



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 12/13/2023

ITEM NO: 5

DATE: December 8, 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 a Constructed Eight-Foot Fence Located in the Rear Yard on Property Zoned R-1:10. **Located at 224 Old Adobe Road.** APN 407-09-029. 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. PROPERTY OWNER/APPLICANT: Vinodha Bala. PROJECT PLANNER: Savannah Van Akin.

RECOMMENDATION:

Deny the appeal and uphold the Community Development Director decision to deny a fence height exception request for a constructed eight-foot fence located in the rear yard on property zoned R-1:10, located at 224 Old Adobe Road.

PROJECT DATA:

General Plan Designation: Low Density Residential

Zoning Designation: R-1:10 – Single-Family Residential

Applicable Plans & Standards: General Plan, Residential Design Guidelines

Parcel Size: 15,362 square feet

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Low Density Residential	R-1:10
South	Residential	Low Density Residential	R-1:10
East	Residential	Low Density Residential	R-1:10
West	Residential	Low Density Residential	R-1:10

PREPARED BY: Savannah Van Akin
Assistant 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 on the east side of Olde Adobe Road, across from Plaza La Posada (Exhibit 1). The property backs up to a channelized concrete creek, labeled Mistletoe Creek in Town Records. The immediate neighborhood consists of single-family residential properties.

On November 13, 2022, the Town received an application for a fence height exception requesting approval for a constructed eight-foot fence located along the rear property line of 224 Old Adobe Road. The Letter of Justification (Exhibit 4), site plan (Exhibit 5), and a photo of the built fence (Exhibit 6) were all submitted as a part of the application.

The Letter of Justification (Exhibit 4) stated that the new eight-foot fence, was built to replace an existing 10- to 11-foot tall fence. Staff asked the applicant/appellant to provide additional information, such as a photo and written description of the old fence that was replaced. The Town's Code Enforcement Officer received a complaint about the height of the rear fence in August 2023. Staff coordinated with the applicant further to obtain the additional information previously requested, and over the following two months the applicant provided a written description of the fence (Exhibit 7) and a photo of the old fence (Exhibit 8).

On October 9, 2023, the exception request was denied by the Community Development Director as none of the required findings per Town Code Section 29.40.0320 or 29.40.0325 could be made to support the request (Exhibit 9).

On October 19, 2023, the applicant/owner appealed this decision to the Planning Commission (Exhibit 10).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located on the east side of Olde Adobe Road, across from Plaza La Posada (Exhibit 1). The property backs up to a channelized concrete creek, labeled Mistletoe Creek in Town Records. 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 for a constructed eight-foot fence located along the rear property line.

DISCUSSION:

A. Fence Height Exception

The property owner has requested a fence height exception for approval of a constructed eight-foot fence located along the rear property line.

Per Town Code Section 29.40.0315 fences, walls, gates, or hedges may not exceed six feet in height, with one foot of lattice on top for seven feet in total.

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.*

DISCUSSION (continued):

- (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.*

Town Code Section 29.40.0325, provided below, allows an exception for any existing nonconforming fence to be maintained or replaced in kind.

Sec. 29.40.0325. – Exemptions.

All fences, hedges, gates, and walls existing on the effective date of this ordinance [from which this section derives] that do not meet the regulations contained herein are nonconforming and are exempt from these regulations. Existing nonconforming fences may be maintained and/or replaced in kind, including historic stone or river rock walls.

The Letter of Justification (Exhibit 4) cited condition (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. The Letter of Justification (Exhibit 4) also outlined that the original eleven-foot tall rear yard fence (Exhibit 8) was replaced by this new eight-foot tall fence (Exhibit 6).

For condition (b)(1) staff could not support the exception. A special privacy concern could not be identified that could not be practically addressed by additional landscaping. The applicant/appellant stated that a line of screening hedges has been maintained on the property along the fence line, but was not sufficient for their privacy needs. The photo of the fence (Exhibit 6) shows landscaping that may be affected by seasonal loss of greenery, impacting the ability to help with privacy, as discussed in the Letter of Justification.

For condition (b)(2) staff could not support the exception. The applicant/appellant's Letter of Justification (Exhibit 4) states that the water that collects at the back of the property attracts wildlife such as coyotes, opossum, and bobcats. Staff could not support the exception based on condition (b)(2) without justification of the additional protection the extra one-foot in height would provide.

For condition (d) staff could not support the exception. The applicant/appellant's Letter of Justification (Exhibit 4) lists instances with neighbor conflict, hoarding, and horticultural practices as justification for a special security concern that cannot be practically addressed through other alternatives. Even with consideration of the concerns stated by the

DISCUSSION (continued):

applicant/appellant, staff was unable to make the findings required to grant the exception based on security.

For condition (e) staff could not support the exception. The applicant/appellant's Letter of Justification (Exhibit 4) lists yard topography as justification for a special circumstance. The applicant/appellant states that there is a rise in slope as you move from the fence line to the house. The Site Plan (Exhibit 5) shows this elevation change. Staff could not support the exception request under condition (e). The items described in Exhibit 4 and shown in Exhibit 5 are not significant enough for staff to grant the exception.

Town Code Section 29.40.0325 allows an exception for any existing nonconforming fence to be maintained or replaced in kind. The applicant/appellant provided the following information in their Letter of Justification (Exhibit 4): "The original fence along this property line that was in place when we purchased the house had a combined height of fence and privacy screen of 10-11 feet; we replaced this old existing fence with a shorter one." Staff requested additional information from the applicant/appellant to determine if the replacement was made in kind. On August 22, 2023, the applicant provided a written description of the fence (Exhibit 7). On October 5, 2023, the applicant was able to provide a photo of the old fence (Exhibit 8).

Per Town Code Section 29.40.0325 – Exemptions, staff could not make the findings necessary to support the exemption. The photo of the previous fence (Exhibit 8) shows a different material than the fence it was replaced with (Exhibit 6). The previous lattice material was not replaced in kind, as the current fence was built with a solid material. The photo (Exhibit 8) and written description (Exhibit 7) did not provide enough information for staff to be able to determine that the existing nonconforming fence was maintained and/or replaced in kind.

The Community Development Department denied the fence height exception on October 9, 2023 (Exhibit 9) for the reasons outlined above.

B. Appeal Analysis

The Decision of the Community Development Director to deny the fence height exception was appealed on October 19, 2023 (Exhibit 10). The appeal form included a written letter providing additional reasoning for the request.

Exhibit 10 provided written justification on the topics discussed above, specifically referencing Town Code Section 29.40.0325 allowing an exemption for any existing nonconforming fence to be maintained or replaced in kind, and Section 29.40.0320 (b)(1)

DISCUSSION (continued):

for special privacy concerns that cannot be practically addressed by additional landscaping or tree screening.

The Planning Commission should review the 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 the constructed eight-foot fence located in the rear yard.

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.

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SUBJECT: 224 Old Adobe Road/FHE-22-006

DATE: December 8, 2023

EXHIBITS:

1. Location Map
2. Required Findings
3. Recommended Conditions of Approval if Appeal is Granted
4. Letter of Justification, Received November 13, 2022
5. Site Plan, Received November 13, 2022
6. Photo of New Constructed Fence, Received November 13, 2022
7. Description of Old Fence, Received August 22, 2023
8. Photo of Old Fence, Received October 5, 2023
9. Fence Height Exception Denial Letter, Dated October 9, 2023
10. Appeal of the Community Development Director Decision, Received October 19, 2023

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