



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 11/10/2021

ITEM NO: 3

DATE: November 5, 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 Tall Vehicular Gate and Fencing within the Required Street-Side Setbacks, Traffic View Area, and Driveway View Area; and Construction of a Vehicular Gate with Reduced Setbacks on Property Located in the Almond Grove Historic District Zoned R-1D:LHP. Located at 103 Tait Avenue. APN 510-18-038. PROPERTY OWNER: Ballou Ventures LLC. APPLICANT/APPELLANT: Kristi Ballou. PROJECT PLANNER: Sean Mullin.

**RECOMMENDATION:**

Deny the appeal of a Community Development Director decision to deny an exception to the Town’s fence regulations on property zoned R-1D:LHP, located at 103 Tait Avenue.

**PROJECT DATA:**

General Plan Designation: Medium Density Residential

Zoning Designation: R-1D:LHP – Single-family residential downtown with a Landmark and Historic Preservation overlay

Applicable Plans & Standards: General Plan, Residential Design Guidelines

Parcel Size: 6,677 square feet

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Medium Density Residential	R-1D:LHP
South	Residential, Religious institution	Medium Density Residential	R-1D; R-1D:PD
East	Residential	Medium Density Residential	R-1D:LHP
West	Residential	Medium Density Residential	R-1D:LHP

**PREPARED BY:** SEAN MULLIN, AICP  
Associate Planner

Reviewed by: Planning Manager and Community Development Director

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SUBJECT: 103 Tait Avenue/FHE-21-010

DATE: November 5, 2021

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. The project proposes new fencing and a vehicular gate.

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.

ACTION:

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

BACKGROUND:

The subject property is located on the northwest corner of Tait and Bean Avenues in the Almond Grove Historic District (Exhibit 1).

On September 6, 2021, the property owner applied for an exception to the Town's fence regulations to construct a vehicular gate and fencing on the subject property, portions of which deviate from the Town Code fence regulations for height and setbacks (Exhibit 4). The property owners' request was based on concerns related to privacy and security on the corner lot.

On September 17, 2021, staff contacted the property owner to discuss concerns with the proposed plan and explore potential options available. Staff outlined concerns related to pedestrian safety and consistency with the Town Code.

On September 23, 2021, the Town denied the exception request because the location of the solid fencing relative to the driveway creates a safety concern as vehicles exit the driveway and cross over the sidewalk and into the roadway and the reduced setback of the vehicular gate would not allow for vehicles to clear the travel lanes while queuing (Exhibit 5).

On October 4, 2021, the decision of the Community Development Director to deny the exception request was appealed to the Planning Commission (Exhibit 6).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located on the northwest corner of Tait and Bean Avenues in the

PROJECT DESCRIPTION (continued):

Almond Grove Historic District (Exhibit 1). The property is surrounded by medium-density residential properties and Saint Mary's Church to the southeast.

B. Project Summary and Zoning Compliance

The property owner is appealing the Community Development Director decision to deny a request for an exception to the fencing regulations of the Town Code to construct a vehicular gate and fencing. Except for the items discussed below, the proposed project complies with all other Town Code requirements.

DISCUSSION:

A. Fence Height Exception

The property owner requested an exception to the fence regulations to construct a vehicular gate and fencing exceeding the three-foot height limitation when located in a required street-side setback, traffic view area, and driveway view area; and a vehicular gate that does not meet the 18-foot setback requirement as measured from the edge of the street (Exhibit 4).

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, driveway view area, or traffic view area 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 as it exits a driveway and crosses over a sidewalk to enter the roadway. 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 street-side setback in the R-1D zone is 10 feet. A traffic view area is the area which is within 15 feet of a street and a driveway view area is a triangular area at the intersection of driveways and sidewalks and street intersections having sides 10 feet in length (Exhibit 7). Staff has prepared an exhibit showing the locations of these areas and the proposed fencing and vehicular gate (Exhibit 8). The proposed six-foot tall vehicular gate would be setback approximately 18-inches from the property line and the proposed six-foot tall solid fencing adjacent to the driveway would be set at the property line.

Per Town Code Section 29.40.0315 (c)(3), vehicular gates shall be set back from the edge of the adjacent street a minimum of 18 feet. The intent of this regulation is to allow for vehicles to clear the travel lanes while queuing as the gate is opening. The required

DISCUSSION (continued):

vehicular setback is shown on Exhibit 8. The proposed vehicular gate would be setback approximately eight feet from the edge of the street.

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 security and privacy concerns (Exhibit 4). The security concerns were related to the property's proximity to Saint Mary's Church and N. Santa Cruz Avenue, citing multiple trespassing incidents. Regarding the privacy concerns, the property owner cited the nature of the small corner lot limiting their backyard area and the setback requirements of six-foot tall privacy fencing further reducing the size of the backyard.

Staff was unable to support the proposed exceptions as the location of the solid fencing relative to the driveway creates a safety concern as vehicles exit the driveway and cross over the sidewalk to enter the roadway. Additionally, the location of the vehicular gate would not allow for vehicles to clear the travel lanes while queuing. Parks and Public Works

DISCUSSION (continued):

reviewed the proposal and could not support the exception requests regarding the driveway view area and vehicular gate setback, citing the heavy pedestrian traffic along the street. The Town denied the exception request on September 23, 2021 (Exception 5).

B. Appeal Analysis

The decision of the Community Development Director to deny the Fence Height Exception application was appealed by the property owner on October 4, 2021 (Exhibit 6). In their appeal, the property owner reiterates and details their safety and privacy concerns. The property owner also states that the exception request is compatible with the neighborhood, providing photos of examples of similar fencing on nearby properties. Further, the applicant indicates that if they complied with Town Code, their limited private outdoor space would be further reduced.

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 300 feet of the subject property. At time of preparation of this report, no 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 exceptions to the fence regulations to construct a vehicular gate and fencing exceeding the three-foot height limitation when located in a required street-side setback, traffic view area, and driveway view area; and a vehicular gate that does not meet the 18-foot setback requirement as measured from the edge of the street.

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 exceptions to the Town's fence regulations:

CONCLUSION (continued):

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 exceptions to the Town's fence regulations.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Grant the appeal and approve the exceptions to the Town's fence regulations 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. Fence Height Exception Request, dated September 5, 2021
5. Fence Height Exception Denial Letter, dated September 23, 2021
6. Appeal of Community Development Director Decision, received October 4, 2021
7. View Area Diagrams
8. Annotated Site Plan by staff