

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO  
APPROVING A PERMIT FOR THE CONSTRUCTION OF A NEW TWO STORY  
8,962.7 SQUARE FOOT RESIDENCE AT LOT 1 LINDY LANE, APN# 356-25-031

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SECTION I: PROJECT DESCRIPTION

Application No.: R-2016-28  
Applicant: Glush Dada  
Location: Lot 1 Lindy Lane (APN 356-25-031)

SECTION II: FINDINGS FOR A TWO STORY PERMIT:

WHEREAS, the City of Cupertino received an application for a Two-Story Permit for the construction of a new two story 8,962.7 square foot residence at Lot 1 Lindy Lane, APN# 356-25-031, as referenced in Section I above;

WHEREAS, the necessary notices were given and the comment period for the application was provided as required by the Procedural Ordinance, Chapter 19.12 of the City of Cupertino's Municipal Code;

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 this application; and

WHEREAS, the City of Cupertino's Environmental Review Committee at its July 27, 2017 meeting reviewed the Draft Mitigated Negative Declaration, received public comments, and recommended adoption of a Mitigated Negative Declaration on a 5-0 vote with minor modifications, and provided measures that ensure the least impactful development of the proposed residence; and

WHEREAS, the Planning Commission adopted the Final Initial Study/Mitigated Negative Declaration prepared for the Project, adopted the Mitigation Monitoring and Reporting

Program, and incorporated all the identified mitigation measures as conditions of approval for the Project prior to the consideration of this Project;

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

WHEREAS, the Planning Commission finds as follows with regard to this application:

- a) 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 Municipal Code, including Parking, Landscape, and other relevant ordinances; and the two-story non-discretionary permit procedural requirements in the R-1 ordinance.*

- b) 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 proposed site is situated on the northside of Lindy Lane. The previously undeveloped lot is surrounded by existing single-family residences located on similar topography. A geotechnical study has been conducted for the proposed project and all recommendations of the geotechnical consultant have been incorporated into the development conditions of the approval.*

*In addition, the development is required to meet the Best Management Practices (BMPs), as required by the State Water Resources Control Board and the Bay Area Air Quality Management District's (BAAQMD) air quality standards for construction activities. The project is also required to adhere to the City's C.3 Municipal Permit for stormwater runoff management. Therefore, the development will not be injurious to property or improvements in the area nor be detrimental to the public health and safety.*

- c) The proposed project is consistent with zoning regulations and 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 majority of them being multi-level and/or two-story homes. Although larger than most homes within the immediate area, it is allowed to be of this size under the current zoning regulations. In addition, the proposed residence will be sited away from public rights-of way and much of what is seen from Lindy Lane will be screened by the existing mature Coast Live Oak trees and proposed future plantings.*

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*The neighbors above the private road or that are immediately adjacent are not anticipated to be significantly impacted because of the topography of site which results in those neighbors being exposed largely to a one story facade view. Overall, the proposed project maintains the single-family home scale found compatible with the general neighborhood.*

- d) 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 mitigation trees to replace those being removed.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and upon adoption of a Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Project (EA-2016-01), subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 thereof, and those contained in all other Resolutions approved for this Project, the application for a Two-Story Permit, Application no. R-2016-28 is hereby approved; and

That the conclusions and subconclusions upon which the findings and conditions specified in this Resolution are based and which are contained in the Public Hearing record for this Application no. R-2016-28, as set forth in the Minutes of Planning Commission Meeting of September 26, 2017, are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval recommendation is based on the plan set dated October 10, 2016 consisting of 23 sheets, labled A1 – A19, and Sheets 1 -4 entitled, “Custom House Address: Lot #131 21987 Lindy Lane, Cupertino, CA,” drawn and submitted by G'lush Design Associates Inc.; 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 building plans.

3. ACCURACY OF THE 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. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file no. EXC-2016-07, EA-2016-01, and RM-2016-26 shall be applicable to this approval.

5. PREVIOUS CONDITIONS OF APPROVAL

All previous conditions of approval from TM-2005-05 and M-2011-06 shall remain in effect unless superseded by or in conflict with subsequent conditions of approval, including the conditions contained herein in this resolution.

6. 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 exterior colors and materials shall be natural earth tones and have low light reflectivity values of 60 or less. 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.

7. TREE REPLACEMENT AND PLANTING

**Prior to Final Occupancy**, the applicant shall complete the following:

- Replace all removed trees onsite in areas of the parcel to provide screening of the home from neighboring properties. The trees shall be replaced on a 1:1 basis with 24-inch box Coast Live Oak trees unless it is determined by the City's Consulting Arborist that either the number or the type of tree cannot be adequately supported on the property in the long term according to good urban forestry practices due to overplanting or overcrowding. In which case, an in-lieu fee may be paid. The final number, location and species (only native species of trees allowed) of the tree replacements shall be reviewed and approved by the City's consultant arborist and staff. A final landscape plan, that indicates the final number, location and species of replacement trees, shall be submitted to the City **prior to final occupancy**.
- Plant two 36" box Live Oaks within the gap between existing Live Oak trees along Lindy Lane, in order to reduce possible visual impacts for neighbors across Lindy Lane to the south.

8. PRIVACY PLANTING

The final privacy planting plan shall be reviewed and approved by the Planning Division, **prior to issuance of building permits**. The variety, size, and planting distance shall be consistent with the City's requirements.

9. 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.

10. 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**.

11. LANDSCAPE INSTALLATION REPORT

A landscape installation audit shall be conducted by a certified landscape professional after the landscaping and irrigation system have been installed and **prior to final occupancy**. The findings of the assessment shall be consolidated into a landscape installation report.

The landscape installation report shall include, but is not limited to: inspection to confirm that the landscaping and irrigation system are installed as specified in the landscape and irrigation design plan, system tune-up, system test with distribution uniformity, reporting overspray or run-off that causes overland flow, and preparation of an irrigation schedule.

The landscape installation report shall include the following statement: "The landscape and irrigation system have been installed as specified in the landscape and irrigation design plan and complies with the criteria of the ordinance and the permit."

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## 12. 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.

## 13. 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 the City, the Applicant, and/or one of the indemnified parties 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.

## 14. 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.

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PASSED AND ADOPTED this 26<sup>th</sup> day of September, 2017, Regular Meeting of the Planning Commission of the City of Cupertino, State of California, by the following roll call vote:

AYES:	COMMISSIONERS:
NOES:	COMMISSIONERS:
ABSTAIN:	COMMISSIONERS:
ABSENT:	COMMISSIONERS:

ATTEST:

APPROVED:

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Benjamin Fu  
Assist. Director of Community Development

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Don Sun  
Chair, Planning Commission