

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

RESOLUTION NO.

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO APPROVING AN  
EXCEPTION TO THE HEART OF THE CITY SPECIFIC PLAN TO ALLOW TEN FOOT SIDE AND  
REAR SETBACKS WHERE 22.5 FEET ARE REQUIRED, AND TO ALLOW A 16-FOOT SETBACK FOR  
AN ARCHITECTURAL FEATURE WHERE 31 FEET IS ALLOWED, LOCATED AT 10122 BANDLEY  
DRIVE AND 10145 NORTH DE ANZA BOULEVARD

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SECTION I: PROJECT DESCRIPTION

Application No.: EXC-2016-03  
Applicant: Amy Chan  
Property Owner: De Anza Venture, LLC  
Location: 10122 Bandley Drive and 10145 North De Anza Boulevard (APN# 326-34-043, 326-34-066)

SECTION II: FINDINGS FOR EXCEPTION FOR DEVELOPMENT STANDARDS:

WHEREAS, the Planning Commission of the City of Cupertino received an application for an Exception to the Heart of the City Specific Plan as described in Section I. of this Resolution; and

WHEREAS, the Environmental Review Committee has recommended adoption of a Mitigated Negative Declaration; 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 application; and

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 proposed development is otherwise consistent with the City's General Plan and with the goals of this specific plan and meets one or more of the criteria described above.

*The development is otherwise consistent with the City's General Plan and the specific plan. The location of the buildings along the street frontage allow for greater activation of the streetscape, and facilitate the overall proposed mixed-use development. The reduced setbacks were proposed after all efforts were exhausted to meet the prescriptive development standards in the specific plan.*

- b) The proposed development will not be injurious to property or improvements in the area nor be detrimental to the public health and safety.

*Because the building will meet the majority of development standards, the development will not be injurious to property or improvements in the area nor be detrimental to the public health and safety. Because of the adjacent non-residential uses and the distance between buildings, the proposed setbacks are adequate to provide spacing between buildings.*

- c) The proposed development will not create a hazardous condition for pedestrian and vehicular traffic.

*The development will not create hazardous conditions for pedestrian and vehicular traffic as the project is designed to accommodate pedestrian and vehicular traffic by providing pedestrian access throughout the site, and multiple points of entry for vehicles at Alves Drive, Bandle Drive, and Stevens Creek Boulevard.*

- d) The proposed development has legal access to public streets and public services are available to serve the development.

*The development has legal access to public streets and public services are available.*

- e) The proposed development requires an exception, which involves the least modification of, or deviation from, the development regulations prescribed in this chapter necessary to accomplish a reasonable use of the parcel.

*The side and rear setbacks of Building A will still be required to meet the minimum required setbacks of ten feet. By still maintaining the minimum required setback, the exception has the least modification from the development standards. The setback for the architectural feature is designed to be pedestrian friendly and at a pedestrian scale to provide a walkable environment along the building frontage.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the initial study, 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 application for a Heart of the City Exception, Application no. EXC-2016-03 is hereby recommended for approval 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. EXC-2016-03 as set forth in the Minutes of Planning Commission Meeting of July 26, 2016, and 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 received on June 2, 2016 consisting 134 sheets labeled as "Marina Plaza the urban village" consisting of 134 sheets labeled as T.1 to T.9, C1.0 to

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C5.2, R-1 to R-2, JT-1 to JT-3, A.0 to A.65, PM-1 to PM-3, SL-1 to SL-3, E-1 to E-2, and L0.02 to L5.02, drawn by Dahlin Group, VER Consultants, RGA, Bruce Jett Associates, Coffman Engineers, Inc, Emerald City Engineer, Inc. Beyond Efficiency Inc, and RGD Acoustic, Inc., except as may be amended by conditions in this resolution.

2. ACCURACY OF 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.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. DP-2015-05, ASA-2015-22, DA-2016-01, TR-2016-14, U-2015-06, and EXC-2016-05 shall be applicable to this approval.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans

6. EXCEPTION APPROVAL

A Heart of the City Exception is granted to allow reduced front, side, and rear setbacks along Alves Drive and the rear and side portion of Building A on the "De Anza Parcel".

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. 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 one or more of the indemnified parties or one or more of the indemnified parties and the applicant 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.

7. 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

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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 26th day of July 2016, 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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Alan Takahashi, Chair  
Planning Commission