



TOWN OF LOS GATOS
PLANNING COMMISSION STAFF REPORT
Meeting Date: September 24, 2014

ITEM NO: 2

PREPARED BY: Jennifer L. Savage, Senior Planner
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APPLICATION NO.: Tree Removal Permit Application T14-060

LOCATION: **205 & 215 Westchester Drive** (northwest side of Westchester Drive, approximately 0.25 miles northeast from the Westchester Drive and Camino del Cerro intersection)

APPLICANT/
PROPERTY OWNER: John Fritz (215 Westchester Drive)

APPELLANT/
CONTACT PERSON: Daniel J. Roberts (205 Westchester Drive)

APPLICATION SUMMARY: Appeal of a decision denying a Tree Removal Permit on properties zoned R-1:8. APNs 523-35-031 and 030.

RECOMMENDATION: Deny the appeal.

PROJECT DATA: General Plan Designation: Low Density Residential 0-5 units/acre
Zoning Designation: R-1:8 – Single Family Residential, 8,000 square foot lot minimum
Parcel Size: 8,000 square feet
Surrounding Area:

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

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

FINDINGS: ■ As required by the adopted Guidelines for the Implementation of the California Environmental Quality Act this project is Categorically Exempt, Section 15304: Minor Alterations of Land.

STANDARDS OF REVIEW: ■ As required by Section 29.10.0990 of the Town Code for a tree removal permit.

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

EXHIBITS: Previously received with August 27, 2014 Staff Report

1. Location Map
2. Findings and Standards of Review
3. Draft Conditions of Approval (one page)
4. Tree Removal Application (one page)
5. Appeal Form and Letter, received May 7, 2014 (seven pages)

BACKGROUND:

On August 27, 2014, the Planning Commission reviewed the subject application and continued the matter to September 24, 2014. The Commission directed the applicant to meet with the Town Arborist to review and discuss pruning that has already been completed and alternatives to pruning. The Commission also directed staff to provide a legal interpretation of public nuisance and considerations for tree removal when weighing the effect of tree droppings versus the tree's health.

On September 17, 2014, planning staff met onsite with both property owners - John Fritz (215 Westchester Drive) and Daniel J. Roberts (205 Westchester Drive). On September 18, 2014, the Town Arborist completed a site visit to review the tree again.

ANALYSIS:

A. Pruning

The subject tree was last pruned in February 2013. The Town Arborist assessed the tree on March 28 and September 18, 2014 and determined that additional pruning would reduce the impact of the tree droppings. Although additional pruning would not prevent tree droppings entirely, pruning on a regular basis would reduce the tree droppings.

B. Alternatives

Staff identified the following alternatives to reduce or prevent droppings on 205 Westchester Drive:

- Regular Pruning – The property owners could prune the tree on a regular basis as opposed to a one time pruning. This option would reduce, but not prevent, tree droppings.
- Extensive Pruning – The tree could be pruned to remove foliage over the property at 205 Westchester. However, the extent of pruning that would be required to accomplish this option would lead to the tree's demise.
- Removal of All Pinecones – A tree professional could remove all of the pinecones, most likely on a regular basis. The cost to remove the pinecones could be cost prohibitive.
- Construction of a Structure – The tree droppings are affecting the property at 205 Westchester (the appellant's property), not the property at 215 Westchester Drive (the property on which the tree is located). The appellant could explore constructing an arbor or covered patio under the tree. This option would allow the tree to remain and decrease the impacts of tree droppings for 205 Westchester Drive.

C. Public Nuisance

Public nuisance is defined in Chapter 29, Article I, Division 2, Section 29.10.0955 as any trees, shrubs, plants or parts thereof growing in, or overhanging, a public street or right-of-way, or upon private property, interfering with the use of any public street or public place in the Town, or trees which, in the opinion of the director, endanger the life, health, safety, comfort or property of any persons using such public street, or in such public place, because of the tree's or shrub's location, condition of its limbs, roots or trunk, or because of its diseased condition, is hereby declared to be a public nuisance.

The tree overhangs a Santa Clara Valley Water District (SCVWD) property. The SCVWD property contains maintenance access on each side of the waterway and the appellant has stated that some people use these pathways for walking. Staff understands that there is not an easement for public use. The tree does not overhang a public street or right-of-way. Therefore, it is not a public nuisance pursuant to Town Code.

California Civil Code Section 3480 defines public nuisance as one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. The subject tree is not an annoyance or causing damage to any considerable number of persons and, therefore, is not a public nuisance pursuant to state law.

D. Tree Droppings Versus Tree Health

The standards for review of Tree Removal Permits are set forth in Town Code Section 29.10.0990 (Exhibit 2). These standards should be considered when the deciding body evaluates a request to remove a tree. Specifically, standard one speaks to disease, danger of falling, structural damage, and public nuisance; standard two speaks to whether the reasonable application of preventative measures or routine maintenance can reduce the concern; and standard nine speaks to if a tree has a significant impact on the property.

In regards to standard one, the tree was found to be in good health. In regards to standard two, there are measures and maintenance that can reduce the tree droppings. In regards to standards nine, Town Code Section 29.10.0955 defines a significant impact on the property as an unreasonable interference with the normal and intended use of the property.

Town Code Section 29.10.0955 states in determining whether there is a significant impact, the typical longevity of the subject tree species, the size of the tree relative to the property, and whether the condition can be corrected shall be considered. The section also states that normal maintenance, including but not limited to, pruning, and leaf removal and minor damage to paving or fences shall not be considered when making a determination of significant impact.

SUMMARY AND RECOMMENDATION:

A. Summary

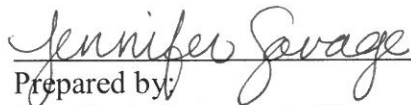
Staff recommends the appeal be denied because the tree can be pruned to limit the damage caused by the pine cones.

B. Recommendation

Uphold the denial of the tree removal permit and deny the appeal.

Alternatively, the Commission can:

1. Grant the tree removal permit appeal subject to the required canopy replacement;
or
2. Continue the matter to a date certain with specific direction.



Prepared by:
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Senior Planner



Approved by:
Laurel R. Prevetti
Assistant Town Manager/
Director of Community Development

LRP:JS:cg

cc: Daniel J. Roberts, 205 Westchester Drive, Los Gatos, CA 95032
John Fritz, 215 Westchester Drive, Los Gatos, CA 95032
Matt Morley, Director of Parks & Public Works

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