



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/19/2025

ITEM NO: 12

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DATE: August 14, 2025  
TO: Mayor and Town Council  
FROM: Chris Constantin, Town Manager  
SUBJECT: **Consider an Appeal of a Planning Commission Decision to Deny a Fence Height 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-1D. Located at 10 Charles Street. APN 532-36-022. Fence Height Exception Application FHE-23-001. Categorically Exempt Pursuant to CEQA Guidelines Section 15303: New Construction or Conversion of Small Structures. Property Owner/Applicant/Appellant: Firoz Pradhan. Project Planner: Sean Mullin.**

RECOMMENDATION: Adopt a resolution (Attachment 16) denying an appeal of a Planning Commission decision to deny a Fence Height Exception request for an existing fence partially located in the Town's right-of-way and exceeding the height limitations within the front yard and street-side yard setbacks on property zoned R-1D, located at 10 Charles Street.

FISCAL IMPACT:

Not applicable. Considering approval or denial of an appeal does not in itself result in an additional cost. Depending on the action taken, additional cost may be incurred.

STRATEGIC PRIORITIES:

Not applicable.

PREPARED BY: Sean Mullin, AICP  
Planning Manager

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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BACKGROUND:

The subject property is located at the corner of Charles Street and Los Gatos Boulevard (Attachment 1, Exhibit 1). The surrounding properties are residential uses. The subject property is developed with a single-family residence.

On November 11, 2022, the Town issued an Administrative Warning for a code violation at the subject property for construction of a fence exceeding height limitations within the required side yard area (Attachment 1, Exhibit 4). This letter requested that the property owner reduce the height of the fence to no more than three feet or apply for a Fence Height Exception. Following the issuance of the Administrative Warning, the property owner contacted Town Planning staff, who communicated to the property owner that the new fence exceeded the maximum height allowed in the required front and street-side yard setbacks, as well as the traffic view area and corner sight triangle. Staff indicated that the Town Code offers an exception process that allows for deviation from the Town's requirements if the appropriate findings are made by the Community Development Director.

On January 10, 2023, the applicant applied for an exception to the Town's fence regulations (FHE-23-001) for the construction of the fence, which does not comply with the Town Code fence height regulations for fences located in the required front and street-side yard areas, as well as the traffic view area and corner sight triangle (Attachment 1, Exhibit 5). The exception request was based on concerns related to safety and security. Planning and Engineering staff initially supported the request (Attachment 1, Exhibit 6), finding that the open design of the fence and the width of sidewalk/planting strip mitigate the traffic and pedestrian safety concerns. Following a site visit by staff to prepare an exhibit to support granting the exception, staff noted that portions of the fence are located in the Town's right-of-way, a fact not available during initial consideration of the exception request. In consultation with the Engineering Division, it was determined that the Town could not make the findings required for granting an exception due to the fence being located in the Town's right-of-way, and the exception request was denied on March 23, 2023 (Attachment 1, Exhibit 8).

On April 3, 2023, the decision of the Community Development Director was appealed to the Planning Commission by the property owner, Firouz Pradhan (Attachment 1, Exhibit 9). On the appeal form, the appellant indicated that they were seeking additional information and discussing the matter with the Parks and Public Works Department to seek a resolution. A Letter of Justification discussing the appeal was provided to staff on March 2, 2025 (Attachment 1, Exhibit 10).

On March 12, 2025, the Planning Commission considered the appeal of a Community Development Director decision to deny the fence height exception request at 10 Charles Street (Attachments 1 and 2). The Planning Commission received the staff report, testimony from the

applicant, input from the public, and voted unanimously to continue the matter to the April 23, 2025, meeting with the following direction to the applicant:

- Address the right-of-way and safety issues created by the fence;
- Redesign the fence at the corner of Los Gatos Boulevard and Charles Street to adhere to the Corner Sight Triangle standards to staff's approval;
- Redesign the fence near the driveway serving 264 Los Gatos Boulevard to address sight and safety concerns; and
- Any approval carries the conditions that there be no changes to the materials or solidness of the fence and that there be no plantings allowed along the fence.

On April 23, 2025, staff recommended that the Planning Commission continue this matter to a date certain of May 28, 2025, to allow the applicant additional time to prepare a response to the Commission's direction of March 12, 2025 (Attachments 3 through 6). A member of the public pulled this item from the Consent Calendar and provided comments to the Commission. The Commission then continued this matter to the May 14, 2025, meeting.

On May 14, 2025, staff recommended that the Commission continue this matter to the May 28, 2025, meeting due to the applicant's previously arranged travel plans (Attachments 7 and 8). The Commission continued this matter to the May 28, 2025, meeting.

On May 28, 2025, the Planning Commission considered the appellant's response to their direction of March 12, 2025 (Attachments 9 through 13). As detailed in the Staff Report included as Attachment 9, the applicant provided two response letters outlining proposed changes to the fence with the intent of responding to the direction of the Planning Commission. Neither option reduced the height of the fence. Both options proposed modifications that would partially address the safety concerns created by fencing located in the corner sight triangle and driveway view areas; however, neither option presented to the Planning Commission provided remedy to the over height fence within the front and street-side setbacks; corner sight triangle; driveway view area; and traffic view area at a height exceeding the maximum allowed three feet. Additionally, portions of the fence located along Charles Street would remain in the right-of-way, with the applicant indicating their willingness to enter into the appropriate agreements with the Town to maintain private improvements in the right-of-way. The Planning Commission received the staff report, testimony from the applicant, and input from the public. The Planning Commission was unable to make the findings to grant the appeal and voted five-to-one to deny the appeal (Attachments 12 through 13).

On June 9, 2025, the decision of the Planning Commission was appealed to the Town Council by an interested person, Firoz Pradhan, property owner of 10 Charles Street (Attachment 14). On the appeal form, the appellant indicated that there was an error or abuse of discretion by the Planning Commission and that the decision of the Planning Commission is not supported by substantial evidence in the record.

Pursuant to Town Code Section 29.20.275, any interested person, as defined by Section 29.10.020, may appeal to the Council any decision of the Planning Commission. The notice of appeal must state specifically how there was an error or abuse of discretion by the Planning Commissioner or how the Planning Commission's decision was not supported by substantial evidence in the record. (Demonstrating that a decision was not supported by substantial evidence in the record is one way of establishing an abuse of discretion.) For residential projects, an interested person is defined as "a person or entity who owns property or resides within 1,000 feet of a property for which a decision has been rendered and can demonstrate that their property will be injured by the decision." The appellant meets the requirements.

Pursuant to Town Code Section 29.20.280, the appeal must be heard within 56 days of the Planning Commission hearing, in this case by August 4, 2025. Due to there being no Council meetings in July and the appellant's previously arranged travel plans, the appellant requested that the item be added to the August 19, 2025, agenda. The Council must at least open the public hearing for the item and may continue the matter to a date certain if the Council does not complete its deliberations.

Pursuant to Town Code Section 29.20.295, in the appeal and based on the record, the appellant bears the burden to prove that either there was an error or abuse of discretion (which includes making a decision that was not supported by substantial evidence in the record) by the Planning Commission. If neither is proved, the appeal should be denied. If the appellant meets the burden, the Council shall grant the appeal and may modify, in whole or in part, the determination from which the appeal was taken or, at its discretion, return the matter to the Planning Commission. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.

#### DISCUSSION:

##### A. Project Summary

The subject property is located at the corner of Charles Street and Los Gatos Boulevard. The Town Code limits the height of fences, walls, trees, and shrubs to three feet when located in required front and street-side setbacks; corner sight triangle; driveway view area; or traffic view area. The subject property is encumbered by all four of these areas. Attachment 9, Exhibit 16, prepared by staff, demonstrates the interaction of the various areas on the subject property to identify the portions of the property where a fence is limited to a maximum height of three feet. The entirety of the existing fence is located in areas limiting its height to three feet. Additionally, portions of the fence are located in the Charles Street right-of-way.

The property owner requested an exception to the fence regulations for a fence exceeding a height of three feet located in the front and street-side yard areas, traffic view area, and corner sight triangle (Attachment 1, Exhibit 5). The total height of the wood fence is five feet, four inches tall. The fence is comprised of two sections: a solid two foot, two-inch-tall lower section with vertical wood boards; and an upper three feet, two-inch-tall section with wood lattice with five-inch openings.

Pursuant to Town Code Section 29.40.0315 (a)(3), fences, walls, gates, and hedges may not exceed a height of three feet when located within a required front or side yard abutting a street, traffic view area, or corner sight triangle, unless an exception is granted by the Town Engineer and Community Development Director. This regulation is intended to minimize conflicts between pedestrians, cyclists, and cars by ensuring fences, walls, gates, and hedges do not obstruct the view from a car at an intersection of two streets. Limiting the height of fences and gates to no more than three feet in these areas allows drivers and pedestrians a view of each other while continuing to afford property owners the opportunity to define the boundaries of their property. The required front setback in the R-1D zone is 15 feet, the required street-side setback is 10 feet, and the traffic view area and corner sight triangle are dimensioned in Exhibit 11 of Attachment 1. The proposed five-foot, four-inch tall fence is set at the front property line, then turns east and enters the Town's right-of-way, paralleling the curb along Charles Street (Attachment 1, Exhibit 7).

Town Code Section 29.40.0320, provided below, allows an exception to any of the fence regulations if a property owner can demonstrate that one of the following conditions exists.

***Sec. 29.40.0320. - Exceptions.***

*An exception to any of these fence regulations may be granted by the Community Development Director. A fence exception application and fee shall be filed with the Community Development Department and shall provide written justification that demonstrates one (1) of the following conditions exists:*

- (a) Adjacent to commercial property, perimeter fences or walls may be eight (8) feet if requested or agreed upon by a majority of the adjacent residential property owners.*
- (b) On interior lots, side yard and rear yard fences, walls, gates, gateways, entry arbors, or hedges, behind the front yard setback, may be a maximum of eight (8) feet high provided the property owner can provide written justification that either:
  - (1) A special privacy concern exists that cannot be practically addressed by additional landscaping or tree screening; or*
  - (2) A special wildlife/animal problem affects the property that cannot be practically addressed through alternatives. Documented instances of wildlife grazing on gardens or ornamental landscaping may be an example of such a problem.**
- (c) At public utility facilities, critical infrastructure, and emergency access locations, exceptions may be granted where strict enforcement of these regulations will result in a security or safety concern.*

*(d) A special security concern exists that cannot be practically addressed through alternatives.*

*(e) A special circumstance exists, including lot size or configuration, where strict enforcement of these regulations would result in undue hardship.*

The property owner requested an exception based on safety and security concerns (Attachment 1, Exhibit 5). Staff was unable to make the findings for granting an exception and denied the exception request on March 23, 2023 (Attachment 1, Exhibit 8). The decision of the Community Development Director was appealed to the Planning Commission.

B. Planning Commission

On May 28, 2025, the Planning Commission considered the applicant's response to its direction of March 12, 2025. As detailed in the Staff Report included as Attachment 9, the applicant provided two response letters outlining proposed changes to the fence with the intent of responding to the Planning Commission. Neither option reduced the height of the fence. Both options proposed modifications that would partially address the safety concerns created by fencing located in the corner sight triangle and driveway view areas; however, neither option presented to the Planning Commission provided remedy to the over height fence within the front and street-side setbacks; corner sight triangle; driveway view area; and traffic view area at a height exceeding the maximum allowed three feet. Additionally, portions of the fence located along Charles Street would remain in the right-of-way, with the applicant indicating their willingness to enter into the appropriate agreements with the Town to maintain private improvements in the right-of-way. The Planning Commission received the staff report, testimony from the applicant, input from the public, and voted five-to-one to deny the request (Attachments 12 and 13).

C. Appeal to Town Council

On June 9, 2025, the decision of the Planning Commission was appealed to the Town Council by an interested person, Firoz Pradhan, property owner of 10 Charles Street (Attachment 14). On the appeal form, the appellant indicated that there was an error or abuse of discretion by the Planning Commission and that the decision of the Planning Commission is not supported by substantial evidence in the record. The appellant's reasoning is provided below, followed by staff's response.

1. Appellant: There was an error or abuse of discretion by the Planning Commission as the Planning Commission failed to exercise its discretion to grant the appeal with stringent conditions that the property owner would be mandated - and was, in fact, willing to - implement to ensure any safety concerns due to visibility issues.

Staff Response: In discussion, the Commission noted that they provided clear direction to the appellant and that the appellant returned to the Commission with two options that did not respond to their direction. Additionally, the Commission noted that the fence creates a safety issue, and they were unable to make the findings required by Town Code Section 29.40.0320 for granting an exception. The Commission voted five-to-one to deny the appeal.

2. Appellant: The Planning Commission's decision is not supported by substantial evidence in the record, as the Town is willing to have the right-of-way issue addressed through a license agreement; the Planning Commission's decision to reject the appeal in full, and not grant it partially, is not supported by this evidence.

Staff Response: In discussion, staff and the Commission indicated that there was support for allowing the portion of the fence located in the right-of-way to remain, subject to a license agreement. However, since the Commission opined that the portions of the fence create a safety issue and they were unable to make the findings required by Town Code Section 29.40.0320 for granting an exception, the Commission voted five-to-one to deny the appeal.

On June 12, 2025, the appellant submitted a proposal for modifications to the fence (Attachment 15). The appellant proposes the following changes:

- Fence height would be reduced along the entire Los Gatos Boulevard frontage to three feet or less;
- Shrubs located behind the fence along the Los Gatos Boulevard frontage be reduced to three feet or less;
- First 30 feet of fence and shrubs located along Charles Street would be reduced to three feet or less;
- Past the 30 feet on Charles Street, the fence would remain at the current height (see typical elevation with dimensions and materials);
- At the driveway south of 10 Charles Street, the fence would be reduced to three feet or less for the first 10 feet from the corner towards the house. (Triangle "A"); and
- All fences and shrubs in the areas designated "A", "B", "C" & "D" as shown in Attachment 15 in red, would be reduced and maintained at three feet or less, while the rest of the fence section shown in green would remain.

Staff Response: The information provided in Attachment 15 is new and was not presented to or considered by the Planning Commission. Pursuant to Town Code Section 29.20.295, if the appellant meets the burden of proof that either there was an error or abuse of discretion (which includes making a decision that was not supported by substantial evidence in the record) by the Planning Commission, and the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning

Commission, the appeal should be granted and the matter remanded back to the Planning Commission for consideration of the new information. However, if the appellant fails to meet the burden of proof that either there was an error or abuse of discretion (which includes making a decision that was not supported by substantial evidence in the record) by the Planning Commission, the appeal shall be denied.

PUBLIC COMMENTS:

Written notice of the Town Council hearing was sent to property owners and tenants within 300 feet of the subject property. Public comments received between 11:01 a.m., Wednesday, May 28, 2025, and 11:00 a.m., Thursday, August 14, 2025, are included as Attachment 17.

ENVIRONMENTAL REVIEW:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction.

CONCLUSION:

A. Recommendation

For the reasons stated in this report, it is recommended that the Town Council uphold the decision of the Planning Commission to deny the application and adopt a resolution (Attachment 16) denying the appeal.

B. Alternatives

Alternatively, the Town Council could continue the application to a date certain and:

1. Provide direction to staff to prepare a resolution to grant the appeal and remand the application back to the Planning Commission with specific direction;
2. Provide direction to staff to prepare a resolution granting the appeal and approving the application; or
3. Continue the application with other specific direction.



ATTACHMENTS:

1. March 12, 2025, Planning Commission Staff Report, with Exhibits 1 through 11
2. March 12, 2025, Planning Commission Verbatim Minutes
3. April 23, 2025, Planning Commission Staff Report
4. April 23, 2025, Planning Commission Addendum, with Exhibit 12
5. April 23, 2025, Planning Commission Desk Item, with Exhibits 13 through 14
6. April 23, 2025, Planning Commission Verbatim Minutes
7. May 14, 2025, Planning Commission Staff Report
8. May 14, 2025, Planning Commission Meeting Minutes
9. May 28, 2025, Planning Commission Staff Report, with Exhibits 15 through 19
10. May 28, 2025, Planning Commission Addendum, with Exhibit 20
11. May 28, 2025, Planning Commission Desk Item, with Exhibit 21
12. May 28, 2025, Planning Commission Verbatim Minutes
13. May 28, 2025, Planning Commission Action Letter
14. Appeal of the Planning Commission Decision, received June 9, 2025
15. Additional Information from Appellant, received June 12, 2025
16. Draft Resolution to Deny Appeal and Deny the Application
17. Public comments received between 11:01 a.m., Wednesday, May 28, 2025, and 11:00 a.m., Thursday, August 14, 2025