

RESOLUTION NO. 16-001

**A RESOLUTION OF THE BOARD OF ZONING ADJUSTMENTS
OF THE CITY OF SAN LEANDRO**

**A RESOLUTION UPHOLDING THE DETERMINATION
OF THE ZONING ENFORCEMENT OFFICIAL
THAT ELECTRIC FENCES ARE NOT A PERMITTED USE
UNDER THE SAN LEANDRO ZONING CODE
APL16-003**

WHEREAS, Electric Guard Dog LLC. (“Appellant”) applied for and was denied a building permit (B16-1483) to construct an electric fence on an approximately 5 acre site located at 2371 Polvorosa Avenue zoned Industrial General (IG) on behalf of the property owner, LBA CPT Industrial Co. V. LLC.; and

WHEREAS, the City of San Leandro’s Zoning Code (the “Zoning Code”) operates under the principles of permissive zoning. The Zoning Code specifies those land uses which are permitted and includes special requirements, if any, applicable to specific uses; and

WHEREAS, it is a policy of the City’s General Plan to improve the visual appearance of the City’s industrial areas by applying high standards of architectural design and landscaping for new industrial development and the re-use or remodeling of existing industrial buildings; and

WHEREAS, Zoning Code section 1-202(A) provides that “[t]he Zoning Code shall apply to all land within the City of San Leandro, and to state or federal agencies, to the extent applicable by law. Application of regulations to specific lots shall be governed by the zoning map”; and

WHEREAS, Zoning Code section 1-202(C) states that “[n]o land shall be used, and no structure shall be constructed, occupied, enlarged, altered, demolished or moved in any zoning district, except in accord with the [Zoning Code]”; and

WHEREAS, Article 2 of the Zoning Code further states that “[w]here uncertainty exists regarding the interpretation of any provision of this code or its application to a specific site, the Zoning Enforcement Official (“ZEO”) shall determine the intent of the provision”; and

WHEREAS, Article 21 of the Zoning Code states that “[t]o ensure that each new or expanded use of a site and each new or expanded structure

complies with this ordinance, a zoning permit shall be required prior to issuance of a building permit”; and

WHEREAS, Article 21 of the Zoning Code further states that “the Zoning Enforcement Official may determine that a specific use shall not be deemed to be within a classification if its characteristics are substantially incompatible with those typical of uses named within the classification”; and

WHEREAS, after reviewing the Appellant’s proposed building permit and evaluating the applicable policies of the General Plan and provisions of the Zoning Code, including provisions regulating fences, walls, and hedges as well as restrictions on the use of razor / barbed wire, the ZEO made the determination that the building permit could not be issued due to the fact that there are no provisions in the Zoning Code permitting the use of an electric fence; and

WHEREAS, the Appellant was notified of the disapproved building permit on August 25, 2016 and filed an appeal of the determination within the 15 day appeal period on September 7, 2016, in accord with Article 28 of the San Leandro Zoning Code; and

WHEREAS, the Board of Zoning Adjustments held a duly noticed public hearing on November 3, 2016, at which time all interested parties had the opportunity to be heard on the Appeal; and

WHEREAS, the staff report presented to the Board of Zoning Adjustments dated November 3, 2016, described and analyzed the Appellant’s position and contained an analysis which concluded that electric fences are not permitted within the City consistent with the principles of permissive zoning and findings could not be made to indicate that electric fences are similar to other types of fencing materials permitted under the Zoning Code, which report is on file with the City and incorporated herein by reference; and

WHEREAS, the Board of Zoning Adjustments has fully considered the determination made by the ZEO as well as the arguments made by and on behalf of the Appellant, the staff report, and all other testimony and evidence presented at the public hearing.

NOW, THEREFORE, BE IT RESOLVED THAT: The above recitals are true and correct and made a part of this resolution.

BE IT FURTHER RESOLVED THAT: The Board of Zoning Adjustments does hereby consider the Appeal of Electric Guard Dog LLC. (APL16-003) and makes the following findings and determinations:

- A. The San Leandro Zoning Code operates under the principles of permissive zoning. Electric fences are not a use listed or permitted in the

San Leandro Zoning Code as provided in Zoning Code Article 2 Sections 1-202(A) and 1-202(C). Zoning Code Section 1-202(C) clearly provides that “[n]o land shall be used and no structure shall be constructed, occupied, enlarged, altered, demolished or moved in any zoning district, except in accord with the provisions of this code...”

- B. Electric fences are not stated as a permitted use or fencing material in the San Leandro Zoning Code and are therefore not eligible for consideration of a Fence Modification application under Article 16, Section 4-1682 of the Zoning Code.
- C. Based upon the Record before the Board of Zoning Adjustments, the City has not issued any permits for an electric fence.
- D. Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, “CEQA”), the Board of Zoning Adjustments decision does not constitute a “project” within the meaning of Public Resources Code Section 21065, 14 Cal Code Regs. Section 15060(c)(2), 15060(c)(3), or 15378 because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even if such activities did constitute a project under CEQA, staff believes the activities fall within the “common sense” exemption set forth in 14 Cal. Code Regs. Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment...”
- E. The Board of Zoning Adjustments finds that electric fences are substantially different from other types of fences and fencing materials which are permitted and regulated under the Zoning Code, such as tubular steel, razor or barbed wire fences, in that electric fences require an electric current and are designed differently than other types of fences, consisting of horizontal electrified wires which have a function and appearance that is substantially different from other types of fences. Electric fences are not visually transparent and may be accompanied by warning signs and/or a second non-electrified fence. For these reasons, electric fences are aesthetically and functionally incompatible with the design and land use policies identified in the General Plan and the quality of fence design prevalent in the City.
- F. The foregoing determination that electric fences are not permitted under the Zoning Code is consistent with the express language and intent of the Zoning Code, and is consistent with the purpose of zoning districts and the General Plan because the determination promotes the general health,

safety and welfare of the residents and preserves the character of neighborhoods in the City of San Leandro. Pursuant to the principles of permissive zoning, the use of electric fences is not a permitted use or activity of or upon land within the City of San Leandro, such that it is prohibited under the City's Zoning Code.

PASSED, APPROVED, AND ADOPTED this 3rd day of November, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Catherine Vierra Houston, Chairperson

ATTEST:

Andrew J. Mogensen, AICP
Secretary to the Board of Zoning Adjustments

2723787.1