



OFFICE OF COMMUNITY DEVELOPMENT
PLANNING DIVISION

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PLANNING COMMISSION STAFF REPORT

Agenda Date: January 23, 2018

SUBJECT

Consider an appeal of the Director's decision to approve a Two-Story Permit to allow the construction of a new 2,400 square foot two-story, single-family residence and a Minor Residential Permit to allow for the construction of a new rear and side-facing second-story balcony. (Application No(s): R-2017-27 and RM-2017-28; Applicant(s): Frank Ho (Sun/Hou residence); Location: 18850 Barnhart Avenue; APN(s): 375-33-015); Appellant(s): Joseph Chou and Jeff and Christine Ronne)

RECOMMENDED ACTION

That the Planning Commission adopt the draft resolutions (see Attachments 1 and 2) to deny the appeal and uphold the Community Development Director's decision to approve a Two-Story Permit (R-2017-27) and Minor Residential Permit (RM-2017-28) for the project.

DISCUSSION

Project Data:

General Plan Designation:	Low Density (1-6 DU/Ac.)	
General Plan Neighborhood:	Rancho Rinconada	
Zoning Designation:	R1-5 (Single-Family Residential)	
	Allowed/Required	Proposed
Net Lot Area	5,355 sq. ft. (0.12 acres)	
Floor Area Ratio (F.A.R.)	2,409 sq. ft. (45%)	2,400 sq. ft. (44.8%)
Lot Coverage	2,677 sq. ft. (50%)	2,440 sq. ft. (45.6%)
1st Floor Setbacks		
Front	20'	25'-8"
Rear	20'	23'-4"
Side	5' each side	5'-1" (each side)
2nd Floor Setbacks		
Front	25'	26'-8"

Rear	25'	30'-5"
Side	Combined 25' (no side less than 10')	Combined 30'-2" (each side - 15'-1")
2nd Floor Balcony Setbacks		
Front	20'	N/A
Rear	20'	25'
Side	15'	15'-1" (east side) 21'-6" (west side)
Total Building Height	28'	26'-7"
Project Consistency with:		
General Plan:	Yes	
Zoning:	Yes	
Environmental Review:	Categorically Exempt per Section 15303, Class 3 of the California Environmental Quality Act (CEQA)	

Background:

On August 10, 2017 the applicant, Frank Ho (Sun/Hou residence), applied for a Two-Story Permit to allow a new 2,400 square foot two-story, single-family residence and a Minor Residential Permit to allow a second-story balcony on the new residence located at 18850 Barnhart Avenue (see Attachment 3). The property is located in the R1-5 zoning district, which permits two-story homes, up to 28-feet in height, with a maximum Floor Area Ratio (FAR) of 45% of the net lot area.

No design review was required for this project since the ratio of the proposed second-floor to the first-floor area is less than 66% and at least 15-foot second-floor side yard setbacks have been provided. Additionally, views from the second story balcony were screened as required by the City's Municipal Code. Conditions of approval ensured that all privacy screening trees would be recorded as protected trees prior to final occupancy to ensure their maintenance and protection.

Staff received written comments from three adjacent property owners during the comment period. The concerns are summarized below:

- Potential privacy impacts from the proposed second-story balcony.
- Reduction of natural light from the proposed new two-story residence.
- A proposed chimney on the west side of the residence. This concern was allayed prior to approval of the permits since the chimney is decorative.

Following the comment period, the property owner met with appellant, Joseph Chou, several times to discuss the concerns regarding the proposed balcony and the reduction of natural light. However, the two parties were unable to reach an amicable solution.

Since the project is consistent with all aspects of Chapter 19.28, Single-Family Residential (R-1), of the Municipal Code, and other pertinent City ordinances, the project was approved administratively on November 7, 2017 without any modifications to the plans or additional conditions of approval (Attachment 4). The deadline to appeal the project was November 21, 2017. The approval of the Two-Story Permit and Minor Residential Permit was appealed by Joseph Chou on November 20, 2017 (Attachment 5) and by Jeff and Christine Ronne on November 21, 2017 (Attachment 6).

DISCUSSION:

Basis of the Appeal

The appellants' basis of appeal is summarized below. Where appropriate, staff's responses are in *italics*.

Appellant Chou:

1. "The newly proposed two-story house with balcony is sharing the backyard fence with my house. My family has been living in our house for eight years. We enjoy open our windows and having natural light coming into our house and yard. The second-story balcony gives the occupants the ability to see into neighbors' yards and houses. This is a privacy concern."

The Single-Family Residential (R-1) Ordinance allows the construction of second-story balconies as long as, prior to final occupancy, the property owner:

- *Either plants privacy protection trees and/or shrubs as required by the ordinance,*
- *Or obtains signed "Release of Privacy Protection Measures" forms from adjacent neighbors to waive the required privacy protection plantings.*

The objective of privacy protection plantings is to provide substantial (not complete) screening within three years of planting. Privacy protection plantings are considered Protected Trees under the City's Municipal Code (Chapter 14.18) 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 obtaining a tree removal permit and providing replacement plantings.

In order to ensure that visual impacts to the adjacent neighbors are mitigated in compliance with the R-1 Ordinance, the property owner has both, incorporated existing plantings on the

subject property that meet the City's requirements for privacy protection plantings, and proposed additional City-approved privacy protection plantings.

2. "My family has planted sun loving plants along our backyard fence. If the neighbor plants multiple tall privacy trees, it would affect the growth of our plants. I do not see a study of the privacy trees that would cause the loss of natural light, in particular of sunlight to our property. We do not feel we have to alter our life style to accommodate the new construction."

One of the purposes of the R-1 Ordinance is to ensure the provision of light, air, and a reasonable level of privacy to individual residential parcels through the requirements incorporated in the ordinance. Building envelope requirements for the first floor portions of the building, and increased setback requirements for the second-floor ensure that a reasonable level of light and air is available for neighbors, while privacy protection plantings mitigate privacy impacts and the visual mass of two-story residences. The R-1 Ordinance does not require applicants to provide studies on light impacts to adjacent properties, if the prescriptive requirements in the ordinance are met.

The proposal for 18850 Barnhart Avenue meets, and at times exceeds, all setback requirements for the R1-5 zoning district. While the R-1 Ordinance requires a 20-foot rear yard setback for second-story balconies, the proposed second-story balcony for 18850 Barnhart Avenue exceeds this requirement by being setback 25-feet from the rear property line.

3. "In the past eight years, I have gone to quite a few open houses that featured two-story houses with rear balconies in Rancho Rinconada. I have yet to see a house that cannot look into neighbors' properties. It really bothers me that City of Cupertino is allowing such construction that could easily see into neighbors' yards and houses."

See response #1.

4. "When I first filed the protest about the balcony, Yunfeng Hou, the owner, met with me on October 29th. We talked about my privacy concern, but did not come to an agreement. Mr. Hou and I talked on November 2nd. He told me verbally, yes, he went to a few second floor balconies and saw quite a bit of neighbors' properties. However, his architect told him making a design change was quite an effort and my appeal/protest would delay the building process. Mr. Hou followed up with an e-mail, stating he had seen, '...much worse setup, and yet, those designs got approved...' This tells me Mr. Hou is aware that the second-story balcony is intruding into neighbors' privacy."

No comment.

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5. "On November 19th, I went to two newly completed houses that have similar lot sizes and rear balcony designs as Mr. Hou's project. The owner at 19025 Pendergast Avenue turned down my request to take a look from his balcony. He did state that he could look into many neighbors' properties...I have taken a picture of 19025 Pendergast Avenue's balcony from Barnhart Avenue. It is clear that if I can take a picture of the balcony from one street behind this property, this balcony can see into quite a bit of neighbors' properties."

See response #1. The applicant and/or property owner for 19025 Pendergast Avenue obtained a signed "Release of Privacy Protection Measures" form from adjacent neighbors to waive required privacy protection plantings. Therefore, the project is exempt from providing privacy protection plantings for the second-story windows and balcony.

6. "The owner at 19051 Barnhart Avenue also did not allow me to go to his balcony; he did state that he could see into neighbors' properties; he further stated that since the balcony is high up, there would always be gaps and spaces among the trees to look into neighbors' properties. Both home owners also refused to use my camera to take pictures from the balconies into other properties...I have taken a few pictures of 19051 Barnhart Avenue's balcony from the next door neighbor, 19041 Barnhart Avenue's backyard. If I can take clear view of the balcony, this balcony can certainly have clear view of the neighbors' yard and open windows."

The project at 19051 Barnhart Avenue was completed in summer 2016 with the privacy plantings planted in May of that year. As mentioned before, the objective of privacy protection plantings is to provide substantial screening within three years of planting. Therefore, it is anticipated that substantial screening will occur by the summer of 2019. See response #1.

7. "The City of Sunnyvale is not approving second-story rear balcony for newly proposed single-family construction. This is a result of multiple projects and complaints from the city residents."

The Sunnyvale Municipal Code does not prohibit second-story balconies in residential zoning districts. The Municipal Code also does not require privacy plantings for second-story balconies, but opaque/solid railings may be required to prevent views into adjacent yards.

8. "I feel City of Cupertino has fundamental issues. Yes, there are ordinances, theories of protecting privacy. However, there is also the reality that people can see from second-story balcony. Privacy trees can be trimmed down. People can use binocular from the balcony to look into neighbors' properties."

See response #1.

9. "I want to put on the public record that the appeal hearing committee members should visit five newly constructed houses of similar lot sizes and designs along with the appellants. Rather than talking about theories, let us use our own eyes to check into reality. The building and planning departments should be able to identify these projects in Rancho Riconada."

No comment.

Appellant Ronne:

10. "The proposed balcony will overlook our yard and have a view into windows that have no coverings due to no current need for privacy and ability to view our yard. For 20 years we have had no need to cover our first story windows and have enjoyed both the natural light and views without concern for privacy. Please reconsider this decision."

See response #1.

Environmental Review:

This project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) per Section 15303.

PUBLIC NOTICING AND COMMUNITY OUTREACH

The following table is a brief summary of the noticing for this appeal:

Notice of Public Hearing & Site Signage	Agenda
<ul style="list-style-type: none">▪ Site Signage (<i>at least 10 days prior to hearing</i>)▪ 9 notices mailed to property owners adjacent to the project site (<i>at least 10 days prior to the hearing</i>)	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (<i>five days prior to hearing</i>)▪ Posted on the City of Cupertino's Web site (<i>five days prior to hearing</i>)

No public comments were received at the time of production of this staff report.

CONCLUSION

Since the proposed project complies with all aspects of the R-1 Ordinance, staff recommends that the Planning Commission deny the appeal and uphold the Community Development Director's decision to approve the Two-Story and Minor Residential Permits.

NEXT STEPS

The Planning Commission's decision on this project is final unless appealed within 14 days of the decision. If appealed, the City Council will hear the final appeal.

Prepared by: Erika Poveda, Assistant Planner

Reviewed and Approved by: Piu Ghosh, Principal Planner

ATTACHMENTS

1. Draft Resolution for R-2017-27
2. Draft Resolution for RM-2017-28
3. Plan Set
4. Two-Story and Minor Residential Permits (R-2017-17 and RM-2017-28) Action Letter, Dated November 7, 2017
5. Appellant Chou's Letter and Images
6. Appellant Ronne's Letter