



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

**MINUTES OF THE PLANNING COMMISSION MEETING
MARCH 8, 2023**

The Planning Commission of the Town of Los Gatos conducted a Regular Meeting on Wednesday, March 8, 2023, at 7:00 p.m.

MEETING CALLED TO ORDER AT 7:00 P.M.

ROLL CALL

Present: Chair Jeffrey Barnett, Vice Chair Steve Raspe, Commissioner Susan Burnett, Commissioner Kylie Clark, Commissioner Kathryn Janoff, and Commissioner Emily Thomas
Absent: Commissioner Melanie Hanssen

PLEDGE OF ALLEGIANCE

VERBAL COMMUNICATIONS

None.

CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)

1. **Approval of Minutes** – January 11, 2023
2. **Approval of Minutes** – January 25, 2023
3. **202 University Avenue**
Variance Application V-22-003
APN 529-04-001
Applicant: Jay Plett, Architect
Property Owner: Tyler and Kristine Shewey
Project Planner: Sean Mullin

Requesting approval for construction of an accessory structure requiring variances to accessory structure lot coverage standards and side and rear setback requirements in the University-Edelen Historic District on property zoned R-1D:LHP. Requesting item be continued to a date certain of April 12, 2023.

MOTION: **Motion by Vice Chair Raspe** to approve adoption of the Consent Calendar. **Seconded by Commissioner Burnett.**

VOTE: **Motion passed unanimously.**

PUBLIC HEARINGS

4. 144 Wood Road

Building Permit Application B22-0025

APN 510-47-045

Property Owners/Appellants: Omari and Kavita Bouknight

Project Planner: Sean Mullin

Appeal of a Santa Clara County Fire Department decision denying a request for an exception to the State Minimum Fire Safe Regulations on property zoned HR-5.
Categorically Exempt Pursuant to CEQA Guidelines Section 15303: New Construction.

Sean Mullin, Senior Planner, presented the staff report.

Opened Public Comment.

Omari Bouknight, Property Owner/Appellant

- We submitted our application in January 2021 and received a letter of approval on June 23, 2021 based on a detailed review by Fire, including site access. We submitted a request in October 2021 to receive our grading permits, but we have still not been able to start our approved project. This hearing is about an obscure and broken process that has resulted in unreasonably long timelines and has cost us tens of thousands of dollars. PRC 4290 was supposedly expanded in July 1, 2021 in a way that would apply to the majority of Los Gatos. These actions were not in accordance with Town process, including a rigorous technical review, which helps determine final conditions of approval, and we now face an alteration of those conditions. We had no hint that PRC 4290 was coming into play until more than seven months after July 1, 2021 and have been asked to go through a supplemental review procedure not codified in the development guidelines after approval at significant cost to us. Most other counties, if not all, are waiting for clarity around regulation amendments or they have introduced common sense interpretations. The required significant re-engineering of Wood Road would constitute a taking under three different legal doctrines. The project meets the intent of providing defensible space consistent with PRC 4290 regulations.

Kyran Prosod

- I support the Bouknight family's appeal. My wife and I have taken a particular interest in this project, and what the Bouknights have been through is completely excessive and unnecessary, and altering the final conditions of approval after Planning Commission approval is highly inappropriate. Their proposal significantly improves the fire safety in the area as compared to leaving the lot vacant. I urge the Planning Commission to approve their appeal this evening.

Margaret Belska

MINUTES OF PLANNING COMMISSION MEETING OF MARCH 8, 2023

- I am a landowner in unincorporated Santa Clara County who is also impacted by PRC 4290. As part of my conditions of approval I was required to make significant and costly improvements to the existing subdivision road leading to my parcel, which were so unaffordable it rendered my parcel unbuildable. The Santa Clara County Fire Department denied my request for exception, but when I appealed my case to the Santa Clara County Planning Commission, they agreed that what was asked of me was a violation of my constitutional rights and could qualify as a taking, and my appeal was granted. Los Gatos appears to be the only holdout in the state still requiring infeasible and unconstitutional improvements as conditions of single-family home construction. I hope the Planning Commission approves the Bouknight's appeal.

Eugenia Givens

- I am a Los Gatos resident and homeowner. I support the Bouknight's appeal, as I believe the project meets the spirit of the fire safe regulations and would improve fire safety in the area. Getting single-family homes through the approval process in Los Gatos is known to be long and challenging, and that needs to change. Asking homeowners to re-engineer a public road that they are not responsible for is not appropriate. I hope the Planning Commission approves this appeal tonight.

Eric Wade

- I support this application. This meeting is about whether or not this Planning Commission believes Santa Clara County Fire is lawful in its interpretation of PRC 4290 and whether retroactively imposing it on previously approved projects is appropriate. The question is does denial of this application constitute a regulatory taking? The Commission has ruled that it does on all previous applications facing the same restriction. Denial of this application would impose a regulatory taking on the applicant, who will respond with a lawsuit against the Town and will win in the end.

Ed Chow

- I second Mr. Wade's comments regarding the regulatory taking. There are approximately 55 residences within a seven-mile radius of downtown Los Gatos that are affected by PRC 4290. The fiscal liability of losing a regulatory taking lawsuit would be significant, and unnecessary if the Planning Commission would approve the applicant's project. Edith Hannigan, Executive Officer of the Board of Forestry, who finalized the revision of PRC 4290, told me personally that local jurisdictions absolutely have the authority to grant exceptions to PRC 4290 when they deem it to be out of line with the local master plan, and this is the perfect opportunity to do that.

Vip

- The Bouknight's experience with Town of Los Gatos has been prolonged and I urge the Commission to help the project move along. The City of Saratoga recently streamlined its approach to PRC 4290, and it would be good for Los Gatos to do that as well. This has been an unnecessarily prolonged process for the Bouknights, and the Planning Commission should approve the appeal tonight.

David

- I offer my support to the Bouknights, who have tried everything in their power to deal with a difficult situation. Back peddling on the previously approved plans in the post-entitlement phase is not appropriate. It is simply wrong that PRC 4290 is being applied only by our fire department, and there is no evidence that anywhere else is applying it in this manner.

Michael Strahs

- I'm here as a Los Gatos resident in support of the Bouknight family's appeal. I've followed this saga for several years and encourage the Planning Commission to grant the appeal tonight, because it is the fair thing to do given the circumstances. It is almost impossible to make Wood Road fully compliant, the Bouknights have agreed to reasonable mitigation, Santa Clara Fire conducted their operational assessment without incident, and there is a constitutional argument.

Julie Southern

- I live on Wood Road and my home there burned down in 1997. I ask that the Planning Commission not take any shortcut or exceptions in the name of fire safety just because they are a nice family. I am a nice person too, and it took a long time to rebuild my house.

Omari Bouknight, Property Owner/Appellant

- A fire was started on our vacant property in November 2022, and it is not uncommon for people to trespass on the property, which contrasts with having a fire safe dwelling with defensible space, significant water access, and reasonable road access. I'm grateful for the significant public support we have received. We have done everything the right way as we've navigated this obscure process. It has been nearly 18 months since we submitted for our grading permits in accordance with our conditions of approval, and it is time to complete that process. We have demonstrated that our project aligns well with the spirit and intent of PRC 4290 and improves fire safety in the area. Please approve our appeal.

Closed Public Comment.

Commissioners discussed the matter.

MOTION: **Motion by Commissioner Janoff** to grant the appeal of the Santa Clara County Fire Department decision denying a request for an exception to the State Minimum Fire Safe Regulations on property zoned HR-5 for 144 Wood Road. **Seconded by Commissioner Thomas.**

VOTE: **Motion passed unanimously.**

5. 15600-15650 Los Gatos Boulevard

APNs 424-14-028 and -036

Property Owner/Applicant: Steve Lynch, Sand Hill Property Company

Project Planner: Jocelyn Shoopman

Requesting approval for construction of a new commercial building, a formula retail business (Whole Foods) greater than 6,000 square feet, a merger of two lots into one, a Variance from the required number of parking spaces, and removal of large protected trees on properties zoned CH. Categorically Exempt Pursuant to CEQA Guidelines Section 15332: In-Fill Development Projects.

Commissioner Thomas and Commissioner Clark announced that they live within 500-1000 feet of the subject site and would recuse themselves from participating in the public hearing for 15600-15650 Los Gatos Boulevard.

Jocelyn Shoopman, Associate Planner, presented the staff report.

Opened Public Comment.

Steve Lynch, Sand Hill Property Company, Applicant

- We've had projects in Los Gatos over time, such as the Netflix campus, the development at Blossom Hill, and the Palo Alto Medical Foundation building.

Ken Rodriguez, Architect and Master Planner, Applicant

- With this building we've tried to take the types of material that are very consistent in the community, such as cut stone, integral colored hand-troweled plaster walls, and wood siding. The trellis elements on the building would be a positive visual piece, with landscaping growing up and over many of those elements. We've also included a large glass element along Los Gatos Boulevard to be transparent and project sunlight into the building. We propose an outdoor patio, a prepared food area off the Boulevard, outdoor seating, and then an entire 20-foot deep outdoor sales area to encourage pedestrian and bicycle traffic. Lastly, we placed the building up on the street edge per the design guidelines, with screened parking at the rear.

Steve Lynch, Sand Hill Property Company, Applicant

- With respect to the parking variance request, staff found no significant impact from this project; in fact they found the architecture met the Town's guidelines and the use met the Los Gatos Boulevard policies for a use in this area. With respect to the environmental review, this is a Category 32 exception, which is very rare and only used when no impact or perceived impact from the project is found from the outset. The environmental review also looked at the parking, which is not a project impact, or an impact at all; it's just a conflict with the Town's code, which in this case is fairly antiquated. We had the Town's traffic engineer; our own transportation engineer, Hexagon; and the Town's consulting

engineer, TJKM, review this parking variance and they all felt that it could be justified. We are seven spaces short, which is 4 percent of our overall parking count.

Catherine Somers

- I am the Executive Director of the Chamber of Commerce and I ask what the Boulevard should look like 20 years from now? We somehow have to connect those 40 floating acres near Highway 85 into that vision, and the time is now. This project offers so much, but most importantly it is an anchor. That site has been vacant for many years, and we have to activate that Boulevard. The potential sales tax revenue speaks for itself, and the Town's budget is facing a deficit. This project is the necessary starting point to an economic boom on the Boulevard. The Sand Hill group has proven itself over and over again, and done extensive research and been met with mostly positive support. This is a huge opportunity we cannot pass up. Approve it tonight.

Nick Lamson

- I am with McCarthy Ranch, a local developer and property owner in Town, and we own the property across the street from the subject site. I want to express my support of this project. This development would play a vital role in the Town's overall vision to revitalize the Los Gatos Boulevard corridor. This site has been vacant for quite some time and this project is an opportunity to transform that vacant lot into a vibrant retail center that would serve the surrounding businesses. It's also important to note that the North Forty development down the street is bringing in new residents to Los Gatos, and this serves as another draw to this area.

Jim Foley

- I'm a local business owner and resident of Los Gatos. A decade ago I was part of a group that looked at a similar development for the site and Whole Foods was a name that came up, so this has been contemplated for a long time and appears to be a really good fit for this location. We're fortunate to have this project in front of us now and there is tremendous community support. I agree with prior speakers' comments regarding vitality on Los Gatos Boulevard. Over time we'll see projects on the Boulevard that look different and don't necessarily fit into the traditional boxes we're used to, so a little variance on parking here or there that makes this project work should be considered.

Alok (phonetic)

- I'm in favor of the project. If we look at it from a long-term perspective it's imperative that we encourage pedestrians and bicyclists and try to make that a priority. They should consider a much friendlier access to pedestrians and bicyclists coming in from the Los Gatos Manor and dedicate Los Gatos-Almaden to pedestrians and bicyclists.

Chris Zaler (phonetic)

- My family lives across from the subject site. The shipping and receiving area and the Los Gatos-Almaden Road driveway would greatly increase the noise, dirt, and disturbances at our property and for the neighbors around us with cars, trucks, and delivery vehicles early

in the morning and throughout the day. The driveway off Los Gatos-Almaden would add a lot more congestion to that intersection, which is confusing and has had multiple accidents over the years. It is hard to get in and out of our driveway and this would create even more disturbance and safety issues.

Jim Barth

- My wife and I own an apartment building on Carlton Avenue, one street away from Los Gatos Boulevard, and we are delighted with this opportunity to have Whole Foods this close to all the residents on Carlton, which is all condos and apartments. I'm a little disappointed that Town staff couldn't see beyond the lack of seven spaces, because I'm sure that formula was based on things in the past, but we have a lot of residents living within walking and biking distance of Los Gatos Boulevard, particularly this location, so I believe they will have vacant parking spaces. I like the design of the project and everything about it and I'm in full support.

John Zavoshy

- My wife and I own an apartment building immediately behind the proposed project. I am here to appeal to save the enormous oak tree that is 12 feet away from the fence on our property; that would entail sacrificing two parking spaces at most. It provides shade for our tenants. It would be a shame to cut something like this down, as it must be at least 130 years old. I do not oppose the project and welcome it; it would be a great addition to the area. With respect to the number of parking spaces, I have visited the Whole Foods locations on Los Gatos Boulevard and in Cupertino, and 30-40 percent of the parking spaces are not utilized.

Michael Strahs

- My home is just a half-mile walk from this location and my family could not be more thrilled to welcome Whole Foods in a full sized store to the neighborhood as quickly as possible. I look at the potential deficiency of seven spaces out of the 171 as effectively compliant. The Town should look at reducing the parking ratios anyway.

Julie Mersick (phonetic)

- My issue is with the wall that is being created all the way up the Boulevard and around the corner on Los Gatos-Almaden Road. Even though this project is well designed with nice landscaping, there is no engagement. Across the street where Philz is, there is always activity at that intersection in the carved out patio, and there is an opportunity here to do something similar but in a more visible place toward the corner.

Gary Kohlsaatt

- I support this project and think it would be a huge step in the overall transformation of Los Gatos Boulevard and commend Ken Rodriguez and his team. The architecture is fabulous, fresh, exciting, and forward thinking, which is what the Boulevard should be. The siting of the building close to the sidewalk is really what we should be doing instead of parking lots. I have it on good authority that Whole Foods has been looking at doing this for over ten

years. Los Gatos deserves a better Whole Foods and I commend Sand Hill Properties for putting this application forward.

Steve Lynch, Sand Hill Property Company, Applicant

We have gone to great extent to save as many trees onsite as we can, but a lot of the trees were planted as parking lot trees in patches of ground wherever they could when this was Anderson Chevrolet. Some of the street trees are worth saving, and some are not.

Unfortunately, this site has had no maintenance, meaning no irrigation or watering for the trees. The oak tree in the back that John Zavoshy spoke about is a significant sized tree, but we will be lowering the grade in the back and raising it in the front and it would be very difficult, but not impossible, to save that tree; it would entail losing more than two parking spaces to do it and that is the fundamental problem.

Ken Rodriguez, Architect and Master Planner, Applicant

- I appreciate staff's comment regarding struggling with this variance, because I know Variances are difficult, particularly in Los Gatos. We need help with parking in this particular case, and as all the speakers said, most of the Whole Foods stores that were over-parked under other ordinances have unused parking stalls, and none of us want asphalt, we want activity, and I encourage a dialogue to try to find reasons for this Variance.

Closed Public Comment.

Commissioners discussed the matter.

MOTION: **Motion by Commissioner Janoff** to approve construction of a new commercial building, a formula retail business (Whole Foods) greater than 6,000 square feet, a merger of two lots into one, a Variance from the required number of parking spaces, and the removal of large protected trees on property zoned CH. **Seconded by Vice Chair Raspe.**

VOTE: **Motion passed unanimously.**

OTHER BUSINESS

REPORT FROM THE DIRECTOR OF COMMUNITY DEVELOPMENT

Jennifer Armer, Planning Manager

- The Town Council:
 - Approved the Housing Element, per the Planning Commission's recommendation, on January 30, 2023;
 - Approved code amendments for lot mergers, per the Planning Commission's recommendation, on February 7, 2023;

MINUTES OF PLANNING COMMISSION MEETING OF MARCH 8, 2023

- Approved the first reading of a Planned Development amendment for the Shannon Valley Ranch subdivision and discussed SB 9, but did not make any changes to that Ordinance, on March 7, 2023.
- The Housing Element Advisory Board will meet on March 16, 2023 to review the revised version of the Housing Element, and we expect to have the revised version online by the end of the week.

SUBCOMMITTEE REPORTS/COMMISSION MATTERS

Historic Preservation Committee

Vice Chair Raspe

- The HPC met since the last Planning Commission meeting regarding moving an ADU at 202 University, which was continued.

Commission Matters

None.

ADJOURNMENT

The meeting adjourned at 9:53 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the March 8, 2023 meeting as approved by the Planning Commission.

/s/ Vicki Blandin