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

Los Gatos Planning Commissioners:	Melanie Hanssen, Chair Jeffrey Barnett, Vice Chair Kylie Clark Kathryn Janoff Steve Raspe Emily Thomas
Town Manager:	Laurel Prevetti
Community Development Director:	Joel Paulson
Town Attorney:	Gabrielle Whelan
Transcribed by:	Vicki L. Blandin (619) 541-3405

1
2 P R O C E E D I N G S:
3

4 CHAIR HANSSEN: We will move on to the Public
5 Hearings portion of the meeting, and we have two items for
6 Public Hearings this evening.

7 The first one is consider an appeal of a
8 Community Development Director Decision to deny a Fence
9 Height Exception request for construction of a 6' tall
10 fence located within the required front yard setbacks, and
11 construction of a vehicular gate with reduced setbacks on
12 property zoned R-1:10, located at 755 Blossom Hill Road,
13 APN 523-04-043, Fence Height Exception Application FHE-21-
14 003, Property Owners David and Ilana Kohanchi, and
15 Applicant Nina Gurainic. Project planner is Savannah Van
16 Akin.
17

18 I will ask if any Commissioners need to be
19 recused from this item? And may I see a show of hands from
20 Commissioners who have visited the subject property? Very
21 good.

22 Then I will turn it over to staff for their Staff
23 Report.

24 SAVANNAH VAN AKIN: Good evening, Planning
25 Commissioners. Before you is an appeal of a Community

1 Development Director Decision to deny a Fence Height
2 Exception request at 755 Blossom Hill Road. This item was
3 originally scheduled for the September 14th meeting date. On
4 September 13th the property owner requested the item be
5 continued to the November 9, 2022 Planning Commission
6 meeting. The Staff Report and exhibit materials from the
7 September 14th meeting are what are being considered today.

8 The property owner is requesting approval to
9 permit a previously constructed 6' metal fence and gate.
10 The fence is along the property line within the required
11 front yard setback. Per current Town Code, fences are
12 limited to 3' in height when located within a required
13 front yard setback, and gates have an 18' setback
14 requirement unless accepted as granted by the Town Engineer
15 and the Community Development Director. The fence also has
16 sharp points, as seen in Exhibit 12, which are prohibited
17 per Town Code.

18
19 On February 12, 2021 the property owner applied
20 for an exception to the Town's fence regulations for the
21 unpermitted construction of the gate and the fencing on the
22 subject property, which does not comply with the Town Code
23 fence regulations. The property owner cited Condition D for
24 privacy and security concerns as justification for their
25 fence and gate. The privacy concerns were related to the

1 property's proximity to the commercial centers and medical
2 offices, citing occasions when people thought their home
3 was the chiropractor's office, which is located next door.
4 The property owner also cited protecting children,
5 containing animals, and protecting a garden as
6 justification for extra security.

7 On July 2, 2021 the Town denied the exception
8 request because the findings listed in the Town Code could
9 not be made. The decision of the Community Development
10 Director to deny the Fence Height Exception application was
11 appealed on August 5, 2022. The Appellant listed security
12 and the unique location as justification for their appeal.

13 The Appellant's letter raises several points to
14 support their Fence Height Exception, all of which is
15 listed in your Staff Report. Of the seven public comments
16 received for this application, one was in opposition to the
17 fence.

18 Based on the discussion provided in the Staff
19 Report Staff, Staff recommends that the Planning Commission
20 deny the appeal, uphold the decision of the Community
21 Development Director, and deny the Fence Height Exception.

22 This concludes Staff's presentation and we're
23 happy to answer any questions.
24
25

1 CHAIR HANSSEN: Thank you very much for your
2 Staff Report. Do any Commissioners have questions for Staff
3 at this time? Commissioner Janoff.

4 COMMISSIONER JANOFF: Thank you. This is a
5 question for the Town Attorney. It seems to me in the
6 Appellant's package they were disputing this item because
7 they couldn't get ahold of Town Staff because of COVID, and
8 so there was no clear direction given from Staff, and the
9 information that they could find online didn't provide
10 clarification as to their specific circumstance. Could you
11 comment on those reasons why the appeal should be
12 considered and provide guidance?
13

14 ATTORNEY WHELAN: Those contentions really fall
15 into an estoppel argument, and the courts have held there
16 are cases in which towns actually gave the wrong
17 information to an applicant and court held that the
18 applicant was still required to undo what had been
19 constructed, because it was not possible to get estoppel
20 against a public agency, because the courts will balance
21 the public interest in having a consistent code applied
22 against the private injustice, and the public interest in
23 almost all cases will prevail in the court decision.
24

25 CHAIR HANSSEN: Thank you. Thank you for that,
Commissioner Janoff. Commissioner Clark.

1 COMMISSIONER CLARK: Thank you. I have two
2 questions. I was wondering if you would be able to say
3 again the amount of attempts that the Town made to reach
4 out to them, and was it attempts where you just didn't hear
5 back at all?

6 SAVANNAH VAN AKIN: Thank you for that question.
7 The Town first sent a warning letter on December 14, 2020.
8 They applied for their exception on February 12, 2021. We
9 denied the application on July 2, 2021 and then the Town
10 continued to contact the property owner on November 16,
11 2021, January 31, 2022, March 22, April 5, May 3, and May
12 24, and then we proceeded to send a second warning letter
13 on July 7th, 2022.

15 COMMISSIONER CLARK: Okay, thank you, and all of
16 those attempts that were listed before the warning letter,
17 you just didn't get any sort of response?

18 SAVANNAH VAN AKIN: There were many instances
19 where there was just no response at all, and if there was a
20 response, it was very minimal.

21 JENNIFER ARMER: Sorry Commissioner, I just
22 wanted to add as well, we do generally reach out to try to
23 have a conversation when we've had a report of something
24 that's nonconforming before issuing a violation, and there
25 have been numerous conversations with them through the

1 process, so it isn't a case where we just aren't getting a
2 response. There are numerous conversations and following up
3 to make sure that they are continuing and moving forward
4 with what needs to be the next steps in the process, as
5 they decided that they didn't want to remove the fence and
6 so they wanted to move onto the next steps.

7 COMMISSIONER CLARK: Okay, thank you. Chair, may
8 I ask another question?

9 CHAIR HANSSEN: Yes.

10 COMMISSIONER CLARK: I was wondering if you can
11 speak a little bit more to the safety hazards for traffic
12 and pedestrians that it causes? One thing I saw was that it
13 wouldn't allow for vehicles to clear the travel lanes while
14 queuing and I don't really understand what that means, if
15 you'd be able to speak a little bit to that?

16 JENNIFER ARMER: I can jump in initially,
17 Savannah, if you'd like. We also have the Town Engineer,
18 WooJae Kim, available. It has to do with the location of
19 the gate, not allowing a car to pull all the way onto the
20 property while waiting for the gate to open, but would
21 block the sidewalk and the travel lane is one issue.

22 The other issue, I believe, was the view
23 triangle. If somebody is coming out of the driveway, does
24 this fence and gate block that? But as I said, we do have
25

1 WooJae Kim here, Town Engineer, who may have something to
2 add.

3 WOOJAE KIM: Thank you, Ms. Armer. WooJae Kim,
4 Town Engineer. This request came through our office as well
5 and we reviewed the site. Blossom Hill Road is an arterial
6 for the Town, so it's heavily used, 35 miles per hour speed
7 limit, and the 18' requirement is so that the vehicle when
8 entering the property wouldn't be blocking the street and
9 they wouldn't be queuing waiting for the gate to open, so
10 that's a safety concern there.
11

12 Also, there is quite a bit of pedestrian and
13 student traffic on the sidewalks, and that's the other
14 issue with the traffic view area, which needs to be
15 cleared, or at least at like 3' high obstruction at most.

16 COMMISSIONER CLARK: Thank you, that's perfect.

17 CHAIR HANSSEN: Vice Chair Barnett.

18 VICE CHAIR BARNETT: Thank you. I have a question
19 for Staff in terms of the availability of the Staff to
20 answer questions from the public during the COVID shutdown.

21 JENNIFER ARMER: Thank you, Commissioner. I'll
22 jump in again since Savannah has joined us since that time.
23 We have continued to be available through the entire
24 closure. Even when we did not have open door, drop-in
25

1 hours, we did continue to respond to inquiries via phone
2 and email.

3 VICE CHAIR BARNETT: Thank you for that response.

4 CHAIR HANSSEN: Did you have any other questions?

5 VICE CHAIR BARNETT: Yes, I have a question for
6 the Town Attorney, if I might?

7 CHAIR HANSSEN: Go ahead.

8 VICE CHAIR BARNETT: I noticed in Section
9 29.40.0320(b) that their reference is to special privacy
10 concerns and wildlife problems as potential reasons for
11 exception from the fence regulations, and my question is
12 are these only relevant where the fence is outside of the
13 setback?
14

15 ATTORNEY WHELAN: Yes, that is correct.

16 VICE CHAIR BARNETT: Thank you.

17 CHAIR HANSSEN: Commissioner Thomas.

18 COMMISSIONER THOMAS: I have a question for Staff
19 also about the other houses on that block of Los Gatos
20 Boulevard. I just wanted to confirm that, because there are
21 other fences on that block of Los Gatos Boulevard going
22 towards the school, and I just wanted to confirm that all
23 of those were in compliance with the ordinance, and if any
24 are not if it's because they were built before the
25 ordinance was passed.

1 JENNIFER ARMER: Yes, that is our understanding,
2 that all of the other properties either are in conformance,
3 or the fence was built prior to the adoption of the most
4 recent ordinance in 2019. I don't believe we're aware of
5 any in that vicinity that are currently in noncompliance
6 and built after the new ordinance.

7 COMMISSIONER THOMAS: Okay, perfect. I just
8 wanted to confirm, because there are lots of different
9 options and styles happening along there. Thank you.

10 CHAIR HANSSEN: Are there any other questions
11 from Commissioners? And you'll have another opportunity to
12 ask Staff questions after the public hearing is closed. I
13 don't see any, so we will turn to the Appellant, and the
14 Appellant has up to five minutes to speak to the Planning
15 Commission on this item.

16 JENNIFER ARMER: We've got two hands raised,
17 Ilana, and I'll let you speak. You may speak for up to five
18 minutes. If there is anyone else on your team who also
19 wants to speak, let us know and we can allow them. It all
20 needs to be part of the same five minutes.

21 DAVID KOHANCHI: Can you show the PowerPoint, if
22 possible, before we start the timer?

23 JENNIFER ARMER: Yes, I can get that started.

1 DAVID KOHANCHI: Thank you so much for coming. We
2 truly appreciate it.

3 ILANA KOHANCHI: Hi, you guys are confused. I'm
4 Ilana, that's my husband David. We're on my computer.

5 DAVID KOHANCHI: Hi. This is the Fence Height
6 Exception request for the Kohanchi family. There are a lot
7 of topics to cover, so I'll go as quickly as possible.

8 Our home is positioned, as we discussed, in a
9 commercial area. Directly in front of us are the Terraces
10 of Los Gatos, to the right in the front is King's Court
11 Shopping Center, and directly to the right adjoined to our
12 home is a large dental/chiropractor office.

13 This is the Terraces of Los Gatos.

14 This is the King's Court.

15 And this to the right adjoining our fence is the
16 chiropractor/dental office.

17 Again, concerns with this, I couldn't be more
18 vocal about it. In the area there is a lot of walking
19 traffic, there are a lot of strangers, there's a lot of
20 very suspicious characters. We feel that we need the added
21 protection.

22 In addition, the Terraces, our home is directly
23 under their second story, so there are probably within a
24 hundred people that can view into our kitchen and into our
25

1 front lot, so we think that we need an added layer of
2 protection from that as well.

3 Again, as discussed, we're on Blossom Hill Road,
4 a very dangerous street, and the speeds have been unchecked
5 for years. There was within recent years an accident where
6 somebody was unfortunately killed; that was within a block
7 of our home.

8 The fence is a galvanized steel fence. It is
9 almost impenetrable by a car, and we fear a car jumping the
10 curb, and just like before a car actually swerved off the
11 road and hit someone who was opening their trunk; we feel
12 that's puts us at high risk, so we think it's a safety
13 measure.
14

15 Things to consider. Crime rates are going up
16 everywhere, in particular Blossom Manor. Our home was
17 actually burglarized within the last two years, very known
18 to the Town and to the street. Two doors down, 763 Blossom
19 Hill Road, was burglarized within the last year, which I
20 think is important to note.

21 In general, we live in a great area that
22 unfortunately is not as safe as we think. Our Town is more
23 dangerous than 53% of cities.
24

25 If you look at the Ring thread, which we have
from our front door camera, there's a bunch of stuff that's

1 going on in the Town; I know if you are discussing it.
2 Trespassing. This is all in Los Gatos. Gunshots, people
3 with guns, people stealing packages. I think we need to
4 reevaluate the safety of our community.

5 Something that was astounding to us, we have a
6 child, a three year old, at home. The southern part of Los
7 Gatos might be protected from this, but where we live in
8 the dot, we're within a very close area to about 200 sex
9 offenders, one within a few homes of us, so we think it's
10 safe to have an extra fence, one in which the vehicular
11 gate is only closed at nighttime to protect us from these
12 incidents.
13

14 Again, Ilana and I are both Jewish. I don't like
15 to say this. Ilana and I come from families, Russian and
16 Persian, that left their home countries in exile, and we're
17 quite concerned given the current rhetoric in the world.
18 Notable on this is that there was a manifesto of somebody
19 who had guns ready to kills Jews in Los Gatos within the
20 last year on 7/19/2021.

21 In addition to that, some other considerations.
22 I'm a single provider physician. I don't truthfully make
23 enough money. We make good money, but I'm a single provider
24 and we have active endeavors in the works. I'm buying a
25 vending machine business that requires a lot of inventory

1 that will stay in our home. I plan for an exotic car
2 business on (inaudible) that will start in the next year,
3 and we have the original Cilker farmland that has a lot of
4 productive products that we're going to sell in the future.
5 So I think those assets put this at higher risk than other
6 properties.

7 Again, this was discussed, when we went online.
8 We moved to this town, my wife was pregnant, we were very
9 stressed, and it was the COVID pandemic. Nobody was
10 accessible. Very, very difficult to get ahold of people.

11 So we used the only resource available,
12 losgatosca.gov, which was unfruitful. It basically said 6'
13 and that's all. Six feet, no setback, period.

14 So, if you look through Los Gatos there are
15 fences everywhere. And we looked everywhere, and this was
16 within the two-minute drive, we found 39 fences. We
17 discussed it with the Town, the comments that these are
18 before, etc., don't seem to apply given the ubiquitousness
19 of the fences.

20 Again, you can't have selective enforcement of
21 the rules. We should have a way to monitor who has a fence
22 and who doesn't for you to be able to say that previous
23 fences existed. There are actually one to two on this
24
25

1 street that violate, and one that was built in the last few
2 months.

3 I'm a single provider. My wife and I live here.
4 We moved here to protect our daughter. We bought our home
5 close to its peak; property taxes are high. So at least our
6 opinion should be as important as others. COVID happened,
7 we're scared; life is tough.

8 We understand the concerns that are presented. A
9 single person complained, and we don't think their concerns
10 are valid. We're here, and we're all just trying to survive
11 and live happily. Thank you so much.

12
13 CHAIR HANSSEN: Thank you very much for your
14 presentation. I'd like to ask if any Planning Commissioners
15 have questions for the Appellant? Commissioner Clark.

16 COMMISSIONER CLARK: Thank you. Where did you get
17 the number that Los Gatos is more dangerous than 53% of
18 cities?

19 DAVID KOHANCHI: There are a number of registries
20 online. I can actually open it up. I initially had a
21 reference. I can get it to you in about 30 seconds. That's
22 a universally accepted number currently. The crime index is
23 47 out of 100, which indicates it's 47% safer (inaudible)
24 than other U.S. cities.
25

1 COMMISSIONER CLARK: Then a follow up. It seems
2 like you have a lot of concern specifically about Los Gatos
3 and crime here, and instead of doing all of this for your
4 home, why did you move here and why don't you move if this
5 is such a big concern for you?

6 DAVID KOHANCHI: I'm a cardiac anesthesiologist
7 at Good Samaritan Hospital. I have to be within 15-20
8 minutes for emergencies, very important ones, and there is
9 a very selective distance that I can live that we felt
10 safe. We want our daughter to be in a good school district
11 and this is one of the best. It's tough to say that I'm
12 suggesting that this is a very dangerous area. Clearly I
13 didn't think so, given that we moved here, but given what
14 we've heard in moving here and the dangers that it
15 presents...

17 Our home was robbed within in the last three
18 years. Somebody jumped over a fence and came here and
19 robbed the home. We weren't here, but that's the story that
20 we're hearing from our neighbors. That's terrifying. Two
21 doors down they were robbed. On Oleander Avenue a car was
22 stolen two blocks away within the last six months.

23 Everybody during COVID and pre-COVID, we wanted
24 to buy a home. That's the thing to do. You move to the
25 City, you start working, and you buy a home. One of the

1 biggest concerns when you buy a home is where to live.
2 Unfortunately, it was very hard to find homes, and this was
3 the quickest to get, and we actually bought it off market
4 and we were very lucky. I love the Town; I just think we
5 should be transparent about the safety concerns so that we
6 can move forward safely as citizens. We can't take a blind
7 eye to the dangers that exist right here.

8 COMMISSIONER CLARK: Thank you.

9
10 CHAIR HANSSEN: Thank you for that. Do any other
11 Commissioners have questions for the Appellant? Vice Chair
12 Barnett.

13 VICE CHAIR BARNETT: I'm afraid I have a large
14 number of questions, maybe eight or nine, so I wonder if
15 the Chair would indulge me as I go through them?

16 CHAIR HANSSEN: Yes, go ahead and do that.

17 VICE CHAIR BARNETT: What's your position on the
18 Town's argument that your fence spikes are in violation of
19 the code?

20 DAVID KOHANCHI: Sorry, could you repeat that?

21 VICE CHAIR BARNETT: The Town has pointed out
22 that you have spikes at the top of the fence in violation
23 of Section 29.40.0315 of the code, and I was wondering what
24 your position is on that?
25

1 DAVID KOHANCHI: To be quite honest, the spikes
2 were an intent of an aesthetic. We were trying for it to
3 look nice. We didn't realize it was against the code when
4 we looked at the rules. The ordinance that was listed was
5 very clear, and that was all that was listed with regards
6 to fences that was posted on that website.

7 Though I understand the concern, and I understand
8 that that might be an issue, that for us is not that
9 significant. If needed, I can get rid of the spikes on the
10 fence. I understand that concern.

11 VICE CHAIR BARNETT: Okay, appreciate that. Is
12 the garage on your property available for parking, and if
13 not, why?

14 DAVID KOHANCHI: The garage on the property was
15 converted to closed space so that we can use it as storage,
16 so no, it is not currently used and accessible for cars.

17 VICE CHAIR BARNETT: Could the storage be removed
18 to another location so that you could park your car in the
19 garage and have straight access out to Blossom Hill Road
20 for your emergency calls?

21 DAVID KOHANCHI: The front lot of our house is
22 very large, and it's really far back, so in theory if you
23 put a car in there it can only fit one and not two, and
24 that still wouldn't... I don't fully understand. Are you
25

1 saying that parking in the garage would make it easier to
2 get out for emergencies? It's very far away from the front
3 of the house.

4 VICE CHAIR BARNETT: No, what I understand is
5 that you want to keep the front area available for
6 potential use by your daughter as a playing area, and
7 therefore you don't want a car parked there, so my question
8 is whether you could find that available parking, keep the
9 play space open, and still have direct access out to the
10 street?

11 DAVID KOHANCHI: In theory, yes, I could put my
12 car, but currently we have two cars and a third, because
13 our mother-in-law is here all the time. I plan on buying
14 two to three more exotic cars in the next six months to a
15 year for the purpose of renting them out as a business, so
16 even if did that it would be blocked for me to get out,
17 because those cars require space to be parked.

18 VICE CHAIR BARNETT: So we can move on. The
19 letters that you sent to the Town don't actually have dates
20 on them. I looked at Exhibit 5 on page 27, and Exhibit 6 on
21 page 31. Are you able to define what the sending dates of
22 those two letters were?

23 DAVID KOHANCHI: I don't have those in front of
24 me, so I can't answer that question.
25

1 VICE CHAIR BARNETT: My fellow Commissioner
2 raised the question about notices from the Town. Is it
3 accurate that you received a number of outreaches by the
4 Town concerning the fence and gate?

5 DAVID KOHANCHI: The notices that responded to us
6 were after the fence was made, not previous to. Those were
7 several attempts to contact the Town where we did not get
8 responsiveness, and we made the fence given what we knew to
9 be the knowledge at the time. In response to every single
10 one that was sent, every since message that was sent that
11 we received, we communicated again with the Town to say
12 that we believe that this should be appealed for X, Y, and
13 Z. The delay in that time frame is nothing to do with our
14 miscommunication, it has to do with we were waiting for the
15 next steps to occur.

17 Our mother-in-law met with the Town several
18 times. I met with the Town at least once, and there have
19 been several phone calls between then and now. The
20 narrative that we were communicated with without
21 responsiveness is false. We definitely responded to every
22 message if it made sense for the next step to occur.

23 VICE CHAIR BARNETT: Were some of those emails,
24 or was it all oral?
25

1 DAVID KOHANCHI: Mainly phone calls and in-person
2 meetings. In fact, it's very easy for us to find out,
3 because Nina Gurainic met with the Planning Committee
4 multiple times: Joel, Jocelyn, everybody who is well aware
5 of her communication. I'm late to the game of
6 communication, because the last several years have been
7 relatively tough for us, but in response to that, yes, we
8 have definitely responded to the messages.

9 VICE CHAIR BARNETT: Okay, thank you. My next
10 question is in Exhibit 6, which is one of the letters
11 submitted to the Town. In paragraph eight it says that the
12 fence was placed solely for safety during the COVID
13 pandemic. Was that correct at the time?

14 DAVID KOHANCHI: Not solely, but one of the major
15 reasons, yes.

16 VICE CHAIR BARNETT: And would you acknowledge
17 that there's a risk that the gate mechanism or the remote
18 might not be operable at some times due to malfunction or
19 batteries?
20

21 DAVID KOHANCHI: Is it possible? Are you asking
22 me is it possible that a mechanical vehicle gate can
23 malfunction? Yes. In response to that, if I may, the gate
24 is left open all days from 6:30 to 9:00pm. And the
25 potential that that would happen would happen during off

1 hours when the car traffic is significantly minimal on
2 Blossom Hill Road, in which case we would park on the side
3 of the road, and we have side gates that would allow us
4 into the gate.

5 ILANA KOHANCHI: I just want to clarify. He meant
6 6:30am to 9:00pm, not evening hours, but as in the entire
7 day from morning till night. It's only closed at night for
8 our safety.

9 DAVID KOHANCHI: Never, never has it been closed
10 during the day.

11 ILANA KOHANCHI: Therefore, it could never block
12 anyone from driving in or pulling in or block the road;
13 that just wouldn't happen, because it's always open.

14 DAVID KOHANCHI: That being said, also we
15 intentionally purchased the top of the line clicker and
16 device that is over 500' away. We thought of that concern
17 prior to placing it and planned ahead.

18 VICE CHAIR BARNETT: Clarify for me, if you
19 would, how many occasions of trespass there have been
20 during your period of ownership.

21 DAVID KOHANCHI: Twice. One person came into our
22 back yard to obtain persimmons when we moved in, and when
23 we moved there was a small amount of time between the time
24 that we purchased the home and when we moved in, because we
25

1 were delivering a baby, and in that two-week time somebody
2 squatted in the front of our house. We had a squatter in
3 the front of our home. Very nice couple that was sleeping
4 on the front of the home; we asked them to leave. So in
5 terms of how long we have lived here and how many people
6 have trespassed on our watch, twice.

7 VICE CHAIR BARNETT: Okay, thank you for that.
8 You pointed out in your appeal that there were a number of
9 fences within the setback in Los Gatos-Almaden Road, but
10 did you find any on Blossom Hill Road between, say, Cherry
11 Blossom and Camellia Terrace?
12

13 DAVID KOHANCHI: You're speaking of a very small
14 distance, right? So you're asking a question of seven
15 homes. You're asking were there any within seven homes,
16 right? Because across the street is the retirement
17 facility, and to the right of me is the dental/chiropractor
18 office, and the answer is yes, there's a vehicular gate at
19 the end of the street.

20 VICE CHAIR BARNETT: Do you know if it's within
21 the setback?
22

23 DAVID KOHANCHI: It is not within the setback.
24 The reason I don't bring that up is because I don't feel
25 that that's appropriate to discuss my neighborhood.

1 VICE CHAIR BARNETT: Can you comment on the fact
2 that you have security concerns, but at the same time
3 you're willing to keep the gate open during daylight hours?

4 DAVID KOHANCHI: I think the vast majority of
5 trespassing that occurs in Los Gatos, if you look at the
6 Ring thread and historically and you look at crime data,
7 happens at night. So my concern is when I am not home. I am
8 a happy gun owner, and if somebody comes into my house
9 during the nighttime I'm usually present, but during the
10 nighttime, sometimes when I leave the house I am not
11 present; it was my concern. I'm worried about the time when
12 I leave to go to call in the hospital in the middle of the
13 night and I'm not home. I am not as concerned during the
14 day.
15

16 VICE CHAIR BARNETT: Finally, you acknowledged in
17 your presentation today, and I think in your appeal also,
18 that Blossom Hill Road is in fact a dangerous road because
19 of speeding?

20 DAVID KOHANCHI: Yes, sir.

21 VICE CHAIR BARNETT: And in light of that
22 statement, what do you feel is incorrect about the Town's
23 position that there is a safety risk with respect to the
24 gate not being 18' back and the fence being within the
25 setback?

1 DAVID KOHANCHI: In response, I have to take a
2 step back from you. If the true concern were that the gate
3 and the vehicle setback was a risk, then everyone with a
4 gate that's on a high-speed street, Los Gatos-Almaden as an
5 example, should be at the same risk.

6 In response to that comment also, would be that
7 the fence to us, because the incident where the person was
8 killed, and there was another incident I know of in the
9 same town on Blossom Hill Road where a car ran into
10 somebody's home, drove into somebody's home within the last
11 five years, I believe. We don't want that to happen. Our
12 fence would prevent a car from getting into our lot, so
13 that's one of the main reasons why we put up that metal
14 fence.
15

16 VICE CHAIR BARNETT: Okay, thank you. I think
17 that's all my questions. I appreciate your time.

18 CHAIR HANSSEN: Thank you for all your questions,
19 Vice Chair Barnett. Then we also have Commissioner Thomas
20 has her hand up.

21 COMMISSIONER THOMAS: Thank you, Chair. I have
22 two questions for the Applicant.

23 The first is if you could walk us through how and
24 when you tried to contact the Town to get clarification on
25 the Fence Ordinance?

1 DAVID KOHANCHI: The vast majority of
2 communication prior to the placement of the fence was done
3 by Nina Gurainic.

4 When we purchased the house it was October of
5 2020. I was sick; I had COVID. We were managing
6 complications of COVID. My wife was pregnant. We were
7 living on Santana Row. She had a very complicated
8 pregnancy. She was in the hospital probably eight times
9 over the course of a month with the concerns that there
10 would be fetal demise. The baby was small; we had IUGR,
11 Intrauterine Growth Restriction.

12 In the time from when we were in the hospital
13 delivering the baby, within several weeks Nina definitely
14 contacted the Planning Department at least four separate
15 times. I know, because she was in the hospital when she did
16 it.

17 I personally did not call within that time frame.
18 I spoke to the contractor. We hired a contractor who looked
19 at the online ordinance that was listed, and I approved
20 given the ordinance that was listed. I, myself, did not
21 attempt to contact the Planning Department.

22 COMMISSIONER THOMAS: Thank you for that. So the
23 contractor that you hired said that they looked at the
24 ordinance and you went with them that they trusted it?
25

1 DAVID KOHANCHI: We confirmed by looking up the
2 ordinance as well.

3 COMMISSIONER THOMAS: So you do not think that
4 the way that the ordinance was written that it's clear that
5 the way that you built your fence, that it's in violation?

6 DAVID KOHANCHI: The ordinance that we used is
7 the one that I put in the PowerPoint. The ordinance that we
8 used we actually followed to a tee. There was an ordinance
9 listed online, I can pull it up, and that ordinance
10 essentially says, "In residential zones fences, hedges, and
11 walls not over 6' high are allowed on or within all
12 property lines," period. There is no addendum to it,
13 there's no setback discussion, there's no 3'. This was
14 modified after the fact. So this was listed on the website
15 in October of 2020.

16 The Ordinance Handbook, which is what we were
17 told after the fact is different, was updated within the
18 last few years and unfortunately the onsite website was not
19 updated. And I understood the lawyer's very intricate and
20 phenomenal argument that the public, etc., but this is what
21 was written and this is what we used. So it's not that I
22 violated an ordinance and I had any nefarious agenda. That
23 was what was posted.
24
25

1 And I get it, COVID, life is tough and we didn't
2 update anything. But I just used what was there. I don't
3 know how else to answer that, to be honest with you. So no,
4 I did not know I violated the ordinance, because the one
5 that I had utilized I currently followed.

6 COMMISSIONER THOMAS: Okay, thank you.

7 CHAIR HANSSEN: Commissioner Janoff.

8 COMMISSIONER JANOFF: Just quickly, because I
9 know we have public comments and then the Appellant does
10 have the opportunity to speak again, but I did want to
11 follow up on the question Commissioner Thomas was asking of
12 Staff.

13 Staff, can you verify that at the time the
14 Appellant looked at the ordinance that that in fact was the
15 ordinance and the only thing listed was what he's
16 describing, or were there other sections of code that the
17 Appellant simply missed, or didn't know to find, or didn't
18 search thoroughly enough? I'm having a hard time
19 understanding the content of what is publicly available
20 online, which is generally all anybody is going to have
21 access to, during COVID anyway, how that could be so
22 different from what the actual code at the time was, if
23 Staff could please explain?
24
25

1 JENNIFER ARMER: Thank you, Commissioner. I'd be
2 happy to give a little bit of background on that. The
3 official Town Code that is available online, that's Chapter
4 29, which is the Zoning Code, but all of the other chapters
5 of the Municipal Code, when code updates are adopted by
6 Town Council those updates actually get automatically
7 updated by the company that maintains that website and our
8 code. However, there are sometimes other pages on the
9 Town's website with reference information pulling out
10 certain sections of the code to try to make it more easily
11 accessible, and I believe the page that the Appellant is
12 referencing was a reference that was connected with the
13 Building Department's webpage stating when a building
14 permit would be required for a fence and it had reference
15 to the old code at that time, and so that was delayed in
16 being updated. The full Municipal Code was updated
17 promptly.

19 COMMISSIONER JANOFF: So you're saying that there
20 were two places where there were two code reference, one up
21 to date and one not up to date, so up to date code was
22 available at the time the Appellant was searching for fence
23 information?

24 JENNIFER ARMER: That is correct.

25 COMMISSIONER JANOFF: Thank you.

1 CHAIR HANSSEN: Commissioner Raspe.

2 COMMISSIONER RASPE: Thank you, Chair. I actually
3 had the same question as Commissioner Janoff, so thank you
4 for asking that, and for your answer.

5 I did have one other question for the Appellant,
6 because I just don't find it readily in my packet. What was
7 the date of construction of the fence? I don't know that
8 our materials contain that.

9
10 DAVID KOHANCHI: The date of construction of the
11 fence is the end of 2020. We were delivering a child, so
12 somewhere early in December of 2020, I would say December
13 6th, somewhere around there.

14 COMMISSIONER RASPE: Okay. I notice that the Town
15 issued its administrative warning on December 14th, so it
16 would have to be before that. What was the time lapse
17 between the time you completed the fence and the time you
18 got the warning?

19 DAVID KOHANCHI: Probably several weeks. One to
20 two weeks.

21 COMMISSIONER RASPE: Okay, thanks so much.

22 DAVID KOHANCHI: That's my best guestimate, to be
23 honest with you.

24 COMMISSIONER RASPE: I appreciate it. Thanks.
25

1 CHAIR HANSSEN: That was a lot of questions, and
2 thank you for all your thorough questions, Commissioners. I
3 feel like we should turn to the public for public comments,
4 so I will put out to those in attendance, this would be the
5 time for anyone that would like to speak in Verbal
6 Communications on this item. So if you would like to do so,
7 please raise your hand on Zoom.

8 JENNIFER ARMER: Thank you, Chair. We do have
9 several people who have their hands raised. Right now the
10 first is Mark. I will allow you to speak. Mark, you should
11 be able to unmute, and you have up to three minutes.

12 MARK JAMIESON: Hi, my name is Mark Jamieson; I
13 live at 285 Marchmont Drive. I'm an acquaintance with the
14 Kohanchis.

15 I'm basically in support of the fence. I drive by
16 their house every morning. I find nothing offensive with
17 the fence. The gate is open during the day that I've
18 noticed. The only safety issue I would potentially realize
19 is if like an Amazon truck or something like that had a
20 delivery, and during the day it's open for delivery, so I
21 don't see anything that would block the driveway.

22 We've been woken up to my daughter going into our
23 garage and finding a stranger asleep in our garage, and if
24 I had the same opportunity to build a security fence if my
25

1 property afforded that, I would. I know through reading all
2 the Nextdoor and comments that have been going on in town,
3 If I had a young baby and wife at home during the day, I
4 would definitely have a secure fence at night.

5 Maybe there is some compromise that could happen,
6 like taking the spikes down and leaving the gate open
7 during the day, and so I would like to see maybe the Town
8 could work with the Kohanchis as far as keeping the gate
9 and maybe painting it that it might blend in a little bit
10 more with the surrounding area.

11 I see many gates similar to theirs, and I realize
12 it's not fully to code, but I think there might be some
13 room for exception, the fact that they live on one of the
14 busiest places in Town. Thank you for your time.

15 CHAIR HANSSEN: Thank you for your comments, and
16 I will turn to the Commission and see if any Commissioners
17 have questions for you, Mr. Jamieson. I don't see any hands
18 raised, but thank you again for your comments. It looks
19 like we do have others that would like to speak on this
20 item.

21 JENNIFER ARMER: Yes, Steve is next in line.
22 We'll allow you to speak. You should be able to unmute, and
23 you have up to three minutes.
24
25

1 STEVE DOZIER: Thank you. Steven Dozier. I live
2 at 16536 Englewood Avenue and I frequently drive by the
3 property in question—I go to Peet's quite a bit—and I find
4 the fence well constructed and immaculate and I've never
5 really had any problem with it. It seems to fit into the
6 neighborhood as far as I can see on my daily trips to
7 King's Court.

8 I agree that perhaps maybe there is a compromise
9 here between the Town and the Kohanchis. He has a young
10 child and security these days is a concern; I also have. I
11 just think the fence fits into the neighborhood, and I
12 think that the security it provides to this family is
13 important and I support the presence of the fence. That's
14 all I really have to say.

15 CHAIR HANSSEN: Thank you for your comments, and
16 I'd like to see if any Commissioners have questions for
17 you. I don't see any hands raised. Thank you, again, and it
18 looks like we have others as well.

19 JENNIFER ARMER: Yes, next in line is John. You
20 should be able to unmute and you have up to three minutes.

21 JOHN CELLAR: Thank you, my name is John Cellar.
22 I'm a 31 year resident of Los Gatos, and going back further
23 I actually went to high school here, so I have deep roots
24 in the community. I appreciate your time and your
25

1 consideration of this matter. There are a couple of points
2 that I would like to make.

3 One is I understand and respect the need for
4 rules and regulations around building issues such as Dr.
5 Kohanchi's; I absolutely think that they create an orderly
6 and aesthetic community. But if we're going to have these
7 ordinances, they either need to be applied uniformly or
8 they should not be applied at all. To single one person out
9 while there are many examples of others that have in fact
10 violated this code I think is blatantly unfair, unethical,
11 and not in the spirit of community.

12
13 The other point that I would like to make is I
14 live on Littlefield Lane. Prior to that I lived at the
15 corner of Camino del Cerro and Blossom Hill Road. I was not
16 on Blossom Hill Road, but we cornered it, and it's a very
17 busy road. People would drive very rapidly down the road.
18 In fact, there were two instances—not while we owned the
19 home—where cars came through the fence onto our property.
20 So the issue of safety is one that is very near and dear to
21 me.

22 Blossom Hill is a very busy road. Dr. Kohanchi is
23 surrounded by commercial buildings. I live on a cul-de-sac
24 now, I don't have those kinds of concerns, but if I were to
25 live on Blossom Hill Road... And I have to tell you, part of

1 the reason we left our previous home is because of issues
2 around safety with cars coming rapidly down the street. So
3 I think that it's really important to consider the safety
4 aspect of cars jumping the road and potentially going
5 through the fence and causing harm to family and/or
6 construction. That's all I have to say. Thank you for your
7 time.

8
9 CHAIR HANSSEN: Thank you so much for your
10 comments. It looks like there are a couple of questions for
11 you from Commissioners. I'll start with Commissioner
12 Janoff.

13 COMMISSIONER JANOFF: Thank you, and thank you,
14 Mr. Cellar. I just wanted to point out one thing. I
15 appreciate your concern for the Kohanchis, and I appreciate
16 your thinking that this is an isolated incident that we
17 would be seeing the fence issue for this one family
18 differently from others, but I wanted to point out and
19 perhaps direct you to previous Planning Commission
20 meetings.

21 We've had a number of Fence Ordinance issues
22 along these very lines. We are not singling out one family.
23 I just wanted to make sure that you understood, we do hear
24 these issues individually, we consider them on their
25 merits, and I just wanted to assure you, this is not an

1 isolated, singled out instance. Just wanted to make that
2 perfectly clear.

3 JOHN CELLAR: I appreciate that. We all know
4 there are multiple examples of fences that are 6' that are
5 within the 18' setback. Maybe each one of them has been
6 (inaudible).

7
8 COMMISSIONER JANOFF: We are aware of that, Mr.
9 Cellar, and many of them are prior to the Fence Ordinance
10 being in place, and some are not and they come to us
11 individually. But thank you for your comments. Appreciate
12 it.

13 CHAIR HANSSEN: Then also Commissioner Thomas has
14 a question for you.

15 COMMISSIONER THOMAS: Thank you. Mr. Cellar, I
16 was wondering if you were aware of any recent fence height
17 exceptions that you felt have been unfair? Because you
18 mentioned this, that you feel like not enforcing it
19 uniformly is a problem, so are you positive that the fences
20 you're thinking of and referring to have been built since
21 the new ordinance was adopted?

22 JOHN CELLAR: No, I'm not positive of that, but
23 like I said, I've been in this community for a lot of
24 years, I've worked in this community, and I drive through
25 the streets. Can I prove that? No, absolutely not, but it

1 is very much my sense that there have been continued
2 construction of 6' fences over the years, and obviously
3 some were put in prior to the ordinance and my sense is
4 that some have been put in subsequent to the ordinance.

5 COMMISSIONER THOMAS: Thank you, I appreciate
6 that. I think that it is important. I think that our Town
7 Staff works really hard to ensure that things are enforced
8 uniformly across the Board, and I know that this has been
9 something that has come up in previous meeting, and every
10 single time we ask, "Can you tell us exactly how many 6'
11 fences that are violation that had been built since the
12 ordinance?" and as far as my experience since being on the
13 Planning Commission, we haven't had one issue with it, so
14 thank you.

16 CHAIR HANSSEN: Thank you for that, Commissioner
17 Thomas. Do any other Commissioners have questions for Mr.
18 Cellar? I don't see any hands raised, so thank you for your
19 comments, and it looks like we still have others that want
20 to speak.

21 JENNIFER ARMER: Yes, I believe the next speaker
22 is Tony, and I'm going to allow you to speak. Go ahead, you
23 can unmute and you have up to three minutes.

24 TONY BOMMARITO: My name is Tony Bommarito; I'm
25 well acquainted with the Kohanchis. I was just listening to

1 the entire discussion and I just to make the point, and I
2 hope it's accurate, but it sounds like they did what I
3 would expect any reasonable person to do, which is to
4 consult the Town's website, and it sounds like any
5 reasonable person in their circumstances would have
6 concluded that they were acting within the code. Now, I
7 guess they could have scoured further and found more
8 information through other accessible sites, but I can
9 easily see how I, myself, would have been directed toward
10 the information that they had and thought I was acting
11 within the code properly.
12

13 I think in fairness to them, this is sort of a
14 similar circumstance where somebody might have built a
15 fence 20 years ago or whatever, and then later on after the
16 fact they find out that the code is in fact different than
17 what they were told, and I don't think that's any fault of
18 theirs, so I think in fairness to them I could see how they
19 could be treated like somebody who built there fence before
20 the code was changed. That's my comment.
21

22 CHAIR HANSSEN: Thank you for your comment. Do
23 any Commissioners have questions for Tony? I don't see any,
24 but thank you for your comments.
25

1 I don't see any other hands raised, but if anyone
2 else that is viewing the meeting would like to speak on
3 this item. It looks like we have a couple more.

4 JENNIFER ARMER: Yes, Lee, you should be able to
5 speak. You have up to three minutes.

6 LEE QUINTANA: I don't think I'll take the three
7 minutes, but I would like to comment that one of the
8 reasons that that Fence Ordinance was changed as to the
9 setbacks in the front and the sides of yards that fronted
10 streets was to maintain the small town character of Los
11 Gatos, and when I drove by this this morning after reading
12 it on the website, after just coming back from vacation in
13 Oregon, I was sort of shocked by that fence and I felt like
14 if everybody who wanted to be more protected put up fences
15 like that, it would definitely change the character of Los
16 Gatos.
17

18 As far as safety goes, I live in a house that's
19 on a corner of a street where there's a curve going uphill,
20 and before I moved in the actual bay window of our house on
21 the street was hit by a car, the tree in front of our house
22 was hit by a car, and my car was demolished by a speeder
23 coming up the hill, and yet I don't have that kind of a
24 fence, and I would never put it up because I think it would
25 be an affront to my neighbors.

1 I understand to a certain extent their concern,
2 but there must have been another way to do that. They could
3 have replaced their 6' fence that is further in with a more
4 substantial fence.

5 I also would like to comment on the fact that the
6 whole front of that lot is fronted by very large trees
7 that, again, are not consistent with our current code, but
8 they were there, and their concern is about intruders, and
9 it seems to me having those large trees along that area
10 provides a sort of hiding place for people, and if they're
11 concerned about safety one thing would be to lower the
12 foliage in the front of their yard.

14 I also looked at the plans and I was confused,
15 because it looked like there was a lot of space inside the
16 yard inside the existing fence that has a gate across it
17 that would allow for more storage of cars; it just shows on
18 the plan asphalt.

19 I do have a certain amount of sympathy for them,
20 but I also think that the Town needs to be very careful
21 about the exceptions that it grants. Thank you.

22 CHAIR HANSSEN: Thank you so much, Ms. Quintana.
23 Do any Commissioners have questions for Ms. Quintana? I
24 don't see any hands raised, but thank you again for your
25

1 comments, and it looks like we have another speaker, Mr.
2 Freeman.

3 JENNIFER ARMER: Yes, Keith, you should be able
4 to unmute. You have up to three minutes.

5 KEITH FREEMAN: Thank you. I live at 759 Blossom
6 Hill Road, next door to the Kohanchis, and have lived here
7 for 30 years, and over the years have seen quite a few
8 incidents on the street.

9 All the comments have already been made about it
10 being a commercial area. I'd like to point out that the
11 land slopes downward where 755 is located, and without that
12 fence they were quite exposed to everything that's been
13 mentioned: people walking by, accidents. While we've lived
14 next door there have been burglaries next door to me at
15 763, so the Kohanchis wanting to put up this fence in this
16 particular area makes sense to me and I don't have any
17 objections to it. I don't have any aesthetic problems with
18 it, because it's in such a commercial area, especially with
19 the Terraces located across the street. It isn't really out
20 of character, considering where it's located. Thank you.

21
22 CHAIR HANSSEN: Thank you so much for your
23 comments, Mr. Freeman. Do any Commissioners have questions?
24 I don't see any hands raised, so thank you again.
25

1 I will again say that I don't see anyone else
2 with their hand raised, so this would be the time to raise
3 your hand if you want to speak on this item before I close
4 the public hearing.

5 JENNIFER ARMER: If anyone else wishes to speak
6 before we do return to the Applicant/Appellant for their
7 closing statement, any members of the public who wish to
8 speak should raise your hand now. I don't see any
9 additional hands raised, Chair.

10 CHAIR HANSSEN: Thank you for that. As Staff
11 said, that would be the end of public comments, and now we
12 will go back to the Applicant/Appellant, and you have an
13 additional three minutes to address the Planning Commission
14 as well as any comments that were made by the public.

15 DAVID KOHANCHI: I'm going to respond to a few of
16 the comments that were made negatively toward the fence,
17 and then I'll just make it brief. Thank you so much for
18 being here. I sure appreciate it. We're neighbors at the
19 end of the day, so I hope it stays that way regardless.

20 One, in relation to the comment about maintaining
21 small town values, we are, again, in a business area. We
22 fit into where we are, and respectfully that doesn't make
23 sense with the ubiquitousness of the violations that are so
24 severe. I spoke with Director Paulson within the last day.

1 There are thousands of violations. When it's that much of a
2 portion it no longer makes sense to say that's the value of
3 the Town, unless we were to accept the 12,000 to 20,000 or
4 whatever properties you want to build in the next decade,
5 that doesn't make sense. I understand your point. I respect
6 the comment, but I disagree.

7 With regard to packages if the gate were closed.
8 Again, the gate is opened from sometimes earlier, 6:30, to
9 9:00 to 10:00pm at night. If you want we can have some kind
10 of system where I monitor that and media record it; we can
11 do that. Whatever you say I will abide by, but in response
12 to the package, on Blossom Hill Road and nowhere else in
13 this area Amazon trucks don't drive into the driveway; they
14 just don't. They stop in front of the driveway, they take
15 out the package, and they walk it to your front door.

17 In addition, if, let's say, our gate was closed,
18 we have a metal package and delivery system outside of the
19 gate that's embedded in the gate itself for this very
20 purpose, so the potential for a delivery truck stopping and
21 staying for longer than any other home does not exist in
22 our home.

23 In response to a comment from somebody who said
24 even though a car flew into her house and she didn't have a
25 fence, so why does anybody else have a fence? Do we believe

1 that to be a justifiable comment? Do we think that somebody
2 saying that just because my house was robbed, my house had
3 a car crash into it, why did I have a fence? Does that
4 merit you after the fact saying that why does somebody else
5 want to prevent these disasters? That does not make sense
6 to me as a logical statement.

7 In response to the trees that we have, there was
8 a comment about visibility. One of the big comments is
9 there's walking traffic, there are people coming by, and
10 you can't see when you come out of the fence. This gate was
11 designed as a metal perforated fence with the intent of
12 being able to see through the fence; that was deliberate.

13 In addition, the trees alone block the view
14 enough, and they're grandfathered in because they were
15 placed a decade ago, so none of those arguments seem to be
16 valid with response. Yes, in theory that is a great
17 argument, but when you look at the fine details of what is
18 actually happening, it does not make sense.

19 Our gate, if closed, which it never is, has a
20 package delivery system, so cars will not stop. The trees
21 are there and they obstruct already, so even if I were to
22 remove the gate, the trees are there, so I don't think the
23 vast majority of comments that were made, though I do
24 respect them, were valid in their points to get across.
25

1 CHAIR HANSSEN: I think Ms. Armer had her hand
2 up, so I'm sensing that is probably the three minutes.

3 DAVID KOHANCHI: Thank you so much.

4 CHAIR HANSSEN: Don't go just yet. Let me see if
5 Commissioners have any additional questions for you, and
6 this would be the last time to ask the Applicant/Appellant
7 any questions, because after this we will be closing the
8 public hearing. Commissioner Janoff.

9 COMMISSIONER JANOFF: Thank you. Mr. Kohanchi,
10 you have a fence within this fence. Could you please
11 describe that and tell us why that fence is not sufficient
12 security for your needs?

13 DAVID KOHANCHI: When we came into the home
14 initially that fence was locked, and we had squatters in
15 the home with that fence already. We also hired somebody to
16 fix the door. Within the first three months that we were
17 here, the front door was broke into the home; there was
18 like a lock issue, and we left. He left for lunch and came
19 back and got over that fence.

20 The way that the fence is designed, given the
21 slope of the lot, and it's a very flimsy wooden fence, in
22 theory for someone to say why didn't you replace that
23 fence? There's a misunderstanding of the cost incurred. To
24 replace that fence entirely would have cost three to five
25

1 times the cost of putting our fence in, so that's why we
2 didn't. I would have replaced and fixed that fence, but the
3 cost was too great to do so.

4 COMMISSIONER JANOFF: So there's a cost issue,
5 and you're saying that the fence...

6 DAVID KOHANCHI: It's not sufficient.

7 COMMISSIONER JANOFF: ...inside the metal fence is
8 not (inaudible).
9

10 DAVID KOHANCHI: Not (inaudible).

11 COMMISSIONER JANOFF: Another question, if I
12 might, Chair?

13 Your recent presentation indicated that you've
14 got two new businesses that require use of your property in
15 a way that makes it necessary to park your personal use
16 cars outside the original fence and behind the new fence.
17 It's a little unclear to me. Your arguments have gone quite
18 a bit into personal security, but what it looks like to me
19 is that you're really creating security for the cars that
20 you want parked inside that fence as well; it seems like
21 that's a pretty high priority. Also, you're starting a
22 high-end car rental business of some sort, and my guess is
23 that you're going to want to park those cars behind this
24 fence as well, because there obviously wouldn't be room
25

1 behind the wooden fence, since there already isn't room
2 behind the wooden fence.

3 DAVID KOHANCHI: No, I think I could sufficiently
4 fit more cars, but I did not prioritize one versus the
5 other. All of them, I feel, are arguments that stand. I
6 think the notion that safety is a priority to us; it's been
7 made very clear. The notion that if I buy cars that are
8 worth a lot would I park them inside the inner gate versus
9 in the other gate, the space and availability and
10 protective measures, the outer gate is significantly more
11 sufficient in protecting the cars, and so for the added
12 space I would park it in either.

14 There's also the potential that if I were to rent
15 those cars that I would want those cars in the in-between
16 space, and this is not a priority issue, so that the person
17 that came to access the car, there would also be an extra
18 layer there between the car and coming into our home.

19 COMMISSIONER JANOFF: What I'm trying to
20 understand is given the use of your property in these new
21 business ventures whether or not you have sufficient room
22 behind the wooden fence to store the vending machines and
23 high-end cars as well as your cars?

24 DAVID KOHANCHI: Likely not.

25 COMMISSIONER JANOFF: Thank you.

1 CHAIR HANSSEN: Commissioner Thomas.

2 COMMISSIONER THOMAS: Thank you, Chair. I have
3 one follow up question, and that is in order for us to
4 grant an exception we have to make these required findings.
5 One of them includes an undue hardship, so can you tell me
6 the status of your two business ventures at this moment?

7 DAVID KOHANCHI: Yes. One of the business
8 ventures I'm in a bidding war to purchase a vending machine
9 route that has 55 vending machines, 14 of which are
10 unallocated, that would stay in our home until I find a
11 location for them. I would store a significant inventory in
12 the house. Likely it will go through within the next two
13 weeks, and I'll probably start taking over that business
14 within the next month or two.

16 As far as cars, the car market, within the last
17 two years I've been looking for cars. I went to this Los
18 Gatos exotic car collection many times. Unfortunately, the
19 price of cars right now is 10-30% or even higher for exotic
20 cars, so I've been waiting for the price of the used car
21 market to decline significantly for it to make sense.

22 COMMISSIONER THOMAS: Thank you. I do just have a
23 question. In the materials you submitted, when you
24 discussed earlier you stated that over 100 people, you
25 estimate, from the Terraces can see directly into your

1 house, and so are you arguing that you feel like there's a
2 safety concern because the people that live at the Terraces
3 can see your house?

4 DAVID KOHANCHI: I think uninvited visibility of
5 any place creates the potential for a person to have
6 malintent. Any unwelcomed visibility creates a scenario of
7 somebody you do not know having some intent upon you that
8 you are unaware of. So do I think the retirement facility
9 is the most risky of them all? No, but the facility in and
10 of itself has a lot of outsiders the come and work in the
11 facility that have no association with Los Gatos. There is
12 heavy turnaround there with cooking staff, cleaning staff,
13 the day-to-day workers, and nursing staff that have changed
14 in and out. My concern isn't necessarily for the residents
15 that are retired there and living happily, my concern is
16 for everybody else.

18 Directly across from us on the bottom floor,
19 which has a large gate itself, is like I think a restaurant
20 related to the retirement facility, where all of the
21 workers sit directly outside our home and smoke constantly
22 from early hours when I leave the home until 11:00pm. Right
23 now, if I go outside there's likely somebody smoking there.
24 That in and of itself creates a level of stress and a level
25

1 of fear with the stranger that's there, because there's
2 very little accountability.

3 COMMISSIONER THOMAS: Okay, you answered my
4 question. I just would like to clarify, so you're not
5 really concerned about the residents that live across the
6 street, but you are concerned about the type of workers
7 that might come and be working at the Terraces?

8 DAVID KOHANCHI: Everybody else that frequents
9 that site, yes.

10 COMMISSIONER THOMAS: Chair, I have one more
11 question.

12 CHAIR HANSSEN: Go ahead.

13 COMMISSIONER THOMAS: One of the other things
14 with the exceptions is that there are security concerns
15 that exist that cannot be practically addressed through
16 alternatives, and I think Commissioner Janoff talked about
17 this a little bit with the second fence, but can you walk
18 us through any other improvements that you've made to your
19 home, or anything else that you've done to improve and
20 increase the safety of your home for your family?

21 DAVID KOHANCHI: The front door that was broken
22 when we moved in we fixed. The back door we reinforced with
23 a double lock. We created a security system with about 17
24 cameras in the home, two outside in the front, three
25

1 outside in the back, and a Ring doorbell. Everything that
2 we can do that seems feasible, we've done.

3 COMMISSIONER THOMAS: Are those all the things
4 that you've done? Is there anything else that you've done
5 to try to improve safety?

6 DAVID KOHANCHI: Improve safety? I don't see any
7 other thing that you could do, respectfully.

8 COMMISSIONER THOMAS: And do you have a pool?

9 DAVID KOHANCHI: Yes.

10 COMMISSIONER THOMAS: And is there a fence around
11 your pool?
12

13 DAVID KOHANCHI: There's a reinforced cover that
14 we essentially just reinforced within the last two months,
15 because our baby decided to walk and we're aware that she's
16 at risk, so yes, there is a cover to the pool.

17 COMMISSIONER THOMAS: Okay, thank you.

18 CHAIR HANSSEN: I had a question for you. I was
19 going to ask about the security system. I'm trying to
20 understand, and maybe you could help me understand. You're
21 leaving the gate open from, if I heard correctly, 6:30 in
22 the morning till 9:00 o'clock at night, so relative to this
23 issue with the Terraces, I'm having a hard time visualizing
24 where the concern would be from 9:00 o'clock at night until
25 6:30 in the morning from the Terraces. Could you help me

1 with that, because you're leaving the gate open the rest of
2 the time?

3 DAVID KOHANCHI: I'm confused by the question.

4 CHAIR HANSSEN: Well, you're talking about being
5 concerned about your safety and gave the examples of the
6 workers at the Terraces and people sitting outside, and so
7 are these workers sitting outside from 9:00 at night until
8 6:30 in the morning?

9 DAVID KOHANCHI: There are risks that I can
10 control and risks that I can't control. One, we are in
11 agreement from the beginning that this gate should not be
12 closed during the day, so we feel that there is a potential
13 that if my wife wants to come in and out that there could
14 be an issue, so we decided from the very inception that the
15 gate would be open during those hours. For the sake of just
16 us, we thought that it was appropriate for the gates to be
17 open during the day.

18 Now, I don't fully understand, because the gate
19 is perforated, so my concern is not necessarily that at
20 daytime somebody is going to come in and at nighttime
21 they're not. My concern is that the very added layer of
22 protection is a strong deterrent to anybody that would
23 create a problem. And again, crime across the board is
24
25

1 significantly worse at night, specifically with regards to
2 trespassing and strangers breaking into homes.

3 I mean, if there was an option to close the gate
4 during the day and we thought it made sense, then yes, but
5 I think logically speaking we keep it open, and there are
6 things that you can and make sense to do, and things that
7 you can't. I don't walk around in a bulletproof vest. When
8 COVID happened we could have all wore...

9
10 CHAIR HANSSEN: It's okay. I think you answered
11 by question, thank you.

12 DAVID KOHANCHI: No problem.

13 CHAIR HANSSEN: Do any other Commissioners have
14 questions? Vice Chair Barnett.

15 VICE CHAIR BARNETT: Doctor, I'm having trouble
16 understanding why you wouldn't get adequate security if you
17 moved the fence back to the setback as required by the
18 ordinance. Wouldn't you get everything you're asking for by
19 moving it into compliance with the ordinance?

20 DAVID KOHANCHI: Respectfully, multiple
21 responses. If we moved cars closer to the front because we
22 needed the space, those cars would be at risk for people
23 jumping over the curb and hitting those cars and
24 vandalizing the cars, as a business discussion we had, and
25 if we moved the gate it would incur significant costs that

1 are insurmountable. So even the notion, even if that was
2 possible, even if we said we're going to move the gate,
3 then by that virtue we followed an ordinance that it would
4 be surmisable that other people that were within similar
5 situations should do the same.

6 The reason that we're asking, we changed the code
7 and we said it's really important for the Town to maintain
8 small town values, right? And we're saying that the reason
9 that we can't ask everybody else, and the reason we made
10 everyone grandfathered in (inaudible) because it's a burden
11 to its citizens, right? Because the notion of removing or
12 reinstalling a fence is months of income, six months to a
13 year of work, and a lifetime of money. I get the
14 suggestion, but in practicality I think it's very, very
15 difficult and non-feasible.

17 VICE CHAIR BARNETT: Okay, I understand your
18 response. Continuing the conversation on that point, would
19 it be safe to say other than the cost factor, which I
20 respect is significant, the risk would be to the cars
21 parked in front of it?

22 DAVID KOHANCHI: Well, also us, right? This is
23 the lot of our home, it's our property, so in theory if I'm
24 walking out to get my mail a car could hop the curb and hit
25 me. Same thing with our daughter. It's a big lot, there's

1 we're saying 18' setback from where the other fence is,
2 there's 18', and on both sides probably 50-60'. You're
3 talking a big portion of our lot would be exposed. It's not
4 like every other home. Our lot is set back 40' from the
5 front of the street, so you're taking away a significant
6 portion of our property.

7 VICE CHAIR BARNETT: I understand your point and
8 appreciate your input.

9 CHAIR HANSSEN: Thank you for that, and
10 Commissioner Thomas has another question.

11 COMMISSIONER THOMAS: Thank you, Chair. I just
12 have another question, because you mentioned that you're
13 going to start this business venture with the cars, but you
14 currently don't own any of those vehicles and you're not
15 storing any of them on your property?

16 DAVID KOHANCHI: My car is very expensive, but
17 no. Other than my own personal car that I use? No.

18 COMMISSIONER THOMAS: And then have you filed for
19 a business license for this business that you're planning
20 on doing yet?

21 DAVID KOHANCHI: I have a business license. I
22 don't think this should be privy to the Town, but yes, I
23 have a business license that could be utilized (inaudible)
24 to the public.
25

1 COMMISSIONER THOMAS: Well, it is part of our
2 seeing if this is an undue hardship or something, so that's
3 why I'm asking.

4 DAVID KOHANCHI: Understood. It could be amended.
5 I have a corporation that could be amended easily to be
6 utilized for this, so yes, the infrastructure is in place
7 for me to start the business.

8 COMMISSIONER THOMAS: Okay, but it would be very
9 expensive to move the fence back, so that's the main issue
10 here?

11 DAVID KOHANCHI: That's one of the issues. That's
12 the one that I think makes it almost impossible to do. It's
13 not the main issue, I think there are many, but that's one
14 of the issues that I think are very important.

15 COMMISSIONER THOMAS: Thank you.

16 CHAIR HANSSEN: Any other Commissioners have
17 questions for the Applicant/Appellant? I don't see any
18 other hands raised, so thank you for your responses and I'm
19 going to close the public hearing and turn to the
20 Commission for any additional questions for Staff, or
21 comments on the application/appeal. I don't know that we're
22 ready for a motion yet, but maybe, and I will start with
23 Commissioner Clark.
24
25

1 COMMISSIONER CLARK: Thank you. I have several
2 comments that I want to share. I think that a lot of what
3 he said ended up countering his other points, and so I want
4 to go through my thoughts I had as this was happening.

5 What we have is a fence that's prohibited no
6 matter what, because it has spikes, within the setback, and
7 then another fence in that fence that's also within the
8 setback, and there's a 3' height limitation when it's in
9 the front setback, traffic view area, and driveway view
10 area, and this property meets all three of those criteria
11 for why it should have a 3' height, and so I think that's a
12 very important base to start with. There is a lot of
13 reasoning behind them not being able to do this.

14 One concern I had was they talked about how it
15 will increase safety, because the fence is pretty much
16 impenetrable by cars, and where my mind went with this is
17 that then if a pedestrian is walking along and a car comes
18 or something, they'd have absolutely nowhere to go, and I'm
19 a lot more concerned about a pedestrian than about some
20 expensive cars inside of a fence, and so I think that it
21 sacrifices the safety of the public for the potential
22 safety of some cars and supposedly his family, even though
23 I think that there are other ways around this.
24
25

1 And he said that he didn't replace the existing
2 fence because of the cost, but that really confuses me,
3 because he's talking about expensive cars and having all
4 these business ventures and saying that that makes it
5 nearly impossible, but I think that it's definitely within
6 the realm of possibility for them to create a fence within
7 their setback, and I don't see any reason why they
8 shouldn't be required to do that.

9
10 He said he wants two fences so that people can go
11 through the first one to get the cars and then maybe not
12 get past the second, which I also think contradicts some of
13 the other points.

14 So yes, overall I think that this feels like a
15 very, very special exception that they're asking for that I
16 don't think is warranted. I think this fence really doesn't
17 fit with Town character. I was definitely surprised to see
18 it, and I am not personally open to some form of compromise
19 where they keep the fence open during the day and then
20 close it at night, because first, there's not a way to
21 enforce that, and I don't think we can just put that as a
22 condition. But also, I don't think that that's the only
23 problem by any means.

24
25 CHAIR HANSSEN: Thank you so much for your
comments, Commissioner Clark. Commissioner Thomas.

1 COMMISSIONER THOMAS: Thank you, Chair. I also
2 just want to add that it's difficult for me to see this as
3 a special security concern that exists that cannot be
4 practically addressed; there are alternatives. I know that
5 we've talked about security and safety and how that can be
6 problematic, because some of it is like a feeling and
7 perception, but it is very difficult for me to grant an
8 exception, to grant this appeal as an exception based on
9 possible future business ventures. I'm interested to hear
10 what other Commissioners have to say.
11

12 I know that during COVID things were difficult,
13 but it's also difficult for me to think that the Town
14 didn't respond at all. There's just the lack of proof of
15 communication on either way. It's just really unfortunate,
16 because it's making it difficult for me to know just based
17 on multiple phone calls, and I think that as a person that
18 has recently dealt with things digitally when offices
19 haven't been open, getting some permits for stuff, I
20 definitely have proof of when I contacted the Town first
21 about things to clarify with Staff, and so it just makes it
22 hard to me to believe since our email addresses are all
23 over that there wasn't a possible way to get a phone call
24 back or an email, so that's something that I'm kind of
25 struggling with too.

1 CHAIR HANSSEN: Thank you for that, Commissioner
2 Thomas. Commissioner Raspe.

3 COMMISSIONER RASPE: Thank you, Chair. I'll join
4 in my fellow commissioners. I think it's fairly plain that
5 the fence as currently constructed is violative of various
6 aspects of our new Town ordinance of height, setback, and
7 materials.

8 I also didn't find many of the Applicant's
9 arguments compelling, the reliance upon the crime
10 statistics, for instance. Certainly we've all faced those
11 types of things, but my experience in Los Gatos, and I
12 think for most people, it's not such a crime infested area
13 that 6' spiked fences are required for our protection.

14 All that being said, I think the only point that
15 caught me at all was the notion of the confusion during
16 COVID regarding what the Town Code actually provided. I
17 listened to both sides of the argument on that issue, and I
18 agree there may have been some confusion or lack of clarity
19 perhaps, but the Applicant has made clear this was an
20 expensive build, and so I think reasonable due diligence
21 was imperative on that part; I'm not sure they satisfied
22 that requirement. It sounds like the Town was available in
23 large measure to answer reasonable queries, and so that
24 could have been sorted out before, and so even that I think
25

1 the fence fails in the long run, and so that's the way I
2 see it.

3 CHAIR HANSSEN: Thank you for that, Commissioner
4 Raspe. Back to Commissioner Thomas.

5 COMMISSIONER THOMAS: I do have a question for
6 Staff, if that's okay.

7 CHAIR HANSSEN: It is.

8 COMMISSIONER THOMAS: Thank you. I have a
9 question about if cars were being stored in between the
10 fences, can they be stored there permanently or is that one
11 of those rules that we have about things like RVs and boat
12 trailers, that they're not supposed to be visible to the
13 street. I didn't really think about that until now, so I
14 didn't have time to look up that part of our code, but
15 could Staff clarify that?
16

17 SAVANNAH VAN AKIN: Thank you for that question.
18 I can address that in terms of our Home Occupation Permit,
19 which corresponds to receiving a business license. In this
20 case, there are restrictions for having commercial vehicles
21 or also storage that is visible from the street.

22 COMMISSIONER THOMAS: So it is allowed, or would
23 it be part of the application process, or it's not allowed?
24

25 JENNIFER ARMER: Review of the description of the
business would be part of the process. When an Applicant

1 comes in for a business license that is associated with the
2 residential address we do look to get details of the
3 business, whether they're going to be storing materials or
4 have unusual activity that is out of character with the
5 residential neighborhood, and so that's part of a Home
6 Occupancy Permit that would be required if they were to
7 apply for a business license.

8 It looks like Director Paulson has turned on his
9 camera, so he may have something else to add as well.

10 JOEL PAULSON: Thank you, Ms. Armer. Commissioner
11 Thomas, I think you were calling out the RVs, boats,
12 campers, trailers, and those are not allowed to be stored
13 in the front setback, but a vehicle, you can park a vehicle
14 as long as it's not your required parking, which is not the
15 instance here. The other component that Ms. Van Akin and
16 Ms. Armer were talking about is more related to the
17 potential for any future business endeavors, so we would
18 evaluate those at that time.

19 COMMISSIONER THOMAS: Thank you for the
20 clarification. I didn't know if it had to do with the type
21 of thing that was parked, or if it was how long it was
22 parked, or both, so thank you for that clarification.

23 CHAIR HANSSEN: Thank you for that. Commissioner
24 Janoff.
25

1 COMMISSIONER JANOFF: Thank you. The only area
2 that I could think would warrant an exception would be for
3 a special circumstance where you've got some undue
4 situation that requires this fence, and at the moment the
5 only circumstance that the Appellant has described that I
6 heard tonight was a future potential high-end car rental
7 business, and that's all we heard. They're too expensive to
8 purchase now, I get that, and so that business hasn't
9 launched, but the Planning Commission can't make decisions
10 based on a potential future what if. Somebody could say I'm
11 planning to have a dinosaur statue in my front yard and I
12 need a fence to protect it from vandals. Well, we can't
13 really make a decision based on the what if, we need to
14 make a decision based on the existing circumstances, and I
15 think what we have heard tonight, and I think what I'm
16 hearing my fellow commissioners saying, is that we have
17 clear violations of an ordinance and there aren't
18 compelling reasons to make a finding for an exception. And
19 I can't make an exception based on a what if scenario. It
20 might never materialize, and there we are.

22 Having said that, I'm sympathetic to this
23 property being in a quasi-commercial zone. If there were a
24 car business, if there were an active car rental business,
25 I could see potentially having this sort of a fence to

1 protect the vehicles behind it. It's not an affront to me
2 to see this fence in this particular area of town, I just
3 can't find a compelling reason to make an exception, but
4 I'm open to other Commissioners.

5 CHAIR HANSSEN: Thank you, Commissioner Janoff.
6 Vice Chair Barnett.

7 VICE CHAIR BARNETT: Thank you, Chair. One thing
8 that troubles me a lot is the discrepancy between the code
9 provision and what was on the website. The fact is that the
10 actual language of the ordinance was always in place and
11 easily viewed.
12

13 Also, I think it's quite important that we take
14 advice from our Town Attorney that there is no estoppel
15 under the general rules applicable to towns and cities.

16 I'm concerned about the spikes, but appreciate
17 the offer of the Applicant/Appellant to remove those.

18 It seems to me that there is adequate parking. A
19 major part of the presentation in support of the appeal was
20 that there wouldn't be an adequate play area for the
21 children based on the parking requirement of the doctor,
22 however, we did discuss the garage and that seemed to be a
23 partial solution to the problem.
24

25 I don't think it's consistent with the Blossom
Hill neighborhood. There are no other homes on that stretch

1 between Camellia Terrace and Cherry Blossom that don't have
2 the proper setbacks.

3 In terms of the safety, which the Town raised as
4 a concern, I assumed that there was an opportunity to
5 understand the spacing of the pickets on the fence and the
6 view that would be allowed by that, but it appears that the
7 Town, for whatever reason, discounted that as a problem.

8 So in all, I tend to agree with my fellow
9 commissioners that there is a problem with this. I'm very
10 sympathetic to the Applicant, having to rely on the
11 incorrect information on the website and spent a lot of
12 money doing that, but I don't see that we have an
13 opportunity to go outside our jurisdiction and allow it in
14 this case. Thank you.

16 CHAIR HANSSEN: Thank you for that, Vice Chair
17 Barnett.

18 I have a few comments as well. I was on the
19 Planning Commission when we were considering the update to
20 the Fence Ordinance, and I think the whole idea was very
21 much in line with what Ms. Quintana said in her comments,
22 which is that if we're going to have the small town
23 character we can't go into a situation where we're going to
24 have all these homes that are going to put big fences along
25

1 the front of their property, that does jive with it being a
2 welcoming community.

3 Having said that, the ordinance is law and it
4 became law, and I was a bit concerned to hear that there is
5 the possibility of one kind of information in one place and
6 one in another place, but nonetheless, the Fence Ordinance
7 had been in place.

8 I also had the experience of having been on the
9 Commission when we were working on the General Plan during
10 the pandemic, and I don't see any scenario where Town Staff
11 wouldn't have been very and incredibly responsive during
12 that entire ordeal of the pandemic.

13 As for the concerns as noted by my fellow
14 commissioners, in order for us to grant an exception we
15 would have to have compelling evidence that would support
16 one of the findings that would be allowing for an
17 exception, and I just wasn't hearing it. It sounds like
18 there are other means of security that are in place, and
19 then there's also this future business but we can't
20 consider that at this point in time, and so I can't find
21 any compelling reasons to grant an exception.

22 I would also add that in listening to our Town
23 Traffic Engineer, just the very concern alone about the
24 viewing and stuff for the fence, whether it's open or not,
25

1 is a very compelling thing to make sure that we get this
2 set right.

3 I will see if there are any other comments from
4 Commissioners, and if not, I would ask that somebody make a
5 motion. Commissioner Clark.

6 COMMISSIONER CLARK: Thank you. I'll make a
7 motion. I move to deny the appeal of a Community
8 Development Director decision to deny an exception to the
9 Town's fence regulations on property zoned R-1:10 located
10 at 755 Blossom Hill Road.

11 CHAIR HANSSEN: Thank you for that. Commissioner
12 Thomas.

13 COMMISSIONER THOMAS: I second the motion.

14 CHAIR HANSSEN: So we have a motion and a second.
15 Are there any additional comments from Commissioners before
16 I call the question? So we will go again with the roll call
17 vote, and I will start with Commissioner Thomas.

18 COMMISSIONER THOMAS: Yes.

19 CHAIR HANSSEN: Commissioner Raspe.

20 COMMISSIONER RASPE: Yes.

21 CHAIR HANSSEN: Commissioner Janoff.

22 COMMISSIONER JANOFF: Yes.

23 CHAIR HANSSEN: Commissioner Clark.

24 COMMISSIONER CLARK: Yes.

1 CHAIR HANSSEN: Vice Chair Barnett.

2 VICE CHAIR BARNETT: Yes.

3 CHAIR HANSSEN: And I vote yes as well, so the
4 motion passes unanimously, and I will ask Staff if there
5 are appeal rights for this action by the Commission?

6 JENNIFER ARMER: Thank you, Chair. Yes, there are
7 appeal rights. The decision of the Commission can be
8 appealed to the Town Council by any interested person as
9 defined by Town Code Section 29.10.020 within ten days, and
10 on forms available online with fees paid. Final deadline is
11 4:00pm on the tenth day.
12

13 CHAIR HANSSEN: Very good. Thank you for that.

14 (END)

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