



17575 Peak Avenue Morgan Hill CA 95037

**APPROVAL CERTIFICATE NO. 20-007**

**PROJECT: Minor Exception No. VAR2020-0001: Rainbow Crow - Yao**

**PROJECT DESCRIPTION/LOCATION:** A minor exception to allow for a fence in excess of the three-foot fence height limitations at 1345 Rainbow Crow Lane (APN: 728-56-060).

**RECITALS**

1. On March 5, 2020, the Community Development Department received a minor exception application request to allow for a 5-foot tall fence within the front yard setback. The subject property is located at 1345 Rainbow Crow Lane, is part of a larger residential development called Lantana/Wisteria that was approved in 2015 and recently constructed in 2019 and 2020. As part of the RDCS commitments for the residential development, homes located on corner lots were required a unique condition to have front entrances face the opposite street from the adjacent home. In this case, the property is on a corner lot with the home place approximately 20 ± feet back from the front and side yard property lines that are adjacent to the public street. The lot topography at its highest point near the west and south interior lot lines, slopes down towards the north and east public street and sidewalk lot lines. This home is situated in a way that the front door and main garage door are oriented toward and accessed from, what is technically the side yard of the property. The technical front yard is a large landscaped area that appears to be the side of the home as the side garage door provided access into this area.
2. Said application was deemed complete for processing and was considered by the Development Review Committee (DRC) at its regular meeting of March 11, 2020, at which time the Committee recommended conditional approval of administrative minor exception, VAR2020-0001: Rainbow Crow - Yao.
3. The minor exception was publicly noticed by mailing to property owners within 300 feet of the project, an ad in the newspaper, and posted on the City's website under Project Pending Actions.
4. Comments received from the public and from the applicant, along with exhibits and drawings and other materials have been considered in the review process.

**FINDINGS**

**SECTION 1.** The exception will be compatible with adjacent structures and uses and is consistent with the character of the neighborhood or district where it is located.

*The front yard of the subject property as defined by the Morgan Hill Municipal*

*Code is visually and functionally, the side yard of the property as the front entrance door and garage door for the home are oriented and accessed from the side yard. If the front yard area is fenced in, it would fit the character of the neighborhood as a side yard in that the fence is located a minimum of six-feet away from back of public sidewalk which maintains the traditional characteristics of a side yard fence for this neighborhood.*

**SECTION 2.** The exception will not adversely impact the neighboring properties or the community at large.

*The location of the new fence will only be visible from the neighbor located to the west of the property. The new fence will be adjacent to the driveway side of the property which is a similar characteristic for corner lot homes with front doors facing opposite street sides.*

**SECTION 3.** The exception is necessary due to unique characteristics of the subject property, structure, or use.

*The way the home is oriented on the lot, there is minimal private yard area. The floor plan layout of the home provides a side garage door that would typically provide access into a side yard area but currently accesses the front yard. This exception will allow for additional private yard area for the property and allow the side garage door to access private yard area.*

**SECTION 4.** The modification is consistent with the purpose of the Zoning district, the General Plan, and any applicable specific plan or area plan adopted by the City Council.

*The project as proposed meets the intent of the fence front and side yard setbacks and height limitations for fences and therefore is consistent with the General Plan and Zoning.*

**SECTION 5.** The exception will not establish an undesirable precedent.

*This exception is being granted based on the unique condition within the Lantana/Wisteria residential development where the orientation of the home where the front door and garage access is from the side yard and the floor plan layout where the side garage door access is oriented into the front yard of the home. In addition, due to the required location of the unit, this exception allows for more usable private open space for the property and meets the typical characteristics of a corner lots with neighbor properties facing opposite street frontages.*

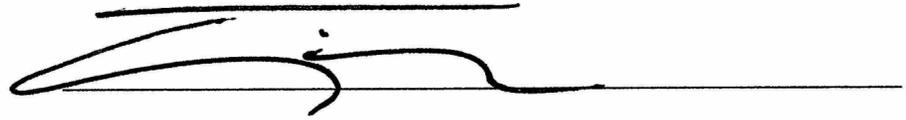
**SECTION 6.** Pursuant to the authority set forth under Section 18.52.050 of the Morgan Hill Municipal Code, the Community Development Director hereby approves the project application subject to the attached conditions of approval outlined in Exhibit A.

**APPROVED THIS 15 DAY OF MAY 2020.**

  
\_\_\_\_\_  
**Jennifer Carman, Development Services Director**

**AFFIDAVIT**

I, Timothy Yao, applicant, hereby agree to accept and abide by the terms and conditions specified in this approval certificate.

\_\_\_\_\_  


6/1/2020  
Date

**EXHIBIT A**  
**CONDITIONS OF APPROVAL**

**MINOR EXCEPTION**

This approval is for a minor exception to the three-foot height maximum for a fence located within the front yard setback. The fence is allowed to exceed the maximum height for front yards by two-feet as measured from top of wall per Section 18.52.030, not to exceed five-feet in height. Per the plans, the fence shall be made of wood. The last foot of the top of the fence shall be constructed of lattice work or other decorative feature uniformly open to the passage of light and air.

**TIME LIMITS**

The minor exception approval granted pursuant to this certificate shall remain in effect for two years from approval date. Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date.

**DEFENSE AND INDEMNITY**

As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.