



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 5/11/2022

ITEM NO: 3

DATE: May 6, 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 Five-Foot, Nine-Inch Fence Located Within the Required Front Yard Setback on Property Zoned R-1:10. Located at 14741 Blossom Hill Road. APN 527-41-047. Property Owner/ Applicant/Appellant: Alexandra Mims. Project Planner: Ryan Safty.

RECOMMENDATION:

Deny the appeal of a Community Development Director decision to deny a fence height exception request for construction of a five-foot, nine-inch fence located within the required front yard setback on property zoned R-1:10, located at 14741 Blossom Hill Road.

PROJECT DATA:

General Plan Designation: Low Density Residential
Zoning Designation: R-1:10
Applicable Plans & Standards: General Plan
Parcel Size: 10,163 square feet
Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Low Density Residential	R-1:8
South	Residential	Hillside Residential	HR-1:PD
East	Residential	Low Density Residential	R-1:10
West	Residential	Low Density Residential	R-1:10

CEQA:

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

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 wooden 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 north side of Blossom Hill Road, directly across the street from the intersection with Regent Drive (Exhibit 1).

On February 8, 2022, the Town's Code Compliance Officer was contacted by the property owner to provide information regarding height requirements for a shared-property fence. When at the site, the Officer observed a recently constructed non-compliant fence within the front setback area. The Officer spoke with the property owner, informed them of the Town's regulations, and advised them to modify the fence to comply with height requirements or apply for a Fence Height Exception.

On March 4, 2022, the Town received a Fence Height Exception application to permit a previously constructed five-foot, nine-inch, tall wooden fence within the required front yard setback at 14741 Blossom Hill Road (Exhibits 4 and 5). Town Code requires that fences and gates within the required front yard setback be limited to three feet in height.

On March 9, 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 March 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 north side of Blossom Hill Road, directly across the street from the intersection with Regent Drive (Exhibit 1). The surrounding properties are low-density and hillside residential.

B. Project Summary and Zoning Compliance

The property owner is appealing the Community Development Director decision to deny a Fence Height Exception application to permit a previously constructed five-foot, nine-inch, tall wooden fence within the required front yard setback.

DISCUSSION:

A. Fence Height Exception

The property owner is requesting approval to permit a previously constructed wooden fence within the required front yard setback ranging in height from five-foot, five-inches to five-foot, nine-inches. As measured by Town staff, the fence is approximately 15.5 feet from the edge of the sidewalk, which is the approximate location of the front property line along Blossom Hill Road (Exhibit 8).

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 subject fence is limited to three feet by Code as it is within the front yard setback requirement.

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.

DISCUSSION (continued):

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:
 - (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 references privacy and security to justify the exception request (Exhibit 4). Regarding privacy, the owner cites concerns related to the orientation of the home and placement of their child's bedroom window facing Blossom Hill Road. As the subject property is fronting the intersection of Blossom Hill Road and Regent Drive, the owner states that several times a day there is vehicular and pedestrian traffic that stops in front of the house and, without a privacy fence, they would be able to see directly into the bedroom window. Condition (b)-(1) of Town Code Section 29.40.0320 allows for a height exception when a special privacy concern exists that cannot be practically addressed by additional landscaping or tree screening; however, sub-section (b) only applies to side and rear yard fences. Therefore, the Town staff could not support the front yard exception with condition (b)-(1).

DISCUSSION (continued):

Regarding security, the owner cites concerns again related to the orientation of the home and placement of their child's bedroom window facing Blossom Hill Road (Exhibit 4). As Blossom Hill Road is a busy thoroughfare with pedestrian and vehicular traffic, there have been instances of trespassing and theft. The owner is concerned that a three-foot tall fence in front of their child's bedroom would not provide security. Condition (d) of Town Code Section 29.40.0320 allows for a height exception when a special security concern exists that cannot be practically addressed through alternatives. Per the hand-measurements provided on the site plan in Exhibits 4 and 5, the existing garage has a front setback of approximately 23.5 feet. The left side of the building and bedroom in question is setback an additional 17 feet from the front wall of the garage, resulting in an approximate front setback of over 40 feet to the bedroom wall. Town Code would allow a six-foot fence with one-foot of lattice above when outside of the 25-foot front setback requirement. The fence could be moved back, and previously installed landscaping removed, to meet setback requirements. With this alternative to provide security to the bedroom, staff could not support the exception with condition (d).

The Community Development Department denied the Fence Height Exception application on March 9, 2022 (Exhibit 6) for the reasons outlined above.

B. Appeal Analysis

The Decision of the Community Development Director to deny the Fence Height Exception application was appealed on March 18, 2022 (Exhibit 7).

In addition to the reasoning provided in the Project Description and Letter of Justification (Exhibit 4), the property owner provided additional justification in the appeal packet. Specifically, the fence was built shortly after the Town's updated Fence Ordinance adoption date of August 16, 2019, and the fence has now been in place for over two years. Pictures from staff's site visit are provided in Exhibit 8. Additionally, the cost of moving the fence back to comply with Town Code would be upwards of two thousand dollars, and they would need to remove the fruit trees and garden beds that were previously planted and installed behind the fence. The owner states that they are willing to add landscaping in front of the fence to help soften the appearance. The owner also expanded on the privacy and security concerns, pointing to the number of properties (44) that use Regent Drive to turn on to Blossom Hill Road, resulting in a busy intersection.

DISCUSSION (continued):

Lastly, the property owner referenced neighborhood compatibility. The owner identified four neighbors to the east, along the same side of Blossom Hill Road, which have fences, gates, or hedges that do not comply with the Town's updated Fence Ordinance (14761, 14771, 14781, and 14811 Blossom Hill Road) (Exhibit 7). Town staff visited the site to analyze these properties, and pictures of the site visit are included as Exhibit 9. 14761 Blossom Hill Road has an approximately 15-foot tall hedge within the front setback, located adjacent to the front property line; 14771 Blossom Hill Road has an approximately seven-foot tall wall and hedge, and approximately five-foot tall gate located approximately ten feet from the front property line; 14781 Blossom Hill Road has an approximately six-foot tall hedge and gate located approximately ten feet from the front property line; and 14811 Blossom Hill Road has an approximately eight-foot tall hedge located along the front property line, which is approximately ten feet further into Blossom Hill Road in an area of future Town right-of-way. However, per Google Maps historic imagery, the fence, gate, wall, or hedge of all four neighbors existed prior to adoption of the updated Fence Ordinance.

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. Public comment is provided in 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 maintain a five-foot, nine-inch 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.

CONCLUSION (continued):

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 finding 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 and Letter of Justification, received March 1, 2022
5. Project Plans and Pictures, received March 1, 2022
6. Fence Height Exception Denial Letter, dated March 9, 2022
7. Appeal of Community Development Director Decision, received March 18, 2022
8. Pictures of Subject Property, taken April 15, 2022
9. Pictures of Surrounding Neighborhood, taken April 15, 2022
10. Public comment received prior to 11:00 a.m., Friday, May 6, 2022

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