



MEETING DATE: 11/03/08

ITEM NO:

6

## COUNCIL AGENDA REPORT

DATE: OCTOBER 21, 2008

TO: MAYOR AND TOWN COUNCIL

FROM: ORRY P. KORB, TOWN ATTORNEY *OK*

SUBJECT: RESOLUTION DENYING APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION DENYING AN APPEAL OF THE DEVELOPMENT REVIEW COMMITTEE'S APPROVAL OF A REQUEST TO DEMOLISH A SINGLE FAMILY RESIDENCE AND TO CONSTRUCT A NEW RESIDENCE ON PROPERTY ZONED R1:8; APN: 409-15-021; ARCHITECTURE AND SITE APPLICATION: S-07-188. PROPERTY LOCATION: 14329 MULBERRY DRIVE. PROPERTY OWNER: HALLMARK COMMUNITY SERVICES; APPLICANT/APPELLANT: DENNIS CHAMBERS

### RECOMMENDATION:

Adopt resolution denying an appeal of a decision approving a request to demolish a single family residence and to construct a new residence on property Zoned R1:8.

### DISCUSSION:

On October 20, 2008, Council considered and voted to deny an appeal and uphold the Planning Commission's decision approving a request to demolish a single family residence and to construct a new residence on property Zoned R1:8, and denying the appeal. The attached resolution finalizes that decision.

Attachment: Proposed Resolution

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

OPK:LMB/wp [N:\ATTY\Reports\Report (Mulberry Drive).wpd]

Reviewed by: *[Signature]* Town Manager *[Signature]* Assistant Town Manager \_\_\_\_\_ Clerk  
\_\_\_\_\_ Finance \_\_\_\_\_ Community Development

Rev: 10/30/08 9:40 am

Reformatted: 7/19/9

File# 301-05

## **RESOLUTION**

### **RESOLUTION DENYING APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION DENYING AN APPEAL OF THE DEVELOPMENT REVIEW COMMITTEE'S APPROVAL OF A REQUEST TO DEMOLISH A SINGLE FAMILY RESIDENCE AND TO CONSTRUCT A NEW RESIDENCE ON PROPERTY ZONED R1:8**

**APN: 409-15-021**

**PROPERTY LOCATION: 14329 MULBERRY DRIVE  
PROPERTY OWNER: HALLMARK COMMUNITY SERVICES  
APPELLANT: DENNIS CHAMBERS**

#### **WHEREAS:**

A. This matter came before the Town Council for public hearing on October 20, 2008, and was regularly noticed in conformance with State and Town law.

B. Council received testimony and documentary evidence from the appellant and all interested persons who wished to testify or submit documents. Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report dated October 9, 2008, along with any and all subsequent reports and materials prepared concerning this application.

C. The appeal concerns a Planning Commission decision denying an appeal of the Development Review Committee's (DRC) decision approving the application to demolish a single family residence and to construct a new residence on property zoned R1:8.

D. On June 17, 2008, the DRC considered and approved a request to demolish a single family residence and to construct a new residence on property zoned R1:8.

E. On August 27, 2008, the Planning Commission considered and denied the appeal of the DRC's decision.

G. On September 8, 2008, the appellant filed his appeal of the Planning Commission's decision, claiming that the Planning Commission erred or abused its discretion in that they did not adhere to the Residential Development Standards. Specifically, it is appellant's opinion that the Planning Commission did not consider the safety of the neighborhood (increased traffic in addition to ambulances and fire trucks), the various site development, planning and design sections of new residence (appellant questioned the size of the house) and privacy issues (height of fencing).

H. The decision of the Planning Commission is correct.

I. Council finds as follows:

i. The findings of the Planning Commission made on August 27, 2008 are adopted and incorporated herein. Specifically, no new evidence was brought forth to the Planning Commission to deny the applicant's request to demolish the single family residence and to construct a new residence on property zoned R-1:8.

**RESOLVED:**

1. The Planning Commission's decision approving a request to demolish a single family residence and to construct a new residence on property zoned R-1:8 is upheld and the appeal is denied.

2. The Conditions of Approval attached hereto as Exhibit A are adopted as the Conditions of Approval for the demolition of single family residence and construction of a new residence on property zoned R1:8.

3. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by State and Federal Law.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California on the \_\_\_\_ day of November 2008, by the following vote.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

\_\_\_\_\_  
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

\_\_\_\_\_  
CLERK ADMINISTRATOR  
TOWN OF LOS GATOS, CALIFORNIA

# EXHIBIT A

## **CONDITIONS OF APPROVAL**

**Town Council meeting of October 20, 2008**

**14329 Mulberry Drive**

**Architecture and Site Application S-07-188**

**Requesting approval to demolish a single family residence and to construct a new residence on property zoned**

**R-1:8. APN 409-15-021**

**PROPERTY OWNER/APPLICANT: Hallmark Community Services**

**TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT  
(Planning Division)**

1. **APPROVAL.** This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved. Any changes or modifications made to the approved plans shall be approved by the Director of Community Development, Development Review Committee or the Planning Commission, depending on the scope of the change(s).
2. **EXPIRATION.** Zoning approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
3. **SALVAGE OF BUILDING MATERIALS:** Prior to the issuance of a demolition permit, the developer shall provide the Director of Community Development with written notice of the company that will be recycling the building materials. All wood, metal, glass, and aluminum materials generated from the demolished structure shall be deposited to a company which will recycle the materials. Receipts from the company(s) accepting these materials, noting the type and weight of materials, shall be submitted to the Town prior to the Town's demolition inspection.
4. **TREE REMOVAL PERMIT.** A Tree Removal Permit shall be obtained prior to the issuance of a Building, Grading or Encroachment Permit.
5. **MITIGATION TREES.** The tree to be removed shall be mitigated and pursuant to Town Code and Arborist requirements, the mitigation shall be three 24 inch box trees or two 36 inch box trees. These trees and their sizes shall be shown on the building permit plans.
6. **ARBORIST REQUIREMENTS.** The developer shall implement, at their cost, all recommendations made by the Town's Consulting Arborist identified in the Arborist's report, dated November 5, 2007, on file in the Community Development Department. A Compliance Memorandum shall be prepared and submitted with the building permit application detailing how the recommendations have or will be addressed. These recommendations must be incorporated in the building permit plans, and completed prior to issuance of a building permit where applicable.
7. **GENERAL.** All existing trees shown to remain on the plan and newly planted trees are specific subjects of approval of this plan and must remain on site.

8. NEW TREES. The new trees to be planted shall be double-staked, using rubber tree ties and shall be planted prior to occupancy.
9. PROTECTIVE FENCING. Prior to any construction or building permits being issued, the applicant shall meet with the Parks Superintendent concerning the need for protective fencing around the existing trees. Such fencing is to be installed prior to, and be maintained during, construction. The fencing shall be a four foot high chain link attached to steel poles driven two feet into the ground when at the dripline of the tree. If the fence has to be within eight feet of the trunk of the tree, a fence base may be used, as in a typical chain link fence that is rented.
10. PERIMETER FENCING. The fencing along the front, rear and side property lines may be six feet in height with one foot of lattice for a height of seven feet, or a total height up to eight feet, if both the property owners who share this fence agree to this height increase. The southern property line fence adjacent to the existing garage at 14333 Mulberry Drive may be stepped down towards the driveway to increase vehicle sight distance, if both the property owners agree. The height of the fencing shall be resolved prior to the issuance of a building permit. A detail of the fencing shall be provided on the building permit plans. The fencing shall be installed prior to final occupancy.
11. PARKING. The parking spaces and backup area noted on the approved plans shall be reversed so that the spaces are outside of the front setback. This shall be noted on the building permit plans and the spaces shall be dimensioned to meet Town Code.
12. LANDSCAPING. The developer shall work with Town staff to consider landscape screening along the southern property line prior to the issuance of a building permit.
13. ELEVATION CHANGES. The developer shall work with Town staff to incorporate additional architectural detailing along the right elevation prior to the issuance of a building permit. The developer shall also work with Town staff to ensure that the exterior materials are similar to traditional materials used elsewhere in Los Gatos pursuant to the comments from Cannon Design Group in their letter dated February 4, 2008.
14. TOWN INDEMNITY. Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.

(Building Division)

15. PERMITS REQUIRED: A building permit shall be required for the demolition of the existing single family residence and the construction of the new single family residence. Separate permits are required for site retaining walls, water tanks, swimming pools, electrical, mechanical, and plumbing work as necessary.

16. **CODE:** Projects will be required to conform to the 2007 California Building, Fire, Mechanical, Electrical, and Plumbing Codes. The CC's are based on model codes; 2006 International Building Code and Fire Code and 2006 Uniform Plumbing and Mechanical Codes and the 2005 National Electrical Code.
17. **CONDITIONS OF APPROVAL:** The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans. A Compliance Memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval will be addressed.
18. **SIZE OF PLANS:** For sets of construction plans, maximum size 24" x 36."
19. **DEMOLITION REQUIREMENTS:** Obtain a Building Department Demolition Application and a Bay Area Air Quality Management Application from the Building Department Service Counter. Once the demolition form has been completed, all signatures obtained, and written verification from PG&E that all utilities have been disconnected, return the completed form to the Building Department Service Counter with the J# Certificate, PG&E verification, and three (3) sets of site plans to include all existing structures, existing utility service lines such as water, sewer, and PG&E. No demolition work shall be done without first obtaining a permit from the Town.
20. **SOILS REPORT:** A soils report, prepared to the satisfaction of the Building Official, containing foundation and retaining wall design recommendations, shall be submitted with the building permit application. This report shall be prepared by a licensed civil engineer specializing in soils mechanics. **ALTERNATE:** Design the foundation for an allowable soils 1,000 psf design pressure. (Uniform Building Code Volume 2 – Section 1805)
21. **FOUNDATION INSPECTIONS:** A pad certificate prepared by a licensed civil engineer or land surveyor shall be submitted to the project building inspector at foundation inspection. This certificate shall certify compliance with the recommendations as specified in the soils report; and, the building pad elevation, on-site retaining wall locations and elevations are prepared according to approved plans. Horizontal and vertical controls shall be set and certified by a licensed surveyor or registered civil engineer for the following items:
  - a. Building pad elevation
  - b. Finish floor elevation
  - c. Foundation corner locations
22. **RESIDENTIAL TOWN ACCESSIBILITY STANDARDS:** The residence shall be designed with adaptability features for single family residences per Town Resolution 1994-61:
  - a. Wooded backing (2" x 8" minimum) shall be provided in all bathroom walls, at water closets, showers, and bathtubs located 34-inches from the floor to the center of the backing, suitable for the installation of grab bars.
  - b. All passage doors shall be at least 32-inches wide on the accessible floor.
  - c. Primary entrance shall a 36-inch wide door including a 5'x5' level landing, no more than 1-inch out of plane with the immediate interior floor level with an 18-inch clearance.
  - d. Door buzzer, bell or chime shall be hard wired at primary entrance.

23. TITLE 24 ENERGY COMPLIANCE: California Title 24 Energy Compliance forms CF-1R, MF-1R, and WS-5R must be blue-lined on the plans.
24. BACKWATER VALVE: The scope of this project may require the installation of a sanitary sewer backwater valve per Town Ordinance 6.50.025. Please provide information on the plans if a backwater valve is required and the location of the installation. The Town of Los Gatos Ordinance and West Valley Sanitation District (WVSD) requires backwater valves on drainage piping serving fixtures that have flood level rims less than 12-inches above the elevation of the next upstream manhole.
25. TOWN FIREPLACE STANDARDS: New wood burning fireplaces shall be an EPA Phase II approved appliance as per Town Ordinance 1905. Tree limbs shall be cut within 10-feet of chimneys.
26. SPECIAL INSPECTIONS: When a special inspection is required by UBC Section 1701, the architect or engineer of record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the building permit. The Town Special Inspection form must be completely filled-out, signed by all requested parties, and be blue-lined on the construction plans. Special Inspection forms are available from the Building Division Service Counter or online at [www.losgatosca.gov/building](http://www.losgatosca.gov/building)
27. NONPOINT SOURCE POLLUTION STANDARDS SHEET: The Town standard Santa Clara County Valley Nonpoint Source Pollution Control Program Sheet (or Clean Bay Sheet 24x36) shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter for a fee of \$2 or at San Jose Blue Print for a fee.
28. PLANS: The construction plans shall be prepared under the direct supervision of a licensed architect or engineer. (Business and Professionals Code Section 5538)
29. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
  - a. Community Development – Planning Division: Sandy Baily at 354-6873
  - b. Engineering/Parks & Public Works Department: Fletcher Parsons at 395-3460
  - c. Santa Clara County Fire Department: (408) 378-4010
  - d. West Valley Sanitation District: (408) 378-2407
  - e. Local School District: The Town will forward the paperwork to the appropriate school district(s) for processing. A copy of the paid receipt is required prior to permit issuance.
  - f. Bay Area Air Quality Management District: (415) 771-6000.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:  
(Engineering Division)

30. CONSTRUCTION MANAGEMENT PLAN. The Applicant shall submit a construction management plan that shall incorporate, at a minimum, project schedule, site security fencing, employee parking, construction staging area, construction trailer, and proposed outhouse location.

31. PRE-CONSTRUCTION MEETING. The contractor shall hold a pre-construction meeting with the Mulberry Drive neighborhood to exchange contact information and discuss project issues such as work hours, parking, schedule, etc.
32. SIDEWALK IN-LIEU FEE. A curb and sidewalk in-lieu fee of \$810 shall be paid prior to issuance of a certificate of occupancy. This fee is based on 54-square feet of 4.5-foot wide sidewalk at \$15/SF in accordance with Town policy.
33. FIRE LANE. Fire lane signage shall be provided on the driveway in accordance with Santa Clara County Fire Department standards.
34. DRIVEWAY. The driveway must provide a minimum paved width of 12-feet if serving one residential unit, and 18-feet if serving two. The driveway shall be fully contained within property or evidence of easements shall be provided if the driveway is located on an adjacent property.
35. DRAINAGE. Stormwater detention shall be provided to limit post development flow to neighboring properties to predevelopment flowrates and flow volumes, including subsurface flow. Detained water shall be pumped to the street and not allowed to percolate into the soil. Site grading shall be designed to maintain existing drainage patterns. Stormwater detention calculations shall be approved prior to issuance of a building permit.
36. EASEMENTS. A current title report (within the past 3 months) shall be submitted with the building permit application. All plotable exceptions to title shall be shown on the plans.
37. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
38. ENCROACHMENT PERMIT. All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
39. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
40. CONSTRUCTION STREET PARKING. No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the Town Engineer (§ 15.40.070).
41. SITE DRAINAGE. Rainwater leaders shall be discharged to splash blocks. No through curb drains will be allowed.

42. NONPOINT SOURCE POLLUTION PREVENTION. On-site drainage systems shall include a filtration device such as a bio-swale or permeable pavement.
43. SILT AND MUD IN PUBLIC RIGHT-OF-WAY. It is the responsibility of contractor and home owner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris SHALL NOT be washed into the Town's storm drains.
44. UTILITIES. The developer shall install all utility services, including telephone, electric power and all other communications lines underground, as required by Town Code §27.50.015(b). All new utility services shall be placed underground. Underground conduit shall be provided for cable television service.
45. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
46. CURB AND GUTTER. The developer shall repair and replace to existing Town standards any curb and gutter damaged now or during construction of this project. New curb and gutter shall be constructed per Town Standard Details. The limits of curb and gutter repair will be determined by the Engineering Construction Inspector during the construction phase of the project.
47. DRIVEWAY APPROACH. The developer shall install one (1) Town standard residential driveway approach. The new driveway approach shall be constructed per Town Standard Details.
48. AS-BUILT PLANS. After completion of the construction of all work, the original plans shall have all changes (change orders and field changes) clearly marked. The "as-built" plans shall again be signed and "wet-stamped" by the civil engineer who prepared the plans, attesting to the changes. The original "as-built" plans shall be review and approved the Engineering Inspector. A Mylar and AutoCAD disk of the approved "as-built" plans shall be provided to the Town before the Faithful Performance Security or Occupancy Permit is released. The AutoCAD file shall include only the following information and shall conform to the layer naming convention: a) Building Outline, Layer: BLDG-OUTLINE; b) Driveway, Layer: DRIVEWAY; c) Retaining Wall, Layer: RETAINING WALL; d) Swimming Pool, Layer: SWIMMING-POOL; e) Tennis Court, Layer: TENNIS-COURT; f) Property Line, Layer: PROPERTY-LINE; g) Contours, Layer: NEWCONTOUR. All as-built digital files must be on the same coordinate basis as the Town's survey control network and shall be submitted in AutoCAD version 2000 or higher.

49. SANITARY SEWER LATERAL. Sanitary sewer laterals are televised by West Valley Sanitation District and approved by the Town of Los Gatos before they are used or reused. Install a sanitary sewer lateral clean-out at the property line.
50. SANITARY SEWER BACKWATER VALVE. Drainage piping serving fixtures which have flood level rims less than twelve (12) inches (304.8 mm) above the elevation of the next upstream manhole and/or flushing inlet cover at the public or private sewer system serving such drainage piping shall be protected from backflow of sewage by installing an approved type backwater valve. Fixtures above such elevation shall not discharge through the backwater valve, unless first approved by the Administrative (Sec. 6.50.025). The Town shall not incur any liability or responsibility for damage resulting from a sewer overflow where the property owner or other person has failed to install a backwater valve, as defined section 103(e) of the Uniform Plumbing Code adopted by section 6.50.010 of the Town Code and maintain such device in a functional operating condition. Evidence of West Valley Sanitation District's decision on whether a backwater device is needed shall be provided prior to issuance of a building permit.
51. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT

52. FIRE APPARATUS ACCESS DRIVEWAY. The applicant shall provide an access driveway with a paved all weather surface, a minimum unobstructed width of 12 feet, vertical clearance of 13 feet six inches to the point approximately 120 feet inward from the public street. Installations shall conform to Fire Department Standard Details and Specifications sheet D-1.
53. PREMISE IDENTIFICATION. Approved numbers or addresses shall be placed on all new buildings in such a position to be plainly visible and legible from the street or road fronting the property. Numbers shall contrast with their background.