



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 2/23/2022

ITEM NO: 2

DATE: February 18, 2022
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of a Community Development Director Decision to Deny a Fence Height Exception Request for Construction of a Six-Foot Fence Located Within the Required Front Yard Setback on Property Zoned R-1:8. Located at 16509 Bonnie Lane. APN 532-42-013. Property Owner/Applicant/Appellant: Pamela Kee. Project Planner: Ryan Safty.

RECOMMENDATION:

Deny the appeal of a Community Development Director decision to deny a fence height exception on property zoned R-1:8, located at 16509 Bonnie Lane.

PROJECT DATA:

General Plan Designation: Low Density Residential
Zoning Designation: R-1:8
Applicable Plans & Standards: General Plan
Parcel Size: 8,249 square feet
Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Low Density Residential	R-1:8
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: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

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. The project proposes a new approximately six-foot tall fence.

FINDINGS:

- 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.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject property is located on the west side of Bonnie Lane, just north of the intersection with Shady View Lane (Exhibit 1).

On November 22, 2021, the Town received a Fence Height Exception application to install an approximately six-foot tall redwood fence within the required front yard setback at 16509 Bonnie Lane (Exhibit 6). Town Code requires that fences and gates within the required front yard setback be limited to three feet in height.

On January 7, 2022, the Town denied the exception request since none of the required conditions listed in Town Code 29.40.0320 (*Exceptions*) were found to exist on the subject property.

On January 18, 2022, the decision of the Community Development Director to deny the exception request was appealed to the Planning Commission by the property owner.

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located on the west side of Bonnie Lane, just north of the intersection with Shady View Lane (Exhibit 1). The surrounding properties are low-density residential.

PROJECT DESCRIPTION (continued):

B. Project Summary and Zoning Compliance

The property owner is appealing the Community Development Director decision to deny a Fence Height Exception application to install an approximately six-foot tall redwood fence within the required front yard setback.

DISCUSSION:

A. Fence Height Exception

The property owner is requesting approval to construct an approximately six-foot tall pressure treated redwood fence within the required front yard setback. The fence would range in height from 60 to 67.5 inches and would be located roughly two to three feet from the front property line. The property owner has also proposed a pedestrian arbor that would comply with the maximum allowed height of eight feet for pedestrian gateways pursuant to Town Code Section 29.40.0315(a)(4).

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 would be within the front yard setback requirement, the traffic view area, and the driveway view area (Exhibit 7).

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 property owner cited condition (E) from Town Code Section 29.40.0320 for the exception request (Exhibit 4). Specifically, the property slopes down roughly six feet from the front property line to the front façade of the existing residence. The windows along the front façade are at roughly the same height as the existing grade of Bonnie Lane. The owner states that vehicular traffic along Bonnie Lane at night results in headlights shining directly into the residence, and that a code-compliant three-foot tall fence would not provide the privacy buffer they need. Additionally, the property previously had a roughly six- to seven-foot-tall hedge in the same location as the proposed fence. The hedge was removed to accommodate the proposed fence, which the owner contests would be, “less intrusive to the street than replacing the former hedge in kind” (Exhibit 9).

The property owner included a Letter of Justification (Exhibit 5), which analyzed the surrounding neighborhood for compliance with the Town’s current fence requirements. The owner surveyed the 18 properties on either side of Bonnie Lane, and found that eight of the properties currently have solid fences or hedges within the front yard that exceed the current three-foot height limit. Staff reviewed these properties and found that all eight have existed since at least 2013, which was before the Town updated the fence regulations in 2019.

The Community Development Department could not support the Fence Height Exception application and denied the application on January 7, 2022 (Exhibit 8). Although a “special circumstance exists,” as the property slopes down from Bonnie Lane, staff could not find that, “strict enforcement of these regulations would result in undue hardship” (Town Code Section 29.40.0320). Town Code allows a three-foot tall fence within the front 25 feet of the property. If a privacy fence is needed to block vehicular headlights, a six-foot fence with one-foot of lattice (seven total) could be placed outside of the front setback, continuing along the front face of the garage. Additionally, blinds or other window treatments could be added to screen the view of headlights.

DISCUSSION (continued):

Lastly, although roughly half of the neighborhood does not comply with the Town's current fence regulations, all of these fences and hedges existed prior to adoption of the new fence regulations.

Per Town Code Section 29.40.0315, both the Community Development Director and the Town Engineer need to approve of exceptions to the three-foot height maximum when located within the required front yard, driveway view area, traffic view area, or corner sight triangle. As stated above, the Community Development Director could not support the requested height exception. In anticipation of this appeal hearing, staff reached out to the Town Engineer to see if they could support the height exception as the project would be within the driveway view area and the traffic view area (Exhibit 7). The Town Engineer informed staff that they could consider an exception to the traffic view area, but would not allow an exception to the driveway view area. If the Planning Commission were to approve the appeal and the Fence Height Exception request, the applicant would need to revise the plans to meet the requirements of the driveway view area and would need to work with the Town Engineer for an exception to the traffic view area (Condition 3, Exhibit 3).

B. Appeal Analysis

The Decision of the Community Development Director to deny the Fence Height Exception application was appealed on January 7, 2022 (Exhibit 9). The property owner believes that the exception request is compatible with the neighborhood and if they complied with Town Code, they would be subject to an undue hardship due to the slope of their lot.

C. Environmental Review

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.

PUBLIC COMMENTS:

Written notice was sent to property owners and tenants within 300 feet of the subject property. Two neighbors have written letters of support, which are included as Exhibit 10.

CONCLUSION:

A. Summary

The property owner is requesting that the Planning Commission reconsider the Community Development Director's decision to deny the Fence Height Exception application in order to build a new six-foot fence within the required front yard setback.

B. Recommendation

Staff recommends that the Planning Commission deny the appeal and uphold the decision of the Community Development Director to deny the Fence Height Exception application.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Grant the appeal and approve the Fence Height Exception application making the findings in Exhibit 2 and with the draft conditions provided in Exhibit 3; or
3. Grant the appeal with additional and/or modified conditions.

EXHIBITS:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval if Appeal is Approved
4. Project Description, received November 22, 2021
5. Letter of Justification, received December 21, 2021
6. Project Plans, received December 29, 2021
7. Parks and Public Works View Area Diagrams
8. Fence Height Exception Denial Letter, dated January 7, 2022
9. Appeal of Community Development Director Decision, received January 18, 2022
10. Neighborhood Letters of Support, received February 12, 2022