

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION

OF THE ADMINISTRATIVE HEARING OFFICER
OF THE CITY OF CUPERTINO APPROVING A DEVELOPMENT
PERMIT TO ALLOW A 2,235 SQUARE FEET ADDITION TO AN
EXISTING RETAIL BUILDING FOR COMMERCIAL USES LOCATED
AT 19900 STEVENS CREEK BLVD.

SECTION I: PROJECT DESCRIPTION

Application No.: DP-2019-001
Applicant: Nathan Ung
Location: 19900 Stevens Creek Blvd. (APN 369-05-038)

SECTION II: FINDINGS FOR ARCHITECTURAL AND SITE APPROVAL PERMIT:

WHEREAS, the City of Cupertino received an application for a Development Permit to consider allowing a 2,235 square feet addition to an existing retail building for commercial uses, 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 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 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 current building is a one-story retail commercial building that is located within the Heart of the City Special Area that promotes retail and active uses. The zoning district allows the construction of building of up to 45 feet in height while the existing building is measured approximately 20'. The proposal will not change the height of the building. The project will enclose the two arcades that are located along the front and in the southwest corner of the rear of the building. There will be no change to the massing and setbacks. Therefore, the proposal will not be detrimental or injurious to property or improvements in the vicinity.

2. The proposed development will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan and the purpose of this title and complies with the California Environmental Quality Act (CEQA).

The proposed development is in conformance with the Cupertino General Plan and the proposal has met the development standards specified in the Heart of the City Specific Plan and the City Municipal Code such as heights, setbacks and landscaping requirements. Furthermore, the use of the building is proposed to be consistent with the goals of the General Plan to maintain a commercial core along Stevens Creek Blvd. The project is categorically exempt from CEQA under Section 15301 since it is an addition to an existing structure of less than 10,000 sq. ft. Furthermore, since the building is already a developed site and merely proposes to enclose existing areas already covered by a roof, the project is also categorically exempt from CEQA under Section 15332 - In-Fill Development Projects.

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 2 thereof,;

The application for a Development Permit, Application no. DP-2019-001 is hereby approved and that the subconclusions upon which the findings and conditions specified in this resolution are based and contained in the Public Hearing record concerning Application no. DP-2019-001 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 DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set drawn by M/A Design Group and HMM 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. 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. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. ASA-2019-006 and TR-2019-032 shall be applicable to this approval.

5. DEVELOPMENT ALLOCATION

The applicant shall receive an allocation of 2,235 square feet of the retail commercial allocations from the Heart of the City Special Area.

6. BELOW MARKET RATE PROGRAM

The applicant shall participate in the City's Below Market Rate (BMR) Housing Program by paying the Below Market Rate linkage fee for Commercial use concurrent with issuance of building permits at the rate in effect at that time. The current fee is \$12.30 per net new square feet (~2,235 sq.ft.) for commercial use.

7. 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.

8. BUILDING AND FIRE CODE

The applicant shall apply for and obtain building permits to allow the construction of the approved project. The applicant shall provide information and plans to allow the Building Official and the Fire Marshall or their designee that the proposed plans comply with Building and Fire Codes in effect at the time of application for a building permit.

9. CONSTRUCTION MANAGEMENT PLAN

A construction management plan shall be prepared by the applicant and approved by staff prior to issuance of building permits. Staging of construction equipment shall not occur within 40 feet of any residential property.

10. COVENANT DISCLOSURE

The property is under a Cupertino planned development zoning and property purchasers should check with the City to determine the specific restrictions under the Planned Development Zone and related permits.

11. RESTAURANT ODOR ABATEMENT

All new restaurants shall install odor abatement systems to reduce odor impacts from the restaurants to the adjacent community. The odor abatement systems shall be installed prior to final occupancy of the associated restaurant(s). Detailed plans shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

12. SCREENING

All mechanical and other equipment on the building or on the site shall be screened so they are not visible from public street areas or adjoining developments. Screening materials/colors shall match building features and materials. The height of the screening shall be taller than the height of the mechanical equipment that it is designed to screen. The location of equipment and necessary screening shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

13. SITE IMPROVEMENTS

All proposed site improvements shall be completed prior to final occupancy of any structures approved in conjunction with the project.

14. 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.

15. 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.

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