



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 3/22/2023

ITEM NO: 3

DATE: March 17, 2023  
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 Tall Fence Located Within the Required Front Yard Setback on Property Zoned R-M:5-12. **Located at 16185 George Street.** APN 529-18-046. Fence Height Exception Application FHE-22-008. PROPERTY OWNER/APPELLANT: Antony Jayaraj Alapat. APPLICANT: Sandra Paim. 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 six-foot tall fence within the required front yard setback on property zoned R-M:5-12, located at 16185 George Street.

**PROJECT DATA:**

General Plan Designation: Medium Density Residential  
Zoning Designation: R-M:5-12 – Multiple-Family Residential  
Applicable Plans & Standards: General Plan, Residential Design Guidelines  
Parcel Size: 8,207 square feet  
Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Commercial	Mixed Use Commercial	CH
South	Residential	Medium Density Residential	R-M:5-12
East	Residential	Mixed Use Commercial	CH:PD
West	Residential	Medium Density Residential	R-M:5-12

**PREPARED BY:** RYAN SAFTY  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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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.

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 at the corner of Roberts Road and George Street, one block east of Fisher Middle School (Exhibit 1). The Laurel Mews Residential Planned Development is across George Street, to the east, and commercial properties are across Roberts Road, to the north. The rest of the immediate neighborhood are residential uses.

The subject property was previously occupied by a pre-school. On October 6, 2020, an Architecture and Site Application was approved for a new single-family residence on the property. The Architecture and Site Application established the frontage on Roberts Road as the front-yard and the George Street frontage as the street-side yard. The construction of the new residence is nearly completed.

On December 9, 2022, the Town received an application for a fence height exception request to construct a six-foot tall fence within the front yard setback, along Roberts Road. The project plans are provided as Exhibit 4, and the Letter of Justification for the exception is provided as Exhibit 5.

On February 14, 2023, the exception request was denied by the Community Development Director as none of the required findings per Town Code Section 29.40.0320 could be made to support the request (Exhibit 7).

On February 24, 2023, the property owner appealed this decision to the Planning Commission (Exhibit 8).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located at the corner of Roberts Road and George Street, one block east of Fisher Middle School (Exhibit 1). The Laurel Mews Residential Planned Development is across George Street, to the east, and commercial properties are across Roberts Road, to the north. The rest of the immediate neighborhood are residential uses.

B. Project Summary and Zoning Compliance

The property owner is appealing the Community Development Director decision to deny a fence height exception request for the construction of a six-foot tall wooden fence within the required front yard setbacks along Roberts Road.

DISCUSSION:

A. Fence Height Exception

The property owner requested a fence height exception for construction of a six-foot tall wooden fence along the front property line, adjacent to Roberts Road. The fence would be six feet tall, with the top 20 percent of the fence being open lattice material, as shown in Exhibit 4.

The previous pre-school use had vehicular access off Roberts Road. Adjacent to the driveway and along Roberts Road was an approximately four-foot tall, open-view, iron fence with five-foot tall wooden posts (Exhibit 10). With the 2020 Architecture and Site Application for a new two-story single-family residence, the driveway access was moved to George Street, with the Roberts Road frontage becoming the front yard area. As a condition of approval to the Architecture and Site Application, the owners were required to dedicate 10 feet of the Roberts Road frontage to the Town for right-of-way purposes. The location of the previous fence was approximately five feet in front of the new property line, within the Town's new right-of-way area. The proposed new six-foot fence would be along the new front property line. Staff created an exhibit comparing the previous fence location and design to the current proposal, which is provided as Exhibit 9.

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. Although this is a corner lot, the proposed fence is not within a driveway view area, traffic view area, or corner sight triangle.

DISCUSSION (continued):

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:
  - (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 Letter of Justification (Exhibit 5) cited condition (d) related to security, stating that the owners are concerned about the safety and liability due to the sidewalk area being used as a school pick up area and kids may climb over or sit on the fence if it was only three feet tall. Staff did not feel that this was a special security concern. The owners also verbally referenced the fence heights and locations at the Laurel Mews Residential Planned Development across the street as justification; however, neighborhood compatibility is not one of the listed conditions for fence height exception approval.

The Community Development Department denied the fence height exception on February 14, 2023 (Exhibit 7) for the reasons outlined above.

DISCUSSION (continued):

B. Appeal Analysis

The Decision of the Community Development Director to deny the fence height exception was appealed on February 24, 2023 (Exhibit 8).

In addition to the reasoning provided in the Letter of Justification (Exhibit 5), the property owner provided three additional justification points in the appeal packet (with corresponding pictures), provided below:

1. This is the side/rear fence of the house. Neighboring residences (built in 2013) have exactly the same side/rear fence, so this is not out of character for the location;
2. This helps with privacy since across the street there are commercial properties including car shops; and
3. The proposed fence with a 10-foot distance from the street replaces an open-view metal fence (roughly six feet high) which was taken down.

Regarding the first point in the appeal packet, this is not the side/rear fence as the Architecture and Site Application established the front yard in this area along Roberts Road. The 20-foot rear yard area is to the south of the new residence and attached garage. Although neighboring properties in the Laurel Mews Residential Planned Development have similar fences as to what is proposed with this exception, they are a part of a Planned Development that supersedes the Zoning Code and were built in 2013, prior to the 2019 update to the Town's fence regulations.

Regarding the second point, there is a commercial use with a large parking lot directly to the north, across Roberts Road. Town Code Section 29.40.0320(a) allows eight-foot perimeter fences or walls when adjacent to commercial property if agreed upon by a majority of the adjacent residential property owners. In this case, the commercial property is across the street and not immediately adjacent to a commercial property. This exception is generally used to build eight-foot masonry walls when residential properties back up to commercial property to ensure safety, privacy, and noise attenuation.

Regarding the final point, a fence existed within a foot or so from the existing sidewalk prior to the Architecture and Site Application approval. The fence is no longer existing, so staff could not take measurements, but it appears to be a roughly three to four-foot tall open-view rod-iron fence with wooden posts roughly one foot higher. This fence was removed, and the area of the previous fence has since been dedicated to the Town as required by the Architecture and Site Application. Town Code Section 29.40.0325 (Exemptions) allows an existing non-conforming fence to be maintained and/or replaced in kind; however, the location, height, and design has changed, so this would not be an in-kind replacement.

DISCUSSION (continued):

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. At the time of preparation of this report, no public comment has been received.

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 to allow a new six-foot tall wooden fence within the required front yard setback.

B. Recommendation

Staff recommends that the Planning Commission deny the appeal of the Community Development Director decision to deny the fence height exception application based on the reasoning provided in this report.

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 with the finding in Exhibit 2 and the draft conditions provided in Exhibit 3; or
3. Grant the appeal with additional and/or modified conditions.

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SUBJECT: 16185 George Street/FHE-22-008

DATE: March 17, 2023

EXHIBITS:

1. Location Map
2. Required Finding
3. Recommended Conditions of Approval if Appeal is Granted
4. Project Plans, Received January 30, 2023
5. Letter of Justification, Received January 30, 2023
6. Neighborhood Outreach Summary, Received January 30, 2023
7. Fence Height Exception Denial Letter, Dated February 14, 2023
8. Appeal of the Community Development Director Decision, Received February 24, 2023
9. Diagram Showing Existing and Proposed Fence Design and Location
10. Pictures of Subject Property – Current Conditions and 2019 Conditions

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