



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 03/12/2025

ITEM NO: 3

DATE: March 7, 2025
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of a Community Development Director Decision to Deny a Fence Exception Request for an Existing Fence Partially Located in the Town’s Right-of Way and Exceeding the Height Limitations within the Required Front Yard and Street-Side Yard Setbacks on Property Zoned R-1D. **Located at 10 Charles Street.** APN 532-36-022. Categorically Exempt Pursuant to CEQA Guidelines Section 15303: New Construction or Conversion of Small Structures. Fence Height Exception Application FHE-23-001. Property Owner/Applicant/Appellant: Firouz Pradhan. Project Planner: Sean Mullin.

RECOMMENDATION:

Deny the appeal of a Community Development Director 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.

PROJECT DATA:

General Plan Designation: Medium Density Residential
Zoning Designation: R-1D, Single-Family Residential Downtown
Applicable Plans & Standards: Town Code, General Plan, Residential Design Guidelines
Parcel Size: 7,500 square feet
Surrounding Area:

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

PREPARED BY: SEAN MULLIN, AICP
Planning Manager

Reviewed by: Community Development Director

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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.

FINDINGS:

- The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303 (e): New Construction or Conversion of Small Structures.
- 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 corner of Charles Street and Los Gatos Boulevard (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 (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 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 (Exhibit 5). The exception request was based on concerns related to safety and security. Planning and Engineering staff initially supported the request (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 (Exhibit 7), 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 (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 (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 resolution. A Letter of Justification discussing the appeal was provided to staff on March 2, 2025 (Exhibit 10).

Pursuant to the Town Code Section 29.20.255, any interested person as defined by Section 29.10.020 may appeal to the Planning Commission any decision of the Community Development Director. 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 property owner/appellant meets the requirements.

Pursuant to Town Code Section 29.20.265, the hearing of the appeal shall be set for the first regular meeting of the Planning Commission in which the business of the Planning Commission will permit, more than five days after the date of filing the appeal. The Planning Commission may hear the matter anew and render a new decision on the matter. In coordination with the property owner/appellant, the hearing by the Planning Commission was delayed for personal reasons until March 12, 2025.

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

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

B. Project Summary and Zoning Compliance

The property owner is appealing the Community Development Director decision to deny an exception to the fencing regulations for a fence partially located in the Town's right-of way and exceeding a height of three feet located in the front and street-side yard areas, traffic view area, and corner sight triangle (Exhibits 9 and 10). Pursuant to Town Code Section 29.20.265, the Planning Commission may hear the matter anew and render a new decision on the matter.

DISCUSSION:

A. Fence Height Exception

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 (Exhibit 5).

Exhibit 7, prepared by staff, shows the approximate location of the fence in question, highlighting the portions that are located in the Town's right-of-way. 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 (Exhibit 5).

Per 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. 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 (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 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 based on safety and security concerns (Exhibit 5). As noted above, staff initially supported the exception request given the mitigating factors that addressed pedestrian and traffic issues; however, once the fence was determined to be in the Town's right-of-way, staff was unable to support the exception request. The Town denied the exception request on March 23, 2023 (Exhibit 8).

B. Appeal

The decision of the Community Development Director to deny the Fence Height Exception application was appealed by the property owner on April 3, 2023 (Exhibit 9). In their Letter of Justification, the property owner reiterates their safety and security concerns, and discusses the unique characteristics of the property and goals of mitigating safety issues with the open view portion of the fence (Exhibit 10). When initially considering this justification, staff supported the requested exception. The primary reason for denial of the exception request was due to the location of the fence in the Town's right-of-way. In their Letter of justification, the property owner indicates that a portion of the fence was inadvertently built in the Town's right-of-way, which helped provide reasonable and fair access to approach the front yard. The property owner also noted that locating the fence within the property boundary would make exterior circulation between the front yard and the side yard impractical. Further, relocating the fence onto the property may require removal of a cluster of oak trees. Finally, the property owner offers their willingness to sign any needed agreements with the Town in order to maintain the fence in the Town's right-of-way.

Private improvements located in Town rights-of-way can create safety and Town liability issues and are not typically permitted. When allowed, an Encroachment Permit and License Agreement are typically required through the Parks and Public Works Department.

C. Environmental Review

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

PUBLIC COMMENTS:

The property owner provided letters of support from two neighbors (Exhibit 10). Written notice was sent to property owners and occupants within 300 feet of the subject property. No additional public comments were received at the time of this report's preparation.

CONCLUSION:

A. Summary

The property owner is requesting that the Planning Commission grant their appeal of the Community Development Director's decision to deny an exception to the fencing regulations, approving the exception for a fence partially located in the Town's right-of-way and exceeding a height of three feet located in the front and street-side yard areas, traffic view area, corner sight triangle, and the Town's right-of-way.

B. Recommendation

Staff recommends that the Planning Commission deny the appeal and uphold the Community Development Director decision to deny the requested exception due to safety and Town liability issues created with public improvements located in the Town's right-of-way.

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 with the findings in Exhibit 2 and the draft conditions provided in Exhibit 3; or
3. Grant the appeal with additional and/or modified conditions.

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EXHIBITS:

1. Location Map
2. Required Findings
3. Recommended Conditions of Approval if Appeal is Granted
4. Administrative Warning VL-22-578
5. Fence Height Exception Request – Letter of Justification
6. Email between Planning and Engineering staff
7. Annotated Site Plan Prepared by Staff
8. Fence Height Exception Denial Letter
9. Appeal of the Community Development Director Decision
10. Letter of Justification for Appeal
11. Traffic view Area Diagrams

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