



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION STAFF REPORT

Meeting: June 14, 2022

Subject

Consider an appeal of the Community Development Director's approval of a Two-Story Permit to consider the construction of a new 3,233-square-foot, two-story single-family residence, and an attached 797-square-foot Accessory Dwelling Unit (ADU) (Application No.: R-2021-023; Applicant: Kyle Chan.; Property Owners: Dung N. (David) Do & Wen Hsiu (Cristina) Hung; Appellant: Sanjiv and Deepika Kapil; Location: 6522 Clifford Dr; APN # 369-24-037)

Recommended Action

That the Planning Commission conduct a public hearing and adopt the Draft Resolution (Attachment 1) denying the appeal and upholding the Director's decision to approve the application.

Discussion

Project Data:

General Plan Designation:	Residential Low Density (1-5 DU/Acre)	
General Plan Neighborhood:	South Blaney	
Zoning Designation:	R1-6 (Single-Family Residential)	
	Allowed	Proposed
Net Lot Area	≥ 6,000 sq. ft.	7,303 sq. ft.
Floor Area Ratio (F.A.R.)	3,286 sq. ft. (45%) + ≤ 800 sq. ft. ADU	3,233 sq. ft. (44.3%) + 797 sq. ft. ADU
Lot Coverage	3,359 sq. ft. (50%) + ≤ 800 sq. ft. ADU	3,131 sq. ft. (43%) + 797 sq. ft. ADU
1st Floor Setbacks	Required	Proposed
Front	20'	20'
Rear	20'	36'-7" *
Side – Corner Lot	Interior Side: 5'; Street Side: 12'	Interior (North) Side: 5'*; Street (South) Side: 12'-10"

Note: * Setback to ADU is allowed to be 4 feet by state law. Therefore, interior (north) side and rear setback is measured to the principal dwelling unit.		
2nd Floor Setbacks	Required	Proposed
Front	25'	25'
Rear	25'	46'-6 1/2"
Side	Combined 25' (no side less than 10')	Combined – 38'-3/8" Interior (North) Side: 25'-6 1/2" Street (South) Side: 14'- 4 1/8"
ADU Setbacks	Required	Proposed
Front	20'	20'
Rear	4'	5'
Side	4'	5'
Total Building Height	Allowed	Proposed
Principal Building	28' max.	25'-2 1/2"
Attached ADU	Same as principal unit	14'-11"
Project Consistency with:		
General Plan:	Yes	
Zoning:	Yes	
Environmental Review:	Categorically Exempt per Section 15303, Class 3 of the California Environmental Quality Act (CEQA)	

Background:

On June 22, 2021, Kyle Chan of Kyle Chan Architect, Inc., representing the homeowners, Dung N. Do & Wen Hsiu Hung, applied for a Two-Story Permit for the City to consider allowing the construction of a new 3233-square-foot two-story home with a 797-square-foot attached accessory dwelling unit (ADU) located at 6522 Clifford Drive (Figure 1).

The property is located in the South Blaney neighborhood and zoned R1-6. Surrounding uses include other R1-6 zoned properties comprised of a mixture of single-story and two-story single-family residences.



Figure 1. Applicant's property outlined in red.
Appellants' properties outlined in orange.

The Single-Family Residential (R-1) Ordinance, Chapter 19.28 of the Cupertino Municipal Code (CMC) (Attachment 2) requires a Two-Story Permit for two-story additions or new two-story residences. Two Story Permit applications require administrative review and approval by the Director of Community Development per CMC Chapter 19.12: Administration.

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

August 12, 2021	The applicant (Kyle Chan) applies for a Two-Story Permit (R-2021-023)
August 12, 2021 – December 2, 2021	Planning staff reviews the proposed project for conformance to the Cupertino Municipal Code.
December 9, 2021 – January 3, 2022	Staff receives several comments from one resident during the 14-day public comment period. Staff responds to the public comment and includes a summary of comments and responses in the Action Letter dated January 31, 2022 (Attachment 4).
January 27, 2022	The applicant revises the project in response to comments received during the public comment period as follows: <ul style="list-style-type: none">• Glazing on right side (north) windows changed to frosted glass material.
January 31, 2022	The Director of Community Development approves a Two-Story Permit (R-2021-023) to allow the construction of a new 3,233 sq. ft. two-story home with a 797 sq. ft. attached ADU.
February 14, 2022	Sanjiv Kapil and Deepika Kapil, property owners of 6544 Clifford Drive, submit an appeal (Attachment 5) of the Director's approval of the project.

Basis of the Appeal:

The appellants' specific basis of appeal of the Director's decision is summarized below with related quotes in *italics*. Where appropriate, staff's response follows.

1. Accessory Dwelling Unit

The following issues raised pertain to the Accessory Dwelling Unit (ADU) proposed as a part of the project. Accessory Dwelling Unit development proposals are reviewed and approved ministerially and are precluded from consideration in this appeal. However, staff has provided a brief response to each concern.

"ADU Bathroom window and kitchen windows are taller than fence separating 6522 and 6544 property and easily allows view of our backyard thus violating privacy (needs DRC review of such clause).

The proposed attached ADU complies with the site development regulations of the ADU Ordinance, Chapter 19.112 of the Cupertino Municipal Code (CMC) with regard to setbacks, height, and parking requirements. Under State law, the proposed 797 sq. ft. ADU is exempt from floor area and lot coverage requirements since it is less than 800 sq. ft. Further, the CMC does not require privacy plantings for any first floor windows – whether as part of the principal dwelling unit or an accessory dwelling unit.

“PG&E High voltage distribution pole is 5ft. away from ADU in 6522. This has been ignored in plans.”

The proximity of the proposed attached ADU to PG&E’s pole will be reviewed by PG&E during Building Permit review of the project. As proposed, the ADU complies with the setback requirements and height requirements within the existing five-foot-wide Wire Clearance Easement located at the rear of the property. The Wire Clearance Easement allows structures that are less than 15-feet in height to encroach into the easement area. The proposed attached ADU has a five-foot setback from the rear and has a maximum height of 14’-11”, thus, complying with the development standards of the easement area and the ADU Ordinance.

“The pole is a fire hazard due to sparking in storms and being a wooden pole can fall on ADU and might already be violating city guidelines. This directly relates to small setbacks given to ADU placement in 6522, which could have been placed elsewhere on property”

The proposed attached ADU complies with the site development regulations with regard to setbacks, height, and parking requirements as required by state law and the CMC. As mentioned above, the proposed attached ADU will be evaluated by PG&E and/or other agencies such as the Santa Clara County Fire Department, to ensure consistency with those agencies’ standards and regulations regarding fire safety.

“The separation of 5 ft between fence and ADU’s is insufficient to plant privacy tree as they also pose danger of falling during inclement weather”

The City cannot require the ADU to be setback more than four feet from the property lines pursuant to state law. The landscape plan includes privacy plantings between the proposed ADU and the fence, which are proposed by a licensed landscape professional. Placement of the plants have been reviewed by the landscape professional and the Planning Division has verified compliance with the Landscape Ordinance, Chapter 14.15 of the CMC and Landscape Requirements, Section 19.28.120 of the CMC. In many cases, planters to accommodate privacy plantings are between three to five feet in width.

2. Primary Dwelling Unit:

“Second Story three windows shown A3.2 (south) elevation gives direct view of two neighbors backyards and they also violate floor to lower edge height guidelines of minimum 5 ft.”

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 light and air is available for neighbors. The proposal for 6522 Clifford Drive meets, and in some cases, exceeds all setback requirements for the R1-6 zoning district. The project proposes a first-floor rear yard setback of 36'-7" where only 20'-0" is required and a second story rear yard setback of 46'-6 1/2" where only 25'-0" is required.

Per the R-1 Ordinance, a reasonable level of privacy is afforded to neighbors, rather than complete privacy and as a result, the objective of privacy protection plantings is to provide substantial, not complete, screening within three years of planting to mitigate second-story window privacy impacts. The project complies with the privacy screening requirements of the R-1 Ordinance by providing privacy screening plantings for the second-story windows with a sill height below five feet along the rear (southern) property line (Figure 2).

The applicant has proposed to plant five *Laurus nobilis*, one of the City's approved privacy planting species, along the rear property line spaced at the appropriate distance to provide screening to the neighbor along the rear (southern) property line and a very small portion of the appellant's rear yard (see

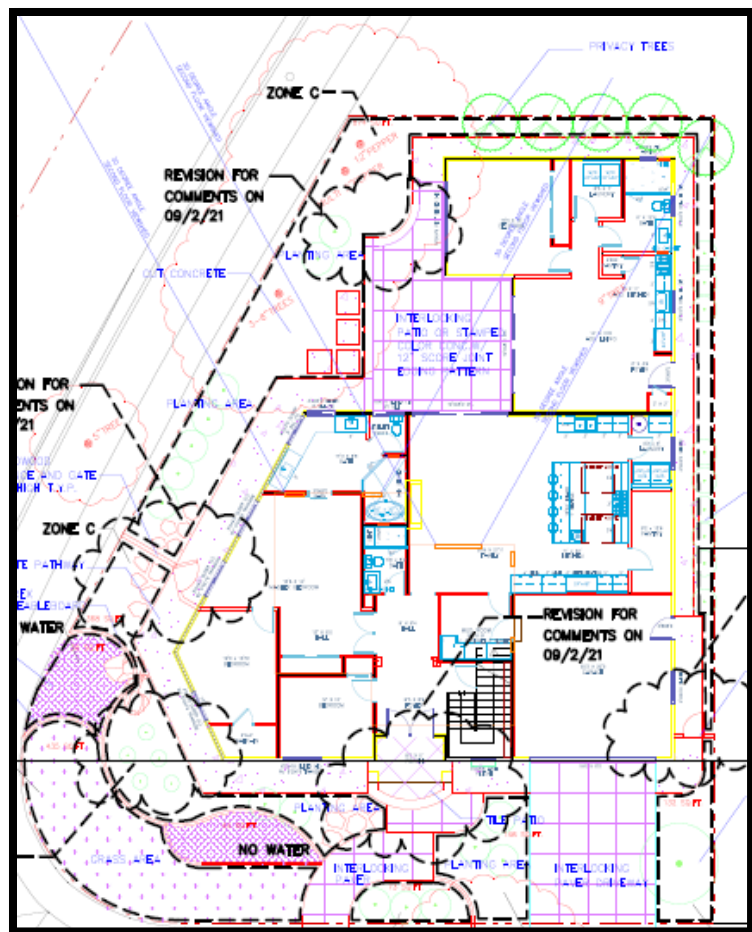


Figure 2. Planting Plan.

green outlines in Figure 2). The City's approved list of privacy plantings requires *Laurus nobilis* to be at least 15-gallon container size and have a minimum planting height of six feet. Additionally, while views into front yards are not required to be mitigated per the Cupertino Municipal Code, the applicant is proposing to retain three existing pepper trees, located along the rear (southern) property line and along the street side (eastern) property line to provide additional screening for the adjacent neighbor on the south. It should be noted that this neighbor has not raised concerns about the applicant's choice of privacy planting.

Privacy protection 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. Protected trees are not permitted to be removed without obtaining a tree removal permit and providing replacement plantings. The CMC does not require privacy plantings for any first-floor windows or openings.

"Right (North) elevation two windows directly overlook over bathrooms though they are frosted, need to be immovable."

The right (northern) elevation proposes two frosted glass, operable windows with a sill height of six feet. The proposed windows do not meet the criteria for requiring privacy planting under the CMC. While it would be very difficult to see over a six-foot high windowsill, in order to thoroughly discuss the appellant's privacy concerns, staff discussed alternative window designs with the applicant. If the Commission so desires, the applicant is agreeable to replacing these windows with ones that only open along the top edge of the windowsill while the bottom would be hinged. Thus, the window would remain operable, but limited to a hinge window design to allow air flow. The hinge window design could be added as a condition of approval, and reviewed by the Planning Division, prior to issuance of Building Permits.

Housing Accountability Act

The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

Subdivision (j) of the HAA also requires the local agency to identify and provide written documentation of the reasons why a proposed housing development is inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other provision within 30 days of the date that the application for the housing development project is determined to be complete if the housing development project contains 150 or fewer housing units.

The proposed project has been determined to comply with applicable, objective general plan and zoning standards, including maximum height, density, minimum setbacks, and number of parking spaces. Thus, subdivision (j) of the Housing Accountability Act applies. Staff is not aware of any basis to make the findings listed above.

Environmental Review:

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

Public Noticing and Community 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>)▪ 9 notices mailed to property owners adjacent to the project site and residents who submitted a public comment prior to the Director's approval (<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>five days prior to hearing</i>)▪ Posted on the City of Cupertino's Web site (<i>five days prior to hearing</i>)

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

Conclusion

The project complies with all R-1 Ordinance requirements, which are in place, in part to guarantee a reasonable level of light, air, privacy, and maintain structures at a comparable scale within the neighborhood through requirements such as setbacks, height, the daylight plane, and privacy planting requirements. Further, the applicant has revised the project design to reflect the concerns of adjacent property owner. Therefore, staff recommends that the Planning Commission deny the appeal and uphold the Community Development Director's decision to approve the Two-Story Permit through the Resolution for Application R-2021-023.

With respect to the Two-Story Permit, the following findings may be made:

1. *The project is consistent with the Cupertino General Plan, any applicable specific plans, zoning ordinance, and the purposes of the R-1 Ordinance; and*

The proposed project is consistent with the General Plan as the project is within the Low-Density land use area. There are no applicable specific plans that affect the project. The project has been found to be consistent with the requirements of Cupertino Municipal Code Chapter 19.28 Single Family (R-1) Residential.

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; and*

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 project is located within the R1-6 (Single Family Residential) zoning district and will be compatible with the surrounding uses of the neighborhood. The project meets the building development regulations of the R-1 Ordinance and complies with the privacy protection measures to ensure that visual impacts to adjacent neighbors are mitigated.

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

The proposed project is located in a residential area consisting of single-family homes. The subject neighborhood contains a mix of single-story and two-story homes, making the proposed project compatible with the neighborhood. The proposed 3,223 sq. ft. two-story residence is comparable in size to the existing residences in the surrounding area and complies with the R-1 Ordinance regulations for floor area ratio. Additionally, the project complies with all other development regulations for R1-6 zoned properties regarding mass and bulk, including, but not limited to, first floor building envelope, minimum setback regulations, and building height limitations. Furthermore, the applicant proposes a design that is found to be harmonious in scale and design with the neighborhood, in that, the architectural features, change in materials, and symmetry of window treatments were considered for the home design which reduces the overall bulk and massing to the street frontage of the corner lot. The project meets the finding that requires compatibility with the existing single-family home scale within the general neighborhood.

4. *Adverse visual impacts on adjoining properties have been reasonably mitigated.*

Any potential adverse visual impacts on adjoining properties have been reasonably mitigated through adherence to the setback requirements and privacy protection measures of the R-1 Ordinance. The proposal for 6522 Clifford Drive meets, and in some cases exceeds, all setback requirements for the R1-6 zoning district. The project

proposes a first-floor rear-yard setback of 36'-7", where only 20' is required and a second-story rear-yard setback of 46'-6 1/2", where 25' is required.

The R-1 Ordinance allows property owners the ability to construct second-story windows as long as privacy protection trees and/or shrubs are planted as required by the ordinance. The project complies with the privacy screening requirements of the R-1 Ordinance by providing privacy screening plantings for the second-story windows with a sill height below five feet along the rear (southern) property line and left (eastern) property lines. Per the R-1 Ordinance, the objective of privacy protection plantings is to provide substantial screening within three years of planting. Privacy protection 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. Protected trees are not permitted to be removed without obtaining a tree removal permit and providing replacement plantings.

Next Steps

The Planning Commission's decision on this project is final unless appealed within 14 days of the decision. If appealed, the City Council will hear the final appeal.

<u>Prepared by:</u>	Brianne Harkousha, Associate Planner
<u>Reviewed by:</u>	Piu Ghosh, Planning Manager
<u>Approved by:</u>	Benjamin Fu, Director of Community Development

ATTACHMENTS

1. Draft Resolution for R-2021-023
2. Single-Family Residential (R-1) Ordinance
3. Action Letter with Conditions of Approval
4. Approved Plan Set
5. Sanjiv and Deepika Kapil Appellant Letter