



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 11/13/2024

ITEM NO: 4

DATE: November 8, 2024
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of a Community Development Director's Decision to Deny a Fence Height Exception Request for Construction of a Six-Foot Tall Fence Within a Required Street-Side Setback and Traffic View Area on Property Zoned R-1:8. Located at **108 Westchester Drive**. APN 523-36-037. 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. Fence Height Exception Application FHE-24-003. Property Owner/Applicant/ Appellant: Parul Upadhyaya and Deepak Pandey. Project Planner: Suray Nathan.

RECOMMENDATION:

Deny the appeal and uphold the Community Development Director’s decision to deny a fence height exception request for construction of a six-foot tall fence located within the required street-side setback and traffic view area on property zoned R-1:8, located at 108 Westchester Drive.

PROJECT DATA:

General Plan Designation: Low Density Residential
Zoning Designation: R-1:8 – Single-Family Residential, 8,000 square-foot minimum
Applicable Plans & Standards: General Plan, Residential Design Guidelines
Parcel Size: 9,345 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: Suray Nathan
Assistant Planner

Reviewed by: Planning Manager and Community Development Director

PAGE 2 OF 7

SUBJECT: 108 Westchester Drive/FHE-24-003

DATE: November 8, 2024

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.

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.
- 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 southwest corner of Westchester Drive and Adrian Place, one block south of Los Gatos-Almaden Road and one block north of Blossom Hill Road (Exhibit 1). All surrounding properties are zoned for and developed with single-family residential uses.

The Town received a complaint regarding the subject fence located at the corner of Westchester Drive and Adrian Place. Following inspection by the Town's Code Enforcement Officer, the Town determined that the fence exceeded the height limitations for fences located in the required street-side setback, traffic view area, and driveway view area (Exhibit 4). On June 25, 2024, the Town issued an Administrative Citation (VL-24-329) regarding for the fence (Exhibit 5).

On July 16, 2024, the property owner applied for a Fence Height Exception (FHE-24-003). The Letter of Justification provided with the exception request is included as Exhibit 6. The applicant requested exceptions to allow a fence taller than three feet in the required street-side setback, traffic view area, and driveway view area (Exhibit 7). Their letter cites a security concern, limited rear yard area, and a safety concern as justifications for the exception request.

As detailed in the following discussion, the Community Development Director was unable to make the findings required for granting an exception. On September 11, 2024, the Community Development Director denied the exception request as none of the required findings per Town Code Section 29.40.0320 could be made (Exhibit 8).

On September 23, 2023, the property owners appealed this decision to the Planning Commission (Exhibit 9) and provided a revised Letter of Justification for the fence height exception (Exhibit 10).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located at the southwest corner of Westchester Drive and Adrian Place, one block south of Los Gatos-Almaden Road and one block north of Blossom Hill Road (Exhibit 1). All surrounding properties are zoned for and developed with single-family residential uses.

B. Project Summary

The property owner is appealing the Community Development Director's decision to deny a fence height exception request to allow the construction of a six-foot-tall fence in a location within the required street-side yard setback and traffic view area along Adrian Place.

DISCUSSION:

A. Fence Height Exception

The subject fence comprises approximately 102 linear feet of unspaced wood fencing along Adrian Place (Exhibits 7 and 11). The fence generally meets the Town's Residential Design Guidelines for appropriate material and design; however, there are no other homes on Adrian Place, a cul-de-sac, that have fences within the required setbacks.

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 setback 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 setback, traffic view area, and driveway view area (Exhibit 4).

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 exists.

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.*

In their Letter of Justification provided with the exception request, the property owner cited conditions (b)(1) related to a privacy concern, (d) related to a security concern, and (e) related to a special circumstance to justify the fence height exception request (Exhibit 6).

For condition (b)(1), staff could not support the exception as subsection (b) only applies to the side and rear fences on interior lots. The subject property 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 applicant indicated that the fence is needed to address a safety concern related to heavy pedestrian traffic including aggressive pets that would not be addressed by a compliant fence in the same location. After considering the applicant's concerns, staff could not support the exception request under condition (d).

For condition (e), the applicant indicated that the corner lot configuration and existing grade changes result in a limited rear yard area (Exhibits 10 and 11). Staff could not support the exception request under condition (e) since most backyard configurations for corner

lots have similar limitations, and the subject property does not constitute a “special circumstance” under this finding for a fence height exception.

On August 20, 2024, the Town's Senior Traffic Engineer provided an analysis of the six-foot-tall fence, concluding that the portion of fence located in the driveway view area obstructs the line of sight of the sidewalk and is not acceptable from a traffic safety perspective (Exhibit 12). For this reason, the Town Traffic Engineer could not support the exception request.

On August 26, 2024, the Town received a revised fence plan showing a modified portion of the fence to comply with the driveway view area (Exhibit 13).

On September 11, 2024, the Community Development Director denied the exception request as none of the required findings per Town Code Section 29.40.0320 could be made as detailed in the summary above (Exhibit 8).

On September 23, 2023, the property owners appealed this decision to the Planning Commission (Exhibit 9) and provided a revised Letter of Justification for the fence height exception (Exhibit 10).

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 Community Development 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/property owner meets the requirements.

B. Appeal Analysis

The property owner provided a revised Letter of Justification with their appeal (Exhibit 10); however, this letter does not provide any additional or new information supporting the appeal for the Town or Planning Commission to consider.

As reflected in Exhibit 13, the property owner has indicated to staff their willingness to modify the fence to comply with the driveway view area, since the Senior Traffic Engineer identified this portion of the fence as a safety concern from a traffic safety perspective. Staff included a condition to modify the fence to comply with the driveway view area if the appeal is granted (Exhibit 3).

Regarding the traffic view area, staff coordinated with the Senior Traffic Engineer who confirmed that the fence's location in the traffic view area is not a traffic safety concern since the approach speeds of vehicles is limited and there will be sufficient sight distance (Exhibit 12).

The analysis conducted under the fence height exception request detailed above remains applicable since additional or new information was not provided. Additionally, the findings for an exception could not be made.

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.

PUBLIC COMMENTS:

Written notice was sent to property owners and residents 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 appealing the Community Development Director's decision to deny a fence height exception request to allow the construction of a six-foot-tall fence in a location within the required street-side setback and traffic view area along Adrian Place.

B. Recommendation

Staff recommends that the Planning Commission deny the appeal and uphold the Community Development Director's 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.

PAGE 7 OF 7

SUBJECT: 108 Westchester Drive/FHE-24-003

DATE: November 8, 2024

EXHIBITS:

1. Location Map
2. Required Findings
3. Recommended Conditions of Approval if Appeal is Granted
4. Traffic View Area Diagrams
5. Administrative Citation (VL-24-329)
6. Letter of Justification, Received July 16, 2024
7. Site Plan from Applicant
8. Fence Height Exception Denial Letter, Dated September 11, 2024
9. Appeal of the Community Development Director Decision, Received September 22, 2024
10. Revised Letter of Justification, Received September 22, 2024
11. Pictures of Subject Property
12. Analysis by Town Senior Traffic Engineer
13. Modified Site Plan from Applicant

***This Page
Intentionally
Left Blank***