



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 1/17/2023

ITEM NO: 15

DATE: January 12, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Consider an Appeal of a Planning Commission Decision to Deny a Fence Height Exception Request for Construction of a Six-Foot Fence Located Within the Required Front Yard Setback and a Vehicular Gate Set Back Less than 18 Feet from the Edge of the Adjacent Street on Property Zoned R-1:10. Located at 755 Blossom Hill Road. APN 523-04-043. PROPERTY OWNER/APPELLANT: David and Ilana Kohanchi. APPLICANT: Nina Guralnic.

RECOMMENDATION:

Deny an appeal of a Planning Commission decision to deny a fence height exception request for construction of a six-foot fence located within the required front yard setback and a vehicular gate set back less than 18 feet from the edge of the adjacent street on property zoned R-1:10, located at 755 Blossom Hill Road.

BACKGROUND:

The subject property is located on the north side of Blossom Hill Road, east of the intersection with Camelia Terrace (Attachment 1, Exhibit 1).

On December 14, 2020, the Town issued an administrative warning for a code violation at 755 Blossom Hill Road (Attachment 1, Exhibit 4). This warning was sent after several complaints were submitted regarding a front yard fence and vehicular gate. This administrative warning requested that the property owners reduce their six-foot fence along the front property line down to three feet, and to remove the vehicular gate, to meet Town Code, by January 3, 2021.

On February 12, 2021, the applicant applied for an exception to the Town's fence regulations for the unpermitted construction of the vehicular gate and fencing on the subject property,

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Assistant Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

BACKGROUND (continued):

which does not comply with the Town Code fence regulations for height and setbacks (Attachment 1, Exhibits 5 and 6). The request was based on concerns related to protection for children, animals, and a garden. Privacy is also listed as a concern.

Staff contacted the applicant to discuss the concerns with the vehicular gate and fence, and explore potential options available.

On July 2, 2021, the Town denied the exception request because the findings listed in Town Code Section 29.40.0320 could not be made. Safety concerns with the fence included the location of the metal fencing relative to the driveway which obstructs visibility as vehicles exit the driveway and cross over the sidewalk and into the roadway, and the reduced setback of the vehicular gate would not allow for vehicles to clear the travel lanes of Blossom Hill Road while queuing (Attachment 1, Exhibit 7).

On November 16, 2021, staff contacted the applicant and provided examples of similar fence height exception requests that were appealed to the Planning Commission. Staff also reminded the applicant of the options to remedy the situation. These options included: removing the illegal fence and gate; modifying the fence and gate to comply with Town Code; or filing an appeal of the decision to deny the fence height exception.

The applicant was contacted via email on January 31, 2022, March 22, 2022, April 5, 2022, May 3, 2022, and May 24, 2022. Staff asked for a progress update and provided the options to remedy the situation.

On July 7, 2022, the Town issued a second administrative warning for a code violation (Attachment 1, Exhibit 8). This administrative warning requested the property owners to: remove the illegal fence and gate; modify the fence and gate to comply with Town Code; or file an appeal of the decision to deny the fence height exception by August 7, 2022.

On August 5, 2022, the decision of the Community Development Director to deny the exception request was appealed to the Planning Commission (Attachment 1, Exhibit 9). The project was scheduled for review on September 13, 2022, and in response to a request from the applicant, the item was continued to the November 9, 2022 Planning Commission hearing date (Attachment 3, Exhibit 14).

On November 9, 2022, the Planning Commission denied the appeal and upheld the Community Development Director denial of the fence height exception request for construction of six-foot tall fencing located within the required front yard setback and construction of a vehicular gate with reduced setbacks (Attachment 5).

On November 14, 2022, the decision of the Planning Commission was appealed to the Town Council by the property owners, David and Ilana Kohanchi (Attachment 6).

BACKGROUND (continued):

On December 13, 2022, the appellant made a request for a continuance of the item to a date certain of January 17, 2023 (Attachment 7). Because this item was publicly noticed and because the Town Code Section 29.20.280 requires that the Town hold a public hearing within 56 days of an appeal (in this case by January 4, 2023), the Town Council opened the public hearing on December 13, 2022 and continued the appeal hearing to January 17, 2023. No one provided testimony on December 13, 2022.

Pursuant to Town Code Section 29.20.295, in the appeal, and based on the record, the appellant bears the burden to prove that there was an error or abuse of discretion by the Planning Commission, or that its decision is not supported by substantial evidence in the record. If neither is proved, the appeal should be denied. If the appellant meets the burden, the Town Council shall grant the appeal and may modify, in whole or in part, the determination from which the appeal was taken or, at its discretion, return the matter to Planning Commission. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.

DISCUSSION:

A. Project Summary

The property owner requested an exception to the fence regulations to approve a constructed six-foot fence located within the required front set back and a vehicular gate set back less than (18) feet from the edge of the adjacent street (Attachment 1, Exhibits 5 and 6). The vehicular gate and fencing exceed the three-foot height limitation when located in a required front setback, traffic view area, and driveway view area; and the vehicular gate does not meet the 18-foot setback requirement as measured from the edge of the street.

Per Town Code Section 29.40.0315 (a)(3), fences, walls, gates, and hedges may not exceed a height of three feet when located within a required front or side yard abutting a street, driveway view area, or traffic view area unless an exception is granted by the Town Engineer and Community Development Director. This regulation is intended to minimize conflicts between pedestrians, cyclists, and cars by ensuring fences, walls, gates, and hedges do not obstruct the view from a car as it exits a driveway and crosses over a sidewalk to enter the roadway. Limiting the height of fences and gates to no more than three feet in these areas allows drivers and pedestrians a view of each other while continuing to afford property owners the opportunity to define the boundaries of their property.

The required front yard setback in the R-1:10 zone is 25 feet. A traffic view area is the area which is within 15 feet of a street and a driveway view area is a triangular area at the intersection of driveways and sidewalks and street intersections having sides 10 feet in

DISCUSSION (continued):

length (Attachment 1, Exhibit 10). The existing six-foot tall wood fence, built prior to the fence regulations update in 2019, has a minimum setback of nine feet from the property line. The six-foot tall metal fence and vehicular gate, constructed after the adoption of the new regulations, are located on the property line (Attachment 1, Exhibit 11).

Per Town Code Section 29.40.0315 (c)(3), vehicular gates shall be set back from the edge of the adjacent street a minimum of 18 feet. The intent of this regulation is to allow for vehicles to clear the travel lanes while queuing as the gate is opening.

Per Town Code Section 29.40.0315 (b)(1)(c), barbed or razor wire fences, including any fence with attached barbs, sharp points, or razors materials are prohibited. The existing metal fence and gate have distinct sharp points at the top (Attachment 1, Exhibit 12).

Town Code Section 29.40.0320, provided below, allows an exception to any of the fence regulations if a property owner can demonstrate that one of the following conditions exist.

Sec. 29.40.0320. - Exceptions.

An exception to any of these fence regulations may be granted by the Community Development Director. A fence exception application and fee shall be filed with the Community Development Department and shall provide written justification that demonstrates one (1) of the following conditions exist:

- (a) Adjacent to commercial property, perimeter fences or walls may be eight (8) feet if requested or agreed upon by a majority of the adjacent residential property owners.*
- (b) On interior lots, side yard and rear yard fences, walls, gates, gateways, entry arbors, or hedges, behind the front yard setback, may be a maximum of eight (8) feet high provided the property owner can provide written justification that either:
 - (1) A special privacy concern exists that cannot be practically addressed by additional landscaping or tree screening; or*
 - (2) A special wildlife/animal problem affects the property that cannot be practically addressed through alternatives. Documented instances of wildlife grazing on gardens or ornamental landscaping may be an example of such a problem.**
- (c) At public utility facilities, critical infrastructure, and emergency access locations, exceptions may be granted where strict enforcement of these regulations will result in a security or safety concern.*
- (d) A special security concern exists that cannot be practically addressed through alternatives.*
- (e) A special circumstance exists, including lot size or configuration, where strict enforcement of these regulations would result in undue hardship.*

The property owner requested an exception due to security and privacy concerns (Attachment 1, Exhibit 5 and 6). The privacy concerns were related to the property's

DISCUSSION (continued):

proximity to commercial centers and medical offices, citing instances when people mistake their home for the chiropractor's office next door. Regarding the security concerns, the property owner cited protecting children, containing animals, and protecting a garden as justification.

Staff was unable to support the proposed exceptions as the location of the metal fencing relative to the driveway creates a safety concern as vehicles exit the driveway and cross over the sidewalk to enter the roadway. Additionally, the location of the vehicular gate would not allow for vehicles to clear the travel lanes while queuing. Parks and Public Works Department staff reviewed the proposal and could not support the exception requests. The Town denied the exception request on July 2, 2021 (Attachment 1, Exhibit 7).

B. Planning Commission

The project was scheduled for review on September 13, 2022 (Attachments 1, 2, and 3), and in response to a request from the applicant the item was continued to the November 9, 2022, the Planning Commission hearing.

On November 9, 2022, the Planning Commission opened the public hearing and considered testimony from the appellant, and the public (Attachments 4 and 5). After asking questions, the Planning Commission closed the public hearing and discussed the appeal. The Commission discussed the appellant's concerns. The Commission stated that the fence was in clear violation of the Town Code, and that they could not find compelling evidence to grant an exception. One of the findings discussed was regarding a special privacy concern. The Commission did not see substantial evidence that a special privacy concern exists that could not be practically addressed in other ways. The Commission listed the properties in the immediate neighborhood with fencing that complies with current fence height regulations, the sufficient space in the front yard to install a tall fence behind the required front yard setback, and the other security measures that already exist onsite as reasons for not being able to make the required findings for approval. The Commission also listed the safety concerns address by Parks and Public Works staff as a reason for their motion. After completing their deliberations, the Commission denied the appeal and upheld the Community Development Director denial of the Fence Height Exception application.

C. Appeal to Town Council

The decision of the Planning Commission was appealed on November 14, 2022, by David and Ilana Kohanchi (Attachment 6). The appellant stated that the Planning Commission erred or abused its discretion because of discrimination and bias. The appellant stated that the Planning Commission's decision was not supported by substantial evidence in the record, including crime statistics, concerns about break-ins, safety given recent burglaries, the location being a high traffic commercial area, and neighbor support. The Town Council

DISCUSSION (continued):

should review the record contained in the Planning Commission Verbatim Minutes (Attachment 5) to determine if the appeal should be upheld or denied.

PUBLIC COMMENTS:

Written notice of the Town Council hearing was sent to property owners and tenants within 300 feet of the subject property.

CONCLUSION:

A. Recommendation

For the reasons stated in this report, it is recommended that the Town Council uphold the decision of the Planning Commission and adopt a resolution denying the appeal (Attachment 8).

B. Alternatives

Alternatively, the Town Council could:

1. Adopt a resolution to grant the appeal and remand the application back to the Planning Commission with specific direction (Attachment 9);
2. Adopt a resolution granting the appeal and approving the application (Attachment 10);
or
3. Continue the application to a date certain with specific direction.

COORDINATION:

The Community Development Department coordinated with the Parks and Public Works Department in the review of the fence height exception.

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction or Conversion of Small Structures.

ATTACHMENTS:

1. September 14, 2022, Planning Commission Staff Report, with Exhibits 1 through 12
2. September 14, 2022, Planning Commission Desk Addendum, with Exhibit 13
3. September 14, 2022, Planning Commission Desk Item, with Exhibit 14 and 15

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SUBJECT: 755 Blossom Hill Road/FHE-21-003

DATE: January 12, 2022

ATTACHMENTS (continued):

4. November 9, 2022, Planning Commission Staff Report, with Exhibit 16
5. November 9, 2022, Planning Commission Verbatim Minutes
6. Appeal of the Planning Commission decision, received November 14, 2022
7. Request for Continuance, dated December 13, 2022
8. Draft Resolution to Deny the Appeal and Deny the Project
9. Draft Resolution to Grant the Appeal and Remand the Project to Planning Commission
10. Draft Resolution to Grant the Appeal and Approve the Project, with Exhibits A and B

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