

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

RESOLUTION NO. 6798

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO
DENYING AN APPEAL AND UPHOLDING THE DIRECTOR OF COMMUNITY
DEVELOPMENT'S DECISION TO ALLOW THE CONSTRUCTION OF A NEW 5,140
SQUARE FOOT SINGLE FAMILY RESIDENCE AT 21900 OAKVIEW LANE

SECTION I: PROJECT DESCRIPTION

Application No.: R-2015-08
Applicant: WEC & Assoc. (Kingkay Capital, LLC)
Appellant: Matthew and Angela Miller, 21884 Oakview Lane
Location: 21900 Oakview Lane. (APN 326-19-105)

SECTION II: FINDINGS FOR A TWO STORY PERMIT:

WHEREAS, the City of Cupertino received an application for a Two-Story Permit as described in Section I of this Resolution;

WHEREAS, the necessary notices were given and the comment period for the application was provided as required by the Procedural Ordinance of the City of Cupertino;

WHEREAS, the City was able to make the findings required under Section 19.28.140 (B) and the application was approved with conditions on January 8, 2016; and

WHEREAS, the notice of decision was mailed to the appropriate parties, including the applicant and any person who contacted City staff with comments during the comment period, notifying them about the possibility of appealing a project; and

WHEREAS, the Planning Commission of the City of Cupertino received an appeal for the Community Development Director's approval of the Two-Story Permit; 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 appeal; and

WHEREAS, the appellant has not met the burden of proof required to support said appeal; and

WHEREAS, the project is determined to be categorically exempt from the California Environmental Quality Act (CEQA); 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 Parking, Landscape, and Fence 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 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 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.

- c) 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. 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 a front-yard tree as required.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 2 thereof, the appeal of an application for a Two-Story Permit, Application no. R-2015-08 is hereby denied and the Director of Community Development's approval of the Two-Story Permit is upheld; and

That the subconclusions upon which the findings and conditions specified in this Resolution are based and contained in the Public Hearing record concerning Application no. R-2015-08 as set forth in the Minutes of Planning Commission Meeting of February 23, 2016, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED PROJECT

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 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. RM-2015-08 shall be applicable to this approval.

5. 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.

6. 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.

7. 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.

8. 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.

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. 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.

12. 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.

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

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

RESOLUTION NO. 6799

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO
DENYING AN APPEAL AND UPHOLDING THE DIRECTOR OF COMMUNITY
DEVELOPMENT'S DECISION TO ALLOW THE CONSTRUCTION OF A SECOND-
STORY BALCONY ON THE NEW RESIDENCE AT 21900 OAKVIEW LANE

SECTION I: PROJECT DESCRIPTION

Application No.: RM-2015-08
Applicant: WEC & Assoc. (Kingkay Capital, LLC)
Appellant: Matthew and Angela Miller, 21884 Oakview Lane
Location: 21900 Oakview Lane. (APN 326-19-105)

SECTION II: FINDINGS FOR A MINOR RESIDENTIAL PERMIT:

WHEREAS, the City of Cupertino received an application for a Minor Residential Permit as described in Section I of this Resolution;

WHEREAS, the necessary notices were given and the comment period for the application was provided as required by the Procedural Ordinance of the City of Cupertino;

WHEREAS, the City was able to make the findings required under Section 19.28.140 (A) and the application was approved with conditions on January 8, 2016; and

WHEREAS, the notice of decision was mailed to the appropriate parties, including the applicant and any person who contacted City staff with comments during the comment period, notifying them about the possibility of appealing a project; and

WHEREAS, the Planning Commission of the City of Cupertino received an appeal for the Community Development Director's approval of the Minor Residential Permit; 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 appeal; and

WHEREAS, the appellant has not met the burden of proof required to support said appeal; and

WHEREAS, the project is determined to be categorically exempt from the California Environmental Quality Act (CEQA); 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, privacy protection planting requirements and other Municipal Code requirements. In addition, the second story balcony and privacy protection requirements of the R-1 Ordinance are met.

- 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 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 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 prescriptive requirements incorporated in 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.

- c) 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. 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 required to reasonably obscure the viewsheds of the second story balcony.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 2 thereof, the appeal of an application for a Minor Residential Permit, Application no. RM-2015-08 is hereby denied and the Director of Community Development's approval of the Minor Residential Permit is upheld; and

That the subconclusions upon which the findings and conditions specified in this Resolution are based and contained in the Public Hearing record concerning Application no. RM-2015-08 as set forth in the Minutes of Planning Commission Meeting of February 23, 2016, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED PROJECT

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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. R-2015-08 shall be applicable to this approval.

5. 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.

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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.

8. 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.

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.

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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.

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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.

