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

Los Gatos Planning Commissioners:	Emily Thomas, Chair Kendra Burch, Vice Chair Jeffrey Barnett Susan Burnett Joseph Sordi Rob Stump
Town Manager:	Chris Constantin
Community Development Director:	Joel Paulson
Town Attorney:	Gabrielle Whelan
Transcribed by:	Vicki L. Blandin (619) 541-3405

1  
2 P R O C E E D I N G S:  
3

4 CHAIR THOMAS: We will now move on to our public  
5 hearings, starting with Item 2. Item 2 is to consider an  
6 appeal of a Community Development Director decision to deny  
7 a fence exception request for an existing fence partially  
8 located in the Town's right-of-way and exceeding the height  
9 limitations within the required front yard and streetside  
10 yard setbacks on property zoned R-1D, located at 10 Charles  
11 Street. APN 532-36-022. Categorically exempt pursuant to  
12 CEQA Guidelines Section 15303: New Construction or  
13 Conversion of Small Structures. Fence Height Exception  
14 Application FHE-23-001. The property owner and Applicant  
15 and Appellant is Mr. Pradhan, and our project planner is  
16 Mr. Mullin, who will be giving the Staff Report.  
17

18 Before that, are there any disclosures from the  
19 Commissioners? Okay, and then can I see hands of who has  
20 visited the property? Thank you. Okay, thank you, Mr.  
21 Mullin.

22 SEAN MULLIN: Thank you, and good evening.

23 On March 12<sup>th</sup> the Planning Commission considered  
24 the appeal and continued the matter with the following  
25 direction to the Applicant: address the right-of-way and

1 safety issues created by the fence; redesign the fence at  
2 the corner of Los Gatos Boulevard and Charles Street to  
3 adhere to the corner sight triangle standards to Staff's  
4 approval; redesign the fence near the driveway serving 264  
5 Los Gatos Boulevard to address site and safety concerns;  
6 and any approval should carry the condition that there be  
7 no changes to materials or solidness of the fence, and that  
8 there will be no plantings allowed along the fence.  
9

10 In response to the Commission's direction the  
11 Applicant has met with Staff and neighbors and has  
12 submitted two letters presenting two options for  
13 consideration.

14 The first option would maintain the fence at the  
15 current height, design, and location with modifications  
16 moving portions of the fence to partially address the  
17 corner sight triangle and the neighbor's driveway view  
18 area. With these modifications, the fence would remain in  
19 the required front and street side setbacks, corner sight  
20 triangle, driveway view area, and traffic view area at a  
21 height exceeding the maximum allowed 3'.  
22

23 The second option would maintain the current  
24 height and design of the fence, but would move the fence  
25 back 3'-9", and relocate portions of the fence at the  
corner and adjacent to the neighbor's driveway to tie into

1 the existing fence. With this option, the fence would  
2 remain in the required front and streetside setbacks,  
3 corner sight triangle, driveway view area, and traffic view  
4 area at a height exceeding the maximum allowed 3'.

5 With both options, portions of the fence located  
6 along Charles Street would remain in the right-of-way, and  
7 the Applicant indicates that they are willing to enter into  
8 the appropriate agreements with the Town to maintain  
9 private improvements in the right-of-way.

10 Based on the analysis provided in the Staff  
11 Report, Staff recommends denial of the appeal due to safety  
12 and Town liability issues, upholding the decision of the  
13 Director to deny the exception to the fence regulations.

14 An Addendum and Desk Item were distributed with  
15 public comments received after the publishing of the Staff  
16 Report, and in addition to Planning Staff, Engineering  
17 Staff is also in attendance tonight to further support your  
18 discussion.

19 This concludes Staff's presentation and we're  
20 available for any questions.

21 CHAIR THOMAS: Thank you. Are there any questions  
22 for Staff at this time? Commissioner Stump.

23 COMMISSIONER STUMP: Mr. Mullin, if the appeal  
24 were to be denied, what is the next process as far as  
25

1 remediation? What sort of commitment would we be getting  
2 from the Appellant to take the required action so that that  
3 fence fully complies with Town Code as well as the right-  
4 of-way?

5           ATTORNEY WHELAN: I can address that. The Town's  
6 Code Compliance Officer most likely would issue a  
7 compliance order that would require that the fence be  
8 brought into conformance with the Town's regulations within  
9 a specified amount of time. Then, if it doesn't occur  
10 within that time frame, then there is a hearing scheduled  
11 before a hearing officer, and the hearing officer has the  
12 ability to impose penalties. Then, if the fence is still  
13 not brought into conformance, then the Town's next step  
14 would be to get an injunction.

15           COMMISSIONER STUMP: Thank you.

16           DIRECTOR PAULSON: Through the Chair, prior to  
17 that occurring, whatever decision is made by the Planning  
18 Commission is ultimately appealable to the Council, so that  
19 would be the next step. Following that decision, then what  
20 Ms. Whelan mentioned is plausible.

21           CHAIR THOMAS: Are there any other additional  
22 questions for Staff at this time. Commissioner Barnett.  
23

24           COMMISSIONER BARNETT: This would be for Ms.  
25 Whelan. The Applicant/Appellant has offered to enter into

1 an indemnity agreement with the Town respecting the right-  
2 of-way encroachment, and the question I have is would a  
3 standard homeowner's insurance policy cover liability  
4 related to the easement that would be given by the Town?

5           ATTORNEY WHELAN: I don't have the answer to that  
6 offhand. I know that upon occasion there are people who  
7 install things in the Town's public right-of-way, and in  
8 those instances the Town and that party enter into a  
9 license agreement, and as a general rule that license  
10 agreement contains an indemnity requirement, and then we do  
11 typically require a separate insurance policy. I don't know  
12 whether a homeowner's policy would cover this or not, but I  
13 could get back to the Commission with that information at a  
14 future time.

16           COMMISSIONER BARNETT: It sounds like one way or  
17 the other, there's going to be coverage.

18           ATTORNEY WHELAN: Yes.

19           COMMISSIONER BARNETT: Okay, thanks so much.

20           CHAIR THOMAS: Any other questions for Staff at  
21 this time? I now invite the Appellant up to speak. Whoever  
22 is speaking on behalf of the Appellant can come to the  
23 microphone and State your name, and you will have five  
24 minutes. Thank you.  
25

1 FIROZ PRADHAN: My name is Firoz Pradhan and I'm  
2 the proud owner of the property at 10 Charles Street.

3 On the 12<sup>th</sup> of March the Planning Commission  
4 unanimously voted that I should go back and try to work  
5 with the staff and with the neighbors to find a workable  
6 solution that addresses the visibility or safety concern.

7 If you can jump to slide 10. And so, this is the  
8 story of the mysterious fence. I diligently reached out to  
9 as many neighbors as I possibly could. My home is in red.

10 The neighbor, Michelle, I reached out to, had  
11 several discussions, extremely supportive, and I think we  
12 came up with a solution that would work.

13 Jenna seems like is not on Charles, but is on  
14 Charles because it's a flag lot. I have had (inaudible)  
15 discussions with her, and she wasn't even aware there was a  
16 problem with respect to the visibility. I told her what we  
17 were doing, what we were proposing, and essentially the  
18 solution we were recommending is pushing the fence back by  
19 3.5', clipping the corners, and going from there. She said  
20 this obviously seems to solve the problem.

21 The same response I got from Mr. Olcott, and the  
22 same response I got from Saeed. I also got the same  
23 response from Kent, except in the case of Kent there was no  
24 follow-up letter as was the case with Saeed and with Mr.  
25

1 Olcott, and with Michelle. All of them responded with a  
2 letter to the Town expressing their comfort.

3           As far as the neighbor, Kevin, is concerned, and  
4 I believe he is here with us today and obviously he could  
5 speak on his behalf, he initially was not comfortable at  
6 all. When I showed him the solution, he said, "As far as  
7 the visibility is concerned, it seems to solve my problem."  
8 I'm sorry if I'm being so sort of open or candid about it,  
9 but he said, "I'm really pissed off with you, and so I'm  
10 going to raise an objection." And obviously the discussions  
11 ended over there.  
12

13           I did try to reach out to Matt Daily, who used to  
14 be on Charles, more to find out about an accident that had  
15 occurred at the intersection. I was not able to reach out  
16 to him regarding the visibility till this morning.

17           If you can move to slide 1. So, this was the  
18 solution. If you see the fence on Los Gatos Boulevard, it's  
19 pushed back by 3.5', actually 3'-9" based on my  
20 clarification with Sean. The visibility is significantly  
21 enhanced, and you can literally see down the road, as well  
22 as Michelle is extremely comfortable and she's put that in  
23 her letter as well, which is on the record.  
24

25           Subsequent to this, what happened is I met with  
Sean and had a discussion with him. He urged me to talk to



1 Gary Heap at Public Works, if (inaudible). Sorry, next  
2 slide again.

3 And Gary Heap said, "We will not support what you  
4 have come up with." What he wants us to do is a 30-foot  
5 triangle from face-of-curb at Los Gatos Boulevard to face-  
6 of-curb at Charles. We did that, marked out everything, we  
7 did the fence accordingly. Go to the next slide, please.

8 And this was the triangle that he came up with on  
9 both sides. He looked at it, and I believe he's in the  
10 room, and I'm obviously trying to quote him as accurately  
11 as possible. I was nervous when he told me about this. He  
12 said, "Firoz, it's not going to be as bad as you think. Let  
13 us mark it and show it to you." He showed it to me, I felt  
14 comfortable, he said, "Go ahead and do this. It definitely  
15 solves the problem." Let's go to the next slide.

17 This is the triangle. Next slide.

18 This is on the other side. Next slide, please.

19 Unfortunately, what happened is two or three days  
20 later I got an email from him saying that it was a mistake  
21 and that the 30 feet really has to be measured from the  
22 property corner and not from the curb corner, and that  
23 completely threw me off. I went back to Sean and had a  
24 meeting with him. Next slide, please.  
25

1           And this is what the code requires, and there is  
2 no way we could do this, so I would urge the Planning  
3 Commission to let us do the solution that we came up with  
4 Gary Heap.

5           CHAIR THOMAS: Okay, thank you very much. Are  
6 there any questions for speaker at this time? Yes,  
7 Commissioner Barnett.

8           COMMISSIONER BARNETT: Yes, sir. The unanimous  
9 vote of the Planning Commission at our March 12<sup>th</sup> meeting  
10 included a direction to redesign the fence at the corner of  
11 Los Gatos Boulevard and Charles Street to adhere to the  
12 corner sight triangle standards to Staff's approval, and  
13 Staff's approval was not given. It's recommendation tonight  
14 is to deny the appeal. Do you have any comment about that?

15           FIROZ PRADHAN: My understanding from the last  
16 meeting with the Planning Commission—that's a great  
17 question—my understanding, Mr. Barnett, was that I should  
18 go back and come back with a solution that would work for  
19 everybody, for the neighbors and for the Staff, and see if  
20 it practically solves the concern that people have with  
21 respect to visibility.  
22

23           I'm trying to quote as closely as possible. When  
24 I met with the Staff, with Gary Heap and James Watson, and  
25 they showed me the triangle they wanted me to... They looked

1 at it and they said, "This definitely solves the visibility  
2 problem." James Watson mentioned something about the 200'  
3 rule, to which Mr. Heap said, "That's not a problem. We are  
4 going to be granting... We're okay with the fence height  
5 exception, so that should not be a problem."

6 So, if the idea was just for me to go back and  
7 follow the code to the T, it would imply giving up 55% of  
8 the front yard. That was the last slide that Sean showed  
9 us, and that's something that I would just not be  
10 comfortable with.

11  
12 COMMISSIONER BARNETT: Okay, thank you, sir.

13 CHAIR THOMAS: Any other questions? Thank you.  
14 We'll have public comment, and then you'll have an  
15 additional three minutes.

16 FIROZ PRADHAN: Thank you so much. I didn't  
17 realize five minutes would go so fast.

18 CHAIR THOMAS: I know, it does. It goes fast when  
19 you're up there. So, we will now continue with the public  
20 portion of this public hearing, and invite comments from  
21 members of the public. If you have not already turned in a  
22 speaker card to Staff, please do so at this time, or use  
23 the raised hand feature on Zoom. I do have two speaker  
24 cards, and the first one is for Kevin Chesney. Thank you.  
25 You will have three minutes.

1 KEVIN CHESNEY: Good evening, Commissioners, and  
2 thank you for your time. My name is Kevin Chesney and I  
3 reside at 2 Charles Street, immediately adjacent to the  
4 subject property.

5 I urge the Commission to deny this fence  
6 exception, not as a personal disagreement, but because it  
7 poses a real risk to pedestrian safety and undermines the  
8 community standards.

9 First, I want to address a claim by the Applicant  
10 in his addendum. He asserts that all neighbors support the  
11 proposed fence, with the exception of a single neighbor,  
12 Kevin Chesney, which is me. This statement is not only  
13 misleading, but it is inaccurate. Other neighbors, like  
14 Matthew Daily and Ken Anderson, have also expressed  
15 concerns despite the Applicant's efforts to convince them  
16 otherwise, and after two years of this, we're all worn  
17 down; we're tired.

18 This is not about personal preference or  
19 aesthetics, it's about safety, code compliance, and the  
20 public right-of-way. The fence, as constructed, encroaches  
21 into the town's right-of-way, exceeds height limits, and  
22 violates visibility standards that exist for a reason.

23 The intersection is traveled daily by school  
24 children walking or biking to Louise Van Meter Elementary,  
25

1 Raymond Fisher, Los Gatos High School, and even Mariposa.  
2 These children use this very sidewalk, some learning to  
3 ride, others carrying back packs that are bigger than them.  
4 They shouldn't have to navigate a blind corner caused by a  
5 noncompliant fence. The Town has a duty to protect its most  
6 vulnerable pedestrians, not just accommodate property  
7 owners.

8           The Applicant has also suggested that a prior  
9 fence may justify this one, but any previous fence only  
10 existed a short way down the frontage, and Town policy is  
11 clear. New construction in violation of code does not get  
12 grandfathered because someone didn't know the rules.

13           If this appeal is granted, it will send the  
14 message that safety regulations are flexible and it is  
15 acceptable to build first and seek forgiveness later, even  
16 when children's safety is at stake. I respectfully urge the  
17 Commission to support the Staff recommendation and deny  
18 this appeal.

19           Upholding these standards affirm that Los Gatos  
20 values safety over shortcuts, and children over  
21 convenience. Let's show that rules exist for a reason and  
22 that the Town is protecting those who walk its sidewalks.  
23 When rules are enforced fairly, everyone—residents,  
24  
25

1 parents, and future builders—benefits from a system they  
2 can trust.

3 I also want to thank the Staff, Sean and Erin  
4 Walters especially, for educating me.

5 CHAIR THOMAS: Thank you. Are there any questions  
6 for the speaker? No. Okay, thank you. The next speaker card  
7 I have is for Michelle Huntley.

8 MICHELLE HUNTLEY: Hi, my name is Michelle  
9 Huntley; I live at 264 Los Gatos Boulevard. I've been  
10 thinking about this a lot, because it's been years, but  
11 really the only issue for this is: is this safe or is this  
12 not safe?  
13

14 I think that the new proposal of moving back, was  
15 it 6'-9", and angling the corners, is a minimum. Right now,  
16 people can't see me and I can't see them. Moving the fence  
17 back from my side, I think, would be okay. Speaking from  
18 the Charles side, I can't really speak to that. Is it safe?  
19 I don't know. That's not my job; I'm a nurse and we don't  
20 do that.

21 We just need to decide if this is something  
22 that's safe. We have Town Code and Town rules, and I do  
23 believe that there are exceptions that can work for  
24 everyone to be safe, but I'm not one that can say if this  
25 is safe. It's certainly a big improvement. From my side, I

1 think I can work with it. From the Charles Street side,  
2 they have a lot more traffic. It isn't just me; it's all of  
3 the neighborhood.

4 But whatever we decide, I just ask that we make  
5 it very specific going forward, because we've had  
6 agreements in the past and things have not exactly turned  
7 out as discussed, so make it specific and include future  
8 protections. I know it's already a redundancy, and we  
9 talked about it before, but saying that going forward, the  
10 fence must be in like kind for any future owners.

11 But we definitely need to move a little bit back.  
12 I think the 6'-9" from my side could work, but again,  
13 Charles Street is a busy intersection and someone needs to  
14 say is this safe or it not, because that's really the only  
15 thing that matters.

16 CHAIR THOMAS: Thank you. Are there any questions  
17 for the speaker? Okay, thank you. I don't have any more  
18 speaker cards. Are there any hands raised...

19 (Inaudible speaker in audience.)

20 CHAIR THOMAS: That's okay, you can pass it on  
21 up. Thank you. For Item 2. Yes, perfect. Just please State  
22 your name for the record.

23 DOUG OLCOTT: Yes, my name is Doug Olcott; I've  
24 lived at 300 Charles Street since 1977, which is the end of  
25

1 that section of Charles. I wrote a second letter, after the  
2 Staff here proposed changes to the configuration of the  
3 fence, in support of the changes, moving the fence back  
4 from the Boulevard 3.5', and clipping the corner.

5 But I also made a recommendation for another  
6 minor change, and that would be to put reflectors on that  
7 fence, because I have driven into Charles from the  
8 intersection on the Boulevard—one of the slides shows that—  
9 at night, and have hit the curb there on Firoz's side.

10 There's a bulge in that curb there, not straight,  
11 and there's a very large tree there; it's not listed, this  
12 is Town property. Not suggesting that we cut down the tree,  
13 but there are no lights put up by the Town, or reflectors  
14 there, warning people about that restriction as you come  
15 in, so I was suggesting to Firoz that he, himself, put  
16 reflectors on his fence. People commonly do that when there  
17 is any kind of danger when you're entering a gate or  
18 something, and he has agreed to do that, so that might  
19 help.  
20

21 If you're coming from the intersection of Highway  
22 9 and the Boulevard, and you're turning right at night, no  
23 lights, and you come in there, you can't see that red  
24 painted curb very well, so having more reflectors there, I  
25 think, would help.



1 CHAIR THOMAS: Thank you, and before you sit  
2 down, are there any questions for the speaker? No. Okay,  
3 thank you very much. Are there any more speaker cards? No.  
4 Any hands raised on Zoom?

5 DIRECTOR PAULSON: No hands.

6 CHAIR THOMAS: Oh, there is one more. Can you  
7 fill out a speaker card, please? Oh, perfect, can I get it?  
8 Thank you very much.

9 SAEED NEJAD: Good evening. My name is Saeed  
10 Nejad. I've been living on Charles Street since 1993.  
11 Firoz's work on rebuilding this house, this Victorian old  
12 house, is well done. It's very nice, I'm very proud.

13 But when it comes to the fence and this dispute,  
14 I regret having it basically, because it's strange to have  
15 this real nice home, and yet we are still disputing over  
16 the fence. I wish this would never have happened, but  
17 anyway.

18 Both options that I looked at, A and B, I think  
19 they do provide good visibility, and even without those,  
20 talking about basically myself on my behalf, I try to drive  
21 safely, and visually in the morning at 4:30 when I'm  
22 leaving the house, there is no one there, and I still stop  
23 and look around, sometimes you see joggers, they run, but I  
24 am able to manage that. So far, so good.

1           Back to Options A and B. As you saw in the  
2 slides, the visibility actually increases, it enhances, and  
3 I think if you just stop right where the stop sign is, you  
4 can easily see both sides and you can move on, but as far  
5 as the code is concerned, and regulations, it's up to you  
6 totally. You are the experts in this field, but as far as  
7 the safety that I'm concerned, I think it is manageable.  
8 That's it.

9  
10           CHAIR THOMAS: Thank you very much. Are there any  
11 questions for the speaker? Thank you. Is there anyone else  
12 that would like to speak on this Item 2, or are there any  
13 hands raised on Zoom? Okay. I now will invite the Appellant  
14 back up, and you will have an additional three minutes,  
15 followed by questions by Commissioners.

16           FIROZ PRADHAN: If we can go to slide 9. In  
17 January 2023, Public Works actually gave an email mailed to  
18 Planning, saying, "Engineering supports this exception, and  
19 because of the width of the sidewalk and the planter strip,  
20 it provides the space for the driveway turning into Los  
21 Gatos Boulevard; therefore, it is my opinion that the  
22 height and open design of the proposed fence does not  
23 create a safety hazard at this location."

24           Subsequently, as recent as the 8<sup>th</sup> of May the same  
25 gentleman and Mr. Gary Heap both looked at the triangle and

1 said, "This definitely solves the visibility problem, and  
2 we will support the fence exception."

3 Mr. Olcott actually acknowledged and sent a  
4 letter to the Town saying the presence of the current fence  
5 in the right-of-way following the direction of the curb  
6 actually provides more visibility while entering Charles  
7 Street, thereby reducing the aforementioned risk factor.  
8 And it is a risk factor. In the night, when you're turning  
9 into Charles, you could hit the curb, had it not been for  
10 the fence.  
11

12 The other issue I want to touch upon is it was  
13 mentioned that Matt Daily was against the fence and there  
14 was an accident, and there was a big issue in the last  
15 Planning Commission hearing about that accident. I did  
16 reach out to Matt Daily this morning and had a long  
17 conversation with him. I don't know if he had a chance to  
18 reach out to Sean; he said he will try to do that.

19 He said that the accident occurred when there was  
20 a 6-foot opaque construction fence that wrapped around the  
21 property completely, and the police had determined that the  
22 accident was not his fault, but it was the fault of the  
23 other driver. So, I just want to point out that this issue  
24 was obviously amplified and exaggerated.  
25

1           There was another letter that said that we  
2 changed the address from Los Gatos Boulevard to 10 Charles  
3 Street, and that again was completely false. Sean was  
4 involved, and Mr. Gray was involved in that decision.

5           My request would therefore be to let me follow  
6 the 30'x30' triangle that was worked out in one of the  
7 exhibits with the Public Works staff. I can lower the fence  
8 to 3 feet in that triangle, get all the bushes out, get all  
9 the trees that we planted out, give an undertaking that we  
10 will not put any plant more than 3', and we can go from  
11 there. I am absolutely confident it solves the problem.

12  
13           CHAIR THOMAS: Thank you. Are there any questions  
14 for the Applicant? Vice Chair Burch.

15           VICE CHAIR BURCH: Just to be clear with what you  
16 were saying at the end, there's an Option A, and Option B,  
17 and then there is the plan of compliance. Is what you're  
18 suggesting either Option A or Option B with lowering the  
19 fence height and clipping the corners? Which one are you  
20 referencing that is your preference?

21           FIROZ PRADHAN: Thank you so much. I know I was a  
22 little rushed toward the end. What I'm suggesting is that  
23 we worked out—and we can go back to the triangle, if you  
24 like—it's the one that we worked out Staff, with Public  
25 Works. It's slide 4. Yes, perfect.

1           So, what I'm saying is that if you take the  
2 visibility triangle, and it provides tremendous significant  
3 visibility, if we can instead clip the fence there, we  
4 basically in that triangle lower the fence to 3', both the  
5 triangles, the left side and the right side; and  
6 essentially eliminate all the plants which are over 3',  
7 basically all the trees that we have planted, we push them  
8 back outside the triangle, which is essentially lowering  
9 one, two, three sections on the right side and two sections  
10 on the left side, so five full panels get lowered to 3'. We  
11 don't need to remove the fence and push it back, we just  
12 lower the fence to 3', and everything inside the triangle,  
13 all the plants inside the triangle, get moved away.

15           VICE CHAIR BURCH: If it, depending on how the  
16 discussion obviously goes amongst the Commissioners and  
17 everything, if this Commission though leaned more towards  
18 Option A, which does push the fence back, would still have  
19 the clipped corners, the 3' reduced. Is that amenable to  
20 you also?

21           FIROZ PRADHAN: So, here is my concern on that.  
22 My concern on that is that you've got children walking up  
23 and down. If you move the fence 3.5' or 3'-9", almost 4', I  
24 don't want to be responsible for somebody getting hurt on  
25

1 my property when they're walking up and down; that is a  
2 concern I have.

3 If this is providing any less visibility, I'm  
4 open to that idea, but I know practically this solution  
5 provides more visibility on both sides.

6 VICE CHAIR BURCH: Okay, thank you.

7 FIROZ PRADHAN: I just think it's a more win/win.

8 CHAIR THOMAS: Are there any additional questions  
9 for the Appellant? Okay, thank you very much. We will now  
10 close the public portion of the public hearing on Item 2,  
11 and I invite Commissioners to ask questions of Staff,  
12 provide comments, or propose a motion.  
13

14 I am going to start it off, actually. I have a  
15 question for Staff about part of the fence that's in the  
16 public right-of-way. I know that there was a fence there  
17 previously. Can you just explain a little bit of the  
18 history on that part of the property?

19 SEAN MULLIN: Thank you for that question. I  
20 believe there have been some photos that show that there  
21 was a fence there previously. I can't speak to whether it  
22 was located in the public right-of-way, I don't have plans  
23 that show that, and regardless, once the fence is removed,  
24 per the Town Code the rights to it are lost.  
25

1 CHAIR THOMAS: Okay, I just didn't know if its  
2 location has been an issue for the Town or something  
3 previously. Not that you're aware of.

4 SEAN MULLIN: Not that I'm aware of, and I  
5 couldn't speak to its location relative to the right-of-  
6 way.

7 CHAIR THOMAS: Okay, thank you. I know a lot of  
8 us have questions, so Commissioner Burnett.

9 COMMISSIONER BURNETT: Thank you for that.  
10 Question for Staff. I'm wondering with the Staff Report; do  
11 you still stand by your recommendations in your report  
12 after all the different designs have been submitted that  
13 we've looked at?  
14

15 SEAN MULLIN: Yes.

16 COMMISSIONER BURNETT: Thank you.

17 CHAIR THOMAS: Commissioner Barnett.

18 COMMISSIONER BARNETT: I would appreciate hearing  
19 from a representative from Public Works with respect to the  
20 revised plans, and to clear up the record concerning the  
21 communications. Thank you.

22 GARY HEAP: Yes, Gary Heap, Town Engineer. We  
23 have some explaining to do on this one. We have not  
24 provided a consistent response back to the Applicant on  
25 this; I'll be the first one to say it. There have been a

1 number of communications with this Applicant. I can say the  
2 one consistent thing throughout this whole process has been  
3 our Town standard drawing that we have provided to this  
4 Applicant and showing him through the diagram what we've  
5 allowed.

6           Early indications and early discussions with the  
7 Applicant indicated for my Staff that we would be  
8 supportive of the fence exception, allowing the fence to  
9 remain. We went and did a site visit prior to, I think, the  
10 first meeting which we had, and I did a ride-along with our  
11 traffic sergeant and asked him, I said, "We're getting a  
12 lot of questions about this. I don't get it. Where is the  
13 site distance issue coming out of the street, coming out of  
14 Charles? I don't understand how this is a sight distance  
15 issue. You've seen the exhibits; you've seen the diagrams.  
16 Folks coming out of the street and making that left or  
17 right turn onto Los Gatos Boulevard doesn't seem to be an  
18 issue." He said, "Gary, that's not the issue. It's actually  
19 when you're going northbound on Los Gatos Boulevard and  
20 making the right turn." Sean, do you have the image that I  
21 sent you earlier today?  
22

23           So, this is the direction of traffic flow that is  
24 concerning to us. As you're going northbound and then going  
25 to make a right turn onto Charles, you can see the whole



1 frontage of his property there, you can see the driveway  
2 just south of the beginning of the fence. As you're  
3 traveling northbound and go to make the right turn onto  
4 Charles, that is the obstruction. Looking at the fence on  
5 angle, even though you're looking at it perpendicularly,  
6 it's half open; looking at it on angle like that, it  
7 provides 100% obstruction.

8  
9 And so, at that point I believe that we came to  
10 the meeting as Staff and we said, "We really can't support  
11 the fence exception. We've really got to go ahead and have  
12 it removed within the triangle area of visibility." You  
13 guys made your decision; we had subsequent discussions.

14 On May 8<sup>th</sup> we met with the Applicant and we  
15 provided incorrect information, which was followed up very  
16 quickly with an email that said we're sorry, we incorrectly  
17 measured. Typically, we don't go out in the field and  
18 measure for applicants. We thought we were helping out, we  
19 thought we were supporting. We usually just review plans  
20 and then look at the plans and say does the plan meet the  
21 code, or does it not? All the plans that we've seen, we  
22 consistently provided responses back, saying it did not  
23 meet our code, it did not meet our requirements.

24  
25 When we traveled out there and met with the  
Applicant, mismarked, because when we went out there we

1 measured 30' from the face of curb, which throughout my  
2 career is what I'm used to doing. Here in Los Gatos though  
3 the 30' is measured from the property line. That was  
4 realized after the fact.

5           We apologized, we sent an email to the property  
6 owner saying we're willing to go ahead and allow the fence  
7 on Charles to remain in the public right-of-way, because  
8 that was something that we were still contemplating, with  
9 the license agreement, but we've got to remove that fence  
10 within the corner triangle sight distance.

11           From our opinion, I believe the trees can remain  
12 so long as they're trimmed up above 7', and so long as no  
13 foliage or fence is higher than 3'; that is what our  
14 standard requires.

15           But it's the 30' triangle from the property line  
16 that needs to be adhered to, and that's I think because we  
17 haven't seen those plans yet with that proposal, which is  
18 why you see in front of you this evening the recommendation  
19 you have.

20           COMMISSIONER BARNETT: Thank you, that's very  
21 helpful.

22           CHAIR THOMAS: Vice Chair Burch.

23           VICE CHAIR BURCH: As a follow-up to what you  
24 were just talking about, going down there and measuring.  
25

1 For scalability, in my mind, I know the house just right  
2 across from Charles does have the clipped fence. Is that  
3 30' back? Did you measure to see if that met the 30' off  
4 the properly line?

5 GARY HEAP: There is no visibility triangle  
6 compliance at that location at all. But again, if you're  
7 travelling northbound and making the right turn, the fence  
8 on the far side, the green fence, doesn't impact  
9 visibility. Coming out on Charles and looking left or  
10 right, neither of the fences, frankly, in their current  
11 location, create a visibility issue. It's only when you're  
12 making that northbound right turn that the fence on the  
13 south side in front of the Appellant's house causes the  
14 issue.  
15

16 VICE CHAIR BURCH: Okay, thank you.

17 CHAIR THOMAS: Commissioner Stump.

18 COMMISSIONER STUMP: Question for Staff as well.  
19 I'm not sure if it comes your way or maybe Sean's way. We  
20 certainly have a good idea of a fence that does not comply  
21 with the Town Code. We've been looking at this now for  
22 several weeks.

23 My question would be could you recap what would  
24 be in compliance at that location? I realize it may be  
25 somewhat of a verbal description, or if you put up a

1 diagram and say these changes would need to be made for a  
2 fence to be in compliance on this property.

3 SEAN MULLIN: Thank you for that question. I can  
4 put up a slide if you'll bear with me, that is  
5 overwhelmingly complicated, I admit, but I can try to walk  
6 you through it. We'll just focus on the front part of the  
7 property at the corner of Charles and Los Gatos Boulevard,  
8 and this is fairly consistent with the Applicant's  
9 presentation that showed the areas that would be impacted  
10 by the fence.  
11

12 One thing that I would clarify is that while you  
13 see all these areas with colors and triangles where the  
14 fence has been characterized as now allowed, a fence that's  
15 3' tall could be located right on the property line in all  
16 these areas, so one solution is to have a fence that marks  
17 the property line that would be consistent with Town Code,  
18 to the Commissioners' question, to limit the height to 3'  
19 as the code requires.

20 This complicated diagram provides the corner  
21 sight triangle that is measured at the property line in  
22 blue. It provides the traffic view area. It provides the  
23 driveway view area. These are all standard drawings on file  
24 with the Town. This is based on a plan that was provided  
25 for the house remodel, so we had some scalability there.

1           The red dashed line is the location of the fence  
2 currently. There is not a surveyed location; this is based  
3 on field observations to the best of Staff's ability.

4           Option 1 is this burgundy dotted line you see as  
5 it's clipping the corners near the driveway and the corner,  
6 and Option 2 is the blue dotted line moving the fence back  
7 3'-9" and then clipping the corners a little bit as well.  
8 As stated in the Staff Report, with either of those  
9 options, the fence would still require an exception, and  
10 that's part of the appeal this evening.

11  
12           CHAIR THOMAS: Commissioner Stump.

13           COMMISSIONER STUMP: Quick follow-up. If I  
14 understand this correctly, a 3' fence could go right to the  
15 properly line. A 3' fence also would not require side  
16 angles, because you can see over a 3' fence.

17           SEAN MULLIN: That's correct.

18           COMMISSIONER STUMP: Okay, thank you very much.

19           CHAIR THOMAS: Any other questions? Yes, Vice  
20 Chair Burch.

21           VICE CHAIR BURCH: If a 3' fence would meet Town  
22 Code, does that also include plantings? Do the plantings  
23 have to stay below the 3' for this building?

24           SEAN MULLIN: Thank you for that question. Yes,  
25 the Town's Zoning Code would limit shrubs, fences, and

1 walls to a 3' height in these locations, and then one of  
2 the Town's engineering codes would require that any trees  
3 in those locations be limbed up to 7'. So, you get this  
4 buffer between 3' and 7' for the view area when you're  
5 operating a car in and out of these intersections.

6 VICE CHAIR BURCH: Thank you.

7 CHAIR THOMAS: Commissioner Sordi.

8 COMMISSIONER SORDI: As long as you've got that  
9 graphic up, I have a question about the corner sight  
10 triangle. So, that is represented accurately in the graphic  
11 now?  
12

13 SEAN MULLIN: It's as scaled as it could be, but  
14 yes, it's represented accurately. What was provided in the  
15 field, these straight legs here and down here were not  
16 included, so the triangle itself was more of a traditional  
17 triangle with the two corner points being right at the face  
18 of the curb. What the standard drawing requires is that you  
19 come perpendicular in from the roadway to the properly  
20 line, then begin your 30' measurement, and then connect it  
21 with the hypotenuse.

22 COMMISSIONER SORDI: Okay, thank you.

23 SEAN MULLIN: I have a cleaned-up version of the  
24 Town's standard engineering drawing that might be a little  
25 bit easier. You can see it's not as extreme as the example

1 that was just shown, but you see from the edge of the  
2 roadway/face of the curb that the triangle doesn't start at  
3 that angle; it comes in perpendicular until it hits the  
4 properly line, and then the angle is drafted.

5 CHAIR THOMAS: I have another question. Do either  
6 Option A or B fix the turning right onto Charles view  
7 situation from your perspective? I recognized that even if  
8 it does, it's still not in compliance, but I think that as  
9 members of the public and many of us have stated, safety is  
10 the number one concern, and obviously the purpose of having  
11 these sight triangles is for safety, so do Option A or B  
12 address that safety issue?

14 GARY HEAP: I do not believe so. We have Town  
15 standards for a reason, and not complying with those Town  
16 standards, I don't think, leaves us in a really good light.  
17 They're there for a reason; we have to really follow them  
18 when we need to.

19 CHAIR THOMAS: Okay, thank you. Then I did have  
20 another question for Staff regarding our decision-making. A  
21 couple members of the public made comments about how a  
22 decision could set a precedent. I mean maybe Director  
23 Paulson should comment on this. Is that true that if we  
24 made a decision tonight, that would require us to make it  
25 for future similar decisions.

1           DIRECTOR PAULSON: Thank you. Appreciate the  
2 question. No, each individual application is looked at on  
3 its own merits. Unless identical circumstances existed,  
4 which is highly unlikely, and even in that case the  
5 Commission is not tied to previous decisions.

6           CHAIR THOMAS: Okay, thank you. Vice Chair Burch.

7           VICE CHAIR BURCH: In front of us, if we deny the  
8 appeal, my understanding from what you said, Mr. Mullin,  
9 this will go back then to the Compliance Officer who will  
10 then enforce the fence being in compliance, which sounds  
11 like would be a 3' fence, 3' plantings, 7' clearance  
12 without the clipped; or we could look at these options and  
13 determine we feel like one of these would also fulfill the  
14 need, and we could recommend one of these. It's a little  
15 confusing, so I just want to understand.

16           SEAN MULLIN: I think there are several options.

17           First of all, if the Planning Commission denied  
18 the appeal, it's subject to further appeal to the Town  
19 Council, so this is not necessarily the final  
20 administrative decision.

21           Second, if the ultimate decision was not granting  
22 of the appeal, should this end up on the Council's hands,  
23 the Applicant would need to work with the Code Enforcement  
24 Officer and Planning to remedy the situation and meet the  
25



1 Town Code. That would include lowering the height, or  
2 moving the fence out of these traffic view areas, and  
3 removing the fence from the public right-of-way as well  
4 along Charles Street.

5 It is possible to further request an exception  
6 with a different option; but not typical.

7 CHAIR THOMAS: My proposal here, I think maybe we  
8 could move forward with some sort of motion. We voted  
9 unanimously to come back to address the safety sight  
10 triangle, etc., issue. I think that we can make the  
11 findings about in the public right-of-way, especially if  
12 Commissioner Barnett feels comfortable from a legal point  
13 of view that we've covered all of our bases, and the Town  
14 Attorney feels comfortable, I think we can find the  
15 exception for that portion of the fence.

17 My concern is that if we deny this application  
18 fully, then that is all included in it, so I propose that  
19 make a motion to approve it with specific modifications to  
20 the front portion of the fence with the safety issues that  
21 are very specific, and try to come up with a way to grant  
22 the appeal in that direction. Is that something that we're  
23 perhaps interested in?

24 Let me further explain maybe what that would  
25 possibly look like first. We would perhaps grant this

1 appeal and have two options, you need to move the entire  
2 fence out of the view triangle, the blue square situation.  
3 Sean, can you put that back up again? So, either move the  
4 fence back so that that works, or lower the fence. Leave it  
5 as it is, but make it compliant with the 3', and then allow  
6 for an exception for it to be higher than 3' once it is  
7 outside of that corner sight triangle, like in the back, on  
8 the Charles Street side. Is this making sense at all?

9  
10 That is something that I feel like I can make the  
11 findings for, but I am interested.. I just saw Sean writing  
12 stuff down, so, Mr. Mullin.

13 SEAN MULLIN: Thank you. I may have some  
14 clarifying questions during the discussion. I'll try to  
15 write them down.

16 CHAIR THOMAS: Okay. Commissioner Barnett.

17 COMMISSIONER BARNETT: My position is that there  
18 was clear direction from the Planning Commission on March  
19 12<sup>th</sup> that the Appellant return with a plan that was approved  
20 by Staff. Staff has not approved either Option A or B.

21 Furthermore, I cannot make any of the findings  
22 required by Town Ordinance 29.43.20. We're not adjacent to  
23 a commercial property. A special privacy concern does not  
24 exist, in my opinion. There is no wildlife issue here. The  
25 security issues, well, the Appellant mentioned two people

1 who were loitering near his property. I don't see that as a  
2 justification for allowing the fence height to be allowed.

3 And I don't see further that there are special  
4 circumstances, including size of the lot or configuration,  
5 where it would cause an undue hardship.

6 The Appellant has mentioned that part of his yard  
7 is not usable unless we have the modification, but there is  
8 no way that that overcomes the public safety issue for  
9 children, for adults. We know how people are driving in the  
10 Town, which is frequently in violation of the Vehicle Code.  
11 So, those are my thoughts.

12  
13 CHAIR THOMAS: I appreciate that. Is the public  
14 right-of-way your issue? Because that's what I'm saying,  
15 that if we grant the appeal that that's the portion that I  
16 would be in support of. The rest of it would have to come  
17 into compliance.

18 COMMISSIONER BARNETT: As I understand, Staff  
19 said that that issue can be addressed with a License  
20 Agreement and insurance, but I don't see the point of  
21 dealing with the right-of-way when we have to have the  
22 fence reconfigured anyway.

23 CHAIR THOMAS: Okay.

24 COMMISSIONER BARNETT: I'm not adamantly against  
25 that, but I think it's a moot issue.

1 CHAIR THOMAS: Okay. Commissioner Burnett.

2 COMMISSIONER BURNETT: Thank you, Chair. Yes, I  
3 totally agree with Commissioner Barnett. I think this item  
4 has gone on for quite a while with very clear directions.  
5 Our Staff is definitely still upholding their summary and  
6 their discussion and their feelings that have been  
7 presented, so I totally agree with Commissioner Barnett  
8 that we should move forward and deny this. I mean, not deny  
9 it, but deny the appeal. Thank you.  
10

11 CHAIR THOMAS: Commissioner Stump.

12 COMMISSIONER STUMP: I've got to throw my  
13 agreement in there as well. This has become so convoluted  
14 over time. We are continuing to try to solve a problem that  
15 shouldn't have been there in the first place. I realize  
16 that the Appellant likely built this fence in good faith,  
17 thinking that it was going to be a beautiful fence, but it  
18 does not meet the Town Code.

19 So, I guess two wrongs don't make a right. I  
20 don't know if that makes sense or not, I'm just saying I  
21 have real concerns about safety in that area. For any of  
22 you that deal with that intersection, that's a dangerous  
23 left turn coming off of Highway 9 and making a left onto  
24 Charles Street. My concern is why? Because pedestrians are  
25 there, and people are so concerned about making a left turn

1 they don't really pay attention to what's going on on the  
2 sidewalk.

3           You may say that's not a side issue, I'm just  
4 saying there are continued safety issues around Charles  
5 Street, and it is a congested area, it's a tight area, it's  
6 a funny intersection there, and I do not think we should  
7 compromise safety in this matter at all.

8           CHAIR THOMAS: Vice Chair Burch.

9           VICE CHAIR BURCH: My understanding of what the  
10 Chair was saying was not compromising on compliance with  
11 the view corridor in the front yard at all; she was  
12 basically saying that has to fall into compliance for all  
13 the reasons that you guys have said, but rather than have  
14 us deny the appeal and this go back up to Town Council, I  
15 think what she was trying to say was the front yard has to  
16 fall into compliance.

17           We all agree this is a safety issue, no ifs,  
18 ands, or buts; but the side yard, this appears that this is  
19 not a massive issue with Staff. They think there is a path  
20 forward, that what we could do is say we've come up with... I  
21 guess what in a sense it's saying is we're granting the  
22 appeal, but with a number of conditions that aren't really  
23 granting the appeal. Does that make sense?  
24  
25

1           We're still enforcing the safety requirements.  
2 What we're doing is eliminating even more meetings on this  
3 topic by saying that this has to go into compliance, but  
4 the side yard, we're going to let Staff deal with that with  
5 them. Does that make sense? I just want to make it clear  
6 that I don't think anybody up here is going to say forget  
7 the safety issue.

8           CHAIR THOMAS: Commissioner Sordi, and then I'll  
9 get back to you.

10           COMMISSIONER SORDI: I just wanted to agree with  
11 Commissioner Barnett. I don't think a good faith effort was  
12 made to follow the direction of the Planning Commission,  
13 and I did watch the hearing the last time this item was  
14 here.

15           I have an issue with taking a formal action to  
16 uphold an appeal, when effectively we're denying most of  
17 what the Applicant is asking for. (Inaudible) asking to  
18 keep a fence that exceeds height limits and encroaches in  
19 the front setback and in the triangle areas, so I don't  
20 know how else you'd do it.

21           The other question I guess I would have, even if  
22 the appeal is denied, is is there anything preventing the  
23 Applicant from pursuing a License Agreement along Charles  
24 Street with Staff later? Is there anything preventing him  
25

1 from bringing up that issue with Council if he chose to  
2 appeal?

3 SEAN MULLIN: I can start, and the Town Engineer  
4 may want to jump in as well.

5 I think if the appeal were denied, and Staff  
6 continued to work with the Applicant to bring the fence  
7 into compliance, the conversation with the Town Engineer  
8 could be had about maintaining portions of it in the right-  
9 of-way and whether they supported that; that may be a  
10 separate issue.  
11

12 GARY HEAP: I can go ahead and add onto that. The  
13 issue outside the sight triangle along Charles and that 6'  
14 there is not a concern for Public Works. We deal with  
15 fences that get built in the right-of-way, unfortunately,  
16 too many times, and a lot of times it's just easier...so long  
17 as it doesn't create a site distance issue, and a lot of  
18 times there are good reasons for it, security, etc., we  
19 allow those to remain in the public right-of-way; so long  
20 as they don't interfere or go against zoning requirements  
21 in terms of heights in the setback, as long as that's not  
22 the case, then we go ahead and allow those to remain with a  
23 License Agreement.  
24

25 So, in this case, so long as the fence is either  
removed or lowered to 3' within the visibility triangle,

1 we're happy to support keeping the fence 6' high along  
2 Charles outside that triangle, and allowing it to be there  
3 through a License Agreement.

4 CHAIR THOMAS: Thank you for answering that  
5 question. Just before Commissioner Stump, I want to say  
6 that really I think that we should assume best intent from  
7 everyone involved in this entire situation, that everyone  
8 wants this wrapped up as effectively as possible, and I do  
9 think that my potential motion would hopefully be the least  
10 amount of work for Staff, for the Applicant, for the  
11 neighbors, for Town Council, because another one of these  
12 won't have to go to them; it would be preventing that.

14 I don't think we should compromise safety at all.  
15 I'm a huge proponent for... As a person that sat on the  
16 General Plan Advisory Committee and updated the General  
17 Plan, I pushed so much for bike and pedestrian safety and  
18 all of that, and so I really think that the front yard  
19 issue needs to come into compliance, but I don't think we  
20 should just like say...

21 I feel like in my opinion that the Applicant, we  
22 told him that safety was the concern. That was the message  
23 that we sent. We care most about safety, come back to us  
24 with a safety thing, and this is the option that he  
25 proposed. If we're not satisfied with that, that's fine,



1 but he gave us two very specific options. I don't think  
2 that we should be punishing everyone here, including Staff,  
3 to have to go back and do additional more work and have to  
4 start a lot of this process over again just because we feel  
5 like he didn't take the exact direction that we totally  
6 anticipated.

7 I still would urge other Commissioners to  
8 consider the fact that the reality is this is going to  
9 become another fence height exception situation perhaps if  
10 it's in the public right-of-way, and we're going to be  
11 seeing this perhaps again on a future agenda, a new item, a  
12 new thing, a new application, so I would urge everyone to  
13 really think about trying to solve the problem here tonight  
14 instead of just create future problems down the line.  
15 Commissioner Stump.

17 COMMISSIONER STUMP: My question is do we have an  
18 option before us that really is in compliance?

19 CHAIR THOMAS: We don't have an option that's in  
20 compliance, but all Staff has said up this point at all of  
21 our meetings and in all of the Staff Reports is they don't  
22 have a problem with this fence being in the right-of-way.  
23 Fences are in the right-of-way all the time.

24 COMMISSIONER STUMP: I'm not talking about the  
25 right-of-way.

1 CHAIR THOMAS: Then what are you talking about?

2 COMMISSIONER STUMP: Front area.

3 CHAIR THOMAS: Yes.

4 COMMISSIONER STUMP: We keep hearing that it says  
5 not still comply with Town Code.

6 CHAIR THOMAS: I know, but we can approve it, and  
7 say you have to reduce it down to 3' or move it into Town...  
8 Like, this area has to be in Town Code. That's what I'm  
9 proposing. The front part would be in compliance, either at  
10 the 3' or you move it back; those are your two options that  
11 meet our Fence Ordinance situation, but we would be  
12 granting the back part that was just mentioned that's not  
13 an issue, that's in the public right-of-way.  
14

15 Sorry, we can't take any comments from the public  
16 at this point. Vice Chair Burch.

17 VICE CHAIR BURCH: Can I then now look to Mr.  
18 Mullin, because you said you maybe had some questions and  
19 notes. Before we try to go down either path of making a  
20 motion, can we ask you what questions you have? Is this  
21 going to make it more difficult? What is the best path  
22 here?

23 SEAN MULLIN: I would start off by saying  
24 regardless of the difficulties, Staff is happy to continue  
25 working with the Applicant to find a solution and fulfill

1 any direction given by the Planning Commission, so that's  
2 not a problem.

3           The question that I have, the more I listen to  
4 the two options presented by the Chair just clarifying  
5 exactly at what height the fence could be maintained in the  
6 right-of-way with the two options that the Chair presented.

7           So, what I heard was Option 1 is to move the  
8 fence, maintaining its current height, but meeting the Town  
9 Code. We're talking about the portion on the front, so that  
10 would be, with that diagram, moving out all those shaded  
11 and triangled areas and maintain the fence in the right-of-  
12 way. Then my question is at what height? The existing  
13 height, or do we need to lower that?

14           Option 2, as I heard it, was to lower the fence  
15 in its current location to 3', which would then meet the  
16 Town Code, and maintain it in the right-of-way in its  
17 current position, and again, at what height?

18           I would just seek that clarification to me, with  
19 the two options presented by the Chair. That's the only  
20 piece of missing information for me.

21           CHAIR THOMAS: It's currently at 6'?

22           SEAN MULLIN: It's not 6', and I'm sorry, I have  
23 to look it up. It's less than that, but it's somewhere  
24  
25

1 between 3.5' and 5'. I just can't recall off hand; sorry  
2 about that.

3 CHAIR THOMAS: The part in the right-of-way?

4 SEAN MULLIN: I can look it up.

5 CHAIR THOMAS: Okay. Our normal for a side yard  
6 or back yard fence, what is it, 6' with 2' of lattice, or  
7 something? Or what is it?

8 SEAN MULLIN: If it were on a properly line, so  
9 an interior properly line not adjacent to a street, and it  
10 was a side interior or a rear properly line, on this  
11 property without an exception they could build a 7' fence,  
12 but the top part needs to be at least 1' of lattice. There  
13 is no openness requirement with that lattice; it was more  
14 about aesthetically breaking up the tall stretch.

15 CHAIR THOMAS: So, my proposal, I guess, would be  
16 at the current height that it is, current height and  
17 structure that it is.

18 SEAN MULLIN: For clarification, just to be very  
19 clear, for the portion that's in the right-of-way.

20 CHAIR THOMAS: Yes, that is outside of the site.

21 SEAN MULLIN: Outside of the traffic view areas  
22 and triangles.

23 CHAIR THOMAS: Yes, outside of the traffic view  
24 areas and triangles. It could remain at the height that it  
25

1 is in the public right-of-way, because I do think a special  
2 circumstance exists because of the nature of the lot.

3 Then, in the front portion it would either need  
4 to be lowered to 3' to come into compliance with our Fence  
5 Ordinance, or moved out of the setback area to the required  
6 setbacks at its current height. Does that clarify enough  
7 for you for now, Mr. Mullin?

8 SEAN MULLIN: Yes, and I'll come back to you with  
9 that fence height.

10 DIRECTOR PAULSON: Ms. Whelan has her hand up.

11 ATTORNEY WHELAN: It would be good to put on the  
12 record specifically what the special circumstance is  
13 regarding the lot.

14 CHAIR THOMAS: Okay. Commissioner Burnett.

15 COMMISSIONER BURNETT: Yes, I did have a  
16 question. I was confused, again. You were speaking of  
17 Option 1 to lower the entire front to 3', and then going  
18 around the corner, there is 3' to... I don't know how many  
19 feet that is to the triangle.

20 CHAIR THOMAS: Yes, to the end.

21 COMMISSIONER BURNETT: To the end, so that would  
22 all be 3'.

23 CHAIR THOMAS: Yes.

1 COMMISSIONER BURNETT: And the rest of the  
2 fencing would be what it is now.

3 CHAIR THOMAS: Yes.

4 COMMISSIONER BURNETT: Which, I was there, and  
5 actually I think that fencing that he has makes it almost  
6 worse, because it is crisscrossed, and with all the bushes  
7 and everything, I think it's a very difficult situation. I  
8 would prefer just to go along with denying the appeal  
9 entirely and having him go along with what our Town  
10 recommends on this. It is so complicated, and why are we  
11 making all these extra hoops for this? It sort of doesn't  
12 make sense to me. And asking a lot of exceptions when it's  
13 very clear cut, you just follow what our Town has. That's  
14 it.  
15

16 CHAIR THOMAS: Commissioner Barnett.

17 COMMISSIONER BARNETT: As I understand, four of  
18 the Commissioners have strongly indicated denial of the  
19 appeal, and in light of that I propose to make a motion for  
20 discussion and see where we are after that.

21 So, if I may, with respect to Item 2 on tonight's  
22 calendar, I propose to move to deny the appeal of the  
23 Director's decision concerning the fence exception,  
24 including the right-of-way, for the reason stated  
25 previously.

1 I cannot make the findings required under the  
2 code, Section 29.40.320. I would incorporate my comments  
3 previously indicated into the motion, and I think that's  
4 the extent of the motion.

5 CHAIR THOMAS: Is there a second? Commissioner  
6 Burnett.

7 COMMISSIONER BURNETT: I'll second it.

8 CHAIR THOMAS: Okay, and then discussion. I'll  
9 call the question. All those in favor, please raise your  
10 hand. And that's everyone except me. So, the motion passes  
11 5-1. Are there appeal rights?  
12

13 DIRECTOR PAULSON: Yes, thank you, Chair. There  
14 are appeal rights. Anyone who is not satisfied with the  
15 decision of the Planning Commission can appeal that  
16 decision to the Town Council. Forms are available online  
17 and in the Clerk's Office. There is a fee for filing the  
18 appeal, and the appeal must be filed within ten days.

19 CHAIR THOMAS: Thank you.

20 (END)  
21  
22  
23  
24  
25