

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO
DENYING AN APPEAL AND UPHOLDING THE DIRECTOR OF COMMUNITY
DEVELOPMENT'S DECISION TO ALLOW THE CONSTRUCTION OF A SECOND-
STORY BALCONY ON THE NEW SINGLE-FAMILY RESIDENCE AT 18850
BARNHART AVENUE

SECTION I: PROJECT DESCRIPTION

Application No.: RM-2017-28
Applicant: Frank Ho (Sun/Hou residence)
Appellants: Joseph Chou, 18841 Pendergast Avenue; Jeff and Christine Ronne,
18851 Pendergast Avenue
Location: 18850 Barnhart Avenue (APN: 375-33-015)

SECTION II: FINDINGS FOR A MINOR RESIDENTIAL PERMIT:

WHEREAS, the City of Cupertino received an application for a Minor Residential Permit as described in Section I of this Resolution; and

WHEREAS, the necessary notices were given and the comment period for the application was provided as required by the Procedural Ordinance of the City of Cupertino; and

WHEREAS, the City was able to make the findings required under Section 19.28.140 (A) and the application was approved with conditions on November 7, 2017; and

WHEREAS, the notice of decision was mailed to the appropriate parties, including the applicant and any person who contacted City staff with comments during the comment period, notifying them about the possibility of appealing a project; and

WHEREAS, the Planning Commission of the City of Cupertino received two appeals of the Community Development Director's approval of the Minor Residential Permit; 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 appeal; and

WHEREAS, the project is determined to be categorically exempt from the California Environmental Quality Act (CEQA); and

WHEREAS, the appellants have not met the burden of proof required to support said appeals; and

WHEREAS, the Planning Commission finds as follows with regard to this application:

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 existing residential land use designations surrounding the site and is consistent with Title 19, Zoning, and Chapter 19.28, Single-Family Residential (R-1) Ordinance, of the Cupertino Municipal Code for setbacks, lot coverage, floor area ratio, and other development standards. The R-1 Ordinance allows property owners the ability to construct second-story balconies as long as either privacy protection trees and/or shrubs are planted as required by the ordinance or the property owner obtains a signed "Release of Privacy Protection Measures" form from adjacent neighbors to waive the required privacy protection plantings. The project complies with the privacy protection plantings as required by the R-1 Ordinance to ensure that visual impacts to adjacent neighbors are mitigated.

2. The proposed project is harmonious in scale and design with the general neighborhood; and

The proposed project is located within the R1-5 (Single Family Residential) zoning district and will be compatible with the surrounding uses of the neighborhood. The subject neighborhood contains a healthy mix of single-story and two-story homes with balconies, making the proposed project compatible with the neighborhood. The purpose of the R-1 Ordinance is to enhance the identity of residential neighborhoods, to ensure the provision of light, air, and a reasonable level of privacy to individual residential parcels, to ensure a reasonable level of compatibility in scale of structures within the neighborhood, and to reinforce the predominantly low-intensity setting in the community through setbacks, building envelope, and privacy planting requirements, as well as other prescriptive requirements incorporated within the R-1 Ordinance. Overall, the proposed project maintains the single-family home scale found to be compatible with the general neighborhood.

3. 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 R1-5 (Single-Family Residential) zoning district and will be compatible with the surrounding uses of the neighborhood.

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

Any potential adverse impacts on adjoining properties have been reasonably mitigated through incorporating existing plantings on the subject property that meet the City's requirements for privacy protection plantings and by proposing additional City-approved privacy protection plantings as required by the R-1 Ordinance to reasonably obscure the viewsheds of the second-story balcony. The R-1 Ordinance allows property owners the ability to construct second-story balconies as long as either privacy protection trees and/or shrubs are planted as required by the ordinance or the property owner obtains a signed "Release of Privacy Protection Measures" form from adjacent neighbors to waive the required privacy protection plantings. Furthermore, privacy protection plantings are considered Protected Trees under the City's Municipal Code and are recorded as such with a covenant against the property to inform current and future property owners about their protected status. Protected trees cannot be removed without an approved tree removal permit and the provision of required replacement plantings.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of 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 Planning Commission DENIES the appeal of an application for a Minor Residential Permit (RM-2017-28) and UPHOLDS the Administrative approval of the Minor Residential Permit. The Planning Commission also finds 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. RM-2017-28 as set forth in the Minutes of Planning Commission Meeting of January 23, 2018 and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

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 for verifying 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. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file no. R-2017-27 shall be applicable to this permit.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is required 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.

11. 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.

12. 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.

13. 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.

PASSED AND ADOPTED this 23rd day of January, 2018, at the 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:

Piu Ghosh
Principal Planner

Don Sun
Chair, Planning Commission