

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION NO. 16-____

OF THE CITY COUNCIL OF THE CITY OF CUPERTINO APPROVING A FENCE EXCEPTION
TO ALLOW ELECTRONIC VEHICLE GATES WITHIN THE CONSTRUCTION OF A 122-
ROOM HOTEL, TWO MIXED-USE BUILDINGS WITH 188 APARTMENT UNITS AND
APPROXIMATELY 22,600 SQUARE FEET OF COMMERCIAL SPACE AND ASSOCIATED
SITE AND OFF-SITE IMPROVEMENTS IN A PLANNED DEVELOPMENT
ZONE AT 10122 BANDLEY DRIVE AND 10145 NORTH DE ANZA BOULEVARD

SECTION I: PROJECT DESCRIPTION

Application No.: EXC-2016-05
Applicant: Amy Chan, De Anza Venture, LLC
Property Owner: Marina Plaza, LLC (APN 326-34-066), and Cupertino 10145, LLC (APN 326-32-043)
Location: 10122 Bandley Drive (APN 326-34-066) and 10145 North De Anza Boulevard (APN 326-32-043)

SECTION II: FINDINGS FOR FENCE EXCEPTION:

WHEREAS, the City Council of the City of Cupertino received an application for a Fence Exception Permit as described in Section I. of this Resolution; and

WHEREAS, the Environmental Review Committee has reviewed an Initial Study and Mitigated Negative Declaration and recommended approval; and

WHEREAS, the Planning Commission held a public hearing on July 26, 2016 and recommended that the City Council approve the application, subject to conditions, and adopt the Mitigated Negative Declaration; and

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the City Council has held at least one public hearing in regard to the application; and

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

WHEREAS, the City Council finds as follows with regard to 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.

Driveways gates are consistent with the intent of the chapter because the proposed driveway gates are within a mixed-use development, where the parking for different uses needs to be separated to assure availability of parking for each use.

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

The proposed driveway gates are located underground and not visible from the public. A condition of approval has been added from the Santa Clara County Fire Department to ensure access in emergencies.

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 exception is consistent with the fence ordinance as the driveway gates separate parking for different uses to ensure adequate parking for each use.

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

The proposed parking layout has been reviewed by the Department of Public Works, and has been determined to not result in a hazardous condition for pedestrian or 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 driveway gate is otherwise consistent with the City's General Plan since the fence facilitates the development of a mixed-use urban village.

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.

A condition of approval has been added to ensure standardized access.

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

The proposed exception is not for fence height.

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 a Fence Exception Permit, Application no. EXC-2016-05 is hereby approved and that the subconclusions upon which the findings and conditions specified in this resolution are based and contained in the Public Hearing record concerning Application no. EXC-2016-05 as set forth in the Minutes of the City Council Meeting of September 6, 2016, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval recommendation is based on the plan set received on June 2, 2016 consisting 134 sheets labeled as "Marina Plaza the urban village" consisting of 134 sheets labeled as T.1 to T.9, C1.0 to C5.2, R-1 to R-2, JT-1 to JT-3, A.0 to A.65, PM-1 to PM-3, SL-1 to SL-3, E-1 to E-2, and L0.02 to L5.02, drawn by Dahlin Group, VER Consultants, RGA, Bruce Jett Associates, Coffman Engineers. Inc, Emerald City Engineer, Inc. Beyond Efficiency Inc, and RGD Acoustic, Inc., except as may be amended by conditions in this resolution.

2. ACCURACY OF 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.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. DP-2015-05, TR-2016-14, U-2015-06, DA-2016-01, ASA-2015-22, and EXC-2016-03 shall applicable to this approval.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

5. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

6. INDEMNIFICATION

Except as otherwise prohibited by law, the applicant shall indemnify and hold harmless the City, its City Council, and its officers, employees and agents (collectively, the "indemnified

parties”) from and against any claim, action, or 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 to attack, set aside, or void this Resolution or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City its actual attorneys’ fees and costs incurred in defense of the litigation. The applicant shall pay such attorneys’ fees and costs within 30 days following receipt of invoices from City. Such attorneys’ fees and costs shall include amounts paid to counsel not otherwise employed as City staff 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.

7. 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. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

SECTION IV: CONDITIONS ADMINISTERED BY THE SANTA CLARA COUNTY FIRE DEPARTMENT

1. EMERGENCY GATE/ACCESS GATE REQUIREMENTS:

Gate installations shall conform with the Fire Department Standard Details and Specification G-1 and, when open shall not obstruct any portion of the required width for emergency access roadways or driveways. Locks, if provided, shall be fire department approved prior to installation. Gates across the emergency access roadways shall be equipped with an approved access devices. If the gates are operated electrically, an approved Knox key switch shall be installed; if they are operated manually, then an approved Knox padlock shall be installed. Gates providing access from a road to a driveway or other roadway shall be at least 30 feet from the road being exited. CFC Sec. 503 and 506’

PASSED AND ADOPTED at a Regular Meeting of the City Council of the City of Cupertino the 6th day of September 2016, by following roll call vote:

Vote: Members of the City Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

Resolution No._____

EXC-2016-05

September 6, 2016

ATTEST:

APPROVED:

Grace Schmidt
City Clerk

Barry Chang
Mayor, City of Cupertino