

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S:

Los Gatos Planning Commissioners:
Jeffrey Barnett, Chair
Steve Raspe, Vice Chair
Susan Burnett
Kylie Clark
Melanie Hanssen
Kathryn Janoff
Emily Thomas

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Gabrielle Whelan

Transcribed by: Vicki L. Blandin
(619) 541-3405

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S:

CHAIR BARNETT: We will now move into the public hearing portion of our agenda and consider Agenda Item 2, which is the consideration of an appeal of the Community Development Director's decision to deny a Fence Height Exception request for construction of an automated vehicle gate exceeding the maximum height and with reduced setbacks on property zoned R-1:8, located at 380 Blackwell Drive, APN 424-12-027, Fence Height Exception Application FHE-23-002. Property owners are Larry Cesnik and Martha Johnson, and the Appellant is Larry Cesnik. The Applicant is Ramin Zohoor, and the project planner is Sean Mullin.

I note that the Staff indicates that the appeal tonight is categorically exempt from CEQA under Section 15303(e), New Construction or Conversion of Small Structures, and that if the appeal is granted tonight a finding is required to be made regarding the application of an exception to the Town's Fencing Ordinance.

May I have a show of hands by the Commissioners who have visited the property? Thank you. Are there any disclosures? I don't see any. Mr. Mullin, why don't we proceed with your Staff Report, if you will?

1 SEAN MULLIN: Thank you, and good evening. For
2 your consideration tonight there is an Appeal of a
3 Director's Decision denying an exception to the fence
4 regulations for a new vehicular gate at 380 Blackwell
5 Drive.

6 Located on the corner of Blackwell Drive and
7 National Avenue, the subject property is with a single-
8 family residence and an attached ADU. Existing
9 nonconforming fencing encloses the outdoor spaces on the
10 property except for the driveway area.

11 The property owner installed a sliding vehicular
12 gate at the front property line without the benefits of
13 permits to enclose the driveway area, and the property
14 owner was contacted by the Town and requested to submit a
15 Building Permit for this vehicular gate.

16 During review of that permit application Planning
17 Staff noted that the vehicular gate exceed the 3' height
18 limitation for gates located in the required front yard
19 setback area and the traffic view area and does not meet
20 the required 18' setback as measured from the edge of the
21 street.

22 On February 6th of this year the property owner
23 applied for a Fence Height Exception for the vehicular
24 gate. The Letter of Justification cited safety concerns
25

1 related to the illness of a child residing on the property
2 and the need to prevent them from stepping off the
3 property. Staff was unable to make the required findings to
4 grant the exception and on March 6th the Town denied the
5 request, recognizing that the property is already enclosed
6 by existing fencing and gates except for the driveway area,
7 and that the vehicular gate creates unsafe conditions
8 caused by the gate lacking the 18' setback and its
9 proximity to the intersection of Blackwell and National. On
10 March 8th the property owner appealed this decision based on
11 the justification provided with the exception request.
12

13 Staff's analysis finds that the reduced setback
14 of the gate would not allow for vehicles to clear the
15 travel lanes while queuing, potentially obstructing traffic
16 on Blackwell Drive near the intersection of National
17 Avenue. The added queue time adjacent to the intersection
18 is considered a nuisance and an unnecessary risk.

19 Based on the analysis provided in the Staff
20 Report, Staff recommends denial of the appeal, upholding
21 the decision of the Director to deny the exception to the
22 fence regulations.

23 A Desk Item was distributed this afternoon that
24 includes additional information related to the safety
25 concerns of the property owner.

1 In addition to Planning Staff, Engineering Staff
2 is also in attendance tonight to address any questions of
3 the Commission, and this concludes Staff's presentation.

4 CHAIR BARNETT: Thank you, Mr. Mullin. I'll turn
5 to the Commissioners and ask if anyone has a question for
6 Staff? Commissioner Hannson.

7 COMMISSIONER HANSSEN: Thank you; that was very
8 helpful. I noted in Exhibit 8 that the gate is 13' and a
9 few inches into the property, so if the gate were moved
10 back 5', would they be allowed to have that height of a
11 gate?
12

13 SEAN MULLIN: Thank you for the question. The
14 gate, even if moved back 5', would still be located in the
15 required front yard setback area which has a height
16 limitation of 3', and it would also be limited in the
17 traffic view area which is measured from the adjacent
18 corner of National and Blackwell.

19 COMMISSIONER HANSSEN: Thank you.

20 CHAIR BARNETT: Other questions of Staff at this
21 time? There will be an opportunity later, of course. We'll
22 now open the public portion of the public hearing and give
23 the Applicant an opportunity to address the Commission for
24 up to five minutes. Who will be speaking for the Appellant
25 tonight?

1 LARRY CESNIK: That will be me.

2 CHAIR BARNETT: Thank you. If you'll state your
3 name and address, please.

4 LARRY CESNIK: Thank you, ladies and gentlemen of
5 the Planning Commission and Chair. My name is Lawrence
6 Cesnik; you can call me Larry. I am the resident at 380
7 Blackwell Drive here in Los Gatos, and I really want to
8 keep this fairly brief, but obviously open to any questions
9 you've got.
10

11 I think my major theme here is safety, not only
12 for our son but also of the citizens of the Town of Los
13 Gatos. Again, the request for the exception is for safety
14 reasons: the safety of our young adult son, Martin. There
15 are a couple of points that are real important to bring up
16 here.

17 Number one, and you'll see a photo in a minute,
18 the ADU that's on the property directly faces the driveway
19 and the street, and actually across the street, as you may
20 have seen for those who have gone there, is a tower area.
21 Our son, who has a condition of autism, has very low safety
22 awareness and he does need to be watched when he's outside.
23 He is also a very physical guy—he's at summer camp right
24 now, he's having a great time—but he does move quickly, and
25 so he can quickly reach the sidewalk, he can reach the

1 street and that electric tower area without a barrier, so
2 that's actually why we built the gate, because we need that
3 gate to prevent any kind of unexpected bolting. So that's
4 safety for him, our son, Martin.

5 Also it's safety of the citizens of Los Gatos,
6 because if indeed he were to get out into the street area
7 or the sidewalk area obviously there are motorists there,
8 there are pedestrians there, and there are cyclists and
9 pets and so forth, so it's not just for his own safety but
10 I think the safety of the people and animals that would be
11 walking or driving by.

13 Just to give you a sense, some of you have been
14 out to the property already, but you can see where the gate
15 is. Obviously it's open, it's not closed now, but if closed
16 it would block that driveway which leads to the sidewalk
17 and into the street, and then the right side view is out
18 towards the street and that yard area around the electric
19 tower near the intersection of Blackwell and National
20 Avenue. That gives you a visual sense of it.

21 Here we have a letter from Martin's primary care
22 physician, Doctor Chaudry. It's a little bit small font to
23 read here, but it's in the record. Essentially what she is
24 saying here is he does have this condition. A lot of folks
25 with this particular condition don't necessarily have a

1 high safety awareness. We're really working on it a lot,
2 but it's something we just cannot fully control, and so
3 this is our way of saying hey, can we put a barrier there
4 of some kind that will at least slow him down.

5 The next couple pages are just some excerpts.
6 He's a client of the San Andreas Regional Center and he,
7 like other consumers there, has an individualized program
8 plan. We're not going to show the whole plan, there's a lot
9 of private information in there, but what we've highlighted
10 in yellow is the word "safety," because it comes out a lot
11 of times in terms of that's an issue. So that's an issue
12 that he has, it's an issue that we're working on; it's an
13 issue that we're setting goals for him to try to achieve.
14 Nonetheless, it's a long process; it's a lifelong process
15 for him to get there. I think the second page has some
16 additional plans and goals in his individual program plan.

17 We have other documentation. As a student he's
18 now working in an adult day program in San Jose, but
19 through his non-public school career at a couple of schools
20 in Redwood City and in Santa Cruz, that's also been on his
21 individualized educational plan, his IEP.

22 I think those are really all of my comments. I'm
23 very happy to answer questions, but again, it's two-fold
24
25

1 safety: safety for our son and safety for citizens of the
2 Town.

3 CHAIR BARNETT: Thank you very much, Mr. Cesnik,
4 and I'll turn to my fellow commissioners to see if they
5 have any questions of you. Commissioner Hanssen.

6 COMMISSIONER HANSSEN: I was just curious; the
7 fence is about 4' or so. What's preventing your son from
8 going over the fence?

9 LARRY CESNIK: It's a great question. There's no
10 solution. We can't put up a 20' fence obviously. He is a
11 physical guy, but it's really not... The assumption here is
12 that there's going to be someone on the property. He will
13 never be at home by himself, and so it's actually to
14 prevent him from doing a bolt when an adult may be right
15 around the corner there. But if he had a fence that was
16 taller and he tried to climb it, yes, that might slow him
17 down a little bit more, but having a fence there of that
18 size and magnitude will at least have him stop and think,
19 slow him down enough so that an adult can get there.

20 COMMISSIONER HANSSEN: Have you had any instances
21 where he was able to climb over the fence?

22 LARRY CESNIK: No, no. As a matter of fact, he
23 hasn't lived on this property a very long time, one of the
24 reasons being we have another property that we're
25

1 transitioning out of as well, so we're residents to Los
2 Gatos. One of the reasons, frankly, that he hasn't full
3 time come to there is because we still haven't resolved
4 this issue, but in other properties that we've had we've
5 had similar setups. Again, we've been able to use those
6 kinds of, let's call demotivators, to prevent him from
7 going too far, whether it's a gate or similar kind of
8 barrier.

9
10 COMMISSIONER HANSSEN: Okay, thank you.

11 CHAIR BARNETT: Thank you for that comment.

12 Commissioner Janoff.

13 COMMISSIONER JANOFF: Thank you. I'm curious
14 about the purpose of the vehicular gate. The ADU doesn't
15 have any driveway-facing windows or doors or access, so
16 it's just a plain wall, so effectively the driveway is a
17 parking area. You have a fence with a gate that tees into
18 the corner of the ADU that faces National Avenue, and you
19 have one that comes parallel to the street that the
20 driveway accesses on, so that's containing your property
21 along with the perimeter fences, so my question is what's
22 the purpose of the gate? What's the use of that area, and
23 what are you trying to achieve?

24
25 LARRY CESNIK: I think two things. Primarily the
reason for the gate is, again, for the safety of our son,

1 and what I would say is yes, it doesn't look like there's a
2 clear path from the ADU right to the street, but in reality
3 there is. We actually did not put a door or window in that
4 front for that... We wanted to make it as safe as possible.
5 There is a door around the side which you can't see in that
6 photo very well, but it's really quick for him to come down
7 there, so essentially even though he can't break through
8 the wall and go right out there, it's just a few feet more
9 for him to be able for him to access it, so that's the
10 first reason. It is actually those several feet that the
11 gate would enclose that is the only open area around our
12 property now. So, yes, we do have the picket fence and
13 other features there. So it's the area that actually is
14 close, it's open; it's actually the closest to the ADU,
15 even though it's sort of a side entrance.
16

17 The second reason is the reason we are not asking
18 for (inaudible), because we are adults that live and work,
19 and so we actually do need to get our cars. You're right,
20 we do park our cars there, that was a garage that the ADU
21 is now, but we need to actually get back and forth, so it
22 was our practical solution to be able to open it up only
23 when we need to get in and out and keep it closed the rest
24 of the time.
25

COMMISSIONER JANOFF: Thank you.

1 CHAIR BARNETT: Other questions by Commissioners?
2 Vice Chair Raspe.

3 VICE CHAIR RASPE: Thank you, Chair. Mr. Cesnik,
4 first of all, thank you for coming this evening and sharing
5 information. I know it's difficult sharing information, but
6 thank you, it makes our decision making all that much
7 better.

8 LARRY CESNIK: Sure.

9 VICE CHAIR RASPE: Really I think we're
10 considering two things here tonight, both the height of the
11 fence and the location of the gate as well.

12 As to the location, is there a way you could move
13 the gate back approximately 5', as Commissioner Hanssen
14 said, still retain a closed off area, but allow enough room
15 that cars could queue without sticking out into the street?
16 Essentially, could you move the gate back 5'?

17 LARRY CESNIK: I think the answer is almost
18 anything is possible architecturally. We'd have to talk to
19 our builders, our architects, so I can't answer the
20 details. Conceptually I think that's possible.

21 May I ask the Commissioners a question to make
22 sure I understand the idea of the queuing, because that's
23 not what I'm totally clear on? Is it okay for me to ask
24
25

1 that question, or not? I want to follow protocol here, so I
2 can fully answer your question.

3 CHAIR BARNETT: I think he can clarify the
4 question.

5 VICE CHAIR RASPE: So my understanding of the
6 queuing is we need enough room, or the Town wants—and
7 Staff, please correct me if I'm wrong—while the gate is
8 opening, the Town is trying to avoid any portion of the car
9 backing out into the street, because the gate is a slow-
10 opening gate in most instances, and the concern is that the
11 remainder of the car stays in traffic while the gate is
12 opening, and as a result the Town has instituted, I
13 believe, an 18' setback to avoid that circumstance, and
14 your gate is currently in violation of the 18' setback. Do
15 I have that about right? So if you move the gate back to
16 that 18' mark, it would solve one of your problems.

17 LARRY CESNIK: Thank you; that helps clarify it.
18 To me one of the other logical solutions would be, if I'm
19 understanding correctly and not being a person who is
20 necessarily in a hurry to get out, would be to make sure
21 the gate is fully open before even trying to back the car
22 out. To me, that would simulate how I would back the car
23 out if I didn't have a gate at all. Is that logical?
24
25

1 VICE CHAIR RASPE: I appreciate your answer.
2 Thanks so much.

3 CHAIR BARNETT: Commissioner Clark, you have your
4 hand up.

5 COMMISSIONER CLARK: Thank you. I'm sorry that
6 I'm on Zoom; I wish I were there in person.

7 LARRY CESNIK: No problem.

8 COMMISSIONER CLARK: I have two questions. First,
9 I was just wondering, how long have you had the gate?
10

11 LARRY CESNIK: The gate has been there for I
12 think at least a year. I don't know the exact amount of
13 time but whenever we received the violation, and the
14 Commission probably has a closer idea, but many months ago,
15 it's been there but it's obviously been open; it hasn't
16 been functioning. Maybe the Commission could help, or the
17 Town can help with the dates. Probably around a year or
18 more.

19 COMMISSIONER CLARK: Okay, thank you. Then my
20 second question is how often is the gate open versus
21 closed? I know when I did my site visit it was open, and
22 it's open in those pictures.

23 LARRY CESNIK: Right now, unless someone has a
24 magical way to get to our control, 100% of the time,
25

1 because we're trying to comply with the notice that we
2 received.

3 COMMISSIONER CLARK: Okay, got it. Thank you.

4 CHAIR BARNETT: Further questions? Commissioner
5 Burnett.

6 COMMISSIONER BURNETT: Thank you for coming
7 tonight. I think my biggest concern is National Avenue is a
8 fairly well traveled road, and if you're turning onto your
9 street and you are parked there to go into your driveway
10 and the gate is closed, the average length of a car I think
11 is like 1.5'-16', so part of the car would be in the
12 roadway, and I think that's my concern that as cars are
13 coming around the bend you're wanting to go into your
14 driveway, the gate is closed, you're waiting, and there's
15 traffic coming by and you're in the roadway. How would you
16 answer that?
17

18 LARRY CESNIK: I understand the question, thank
19 you. I would answer it using the same approach I mentioned
20 to the Vice Chair, which is the control does have quite a
21 bit of distance on it, and we as the homeowner, if we're
22 granted this exception, could commit to practicing the
23 following. Like I said a few minutes ago regarding leaving,
24 waiting until it is fully open, and when we're entering we
25 could activate the gate at a distance, and it's got a

1 pretty good distance on it, so that it would be fully open
2 before we arrive there, thus avoiding the backup that
3 you're expressing.

4 CHAIR BARNETT: You have a further question?

5 COMMISSIONER BURNETT: Yes, thank you, further
6 question. So if you had a visitor that didn't have an
7 automatic gate opening or they had to wait there and didn't
8 have the quick access that you have, how would you handle
9 that?
10

11 LARRY CESNIK: At this point, given the
12 logistics, we do not have a lot of space for guests anyway,
13 so we would be asking them to park on the street or make
14 other arrangements, but that would be the normal process
15 just because it's complicated.

16 COMMISSIONER BURNETT: Thank you.

17 CHAIR BARNETT: Other questions? Commissioner
18 Thomas.

19 COMMISSIONER THOMAS: Yes, thank you for coming
20 and sharing all of this information tonight. I really do
21 appreciate it. I feel like you've been very thorough and it
22 is well appreciated.

23 My question is just that if a special security
24 concern does exist, which I think that's part of what
25 you're presenting tonight, do you feel like you've explored

1 other options for it to be practically addressed in another
2 way?

3 LARRY CESNIK: I think we are using other options
4 in conjunction with the one that we're requesting. I think
5 as parents of a child with special needs, many of the
6 actual requirements, we simply cannot depend on just this,
7 a barrier, to help out. There are many things that we need
8 to do, which kind of gets to the program he's working on,
9 the encouragement of him doing the kind of behaviors, and
10 just, frankly, being alert.

11
12 So the answer is yes, it's been sort of a
13 lifelong work that we've been doing and this is part of the
14 package that we're hoping for the safety of him and the
15 citizens.

16 COMMISSIONER THOMAS: Okay, thank you.

17 CHAIR BARNETT: Commissioner Hanssen.

18 COMMISSIONER HANSSEN: I just wanted to follow up
19 on Commissioner Thomas' question. I think the spirit of
20 that exception which would allow us to grant an appeal is
21 not that you're using other things in conjunction with the
22 gate, but that there was no other way to secure your son's
23 safety other than by having this gate.

24 Just to give an example, one thing that crossed
25 my mind in looking at this was because there are fences in

1 a lot of places on the property is there no way to lock the
2 gates to keep him from entering the driveway? That's the
3 kind of thing that we would need to understand. Is there no
4 other way to keep him from entering the driveway?

5 LARRY CESNIK: In my opinion, no practical way. I
6 suppose there are always ways, and obviously we'd be open
7 to creativity and doing that, but he is our son who has the
8 right to enjoy the property as well, and so we don't want
9 to restrain him to the point that his liberty is lost,
10 because it is the fine balance between being able to have
11 him safe but at the same time feeling like he's a member of
12 the family and a member of the community. That's why I'm
13 saying there could be other ways; they probably wouldn't
14 feel in the spirit of how we want to be treating our son.

16 COMMISSIONER HANSSEN: I understand that. Can I
17 ask a follow up question? What is the utility of the
18 driveway to him or to anyone else other than to have cars
19 parked there?

20 LARRY CESNIK: More ADU owners like ourselves are
21 using the driveways more to park cars than typical
22 families, because we've eliminated the garage as a space
23 there, so that's the utility of it for our family. One of
24 the practical examples of how this presents a problem to us
25

1 is that he has to go to his adult day program every day, he
2 has go places.

3 We do, by the way, love the park down the street.
4 One of the reasons we chose the neighborhood is it's an
5 incredible neighborhood for walking and we can walk to
6 places, so we definitely will take advantage of that.

7 Obviously, more times than not when we're leaving
8 the house we're not going for a walk, we're getting into
9 the car, and so on the way to the cars is actually part of
10 the concern. We'll be very careful there, but that's
11 probably a lot of the reasons for that. He doesn't really
12 have a lot of interest, if I understand your question, of
13 going to the driveway per se; it's sort of a launching pad
14 to where he's going next.

16 COMMISSIONER HANSSEN: I understand, thank you.

17 CHAIR BARNETT: Commissioner Janoff.

18 COMMISSIONER JANOFF: Just to clarify. It sounds
19 like what your need for your son is a secondary form of
20 containment, especially during the times when you have a
21 vehicular transfer for your son.

22 LARRY CESNIK: Yes, that's it exactly. Thank you.

23 CHAIR BARNETT: All right, if there are no more
24 questions, I don't see anyone in the audience, or we still
25 don't have anyone on Zoom, Mr. Paulson? So this would be

1 the opportunity for members of the public who want to speak
2 on Item 2 on the agenda, and I don't think we have any such
3 people, so we'll move on and give the Appellant another
4 three minutes if you choose to do so.

5 LARRY CESNIK: Thank you for setting the agenda
6 in advance. I didn't prepare anything necessarily, because
7 I thought my opening remarks on sort of the safety focus
8 was clear, and so I just wanted to say that we're actually
9 fairly new residents of Los Gatos, we're trying to be good
10 citizens. We've invested, I think, well in the property to
11 hopefully make it a good place for us and our neighbors,
12 and getting to know those neighbors. Just being able to
13 have this ability to have an extra layer of security will
14 be great for us as we continue to enjoy all the good things
15 Los Gatos has to offer. That's it.

17 CHAIR BARNETT: Thank you for those comments.
18 We'll now close the public portion of the public hearing
19 and ask if any Commissioners have questions of Staff, wish
20 to comment on the appeal, or introduce a motion for
21 consideration by the Commission? Commissioner Janoff.

22 COMMISSIONER JANOFF: I'll kick things off. I
23 think it's clear from the Appellant's statements made
24 tonight that what he's looking for for his family is that
25 secondary containment, and it's really clear to me that the

1 gate needs to contain a vehicle in order to make a safety
2 transfer for the son in particular, so my thinking is that
3 the gate is necessary.

4 The positioning of the gate poses problems for me
5 because of the 13' off Blackwell. Even if you're quick to
6 the handle there still is a possibility that you're going
7 to be hanging out there while other cars are coming
8 through, and because of the nature of the intersection
9 you've got that teardrop parklet that prevents you from
10 making a left turn into the driveway, which would be
11 perhaps safer because you wouldn't be potentially
12 obstructing traffic from National Avenue.

14 My thinking at this time is that I would be in
15 favor of approving a gate but asking that it be moved to
16 the 18' mark, even though that creates a setback intrusion
17 on the front of the house. I think that the height of the
18 gate, given the size of the individual, is reasonable. So,
19 again, my thinking is if the same gate and functioning and
20 all can be moved back to create a safer ingress from
21 National onto Blackwell into the driveway, that would be a
22 recommendation I'm thinking is a reasonable one at this
23 time.

24 CHAIR BARNETT: Thank you for that. I actually
25 have a question for you. If the gate were moved back toward

1 the face of the ADU, would you envision additional fences
2 on each side of the driveway as part of that?

3 COMMISSIONER JANOFF: Well, only on the left
4 side, because there's a continuous fence from the sidewalk
5 to the corner of the ADU already, so it would just be you'd
6 need a 5' fence on the left side of the drive.

7 CHAIR BARNETT: Thank you. Other comments? Vice
8 Chair Raspe.

9 VICE CHAIR RASPE: Thank you, Chair. I join 100%
10 with Commissioner Janoff's comments. First off, with
11 respect to fence height, I understand that this fence is
12 4'-3", which is higher than the 3' allowed, but again, in
13 this situation there are security concerns that I think are
14 alleviated with a slightly higher fence, and it seems to me
15 that the purpose of the fence height is to preserve view
16 corridors, and the nature of this fencing is such that you
17 can see clearly through the fence, I don't think it's
18 obstructive in any way, so I would permit the higher fence
19 on the gate.
20

21 Then with respect to the gate, again, I believe
22 it's a security concern that we should allow a gate, but
23 the location is problematic. Pushing it back to the 18'
24 setback I think solves the issue. I think it's achievable
25 with one change, pushing it back with the fencing on one

1 side, and I think that addresses the safety concerns for
2 the Applicant and the safety concerns for the drivers of
3 Los Gatos, so I would join Commissioner Janoff in her
4 recommendations.

5 CHAIR BARNETT: Thank you for that input.
6 Commissioner Hanssen.

7 COMMISSIONER HANSSEN: I have a question for
8 Staff. The exception that we're discussing for the special
9 security concern, did you in your analysis consider that as
10 a possible exception? You said you couldn't make the
11 findings. I'm just trying to understand what was thought.
12

13 SEAN MULLIN: Thank you for the question. Under
14 review of the original Fence Height Exception Staff wasn't
15 provided the level of detail on Mr. Cesnik's son, so we
16 were just presented with, as you can see in the
17 application, that the son had an illness and what was
18 looked at was the majority of the property was fenced and
19 it was just the driveway area.

20 COMMISSIONER HANSSEN: Very good. Can I also make
21 a comment then? I actually worked on the Fence Ordinance,
22 and I believe Commissioner Janoff was on the Commission
23 with me as well, and to me this seems like a valid
24 exception for the safety concern, and especially we
25 appreciate all the information that you shared, and it's

1 not easy to share all that information about your child, so
2 we totally appreciate that to help understand the
3 situation.

4 Having said that, I think it's reasonable to make
5 the exceptions on the grounds of the special secure
6 concern, and it doesn't appear to me that there is another
7 alternative without the vehicular gate.

8 Having said that, I also see the concern—and
9 we've seen this before on some other applications—with the
10 18', it is a very dangerous area around there. Not maybe
11 Blackwell, but National Avenue per se is always very busy,
12 so I would concur with my fellow commissioners that I think
13 that moving the gate back needs to be looked into, but I
14 don't think it's problematic to keep a gate that's 4'-3"
15 high, because the whole reason for the security is to keep
16 the son safe and there's no reason we can't go an extra
17 foot.

18
19 CHAIR BARNETT: Thank you. Other comments,
20 questions, motion? Commissioner Thomas.

21 COMMISSIONER THOMAS: I agree with my fellow
22 commissioners about the height, but I did have a question
23 for Staff about the parking on that street. I know
24 obviously on the corner there's a red zone to protect the
25 view area, but then from the red zone in front of this

1 property—on Blackwell, not on National—is there parking?
2 Right in front of that area is there parking, or is the
3 street parking farther down?

4 SEAN MULLIN: Thank you for the question. I
5 believe street parking is allowed past the red zone. The
6 Town Engineer, Gary Heap, is available. He may be able to
7 add some clarification.

8 CHAIR BARNETT: Why don't we hear from the
9 engineer in light of that comment?
10

11 GARY HEAP: Thank you very much. Gary Heap, Parks
12 and Public Works. In looking at the aerial of the street
13 view right now. I do see the red curbing there that is in
14 existence from the corner to the driveway approach; I
15 believe that is there to protect the fire hydrant that is
16 there. If the fire hydrant were not there, parking would be
17 allowed in that area, both on either side of the driveway,
18 but right now because the hydrant is there parking is only
19 allowed on the west side of the driveway.

20 COMMISSIONER THOMAS: Okay, thank you. I do have
21 some follow up comments then about that.

22 CHAIR BARNETT: Please proceed.

23 COMMISSIONER THOMAS: Okay, thank you. I
24 understand my fellow commissioners' concerns about the 18'
25 to allow for the traffic, but when I was at the site and

1 seeing the red area and seeing the ability to pull a car
2 over to wait for the gate to open I am inclined to feel
3 like it is kind of an undue hardship to require this to be
4 set back. I don't know if there's truly an added safety
5 benefit that is considered practically addressed,
6 considering I understand that the fence is there, so I am
7 struggling with that a little bit I guess is what I'm
8 saying.

9
10 I understand that maybe that's not how we can
11 necessarily even approach this, but I do think that I agree
12 with everyone about the height of the fence. I do think
13 that the way that it's built and structured you can see
14 through it. I don't have a ton of safety concerns or
15 anything like that, and I completely understand how the
16 additional physical barriers are something that is very
17 important to the safety, so I think that we're all on the
18 same page it sounds like with considering for the height
19 and special security concerns that exists, but I am kind of
20 curious to hear a little bit more about why we're feeling
21 like the fence needs to be moved back that 5'.

22 CHAIR BARNETT: I'd like to ask the Public Works
23 Director to comment on the visibility issue if the gate is
24 not moved back.
25

1 GARY HEAP: Gary Heap, Town Engineer, Parks and
2 Public Works. It's not really a visibility standpoint; it's
3 a circulation standpoint. The purpose of the code is so
4 that we don't have vehicles hanging out into the travel
5 lane when there's a lane right adjacent to the curb, which
6 is not the case here. So, yes, it is in violation, and yes,
7 the vehicle waiting or queuing there would hang out, but
8 it's within the limits of what the parking area would be.
9 Does that answer your question?

10
11 CHAIR BARNETT: Yes, it does, thank you.

12 COMMISSIONER THOMAS: Can I just follow up with
13 that then? That was my assumption that that was the thing,
14 so the car would hang out into like where a parked car
15 could be. I guess if my understanding is that, my problem
16 is if a car can park there, then people whipping around the
17 corner from National Avenue could run into the back of the
18 car just as easily as they could run into the back of a car
19 pulling into the driveway from my perspective, but maybe
20 I'm wrong.

21 CHAIR BARNETT: Commissioner Janoff has her hand
22 up.

23 COMMISSIONER JANOFF: Just to clarify, the
24 special security that I would be willing to find for is
25 related to Mr. Cesnik's son's needs on the other side of

1 the gate, not so much the public's safety requirements. So
2 in terms of making the finding to allow for the exception,
3 that's where my thoughts go. So I think we can all agree
4 that a vehicular gate is necessary.

5 The reason to move it back the 15' is to allow a
6 vehicle to clear Blackwell fully as it's waiting for the
7 gate to open, and the circumstance that comes to my mind is
8 this: it seems likely to me that transport might be in the
9 form of a van; that's often the type of transport for
10 individuals. A van is larger than an mini coup or a small
11 car or small sedan, it's a larger vehicle, and that is
12 likely to be hanging out into the travel lane on Blackwell,
13 and that's the issue that I'm seeing that public works is
14 alerting us to the need for the 18'. So we create the 18'
15 depth from the sidewalk or the property line, whatever the
16 measurement point is, inward. We allow for 18' there so a
17 vehicle can be on property and not in the travel lane. The
18 gate can open, the vehicle moves in and there's plenty of
19 space on the other side of the new location of the fence,
20 should it be moved, for that vehicle to park, they get to
21 close, and Mr. Cesnik's son would be safely able to board
22 the vehicle.
23

24 So the 18' for me is how to keep a vehicle from
25 hanging out in Blackwell for the length of time that it

1 takes the gate to open, understanding that there may be
2 occasions when you're expecting the vehicle and you might
3 have the gate open, but there may be times when you don't
4 or you forget, and so I think we need to be cognizant of
5 the reason why we have the 18' foot requirement, and it
6 does seem to be a requirement that can be satisfied at the
7 same time the Appellant's needs are being satisfied.

8 CHAIR BARNETT: Thank you. Any further comments?
9 Commissioner Thomas.

10 COMMISSIONER THOMAS: I agree and understand, but
11 my understanding from what the Town Engineer just said is
12 that because there's no bike lane the lane is not clearly
13 defined on this street, because it's just a wide
14 residential street where you're able to park on the side of
15 the street. My understanding is because the sidewalk is so
16 big and there's the little parklet area, it's like sidewalk
17 and then planting area, then parking, and then travel lane,
18 it seems like there is enough space for a car to queue and
19 not be hanging out, because I agree that is a concern.

20 CHAIR BARNETT: Commissioner Janoff.

21 COMMISSIONER JANOFF: I think the issue is that
22 there is only 13' available with the present location of
23 the gate and that's probably not sufficient to accommodate
24
25

1 the range of vehicles that might be traveling in this
2 space.

3 COMMISSIONER THOMAS: I do want to clarify this,
4 because I think the 13' is from the gate to the actual
5 street, correct? Because then there was a car parked beyond
6 that, so if a van is 16' long, that's hanging out
7 into...which is clearly like very close... I mean how wide is a
8 typical car?

9 SEAN MULLIN: One thing I can offer that might
10 help is that the 13' measurement and the 18' measurement is
11 taken from the edge of the street. That's where the asphalt
12 would meet the face of the curb, so you're right in that
13 from there there would be some area that would be
14 designated for parking and then the actual vehicular travel
15 lane. And again, the Town Engineer may be able to expand on
16 that more eloquently than I.

17 CHAIR BARNETT: Commissioner Hanssen.

18 COMMISSIONER HANSSEN: I'm trying to think of the
19 right way to say this. We've had a number of times in
20 hearings over time where we bring in Parks and Public Works
21 or some outside expert, and so my personal philosophy on
22 this as a Planning Commissioner is that I would never
23 second guess the judgment of our Town Engineer to determine
24 what's safe and not safe in terms of the distance, and
25

1 that's why I would leave it to them to say if 18' is the
2 number, then 18' is the number that we need to be safe. For
3 me personally, I wouldn't want to second guess and try to
4 figure out ways around it. I think it's best to rely on the
5 expertise of our Parks and Public Works, because they own
6 the responsibility for making sure things are safe.

7 CHAIR BARNETT: Commissioner Burnett and then
8 Commissioner Thomas.

9 COMMISSIONER BURNETT: Thank you, Chair. Again,
10 my concern is National Avenue. This is a rounded corner,
11 and when cars are coming around they would tend to be
12 closer to the curb. Because of the configuration of it,
13 it's not like a square corner that you come at an angle, it
14 would be more rounded, which I would feel it would be even
15 more dangerous to have a car that's 3' out into the roadway
16 waiting to go in, so I would support Commissioner Janoff's
17 and Vice Chair Raspe's feelings on this.

18 CHAIR BARNETT: Thank you. Commissioner Thomas.

19 COMMISSIONER THOMAS: Thank you, and I do agree
20 that we need to listen to the Town Engineer, so I would
21 like to know what he has to say, because you did mention
22 that the spirit of the best regulation is that we have this
23 much space, but do you feel like where the fence is right
24
25

1 now allows for enough space to maintain safety in the
2 spirit of the regulation?

3 GARY HEAP: What I had stated earlier is the code
4 says 18'. My professional judgment is there are a number of
5 factors that go into it. The parking lane itself is
6 typically 8' in width. Given the 2' gutter pan, you're
7 looking at 6' there between basically the lip of the gutter
8 and where the parked car could park. We've got an
9 encroachment potentially of a little over 4.5' into that
10 area. National Avenue has a lot of traffic. I don't know if
11 the side street necessarily has a lot of traffic.
12

13 I don't know about the frequency that we have
14 actually in terms of the use of the gate on a daily basis.
15 Is it once a day, twice a day, or every couple of days? I
16 don't know the frequency of that; maybe that's a question
17 for the Applicant.

18 In terms of some protocols, in terms of opening
19 and closing that gate, certainly exiting I don't see as an
20 issue. Entering is the problem. They could queue in another
21 area, they could queue in the front, they could queue in
22 the red zone for that matter while the gate is opening and
23 then swing in. I don't get a sense that there's a huge risk
24 or safety issue with the vehicle that's hanging out within
25 the parking lane for a limited amount of time, again based

1 on the speed of that gate and how fast it opens; I'm not
2 aware of what the foot-per-second rate is on that either
3 and how long that would actually be, but I don't get the
4 sense that this is a huge safety issue.

5 COMMISSIONER THOMAS: Thank you.

6 CHAIR BARNETT: Very well. Commissioner Janoff.

7 COMMISSIONER JANOFF: Thank you. I think one of
8 the things that complicate this particular location is the
9 teardrop parklet that has the effect of making it a one-way
10 lane in. Typically when a car is queuing in a normal two
11 lane road the cars that see the car stopped for the gate
12 are going to go around it, and in this particular location
13 there's no opportunity to go around the car; it's
14 effectively a one lane road. I do think that in this case
15 the configuration of the street on Blackwell creates a
16 narrowing point that complicates... And the teardrop, as I
17 recall, continues past the driveway a little bit, so I
18 think it just is not close to the corner of National, it's
19 quite deep and my impression is that you couldn't turn left
20 into the driveway from Blackwell, so you really just have
21 that narrow lane, so for me it does create a potential
22 safety issue.

23
24 I think the frequency of use, I understand the
25 reason it's mentioned but I think it's a little unfair,

1 because we just really don't know, and you don't really
2 want to hamper a property owner to say you said it's only
3 going to be used once a week and now you're using it every
4 day and it's creating a safety issue, so I don't think we
5 need to go down that route.

6 I do think that there are special circumstances
7 related to the configuration of the street and the red zone
8 that creates, as I said, a necking, a narrowing of that
9 particular length of Blackwell that would create an issue.
10 Think if you had a car parked on the other side of the
11 driveway. You have nowhere for an oncoming car to go. I
12 don't think a parked car makes a difference is what I'm
13 saying. You've got a car that's sticking out effectively
14 into the travel lane because of the narrow width of this
15 part of the road. I think it's an issue.

17 CHAIR BARNETT: Vice Chair Raspe.

18 VICE CHAIR RASPE: Thanks, Chair. I actually have
19 a question for Staff. Procedurally we have two issues
20 before us and it's one appeal. Could we as a body grant
21 with respect to a part and deny with respect to a part? It
22 seems to me that a consensus is building in that regard. I
23 just want to make sure that what we're talking about is
24 procedurally proper.
25

1 SEAN MULLIN: I believe so, and the Town Attorney
2 will also weigh in, I'm sure, but you could also grant the
3 appeal with an added condition to relocate the fence.

4 VICE CHAIR RASPE: Is there a preference,
5 Counsel?

6 ATTORNEY WHELAN: Either way works.

7 VICE CHAIR RASPE: Thank you so much.

8 CHAIR BARNETT: Good question. Are we ready for a
9 motion? I think we are. Commissioner Janoff.

10 COMMISSIONER JANOFF: I move to approve the
11 appeal of a Community Development Director decision to deny
12 a Fence Height Exception and request for construction of an
13 automated vehicular gate exceeding the maximum height and
14 with reduced setbacks on property zoned R-1:8 located at
15 380 Blackwell Drive, APN 424-12-027. I won't go through the
16 rest of the identifying information; it's included in
17 Exhibit 2.

18
19 I can make the finding that this is categorically
20 exempt for CEQA, and I can make the required finding for
21 granting a Fence Height Exception that a special security
22 concern exists that cannot be practically addressed without
23 adding a vehicular gate.

24 My motion would also request that the gate be
25 moved back 5' or 4'-10", whatever the distance is, to be

1 code compliant and provide 18' for a vehicle to park
2 outside the closed gate and not hang out into Blackwell
3 Avenue.

4 CHAIR BARNETT: Thank you for that motion.
5 Commissioner Hanssen.

6 COMMISSIONER HANSSEN: I second the motion.

7 ATTORNEY WHELAN: Before the Commission votes,
8 just one thing. I would say that it's conditioned on moving
9 it back 5' as opposed to making it a request.
10

11 COMMISSIONER JANOFF: The maker of the motion
12 accepts that change in language that it is conditioned upon
13 moving the gate back.

14 COMMISSIONER HANSSEN: The seconder accepts that
15 as well.

16 CHAIR BARNETT: Commissioner Thomas.

17 COMMISSIONER THOMAS: You said a vehicular gate,
18 but I also think that we should add that the height needs
19 to exceed the 3' maximum also.

20 COMMISSIONER JANOFF: Yes, the maker of the
21 motion accepts that change that we also approve the
22 existing height of the existing gate.

23 COMMISSIONER HANSSEN: I agree, but I think you
24 already said that in your motion.
25

1 CHAIR BARNETT: All right, so we do have a motion
2 and a second. Discussion? Commissioner Burnett.

3 COMMISSIONER BURNETT: Yes, thank you. Do you
4 need to add to the motion the side fence added on to the
5 left of the gate if the gate is moved back?

6 COMMISSIONER JANOFF: I would personally say no,
7 that's at the discretion of the homeowner. Clearly they're
8 going to want to add that side. But I do have a question
9 whether we need to talk about the Variance of the setback.
10

11 ATTORNEY WHELAN: I would probably amend the
12 motion to say it's conditioned on moving the fence back 5'
13 and a Variance from the 25' requirement is approved.

14 JENNIFER ARMER: And I would add that it would be
15 granting a Fence Height Exception for the fence within that
16 front setback to be greater than the 3' limitation, and
17 that that includes additional connecting fencing because of
18 the relocation of the gate.

19 COMMISSIONER JANOFF: The maker of the motion
20 accepts that language.

21 COMMISSIONER HANSSEN: I do as well.

22 CHAIR BARNETT: Commissioner Clark.

23 COMMISSIONER CLARK: Thank you. I just wanted to
24 say I personally am torn as to whether I think it's
25 necessary to move the gate back, but it looks to me like

1 the general consensus from the Commission is that it does
2 and so I'm comfortable voting that way, but I don't
3 necessarily think that it's completely warranted.

4 CHAIR BARNETT: Thank you for that comment. If
5 there is no further discussion, I'll call the question, and
6 we'll have to do the roll call this time because
7 Commissioner Clark is not present. We'll begin with Vice
8 Chair Raspe.

9 VICE CHAIR RASPE: Yes.

10 CHAIR BARNETT: Commissioner Hanssen.

11 COMMISSIONER HANSEN: Yes.

12 CHAIR BARNETT: Commissioner Thomas.

13 COMMISSIONER THOMAS: No.

14 CHAIR BARNETT: Commissioner Burnett.

15 COMMISSIONER BURNETT: Yes.

16 CHAIR BARNETT: Commissioner Janoff.

17 COMMISSIONER JANOFF: Yes.

18 CHAIR BARNETT: And Commissioner Clark.

19 COMMISSIONER CLARK: Yes.

20 CHAIR BARNETT: Thank you, and the Chair also
21 votes for the motion, so that passes with one dissent. Are
22 there appeal rights? Thank you.

23 JENNIFER ARMER: Thank you, Chair. Yes, the
24 decision of the Commission can be appealed to Town Council
25

1 by any interested person as defined by Town Code Section
2 29.10.020 within ten days on forms available online with
3 fees paid. Final deadline is 4:00p.m. on the tenth day.

4 CHAIR BARNETT: Thank you for that.

5 (END)

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

*This Page
Intentionally
Left Blank*