



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

CITY HALL
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January 31, 2022

Kyle Chan Architect, Inc.
1416 Saratoga Ave #120
San Jose, CA 95129

SUBJECT: TWO STORY PERMIT ACTION LETTER – Application R-2021-023

This letter confirms the decision of the Director of Community Development, given on January 31, 2022, approving a Two-Story Permit (R-2021-023) to allow for a new 3,233 square-foot two-story residence and a 797 square-foot attached accessory dwelling unit, resulting in a 4,030 square-foot residence located at 6522 Clifford Drive, with the following conditions:

1. APPROVED EXHIBITS

The approval is based on a plan set entitled “6522 Clifford Drive”, consisting of 21 sheets labeled “Boundary and Topographic Survey, A0.1, A0.5, A1.1, A2.1, A2.2, A3.1, A3.2, A8.0, C1, C2, C3, C4, C5, C6, C7, L0.0, L1.0, L2.0, L3.0, and L4.0” 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 property data may invalidate this approval and may require additional review.

4. COMPLIANCE WITH PUBLIC WORKS CONFIRMATION FORM

The project shall comply with the requirements indicated on the Public Works Confirmation form dated February 19, 2015, and updated on May 13, 2021, 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.

5. 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.

6. BIRD SAFE COMPLIANCE

Prior to issuance of Building Permits, the applicant/property owner shall submit final plans in compliance with the approved plans to comply with development standards of Cupertino Municipal Code Section 19.102.030 Bird-Safe Development Requirements. In the event changes are proposed from the approved plans, said changes must be reviewed and approved by the Director of Community Development or their designee. The applicant shall provide all necessary documentation required to determine compliance with the Municipal Code.

7. DARK SKY COMPLIANCE

Prior to issuance of Building Permits, the applicant/property owner shall submit final plans in compliance with the approved lighting plans to comply with development standards of Cupertino Municipal Code Section 19.102.040 Outdoor Lighting Requirements. In the event changes are proposed from the approved plans, said changes must be reviewed and approved by the Director of Community Development or their designee. The applicant shall provide all documentation required to determine compliance with the Municipal Code.

8. DEMOLITION REQUIREMENTS

All demolished building and site materials shall be recycled to the maximum extent feasible subject to the Building Official. The applicant shall provide evidence that materials were recycled prior to issuance of final demolition permits.

9. DUST CONTROL

The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site:

- a) Water all exposed surfaces areas (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.

- b) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d) All vehicle speeds on unpaved roads shall be limited to 15 mph.
- e) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- f) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- g) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h) Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- i) The applicant shall incorporate the City's construction best management practices into the building permit plan set.

10. EXTERIOR BUILDING MATERIALS/TREATMENTS

The final building exterior plan shall closely resemble the details shown on the original approved plans. Final building exterior treatment plan (including but not limited to details on exterior color, materials, architectural treatments, doors, windows, lighting fixtures, and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits to ensure quality and consistency. Any exterior changes determined to be substantial by the Director of Community Development shall either require a modification to this permit or a new permit based on the extent of the change.

11. MODIFICATIONS TO WINDOWS ON RIGHT SIDE (NORTHWEST) ELEVATION

The project applicant shall modify the two windows on the right (northwest) side elevation to be installed as frosted glass to further mitigate privacy impacts to adjacent property owners as agreed upon. Prior to issuance of Building Permits, the applicant shall provide an updated elevation sheet that shows the frosted glass material used for the proposed windows and shall be consistent with the door/window schedule during plan review of the Building Permit.

12. FENCES

The location of all fences on the site shall be indicated on building permit plans, comply with Chapter 19.48, Fences, of the Cupertino Municipal Code, and must be reviewed and approved prior to issuance of building permits.

13. FRONT YARD TREE

The applicant shall indicate on site and landscape plans the location of a front yard tree to be located within the front yard setback area in order to screen the massing of the second story. The front yard tree shall be a minimum 24-inch box and 6 feet planted height and otherwise be consistent with the City's requirements.

14. FRONT YARD TREE COVENANT

The property owner shall record a covenant on this property with the Santa Clara County Recorder's Office that requires the retention and maintenance of the required front yard tree. 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.

15. GRADING AND CONSTRUCTION HOURS AND NOISE LIMITS

- a. All grading activities shall be limited to the dry season (April 15 to October 1), unless permitted otherwise by the Director of Public works.
- b. Construction hours and noise limits shall be compliant with all requirements of Chapter 10.48 of the Cupertino Municipal Code.
- c. Grading, street construction, underground utility and demolition hours for work done more than 750 feet away from residential areas shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Grading, street construction, demolition or underground utility work within 750 feet of residential areas shall not occur on Saturdays, Sundays, holidays, and during the nighttime period as defined in Section 10.48.053(b) of the Municipal Code.
- d. Construction activities shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Construction activities are not allowed on holidays as defined in Chapter 10.48 of the Municipal Code. Night time construction is allowed if compliant with nighttime standards of Section 10.48 of the Cupertino Municipal Code.
- e. Rules and regulations pertaining to all construction activities and limitations identified in this permit, along with the name and telephone number of an applicant appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
- f. The applicant shall be responsible for educating all contractors and subcontractors of said construction restrictions.

The applicant shall comply with the above grading and construction hours and noise limit requirements unless otherwise indicated

16. LANDSCAPE PROJECT SUBMITTAL

Prior to issuance of building permits, the applicant shall submit a full Landscape Documentation Package, per sections 14.15.050 A, B, C, and D of the Landscape Ordinance, for projects with landscape area 500 square feet or more or elect to submit a Prescriptive Compliance Application per sections 14.15.040 A, B, and C for projects with landscape area between 500 square feet and 2,500 square feet. The Landscape Documentation Package or Prescriptive Compliance Application shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits, and additional requirements per sections 14.15.040 D, E, F, and G or 14.15.050 E, F, G, H, and I will be required to be reviewed and approved prior to final inspections.

17. NESTING BIRDS

Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Department of Fish and Game Code.

- a. Construction and tree removal/pruning activities shall be scheduled to avoid the nesting season to the extent feasible. If feasible, tree removal and/or pruning shall be completed before the start of the nesting season to help preclude nesting. The nesting season for most birds and raptors in the San Francisco Bay area extends from February 1 through August 31. Preconstruction surveys (described below) are not required for tree removal or construction activities outside the nesting period.
- b. If construction activities and any required tree removal occur during the nesting season (February 1 and August 31), a qualified ornithologist shall be required to conduct surveys prior to tree removal or construction activities. Preconstruction surveys shall be conducted no more than 14 days prior to the start of tree removal, pruning or construction. Preconstruction surveys shall be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped. During this survey, the ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests.
- c. If the survey does not identify any nesting birds that would be affected by construction activities, no further mitigation is required. If an active nest containing viable eggs or young birds is found sufficiently close to work areas to be disturbed by these activities, their locations shall be documented and protective measures implemented under the direction of the qualified ornithologist until the nests no longer contain eggs or young birds.
- d. Protective measures shall include establishment of clearly delineated exclusion zones (i.e. demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified ornithologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. The active nest within an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify signs

of disturbance and confirm nesting status. The radius of an exclusion zone may be increased by the qualified biologist, if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist only in consultation with California Department of Fish and Wildlife. The protection measures and buffers shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

- e. A final report on nesting birds and raptors, including survey methodology, survey date(s), map of identified active nests (if any), and protection measures (if required), shall be submitted to the Planning Manager, through the building permit review process, and be completed to the satisfaction of the Community Development Director prior to the start of grading.

18. 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.

19. 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.

20. INDEMNIFICATION

As part of the application, to the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "proceeding") brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel 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. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

21. 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.

Please note that if this permit is not vested within a year, it shall expire on January 31, 2023.

Staff received following public comments from one property owner. Staff's response is in italics:

- The adjacent property owner expressed concerns about setbacks at the interior side yard and rear yard that may cause a potential fire hazard.
Staff recorded the public comment, shared the comment with the subject property owners/applicant, and responded to the commenter. Staff explained the project proposals setbacks for the primary dwelling and attached accessory dwelling unit as proposed for the scope of work. The Planning Division reviewed the setback

requirements for a corner lot and verified that the proposed project complies with the first and second floor setbacks pursuant to Cupertino Municipal Code Section 19.28.070 and the attached accessory dwelling unit setbacks pursuant to Cupertino Municipal Code Section 19.112.040.

Additionally, staff explained that all new construction must comply with the California Building Code, including any requirements for fire sprinklers. The Building Division will review fire sprinkler requirements for the project during Building Permit submittal.

- The adjacent property owner stated a general concern/complaint regarding the setbacks of the proposed residence and the proposal for a two-story home in an area that appears to have one-story homes.

Staff recorded the public comment, shared the comment with the subject property owners/applicant, and responded to the commenter. Staff explained that all properties zoned as single-family residential (R1) contain a variety of one or two-story residences and the Cupertino Municipal Code does not prohibit development of a two-story residence request. However, a two-story permit must be granted to develop a two-story home on a property with a residential zoning district and must be consistent with the development regulations of Cupertino Municipal Code Chapter 19.28.

The proposed two-story residence also complies with the height limits set out in the Cupertino Municipal Code. Per the R1 Ordinance (Chapter 19.28 of the Cupertino Municipal Code), the maximum height for single-family residences in the R1 zoning district is 28 feet. The proposed main home has a proposed height of 25'-2.5", thereby complying with the maximum height requirement.

Additionally, the project complies with all required minimum setbacks for the first and second floors as well as for the ADU. Furthermore, as proposed, the project does not require any setback variances. Per recent State law, the ADU is permitted to have side-yard and rear-yard setbacks of four feet, and the property need not comply with any usable rear yard requirements.

- The adjacent property owner expressed privacy concerns for adjacent residences due to the new two-story structure and due to new windows along the right side and rear elevations.

Staff recorded the public comment, shared the comment with the subject property owners/applicant, and responded to the commenter. Staff explained that per the R1 Ordinance, all residences within the R1 zoning district with new and/or modified two-story windows with a windowsill below five feet from finished floor are required to install City-approved privacy plantings prior to final occupancy. The privacy plantings are required to be inspected by an arborist/licensed landscape architect as well as City staff. Additionally, the property owner is required to record an agreement with Santa Clara County agreeing to maintain all required privacy plantings.

Additionally, staff explained that the proposed second story windows with windowsills along the right side (northwest) elevation are proposed as greater than five feet from finished floor, resulting in a six-foot windowsill. As discussed above, the proposed project is not required to provide privacy plantings to mitigate privacy impacts as the proposed windows with windowsill greater than five feet would be exempt from Cupertino Municipal Code Section 19.28.120. However, the owner/applicant of the proposed project agreed to mitigate further privacy concerns by modifying the windows to a frosted glass material in addition to the windowsills at greater than six feet from finished floor. The additional privacy mitigation measure is included as a condition of approval to be reviewed and approved prior to Building Permit issuance and the revised plan is included as part of the combined project plan set for the planning permit (R-2021-023).

Staff has made all the findings that are required for approval of a Two-Story Permit as required and additional conditions were placed as a condition for approval by Cupertino's Municipal Code, Chapter 19.28.140 (B).

1. The project is consistent with the Cupertino General Plan, any applicable specific plans, zoning ordinances and the purposes of this title.

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 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 R1-6 (Single Family Residential) zoning district and will be compatible with the surrounding uses of the neighborhood.

3. 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. The proposed project maintains the single-family home scale found compatible with the general neighborhood.

4. Adverse visual impacts on adjoining properties have been reasonably mitigated.
Any potential adverse impacts on adjoining properties have been reasonably mitigated through adherence to the privacy protection measures of the R-1 Ordinance. Furthermore, the applicant agreed to further mitigate privacy concerns to address the adjacent neighbors' comments on privacy impacts of the right side (northwest) windows by providing windows with frosted glass. Additionally, the windowsills are measured at six-foot from the finished floor to the window sill that would exempt any additional privacy plantings as required pursuant to CMC Section 19.28.120.

Also, please note that an appeal of this decision can be made within fourteen (14) calendar days from the date of this letter (Monday, February 14, 2022, at 5:00 p.m.). If this happens, you will be notified of a public hearing, which will be scheduled before the Planning Commission. Please find a copy of the appeal form attached for your convenience and to ensure your health and safety during the COVID pandemic (also available online at: www.cupertino.org/planningforms.) The completed appeal form and filing fee **must be received by the deadline to appeal** and may be submitted in one of the following ways:

1. **Preferred:** Email the completed form to cityclerk@cupertino.org **and** call (408) 777-3223 between 7:30AM – 5:30PM (M-Th) and 7:30AM – 4:30PM (F) to arrange for payment by credit card.
2. **Other options:**
 - a. Mail the completed form and a check in the amount of \$344 to Attn: City Clerk, City of Cupertino, 10300 Torre Avenue, CA 95014.
 - b. Obtain an appointment to file the appeal by contacting the City Clerk by email or phone (see contact information above).

Please contact the City Clerk's office for additional guidance and instructions on how to file.

Sincerely,

/s/

Brianne Harkousha
Associate Planner
City of Cupertino

Enclosures:

Approved Plan Set

CC: Cristina Hung, 6522 Clifford Drive, Cupertino, CA 95014
Sanjiv Kapil & Deepika Kapil, 6544 Clifford Drive, Cupertino, CA 95014