



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 1/16/2024

ITEM NO: 17

DATE: January 11, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Consider an Appeal of a Planning Commission Decision to Deny a Fence Height Exception Request **at 124 Garden Hill Drive** for the Construction of a Six-Foot Tall Fence Located Within the Required Front Yard Setback, Street Side Yard Setback, and Corner Sight Triangle on Property Zoned R-1:8. APN 424-23-084. Fence Height Exception Application FHE-23-005. Categorically Exempt Pursuant to CEQA Guidelines Section 15303: New Construction or Conversion of Small Structures and Section 15301: Existing Facilities.
Property Owner: Rushikesh Kulkarni. Applicant/Appellant: Martin Lettunich.
Project Planner: Ryan Safty.

RECOMMENDATION:

Deny an appeal of a Planning Commission decision to deny a Fence Height Exception request at 124 Garden Hill Drive for the construction of a six-foot tall fence located with the required front yard setback, street side yard setback, and corner sight triangle on property zoned R-1:8.

BACKGROUND:

The subject property is located at the southwestern corner of Garden Hill Way and Garden Hill Drive, one block south of Lark Avenue and one block west of Highway 17 (Attachment 1, Exhibit 1). The immediate neighborhood consists of single-family residential properties.

Over the past few years, the subject property has been sold and redeveloped. A summary of this history is provided below:

PREPARED BY: Ryan Safty
Associate Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

BACKGROUND (continued):

- November 15, 2017, the previous owner emailed the Town, asking if they can move their approximately five-foot tall fence out to the front and street-side property lines. Town staff informed them that this was not allowed per the Fence Ordinance in effect at the time as the area was within the corner sight triangle (Attachment 1, Exhibit 10);
- April of 2018, the property was sold;
- August 6, 2019, the Town adopted a new Fence Ordinance with stricter regulations regarding front yard and street side yard fence heights and locations, along with a new exception process;
- August 24, 2020, Building Permit application B20-0574 was submitted for a 969-square foot addition to the front and rear of the residence (Attachment 1, Exhibit 4). Town staff provided the following plan correction on September 2, 2020, during the review: "There is an existing five-foot high non-conforming fence located in the front yard setback. Generally, fences located in the front setback are required to be a maximum of three feet in height. In the future, should you wish to maintain or replace this fence, it shall be done in kind pursuant to Section 29.40.0325 of the Town Code." The building permit was issued on January 10, 2021, and finalized by Town staff on June 29, 2022;
- November 23, 2021, Building Permit application B21-1157 was submitted for an outdoor barbeque, arbor, and perimeter wall and fence (Attachment 1, Exhibit 5). Town staff provided the following correction on December 14, 2021, during the review: "Sheet L-4, reduce the height of the corner wall and fence to a maximum of three feet when located within a required front or side yard abutting a street, driveway view area, traffic view area, or corner sight triangle unless an exception is granted by the Town Engineer and Community Development Director." Following this comment, the plans were revised to show a fence and wall that complied with the Town's height requirements. The building permit was issued on April 12, 2022, and finalized by Town staff on May 2, 2023;
- On February 24, 2022, after receiving the comments from staff and amending the plans to show three-foot tall fencing within the front yard setback, street side yard setback, and corner sight triangle, the owners applied for a Fence Height Exception (FHE-22-001). After working with staff and learning that staff could not support the exception request, the application was withdrawn on April 12, 2022;
- On August 4, 2023, following a complaint, the Town issued an administrative warning (Attachment 1, Exhibit 6) regarding an unpermitted six-foot tall fence at the corner of Garden Hill Drive;
- On September 7, 2023, the subject Fence Height Exception application (FHE-23-005) was submitted (Attachment 1, Exhibits 7 and 8), requesting approval to install a six-foot tall fence along the front and street-side property lines and within the corner sight triangle;
- On September 27, 2023, the Community Development Director and Town Engineer determined that the required exception findings could not be made, and denied the request (Attachment 1, Exhibit 9); and

BACKGROUND (continued):

- On October 5, 2023, the applicant and owners appealed this decision to the Planning Commission (Attachment 1, Exhibit 11).

On November 8, 2023, the Planning Commission considered an appeal of a Community Development Director denial of an exception request for construction of a six-foot tall fence located within the required front yard setback, street side yard setback, and corner sight triangle for the subject property. The Planning Commission denied the appeal and upheld the Community Development Director denial of the fence height exception request.

On November 17, 2023, the decision of the Planning Commission was appealed to the Town Council by the applicant (Martin Lettunich) on behalf of the property owner (Rushikesh Kulkarni). Consideration of the appeal by Town Council was scheduled for December 19, 2023.

On December 1, 2023, the appellant made a request for a continuance of the item to a date certain of January 16, 2024. Because this item was publicly noticed and because the Town Code Section 29.20.280 requires that the Town hold a public hearing within 56 days of an appeal (in this case by January 3, 2024), the Town Council opened the public hearing on December 19, 2023 and continued the appeal hearing to January 16, 2024. No one provided testimony on December 19, 2023.

Pursuant to Town Code Section 29.20.295, in the appeal, and based on the record, the appellant bears the burden to prove that there was an error or abuse of discretion by the Planning Commission, or that its decision is not supported by substantial evidence in the record. If neither is proved, the appeal should be denied. If the appellant meets the burden, the Town Council shall grant the appeal and may modify, in whole or in part, the determination from which the appeal was taken or, at its discretion, return the matter to Planning Commission. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.

DISCUSSION:

A. Project Summary

The property owner has requested a fence height exception for construction of a six-foot tall wooden fence on top of an approximately two-foot tall retaining wall along the front corner of the property. The application requests exceptions to the required front yard setback, street side setback, and corner sight triangle. Currently, there is an unpermitted three-foot tall bamboo screen attached to the approved three-foot tall wooden fence along the corner of the property.

DISCUSSION (continued):

As noted in the Background Section above, the property has undergone substantial remodel and redevelopment over the past few years. Building Permit B21-1157 allowed construction of an outdoor patio; a six-foot tall fence along the southern (rear yard) and western (internal side yard) property lines and outside of the required front setback, street side setback, and corner sight triangle; and allowed construction of a three-foot tall garden wall along the eastern (street side yard) property line and a two-foot tall retaining wall along the northern (front yard) property line. As retaining walls adjust the grade behind them, fence height is measured from the higher grade; per Town Code, a three-foot fence can be built above the retaining wall in the front or street-side setback if it complies with the Town Engineer's corner sight triangle requirements (Attachment 1, Exhibit 10).

Town staff visited the site to take pictures, and prepared Attachment 1, Exhibit 12 to highlight which areas of the perimeter fencing is approved and compliant versus non-permitted and non-compliant. The area in green identifies the areas of the perimeter fence and wall that are compliant with code, while the area in red shows the portion of the fence that does not comply with code and requires an exception or modification. The front property line and street-side property lines are differentiated from each other, and the corner sight triangle area is also highlighted.

Per Town Code Section 29.40.0315, fences and gates are limited to six feet in height with one foot of lattice on top (seven feet total), but are limited to, "three feet in height when located within a required front or side yard abutting a street, driveway view area, traffic view area, or corner sight triangle unless an exception is granted by the Town Engineer and Community Development Director." The proposed fence is limited to three feet by Code, as it is within the required front yard setback, street side yard setback, and corner sight triangle.

Town Code Section 29.40.0320, provided below, allows an exception to any of the fence regulations if a property owner can demonstrate that one of the following conditions exist.

Sec. 29.40.0320. - Exceptions.

An exception to any of these fence regulations may be granted by the Community Development Director. A fence exception application and fee shall be filed with the Community Development Department and shall provide written justification that demonstrates one (1) of the following conditions exist:

- (a) Adjacent to commercial property, perimeter fences or walls may be eight (8) feet if requested or agreed upon by a majority of the adjacent residential property owners.*
- (b) On interior lots, side yard and rear yard fences, walls, gates, gateways, entry arbors, or hedges, behind the front yard setback, may be a maximum of eight (8) feet high provided the property owner can provide written justification that either:*

DISCUSSION (continued):

- (1) A special privacy concern exists that cannot be practically addressed by additional landscaping or tree screening; or*
- (2) A special wildlife/animal problem affects the property that cannot be practically addressed through alternatives. Documented instances of wildlife grazing on gardens or ornamental landscaping may be an example of such a problem.*
- (c) At public utility facilities, critical infrastructure, and emergency access locations, exceptions may be granted where strict enforcement of these regulations will result in a security or safety concern.*
- (d) A special security concern exists that cannot be practically addressed through alternatives.*
- (e) A special circumstance exists, including lot size or configuration, where strict enforcement of these regulations would result in undue hardship.*

The November 8, 2023 Planning Commission staff report (Attachment 1) discusses the applicant's justification and staff analysis of the proposed fence in relation to these findings.

B. Planning Commission

On November 8, 2023, the Planning Commission opened the public hearing and considered testimony from the appellant, and the public (Attachment 3). After asking questions, the Planning Commission closed the public hearing and discussed the appeal. The Commission discussed the appellant's concerns. The Commission determined that the property was in-fact a corner lot and subject to the corner sight triangle requirements. The Commission did not see substantial evidence that there was a security concern or a special privacy circumstance associated with the property configuration that isn't applicable to other properties in the Town. Additionally, the fence being located within the required corner sight triangle was referred to by the Commission as a safety issue. After completing their deliberations, the Commission denied the appeal and upheld the Community Development Director denial of the Fence Height Exception application.

C. Appeal to Town Council

The decision of the Planning Commission was appealed on November 17, 2023 by Martin Lettunich on behalf of Rushi Kulkarni (Attachment 4). The appellant stated that the Planning Commission erred or abused its discretion and that the decision was not supported by substantial evidence in the record. The appeal did not provide any supporting evidence for these two statements and for this reason, and because the property owner has since submitted a revised justification letter in place of these claims, there is no staff analysis.

In addition, the appeal states that the owners are having a traffic study done to show that there is not a public safety issue. This item is discussed in more detail below. Finally, the

DISCUSSION (continued):

appeal states that the fence along the north side of the property was reviewed and approved in the field. While conversations with inspectors have been described by the applicant, the approved plans do not reflect the current fence height and no Planning Division review or approval was issued for the increased fence height.

Following the November 17, 2023 appeal submittal, the property owner began working with Town staff and a traffic consultant to review the corner sight triangle concern. As a result of preliminary conversations with the traffic consultant and Town staff, it became apparent that the corner sight triangle requirements were applied correctly; and therefore, the height requirements shown in Attachment 1, Exhibit 10 do apply.

On January 9, 2024, the property owner provided a revised justification letter for their appeal and Fence Height Exception request (Attachment 5). The request is now two-fold. First, they are requesting approval of a fence height exception to allow the six-foot tall solid fence along the front (north) property line to remain. Second, they are requesting to use a combination of the approved three-foot solid fence topped by a three-foot open-view fencing along the sight corner to increase visibility for drivers and address their concerns with “coyote sightings right along the curbside by my property” and “strangers that regularly frequent the street to access Vasona Park trail.”

In regards to the first part of this request, the height of the fence within the front setback would require an exception, and is not substantially in a different location from the previous fencing that could have been maintained or replaced in kind. This portion of the fence is not within the corner sight triangle. Therefore, staff finds that granting of an exception would not result in a traffic safety concern.

In regards to the second part of the request, the proposal does improve visibility within the corner site triangle by proposing an open view fence for those portions above the three-foot height limit; however, it still exceeds the maximum height allowed in the corner sight triangle and required front and street side setback areas. Therefore, even for the revised proposal, an exception would not be granted.

CONCLUSION:

A. Recommendation

For the reasons stated in this report, it is recommended that the Town Council uphold the decision of the Planning Commission and adopt a resolution denying the appeal (Attachment 6).

CONCLUSION (continued):

B. Alternatives

Alternative One: 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 with direction on specific modifications, and identification of 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.

Alternative Two: Grant the appeal and remand the item back to the Planning Commission given that the applicant/appellant is now exploring design options that were not considered by the Planning Commission. In addition, review by the Parks and Public Works staff concluded that if the existing wooden fence within the corner site triangle were to be reduced to be no more than three feet in height, as measure from top of the curb or edge of pavement, then staff would not object to the proposed open view fencing above that height.

If the Council chooses either of these or another alternative, staff will return at a subsequent meeting with the appropriate resolution. The Council should put into the record all facts that it used to make the required findings as noted in this report so they can be properly documented in the resolution.

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SUBJECT: 124 Garden Hill Drive/FHE-23-005

DATE: January 11, 2024

PUBLIC COMMENTS:

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

COORDINATION:

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

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction or Conversion of Small Structures and Section 15301: Existing Facilities.

ATTACHMENTS:

1. November 8, 2023, Planning Commission Staff Report, with Exhibits 1 through 12
2. November 8, 2023, Planning Commission Desk Item, with Exhibit 13
3. November 8, 2023, Planning Commission Verbatim Minutes
4. Appeal of the Planning Commission decision, received November 17, 2023
5. Revised Justification Letter
6. Draft Resolution to Deny the Appeal and Deny the Project