

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

RESOLUTION NO. 2023-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
APPROVING A CONDITIONAL USE PERMIT (U-2023-002) TO ALLOW FOR
THE USE OF A FORMER PUBLIC SCHOOL SITE FOR A PRIVATE
EDUCATIONAL FACILITY LOCATED AT 1170 YORKSHIRE DRIVE

SECTION I: PROJECT DESCRIPTION

Application No.: U-2023-002
Applicant: Grace Stanat on behalf of Tessellations
Location: 1170 Yorkshire Drive, APN: 362 08 001

SECTION II: FINDINGS FOR A USE PERMIT:

WHEREAS, the City Council of the City of Cupertino received an application for a Conditional Use Permit (U-2023-002) to consider the use of a former public school site for a private educational facility;

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the City Council has held at least one public hearing in regard to the application; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.) ("CEQA"), together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"), the City staff has independently studied the proposed Project and has determined that the Project is exempt from environmental review pursuant to the categorical exemption in CEQA Guidelines section 15301 for the reasons set forth in the staff report dated December 5, 2023 and incorporated herein; and

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

WHEREAS, the City Council finds that:

1. The proposed development and/or use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

The school is an existing facility and only minor improvements are proposed as part of this application to allow for operation as a private school site. Further, the operation of the private school is seen as substantially similar to the previous operation as a public school and is therefore will not be detrimental or injurious to property or improvements in the vicinity and will not be detrimental to the public health, safety, general welfare, or convenience.

2. The proposed development and/or use will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan, underlying zoning regulations, and the purpose of this title and complies with the California Environmental Quality Act (CEQA).

The Project, as proposed, will be located on an existing school site and will operate in a manner that is substantially similar to previous uses at the site. The operation of a private educational facility at this property is in accord with the General Plan and the underlying zoning regulations. The Project is categorically exempt from the California Environmental Quality Act ("CEQA") per section 15301 (Existing Facilities) of the CEQA Guidelines, which applies to existing facilities that involve negligible or no expansion of existing or former use.

WHEREAS, the City Council is the approval authority for this project and is granted the authority by the Municipal Code to exercise its independent judgment, based on the record before it, for purposes of the California Environmental Quality Act; and

NOW, THEREFORE, BE IT RESOLVED that the City Council takes the following actions:

1. Exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15301. The Class 1 exemption applies to existing facilities that involve negligible or no expansion of existing or former use. The proposed project includes only minor alterations to the existing school facility. Therefore, the proposed project would not involve the expansion of the former use (Section 15301, Class 1), will not significantly expand the use beyond the current use that already exists or previously existed, and will not have a significant effect on the environment.
2. Approves the application for a Conditional Use Permit, Application no. U-2023-002 subject to conditions which are enumerated in this Resolution beginning on PAGE 4 thereof. The conclusions and sub conclusions upon which the findings and conditions specified in this resolution are based, including those contained in the Public Hearing record concerning Application no. U-2023-002 as set forth in

the Minutes of City Council Meeting of December 5, 2023, are hereby incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPARTMENT

1. APPROVED EXHIBITS

Approval is based on the plan set entitled and documentation entitled “Regnart Elementary School Fabric Shade Structure” prepared by i Parch Architect, consisting of 8 sheets showing the existing site plan, and “Tessellations Project Description for Cupertino Planning Division” and “Applicant Response # 1 (October 9, 2023)” prepared by Tessellations School staff, consisting of 34 sheets, 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 any property data may invalidate this approval and may require additional review.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file no. EXC-2023-009 shall be applicable to this approval.

3. EFFECTIVE APPROVAL DATE

This permit shall not be considered valid until the time Ordinance 2023-XX takes effect, modifying the conditionally allowed uses in the BA zoning district.

4. USE APPROVAL

Approval is hereby granted to allow the operation of a private school with the following functions:

- Pre-K through 9th grade for up to 300 students and 85 staff operating from August to June of each academic year, Monday through Friday, 6:30 a.m. to 4:00 p.m., with all staff parking provided on-site
- An afterschool program hosting up to 125 of the students enrolled in the Pre-K through 9th grade operation, occurring Monday through Friday from 4 p.m. to 6:30 p.m.
- Up to seven special events annually for up to 500 people, occurring on weekends and weekdays and ending by 9:00 p.m., making use of blacktop parking, as proposed

- Small, school-related events for up to 60 people, occurring on weekends and weekdays and ending by 9:00 p.m., making use of blacktop parking, as proposed
- Summer school operations for up to 200 students and 60 staff, operating from June to August of each year, Monday through Friday from 7:00 a.m. to 4:00 p.m., with all staff parking on-site.

The actual capacity of children at the facility maybe further restricted based on Fire Department, Building Department, CA Department of Social Services, CA Department of Education or other relevant agencies' requirements. Appropriate licensing/registration from the Community Care Licensing Department and/or other relevant County/State agencies shall be obtained prior to commencement of the operation.

The applicant shall comply with the applicable requirements of the Municipal Code. The Planning Commission shall review amendments to the project, including modifications to the number of students, number of staff, hours of operation, etc. considered major by the Director of Community Development.

5. USE PERMIT REVIEW/ADDITIONAL RESTRICTIONS

If complaints have been received related to the tenant(s) under this use permit, and the complaints were not addressed immediately by the property owner, then the Planning Commission shall conduct a public hearing on the use permit at which time, the approval for private school operations may be modified or revoked.

6. TITLE 17 COMPLIANCE

Project operation and construction activities shall conform to the applicable requirements of City Code Chapter 17.04.

7. DARK SKY COMPLIANCE AND/OR BIRD SAFE COMPLIANCE

The applicant/property owner shall comply with the development standards of Cupertino Municipal Code Section 19.102.030 (Bird-Safe Development Requirements) and Section 19.102.040 (Outdoor Lighting Requirements). Upon request, the applicant shall provide all documentation required to determine compliance with the Municipal Code.

8. NOTIFICATION OF PERMITS FROM DIVISION OF STATE ARCHITECT

The applicant shall provide notification of and documentation showing that alterations have been permitted by Division of the State Architect prior to the commencement of construction activities.

9. SPECIAL EVENT REQUIREMENTS

Special events hosted by the applicant shall be subject to the requirements for special events as outlined in the “Outdoor Sales and Promotional Events Policy” adopted by the City Council on April 21, 1975. The applicant shall apply for and obtain a Special Events Permit for each of the seven special events proposed as part of this permit. Special Event Permits shall not be required for small, school related events, as described in Condition 5.

Notice of the event shall be made available online at least seven calendar days in advance of the event to inform neighboring property owners of the date, time, size, and activities to be undertaken at the event.

10. PAYMENT OF OUTSTANDING FEES

The applicant shall make payment of any outstanding fees associated with this permit prior to the commencement of permitted activities.

11. REIMBURSEMENT OF ENFORCEMENT COSTS

The property owner shall pay for any additional Sheriff or Code enforcement time resulting from documented incidents related to the private school operation at the City’s contracted hourly rate with the Sheriff Department or the Code Enforcement Actual Cost fee, as defined in the City’s general fee schedule, at the time of the incident.

12. DROP-OFF AND PICK-UP MANAGEMENT

In order to ensure the safety of children and vehicle movements during the pick-up and drop-off periods, the applicant shall comply with the submitted children pick-up and drop-off plan. In the event that the pick-up and drop-off schedule changes, the applicant must submit a revised plan to the City for review and approval. Such plan shall delineate the system used for pick-up and drop-off operations, general pedestrian/vehicular safety guidelines for parents, appropriate directional signs/parking lot striping (as needed) and parking lot safety measures to include a traffic safety conductor be present in the parking lot to monitor and direct all vehicular activities during pick-up and drop-off times.

13. PERMIT PARKING FEES

Should a future request for permit parking be submitted in response to the operation of a private school, the operator shall defray the cost of City permit fees associated with the initiation and maintenance of permit parking for up to 75 residences in the surrounding area. This condition shall only be applied if it is determined by the Public Works Director (or his/her designee) that the permit parking request is a result of demonstrated negative parking impacts from the private school use.

14. SHUTTLE SERVICE

The proposed shuttle service shall be implemented by the operator upon written notification from the Director of Community Development when it is determined by the Director of Community Development, in consultation with the City's Public Works Director (or his/her designee), that the parking associated with the private school operation is creating a public nuisance in the surrounding neighborhood.

15. ENVIRONMENTAL PROGRAMS CONDITIONS

Prior to commencement of permitted activities, the applicant shall coordinate with the Environmental Programs Division for additional requirements related to stormwater pollutant management and solid waste diversion and management.

16. NOISE CONTROL

Base equipment stations are subject the Community Noise Control Ordinance, Chapter 10.48. Noise levels shall not exceed those as listed in the Community Noise Control Ordinance, Cupertino Municipal Code Chapter 10.48. If there are documented violations of the Community Noise Control Ordinance, the Director of Community Development has the discretion to require noise attenuation measures to comply with the ordinance.

17. 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.

18. INDEMNIFICATION 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.

19. 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 ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT

20. STREET IMPROVEMENTS & DEDICATION

Street dedication and improvements along the project frontage may be required to the satisfaction of the Director of Public Works. Street improvements may include, but not be limited to, remove and repair sidewalk, driveways, curb and gutter, and

street tree installations. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

21. ACCEPTANCE OF PROPERTY RIGHTS

The Public Works Director, or his/her designee, shall have the authority to accept all offers of dedications, easements, quitclaims and other property rights and interests on behalf of the City.

22. PEDESTRIAN AND BICYCLE IMPROVEMENTS

Developer shall provide pedestrian and bicycle related improvements (e.g. walkway and bicycle racks, etc.) consistent with the Cupertino Bicycle Transportation Plan and the Pedestrian Transportation Plan, and as approved by the Director of Public Works. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

23. DRAINAGE

Drainage shall be provided to the satisfaction of the Director of Public Works. Any storm water overflows or surface sheeting should be directed away from neighboring private properties and to the public right of way as much as reasonably possible.

All storm drain inlets shall be clearly marked with the words “No Dumping – Flows to Creek” using permanently affixed metal medallions or equivalent, as approved by the Environmental Programs Division.

24. C.3 REQUIREMENTS (if required)

C.3 regulated improvements are required for all projects creating and/or replacing 5,000 S.F. or more of impervious surface, collectively over the entire project site. The developer shall reserve a minimum of 4% of developable surface area for the placement of low impact development measures, for storm water treatment, unless an alternative storm water treatment plan, that satisfies C.3 requirements, is approved by the Director of Public Works.

The developer must include the use and maintenance of site design, source control and storm water treatment Best Management Practices (BMPs), which must be designed per approved numeric sizing criteria. A Storm Water Management Plan and a Storm Water Facilities Operation, Maintenance and Easement Agreement, and certification of ongoing operation and maintenance of treatment BMPs are each required.

All storm water management plans are required to obtain certification from a City approved third party reviewer.

25. DEVELOPMENT FEES & BOND

The project developer shall provide for payment of fees, including but not limited to checking and inspection fees, storm drain fees, transportation impact fees, park dedication fees and fees for under grounding of utilities. Said fees and bond shall be paid prior to issuance of any City of Cupertino permits.

Fees:

- a. Checking & Inspection Fees: Per current fee schedule (\$1,218)
- b. Storm Drainage Fee: Per current fee schedule (\$4,671 per AC)
- c. Transportation Impact Fee: Per current fee schedule: (\$6,862 per new PM trips generated)
- d. Encroachment Permit Fee: Per current fee schedule (\$647)
- e. Storm Management Plan Fee (if required) Per current fee schedule (\$1,789)
- f. Street Tree Fee: By Developer or Per current fee schedule: \$515 per tree

Bonds:

- a. Encroachment Bond: 100% of Off-site Improvements

The fees described above are imposed based upon the current fee schedule adopted by the City Council. However, the fees imposed herein may be modified at the time of recordation of a final map or issuance of a building permit in the event of said change or changes, the fees changed at that time will reflect the then current fee schedule.

26. TRASH, RECYCLING AND COMPOST ENCLOSURES

Trash enclosure plans must be designed in accordance with the City's "Public Works Guidelines posted at www.cupertino.org/nowaste, and to the satisfaction of the Environmental Programs Manager. Clearance by the Public Works Department is required prior to issuance of any City of Cupertino permits. (CMC 9.18.210 H & K)

27. UNDERGROUND UTILITIES

Developer shall comply with the requirements of the Underground Utilities Ordinance No. 331 and other related Ordinances and regulations of the City of Cupertino, and shall coordinate with affected utility providers for installation of underground utility devices. Developer shall submit detailed plans showing utility

underground provisions. Said plans shall be subject to prior approval of the affected Utility provider and the Director of Public Works.

28. TRANSFORMERS & CABINETS

Electrical transformers, telephone cabinets and similar equipment shall be placed in underground vaults. The developer must receive written approval from both the Public Works Department and the Community Development Department prior to installation of any above ground equipment. Should above ground equipment be permitted by the City, equipment and enclosures shall be screened with fencing and landscaping such that said equipment is not visible from public street areas, as determined by the Community Development Department. Transformers shall not be located in the front or side building setback area.

29. WATER BACKFLOW PREVENTERS

Domestic and Fire Water Backflow preventers and similar above ground equipment shall be placed away from the public right of way and site driveways to a location approved by the Cupertino Planning Department, Santa Clara County Fire Department and the water company.

30. BEST MANAGEMENT PRACTICES

Utilize Best Management Practices (BMPs), as required by the State Water Resources Control Board, for construction activity, which disturbs soil. BMP plans shall be included in grading and street improvement plans.

31. EROSION CONTROL PLAN

Developer must provide an approved erosion control plan by a Registered Civil Engineer. This plan should include all erosion control measures used to retain materials on site. Erosion control notes shall be stated on the plans.

32. WORK SCHEDULE

Every 6 months, the developer shall submit a work schedule to the City to show the timetable for all grading/erosion control work in conjunction with this project.

33. TRAFFIC CONTROL PLAN

The developer must submit a traffic control plan by a Registered Traffic Engineer to be approved by the City. The plan shall include a temporary traffic control plan for work in the right of way as well as a routing plan for all vehicles used during construction. All traffic control signs must be reviewed and approved by the City prior to commencement of work. The City has adopted Manual on Uniform Traffic Control Devices (MUTCD) standards for all signage and striping work throughout the City.

34. STREET TREES

Street trees shall be planted within the Public Right of Way to the satisfaction of the Director of Public Works and shall be of a type approved by the City in accordance with Ordinance No. 125.

35. FIRE PROTECTION

Fire sprinklers shall be installed in any new construction to the approval of the City.

36. SANTA CLARA COUNTY FIRE DEPARTMENT

A letter of clearance for the project shall be obtained from the Santa Clara County Fire Department prior to issuance of any City of Cupertino permits. Clearance should include written approval of the location of any proposed Fire Backflow Preventers, Fire Department Connections and Fire Hydrants (typically Backflow Preventers should be located on private property adjacent to the public right of way, and fire department connections must be located within 100' of a Fire Hydrant).

37. FIRE HYDRANT

Fire hydrants shall be located as required by the City and Santa Clara County Fire Department as needed.

38. SAN JOSE WATER SERVICE COMPANY CLEARANCE

Provide San Jose Water Service Company approval for water connection, service capability and location and layout of water lines and backflow preventers before issuance of any City of Cupertino permits.

39. DEDICATION OF UNDERGROUND WATER RIGHTS

Developer shall "quit claim" to the City all rights to pump, take or otherwise extract water from the underground basin or any underground strata in the Santa Clara Valley.

40. SANITARY DISTRICT

A letter of clearance for the project shall be obtained from the Cupertino Sanitary District prior to issuance of any City of Cupertino permits.

INTRODUCED this ____ day of _____, 2023, at a Regular Meeting of the City Council of the City of Cupertino and ENACTED on the ____ day of _____, 2023, at a Regular Meeting of the City Council of the City of Cupertino by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

<p>SIGNED:</p> _____ Hung Wei, Mayor City of Cupertino	 _____ Date
<p>ATTEST:</p> _____ Kirsten Squarcia, City Clerk	 _____ Date
<p>APPROVED AS TO FORM:</p> _____ Christopher Jensen, City Attorney	 _____ Date