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17575 Peak Avenue Morgan Hill CA 95037

**APPROVAL CERTIFICATE NO. 21-012**

**PROJECT: Minor Exception No. VAR2021-0002: Del Monte - Skuratovskiy**

**PROJECT DESCRIPTION/LOCATION:** A request for a minor exception to the second story side yard setback. This application will reduce the side yard setback by two-feet and one-inch to allow for the balcony with railing to be built flush with the first floor. The property, identified by Assessor Parcel Number 764-20-108 is located at 18055 Del Monte Avenue; Roman and Katherine Skuratovskiy, owner.

**RECITALS**

1. On October 29, 2021 the Community Development Department received a minor exception application for the request to allow for a reduction in the side yard setback for a second story balcony railing. This would allow the balcony railing to be flush with the first-story addition.
2. Said application was deemed complete for processing and was considered by the Development Review Committee (DRC) at its regular meeting of November 3, 2021, at which time the Committee recommended conditional approval of administrative minor exception, VAR2021-0002: Del Monte - Skuratovskiy
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 minor exception to reduce the required 2<sup>nd</sup> story setback by two-feet and one inch will allow the balcony railing to be flush with the first floor main building exterior wall. Surrounding uses include two-story residential homes. This exception would not change the character of the existing residential neighborhood.*

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

*A balcony is permitted within the zoning district and will not adversely impact neighboring properties or the community at large.*

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

*This is a smaller lot with limited outdoor open space. The addition of a balcony is a solution to provide more outdoor open space. In addition, the intent of the 2<sup>nd</sup> story setback requirement is to provide architectural detail between the first and second story of a home and limit shadowing in between properties. A setback for a balcony railing will not visually impact the architecture or cause additional shadowing on the adjacent property.*

**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 second story setback and therefore is consistent with the General Plan and Zoning Ordinance.*

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

*This exception is being granted biased on the unique situation where the 2<sup>nd</sup> story setback is intended for a building wall and not a balcony railing and therefore will not present an undesirable precedent.*

**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** 14 **DAY OF DECEMBER 2021.**

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

**AFFIDAVIT**

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

Charles Weston

1/3/2022

Date

**EXHIBIT A  
CONDITIONS OF APPROVAL**

**MINOR EXCEPTION**

1. This approval is for a minor exception to the second story side yard setback. This application will reduce the side yard setback by two-feet and one-inch to allow for the balcony with railing to be built flush with the first floor. The property, identified by Assessor Parcel Number 764-20-108 is located at 18055 Del Monte Avenue.

**TIME LIMITS**

2. 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**

3. 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.