



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 10/27/2021

ITEM NO: 2

DATE: October 22, 2021
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of a Community Development Director Decision to Deny a Fence Height Exception Request for Construction of a Six-Foot Fence and Driveway Gate Located Within the Required Front Yard Setback on Property Zoned HR-1. Located at 100 Alerche Drive. APN 567-18-069. Property Owner/Applicant/Appellant: Anirudh Chauhan. Project Planner: Ryan Safty.

RECOMMENDATION:

Deny the appeal of a Community Development Director decision to deny a fence height exception on property zoned HR-1, located at 100 Alerche Drive.

PROJECT DATA:

General Plan Designation: Hillside Residential
Zoning Designation: HR-1
Applicable Plans & Standards: General Plan
Parcel Size: 62,328 square feet
Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Hillside Residential	HR-1
South	Residential	Hillside Residential	HR-1
East	Residential	Hillside Residential	HR-1
West	Residential	Low Density Residential	R-1:10

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction or Conversion of Small Structures. The project proposes a new six-foot tall fence and vehicular gate.

FINDINGS:

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

ACTION:

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

BACKGROUND:

The subject property is located on the south-east corner of Alerche Drive and Harwood Road (Exhibit 1).

On August 9, 2021, the Town received a complaint regarding an unpermitted fence being constructed in the front yard of 100 Alerche Drive. On August 12, 2021, the Town's Code Enforcement Officer contacted the property owner and informed them of the violation.

On August 16, 2021, the property owner applied for a Fence Height Exception application to install a six-foot tall wrought iron fence and automatic gate within the required front yard setback (Exhibit 7). Town Code requires that fences and gates within the required front yard setback be limited to three feet in height.

On September 1, 2021, the Town denied the exception request since none of the required conditions listed in Town Code 29.40.0320 (*Exceptions*) were found to exist on the subject property.

On September 7, 2021, the decision of the Community Development Director to deny the exception request was appealed to the Planning Commission.

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located on the south-east corner of Alerche Drive and Harwood Road (Exhibit 1). The surrounding properties are low-density residential and hillside residential.

B. Project Summary and Zoning Compliance

The property owner is appealing the Community Development Director decision to deny a Fence Height Exception application to install a six-foot tall fence and vehicular gate within the required front yard setback. The proposed project complies with all other Town Code requirements.

DISCUSSION:

A. Fence Height Exception

The property owner is requesting to construct a six-foot tall wrought iron fence and automatic driveway gate within the required front yard setback. Prior to being contacted by the Code Enforcement Officer, the owner had begun installation of the six-foot fence (Exhibit 6). The majority of the unpermitted fence is setback five feet from the front property line. A small portion in between the eastern edge of the property and the second driveway approach is setback ten feet from the front property line.

The owner is requesting to maintain the current location of the six-foot fence, and also install six-foot tall vehicular gates located 18 feet from the edge of the street. Parks and Public Works reviewed the proposal in terms of driveway view area, traffic view area, and corner sight triangle and found that the exception request could be supported.

Per Town Code Section 29.40.0315, fences and gates in the hillside area are limited to six-feet in height and further limited to three feet when located within the required front or side yard setback abutting a street, fences located within 20 feet of a property line must be "open view" where no more than 20 percent of the surface area of the fence obstructs a view through the fence, and vehicular gates must be setback from the edge of the adjacent street a minimum of 18 feet. The proposal complies with the "open view" definition as the iron posts are 0.625 inches and the spacing is four inches (15.6 percent). The vehicular gates also comply as they would open inward, towards the property, and would be setback 18 feet from the edge of pavement of the street. The proposed height of the fence and gates is the only exception request.

DISCUSSION (continued):

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

Sec. 29.40.0320. - Exceptions.

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

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

The property owner requested an exception due to wildlife concerns associated with the existing vineyard and orchard, privacy and security concerns due to the property being situated at the corner of two busy streets, and compatibility with the surrounding neighborhood (Exhibit 4).

For the wildlife concerns, the property owner cited condition (b) (2) from Town Code Section 29.40.0320. The property has an existing vineyard in the front yard and orchard trees in the front corner of the property. The property owner states that deer are eating the front vineyard, and that a six-foot tall fence is required to protect the vineyard from being eaten (Exhibit 4). However, (b) (2) from Town Code Section 29.40.0320 only applies to side and rear yard fences on interior lots, behind the front setback. The proposal is within the front yard of a corner lot; therefore, staff could not support the requested exception.

DISCUSSION (continued):

For the privacy and security concern, the property owner cited condition (b) (1) from Town Code Section 29.40.0320. The property is a corner lot, and the property owner states that people trespass on to the property to visit and taste the fruits, which creates a privacy and safety concern (Exhibit 4). However, (b) (1) from Town Code Section 29.40.0320 only applies to side and rear yard fences on interior lots, behind the front setback. The proposal is within the front yard of a corner lot; therefore, staff could not support the requested exception.

For neighborhood compatibility, the property owner cited condition (e) from Town Code Section 29.40.0320. The property owner recently purchased the property, and the vineyard and orchard were existing. The property owner states that complying with Town Code by either reducing the height to three feet or pushing the fence and gates back to comply with the required 30-foot front setback requirement would be an undue hardship (Exhibit 4). The property owner references nine other properties in the neighborhood that do not comply with these rules, and they feel that a compliant fence would not be compatible with the neighborhood (Exhibit 5). However, none of the nine properties referenced received an approved fence exception; therefore, staff could not support the requested exception.

B. Appeal Analysis

The Decision of the Community Development Director to deny the Fence Height Exception application was appealed on September 7, 2021 (Exhibit 9). The property owner believes that the exception request is compatible with the neighborhood and if they complied with Town Code, their property would not blend with the neighborhood. Attached to the appeal form were twelve emails from neighbors in support of the proposed exception (Exhibit 10). The neighbor's emails reflect the reasoning provided by the property owner in the appeal form.

C. Environmental Review

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

PUBLIC COMMENTS:

Written notice was sent to property owners and tenants within 500 feet of the subject property. Several neighbors have submitted letters of support, which were provided when the appeal was received, and are included as Exhibit 10. At time of preparation of this report, no additional public comment has been received.

CONCLUSION:

A. Summary

The property owner is requesting that the Planning Commission reconsider the Community Development Director's decision to deny the Fence Height Exception application in order to maintain the existing six-foot tall fence and vehicular gates within the required front yard setback.

B. Recommendation

Staff recommends that the Planning Commission take the following actions to deny the appeal, uphold the decision of the Community Development Director, and deny the Fence Height Exception application:

1. Find that the proposed 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 (Exhibit 2); and
2. Deny the appeal of a Community Development Director decision to deny the Fence Height Exception application.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Grant the appeal and approve the Fence Height Exception application with the draft conditions provided in Exhibit 3; or
3. Grant the appeal with additional and/or modified conditions.

EXHIBITS:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval if Appeal is Approved
4. Project Description and Letter of Justification, received August 29, 2021
5. Neighborhood Pictures, received August 29, 2021
6. Property Pictures, received August 29, 2021
7. Project Plans, received August 29, 2021
8. Fence Height Exception Denial Letter, dated September 1, 2021
9. Appeal of Community Development Director Decision, received September 9, 2021
10. Neighborhood Support of Appeal, received September 9, 2021