

Draft Resolution to be modified by Town Council deliberations and direction.

**RESOLUTION**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
DENYING AN APPEAL OF THE PLANNING COMMISSION DECISION TO APPROVE 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.**

**APN 424-12-027  
FENCE HEIGHT EXCEPTION APPLICATION: FHE-23-002  
PROPERTY LOCATION: 380 BLACKWELL DRIVE  
PROPERTY OWNERS: LARRY CESNIK AND MARTHA JOHNSON  
APPELLANT: LARRY CESNIK  
APPLICANT: RAMIN ZOHOOR**

**WHEREAS**, on September 13, 2022, the Town issued an administrative warning for a code violation at 380 Blackwell Drive for the unpermitted construction of a vehicular gate that exceeds the three-foot height limitation for a gate located in the required front yard and the traffic view area; and does not meet the required 18-foot setback from the edge of the street. The Town requested that the property owner apply for a Building Permit and indicated that the Town Code offers an exception process that allows for deviations from the Town’s fence regulations if appropriate findings can be made; and

**WHEREAS**, on February 6, 2023, the property owner applied for an exception to the Town’s fence regulations for the unpermitted construction of a vehicular gate on the subject property that does not comply with the Town Code fence regulations for height and setbacks; and

**WHEREAS**, on March 6, 2023, the Town denied the exception request because the findings listed in Town Code Section 29.40.0320 could not be made; and

**WHEREAS**, on March 8, 2023, the decision of the Community Development Director to deny the exception request was appealed to the Planning Commission; and

**WHEREAS**, on June 14, 2023, the Planning Commission held a duly-noticed public hearing and considered an appeal of the Community Development Director denial of an exception to the Town’s fence regulations for unpermitted construction of a vehicular gate that exceeds the three-foot height limitation for a gate located in the required front yard and the traffic view area; and

does not meet the required 18-foot setback from the edge of the street; and

**WHEREAS**, on June 14, 2023, the Planning Commission granted the appeal, approving an exception to the Town's fence regulations by making the required findings that a special security concern exists that cannot be practically addressed through alternatives and that a special circumstance exists where strict enforcement of the fence regulations would result in an undue hardship; and

**WHEREAS**, the facts in the record that support the findings include the information provided by the appellant at the Planning Commission hearing, detailing the security concerns; and

**WHEREAS**, the Planning Commission's approval included additional conditions requiring that the vehicular gate be relocated to comply with the 18-foot setback required by the Town Code and that any additional fencing needed between the relocated vehicular gate and the existing property line fencing be no taller than the height of the existing adjacent fencing; and

**WHEREAS**, on June 21, 2023, the appellant, an interested person, filed a timely appeal of the decision of the Planning Commission approving the exception the Town's fence regulations with additional conditions; and

**WHEREAS**, this matter came before the Town Council for public hearing on August 1, 2023, and was regularly noticed in conformance with State and Town law; and

**WHEREAS**, the Town Council received testimony and documentary evidence from the appellant and all interested persons who wished to testify or submit documents. The Town Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report for their meeting on August 1, 2023, along with any and all subsequent reports and materials prepared concerning this application.

**WHEREAS**, the Town Council was unable to make the findings required to grant an appeal of a decision of the Planning Commission, in accordance with Town Code section 29.20.275, with the Town Council finding the following:

1. There was not an error or abuse of discretion by the Planning Commission; and
2. The Planning Commission decision is supported by substantial evidence in the record.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The appeal of the decision of the Planning Commission decision to approve an exception the Town's fence regulations with additional conditions is denied. The conditions added in the Planning Commission's decision requiring that the vehicular gate be relocated to comply with the 18-foot setback required by the Town Code and that any additional fencing needed between the relocated vehicular gate and the existing property line fencing be no taller than the height of the existing adjacent fencing are upheld.

2. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by state and federal Law.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 1<sup>st</sup> day of August 2023, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

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