



**TOWN OF LOS GATOS**  
**PLANNING COMMISSION STAFF REPORT**  
**Meeting Date: February 8, 2012**

**ITEM NO: 1**  
**DESK ITEM**

PREPARED BY: Suzanne Davis, Senior Planner  
[sdavis@losgatosca.gov](mailto:sdavis@losgatosca.gov)

APPLICATION NO: Architecture and Site Applications S-06-46 and S-06-64  
Lot Line Adjustment Application M-06-09  
Variance Application V-11-001  
Negative Declarations ND-08-02 and ND-08-03

LOCATION: **339 and 341 Bella Vista Avenue** (west side of Bella Vista Avenue,  
north of Charles Street)

APPLICANT/  
PROPERTY OWNER: Jake Peters and Dan Ross

CONTACT: Dan Ross

APPLICATION  
SUMMARY: Requesting approval of a lot line adjustment, a variance for reduced  
driveway length, and to construct two new single-family residences  
with reduced setbacks that exceed the allowable floor area ratio.  
APNs 529-23-015 and 016.

DEEMED COMPLETE: September 15, 2011


FINAL DATE TO TAKE ACTION: Final action on the subject  
applications is required by CEQA Section 15107, within six months of  
the application being deemed complete (March 15, 2012).

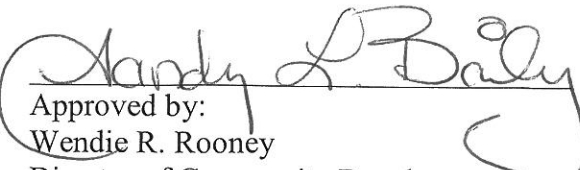
EXHIBITS:

- 1.-20. Previously received under separate cover
21. Letter from Vitaliy Stulski & Natalia Stulskaya (three pages),  
received February 3, 2012
22. Letter from Patrick K. Tillman (four pages) with attachment,  
received February 7, 2012
23. Letter from Mary Martir (one page), received February 7,  
2012

**DISCUSSION:**

Exhibits 21 and 22 are letters from neighbors who live below the project site. The letters were  
received following delivery of the Planning Commission packets.

  
Prepared by:  
Suzanne Davis, AICP  
Senior Planner

  
Approved by:  
Wendie R. Rooney  
Director of Community Development

WRR:SD:ct

RECEIVED

FEB 3-- 2012

TOWN OF LOS GATOS  
PLANNING DIVISION

Viatliy Stulski & Natallia Stulskaya  
152 Maggi Ct.  
Los Gatos, CA 95032

To:

Joe Prizynski, Mayor  
JPrizynski@LosGatosCa.gov

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SRice@LosGatosCa.gov

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Suzanne Davis  
sdavis@LosGatosCa.gov

Re: 339 & 341 Bella Vista Ave. Los Gatos, CA Applications

Dear Mayor, Council Members and Town Managers,

We are writing again to reinforce our extreme concern with the proposed residential development at 339 & 341 Bella Vista Avenue submitted by Mr. Dan Ross. We live at 152 Maggi Ct. Los Gatos, CA in "Bella Vista Village" and are the owners of this property.

Variances and exceptions requested by the applicant were discussed at 10-12-11 Planning Commission hearing and met very strong and well substantiated opposition from **everyone** in our neighbourhood. The project received **zero support** from the neighbour property owners, which was well visible in several hours of opposing statements during the hearing.

Most of the statements opposing the project were factually substantiated. They were stating exact violations of rules and guidelines (FAR, setbacks, lot line changes etc.), precise hardship that will be caused directly by the proposed construction, explaining compromised safety on a very narrow street, describing violations of privacy by erecting a huge house directly facing other people's property, showing dangers of building on the extremely steep slope and making huge grade cuts in a seismic unstable region and finally creating a significant financial loss to everybody around.

On the other hand justification provided by the applicant was reduced to a very subjective and

non-measurable statements that house shall be "livable" and failing to produce reasonable list of comparable homes that were built in Los Gatos in a similar conditions and even remotely resembling exceptions that the applicant was asking for.

If we talk about "livability" and the size of the property there are a lot of homes and apartments in Los Gatos with the size of less than 1000 sq/ft including basement, closets and other rooms. Not every small chunk of land on a steep hill shall accommodate a house for a large family that endangers and inconveniences everybody around.

At the end of the hearing Commissioners gave Mr. Dan Ross a second chance to submit revised plans and offered very precise and measurable suggestions, such as significantly reducing floor size.

Recently I had a chance to look at the revised plans that Mr. Dan Ross submitted for upcoming Planning Commission hearing on 2-8-2012.

Floor area for the proposed houses was reduced by 128 sq.ft and 49 sq.ft respectively. These changes are just negligible given the size of the construction. Non of the other areas of concern highlighted in my previous letter were removed.

With the new and revised application Mr. Dan Ross submitted to the Planning Commission we have none of the problems that concerned us before resolved:

1. **Significant privacy issues** including visibility into neighbour properties, reducing the amount of sun light for the houses down the hill during the day and emitting light and sound directly at them;
2. **Guidelines violations**: FAR, setbacks, lot line changes etc. Not only dangerous to the neighbourhood if passed this project will set a precedent for all new developments in Los Gatos. Every builder will have a right to request an equal treatment for his project leaving very low room for guidelines enforcement.
3. **Financial loss to all the residencies around the project** and also in the close proximity to it;
4. **Environmental impact**: cutting trees and transforming a lively green steep hill into two huge houses that cover the most of it and very visible from the streets down the hill;
5. **Huge safety problems** including cutting huge chunks of the slope in a seismic unstable zone, building enormous houses right up the hill from the neighbour properties, not following setbacks and also endangering pedestrians and bicyclists (most of whom are children going to and from school) on a very narrow street with a sidewalk on one side only;
6. **Causing huge inconvenience to the neighbourhood** during construction and after it (traffic, parking, noise, light etc.)

One of the items also suggested to Mr. Dan Ross during the Planning Commission hearing on 10-12-11 was to address the issues of the proposed construction with the neighbourhood. I haven't received any communications from him about what he intends to do until Jan. 30,

2012. I found a piece of paper tucked under my door mat and it's just luck that it was not thrown away before I was able to read it. Letter was proposing to discuss the project. Having more than 2 months since last hearing Mr. Dan Ross made a single attempt to communicate to us 1 week before the hearing when his plans were already final and submitted. You be the judge of whether it is a fair attempt to engage neighbours.

We live in the area where innovation, entrepreneurship and creativity are well known and practiced by a lot of people. Our neighbours pushing the limits of possible in science, computers, business and many other areas. That also applies to residential development. But the equilibrium in our society is based on the rules we carefully create, enact into a law and then enforce it. No matter how hard will we push we have to stay within the boundaries of the law. This makes consequences of our decisions predictable and our lives protected. If rules that were created will not be enforced we will risk to face very bad consequences like financial meltdown and real-estate crash we experienced recently.

When we were buying our house we knew that the land behind it is zoned as buildable (previous owner informed us). We also knew that prior attempts to build on this land were shut down on the grounds of not following the guidelines (FAR etc.). This fact gave us strong belief that the rules are enforced in Los Gatos and our investment will be well protected against possible attempts to violate them.

I would like to kindly ask the Planning Commission to deny this application. Besides many existing violations with the application, hardship to the neighbours, safety, privacy and many other issues with the project it is just the right thing to do.

Sincerely Yours,

Vitaliy Stulski and Natallia Stulskaya  
Owners of 152 Maggi Ct. Los Gatos, CA.

**PATRICK K. TILLMAN**  
*Attorney at Law*

**RECEIVED**

FEB 7 - 2012

TOWN OF LOS GATOS  
PLANNING DIVISION

February 7, 2012

Steve Rice, Mayor  
Los Gatos Civic Center  
110 E. Main Street  
Los Gatos, CA 95030

Sent via e-mail to: [srice@losgatosca.gov](mailto:srice@losgatosca.gov)

Marico Sayoc, Chairperson  
Los Gatos Planning Committee  
110 E. Main Street  
Los Gatos, CA 95030

Sent via e-mail to: [maricosayoc@yahoo.com](mailto:maricosayoc@yahoo.com)

Greg Larson  
Los Gatos Town Manager  
110 E. Main Street  
Los Gatos, CA 95030

Sent via e-mail to: [manager@losgatosca.gov](mailto:manager@losgatosca.gov)

Wendie Rooney, Director  
Community Development Department  
110 E. Main Street  
Los Gatos, CA 95030

Sent via e-mail to: [wrooney@losgatosca.gov](mailto:wrooney@losgatosca.gov)

Re: 339 & 341 Bella Vista Avenue Applications  
Applicant: Dan Ross  
Supplement

Gentlepersons:

Since submitting my letter of January 17, 2012, I had the opportunity to review the 10-11-11 Planning Meeting tape and the 12-28-11 "Letter of Justification" submitted by Dan Ross. Additional information seems appropriate.

Please consider:

A. **Novice Developer – Dan Ross.** Throughout the 10-11-11 hearing, and throughout this process, Mr. Ross has represented himself to be just some guy trying to build a home for his family.<sup>1</sup> For example, he commented at the hearing:

“[I] spent a lot of time during the escrow period on code, guidelines, and variances to educate ourselves – *because I don’t do this for a living.*”

(Emphasis added)

10-11-11 Planning Committee Meeting

But he does *do this for a living*. Mr. Ross has made a living in the real estate business for +25 years. He was a licensed real estate salesperson from 10-04-85 until 10-18-10, when he let his license expire. (License # 00899240) He probably worked off the Broker’s license of *his mother*, who’s been a real estate broker since 12-16-81. (License # 00524770) He was also a licensed real estate appraiser from 1987 to 1989. He’s been a guest speaker at De Anza College on real estate principles. And he claims to have closed over 1,000 real estate loans totaling +\$1 billion. In his +25 years in the real property industry, his avocation was purchasing and developing real estate (+10 properties), aka “spec homes.” He is, in fact, a seasoned developer.

In the 12-28-11 Letter of Justification, Mr. Ross starts off:

“From the beginning, during escrow process [sic], we spent significant time with Planning Staff to understand guidelines as they related to these lots. ... We researched the previous submittal for 339/341, which was 1 large home proposed over both lots.<sup>2</sup>  
...”

This seasoned developer inadvertently conceded that he carefully researched the issue of construction limitations on this property, e.g. HDS&G, knew full well no building(s) like those he’s proposed would be allowed, and considered the limitations before buying the property. This seasoned developer, according to him, disregarded the legal restrictions and purchased the property only because: *Town*

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<sup>1</sup> Aren’t we all.

<sup>2</sup> The “1 large home proposed over both lots” was 3,103 sq. ft. on a combined lot of 10,155 sq. ft. In lieu thereof, Mr. Ross proposes a 2,740 sq. ft. home on a 4,915 sq. ft. lot plus a 3,114 sq. ft. home on a 5,240 sq. ft. lot.

*personnel led him to believe that the HDS&G do not apply to his property. (See attached Letter of Justification, "BACKGROUND")*

**B. Dan Ross Letter of Justification. (12-28-11)** Using the headings, in the same order as set forth in the Letter of Justification:

### **BACKGROUND:**

Mr. Ross states: "*At the time it was encouraged that we model our plan after the recently approved and constructed home at 145 Bella Vista, with similar western down slope.*" (Emphasis added) The slope of 145 Bella Vista is 24°. The slope of 339 Bella Vista is +60°. (Also see my 01-17-12 Correspondence: "Floor Area Ratio ("FAR"))

Not to mention ... again ... 145 Bella Vista looks over a baseball field.

### **MAIN ISSUES:**

**1) Driveway variance.** Architectural Site Plan (Page A-1) shows Mr. Ross taking possession of ~20 x 60' of public land - +80% of the front yard and driveway of 339 Bella Vista Avenue.

Is the Town selling this land to Dan Ross? Is he leasing it? Are we giving it to him? Are we crediting his setback with Town property?

**2) Setback Exceptions.** Is the legal term "setback" to be redefined for this project?

### **3) FAR/Mass and scale.**

"Maggi Court neighbors below will see 20' tall garage and 21' 6" tall home." [sic]

Not correct; but then, if we don't look, we won't see it at all.

Mr. Ross then compares "FAR, Mass and Scale," and setback variance issues (??) within a townhome complex – ours - with two (2) single-family homes on 60° slopes perched just uphill of our complex. Not a fair comparison? It's babble.

**Other points of Interest.**

**Slope.** Not accurate.

**Grading.** The exported soil reflects how steep the lot actually is – versus as depicted in the drawings. (See my **Exhibit 11**)

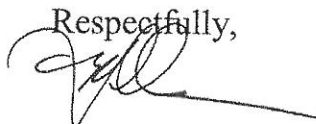
**Traffic.** Mr. Ross suggests that more trees be cut down in the Hillside Development area to accommodate his project – our trees. Apparently, 18 is not enough.

**Neighborhood Meetings.** Dan does not listen. The law does not apply to Dan. Dan makes inaccurate and misleading presentations.

**Privacy.** Previously addressed.

**Summary.** I'm tempted, but I just can't ... not enough time. Too many issues, most of which have no relevance to selective enforcement of the law.

Respectfully,

A handwritten signature in dark ink, appearing to read 'P. Tillman', with a long horizontal stroke extending to the right.

Patrick K. Tillman

Attachment: 12-28-11 Letter of Justification

cc: Mary Badame

TownofLosGatos.draft-Supp



**Letter of Justification. Revised plans for 339/341 Bella Vista Avenue, Los Gatos.**

Dear Town of Los Gatos Planning Department, Planning Commission:

**BACKGROUND:**

From beginning, during escrow process, we spent significant time with Planning Staff to understand guidelines as they related to these lots. At that time it was encouraged that we model our plan after the recently approved and constructed home at 145 Bella Vista, with similar western down slope. We researched the previous submittal for 339/341, which was 1 large home proposed over both lots. The application was incomplete, denied. Town Staff commented 1 larger home over 2 lots wasn't congruent with neighborhood. What was done at 145 Bella Vista would be more appropriate. It was pointed out that most homes on west side of Bella Vista reduced driveway and front setbacks. The FAR numbers were explained, and that homes on non-conforming sub 8000 square foot lots were eligible for exceptions in order to create a "live-able home by today's standards". I purchased my lot on December 23, 2004. Mr. Peters purchased his lot on December 23, 2004

We hired a Design team, Civil Engineer, Geotechnical/Soils Engineer and Arborist with experience working in Los Gatos, and a history of providing high quality work. We followed Town Guidelines to prepare appropriate reports. These reports were Peer Reviewed by Town Consulting Architect and Engineers, and found satisfactory. Along the way, Town Staff/Engineers and Consultants have made recommendations. We have agreed to suggestions and changes that have been recommended by Town Planning Staff and Town Public Works/Engineering.

**MAIN ISSUES:**

- 1) **Driveway Variance.** Garages are sited where they are to address driveway slope, goal of saving Oak at middle of lots, overall height. If we shift garage farther back, it will move garage closer to townhomes, increase height, and increase slope of driveway from street to garage. Town Engineer can give detail on allowable slope. Our driveways are 18'6" to 22' from edge of pavement to garage doors. This is typical, 7 out of 10 homes on west side of Bella Vista have driveways shorter than this. (See chart). Our driveways, as well as neighboring home driveways, cross into public right of way to edge of pavement. The Public right of way is the down-sloped area not likely to ever be built on by Public Works.
- 2) **Setback Exceptions:** Our homes are 24'-25' from edge of pavement. 7 out of 10 homes on west side of Bella Vista are closer to street than our proposal. Shortest distance being 13'. (See Chart). We are requesting a front set back exception to property line for both homes. For 441, we are requesting a side setback exception, next to land bordering Highway 9. **After reducing rear right corner of 339, the rear right and left corners are 23' to property line, now meeting guideline.** We have bump-outs at middle of home, requiring setback exception. **Considering width of trail at bottom of lot, we are very close to 20' to neighbor's fence.** These type of front setback exceptions exist around town, on down slope of Glenridge, Oak Hill, Edelen, etc. A house on my street on Villa has a garage that abuts sidewalk, with 0' setback to sidewalk.
- 3) **FAR/Mass and scale.** Our basic footprint above grade on main level of home is 907 square feet. The garage footprint is 21' x 21' or 441 square feet. The primary change to our plan from October meeting is to 339 Bella Vista. We have removed a 21' wide by 6'

deep area behind the garage. This will increase distance of 339 Bella from townhomes, removes patio/balcony and pushes interior stairwell underneath garage, reducing useable square footage in this area. This smaller area under garage is changed from Bedroom/Bathroom to Study/Media Room. The area under 907 square foot main level remains as 2 bedrooms. It's important to note the finished floor area of the area under garage to garage ceiling is 20', and is farther away from townhomes. The finished floor of the lower level main house to main level ceiling wall plate is 21', 6". The roof slopes away from the back of house. This is NOT 35' of structure bearing down on townhomes below. Maggi Court neighbors below will see 20' tall garage and 21', 6" tall home. Shielded by existing trees, new landscaping/trees and fencing.

It's important to note Maggi Court townhomes are 1650 square feet plus 550 square foot garage on 1350 square foot lots. They are 35' tall, in many instances with NO driveway, reduced front, side and rear setbacks. They are attached homes, with attached front and back balconies. They have lot coverage of 150%+/-, and we are 50%+/- ? It's hard for me to accept Maggi Court argument that we should not receive any variance or exception when you look at the variances/exceptions that have benefitted them, as well as other neighbors on the west/down slope side of Bella Vista.

This is our 3<sup>rd</sup> reduction/change to our original plan mirroring 145 Bella Vista. 145 Bella Vista is 8' wider, and is closer to street by 2-3' and garage is 12' from edge of pavement.

339 and 341 are 31' feet apart. The only remaining material architectural change would be to eliminate the lower levels. However, removing the lower levels would have virtually no effect on Maggi Court neighbors as the lower level would be replaced by an engineered structure, to support the upper level.

#### **Other points of Interest:**

**Slope:** Our slope is similar to other homes on west side of Bella Vista. Our numbers are skewed by drop off at top of lot and man-made cut by HOA below us to create trail at bottom of our lot. Portion of trail impedes on our property. Our slope, particularly in the middle portion of lot is in the 30's similar to 145 Bella Vista and other homes.

**Grading:** We are exporting approximately 335 cubic yards of dirt, total, for both houses. I'm told this is reasonable, and that a hillside home development can be known to export as much as 2000 cubic yards.

**Traffic:** Public Works has stated that traffic calming measures are being worked on now. Visibility/Safety could be improved if the land to the north of us, owned by HOA below us, was trimmed to improve eye level views along the curve in the road.

**Neighbor Meetings:** I met with Maggi Court neighbors in 2008 (when they accused me of rushing project through), and 2010. In 2011, I notified them of my willingness to meet prior to October PC meeting. None responded to my request. I was scheduled for August 10<sup>th</sup>, 2011 Planning Commission meeting. They asked for postponement to prepare, I agreed. The neighborhood has had my email address and phone number since 2008. Not a single neighbor has reached out to me to meet individually. At our 2008 and 2010 meetings, Pat Tillman was their appointed spokesperson. He fired questions as if it were a deposition, there was very little 2 way dialogue. He's called me names, and has been generally threatening in nature. At the

2008 meeting, two suggestions were made: Change the area under garage from open storage to enclosed living space, and move deck on 339 from rear of house to side of house to distance deck from townhomes. We did both. In 2011, I did ask for meetings with 7 Bella Vista neighbors across the street from us. None responded. I had brief conversations with 2 Bella neighbors in prior years. It is disappointing neighbors aren't willing to sit down face to face and work through concerns and compromise to try and achieve a solution.

**Privacy:** Maggi Court neighbors do not have absolute privacy now. You can see into the townhomes from Bella Vista Avenue, and from trail at back of lot. On our own we have reduced rear facing window count, removed 2 rear facing balconies, and reduced size of decks. We've raised the height of balcony rails to 6' feet to block any direct eye contact. We've prepared landscape plan to create separation and further block/soften views. When neighbors stated they didn't want trees removed, I stated we would have replacement trees, they complained there would be too much shade. These homes are under the existing canopy. There are existing trees between the garage and townhomes that already create shade.

**Summary:** The disappointing part of this process is neighbors are left to fight over issues, when neither side can claim they fully understand rules, guidelines and nuances 100%.

Deb and I had 30 supporters at the October meeting, 27 Los Gatos neighbors, and more watching from home. The comments I received was this should be less a "mob-ocracy" or "anger-fest", and more about what is fair to the applicant based on what has been granted to nearby neighbors.

When the meeting is dominated by anger and generalizations, it diminishes the work of the applicant, Town Planning Staff, Town Public Works/Engineering and Town Consultants. Particularly when opponents don't study the technical work, then generalize incorrectly.

I've had neighbors in the Bella Vista/Maggi Court area tell me they are in disbelief over what I've been subjected to, and they won't speak publicly for fear of retribution.

We appreciate the consideration of the Planning Commission, and respectfully ask for a final (hopefully approving) vote on this proposal.

Best regards,

Dan Ross

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**Mary C. Martin**

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254 Vista del Monte • Los Gatos, CA 95030 • 408.354.8878 • mbrence@comcast.net

February 7, 2012

Marcia Jensen, Los Gatos Planning Commission  
110 East Main St.  
Los Gatos, CA 95030

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FEB 7 - 2012

TOWN OF LOS GATOS  
PLANNING DIVISION

Dear Commissioner Jensen,

This is with regard to the two houses at 339/341 Bella Vista for which the developer is seeking planning permission.

Though I don't live in that neighborhood, I have concerns about the size of these houses, the impact they'll have on the people below them and across the street from them, the way they will look from other areas of town, and the precedent that will be set if the Town allows the developer to follow his proposed plans.

First, these steep lots are not suitable for *one* big house, much less two huge houses. I couldn't believe my eyes when I drove past and saw the story poles. In my opinion, the only type of house that should be built on a grade that steep, if any, would be similar in size to the more modest dwellings on that same side of Bella Vista where it meets Simons Way and New York Ave.

Putting two massive houses so close together overlooking the townhomes below would be an invasion of the privacy of the residents of those townhomes. And the new houses would impact the view for residents directly across the street because of all the trees that would have to be cut down.

It seems to me that the way the planning procedure often works in Los Gatos is: (1) Developer asks for the moon, proposing a plan that requires a ton of variances and exceptions to Town policies and rules, knowing from the start that the project will not be approved as is; (2) Planning Commission sends developer away with suggested changes; (3) Developer returns having made *some* suggested changes but with plenty of things still not in accordance with, say, the Hillside Plan and plenty of reasons why his project should be the exception to the rule; and (4) Eventually Planning Commission (or Town Council) approves plan even with some noncompliance to Town ordinances because the revised plan is not as blatantly out-of-bounds as the original proposal. So developers must know to start with over-the-top plans and work their way down to something that is still too much, but not quite as over-the-top as the original. I hope that doesn't happen at 339/341 Bella Vista, and that the Commission follows the letter of the law in this—and all—cases.

Sincerely,

Mary Martin