



**COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**

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**PLANNING COMMISSION STAFF REPORT**

Agenda Date: November 12, 2019

**SUBJECT**

Consider an appeal of the Community Development Director's approval of a Residential Design Review Permit to allow the construction of a 520 square-foot first-floor addition and a new 820 square-foot second-story with a second-story setback less than 15 feet and a Minor Residential Permit to allow a second-story balcony. (Applications: R-2017-33 and RM-2017-39; Applicant: Francis Kun (Tsai residence); Project Location: 21865 San Fernando Avenue; A.P.N.: 357-15-043; Appellant(s): Shayjan Huang and Eric and Cindy Fang)

**RECOMMENDED ACTION**

Conduct the public hearing and deny the appeal and uphold the Director's decision to approve the applications per the Draft Resolutions (see Attachments 1 and 2).

**DISCUSSION**

**Project Data:**

<b>General Plan Designation:</b>	Residential (0-4.4 DU/AC)		
<b>General Plan Special Area:</b>	Monta Vista Village Special Area		
<b>Zoning Designation:</b>	R1-7.5 (Single-Family Residential)		
	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>
<b>Net Lot Area</b>	-	9,966 sq. ft. (0.23 acres)	9,714 sq. ft.* (0.22 acres)
<b>Floor Area Ratio (F.A.R.)</b>	4,371 sq. ft. (45%)	2,834 sq. ft. (29%)	4,369 sq. ft. (44.9%)
<b>Lot Coverage</b>	4,857 sq. ft. (50%)	3,241 sq. ft. (33%)	4,217 (43.4%)



The Single-Family Residential (R-1) Ordinance, Chapter 19.28 of the Cupertino Municipal Code (CMC) requires two-story additions to obtain a Residential Design Review Permit where a proposed second-story side-yard setback is less than 15 feet to any interior side property line. Since the proposed project has a second story setback of less than 15 feet, a Residential Design Review Permit was required and therefore, an architectural peer-review was conducted. Additionally, the R-1 Ordinance requires a Minor Residential Permit for new second-story balconies with views into neighboring residential side or rear-yards. Since the proposed project involves a second story balcony that will create views into neighboring side or rear-yards, a Minor Residential Permit was required.

The following is a summary of the project events leading up to the appeal:

- |                    |   |
|--------------------|---|
| October 11, 2017:  | Francis Kun (Tsai residence) applied for the Residential Design Review Permit and Minor Residential Permit.   |
| November 11, 2017: | The Planning Division received a letter in opposition to the project signed by 11 neighbors.  |
| November 17, 2017: | The property owner, David Tsai, met with adjacent neighbors to discuss the project concerns outlined in the letter.   |
| February 21, 2018: | <p>To address the concerns identified by adjacent property owners, the applicant revised the proposed project by:</p> <ul style="list-style-type: none"><li>• Reducing the proposed three-car (653 sq. ft.) garage to a two-car (498.5 sq. ft.) garage and converting the third car space to a carport;</li><li>• Increasing the first-floor rear-yard setback from 41'-7" to 48';</li><li>• Moving the location of the proposed second story closer to the street by approximately 12' thereby, increasing the second-story rear-yard setback from 68' to 80'-9" and the second-story balcony rear-yard setback from 44'-4" to 60'-3";</li><li>• Reducing the area of the second-story balcony by approximately 235 sq. ft. resulting in an increase in the second-story balcony side-yard setback from 10' to 18'-9"; and</li></ul> |

	<ul style="list-style-type: none"> <li>• Removing a previously proposed exterior staircase to the second-story balcony</li> </ul>
November, 2017 - May, 2019:	Staff conducted multiple informal meetings at City Hall and on-site with adjacent property owners.
May 1 – 15, 2019:	Staff received multiple written comments during the public comment period, including a letter signed by 35 neighbors (re-submitted as part of the appeal packet).
June 24, 2019	<p>In response to the comments received during the public comment period, the applicant revised the project by:</p> <ul style="list-style-type: none"> <li>• Reducing the width of the proposed carport posts</li> <li>• Incorporating a flat roof line by reducing the roof pitch of the carport resulting in a decrease in height by approximately 4’.</li> </ul>
June 25, 2019:	The project underwent an architectural peer-review by the City’s Consulting Architect and was approved as it was found to be consistent with all aspects of the R-1 Ordinance.
July 10, 2019:	The approval of the Design Review Permit (R-2017-33) and Minor Residential Permit (RM-2017-39) was appealed by Shayjan Huang and Eric and Cindy Fang (Attachment 4).

### **Basis of the Appeal:**

The appellants’ specific basis of appeal of the Director’s decision is summarized below with related quotes in *italics*. Where appropriate, staff's response follows.

1. **Mass and Bulk:** *“This huge protruding expansion of the house with very short front setback, a second-story addition in the back part of the house, a huge 2<sup>nd</sup> floor balcony, and a big carport protruding into the backyard. It will destroy the harmony of the neighborhood.”*

*“The new expansion protruding into the backyard far exceeds the 2nd story lines of all the houses on the north side of San Fernando Avenue.”*

*“This expansion is significantly longer than all the houses on San Fernando Ave. and immediate neighbors.”*

*"Neighbors felt that this expansion looked like two connected houses [and] does not fit the single-family neighborhood..."*

*"The current 21865 San Fernando Ave. house (before expansion) with garage on the back is already longer than adjacent properties...After the addition of the first floor living area and two-car garage has already protrude into our backyard garden leisure area."*

*"21865's design will block all neighbors' backyard views and bring security threats. It will stand out in an aesthetically unpleasing manner and devalue neighborhood properties' value."*

The existing house was built when the property was in the County of Santa Clara's jurisdiction. Therefore, the existing front setback at the first floor is approximately 13', less than the current 20' foot standards. Due to the proposed development, a right of way dedication of five feet is required by the Public Works Department. This results in a front-yard setback for the existing structure of 7'-11". The City's Municipal Code recognizes that structures or portions of structures that were legally constructed and retain, unchanged, with a redevelopment project can remain "legal non-conforming." Therefore, the applicant can retain the existing front-yard setback and structure, despite their non-conforming status

It also appears from an aerial view (see Figure 2) that five adjacent properties along San Fernando Avenue (including the subject property) were all developed with the same/similar setbacks. These properties would also be allowed to retain the existing legal non-conforming first-floor front-yard setback should they redevelop or propose additions/improvements with no changes to the front of the building.

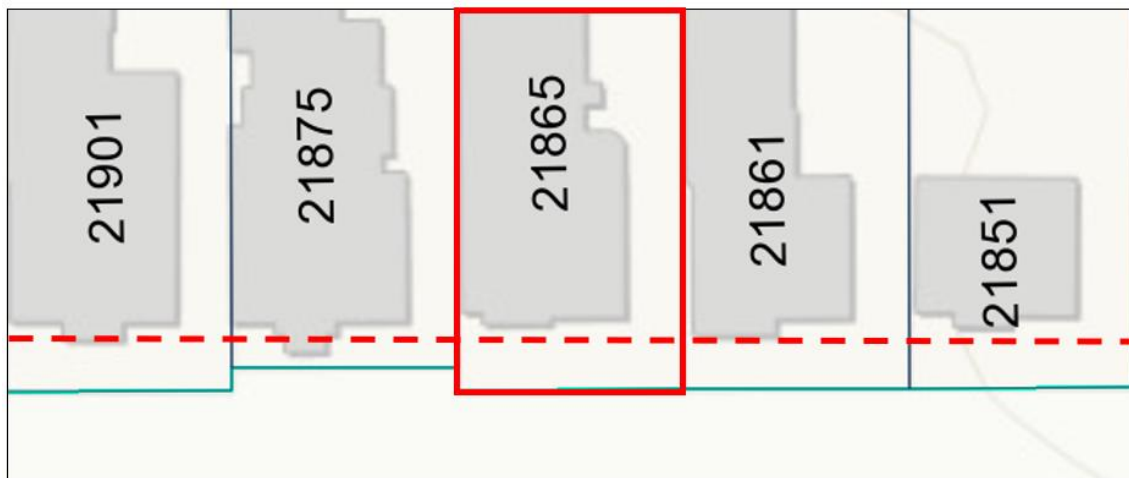


Figure 2. Aerial view of neighboring front-yard setbacks. Applicant's property outlined in red.

However, all remaining portions of the proposed project meet all other setback requirements for the first floor, second floor and second-story balcony and meet

all other the building development regulations including floor area ratio (FAR), lot coverage, and building height.

There are no regulations regarding length of buildings or placement of either the first or second story on the property other than the setbacks identified in the R-1 Ordinance. However, as part of the Residential Design Review, the project underwent an architectural peer-review by the City's Consulting Architect for design and neighborhood compatibility. The Consulting Architect made recommendations to better incorporate the new second-story into the existing structure, which the applicant complied with by amending the proposed plans.

As indicated in the summary of project revisions in the project timeline above, the applicant has voluntarily revised the scope of the project twice in order to address the concerns of adjacent property owners by not only relocating the second story, but also by reducing the size of the second-story balcony and decreasing the total building length. Furthermore, there are other two-story structures in the vicinity of the proposed project (see Attachment 5).

2. **Privacy Impacts:** *"The expansion will create privacy, security issues and obstructing the views of all neighbor's backyards."*

*"We feel our family is entitled to privacy, safety, and comfort in our own backyard."*

*"Although there will be trees planted along the fence, it is very likely that the trees will not provide complete coverage and privacy."*

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 by implementation of the requirements in the ordinance. Setback requirements for the first and second floors 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 proposal for 21865 San Fernando Avenue meets, and in some cases exceeds, all setback requirements for the R1-7.5 zoning district. The project proposes a first-floor rear-yard setback of 48' where only 20' is required; a second-story rear-yard setback of 80'-9" where 25' is required; and a rear-yard balcony setback of over 60' where 20' is required.

The project complies with the privacy screening requirements of the R-1 Ordinance by providing privacy screening plantings for all second-story balconies and second-story windows with a sill height below 5 feet along the western, eastern, and northern property lines. Per the R-1 Ordinance, 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.

#### **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"><li>▪ Site Signage (<i>at least 10 days prior to hearing</i>)</li><li>▪ 44 notices mailed to 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 all aspects of Chapter 19.28 of the Cupertino Municipal Code. Further, the applicant has revised the scope of their project to reflect the concerns of surrounding property owners. Therefore, staff recommends that the Planning Commission deny the appeal and uphold the Community Development Director's decision to approve the Residential Design Review Permit via the Resolution for Application R-2017-33 and Minor Residential Permit via the Resolution for Application RM-2017-39.

#### **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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<u>Approved for Submission by:</u>	Benjamin Fu, Director of Community Development

## **ATTACHMENTS**

1. Draft Resolution for R-2017-33
2. Draft Resolution for RM-2017-39
3. Approved Plan Set
4. Appellant Letter and Supplemental Documents
5. Distribution of Two-Story Residences (exhibit)