



**OFFICE OF COMMUNITY DEVELOPMENT**

CITY HALL

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## PLANNING COMMISSION STAFF REPORT

Agenda Item No. \_\_\_\_

Agenda Date: February 23, 2016

**SUBJECT:**

Consider an appeal of Two-Story Permit (R-2015-08) to allow the construction of a new 5,140-square-foot single-family residence and a Minor Residential Permit (RM-2015-08) to allow a second story balcony on the new residence. (Application No. R-2015-08 and RM-2015-08; Applicant: WEC & Assoc. (Kingkay Capital, LLC)); Appellant: Matthew and Angela Miller; Location: 21900 Oakview Lane; APN: 326-19-105)

**RECOMMENDATION:**

Staff recommends that the Planning Commission deny the appeal and uphold the Community Development Director’s decision to approve the project in accordance with the draft resolutions (see Attachment 1 and 2).

**PROJECT DATA:**

<b>General Plan designation</b>	Low Density (1-5 DU/Ac.)
<b>Zoning designation</b>	R1-10
<b>Environmental review</b>	Categorically Exempt from CEQA under Section 15303
<b>Net lot area</b>	11,425 square feet
<b>Project consistency with:</b>	
General Plan	Yes
Zoning	Yes

	<b>Allowed</b>	<b>Proposed</b>
<b>Lot coverage</b>	5,713 square feet (45% + 5% for eaves/roof overhangs and covered patios)	3,557 square feet (31.13%)
<b>FAR</b>	5,141 square feet (45%)	5,140 square feet (44.98%)
<b>Height</b>	28'	25' – 4"

	Allowed		Proposed	
Setbacks:	First Floor	Second Floor	First Floor	Second Floor
Side	Combined 15' (no side less than 5')	Combined 25' (no side less than 10')	10'-9" (west) and 5' (east)	15'-7" (west) and 20'-1" (east)
Front	20'	25'	25'	29' – 5"
Rear	20'	25'	32' – 11"	36' – 7"

**BACKGROUND:**

On March 20, 2015 the applicant, WEC & Assoc. (Kingkay Capital, LLC), applied for a Two-Story Permit to allow a new 5,140-square-foot single-family residence and a Minor Residential Permit to allow a second story balcony on the new residence located at 21900 Oakview Lane (see Attachment 3). The project property is located in the R1-10 zoning district that permits two-story homes with a maximum Floor Area Ratio (FAR) of 45%, up to 28 feet in height. The applicant is not proposing to have any outdoor sheds etc., which would increase the FAR beyond 45%. Additionally, the project is not subject to design review since the proposed second floor is less than 66% of the square footage of the first floor and provides at least 15-foot side yard setbacks on the second floor. The project is consistent with all aspects of the Single-Family Residential (R-1) Ordinance and other pertinent City ordinances.

Prior to the public comment period for the project, three property owners within the cul-de-sac expressed concerns to staff about privacy impacts, reduced daylight exposure, possible existing ground contamination, increased noise impacts due to construction in the cul-de-sac, and overall project design and massing.

With subsequent project submittals, aside from meeting the prescriptive development requirements as established in the Single-Family Residential Ordinance, the applicant incorporated architectural trims to the western wall to provide relief on the portion of the western elevation where the first and second floor walls are not offset. Additionally, during the comment period, the applicant separately met with the east and west property owners to discuss lingering concerns which resulted in the applicant:

- Providing obscured and non-openable windows to the master bathroom and one of the second story bedrooms on the western elevation;
- Agreeing to remove the eight Italian Cypress trees on the subject site and removing new privacy plantings proposed as requested by the eastern property owners; and
- Offering monthly pool cleaning to the eastern property owners during construction.

The project was approved by the Community Development Director on January 8, 2016 with an increase in the front yard setback due to the property owner's decision to meet the recorded covenant against the properties within the original subdivision entitled "Declaration of Restrictions" section (b) which states that "No dwelling shall be erected on any building plot nearer than twenty-five (25) feet to the front property line." The last day to appeal the project was January 22, 2016; Matthew and Angela Miller, the property owners to the east, appealed the approval of the Two Story Permit and Minor Residential Permit on January 21, 2016 (see Attachment 4).

## DISCUSSION:

### Basis of the Appeal

The appellant's basis of appeal is summarized below. Where appropriate, staff's responses are in *italics*.

1. Oakview Lane is a culdesac with 13 houses, only one of which has a complete second story. That house was built years ago without the culdesac residents knowledge of its two story size until it was too late to appeal.

*One of the purposes of the R-1 Ordinance is to ensure a reasonable level of compatibility in scale of structures within residential neighborhoods. There are three other two-story homes on the street and several other newer and older two story homes in the general neighborhood. While the appellant indicates that a majority of the homes on this street are single-story structures, there are several two-story old and new homes in the residential neighborhood that this project is proposed in. This is a neighborhood in transition and most new homes proposed within the neighborhood are two-story.*

*Prior to 2005, the R-1 Ordinance allowed the construction of two story homes with a second to first floor ratio of 35% or under to be built with a building permit and no noticing, comment period or a public hearing. The house in reference was constructed in 1999.*

2. "This **is not** a **Minor Residential Permit** in the scale of this project or zoning ordinances since will affect in many aspects the four direct neighbors and others near by since the size of this construction **it is not harmonious** with the other houses near by on this street."

*Per the R-1 Ordinance, applications for second story balconies which may have privacy impacts on neighbors' side or rear yards are processed with a Minor Residential Permit as stipulated by Section 19.28.040 (Permits Required for Development) per the procedures outlined in Chapter 19.12, Administration. The proposed plans included a rear facing second floor balcony; therefore, a Minor Residential Permit was required and processed.*

3. "The project can't be granted since it will result in a condition that is detrimental to the the quality of the outdoor life of the owners of the houses around this new project and their insurance of privacy, sunlight in their back yards, swimming pool, solar panels, garden sun light, vegetable garden sunlight, a pollution view from the size of this construction plan."

*One of the principal purposes of the R-1 Ordinance is to ensure provisions of light, air and a reasonable level of privacy to individual residential parcels. These are implemented through the setbacks, daylight plane and privacy planting requirements, and other prescriptive requirements incorporated within the R-1 Ordinance. The daylight plane established for the single story portion of the project ensures light and air at the single story level while increased setback requirements on the second level ensure that a reasonable level of sunlight and air is available for neighbors. In addition, all second story windows that are not exempt from privacy plantings are required to provide trees or shrubs in an area bounded by a thirty-degree angle measured from the edges on each side window jamb. The applicant proposes such plantings on all applicable windows, but pursuant to a request by the property owner to the east, eliminated the proposed privacy plantings on the eastern property line.*

*The size of the home is based on the allowable Floor Area Ratio (FAR). In the case of property zoned R-1, the allowable FAR is 45% of the net lot area with no maximum house size limitations. This means that a larger lot could have a larger home developed on the site while a smaller lot would have a smaller home. The proposed FAR maximizes the amount of development on the property, but does not exceed the allowable FAR.*

4. "The proposed project is not harmonious in scale on adjoining properties or the other neighbors in front of this project or the many houses in the cul-de-sac street."

*See response #1 and #3 regarding the size and scale of the home. The proposed project conforms to the requirements of the R-1 Ordinance and does not seek any exceptions from it.*

5. "The granting of the permit for this project will result in a condition that is detrimental and injurious to property or improvements in the vicinity because we won't have sun on our swimming pool around 3:30 PM during summer time. We won't be able in the future to stall solar voltaic on our house according to our plans because the shadow this project will create on our roof and backyard. Then neighbor on the other side will have no sun light on his side yard at least until 1:00 PM and look which will have an impact in his garden and property. He also will a have massive wall with windows against his property. This will be a visual impact on his side."

*See response #3.*

6. "Adverse visual impacts on adjoining properties *can't be reasonably mitigated* because the damages, I mention above, this new project will cause in the neighborhood. We want to clarify here the word neighborhood also means – 'Quality or condition of being neighbors.' The size of this project is **not harmonious** on this street."

*The R-1 Ordinance requires mitigation of views from the proposed project in to side and rear yards of other existing residential properties. It does not require mitigation of the visual impacts of the proposed project from neighboring properties. In compliance with the R-1 Ordinance, the applicant will be required to plant a 24-inch box front yard tree to mitigate the second story mass from the street.*

*The applicant has also complied with the R-1 Ordinance by proposing to plant all the required privacy planting to ensure that visual impacts in to the neighbor's side and rear yards are mitigated. During the comment period, the appellant (eastern property owner at 21884 Oakview Lane) voiced their concerns to the applicant regarding the existing trees and the proposed privacy trees limiting sun exposure and the potential increase in yard maintenance. In response the applicant agreed to remove eight Italian Cypresses and the appellant agreed to waive any additional privacy protection measures that the applicant would have had to plant.*

7. "Many inconsistencies have been found in this project because there was no study done by the owner or by the city for this project about the future consequences, which I mentioned before. The City Code mention. (sunlight, the damage in receiving the sun light on the pool of 21884 Oakview Lane and solar panels efficiency, the future lost of vegetable garden this neighbor have, the visual impact from neighbors both sides, back and in front of this project, not harmonious construction, the wrong design for this part of the neighborhood, privacy issues because windows and balcony from this project, the second floor height will impact our quality of life in using our swimming pool, backyard, etc.)."

*The R-1 Ordinance does not require the applicant to furnish studies on light impacts to adjacent properties or to existing thermal panels if all prescriptive regulations regarding the first-floor building envelope, overall building height, and first and second story setbacks are met. These prescriptive requirements are deemed adequate to address light, and privacy issues. See response #3.*

8. "It will have a significant adverse visual and privacy impacts as viewed from all four adjoining properties and in front the neighbors's house which *can't be mitigated* to the maximum extent possible because the **height** of the second floor construction, windows and balcony taking out our privacy and other issues I already mention above."

*See previous response #3 and #6 regarding visual and privacy impacts. In addition, the R-1 Ordinance allows a maximum height of 28 feet (no more than two stories) for principal*

*dwelling on the site. The proposed building is 25 feet 4 inches in height and therefore, under the maximum allowed height in this zoning district.*

9. "I already explain in the beginning this letter this project will injurious to the neighbors in different matters."

*Refer to response #3 through #8.*

10. "The exception to be granted is one that **will require** a modification in the design to a **one story house.**"

*Since the subject property is not located in a Single Family Residential District Restricted to One Story (indicated with the "i" suffix), a proposed project on the site cannot be required to be limited to a single story. The subject property's zoning (R1-10) permits the applicant to construct up to a two-story home provided that all development regulations regarding two-story developments (floor area ratios, setbacks, second-to-first floor ratio, etc.) are met.*

11. "The proposed design **will result** in significant impacts as viewed from four abutting properties and front neighbors. The size of the house, the privacy with the windows and balcony in the second floor, the intrusive design of the chimney in the side of the house will have an impact on our view and architectural in the neighbor backyard of 21884 Oakview Lane, the enormous wall on the side of the neighbor at 21917 Oakview Lane. The windows and balcony also with clear view of the sides and back neighbors. The neighbors don't want trees to be plant because they will shade more their house, the roots will cause future problems on the fences, the leaves during winter in their backyards, swimming pool, gutters and roofs."

*See response #3 regarding the size of the home. See response #3 and #6 regarding privacy and visual impacts.*

*The proposed fireplace and chimney, adjacent to the eastern property line, encroaches less than one foot into the required five-foot side yard setback. Architectural features, such as fireplaces, cornices and eaves, are permitted to encroach up to three (3) feet into a required yard setback and are exempt from daylight plane restrictions per the R-1 Ordinance.*

*The applicant addressed staff concerns about unarticulated walls (in particular the wall facing 21917 Oakview Lane) by adding architectural trims to denote the separation of first and second floors.*

12. "This project violates all the Municipal Code 19.28.140 (A), (B), (C), (D), which we have been seen over and approved by the planning commission is this neighborhood. This project must be modify to a one store house. This project **is not harmonious** with this part of the street. We are sure, anyone that visits the site will see that."

*The project meets the findings listed in Sections 19.28.140 (A) and (B). However, Sections 19.28.140 (C) and (D) do not apply to the proposed project. The requested permits were approved at an administrative level in compliance with the requirements of the Municipal Code. See response #2 regarding the size and scale of the home.*

13. "People who have lived here for decades have been discuss with the action of the city plan commission in transforming this city in a polluted vision of construction, traffic, more air pollution, less water and loose the quality of life. The planning commission continue ignore complaints and our inputs from the tax payers. We need to pay a high cost city appeal when this is our rights to have it without no cost. In many of the cases we have been seen the abuse of the power from planning commission and the city council to approve this high density constructions."

*The proposed project is an allowed use within the zoning district that it is proposed in and meets all the prescriptive requirements outlined in the R-1 Ordinance as adopted by the City Council. The City Council set the appeal fee at \$182, much below the actual costs of processing and taking an application through the appeal process, recognizing that appellants should not be priced out of appealing a project, and that this would only cover a small portion of administrative, staff, and processing time associated with appeals.*

14. "**This land for this project is big enough to built a one store house for a family of six people.**"

*See response #10.*

15. "The owner from this new project have many cypress pine trees in his property. These kind of trees attract rats, garden snakes, damage the paint of our cars, fill the gutters from our houses with pines, damage our plants, the yellow powder came from the trees cause a lot allergies to the neighbors during spring time, dust in our houses. These trees must be cut in both sides of this property as soon as possible before construction start. These trees are detrimental for the neighbors. **These cypruss trees hidden the real impact of this construction in adjoining properties and already make shade in our solar panels.**"

*See response #3 regarding privacy protection trees. Although the appellant stresses that these trees be cut on both sides of the property, the western property owner (21917 Oakview Lane) has stated his concerns regarding privacy, therefore no trees are proposed to be removed along the western property line.*

16. "We need to know *the time of duration* for this construction will be in any case of the projects be approved or modify because in three occasions in this street we have

neighbors built or remodel their houses and took more time than the normal period necessary for it. A lot problems of dust, noise, traffic of big trucks, construction people which we don't know looking over our house, damage our front yard and healthy issues because the dust. What kind the fence will be add around construction and hight to protect us from all these factors. The neighbors would have a communication when the house will be demolish and how long will take it."

*The timeline of construction will be determined by the applicant, but construction will need to be initiated prior to the expiration dates of the two planning permits. The applicant has one year from the date of final decision on the project (i.e., from the date of decision on all appeals) to apply for building permits. Once a building permit is issued, the applicant must have inspections every 180 days in order to ensure that the building permit does not expire. The Building Department requires a temporary construction fence at least five feet in height at the front of the property. The building permit will also be subject to all Best Management Practices (BMP's) for construction to minimize dust, runoff, and other construction impacts.*

17. **"We need to know all measurements the owner this project will take to protect, clean, avoid the dust in the swimming pool, solar panel at the neighbor's house of 21884 Oakview Lane and other neighbors."**

*See response #16 regarding Best Management Practices. In addition, the applicant has offered to provide monthly pool cleaning to the appellant (eastern property owner at 21884 Oakview Lane), which was acceptable to them prior to appealing the project.*

18. "Our neighbor Jan Kucera was inform this project was going to have the decision from the planning commission on February/2016. He has the intent to have a CAD design to show better the impact this project. Mr. Jan Kusera was surprise when we send an e-mail to him with the short time to appeal. He is traveling and the planning department new about it. This action from the planning commission it is not fair because he don't have the chance to appeal the way he was planning to do it. The city action is not fair with the ones already have been express their opinion against this project and deny time for appeal which can be discuss in court because wrong informations. We feel it is not time the year this project can be approved or not since many of the neighbors which call the city didn't received the letter of the appeal rights. "

*Staff met with Mr. Jan Kucera and spoke with him on the phone on several occasions to clarify and provide supplemental information. In addition, the comment period letter dated December 8, 2015 and the notice of decision letter dated January 8, 2016 were mailed to him.*

*Staff has been available during both the comment and appeal periods to receive comments and provide assistance. Aside from the comments received prior to the comment period by concerned adjacent neighbors, staff received two additional letters from Mr. Kucera (the western property*

*owner) during the comment period. No other communication was received from any other concerned parties.*

19. "We want to make clear we are not against some two floor constructions but this must happen when have harmony of size of project with side, front neighbors and street house constructions, the law is respected, privacy between neighbors, don't damage the quality of outdoor life or healthy."

*Please see previous responses #1, #3, #4, #6 and #10.*

20. "The sign for this project is very far from the street and very clear. The neighbors feel uncomfortable to go and see the project plan because is too much inside the property and have renters is this property. The desin from this project must be more in front the house and the period for analyses from the neighbors be extended."

*The original sign was located in a bare planting area adjacent to a paved walkway deemed appropriate by staff for the notice board notifying the public of the comment period. The comment period noticing letter included a site plan and elevation drawings of the proposed project in compliance with the requirements of the Municipal Code. In addition, the letter also indicated that a full set of plans of the proposed project would be available for review upon request, also in conformance with the requirements of the Municipal Code.*

21. "We also want some studies to be done by the owner or by the city from the soil erosion and contamination from this property, since the septic tank has been liking for many years and the suspicious previous owner this property has dump some kind of products not identify in the soil and had a not permit construction in the side the house where he uses to stuck many chemical products."

*The applicant will remove the existing septic tank and connect to existing sewer systems. The removal of septic tanks is under the authority of the Santa Clara County Environmental Health Department which will review the proposed removal for compliance with their requirements. As with any building permit, the applicant will be required to provide documentation of having received these permits to Cupertino's Building Division prior to permit issuance.*

22. "We also want alert the city and the new owner this new project in the pass this land was an old indian cemetery. Many years ago when the house at 21901 Oakview Lane (in front of this new project) was remodel the construction was stopped for many days because was found indian bones in this site. The indian tribe needs to give permission for these bones be removed from that site. Delay the remodel for many days."

*Building records do not indicate stopped work due to Native American remains found on site for any remodel projects at 21901 Oakview Lane.*

*As a matter of course, should Native American remains be found, the City has to be notified and there are special procedures for handling any remains or burial sites found. These are implemented through the Building Department during the construction period.*

23. "It is not fair we spent \$182.00 to appeal this decision when we had a miss information from the planning department about the way this is done. The date this project was going to be decided, the appeal process be charged never was explain ton us. We didn't even knew until we received a e-mail from the assistant from this project our concerns will be not consider before the appeal since the planning commission didn't see the plan before appeal."

*See response #13. The appeal process and requirements are codified in the Municipal Code.*

*Aside from staff voluntarily notifying the concerned neighbors and appellant with the status of the project prior to a decision on the project, the comment period letter dated December 8, 2015 states that the project would receive "approval by the Director of Community Development" and that "any interested party may appeal the decision of the Director within fourteen (14) days of the mailing of the notice of decision." The notice of the decision letter dated January 6, 2016 was also sent to all persons who commented on the project as required by the Municipal Code and the same language was reiterated.*

24. "In this time of water short supply we don't need big constructions where will spend more water in trees, gardens which don't produce anything and more space to clean with water."

*The City has established restrictions on water usage around the city in Chapter 15.32 and landscaping water usage in Chapter 14.15 of the Cupertino Municipal Code. In addition, the California Building Code has codified requirements about the types of fixtures and other such requirements to limit the amount of water used within the project. The applicant will be required to comply with all current California Building Code requirements.*

## **ENVIRONMENTAL ASSESSMENT**

The project is categorically exempt from the California Environmental Quality Act (CEQA) per section 15303 (New construction or conversion of small structures) of the CEQA Guidelines.

**PUBLIC NOTICING & OUTREACH**

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

Notice of Public Hearing, Site Signage & Legal Ad	Agenda
<ul style="list-style-type: none"> <li>▪ 9 public hearing notices mailed to property owners adjacent to the project site (<i>19 days prior to hearing</i>)</li> <li>▪ Legal ad placed in newspaper (<i>at least 10 days prior to hearing</i>)</li> <li>▪ Site Signage (<i>City-provided appeal signage placed on site 12 days prior to hearing</i>)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Posted on the City's official notice bulletin board (<i>one week prior to hearing</i>)</li> <li>▪ Posted on the City of Cupertino's Web site (<i>one week prior to hearing</i>)</li> </ul>

**PERMIT STREAMLINING ACT**

The appeal is subject to the Permit Streamlining Act (Government Code Section 65920 – 65964). The City has complied with the deadlines found in the Permit Streamlining Act.

*Project Received:* March 20, 2015; *Deemed Incomplete:* April 16, 2015

*Project Resubmittal:* July 1, 2015; *Deemed Incomplete:* July 23, 2015

*Project Resubmittal:* September 20, 2015; *Deemed Incomplete:* September 21, 2015

*Project Resubmittal:* October 26, 2015; *Deemed Complete:* October 30, 2015

**NEXT STEPS AND CONCLUSION**

The Planning Commission’s decision on this project is final unless appealed within 14 days of the decision. If appealed, the City Council will hear the final appeal on this project.

Since the proposed project complies with all aspects of the R-1 Ordinance, staff recommends that the Planning Commission deny the appeal and uphold the Community Development Director's decision to approve the Two-Story and Minor Residential Permits.

Prepared by: Ellen Yau, Assistant Planner

Reviewed by:

/s/Piu Ghosh  
Piu Ghosh  
Principal Planner

Approved by:

/s/Aarti Shrivastava  
Aarti Shrivastava  
Community Development Director

**ATTACHMENTS:**

- 1 – Draft Resolution for R-2015-08
- 2 – Draft Resolution for RM-2015-08
- 3 – Plan Set

- 4 – Two-Story and Minor Residential Permits (R-2015-08 and RM-2015-08) action letter dated January 8, 2016
- 5 – Appellant’s letter and images