



## COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA  
95014-3255 TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333  
CUPERTINO.ORG

### PLANNING COMMISSION STAFF REPORT

Agenda Date: February 12, 2019

#### SUBJECT

Consider an appeal of the Administrative Hearing Officer's decision to approve 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 Two Story Permit to allow a 980-square-foot second floor to an existing single-story residence. (Applications: INT-2018-01 and R-2018-20; Applicant: Clayton Johnson, Premiere Builders; Project Location: 10550 Bette Avenue; A.P.N.: 369-26-016) Appellant(s): Elisa Herberg)

#### RECOMMENDED ACTION

That the Planning Commission adopt the draft resolutions (see Attachments 1 and 2) to deny the appeal and uphold the Administrative Hearing Officer's decision to approve a Two-Story Permit (R-2018-20) and Front Yard Interpretation Permit (INT-2018-01) for the project.

#### DISCUSSION

*Project Data:*

<b>Special Area/Neighborhood</b>	South Blaney Neighborhood			
<b>General Plan Designation</b>	Low Density Residential (1-5 DU/Acre)			
<b>Zoning Designation</b>	R1-10 (Single-Family Residential)			
	<b>Allowed/ Required</b>	<b>Existing</b>	<b>Approved (8/9/2018)</b>	<b>Revised</b>
<b>Lot Size</b>	6,657 sq. ft. (0.15 acres)			
<b>Lot Coverage</b>	50%	32%	35%	34%
<b>Proposed Size</b>	2,996 sq. ft.	1,745 sq. ft.	2,923 sq. ft.	2,817 sq. ft.
<b>First Floor</b>	-	1745 sq. ft.	1,943 sq. ft.	1,824 sq. ft.
<b>Second Floor</b>	-	0 sq. ft.	980 sq. ft.	980 sq. ft.
<b>F.A.R.</b>	45%	26%	44%	43%

	Allowed/ Required	Existing	Approved (8/9/2018)	Revised
<b>1<sup>st</sup> Floor Setbacks</b>				
Front	20'	18'-5"	<b>20'-5"</b>	<b>20'</b>
Rear	20'	22'-10"	<b>22'-10"</b>	<b>20'</b>
Street Side	12'	15'	15'	15'
Interior Side	5'	14'-4"	<b>5'-9"</b>	14'4"
<b>2<sup>nd</sup> Floor Setbacks</b>				
Front	25'	-	25'	25'
Rear	25'	-	25'	25'
Street Side	12'	-	23'-4"	23'-4"
Interior Side	20'	-	20'	20'
<b>Total Building Height</b>	28'	13'-7"	<b>23'-10"</b>	<b>23'6"</b>
<b>Project Consistency With:</b>				
General Plan	Yes			
Zoning	Yes (upon approval of the Front Yard Interpretation)			
Environmental Review	Categorically Exempt per Section 15303 of the California Environmental Quality Act (CEQA)			

*Note: Revisions since approval of the project are indicated in bold in the table above.*

#### *Background:*

On May 8, 2018, Clayton Johnson of Premiere Builders, representing the homeowners Steven and Jane Lau, applied for a Front Yard Interpretation Permit 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 Two Story Permit to allow a 980 square foot new second floor.



Figure 1 Project location. Applicant's property outlined in red. Appellant's property outlined in yellow.

The Municipal Code (CMC) defines the longer side on a corner lot as the side yard lot line, which for this property is Bette Avenue. However, there is an established pattern of corner lot residences within the original tract that have functional front yards along the

longer lot line, and under the City of Cupertino's earlier zoning standards, an applicant with a corner lot could choose which street to place the front setback along.

Since the proposed project is consistent with all aspects of Chapter 19.28, Single-Family Residential (R-1), of the Municipal Code, and the proposed interpretation will reinforce the existing residential building relationship as established by the original development, while eliminating the non-conforming status of the existing residence under the CMC, the project was approved administratively on August 9, 2018 (Attachments 3, 4 & 5). The deadline to appeal the project was August 23, 2018. The approval of the Two-Story Permit and Front Yard Interpretation was appealed by Elisa Herberg (6693 Clifford Drive) on August 23, 2018 (Attachment 6).

Subsequent to the appeal being filed, PG&E confirmed with the applicant that a 15' wide easement located in the side yard, that was believed to be abandoned, in fact was active. As a result, the project was revised to increase the setback on the interior side yard from 5'-9" to 14'-4" (Attachment 7).

## **DISCUSSION:**

### **Basis of the Appeal**

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

1. "The developer built the corner lot homes, now considered non-conforming, with a setback of 5' or so to the newer homes backyard while the older homes (occupied) were given special consideration (concession?) and built almost 3 times further away (about 14'6" or so).

Front yard Interpretation is all about setbacks. If the front yard Interpretation is approved should the owner be allowed to encroach on a setback that was clearly made to get the development approved by the existing neighbors and City?"

*In the case of the appellant's property, which was developed in the City of San Jose, a building setback line recorded on his Tentative Map (No. 2076, recorded in 1958) established the front yard to be located on Clifford Drive and the street side yard setback to be located on Bette Avenue. However, Tract Map (No. 2155, recorded in 1959) does not include any restrictions on the location of the front yard, other than any Municipal Code requirements. At the time this home was developed, the Municipal Code allowed the applicant to decide which street the original home would front on.*

*While on a corner lot unencumbered by any easements, the Front Yard Interpretation would have allowed the first floor to extend as close as 5' to the side property line; in this case, due to*

*the existence of the active 15' PG&E easement, the side yard setback has to be at least as much. Amendments have been made to the plans to ensure that the required setbacks are met, while keeping structures out of easements that are required to be kept free and clear.*

2. "I am also concerned about the camphor tree being removed...including a second story."

*The second story window sills facing the appellant's rear yard are at 5' above the finished floor, therefore, the applicant is not required to provide any privacy mitigation or propose retention of any existing trees to serve as privacy plantings. However, as a result of meetings between the applicant and the appellant, there have been agreements to maintain the camphor tree and plantings of additional Italian Cypresses to mitigate any potential views.*

### **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:

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

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

### **CONCLUSION**

The proposed project complies with the General Plan, and zoning ordinances, while also conforming to the single-family residential development pattern of many of the corner lots within their tract, in accordance with Chapter 19.28 of the Cupertino Municipal Code. Further, the applicant has revised the scope of their project to reflect the concerns of the appellant. Therefore, staff recommends that the Planning Commission deny the appeal and uphold the Administrative Hearing Officer's decision to approve the Two-Story Permit and Front Yard Interpretation.

## **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.

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Prepared by:	Gian Paolo Martire, Associate Planner
Reviewed by:	Piu Ghosh, Principal Planner
Approved for Submission by:	Benjamin Fu, Interim Dir. of Community Development

## **ATTACHMENTS**

1. Draft Resolution for R-2018-20
2. Draft Resolution for INT-2018-01
3. Administrative Hearing Resolution INT-2018-01
4. Administrative Hearing Resolution R-2018-20
5. Approved Plan Set
6. Appellant Elisa Herberg's Letter and Images
7. Revised Plan Set