



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 3/13/2024

ITEM NO: 2

DATE: March 8, 2024
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider on Remand an Appeal of a Denial of a Fence Height Exception Request for Construction of a Six-Foot Tall Fence Located Within the Required Front Yard Setback, Street Side Yard Setback, and Corner Sight Triangle on Property Zoned R-1:8. **Located at 124 Garden Hill Drive.** APN 424-23-084. Fence Height Exception Application FHE-23-005. Categorically Exempt Pursuant to CEQA Guidelines Section 15303: New Construction or Conversion of Small Structures and Section 15301: Existing Facilities. Property Owner/Appellant: Rushikesh Kulkarni. Project Planner: Ryan Safty.

RECOMMENDATION:

Consider on remand an appeal of a denial of a fence height exception request for construction of a six-foot tall fence within the required front yard setback, street side yard setback, and corner sight triangle on property zoned R-1:8, located at 124 Garden Hill Drive.

PROJECT DATA:

General Plan Designation: Low Density Residential
Zoning Designation: R-1:8 – Single-Family Residential
Applicable Plans & Standards: General Plan, Residential Design Guidelines
Parcel Size: 8,712 square feet
Surrounding Area:

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

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

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SUBJECT: 124 Garden Hill Drive/FHE-23-005

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CEQA:

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction or Conversion of Small Structures and Section 15301: Existing Facilities.

FINDINGS:

- The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction or Conversion of Small Structures and Section 15301: Existing Facilities; and
- As required by Section 29.40.320 of the Town Code for granting a Fence Height Exception.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject property is located at the southwestern corner of Garden Hill Way and Garden Hill Drive, one block south of Lark Avenue and one block west of Highway 17 (Exhibit 1). The immediate neighborhood consists of single-family residential properties.

Over the past few years, the subject property has been sold and redeveloped. On numerous occasions over the past few years, the owners were notified about the Town's fence height requirements. A summary of this history was provided in the Staff Report to the Planning Commission on November 8, 2023, as well as the Staff Report to the Town Council on January 16, 2024. The full staff report packets and meeting minutes for each hearing can be accessed via the Town's Agenda Center: <https://losgatos-ca.municodemeetings.com/>.

On August 4, 2023, following a code complaint, the Town issued an administrative warning regarding an unpermitted six-foot tall fence at the corner of Garden Hill Drive (November 8, 2023 Planning Commission Staff Report, Exhibit 6). On September 7, 2023, the subject Fence Height Exception application was submitted (November 8, 2023 Planning Commission Staff Report, Exhibits 7 and 8), requesting approval to install a six-foot tall wooden fence on top of a retaining wall along the front and street-side property lines and within the corner sight triangle.

On September 27, 2023, the Community Development Director and Town Engineer determined that the required exception findings could not be made, and denied the request (November 8, 2023 Planning Commission Staff Report, Exhibit 9). On October 5, 2023, the owner appealed this decision to the Planning Commission (November 8, 2023 Planning Commission Staff Report, Exhibit 11) pursuant to Town Code Section 29.20.255.

BACKGROUND (continued):

On November 8, 2023, the Planning Commission considered the request and voted unanimously to deny the appeal and uphold the Community Development Director denial of the fence height exception request (January 16, 2024 Town Council Staff Report, Attachment 3).

On November 17, 2023, the decision of the Planning Commission was appealed to the Town Council by the owner (January 16, 2024 Town Council Staff Report, Attachment 4). On January 16, 2024, the Town Council considered the appeal. The Town Council voted unanimously to remand the item back to the Planning Commission due to new information that the owner provided. The Town Council noted within the motion that the owner was willing to compromise to allow for the corner site area to be visible, and that there was no error or abuse of discretion made by the Planning Commission (Exhibit 4).

On February 8, 2024, after meeting with staff to discuss options, the owner submitted an updated proposal to the Town (Exhibit 5) for the Planning Commission to consider based on discussions that occurred at the January 16, 2024 Town Council meeting.

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located at the southwestern corner of Garden Hill Way and Garden Hill Drive, one block south of Lark Avenue and one block west of Highway 17 (Exhibit 1). The immediate neighborhood consists of single-family residential properties.

B. Project Summary and Zoning Compliance

The property owner is appealing the Community Development Director decision to deny a fence height exception request within the required front yard setback, street side yard setback, and corner sight triangle. Based on new information submitted, Town Council remanded the application back to Planning Commission for their consideration. The property owner has revised the exception request (Exhibit 5) from the last time Planning Commission reviewed and denied the appeal on November 8, 2023.

DISCUSSION:

A. Fence Height Exception

Per Town Code Section 29.40.0315, fences and gates are limited to six feet in height with one foot of lattice on top (seven feet total), but are limited to, “three feet in height when located within a required front or side yard abutting a street, driveway view area, traffic view area, or corner sight triangle unless an exception is granted by the Town Engineer and Community Development Director.” The proposed fence is limited to three feet by Code, as it is within the required front yard setback, street side yard setback, and corner sight triangle.

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

Sec. 29.40.0320. - Exceptions.

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

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

DISCUSSION (continued):

Additionally, Town Code Section 29.40.0325 allows, “All fences, hedges, gates, and walls existing on the effective date of this ordinance that do not meet the regulations contained herein are nonconforming and are exempt from these regulations. Existing nonconforming fences may be maintained and/or replaced in kind, including historic stone or river rock walls.”

The property owner has submitted a fence height exception request to exceed maximum allowed height of a fence within the front yard setback, street side yard setback, and corner sight triangle. Currently, there is an unpermitted three-foot tall bamboo screen attached to an approved three-foot tall wooden fence along the corner of the property.

As noted in the Background Section above, the owner submitted an updated and revised request prior to the January 16, 2024, Town Council hearing (January 16, 2024 Town Council Staff Report, Attachment 5). Following Town Council discussion and decision to remand the appeal back to Planning Commission, the owner submitted an updated exception request based on the Town Council comments and meetings with staff (Exhibit 5).

The owner’s exception request is now twofold: approve an exception to permit the existing solid six-foot tall wooden fence along the front property line; and approve an exception for a six-foot tall see through iron fence along the corner sight triangle area. Exhibit 6 includes an image of the existing conditions, highlighting the front property line, street side property line, and corner sight triangle.

First, the owner would like an exception to allow the existing six-foot tall wooden fence to remain along the front property line. Per the letter provided to Town Council on January 16, 2024 (January 16, 2024 Town Council Staff Report, Attachment 5), this fence is substantially a replacement fence of what existed previously. The previous fence was also six feet tall and was setback approximately five feet from the property line. The current unpermitted fence is also six feet tall, but has an approximate four-foot, five-inch setback, seven inches closer than the previous fence. As Town Code Section 29.40.0325 allows fences to be replaced in kind, the owner is requesting that this fence be deemed an in kind replacement. If not, the owner would like to pursue an exception pursuant to Town Code Section 29.40.0320 (d – Special Security Concern) or (e – Special Circumstance). Staff has highlighted the area of this request in orange in Exhibit 6.

DISCUSSION (continued):

Second, the owner would like an exception along the corner of the property, which entails an exception to allow a fence taller than three feet within the required front setback, street side setback, and corner sight triangle. The owner has amended the request per conversations with staff and direction from Town Council so that the proposed material along this corner be of open-view with spaced wrought iron fencing so that safety and visibility is maintained along the street corner. Specifically, the entire three-foot solid wooden fence portion would be removed and replaced with a six-foot tall iron fence, built above the stone retaining wall. The iron fence pickets would be one-half inch wide and spaced every four inches, which means the corner area would be 89 percent open view (Attachment 5). Parks and Public Works has confirmed that they can now support this exception to the corner sight area. The owner is requesting an exception pursuant to Town Code Section 29.40.0320 (d – Special Security Concern) or (e – Special Circumstance). Staff has highlighted the area of this request in blue in Exhibit 6.

The specific justification for each exception finding was detailed in the October 5, 2023, Planning Commission report and is provided below:

For condition (d), the provided justification is as follows: “It is also a special security concern given the fact that my client has three young children who have no place to play outside but in that area. We see no alternative ways to address the safety of my client’s children other than to have a tall fence to keep the children in and the coyotes out [...]. The fence at 3 feet high is not workable to avoid the threat from the coyotes.”

For condition (e), the provided justification is as follows: “My client is of East Indian descent. He belongs to a religion which places special importance on the sun and its east west passage through the sky. According to the tenants of his religion, he is to hold prayer sessions on the east side of his yard. He has tried to do so, but prior to erecting the bamboo fence, the neighbors would stop and watch his private prayer sessions with his family. The lack of privacy with a short fence made it very difficult and uncomfortable for my client and his family to practice their faith.”

B. Appeal Analysis

On January 16, 2024, the Town Council voted unanimously to remand the item back to the Planning Commission due to new information that the owner provided. The Town Council noted within the motion that the owner is willing to compromise to allow for the corner site area to be visible, and that there was no error or abuse of discretion made by the Planning Commission (Exhibit 4).

DISCUSSION (continued):

On February 8, 2024, the owner submitted an updated fence proposal which addresses the previous Town Council direction and staff's corner sight concerns. The previous findings and justification have not changed and are outlined in Fence Height Exception Section of the report above, and Parks and Public Works staff has confirmed they can support the corner sight triangle exception in terms of sight line safety.

C. Environmental Review

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction or Conversion of Small Structures and Section 15301: Existing Facilities.

PUBLIC COMMENTS:

Written notice was sent to property owners and tenants within 300 feet of the subject property. At the time of preparation of this report, no public comment has been received.

CONCLUSION:

A. Summary

The property owner is appealing the Community Development Director decision to deny a fence height exception request within the required front yard setback, street side yard setback, and corner sight triangle. Based on new information submitted, Town Council remanded the application back to Planning Commission for their consideration. The property owner has revised the exception request from the last time Planning Commission reviewed and denied the appeal on November 8, 2023 (Exhibit 5).

B. Recommendation

Staff recommends that the Planning Commission consider the exception request based on the new information and updated proposal as outlined in the staff report and approve the exception request with the findings in Exhibit 2 and the conditions provided in Exhibit 3.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Grant the appeal with additional and/or modified conditions; or
3. Deny the appeal.

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EXHIBITS:

1. Location Map
2. Required Findings
3. Conditions of Approval
4. January 16, 2024, Town Council Meeting Minutes
5. Updated Fence Height Exception Request, received February 8, 2024
6. Picture of Current Conditions