

## Nimisha Agrawal

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**From:** Nimisha Agrawal  
**Sent:** Tuesday, September 29, 2020 11:48 AM  
**To:** Daniel Smith  
**Cc:** deborah smith; Judith Blanco; Ginger Dillon; Suhas Sheshadri  
**Subject:** RE: Date for appeal to be heard  
**Attachments:** Ordinance No. 2011 Amending Chapter 18.76 (Architectural Review) of Title 18 (Zoning).pdf

Hi Dan,

Thank you for your email. During the shelter in place, we are able to allow up to 10 people inside the Council Chambers including staff. Therefore, we would only be able to allow no more than 2 speakers at a time, each from the appellant's and applicant's side. We can set up a maximum of 10 other speakers to attend remotely from the cafeteria. The appellant will be able to share their presentation with the Planning Commission via zoom.

After consultation with the City Attorney's office please see our response to questions 2 and 3 in [blue](#).

2. The Architectural Review Committee made its decision in 2018. The neighborhood won the case after three lengthy hearings. How can that decision be overturned without any notice? I believe there is some res judicata effect of the decision or else the meetings, the vote and the decision have no meaning whatsoever. I am looking for the legal basis for overturning the Architectural Committee decision in 2018. If there is a statute that you are relying on - I would greatly appreciate you citing and explaining it. [The 2018 decision, which denied a proposed 500-square foot addition, has not been "overturned."](#) [The application submitted on May 21, 2020 was a new application for a different, 570-square foot expansion, and a staff level approval was provided based on the current policies in place.](#)

[As explained in my earlier email date August 25, 2020, the City Council adopted an ordinance amending Chapter 18.76 \(Architectural Review\) of the Zoning Code on February 11, 2020. Please see attached a copy of this ordinance. This Zoning Code amendment requires single family home additions proposing 5 or more bedrooms to be heard at a public hearing, Development Review Hearing. Proposals including additions on the first floor with four or fewer bedrooms, are permitted by right, subject to staff's review of Zoning Code regulations, and no longer require a public hearing. The new application, which was submitted to the City on May 21, 2020, meets all the zoning requirements and is consistent with the Single Family Design Guidelines and was therefore approved.](#)

3. Appeal Process - when the homeowners of 2847 Sycamore Way appealed the decision - you notified us the following:

There has been no change on the appeal for 2847 Sycamore. The City Of Santa Clara Code does not impose any time limit for acting upon the appeal. We will keep you informed if we hear anything further on the project.

I assume that same rule applies to all the neighbors on Sycamore Way. We wish to let our appeal sit for the next few years and that no building be permitted until our appeal is heard. Please explain what happens if we choose to wait a few years before we schedule a date with the Planning Commission. If different appeal rules apply to everyone except the homeowners of the residence of 2847 Sycamore Way, please explain the legal basis for that difference. [As stated previously, the Santa Clara City Code does not prescribe a specific amount of time acting on appeals of architectural decisions to the Planning Commission. SCCC § 18.76.020\(i\). However, the City also has an obligation under both the U.S. and California Constitutions to ensure that due process is followed in quasi-judicial actions such as architectural approvals.](#)

[On September 19, 2018, the neighbors were successful at the Architectural Committee hearing, and the Committee rejected the proposed 500 square foot home addition. The applicant filed a timely appeal of the decision. The applicant](#)

did not immediately proceed with the appeal, but in the meantime, the neighbors' rights were preserved, because the Architectural Committee decision, which supported the neighbors, was still in effect. Ultimately, the applicant did not proceed with the appeal, and the Architectural Committee decision to deny the 500-square foot expansion remained in place.

In 2020, in contrast, the applicant received an approval of the new 570-square foot expansion proposal from the Community Development Director on August 17, 2020. The neighbors filed a timely appeal, which has been scheduled for a hearing at the Planning Commission on October 14, 2020. In the event the hearing was delayed, however, the applicant's rights would not be preserved, because he would not be able to proceed with the legally entitled expansion, without due process. The neighbors have a due process right to appeal the architectural approval, but the property owner has a due process right to a timely hearing, when the appeal prevents him from proceeding with his entitlement.

Please let me know if you have any questions.

Thanks,

**Nimisha Agrawal** | Associate Planner  
Community Development Department  
1500 Warburton Avenue | [Santa Clara, CA 95050](https://www.santacleara.ca.gov)  
O:408.615.2450 | D: 408.615.2467



*In accordance with the County of Santa Clara Order, City Hall will be closed. Coronavirus Updates are available on the [City's website](https://www.santacleara.ca.gov) and include the latest information on City Facility Closures. The Planning Division is currently operating only by email, mail and phone. **I will be working remotely during this time.***

*Please be aware that there may be a delay in responses depending on the nature of the inquiry. For general or urgent matters, please contact [planning@santacleara.ca.gov](mailto:planning@santacleara.ca.gov) or by phone at 408-615-2450.*

**From:** Daniel Smith <danielsmithcdv@gmail.com>  
**Sent:** Sunday, September 27, 2020 1:01 PM  
**To:** Nimisha Agrawal <NAgrawal@SantaClaraCA.gov>  
**Cc:** deborah smith <r4smiths@msn.com>; Judith Blanco <153jblanco@gmail.com>; Ginger Dillon <gdillong@yahoo.com>; Suhas Sheshadri <suhasshesh@gmail.com>  
**Subject:** Re: Date for appeal to be heard

Dear Nimisha,

Thanks for responding to my September 1, 2020 email. We anticipate a minimum of 10 people will be speaking on behalf of the neighborhood and ask that you ensure we have sufficient time allotted for their presentations. If the agenda is too full for that length - we will need to find a new appeal date that works for the Planning Commissioning calendar and the neighborhood. We anticipate at least 6-8 people from the neighborhood will appear in person at the Council Chambers and the remaining will appear by Zoom.

My question 4 was not clear. The neighborhood presenters want to make sure the Planning Commission will be able to see their slides during their 2 minute time allotments. How do we ensure the Planning Commission can view the slides and documents during their presentations?

Finally - I never received a response to questions 2 and 3 of my email on August. 25, 2020 ( see email below) . I would ask that you please respond to those two important questions. Thanks

Dan and Deb Smith

On Wed, Sep 2, 2020 at 9:12 AM Nimisha Agrawal <[NAgrawal@santaclaraca.gov](mailto:NAgrawal@santaclaraca.gov)> wrote:

Hi Dan,

Thank you for confirming the date. Please see response to your questions inline in [blue](#). Also see attached the first two pages of the agenda from the last PC meeting, explaining the guidelines in detail.

Thanks,

Nimisha

**From:** Daniel Smith <[danielsmithcdv@gmail.com](mailto:danielsmithcdv@gmail.com)>

**Sent:** Tuesday, September 1, 2020 7:51 PM

**To:** Nimisha Agrawal <[NAgrawal@SantaClaraCA.gov](mailto:NAgrawal@SantaClaraCA.gov)>

**Cc:** deborah smith <[r4smiths@msn.com](mailto:r4smiths@msn.com)>; Judith Blanco <[153jblanco@gmail.com](mailto:153jblanco@gmail.com)>; Ginger Dillon <[gdillong@yahoo.com](mailto:gdillong@yahoo.com)>; Suhas Sheshadri <[suhasshesh@gmail.com](mailto:suhasshesh@gmail.com)>

**Subject:** Re: Date for appeal to be heard

Dear Nimisha,

Thanks for your email - we are available on October 14, 2020 but have some questions about the process. We would appreciate being provided the following information:

1. Is the meeting by zoom or in person? [The Planning Commission meetings are currently being held virtually via zoom with some staff present in person in the Council Chambers.](#)
2. Will the Planning Commission be present or do the members have the option of appearing remotely? [Planning Commissioners would join remotely.](#)

3. How much time is allotted to each person who wants to speak. While we signed the petition because of the extremely short appeal deadline, we signed on behalf of many people in the neighborhood. [Typically, 2 minutes are allocated for the speakers.](#)

4. If anyone is appearing remotely from the Planning Commission - how do we ensure they have access to the documents and powerpoint presentations. [The Planning Commission agenda is available before the meeting with all materials.](#)

5. What is the procedure with respect to the appeal - does the City or applicant start the process ? [When an appeal is received, the City staff checks with the applicant and the appellant to set the date for hearing.](#)

Thank you in advance for answering these questions.

Dan and Deb

On Fri, Aug 28, 2020 at 2:04 PM Nimisha Agrawal <[NAgrawal@santaclaraca.gov](mailto:NAgrawal@santaclaraca.gov)> wrote:

Dan and Deborah,

I would like to check with you to see if the date of Wednesday, October 14 would work for you for the Planning Commission hearing for the appeal to the proposed addition at 2847 Sycamore Way?

Thanks,

Nimisha

**From:** Daniel Smith <[danielsmithcdv@gmail.com](mailto:danielsmithcdv@gmail.com)>

**Sent:** Tuesday, August 25, 2020 3:37 PM

**To:** Nimisha Agrawal <[NAgrawal@SantaClaraCA.gov](mailto:NAgrawal@SantaClaraCA.gov)>

**Cc:** deborah smith <[r4smiths@msn.com](mailto:r4smiths@msn.com)>; Suhas Sheshadri <[suhasshesh@gmail.com](mailto:suhasshesh@gmail.com)>; Ginger Dillon <[gdillong@yahoo.com](mailto:gdillong@yahoo.com)>; Judy Blanco <[153jblanco@gmail.com](mailto:153jblanco@gmail.com)>

**Subject:** Re: APPEAL- Questions on Procedures

Dear Nimisha,

Thanks for the email and prompt response. You answered Question 1 and I will review the revised statute - thank you. Your email did not address Questions 2 and 3. I would appreciate a response to those two questions. Thanks

Dan

On Tue, Aug 25, 2020 at 12:07 PM Nimisha Agrawal <[NAgrawal@santaclaraca.gov](mailto:NAgrawal@santaclaraca.gov)> wrote:

Hello,

We received a variety of questions on the notice sent to share Community Development Director's approval of a single family house single story addition at 2847 Sycamore Way. We have also received an appeal request on this administrative decision, and this appeal will be heard at an upcoming Planning Commission meeting. Notices of the appeal hearing will be mailed to properties within 300 feet of the subject application. This response is covering the variety of questions we have received.

On February 11, 2020 the City Council adopted an ordinance amending Chapter 18.76 (Architectural Review) of the Zoning Code. This Zoning Code amendment took effect earlier this year and the Amendment requires single family home additions proposing 5 or more bedrooms to be heard at a public hearing, Development Review Hearing. Proposals including additions on the first floor with four or fewer bedrooms, are permitted by right, subject to staff's review of Zoning Code regulations, no longer require a public hearing. The new application, which was submitted to the City on May 21, 2020, meets all the zoning requirements and is consistent with the Single Family Design Guidelines and was therefore approved. Administrative decisions can still be appealed to the Planning Commission and as such, a courtesy notice was sent of the decision to properties within 300 feet. As mentioned, an appeal was received and the appeal will be heard by the Planning Commission at an upcoming hearing. The agenda date is yet to be determined, but notices will be mailed once a hearing date is set.

The citywide ordinance change which modified the Architectural Review ordinance (Chapter 18.76) was heard multiple times by the Planning Commission in 2019. Those agendas are made public. The City Council public hearing item considering this city-wide ordinance change was published in the Santa Clara Weekly, posted on the agenda, and sent out through the City Manager's Blog.

A question was sent to staff regarding what the number of bedrooms is in the existing residence. The city records show that the residence as existing is 1,882 square feet plus a 395 square foot garage, for a total of 2,277 square feet. The house was originally built in 1960 with 4 bedrooms. In 2017, building permits were issued to remove walls from one of the bedrooms, making it an open area. As such it is currently a 3 bedroom residence.

Thanks,

**Nimisha Agrawal** | Associate Planner

Community Development Department

1500 Warburton Avenue | [Santa Clara, CA 95050](#)

O:408.615.2450 | D: 408.615.2467



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**From:** Daniel Smith <[danielsmithcdv@gmail.com](mailto:danielsmithcdv@gmail.com)>

**Sent:** Monday, August 24, 2020 3:17 PM

**To:** Nimisha Agrawal <[NAgrawal@SantaClaraCA.gov](mailto:NAgrawal@SantaClaraCA.gov)>

**Cc:** deborah smith <[r4smiths@msn.com](mailto:r4smiths@msn.com)>; Suhas Sheshadri <[suhasshesh@gmail.com](mailto:suhasshesh@gmail.com)>; Ginger Dillon <[gdillong@yahoo.com](mailto:gdillong@yahoo.com)>; Judy Blanco <[153jblanco@gmail.com](mailto:153jblanco@gmail.com)>

**Subject:** Re: APPEAL- Questions on Procedures

Dear Nimisha -

Thanks for the confirmation. Now that the appeal is on file, the entire neighborhood has been wondering how this approval could even occur given the decision in 2018. On behalf of the 29 neighbors who participated in the three hearings which resulted in the Architectural Review Committee rejecting the proposed addition at 2847 Sycamore Way, we have several questions. If some questions are for the legal team at the City of Santa Clara - please feel free to forward to them for a response. Here are our questions:

1. The reason so many people in the neighborhood attended the Architectural Review Committee meetings in 2018 is because the City was required by statute to notify the neighborhood of the proposed change so that they could voice their concerns prior to the Architectural Review Committee making a decision.. Why was the neighborhood not notified this time of the proposed change before the Architectural Review Committee ? The decision by the Architectural Review Committee in 2020 was secretly made with zero notification to the neighborhood. Can you identify the statute which allowed this meeting to occur without notice? If there was a change in the notification statute from 2018 and 2020 - can you point out that change?

2. The Architectural Review Committee made its decision in 2018. The neighborhood won the case after three lengthy hearings. How can that decision be overturned without any notice? I believe there is some res judicata effect of the decision or else the meetings, the vote and the decision have no meaning whatsoever. I am looking for the legal basis for overturning the Architectural Committee decision in 2018. If there is a statute that you are relying on - I would greatly appreciate you citing and explaining it.

3. Appeal Process - when the homeowners of 2847 Sycamore Way appealed the decision - you notified us the following:

There has been no change on the appeal for 2847 Sycamore. The City Of Santa Clara Code does not impose any time limit for acting upon the appeal. We will keep you informed if we hear anything further on the project.

I assume that same rule applies to all the neighbors on Sycamore Way. We wish to let our appeal sit for the next few years and that no building be permitted until our appeal is heard. Please explain what happens if we choose to wait a few years before we schedule a date with the Planning Commission. If different appeal rules apply to everyone except the homeowners of the residence of 2847 Sycamore Way, please explain the legal basis for that difference.

Please also know that the neighborhood on Sycamore Way reached out to the homeowners of 2847 Sycamore Way within a week or two after they were denied the permit by Santa Clara in 2018. We reached out to try and reach a compromise on the addition and asked to meet with them to discuss options. We knew they were very disappointed with the decision and we wanted to work with them despite the decision. We actually had a proposal approved by the neighborhood that we thought might work for the neighbors and was a fair compromise of the competing concerns. Our neighbors at 2847 responded by email that they did not want to have any communication with us and asked that we not communicate further by email with them. We have respected their request.

Any information would be greatly appreciated.

Dan Smith

2843 Sycamore Way

Santa Clara

On Mon, Aug 24, 2020 at 11:43 AM Nimisha Agrawal <[NAgrawal@santaclaraca.gov](mailto:NAgrawal@santaclaraca.gov)> wrote:

Hi Daniel,

Thank you for the updated form. Confirming that the appeal has been filed. I will touch base later for scheduling the date for the Planning Commission meeting.

Thanks,

Nimisha

**From:** Daniel Smith <[danielsmithcdv@gmail.com](mailto:danielsmithcdv@gmail.com)>

**Sent:** Monday, August 24, 2020 11:34 AM

**To:** Nimisha Agrawal <[NAgrawal@SantaClaraCA.gov](mailto:NAgrawal@SantaClaraCA.gov)>

**Cc:** deborah smith <[r4smiths@msn.com](mailto:r4smiths@msn.com)>; Suhas Sheshadri <[suhasshesh@gmail.com](mailto:suhasshesh@gmail.com)>; Ginger Dillon <[gdillong@yahoo.com](mailto:gdillong@yahoo.com)>; Judy Blanco <[153jblanco@gmail.com](mailto:153jblanco@gmail.com)>

**Subject:** Re: APPEAL- Signature

Good morning Nimisha,

This is Dan Smith - Deborah Smith's husband. We are trying to address the issue of the signature. Deb is out of town and your document does not allow for an electronic signature. I attach the Appeal Form which now lists Deborah Smith **and** Daniel Smith as the Appellants. I have signed as the Appellant and I have signed on behalf of my wife - the other Appellant since she is not able to sign electronically or print the document from her location. Please confirm receipt of these signatures and please confirm this satisfies the filing requirements for the appeal. Thanks



Dan

Dan Smith

2843 Sycamore Way

Santa Clara, California 95051

On Mon, Aug 24, 2020 at 8:29 AM Nimisha Agrawal <[NAgrawal@santaclaraca.gov](mailto:NAgrawal@santaclaraca.gov)> wrote:

Good Morning Deborah,

I received the completed appeal form, it has not been signed however. Please sign (electronic is fine) on the second page, 'Signature of the Appellant' and send it back to me. As I mentioned earlier, please call (408) 615-2310 (Business License) to pay the required fee via credit card over the phone.

Thanks,

Nimisha

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**From:** deborah smith <[r4smiths@msn.com](mailto:r4smiths@msn.com)>

**Sent:** Sunday, August 23, 2020 6:15 PM

**To:** Nimisha Agrawal <[NAgrawal@SantaClaraCA.gov](mailto:NAgrawal@SantaClaraCA.gov)>; deborah smith <[r4smiths@msn.com](mailto:r4smiths@msn.com)>; Suhas Sheshadri <[suhasshesh@gmail.com](mailto:suhasshesh@gmail.com)>; Ginger Dillon <[gdillong@yahoo.com](mailto:gdillong@yahoo.com)>; Judy Blanco <[153jblanco@gmail.com](mailto:153jblanco@gmail.com)>; Daniel Smith <[danielsmithcdv@gmail.com](mailto:danielsmithcdv@gmail.com)>

**Subject:** APPEAL

**Reason for Appeal:**

**18 July 2018: First Meeting with Architect Committee**

Members of the committee advised the owners at 2847 Sycamore Way to present a new design that addressed neighborhood concerns.

**29 August 2018: Second Meeting with Architect Committee**

Owners did not propose any new designs as directed. Nine neighbors attended the meeting in person and twenty more signed a petition opposing the addition at 2847 Sycamore Way.

**19 September 2018: Third Meeting with Architect Committee**

Redesign Proposal: ADD 451 sq. ft to first floor; ADD 49 sq. ft to garage and change orientation of garage = Gross Floor Area 500 sq. ft

This proposal was disapproved by the Committee and the neighbors at 2874 Sycamore Way filed an appeal.

**28 November 2018:** Nimisha Agrawal responded via email as follows regarding the appeal:

*There has been no change on the appeal for 2847 Sycamore. The City Of Santa Clara Code does not impose any time limit for acting upon the appeal. We will keep you informed if we hear anything further on the project.*

**20 August 2020:** Notice of Architectural Approval 2847 Sycamore Way:

ADD: 499 sq. ft fourth bedroom in the front; ADD: 48 sq. ft foyer; ADD: 71 sq. ft garage addition and change orientation of garage = Gross Floor Area 618 sq. ft

**PLEASE NOTE: The square footage that is reflected in the most recent proposal is greater than the square footage that was disapproved by the Architect Committee two years ago.**

The notice we received today indicates that an appeal can be filed with the Planning Division by 25 August 2020. I have already sent concerns about the process to Nimisha Agrawal. Considering the short time line and anticipated delays in responding to email, **I wish to formally appeal the proposed addition at 2847 Sycamore Way.**

**We will pay appeal fee by phone tomorrow (8/24/2020).**

Regards,

Deborah Smith