



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 11/08/2023

ITEM NO: 2

DATE: November 3, 2023

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Consider an Appeal of a Community Development Director Decision to Deny a Fence Height Exception Request for Construction of a Six-Foot Tall Fence Located Within the Required Front Yard Setback, Street Side Yard Setback, and Corner Sight Triangle on Property Zoned R-1:8. **Located at 124 Garden Hill Drive.** APN 424-23-084. Fence Height Exception Application FHE-23-005. Categorically Exempt Pursuant to CEQA Guidelines Section 15303: New Construction or Conversion of Small Structures and Section 15301: Existing Facilities. Property Owner: Rushikesh Kulkarni. Applicant/Appellant: Martin Lettunich. Project Planner: Ryan Safty.

RECOMMENDATION:

Deny the appeal and uphold the Community Development Director decision to deny a fence height exception request for construction of a six-foot tall fence within the required front yard setback, street side yard setback, and corner sight triangle on property zoned R-1:8, located at 124 Garden Hill Drive.

PROJECT DATA:

General Plan Designation: Low Density Residential

Zoning Designation: R-1:8 – Single-Family Residential

Applicable Plans & Standards: General Plan, Residential Design Guidelines

Parcel Size: 8,712 square feet

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Low Density Residential	R-1:8
South	Residential	Low Density Residential	R-1:8
East	Residential	Low Density Residential	R-1:8
West	Residential	Low Density Residential	R-1:8

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

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 and Section 15301: Existing Facilities.

FINDINGS:

- 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 and Section 15301: Existing Facilities; and
- As required by Section 29.40.320 of the Town Code for granting a Fence Height Exception.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject property is located at the southwestern corner of Garden Hill Way and Garden Hill Drive, one block south of Lark Avenue and one block west of Highway 17 (Exhibit 1). The immediate neighborhood consists of single-family residential properties.

Over the past few years, the subject property has been sold and redeveloped. A summary of this history is provided below:

- November 15, 2017, the previous owner emailed the Town, asking if they can move their approximately five-foot tall fence out to the front and street-side property lines. Town staff informed them that this was not allowed per the then current Fence Ordinance as the area is within the corner sight triangle (Exhibit 10);
- April of 2018, the property was sold;
- August 6, 2019, the Town adopted a new Fence Ordinance with stricter regulations regarding front yard and street-side yard fence heights and locations, along with a new exception process;
- August 24, 2020, Building Permit application B20-0574 was submitted for a 969-square foot addition to the front and rear of the residence (Exhibit 4). Town staff provided the following plan correction on September 2, 2020, during the review: "There is an existing five-foot high non-conforming fence located in the front yard setback. Generally, fences located in the front setback are required to be a maximum of three feet in height. In the future, should you wish to maintain or replace this fence, it shall be done in kind pursuant to Section 29.40.0325 of the Town Code." The building permit was issued on January 10, 2021, and finalized by Town staff on June 29, 2022;

BACKGROUND (continued):

- November 23, 2021, Building Permit application B21-1157 was submitted for an outdoor barbeque, arbor, and perimeter wall and fence (Exhibit 5). Town staff provided the following plan correction on December 14, 2021, during the review: "Sheet L-4, reduce the height of the corner wall and fence to a maximum of three feet when located within a required front or side yard abutting a street, driveway view area, traffic view area, or corner sight triangle unless an exception is granted by the Town Engineer and Community Development Director." Following this comment, the plans were revised to show a fence and wall that complied with the Town's height requirements. The building permit was issued on April 12, 2022, and finalized by Town staff on May 2, 2023;
- On February 24, 2022, after receiving the comments from staff on B20-0574 and B21-11157 and amending the plans to show three-foot tall fencing within the front yard setback, street side yard setback, and corner sight triangle, the owners applied for a Fence Height Exception (FHE-22-001). After working with staff and learning that staff could not support the exception request, the application was withdrawn on April 12, 2022;
- On August 4, 2023, following a complaint, the Town issued an administrative warning (Exhibit 6) regarding an unpermitted six-foot tall fence at the corner of Garden Hill Drive;
- On September 7, 2023, the subject Fence Height Exception application (FHE-23-005) was submitted (Exhibits 7 and 8), requesting approval to install a six-foot tall fence on top of a retaining wall along the front and street-side property lines and within the corner sight triangle;
- On September 27, 2023, the Community Development Director and Town Engineer determined that the required exception findings could not be made, and denied the request (Exhibit 9); and
- On October 5, 2023, the applicant and owners appealed this decision to the Planning Commission (Exhibit 11).

Pursuant to Town Code Section 29.20.255, any interested person as defined by Town Code Section 29.10.020 may appeal to the Planning Commission any decision of the Planning Director. For residential projects, an interested person is defined as, "a person or entity who owns property or resides within 1,000 feet of a property for which a decision has been rendered and can demonstrate that their property will be injured by the decision." The appellant/owner meets the requirements.

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located at the southwestern corner of Garden Hill Way and Garden Hill Drive, one block south of Lark Avenue and one block west of Highway 17 (Exhibit 1). The immediate neighborhood consists of single-family residential properties.

B. Project Summary and Zoning Compliance

The property owner is appealing the Community Development Director decision to deny a fence height exception request for the construction of a six-foot tall wooden fence on top of an approximately two-foot tall retaining wall within the required front yard setback, street side yard setback, and corner sight triangle.

DISCUSSION:

A. Fence Height Exception

The property owner has requested a fence height exception for construction of a six-foot tall wooden fence on top of an approximately two-foot tall retaining wall along the front corner of the property. The application requests exceptions to the required front yard setback, street-side setback, and corner sight triangle. Currently, there is an unpermitted three-foot tall bamboo screen attached to the approved three-foot tall wooden fence along the corner of the property.

As noted in the Background Section above, the property has undergone substantial remodel and redevelopment over the past few years. Building Permit B21-1157 allowed construction of an outdoor patio; a six-foot tall fence along the southern (rear yard) and western (internal side yard) property lines and outside of the required front setback, street side setback, and corner sight triangle; and allowed construction of a three-foot tall garden wall along the eastern (street side yard) property line and a two-foot tall retaining wall along the northern (front yard) property line. As retaining walls adjust the grade behind them, fence height is measured from the higher edge of grade; per Town Code, a three-foot fence can be built above the retaining wall in the front or street-side setback if it complies with the Town Engineer's corner sight triangle requirements (Exhibit 10).

Town staff visited the site to take pictures, and prepared Exhibit 12 to highlight which areas of the perimeter fencing is approved and compliant versus non-permitted and non-compliant. The area in green identifies the areas of the perimeter fence and wall that are compliant with code, while the area in red shows the portion of the fence that does not comply with code and requires an exception or modification. The front property line and

DISCUSSION (continued):

street-side property lines are differentiated from each other, and the corner sight triangle area is also highlighted.

Per Town Code Section 29.40.0315, fences and gates are limited to six feet in height with one foot of lattice on top (seven feet total), but are limited to, “three feet in height when located within a required front or side yard abutting a street, driveway view area, traffic view area, or corner sight triangle unless an exception is granted by the Town Engineer and Community Development Director.” The proposed fence is limited to three feet by Code, as it is within the required front yard setback, street side yard setback, and corner sight triangle.

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.*

DISCUSSION (continued):

The Letter of Justification (Exhibit 8) cited conditions (b)(1) related to a special privacy concern, (b)(2) related to a special wildlife problem, (d) related to security, and (e) related to a special circumstance associated with the property configuration for justification of the exception request.

For conditions (b)(1) and (b)(2), staff could not support the exception as subsection (b) only applies to the side and rear fences on interior lots. This is a corner lot, and the exception is for the front and street side yards; therefore, subsection (b) of Town Code Section 29.40.0320 is not applicable.

For condition (d), the provided justification is as follows: "It is also a special security concern given the fact that my client has three young children who have no place to play outside but in that area. We see no alternative ways to address the safety of my client's children other than to have a tall fence to keep the children in and the coyotes out [...]. The fence at 3 feet high is not workable to avoid the threat from the coyotes." Town staff could not support the exception request under condition (d) as the property is located in an urbanized, residential subdivision. If the potential of a coyote sighting were deemed a "special security concern," then most properties in the Town would be eligible. Additionally, the owners are allowed to construct a six-foot tall fence with one-foot of lattice above (seven feet total) if they move the fence location back to the meet the required front and street side yard setbacks. As noted in the Background Section above, the owners were notified before and throughout their remodel process that the fence height at this location is limited to three feet. They proceeded with their house addition and remodel plans, which impacted which areas of the lot were available for outdoor use.

For condition (e), the provided justification is as follows: "My client is of East Indian descent. He belongs to a religion which places special importance on the sun and its east west passage through the sky. According to the tenants of his religion, he is to hold prayer sessions on the east side of his yard. He has tried to do so, but, prior to erecting the bamboo fence, the neighbors would stop and watch his private prayer sessions with his family. The lack of privacy with a short fence made it very difficult and uncomfortable for my client and his family to practice their faith." Town staff could not support the exception request under condition (e). As noted in the Background Section above, the owners were notified before and throughout their remodel process that the fence height at this location is limited to three feet. They proceeded with their house addition and remodel plans, which impacted which areas of the lot were available for outdoor use. Additionally, the owners are allowed to construct a six-foot tall fence with one-foot of lattice above (seven feet total) if they move the fence location back to the meet the required front and street side yard setbacks.

DISCUSSION (continued):

The Letter of Justification also argues that this is not a true road intersection, but instead a bend of a road, and therefore the corner sight triangle requirements should not be applicable. As a part of the Town's review, the Town Engineer reviewed the request and confirmed that the corner sight triangle requirements are valid at this location, and also denied the exception request. For the reasons outlined in this section, the Town denied the exception request on September 27, 2023 (Exhibit 9).

B. Appeal Analysis

The Decision of the Community Development Director to deny the fence height exception was appealed on October 5, 2023 (Exhibit 11).

The appeal form did not provide any additional reasoning for the request for the Town or Planning Commission to consider. The Planning Commission should review the previous exception justification points listed above to determine if the exception request can be approved.

C. Environmental Review

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 and Section 15301: Existing Facilities.

PUBLIC COMMENTS:

Written notice was sent to property owners and tenants within 300 feet of the subject property. At the time of preparation of this report, no public comment has been received.

CONCLUSION:

A. Summary

The property owner is requesting that the Planning Commission reconsider the Community Development Director's decision to deny the fence height exception to allow a new six-foot tall wooden fence within the required front yard setback, street side yard setback, and corner sight triangle.

CONCLUSION (continued):

B. Recommendation

Staff recommends that the Planning Commission deny the appeal and uphold the Community Development Director decision to deny the fence height exception application based on the reasoning provided in this report.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Grant the appeal and approve the fence height exception with the findings in Exhibit 2 and the draft conditions provided in Exhibit 3; or
3. Grant the appeal with additional and/or modified conditions.

EXHIBITS:

1. Location Map
2. Required Finding
3. Recommended Conditions of Approval if Appeal is Granted
4. Building Permit B20-0574 Approved Plans
5. Building Permit B21-1157 Approved Plans
6. Administrative Warning, Dated August 4, 2023
7. Project Plans, Received September 7, 2023
8. Letter of Justification, Received September 7, 2023
9. Fence Height Exception Denial Letter, Dated September 27, 2023
10. View Area Diagrams
11. Appeal of the Community Development Director Decision, Received October 5, 2023
12. Pictures of Subject Property