

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

Los Gatos Planning  
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Susan Burnett  
Steve Raspe  
Rob Stump

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P R O C E E D I N G S:

CHAIR THOMAS: We will now be moving onto Item 3 on our agenda for tonight. Item 3 is to consider an appeal of a Community Development Director decision to deny a Fence Exception Request for an existing fence partially located in the Town's right-of-way and exceeding the height limitations within the required front yard and street side yard setbacks on property zoned R-1:D, located at 10 Charles Street. APN 532-36-022. Categorically exempt pursuant to CEQA Guidelines Section 15303: New Construction or Conversion of Small Structures. Fence Height Exception Application FHE-23-001. Property Owner, Applicant, and Appellant is Firoz Pradhan, and the project planner is Mr. Mullin.

Can I have a show of hands of Commissioners that visited the site? And are there any disclosures? No. Thank you. And I believe, Mr. Mullin, you're giving the Staff Report. Thank you.

SEAN MULLIN: Yes, thank you and good evening. For your consideration tonight there is an appeal of the Director's decision denying an exception to the fence height regulations at 10 Charles Street.

1           The subject property is located on the corner of  
2 Charles Street and Los Gatos Boulevard, and it is developed  
3 as a single-family residence.

4           On November 11, 2022 an administrative warning  
5 was issued by the Town for the construction of a fence  
6 exceeding height limitations in the required side yard  
7 area. Staff discussed the fence with the property owner and  
8 informed them that the new fence exceeded the maximum  
9 allowable height of 3' when located in the required front  
10 and streetside yard setbacks, as well as the traffic view  
11 area and the corner site triangle.  
12

13           On January 10, 2023 the Applicant applied for an  
14 exception to the Town's fence regulations based on concerns  
15 related to safety and security. Planning and Engineering  
16 Staff initially supported the request, finding that the  
17 open design of the fence and the width of the sidewalk and  
18 planting strip mitigated the traffic and pedestrian safety  
19 concerns, however, following a site visit Staff noted that  
20 portions of the fence are located in the Town's right-of-  
21 way, a fact not available during initial consideration of  
22 the exception request.  
23

24           In consultation with the Engineering division, it  
25 was determined that the Town could not make the findings

1 required for granting the exception, and the request was  
2 denied on March 23, 2023.

3           On April 3, 2023 the denial was appealed to the  
4 Planning Commission by the property owner. Pursuant to Town  
5 Code, the Planning Commission may hear the matter anew and  
6 render a new decision.

7           In their Letter of Justification, the property  
8 owner reiterates their safety concerns, security concerns,  
9 discusses the unique characteristics of the property, and  
10 goals of mitigating safety issues with the open view  
11 portion of the fence. The property owner also notes the  
12 location of the fence accommodates reasonable and fair  
13 access to approach the front yard. The property owner also  
14 noted that locating the fence within the property boundary  
15 would make exterior circulation between the side yard and  
16 front yard impractical and may require the removal of some  
17 oak trees. Finally, the property owner offers their  
18 willingness to sign any needed agreements with the Town in  
19 order to maintain the fence in the Town's right-of-way.  
20

21           Based on the analysis provided in the Staff  
22 Report, Staff recommends denial of the appeal, upholding  
23 the decision of the Director to deny the exception request.  
24

1           In addition to Planning Staff, Engineering Staff  
2 is also in attendance tonight to address any questions that  
3 the Commission has.

4           This concludes my presentation and Staff is  
5 available to support your discussion this evening.

6           CHAIR THOMAS: Thank you. Commissioner Stump.

7           COMMISSIONER STUMP: A couple of questions.  
8 First, as I understand it, the portion of the fence that's  
9 in the Town right-of-way is on Charles Street, not the Los  
10 Gatos Boulevard side, is that correct?

11           SEAN MULLIN: That's correct.

12           COMMISSIONER STUMP: So, it's Charles Street that  
13 is in the Town right-of-way.  
14

15           The other question I would have for Public Works  
16 would be are there any plans for a sidewalk now or ever to  
17 be installed on Charles Street? What is the priority?  
18 Obviously Town right-of-way would be very important to us  
19 if sidewalks were to be installed. What's the story there?

20           DIRECTOR PAULSON: Thank you, Commissioner Stump.  
21 We have Mr. Watson, Senior Civil Engineer, on Zoom, as well  
22 as the Town Engineer, Gary Heap, so whoever wants to field  
23 that, go ahead and chime in.  
24  
25

1 JAMES WATSON: I can jump in. James Watson,  
2 Senior Engineer, Town of Los Gatos. Thanks for the  
3 question.

4 Sidewalks are something that typically are put in  
5 by the direction of Council, and so we would look to  
6 Council to make some sort of capital improvement project in  
7 the area if there were such a demand or request. To my  
8 knowledge, there is currently no plan, and I've heard no  
9 discussions of any plans to install a sidewalk on Charles  
10 Street.

11  
12 COMMISSIONER STUMP: Thank you.

13 CHAIR THOMAS: Commissioner Raspe.

14 COMMISSIONER RASPE: Thank you. I just want to  
15 follow-up on that question. To the extent that we permitted  
16 a fence to be placed subject to, as I understand it, a  
17 license agreement of encroachment (inaudible), is one of  
18 the conditions of that, to follow-up on Commissioner  
19 Stump's question, if the Town ever wished to develop it,  
20 the landowner would have to remove the fence? Is that one  
21 of the conditions of the agreement?

22 ATTORNEY WHELAN: Yes.

23 COMMISSIONER RASPE: Thank you.

24 CHAIR THOMAS: Any other questions for Staff?  
25 Commissioner Barnett.

1 COMMISSIONER BARNETT: Extending on that comment.  
2 The Staff Report says that private improvements on the  
3 Town's right-of-way can create safety and Town liability  
4 issues that are not typically permitted, but they can be  
5 allowed with an Encroachment Permit and License Agreement,  
6 typically required through Parks and Public Works  
7 Department, so my question is has there been any discussion  
8 with the Applicant related to getting such an Encroachment  
9 Permit?

10  
11 SEAN MULLIN: Thank you for that question. I can  
12 start. The Applicant has expressed their willingness to  
13 sign any agreement needed to maintain the fence in the  
14 Town's right-of-way.

15 COMMISSIONER BARNETT: Is there any reason why  
16 that hasn't been done yet?

17 SEAN MULLIN: In general—and I can defer to Mr.  
18 Watson—the Town discourages improvements in the public  
19 right-of-way, so that was the reason for denial. I don't  
20 know if Mr. Watson has anything to add to that.

21 JAMES WATSON: I'll just echo that, but yes, when  
22 we originally looked at it we weren't considering any  
23 improvements in the public right-of-way. We have had some  
24 situations come up recently that have made us consider some  
25 private improvements in the public right-of-way.

1           One other thing to consider, information that did  
2 come up subsequent to our original denial, is our Town  
3 Engineer did a ride-along with one of our Police Department  
4 officers and actually went to the site just today and took  
5 a look at it, and the police officer did not support the  
6 viewing that was available at that turn, expressing concern  
7 about southbound traffic on Los Gatos Boulevard turning  
8 right onto Charles and potential for a pedestrian being  
9 unable to be seen. I just wanted to add that extra piece of  
10 information, since it did kind of develop today.

11  
12           CHAIR THOMAS: Are there any other questions for  
13 Staff? Yes, Commissioner Stump.

14           COMMISSIONER STUMP: Maybe I'm directionally  
15 challenged, but that was a right turn onto Charles Street  
16 as you would be going north on Los Gatos Boulevard? Is that  
17 what was being stated as concern by the police officer?

18           JAMES WATSON: If I said that, I misspoke. I  
19 intended to say southbound on Los Gatos Boulevard, right  
20 turn onto Charles.

21           SEAN MULLIN: For clarification, I believe the  
22 right turn would be northbound.

23           COMMISSIONER STUMP: The right turn going  
24 northbound, okay. We wouldn't be making a right turn onto  
25 Charles Street if you're going southbound.



1 JAMES WATSON: That's contrary. So, you come up  
2 to the traffic intersection at Los Gatos/Saratoga and Los  
3 Gatos Boulevard, you take a right turn onto Los Gatos  
4 Boulevard, and then it's a left turn onto Charles, and so  
5 if you're heading in the northbound direction, you would  
6 turn left onto Charles, but that's not the one that was  
7 brought up. It's the other direction, coming towards Los  
8 Gatos/Saratoga and turning onto Charles, which to my  
9 recollection is a right turn.  
10

11 SEAN MULLIN: Just verifying through the Chair,  
12 that would be the northbound direction of Los Gatos  
13 Boulevard, turning right onto Charles Street.

14 JAMES WATSON: I apologize for that. I'm the  
15 directionally challenged one.

16 CHAIR THOMAS: I just would like to clarify with  
17 Staff though that there was a... According to Parks and  
18 Public Works, is that who determines that the initial view  
19 corridor was clear and okay?

20 SEAN MULLIN: Thank you for that question.  
21 Obviously, as you can recognize with the dates, this has  
22 been kicking around for a little bit. Discussions back in  
23 2023 with Mr. Watson and the traffic engineering based on a  
24 site visit, they didn't have any site line issue, and  
25

1 that's reflected in that email exchange between me and Mr.  
2 Watson.

3           There was some information provided verbally  
4 through the Town Engineer based on a ride-along with one of  
5 our police officers today, that the police officer in that  
6 conversation expressed some concern with the line of sight  
7 when turning right onto Charles from Los Gatos Boulevard.  
8 As you look down that fence, you're not looking  
9 perpendicular to the open view of it, you're looking at it  
10 at an angle, and that officer, to my understanding,  
11 expressed some concerns about the blocking of the view  
12 through the corner when approaching it from that direction.

14           CHAIR THOMAS: Okay, thank you. Any other  
15 questions at this time? Thank you, Mr. Mullin, and  
16 everyone. We will now open the public portion of the public  
17 hearing on Item 3 and give the Applicant or Appellant an  
18 opportunity to address the Commission for up to five  
19 minutes. I believe I have a speaker card for Mr. Pradhan.

20           FIROZ PRADHAN: Respected Chairwoman and members  
21 of the Planning Commission. I just want to start out by  
22 taking a moment to, from the bottom of my heart, thank the  
23 Staff, particularly Sean Mullin, for the patience that he  
24 has exhibited over the last year-and-a-half while I was  
25

1 going through an irreparable loss in my life, and I really  
2 want to thank you.

3           There are some unique characteristics surrounding  
4 this particular home. It was built in 1920. We purchased  
5 the home 99 years later. It's obviously located—and I'm  
6 really happy that you've all visited the site—on a very  
7 quiet dead-end street at the intersection of Charles and  
8 Los Gatos Boulevard. Just six neighbors on the street, very  
9 little traffic.

10           The main living room, which is often visited by  
11 my son and the two grandkids of my mother-in-law is the  
12 bedroom on the front of the house, and that room, through a  
13 pair of French doors, opens to the Boulevard.

14           The other thing of course is that there is a stop  
15 sign on Charles, which you are aware of. During COVID, and  
16 while construction was going on, there was a 6-foot solid  
17 fence, the green canvas fence. We had never, never got a  
18 phone call even from anybody saying that there is a concern  
19 about visibility.  
20

21           When we were designing the home, and the fence  
22 specifically, but even the home, just to let you know that  
23 we had overall a fantastic experience with the Town,  
24 whether it was with Joel Paulson from Planning or from the  
25 HPC, or Roy Alba, or Robert Gray, or Sean Mullin of course,

1 any of the people. It was just a fantastic experience, and  
2 people would say, "Oh my God, we feel sorry that you're  
3 building something in the Town," and I'm just being honest  
4 with you, for us the experience was absolutely fantastic.

5           We were also blessed, we had spoken with two top,  
6 top architects, Gary Kohlsaas and Chris Spaulding, and then  
7 we worked with Chris Spaulding. The objectives of building  
8 the fence for us was safety and security, particularly  
9 because kids were going to be playing in the front yard,  
10 and that was the main play area. Visibility was a main  
11 issue, and we had spoken with the neighbors, and most of  
12 the neighbors.  
13

14           There was one neighbor, obviously, who has some  
15 concern, and we are still trying to work out some tweaking  
16 of the fence that would address that need and hopefully the  
17 concern of the police officer.

18           In fact, when James Watson mentioned about the  
19 police officer, I actually have spoken to three or four  
20 different police officers when there would be some incident  
21 and they would park on Charles Street, because it's easy  
22 parking, and I would literally call them out and I would  
23 say, "Can you just spend a couple of minutes and tell me if  
24 you have any concerns with the visibility," and each one of  
25 them said absolutely not, the way the fence has been

1 designed and built, they don't have any concern. But  
2 visibility for us was important, in addition to safety and  
3 security.

4           We spoke with the neighbors. We made it a point  
5 to have a very expensive and custom-built fence, 26" tall,  
6 38" of latticework, and we literally mimicked the fence of  
7 the house across the street. Then of course I reached out  
8 to Nicole Burnham when Sean Mullin expressed a concern. She  
9 (inaudible) James Watson, he came, he spent some time, and  
10 thus the email that he sent.

11           If you can quickly pull up the PDF on the  
12 visibility. The white car is mine, and I'm literally at the  
13 stop sign, and this is today. It's obviously a rainy and  
14 cloudy day, but you can see that even through the lattice  
15 you could see the cars. If you can play it again. As soon  
16 as the car enters and much before. Now, if you can show us  
17 the PDF. I know there is a concern about the right-of-way.  
18 What we did is very naively we built the fence along the  
19 curb and gutter, and you can see there are some trees, and  
20 if we were to build the fence along the properly line,  
21 which we were not even aware of, all I did was I called  
22 Chris Spaulding, I sent him the design, and I said, "Do you  
23 have a view on this?" and he said, "It's beautiful, but it  
24  
25

1 must be very expensive," and is said, "Yes, but it is in  
2 keeping with all the details that we have put in the home."

3           You're not able to find the other PDF? It's fine.  
4 They were basically snapshots of the video that I had sent  
5 where you can literally see the cars coming through the  
6 lattice, and if you need to tweak the last two or three  
7 sections, it's something that we are definitely willing to  
8 do, and as far as the right-of-way is concerned, Sean and I  
9 have spoken about this. If there's anything we need to do  
10 to protect the Town, we'll do it. Thank you.  
11

12           CHAIR THOMAS: Thank you, thank you. Before you  
13 sit down, are there any questions for the Appellant at this  
14 time? No. Okay, thank you. You will have an additional  
15 three minutes to speak after we get public comment.

16           FIROZ PRADHAN: Thank you so much.

17           CHAIR THOMAS: I do have a couple of speaker  
18 cards here. The first is for Michelle. Please just state  
19 your name for the record and you will have three minutes.

20           MICHELLE HUNTLEY: Thank you. Hi, my name is  
21 Michelle Huntley. I am the property owner at 264 Los Gatos  
22 Boulevard, which shares a property line with 10 Charles.  
23 Forgive me, I don't know Town laws and regulations, but I  
24 just wanted to speak to you today.  
25

1           When Firoz finished his remodel, he did approach  
2 me about a fence going on Los Gatos Boulevard, at which  
3 point I did express my concerns, because it is a busy road,  
4 we've got kids, we've got kids on bikes, scooters, short  
5 kids, tall kids, high schoolers, middle schoolers, cars. He  
6 did make many changes to the fence. He did provide some  
7 spacing so I could see and have some visibility, because if  
8 it's a solid fence my driveway is a complete safety hazard  
9 and unusable.

10  
11           It has affected my visibility; it has reduced it  
12 for sure. What caught me off guard was that not only does  
13 it affect my visibility, but the pedestrians walking by  
14 cannot see me. I'm very careful, and I drive out carefully,  
15 and as it is now I'm okay as long as the bushes are kept  
16 off the fence, but I've witnessed the surprise on many  
17 people's faces when they see my car; they had no idea it's  
18 there, which is an extra layer.

19           So, my concern going forward would be allowing an  
20 unrestricted fence going in, requiring a permanent...saying  
21 that it's allowed to have the fence higher, and with  
22 unrestricted materials, because someone in the future, he  
23 could change his mind later and put a solid fence in and  
24 visibility, the driveway would be unusable; visibility at  
25 Charles Street would be even more impacted.

1 I have seen people really have to slow down, and  
2 that's an unreasonable expectation for kids to take that  
3 extra time to go super slow if something more solid were to  
4 go in down the line. It's an unreasonable expectation for  
5 adults to slow down running late for work. People tend to  
6 speed through these intersections and we need some  
7 visibility, so as it is now, I hope that we can find a way  
8 to work together to maintain this visibility that works  
9 within the Town laws and to preserve the safety going  
10 forward for any future owner.

11  
12 CHAIR THOMAS: Thank you. I think Commissioner  
13 Stump has a question.

14 COMMISSIONER STUMP: In fact, I looked at your  
15 property today just because of that concern of a fence  
16 coming right up to your property, and I noticed that it is  
17 angled a bit.

18 MICHELLE HUNTLEY: Yes, I asked him for an angle,  
19 and he did.

20 COMMISSIONER STUMP: My question is, is that  
21 angle sufficient from your perspective, or could it be even  
22 greater? Could you be happier? Could you have additional  
23 visibility? I know that the fence comes around between your  
24 properties and I think stops at a hedge line.  
25



1 MICHELLE HUNTLEY: Yes, it does, the hedge line  
2 going back. They wanted a fence and a hedge line, and I  
3 just couldn't fit it in my driveway. We had asked for the  
4 angle, and they did agree, and I had thought at the time  
5 that it was going to be a little bit more we had agreed  
6 upon, so, I mean, any angle additional helps greatly.  
7 Everything helps on that street.

8 CHAIR THOMAS: I do just want to clarify one  
9 thing with you. Right now, you feel like the visibility is  
10 good. Your main concern is that moving forward if the fence  
11 were altered to not have the lattice, that would be...

13 MICHELLE HUNTLEY: If there is any altering, that  
14 would be completely unusable. As of right now, I'm  
15 managing. He's been agreeing to keep the hedge off the  
16 fence, because there's now a hedge on the other side of it  
17 which further obstructs the view, but if he agrees to keep  
18 it maintained, as it is now, I feel comfortable working  
19 with him. A future owner might be another story.

20 CHAIR THOMAS: Okay, thank you. The next speaker  
21 card I have is for Doug.

22 DOUG OLCOTT: My name is Doug Olcott; I live at  
23 300 Charles Street, the very end of the street, and I am  
24 speaking in defense of the appeal of the denial of the  
25 exception. I have lived on that street for a long time with

1 my wife, and our children have been raised mainly there,  
2 going to local schools.

3 I had sent you a PowerPoint with many more slides  
4 than Mr. Mullin showed up there showing the access to Los  
5 Gatos Boulevard, first from Charles Street, and then views  
6 looking either way, left and right, from the street, and  
7 showing that there was no blocking of the view by his  
8 fence.

9  
10 Also, at the very end of Charles Street before  
11 you get to the Boulevard, there is the word "Stop" written  
12 in the pavement before the sidewalk, so if you're leaving,  
13 you have to stop there and you look in either direction,  
14 and there is no obstruction.

15 Also, the Town, at my request and some other  
16 people's request, has put a sign on the Boulevard before  
17 you approach Charles Street saying, "Do Not Block  
18 Intersection," at the intersection with Charles Street, not  
19 at the traffic light which connects the road to Saratoga.  
20 And also, they marked on the pavement in front of the  
21 Charles intersection with the Boulevard, "Keep Clear." So,  
22 if people are driving in that direction and paying  
23 attention, they would not block the exit or ingress in, and  
24 they would leave space for people to get in and out, and  
25

1 also, it would protect children, lots of children going to  
2 school there down that street, and bicyclists.

3 I feel that the current location of the fence and  
4 the provisions that the Town has made for safety there are  
5 adequate, and I have not seen any accidents there in all  
6 the time we've lived there, and from the time he built that  
7 fence that was caused by a lack of a view, so that's all I  
8 wanted to say.

9  
10 Now, if you want, I'd like to meet with Mr.  
11 Mullin at the site, again, or someone, to go over these  
12 details. If you could see them in my photos, I think you  
13 would agree with what I'm saying. Unfortunately, I wasn't  
14 aware that the deadline was 11:00am today. That's all I  
15 wanted to say.

16 CHAIR THOMAS: Thank you very much. Yes, and  
17 thank you for the reminder that the deadline is at 11:00am  
18 for the public. But we did all do a site visit, at least.  
19 Are there any questions for the speaker? The next speaker  
20 card I have is for Natasha.

21 FIROZ PRADHAN: She's my daughter. I think she  
22 had confidence in her dad and she left.

23 CHAIR THOMAS: Okay. I understand. And Sayid  
24 Nejard also? Okay, thank you.  
25

1 SAYID NEJARD: Hi, my name is Sayid Nejard. I  
2 live on Charles Street a couple of houses down from the Mr.  
3 Pradhan's house.

4 Like Mr. Doug was saying, I don't see any issue  
5 with visibility from Charles Street to Los Gatos Boulevard.  
6 There is a stop sign right there, you stop, and then just  
7 look and you can see anybody who is passing; dogwalkers,  
8 people, pedestrians, and so on.

9  
10 The only issue I see on this is in the afternoon  
11 the high school students are going back home and driving  
12 off of Los Gatos Boulevard. That section, they speed up and  
13 there is a little bit of danger of an accident there, but  
14 it's not the reason for the fence; they're not taking about  
15 the fence here. But that intersection is quite dangerous,  
16 and I've seen an accident before, and this really had  
17 nothing with do with 10 Charles Street.

18 When he built the house, it just really made the  
19 neighborhood so much nicer; it's a beautiful home and the  
20 fence is a very high-quality, beautiful, with the lattice  
21 section that you can be seen through, and I'd hate to see  
22 that be changed to something else; definitely not a solid  
23 fence. I'm not very familiar with the ordinance of the  
24 Town, but the way it is, I have no issues with it, not me  
25 and not anyone in my family. Thanks.

1 CHAIR THOMAS: Are there any questions for the  
2 speaker? No. Thank you. The last speaker card I have is for  
3 Kevin.

4 KEVIN CHESNEY: Hi, I'm Kevin Chesney; I have  
5 owned the house on 2 Charles Street since 1994.

6 First of all, I lost both parents in 2024, my  
7 mother and father, and Firoz and I have talked about our  
8 losses together. He lost his lovely wife. He's a wonderful  
9 neighbor. It's not an issue. He's a kind neighbor, and I  
10 hate to come up here and talk about how dangerous that  
11 fence is.  
12

13 To be quite honest, the neighbor on 5 Charles  
14 Street, Matthew Daily, had an accident for the fence that  
15 was that green fence that he's talking about that was for  
16 construction. Kent Anderson, the other neighbor, and I both  
17 immediately after he brought that fence up said that's  
18 dangerous. Both of us said please make changes to it,  
19 please change it, and we've talked about it for over a  
20 year. We didn't go to the Town, but we asked him to make  
21 changes, because as you're coming out from Charles Street  
22 and you're turning right, you can't see to the left, and  
23 when his hedges come up..  
24

25 Basically, if the Town leaves it there, I'm going  
to sue you; it is dangerous. Basically, you're doing

1 something that is putting me at risk. As a homeowner, as  
2 someone who has lived there since 1994, it is a dangerous  
3 fence.

4           Now, that being said, I've sat down with him.  
5 He's very kind, and we've talked about changes that could  
6 be made that would address that, and if he can make those  
7 changes, I am totally fine. He needs to move it back maybe  
8 2'-4', or he needs to drop some of those things down, but  
9 if he doesn't make those changes, then you guys are going  
10 to be liable. You make that decision, I will hold you  
11 liable. It is a dangerous fence, and there are three  
12 neighbors, Matthew Daily, Kent Anderson, and me, that see  
13 it as extremely dangerous.  
14

15           I'm sorry. I love my neighbor. He's very kind.  
16 He's a very good man. It's a beautiful home. But to be  
17 quite honest, it's dangerous, and we've already had one  
18 accident because of that prior fence, so to be quite  
19 honest, it's very dangerous.

20           CHAIR THOMAS: Are there any questions?  
21 Commissioner Stump.

22           COMMISSIONER STUMP: I just wanted to get a  
23 clarification. You said because of that prior fence. Are  
24 you talking about the construction fence that was up?  
25

1 KEVIN CHESNEY: Yes, the construction fence.  
2 Matthew Daily had an accident with the construction fence.

3 COMMISSIONER STUMP: I understand.

4 KEVIN CHESNEY: Prior to that, there was no  
5 fence. I've lived there. I knew Don prior to that.

6 COMMISSIONER STUMP: What changes are you  
7 recommending to that corner?

8 KEVIN CHESNEY: Actually, I spoke with him  
9 earlier. We've talked about a couple of changes. Either  
10 move the fence back, which other neighbors, if you look,  
11 it's all about visibility. He's done a beautiful job of  
12 building a beautiful home, the fence itself is a beautiful  
13 fence. I don't want to discount that.

14 He's been kind, and we've talked about things.  
15 It's not a matter of me wanting to come up here and diss  
16 him, it's a matter of safety; that's all it is. And he and  
17 I talked about it earlier today. He needs to bring a  
18 portion of that fence down. If I'm coming up and I have to  
19 go into the sidewalk to see whether or not someone is  
20 coming over, or if I need to turn right, it's dangerous for  
21 me. We've already had an accident. All I want to do is make  
22 it safe, that's all. And to be quite honest, he's a good  
23 neighbor and I feel bad having to come up and say this.

24 COMMISSIONER STUMP: Okay, thank you.

1 CHAIR THOMAS: Are there any additional  
2 questions? Thank you. I have no speaker cards for Item 3.  
3 Are there any hands raised on Zoom?

4 DIRECTOR PAULSON: Thank you, Chair. Let me  
5 switch screens. No, there are no hands raised on Zoom.

6 CHAIR THOMAS: So, I invite the Appellant back  
7 up. You will have an additional three minutes.

8 FIROZ PRADHAN: I really don't know if I have  
9 much to add, but I will say that when I spoke to those two  
10 or three different police officers, in one of the cases he  
11 had already addressed the incident and he actually turned  
12 around, stopped at a stop sign, looked left, looked right,  
13 and he said, "Why are you asking me this? I don't see a  
14 problem."  
15

16 And I do understand that Kevin has a problem, and  
17 we have spoken about lowering those two or three sections  
18 at the corner. Obviously, our concern is the safety issue,  
19 because when the grandkids are playing there, it's a 26-  
20 inch fence and somebody can walk across. I also mentioned  
21 to Sean that we had two incidents where somebody literally  
22 knocked at the door of the French doors in the front  
23 bedroom, so safety and security is a concern.

24 I also totally understand that visibility is a  
25 concern. I was driving back today from Whole Foods to



1 Charles to see if there are other such cases, and I came  
2 across nine homes on the corner of Los Gatos Boulevard and  
3 side streets that had fences that were about 3 feet and  
4 solid. On Charles itself, all three other corners have the  
5 same issue, but they are working with it, and I am willing  
6 to work with people and get this issue resolved.

7 I really don't have anything to say. We have such  
8 wonderful memories, and this is not relevant to this, but I  
9 just share these things. The home originally was 268 Los  
10 Gatos Boulevard and I got a call from Robert Gray because  
11 we had applied for a change of address, and he said, "I  
12 just want to give you the good news. Your home is now going  
13 to be on Charles, but there is a problem. We need an even  
14 number from 2-20," and in the spur of the moment I said,  
15 "We are not rich enough to live on 10 Downing, but we could  
16 live on 10 Charles," and that's how the address came.

18 When the demolition was going on, we found a  
19 piece of paper, handwritten, nailed to one of the studs  
20 saying the mailbox on this building has been found to be  
21 satisfactory, and it was signed February 18, 1920, and we  
22 found it in February 2020, a hundred years later.

23 It's really, really important for me, and I know  
24 this is very personal and this may not be... My wife lived  
25 joyfully until the very last moment. There is a beautiful

1 African proverb, "When death comes, and it will, make sure  
2 it finds you alive," and she lived that until the very last  
3 moment. I want to honor her legacy and still make sure that  
4 people are safe.

5 Finally, I want to say let justice and law be  
6 tempered with pragmatism. That's all. Thank you so much,  
7 and I'm sorry if I got emotional.

8 CHAIR THOMAS: No, thank you. Thank you for  
9 sharing all of that, and all the details. Are there any  
10 questions. Commissioner Stump does have a question for you.

11 COMMISSIONER STUMP: Thanks for the information  
12 that you provided. Would you consider making some changes  
13 at the corner of Charles and Los Gatos Boulevard, whether  
14 it's more of an angle similar to what you did on the other  
15 side for your neighbor so that there would be more  
16 visibility, especially looking down Los Gatos Boulevard?

17 FIROZ PRADHAN: Right. One of the things that's  
18 easy to do, because obviously these are very solid posts  
19 and so on, is there are three sections, and if you pull up  
20 the picture I can show you. There are three sections, one  
21 on Charles and two on Los Gatos Boulevard. If the lattice  
22 work can be lowered to 3', or probably to 39", as long as  
23 the visibility is there, then you're not looking through  
24 the lattice.  
25

1                   COMMISSIONER STUMP: Other question too. Your  
2 neighbor at 264 Los Gatos Boulevard, would you also be  
3 willing to work with her to review the kind of the angle  
4 that was put in there? Because even my observation was it  
5 was a bit shallow and not a lot, and it could be something  
6 that goes back a little bit even farther.

7                   FIROZ PRADHAN: Yes, I can work with Michelle.  
8 Sure.

9                   COMMISSIONER STUMP: Thank you.  
10

11                  FIROZ PRADHAN: Though I do feel that her concern  
12 was (inaudible) this morning of course is that if you sell  
13 the home, somebody will come and put a solid fence, so if  
14 there is an exception, it shouldn't be a blanket exception.

15                  COMMISSIONER STUMP: Thank you.

16                  CHAIR THOMAS: Thank you. Are there any other  
17 questions? Okay. Thank you so much.

18                  FIROZ PRADHAN: Thank you so much.

19                  CHAIR THOMAS: We will now close the public  
20 portion of the public hearing on Item 3, and I invite  
21 Commissioners to ask questions of Staff, provide comments,  
22 and eventually propose a motion.

23                  I have a question about the findings just because  
24 we started with some other questions. On page 129, Exhibit  
25 2 says, "The required findings for granting a fence height

1 exception pursuant..., " blah, blah, blah, "are a special  
2 security concern exists," and then there's a second bullet  
3 point. I just want to clarify that we only need to make one  
4 of those two findings.

5 SEAN MULLIN: That's correct.

6 CHAIR THOMAS: Okay, thank you. Then, originally  
7 the Applicant came forward with the special security  
8 concern, but this is also listed as option, and when I was  
9 looking through I was thinking that perhaps a special  
10 circumstance exists because of the lot configuration with  
11 regard to the house and everything, so is that why that's  
12 listed there also for us.

14 SEAN MULLIN: Thank you for that question. The  
15 reason those are listed is those are the two that really  
16 apply to the property, because it's not interior lot, so  
17 there are a number of findings, A-E, D and E, which are  
18 provided here, are the ones that are applicable to the lot.

19 CHAIR THOMAS: Right, because the other one is  
20 also like commercial property, all of that.

21 SEAN MULLIN: Correct.

22 CHAIR THOMAS: Okay, thank you. Just wanted to  
23 clarify that. Does anyone else have questions for Staff? I  
24 just want to clarify with Staff and with the Town Attorney  
25 that if this appeal... I mean, what happens if we grant this

1 appeal, and with regard to the legal responsibility of the  
2 Town if this fence is in the public right-of-way.

3 ATTORNEY WHELAN: The Town would be susceptible  
4 to claims if there were an injury. There's an immunity  
5 that's called the "design immunity," when the Town has  
6 participated in the design of an improvement that immunity  
7 would not be available because the Town... And a legislative  
8 body has to approve the design for the design immunity to  
9 apply, so the design immunity would not be available under  
10 these circumstances.

11  
12 CHAIR THOMAS: And as part of the documents that  
13 the Appellant is agreeing to sign off on, what sort of  
14 responsibility do they take?

15 ATTORNEY WHELAN: It does require the property  
16 owner to indemnify the Town for any claims that arise out  
17 of the improvement that's located in the public right-of-  
18 way. And then there is also an insurance requirement.

19 CHAIR THOMAS: Okay, and it also gives the Town  
20 the ability to remove the fence in case of an emergency, or  
21 require that the property owner remove the fence if there's  
22 a need for the use of that right-of-way?

23 ATTORNEY WHELAN: The Town's agreements in the  
24 past have required the property owner to remove the  
25 improvement at the request of the Town. We don't have any

1 language in the agreement right now that talks about the  
2 Town having the ability to remove it in the event of an  
3 emergency, but I think there's case law that would support  
4 the Town's ability to do that.

5 CHAIR THOMAS: Okay, thank you. Yes, Commissioner  
6 Burnett.

7 COMMISSIONER BURNETT: Yes, I have a question. If  
8 the present owner sold his home, would the same rules  
9 apply? I mean, he would have signed an indemnity protecting  
10 the Town. Would the new homeowner?

11 ATTORNEY WHELAN: That's a good point. The  
12 Conditions of Approval do run with the land, however, the  
13 license agreement would not run with the land, and so we  
14 would need to provide that the license agreement terminates  
15 when the property changes hands.

16 COMMISSIONER BURNETT: Thank you.

17 CHAIR THOMAS: Commissioner Stump.

18 COMMISSIONER STUMP: The safety issue that was  
19 brought up by one of the residents on Charles Street, is  
20 there some guidance the Town would give there related to  
21 the construction? I know some suggestions have been  
22 offered, but if we were to grant the appeal, could that be  
23 a condition of granting the appeal, or granting permission  
24 to be in the Town right-of-way, etc.?  
25

1 SEAN MULLIN: Thank you for that. I think the  
2 Town or the Planning Commission has the ability to grant  
3 the appeal with conditions to modify the fence as you see  
4 fit. My initial response is does the Town have basically a  
5 framework to avoid the situation. Obviously, the Town Code  
6 helps avoid it, and that's why we're here this evening. You  
7 have the latitude to look at things a little bit more in a  
8 different light and consider the appeal and the extenuating  
9 circumstances.  
10

11 DIRECTOR PAULSON: Through the Chair, if I may  
12 offer? Through the Town Engineer, the license agreement  
13 would actually... He's indicating the license agreement would  
14 be recorded on the property, it would run with the  
15 property, just to add that information. I'm not sure if  
16 he's available to unmute at the moment.

17 ATTORNEY WHELAN: We'd need to structure it as a  
18 deed restriction so that it applied to any new buyer,  
19 because historically the Town's license agreements have  
20 been between the Town and a specific party.

21 COMMISSIONER BARNETT: Can we start with  
22 comments, Chair?

23 CHAIR THOMAS: Go for it.

24 COMMISSIONER BARNETT: I don't see from my  
25 perspective any way that we can grant the appeal. The

1 recommendation by Staff is no. I think there's credibility  
2 from the Public Works representative about the policeman  
3 speaking today, even though it's hearsay; so is the  
4 Applicant's statement about the other policeman. I think  
5 the concern about loss of indemnity is a very serious  
6 issue. The liability of the Town is a very great issue  
7 also.

8  
9           There may be opportunities for the Appellant to  
10 come back with another application to be consistent with  
11 the ordinances of the Town, but I personally would find it  
12 extremely difficult to grant the appeal.

13           CHAIR THOMAS: Commissioner Burnett.

14           COMMISSIONER BURNETT: Yes, I agree with  
15 Commissioner Barnett. Hearing from a couple of the  
16 residents, the issues they brought up, which were very  
17 concerning, I would not be able to make the required  
18 findings to grant the appeal, and I stand by our compliance  
19 officer in violation of the code and the zoning,  
20 29.40.0315.

21           I mean, these corners are very important and we  
22 have a lot of them come before us, so we're very sensitive  
23 about any kind of change on corner fences, and this seems  
24 to pose a particular problem. This is a busy road, and from  
25 the police officer who mentioned, although we say it was



1 hearsay, he did comment that it was dangerous and the fence  
2 was not... There's so much lattice that I think it actually  
3 tends to help block the view, but I would not be able to  
4 grant an appeal in this item.

5 CHAIR THOMAS: I have an additional question for  
6 Town Staff, and that is if the current owner or future  
7 owner wanted to alter the fence, they couldn't make it a  
8 solid fence, because that wouldn't be an in-kind  
9 replacement?  
10

11 SEAN MULLIN: That's correct. If the appeal were  
12 granted for the fence as it currently is, the fence would  
13 have to remain as is.

14 CHAIR THOMAS: Okay, thank you. Just to clarify  
15 that, because that was a concern of one of the neighbors.

16 ATTORNEY WHELAN: To add onto that, if the  
17 Commission were inclined to grant the appeal, I would  
18 recommend making that a condition of approval about keeping  
19 it in-kind.

20 CHAIR THOMAS: Even though it's in the Town Code,  
21 additionally having that just as a backup.

22 ATTORNEY WHELAN: I think so, because otherwise  
23 the conditions will be recorded as they are, and it won't  
24 be documented.  
25

1 CHAIR THOMAS: Okay, perfect. I hear everyone's  
2 concerns. My mom lives relatively close to this property,  
3 so I do walk and... Obviously I'm not walking up that end of  
4 Charles, because it's a dead end, but I do cross Charles  
5 there a lot and walk along Los Gatos Boulevard, and I know  
6 that safety is a primary concern, however, when the initial  
7 Staff Report that we have came in they didn't have a  
8 concern with the corner site triangle, which typically is  
9 the standard that we look at with regard to safety,  
10 however, I hear some of the neighbors' concerns.

11  
12 I'm wondering if we can come to some sort of  
13 middle ground of adjusting the fence, because I do think  
14 that on certain parts of this property it does make sense,  
15 and I could make some of these findings. I could make the  
16 findings that this is not an unreasonable request, and so I  
17 really do think that if the safety is the concern I'm  
18 wondering if the Commission has any ideas about how to  
19 possibly just make an adjustment.

20 COMMISSIONER RASPE: Chair, I'm torn on this one.  
21 I really came in this evening after reviewing materials and  
22 I understood the Appellant's concerns. He wants to utilize  
23 their front yard, has small children, and as a result there  
24 is traffic right there and you want to protect your  
25 children from both intruders and getting outside the

1 property and into traffic. At the same time, we have to  
2 protect our pedestrians and drivers from visibility issues,  
3 and so this is one where I think I agree with you, Chair.

4           There is a win here, I think, for both the Town  
5 and for the Applicant, but I don't think it's the current  
6 configuration. I think the current configuration obstructs  
7 too much of children and high schoolers walking up and down  
8 the street, and people trying to make a left turn, for  
9 instance, out of Charles onto Los Gatos Boulevard.

10           I don't know that lowering the fence height helps  
11 the Applicant, because children can go over in either  
12 direction, out in traffic or into his yard. I'm wondering  
13 if perhaps taking the right angle out where it connects  
14 Charles and Los Gatos Boulevard, if you turn that instead  
15 into a 45-degree angle, I think that creates a sight line.  
16 Is that a better idea? Maybe. The Applicant would have to  
17 give up some land to make that happen, so part of the  
18 usable space.

19           I think, again, there's a solution here, but in  
20 its current configuration, I can't support the fence. I  
21 think it creates issues for pedestrians, for drivers, and  
22 ultimately for the Town.

23           CHAIR THOMAS: Could I request that the photo  
24 that is in the Staff Report as part of Exhibit 10, that  
25

1 corner that really shows us...that we look at it together as  
2 a group, but perhaps for Staff's recommendation, if we're  
3 going to make a recommendation to clarify.

4 SEAN MULLIN: What was that page number again?

5 CHAIR THOMAS: One-thirty-seven.

6 SEAN MULLIN: It will take me one moment.

7 CHAIR THOMAS: I think that as you're pulling  
8 that up, Mr. Mullin, I just want to say that part of the  
9 visibility issue that I saw when I visited is that there  
10 are a lot of trees happening anyway, so those trees are  
11 there and they exist, but that does definitely add to the  
12 situation. I think that if where that first tree in on  
13 Charles is, is that's where the fence starts its lefthand  
14 turn, that will mitigate a lot of these issues. So, I am  
15 wondering if everyone is amenable to us just opening up  
16 public comment again just to get a clarification if the  
17 Appellant would be willing to adjust that change.

18  
19 ATTORNEY WHELAN: You could open it up just for  
20 the purpose of asking that question.

21 CHAIR THOMAS: That one question, okay. Let's  
22 hold. I want to see what other Commissioners think. There  
23 are multiple trees there, so really, I agree with  
24 Commissioner Raspe that if that...  
25

1           COMMISSIONER RASPE: Just to clarify. You see, it  
2 looks like there's a span probably of 10' from the corner  
3 to the first vertical post right where the cursor is. If  
4 you take out that section and instead go on a 45-degree  
5 angle, I think that perhaps opens up a view corridor. I  
6 don't know if it's adequate or not, and I just throw it out  
7 there as a possible solution.

8           CHAIR THOMAS: Yes, Commissioner Barnett.

9           COMMISSIONER BARNETT: I have a question for  
10 Staff, and that is given the procedural status that we have  
11 an appeal based on the existing fence, do we as the  
12 Commission have authority to approve a variation?  
13

14          ATTORNEY WHELAN: You could grant the appeal with  
15 conditions, and the conditions could be the revisions that  
16 the Commission lands on.

17          COMMISSIONER BARNETT: Okay, thank you.

18          CHAIR THOMAS: And the alternative would be  
19 reject, and then there would have to be a whole new  
20 application to come in to be processed.

21          ATTORNEY WHELAN: I'll see what Mr. Paulson has  
22 to say after me, but I would say that you could deny the  
23 appeal, and then say that the Applicant is free to come  
24 back with a new proposal.  
25

1 DIRECTOR PAULSON: In addition, whether the  
2 appeal is granted or denied, that's an appealable action.

3 CHAIR THOMAS: Okay, because it's a decision.  
4 Great, so all of the options. I feel like that would  
5 satisfy the needs of all the parties involved. I'm curious  
6 what other Commissioners are thinking, or do you want me to  
7 ask the Appellant if they're willing to make that change?

8 COMMISSIONER STUMP: I was going to say can you  
9 expand on that? So, which solution were you proposing?  
10

11 CHAIR THOMAS: To attempt to grant the appeal  
12 with the condition that this part of the fence, the lattice  
13 be removed and the fence be made at the 45-degree angle.

14 COMMISSIONER STUMP: I agree we should give it a  
15 try. We should pursue it tonight.

16 CHAIR THOMAS: Yes, Commissioner Barnett.

17 COMMISSIONER BARNETT: I just want to say  
18 following up on Staff's option. My personal opinion was  
19 that we shouldn't be engineering and designing this  
20 tonight, that we should deny it without prejudice and  
21 encourage the Appellant to come in with a different plan. I  
22 personally don't feel confident about doing that ourselves  
23 without Staff reviewing the new design, including Public  
24 Works.  
25

CHAIR THOMAS: Commissioner Burnett.

1 COMMISSIONER BURNETT: Yes, I agree with  
2 Commissioner Barnett exactly on this. I feel we should deny  
3 it and have them come back with a new design, and I'm also  
4 concerned about leaving shrubbery and tree care up to them,  
5 to make sure that the visibility is cleared out all the  
6 time; that's another problem for me.

7  
8 So, with this issue, there are a lot of problems  
9 with this fence the way it is. You have shrubbery, you have  
10 row, you have indemnity issues, you have the fence, which  
11 is very busy and causes, I think, an obstructed view, so I  
12 would feel much more comfortable denying it and having them  
13 come back with clear direction from Staff on how these  
14 issues could be resolved.

15 But I'm still concerned about our other Town  
16 issue, the right-of-way, so I'm not comfortable with that  
17 yet. Thank you.

18 CHAIR THOMAS: Okay, thank you. I do want to say  
19 that according to the Staff Report that we got tonight, I  
20 did not see that there was a safety issue according to  
21 that, so I'm not sure for me personally how that really  
22 has... I don't know how Staff would reevaluate it in a way  
23 that it couldn't make anything worse, it's only going to  
24 improve.  
25

1 But I do have a question for Staff about the  
2 shrubbery and if there is anything in Town Code about  
3 requiring visibility with shrubs with regard to  
4 landscaping?

5 SEAN MULLIN: Thank you for that question. The  
6 same rules that apply to this fence also apply to trees and  
7 shrubs. They're limited to 3' in height and subject to code  
8 enforcement should they grow taller than what is allowed  
9 when they're in the required front yard area, corner, site  
10 triangle, traffic view area, or the required streetside  
11 setback.  
12

13 CHAIR THOMAS: So, if the owner, or whoever lives  
14 there in the future, let the shrubs get out of control,  
15 that should be a code compliance complaint and a code  
16 violation?

17 SEAN MULLIN: Yes.

18 COMMISSIONER RASPE: I have a question for Staff.  
19 Is there any way--again, I'm trying to find a path forward--  
20 that if the Applicant were to incorporate our changes, for  
21 instance, if we were to deny the appeal, that the Applicant  
22 would incorporate our changes with a new design, would it  
23 necessarily come back to us? Or if the Community  
24 Development Director found... I understand it's the private  
25 right-of-way issue that actually initially landed it before



1 us, but if, for instance, we indicated that that wasn't our  
2 main concern, rather it's the safety issue, and if Town  
3 Staff was placated with that issue, would it have to come  
4 back to us if the redesign was incorporated giving our  
5 input tonight and Town Staff was satisfied?

6 SEAN MULLIN: If I could ask a clarifying  
7 question. If you're talking about design alterations, is  
8 that something that would be accomplished through a  
9 condition on granting the appeal, or would that be... There  
10 are options of continuing it and coming back with an  
11 alternate design, or denying it with direction and without  
12 prejudice, being explicit about why you can't grant the  
13 appeal, and then the homeowner could file for a new Fence  
14 Height Exception and Staff could reevaluate under that. I'm  
15 not sure if it would end up back here or not; it's hard to  
16 tell unless you continued it.

18 COMMISSIONER RASPE: I'm just trying to find the  
19 quickest point A to B. I think we're largely in a court  
20 here. I think we all want to solve the problem. We see what  
21 the issues are, and I suggested a solution. I do agree with  
22 Commissioner Barnett. I don't want to be in a position that  
23 we are engineering results; that's not our role. But I want  
24 to get to the end result as quickly as possible, so if that  
25 is denial with recommendations, let them start the process

1 again, maybe that's it. I'm open to suggestions on it, but  
2 I do agree, we shouldn't be designing the fence.

3 CHAIR THOMAS: Commissioner Barnett.

4 COMMISSIONER BARNETT: Just a quick comment would  
5 be that as part of a revised plan they could move the fence  
6 out of the right-of-way and take away that issue, and then  
7 I think if it passes muster with Staff that everyone would  
8 be okay with that.

9 CHAIR THOMAS: Personally, I understand the  
10 safety concerns, but once again, I do really strongly feel  
11 that Parks and Public Works said that this was not a major  
12 safety concern. It's really more in front of us, I think.  
13 We do need to make the finding for a Fence Height  
14 Exception, and I understand that. I think the public right-  
15 of-way issue is what is in front of us, so maybe we do need  
16 to get a better idea of how we feel about that. I know that  
17 Commissioner Burnett said she's not entirely comfortable  
18 with that situation, but I felt like the willingness of the  
19 Applicant to sign the license agreement and all the  
20 required documents were satisfactory to me. I know there  
21 are other examples of private improvements in the public  
22 right-of-way in Town, it just is part of being an old town  
23 with small streets and funky lots and all of the things,  
24 but I don't really feel comfortable relying on hearsay from  
25

1 one police officer today, like saying that should trump the  
2 traffic engineer's opinions on safety, so that's just kind  
3 of where I'm at. Commissioner Stump.

4 COMMISSIONER STUMP: So, then I think it comes to  
5 either denial, that we deny the appeal, or we continue this  
6 with the idea that we would bring this back, and because we  
7 have two things to consider. We've got the right-of-way,  
8 and now we're identifying public safety. It could have all  
9 been avoided if the fence were 3' high all the way around  
10 and not in the Town right-of-way. That's not the  
11 circumstance we find ourselves in.  
12

13 The other thing we need to keep in mind too,  
14 Staff was ready to grant this exception, as we see it,  
15 until it was discovered that a portion of this fence was in  
16 the right-of-way, and keep in mind that the Los Gatos  
17 Boulevard side of the fence is not in the Town right-of-  
18 way, it's only on the Charles Street side, so I think  
19 that's what we're faced with. It's either we've got to deny  
20 this appeal and encourage the homeowner to come back  
21 through the process, or continue this, and I guess I'd look  
22 to Staff to say is there a preference, and is one of those  
23 ways more convenient for the Appellant.  
24

25 SEAN MULLIN: There's certainly not a preference  
from Staff's perspective. I think there are merits to both

1 directions. Continuing with very specific direction could  
2 allow, and actually applying for a new Fence Height  
3 Exception if it were denied would allow the Applicant an  
4 opportunity to continue to work with Staff, and based on  
5 what we've heard tonight and the interaction with the  
6 Police Department, that could be something that we could  
7 chase down as well. If it were a continuance, we'd be  
8 looking for very specific direction about the items that  
9 would need to be addressed, and then we could continue  
10 working with the Applicant and then bring that back.

12 DIRECTOR PAULSON: Through the Chair, I see that  
13 the Town Engineer has his hand raised on Zoom, so Mr. Heap,  
14 if you have some input, please unmute yourself.

15 GARY HEAP: Yes, thank you. I appreciate you  
16 allowing me to speak on this item here. I appreciate the  
17 late notice of this new information this evening with  
18 regard to the input from the Police Department today. I was  
19 fortunate enough to do a drive-along with Sergeant Kalipo  
20 this afternoon, and I did bring this item up, specifically  
21 with regard to the visibility issue.

22 The visibility issue is not from exiting Charles,  
23 but it is from traveling northbound on Los Gatos Boulevard  
24 and making that right turn onto Charles, which is not stop  
25 controlled, so folks can make that right turn, and if there

1 are pedestrians that happen to be walking along Charles in  
2 the street, because there is no sidewalk, it's difficult  
3 for them to move out of the way with that fence being  
4 there.

5 I would be okay, so long, as it was all right  
6 with the Planning Department and the Town Attorney, to go  
7 ahead and allow for this to move forward as a  
8 recommendation with removal of the fence, or at least  
9 lowering the fence within the 30' triangle at the corner,  
10 which is our standard sight distance requirement for a  
11 corner.  
12

13 Then with regard to the fencing along Charles in  
14 the right-of-way, we could then live with that in the  
15 right-of-way with the license agreement that is recorded  
16 against the property, which again, is deed restricted, and  
17 so if in the future we did need that right-of-way, we could  
18 request that property and remove that.

19 CHAIR THOMAS: I think that I would request that  
20 we open the public comment just to answer the question of  
21 what the Appellant...would you want us to issue a continuance  
22 with specific guidance, or would you rather have us deny  
23 and essentially you would need to start over?

24 FIROZ PRADHAN: The neighbors and I have been  
25 discussing this issue.

1 CHAIR THOMAS: I'm sorry, it's just a question of  
2 would you be... If we issued a continuance on this item with  
3 specific direction, would you be willing to work with Staff  
4 to improve the view corridor, as the Town Engineer  
5 mentioned?

6 FIROZ PRADHAN: One hundred percent, yes.

7 CHAIR THOMAS: And would you prefer to go that  
8 route versus a straight up denial of the request, which  
9 means that your options would be that you could appeal to  
10 Town Council or start over with a new application?  
11

12 FIROZ PRADHAN: I would one hundred percent like  
13 to resolve this issue with the Staff, and obviously we'll  
14 involve the neighbors as well, rather than going to Town  
15 Council or coming back to this place. Thank you so much.

16 CHAIR THOMAS: Thank you. I really appreciate  
17 that. Thank you. Commissioner Barnett.

18 COMMISSIONER BARNETT: Would there be a new  
19 filing fee if there was a new application?

20 DIRECTOR PAULSON: Yes.

21 COMMISSIONER BARNETT: On that basis, I'd like to  
22 make a motion that we continue this hearing to a date  
23 acceptable to Staff with direction that the Appellant  
24 confer with Staff with respect to addressing both the  
25 right-of-way issue and the safety issue, and that we have

1 the opportunity then to bring it back in the event that  
2 Staff is not prepared to make a decision on its own.

3 CHAIR THOMAS: Is that a specific enough motion?

4 SEAN MULLIN: I can start, and then the Director  
5 can jump in. I think with that motion, that's what Staff  
6 has been working on for some time. I think as a  
7 recommendation, perhaps we might want to be more specific  
8 about the safety concerns and the potential resolutions  
9 without of course engineering from the dais. We've heard  
10 concerns about the corner sight triangle, and we've heard  
11 some opinions and feedback from the Town Engineer on that,  
12 and we've also heard concerns about the neighbor's  
13 driveway; I think it was 264 Los Gatos Boulevard.

15 Offering specificity about bringing the height  
16 down, I think that's the kind of direction that would be  
17 extremely useful for Staff since we've already been trying  
18 to get there with this offline.

19 CHAIR THOMAS: I think Commissioner Raspe has...

20 COMMISSIONER RASPE: Chair, if I might offer a  
21 discussion among Commissioners. My specific recommendations  
22 would be for the redesign. Redesigning the corner at the  
23 intersection of Los Gatos/Saratoga and Charles Street such  
24 that a possible resolution will be a 45-degree angle  
25 instead of a 90-degree angle at that site, that as part of

1 the conditions of approval there would be no changes in  
2 material to the fence, that plantings would not be allowed  
3 to grow along the fence line, and there would be a redesign  
4 of the fence at the driveway section of 264 Charles. Those  
5 would be my specific recommendations we would include as  
6 part of our continuance.

7 CHAIR THOMAS: I realized we didn't get a second  
8 for motion.

9 COMMISSIONER BARNETT: We didn't get a second. We  
10 don't have a motion.

11 CHAIR THOMAS: We don't have a motion. Is that a  
12 motion though?

13 COMMISSIONER RASPE: I would append that to  
14 Commissioner Barnett's motion. He already, I think, made a  
15 motion to continue. Those would be my conditions for the  
16 continuance, if Staff believes those are specific enough.

17 COMMISSIONER BARNETT: Yes, the maker would  
18 accept those.

19 CHAIR THOMAS: Okay, and who seconded that motion  
20 initially? Okay, Commissioner Stump. Thank you. So, now  
21 discussion. Do we feel like that's sufficient direction?  
22 Commissioner Burnett.  
23  
24  
25



1 COMMISSIONER BURNETT: Could I just have the  
2 motion clarified? At the corner you're talking about having  
3 a 45-degree angle?

4 COMMISSIONER RASPE: Yes, your recommendation.

5 COMMISSIONER BURNETT: And you're keeping the  
6 same fencing material, lattice?

7 COMMISSIONER RASPE: So, it couldn't be solid,  
8 and it couldn't allow plantings to grow (inaudible) view  
9 corridor, either this corner or any subsequent corner.

10 COMMISSIONER BURNETT: And then how many feet  
11 would that be on Los Gatos Boulevard and then...

12 COMMISSIONER RASPE: I think I would leave the  
13 specifics for Staff.

14 COMMISSIONER BURNETT: How do you figure out the  
15 dimensions on that?

16 CHAIR THOMAS: To open the view triangle?

17 COMMISSIONER BURNETT: Yes.

18 COMMISSIONER RASPE: I think there's the... I would  
19 go from post-to-post. There are already existing posts it  
20 looks like about 10' from the corner.

21 COMMISSIONER BURNETT: I see.

22 COMMISSIONER RASPE: (Inaudible).

23 COMMISSIONER BURNETT: And does Staff feel that  
24 that would be adequate?  
25

1 CHAIR THOMAS: Is that adequate? Is that more  
2 specific?

3 SEAN MULLIN: Thank you for that. I think that's  
4 certainly more specific. What I'm hearing is to look at the  
5 corner sight triangle with the suggestion of changing that  
6 angle between Los Gatos Boulevard and Charles to a 45-  
7 degree angle or somewhere thereabouts, especially on the  
8 first panel on each side. Condition of Approval so that  
9 there are no changes to fence moving forward so it carries  
10 with the project, not just in the Town Code, and that no  
11 plantings be allowed along the fence, and to work to  
12 redesign the fence to improve the safety at 264 Los Gatos  
13 Boulevard.  
14

15 CHAIR THOMAS: Yes. And then, I would just like  
16 to offer a recommendation to amend that we understand there  
17 are existing trees, so taking that into consideration too  
18 that we understand it might be like a foot, or inches, or  
19 something else might need to happen to engineer around  
20 those trees on the corner. Is that okay with the makers?

21 COMMISSIONER BARNETT: Yes.

22 CHAIR THOMAS: Okay, thank you. And then I  
23 believe the Town Engineer, he raised his hand for a second.  
24

25 GARY HEAP: I did. If I could provide additional  
input. Our Town standard at corners is a 30' setback from

1 the intersection, 30' back from the property line, along  
2 both of the legs of that triangle at the corner, and then  
3 it would be 10' back at the adjacent driveway, so that  
4 would be our Town standard for visibility.

5 COMMISSIONER BARNETT: Yes, I would amend my  
6 motion to adopt that standard as one to be considered  
7 before this is brought back to us, or certainly to the  
8 Staff's approval.

9 CHAIR THOMAS: Okay. Are we ready to call the  
10 question? I'm sorry, we can't open the public portion  
11 again. Are we continuing to a date... Sorry, this is not to a  
12 date certain determined by Staff.

13 DIRECTOR PAULSON: We can do it to a date  
14 certain, and let's do April 23<sup>rd</sup>, and we'll work through  
15 internal stuff, and if we're not ready, then we'll just  
16 continue it again.

17 CHAIR THOMAS: Okay, to April 23<sup>rd</sup>. Great. Let's  
18 go ahead and call the question. All those in favor? The  
19 motion passes unanimously.

20 (END)  
21  
22  
23  
24  
25