

RESOLUTION NO. ____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING SIX MINOR RESIDENTIAL PERMITS TO ALLOW
SIX NEW SECOND-STORY BALCONIES LOCATED
AT 20860 MCCLELLAN ROAD

SECTION I: PROJECT DESCRIPTION

Application No.: RM-2022-015, -016, -022, -023, -024, -025
Applicant: District McClellan LLC, c/o Alok Damireddy
Location: 20860 McClellan Road; APN#359-20-030

SECTION II: FINDINGS FOR A MINOR RESIDENTIAL PERMIT:

WHEREAS, the City of Cupertino received applications for six Minor Residential Permits to allow six second story balconies; and

WHEREAS, the project is determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 of CEQA Guidelines; and

WHEREAS, on September 13, 2022, the Planning Commission held a duly noticed public hearing to receive staff's presentation and public testimony, and to consider the information contained in the Infill Exemption Memorandum along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing; and

WHEREAS, on September 13, 2022 the Planning Commission recommended on a 3-2 vote that the City Council find the project exempt from CEQA, approve Tentative Tract Map (TM-2021-006 in substantially similar form to the Resolution presented (Resolution No. 6957) and approve six Two Story Permits (R-2021-040 to R-2021-045) in substantially similar form to the Resolution presented (Resolution No. 6958); and

WHEREAS, all necessary public notices having been given as required by the Cupertino Municipal Code and the Government Code, and the City Council held at least one public hearing in regard to this application on October 18, 2022; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution; and

WHEREAS, the applicant has met the burden of proof required to support the application for six Minor Residential Permits; and

WHEREAS, the City Council finds as follows with regard to this application:

1. The project is consistent with the Cupertino General Plan, any applicable specific plans, zoning ordinance, and the purposes of the R-1 Ordinance; and

The proposed project is consistent with the General Plan as the project is within the Low Density land use area. There are no applicable specific plans that affect the project. The project has been found to be consistent with the requirements of Cupertino Municipal Code Chapter 19.28 Single Family (R-1) Residential.

2. The granting of the permit will not result in a condition that is detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, or welfare; and

The granting of the permits will not result in a condition that is detrimental or injurious to property improvements in the vicinity, and will not be detrimental to the public health, safety or welfare as the project is located within the R1-7.5 (Single Family Residential) zoning district, and will be compatible with the surrounding uses of the neighborhood. The project meets the building development regulations of the R-1 Ordinance and complies with the privacy protection measures to ensure that visual impacts to adjacent neighbors are mitigated.

3. The project is harmonious in scale and design with the general neighborhood; and

The proposed project is located in a residential area consisting of single-family homes. The subject neighborhood contains a mix of single-story and two-story homes, making the proposed project compatible with the neighborhood. The project complies with all other development regulations for R1-7.5 zoned properties, including, but not limited to, minimum setback regulations.

4. Adverse visual impacts on adjoining properties have been reasonably mitigated.

Any potential adverse visual impacts on adjoining properties have been reasonably mitigated through adherence to the setback requirements and privacy protection measures of the R-1 Ordinance. The proposed balconies for the project comply with the setback requirements for the R1-7.5 zoning district.

The R-1 Ordinance allows property owners the ability to construct second-story balconies as long as privacy protection trees and/or shrubs are planted as required by the ordinance. The project complies with the privacy screening requirements of the R-1 Ordinance by providing privacy screening plantings for the second-story balcony along the rear (eastern) property line and signed privacy waivers for the right (southern) and left (northern) property lines. Per the R-1 Ordinance, the objective of privacy protection plantings is to provide substantial screening within three years of planting. Privacy protection plantings are considered Protected Trees under the City's Municipal Code (Chapter 14.18) and are recorded as such with a covenant against the property to inform current and future property owners about their protected status. Protected trees are not permitted to be removed without obtaining a tree removal permit and providing replacement plantings.

NOW, THEREFORE, BE IT RESOLVED that after careful consideration of 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, and those contained in all other Resolutions approved for this Project, the City Council does hereby:

1. Exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15332. Section 15332 exemption applies projects characterized as in-fill development meeting the following criteria:
 - a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
 - b. The proposed development occurs within the city limits on a project site of no more than five acres substantially surrounded by urban uses.
 - c. The project site has no value as habitat for endangered, rare or threatened species.
 - d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
 - e. The site can be adequately served by all required utilities and public services.

Therefore, the proposed project is consistent with the criteria stated above (Section 15332) and as discussed in the Infill Exemption Memorandum prepared for the project, will not have a significant effect on the environment.

2. Approve, the application for six Minor Residential Permits, Application No.'s RM-2022-015, -016, -022, -024, -023, -025, and
3. Find that the subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no.'s RM-2022-015, -016, -022, -023, -024, -025 as set forth in the Minutes of the City Council Meeting of MONTH DAY, YEAR and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPARTMENT

1. APPROVED EXHIBITS

The approval is based on a plan set entitled "District McClellan ", consisting of one hundred and twenty nine (129) sheets except as may be amended by conditions in this resolution. In the event there are conflicts between the floor plan, cross sections and elevation drawings, the elevation drawings take precedence.

2. BALCONIES APPROVED

A total of six balconies, one for each residential unit within the proposed development is approved as indicated in the attached plan set. The size and location of the balconies shall not be changed without review and approval of the City with permits as needed. A reduction in the size of the balcony is permitted.

3. ANNOTATION OF THE CONDITIONS OF APPROVAL

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

4. 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.

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. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file no. TM-2021-006 and R-2021-040 to R-2021-045.

7. PRIVACY PLANTING

The final privacy planting plan shall be reviewed and approved by the Planning Division prior to issuance of building permits. The variety, size, and planting distance shall be consistent with the City's requirements.

8. PRIVACY PROTECTION COVENANT

The property owner shall record a covenant on this property to inform future property owners of the privacy protection measures and tree protection requirements consistent with the R-1 Ordinance, for all windows with views into neighboring yards and a sill height that is 5 feet or less from the second story finished floor. The precise language will be subject to approval by the Director of Community Development. Proof of recordation must be submitted to the Community Development Department prior to final occupancy of the residence.

9. EXTERIOR BUILDING MATERIALS/TREATMENTS

The final building exterior plan shall closely resemble the details shown on the original approved plans. Final building exterior treatment plan (including but not limited to details on exterior color, materials, architectural treatments, doors, windows, lighting fixtures, and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits to ensure quality and consistency. Any exterior changes determined to be substantial by the Director of Community Development shall either require a modification to this permit or a new permit based on the extent of the change.

10. GEOLOGY AND SOILS

All grading and foundation plans for the proposed project shall be designed by a Civil and Structural Engineer, peer-reviewed by a third-party qualified Geotechnical Engineer, paid for by the applicant, and reviewed and approved by the City Engineer, and Chief Building Official, prior to issuance of building permit or grading permit, whichever comes

first, to ensure that all geotechnical recommendations specified in the Geotechnical Investigation prepared for the proposed project by GeoEngineering Consultants are properly incorporated and utilized in the project design.

11. HAZARDS AND HAZARDOUS MATERIALS PHASE II RECOMMENDATIONS

Prior to initiation of demolition or construction activities, the project applicant shall comply with all applicable recommendations within the Limited Phase II ESA prepared for the proposed project by ReDevelop Inc. including the excavation and proper disposal of OCP impacted soils, the development of a Health and Safety Plan to protect workers during grading and construction activities, and the installation of vapor barrier protection for residences. OCP-impacted soils located within the project site shall be removed to a depth of one foot and off-hauled by a licensed hazardous waste contractor (Class A) and contractor personnel that have completed 40-hour OSHA hazardous training. The soil shall be disposed of appropriately in accordance with applicable federal, State, and local regulations associated with hazardous waste. That the applicant has complied with the recommendations shall be verified by the City of Cupertino Community Development Department and the Santa Clara County Environmental Health Department through their Voluntary Cleanup Program, prior to the issuance of the first grading and/or building permit.

12. HAZARDS AND HAZARDOUS MATERIALS ASBESTOS AND/OR LEAD ASSESSOR CONSULTATION

Prior to issuance of a demolition permit for on-site structures, the project applicant shall consult with certified Asbestos and/or Lead Risk Assessors to complete and submit for review to the Building Department an asbestos and lead survey. If asbestos containing materials or lead-containing materials are not discovered during the survey, further mitigation related to asbestos-containing materials or lead containing materials shall not be required. If asbestos containing materials and/or lead-containing materials are discovered by the survey, the project applicant shall prepare a work plan to demonstrate how the on-site asbestos-containing materials and/or lead-containing materials shall be removed in accordance with current California Occupational Health and Safety (Cal-OSHA) Administration regulations and disposed of in accordance with all CalEPA regulations, prior to the demolition and/or removal of the on-site structures. The plan shall include the requirement that work shall be conducted by a Cal-OSHA registered asbestos and lead abatement contractor in accordance with Title 8 CCR 1529 and Title 8 CCR 1532.1 regarding asbestos and lead training, engineering controls, and certifications. The applicant shall submit the work plan to the City of Cupertino for review and approval. The City has the right to defer the work plan to the Santa Clara County Department of Environmental Health for additional review. Materials containing more than one (1) percent asbestos that is friable are also subject to BAAQMD regulations. Removal of materials containing more than one (1) percent friable asbestos shall be completed in accordance with BAAQMD Section 11-2-303.

13. IDEMNIFICATION AND LIMITATION OF LIABILITY

As part of the application, to the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "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 related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel 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. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

14. 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.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 18th day of October, 2022 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date