

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 PERMIT
TO ALLOW FAÇADE AND LANDSCAPE MODIFICATIONS TO THE
EXISTING COURTYARD BY MARRIOTT HOTEL LOCATED
AT 10605 N. WOLFE ROAD

SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2019-007
Applicant: Tom Young (Spectrum Development)
Location: 10605 N. Wolfe Road (APN 316-47-049)

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 hotel, 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 for the reasons set forth in the staff report dated May 14, 2020 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 proposal includes façade modifications to the existing Courtyard by Marriott hotel that modernize the architectural style of the building. The exterior enhancements will incorporate a flat-roof design, additional textures and finishes, including dry stone, faux wood (fiber cement) wall paneling, and metal elements, and a more contemporary color scheme of white, greys, and brown. The existing floor area, number of guestrooms, and total building height will not be impacted by the proposed scope of work and the footprint of the existing hotel will largely be retained with a minor increase in lot coverage. The materials used will have to comply with building code and other state code standards for health and safety. Furthermore, the project is located at an established hotel site in a residential and commercial district and is surrounded by another hotel use, multi-family residential, and a small number of single-family residential uses. Therefore, the façade modifications 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.

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 scale of the building will be maintained with no increase to the height. The façade modifications will incorporate a flat-roof design at the main entrance, which will result in a minor reduction in bulk. Overall, the hotel will maintain the same form as the existing structure with an enhanced contemporary design. Therefore, there will be no abrupt changes in building scale related to height and bulk and no new buildings are being proposed.

- 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.

The façade modifications are harmonious with the existing building form and the proposed upgrades to the existing materials and colors will not impact the future character of the neighborhood. The new trash enclosure is located to the west of the building in an area not visible from the public right-of-way and is designed to be compatible with the proposed aesthetic of the hotel. The proposed tree removals are due to poor initial planting locations that are not suitable for the continued maintenance of the trees. The proposed tree replacements will improve the aesthetics of the site for its users. Additional landscaping is being proposed to enhance existing landscaping at the site. The proposed new lighting fixtures are designed in order to prevent spill-over light to adjoining properties.

- 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 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 development project.

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-2019-007 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-2019-007 as set forth in the Minutes of the Administrative Hearing Meeting of May 14, 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 Baskervill titled "Spectrum Development Group, Courtyard by Marriott – San Jose Cupertino, CA – 10605 N. Wolfe Rd., Cupertino, CA 95014 Exterior Reimage" consisting of 52 sheets labeled T.001, A.001, A.002, A.010, A.011, A.012, A.013, A.110, A.111, A.114, A.201, A.202, A.203, A.204, A.211, A.212, A.213, A.214, A.401a, A.401b, A.401c, A.402a, A.402b, A.402c, A.403a, A.403b, A.403c, A.403d, A.404a, A.405, A.406, D.110, D.111, D.114, D.201, D.202, D.301, E.001, E.101, E.102, E.103, E.104, E.201, E.202, G.001, G.002, L.001, L.002, L.003, L.004, P.114, and PD.114, except as may be amended by conditions in this resolution. Sheets S0.0, S1.0, S2.0, S2.1, S3.0, S4.0, S5.0, S5.1, and S6.0 were neither reviewed nor approved as part of this project.

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 no. TR-2019-034 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. EXTERIOR BUILDING MATERIALS/TREATMENTS

- a. The final building exterior plan shall closely resemble the details shown on the original approved plans.
- b. 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.

- c. 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.

6. 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** The Landscape Documentation Package 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 14.15.050 E, F, G, H, and I will be required to be reviewed and approved prior to final inspections.

7. 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."

8. 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.

9. SIGNAGE

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

10. LIGHTING

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

11. 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.

12. 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.

13. 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).

14. 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.

15. INDEMNIFICATION

The applicant agrees that, 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 any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized 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.

The Applicant further agrees to defend, indemnify and hold harmless the indemnified parties for all cost incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review if the applicant desires to continue to pursue the project.

16. 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 ENVIRONMENTAL SERVICES DEPARTMENT

17. TRASH ENCLOSURE MODIFICATION

SHEET A.406: Please reconfigure the storm drain within the trash enclosure to an area outside of the structure. The full trash capture device identified should remain on the relocated storm drain inlet. Please note that the Sanitary District may require a sanitary drain within the enclosure with a filter system. Please inquire directly with them for their requirements.

SHEETS A.110, A.406, and Page 12 of Exhibit A (1987 topographic site survey): Please identify the location of the relocated storm drain inlet from the trash enclosure. Include the specific model of full trash capture device to be installed to the inlet.

SECTION V: CONDITIONS ADMINISTERED BY THE FIRE DEPARTMENT

18. FIRE SPRINKLER MODIFICATIONS

This building is equipped with a fire sprinkler system. Any modifications to the structure may require modification of the fire sprinkler system and will be determined during architectural review. A State of California license (C-16) Fire Protection Contractor shall submit plans, calculations, a completed permit application and appropriate fees to this department for review and approval prior to beginning their work. Call (408) 378-4010 for more information.

19. FIRE ALARM SYSTEM

This building is equipped with a fire alarm system. Any modifications to the structure may require modification of the fire alarm system and will be determined

during architectural review. Any modifications to the current system will require submittal of shop drawings (3 sets) and a permit application to the Fire Prevention Division for review and approval before installing the system. Call (408) 378-4010 for more information.

20. EXITING

All required exits and paths of egress shall be kept unobstructed and maintained at all times.

21. FIRE LANE & HYDRANTS

All fire lanes shall be maintained and unobstructed access provided to fire hydrants at all times.

22. CONSTRUCTION SITE FIRE SAFETY

All construction sites must comply with applicable provisions of the CFC Chapter 33 and our Standard Detail and Specification SI-7. Provide appropriate notations on subsequent plan submittals, as appropriate to the project. CFC Chp. 33.

PASSED AND ADOPTED this 14th day of May 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:

Erika Poveda
Associate Planner

Albert Salvador
Assistant Director of Community Development