

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

OF THE ADMINISTRATIVE HEARING OFFICER OF THE CITY OF  
CUPERTINO APPROVING AN ARCHITECTURAL AND SITE APPROVAL  
PERMIT TO ALLOW THE ADDITION OF 77 S.F. AND MODIFICATIONS TO  
THE EXTERIOR MATERIALS FOR A SINGLE-FAMILY RESIDENCE IN A  
PLANNED DEVELOPMENT ZONE LOCATED AT 10367 HENNEY CREEK  
PLACE (APN 342-48-027)

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SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2019-03  
Applicant: Steven M. Dauber  
Location: 10367 Heney Creek Place

SECTION II: FINDINGS FOR ARCHITECTURAL AND SITE APPROVAL PERMIT:

WHEREAS, the City of Cupertino received an application for an Architectural and Site Approval to consider allowing the addition of 77 s.f. and modifications to the exterior materials for a single-family home, as described in Section I. of this Resolution; 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, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.) ("CEQA"), together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"), the City staff has independently studied the proposed Project and has determined that the Project is exempt from environmental review pursuant to the categorical exemption in CEQA Guidelines section 15301 and 15332 for the reasons set forth in the staff report dated June 13, 2019 and incorporated herein; and

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, the Administrative Hearing Officer finds as follows with regard to this application:

1. The proposed development, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

*The applicant proposes a complete façade modification that utilizes existing material types that are compatible with the overall development and conversions of partially enclosed spaces into habitable living area totaling 77 s.f. The two conversions are a 54 s.f. front balcony and 23 s.f. alcove off the existing living room. All of the proposed changes are minor and are improvements to the existing home and will not be detrimental or injurious to property or improvements in the vicinity*

2. The proposal is consistent with the purposes of Chapter 19.168, the General Plan any specific plan, zoning ordinances, applicable planned development permit, conditional use permits, variances, subdivision maps or other entitlements to use which regulate the subject property including, but not limited to, adherence to the following specific criteria:

- a) Abrupt changes in building scale should be avoided. A gradual transition related to height and bulk should be achieved between new and existing buildings.

*The square footage added to the home will not abruptly change in scale. The proposal includes a conversion of an existing alcove located at the northwest corner of the home for additional living room area, and a balcony located at the front for a dining room expansion. Both the height and bulk between the proposal and existing buildings will be maintained.*

- b) In order to preserve design harmony between new and existing building and in order to preserve and enhance property values, the materials, textures and colors of new building should harmonize with adjacent development by being consistent or compatible with design and color schemes with the future character of the neighborhoods and purposes of the zone in which they are situated. The location, height and materials of walls, fencing, hedges and screen planting should harmonize with adjacent development. Unsightly storage areas, utility installations and unsightly elements of parking lots should be concealed. The planting of ground cover or various types of pavements should be used to prevent dust and erosion, and the unnecessary destruction of existing healthy trees should be avoided. Lighting for development should be adequate to meet safety requirements as specified by the engineering and building departments, and provide shielding to prevent spill-over light to adjoining property owners.

*The neighborhood was designed to preserve and be respectful of the hillside environment by using materials and colors that comply with Residential Hillside standards. The proposed materials for re-facing the building will maintain this aesthetic. The façade changes will continue to use materials similar to the existing neighborhood and will integrate stucco, Hardie wood, and stone veneer on all four facades. Additionally, the colors will be compatible with the earth-tone color palette that currently exists.*

- c) The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures have been designed to minimize traffic hazard, positively affect the general appearance of the neighborhood and harmonize with adjacent development.

*No signs are proposed as part of this residential project.*

- d) With respect to new projects within existing residential neighborhoods, new development should be designed to protect residents from noise, traffic, light and visually intrusive effects by use of buffering, setbacks, landscaping, walls and other appropriate design measures.

*The proposal includes small additions and a façade modification for an existing home located on a flag lot with significant tree screening. The additional square footage is a conversion of an existing balcony located at the front of the home and a partially enclosed alcove located at the northwest corner of the home. Both additions will not be visibly intrusive because of the size and location. Additionally, the chosen materials and architectural articulation are appropriately applied throughout the exterior of the home and complements the existing neighborhood in materials and colors. The project will not be visually intrusive or cause noise, traffic, and light impacts to the adjacent properties.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the maps, facts, exhibits, testimony, staff's report and presentation, and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 4 thereof,;

The application for an Architectural and Site Approval, Application no. ASA-2019-03 is hereby approved and that the subconclusions upon which the findings and conditions specified in this resolution are based and contained in the Public Meeting record concerning Application no. ASA-2019-03 as set forth in the Minutes of the Administrative Hearing Meeting of June 13, 2019 and are incorporated by reference as though fully set forth herein.

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### SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

#### 1. APPROVED EXHIBITS

Approval is based on the plan set drawn by Leitzinger & Company entitled "Steve Dauber Residence" consisting of twenty (20) sheets, except as may be amended by conditions in this resolution.

#### 2. 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.

#### 3. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

#### 4. EXTERIOR BUILDING MATERIALS/TREATMENTS

- a. The final building exterior plan shall closely resemble the details shown on the original approved plans.
- b. The final building materials shall be of natural earth tone and vegetation colors and shall not exceed a reflectivity value of 60 as required by Cupertino Municipal Code 19.40.040.
- c. All final building exterior treatment plan (including but not limited to details on exterior color, materials, architectural treatments, doors, windows, lighting fixtures, and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits to ensure quality and consistency.
- d. Any exterior changes determined to be substantial by the Director of Community Development shall either require a modification to this permit or a new permit based on the extent of the change.

#### 5. DEMOLITION REQUIREMENTS

All demolished building and site materials shall be recycled to the maximum extent feasible subject to the Building Official. The applicant shall provide evidence that materials were recycled prior to occupancy.

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## 6. GRADING AND CONSTRUCTION HOURS AND NOISE LIMITS

The applicant shall indicate compliance with the following grading and construction hours and noise limit requirements on all demolition, construction and grading permits, and in the construction management plan(s), unless otherwise indicated.

- a. All grading activities shall be limited to the dry season (April 15 to October 1), unless permitted otherwise by the Director of Public works.
- b. Construction hours and noise limits shall be compliant with all requirements of Chapter 10.48 of the Cupertino Municipal Code.
- c. Grading, street construction, underground utility and demolition hours for work done more than 750 feet away from residential areas shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Grading, street construction, demolition or underground utility work within 750 feet of residential areas shall not occur on Saturdays, Sundays, holidays, and during nighttime period as defined in Section 10.48.053(b) of the Municipal Code.
- d. Construction activities shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Construction activities are not allowed on holidays as defined in Chapter 10.48 of the Municipal Code. Night time construction is allowed if compliant with nighttime standards of Section 10.48 of the Cupertino Municipal Code.
- e. Rules and regulations pertaining to all construction activities and limitations identified in this permit, along with the name and telephone number of an applicant appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
- f. The applicant shall be responsible for educating all contractors and subcontractors of said construction restrictions.

## 7. BAAQMD BASIC CONTROL MEASURES (DUST CONTROL)

Project shall comply with the Bay Area Quality Management District's Basic Construction Mitigation Measures to reduce construction fugitive dust impacts as follows:

- a. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- c. All visible mud or dirt tracked-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

- d. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h. A publicly visible sign shall be posted with the telephone number and person to contact at the City of Cupertino regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD phone number shall also be visible to ensure compliance with applicable regulations.

Applicant shall indicate compliance with BAAQMD's basic control measures on all demolition, construction and grading permits and construction management plan(s).

#### 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.

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PASSED AND ADOPTED this 13th day of June, 2019 at a noticed Public Meeting of the Administrative Hearing Officer of the City of Cupertino, State of California, held by the Director of Community Development, or his or her designee, pursuant to Cupertino Municipal Code Section 19.12.120.

ATTEST:

APPROVED:

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Ellen Yau  
Associate Planner

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Benjamin Fu  
Acting Director of Community Development