



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 9/14/2022

ITEM NO: 2

DATE: September 9, 2022

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 Six-Foot Tall Fencing Located Within the Required Front Yard Setback and Construction of a Vehicular Gate with Reduced Setbacks on Property Zoned R-1:10. **Located at 755 Blossom Hill Road.** APN 523-04-043. Fence Height Exception Application FHE-21-003. PROPERTY OWNER: David and Ilana Kohanchi. APPLICANT: Nina Guralnic. PROJECT PLANNER: Savannah Van Akin.

RECOMMENDATION:

Deny the appeal of a Community Development Director decision to deny an exception to the Town's fence regulations on property zoned R-1:10, located at 755 Blossom Hill Road.

PROJECT DATA:

General Plan Designation: Low Density Residential

Zoning Designation: R-1:10 – Single-family residential

Applicable Plans & Standards: General Plan, Residential Design Guidelines

Parcel Size: 21,058 square feet

Surrounding Area:

| | Existing Land Use | General Plan | Zoning |
|-------|--------------------------|--|--------------------|
| North | Residential | Low Density Residential | R-1:8 |
| South | Residential & Commercial | High Density Residential & Neighborhood Commercial | R-M:12-20:PD & C-1 |
| East | Residential | Low Density Residential | R-1:10 |
| West | Office | Office Professional | O |

PREPARED BY: SAVANNAH VAN AKIN
Assistant Planner

Reviewed by: Planning Manager and Community Development Director

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 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 north side of Blossom Hill Road, east of the intersection with Camelia Terrace (Exhibit 1).

On December 14, 2020, the Town issued an administrative warning for a code violation at 755 Blossom Hill Road (Exhibit 4). This warning was sent after several complaints were submitted regarding a front yard fence/vehicular gate. This letter requested that the property owners reduce their six-foot fence along the front property line down to three feet to meet Town Code, by January 3, 2021.

On February 12, 2021, the property owner applied for an exception to the Town's fence regulations for the unpermitted construction of the vehicular gate and fencing on the subject property, which does not comply with the Town Code fence regulations for height and setbacks (Exhibits 5 and 6). The request was based on concerns related to protection for children, animals, and a garden. Privacy is also listed as a concern.

Staff contacted the property owner to discuss concerns with the vehicular gate and fence and explore potential options available.

On July 2, 2021, the Town denied the exception request because the findings listed in Town Code Section 29.40.0320 could not be made, safety concerns including the location of the metal fencing relative to the driveway which obstructs visibility 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 of Blossom Hill Road while queuing (Exhibit 7).

BACKGROUND (continued):

On November 16, 2021, staff contacted the property owner and provided examples of similar fence height exception requests that were appealed to the Planning Commission. Staff also reminded the property owners of the options to remedy the situation. These options included: removing the illegal fence and gate; modifying the fence and gate to comply with Town Code; or filing an appeal of the decision to deny the fence height exception.

The property owner was contacted via email on January 31, 2022, March 22, 2022, April 5, 2022, May 3, 2022, and May 24, 2022. Staff asked for a progress update and provided the options to remedy the situation.

On July 7, 2022, the Town issued a second administrative warning for a code violation (Exhibit 8). This letter requested the property owners to: remove the illegal fence and gate; modify the fence and gate to comply with Town Code; or file an appeal of the decision to deny the fence height exception by August 7, 2022.

On August 5, 2022, the decision of the Community Development Director to deny the exception request was appealed to the Planning Commission (Exhibit 9).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located on the north side of Blossom Hill Road, east of the intersection with Camelia Terrace (Exhibit 1). The property has single-family residential properties to the north and east, a senior living facility and a commercial center to the south, and an office to the west.

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 for the unpermitted construction of the vehicular gate and fencing.

DISCUSSION:

A. Fence Height Exception

The property owner requested an exception to the fence regulations to approve a constructed six-foot fence located within the required front yard and a vehicular gate set back less than eighteen (18) feet from the edge of the adjacent street (Exhibits 5 and 6). The vehicular gate and fencing exceed the three-foot height limitation when located

DISCUSSION (continued):

in a required front setback, traffic view area, and driveway view area; and the vehicular gate does not meet the 18-foot setback requirement as measured from the edge of the street.

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 front yard setback in the R-1:10 zone is 25 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 10). The existing six-foot tall wood fence has a minimum setback of nine feet from the property line and the six-foot tall metal fence and vehicular gate are located on the property line (Exhibit 11).

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.

Per Town Code Section 29.40.0315 (b)(1)(c), barbed or razor wire fences, including any fence with attached barbs, sharp points, or razors materials are prohibited. The existing metal fence and gate has distinct sharp points at the top (Exhibit 12).

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.*

DISCUSSION (continued):

- (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 5 and 6). The privacy concerns were related to the property's proximity to commercial centers and medical offices, citing instances when people mistake their home for the chiropractor's office next door. Regarding the security concerns, the property owner cited protecting children, containing animals, and protecting a garden as justification.

Staff was unable to support the proposed exceptions as the location of the metal 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 Department staff reviewed the proposal and could not support the exception requests. The Town denied the exception request on July 2, 2021 (Exhibit 7).

B. Appeal Analysis

The decision of the Community Development Director to deny the Fence Height Exception application was appealed on August 5, 2022 (Exhibit 9), after several months of staff reaching out and after a second administrative warning letter was sent on July 7, 2022. The appellant lists security and the unique location as justification for their appeal. The appellant's letter raises several points to support their appeal of the fence height exception as listed below.

DISCUSSION (continued):

1. The noncompliant fence and gate are already built.
2. All other noncompliant fences within the Town should be altered to meet Town Code.
3. The fence provides protection against wildlife.
4. The fence adds extra security for their family while away at work.
5. The fence adds extra security and privacy against intrusions from the public.
6. The location of their home is uniquely surrounded by businesses.
7. Town staff were not accessible for questions during the pandemic closure.
8. The fence provided safety during COVID.

The property appellant's letter also provided responses to support their appeal of the 18-foot setback requirement for the vehicular gate as listed below.

1. There are existing seven feet tall trees lining the property that block visibility.
2. Their fence has gaps between the rails, making visibility easy for incoming or outgoing vehicles.
3. The gate receiver works from a distance of 1,000 feet, which prevents cars from stopping in the road to enter through the gate.
4. They are willing to leave the gate open during the day. The gate is to prevent nighttime intruders.
5. Their home is uniquely placed among commercial properties, and along Blossom Hill Road, creating a less defined "neighborhood character."

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 maintain an unpermitted vehicular gate and fencing that exceeds the three-foot height

CONCLUSION (continued):

limitation when located in a required front setback, 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 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 finding in Exhibit 2 and 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
4. Administrative Warning Letter, dated December 14, 2020
5. Fence Height Exception Request, dated February 12, 2021 to the Community Development Department
6. Fence Height Exception Request, dated February 12, 2021 to the Parks and Public Works Department
7. Fence Height Exception Denial Letter, dated July 2, 2021
8. Administrative Warning Letter, dated July 7, 2022
9. Appeal of the Community Development Director Decision, received August 5, 2022
10. View Areas Diagrams
11. Site Plan
12. Site Images

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