



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

CITY HALL
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CITY COUNCIL STAFF REPORT

Meeting: April 21, 2020

Subject:

Consider an appeal of the Planning Commission’s approval of a Minor Residential Permit to allow a second-story balcony. (Application: RM-2017-39; Applicant: Francis Kun (Tsai residence); Project Location: 21865 San Fernando Avenue; A.P.N.: 357-15-043; Appellant(s): Shayjan Huang and Eric and Cindy Fang)

Recommended Action:

That the City Council deny the appeal and uphold the Planning Commission’s decision to approve the application, in accordance with the draft resolution (see Attachment A).

Discussion:

Project Data:

| | | | |
|--|------------------------------------|-------------------------------|--------------------------------|
| General Plan Designation: | Residential (0-4.4 DU/AC) | | |
| General Plan Special Area: | Monta Vista Village Special Area | | |
| Zoning Designation: | R1-7.5 (Single-Family Residential) | | |
| | Allowed | Existing | Proposed |
| Net Lot Area | - | 9,966 sq. ft. (0.23 acres) | 9,714 sq. ft.* (0.22 acres) |
| Floor Area Ratio (F.A.R.) | 4,371 sq. ft. (45%) | 2,834 sq. ft. (29%) | 4,369 sq. ft. (44.9%) |
| Lot Coverage | 4,857 sq. ft. (50%) | 3,241 sq. ft. (33%) | 4,217 (43.4%) |
| 2nd Floor Balcony Setbacks | Required | Existing | Proposed |
| Front | 20' | N/A | N/A |
| Rear | 20' | N/A | 60'-3" |
| Side | 15' Each Side | N/A | 18'-9" & 17'-5" |
| Project Consistency with: | | | |
| General Plan: | Yes | | |

| | |
|-----------------------|---|
| Zoning: | Yes |
| Environmental Review: | Categorically Exempt per Section 15303, Class 3 of the California Environmental Quality Act (CEQA) Guidelines |

* **NOTE:** Required 5' dedication results in a reduction in the net lot area.

Background:

On October 11, 2017, Francis Kun of Atelier Designs, representing the homeowners David and Yi Ting Tsai, applied for a Residential Design Review Permit to allow the construction of a 520 square-foot first-floor addition and a 820 square-foot second story and a Minor Residential Permit to allow a second-story balcony located at 21865 San Fernando Avenue (See Figure 1).



Figure 1. Subject property – red outline. Appellants' properties – Yellow outline.

Projects where a proposed second-story addition result in a second-story side-yard setback of less than 15 feet to any interior side property line require a Residential Design Review Permit per the Single-Family Residential (R-1) Ordinance, Chapter 19.28 of the Cupertino Municipal Code (CMC). A Residential Design Review Permit was required for this project, and therefore, an architectural peer-review was conducted. Additionally, since a second-story balcony that will create views into neighboring side or rear-yards was proposed, a Minor Residential Permit was required in compliance with the R1 Ordinance.

The following is a summary of the project events leading up to the City Council appeal:

- October 11, 2017: Francis Kun (Tsai residence) applies for a:
- Residential Design Review Permit (R-2017-33) to consider allowing the construction of a 520 square-foot first-floor addition and an 820 square-foot new second story and

- Minor Residential Permit (RM-2017-39) to consider allowing an approximately 280 square-foot second-story balcony located at 21865 San Fernando Avenue.
- October 11 - November 11, 2019: The project undergoes an architectural peer-review by the City's Consulting Architect.
- November 11, 2017: The Planning Division receives a letter in opposition to the project signed by 11 neighbors.
- November 17, 2017: The property owner, David Tsai, meets with adjacent neighbors to discuss the project concerns outlined in the letter.
- February 21, 2018: The applicant revises the project to address concerns identified by adjacent property owners as follows:
 - A proposed three-car (653 sq. ft.) garage reduced to a two-car (498.5 sq. ft.) garage with the third car space converted to a carport;
 - The first-floor rear-yard setback increased from 41'-7" to 48';
 - The proposed second story relocated approximately 12' closer to the street; thereby increasing the second-story rear-yard setback from 68' to 80'-9" and the balcony rear-yard setback from 44'-4" to 60'-3";
 - The balcony reduced by approximately 235 sq. ft., resulting in an increase in the balcony side-yard setback from 10' to 18'-9"; and
 - The proposed exterior staircase to the balcony removed.
- November 2017 - May 2019: Staff conducts multiple informal meetings at City Hall and on-site with adjacent property owners.
- May 1, 2019: 14-day public comment period starts.
- May 1 – 15, 2019: Staff receives multiple written comments during the public comment period, including a letter signed by 35 neighbors (this was re-submitted with the Planning Commission appeal forms).¹

¹ See Attachment 4 online at: <https://cupertino.legistar.com/LegislationDetail.aspx?ID=4223260&GUID=89E9C2CA-AAC3-45E8-927B-16A9D7E919EB&Options=&Search=>

- June 24, 2019 The applicant revises the project again in response to comments received during the public comment period. The following revisions were incorporated to the carport design:
- The width of the proposed carport posts were reduced; and
 - A flat roof line was incorporated into the design by reducing the roof pitch of the carport, resulting in a decrease in height by approximately 4’.
- June 25, 2019: The Residential Design Review and Minor Residential permits are approved as they are found to be consistent with all aspects of the R-1 Ordinance.
- July 10, 2019: Shayjan Huang, and Eric and Cindy Fang file an appeal of the Director of Community Development’s decision to approve the Residential Design Review (R-2017-33) and Minor Residential (RM-2017-39) permits.
- November 12, 2019: Planning Commission conducts a public hearing, considers the facts, comments and data, and denies the appeal and upholds the Director’s decision to approve the Residential Design Review and Minor Residential permits with minor revisions to the resolutions (see Attachments B, C, and D).
- November 26, 2019: Shayjan Huang and Eric and Cindy Fang appeal the Planning Commission’s decision to uphold the Minor Residential Permit (RM-2017-39) (Attachment E).² Attachment E includes two letters of concern signed by a total of 64 residents. One of the letters was previously submitted during the May 2019 public comment period, and the second letter was submitted as a desk item at the Planning Commission’s November 2019 public hearing.

Contents of the Appeal:

The appeal of the Minor Residential Permit (RM-2017-39) is focused on privacy, security, and the obstruction of neighboring views. The appellants’ specific basis of appeal of the Planning Commission’s decision is summarized below with relevant quotes in *italics*.

² Residential Design Review Permit (R-2017-33) was not appealed, therefore, issues related to that application are not addressed in this staff report.

Comments:

"The balcony will basically be well into the lot and look into every neighbor's backyards."

"Not only will every neighbor's backyard privacy and security be severely impacted..."

"Numerous neighbors see the huge 284 sq. ft. balcony as a safety threat."

"...neighbors will be forced to behold this watch-tower like, monster balcony instead of open views from their backyards."

"...not build his 500+ SF balcony for the purpose of aligning with his neighbors to leave the neighborhood backyard views/space open."

"We are simply asking not build this type of balcony."

"With the close proximity of living next to each other, our backyard serenity and beauty is ruined."

"Granting this permit will be detrimental or injurious to property value improvements in the vicinity. Countless neighbors say they do not want to live next to a house like this."

"We are not ensured the provision of light, healthy air, and reasonable level of privacy with this proposed project."

"This proposed project not only breaks the harmonious scale and design of the general neighborhood but destroys relationships with neighbors."

"The proposed long building, though under adherence to setback requirements, is unattractive and destroys the backyard beauty and visual enjoyment of the mountains and surrounding nature."

"...it bring [sic] much pain and distress to its surrounding neighbors due to their invasiveness into our backyards, privacy and security issues, and blocking of our open space/view."

Staff response:

One of the purposes of the R-1 Ordinance is to ensure the provision of light, air, and a reasonable level of privacy to individual residential parcels (CMC Section 19.28.010). This is achieved by implementing objective requirements adopted in the R-1 Ordinance. Building envelope requirements for the first floor and setback requirements for the first and second floors ensure that a reasonable level of light and air is available for neighbors. Privacy protection plantings mitigate privacy impacts from second-story windows and balconies and the visual mass of two-story residences. Preservation of views is not one of the stated purposes of the R-1 Ordinance.

The R-1 Ordinance has specified setback requirements for second story balconies. The project proposes a rear-yard balcony setback of over 60' where 20' is required; a side-yard balcony setback of 18'-9" on the west side and 17'-5" on the east side,

where only 15' is required. Therefore, the proposed second-story balcony exceeds the established setback requirements. The square footage of second story balconies is not included in floor area calculations, but in the event the balcony overhangs over the first floor, it is included in the lot coverage. Elimination of the balcony would not impact the floor area or lot coverage for the property.

In addition, the project complies with the privacy screening requirements of the R-1 Ordinance by providing privacy screening plantings for the second-story balcony along the western, eastern, and northern property lines. Per the R-1 Ordinance, the objective of privacy protection plantings is to provide substantial (not complete) screening within three years of planting. These plantings are considered Protected Trees under the City's Municipal Code (Chapter 14.18) and are recorded as such with a covenant against the property to inform current and future property owners about their protected status. They cannot be removed without obtaining a tree removal permit and providing replacement plantings, which are subsequently recorded as Protected Trees.

To further address the appellant's privacy concerns, the Planning Commission revised the privacy planting condition (Condition No. 10) in the resolution for the Minor Residential Permit to additionally stipulate that "privacy protection shall include alternative privacy plantings consistent with the City's requirements and balcony railing of at least 48", comprised of materials that provide sufficient privacy screening." With this modification, the Planning Commission denied the appeal and upheld the Director's decision to approve the Minor Residential Permit (in addition to the Residential Design Review Permit).

There are several other points raised by the appellants which are addressed below:

- *Other neighbors would not propose a second story balcony:* All the properties in the vicinity of the subject property are zoned R-1 and could propose similar second-story balconies as long as setback and privacy plantings are provided (unless waived by a neighbor).
- *Concerns about the length of the building:* The length of the building (including the length the second story balcony adds to it) is a function of the depth of the lot and the building pad allowed by the R-1 Ordinance.
- *Safety concerns related to potential future Short Term Rental activity:* While this is speculative, the City currently has regulations in place regarding Short Term Rental activity. Furthermore, the City is in the process of considering adoption of Short Term Rental regulations, which would limit the number of overnight guests and prohibit commercial activity – including parties and weddings - among other Municipal Code regulations that could be used to restrict such future activities.

- *The proposed residence would negatively impact surrounding property values:* However, there are no facts provided related to this assertion.
- *The balcony is causing neighbor disharmony:* The term “harmony” in this context pertains to architectural harmony – not neighbor harmony. The architectural design of the project, including the second-story balcony, was reviewed by the City’s consulting architect. Modifications were made to the original design by incorporating the consulting architect’s recommendations. With these changes, the home with the balcony was found to be compatible with the neighborhood and meet the design principles in the R-1 Ordinance.

There have been no changes to the project since the Planning Commission’s decision. The City Council has the option to amend the size and location of the second-story balcony and/or require larger and specific privacy trees or uphold the appeal.

Environmental Review:

This project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) per Section 15303 of the CEQA Guidelines.

Public Noticing and Outreach:

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

| Notice of Public Hearing & Site Signage | Agenda |
|--|---|
| <ul style="list-style-type: none"> ▪ Site Signage (<i>at least 10 days prior to hearing</i>) ▪ 108 notices mailed to property owners within 300 feet the project site and individuals who commented on the project (<i>at least 10 days prior to the hearing</i>) ▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>) | <ul style="list-style-type: none"> ▪ Posted on the City's official notice bulletin board (<i>six days prior to hearing</i>) ▪ Posted on the City of Cupertino’s Web site (<i>six days prior to hearing</i>) |

No public comments were received at the time of production of this staff report.

Sustainability Impact:

None.

Fiscal Impact:

None.

Conclusion:

Planning Commission and staff found that the proposed project complies with all aspects of Chapter 19.28 of the Cupertino Municipal Code. Further, the applicant has revised their project twice to address the concerns of surrounding property owners. Therefore, staff recommends that the City Council deny the appeal and uphold the Planning Commission's decision to approve the Minor Residential Permit in accordance with the Resolution for Application RM-2017-39.

Next Steps:

The City Council's decision on this project is final unless reconsidered within 10 days of the decision.

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Reviewed by:

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Approved for Submission by:

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Attachments:

- A. Draft Resolution approving RM-2017-39
- B. Planning Commission Resolution No. 6887 (R-2017-33)
- C. Planning Commission Resolution No. 6888 (RM-2017-39)
- D. Approved Plan Set
- E. Appellant Letter and Supplemental Documents