



OFFICE OF COMMUNITY DEVELOPMENT

CITY HALL

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November 7, 2017

Studio 61 Architects, Inc.

Attn: Frank Ho

12480 Saratoga Ave.

Saratoga, CA 95070

SUBJECT: TWO STORY PERMIT ACTION LETTER – **Application R-2017-27, RM-2017-28**

This letter confirms the decision of the Director of Community Development, given on November 7, 2017 approving a Two Story Permit (R-2017-27) to allow the construction of a new 2,400 square foot two-story single-family residence; and a Minor Residential Permit (RM-2017-28) for a second-story balcony at 18850 Barnhart Avenue, with the following conditions:

1. APPROVED PROJECT

The approval is based on a plan set entitled "Hou's Residence, New Custom Homes, 18850 Barnhart Ave., Cupertino, CA 95014", consisting of six (6) sheets labeled "A0.1, A0.2, A2.1, A3.1, C1, and LA0" and a landscape plan entitled "Yafeng Hou, 18850 Barnhart Ave., Cupertino, CA 95014," consisting of an arborist report and two (2) sheets labeled "LA1 and LA2," 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, 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.

5. 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.

6. 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.

7. 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

8. PRIVACY PROTECTION AND FRONT YARD TREE 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.

9. 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.

10. EXTERIOR BUILDING MATERIALS/TREATMENTS

Final building exterior treatment plan (including but not limited to details on exterior color, material, architectural treatments and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits. The final building exterior plan shall closely resemble the details shown on the original approved plans. Any exterior changes determined to be substantial by the Director of Community Development shall require a minor modification approval with neighborhood input.

11. 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.

12. 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 November 7, 2018.

Staff received three written comments from adjacent property owners. One property owner stated their concerns about the reduction of natural light from the proposed new two-story residence and objected to the proposed second-story balcony, expressing concerns about potential privacy impacts. Another property owner also stated concerns about potential privacy impacts from the proposed second-story balcony. Staff responded to both property owners by explaining that the Cupertino Municipal Code requires a minimum setback area for all single-family homes in order to ensure provision of light, air, and a reasonable level of privacy to individual residential parcels. The proposed project meets, and at times exceeds, all setback requirements. While the minimum required rear yard setback for second-story balconies is 20 feet from the rear property line, the proposed balcony for 18850 Barnhart Avenue is set back 25 feet. Additionally, the project satisfies the privacy protection requirement for the balcony. As stated in the conditions of approval above, the property owner for 18850 Barnhart Avenue shall record a covenant to protect and maintain all required privacy screening trees and/or shrubs.

Another property owner expressed health and safety concerns about the proposed chimney on the west side of the residence. The property owner requested that the applicant modify the design and relocate the chimney exhaust above the second-story roof, or ensure that the chimney shall be non-functional in the current proposed location and maintained by a covenant. The applicant noted that the proposed chimney is non-functional and is for decorative purposes only. The proposed fireplace is a direct vent fireplace with a sealed combustion chamber, which does not emit smoke from the chimney. The project will also be required to meet any applicable building codes for the proposed fireplace.

No modifications were made to the plans and no additional conditions of approval were required in order to address the comments raised during the noticing period. Staff has made all the findings that are required for approval of a Two-Story Permit and a Minor Residential Permit as required for approval by Cupertino's Municipal Code, Chapter 19.28.140 (A) and (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 project is located within the R1-5 (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 the privacy protection plantings and the installation of a front-yard tree as required.

Also, please note that an appeal of this decision can be made within fourteen (14) calendar days from the date of this letter (by 5:00pm, Tuesday, November 21, 2017). If this happens, you will be notified of a public hearing, which will be scheduled before the Planning Commission.

Sincerely,

Erika Poveda
Assistant Planner
Planning Division
City of Cupertino

Enclosures:
Approved Plan Set

CC: Yunfeng Hou and Huaqin Sun, 18850 Barnhart Ave., Cupertino, CA 95014
Morgan and Akemi Winebarger, 18860 Barnhart Ave., Cupertino, CA 95014
Joseph Chou, Li Chien, and Lucia Lee, 18841 Pendergast Ave., Cupertino, CA 95014
James Hylen, 18833 Pendergast Ave., Cupertino, CA 95014