



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 14

DATE: July 27, 2023
 TO: Mayor and Town Council
 FROM: Laurel Prevetti, Town Manager
 SUBJECT: Consider an Appeal of a 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. **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 an appeal of a 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, 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: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

BACKGROUND:

The subject property is located at the corner of Blackwell Drive and National Avenue (Attachment 1, 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 (Attachment 1, 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 height or setback regulations. The exception request was based on concerns related to protecting their adult child from stepping off the property. The project plans are provided as Attachment 1, Exhibit 10, and the Letters of Justification for the exception are provided as Attachment 1, Exhibit 5, and Attachment 2, Exhibit 11.

On March 6, 2023, the exception request was denied by the Community Development Director based on the information received at that time 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 (Attachment 1, Exhibit 6).

On March 8, 2023, the property owner appealed the decision of the Community Development Director to the Planning Commission (Attachment 1, Exhibit 7).

On June 14, 2023, the Planning Commission considered the appeal and additional information provided by the appellant/property owner supporting the finding that a special security concern exists that cannot be practically addressed through alternatives (Attachments 1 and 2). The Planning Commission granted the appeal with two 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 (Attachment 3, Conditions 5 and 6).

BACKGROUND (continued):

On June 21, 2023, the Planning Commission decision was appealed by the property owner, specifically the condition requiring that the vehicular gate be relocated to comply with the 18-foot setback required by the Town Code (Attachment 5).

DISCUSSION:

A. Project Summary

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 edge of the street. The exception request was based on concerns related to protecting their adult child from stepping off the property. The project plans are provided as Attachment 1, Exhibit 10, and the Letters of Justification for the exception are provided as Attachment 1, Exhibit 5 and Attachment 2, Exhibit 11.

As detailed in the Planning Commission staff report (Attachment 1), the Town Code limits the height of fences and gates in the required front yard or side yard abutting a street, driveway view area, and traffic view area to no more than three feet to minimize conflicts between pedestrians, cyclists, and cars by allowing for an unobstructed view as a car exits a driveway. Additionally, vehicular gates are required to be setback a minimum of 18 feet as measured from the edge of the street to allow for vehicles to clear the travel lanes while queuing as the gate is opening. Staff has prepared an exhibit showing the locations of these areas and the existing unpermitted vehicular gate (Attachment 1, Exhibit 8). The proposed four-foot, three-inch tall vehicular gate is set at the front property line.

Town Code Section 29.40.0320 allows an exception to any of the fence regulations if specific findings can be made. These findings are:

- A special security concern exists that cannot be practically addressed through alternatives; or
- A special circumstance exists, including lot size or configuration, where strict enforcement of these regulations would result in undue hardship.

The applicant applied for an exception to the fence regulations citing a special safety concern related to protecting their adult child from leaving the property (Attachment 1, Exhibit 5). Based on the information provided with the exception request, staff was unable to support the requested exceptions as neither of the required findings could 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,

DISCUSSION (continued):

the requested exceptions would create unsafe conditions caused by a vehicular gate lacking the 18-foot setback required by the Town Code, not allowing for vehicles to clear the travel lanes while queuing. The Community Development Director denied the exception request on March 6, 2023 (Attachment 1, Exhibit 6).

B. Planning Commission

The property owner appealed the decision of the Community Development Director to the Planning Commission who considered the matter on June 14, 2023. With their appeal, the appellant provided additional information on the medical background of their adult child. This information has been provided under separate cover to the Town Council and is not included as an attachment to this report to protect the privacy of the individuals involved.

During their visual and oral presentation to the Planning Commission, the appellant provided additional details of the security concerns related to their adult child (Attachment 4). The Planning Commission granted the appeal, approving the exception to the fence regulations related to height, but did not approve the exception for the required 18-foot setback. Instead, the Planning Commission included additional conditions of approval for the project requiring that the vehicular gate be relocated to comply with the 18-foot setback 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 (Attachment 3, Conditions 5 and 6).

The Planning Commission staff report and Desk Item (Attachments 1 and 2), the Verbatim Minutes (Attachment 4), and the appeal documents (Attachment 5) are provided for review.

C. Appeal to Town Council

The decision of the Planning Commission was appealed on June 21, 2023, by the property owner Lawrence W. Cesnik (Attachment 5). In their appeal, the property owner raises three points where they feel the Planning Commission erred or abused its discretion in its decision to require the vehicular gate be relocated to meet the required 18-foot setback from the edge of the street. These points are provided verbatim from the appellant below, followed by staff's response.

1. The statement made by one of the Commissioners that the vehicle picking up our son for his day program is likely a van/longer vehicle - and therefore would protrude into the street without a gate setback. In fact, the transportation company with which we contract - Union Taxi - picks up our son in a compact/medium size sedan - which fits between the curb and gate without protrusion.

DISCUSSION (continued):

Staff response: The Town Council should consider this clarifying information in their determination of whether the appeal should be upheld or denied.

2. The assumption that there will be a "queuing/backup hazard" when we exit or enter the gate due to the delay in opening it. In fact - as I explained to the commission, our plan is to avoid this problem by a) waiting to back out until the gate is completely open b) before approaching the gate for entering, opening it remotely early enough (it has good range) so that it is fully open when we are in front of the driveway.

Staff response: Requiring that the vehicular gate be operated in a specific way, as the property owner describes, through a condition of approval would create a cumbersome regulation that would be difficult to enforce. Staff does not recommend incorporating such a condition if the Town Council grants the appeal.

3. Not recognizing that pushing the gate back 5 feet will (a) be a major inconvenience and will "squeeze" the very limited space we have to park our vehicles (b) will increase the safety risk to our son by shortening the amount of time for him to reach the gate during any potential "bolt" and (c) disrupt the aesthetics of our property that we have worked hard/invested in to develop and maintain, as well as the surrounding neighborhood.

Staff response: The length of the existing driveway between the front property line and the existing residence is approximately 29.8 feet (Attachment 6). The Planning Commission included a condition with their approval that the vehicular gate be relocated to meet the required 18-foot setback from the edge of the street. Satisfying this condition would require the vehicular gate to be moved approximately 4.3 feet towards the residence resulting in a driveway length of 25.5 feet where a driveway length of 25 feet is required by the Town Code. Regarding the shortened distance to and the potential aesthetic impacts of the relocated vehicular gate, the Town Council could consider this in their determination of whether the appeal should be upheld or denied.

PUBLIC OUTREACH:

Written notice of the Town Council hearing was sent to property owners and tenants within 300 feet of the subject property.

CONCLUSION:

A. Recommendation

For the reasons stated in this report, it is recommended that the Town Council deny the appeal, upholding the Planning Commission's decision to approve the exception to the

CONCLUSION (continued):

fence regulations with additional conditions of approval requiring compliance 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 (Attachment 7).

B. Alternatives

Alternatively, if the Council finds merit in the appeal it should continue the application to the next meeting and provide direction to staff to prepare a resolution to grant the appeal, grant the exception to the Town's fence regulations for construction of an automated vehicular gate with reduced setbacks, approve the application with Planning Commission Conditions 5 and 6 removed, and identify the facts that support the following required findings.

Required finding for 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.

Required findings for granting an exception to the Town's fence regulations:

- A special security concern exists that cannot be practically addressed through alternatives; or
- A special circumstance exists, including lot size or configuration, where strict enforcement of these regulations would result in undue hardship.

Required findings for granting an appeal of a decision by the Planning Commission:

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

COORDINATION:

The Community Development Department coordinated with the Parks and Public Works Department in the review of the fence height exception.

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SUBJECT: 380 Blackwell Drive/FHE-23-002

DATE: July 27, 2023

ENVIRONMENTAL ASSESSMENT:

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.

ATTACHMENTS:

1. June 14, 2023, Planning Commission Staff Report, with Exhibits 1 through 10
2. June 14, 2023, Planning Commission Desk Item, with Exhibit 11
3. June 14, 2023, Planning Commission Action Letter
4. June 14, 2023, Planning Commission Verbatim Minutes
5. Appeal of the Planning Commission decision, received June 21, 2023
6. Annotated Driveway Exhibit Prepared by Staff
7. Draft Resolution to Deny the Appeal and Uphold the Planning Commission Decision

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