



OFFICE OF COMMUNITY DEVELOPMENT

CITY HALL

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To: Mayor and City Council Members
Planning Commissioners

From: Benjamin Fu, Director of Community Development

Date: January 29, 2021

Subj: REPORT OF DESIGN REVIEW COMMITTEE FINAL DECISIONS MADE
January 21, 2021

<p>Chapter 19.12.170 of the Cupertino Municipal code provides for Appeal of decisions made by the Design Review Committee</p>
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- 1. Application**
EXC-2020-006, Manju Radhakrishnan (Radhakrishnan residence), 10330 Menhart Ln

Description

Fence Exception to allow a six (6) foot front yard fence in the required 20' front yard setback area.

Action

The Design Review Committee approved the application on a 2-0-0 vote. This is effective January 21, 2021. The fourteen-calendar day appeal will expire on February 4, 2021.

Enclosures:

Design Review Committee Report of January 21, 2021
Resolution No(s). 334
Plan set



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

CITY HALL
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DESIGN REVIEW COMMITTEE STAFF REPORT

Meeting: January 21, 2021

Subject

Fence Exception Permit to allow a six foot high fence within a required 20 foot front yard setback area. (Application No.: EXC-2020-006; Applicant: Manju Radhakrishnan; Location: 10330 Menhart Lane; APN: 375-16-017)

Recommended Action

That the Design Review Committee adopt the draft resolution (Attachment 1) to:

1. Find the project exempt from CEQA; and
2. Approve the Fence Exception (EXC-2020-006).

Discussion

Project Data:

General Plan Designation:	Low Density (1-6 DU/Ac.)	
Zoning Designation:	R1-5	
Lot Area:	5,862 sq. ft.	
Floor Area:	2,627 sq. ft. (44.83% FAR)	
1st Floor Setbacks	Allowed	Existing
Front	20'-0"	20'-3"
Side	Combined 15'	10'-0" right, 5'-0" left
Rear	20'-0"	20'-0"
2nd Floor Setbacks	Allowed	Existing
Front	25'-0"	25'-0"
Side	Combined 25'	15'-0" right, 15'-0" left
Rear	25'-0"	25'-0"
Project Consistency with		
General Plan:	Yes	
Zoning:	No, exception requested for six-foot tall fence in the front setback area	
Environmental Assessment:	Categorically Exempt	

Project Location:

The project site is located on Menhart Lane, approximately 150 feet west of the intersection of Menhart Lane and Wunderlich Drive in the Rancho Rinconada neighborhood. The property is surrounded by other single-family homes to the north, south, east and west.

Background:

In 2016, a Two-Story Permit (R-2016-20) was approved to allow the construction of a new two-story home. The proposed home met all development regulations, including setback requirements for Single Family Homes, per Cupertino Municipal Code Chapter 19.28.



Figure 1: Vicinity Aerial (subject property outlined in blue)

The lot only has three property lines and is effectively triangular in shape. Based on the Municipal Code, the property only needs to provide a 20 foot rear setback in the form of an arc from the intersection of the two side property lines. This results in the creation of a smaller rear yard, and a larger front yard due to unique shape of the lot. The Cupertino Municipal Code Chapter 19.48 allows a three-foot high fence within the front-yard area; however, the applicant is requesting a six-foot fence high fence for purposes of privacy. Currently, there is no front yard fence existing on this property.

Discussion:

The applicant is proposing to enclose a portion of the front yard by constructing a six-foot-tall fence along the southern property line, which would then veer roughly 30 degrees to the north, to avoid an existing shrub, till it reaches the western (front) property line. The fence would then continue along the western (front) property line for a length of approximately 41 feet, and then make a 90-degree turn and terminate at the house. A gate will also be installed for continued access to a concrete walk in the front yard (see Figure 2 – fence outlined in red, green and blue)

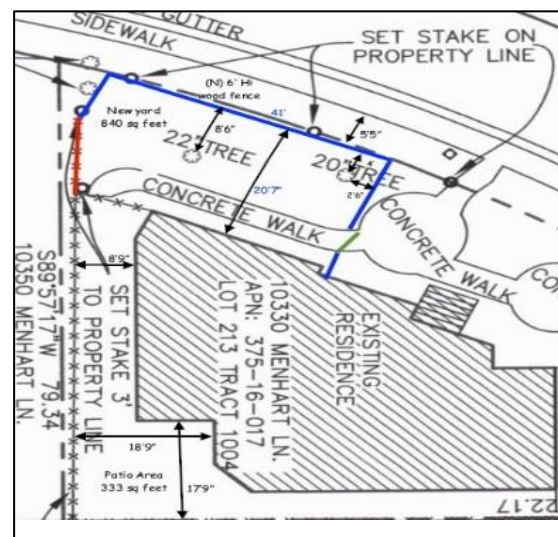


Figure 2: Area of Work at 10330 Menhart Ln

Per the Cupertino Municipal Code, fences located within required front setback areas and up to five feet from the property line in a required street side setback area must be no taller than three feet for visibility and light and air purposes. The property appears to be a corner property due to the curved front property line. Fences taller than three feet must be located a minimum of five feet along a required street side setback.

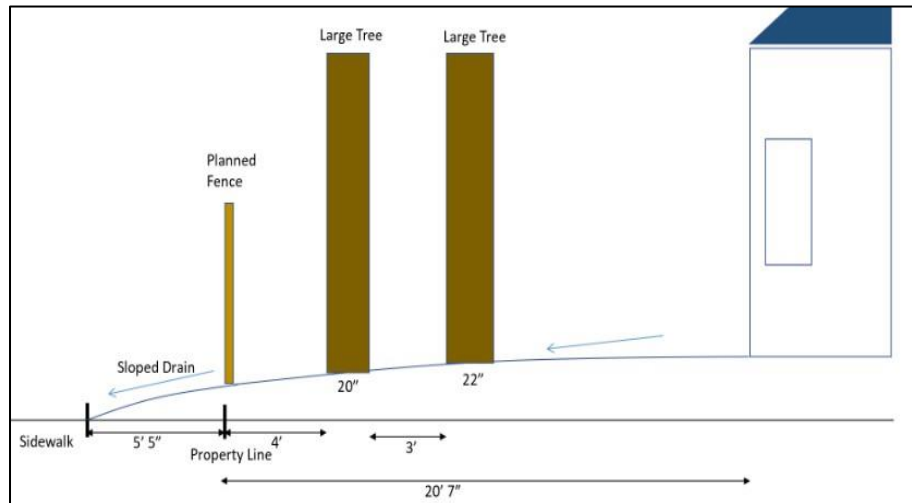


Figure 3: Section Elevation

The sidewalk in this neighborhood is a monolithic sidewalk meaning that the sidewalk is adjacent to the street curb (see Fig. 2) and the front property line is setback 5'5" from the sidewalk (see Fig. 3) and 9'5" from curb line. Due to the distance from the curb, the perceived setback of the fence from the sidewalk, the appearance of the property as a corner lot, and the existing development on the property, the proposed location of the fence is acceptable.

The proposed fence does not impede into the adjacent neighbor's site lines when entering or exiting their driveway, and additionally the applicant has proposed the fence in a manner to not damage an existing shrub along the south property line.

Typical rear yards in R-1 zones are the lot width (usually between 51 and 57 ft in the bulk of the Rancho Rinconada neighborhood) times 20 (the rear yard setback requirement), giving the average single-family residential property owner at least 1,020 - 1,140 sq. ft. as a private rear yard space. This property, however, has an approximately 332 sq. ft. rear yard with some usable side yard. Allowing a front yard fence in the proposed location, would add approximately 800 s.f. of private outdoor space for the applicants, while maintaining distance from the public street and minimizing impacts to the pedestrian experience.

Public Works staff has reviewed the proposal, and do not have any issues with the location of the fence.

As a condition of approval, the applicant will be required to remove the fence in the event of complete redevelopment of the property that improves the ability to provide a yard in a better location.

Tree Protection

As a condition of approval, a covenant shall be recorded on the two front yard trees within the fenced area to protect and maintain them, since the applicant has indicated that the location of the proposed fence is in part to preserve these trees. Should the trees have to be removed due to ill-health in the future, they shall be replaced with a protected tree.

Environmental Assessment

This project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) per Section 15301 Existing Facilities (Class 1) consisting of new copy on existing on and off-premise signs.

Public Outreach and Noticing

The following table is a brief summary of the noticing done for this project:

Notice of Public Hearing and Intent, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none">▪ Site Signage (<i>10 days prior to the hearing</i>)▪ 11 public hearing notices mailed to adjacent property owners (<i>10 days prior to the hearing</i>)	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (<i>one week prior to the hearing</i>)▪ Posted on the City of Cupertino's website (<i>one week prior to the hearing</i>)

No public comments have been received as of the date of production of this staff report.

Permit Streamlining Act

This project is subject to the Permit Streamlining Act (Government Code Section 65920 – 65964). The City has complied with the deadlines found in the Permit Streamlining Act.

Project Received: October 22, 2020; **Deemed Incomplete:** November 11, 2020

2nd Submittal Received: December 16, 2020;

Deemed Complete: January 5, 2020

The City has up to 60 days from the date of deeming the project complete (until February 31, 2021) to make a decision on the project.

Conclusion

Staff recommends approval of the project since the conditions of approval address all concerns related to the proposed project and all of the findings for approval of the proposed project are consistent with Chapter 19.48: Fences of the Cupertino Municipal Code.

Next Steps

Should the project be approved, the Design Review Committee's decision on this proposal is final unless an appeal is filed within 14 calendar days of the date of the decision, on February 4, 2021. The applicant may apply for building and other permits at the end of the appeal period.

This approval expires on January 21, 2022, at which time the applicant may apply for a one-year extension.

Prepared by: Lauren Ninkovich, Assistant Planner

Reviewed and Approved by: Piu Ghosh, Planning Manager

ATTACHMENTS:

1 – Draft Resolution

2 – Plan Set

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

RESOLUTION NO. 334

OF THE DESIGN REVIEW COMMITTEE OF THE CITY OF CUPERTINO
APPROVING A FENCE EXCEPTION TO ALLOW THE CONSTRUCTION OF A 6
FOOT FENCE IN THE FRONT SETBACK AREA OF A SINGLE-FAMILY RESIDENCE

SECTION I: PROJECT DESCRIPTION

Application No.: EXC-2020-006
Applicant: Manju Radhakrishnan
Location: 10330 Menhart Ln, APN: 375-16-017

SECTION II: FINDINGS

WHEREAS, the Design Review Committee of the City of Cupertino received an application for an Exception from the Residential Single Family Zoning regulations as described in Section I. of this Resolution; and

WHEREAS, the Project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303 Class 3 (New construction or conversion of small structures); and

WHEREAS, the necessary notices have been given in accordance with the Procedural Ordinance of the City of Cupertino, and the Design Review Committee has held at least one Public Meeting on this matter; and

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, the Design Review Committee finds the following with regard to the exception for this application:

1. *The literal enforcement of the provisions of this chapter will result in restriction inconsistent with the spirit and intent of this chapter.*

The proposed fence location has been designed to meet the intent of the chapter by providing a six foot fence, a height allowed without a permit in other areas of the property, in a location that provides privacy for the applicants but is minimally intrusive to the adjacent property owners and pedestrians.

2. *The granting of the exception will not result in a condition which is materially detrimental to the public health, safety or welfare.*

The fence location will not be detrimental to public health, safety or welfare because the fence location is generally consistent with the City's fence ordinance, and the fence will provide privacy for property owners.

3. *The exception to be granted is one that will require the least modification of the prescribed regulation and the minimum variance that will accomplish the purpose.*

The fence height and material is consistent with the ordinance. Placement of the fence location is consistent with that of a key lot, and the placement of the fence would be consistent with the requirements of street side fence location.

4. *The proposed exception will not result in a hazardous condition for pedestrian and vehicular traffic.*

The proposed fence is along the property line which is located five (5) feet five (5) inches from the sidewalk and provides adequate pedestrian accessibility. Additionally, Public Works has reviewed the site plan, and has determined that the proposed fence location will not be detrimental to vehicular traffic.

5. *The proposed development is otherwise consistent with the City's General Plan and with the purpose of this chapter as described in Section 19.48.010*

The proposed fence is otherwise consistent with the City's General Plan and with the purpose of the Fence Ordinance since fences are permitted in all single-family residential zones.

6. *The proposed development meets the requirements of the Santa Clara Fire Department and Sheriff's Department, and if security gates are proposed, that attempts are made to standardize access.*

The proposed fence is a standard 6 foot tall fence. The Santa Clara Fire Department and the Sheriff's Department are normally concerned when security gates are proposed. The projects proposes no security gates.

7. *The fence height for the proposed residential fence is needed to ensure adequate screening and/or privacy.*

The six-foot fence height is consistent with the allowable fence height which is to aid in providing privacy.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 thereof, the application for an Exception to the Fence Ordinance regulations, Application no. EXC-2020-006 is:

1. Exempt from CEQA and
2. Hereby APPROVED, and

That the sub-conclusions upon which the findings and conditions specified in this Resolution are based and contained in the Public Meeting record concerning Application no. EXC-2020-006 as set forth in the Minutes of Design Review Committee Meeting of January 21, 2021 and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

The approval is based on the plan set titled "Request for Privacy Fence" consisting of eight (8) sheets, except as may be amended by the Conditions contained in this Resolution.

2. NOTICE OF FEES, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions.

3. ACCURACY OF THE PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

4. FRONT YARD TREE COVENANTS

Prior to construction of the fence, a covenant will be recorded to protect the two fruitless mulberry trees in the front yard as Protected Trees. Should either tree be need to removed due to ill-health, demonstrated by an ISA-certified Arborist report, the tree shall be replaced in the vicinity by a Protected Tree.

5. FUTURE REDEVELOPMENT OF THE PROPERTY

In the event the property is redeveloped, the location of the front yard fence shall be reevaluated for appropriateness of location or a reduction in height.

6. DUST CONTROL

The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site:

- a) Water all exposed surfaces areas (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- b) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d) All vehicle speeds on unpaved roads shall be limited to 15 mph.
- e) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- f) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- g) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h) Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

The applicant shall incorporate the City's construction best management practices into the building permit plan set prior to any grading, excavation, foundation or building permit issuance.

7. INDEMNIFICATION AND LIMITATION OF LIABILITY

As part of the application, to the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "proceeding") brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT

1. FENCE IMPROVEMENTS

It shall be the owner's and contractor's responsibility to ensure the new fence location and height are installed per the approved plan. The fence shall not encroach into the public right-of-way and shall not impede lot drainage towards the public street.

PASSED AND ADOPTED this 21st day of January 2021, at a regular meeting of the Design Review Committee of the City of Cupertino by the following roll call vote:

AYES: MEMBERS: Chair Wang, Fung

NOES: MEMBERS: none

ABSTAIN: MEMBERS: none

ABSENT: MEMBERS: none

ATTEST:

APPROVED:

_____/s/Lauren Ninkovich_____
Lauren Ninkovich
Assistant Planner

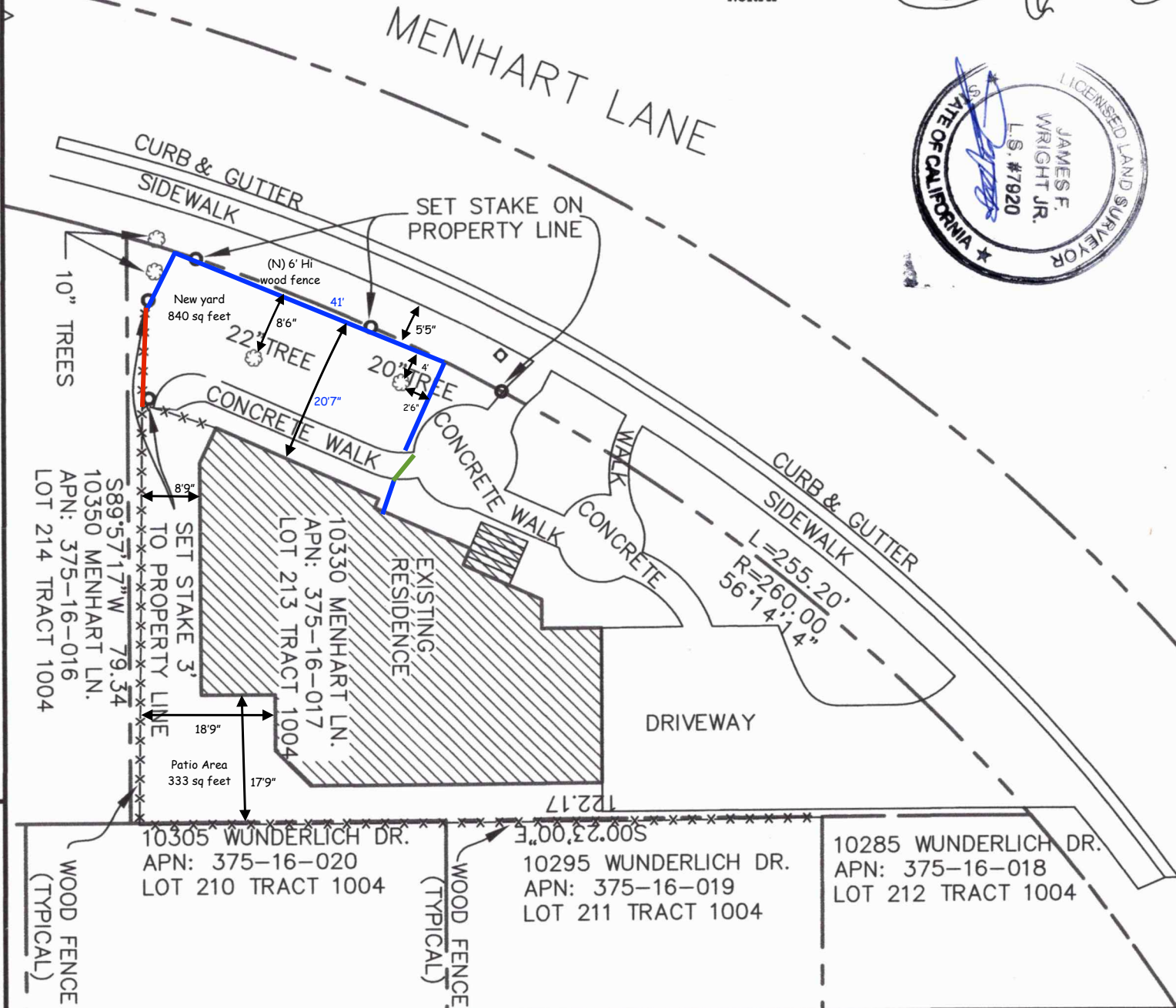
_____/s/R Wang_____
R Wang, Chair
Design Review Committee

Site Plan

NORTH



FOOTSTEPS SURVEYING
 3315 ST. IGNATIUS PL. SANTA CLARA, CA. 95051
 PHONE: (408) 737-2265 FTSTPSJAY@GMAIL.COM



EXHIBIT

FOR NEW FENCE

10330 MENHART LANE CUPERTINO, CA

Date: 09/12/20

Scale 1"=20'

Dwn by: JW

Job J200901

New 6 feet tall wooden gate

Increase height of existing fence to 6' to match the new fence

New wooden fence 1' kickboard, 4' fence, and 1' lattice for a total of a 6' tall fence.