. Evidence presented by the applicant/appellant in writing and testimony, and additional evidence through the testimony of the Ian Felix, the neighbor at 15333 Kennedy Road and Lynn Olson, the neighbor at 15300 Suvie Drive, along with the direct observations of the members of Council, demonstrates that the modifications made without permits provide reasonable solutions to a number of privacy issues. The pergola provides a privacy barrier between the applicant/appellant's property and the neighboring property at 15333 Kennedy Road without blocking views of the Town from the neighboring property. The entry walls, which will be faced in stone and landscaped, will block disruptive light from headlights and fully define the driveway. The existing retaining walls compliment the development such that their replacement with walls as originally approved would not justify the resulting disruption, grading, truck trips and soil compaction concerns.

iii. The opposition of Alex Gorovitz, the neighbor residing at 15335 Kennedy Roads unconvincing. Mr. Gorovitz fails to demonstrate that views of the Town from his property are significantly impacted by the pergola. The staff report and the testimony of Lynn Olson, on the other hand, demonstrate that the pergola is visible only from the property located at 15300 Suvie Drive. Mr. Gorovitz's concerns about the use of stucco walls as opposed to wood fences is countered by the conditions of approval requiring natural surface treatment and landscaping of the walls. Testimony of the applicant/appellant's landscape architect demonstrates that stucco walls are more appropriate to the site given high wind conditions during the winter.

iv. The Hillside Guidelines allow exceptions and the integrity of the Guidelines is not compromised by granting exceptions where warranted. The modifications to the project were not originally permitted. Consequently, the applicant/appellant ran the risk that some or all of the modifications would not be approved, requiring their removal. The applicant/appellant's subsequent application for the necessary permits must be considered on its merits as land use matter rather than as punitive proceeding. The record demonstrates that the subject property presents a number of

unique and difficult issues resulting in seven public hearings before the Town Council and Planning Commission. The modifications improve the project from what was originally approved.

**RESOLVED:**

1. The appeal of the decision of the Planning Commission denying Architecture and Site Applications S-06-066 is granted, subject to the conditions of approval attached hereto and incorporated herein as Exhibit "A."

2. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by State and Federal Law.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California on the \_\_\_\_\_ day of August 2007, by the following vote.

**COUNCIL MEMBERS:**

AYES: Steve Glickman, Mike Wasserman, Diane McNutt,  
Mayor Joe Pirzynski

NAYS:

ABSENT:

ABSTAIN: Barbara Spector

SIGNED:

\_\_\_\_\_  
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

\_\_\_\_\_  
CLERK ADMINISTRATOR  
TOWN OF LOS GATOS, CALIFORNIA