

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 OF A FRONT YARD INTERPRETATION TO  
DESIGNATE THE PROPERTY LINE ALONG BETTE AVENUE AS THE  
FRONT LOT LINE TO ALLOW FOR A 198 SQUARE FOOT ADDITION TO  
THE FIRST FLOOR AND A 980 SQUARE FOOT ADDITION OF A  
SECOND FLOOR TO AN EXISTING SINGLE-STORY  
RESIDENCE LOCATED AT 10550 BETTE AVENUE (A.P.N 369-26-016)

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SECTION I: PROJECT DESCRIPTION

Application No.: INT-2018-01  
Applicant: Clayton Johnson (Premiere Builders)  
Appellant: Elisa Herberg  
Location: 10550 Bette Avenue (A.P.N 369-26-016)

SECTION II: FINDINGS

WHEREAS, the City of Cupertino received an application for a Front Yard Interpretation to designate the property line along Bette Avenue as the front lot line and to permit a 198 square foot addition to the first floor and a 980 square foot addition of a second floor to an existing single-story residence; and

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

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the Administrative Hearing Officer has held at least one public meeting in regard to the application; 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:

1. The project is consistent with the Cupertino General Plan, any applicable specific plans, zoning ordinance, and the purposes of the R1 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 (R1) Ordinance, of the Cupertino Municipal Code for setbacks, lot coverage, floor area ratio, and other development standards.*
2. The proposed project is harmonious in scale and design with the general neighborhood; and  
*The interpretation will reinforce the existing residential building relationship as established by the original development when the property was in the City of Cupertino in 1959, eliminate the non-conforming status of the existing residence under the Cupertino Municipal Code, maintain the frontage orientation of the subject site and surrounding properties, and improve the relationship of existing residences and future developments.*
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.  
*No changes to site access are proposed. Therefore, there is no change or impact to the surrounding neighborhood due to access to and from the site. The proposed project meets all required setbacks of the R1 zoning district and the Zoning Title. Therefore, the proposed project will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, or welfare.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 thereof,:

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 Front Yard Interpretation, Application no. INT-2018-01 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 DEPARTMENT

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 R-2018-20, shall be applicable to this approval.

5. 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.

6. FRONT YARD INTERPRETATION

An Interpretation is granted to allow the lot line adjoining Bette Avenue to be considered the front lot line. Any future additions or modifications to the residence shall be consistent with the interpretation of the lot line adjoining Bette Avenue as the front lot line.

7. 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.

8. 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.

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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:

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Benjamin Fu  
Interim Dir. of Community Development

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Chair, Planning Commission