

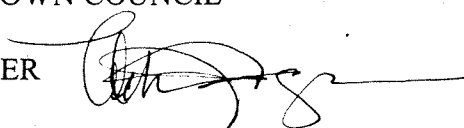


MEETING DATE: 1/16/07  
ITEM NO. 18

## COUNCIL AGENDA REPORT

DATE: January 10, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: TOWN MANAGER 


SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION TO DENY A REQUEST FOR MODIFICATIONS TO AN APPROVED ARCHITECTURE & SITE APPLICATION RELATED TO GRADING AND LANDSCAPE IMPROVEMENTS ON PROPERTY ZONED HR-2½. PROPERTY LOCATION: **15350 SUVIEW DRIVE**. FILE #S-06-66. PROPERTY OWNER/APPLICANT & APPELLANT: CHARLES HACKETT.

### 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-06-66 (**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
  - (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.

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

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Reviewed by: PS Assistant Town Manager OK Town Attorney \_\_\_\_\_ Clerk \_\_\_\_\_ Finance \_\_\_\_\_  
✓ Community Development

Revised: 1/10/07 4:26 PM

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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 is approved, use the findings and consideration of the Architecture and Site applications (Attachment 2), and modify the conditions in Attachment 3 as appropriate.
4. Refer to the Town Attorney for preparation of the appropriate resolution(s).

#### BACKGROUND

On August 22, 2001 the Planning Commission approved an Architecture and Site application for a new hillside home and pool on the subject property. The project went through an extended review process including multiple Planning Commission hearings before being approved. The applicant secured a building permit in March 2002, but did not commence construction prior to the expiration date for the architecture and site approval (August 22, 2003).

On May 26, 2004 the Planning Commission approved a new Architecture & Site application for a new residence and pool. The project has been under construction since July 2004. During the course of construction the applicant modified the retaining wall design in the pool area and behind the house, added entry walls, constructed a pergola along the rear property line and backfilled the side yard to an existing wall on the south property line. The applicant has since removed the unauthorized fill and filed the subject application seeking approval of the improvements that were done without prior planning approvals, as well as some changes that have not yet been implemented

On September 13, 2006 the Planning Commission considered the subject application and decided to deny the request for approval of the improvements that were made without Town approval or necessary permits. The applicant appealed the Commission's decision on September 22, 2006. On October 16, 2006 the Town Council considered the appeal and following discussion, continued the matter to January 16, 2007. The continuance was to allow the applicant additional time to address Planning Commission concerns.

#### PROJECT SUMMARY:

The applicant is requesting approval of a revised site plan for a previously approved Architecture & Site application. The approved site plan is shown in a gray tone and the changes that are being requested are shown in black (see Exhibit H to Attachment 7). The pool, spa and arbor on the south side of the house have been approved and were constructed with building permits. The improvements that are pending approval are listed below. Staff comments are in italics following each item:

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1. Entry walls along driveway

*If staff were reviewing the entry walls prior to installation, consideration would have been given to the exterior color and finish of the walls. The goal is to have them blend into the site as much as possible. Natural materials such as wood and stone would help the walls blend better with the site. In this particular case, the entry walls are not visible from any off site locations and do not present any visual impact to neighbors.*

2. Expansion of driveway turnaround (not yet installed)

*Staff does not have any concerns relative to the driveway expansion.*

3. Three terraced retaining walls on east side of pool (one 4½ feet, two 3½ feet high)
4. Retaining wall with planter wall along east property line (4½ feet and 1½ feet high)
5. Two retaining walls on either side of the grape arbor (previously approved, but location was changed)

*Staff would have considered the exterior finish and colors of these walls, and would have looked at options to reduce the number of walls needed. Natural materials such as wood or stone would help the walls blend into the site. The proposed stucco finish would match the house; however, stucco makes the walls more prominent until planting is completed and grows large enough to help screen the walls. The walls heights are in compliance with Hillside Development Standards & Guidelines (HDS&G) criteria for retaining walls. The Zoning Ordinance does not include criteria for walls.*

6. Two new stairways and relocation of approved stairway above pool area

*Staff does not have any concerns about these changes to the plan.*

7. Grape arbor (pergola) on east side of the house

*The grape arbor (columns with a trellis top) is located five feet from the east (rear) property line. While Zoning Ordinance provisions for accessory structures allow a five foot setback from the rear property line, the HDS&G includes a standard that accessory structures be outside required setbacks. The rear setback in HR zones is 25 feet. Although the project was originally approved prior to adoption of the HDS&G, the arbor was constructed after the HDS&G became effective in February 2004. The applicant is requesting an exception to the HDS&G to allow the arbor to remain. The HDS&G state that the burden of proof is on the applicant to demonstrate that an exception is warranted.*

8. Stairs at grape arbor

*Staff does not have any concerns about this change.*

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9. Mechanical equipment pad and enclosure

*Staff does not have any concerns about this change. Enclosing mechanical equipment helps reduce noise impacts to neighbors and provides screening.*

The applicant has submitted a packet including a letter addressing the changes that approval is being requested for and reasons why the Planning Commission decision should be reversed (see Attachment 7).

FISCAL IMPACT: None

Attachments:

- 1.-7. Previously received (Attached to staff report of October 16, 2006)  
8. Applicant's packet including letter from Charles T. Killian (eight pages) and attachments (15 photos and four letters)

Distribution:

Bob Steuer, 1133 Fairview Avenue, San Jose, CA 95125  
Charles Hackett, 15400 Suview Drive, Los Gatos, CA 95032  
Charles T. Killian, 20410 Town Center Lane, Suite 210, Cupertino, CA 95014

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**ITEM #18**

**PUBLIC HEARING FOR 15350 SUVIEW DR.**

**ATTACHMENTS 1-7 ARE AVAILABLE FOR  
REVIEW IN THE CLERK DEPARTMENT**