



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 11/08/2023

ITEM NO: 1

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 to Relocate an Existing Six-Foot Tall Fence Within the Required Street Side Yard Setback on Property Zoned R-1:8. **Located at 501 Roxbury Lane.** APN 407-31-026. 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. Fence Height Exception Application FHE-23-004. Property Owner/Applicant/ Appellant: Jared Susoev. Project Planner: Maria Chavarin.

RECOMMENDATION:

Deny the appeal and uphold the Community Development Director decision to deny a fence height exception request to relocate an existing six-foot tall fence within the required street side yard setback on property zoned R-1:8, located at 501 Roxbury Lane.

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: 9,885 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 & R-1:10
East	Residential	Low Density Residential	R-1:8
West	Residential	Low Density Residential	R-1:8

PREPARED BY: MARIA CHAVARIN
Assistant Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

The project is Categorical 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 Categorical 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.
- As required by Section 29.40.0320 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 corner of More Avenue and Roxbury Lane (Exhibit 1). All surrounding properties are zoned for and developed with single-family residential uses.

On October 24, 2022, a building permit application was received for an addition to the main residence. The building permit application established the front yard off Roxbury Lane, and More Avenue as the street side yard. The application is currently in “issued” status and active.

On August 18, 2023, the Town received an application for a fence height exception request to relocate an existing six-foot tall fence to a location within the required street side yard setback. The letter of justification for the exception request is provided as Exhibit 5.

On September 22, 2023, the exception request was denied by the Community Development Director as none of the required findings per Town Code Section 29.40.0320 could be made to support the request (Exhibit 7).

On September 29, 2023, the property owner filed a timely appeal (Exhibit 8).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located at the corner of More Avenue and Roxbury Lane (Exhibit 1). All surrounding properties are zoned for and developed with single-family residential uses.

PROJECT DESCRIPTION (continued):

B. Project Summary and Zoning Compliance

The property owner is appealing the Community Development Director decision to deny a fence height exception request to relocate an existing six-foot tall fence to a location within the required street side yard setback along More Avenue.

DISCUSSION:

A. Fence Height Exception

The property owner is proposing to relocate an existing six-foot tall fence along More Avenue from a location that complies with the required street side yard setback, to a new location within the street side yard setback area. The fence is comprised of solid wood materials and runs for approximately 70 linear feet along More Avenue. The existing and proposed materials and design are suitable to the character of the immediate neighborhood. The new proposed fence would be located 18-inches away from the property line (along the edge of the concrete sidewalk) where a 15-foot setback is required for a fence of this height.

The location of the current fence complies with the minimum required 15-foot street side yard setback. Its current height (six-feet) complies with Town Code as the fence is located outside of the minimum required 15-foot street side yard setback. The google imaging platform shows that the existing fence was screened by a row of mature hedge/trees. A building permit was secured for an addition and improvement to the residence resulting in the removal of the hedge that served to screen the existing fence. As part of the improvements, the property owner wishes to include the relocation of the fence for the reasons mentioned in the letter of justification. Staff created an exhibit showing the previous fence location and design and the current conditions of the site, which is provided as Exhibit 10.

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 Town Code, as it is within the required street side yard setback. The Parks and Public Works Department evaluated the plans and concluded that the proposed fence is not expected to reduce sight distance (Exhibit 4) to an unacceptable level and therefore, the fence height exception as proposed is acceptable from a traffic perspective.

DISCUSSION (continued):

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 letter of justification (Exhibit 5) received with the fence height exception request cited condition (b)(1) related to a privacy concern, (d) related to a security concern, and a noise abatement concern that is not a listed condition for means to support a fence height exception request.

For condition (b)(1), 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 street side yard; therefore, subsection (b) of Town Code Section 29.40.0320 is not applicable.

For condition (d), the provided justification is as follows: "With the large intersection at the corner of Roxbury and More Ave, we have people continuously recklessly driving (spinning doughnuts), this poses a huge threat as we have had folks crash into the property

DISCUSSION (continued):

previously. Part of this is solved with the large tree in the front yard, however the additional safety of a 6' fence will provide additional protection for the property."

However, even with consideration of the concerns stated by the applicant, staff was unable to make the findings required by the Town Code related to privacy and security.

For noise abatement, the provided justification is as follows: "This intersection not only has substantial traffic for both regular passenger vehicles, but also large trucks using this intersection to reach the water treatment plant north of our property, a 6' fence will help remove some of this noise. Note this fence will be wood, not a true noise abatement cement fence." As noted above, noise abatement is not a listed condition for means to support a fence height exception request. Therefore, Town staff could not support this exception request for noise abatement concerns.

The Community Development Department denied the fence height exception on September 22, 2023 (Exhibit 7) for the reasons outlined above.

B. Appeal Analysis

The Decision of the Community Development Director to deny the fence height exception was appealed on September 29, 2023 (Exhibit 8).

On October 8, 2023, a revised Letter of Justification (Exhibit 9) was received to support the appeal of the decision of the Director of Community Development.

The revised letter added additional justification on the topics discussed above: privacy, security, and noise. In addition, the revised letter of justification added concerns related to condition (b)(2) related to wildlife, stating that numerous neighbors have lost animals (chickens, turtles, and dogs) due to wildlife. Expressing that these types of wildlife are hungry wild animals that roam freely in the neighborhood, coyotes, and bobcats specifically.

For condition (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 street side yard; therefore, subsection (b) of Town Code Section 29.40.0320 is not applicable. The property is located in an urbanized, residential subdivision. If the potential of coyote and bobcat sightings were deemed a "special wildlife/animal problem," then most properties in the Town would be eligible. Additionally, the owners are allowed to have a six-foot tall fence with one-foot of lattice above (seven feet total) if they locate the fence to meet the required street side yard setbacks, as the existing fence currently does.

DISCUSSION (continued):

The revised letter of justification also included a concern related to the containment of their large dog. The property site has alternative locations to safely contain pet(s) while meeting the rules and regulations of the Town as it relates to fences, including the fence in its current location.

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 the relocation of an existing six-foot tall fence within the required street side yard setback.

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 required findings in Exhibit 2 and the draft conditions provided in Exhibit 3; or
3. Grant the appeal with additional and/or modified conditions.

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SUBJECT: 501 Roxbury Lane/FHE-23-004

DATE: November 3, 2023

EXHIBITS:

1. Location Map
2. Required Findings
3. Recommended Conditions of Approval if Appeal is Granted
4. View Areas Diagrams
5. Letter of Justification, Received August 18, 2023
6. Site Plan from Applicant
7. Fence Height Exception Denial Letter, Dated September 22, 2023
8. Appeal of the Community Development Director Decision, Received September 29, 2023
9. Revised Letter of Justification, Received October 8, 2023; Neighborhood Outreach;
Renderings of Proposed Fence Location and Design; and Site Plan
10. Google Street View Images

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