



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL

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PLANNING COMMISSION STAFF REPORT

Agenda Date: August 22, 2017

**SUBJECT**

Hillside Exception to allow the construction of an attached pool house, pool and patio to an existing residence on slopes greater than 30%. Application No(s): EXC-2016-08; Applicant(s): Charles Holman (Hirano Residence); Location: 11406 Lindy Place, APN # 356-24-011

**RECOMMENDATION**

Find that the application is Categorically Exempt from CEQA; and  
Approve the application per the Draft Resolution (Attachment 1).

**DESCRIPTION**

**A. Project Data Summary**

<u>Requirement/Standard</u>	<u>Allowed/Required</u>	<u>Proposed</u>
General Plan designation	Residential: Very Low Density (1/2 acre slope density formula)	No change/consistent
Zoning designation	Residential Hillside Zone (RHS-21)	No change/consistent
Environmental Assessment	n/a	Categorically exempt, Section 15301 (Existing Facilities) and 15303 (New Construction or Conversion of Small Structures)
Height limit	30 feet maximum	14.5 feet
Setbacks:		
Front	10 feet minimum	No change/consistent
Side	10 feet minimum	Consistent
Rear	n/a. Per CMC 19.08, a lot bounded by only three lot lines will not have a rear lot line.	n/a
Second-story patio/deck	15 feet minimum	Consistent
RHS floor area	3,695 square feet (after slope reduction of 30%)	3,695 square feet
Site grading	2,500 cubic yards (cut plus fill)	300 cubic yards

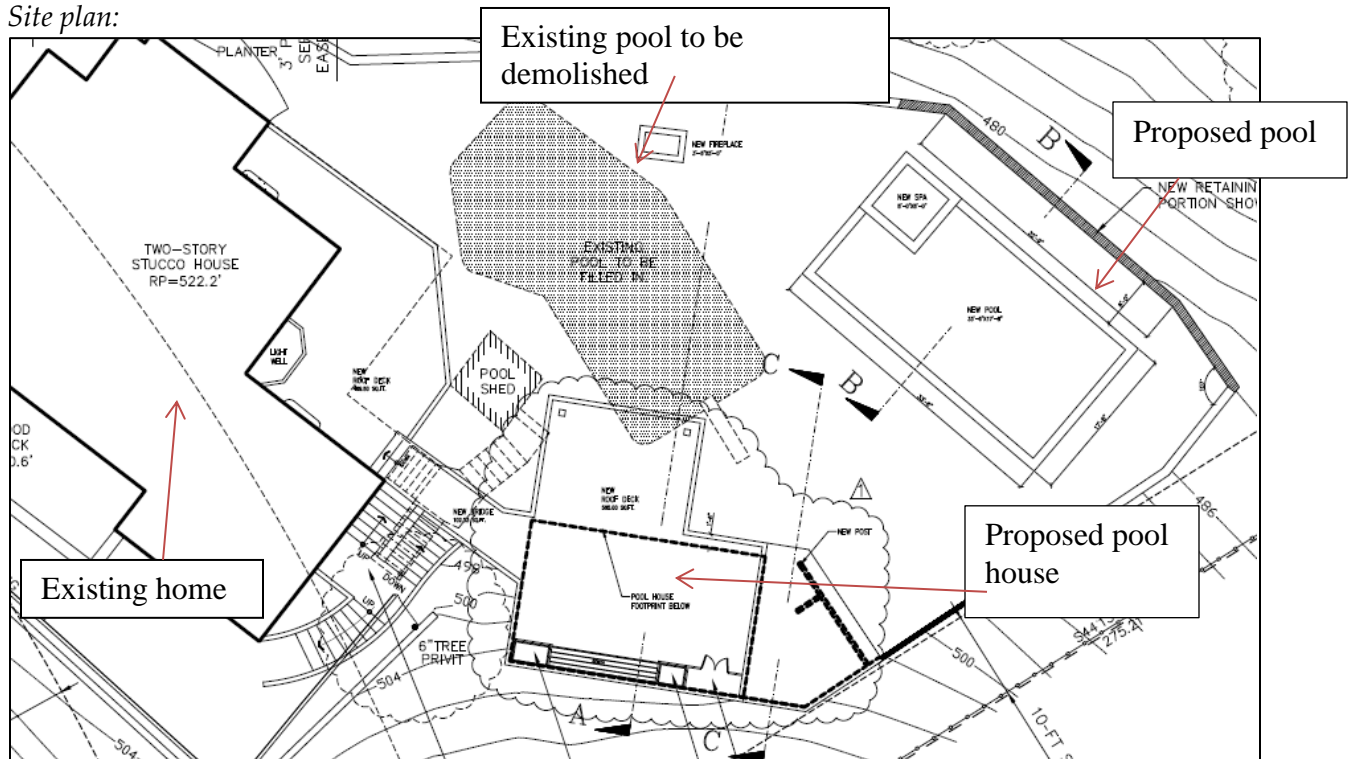
## BACKGROUND

The property owners, Bernadette Hirano and Kelly Hirano, propose a 412-square-foot pool house, patio and new pool adjacent to their home within the back yard area. The existing pool would be demolished. The new pool house includes a roof deck with railing of 42 inches as required by building code, and is attached to the primary residence via the structural element of a second-story deck. From Lindy Place, the home and building pad area is below the street elevation. A perspective and elevation, looking west, and a partial site plan, "zoomed in" for greater detail, are shown below (full project plans including civil plans are in Attachment 4):

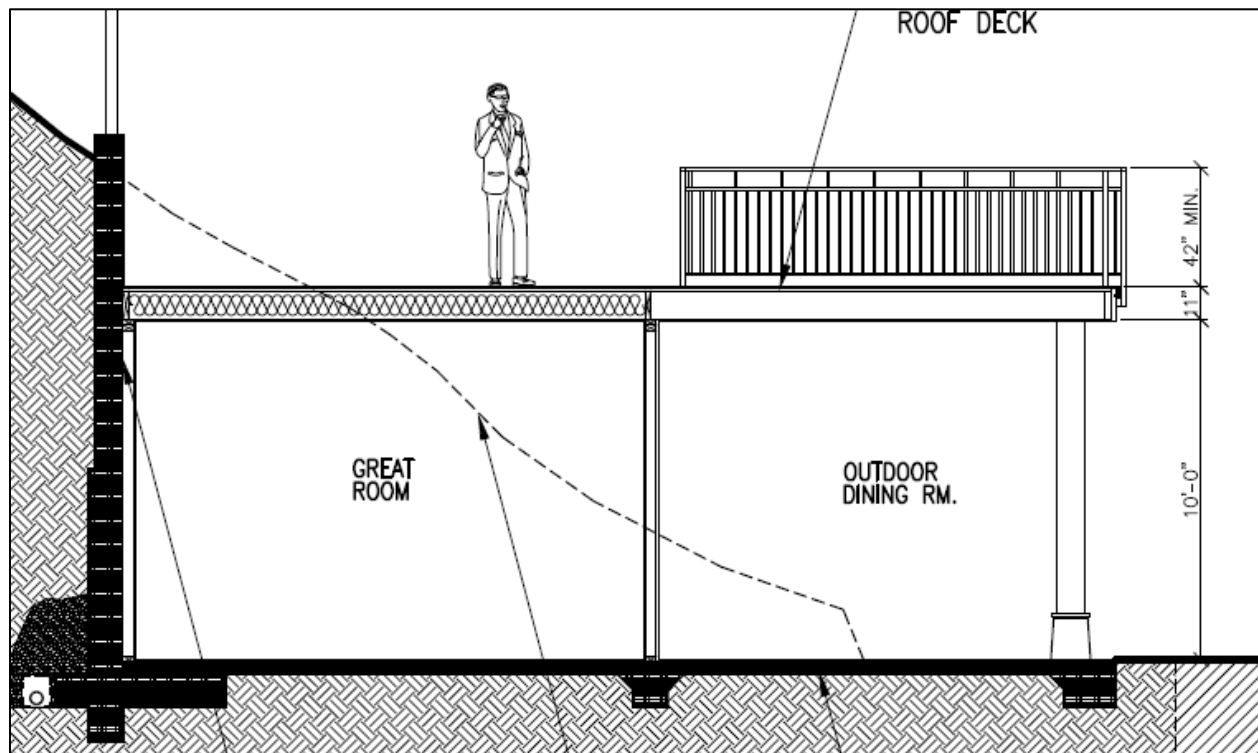
*Perspective/elevation:*



Site plan:



Section:





A planning permit called a “hillside exception” is required for all grading, structures and other development greater than 500 square feet on slopes greater than or equal to 30%. The average slope of the subject parcel is ~35.5%. While the pool house is less than 500 square feet, the added grading for the entire scope of the project, including the pool and patio areas, would meet the criteria requiring the hillside exception. To clarify, a “hillside exception” is the name of the type of permit; it is not an exception in the sense of a variance or other similar zoning request to not meet site development requirements. The proposal meets the applicable RHS development regulations, outlined in the project data summary above and discussed in greater detail in subsequent sections of this staff report.

The property is located within the southwest, hillside area of Cupertino. Surrounding land uses are other single-family residential homes shown below, with smaller/flatter lots zoned R1-10 adjacent to the north on Lindy Lane and other residential hillside zoned properties to the east, south and west:



## DISCUSSION

### Environmental Review

The proposed project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), in accordance with CEQA Guidelines Section 15301 (Existing Facilities) and 15303 (New Construction or Conversion of Small Structures).

### General Plan and Zoning

*General Plan.* The City's General Plan “seeks to establish clear hillside policy in order to provide for the realistic use of privately-owned hillside lands, while preserving natural and aesthetic features.” The Land Use (GPLU) designation is Residential: Very Low Density (1/2 acre slope

density formula). Properties within this designation have limited development areas based upon their average slope formula as defined within the General Plan Appendix.

Applicable policies include General Plan policy LU-12.1.1: Ordinance and Development Review. Through building regulations and development review, limit development on ridgelines, hazardous geological areas and steep slopes. Control colors and materials and minimize the illumination of outdoor lighting. Reduce visible building mass with measures including, stepping structures down the hillside, following natural contours, and limiting the height and mass of the wall plane facing the valley floor."

*Zoning.* The property is zoned Residential Hillside (RHS-21). Meeting General Plan policy outlined above is accomplished through implementation of the RHS zoning standards, which seeks to balance rights to reasonably develop, maintain or upgrade private property with the responsibilities of meeting specified RHS standards intended to regulate such development.

The proposal is limited to the back yard area and proposes no changes to the existing primary home's conditioned living space. The proposed attached pool house meets all applicable site development regulations such as height, setbacks, and floor area ratio. RHS has no lot coverage criteria, for lots greater than or equal to 10,000 sq.ft. Rather, the floor area ratio is reduced by 30% according the RHS slope adjustment criteria as shown below, for lots greater than or equal to 10,000 sq.ft.:

- 1) 4,500 square feet plus 59.59 square feet for every 1,000 square feet over 10,000 square feet of net lot area.
- 2) Formula of the above criteria is expressed as:  
$$A = ((B - 10,000) / 1000) (59.59) + 4,500$$
 where  
A = Maximum allowable house size, prior to instituting the maximum 6,500 square foot building size; and  
B = Net lot area of 23,086.8 square feet

The resulting calculation for allowable floor area on this lot, after the 30% reduction, is 3,695.89 square feet. The proposal conforms to this limit at 3,695 square feet, when the primary home, garage and pool house are added together. The size of the pool house has been reduced from the original proposal to conform to this floor area limit, but remains in the same location as the original proposal.

### **Preliminary Geotechnical Review**

This proposal was subject to review and oversight of the City's geotechnical engineer, Cotton Shires, who is involved at the preliminary phase through to the construction phase. The report and supplemental review are in Attachment 2. Preliminary plans are recommended for approval, with the required conditions of approval, by the geotechnical engineer as follows:

Prior to issuance of building permits, a geotechnical plan review shall be performed, and a shoring plan shall be submitted to the City, as described below:

1. *Shoring Plan* – A shoring plan shall be submitted by a civil/structural engineer due to the close proximity of the proposed addition to the neighboring property and structures. The shoring plan shall include profiles that depict the existing site topography, proposed cuts, and existing neighboring structures and property line. It should be noted that an approximate 17-foot high vertical cut is proposed within 10 feet of the property line, and neighboring structures appear to be very close to this property line.

2. *Geotechnical Plan Review* - The applicant's geotechnical consultant should review and approve all geotechnical aspects of the development plans (i.e., site preparation and grading, site drainage improvements and design parameters for foundations, drainage, pavement and retaining walls) to ensure that their recommendations have been properly incorporated. Specific performance recommendations for the geotechnical consultant include the following:

- Review the location of the proposed storm water energy dissipater.
- Review and approve the shoring plans.

The shoring plans and geotechnical plan review shall be submitted to the City for review and approval by City Staff and the City Geotechnical Consultant prior to approval of building permits.

3. *Geotechnical Field Inspection* - The geotechnical consultant/engineering geologist 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, swimming pool excavation, site surface and subsurface drainage improvements and excavations for foundations and retaining walls prior to the placement of steel and concrete. The following shall be specifically performed:

- The guesthouse and swimming pool excavations shall be closely inspected to assure that the geologic materials are as anticipated.

The results of these inspections and the as-built conditions of the project shall be described by the consultant in a letter and submitted to the City Engineer for review prior to final project (as-built) approval.

#### **Additional conditions of approval**

The color rendering provided in the application packet shows materials call-outs for wood, tile and stucco. While recognizing the limitations of digital rendering of color, which is generally less accurate than a field sample, staff is concerned about the colors indicated. While the stucco indicates a color to match the existing house, which would be a taupe or hue of brown and would be acceptable, the color rendering appears as a red tone, which is not consistent with natural earth and vegetation tones required for hillside. A condition of approval should require that prior to issuance of the building permit, final colors and materials shall be assembled and mocked up in the field for staff review. Changes would also require staff review and approval.

**Hillside Exception Findings**

In accordance with CMC 19.40.080, the Planning Commission may grant a request for a Hillside Exception only if all of the following findings are made:

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

*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 proposed development conforms to the RHS development regulations standards and was subject to preliminary review of the City's geotechnical engineer. The graded area is limited to the building pad area to the greatest extent possible and is approximately 300 cubic yards cumulative cut and fill, which is significantly less than the allowed cumulative total of 2,500 cubic yards.*

2. The proposed development will not create a hazardous condition for pedestrian or vehicular traffic.

*The proposed development will not create a hazardous condition for pedestrian or vehicular traffic because the property is served by public roads, which has the capacity to accommodate the limited scale of development proposed and usual for a single family home within the area.*

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

*The proposed property is an existing, legal single-family home served by public streets and public services, and the additional development is within the scope allowed by and within the applicable zoning district.*

4. 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 proposed development conforms to the requirements of the RHS zoning district and does not deviate from the site development standards.*

5. All alternative locations for development on the parcel have been considered and have been found to create greater environmental impacts than the location of the proposed development.

*The alternative location would be to locate the back yard improvements further down the hill away from the existing home, which has been found to create greater environmental impacts than the location of the proposed development because it would increase grading quantities and disturbance of additional areas previously undisturbed. Further, RHS regulations stipulate that the graded area shall be limited to the building pad area the greatest extent possible. This is accomplished through the proposed location closest to the home.*

6. The proposed development does not consist of structures on or near known geological or environmental hazards which have been determined by expert testimony to be unsafe or hazardous to structures or persons residing therein. (See General Plan Policies 2-49.)

*This proposal was subject to review and oversight of the City's geotechnical engineer, Cotton Shires, who was involved at the preliminary phase and required through the construction phase. Preliminary plans are recommended for approval, with the required conditions of approval, by the geotechnical engineer as follows: Prior to issuance of a building permit, the applicant shall provide a shoring plan, geotechnical plan review and a geotechnical field inspection. The geotechnical consultant/engineering geologist 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, swimming pool excavation, site surface and subsurface drainage improvements and excavations for foundations and retaining walls prior to the placement of steel and concrete.*

7. The proposed development includes grading and drainage plans which will ensure that erosion and scarring of the hillsides caused by necessary construction of roads, housing sites, and improvements will be minimized. (See General Plan Policies 2-53, 2-54 and 2-57.)

*The proposed development is limited to a 412-square-foot pool house, second-story deck, patio area at ground level and pool. The primary home is an existing structure that would not be expanded in this proposal, and there would be no road construction. Grading and drainage plans are generally limited to the back yard area.*

8. The proposed development does not consist of structures which would disrupt the natural silhouette of ridgelines as viewed from established vantage points on the valley floor unless either:

- a. The location of a structure on a ridgeline is necessary to avoid greater negative environmental impacts; or
- b. The structure could not otherwise be physically located on the parcel and the size of the structure is the minimum which is necessary to allow for a reasonable use of the parcel. (See General Plan Policies 2-46, 2-47 and 2-48.)

*The proposed development does not consist of structures which would disrupt the natural silhouette of ridgelines as viewed from established vantage points on the valley floor because the proposed development and building pad area is located below the grade of Lindy Place. At a total maximum height of 14.5 feet (11 feet from grade to top of roof plus 3.5 feet of railing for the roof deck), the pool house is lower in height than existing two-story home, not located near a ridgeline, and does not rise above a natural silhouette of a ridgeline.*

9. The proposed development consists of structures incorporating designs, colors, materials, and outdoor lighting which blend with the natural hillside environment and which are designed in such a manner as to reduce the effective visible mass, including building height, as much as possible without creating other negative environmental impacts. (See General Plan Policies 2-46, 2-50, 2-51 and 2-52.)



*The development proposes wood siding, wood columns and stucco to match the existing home, which is currently an earth tone color. By condition of approval, all final exterior colors shall be natural earth tone and vegetation colors, mocked up in the field, and subject to the review and approval of the Director of Community Development prior to installation.*

10. The proposed development is located on the parcel as far as possible from public open space preserves or parks (if visible there from), riparian corridors, and wildlife habitats unless such location will create other, more negative environmental impacts. (See General Plan Policies 2-55, 5-14 and 528.)

*The proposed development is located on the parcel away from public open space, preserves, parks, riparian corridors, and wildlife habits because the proposed building pad area is the immediate back yard area adjacent to an existing single-family residential house.*

11. The proposed development includes a landscape plan which retains as many specimen trees as possible, which utilizes drought-tolerant native plants and ground covers consistent with nearby vegetation, and which minimizes lawn areas. (See General Plan Policies 2-54, 5-15 and 5-16.)

*No trees will be removed or disturbed within this development proposal, which is a limited area within the back yard. The remainder of the parcel further downhill would remain in its natural and existing state.*

12. The proposed development confines solid fencing to the areas near a structure rather than around the entire site. (See General Plan Policy 5-17.)

*The property includes existing chain link fences along the side property lines and solid fencing limited to areas near the house and generally not visible from public areas. The proposal includes a new six-foot fence at the side property line. There is no solid fence proposed around the entire site.*

13. The proposed development is otherwise consistent with the City's General Plan and with the purposes of this chapter as described in Section [19.40.010](#).

*The proposal is otherwise consistent with the City's General Plan because it steps the structure down the hillside, minimizes wall planes facing the valley floor, limits the height and mass, and conforms to the development allowed as determined through zoning ordinances.*

## **PUBLIC NOTICING & OUTREACH**

The following is a brief summary of the noticing completed for the project:

<b>Public Notice</b>	<b>Agenda</b>
<ul style="list-style-type: none"> <li>▪ Legal ad placed in newspaper at least 10 days prior to the hearing</li> <li>▪ Mailed notice of public hearing to property owners within 300 feet radius</li> <li>▪ Posted site notice abutting street</li> </ul>	<ul style="list-style-type: none"> <li>▪ Posted on the City's official notice bulletin board at least one week prior to the hearing</li> <li>▪ Posted on the City of Cupertino's Web site at least one week prior to the hearing</li> </ul>

**PUBLIC COMMENTS**

Consistent with previous policy direction from the Planning Commission, staff encourages applicants to reach out to neighbors with proposed project information, so that constructive dialogue can occur early and often. The applicant reached out to adjacent neighbors to discuss project plans. Public comments are included in Attachment 3, stating opposition to the project due to geotechnical concerns. One neighbor had no comments and was supportive of the proposal.

**PERMIT STREAMLINING ACT**

Received on June 20, 2017, the revised project with a reduced scope was deemed complete on July 20, 2017. In accordance with the Permit Streamlining Act, the Planning Commission must render a decision regarding the application by September 20, 2017.

**NEXT STEPS**

All approvals granted by the Planning Commission shall go into effect after 14 calendar days from the public hearing date.

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Prepared by:	Catarina Kidd, Senior Planner
Reviewed by:	Benjamin Fu, Assistant Director of Community Development
Approved by:	Aarti Shrivastava, Assistant City Manager

**ATTACHMENTS:**

- 1 - Draft resolution
- 2 - Consulting geotechnical report – Cotton Shires
- 3 - Public comments
- 4 – Project plans