

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION

OF THE DESIGN REVIEW COMMITTEE OF THE CITY OF CUPERTINO APPROVING A
FENCE EXCEPTION TO ALLOW A MANUAL DRIVEWAY GATE ON A PLANNED
DEVELOPMENT (LIGHT INDUSTRIAL) PROPERTY LOCATED AT 10280 IMPERIAL
AVENUE (APN 357-19-054).

SECTION I: PROJECT DESCRIPTION

Application No.: EXC-2018-02
Applicant: Janice Yeh, Adaptive Architecture
Property Owner: Cisco Rivera, Xtina Properties, LLC.
Location: 10280 Imperial Avenue (APN# 357-19-054)

SECTION II: FINDINGS FOR FENCE EXCEPTION:

WHEREAS, the Design Review Committee of the City of Cupertino received an application for a Fence Exception as described in Section I of this Resolution; and

WHEREAS, per Chapter 19.48, Fences, of the Cupertino Municipal Code (CMC), roadway and driveway gates may be approved through a fence exception where the gate is needed for demonstrated security and/or demonstrated safety reasons. CMC Chapter 19.12, Administration, requires that the Design Review Committee review and approve requests for exceptions to the development standards established by the Fence Ordinance; and

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the Design Review Committee has held at least one Public Meeting in regards to the application; and

WHEREAS, the project is determined to be exempt from the California Environmental Quality Act (CEQA); and

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

WHEREAS, the Design Review Committee 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.

The proposed driveway gate is consistent with the intent of the chapter because the proposed driveway gate is within a non-residential zoning district, where the gate is needed for demonstrated security and/or demonstrated safety reasons.

The proposed business for the subject property is Rebel Sun Productions, a video and audio equipment rental company, which can be a target for burglary. Rebel Sun Productions experienced a burglary in 2015 while operating in Mountain View. The burglary resulted in over \$70,000 worth of equipment loss and damages. Subsequently, a security gate was installed at the Mountain View property. No other burglaries have occurred at the property since the installation of the security gate.

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 gate adheres to the Santa Clara County Fire Department's safety requirements and a condition of approval has been added from the Santa Clara County Fire Department to ensure access in emergencies. A separate condition of approval has been added from the Public Works Department requiring the existing concrete masonry unit wall to be reduced to three (3) feet in height in order to enhance vehicular visibility. Safety conditions for pedestrian and vehicular traffic will improve from enhanced visibility.

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 prescribed regulation, CMC Chapter 19.48 ("Fence Ordinance"), because the driveway gate is needed for security and/or safety reasons to prevent burglary. The design review guidelines are regulated by the Fence Ordinance, which outlines that fences and walls separating industrial zones from residential zones shall be constructed to acoustically isolate part of or all noise, ensure visual privacy for adjoining residential dwelling units, and provide for sight visibility. The Fence Ordinance does not identify setback requirements for fences located in zones requiring design review. Additionally, there is no established setback pattern for existing fences or driveway gates within the Monta Vista Planning Area.

The applicant is proposing a six (6) foot redwood driveway gate to be set back ten (10) feet from the front property line. The front driveway gate will connect to the existing six (6) foot chain-link fence for the adjacent automotive repair shop and to the existing six (6) foot concrete masonry unit (CMU) wall along the property line shared with the single-family residence. These heights, materials and fence placements are consistent with fences within the area. The proposed driveway gate be setback a minimum of ten (10) feet to provide a buffer between the existing industrial and residential uses. The applicant is also proposing to install a landscape planter within the front setback area adjacent to the single-family residence. The proposed fence setback and landscape buffer are consistent with the General Plan Policy LU-26.4 to incorporate building transitions, setbacks, and landscaping to provide a buffer for adjoining low-intensity residential uses, causing no modification to the prescribed regulation and no variance.

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

The proposed driveway gate has been reviewed by the Department of Public Works, and a condition of approval has been added requiring the existing concrete masonry unit wall to be reduced to three (3) feet in height. Safety conditions for pedestrian and vehicular traffic will improve from enhanced visibility.

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 provides increased security for the property. The proposed fence setback and landscape buffer are consistent with the General Plan Policy LU-26.4 to incorporate building transitions, setbacks, and landscaping to provide a buffer for adjoining low-intensity residential uses.

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 a residential fence.

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-2018-02 is hereby recommended for approval 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-2018-02 as set forth in the Minutes of Design Review Committee Meeting of September 6, 2018, 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 entitled, "Rebel Sun New Fence and Parking Lot Layout," consisting of three (3) sheets labeled, "A0.1, A1.1, and Field Survey Exhibit" 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 property data may invalidate this approval and may require additional review.

3. 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.

4. 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.

5. 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.

6. 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 ADMINSTERED BY THE PUBLIC WORKS DEPARTMENT

7. VISIBILITY REQUIREMENTS:

The existing concrete masonry unit wall along the southern property line shall be reduced in height to three (3) feet between the property line and the proposed fence to enhance visibility.

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

8. EMERGENCY GATE/ACCESS GATE REQUIREMENTS:

Gate installations shall conform to 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. Gate locks, if provided, shall be fire department approved prior to installation. Gates across the emergency access roadways shall be equipped with 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 this 6th day of September 2018, Regular Meeting of the Design Review Committee of the City of Cupertino, State of California, by the following vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Erika Poveda
Assistant Planner

Alan Takahashi, Chair
Design Review Committee