



OFFICE OF THE CITY CLERK

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366

April 21, 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)

At its April 19, 2016 regular meeting, the Cupertino City Council took the following action:

ADOPTED RESOLUTION NO. 16-040 DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION PER PLANNING COMMISSION RESOLUTION NO(S). 6798 AND 6799 (PAUL ABSTAINING)

Also included is the adopted Resolution No. 16-040.

Any interested person, including the applicant, prior to seeking judicial review of any adjudicatory decision of the City Council, must first file a petition for reconsideration with the city clerk within ten days after the date of mailing of this notice. Any petition filed must comply with Municipal Code §2.08.096. The last day to file a petition for reconsideration is May 2, 2016.

Sincerely,

A handwritten signature in blue ink that reads "Kirsten Squarcia". The signature is written in a cursive, flowing style.

Kirsten Squarcia
Deputy City Clerk

cc: City Attorney
Planning Department

Jan Kucera
21917 Oakview Lane
Cupertino, CA 95014

Mathew R. and Angela M.D. Miller
21884 Oakview Lane
Cupertino, CA 95014

KingKay Capital, LLC
George Wang
21900 Oakview Lane
Cupertino, CA 95014

WEC & Associates
Attn: Jing Quan
2625 Middlefield Rd. #658
Palo Alto, CA 94306



CUPERTINO

April 21, 2016

Subject: Appeal of a Planning Commission decision to approve a Two Story Farm (P-2015-08) to allow the use of a 5,140 square-foot single-family residence and a 10,000 square-foot second story balcony on the north side of 21900 Oakview Lane (P-2015-08) and RM-2015-08. Applicant: WEC & Associates (WEC & Assoc.) and Mathew R. and Angela M.D. Miller (MR & AM). Appellants: Jan Kucera and Mathew R. and Angela M.D. Miller (MR & AM).
At its April 19, 2016 regular meeting, the Cupertino City Council adopted Resolution No. 16-040, denying the appeal and upholding the Planning Commission's decision. PER PLANNING COMMISSION RESOLUTION NO. 16-040, WAS AND WAS NOT ABSTAINING.

ADOPTED RESOLUTION NO. 16-040 DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION. PER PLANNING COMMISSION RESOLUTION NO. 16-040, WAS AND WAS NOT ABSTAINING.

Also included is the adopted Resolution No. 16-040.

Any interested person, including the applicant, prior to seeking judicial review of any administrative decision of the City Council, must first file a petition for reconsideration with the city clerk within ten days after the date of mailing of this notice. Any petition filed must comply with Municipal Code §2.08.090. The last day to file a petition for reconsideration is May 2, 2016.

Sincerely,

Kristen Edmunds

Kristen Edmunds
Deputy City Clerk

RESOLUTION NO. 16-040

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S
FEBRUARY 23, 2016 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 LOCATED AT 21900 OAKVIEW LANE,
(APN: 326-19-105)**

SECTION I: PROJECT DESCRIPTION

Application No.: R-2015-08 and RM-2015-08
Applicant: WEC & Assoc. (Kingkay Capital, LLC)
Property Owner: George Wang
Appellants: Jan Kucera Jr., and Matthew R. and Angela M.D. Miller
Location: 21900 Oakview Lane, (APN: 326-19-105)

SECTION II: FINDINGS FOR A TWO-STORY AND MINOR RESIDENTIAL PERMITS:

WHEREAS, the City Council of the City of Cupertino received an appeal of the Planning Commission's February 23, 2016 approval for a Two-Story Permit and a Minor Residential Permit as described in Section I. of this Resolution; and

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

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

WHEREAS, the City Council is the final decision maker for this application, and, based upon its independent judgment determines that the project is determined to be categorically exempt from the California Environmental Quality Act (CEQA); 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 this title.

The project is consistent with the regulations and intent of the Cupertino General Plan and Single-Family Residential (R-1) Ordinance. The project complies with all established and required setbacks, floor area ratio limitations, privacy protection planting requirements and other Municipal Code requirements. In addition, the proposed development meets all prescriptive development requirements of the Parking, Landscape, and Fence ordinances; and the two-story non-discretionary permit procedural requirements in the R-1 Ordinance.

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.

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 projects is located within the R1-10 (Single Family Residential) zoning district, and will be compatible with the surrounding residential uses of the neighborhood. The purpose of the R-1 ordinance is to provide light, air and a reasonable level of privacy to individual residential parcels, ensure a reasonable level of compatibility in scale of structures within the neighborhood and reinforce the predominantly low-intensity setting in the community through setbacks, daylight plane and privacy planting requirements, and other prescriptive requirements incorporated within the R-1 Ordinance. The neighborhood is in transition and there is a healthy mix of single-story and two-story homes in the general area making the proposed project compatible with the neighborhood.

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

The proposed project is located in a residential area consisting of single-family homes with a mix of single-story and two-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. Overall, the proposed project 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 impacts on adjoining properties have been reasonably mitigated through the privacy protection plantings and installation of a front-yard tree as required.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution and the Planning Commission Resolution numbers 6798 and 6799,

The appeal of the applications for a Two-Story and a Minor Residential Permits, Application nos. R-2015-08 and RM-2015-08 is hereby DENIED, and the Planning Commission's February 23, 2016 approval is hereby UPHELD, and that the subconclusions upon which the findings and conditions specified in this Resolution and Planning Commission Resolutions 6798 and 6799, are based and contained in the Public Hearing record concerning Application nos. R-2015-08 and RM-2015-08 as set forth in the Minutes of the Planning Commission Meeting of February 23, 2016 and City Council Meeting of April 19, 2016, and are incorporated by reference as though fully set forth herein.

Prior to seeking judicial review of this decision, any interested party, including an applicant, must file a petition for reconsideration with the city clerk within ten days after the date of mailing of this decision under Municipal Code §2.08.096. The time for an appeal of a final decision is governed by Code of Civil Procedure Section 1094.6.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

This approval is based on a plan set entitled, "New Residence 21900 Oakview Lane, Cupertino CA" consisting of eleven sheets labeled "A.1 to A.10 and a topographic survey", dated "Received January 6, 2016" except as may be amended by conditions in this resolution.

2. ANNOTATION OF THE CONDITIONS OF APPROVAL

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

3. 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.

4. COMPLIANCE WITH PUBLIC WORKS CONFIRMATION FORM

The project shall comply with the requirements indicated on the Public Works Confirmation form, including, but not limited to, dedications, easements, off-site improvements, undergrounding of utilities, all necessary agreements, and utility installations/relocations as deemed necessary by the Director of Public Works and required for public health and safety. The Public Works Confirmation is a preliminary review, and is not an exhaustive review of the subject development. Additional requirements may be established and implemented during the construction permitting process. The project construction plans shall address these requirements with the construction permit submittal, and all required improvements

shall be completed to the satisfaction of the Director of Public Works prior to final occupancy.

5. GEOTECHNICAL PLAN REVIEW

The applicant's geotechnical consultant shall inspect, test, and approve all geotechnical aspects of the development plans to ensure that their recommendations have been incorporated. The Geotechnical Plan Review should be submitted to the City for review by the City staff prior to issuance of permits.

6. GEOTECHNICAL CONSTRUCTION INSPECTIONS

The applicant's geotechnical consultant shall inspect, test (as needed), and approve all geotechnical aspects of the project construction. The inspections shall include, but not necessarily be limited to: site preparation and grading, site surface and subsurface drainage improvements and excavations for foundations and retaining walls prior to the placement of steel and concrete. The following shall specifically be performed:

The applicant's geotechnical consultant shall inspect all foundation excavations to ensure that the subsurface conditions are as anticipated, and that footings are embedded sufficiently into competent earth materials.

The results of these inspections and the as-built conditions of the project shall be described by the geotechnical consultant in a letter and submitted to the City Engineer for review prior to final project approval.

7. PRIVACY PLANTING

The neighbors on the east side stated they will waive the privacy tree requirement in order to gain sun exposure to their property, therefore those privacy plantings are not indicated on the plans. Prior to building permit issuance, the applicant shall submit the waiver and the final privacy-planting plan (of all required privacy planting) for review and approval from the Planning Division. The variety, size, and planting distance shall be consistent with the City's requirements. Should a waiver not be obtained, the applicant shall plant all required privacy planting in compliance with the R-1 Ordinance.

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. LANDSCAPE PROJECT SUBMITTAL:

The applicant shall submit a full landscape project submittal, per sections 490.1, 492.1, and 492.3 of the Department of Water Resources Model Water Efficient Landscape Ordinance, **for projects with landscape area more than 500 square feet**; the applicant shall submit either a full landscape project submittal or submit the Prescriptive Compliance Checklist per Appendix D of the Department of Water Resources Model Water Efficient Landscape Ordinance **for projects with landscape area more than 500 square feet and less than 2,500 square feet**. The Landscape Documentation Package or Prescriptive Compliance Checklist shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits.

10. 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.

11. EXTERIOR BUILDING MATERIALS/TREATMENTS

Final building exterior treatment plan (including but not limited to details on exterior color, material, architectural treatments and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits. The final building exterior plan shall closely resemble the details shown on the original approved plans. Any exterior changes determined to be substantial by the Director of Community Development shall require a minor modification approval with neighborhood input.

12. INDEMNIFICATION

Except as otherwise prohibited by law, the applicant shall indemnify and hold harmless the City, its City Council, and its officers, employees and agents (collectively, the "indemnified parties") from and against any claim, action, or 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 to attack, set aside, or void this Resolution or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City its actual attorneys' fees and costs incurred in defense of the litigation. The applicant shall pay such attorneys' fees and costs within 30 days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts paid to counsel not otherwise employed as City staff 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.

13. 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.

PASSED AND ADOPTED at a Regular Meeting of the City Council of the City of Cupertino the 19th day of April, 2016, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
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AYES:	Chang, Vaidhyanathan, Sinks, Wong
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NOES:	None
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ABSENT:	None
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ABSTAIN:	Paul
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ATTEST:

APPROVED:

/s/Grace Schmidt

/s/Barry Chang

Grace Schmidt, City Clerk

Barry Chang, Mayor, City of Cupertino