



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: October 5, 2021

Subject

Consider an appeal of the Planning Commission's decision to uphold the Director of Community Development's approval of a Two-Story Permit to allow a new 2,992 square-foot two-story home with a 746 square-foot attached accessory dwelling unit and a Minor Residential Permit to allow a new 115 square-foot second-story balcony. (Application Nos.: R-2020-035, RM-2020-023; Applicant: Smart Lily, LLC.; Property Owners: Tariqul Khan and Chaman Hafiz; Appellants: Jitesh Vadhia and Chih-Lung Lin; Location: 1506 Primrose Way; APN # 366-15-018)

Recommended Action

That the City Council conduct a public hearing and adopt the Draft Resolutions (Attachments A and B) denying the appeal and upholding the Planning Commission's decision to uphold the Director's approval of the applications.

Discussion

Project Data:

General Plan Designation:	Residential Low Density (1-5 DU/Acre)	
General Plan Neighborhood:	Monta Vista South	
Zoning Designation:	R1-6 (Single-Family Residential)	
Net Lot Area	6,718 sq. ft.	
	Allowed	Proposed
Floor Area Ratio (F.A.R.)	3,023 sq. ft. (45%) + ≤ 800 sq. ft. ADU	2,992 sq. ft. (44.5%) + 746 sq. ft. ADU
Lot Coverage	3,359 sq. ft. (50%) + ≤ 800 sq. ft. ADU	2,656 sq. ft. (39.5%) + 746 sq. ft. ADU
1st Floor Setbacks	Required	Proposed
Front	20'	25'
Rear	20'	28' 5"
Side	Combined 15' (no side less than 5')	Combined 21' South Side: 5; North Side: 16'*

2 nd Floor Setbacks	Required	Proposed
Front	25'	25'
Rear	25'	34' 6"
Side	Combined 25' (no side less than 10')	Combined 32' North & South Sides: 16' each
2 nd Floor Deck Setbacks	Required	Proposed
Front	20'	N/A
Rear	20'	26' 6"
Side	15' Each Side	South Side: 26' North Side: 17' 8"
ADU Setbacks	Required	Proposed
Front	20'	25'
Rear	4'	26' 10"
Side	4'	4'
Total Building Height		
Principal Building	28' max. allowed	23'
Attached ADU	16' allowed	15'
Project Consistency with:		
General Plan:	Yes	
Zoning:	Yes	
Environmental Review:	Categorically Exempt per Section 15303, Class 3 of the California Environmental Quality Act (CEQA)	
Note: * Setback to ADU is allowed to be 4 feet by state law. Therefore, north side setback is measured to the principal dwelling unit.		

Background:

On November 29, 2020, Ken Zhai of Smart Lily, LLC., representing the homeowners, Tariqul Khan and Chaman Hafiz, applied for a Two-Story Permit for the City to consider allowing the construction of a new 3,015 square-foot two-story home with an attached accessory dwelling unit (ADU); and a Minor Residential Permit to consider allowing a rear-facing second-story balcony located at 1506 Primrose Way (Figure 1). The property is located in the Monta Vista South neighborhood and is zoned R1-6. Surrounding uses include other R1-6 zoned properties comprised of a mixture of single-story and two-story single-family residences.



Figure 1. Applicant's property outlined in red.
Appellants' properties outlined in yellow.

The Single-Family Residential (R-1) Ordinance, Chapter 19.28 of the Cupertino Municipal Code (CMC) (Attachment C) requires a Two-Story Permit for two-story additions or new two-story residences. Additionally, the R-1 Ordinance requires a Minor Residential Permit for new second-story balconies with views into neighboring residential side or rear-yards. Both permit types require administrative review and approval by the Director of Community Development per CMC Chapter 19.12: Administration.

The following is a summary of the project events leading up to the appeal of the Planning Commission's decision:

November 29, 2020	The applicant (Smart Lily, LLC.) applies for a Two-Story Permit (R-2020-035) and a Minor Residential Permit (RM-2020-023).
November 29, 2020 – February 22, 2021	Planning staff conducts a review of the proposed project for conformance to the Cupertino Municipal Code.
March 5 – 19, 2021	Staff receives 11 comments during the 14-day public comment period. Staff responds to each public comment and includes a summary of comments and responses in the Action Letter dated April 19, 2021.
April 19, 2021	<p>The applicant revises the project in response to comments received during the public comment period. The following is a summary of revisions incorporated into the residential design:</p> <ul style="list-style-type: none">• Reduced total building height from 25'-2 to 23'.• Reduced entry feature height from 14' to 12'-5".• Reduced total proposed FAR by 23 sq. ft.• Increased total proposed lot coverage by 7 sq. ft.• Reconfigured elevations to be more harmonious in design:<ul style="list-style-type: none">○ Broke up the bay window element and added ornamental features (ex: wrought iron window railing) to provide better articulation of wall lines.○ Reduced the visual mass of the exposed second story by increasing the roofing area of the first floor.○ Reconfigured windows to be more proportional and consistent with each other.○ Simplified proposed rooflines.
April 19, 2021	The Director of Community Development approves a Two-Story Permit (R-2020-035) to allow the construction of a new 2,992 sq. ft. two-story home with a 746 sq. ft. attached ADU,

	and a Minor Residential Permit (RM-2020-023) to allow a new second-story balcony ¹ .
April 29, 2021	Chih-Lung Lin, property owner of 1493 Poppy Way, submits an appeal ² of the Director's approval of the project.
May 3, 2021	Jitesh Vadhia, property owner of 1479 Poppy Way, submits an appeal ³ of the Director's approval of the project.
June 22, 2021	Planning Commission conducts a public hearing, considers the facts, comments, and data, and denies the appeals and upholds the Director's decision to approve the Two-Story and Minor Residential Permits with no modification (see Attachments D, E, and F).
July 2, 2021	Chih-Lung Lin, property owner of 1493 Poppy Way, appeals the Planning Commission's decision to uphold the Minor Residential Permit (RM-2020-023) (Attachment G).
July 3, 2021	Jitesh Vadhia, property owner of 1479 Poppy Way, appeals the Planning Commission's decision to uphold the Two-Story Permit (R-2020-035) and Minor Residential Permit (RM-2020-023) (Attachment H).

Basis of the Appeal:

The appellants' specific basis of appeal of the Planning Commission's decision is summarized below with related quotes in *italics*. Where appropriate, staff's response follows.

1. Mass and Bulk:

Appellant Vadhia:

"Primrose Way is a community of beautiful single story homes. A two story construction will destroy the look and feel of the neighborhood. It's everyone's responsibility to uphold the integrity and feel of the neighborhood."

Staff conducted a review of the existing homes within a one-block radius along Primrose Way and Poppy Way and within a portion of the Monta Vista South neighborhood. Both reviews indicate that the surrounding neighborhood is transitional and comprised of a mixture of single-story and two-story residences. Within a one-block radius (*Figure 2*),

¹ See Attachments 4 & 5 online at:

<https://cupertino.legistar.com/LegislationDetail.aspx?ID=4990542&GUID=662ED993-AC64-4693-8D7E-AB617C257901&Options=&Search=>

² See Attachment 6 online at: <https://cupertino.legistar.com/LegislationDetail.aspx?ID=4990542&GUID=662ED993-AC64-4693-8D7E-AB617C257901&Options=&Search=>

³ See Attachment 7 online at: <https://cupertino.legistar.com/LegislationDetail.aspx?ID=4990542&GUID=662ED993-AC64-4693-8D7E-AB617C257901&Options=&Search=>

37.5% of the surrounding homes (including appellant Vadhia) are two-story residences with an average floor area of 2,822 sq. ft.



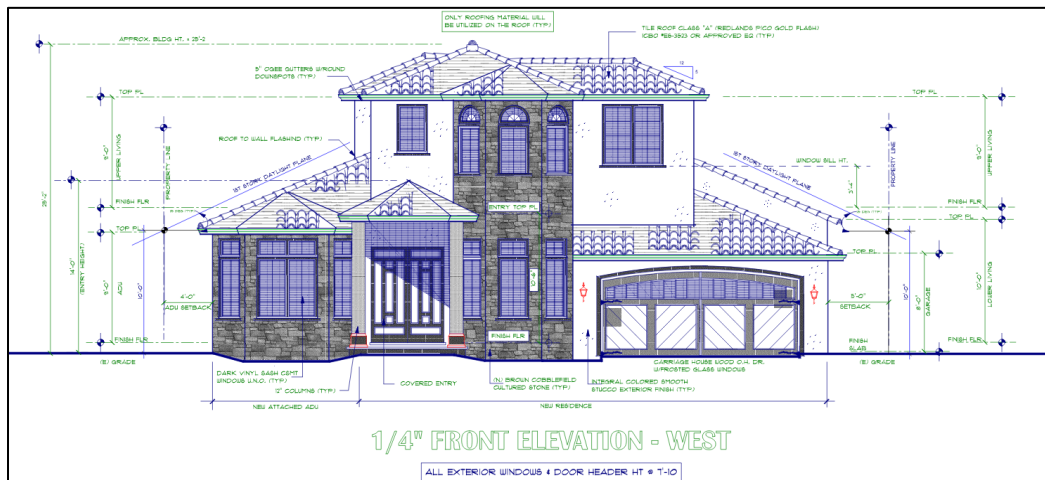


Figure 3. Previous front elevation

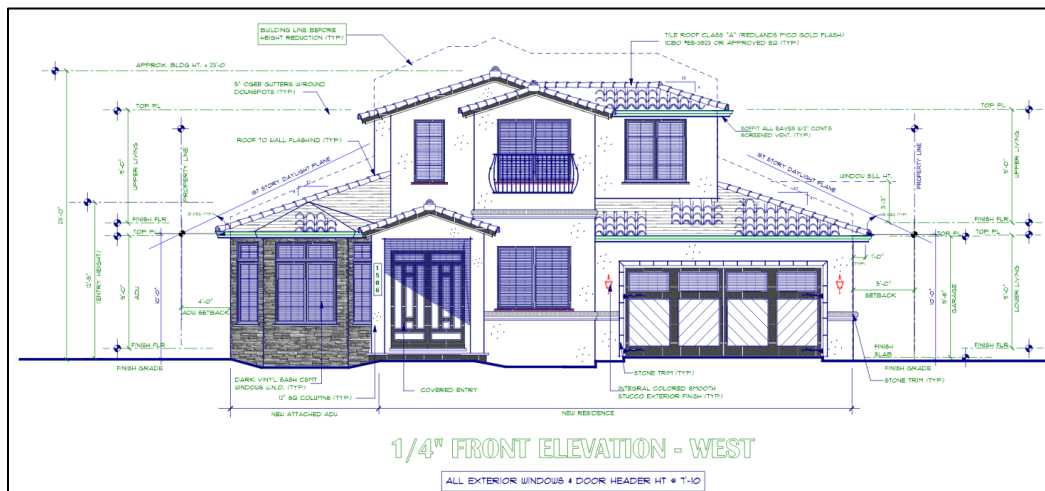


Figure 4. Revised front elevation

2. Privacy Impacts:

Appellant Lin:

"The proposed landscape plan can't address the privacy issue effectively. The height of the trees could cause problems with [the] electricity pole. The planned new tree[s] will take time and may not provide the needed coverage. If the tree[s] didn't grow or reach the intended height, there is no regulation to ask for re-plant."

"I am asking our city leaders to reconsider the balcony permit and also reduce the window size to minimize my privacy concern."

Appellant Vadhia:

"There's a deliberate five foot grade difference between my home and the Primrose Way home. This elevation difference ensures privacy from each-others backyard, even from my

2nd floor windows. The height of the applicant two story home, height of the balcony, and grade difference vastly increase my privacy concerns including vastly reduced sunshine into [my] backyard."

"The rear facing balcony continues to raise severe privacy concerns. The balcony has direct views into all my 1st and 2nd floor bedrooms and backyard. The height of the balcony, balcony wall height, and balcony side walls are detrimental to our privacy. The balcony should be removed."

"Privacy plantings along the utility easement will be inadequate. The height of the rear facing balcony requires very tall plantings. Those will take several years to grow. The planting[s] run along and below the utility easement significantly below the rear facing balcony height. This in combination with the several foot grade difference ensures my privacy is violated. The applicant has not addressed my privacy mitigation concerns."

"The large windows on the ADU combined with the five foot grade difference raise my privacy concerns. These windows have direct line of sight into my bedrooms and backyard."

One of the purposes of the R-1 Ordinance is to ensure the provision of light, air, and a reasonable level of privacy to individual residential parcels (CMC Section 19.28.010). This is achieved by implementing objective requirements adopted in the R-1 Ordinance, including height limitations, building envelope requirements for the first floor, and setback requirements for the first and second floors ensure that a reasonable level of light and air is available for neighbors.

Following the public comment period, the project applicant reduced the proposed building height from 25'-2" to 23', where a maximum building height of 28' is allowed by the R-1 Ordinance. The Cupertino Municipal Code measures total building height from natural grade of the existing property but does not account for differences in grade between adjoining homes. The project, therefore, complies with the height limitations of the R-1 Ordinance. The proposal also meets, and in some cases exceeds, all setback requirements for the R1-6 zoning district. The project proposes a first-floor rear-yard setback of 28'-5", where only 20' is required; a second-story rear-yard setback of 34'-6", where 25' is required; and a rear-yard balcony setback of over 26'-6", where 20' is required.

Furthermore, the R-1 Ordinance allows property owners the ability to construct second-story windows and balconies as long as privacy protection trees and/or shrubs are planted in accordance with ordinance requirements and maintained as protected plantings. The R-1 Ordinance does not require privacy plantings for the first floor nor does it restrict balcony and window size as long as the proposed structure meets setbacks. At the public hearing held on June 22, 2021, the Planning Commission posed the question to the property owners about reducing the size of the approximately 115 square foot

second-story balcony. After a discussion, the Planning Commissioners elected to not require the applicant to reduce the size of the balcony. The project was upheld with no added condition(s) of approval requiring a reduction to the balcony.

The project complies with the privacy screening requirements of the R-1 Ordinance by providing privacy screening plantings for the second-story balcony as well as second-story windows with a sill height below 5-feet. The applicant has proposed to plant seven *Laurus nobilis* along the rear (eastern) property line to provide adequate screening for adjacent property owners (Figure 5). Privacy plantings for the right (southern) and left (northern) property lines are not required, as the applicant has obtained a signed privacy waiver form from the adjacent property owners at 1518 Primrose Way and 1492 Primrose Way.

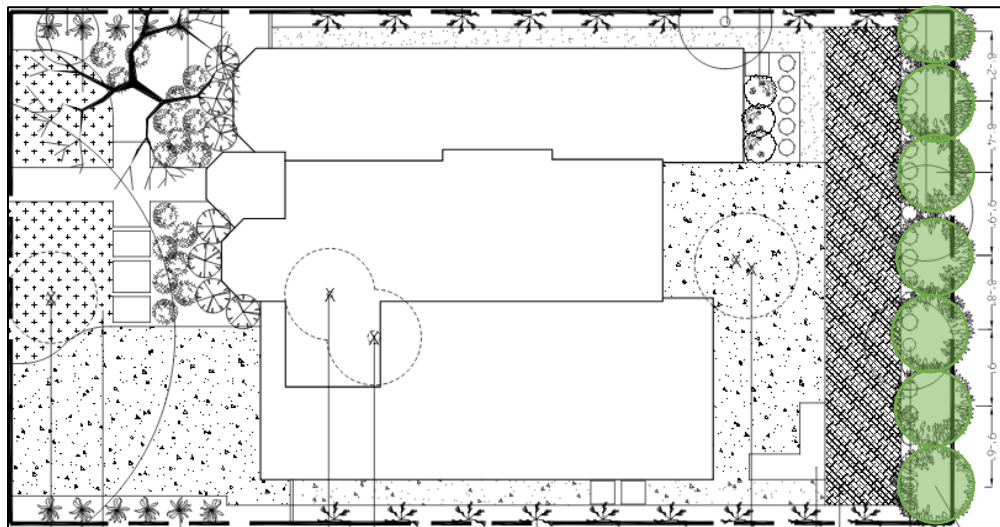


Figure 5. Proposed privacy plantings shown in green

Per the tract map and title report, the property has a 10-foot Public Service Easement (PSE) and a 5-foot Wire Clearance Easement (WCE) located at the rear of the property. The previously approved site plan inadvertently switched the locations of the PSE and WCE. This has been corrected with an updated site plan, which has been stamped as approved on September 23, 2021, and replaces the previously approved site plan. This has been incorporated into the approved plan set (Attachment F).

While the tract map indicates that development is regulated within the PSE and WCE, landscaping, including privacy plantings, is not restricted in the easement areas. Based on the revised site plan, the proposed *Laurus nobilis* will be located within the 10' PSE. An alternative to planting the trees in the PSE would be to locate the privacy trees outside the PSE and the WCE. While it would result in the trees being planted closer to the home and the balcony, it may be possible that fewer privacy trees would be needed to provide the same level of privacy.

Laurus nobilis is one of the City's approved privacy planting shrubs and shall have a minimum container size of 15-gallons and a minimum planting height of 6-feet. Mature height for *Laurus Nobilis* ranges from 15' to 40', with a mature spread of 20'. The finished floor of the second-story balcony is approximately 11'-4" above natural grade level. Per the R-1 Ordinance, the objective of privacy protection plantings is to provide substantial (not complete) screening within three years of planting to mitigate second-story window and balcony privacy impacts. Furthermore, privacy protection plantings are protected under the Protected Tree Ordinance, Chapter 14.18 of the CMC 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.

3. **Other:** Appellant Vadhia raised additional points, which are addressed below:

"The ADU is planned to be a separate unit even though it's attached to the main residence. Over the long run the applicant has not demonstrated the ADU and main residence will continue to be separate. I still see little evidence the City has addressed this long term issue."

The proposed ADU complies with the site development regulations of the ADU Ordinance, Chapter 19.112 of the CMC with regard to setbacks, height, and parking requirements. Under State law, a property that has maximized its development potential cannot be denied an ADU that is 800 square feet or less, even if this means that the property exceeds floor area ratio or lot coverage requirements set by the R-1 Ordinance. Additionally, per the Housing Accountability Act and the Accessory Dwelling Unit provisions of State law, the number of dwelling units shall not be reduced. Since the new home maximizes the floor area of the property, the proposed 746 sq. ft. ADU must be allowed.

As required by the ADU Ordinance, the attached ADU must remain entirely separated from the principal dwelling unit and can never be modified to become part of the primary dwelling. This is clearly stated as a condition of approval for Planning Commission Resolution 6925 (Attachment D), which requires recordation of a covenant to ensure future property owners are aware of this requirement.

"I paid a king's ransom to buy a home in Cupertino with views of the beautiful Cupertino Hills. The two-story proposal totally obscures my views of the beautiful Cupertino hills and skyline. The City's decision has now given my beautiful views to the applicant to enjoy! Does that seem fair? The City's decision discriminates established residents like myself relative to applicants that apparently don't live in Cupertino."

Preservation of views is not one of the stated purposes of the R-1 Ordinance.

Environmental Review:

This project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) per Section 15303.

Public Noticing and Community Outreach:

The following table is a brief summary of the noticing for this appeal:

Notice of Public Hearing & Site Signage	Agenda
<ul style="list-style-type: none">▪ Site Signage (<i>at least 10 days prior to hearing</i>)▪ 10 notices mailed to property owners adjacent to the project site and residents who submitted a public comment prior to the Director's approval (<i>at least 10 days prior to the hearing</i>)	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (<i>five days prior to hearing</i>)▪ Posted on the City of Cupertino's Web site (<i>five days prior to hearing</i>)

No public comments were received at the time of production of this staff report.

Conclusion

Staff, the Director of Community Development, and Planning Commission have found that the project complies with all R-1 Ordinance requirements, which are in place in part to guarantee a reasonable level of light, air, privacy, and maintain structures at a comparable scale within the neighborhood through requirements such as setbacks, height, the first-floor building envelope, and privacy planting requirements. Furthermore, the applicant has revised the project design to reflect the concerns of surrounding property owners. Therefore, staff recommends that the City Council deny the appeal and uphold the Planning Commission's decision to uphold the Director of Community Development's approval of the Two-Story Permit through the Resolution for Application R-2020-035 and the Minor Residential Permit through the Resolution for Application RM-2020-023.

With respect to the Two-Story Permit and Minor Residential Permit, the following findings may be made:

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 permit 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 R1-6 (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 proposed 2,992 sq. ft. two-story residence is comparable in size to the existing residences in the surrounding area and complies with the R-1 Ordinance regulations for floor area ratio. Additionally, the project complies with all other development regulations for R1-6 zoned properties regarding mass and bulk, including, but not limited to, first floor building envelope, minimum setback regulations, and building height limitations. Furthermore, the applicant has worked with staff to make significant design changes to the front elevation to be more harmonious in scale and design with the neighborhood. Design changes included decreasing the overall height of the project from 25'-8" to 23', simplifying the first and second-story rooflines to accommodate more gables, simplifying the two-story bay window feature to reduce the three-dimensional elements of the home, and making the windows more consistent and proportional throughout the project. Together, the reduced height and design changes provide better articulation of wall lines, reduce the visual mass of the exposed second story, and simplify the roofline. The project therefore maintains the single-family home scale found compatible with the general neighborhood.

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 proposal for 1506 Primrose Way meets, and in some cases exceeds, all setback requirements for the R1-6 zoning district. The project proposes a first-floor rear-yard setback of 28'-5" where only 20' is required; a second-story rear-yard setback of 34'-6" where 25' is required; and a rear-yard balcony setback of over 26'-6" where 20' is required.

The R-1 Ordinance allows property owners the ability to construct second-story windows and 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 and second-story windows with a sill height below 5 feet 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 protected 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.

Next Steps

The City Council's decision on this project is final unless a councilmember wishes to reconsider the decision or a petition for reconsideration is received from an interested person within 10 days of the mailing of the notice of decision pursuant to Chapter 2.08 of the Municipal Code.

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Benjamin Fu, Director of Community Development

Approved for Submission by:

Greg Larson, Interim City Manager

ATTACHMENTS

- A. Draft Resolution for R-2020-035
- B. Draft Resolution for RM-2020-023
- C. Single-Family Residential (R-1) Ordinance
- D. Planning Commission Resolution No. 6925 (R-2020-035)
- E. Planning Commission Resolution No. 6926 (RM-2020-023)
- F. Approved Plan Set
- G. Chih-Lung Lin Appellant Letter and Supplemental Documents
- H. Jitesh Vadhia Appellant Letter and Supplemental Documents
- I. Neighborhood Distribution of Two-Story Residences