

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION

OF THE ADMINISTRATIVE HEARING OFFICER
OF THE CITY OF CUPERTINO TO ALLOW FACADE, PARKING,
AND SITE IMPROVEMENTS TO AN EXISTING RETAIL BUILDING
LOCATED AT 19900 STEVENS CREEK BLVD.

SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2019-006
Applicant: Nathan Ung
Location: 19900 Stevens Creek Blvd. (APN 369-05-038)

SECTION II: FINDINGS

WHEREAS, the City of Cupertino received an application for an Architectural and Site Approval to consider allowing modifications to the exterior building materials and landscaping for an existing retail building, 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 with 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 January 9, 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 proposal, 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 to enclose existing covered arcades; therefore, not increasing the lot coverage and overall massing. In addition, the project proposes a façade modification to modernize the existing building. The changes include material changes from an all brick façade to one with metal and wood accents in addition to the brick. The proposal includes the creation of two front patios on each side of the central walkway that leads to the entrance. The project also includes improvements in the parking lot and within the landscaped areas. All the proposed changes are minor improvements to the existing building and site 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.

There are no changes in building scale except the addition of a metal clad architectural feature at the northeast corner of the building. The architectural feature will add 1'-3" to 13'-7" feet along the north elevation (Stevens Creek Boulevard) and 13'-10" feet along the east elevation (facing the main driveway) at the northeast corner of the building. No other height or scale modifications are proposed that will impact the existing massing.

- b) In order to preserve design harmony between new and existing buildings 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.

Through this proposal the applicant has incorporated existing materials with attractive contemporary metal and wood elements that are suited and compatible with the character of the area. In addition, the applicant proposes to enhance the landscaping on the property. Existing mature trees that are in good health are proposed to be retained. Outdoor lighting incorporates appropriate shielding and is designed to meet the parking lot lighting requirements of the Municipal Code.

- 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.

There is currently a ground sign located with the front setback area and the applicant intends to reface the sign to reflect the new architectural style and tenants. At this point, no signs are proposed, nor approved, as part of this 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.

This application is not a new project and will maintain the existing buffering and setbacks established adjacent to the existing residential neighborhoods.

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 3 thereof,

The application for an Architectural and Site Approval, Application no. ASA-2019-006 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-2019-006 as set forth in the Minutes of the Administrative Hearing Meeting of January 9, 2020 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 drawn by M/A Design Group and HMH titled "Charles Dunn 19900 Stevens Creek Blvd. Building Remodel and Renovations" consisting of forty-five (45) sheets labeled A0-1, A1-1, A1-2, A1-3, A2-1, A2-2, A3-1, A4-1, A4-2, A4-3, A4-4, A4-5, A5-1, G0.01, C1.1, C1.2, C2.1, C2.2, C3.1, C3.2, C4.1, L0.01, L0.02, L1.01, L1.02, L1.03, L2.01, L3.01, L3.02, L3.03, L3.04, L3.05, L3.06, L3.07, L4.01, L4.02, L4.03, L4.04, L5.01, L5.02, L5.03, L5.04, and L5.05, 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. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. DP-2019-001 and TR-2019-032 shall be applicable to this approval.

4. 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.

5. INGRESS/EGRESS EASEMENT

Prior to final occupancy, the property owner shall record an appropriate deed restriction and covenant running with the land subject to the approval of the City Attorney, to provide the necessary reciprocal ingress and egress easements to and from the adjoining properties for purposes of pedestrian and vehicular access and cross circulation. The easement language shall provide that construction of any driveways shall be completed to the City's satisfaction at such time as the city can require the adjacent property owners to agree to construct driveway(s) and provide reciprocal ingress/egress easements through a planning permit. The agreement language including the driveway(s) and easement layout shall be reviewed and approved by the City prior to recordation with the County Recorder's Office. The easement shall contain a provision that it may not be modified or removed without express written approval from the City.

6. EXTERIOR BUILDING MATERIALS/TREATMENTS

- a. The final building exterior plan shall closely resemble the details shown on the original approved plans.
- b. No fencing is approved within the front setback area.
- 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.

7. WINDOW DETAILS

All storefront windows shall be kept open and transparent to the greatest extent possible. The final storefront design and window display shall be reviewed and approved by the Director of Community Development prior to issuance of building permits for tenant improvements. No changes shall be made to the transparency of the windows without the express approval of the Director of Community Development.

8. LANDSCAPE PROJECT SUBMITTAL

Prior to issuance of building permits, the applicant shall submit a full Landscape Documentation Package, per sections 14.15.050 A, B, C, and D of the Landscape Ordinance, **for projects with landscape area 500 square feet or more** or elect to submit a Prescriptive Compliance Application per sections 14.15.040 A, B, and C **for projects with landscape area between 500 square feet and 2,500 square feet**. The Landscape Documentation Package or Prescriptive Compliance Application shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits, and additional requirements per sections 14.15.040 D, E, F, and G or 14.15.050 E, F, G, H, and I will be required to be reviewed and approved prior to final inspections.

9. LANDSCAPE INSTALLATION REPORT

The project is subject to all provisions delineated in the Landscape Ordinance (CMC, Chapter 14.15). A landscape installation audit shall be conducted by a certified landscape professional after the landscaping and irrigation system have been installed. The findings of the assessment shall be consolidated into a landscape installation report.

The landscape installation report shall include but is not limited to: inspection to confirm that the landscaping and irrigation system are installed as specified in the landscape and irrigation design plan, system tune-up, system test with distribution uniformity, reporting overspray or run-off that causes overland flow, and preparation of an irrigation schedule.

The landscape installation report shall include the following statement: "The landscape and irrigation system have been installed as specified in the landscape and irrigation design plan and complies with the criteria of the ordinance and the permit."

10. LANDSCAPE AND IRRIGATION MAINTENANCE

Per the Landscape Ordinance (CMC, Chapter 14.15), a maintenance schedule shall be established and submitted to the Director of Community Development or his/her designee, either with the landscape application package, with the landscape installation report, or any time before the landscape installation report is submitted.

- a. Schedules should take into account water requirements for the plant establishment period and water requirements for established landscapes.
- b. Maintenance shall include, but not be limited to the following: routine inspection; pressure testing, adjustment and repair of the irrigation system; aerating and de-thatching turf areas; replenishing mulch; fertilizing; pruning; replanting of failed plants; weeding; pest control; and removing obstructions to emission devices.
- c. Failed plants shall be replaced with the same or functionally equivalent plants that may be size-adjusted as appropriate for the stage of growth of the overall installation. Failing plants shall either be replaced or be revived through appropriate adjustments in water, nutrients, pest control or other factors as recommended by a landscaping professional.

11. ARTWORK

All artwork to be installed within the project shall be reviewed by the Fine Arts Commission. Said artwork may be retained for as long as desired. However, if retained the artwork shall be maintained by the property owner appropriately and adequately on a regular basis.

11. SIGNAGE

Signage is not approved with this application. Signage shall conform to the City Sign Code.

12. LIGHTING

On-site lighting must be in conformance with Cupertino Municipal Code Chapters 19.60 and 19.124.

13. 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.

14. 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.

15. BAAQMD BASIC CONTROL MEASURES (DUST CONTROL)

Project shall comply with the Bay Area Quality Management District's Basic Construction Mitigation Measures 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).

16. 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.

17. INDEMNIFICATION

To the fullest extent permitted by law, the applicant shall indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, 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 related to this Resolution/Action Letter, the related entitlements, 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 (thirty) days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel 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. The applicant shall likewise indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties.

18. 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.

SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT

19. STREET IMPROVEMENTS & DEDICATION

Provide a street dedication in fee title and frontage improvements along the project to the satisfaction of the Director of Public Works Street improvement plan design must be completed and approved prior to issuance of Building Permit.

Street improvements may include, but not be limited to, remove and replace uplifted and broken curb, gutter, sidewalk, and driveway, and street tree. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

17. ACCEPTANCE OF PROPERTY RIGHTS

The Public Works Director, or his/her designee, shall have the authority to accept all offers of dedications, easements, quitclaims and other property rights and interests on behalf of the City.

18. PEDESTRIAN AND BICYCLE IMPROVEMENTS

Developer shall provide pedestrian and bicycle related improvements (eg. walkway and bicycle racks, etc.) consistent with the Cupertino Bicycle Transportation Plan and the Pedestrian Transportation Guidelines, and as approved by the Director of Public Works.

19. DRAINAGE

Drainage shall be provided to the satisfaction of the Director of Public. All storm drain inlets shall be clearly marked with the words "No Dumping – Flows to Creek" using permanently affixed metal medallions or equivalent, as approved by the Environmental Programs Division.

20. C.3 REQUIREMENTS

C.3 regulated improvements are required for all projects creating and/or replacing 10,000 S.F. or more of impervious surface (collectively over the entire project site). The developer shall reserve a minimum of 4% of developable surface area for the placement of low impact development measures, for storm water treatment, unless an alternative storm water treatment plan, that satisfies C.3 requirements, is approved by the Director of Public Works.

21. IMPROVEMENT AGREEMENT

The project developer shall enter into a development agreement with the City of Cupertino providing for payment of fees, including but not limited to checking and inspection fees, storm drain fees, park dedication fees and fees for under grounding of utilities. Said agreement and fees shall be executed and paid prior to issuance of Building.

Fees:

- | | |
|--------------------------------|--|
| a. Checking & Inspection Fees: | Per current fee schedule (\$891) |
| b. Storm Drainage Fee: | Per current fee schedule (\$9,566 per AC) |
| c. Transportation Impact Fee: | Per current fee schedule: \$22,439 (2,235SF X \$10.04/SF). |
| d. Encroachment Permit Fee: | Per current fee schedule (\$2,638 or less) |
| e. Street Tree | By Developer |

Bonds:

Faithful Performance Bond: 100% of Off-site and On-site Improvements

Labor & Material Bond: 100% of Off-site and On-site Improvement

-The fees described above are imposed based upon the current fee schedule adopted by the City Council. However, the fees imposed herein may be modified at the time of recordation of a final map or issuance of a building permit in the event of said change or changes, the fees changed at that time will reflect the then current fee schedule.

22. TRANSPORTATION IMPACT FEES

The Project may be subject to the payment of Transportation Impact Fees under City's Transportation Impact Fee Program (Chapter 14.02 of the Cupertino Municipal Code). The current fee schedule rate is \$10.04 per square foot and the estimated cost is \$22,439 for the proposed 2,235 square foot addition.

23. TRASH, RECYCLING AND COMPOST ENCLOSURES

Trash enclosure plans must be designed in accordance with the City's "Public Works Guidelines posted at www.cupertino.org/nowaste, and to the satisfaction of the Environmental Programs Manager. Clearance by the Public Works Department is required prior to obtaining a building permit. (CMC 9.18.210 H & K).

24. OPERATIONS & MAINTENANCE AGREEMENT

Developer shall enter into an Operations & Maintenance Agreement with the City before issuance of a building permit approval. The Agreement shall include the operation and maintenance for non-standard appurtenances in the public road right-of-way that may include, but is not limited to, sidewalk, pavers, and street lights.

25. UNDERGROUND UTILITIES

Developer shall comply with the requirements of the Underground Utilities Ordinance No. 331 and other related Ordinances and regulations of the City of Cupertino and shall coordinate with affected utility providers for installation of underground utility devices. Developer shall submit detailed plans showing utility underground provisions. Said plans shall be subject to prior approval of the affected Utility provider and the Director of Public Works.

26. TRANSFORMERS & CABINETS

Electrical transformers, telephone cabinets and similar equipment shall be placed in underground vaults. The developer must receive written approval from both

the Public Works Department and the Community Development Department prior to installation of any above ground equipment. Should above ground equipment be permitted by the City, equipment and enclosures shall be screened with fencing and landscaping such that said equipment is not visible from public street areas, as determined by the Community Development Department. Transformers shall not be located in the front or side building setback area.

27. WATER BACKFLOW PREVENTERS

Domestic and Fire Water Backflow preventers and similar above ground equipment shall be placed away from the public right of way and site driveways to a location approved by the Cupertino Planning Department, Santa Clara County Fire Department and the water company.

28. BEST MANAGEMENT PRACTICES

Utilize Best Management Practices (BMPs), as required by the State Water Resources Control Board, for construction activity, which disturbs soil. BMP plans shall be included in grading and street improvement plans.

29. EROSION CONTROL PLAN

Developer must provide an approved erosion control plan by a Registered Civil Engineer. This plan should include all erosion control measures used to retain materials on site. Erosion control notes shall be stated on the plans.

30. WORK SCHEDULE

Every 6 months, the developer shall submit a work schedule to the City to show the timetable for all grading/erosion control work in conjunction with this project.

31. TRAFFIC CONTROL PLAN

The developer must submit a traffic control plan by a Registered Traffic Engineer to be approved by the City. The plan shall include a temporary traffic control plan for work in the right of way as well as a routing plan for all vehicles used during construction. All traffic control signs must be reviewed and approved by the City prior to commencement of work. The City has adopted Manual on Uniform Traffic Control Devices (MUTCD) standards for all signage and striping work throughout the City.

32. STREET TREES

Street trees shall be planted within the Public Right of Way to the satisfaction of the Director of Public Works and shall be of a type approved by the City in accordance with Ordinance No. 125.

33. FIRE PROTECTION

Fire sprinklers shall be installed in any new construction to the approval of the City.

34. SANTA CLARA COUNTY FIRE DEPARTMENT

A letter of clearance for the project shall be obtained from the Santa Clara County Fire Department prior to issuance of building permits. Clearance should include written approval of the location of any proposed Fire Backflow Preventers, Fire Department Connections and Fire Hydrants (typically Backflow Preventers should be located on private property adjacent to the public right of way, and fire department connections must be located within 100' of a Fire Hydrant).

35. FIRE HYDRANT

Fire hydrants shall be located as required by the City and Santa Clara County Fire Department as needed.

36. CALIFORNIA WATER SERVICE COMPANY CLEARANCE

Provide California Water Service Company approval for water connection, service capability and location and layout of water lines and backflow preventers before issuance of a building permit approval.

37. DEDICATION OF UNDERGROUND WATER RIGHTS

Developer shall "quit claim" to the City all rights to pump, take or otherwise extract water from the underground basin or any underground strata in the Santa Clara Valley.

38. SANITARY DISTRICT

A letter of clearance for the project shall be obtained from the Cupertino Sanitary District prior to issuance of building permits.

39. UTILITY EASEMENTS

Clearance approvals from the agencies with easements on the property (including PG&E, AT&T, and California Water Company, and/or equivalent agencies) will be required prior to issuance of building permits.

SECTION V: CONDITIONS ADMINISTERED BY THE FIRE DEPARTMENT

40. FIRE SPRINKLER MODIFICATIONS

The fire sprinkler system shall be modified to provide complete coverage for the revised space configuration (if applicable). A separate Fire Prevention Office

submittal and permit are required for the sprinkler modifications. CFC §105.7.1 & 2016 Edition of NFPA 13 §23.1.3

41. EGRESS PATHWAYS

Entrance/Egress pathways shall be maintained and unobstructed during all phases of construction.

42. FIRE LANE & HYDRANTS

The circulating fire lane and associated fire hydrants shall be maintained and unobstructed at all times.

PASSED AND ADOPTED this 9th day of January 2020 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:

Ellen Yau
Associate Planner

Albert Salvador
Assistant Director of Community Development