




MEETING DATE: 6/19/06
ITEM NO.

20

COUNCIL AGENDA REPORT

DATE: June 8, 2006

TO: MAYOR AND TOWN COUNCIL

FROM: TOWN MANAGER 

SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION TO DENY A REQUEST TO CONSTRUCT A NEW SINGLE FAMILY RESIDENCE ON PROPERTY ZONED HR-2½. PROPERTY LOCATION: **107 COLORADO COURT**. FILE #S-06-22. PROPERTY OWNER/APPLICANT & APPELLANT: STEWART & COLETTE FAHMY.

RECOMMENDATION:

1. Open and hold the public hearing and receive public testimony.
2. Close the public hearing.
3. Uphold the Planning Commission's decision to deny Architecture & Site application S-06-22 **(motion required)**.
4. Refer to the Town Attorney for the preparation of the appropriate resolution **(no motion required)**.

If the Town Council determines that the Planning Commission's decision should be reversed or modified relative to either or both appeals:

1. The Council needs to find one or more of the following:
 - (1) Where there was error or abuse of discretion on the part of the Planning Commission;
or
 - (2) The new information that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or


PREPARED BY: Bud N. Lortz, Director of Community Development

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Reviewed by: PSS Assistant Town Manager OK Town Attorney _____ Clerk _____ Finance
✓ Community Development Revised: 6/8/06 10:10 am

Reformatted: 5/30/02

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- (3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.
2. If the predominant reason for modifying or reversing the decision of the Planning Commission is new information as defined in Subsection (2) above, it is the Town's policy that the application be returned to the Commission for review in light of the new information unless the new information has a minimal effect on the application.
3. If the appeal(s) is/are approved, use the findings included as Attachment 3 for consideration of the Architecture and Site applications, and modify conditions in Attachment 4 as appropriate. The Council may use findings made by the Planning Commission on January 14, 2004.
4. Refer to the Town Attorney for preparation of the appropriate resolution(s).

BACKGROUND

In 1997, the Development Review Committee approved plans for a new 5,923 square foot house with a 909 square foot garage and a swimming pool. That application expired in 1999 and is no longer valid. The approval was made prior to the adoption of the General Plan (2000) and the Hillside Design Standards and Guidelines (2004).

Staff met with the applicant and project architect prior to submittal of a formal application, and on several occasions following receipt of the application, to discuss concerns about the proposed project. The applicant made some revisions to the plans, but did not address all of the issues and concerns.

Staff forwarded the plans and supporting information to the Planning Commission so that direction could be provided to the applicant for a significant redesign of the project or the application could be denied. Technical and peer reviews (includes arborist, architect, geotechnical and environmental evaluations) have not been completed in the interest of saving the applicant time and expense and saving staff and Town consultants from expending significant time to completely analyze plans that are significantly noncompliant with the HDS&G.

On May 10, 2006 the Commission considered the application and concurred with staff that the applicant did not comply with the HDS&G and denied the application.

June 14, 2006

PROJECT SUMMARY:

The applicant is proposing to construct a 5,775 square foot house with an attached 1,230 square foot garage. The total floor area is 7,005 square feet including the garage. There is also 1,875 square feet of covered terraces and porches which adds to the bulk and mass of the house. The proposed floor area exceeds the maximum allowable FAR of 4,800 square feet (400 square feet of the garage may be excluded).

Most of the property consists of slopes in excess of 30% and a new home cannot be built on this lot within the least restrictive development area (LRDA). However, staff believes the encroachment outside the LRDA should be minimized as much as possible and that the size of house is too large for the site given the constraints. The proposed project is located predominantly on slopes in excess of 30%, would impact most of the mature oaks trees, and requires a significant amount of grading and retaining walls.

The proposed house exceeds the 30 foot height limit established by the Zoning Ordinance which would require approval of a variance. It also exceeds the maximum 25 foot sectional height allowed by the HDS&G. Any increase in height above 25 feet would require approval of a major exception to standard V.E.1. of the HDS&G. A major exception may only be granted by the Planning Commission or Town Council after carefully considering the constraints on the site. The burden of proof is on the applicant to show that there are compelling reasons for granting an exception.

The proposed pool is located on a slope that exceeds 30% which is prohibited by the HDS&G. The HDS&G also states that due to topographic constraints not every lot will be able to accommodate a pool. The pool should be eliminated.

Cuts in excess of the HDS&G grading criteria are required to construct the proposed house, driveway and pool. The standards allow a maximum cut of eight feet, excluding cellars within the house footprint, and a four foot maximum cut in all other areas. A cut of 15-feet is proposed in the northwest house corner and a high stem wall is proposed. The driveway requires a 14-foot fill and fill depths of up to 10 feet are proposed around the rear deck (three feet is allowed by the HDS&G).

While retaining walls have been limited to five feet or less, there are numerous walls needed to support the proposed design and the total length of the walls is significant (1,045 linear feet). Generally when a large number of retaining walls are needed, the development is not appropriate for the site.

There are 16 Coast Live Oaks on the site that are concentrated on the front half of the property. Eleven of the oak trees are proposed to be removed, and two others will be severely impacted by construction. Three of the oaks can potentially be saved under the proposed plan. The Consulting Arborist has not yet evaluated the plans to evaluate the feasibility of maintaining any of the existing trees.

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Floor Area Exception

As stated in the HDS&G, achieving the maximum floor area is not guaranteed due to individual site constraints. The priority is to comply with the standards and guidelines rather than designing to the FAR. The FAR is a numerical guide and achieving the allowable square footage is not a goal. Greater weight will be given to issues including but not limited to height, building mass and scale, visual impacts, grading and compatibility.

Criteria for allowing an exception to maximum allowed floor area (pages 29 and 30 of the HDS&G) is as follows:

1. The development will not be visible from any of the established viewing platforms.
2. There will be no significant impacts on protected trees, wildlife habitat or movement corridors.
3. Any grading necessary to accommodate the building area that exceeds the allowed FAR or an accessory building will be minimized.
4. All standards and applicable guidelines are being met.
5. Compliance to Title 24 Energy Efficiency Standards are shown using computer methods. The compliance margin must be at least 10.0.
6. The house will be pre-wired for future photovoltaic (PV) installation.
7. A minimum of 25% of hardscape material is permeable (certain types of interlocking pavers, grasscrete, pervious concrete, etc.).
8. A significant cellar element is included in the design, unless it conflicts with other standards.
9. There will not be a significant visual impact to neighboring properties.

Staff has determined that the project does not comply with items 2, 3, 4, 8 and 9 for the reasons stated under project summary. In addition, the applicant has not demonstrated compliance with items 1, 5, 6 and 7, although the project could be designed to meet these criteria.

Hillside Development Standards & Guidelines

The proposal does not comply with the following provisions of the HDS&G:

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1. The house and driveway have not been sited within the LRDA.
2. The overall square footage exceeds the maximum allowed and the applicant failed to justify an exception.
3. The height limitation is being exceeded by five feet.
4. Amount of development is extensive (building area is extremely limited by site constraints); the site may not be able to support the proposed pool.
5. Tree removals are significant.
6. Total grading volume is significant and cut and fill criteria has been exceeded.
7. Extensive use of retaining walls is necessary to construct the proposed project.

General Plan Conformance

The project is in conflict with the following policies and implementing strategies from the General Plan:

- L.P.8.4 Emphasize preserving the natural land forms by minimizing grading. Grading should be limited only to the area needed to place the main house on the property.
- L.P.8.8 Existing specimen trees shall be preserved and protected as a part of any development proposal.
- L.I.8.10 Hillside Design Standard: Houses shall be designed to step down the contours rather than be designed for flat pads.
- CD.P.2.3 Mass Grading in New Construction: Follow natural land contour and avoid mass grading in new construction. Grading large, flat yard areas shall be avoided. Siting of the house must consider natural topography.
- CD.P.2.4 Reducing Visible Mass: Effective visible mass shall be reduced through such means as stepping structures up and down the hillside, a maximum of two stories shall be visible from every elevation following the natural contours, and limiting the height and mass of the wall plane.
- CD.P.2.6 Hillside landscaping: Hillside landscaping shall be designed with the following goals in mind:
 - a. Preservation and use of native/natural vegetation
 - b. Following the natural topography
 - c. Preservation of natural trees, vegetation

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PLANNING COMMISSION ACTION:

On May 10, 2006, the Planning Commission considered the subject architecture and site application. The Commission received public testimony and discussed the project. The Commission voted 5-1 to deny the application based on the following:

- The proposed project is not in compliance with the Hillside Development Standards & Guidelines.
- A complete redesign is needed to bring the project into compliance with the HDS&G.
- There was significant neighborhood objection to the proposed project.

Appeal

Attachment 2 is the applicant's appeal letter. He maintains that the Planning Commission erred in its decision for the following reasons (staff comments are in italics):

- The decision denying the application constitutes illegal Reverse Spot Zoning.

The applicant is not being denied the right to develop, but is being asked to design a home that fits the site and that is of a smaller size, consistent with other homes on Colorado Court, and consistent with current hillside regulations. No evidence has been presented that supports a larger home size.

- The HDS&G exceptions to maximum floor area is ambiguous in that the requirement to be in compliance with all standards and applicable guidelines conflicts with the ability to request an exception.

There are nine criteria for granting an exception to allowable floor area.. The proposed project is not in compliance with four of the nine criteria. This one point is not the reason for denial of the application. The Commission denied the application due to lack of overall compliance with the HDS&G.

The project is not in compliance with two major hillside standards; floor area and height. Several other higher priority standards are not being met including grading cut and fill depths, tree preservation and a pool on a slope greater than 30%.

FISCAL IMPACT: None

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Attachments:

previously sent to Council under separate cover:

1. Applicant's appeal statement (one page), filed May 18, 2006
2. May 10, 2006 Planning Commission Minutes
3. May 10, 2006 Planning Commission desk item with Exhibit L & M
4. May 10, 2006 Report to Planning Commission with Exhibits A-K

Distribution:

Stewart & Colette Fahmy, 331 Santa Rosa Drive, Los Gatos, CA 95032

Cherine Bassal Planning & Design, 4912 Bradford Place, Rocklin, CA 95765

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FILING FEES
\$272.00 Residential
\$1089.00 per Commercial, Multi-
family or Tentative Map Appeal

PAID #5401
MAY 18 2006
2669
TOWN OF LOS GATOS
CLERK DEPARTMENT

Town of Los Gatos
Office of the Town Clerk
110 E. Main St., Los Gatos CA 95030

APPEAL OF PLANNING COMMISSION DECISION

I, the undersigned, do hereby appeal a decision of the Planning Commission as follows: (PLEASE TYPE OR PRINT NEATLY)

DATE OF PLANNING COMMISSION DECISION: 5-10-06

PROJECT / APPLICATION NO: 5-06-022

ADDRESS LOCATION: 107 COLORADO CT

MAY 18 2006

Pursuant to the Town Code, the Town Council may only grant an appeal of a Planning Commission decision in most matters if the Council finds that one of three (3) reasons exist for granting the appeal by a vote of at least three (3) Councilmembers. Therefore, please specify how one of those reasons exist in the appeal:

1. The Planning Commission erred or abused its discretion because Please See attached

2. There is new information that was not reasonably available at the time of the Planning Commission decision, which is _____; OR

3. The Planning Commission did not have discretion to modify or address the following policy or issue that is vested in the Town Council: _____ (please attach the new information if possible): OR

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS.

IMPORTANT:

1. Appellant is responsible for fees for transcription of minutes.
2. Appeal must be filed within ten (10) calendar days of Planning Commission Decision accompanied by the required filing fee. Deadline is 5:00 p.m. on the 10th day following the decision. If the 10th day is a Saturday, Sunday, or Town holiday, then it may be filed on the workday immediately following the 10th day, usually a Monday.
3. The Town Clerk will set the hearing within 56 days of the date of the Planning Commission Decision (Town Ordinance No. 1967)
4. An appeal regarding a Change of Zone application or a subdivision map only must be filed within the time limit specified in the Zoning or Subdivision Code, as applicable, which is different from other appeals.
5. Once filed, the appeal will be heard by the Town Council.
6. If the reason for granting an appeal is the receipt of new information, the application will usually be returned to the Planning Commission for reconsideration.

PRINT NAME: STEWART COLETTE FAHM SIGNATURE: 

DATE: 5-18-06

ADDRESS: 331 SANTA ROSA BL

PHONE: 408-358-8886

LOS GATOS CA 95032

*** OFFICIAL USE ONLY ***

DATE OF PUBLIC HEARING: 6/19/06

CONFIRMATION LETTER SENT: Date: _____

Pending Planning Department Confirmation

TO APPLICANT & APPELLANT BY: _____

DATE TO SEND PUBLICATION: _____

DATE OF PUBLICATION: _____

N:\DEV\FORMS\Planning\Planning Commission Appeal.wpd - July 1, 2005

ATTACHMENT 1

Date of Planning Commission Decision: 05/10/2006
Project/Application No.: 107 Colorado Court, App # S-06-022
Address Location: 107 Colorado Court

Supplement to Item 1:

1. The Planning Commission erred or abused its discretion because:

- A. The decision denying the Application constitutes illegal Reverse Spot Zoning, namely a land use decision which arbitrarily singles out a particular parcel for different, less favorable treatment than the neighboring parcels. Reverse Spot Zoning has been held to be illegal by the U.S. Supreme Court and lower federal and state courts.
- B. The Hillside Development Standards and Guidelines, Exceptions to maximum floor Area (page 29, Part C) is ambiguous on its face with respect to Requirement Item 4, namely "All standards and applicable guidelines are being met." It is a legal impossibility to satisfy item 4, since if all standards and applicable guidelines are met, there would be no need for an exception. By requiring Applicant to comply with Item 4, the Planning Commission acted in an arbitrary and capricious manner. The decision amounted to a taking of Applicant's Property.

A P P E A R A N C E S:

Los Gatos Planning
Commissioners: Phil Micciche, Chair
John Bourgeois
Michael Kane
Tom O'Donnell
Lee Quintana
Steve Rice
Joanne Talesfore

Assistant Director of
Community Development: Randy Tsuda

Town Attorney: Orry Korb

Transcribed by: Vicki L. Blandin
(510) 526-6049

LOS GATOS PLANNING COMMISSION 05/10/2006
Item #4, 107 Colorado Court

P R O C E E D I N G S:

CHAIR MICCICHE: Item #4, 107 Colorado Court,
Architecture and Site Application S-06-022, requesting
approval to construct a new single-family residence on
property zoned HR-2½, APN 527-56-033. Is the applicant
here? You have five minutes, sir.

STEWART FAHMY: Good evening, honorable
Commissioners. My name is Stewart Fahmy and I actually live
in the Alta Tierra area on 331 Santa Rosa Drive, and my wife
and I are the owners of the property at 107 Colorado, which
is the subject of this application.

A brief history: When we first decided to design
the house on the property, we approached the architectural
committee of the Alta Tierra area and we invited our
neighbors who are to the north and south of us to attend the
meeting and discuss the design that was preliminarily done
by our architect. The architectural committee unanimously
liked the project.

Our neighbors to the north indicated that the
prior house that was approved on the property was intruding
in their privacy, that this one seemed to have improved this
particular area. Subsequent to that however they have

LOS GATOS PLANNING COMMISSION 05/10/2006
Item #4, 107 Colorado Court

1 indicated that they've had some issues with the location of
2 the property and had in fact written letters to the
3 Commission and to the City objecting to the location. We'd
4 be happy to work with them in the future, and with our
5 neighbors to the south, and see if we can in fact come to a
6 compromise.

7 I'd like to just state for record, the views of
8 both properties to the north and the south face basically
9 west of the property, or northwest, and so the location of
10 107 Colorado is not going to intrude on the views of either
11 of our neighbors' properties to the north and to the south.

12 Let me just address a couple of issues that have
13 been presented in the letter that is attached to my
14 application, and that is namely the hillside ordinance. The
15 Alta Tierra area consists of 54 lots, 52 of which are
16 already built. Two are left; one is on Santa Rosa, and this
17 one, which is the subject of this application. It is our
18 opinion that the exemptions stated in the hillside ordinance
19 do apply to this house. There is no view from Blossom Hill.
20 I don't want to bore the Commission, but it's all stated in
21 the application.

22 We do however want to be compatible with the area
23 and we are going to work with our neighbors and with Staff
24 to reduce the size of the house if that's what's needed, and
25 the height if that's what's needed. We'll work very hard
with them.

1 Staff suggested that we come to the Commission to
2 get some direction as to what we should do in the future
3 with the design of this house, because apparently we got to
4 the point where they felt it would be advisable for us to
5 come here and discuss it with you and see what kind of
6 direction the Commission wishes us to proceed under.

7 The compatibility with the neighborhood and the
8 size of the other homes in the neighborhood I believe is of
9 great importance to the final design and the size of the
10 house when it's built. We don't believe that there will be
11 any significant visual impact to neighboring properties or
12 to the hillside at all. We are going to comply with most of
13 the exemptions and the exceptions stated in the hillside
ordinance.

14 I would however like for the record to state that
15 it seems to me like the hillside ordinance was meant to
16 protect the hillside of the town, of which I have been a
17 resident since 1989, and I am all in favor of protecting the
18 hillside and the views and the nature of Los Gatos. It is
19 however somewhat ironic that this is the only house left in
20 that neighborhood to be built, therefore the hillside as it
21 exists right now has already been impacted, and I don't
22 believe that the house as we are suggesting, with some
23 modification that we will be happy to do based on your
24 recommendations and direction, is going to really have any
25

1 significant impact visually or otherwise to the neighborhood
2 in general.

3 Again, I would like to reiterate, I want to make
4 it clear to my neighbors and to our friends that I'll be
5 delighted to meet with them, listen to their concerns, if
6 any, and work with them to reach something that is
7 compromising, that respects their privacy and at the same
8 time respects our property rights.

9 I had a nice presentation on PowerPoint.
10 Unfortunately technology is not helping us tonight.

11 I think everything has been stated in the
12 application. The site is posted on the wall. Right now it
13 seems like the issues that Staff has raised is the size and
14 the height to a certain extent. I'll be happy to answer any
15 questions of the Commission at this time.

16 CHAIR MICCICHE: I have to sum you up. I think the
17 timer did not go on, but I think we've reached the five
18 minutes. At this point are there any questions of the
19 applicant? Commissioner Bourgeois.

20 COMMISSIONER BOURGEOIS: You said you're willing
21 to reduce the size of the house. Can you give us an order of
22 magnitude you're willing to reduce?

23 STEWART FAHMY: We've already reduced it twice
24 before, but at this time...

1 COMMISSIONER BOURGEOIS: I'm looking for an order
2 of magnitude. Are you talking a couple of hundred square
3 feet or are you talking cutting it in half?

4 STEWART FAHMY: Oh no, we're talking somewhere
5 between 500 to 800 square feet reduction, so a significant
6 reduction. And that does not include the garage reduction.
7 We'd have to look at the garage size too and see if we can
8 reduce that.

9 COMMISSIONER TALESFORE: You stated that you're
10 very willing to work with Staff and the Commission?

11 STEWART FAHMY: Yes.

12 COMMISSIONER TALESFORE: Okay, here's my question
13 for you. I read the report, looked at your site plans, and I
14 have to ask you then, it is stated over and over in this
15 report what Staff had advised you, according to the General
16 Plan policies, the Hillside Design Standards, et cetera. I
17 just heard my fellow Commissioner ask how much you would
18 reduce your house, and you're telling me under 1,000 square
19 feet, and the actual allowable floor area on this 30%
20 slopping lot that you have to build on is 43,000.

21 So I don't understand... I mean we're happy to
22 help you see that, if that's what you want.

23 STEWART FAHMY: No other house in the neighborhood
24 has in fact exactly adhered to the exact square footage as
25 specified in the ordinance. There has always been some
variance with some justification, and we believe in this

1 case there is justification. In order for us to be
2 compatible with the neighborhood, in order for us to keep
3 the value of the other homes in the neighborhood as well as
4 the value of this home at the level that we all want it to
5 be, the size of the house has to be adjusted.

6 The slope has caused the house to be reduced
7 significantly, but again as I said, the hillside ordinance,
8 we believe that all the exceptions that are within it, we
9 meet it, and therefore there should be some consideration
10 for increasing the size of the house.

11 COMMISSIONER TALESFORE: All right. Thank you very
12 much.

13 STEWART FAHMY: You're very welcome.

14 CHAIR MICCICHE: Commissioner Quintana.

15 COMMISSIONER QUINTANA: One of the criteria for
16 allowing an exception to the maximum house size is that all
17 standards and applicable guidelines are being met. Can you
18 explain to me how this house meets all the standards? I have
19 a list of standards that don't seem to be met along with
20 applicable guidelines. How do you justify making the
21 statement that all the standards have been met?

22 STEWART FAHMY: In looking at the exceptions one
23 by one, I can go through them if you'd like me to, and
24 there's going to be some disagreements of course.

25 COMMISSIONER QUINTANA: I'm just talking about
number four: All standards must be met.

1 STEWART FAHMY: I'm not an architect, and my
2 architect may know the answer to that, but what do you mean
3 by all standards?

4 COMMISSIONER QUINTANA: The standards in the
5 Hillside Development Standards and Design Guidelines, with
6 respect to cut, fill, height, just everything.

7 STEWART FAHMY: We are going to try to do that,
8 yes, and as I said, we are going to go back and redesign the
9 house and submit it. We had a discussion with my architects
10 this morning and we decided that rather than fight it all
11 the way through, let's go back, let's redesign it, let's
12 come back to Staff, and see what can be done before bringing
13 it back another time to the Commission. But I would like to
14 hear your direction and your opinion so we can incorporate
15 it in whatever we're going to do.

16 CHAIR MICCICHE: I think that's clear in the
17 report that it's gone beyond the standards. I think he said
18 that before, so I'm not sure what your statement means.

19 COMMISSIONER QUINTANA: We're okay, except his
20 letter says that's he's met them all.

21 CHAIR MICCICHE: Well I'm not sure that was a
22 literal statement. He stated all the way through that he's
23 looking for variations. Okay, I'm going to call the public
24 up and then we'll call you back for rebuttal.

25 STEWART FAHMY: Thank you.

1 CHAIR MICCICHE: I have two cards, unless more
2 have been passed in. Mr. Jerry Glemlock.

3 JERRY GLEMLOCK: Good evening, Mr. Chair and
4 commissioners. Thank you for hearing me tonight.

5 I purchased my house in Los Gatos two years ago,
6 and I'm a neighbor to the site. Even though I've only been
7 here two years I forward to living in Los Gatos a long time
8 and I hope to be a long-time resident. I also wanted to make
9 the point that I've invested a significant amount in my
10 house. It's a huge investment for me, and a huge commitment.

11 When I was going through the purchase process, I
12 had many discussions with my developer at the time as to
13 what could and couldn't be built next door. I also obtained
14 a copy of the hillside ordinances and used this as a
15 baseline to understand how Mr. Fahmy's property would fit in
16 to that. I'm surprised that the application is moving
17 forward as it is, because there are many, many issues that I
18 see in meeting these ordinances.

19 Of most concern to me is the size of the house.
20 The ordinance stipulates that for the slope of the lot, the
21 maximum size should be 4,400 square feet. Mr. Fahmy's
22 proposal is asking for 2,000 square feet more than that, and
23 it seems like that is just too massive for the site. The
24 site itself is unique. It has a very high slope, more than
25 30-degrees, and that slope begins immediately after the
street.

1 Additionally, when I looked at the plans, Mr.
2 Fahmy is asking for a house that's more than 30' in height.
3 The hillside standard states 25', and if it is visible from
4 a viewing site, it should be less.

5 Additionally, I believe that the way the house is
6 laid out, and the size of it, it infringes on the privacy in
7 my house as well as the house to the south of us.

8 So in looking at the proposal, I believe that the
9 house should be moved closer to the street, it should be
10 reduced in size, and the plans should be modified so the
11 house setback for our property would be greater.

12 I'm additionally concerned with the grading that
13 will have to happen and the disruption to the hillside on
14 this project, and also the retaining walls that will have to
15 be put in on that slope.

16 And then finally, I'm very concerned about the
17 number of trees that will have to come down. The
18 neighborhood has beautiful live oak trees that are mature
19 and have been there for decades. In looking at the plan, a
20 significant number of those trees will have to come down.

21 So I'm asking the Town Council to ensure that this
22 project strictly meets the guidelines as set forth in the
23 hillside ordinance. Thank you.

24 CHAIR MICCICHE: Hang on a minute. Any questions?
25

1 COMMISSIONER BOURGEOIS: A quick question, just so
2 I'm understanding. Are you the neighbor upslope or
3 downslope?

4 JERRY GLEMLOCK: I'm upslope.

5 COMMISSIONER BOURGEOIS: So you're at the corner
6 there of Colorado and Santa Rosa?

7 JERRY GLEMLOCK: Yes, at the corner of Santa Rosa
8 and Colorado.

9 COMMISSIONER BOURGEOIS: Thank you.

10 CHAIR MICCICHE: I'm going to interrupt the
11 hearing to make a motion to extend our time beyond 11:30,
12 which is required.

13 COMMISSIONER KANE: I'll second it.

14 CHAIR MICCICHE: All in favor? Okay, I'll go back
15 to the hearing now. Thank you, Mr. Glemlock. Jack Goldstein.

16 JACK GOLDSTEIN: Thank you and good evening. I'm
17 Jack Goldstein; I live at 109 Colorado Court, which is the
18 property south of the property in question.

19 I'm glad to hear tonight that Mr. Fahmy is willing
20 to finally work with us. I must say that at the
21 architectural committee that he mentioned as well as on the
22 telephone he said to me on two occasions that he would
23 listen to any questions that I had, but he wasn't going to
24 make any changes.

25 We do have four issues that I relayed to Mr. Fahmy
over the telephone.

1 The first again is the size of the house. We think
2 the size of the house is too large for the property. The
3 property is about 9/10 of an acre, it's pie-shaped, and it
4 is sloped significantly and the slope comes toward our
5 property. When you look at the total floor plan of the
6 proposed house, it's over 2,000 square feet larger than Town
7 regulations, and as was said before, the height of the house
8 also exceeds Town regulations.

9 Now, there is a large house on the corner of Santa
10 Rosa Drive and Colorado Court; it's approximately 10,000
11 square feet. But what has never been said is that when it
12 was being built, and those of you who may have been on the
13 Council at the time, know, that the then owner owned not
14 only the corner lot but owned Mr. Fahmy's lot, and in fact
15 we thought they had been combined and that Mr. Fahmy's lot
16 could not be built upon.

17 Obviously we were wrong about that, but let's not
18 make another mistake and allow another house to be built too
19 large for the lot and against Town regulations. To our
20 knowledge, on Colorado Court there are five homes there, and
21 excluding the house on the corner that I just mentioned, the
22 average size is 4,800 square feet.

23 Our second issue is the angle of the house. The
24 house is angled in such a way that the back of the house and
25 the proposed pool face directly to our house and to our
decks. As a result both houses are going to have privacy

1 problems and no trees or landscaping are going to be able to
2 help because that house is so much higher than our house. We
3 believe that the house should be made smaller and parallel
4 to the street, which would alleviate the problem.

5 Thirdly, the issue of oak trees; the plan calls
6 for the removal of many oaks. Because of the way that the
7 house is situated about five or six extra oaks must be
8 removed behind the house. If the house were smaller,
9 parallel with the street, and moved up to the setback line,
10 it would save these oaks behind the house. We're not just
11 concerned about losing the oaks, but we're worried about the
12 removal of the oaks upsetting the integrity of the hillside
13 itself. As I said, the property is very, very sloped.

14 Lastly, we're concerned with a large cement apron
15 in front of the proposed garage. It's very close to our
16 property.

17 CHAIR MICCICHE: Could you wrap it up, please?

18 JERRY GLEMLOCK: Yes. And we're concerned about
19 flooding. So we just want Mr. Fahmy to adhere to the Town
20 guidelines and take some of the suggestions of his neighbors
21 into consideration. Thank you.

22 CHAIR MICCICHE: Thank you. Any questions? This is
23 the last card I have. Anybody else likes to speak, please
24 submit a card now. Juliette Davis.

25 JULIETTE DAVIS: Hi, my name is Juliette Davis; I
live at 471 Santa Rosa. That's right next to the Fahmy

1 residence proposed project. I just have two quick points I
2 want to make. We've met with Mr. and Mrs. Fahmy; they're
3 very nice people, so this isn't personal whatsoever.

4 But we do want to say that we have tried to give
5 our input multiple times on the house and have seen no
6 changes. So we have tried to give input, as I know the
7 Goldstein's have as well.

8 Second point, Mr. Fahmy said that they are not
9 trying to impede upon our view. I wish the overhead was on
10 and I wish I had better pictures, because some of the story
11 poles are up and it's not even to height, it's probably 6'
12 high, so it's going to be five times higher. The house, the
13 way it's situated, will look entirely onto our backyard, so
14 there's no privacy. It's impedes half of our view. Half of
15 it.

16 So we just ask that it be a smaller house, to the
17 regulation 4,400 square feet, and also that it's closer to
18 the street. That will prevent I think the loss of privacy,
19 and also it would save quite a few trees.

20 CHAIR MICCICHE: Thank you. Any questions? Seeing
21 none, the last card is Mr. Citizen Ray.

22 RAY DAVIS: I can't believe anybody in their right
23 mind who has read the Hillside Standards and digested a
24 portion would come up with a design like that. It is a total
25 insult to everything that the Planning Commission and the
town of Los Gatos has tried to do in the last six years to

1 establish the fact that Los Gatos cares particularly about
2 hillside development, and whatever is proposed must blend
3 with Mother Nature.

4 I'm looking at this monstrosity up here. My God,
5 the roofline is like a carrier deck. Right off the bat,
6 that's a total abomination of the Hillside Standard. We're
7 looking at a 30% slope, there's a step up or down, whatever.
8 I don't see any stepping at all in the building. I can't
9 believe it. What an exercise in futility. What a waste of
10 time for everybody. What's this man trying to do?

11 I say educate this man. Give him a chance to
12 absorb what this town is all about, particularly Santa Rosa
13 up there, the hillsides; what the town and the community
14 values are, because he's deficient. Hugely deficient. The
15 mass and scale of that building is an abomination.

16 I could go on for an hour, but it would just be
17 further accentuation of the lack of sensitivity to the Los
18 Gatos community values on the mountainside. This would be
19 just another Disneyland approach to monster home development
20 on the mountain. Ugly.

21 CHAIR MICCICHE: Thank you, Mr. Davis. Would the
22 speaker like to come up and rebut what has been stated?

23 STEWART FAHMY: As I briefly stated, both of my
24 neighbors indicated that the house as submitted was 2,000
25 above the minimum. The house is at 5,775 and the allowed
minimum under the Hillside Standards is 4,400, so my

1 calculation comes up to 1,375, of which I indicated we're
2 probably going to reduce it by about 500-800. So at the end
3 of the day, it's going to be very close to the Hillside
4 Standards.

5 My argument about the hillside issue, again, is
6 that the whole area has been developed, and that the
7 hillside ordinance came after this whole hillside has been
8 developed, and to really hold this particular remaining lot
9 to these very tough guidelines is almost unfair and
10 arbitrary in nature. I mean it's almost like spot zoning
11 because this is the only lot left.

12 I have talked to the Goldsteins and I have talked
13 to the Glemlocks, and I have tried to work with them, and
14 what I said, and maybe Mr. Goldstein misheard me, is that I
15 would be happy to listen to all of the questions, but there
16 will be some issues that I will probably not be able to
17 change. I did not say with blanket coverage that I will not
18 change anything. I said there will be some issues it will be
impossible for us to change.

19 We believe that the hillside ordinance, with all
20 due respect, is almost inapplicable to this particular lot,
21 just because it has been all developed. Now Mr. Glemlock
22 lives right to our north and has an almost 1,100 square foot
23 house right next to us, and he is looking over us, so if
24 there is anybody whose privacy is going to be impeded on, it
25 would be us, not them.

1 We have no intention to impede on anybody's
2 privacy. We want to work with them and we want to live with
3 everybody in peace. We will work with the Commission, we
4 will work with Staff, we will work with everybody to get the
5 best possible house we can. I mean we really do want to do
6 that. We don't want to be an aberration if you want.

7 Now, one more final item I would like to state
8 about the trees, that we do have an arborist's report, and
9 whatever trees they have recommended to remove was the
10 minimum amount of damage to the trees. I'm an
11 environmentalist myself. I do not want to hurt any of the
12 trees unless there is no other way, and we will obviously
13 offer whatever mitigation the Town requires us to do, so
14 we'll work with that too.

15 As far as the building height, I don't believe
16 that we have exceeded the 30' at any point. I think it's
17 between 25' and 30'. We may have exceeded it by about three
18 feet, am I right? I mean 28' is what we have right now.
19 Again, we're willing to work with our neighbors, whose view
20 is actually to the other direction; it's to the west and the
21 northwest, and we are basically caught in the middle between
22 the Goldstein's house and the Glemlocks.

23 CHAIR MICCICHE: Thank you. Hang on, guys, I'm
24 going to take my own initiative here for a minute.

25 I'm going to make some comments that I generally
wouldn't do—I would ask general questions—but I worked on

1 the hillside specification myself, and during that time we
2 addressed the issue of what are we going to do when we come
3 across neighborhoods that have already, in violation
4 effectively because if they were done prior to the hillside
5 spec, what are we going to do in a situation like that? Well
6 it was an overwhelming majority that decided that we would
7 have to adhere to the new Hillside Standards.

8 I see why you came up here hoping to get more
9 direction to avoid certain things in the hillside spec, but
10 I live by that specification, I think it was done for a good
11 and sound reason, and I do not want to perpetuate bigger
12 homes because the neighborhood happens to have some of them
13 in there.

14 So at this point once I close this hearing, I
15 myself would make a motion to continue it and have it
16 redesigned to meet the specifications of the hillside.

17 STEWART FAHMY: Can I just comment?

18 CHAIR MICCICHE: You can do anything you want,
19 sir.

20 STEWART FAHMY: I appreciate what you just said,
21 Mr. Chair, but the point is that there are some homes that
22 were built after the implementation of the hillside that
23 were in fact larger in size, and there was some
justification given.

24 And by the way, I just want to make a note that
25 when Mr. Glemlock bought his house, I do not believe that at

1 the time he purchased that this ordinance was in fact in
2 place.

3 CHAIR MICCICHE: As I read this, this house was
4 approved for a much larger one prior to the hillside spec.
5 It already states that in the report.

6 STEWART FAHMY: But it was finished and it was
7 completed and it was done after the hillside.

8 CHAIR MICCICHE: Well the original one ran out,
9 and the new came in. I believe it was addressed. I might
10 open it up to further questions, but really that's where I
11 think it's headed, and I for one will only support that kind
12 of a motion. So at this point does anybody want to add to my
13 statement? Go ahead.

14 COMMISSIONER TALESFORE: You're asking for a
15 redesign and the Staff, and yet...

16 CHAIR MICCICHE: Send it back for redesign.

17 COMMISSIONER TALESFORE: And I was looking at
18 Staff's recommendation, which actually asks for a denial,
19 and I think I would more support that.

20 CHAIR MICCICHE: No, I believe the Town Council
21 wants us to afford one opportunity to the...

22 COMMISSIONER KANE: Well I'm prepared to make a
23 motion, Mr. Chair.

24 CHAIR MICCICHE: We haven't closed the hearing
25 yet.

1 COMMISSIONER TALESFORE: Well yeah, wait. Could
2 I...

3 CHAIR MICCICHE: We're in questions. If we don't
4 have any more questions, then I'll close the hearing. Do you
5 have a question of the applicant?

6 COMMISSIONER RICE: I have no questions.

7 CHAIR MICCICHE: Do you have one?

8 COMMISSIONER QUINTANA: I have one. You talked
9 about the house size. You haven't mentioned the pool and you
10 haven't mentioned the extent of the retaining walls. Can you
11 give me some idea of your thinking on those?

12 STEWART FAHMY: I would much rather have Mr. Wist.
13 The presentation was going address some of those issues;
14 unfortunately for whatever reason, it's not working. But Mr.
15 Wist, who is the designer of the pool and high walls, he can
16 address that if you'd like him to.

17 CHAIR MICCICHE: What's your question specifically
18 though? Are you saying he shouldn't have a pool?

19 COMMISSIONER QUINTANA: My question is, are we
20 going to get back a revised design that includes the pool
21 and includes the extensive...

22 CHAIR MICCICHE: Do you want to give some
23 direction on that when we make a motion?

24 COMMISSIONER KANE: We can do that.

25 CHAIR MICCICHE: Is that what you'd like to do?

1 COMMISSIONER QUINTANA: No, I'm trying to get an
2 idea of whether the applicant is actually willing to make
3 major changes, or whether it's just going to be...

4 CHAIR MICCICHE: Commissioner Kane, do you have
5 something?

6 COMMISSIONER KANE: No, I'm okay.

7 CHAIR MICCICHE: Thank you. I'm going to close the
8 hearing and open it up to what I indicated. Commissioner
9 Kane.

10 COMMISSIONER KANE: Mr. Chair, I'll defer to your
11 leadership if you don't want an outright denial. I read the
12 recommendation of Staff the same way Commissioner Talesfore
13 does, that whereas there's always room to comply with things
14 that need to be fixed, there's just so many of them on this
15 application that Staff does come right out and say,
16 "...recommend that the Planning Commission deny this
17 application because a complete redesign is required." Now
18 that's not punitive, that's just procedural, that complete
19 redesign is required and that would call for a denial. But
20 Mr. Chair, if it's a consensus of the Commission that we
21 itemize 85 things, I've got a proposal that says...

22 CHAIR MICCICHE: Can I interrupt you for a
23 moment?

24 COMMISSIONER KANE: ...you all want a denial,
25 we'll deny it; otherwise we send it back to Staff and ask
them to comply.

1 CHAIR MICCICHE: Commissioner Kane, I asked to
2 interrupt you for a moment. May I? As I read that, the
3 Planning Commission should deny the application because of a
4 complete redesign. However, they go on to say, "If the
5 Commission finds merit with the proposed development to the
6 extent it could be improved," then they suggest direction be
7 given to those specific items.

8 COMMISSIONER QUINTANA: Okay.

9 COMMISSIONER KANE: Well which way do we want to
10 go?

11 CHAIR MICCICHE: Well I told you which way I was
12 going to go.

13 COMMISSIONER RICE: Make a motion.

14 COMMISSIONER KANE: I move we return the
15 application to Staff and request it comply fully with the
16 Hillside Development Standards and Guidelines.

17 CHAIR MICCICHE: Do you want to give it any
18 further direction? I'll ask the others too.

19 COMMISSIONER KANE: No.

20 CHAIR MICCICHE: Anybody want to second the motion
21 as it stands?

22 COMMISSIONER RICE: I'll second it.

23 CHAIR MICCICHE: Commissioner Rice has seconded
24 it. Now would you like to give directions?

25 COMMISSIONER TALESFORE: Wait a minute. Can we
have a discussion here?

1 CHAIR MICCICHE: We can, but we made a motion. We
2 can make a motion any time.

3 COMMISSIONER RICE: We can discuss the motion.

4 COMMISSIONER TALESFORE: That's what I want to
5 discuss.

6 CHAIR MICCICHE: We're going to discuss the motion
7 now.

8 COMMISSIONER RICE: Let's discuss the motion.

9 COMMISSIONER TALESFORE: I'd like to discuss the
10 motion because I...

11 CHAIR MICCICHE: Let's discuss the motion. Do what
12 you want to do. Ask.

13 COMMISSIONER TALESFORE: I guess I can't discuss
14 the motion. I would like to take the first recommendation of
15 Staff.

16 CHAIR MICCICHE: Then vote against this one then
17 when it comes up.

18 COMMISSIONER TALESFORE: Well, okay.

19 COMMISSIONER RICE: Maybe I misunderstood his
20 motion.

21 CHAIR MICCICHE: He is voting to continue, to
22 redesign.

23 COMMISSIONER KANE: I'm sending it back to Staff,
24 that it complies fully. My guidance is so out of whack; it
25 needs to comply fully with the Hillside Development
Standards and Guidelines.

1 COMMISSIONER RICE: So you're going to (inaudible)?

2 COMMISSIONER KANE: I'm accepting the Chair's
3 leadership that there is an alternative to denial, which is
4 fine with me.

5 CHAIR MICCICHE: Would you withdraw your second?

6 COMMISSIONER RICE: I withdraw my second.

7 CHAIR MICCICHE: Okay. Is it seconded? It fails
8 for a second then. Would anybody else like to make a motion?

9 COMMISSIONER TALESFORE: Sure. I make a motion to
10 deny this, Architecture and Site Application S-06-022,
11 requesting approval to construct a new single-family
12 residence on property zoned HR-2½ as suggested.

13 And for the reason is that it's a recommendation
14 from Staff after having tried to work with the applicant. I
15 see that there are so many issues, not just with the house,
16 but with the allover siting, the allover grading,
17 everything, that let's just make a nice clean canvas of
18 this and start over. It sounded like the applicant was
19 willing to do that. He wanted to hear from us, and that
20 would be my best suggestion for him instead of trying to
21 erase lines and put other lines.

22 COMMISSIONER RICE: I'll second that.

23 CHAIR MICCICHE: The motion made and seconded. Do
24 you have a comment on it, Commissioner Quintana? We're
25 talking about denial now.

1 COMMISSIONER QUINTANA: Yes, and I will support
2 the motion because I believe that Staff has spent a
3 significant amount of time with the applicant trying to
4 explain the Hillside Design Guidelines and what we're
5 looking for.

6 I think this is probably the most difficult site
7 that I've seen. I think it's the only site I have ever seen
8 in my almost eight years on the Commission that literally
9 has so little space that's below the 30% slope line. This is
10 a highly constrained site and it has groves of oak trees
11 that further constrain the site.

12 Given those two constraints, I think even the
13 maximum allowable square footage may not be able to be met
14 and that this site needs a complete redesign starting with a
15 constraints analysis before any design is actually done, and
16 I would encourage the applicant to reapply.

17 CHAIR MICCICHE: I'm going to call the motion. All
18 in favor? Against? One against. Appeal rights.

19 ORRY KORB: Anyone dissatisfied with the decision
20 of the Planning Commission may appeal the decision to the
21 Town Council. The appeal must be filed within ten days. It
22 must be filed upstairs in the Clerk's Office. There is a fee
23 for filing an appeal.
24
25