



**COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**

CITY HALL  
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April 19, 2021

Smart Lily, LLC.  
Ken Zhai  
11566 Fall Creek Ct.  
Cupertino, CA 95014

**SUBJECT: TWO-STORY PERMIT AND MINOR RESIDENTIAL PERMIT ACTION  
LETTER – Application R-2020-035, RM-2020-023**

This letter confirms the decision of the Director of Community Development, given on April 19, 2021 approving a Two-Story Permit (R-2020-035) to allow for a new 2,922 s.f. two story home with a 780 s.f. attached ADU and a Minor Residential Permit (RM-2020-023) to allow for a new second-story balcony located at 1506 Primrose Way, with the following conditions:

**1. APPROVED EXHIBITS**

The approval is based on a plan set entitled “Hafiz – New Residence, “consisting of fifteen (15) sheets labeled “A1, A2, A2.1(1), A2.1(2), A2.2, A3, A4, A5, A6, A7, A8, L1, L2, L3, and TP,”” except as may be amended by conditions in this resolution. In the event there are conflicts between the floor plan, cross sections and elevation drawings, the elevation drawings take precedence.

**2. UNITS APPROVED**

One 2,992 s.f. replacement single family home (44.5% FAR) and one 780 s.f. attached accessory dwelling unit has been approved. There shall be no internal connection between the Accessory Dwelling Unit and the principal dwelling unit, nor shall the Accessory Dwelling unit be converted to be part of the principal dwelling unit.

**3. ANNOTATION OF THE CONDITIONS OF APPROVAL**

The conditions of approval set forth shall be incorporated into and annotated on the building plans.

**4. 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 property data may invalidate this approval and may require additional review.

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. PRIVACY PLANTING

The final privacy planting plan shall be reviewed and approved by the Planning Division prior to issuance of building permits. The variety, size, and planting distance shall be consistent with the City's requirements.

7. PRIVACY PROTECTION COVENANT

The property owner shall record a covenant on this property to inform future property owners of the privacy protection measures and tree protection requirements consistent with the R-1 Ordinance, for all windows with views into neighboring yards and a sill height that is 5 feet or less from the second story finished floor. The precise language will be subject to approval by the Director of Community Development. Proof of recordation must be submitted to the Community Development Department prior to final occupancy of the residence.

8. FRONT YARD TREE

The applicant shall indicate on site and landscape plans the location of a front yard tree to be located within the front yard setback area in order to screen the massing of the second story. The front yard tree shall be a minimum 24-inch box and 6 feet planted height and otherwise be consistent with the City's requirements.

9. FRONT YARD TREE COVENANT

The property owner shall record a covenant on this property with the Santa Clara County Recorder's Office that requires the retention and maintenance of the required front yard tree. The precise language will be subject to approval by the Director of Community Development. Proof of recordation must be submitted to the Community Development Department prior to final occupancy of the residence.

10. 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.

11. 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.

12. ACCESORY BUILDINGS/STRUCTURES

The location of all existing and proposed accessory buildings and/or structures shall be indicated on building permit plans and shall comply with Chapter 19.100, Accessory Buildings/Structures, of the Cupertino Municipal Code for review and approval prior to issuance of building permits.

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 issuance of final demolition permits.

14. 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.

The applicant shall incorporate the City's construction best management practices into the building permit plan set prior to any grading, excavation, foundation or building permit issuance.

15. COMPLIANCE WITH PUBLIC WORKS CONFIRMATION FORM

The project shall comply with the requirements indicated on the Public Works Confirmation form dated 11/05/2020, 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.

16. 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.

17. DARK SKY ORDINANCE COMPLIANCE

The applicant shall comply with Dark Sky Ordinance regulations, as applicable, prior to issuance of the building permit.

18. BIRD SAFE ORDINANCE COMPLIANCE

The applicant shall comply with the Bird Safe Ordinance regulations, as applicable, prior to issuance of the building permit.

19. 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.

20. ATTIC SPACE

All proposed attic space shall be non-habitable space. The applicant shall provide drawings prior to building permit issuance demonstrating all proposed attic spaces meet this requirement.

21. NESTING BIRDS

Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Department of Fish and Game Code.

- a. Construction and tree removal/pruning activities shall be scheduled to avoid the nesting season to the extent feasible. If feasible, tree removal and/or pruning shall be completed before the start of the nesting season to help preclude nesting. The nesting season for most birds and raptors in the San Francisco Bay area extends from February 1 through August 31. Preconstruction surveys (described below) are not required for tree removal or construction activities outside the nesting period.

- b. If construction activities and any required tree removal occur during the nesting season (February 1 and August 31), a qualified ornithologist shall be required to conduct surveys prior to tree removal or construction activities. Preconstruction surveys shall be conducted no more than 14 days prior to the start of tree removal, pruning or construction. Preconstruction surveys shall be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped. During this survey, the ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests.
- c. If the survey does not identify any nesting birds that would be affected by construction activities, no further mitigation is required. If an active nest containing viable eggs or young birds is found sufficiently close to work areas to be disturbed by these activities, their locations shall be documented and protective measures implemented under the direction of the qualified ornithologist until the nests no longer contain eggs or young birds.
- d. Protective measures shall include establishment of clearly delineated exclusion zones (i.e. demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified ornithologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. The active nest within an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. The radius of an exclusion zone may be increased by the qualified biologist, if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist only in consultation with California Department of Fish and Wildlife. The protection measures and buffers shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.
- e. A final report on nesting birds and raptors, including survey methodology, survey date(s), map of identified active nests (if any), and protection measures (if required), shall be submitted to the Planning Manager, through the building permit review process, and be completed to the satisfaction of the Community Development Director prior to the start of grading.

## 22. 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.

**23. 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.

**Please note that if this permit is not vested within a year, it shall expire on April 19, 2022.**

Staff received eleven public comments from property owners throughout the neighborhood. Comments included concerns that the size, bulk, and design of the project were not consistent with the character of the neighborhood, concerns regarding size of windows, concerns that the proposed ADU would have adverse impacts on

parking and could potentially be converted to be part of the main dwelling unit in the future, privacy impacts of the new two-story house and balcony, and impacts on existing access to sunlight. Staff has communicated with the commenters and explained that the proposed project meets all R-1 requirements, which are in place, in part to guarantee a reasonable level of light, air, privacy, and maintain structures at a comparable scale within the neighborhood through requirements such as setbacks, height, the daylight plane, and privacy planting requirements.

Regarding the size of windows, staff explained that the R-1 Ordinance does not currently have specific provisions regarding size of windows that face the front yard, however the applicant will be planting a 24" box tree in the front yard as part of the front yard tree requirement, to help mitigate some of the massing of the new two story building, which will potentially alleviate privacy impacts on the properties across the street.

Regarding privacy concerns, staff explained that the City requires privacy planting to help mitigate second story privacy impacts, for windows that face side and rear yards, and the balcony. While privacy waivers have been obtained from the neighbors to the north and south, meaning that the privacy planting requirements have been waived along these shared property lines, the property owner to the rear has not signed a waiver. Therefore, the applicant is required to plant privacy planting. The applicant has proposed to plant seven *Laurus nobilis*, one of the City's approved privacy planting species, along the rear property line at the appropriate distance to provide an adequate screen.

Regarding concerns about the Accessory Dwelling Unit (ADU), staff explained that the ADU proposal, including side yard, parking requirements, and proposed square footage meets the requirements of State law and the City does not have the ability to further regulate the proposed ADU. The 780 s.f. ADU is exempt from Floor Area Ratio limitations, per State law, since it is less than 800 s.f. However, the ADU must remain separated from the principal dwelling unit for the lifetime of the home and can never be incorporated into the square footage of the principal dwelling unit. A condition of approval has been added to make these requirements clear.

There were comments regarding the mass and bulk of the proposed structure. The initial proposal of the two story home was for a building with a height of 25'-6", which was below the maximum allowed (28') by the Cupertino Municipal Code Chapter 19.28.070(J)(1). Upon receiving comments from the neighbors and consultation with staff, the applicant further reduced the height during the 30-day decision period to 23' – a reduction of 2'6". Since the concern was mainly due to the difference in grade between Primrose Way and Poppy Drive (the street behind this property), it should be noted that the Code measures total building height from natural grade of the existing property but does not account for differences in grade between adjoining properties. Since the size of the home is larger than many homes in the neighborhood, it should be noted that while the applicant is maximizing the FAR of the primary home, the 2,992 s.f. primary home is



limited to a Floor Area Ratio of 44.5% (less than 45% as allowed per CMC Chapter 19.28.070(B).)

The proposed second story and second story balcony exceeds all setback requirements. The second story is setback at 16' on each side where a 15' setback is required and setback 34'-6" at the rear, where a 25' setback is required. The balcony is setback 17'-8" and 26' on the north and south sides respectively, where a 15' setback is required on the sides, and setback 26'-6" in the rear where a 20' setback is required. The second story balcony is 114 s.f.

The applicant undertook further design changes during the 30-day decision period to address these concerns. Proposed changes include: decreasing the overall building height, simplifying the roof lines on the first and second floors, decreasing the entry feature height, simplifying the two story bay window feature, and making window forms more consistent within the design.

Regarding concerns about incompatibility of design and scale, staff noted that there is no architectural design overlay in this neighborhood per the Zoning map nor does the Municipal Code require a certain architectural style in this neighborhood, therefore the City cannot mandate a certain architectural style. Additionally, staff noted that no single story overlay currently exists in this neighborhood, therefore, while there are many single story homes in the neighborhood, the City cannot require a home to be limited to single story in this neighborhood.

With the changes made to the plans, staff has made all the findings that are required for approval of a Two-Story Permit and Minor Residential Permit as required and no additional conditions were placed as a condition for approval by Cupertino's Municipal Code, Chapter 19.28.140 (A) and (B).

1. *The project is consistent with the Cupertino General Plan, any applicable specific plans, zoning ordinances and the purposes of this title.*

The proposed project is consistent with the General Plan as the project is within the Low Density land use area. There are no applicable specific plans that affect the project. The project has been found to be consistent with the requirements of Cupertino Municipal Code Chapter 19.28 Single Family (R-1) Residential.

2. *The granting of the permit will not result in a condition that is detrimental or injurious to property improvements in the vicinity, and will not be detrimental to the public health, safety or welfare.*

The granting of the permit will not result in a condition that is detrimental or injurious to property improvements in the vicinity, and will not be detrimental to the public health, safety or welfare as the projects is located within the R1-6 (Single Family Residential) zoning district, and will be compatible with the surrounding uses of the neighborhood.

3. *The proposed project is harmonious in scale and design with the general neighborhood.*

The proposed project is located in a residential area consisting of single family homes. The applicant has worked with staff to make significant design changes to the front elevation to be more harmonious in scale and design with the neighborhood. Design changes included decreasing the overall height of the project from 25'-8" to 23', simplifying the first and second story rooflines to accommodate more gables, simplifying the two-story bay window feature to reduce the three-dimensional elements of the home, and making the windows more consistent and proportional throughout the project. After all design changes listed above, staff is able to make the finding that the proposed project maintains the single-family home scale found compatible with the general neighborhood.

4. *Adverse visual impacts on adjoining properties have been reasonably mitigated.*

Any potential adverse impacts on adjoining properties have been reasonably mitigated through the privacy protection plantings and installation of a front-yard tree as required by the R-1 Ordinance.

As required by the Municipal Code Section 19.12.150, the notice of decision must be mailed to the property owner and the applicant at the address shown on the application and to any person who has commented on the proposed project within the comment period. One of the commenters did not provide their mailing address. Staff has made attempts to determine their mailing address but has been unable to determine this, therefore in lieu of mailing the notice of decision, the notice is being provided by email.

**Also, please note that an appeal of this decision can be made within fourteen (14) calendar days from the date of this letter (Monday, May 3, 2021 at 5:00 p.m.). If this happens, you will be notified of a public hearing, which will be scheduled before the Planning Commission.** Please find a copy of the appeal form attached for your convenience and to ensure your health and safety during the COVID pandemic (also available online at: [www.cupertino.org/planningforms](http://www.cupertino.org/planningforms).) The completed appeal form and filing fee **must be received by the deadline to appeal** and may be submitted in one of the following ways:

1. **Preferred:** Email the completed form to [cityclerk@cupertino.org](mailto:cityclerk@cupertino.org) and call (408) 777-3223 between 7:30AM – 5:30PM (M-Th) and 7:30AM – 4:30PM (F) to arrange for payment by credit card.
2. **Other options:**
  - a. Mail the completed form and a check in the amount of \$325 to Attn: City Clerk, City of Cupertino, 10300 Torre Avenue, CA 95014.
  - b. Obtain an appointment to file the appeal by contacting the City Clerk by email or phone (see contact information above).

Please contact the City Clerk's office for additional guidance and instructions on how to file.

Sincerely,  
Lauren Ninkovich  
Assistant Planner  
City of Cupertino

Enclosures:  
Approved Plan Set

CC: Tariqul Khan and Chaman Hafiz, 1506 Primrose Way, Cupertino, CA 95014  
Chih-Lung Lin, 1493 Poppy Way, Cupertino, CA 95014  
Rayman Pon, 1451 Poppy Way, Cupertino, CA 95014  
Jitesh Vadhia, 1479 Poppy Way, Cupertino, CA 95014  
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Niranjana Narashiman, 1515 Poppy Way, Cupertino, CA 95014