

will serve as rep., alternate will be Com. Sun.

Housing Commission: meets second Thursday, 3x to 4x per year 9 a.m. Com. Paulsen will serve as rep., Com. Lee will serve as alternate.

Mayor's Monthly Meeting:

February 3: Com. Paulsen
March 2: Com. Lee
April 6: Vice Chair Gong
May 4: Chair Takahashi
June 1: Com. Sun
July 1: Com. Paulsen

Aug. 3: Com. Lee
Sept. 7: Vice Chair Gong
Oct. 5: Chair Takahashi
Nov. 2: Com. Sun
Dec. 7: Com. Paulsen

Chair Takahashi resumed chairing the meeting.

1. APPROVAL OF MINUTES:

Minutes of the February 9, 2016 Planning Commission meeting:

Motion: Motion by Vice Chair Gong, second by Com. Sun, and unanimously carried 4-0-1 (Vice Chair Takahashi abstained) to approve the minutes of the February 9, 2016 Planning Commission meeting as presented.

WRITTEN COMMUNICATIONS: None

POSTPONEMENTS/REMOVAL FROM CALENDAR: None

ORAL COMMUNICATIONS: None

CONSENT CALENDAR: None

PUBLIC HEARING:

→ **2. R-2015-08, RM-2015-08**
Jing Quan (Kingkay
Capital, LLC)
Matthew or Angela
Miller
21900 Oakview Lane

Appeal of a Director's approval of a two story permit to allow construction of a new 5,140 sq. ft. single family residence and a Minor Residential Permit to allow a second story balcony on the new residence.

Ellen Yau, Assistant Planner, presented the staff report:

- Reviewed the application for appeal of the administrative approval of R-2015-08 and RM-20108 located at 21900 Oakview Lane for a new 5,140 sq. ft. single family residence and second story balcony facing the rear of the property, as outlined in the staff report. She reviewed the permit process, and basis of Appeal Nos. 1 through 24 detailed in the slide presentation. The staff report also contained staff responses to the appellant's basis of appeal.
- Staff recommendation is that the Planning Commission deny the appeal and uphold the decision to approve the project in accordance with the draft resolutions.
- Staff answered Commissioners' questions about how staff was working with the neighborhood and

Applicant from the beginning to the present stage of the application. Com. Sun stated that there are some people who feel there is a lack of efficiency in working with the neighbors. How much neighborhood involvement has there been and how much work has been done to meet the other neighbors' requirements? Staff said they have worked with the applicant in modifying their design; the applicant came in with a very complete application in meeting staff's requirements and staff proposed various design elements to acquiesce some of the concerns addressed. Relative to the permit process, if a two-story home meets the prescriptive requirements of the R1 ordinance there is very little discretion that city staff has in terms of design features and elements as long as they meet those requirements and they meet the findings in those sections cited for these two permits; then staff has to issue the permit because those requirements are met. If it were a two-story designed review home there would be a lot more discretion in terms of design of the home, but as it stands, for this particular permit they met every prescriptive regulation and there was very little leeway with that.

- The two-story permit is allowed for any two-story additions or new proposed second story. A minor residential permit is simply for the second story balcony. If the applicant didn't propose a second story balcony, they would not have to do a minor residential permit. The minor residential permit also covers other additions that are not being requested by the applicant.

Matthew and Angela Miller, 21884 Oakview Lane, Appellants:

- Said they had a lot of shade in their swim pool from the pine trees at the side of the house; the Cyprus trees not only shade the swim pool but also their solar panels which heat the pool. The Cyprus tree at the side of the house also shades their vegetable garden. There is also a lot of dust on the cars and in the swim pool. If more trees have to be planted for privacy, it will be more detrimental to shading the pool and the solar panels. In order to alleviate the visual intrusion, if more trees are planted there will be more shade on the solar panels. He said he was considering solar voltaic panels for the roof, but was advised that if the height of the proposed house is higher, it may interfere with the roof solar panels.
- She said if the proposed house was built it would result in more shade on their home and result in their home being colder, forcing them to use more electrical heat in their home during the winter. She said that fifteen neighbors have signed a protest of the application. Several years ago the city approved a dozen homes behind them which eliminated their privacy because the homes looked directly into their yard; one of the neighbors removed their pool because they lost all their privacy with the new homes.
- They presented architectural drawings of the proposed construction, and stated they felt it was not harmonious with the neighborhood. They said they did not feel it was fair that they should have to give up their privacy and use of their pool after 42 years; the proposed home could be smaller and it could be built so as not to have such a negative impact on the homes already there.

George Quan, 21900 Oakview Lane; Applicant:

(Did not speak)

Ina Lui, property owner:

- Said they purchased the property in March 2014; the design of the house follows the city code completely; they have been working diligently with their architect and city planners to ensure their new plan will not negatively affect their next door neighbors. She said some of the appellants' letter contains irrelevant information, including Indian cemetery yard and some suspicious behavior about previous owners; swim pool, solar panels, privacy and visual impact, harmonic community and why a two-story house. She said she would explain and analyze the points individually; hopefully the explanation would eliminate the neighbors' confusion and worries. She presented information about shading of the pool at different times of the day; shading from the solar panels at various times; privacy and the visual impact. The new house fits in exactly the same space as the existing house;

they tried very hard to maximize the setbacks to protect the neighbor's privacy as well as their own. The second floor is much smaller than the first floor in order to give the neighbors maximum privacy. The two-story house is a magnificent Spanish style masterpiece, they have worked doing modifications to meet their plans and also follow the city code. It is not a pollution view; they spent extra money to make the model in order to show the Commission and neighbors. The house will bring extra value to the community; it is in harmony with the community. She showed a Google map that illustrated the neighborhood homes, illustrating where there are many two-story homes. Said she felt people should be open to accept difference as long as the difference fits the community and follows the city code. There are three adjoining neighbors on the street; the neighbor across the street fully supports the new house plan and feels that the new home would add value to the community and his new home. Their choice for a second story is a two-story home that will provide more space for her children to play in the yard freely. She said she respects the life style of her neighbors and feels that their life style should also be respected. She concluded that the neighbor's swim pool will not be affected by the two-story home; she said they followed the city code and don't believe changing the current two-story design to a one-story house is a reasonable request. Their new home will undoubtedly be a positive addition to the community.

Jin Quan, Project Architect:

- Said that they hired professionals to do the shadow study and the new two-story house will not impact the swim pool. One of the neighbors is willing to cut a large tree to allow the Miller family to have more sunshine in their yard.

Chairperson Takahashi opened the public hearing.

Jennifer Griffin, Rancho Rinconada resident:

- Said it is upsetting when a neighborhood goes through transition such as the current issue. Cupertino had storypoles up until about three years ago and if they still existed, she felt it would have calmed down many questions from the neighbors. The storypoles would have been up and all the neighbors and homeowners would be able to see where the tops of the rosepeaks were, edge of the balcony was, see where the light would be falling into the different yards. Said she felt the city should still have storypoles; don't know why they were pulled from the ordinance. Said she lives on 5500 sq. ft. lot where most of the homes are 5000; they had a two-story go in a street and a half away; you can see the back balcony from her living room windows because it is an Eichler home; they had storypoles, that house was built about 7 years and by having those storypoles go up before the house construction, and it is a common two-story designed by a builder who builds many homes in Cupertino; the back balcony can be seen from her living room window and because they had the storypoles, they had 6 neighbors concerned about the balcony and the size of the home. Because they had the storypoles they were able to see how tall the house was, everybody's heights from it and it helped a great deal. She said she felt they should bring storypoles back; why there is not a second story setback on the big tall wall, supposed to be set back on all four walls and why is that 19 foot wall there; they are trying not to have vertical routings? That is why there is a second story setback ordinance; why is that wall not set back? Also the chimney doesn't have to be as tall. Storypoles would calm a lot of issues.

Catherine D. Quihuis, 21836 Oakview Lane:

- Illustrated views of her back yard from her surrounding neighbors' homes; their windows peer down into her back yard, leaving her with no backyard privacy. When her neighbor remodeled she was forced to bring in cleaners many times to clean up the dust and rubble from the neighbor's remodel job. The neighbors will be negatively impacted as well as the residents of the new home as the neighbors will be able to look into their home also.

Roy Hampton and Yvonne Hampton, 21821 Oakview Lane:

- Said they have added onto their home twice; each time they added on they visited their neighbors, showed them the plans, got their comments, and addressed any issues. No one was unhappy with what was done; great care was taken on their part to blend in with the neighbors and not be objectionable to neighbors. He said he felt the proposed house was intrusive, too large and should be modified. She said she was wavering somewhat because of the setback from the pool, and felt that if windows were built a little higher, people will be less worried about being looked at. Planting trees for privacy may become a nightmare in the future. The setback from the Miller house would at least mitigate the privacy because you can't look down at an angle.

Jeanette Paulsen, 20917 Oakview Lane:

- Said she felt the storypoles were important; their home sits 4 feet below the proposed structure. Not only are they dealing with the height, but have another 3 or 4 feet which would make it 29 feet. They have a 450 year old Oak tree; there will be no sun at 8:30 a.m. for several months if the home is built. Said she felt a one-story home would be the best solution; trees used for privacy get cut down or die, obscure windows get removed.

Jan Kucera Jr., 21917 Oakview Lane, (retired engineer):

- Referred to drawings, which addressed the scale and design; 95% of the homes in the area are single story; the two-story homes are homes that have been added onto, not originally two-story homes. Only one two-story home built in the 90s pre the new release plan; that home today would not have met the specifications, it is the big monster home on 21837. There is only one two-story home on that block; what was shown were additions. Said it was to scale, he hired a professional architect and he had Google maps and everything is precisely to scale. If you design a home that looks 13 feet high next to it and you are designing a home that 25 ft. 4 ins. Is that to scale and design of the neighborhood; the answer is No, so the proposed home is almost double in scaled height, so you tell someone I am going to design this home doubled the scale height of the neighborhood; that is something else, but if the ordinance says, Section 19.28... it says build homes to scale and height design.
- Said the cul de sac in front has a home with 7 windows looking onto his front porch, no privacy mitigation possible, you can't plant enough trees to mitigate it; his wife likes to sit on the front porch and has no privacy. He continued to point out the negative impact the new home would have on his property which has been there more than 24 years.

Peiyuan Zhou, resident:

- Said harmony is necessary in a neighborhood, people greet each other; however the new neighbor does not have eye contact with speaker, shake hands, etc. The proposed large home is a negative impact on the neighborhood; it is huge in size but is an interruption of other people's privacy; more importantly it pits one neighbor against others, ignores the other neighbors' best interests; the owner's attitude is indifference. Looking at the size, they satisfied every building code but in the heart, said he believed the same building code covers the small lot and relative large lot; this is a large lot. The setback is not proportional to the neighbor's house and people living there don't expect 5 feet setback about 19 feet wall that is just the way it is.
- Said he did not believe this house satisfies the building code, or the heart of the people who set down and maintain the building code including all the people in the audience. It is one neighbor against the other, there is no harmony.

Female Speaker; no name given:

- Said she felt the applicants were good people, trying to make things work in a very divisive situation. She hoped they would not think that they are going to be their enemy should they build their home.

They would argue about all the minutia; she would like them to come down to the corner house and say hi, we are going to try and settle this okay.

Chairperson Takahashi closed the public hearing.

(Questions for the appellant)

Com. Paulsen:

- Said he had an interest in trees and managed a forest in No. California; asked if the appellant had spoken with a landscape architect about a different species. The Italian Cypress creates a wall; there is a wall of them on Homestead Road east of DeAnza Blvd. which have grown tall and gangly.

Appellant:

- Said the trees are on the applicant's property. It is a wall in the back and in the front.

Mr. Miller:

- Noted that droppings from trees fall into their pool. Said they tried to mitigate the Cyprus tree with the former owner; the problem existed before the new owner.

Com. Sun:

- Said he talked to Mr. Miller recently; he confirmed that Mr. Miller was opposed to the second story. One issue is the shade cast on the pool; said he didn't think the solar could be blocked from the second story.

Mr. Miller:

- Said according to his neighbor's calculation and software he used, it will.

Com. Sun:

- Said his observation was that it looked somewhat suspicious. Everyone has property rights, the neighbor meets all the city requirements; they will probably respect both rights, yours and theirs. What is the reasonable measurement or solution from your side can you propose to the applicant?

Mr. Miller:

- Don't build a two-story home; keep it one-story. Perhaps a two-story with more setback. As designed now it is an intrusion on us and on my neighbors to the west.

Com. Sun:

- From your side what do you think is the most reasonable measurement your neighbor can accept and the other property owners?

Mr. Miller:

- The main thing is the visual intrusion and I don't see how you can mitigate it with planting trees.

Com. Sun:

- In the past the privacy issue was solved with increasing the height of the fence or planting trees; but in your case you don't want the trees; you have to think about what the solution is; we have an open mind to listen to your proposal. The Planning Commission used to deal a lot with privacy issues; would either the increase in the height of the fence or plant trees there but for your case you don't want the trees; you have to think about the solution.

Mr. Miller:

- The balcony is a problem with the privacy; instead of having to be 5 feet it is only 4 feet.

Com. Sun:

- For the fundamental if we went through the applicant's plan or their structure we have to have some legal ground to turn them down; they don't have any exception yet. We cannot go too far, we try to find a compromise.

Mrs. Miller:

- Said they could not compromise with the privacy issue in the back; and there will be more privacy issues if the proposed house is built.
- She said they have the right to sue the Planning Commission and owner for damages to their home; if they win, the second floor would be demolished. She said they don't want to have to resort to a lawsuit.

Chair Takahashi:

- From the standpoint of the legal interpretation the R1 ordinance is the main element interpretation with regard to all the other things. The points that many neighbors are making in terms of harmonious and scale that is probably the issue that people are having the most heartache with. Said they heard enough in terms of that element and understand.

(Questions for the applicant)**Vice Chair Gong:**

- Said it appeared that there is a lot of disharmony with some of the neighbors and there are other neighbors who are more sympathetic. Asked what efforts he has made to communicate to meet with the neighbors to be neighborly. Did you meet with them prior to submitting the plans; did you talk with them, did you have any conversations with them prior to hearing from the city?

Applicant:

- Said they did not talk to neighbors prior to submitting plans or hearing from the city. They heard there were complaints from the neighbors and they went to discuss with both left and right neighbors and made some offers to Miller's family and went to their home one week after hearing a comment from the city that they were concerned about the trees and shade. They visited the neighbor and discussed concerns about the trees and the shade issue. Said he offered to cut the trees as they requested; and made a plan change and requested his architect to draw up new plans. There is one tree that they feel could block the privacy and could also block the sunshine; an offer was made to decide upon the demolition period; whether they are satisfied with the trees or they want to remove the trees is their call.

Chair Takahashi:

- What were the changes made to the plans based on that discussion?

Applicant:

- The plans were changed to remove the front 4 trees and the back 4 trees; nothing with the structure.

Ina Lui (applicant's wife)

- Said they made changes for the balcony; there is a small opening along Millers' side; changing that wall to 5 feet high so basically the wall is that high, from balcony floor to pop up the opening; the bottom of the opening is 5 feet, previously it was 4 feet. Also they have another window at the living

room facing Millers' house but that window is two stories high. Nobody really can see it when they stay in the room. Clarified that the existing house is only next to Millers' house; it is only 5 feet.

Applicant:

- Also went to their house on the weekend to discuss some of their concerns about privacy; and we offered that we could remove some of the windows if they are concerned, like the windows in the main bathroom facing their backyard and windows in the front facing their property. We offered that protecting their privacy; I cannot remove those, but they disagreed, they didn't accept my offer so we offered to remove two windows if they had privacy concerns but they don't agree with that.

Applicant:

- Said he did not meet with Mr. Zhou, the Hamptons or neighbor across the street.

Ina Lui:

- Pointed out that they were not currently living in the house as their children attend school in another area. It is unfortunate they do not have a lot of time to meet with the neighborhood, however, they are trying to come to the community a couple of times; she agreed with the across neighbors that the community is not only made up by house, more importantly by people; by practicing empathy. Her husband persuaded her to take off the trees in order to provide more privacy to the neighbor. She emphasized that the privacy is mutual; they also have privacy concerns. If they take away the trees they are sacrificing their privacy in order to meet their requirements; she said she wanted this sacrifice cherished and being seen.

Com. Sun:

- Said he didn't know timeline for construction; these cases cause tension in the community. Said he didn't feel comfortable causing upset in the community; asked if there was any chance working with their architect and neighbors doing some mitigation work; recommend doing some construction to reduce the dust, noises, etc. and have some opportunity working with the neighbors. Cupertino tries to build harmony here, they try to blend all people together.

Com. Lee:

- Asked Commissioners not to speak on behalf of the entire Commission, but to speak for themselves.

Staff:

- Said it has been zoned R1 since the 1950s when the first tentative map was approved for the project.

Com. Lee:

- No questions.

Com. Lee:

- Disclosed that she went to the site recently and spoke with some of the west side and east side neighbors and heard their concerns. Cupertino as a group welcomes, understands and respects the fact there is a blend of different sorts of people who have been there for 30 years or more and others who are newcomers; and she likes the fact that they understand as a community that, and that the ordinance embraces the fact that many of its houses and neighborhoods are limiting their useful life now. Some houses are ready for remodel or to be demolished so this house is ready for some improvements, and that is respected as a community, and the ordinance respects that too.
- Said she would vote to uphold the Director's decision because the house design is fine and meets the requirements; the applicant has put forward something reasonable and she would vote to uphold it for that reason.

Com. Paulsen:

- Said he concurred with Com. Lee to uphold the Director's decision to allow the house to be built. Thirty years ago he and his wife moved into the oldest subdivision in Cupertino, 65 years old, one-story and were the first to build up, building a smaller second story. They knew their neighbors and talked to them beforehand and had a longer process with no problems. At the other end of the street, people started building larger houses and it precipitated discussions which lasted almost a year to rezone the street to a specific kind of zoning. As a result of the process there were some hard feelings which was unfortunate. He encouraged the homeowners to talk to each other and build a sense of community, as it is one of the things that makes a home rich and satisfying. There are mediation services available to resolve differences, but he said he was hopeful they could pull together as a neighborhood. Change is difficult; he encouraged them to pull together as a neighborhood and keep the neighborhood spirit.

Com. Sun:

- Said it was a frustrating decision; he concurred with last speaker. Said he was hopeful that the applicant could reach out to his neighbors because the Planning Commission really cannot do much about the particular case; the applicant has done a lot of work, but can do more. After meeting, they can reach out to their neighbor and make some offer before moving in; do something for the neighbors and have a more positive attitude in working with them. He said it would be beneficial and set a good tone if the applicant and architect could work with the neighbors to create a good rapport. If they could do more work before signing the permit it would probably help the community to work together. He said he concurred with his colleagues to deny the appeal and uphold the Director's decision per the draft resolutions.

Vice Chair Gong:

- Asked the staff and city attorney to articulate the scope of the Planning Commission's duties and responsibilities in the particular situation.

City Attorney:

- In the Planning Commission's role in hearing the appeal, what they are looking at is whether or not this particular design and this particular application meets the criteria set forth in the Code, and when the design and criteria meet the requirements set forth in the Code, it is very difficult to make the findings that it doesn't. In order to deny or grant the appeal and deny the application, findings need to be made as to why this particular project doesn't meet the requirements of the Code. What you are doing now is you are either adopting a resolution to deny the appeal and uphold the Director's hearing, or you would be granting the appeal and denying the application; but then you need to go on and make the findings as to why this particular project doesn't meet the criteria of the Code.

Vice Chair Gong:

- Said with those parameters as stated, there are no findings to grant the appeal.

Chairperson Takahashi:

- Said in the community there are a lot of older neighborhoods, the city term being "in transition", i.e., a lot of new owners buying an old house, demolishing it and typically building the largest house possible on the lot, which has happened. They have used 99.9% of the allowable footprint on the lot, maximizing it. It is seen periodically from the standpoint of the neighbors who have been in this community for a longer period of time and are typically in the smaller, older homes that they are suddenly facing a pink elephant. Said it was a case from his perspective with the applicant by continuing to move forward the way you are moving forward. A speaker made a point about privacy, shade, and the other things. Said as he looked at the site, he tried to look up solar angles at different

times of the year and do his assessment; but didn't think shade is really a huge issue; but understood where the applicant was coming from given the pool is on that side of the property.

- As an applicant you are building this house and you are going to be living in this neighborhood presumably for a long time; and you are moving in under circumstances of tension; there is going to be an immediate resentment as soon as that house is built and the Commission is in a position struggling to find findings to deny this. Said he saw it as problematic from the standpoint of how the neighborhood moves forward; to Com. Paulsen's point people may refuse to talk to each other in the neighborhood.
- Looking at the plans in terms of the setbacks, if the house went back farther, that could potentially mitigate some of the privacy concerns, the insistence of a balcony is always a point of tension with neighbors. Any elements, removing the trees is a good first step, but elements that address the concerns as best as reasonable would be helpful. To the applicant's benefit he said he believed all their windows that are facing the Kacera front porch all look pretty high, they are not view windows where they are low enough where they are going to looking down. Said while there are a lot of windows there, he did not think there is a privacy issue. Said he saw the points on both sides, but not enough to find that this compliant applicant should be denied. He encouraged them to try to work together to have some level of understanding.

Vice Chair Gong:

- Said it was unfortunate that the applicant did not live in the neighborhood; their potential future neighbors don't know them; and it does not sound like either side has made a great effort to get to know each other as people first. She said it was not at the Planning Commission's responsibility and level of duty that would solve what is happening. She commented that the applicant and current neighbors will have to live together in the same neighborhood.

Com. Paulsen:

- Commented to staff, in general in these transition neighborhoods, how much thought has been given to looking at revisions to the R1 ordinance, with regard to height? People building new homes want 10 foot ceilings vs. 8 foot ceilings; they want large structures. It seems to be coming up more frequently because the situation of our city. Has there been any consideration to looking at a revised R1?

Aarti Shrivastava: Benjamin Fu:

- Said the R1 code has been revised four times since 2005 and the Council has made the decisions in terms of what the requirements are for processing, what the requirements are for guidelines, and what they can and cannot impose on projects. With regard to the height of the single story portion which is where most people get their high volume, they could just have to meet the daylight plane and that was adjusted in 2005. If it is on the work program at least staff will bring that up; it has not come up; the last time that the R1 ordinance was updated was 2012; but they don't have the discretion unless it is a design review house. They can make recommendations but cannot require.

Com. Paulsen:

- Said he was surprised that a number of the audience members were not aware that every house on their streets could be built as a two-story house. He suggested a city public information campaign to ask the residents citywide to look at their zoning, find out what can be built in their neighborhood and if they have a problem with it, get together as a neighborhood and have a dialogue with the city about that before the plans are drawn. He said the current case is pretty much compliant but it is unfortunate that it caught people by surprise.

Com. Sun:

- Suggested to city staff that in the future when a new resident moves into the city, help them to work with the neighbors, understand the Code, reach the community about plans and issues, and work things out, which would help cut down on problems they might encounter down the road and avoid difficult situations such as the appeal.

MOTION: Motion by Com. Lee, second by Com. Paulsen, and unanimously carried 5-0-0 to deny the appeal and uphold the Director's decision to approve Applications R-2015-08 and RM-2015-08 per the draft resolutions.

OLD BUSINESS: None

NEW BUSINESS: None

REPORT OF THE PLANNING COMMISSION

Environmental Review Committee: No meeting.

Housing Commission: No meeting.

Economic Development Committee Meeting: No meeting.

Mayor's Monthly Meeting With Commissioners: No meeting.

REPORT OF THE DIRECTOR OF COMMUNITY DEVELOPMENT: None

ADJOURNMENT:

- The meeting was adjourned to next Planning Commission meeting on March 8, 2016, beginning at 6:45 p.m.

Respectfully Submitted:

/s/Elizabeth Ellis

Elizabeth Ellis, Recording Secretary

Approved as amended: March 8, 2016