

DRAFT



TOWN OF LOS GATOS PLANNING COMMISSION MEETING ACTION MINUTES TOWN COUNCIL CHAMBERS 110 E. MAIN STREET WEDNESDAY, FEBRUARY 8, 2012

Chair Marcia Jensen called the meeting to order at 7:00 p.m.

ROLL CALL

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

Absent: Commissioner John Bourgeois

Others: Town Attorney Judith Propp, Planning Manager Sandy Baily, Senior Planner Suzanne Davis, Assistant Civil Engineer Trang Tu-Nguyen, and Recording Secretary Linda Rowlett.

Planning Manager Sandy Baily noted that **Commissioner Bourgeois** has an excused absence and must recuse himself from Item #1 since he lives within 500 feet of the subject property.

PLEDGE OF ALLEGIANCE

Led by **Chair Marcia Jensen**.

APPROVAL OF MINUTES OF JANUARY 25, 2012

Motion by **Commissioner Marico Sayoc** and seconded by **Commissioner Joanne Talesfore** to approve meeting minutes of January 25, 2012.

Motion carried 6-0 with **Commissioner John Bourgeois** excused.

WRITTEN COMMUNICATIONS

Chair Marcia Jensen noted that there was a desk item for Item #1.

REQUESTED CONTINUANCES -- NONE

SUBCOMMITTEE REPORTS -- NONE

VERBAL COMMUNICATIONS (AUDIENCE)

Heather Dal Cielo

- Commented that she lives on Marchmont Drive and that she is opposed to the proposed expansion of Hillbrook School.
- Commented that the recent meeting between the head of the school and the neighborhood did not allow for an open discussion and the expansion appeared to be a done deal.
- Commented that her concerns are for the safety of the children in the community and the traffic.

Planning Manager Sandy Baily

- Commented that Hillbrook filed its application last week and has just started the planning process. No date has been set for a hearing on this item.

CONSENT CALENDAR -- NONE

CONTINUED PUBLIC HEARINGS

Chair Marcia Jensen commented that she is required to recuse herself from Item #1 because she lives within 500 feet of the proposed project. She turned the meeting over to **Vice Chair Charles Erikson** and left the meeting.

1. **339 & 341 Bella Vista Avenue**. Architecture and Site Applications S-06-46 and S-06-64, Subdivision Application M-06-09, Variance Application V-11-001, Mitigated Negative Declarations ND-08-02 and ND-08-03. Requesting approval of a lot line adjustment, a variance to allow reduced driveway length, and to construct two new single family residences with reduced setbacks that exceed the allowable Floor Area Ratio on property zoned R-1:8. No significant environmental impacts have been identified as a result of this project and Mitigated Negative Declarations are recommended. APN 529-23-015 and 016. PROPERTY OWNER/APPLICANT: Jake Peters and Dan Ross. PROJECT PLANNER: Suzanne Davis.(Continued from 10/12/11 and 1/11/12 PC Meetings)

Vice Chair Charles Erikson opened the public hearing and confirmed that the Commissioners had visited the property.

Senior Planner Suzanne Davis presented the staff report.

Commissioner Marico Sayoc

- Asked for clarification on the FAR (Floor Area Ratio).
- Asked about the lot line adjustment.

Senior Planner Suzanne Davis

- Commented that there are provisions in the Town Code for exceeding the FAR and there are findings to apply those provisions to this project. She read the applicable section of the Town Code for considering a FAR increase.
- Commented that the two lots are nonconforming and there is nothing in the Subdivision Map Act that states they cannot be made a different size.

Commissioner Thomas O'Donnell

- Asked how much of the driveway is not on the applicant's property.

Senior Planner Suzanne Davis

- Commented that about one fourth of the driveway is on the property and the remainder is in the right-of-way. Typically 18 feet is preferred to be on the site but in this case if the driveway is pushed farther down the hill, it would require more grading and higher walls bringing the massing closer to the townhomes below. It is also impractical to have too steep a driveway for maneuverability.

Commissioner Joanne Talesfore

- Asked if the garage is mandated.

Senior Planner Suzanne Davis

- Commented that Town Code requires two parking spaces but it does not require a garage or a carport.

Dan Ross, Applicant, gave a presentation on the proposed project.

Commissioner Marico Sayoc

- Asked about FAR reduction and why he believes it meets the direction of the last meeting.

Dan Ross

- Commented that he hopes the Commission sees the difference in dimensioning between the old and new plans. The original plan at 339 Bella Vista Avenue was narrowed by eight feet and reduced by 400 square feet. They took it upon themselves to make that reduction.
- Commented that the footprint on the main level is 900 square feet on the main level and a garage pad. They looked at the best way to utilize the space underneath while still blocking the views to the neighbors and provide for a livable home.
- Commented that in the planning stages, Town staff made the point that the applicant has the ability to create a home that is livable by today's standards for a family and at no point did the Town advise them otherwise. He believes that this concern should have occurred at the beginning rather than at this point. The information he gets from the Planning Department is vastly different from the Planning Commission.

Commissioner Thomas O'Donnell

- Commented that the Planning Commission does not always agree with staff and the Town Council does not always agree with the Planning Commission. However, the Planning Commission did advise that it wanted significant reductions at the last meeting. It appears

that the applicant ignored that direction because he voluntarily made a reduction in the beginning.

Dan Ross

- Commented that they are having a hard time defining significant and still making a home size that is livable. They do not know where they would take further reductions from at this point.

Ian Macrae

- Commented that he lives on Bella Vista Avenue and is mystified that the applicant is that far off from what the rules of the Town are and the guidance given by the Planning Department staff.
- Commented that in his experience with the Planning Department staff, he was advised that maximum FAR is not assured or guaranteed and believes that staff is consistent in telling all applicants what the rules are.
- Asked the Commission to remain consistent with the rules that exist.

Forrest Straight

- Commented that he lives on Maggi Court and that he is looking at the equivalent of a six story building from his patio.
- Commented that he is surprised that the Town has not calculated the square footage which is different from what is noted on the plans and is larger by 100-200 square feet.
- Commented that the rules say the house should be 700 square feet and he believes that it should be 700 square feet and not require the cutting down of a dozen established Oak trees.

Commissioner Margaret Smith

- Asked **Mr. Straight** what year he bought his townhouse and if there was a discussion on what would be built behind him.

Forrest Straight

- Commented that he bought his townhouse about eight or nine years ago and he was advised that a previous plan for the property was denied and that is why he bought his house.

Tim Coughlin

- Commented that he lives on Bella Vista Avenue directly across from the subject property and that he does not like to see 145 Bella Vista Avenue used as a precedent.
- Commented that he had expectations in 1975 when he moved in that the Hillside Development Standards and Guidelines (HDS&G) would protect them from large development of that property.
- Commented that he did look at the plans and he received an invitation to talk to the developer but did not see the point since there was no significant reduction in size.

Pat Tillman

- Commented that he lives on Maggi Court and referenced the letters that he submitted.
- Referenced the nine conditions in the HDS&G that must be met for exceeding the FAR.

- Commented that the government code makes reference to the local rules in moving a lot line and the local rules say no.
- Commented that there is an 18-foot wide swatch of land that gets wider going south that starts off as 80 percent of the proposed front yard and driveway of 339 Bella Vista Avenue and drops down to 50 percent of the front yard. Most of the front yard is on Town property.
- Asked if applicant is being given Town property.
- Commented that the staff report is a lot of narrative that masks a lot of baseline facts that were not provided.

Mary Ann Lown

- Commented that she lives on Maggi Court and that they selected their home because of location and privacy. She was never told that anything could be built on that parcel.
- Commented that privacy is a concern for everyone living in the area and no one supports this development.
- Commented that she attended the meetings with **Mr. Ross** and asked him to stay within the guidelines.
- Asked the Commission to deny the application.

William Schweickert

- Commented that he lives on Maggi Court and he is opposed to the revised drawings, specifically square footage and the size.
- Commented that he does not understand why there are so many variances. He does not believe that the property is fit for development.
- Commented that the Town has become overdeveloped creating a lack of parking, homes built close together and an oversaturation of infrastructure.
- Commented that the quality of life is being diminished.
- Commented that he believes the project is about money and the residents will have to deal with the problems caused by this development.
- Asked the Commission to preserve the quality of life in Los Gatos.

Lee Quintana

- Commented that she lives on Palm Avenue and she believes that some of the information provided by the applicant is misleading. She does not believe the issue with the driveway is whether or not it is safer with vegetation trimmed back but rather if it meets the Town's site distance guidelines for safe backing out of a driveway.
- Commented that the staff report stated that exceptions have been granted to other sites on Bella Vista Avenue but no specific examples were given.
- Commented that since there is no land on the site with a slope less than 30 percent, there is a compelling argument that there should be no exception for the FAR because it is too steep.
- Commented that the Town code says that a single family home is permitted on a nonconforming lot if an Architecture and Site (A&S) application is approved, but the lot may be unbuildable.

Ken Lown

- Commented that he lives on Maggi Court. Most of his issues have been raised but he is surprised that one of the solutions to the safety concern of the driveway is for Bella Vista Avenue to accommodate.

Vitaliy Stulski

- Commented that he lives on Maggi Court and he does not understand the applicant's justifications for exceptions or his comparisons. The project is a difficult site to build.
- Commented that the project will impact his privacy.
- Commented that this house will face major storms and earthquakes and urged the Commission to enforce the Town's guidelines to the letter.

Mary Badame

- Commented that she lives on Maggi Court and stated that the staff report is inaccurate regarding project data. The parcel sizes are incorrect for the addresses.
- Commented that Town code does not allocate FAR based on definition of a livable home by today's standards. Within a one-half mile radius of Bella Vista Avenue, there are 23 homes with less than 1,000 square feet on the east side of the street. These homes are not substandard.
- Commented that the staff report indicates a five-foot front setback for 339 Bella Vista Avenue which is a violation of Town code.
- Commented that staff should provide specific information on the size of front, side and rear setbacks on the west side.
- Commented that there are unique impacts associated with this development and this project should be denied.

Commissioner Joanne Talesfore

- Asked where **Ms. Badame** lives and what her impact is.

Mary Badame

- Commented that she will be looking at a prison and she will be impacted by lack of privacy, lack of sunlight, noise and night illumination.

Erin Johnson

- Commented that she lives on Maggi Court and believes that the applicant continues to be defiant of the General Plan, the neighborhood and the instruction given at the last Commission meeting.
- Commented that laws are important and should be applied on a consistent basis.
- Asked that the Commission deny the project.

Debra Chin

- Commented that she lives on Maggi Court directly downhill from the proposed development and that most of her comments relate to the letter of justification that was presented in December.
- Commented that the rules and guidelines should apply here.

- Commented that Maggi Court neighbors do not expect complete privacy but the answer is not to construct two huge homes that are 30 feet away with a direct line of sight into their bedrooms.
- Commented that fairness should be applied to the community in adherence to the HDS&G.
- Commented that there has only been a five percent reduction in the square footage.
- Commented that this project is a detriment to the community and asked the Commission to deny the application.

Curtis Leigh

- Commented that he has lived on Maggi Court since 2004 and is directly below the development. He is a commercial developer and he has never seen anything like this with all of the variances.
- Commented that a five percent change in square footage is not a significant change.
- Commented that he wants to make sure that the project stays within the guidelines.

Commissioner Margaret Smith

- Asked **Mr. Leigh** if he questioned what would be built on that site when he bought his property.

Curtis Leigh

- Commented that he did his research and was aware that in 2004 an application had been denied for appropriate reasons. He looked into what could be built on that site and 700 square feet would be appropriate and he would not have a problem with that.

Town Attorney Judith Propp

- Commented that in response to **Commissioner Sayoc's** earlier question, Exhibit 13 of Exhibit 18 submitted by **Mr. Tillman** is the Lot Line Adjustment Guide written by staff to give guidelines to applicants and relates specifically back to the Town Subdivision Ordinance 24.10.030 on Boundary Changes. It is clear in that the boundary change will not create any new lack of conformity or increase the degree of nonconformity with an ordinance or a statute. There is also code section 24.10.040 on Modifications that is completely discretionary for the reviewing body that if it finds that the land included in this boundary change is of such size or shape affected by such topographical locations or conditions is devoted to such use that it is impossible or impracticable in the particular use for the subdivision to conform to a regulation contained in this chapter, then it is at the reviewing body's discretion, based on findings similar to the findings in the packet for a variance, to consider the nonconforming and making it more nonconforming. Staff is not necessarily recommending it but that is where this section comes from.

Planning Manager Sandy Baily

- Commented that in terms of the allowable square footage in the FAR, the R-1 zoning requirements are more restrictive than the HDS&G. In using the HDS&G, the applicant would be permitted to construct two homes up to 3,800 square feet and there would be no exceptions to the FAR required.
- Clarified that the Town is not giving the applicant any property.

Dan Ross

- Asked where these speakers were when the townhomes were built. They got the benefit from their zone changes, variances and exceptions.
- Commented that, as for privacy, it is possible to see into the townhomes when standing on Highway 9 or Bella Vista Avenue.
- Commented that the existing trees already create shade into their townhomes and are taller than what he proposes to build.
- Commented that the average slope is in the 30's.
- Commented that they are asking for one variance and are not breaking any laws.
- Commented that this plan has had two reductions in size from their original plan, they modeled it after 145 Bella Vista Avenue which was approved by the Town, they received a soft approval in October from the Planning Commission, and they have received supportive recommendations by the peer review and the Town's consulting architect and other consultants.

Commissioner Joanne Talesfore

- Asked **Mr. Ross** for clarification on receiving soft approval from the Planning Commission in October.

Dan Ross

- Commented that he meant the Planning Department.

Commissioner Margaret Smith

- Asked **Mr. Ross** if he knew that the previous owner's application had been denied and asked if he had considered building just one house.

Dan Ross

- Commented that he was aware of the previous denial.
- Commented that during the escrow period, staff felt that one house was a bad idea and preferred two smaller homes that would be more proportionate with the neighborhood. He does not believe that his proposal is obnoxious. It is a 900 square foot footprint. The question is what you do with the areas below that. It can be dead space or it can be used to create a livable, modern home. He is not ignoring the Commission's request to significantly reduce the mass, but in leaving the lower area empty, the neighbors would be looking at structural support and he would be left with a 900 square foot house.

Vice Chair Charles Erikson closed the public input portion of the hearing and returned to the Commission for deliberations.

Commissioner Marico Sayoc

- Asked for clarification on the calculation of height for the homes using the HDS&G.
- Asked about the change in roof line for the garage.
- Asked what the structure element would look like if the cellar was removed.

Senior Planner Suzanne Davis

- Commented that 25 feet is a sectional height and cannot be exceeded. The 35-foot height is the differential from the low to the high points when you have stepping elements. Part of the home is cellar and that height would be measured from the finished grade to the high point.
- Commented that the three-story elevation is a subjective element and the applicant can be asked not to do that.
- Commented that the structural element would have to be strong enough to hold up a house. The house would need to be redesigned rather than be built on stilts.

Commissioner Thomas O'Donnell

- Commented that the Commission asked for a substantial reduction in size and mass of the house. He believes the applicant ignored the direction for his own reasons. Nothing has changed from the last meeting and the Commission does not need to redesign the house.
- Commented that if the applicant is unwilling to do what the Commission has asked, then the Commission should deny the application, as they would have done at the last meeting.
- Commented that if the A&S Application is not going to be approved, the Subdivision Application and Variance Application should also be denied.
- Asked for staff's recommendation on the Mitigated Negative Declarations.
- Commented that he does not see a smaller house being unlivable.

Commissioner Joanne Talesfore

- Commented that she is disappointed that the direction given in October was not followed. Building to FAR is never a guarantee. She cannot understand the applicant's definition for livability.
- Commented that the houses are very well designed, but not for these lots.
- Commented that staff's comparison that seven of the 10 homes on Bella Vista Avenue had shorter than 18-foot driveways does not justify the variance because of the location of the driveways as they appear today on the blind curve.
- Commented that she will not support the applications.

Commissioner Margaret Smith

- Commented that her concerns are the same as last time: mass of the buildings and safety issues. Another consideration is that the neighbors are not in support of the proposed project. She will not be supporting the applications.

Commissioner Thomas O'Donnell

- Asked if they should adopt a Negative Declaration if they do not know what the project is going to be.

Town Attorney Judith Propp

- Commented that staff's recommendation is that the applications should stand together.

Commissioner Marico Sayoc

- Commented that this has been a long process for the applicant and that he may have been unclear with information that was provided. The information contained in the Town's documents spell out what is requested from an applicant before they move on with a project.

Motion by Commissioner Marico Sayoc and seconded by **Commissioner Thomas O'Donnell** to disallow Mitigated Negative Declarations ND-08-02 and ND-08-03 for the purpose of not bifurcating the applications, to deny Subdivision Application M-06-09 based on the Lot Line Adjustment Guide that states if lots are currently nonconforming as to size, they cannot become more nonconforming (Exhibit 13 of Exhibit 18), to deny Variance Application V-11-001 due to the lack of justification for the rear setback, and deny Architecture and Site Applications S-06-46 and S-06-64 on the basis of the Floor Area Ratio not being met and that the bulk and mass was not significantly reduced.

Commissioner Charles Erikson

- Asked for clarification if the Variance Application was for driveway lengths rather than setbacks.

Planning Manager Sandy Bailly

- Commented that the Variance Application is for the driveway length. The rear setback would just be a deviation to modify the setback.

Commissioner Marico Sayoc

- Clarified that the setbacks were deviations and the reason for denial of the Variance Application for the driveway is the information that has been supported by what is contained in the record as well as staff reports and what has been testified to in regards to traffic and safety and nothing has been brought forward to substantiate that the information was incorrect.

Commissioner Thomas O'Donnell

- Commented that he is seconding the motion but made a suggestion that part of the reason for the denial of the driveway is that since the house is being denied, there is nothing before them factually about a variance for a driveway.

Commissioner Marico Sayoc

- Agreed to **Commission O'Donnell's** clarification to the motion.

Motion carried 5-0 with **Chair Marcia Jensen** and **Commissioner John Bourgeois** excused.

Planning Manager Sandy Bailly recited appeal rights.

NEW PUBLIC HEARINGS -- NONE

CONTINUED OTHER BUSINESS -- NONE

NEW OTHER BUSINESS (Heard out of order.)

2. Report from Director of Community Development -- None
3. Commission Matters -- None

ADJOURNMENT

Meeting was adjourned at 8:39 p.m.

TOWN OF LOS GATOS PLANNING COMMISSION
Wednesday, February 8, 2012

Charles Erikson, Vice Chair

APPROVED AS TO FORM AND ATTEST:

Sandy L. Baily
Planning Manager