



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 6/14/2023

ITEM NO: 2

DATE: June 9, 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 an Automated Vehicular Gate Exceeding the Maximum Height and with Reduced Setbacks on Property Zoned R-1:8. **Located at 380 Blackwell Drive.** APN 424-12-027. Categorically Exempt Pursuant to CEQA Guidelines Section 15303 (e): New Construction or Conversion of Small Structures. Fence Height Exception Application FHE-23-002. PROPERTY OWNER: Larry Cesnik and Martha Johnson. APPELLANT: Larry Cesnik. APPLICANT: Ramin Zohoor. PROJECT PLANNER: Sean Mullin.

RECOMMENDATION:

Deny the appeal of a Community Development Director decision to deny a fence height exception request for construction of an automated vehicular gate exceeding the maximum height and with reduced setbacks on property zoned R-1:8, located at 380 Blackwell Drive.

PROJECT DATA:

General Plan Designation: Low Density Residential

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

Applicable Plans & Standards: Town Code, General Plan, Residential Design Guidelines

Parcel Size: 8,000 square feet

Surrounding Area:

| | Existing Land Use | General Plan | Zoning |
|-------|-------------------|-------------------------|----------|
| North | Residential | Low Density Residential | R-1:8:PD |
| 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: SEAN MULLIN, AICP
Senior 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 (e): New Construction or Conversion of Small Structures.

FINDINGS:

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303 (e): New Construction or Conversion of Small Structures.
- 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 corner of Blackwell Drive and National Avenue (Exhibit 1). The surrounding properties are residential uses. The subject property is developed with a single-family residence and an attached accessory dwelling unit (ADU).

On September 13, 2022, the Town issued an administrative citation for a code violation at the subject property (Exhibit 4) after the vehicular gate was noted by a Town Building Inspector during a progress inspection for construction of the ADU. This letter requested that the property owners apply for a Building Permit for the vehicular gate by September 27, 2022. Following issuance of the citation, the applicant contacted Town Planning staff who communicated to the applicant that the vehicular gate exceeds the three-foot height limitation for a gate located in the required front yard and the traffic view area. Additionally, staff noted that the gate does not meet the required 18-foot setback from the edge of the street. Staff indicated that the Town Code offers an exception process that allows for deviation from the Town's requirements if the appropriate findings are made by the Community Development Director.

On February 6, 2023, the applicant applied for an exception to the Town's fence regulations for the unpermitted construction of the vehicular gate, which does not comply with the Town Code fence height regulations for fences located in the required front setback and traffic view area, and for not meeting the required 18-foot setback for vehicular gates as measured from the street. The exception request was based on concerns related to protecting their child from stepping off the property. The project plans are provided as Exhibit 5, and the Letter of Justification for the exception is provided as Exhibit 5.

BACKGROUND (continued):

On March 6, 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 and based upon the conclusion by the Parks and Public Works Department that unsafe conditions are created by the vehicular gate lacking the 18-foot setback required by Town Code Section 29.40.0315(c)(3), and its proximity to the intersection adjacent to the property (Exhibit 6).

On March 8, 2023, the property owner appealed this decision (Exhibit 7).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located at the corner of Blackwell Drive and National Avenue (Exhibit 1). The surrounding properties are residential uses. The subject property is developed with a single-family residence and an attached ADU.

B. Project Summary and Zoning Compliance

The property owner is appealing the Community Development Director decision to deny an exception to the fencing regulations for unpermitted construction of a vehicular gate that does not comply with the height regulations for fences located in the required front setback and traffic view area, and for not meeting the required 18-foot setback for vehicular gates as measured from the street (Exhibit 7).

DISCUSSION:

A. Fence Height Exception

The property owner requested an exception to the fence regulations for: a vehicular gate exceeding the three-foot height limitation located in a required front setback and traffic view area; and a vehicular gate that does not meet the 18-foot setback requirement as measured from the edge of the street (Exhibit 5).

Exhibit 8, prepared by staff, shows the locations of existing fencing on the property, which includes:

- Six-foot tall solid wood fencing along the rear and interior side property lines. This fencing appears to comply with current regulations.
- Four-foot tall concrete block and picket fencing at the front and street-side property lines. This fencing continues along the east side of the driveway to connect with the

BACKGROUND (continued):

residence. This fencing existed prior to the current fence regulations and is considered existing legal nonconforming.

- Four-foot, three-inch, tall solid wood fencing along the interior property line running from the front property line to the six-foot tall fencing described above. This fencing existed prior to the current fence regulations and is considered existing legal nonconforming.
- Seven-foot tall solid wood fencing running from the interior property line to the left side of the residence. This fencing appears to comply with current regulations.
- A four-foot, three-inch tall unpermitted vehicular gate across the driveway at the front property line, which is the subject of this appeal.

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 setback in the R-1:8 zone is 25 feet, and a traffic view area is the area that is within 15 feet of a street. Staff has prepared an exhibit showing the locations of these areas and the existing unpermitted vehicular gate (Exhibit 8). The proposed four-foot, three-inch tall vehicular gate is set at the front property line.

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. The required vehicular setback is shown on Exhibit 8. The vehicular gate is setback approximately 13.4 feet from the edge of the street.

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:

DISCUSSION (continued):

- (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 exceptions based on concerns related to protecting their child from stepping off the property (Exhibit 5).

Staff was unable to support the requested exceptions as the required findings could not be made. In consideration of the safety concern cited by the applicant, staff noted that the property is already enclosed by existing fencing and gates except for the driveway area. Additionally, the requested exceptions would create unsafe conditions caused by a vehicular gate lacking the 18-foot setback required by the Town Code. The reduced setback of the gate would not allow for vehicles to clear the travel lanes while queuing, potentially obstructing traffic on Blackwell Drive near the intersection with National Avenue. Parks and Public Works reviewed the proposal and could not support the exception requests noting that the subject driveway is near a busy street (National Avenue) and the added queue time is considered a nuisance and unnecessary risk. The Town denied the exception request on March 6, 2023 (Exhibit 6).

B. Appeal

The decision of the Community Development Director to deny the Fence Height Exception application was appealed by the property owner on March 8, 2023 (Exhibit 7). In their appeal, the property owner reiterates their safety concerns. Additional justification and information were not provided with the appeal.

DISCUSSION (continued):

C. Environmental Review

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

PUBLIC COMMENTS:

Written notice was sent to property owners and tenants within 300 feet of the subject property. Staff has included all public comments received by 11:00 a.m., Friday, June 9, 2023, as Exhibit 9.

CONCLUSION:

A. Summary

The property owner is requesting that the Planning Commission overturn the Community Development Director's decision to deny an exception to the fencing regulations for unpermitted construction of a vehicular gate that does not comply with the Town Code fence height regulations for fences located in the required front setback and traffic view area, and for not meeting the 18-foot setback for vehicular gates as measured from the street and approve the application.

B. Recommendation

Staff recommends that the Planning Commission deny the appeal and uphold the Community Development Director decision to deny an exception to the fencing regulations 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: 380 Blackwell Drive/FHE-23-002

DATE: June 9, 2023

EXHIBITS:

1. Location Map
2. Required Finding
3. Recommended Conditions of Approval if Appeal is Granted
4. Administrative Warning/Citation VL-22-465, dated September 9, 2022
5. Exception Request – Letter of Justification
6. Fence Height Exception Denial Letter, dated March 6, 2023
7. Appeal of the Community Development Director Decision, received March 8, 2023
8. Annotated Site Plan Prepared by Staff
9. Public Comments received before 1100 a.m., Friday June 9, 2023
10. Project Plans

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