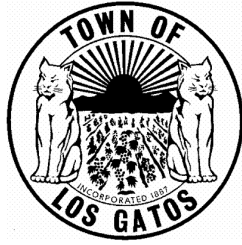


# **DRAFT**



**TOWN OF LOS GATOS**  
**PLANNING COMMISSION MEETING**  
**ACTION MINUTES**  
**TOWN COUNCIL CHAMBERS**  
**110 E. MAIN STREET**  
**WEDNESDAY, JANUARY 25, 2012**

**Chair Marico Sayoc** called the meeting to order at 7:00 p.m.

## **ROLL CALL**

**Present:** Chair Marico Sayoc, Vice Chair Marcia Jensen, Commissioner John Bourgeois, Commissioner Charles Ereksen, Commissioner Thomas O'Donnell, Commissioner Margaret Smith, and Commissioner Joanne Talesfore.

**Absent:** None

**Others:** Town Attorney Judith Propp, Planning Manager Sandy Baily, Associate Planner Jennifer Savage, Assistant Civil Engineer Trang Tu-Nguyen, and Recording Secretary Linda Rowlett.

## **PLEDGE OF ALLEGIANCE**

Led by **Chair Marico Sayoc**.

## **APPROVAL OF MINUTES OF DECEMBER 14, 2011**

**Motion** by **Commissioner John Bourgeois** and seconded by **Commissioner Joanne Talesfore** to approve meeting minutes of December 14, 2011.

Motion carried 7-0.

## **WRITTEN COMMUNICATIONS**

**Chair Marico Sayoc** noted that there was a desk item for Item #2 and Item #3.

## **REQUESTED CONTINUANCES - ITEM #1**

**Motion** by **Vice Chair Marcia Jensen** and seconded by **Commissioner Charles Ereksen** to grant continuance of Item #1 (**16828 Kennedy Road**) to February 22, 2012.

Motion carried 7-0.

### **SUBCOMMITTEE REPORTS**

**General Plan Committee** -- Commissioner John Bourgeois reported that the committee met tonight to review the State Density Bonus Law and Town Housing Assistance Program and heard a presentation by Mid-Peninsula Housing on developing affordable housing in the Bay Area. This was in preparation for developing the Affordable Housing Overlay Zones.

**Historic Preservation Committee** -- Commissioner Charles Erikson reported that the Committee met this afternoon and recommended approval of exterior modifications to the Los Gatos Theatre, reviewed conceptual plans for a second story addition at **106 Massol Avenue**, and continued a request for exterior modifications on a property at **301 University Avenue**.

### **VERBAL COMMUNICATIONS (AUDIENCE)**

#### **Patti Elliot**

- Commented that she lives on Marchmont Drive and that she is concerned about the Hillbrook School issue. Over the past few years, the school has ignored and violated several important conditions in its Conditional Use Permit (CUP) that were put in place to preserve the character of the neighborhood and to mitigate the dangerous conditions caused by the traffic.
- Commented that Hillbrook has routinely ignored Condition #12 which limits the number of vehicles during morning drop-off and afternoon pick-up periods.
- Commented that the neighborhood is inundated by traffic all day long and requested that the Commission instruct Town staff to require Hillbrook School to provide all the documentation of its programs and also those programs that it has allowed outside groups to run.

### **CONSENT CALENDAR -- NONE**

### **CONTINUED PUBLIC HEARINGS -- NONE**

### **NEW PUBLIC HEARINGS**

1. **16828 Kennedy Road.** Minor Residential Development Application MR-11-010. Requesting approval to construct a new second story on a single-family residence on property zoned R-1:8. APN 532-35-076. PROPERTY OWNER: Hillbrook School. APPLICANT: Kim Midstokke. PLANNERS: Marni Moseley/Jennifer Savage.

*Continuance granted to February 22, 2012. See Requested Continuances above.*

2. **15220 Oak Ridge Way.** Architecture and Site Application S-11-059. Requesting approval to construct a new single family residence on a vacant lot zoned R-1:20. APN 424-30-120. PROPERTY OWNER/APPLICANT: Robert Herzig. PLANNER: Jennifer Savage.

**Chair Marico Sayoc** opened the public hearing.

**Associate Planner Jennifer Savage** presented the staff report.

**Commissioner John Bourgeois**

- Asked if an expert was brought in to look at the site regarding the vernal pool.

**Associate Planner Jennifer Savage**

- Commented that she was not aware of the Town bringing in outside experts, but she did not know if the applicant had done so. Town staff determined that the vernal pool was not an issue based on the physical characteristics of the site.

**Chris Spaulding, Applicant,** gave a presentation on the proposed project and provided a letter from a soils engineer to the Commission stating that no evidence of subsurface flow was found.

**Commissioner Thomas O'Donnell**

- Asked if there is a gate blocking Wild Way when you turn right from Oak Ridge Way.
- Asked which houses were used to determine neighborhood compatibility.

**Chris Spaulding**

- Commented that there is a gate where Wild Way is no longer in use and is not a public way.
- Commented that there are several houses in the neighborhood with larger square footage.

**Commissioner Joanne Talesfore**

- Asked if trees will be providing privacy and asked what type they are and where they will be located.
- Commented that she would like to see a landscape plan.
- Commented that the characteristics of the neighborhood that stand out to her are single-story homes that are swept back with low slung roofs and eaves.
- Asked how the architecture of the proposed home relates to the neighborhood.

**Chris Spaulding**

- Pointed out the privacy planting on the overhead stating that the applicant has come to an agreement with the neighbor regarding what type of trees will be planted.
- Commented that there are two-story houses in the neighborhood. Some of the one-story homes were built many years ago on very large lots and may not be suitable for comparison.

**Commissioner John Bourgeois**

- Asked if they considered pushing the house farther back on the lot.

**Chris Spaulding**

- Commented that they did push the house back an additional five feet that is not shown on the drawings. The lot is not deep enough to push it back any farther.

**John Livingstone**

- Commented that he is a planning consultant representing **Mr. Chen** and requested that the item be continued to give **Mr. Chen** an opportunity to attend the hearing.

- Commented that the plans need to be modified to meet staff's Condition #13 regarding easements.
- Commented that the proposed design requires the use of the easement for its day to day functions.
- Commented there is little parking available other than in the easement. The plans propose three garage parking spaces. The only parking available is in front of the two-car garage.
- Commented that the back balcony has a view into **Mr. Chen's** yard, pool and spa area.
- Commented that the staff report indicates that the size of the proposed project is not compatible with the immediate neighborhood.
- Asked that the item be continued due to the privacy issues, encroachment and lack of a landscape plan so **Mr. Chen** can have further dialogue with the applicant.

**Commissioner Thomas O'Donnell**

- Asked **Mr. Livingstone** if he has read the easement and asked where it starts and ends.

**John Livingstone**

- Commented that he has read the easement and that it runs from the front of the lot and goes all the way to the rear. The easement is used for maintenance of the back of the site and they put gravel down for the working access.

**Chair Marico Sayoc**

- Asked if there is anything currently on the easement.
- Asked what is encroaching into the easement.

**John Livingstone**

- Commented that the easement is currently a vacant lot.
- Commented that the eaves of the single car garage are encroaching into the easement and need to be modified per Condition #13.

**Commissioner Margaret Smith**

- Asked about the back balcony and the location of **Mr. Chen's** pool area.

**John Livingstone**

- Pointed to the location of the pool and spa area. There are over 100 feet from the balcony to the BBQ area.

**Commissioner Joanne Talesfore**

- Asked if there is another road to the property in back.

**John Livingstone**

- Commented that there is not another road to the back property.

**Chair Marico Sayoc**

- Asked if there has been any communication between **Mr. Chen** and the property owner.

**John Livingstone**

- Commented that **Mr. Chen** has talked with the property owner but they would like further communication with the architect and an opportunity to see a landscape plan.

**Jean Hardwicke**

- Commented that she lives across the street from the project on Oak Ridge Way and that she does not have issues with the house itself, but there is underground water on the site.
- Commented that her main concern is parking. There is a parking issue on the streets and she wants the Town to pay attention to Buena Vista Avenue and Oak Ridge Way during construction to see that there is unimpeded access.

**Charles Tripp**

- Commented that he lives across the street and one house down from the project on Oak Ridge Way and that he objects to the size of the house.
- Commented that he is concerned about the water situation during heavy prolonged rains. He has installed six pumps and two drains and water still comes under his house.
- Commented that his backyard soaks up millions of gallons of water and it flows underground and goes right through where the proposed house is going to be. The underground water is there.

**Mary Keith Osborn**

- Commented that she lives on Wild Way and her objection is over the drainage of the vernal pool. There is a lot of water when it rains heavily and it washes down her driveway.

**Chris Spaulding**

- Commented that the 18-inch garage eave was intruding into the easement and they will cut that off with a six-inch eave.
- Showed drawings indicating that there is not a privacy problem with the pool.
- Commented that his client is willing to work with the new property owners to get the access they need to service the back of their property.

**Vice Chair Marcia Jensen**

- Asked about the height of the eave.
- Asked what types of trees have been selected.
- Asked about the geotechnical engineering report and if subsurface water is the same as a vernal pool.

**Chris Spaulding**

- Commented that the eave starts at about nine feet above the ground and goes to about 14 feet.
- Commented that evergreen carolinianas will be planted.
- Commented that a vernal pool is a surface puddle and that is different from subsurface water.

### **Robert Herzig, Property Owner**

- Commented that he has talked with the neighbors about the types of trees and decided on carolinianas for privacy.
- Commented that the easement is not a daily easement but for seasonal pruning and maintenance of the well.

### **Commissioner Margaret Smith**

- Asked about landscaping for the back of the house.

### **Robert Herzig**

- Commented that there is already some Italian Cypresses but they are willing to plant more screening if necessary.

### **Commissioner John Bourgeois**

- Commented that neighborhood compatibility is an issue that the Commission will have to address and asked **Mr. Spaulding** if he had anything to add on that issue.

### **Chris Spaulding**

- Commented that judging compatibility with two small houses built in the 1950s precludes one from building a house that meets all the other zoning rules. As an architect, he does not look at just the houses on either side but rather the entire streetscape.

### **Commissioner Joanne Talesfore**

- Asked if part of the design solution is to fit into the neighborhood.
- Asked for **Mr. Spaulding's** comments on the staff report regarding size and style.
- Asked how the cellar is being used to address the massing.

### **Chris Spaulding**

- Commented that the houses to the right are set way back because they have the view and the land to do so. This parcel is not like those parcels.
- Commented that houses around this parcel are eclectic except for the ranches from the late 1950s. The newer house that is three houses to the right is similar to this lot and it was recently approved. Immediately to the left is a tall two-story house with a steep roof.
- Commented that the cellar does not address the massing. The FAR (Floor Area Ratio) was used up above ground with the inclusion of the accessory building. The cellar is additional square footage but, from the street, it is entirely underground.

**Chair Marico Sayoc** closed the public input portion of the hearing and returned to the Commission for deliberations.

### **Commissioner Thomas O'Donnell**

- Commented that his only problem is compatibility with the neighborhood. He would not hold the applicant to the same square footage as the older homes, but rather that the architecture appears massive. He does not believe that the square footage is a problem, but this particular design is unnecessarily massive.

**Commissioner Joanne Talesfore**

- Commented that she also noticed that the architecture stands out even though the square footage is not a problem. A neighborhood in transition does not mean that you change the character of the neighborhood, but rather preserve the characteristics.

**Chair Marico Sayoc**

- Asked if there were any environmental studies done when this lot was subdivided into three lots.

**Planning Manager Sandy Baily**

- Commented that the subdivision was categorically exempt so there were no environmental studies done.

**Commissioner Thomas O'Donnell**

- Asked if the Commission can determine that a redesign is needed rather than turning down the project.

**Associate Planner Jennifer Savage**

- Confirmed that the Commission can ask for a redesign.

**Commissioner Margaret Smith**

- Commented that she does not want to turn down the project but would like it to come back with revisions to the architecture.

**Commissioner Joanne Talesfore**

- Asked if a landscape plan could be included when it comes back to the Commission.
- Commented that she would like to see what is going to be planted along the front of the property.

**Associate Planner Jennifer Savage**

- Commented that staff would recommend that privacy screening be included rather than landscaping for the entire lot if the project comes back.
- Commented that some of the trees in the front landscaping are scheduled to be removed.

**Commissioner Charles Erekson**

- Asked how the construction will exacerbate the water problems in the neighborhood.

**Assistant Civil Engineer Trang Tu-Nguyen**

- Commented that construction should not impact the neighborhood because they have already mitigated the water issues.

**Chair Marico Sayoc**

- Asked if staff had any comments regarding the desk item.
- Asked if Parks and Public Works (PPW) staff checked soil and vegetation when determining the presence of a vernal pool.

**Assistant Civil Engineer Trang Tu-Nguyen**

- Commented that she came to the same conclusion that staff noted in Desk Item #2 regarding groundwater.
- Commented that PPW staff is not the expert, but when examining the soils and vegetation this morning, it did not meet the definition or give the indication of a vernal pool.

**Planning Manager Sandy Baily**

- Commented that the issue of a vernal pool has come up several times over the years at different times of the year and PPW staff has never found evidence of a vernal pool.

**Commissioner John Bourgeois**

- Commented that it is a serious claim that there is a vernal pool on the site. Filling a vernal pool is illegal without a permit but they are extremely difficult to determine if present. He is at a loss of what to do about this issue.

**Commissioner Thomas O'Donnell**

- Commented that the only evidence is that there may have been vernal pools on the site years ago. There is no evidence to support it at the present time.

**Motion by Commissioner Thomas O'Donnell** and seconded by **Commissioner Joanne Talesfore** to continue Architecture and Site Application S-11-059 to March 14, 2012, to give the applicant the opportunity to reduce the appearance of bulk and mass of the design for neighborhood compatibility.

**Commissioner John Bourgeois**

- Asked that a landscaping plan be part of the redesign.

**Commissioner Thomas O'Donnell**

- Commented that his only sensitivity is how complete a landscaping plan is required.

**Commissioner John Bourgeois**

- Commented that a conceptual landscaping plan showing size, species and location would be fine.

**Chair Marico Sayoc**

- Commented that screening between this property and **Mr. Chen's** property was an issue.

**Commissioner Thomas O'Donnell**

- Commented that he would amend the motion to include a conceptual landscape plan, but would not require that it include the back of the property.

**Commissioner Joanne Talesfore**

- Commented that she agrees with the amendment.



**Commissioner Charles Erektion**

- Commented that he believes the applicant will respond appropriately based on tonight's feedback and does not believe that the motion needs to include a lot of specificity.

**Commissioner Thomas O'Donnell**

- Commented that, as maker of the motion, he agrees with **Commissioner Erektion's** comment.

**Commissioner Joanne Talesfore**

- Commented that, as seconder of the motion, she agrees with **Commissioner Erektion's** comments as well.

Motion carried 7-0.

3. **15043 Los Gatos Boulevard.** Conditional Use Permit Application U-11-018. Requesting approval to legalize a nonconforming bar (The Boulevard Tavern) on property zoned CH. APN 424-07-086. PROPERTY OWNER/APPLICANT: Robert & Georgianna Spinazze. PLANNER: Jennifer Savage.

**Chair Marico Sayoc** opened the public hearing.

**Associate Planner Jennifer Savage** presented the staff report.

**Commissioner John Bourgeois**

- Asked about the periodic review for compatibility in relation to the North Forty Specific Plan.

**Associate Planner Jennifer Savage**

- Commented that they would review the CUP before the Specific Plan is adopted to weigh against any plan that is adopted. The condition was meant to determine if use is not compatible with future development if the Specific Plan is adopted.

**Town Attorney Judith Propp**

- Commented that the Town wanted to allow the owners adequate time to be part of the discussion rather than receive notice after the fact.

**Commissioner Thomas O'Donnell**

- Asked about the language regarding legalizing a nonconforming bar.

**Associate Jennifer Savage**

- Commented that the action is to approve a CUP.

**Town Attorney Judith Propp**

- Commented that when granting a CUP it is considered a vested right. Staff has had lengthy discussions with the property owner and the applicant about the potential change in circumstance. Staff is recommending this as a use permit with conditions that it not

necessarily continue if there is a rezoning in the area. It seemed unrealistic to deny a CUP when there is an uncertainty of the future improvements.

**Commissioner Thomas O'Donnell**

- Commented he would like the ability to give notice that the CUP will expire on as broad a basis as possible rather than pin it to the North Forty.

**Town Attorney Judith Propp**

- Commented that staff can recommend some language that would address the Commission's concerns.

**Georgianna Spinazze, Property Owner**, gave a presentation on the proposed project.

**Commissioner John Bourgeois**

- Asked when the bar was established.

**Georgianna Spinazze**

- Commented that the bar was established in the 1930s.

**Commissioner Charles Erekson**

- Asked about the hours for deliveries and for trash collection.

**Mike Ellenburg, Applicant**

- Commented that deliveries usually happen between 10:00 a.m. and 3:00 p.m. but they will comply with any Town requirements.
- Commented that trash is picked up on Friday morning around 7:00-8:00 a.m. and never in the evening.

**Bret Moore**

- Commented he lives on Los Gatos-Almaden Road and his family business is on Los Gatos Boulevard.
- Commented that **Mr. Ellenburg** has held several fund raisers at The Boulevard Tavern for families in need.
- Commented that Los Gatos Boulevard has become less of a destination and business should be encouraged to stay there.
- Strongly recommended granting of the CUP.

**Amy Despars**

- Commented that she lives on Longridge Road and is representing uptown Los Gatos. They are looking for restaurants, entertainment and retail on that side of Town. She feels that uptown Los Gatos is getting the shaft.
- Asked the Commission to support the CUP.

**Commissioner Thomas O'Donnell**

- Asked why she feels that way.

**Amy Despars**

- Commented that she feels that way because of the number of lots that remain vacant along with the retail and restaurants that have been denied. They want businesses, retail, and restaurants in that area of town.
- Commented that the McHugh site was a garbage dump for two years.

**Commissioner Joanne Talesfore**

- Commented that Baja Fresh just opened up at the Trader Joe's New Town Center.

**Amy Despars**

- Asked for a place like Double D's, Sonoma Chicken Coop or Aqui's on their side of town where families can walk to.

**Mike Ellenburg**

- Thanked the Planning Department and the Town for considering the CUP and showed a copy of a Notice of Intent to Engage in the Sale of Alcoholic Beverages from 1955.
- Commented that the property owners are willing to work with the Town.
- Commented that the bar is an important part of that side of town.

**Commissioner Margaret Smith**

- Commented that she hopes that **Mr. Ellenburg** and the neighbors stay involved in the North Forty Specific Plan process.

**Chair Marico Sayoc**

- Commented that there is nothing that says that the North Forty (Specific Plan) means that they will lose their business. It is important to hear feedback to know what is important for that side of the community.

**Chair Marico Sayoc** closed the public input portion of the hearing and returned to the Commission for deliberations.

**Commissioner Thomas O'Donnell**

- Commented that he is impressed with the owners of the business and the property. The reason for dealing with this is because of the people involved; however, a CUP runs with the land and they need to be careful for future owners. The applicant should be given a reasonable opportunity should it be necessary to terminate a CUP.

**Commissioner Charles Erikson**

- Asked if a CUP could be terminated with one year's notice.

**Town Attorney Judith Propp**

- Commented that this application is unique and there is currently a pending application for rezoning that entire area. Staff is bringing options to the Commission.
- Commented that on any CUPs where there is a concern, there are conditions that allow for periodic review under certain circumstances.

**Vice Chair Marcia Jensen**

- Commented that 20 years ago she sat on the General Plan Committee and she was writing a Specific Plan for the North Forty so it does not appear that there will be a rezoning any time soon.
- Commented that Condition #4 gives the Planning Commission the discretion on whether or not to hold a public hearing following the two-year review and she is fine with it.

**Commissioner Thomas O'Donnell**

- Commented that the Commission needs to be careful in its comments because Grosvenor is spending a lot of money and time to develop that property.

**Vice Chair Marcia Jensen**

- Commented that her comments have nothing to do with Grosvenor. She is just relaying her experience over the last 20 years in working on the North Forty.

**Commissioner John Bourgeois**

- Commented that a decision is being made tonight on whether it is a compatible land use and does not see any value in reviewing it every two years if nothing changes.

**Commissioner Thomas O'Donnell**

- Commented that rather than a two-year review, there could be a review whenever staff believes the facts have changed.

**Commissioner Charles Erekson**

- Commented that he does not see a need to put a specific time for review. He believes that the Town would need to have findings for a basis to terminate a CUP.

**Chair Marico Sayoc**

- Commented that there appears to be a consensus that the Commission would like the current business to continue to operate until there is a specific zone change in that area.

**Motion by Vice Chair Marcia Jensen** to approve Conditional Use Permit Application U-11-018 subject to the conditions as noted in Exhibit 3 of staff report dated January 25, 2012, with the exception of Condition #4 with the alternative of upon or within one year of adoption of a North Forty Specific Plan that the Town may review this CUP. The required findings were made as noted in Exhibit 2 of staff report dated January 25, 2012.

**Planning Manager Sandy Baily**

- Commented that this will be a recommendation to Town Council.

**Vice Chair Marcia Jensen**

- Corrected that her motion is to recommend approval to Town Council.

**Commissioner John Bourgeois**

- Asked for clarification of the motion if it included a review of the CUP upon adoption of the North Forty Specific Plan or at staff's discretion if there are any changes that would affect the use.

**Vice Chair Marcia Jensen**

- Commented that she purposely excluded that and if that means the death of her motion, so be it.

**Chair Marico Sayoc**

- Commented that the motion dies for lack of a second.

**Commissioner Charles Ereksen**

- Asked for clarification of Condition #7 regarding the Live Entertainment Policy that is not yet adopted.

**Commissioner Thomas O'Donnell**

- Commented that if the language says comply and the ordinance says you are grandfathered, you comply by being grandfathered.

**Motion by Commissioner Thomas O'Donnell** and seconded by **Commissioner Charles Ereksen** to recommend approval of Conditional Use Permit Application U-11-018 to the Town Council subject to the conditions as noted in Exhibit 3 of staff report dated January 25, 2012, except for Condition #4 as written. The condition would be changed to read that there would not be an automatic review unless staff upon its determination that zoning in the immediate area or the North Forty is adopted and such change is inconsistent with the use under this CUP. If that finding is made, the applicant would be given not less than one-year's notice of cessation and termination of the CUP. The required findings were made as noted in Exhibit 2 of staff report dated January 25, 2012.

**Commissioner Charles Ereksen**

- Asked to change Condition #9 to limit deliveries between 9:00 a.m. and 5:00 p.m. and Condition #10 to limit trash recycling from 9:00 a.m. to 5:00 p.m.

**Commissioner Thomas O'Donnell**

- Agreed to the amendment to the motion.

Motion carried 7-0.

**Planning Manager Sandy Baily**

- Noted that this item is tentatively scheduled for Town Council on February 21, 2012.

**CONTINUED OTHER BUSINESS -- NONE**

**NEW OTHER BUSINESS**

- 4. Election of Chair and Vice Chair
  - a. **Chair Marico Sayoc** commented that **Vice Chair Jensen** has a unique perspective in that she has worked with the General Plan as well as a previous Planning Commission. She also thanked her for her valuable help over the past year.

**Motion by Chair Marico Sayoc** and seconded by **Commissioner John Bourgeois** to elect **Vice Chair Jensen** as Chair for 2012.

Motion carried 7-0.

**Motion by Vice Chair Marcia Jensen** and seconded by **Commissioner Joanne Talesfore** to elect **Commissioner Erekson** as Vice Chair for 2012.

Motion carried 7-0.

- b. **Vice Chair Jensen** and **Commissioner Erekson** thanked **Chair Sayoc** for her exceptional job as Chair during this past year.
- 5. Report from Director of Community Development
  - a. **Planning Manager Sandy Baily** reported that on January 17, the Town Council introduced the ordinance for 135 Riviera Terrace to approve the housing development.
- 6. Commission Matters -- None

**ADJOURNMENT**

Meeting was adjourned at 9:26 p.m.

TOWN OF LOS GATOS PLANNING COMMISSION  
Wednesday, January 25, 2012

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Marico Sayoc, Chair

APPROVED AS TO FORM AND ATTEST:

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Sandy L. Baily  
Planning Manager