

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION

OF THE PLANNING COMMISSION DENYING AN APPEAL AND
UPHOLDING THE ADMINISTRATIVE HEARING OFFICER'S AUGUST 9, 2018
APPROVAL TO ALLOW A TWO STORY PERMIT FOR A 980 SQUARE FOOT
SECOND STORY ADDITION TO AN EXISTING SINGLE-STORY RESIDENCE
LOCATED AT 10550 BETTE AVENUE (A.P.N 369-26-016)

SECTION I: PROJECT DESCRIPTION

Application No.: R-2018-20
Applicant: Clayton Johnson (Premiere Builders)
Appellant: Elisa Herberg
Location: 10550 Bette Avenue (A.P.N 369-26-016)

SECTION II: FINDINGS FOR A TWO-STORY PERMIT:

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

WHEREAS, the project is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303; and

WHEREAS, the necessary notices have been given in accordance with the Procedural Ordinance of the City of Cupertino, and the Administrative Hearing Officer has held one or more Public Hearings on this matter; and

WHEREAS, the Administrative Hearing Officer, after considering all the evidence in the record, including public testimony, was able to make the necessary findings to approve the Project, and therefore approved the Project at its August 9, 2018 meeting;

WHEREAS, the Planning Commission of the City of Cupertino received an appeal of the Administrative Hearing Officer's approval of the Project; 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 Planning Commission finds that:

- a) The project is consistent with the Cupertino General Plan, any applicable specific plans, zoning ordinance and the purposes of this title.

The proposed project is consistent with the General Plan as the project is within the Low Residential (1-5 DU/acre) land use area. There are no applicable specific plans that affect the project. As the Front Yard Interpretation has been approved, the project has been found to be consistent with the requirements of Cupertino Municipal Code Chapter 19.28 Single Family (R-1) Residential.

- b) 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.

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 R1-10 (Single Family Residential) zoning district, and will be compatible with the surrounding uses of the neighborhood.

- c) 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.

- d) Adverse visual impacts on adjoining properties have been reasonably mitigated.

Any potential adverse impacts on adjoining properties have been reasonably mitigated through the installation of privacy protection plantings and front yard trees as required.

NOW, THEREFORE, BE IT RESOLVED:

The Project is found to be exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section 15303. The appeal of the application for a Two Story Permit, Application no. R-2018-20 is hereby denied, and the Administrative Hearing Officer's August 9, 2018 approval is hereby upheld. The conclusions upon which the findings and conditions specified in this resolution are based and contained in the Public Hearing record concerning Application nos. INT-2018-01, and R-2018-20 as set forth in the Minutes of Administrative Hearing Meeting of August 9, 2018 and Planning Commission Hearing of February 12, 2019, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set entitled, "Bette Ave Residence Addition, 10550 Bette Ave., Cupertino, CA 95014," drawn by D-Square Studio dated March 1, 2017 and submitted to the City on November 5, 2018, consisting of eleven (11) sheets labeled A-0.0 through A-6.2; and the boundary survey entitled, "Site Plan/Boundary Survey" certified by John K. King dated April 19, 2018 consisting of one (1) sheet; 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 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.

4. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file no INT-2018-01, shall be applicable to this approval.

5. PRIVACY AND FRONT-YARD TREE PLANTING

The final privacy and front-yard tree 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.

6. PRIVACY AND FRONT-YARD TREE PROTECTION 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 second floor balconies and 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.

7. 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.

8. 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.

9. 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.

10. 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 12th day of February, 2019, 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:

Benjamin Fu
Acting Dir. of Community Development

Chair, Planning Commission