



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 10/14/2020

ITEM NO: 3

DATE: October 5, 2020
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of the Replacement Tree Requirement for a Tree Removal Permit on Property Zoned R-1:8. Located at 205 Lester Lane. APN 424-17-015. Tree Removal Permit T-20-074. Property Owner/Applicant/Appellant: Cynthia Jaen. Project Planner: Ryan Safty.

RECOMMENDATION:

Consider an appeal of the replacement tree requirement for a Tree Removal Permit on property zoned R-1:8 located at 205 Lester Lane.

PROJECT DATA:

General Plan Designation: Low Density Residential
Zoning Designation: R-1:8
Applicable Plans & Standards: General Plan
Parcel Size: 8,163 square feet
Surrounding Area:

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

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15304: Minor Alterations of Land.

FINDINGS:

- The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15304: Minor Alteration of Land.

ACTION:

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

BACKGROUND:

On June 22, 2020, the Parks and Public Works Department received a Tree Removal Permit application (page 17 of Exhibit 6) to remove one Black Locust tree located at 205 Lester Lane (Exhibit 1). The tree was roughly 30 feet in height with a 25-foot canopy (Exhibit 5). The tree is considered a protected tree per Town Code Section 29.10.0960, thus requiring approval of a Tree Removal Permit prior to removal. The property owner requested removal of the tree based on safety concerns as the tree had been dropping limbs. The Town Arborist, Rob Moulden, conducted an inspection of the tree and approved and issued Tree Removal Permit T-20-074 including the tree replacement requirement (Exhibit 4) on June 29, 2020, based on the following findings in Town Code Section 29.10.0992:

....

- 4) The retention of the tree restricts the economic enjoyment of the property or creates an unusual hardship for the property owner by severely limiting the use of the property in a manner not typically experienced by owners of similarly situated properties, and the applicant has demonstrated to the satisfaction of the Director or deciding body that there are no reasonable alternative to preserve the tree; and*
- 5) The tree has, or will imminently, interfere with utility services where such interference cannot be controlled or remedied through reasonable modification, relocation or repair of the utility service or the pruning of the root or branch structure of the tree; or where removal or pruning is required by a public utility to comply with California Public Utility Commission (CPUC) or Federal Energy Regulatory Commission (FERC) rules or regulations.*

....

BACKGROUND (continued):

The approved Tree Removal Permit (Exhibit 4) specifies a tree replacement requirement of three 15-gallon trees to off-set the removal. The owner also has the option of paying in-lieu fees in the amount of \$250.00 per replacement tree (\$750.00 total). The Tree Removal Permit application (page 17 of Exhibit 6), which was signed and submitted by the property owner on June 22, 2020, specifies in the Notes section that, "Replacement Trees are not required if the tree being removed is dead or has a tree Risk Rating of Extreme or High, as determined by the Town Arborist." The Town arborist did not determine that the tree was dead, and no Tree Risk Rating assessment was conducted by the Town Arborist or the owner.

On June 29, 2020, following issuance of the Tree Removal Permit, the Black Locust tree was removed. On July 1, 2020, the owner contacted the Town Arborist to request the replacement tree requirement be waived, stating that the tree was dead and severely rotted. The Town Arborist denied the request, stating that the tree was not dead and that the Tree Removal Permit was issued because the tree was severely rotted. On July 7, 2020, the owner appealed the replacement tree requirement associated with Tree Removal Permit T-20-074.

DISCUSSION:

A. Appeal Analysis

The property owner appealed the replacement tree requirement of the approved Tree Removal Permit due to assertions that the tree was already dead. Per Town Code Section 29.10.0985, "[...] The Director or the deciding body shall impose, except when removal is permitted if the tree is dead or a Tree Risk Rating of Extreme or High is present, as a condition on which a protected tree removal permit is granted that two or more replacement trees of a species and a size designated by the Director or designee, shall be planted [...]."

As detailed above, the Town Arborist visited the site and made the required findings for approval of the Tree Removal Permit. Following the removal of the tree, the owner contacted the Town Arborist to request the replacement tree requirement be waived. The Town Arborist denied this request as he determined that the tree was not dead. A Tree Risk Rating assessment was not conducted by the Town Arborist, and the owner did not provide one to counter the decision of the Town Arborist.

The owner has provided a letter (Exhibit 7) with additional information on the tree, as well as the other trees on the subject property. The tree service company contracted to remove the tree (PMC Tree Service Inc.) also provided a letter (Exhibit 8) describing the status of the tree and work conducted; however, no Tree Risk Rating assessment was provided.

DISCUSSION (continued):

B. Environmental Review

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15304: Minor Alteration of Land.

PUBLIC COMMENTS:

Written notice 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. Summary

The Town Arborist has determined that the tree was not dead prior to removal and the property owner must meet the tree replacement requirement included in the Tree Removal Permit.

B. Recommendation

Staff recommends that the Planning Commission take the following actions to deny the appeal of the tree replacement requirement for the Tree Removal Permit:

1. Find that the proposed project is categorically exempt pursuant to the adopted Guidelines for the implementation of the California Environmental Quality Act, Section 15304: Minor Alterations of Land (Exhibit 2); and
2. Deny the appeal of the tree replacement requirement for the Tree Removal Permit.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Deny the appeal and modify the tree replacement requirement for the Tree Removal Permit; or
3. Grant the appeal and waive the tree replacement requirement for the Tree Removal Permit.

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SUBJECT: 205 Lester Lane/T-20-074

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EXHIBITS:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Tree Removal Permit, received June 29, 2020
5. Tree Photographs
6. Appeal Packet, received July 7, 2020
7. Letter from Owner, received September 18, 2020
8. Letter from Tree Service Company, received September 18, 2020