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

Los Gatos Planning Commissioners:	Jeffrey Barnett, Chair Melanie Hanssen Kathryn Janoff Emily Thomas
Town Manager:	Laurel Prevetti
Community Development Director:	Joel Paulson
Town Attorney:	Gabrielle Whelan
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Located at 124 Garden Hill Drive. APN 424-23-084.
Fence Height Exception Application is FHE-23-005.
Categorically exempt under CEQA Guidelines Section 15303,
New Construction or Conversion of Small Structures, and
Section 15301, Existing Facilities.

19 Can I see a show of hands from Commissioners who
20 have visited the property? That's unanimous. Any
21 disclosures? There are no disclosures.

24 RYAN SAFTY: Yes, thank you, Commissioners. Before
25 you is an appeal of a Community Development Director

1 decision to deny a fence height exception request at 124
2 Garden Hill Drive. The property is located in a single-
3 family residential neighborhood one block south of Lark
4 Avenue and one block west of Highway 17.

5 The property owner is requesting approval to
6 construct a 6' tall wooden fence within the required front
7 yard setback, street side yard setback, and corner side
8 triangle. The fence would be located along both the front
9 and street side property lines.

10 Per Town Code, fences and gates are limited to 3'
11 in height when located within any of these areas: the front
12 yard, the street side yard, or the corner side triangle.

13 As noted in the Staff Report, the property has
14 been redeveloped with two Building Permits over the past
15 few years. During both of these Building Permit reviews the
16 project plans originally showed a 6' tall fence out on the
17 corner of this property. Town Staff provided written
18 comments on both of these Building Permits informing the
19 property owners of our rules, and in both times the fence
20 was reduced to the Town maximum 3' height. Both Building
21 Permits were issued and finalized.

22 On August 4th the Town received a complaint that
23 the fence at this property was over 6' tall, and therefore
24 on September 7th we issued an administrative citation.

1 An exception request was submitted for the
2 exception. The Applicants cited several conditions: B-1, B-
3 2, D, and E.

4 Conditions B-1 and B-2 are only applicable to the
5 side and rear property lines of interior lots, so therefore
6 we could not consider those.

7 For Condition D, which is special security
8 concern, the Applicant claims a taller fence is needed as
9 there have been coyote sightings within the neighborhood
10 and in order to protect their children playing within this
11 front yard area the 3' fence would not quite do it.
12 However, Staff could not support the request under
13 Condition D, as the property is located in an urbanized
14 residential subdivision. If a coyote sighting were deemed a
15 special security concern, then most of the properties in
16 the Town would be eligible for an exception.

17 The owners are also allowed to install a taller
18 fence if they move it back to meet our setback
19 requirements.
20

21 Lastly, as noted in the report, the owners were
22 notified before and throughout the remodel process that the
23 fence height at this location is limited to 3'. They
24 proceeded with the housing and remodel addition, which
25

1 impacted which areas of the lot were available for outdoor
2 use.

3 For Condition E, which is special circumstances
4 associated with the property configuration, the Applicant
5 cited religious freedom, stating that their religion
6 requires them to hold prayer sessions on the east side of
7 the yard, and doing this with a 3' fence caused privacy
8 concerns. However, similar to the reason cited for
9 Condition D, Staff could not support the request. The
10 owners are allowed to move the fence back and increase the
11 height, and additionally, they were aware of our fence
12 height requirements during this process.
13

14 In addition to Planning not being able to support
15 the height exception, the Town Engineer also cannot support
16 the exception to the corner side triangle.

17 For these reasons, the Town denied the exception
18 request on September 27th. On October 5th this denial was
19 appealed, however, the appeal did not bring up any new
20 points for consideration tonight.
21

22 Neighbor support letters were received yesterday;
23 we received six or seven of them, and they were distributed
24 today as a Desk Item.

25 Town Staff also noticed a potential publishing
error with Exhibit 2. It sounds like maybe not all of you

1 guys had this issue. In any event, if the Director can
2 please share the screen so I can quickly outline what this
3 was supposed to show.

4 The area in neon green identifies the areas of
5 the fence and wall that are compliant with code. The area
6 in red shows the portions of the fence that do not comply
7 with code and either require an exception or must be
8 removed, and that red area is somewhat difficult to see but
9 it's on top of the green extending to the right of it. I
10 highlighted both the front and street side property lines
11 so it is clear to the Commissioners, as well as where the
12 corner site triangle requirements would be applicable.

14 Based on the discussion provided in the Staff
15 Report, Staff does recommend the Commission deny the
16 appeal, uphold the decision of the Director, and deny the
17 Fence Height Exception.

18 This concludes Staff's presentation, and both
19 Planning Staff and Parks and Public Works Staff are here to
20 answer any questions.

21 CHAIR BARNETT: Thank you for that report, and
22 I'll ask my fellow commissioners if they have questions at
23 this time? I don't see any, so we'll now open the public
24 portion of our public meeting tonight and give the
25 Appellant an opportunity to address the Commission for up

1 to five minutes. I see Mr. Lettunich approaching, so if you
2 could just come to the microphone and we'll be happy to
3 hear what you have to say.

4 MARTIN LETTUNICH: Good evening, thank you for
5 allowing us to speak tonight.

6 First of all, with regard to the document that
7 was just shown on the screen, the red portion of the fence
8 that's along the side yard was approved and permitted
9 according to permits that we have, so I don't know why all
10 of a sudden that is not permitted. It used to go all the
11 way around, and then we removed the section just above the
12 3' line.
13

14 Basically the problem that we have with this is,
15 if you've been out to the site, there is absolutely no
16 problem with viewing any traffic or pedestrians, and there
17 is plenty of room on the sidewalk.

18 The main issue here, I think, is there isn't an
19 intersecting street. Our lot basically is a lot that has
20 one street that it abuts, and that's Garden Hill Drive. The
21 only one that comes close to being considered a street
22 intersection would be Farm Hill, which is a cul-de-sac; and
23 the other one is Green Hill, which is also a cul-de-sac.
24 The cul-de-sac at Farm Hill parallels, or runs right into
25 and stops where it intersects Garden Hill, so it's really

1 not an intersection there. Our property abuts only one
2 street, and under code a piece of property that abuts one
3 street is an interior lot, it is not a corner lot, so I
4 don't think the rules you're applying to the street and to
5 our property is appropriate to begin with.

6 Could we show the video? I'm sure you've already
7 seen the pictures, and maybe you've already seen the video.

8 This is driving down Garden Hill, going around
9 the corner where the fence is. There are absolutely no
10 vision problems from a vehicle.

11 We're going to turn around here and come back the
12 other way, and this is going back down Garden Hill, and
13 that's the fence across the street.

14 Now, this is parked on Green Hill Road, and there
15 are still photos in your file that show that there is no
16 obstruction. This is Green Hill. Looking out there you can
17 see all the way down and around that corner, and on Farm
18 Hill that truck is turning left there. If he had gone
19 absolutely straight without turning he would have gone
20 right into Farm Hill Road. From everything I've been able
21 to find that would not be considered as coming out of Farm
22 Hill, that it wouldn't be considered a corner lot, and a
23 street triangle regulation would not be required.
24
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1 The concern about the coyote is that he has small
2 children that play in his yard, and it will show you the
3 yard in a second.

4 That's the yard inside, and all the bamboo you
5 can see is where the 3' fence would be. If you move that
6 back by the setback required it takes almost a third of his
7 yard away, and there would be absolutely no reason to do
8 that, aesthetically or any other reason. We have the
9 support of the neighbors, and we have support of what I
10 believe is the definition under what the streets are and
11 whether or not there needs to be a traffic triangle there.
12

13 I thank you. If you have any questions, I'd be
14 glad to answer them.

15 CHAIR BARNETT: Thank you, appreciate that, and
16 we'll see if there are any questions for you. I don't see
17 any.

18 I have a question. When you learned of the Town's
19 position regarding the site triangle, did you have any
20 direct verbal communication with the Town about their
21 interpretation?

22 MARTIN LETTUNICH: I've mentioned it several
23 times. Everybody continues to say it needs to have a
24 traffic triangle there. I don't see why.
25

1 CHAIR BARNETT: I had another question for you.
2 Can you explain why the Fence Height Application exception
3 was withdrawn on April 12, 2023? That was the earlier point
4 in time prior to the current application.

5 MARTIN LETTUNICH: I don't understand the
6 question.

7 CHAIR BARNETT: I understand that there was an
8 earlier application for a fence height exception, and that
9 was withdrawn.
10

11 MARTIN LETTUNICH: I was not involved at that
12 time.

13 CHAIR BARNETT: It looks like your client was.
14 Can I ask you to state your name and address?

15 RUSHIKESH KULKARNI: Thank you, Chair. My name is
16 Rushikesh Kulkarni; I'm the owner of 124 Garden Hill.

17 The earlier application was withdrawn simply
18 because we were in the process of getting the construction
19 permits and we had initially appealed with the Town to
20 grant permission to erect a 6' fence over there, and once
21 they had said that that would not be in conformance with
22 the ordinance, in the interest of moving forward with the
23 construction process and not getting stalled with respect
24 to getting the Final Occupancy Permit, we decided to put
25 that issue on the side and revisit it later, as we did, so

1 that's the reason why we withdrew that initial request for
2 exception, as it was not granted.

3 CHAIR BARNETT: Are there any questions of the
4 owner? I don't see any. If you can stay there, I don't care
5 which one of you answers.

6 You were aware of the Fence Ordinance when you
7 submitted your plans and the Town approved them; the change
8 from the 6' to the 3' was something the Town had
9 communicated to you was necessary, and so you changed the
10 plans to conform to the Town's position?

11 RUSHIKESH KULKARNI: That is correct. We were
12 aware and the Town had informed us. We were challenging the
13 assumption of the corner street definition, because
14 according to my read of the ordinance it says that if the
15 corner triangle is defined as the intersection of two
16 streets and the setback requirements are 30' from the point
17 of intersection.

18 In this case, if you notice the corner around
19 which the street turns, the street that comes in and then
20 continues is Garden Hill Drive. There are no two streets.
21 There is also a double yellow line as opposed to dotted
22 yellow line, which means there is technically not even a
23 divider on the street, whereby traffic is technically not
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1 even allowed to turn left, so it's a through-street where
2 the traffic is supposed to just drive through.

3 My interpretation was that it's not a corner, and
4 I had challenged that assumption, but at the end of the day
5 the visiting inspector onsite said that that ordinance is
6 open to interpretation of the inspection officer and the
7 Planning Department, and it is their interpretation and
8 their point of view that you have to go by.

9
10 So again, in the interest of pursuing the
11 construction on time as well as my needs to finance and
12 refinance the project on time, given how interest rates
13 were moving, I decided to drop the issue. That wasn't
14 necessarily acknowledging or agreeing with the Town's
15 position, but more accepting that it is an issue that I
16 will revisit later.

17 CHAIR BARNETT: I see. Thank you for that. Other
18 Commissioner questions at this time? I am not seeing any.
19 We'd normally open this for public comment. Is there anyone
20 on Zoom?

21 JENNIFER ARMER: We would invite anyone on Zoom
22 who wishes to speak on this to raise their hand. It does
23 look like we've got a few people who are raising their hand
24 to speak on this item.
25

1 CHAIR BARNETT: Okay, if you wish to go forward
2 with that, I'd appreciate it.

3 JOEL PAULSON: The first to speak will be
4 Michael.

5 MICHAEL: I live on 295 Garden Hill Drive. I drive
6 past this corner every day and have for the last four years
7 when I purchased the property originally.

8 I am very much in support of the height of this
9 fence; in fact when I first saw the shorter fence I thought
10 that it was a mar in the vision of the neighborhood and it
11 was strange to look into my neighbor's back yard. I didn't
12 actually know my neighbor at the time, and after I got to
13 meet him I asked him about this and he explained what had
14 occurred.

15 I think it is a more aesthetic view. I have no
16 concern at all about the visibility as I'm coming around
17 Garden Hill Drive in either direction; like I said, I drive
18 this every day.

19 I'm aware of the coyotes and other wild animals
20 and agree there is a safety risk for his family. Thank you.

21 CHAIR BARNETT: Thank you for those comments.

22 JOEL PAULSON: The next speaker will be Hamanchiu
23 (phonetic).
24
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1 HAMANCHIU: Hi, my name is Hamanchiu. I live on
2 Farm Hill Way, the adjoining street. Like the other
3 neighbor I cross this street daily multiple times, like
4 every time I leave or come to my house. I have not once
5 faced any visibility problem on this corner, so I don't
6 think that that's a concern. I agree with the concern
7 regarding the coyote and safety, and do feel that a higher
8 fence would be beneficial. Thank you.

9 CHAIR BARNETT: Thank you, sir.

10 JOEL PAULSON: Next speaker will be Nickette.

11 NICKETTE (phonetic): Hello everyone, this is
12 Nickette. We live just across the street at 135 Green Hill
13 Way and we've lived there for about 5.5 years. I have no
14 concerns with the height of the fence being increased as
15 well. In fact, our kids play in Rushikesh's back yard a lot
16 of times and we get worried with a short fence for our kids
17 as well.

18
19 So again, we've been living here about 5.5 years
20 and I see no safety concerns; I drive there everyday.

21 CHAIR BARNETT: Thank you very much, sir.

22 JOEL PAULSON: Next will be Google Pixel 7.

23 WENLU (phonetic): My name is Wenlu and I live at
24 123 Green Hill Way. Two things I want to mention as well.
25

1 Like Mike said earlier, I'm driving through this
2 road every day, because it's how I get to Highway 17.
3 Initially when I first saw it one side was high and the
4 other one was low; I thought it looked really strange and I
5 don't really like it. But when I talked to Rushikesh and I
6 asked him, he said this is just because of the regulation.

7 The second issue I want to say is the safety
8 concern. To be honest, I'm living in cul de sacs and I got
9 my car broke in. I talked to my neighbor within the same
10 cul-de-sac, my neighbors on 131 and 135; they both had
11 people come into their front yards and go through their
12 cars at night. I'd love to feel like this is a safe town,
13 but the reality of it is that it is not a safe town, and I
14 think it is important to be able to feel safe living here,
15 so that's my comment.

16
17 CHAIR BARNETT: Thank you, sir. Any further
18 public members on Zoom?

19 JOEL PAULSON: I don't see any other hands
20 raised, Chair?

21 CHAIR BARNETT: Okay, thank you very much. So now
22 the Applicant and/or this attorney may come forward with
23 any additional comments you wish to make, up to three
24 minutes. Not required to.
25

1 MARTIN LETTUNICH: The one comment I just want to
2 point out is when you look at an intersecting street the
3 corners lots are usually on each side of that street and it
4 forms the area that the triangle applies to. If you look at
5 the situation on this street, there is no such thing. If it
6 were Green Hill directly across from the driveway side,
7 there is no shoulder or curve on our side for a triangle to
8 fit on, and on the other side it's the two lots that are on
9 either side of Farm Hill that would be considered corner
10 lots. Our lot is not a corner lot.

11
12 CHAIR BARNETT: Thank you, sir. Any questions at
13 this time? If not, I'll close the public portion of the
14 public hearing and ask Commissioners if they have questions
15 for Staff, wish to comment on the appeal, or introduce a
16 motion for consideration by the Commission? Commissioner
17 Hanssen.

18 COMMISSIONER HANSEN: I have a question for
19 Staff. On this interpretation of the corner versus other
20 lot, the way I was looking at the plans it looked to me
21 like you were marking it relative to the 15', not a greater
22 setback, but is it the case that if it is determined to be
23 a corner lot that the setback is double?

1 RYAN SAFTY: The setback itself doesn't change
2 based on a corner lot. The corner lot requirements though,
3 I will let Parks and Public Works answer that question.

4 JAMES WATSON: James Watson, Parks and Public
5 Works. I'm not sure I understand the question.

6 COMMISSIONER HANSSEN: The Applicant/Appellant
7 was contesting the interpretation of the corner lot, and
8 one of the things that was mentioned was having to have a
9 greater setback on account of being determined to be a
10 corner lot, so I'm just trying to verify: a) Is that the
11 case in our ordinance; and b) What is the current situation
12 in terms of the setback? I was looking at the plans and it
13 looked like it was marked for 15'.

14 RYAN SAFTY: I can try again to answer that
15 question, as long as it's not related to the ins and outs
16 of the corner site requirements.

17 If this were not a corner lot, and let's say we
18 treated both of these property frontages as a front yard,
19 it would actually be more of a setback requirement for the
20 fences.
21

22 One thing to clarify, the corner site triangle is
23 just one aspect that Staff cannot support. There is still a
24 6' tall fence within the front and street side yard setback
25 requirements, and those are completely different.

1 COMMISSIONER HANSSEN: I think that answered my
2 question.

3 CHAIR BARNETT: There is the issue of religious
4 practice that was mentioned in the appeal, and I wonder if
5 Staff has any comment on that issue?

6 RYAN SAFTY: Thank you. We did check in with the
7 Town Attorney on this question. It is clear that the
8 Federal Religious Land Use and Institutionalized Persons
9 Act does apply here. There are a few things that the law
10 prohibits, but based on the Town Attorney's read, the Town
11 is treating the residents the same as others and so this
12 law has not been violated. It's not a significant burden,
13 it's necessary for traffic visibility, and it is the least
14 restrictive means in that the residents have the option of
15 abiding by the setback requirement.

16 CHAIR BARNETT: Thank you for that clarification.
17 Are there other questions? Commissioner Janoff.

18 COMMISSIONER JANOFF: For Staff. The
19 Applicant/Appellant has argued that this is not a corner
20 lot by definition. Can you please comment on that?

21 JAMES WATSON: Parks and Public Works, James
22 Watson. Is Mike Vroman available online?

23 MIKE VROMAN: Yes, I'm here. Mike Vroman, Senior
24 Traffic Engineer. I would have to disagree with the
25

1 attorney that from a traffic engineering perspective there
2 is an intersection with Garden Hill Drive and Farm Hill
3 Way. You can also make the contention that Green Hill may
4 also be, because it's directly across from 124 Garden Hill
5 and could also be part of that intersection, but there is
6 definitely an intersection with Garden Hill Drive and Farm
7 Hill Way, so by that means I would say it is a corner lot
8 from a traffic perspective.

9
10 COMMISSIONER JANOFF: Thank you.

11 CHAIR BARNETT: Other questions or comments? Let
12 me check my notes.

13 JENNIFER ARMER: Through the Chair, I can also
14 share the definition of corner lot from the Town Code, in
15 case that's helpful.

16 CHAIR BARNETT: Thank you.

17 JENNIFER ARMER: A corner means a lot situated at
18 the intersection of two or more streets, or bounded on two
19 or more abutting sides by street lines. Based on my
20 experience with the Town Code it would not be important
21 that the same name was applied to those two sides, in this
22 case we have two street-side property lines that are
23 perpendicular to each other, and so we would determine that
24 to be a corner lot.
25

1 CHAIR BARNETT: Thank you for that. Commissioner
2 Janoff.

3 COMMISSIONER JANOFF: Thank you. One other
4 question regarding the testimony of the Applicant/Appellant
5 who argued that the 6' fence toward the rear of the
6 property was approved in the drawing package, and yet in
7 the diagram that you provided us and showed on the screen
8 that section of that fence that is 6' tall is indicated as
9 out of compliance. Could you comment on that?
10

11 RYAN SAFTY: Certainly, and thank you for the
12 question. Staff did provide the final Building Permit plan
13 sets for both of them. There was not an approved 6' fence
14 out there. On the side they are referring to a 3' garden
15 wall was approved. I don't know if that portion was built,
16 but that was not in the approved plans.

17 COMMISSIONER JANOFF: Thank you.

18 CHAIR BARNETT: Commissioner Hanssen, please.

19 COMMISSIONER HANSSEN: I don't have a question. I
20 do have a comment though. As I said on the other item this
21 evening, these are very difficult because we didn't have
22 that stringent of a Fence Ordinance prior to 2019. There
23 are a lot of people out there that have preexisting fences;
24 this may not be the case.
25

1 I also am sympathetic to hearing that a 3' fence
2 doesn't provide security, but this is what was decided when
3 the Town created a Fence Ordinance and the Town Council
4 approved it. This requirement for the 3' fence, it was
5 known that it wasn't going to provide a lot of security,
6 and I think as Staff mentioned, with all due respect,
7 coyotes are a concern, but we do have this Fence Ordinance;
8 it's applicable to everybody in their front yard with the
9 3' fence.

10
11 I'm having trouble finding that there is cause
12 for granting the appeal, as I'm not hearing the
13 justifications based on undue hardship or a special privacy
14 concern that isn't applicable to anyone else in town.

15 CHAIR BARNETT: Thank you. Other Commissioners?
16 Or we're open for a motion. Commissioner Janoff.

17 COMMISSIONER JANOFF: Thank you. Yes, and on this
18 item a significant concern for me is the fact that our
19 traffic staff does find an issue that it is a corner lot,
20 unlike the item that we saw before, and so I will not be
21 supporting the appeal.

22 CHAIR BARNETT: Commissioner Thomas.

23 COMMISSIONER THOMAS: I want to echo Commissioner
24 Janoff's comments. I understand the Applicant's concerns,
25 and I appreciate all of the work that you've done and the

1 home that you have built is gorgeous and a lovely part of
2 that neighborhood. However, the issue with the traffic, I'm
3 seeing this as a corner lot as according to Town Staff, and
4 because of that, that triangle is something that I think
5 needs to be prioritized and is important, and so I am not
6 in support of granting this appeal with how this fence is
7 structured at this moment.

8 CHAIR BARNETT: Thank you for that. I share the
9 same concern. I think as a planning commission we don't
10 have any independent legal basis to challenge our Staff's
11 report, and this is a safety issue, which is always a
12 concern. While I share my fellow commissioners' comments
13 about the hard work you've put into this and we respect
14 that very much, I'm unable to support it primarily because
15 of the Town's Public Works Department statement and
16 conclusions.

17 We might be open for a motion. Commissioner
18 Thomas.

19 COMMISSIONER THOMAS: I move to deny the appeal
20 of the Community Development Director's Decision to Deny a
21 Fence Height Exception Request for construction of a 6'
22 tall fence located within the required front yard setbacks,
23 street side yard setback, and corner side triangle on
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1 property zoned R-1:8, APN 424-23-084. I don't have to make
2 any findings, correct?

3 JENNIFER ARMER: No findings required.

4 CHAIR BARNETT: Is there a second to that motion?
5 Commissioner Hanssen.

6 COMMISSIONER HANSSEN: I second the motion.

7 CHAIR BARNETT: Any discussion? If not, please
8 raise your hand if you're in support of the motion. It
9 passes unanimously. Thank you very much for coming tonight
10 and sharing your thoughts, and also for submitting
11 materials in advance.
12

13 JENNIFER ARMER: Through the Chair, the decision
14 of the Commission can be appealed to Town Council by any
15 interested person as defined by Town Code Section 29.10.020
16 within ten days on forms available online with fees paid.
17 The final deadline is 4:00pm on the tenth day.

18 CHAIR BARNETT: Thank you.

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