

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION

OF THE DESIGN REVIEW COMMITTEE OF THE CITY OF CUPERTINO
APPROVING AN R-1 EXCEPTION TO ALLOW THE CONSTRUCTION OF A
NEW 3,026 SQUARE-FOOT SINGLE-STORY RESIDENCE WITH REDUCED
SIDE-YARD SETBACKS OF FIVE FEET ON EACH SIDE, WHERE A
COMBINED SIDE-YARD SETBACK OF 15 FEET IS TYPICALLY REQUIRED IN
THE R1-7.5 ZONING DISTRICT

SECTION I: PROJECT DESCRIPTION

Application No.: EXC-2020-005
Applicant: T.N. Design (Kumar residence)
Location: 10290 Imperial Avenue; APN: 357-19-053

SECTION II: FINDINGS

WHEREAS, the Design Review Committee of the City of Cupertino received an application for an Exception from the Single-Family Residential Zoning regulations as described in Section I. of this Resolution; and

WHEREAS, the Project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303 Class 3 (New construction or conversion of small structures); and

WHEREAS, the necessary notices have been given in accordance with the Procedural Ordinance of the City of Cupertino, and the Design Review Committee has held at least one Public Meeting on this matter; and

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

WHEREAS, the Design Review Committee finds the following with regard to the exception for this application:

1. The literal enforcement of this chapter will result in restrictions inconsistent with the spirit and intent of this chapter.

The project is consistent with the intent of the R-1 Ordinance in that it minimizes visual impacts to adjacent residential properties and that it is compatible with other homes in the

neighborhood. The five-foot side-yard setbacks are appropriate to allow for a functional floor plan and a balanced, aesthetically pleasing front elevation, that is not dominated by a two-car garage door, on a substandard lot.

2. The proposed development will not be injurious to property or improvements in the area, nor be detrimental to the public and safety, health and welfare.

The project will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, or welfare. The project is a single-story single-family residence that is compatible with other homes in the neighborhood in terms of massing and overall design.

3. The exception to be granted is one that will require the least modification of the prescribed design regulation and the minimum variance that will accomplish the purpose.

Due to the substandard lot width of the subject property and the two-car garage requirement for new homes, the strict application of the prescribed side-yard setback requirement per the R-1 Ordinance would create a situation that would result in an unbalanced floor plan and front elevation. All other aspects of the project comply with the R-1 Ordinance in terms of height, building envelope, front and rear setbacks, and design. The intent of the R-1 Ordinance is met since the R-1 Exception would result in a house that is comparable in siting, scale, and design as others in the neighborhood.

4. The proposed exception will not result in significant visual impact as viewed from abutting properties.

The project is a single-story single-family residence that is consistent with other existing homes in the Monta Vista neighborhood. The granting of a side-yard setback exception is not anticipated to create adverse visual impacts as viewed from abutting properties as it will allow for a balanced front elevation on the substandard lot. All other aspects of the project comply with the R-1 Ordinance in terms of height, building envelope, front and rear setbacks, and design.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the maps, facts, exhibits, testimony 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 Exception to the Single-Family Residential Ordinance regulations, Application no. EXC-2020-005 is:

1. Exempt from CEQA and
2. Hereby APPROVED, and

That the sub-conclusions upon which the findings and conditions specified in this Resolution are based and contained in the Public Meeting record concerning Application

no. EXC-2020-005 as set forth in the Minutes of Design Review Committee Meeting of May 20, 2021 and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

The approval is based on the plan set titled "A Planning Application For: Kumari Residence, 10290 Imperial Ave., Cupertino, CA 95014," consisting of 14 sheets, labeled "A0.00, A1.01, A1.02, A1.03, A1.04, A2.11, A2.21, A2.40, A3.01, A3.02, A4.01, A7.01, C1, and L1," except as may be amended by the Conditions contained in this Resolution.

2. ACCURACY OF THE 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 building plans.

4. COMPLIANCE WITH PUBLIC WORKS CONFIRMATION FORM

The project shall comply with the requirements indicated on the Public Works Confirmation form dated October 22, 2020, including, but not limited to, dedications, easements, off-site improvements, undergrounding of utilities, all necessary agreements, and utility installations/relocations as deemed necessary by the Director of Public Works and required for public health and safety. The Public Works Confirmation is a preliminary review, and is not an exhaustive review of the subject development. Additional requirements may be established and implemented during the construction permitting process. The project construction plans shall address these requirements with the construction permit submittal, and all required improvements shall be completed to the satisfaction of the Director of Public Works prior to final occupancy.

5. 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.

6. CMU WALL & LANDSCAPING

Prior to issuance of building permits, the applicant shall provide landscaping as part of the final landscape package to be installed within the front yard along the portion of the CMU wall located on the northerly property line. Landscaping is intended to provide visual relief, and shall consist of drought-tolerant, taller plantings, be appropriately irrigated and maintained by the property owner and recorded as protected plantings, until such time as the CMU wall is not required to be retained by the City.

7. 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.

8. EXTERIOR BUILDING MATERIALS/TREATMENTS

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

9. 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 issuance of final demolition permits.

10. DUST CONTROL

The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site:

- a) Water all exposed surfaces areas (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- b) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- c) All visible mud or dirt track-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) Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- i) The applicant shall incorporate the City's construction best management practices into the building permit plan set.

11. GRADING AND CONSTRUCTION HOURS AND NOISE LIMITS

- 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 the 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.

The applicant shall comply with the above grading and construction hours and noise limit requirements unless otherwise indicated.

12. INDEMNIFICATION

As part of the application, to the fullest extent permitted by law, the applicant shall agree to 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 (collectively referred to as "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. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. 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 agree to 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 shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs 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.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

13. 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.

PASSED AND ADOPTED this 20th day of May 2021, at a regular meeting of the Design Review Committee of the City of Cupertino by the following roll call vote:

AYES: MEMBERS:

NOES: MEMBERS:

ABSTAIN: MEMBERS:

ABSENT: MEMBERS:

ATTEST:

APPROVED:

Erika Poveda
Associate Planner

Steven Scharf, Chair
Design Review Committee