



**DEPARTMENT OF COMMUNITY DEVELOPMENT**

CITY HALL

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**CITY COUNCIL STAFF REPORT**

Meeting: April 19, 2016

Subject

Appeal of a Planning Commission decision to deny an appeal of a Director's approval of a 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: Jan Kucera Jr., and Matthew R. and Angela M.D. Miller; Location: 21900 Oakview Lane; APN: 326-19-105)

Recommended Action

Adopt draft resolution to deny the appeal and uphold the Planning Commission's decision (see Attachment A).

Discussion

***Background***

On March 20, 2015 the applicant, WEC & Assoc. (Kingkay Capital, LLC), applied for a Two-Story Permit to construct a new 5,140-square-foot single-family residence and a Minor Residential Permit to construct a second story balcony on the new residence located at 21900 Oakview Lane (see Attachment B). The subject property is located in the R1-10 zoning district that permits two-story homes with a maximum Floor Area Ratio (FAR) of 45% and up to 28 feet in height. The applicant is not proposing to have any outdoor sheds etc., which would increase the FAR beyond 45%. 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.

Prior to the public comment period, the appellants and other property owners expressed their concerns regarding reduced daylight exposure, privacy impacts, potential existing ground contamination, noise impacts due to construction, and overall project design and massing to staff. Since staff and the applicant were made aware of these concerns prior to the completion of the application packet, the applicant adjusted the design through minor

architectural changes and proposed adequate mitigation plantings as required by the R-1 Ordinance in subsequent project submittals. Additionally, during the two-week public comment period, the applicant separately met with the east and west property owners to discuss lingering concerns that were raised and modified window treatments, privacy mitigation planting plan, and offered monthly pool cleaning to the eastern property owners during construction.

The proposal meets the prescriptive requirements of the Single-Family Residential (R-1) Ordinance and other applicable City ordinances and was approved by the Community Development Director on January 8, 2016. The decision was appealed by Matthew R. and Angela M.D. Miller (eastern property owner at 21884 Oakview Lane) on January 21, 2016 and brought to the February 23, 2016 Planning Commission public hearing. The Commission was tasked to look at whether the proposed project met the criteria set forth in the Municipal Code and determined that there were no findings to grant the appeal (see Attachment H – Planning Commission staff report provides the discussion related to the appeal). Therefore, the Planning Commission upheld the Director's approval and denied the appeal. The Planning Commission's decision was subsequently appealed by Jan Kucera Jr. (western property owner at 21917 Oakview Lane) on February 24, 2016 and by Matthew R. and Angela M.D. Miller on March 1, 2016 (see Attachment C and D).

### ***Basis of Appeal***

The appellants' basis of appeal of the Planning Commission's decision is summarized below and categorized into the following topics. Where appropriate, staff's responses are in *italics*.

Appellant Jan Kucera Jr.'s basis of appeal is on the "false findings of the Planning Department regarding privacy, windows, setbacks and detriments to my lifestyle" and that the project is "far from harmonious with anything we as neighbors call home." Appellants Matthew R. and Angela M.D. Miller states that the Planning Commission "did not solve our privacy issues or solar shading issues on our swimming pool or our roof"; they "believe that this two story construction is not harmonious" is a "detrimental to our existing properties," and want to see "only single story new construction on the cul-de-sac."

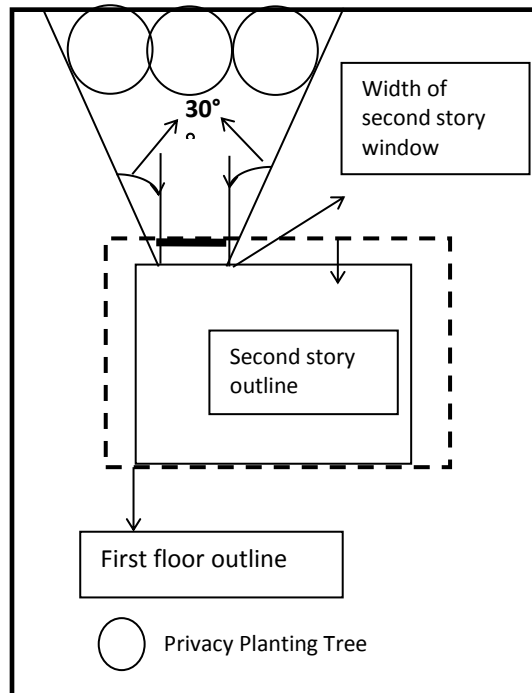
#### **1. Privacy impacts**

*The intent of the R-1 Ordinance landscape requirements for two-story single-family construction is to provide a reasonable level of privacy to residential lots through tree and shrub plantings for all second story windows and balconies. Such privacy planting requirements do not apply to windows that measure more than five feet from finished floor to window sill, are obscured and inoperable, etc. The applicant has complied with the R-1 Ordinance by proposing to plant all the required privacy planting to ensure that visual impacts into the neighbors' 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. Additionally, the applicant modified the western elevation by providing obscured and non-operable windows to the master bathroom and one of the second story bedrooms to address the privacy concerns of the other appellant (western property owner at 21917 Oakview Lane).

## 2. Windows

The appellant (western property owner at 21917 Oakview Lane) states that false findings were made regarding windows. However, there are no findings in the R-1 Ordinance associated with second story windows. Although the R-1 Ordinance does not limit the number of windows on a project, it does address concerns about privacy impacts that may result from unlimited glazing. The R-1 Ordinance requires all second story windows that are not exempt from privacy plantings (listed in response #1) provide trees or shrubs in an area bounded by a thirty-degree angle measured from the side edge on each window jamb. The applicant proposes mitigation plantings on all applicable windows subject to the plantings.



## 3. Setbacks

The property is located in the R-10 zoning district and is proposed to meet the required setbacks regulations as depicted in the chart below. Additionally, since the project proposed at least 15' second floor side yard setbacks, the project is not subject to the Design Review process.

	Required		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"

4. Detriments to lifestyle and existing properties and effect on quality of life

*The project is located within the R1-10 Single Family residential zoning district, reinforces the predominately low-intensity use settings, and deemed compatible with the residential uses in the surrounding residential neighborhood. The project is determined to be consistent with the regulations in the R-1 Ordinance, therefore not detrimental or injurious to property.*

5. Solar shading on pool and roof

*In order to preserve and enhance residential lots, one of the guiding purposes of the R-1 Ordinance is to ensure provisions of light, air and a reasonable level of privacy to individual residential parcels. These purposes are addressed through the prescriptive requirements within the R-1 Ordinance for building setbacks and daylight plane. 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. The proposed project meets and exceeds setbacks and the first floor portion of the two-story structure is within the daylight plane as required by the R-1 Ordinance.*

6. Not harmonious at end of cul-de-sac

*One of the purposes of the R-1 Ordinance is to ensure a reasonable level of compatibility in scale of structures within residential neighborhoods. Although the adjacent properties are single-story homes, there are three other two-story homes on the street and several other newer and older two-story homes in the general neighborhood. This is a neighborhood in transition and most new homes proposed within the neighborhood are two-story.*

*The size of the home is based on the allowable Floor Area Ratio (FAR). In the case of a 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 development potential on the property, but does not exceed the allowable FAR.*

7. Residents in cul-de-sac only want to see single story construction.

*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. In addition, the R-1 Ordinance allows a maximum height of 28 feet (no more than two stories) for principal dwellings on the site. The proposed building is 25 feet 4 inches in height and therefore, under the maximum allowed height in this zoning district. The residents have been advised of the option and process of designating their neighborhood to a Single Family Residential District Restricted to One Story. While this would not apply to the current project, future projects could be limited to a single story if the neighborhood receives a One Story designation.*

### **Noticing and Public Outreach**

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

<b>Notice of Public Hearing, Site Signage &amp; Legal Ad</b>	<b>Agenda</b>
<ul style="list-style-type: none"> <li>▪ 13 public hearing notices mailed to interested parties and property owners adjacent to the project site (<i>at least 14 days prior to hearing</i>)</li> <li>▪ Newspaper posting (<i>at least 10 days prior to hearing</i>)</li> <li>▪ Site Signage (<i>City-provided appeal signage placed on site at least 14 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>

Staff received an e-mail from the appellant (Angela M.D. Miller) and an e-mail from a Cupertino resident regarding the Planning Commission meeting. This property owner did not provide an address but was e-mailed a Notice of Public Hearing for this City Council meeting (Attachment E).

### **CEQA**

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.

### **Sustainability Impact**

None.

### **Fiscal Impact**

None.

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Prepared by: Ellen Yau, Assistant Planner

Reviewed by: Benjamin Fu, Assistant Director of Community Development  
Aarti Shrivastava, Assistant City Manager

Approved for Submission by: David Brandt, City Manager

Attachments:

- A. Draft Resolution
- B. Plan Set
- C. Appeal Filed by Jan Kucera Jr.
- D. Appeal Filed by Matthew R. Miller and Angela M.D. Miller
- E. Comment Letters
- F. Resolution No. 6798
- G. Resolution No. 6799
- H. Planning Commission Staff Report, 2/23/2016
- I. Planning Commission Meeting Minutes, 2/23/2016
- J. Original Appeal of Director's Decision filed by Matthew R. Miller and Angela M.D. Miller
- K. Two-Story and Minor Residential Permits (R-2015-08 and RM-2015-08) action letter, 1/8/2016