



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION STAFF REPORT

Meeting: June 22, 2021

Subject

Consider an appeal of the Community Development Director's approval of a Two-Story Permit to allow for a new 2,922 square-foot two-story home with a 746 square-foot attached accessory dwelling unit and a Minor Residential Permit to allow for a new second-story balcony. (Application Nos.: R-2020-035, RM-2020-023; Applicant: Smart Lily, LLC.; Property Owners: Tariqul Khan and Chaman Hafiz; Appellants: Jitesh Vadhia and Chih-Lung Lin; Location: 1506 Primrose Way; APN # 366-15-018)

Recommended Action

That the Planning Commission conduct a public hearing and adopt the Draft Resolutions (Attachments 1 and 2) denying the appeal and upholding the Director's decision to approve the applications.

Discussion

Project Data:

General Plan Designation:	Residential Low Density (1-5 DU/Acre)	
General Plan Neighborhood:	Monta Vista South	
Zoning Designation:	R1-6 (Single-Family Residential)	
	Allowed	Proposed
Net Lot Area	≥ 6,000 sq. ft.	6,718 sq. ft.
Floor Area Ratio (F.A.R.)	3,023 sq. ft. (45%) + ≤ 800 sq. ft. ADU	2,992 sq. ft. (44.5%) + 746 sq. ft. ADU
Lot Coverage	3,359 sq. ft. (50%) + ≤ 800 sq. ft. ADU	2,656 sq. ft. (39.5%) + 746 sq. ft. ADU

1st Floor Setbacks	Required	Proposed
Front	20'	25'
Rear	20'	28' 5"
Side	Combined 15' (no side less than 5')	Combined - 21' South side: 5'; North side: 16'*

2 nd Floor Setbacks	Required	Proposed
Front	25'	25'
Rear	25'	34' 6"
Side	Combined 25' (no side less than 10')	Combined - 32' North and South side: 16' each
2 nd Floor Deck Setbacks	Required	Proposed
Front	20'	N/A
Rear	20'	26' 6"
Side	15' Each Side	South side: 26' North side: 17' 8"
ADU Setbacks	Required	Proposed
Front	20'	25'
Rear	4'	24' 8"
Side	4'	4'
Total Building Height		
Principal Building	28' max. allowed	23'
Attached ADU	16' allowed	15'
Project Consistency with:		
General Plan:	Yes	
Zoning:	Yes	
Environmental Review:	Categorically Exempt per Section 15303, Class 3 of the California Environmental Quality Act (CEQA)	
Note: * Setback to ADU is allowed to be 4 feet by state law. Therefore, north side setback is measured to the principal dwelling unit.		

Background:

On November 29, 2020, Ken Zhai of Smart Lily, LLC., representing the homeowners, Tariqul Khan and Chaman Hafiz, applied for a Two-Story Permit for the City to consider allowing the construction of a new 3,015 square-foot two-story home with a 780 square-foot attached accessory dwelling unit (ADU), and a Minor Residential Permit to consider allowing a rear-facing second-story balcony located at 1506 Primrose Way (*Figure 1*). The property is located in the Monta Vista South neighborhood and zoned R1-6. Surrounding uses include other R1-6 zoned properties comprised of a mixture of single-story and two-story single-family residences.



*Figure 1. Applicant's property outlined in red.
Appellants' properties outlined in yellow.*

The Single-Family Residential (R-1) Ordinance, Chapter 19.28 of the Cupertino Municipal Code (CMC) (Attachment 3) requires a Two-Story Permit for two-story additions or new two-story residences. Additionally, the R-1 Ordinance requires a Minor Residential Permit for new second-story balconies with views into neighboring residential side or rear-yards. Both permit types require administrative review and approval by the Director of Community Development per CMC Chapter 19.12: Administration.

The following is a summary of the project events leading up to the appeal:

November 29, 2020	The applicant (Smart Lily, LLC.) applies for a Two-Story Permit (R-2020-035) and a Minor Residential Permit (RM-2020-023).
November 29, 2020 – February 22, 2021	Planning staff conducts a review of the proposed project for conformance to the Cupertino Municipal Code.
March 5 – 19, 2021	Staff receives 11 comments during the 14-day public comment period. Staff responds to each public comment and includes a summary of comments and responses in the Action Letter dated April 19, 2021 (Attachment 4).
April 19, 2021	<p>The applicant revises the project in response to comments received during the public comment period. The following is a summary of revisions incorporated into the residential design:</p> <ul style="list-style-type: none">• Reduced total building height from 25'-2 to 23'• Reduced entry feature height from 14' to 12'-5"• Reduced total proposed FAR by 23 sq. ft.• Increased total proposed lot coverage by 7 sq. ft.• Reconfigured elevations to be more harmonious in design:<ul style="list-style-type: none">○ Broke up the bay window element and added ornamental features (ex: wrought iron window railing) to provide better articulation of wall lines○ Reduced the visual mass of the exposed second story by increasing the roofing area of the first floor○ Reconfigured windows to be more proportional and consistent with each other○ Simplified proposed rooflines
April 19, 2021	The Director of Community Development approves a Two-Story Permit (R-2020-035) to allow the construction of a new 2,922 sq. ft. two-story home with a 746 sq. ft. attached ADU, and a Minor Residential Permit (RM-2020-023) to allow a new second-story balcony (Attachments 4 + 5).

April 29, 2021	Chih-Lung Lin, property owner of 1493 Poppy Way, submits an appeal (Attachment 6) of the Director's approval of the project.
May 3, 2021	Jitesh Vadhia, property owner of 1479 Poppy Way, submits an appeal (Attachment 7) of the Director's approval of the project.

Basis of the Appeal:

The appellants' specific basis of appeal of the Director's decision is summarized below with related quotes in *italics*. Where appropriate, staff's response follows.

1. **Mass and Bulk:** *"The new house will have 2,992 S.F. with 746 S.F. ADU while other houses are only 1,420 S.F. in size. The new house will be more than double in size comparing with other houses on Primrose Way."*

"Primrose Way is a community of single story homes. A two story construction will destroy the look and feel of the neighborhood and also encourage other builders to build more two story homes. The City is demonstrating little concern for the neighborhood."

"The height of the home obscures totally our views of the beautiful Cupertino hills and skyline."

"The new house will be a mega house that reduces neighboring houses' access to sun and natural scenery."

The proposed main residence has a total floor area of 2,992 sq. ft., which is 44.5% of the net lot area of 6,718 sq. ft. The R-1 Ordinance allows a maximum floor area ratio of 45% of the net lot area.

The proposed ADU complies with the site development regulations of the ADU Ordinance, Chapter 19.112 of the CMC with regard to setbacks, height, and parking requirements. Under State law, the proposed 746 sq. ft. ADU is exempt from floor area and lot coverage requirements since it is less than 800 sq. ft. As required by the ADU Ordinance, the attached ADU must remain separated from the principal dwelling unit and can never be modified to become part of the primary dwelling. While these requirements were intended to be recorded against the property, the condition of approval did not clearly indicate this. Therefore, the condition has been clarified to require recordation of a covenant (Attachment 1) to ensure future property owners are aware of this requirement.

A review of the existing homes in a one-block radius along Primrose Way and Poppy Way (*Figure 2*), indicates that floor areas range from approximately 1,890 sq. ft. to approximately 3,040 sq. ft., with the average floor area being 2,365 sq. ft. The surrounding neighborhood is transitional and comprised of a mixture of single-story and two-story

residences, with 12 out of the 32 surrounding homes (including appellant Vadhia) being two-story residences with an average floor area of 2,822 sq. ft. The proposed 2,992 sq. ft. two-story residence is comparable in size to the existing residences in the surrounding area and complies with the R-1 Ordinance regulations. It is important to note that the



Figure 2. Two Story residences in yellow. Applicant's property outlined in red.

neighborhood currently does not have a single-story overlay, therefore the City cannot require a home to be limited to single story in this neighborhood at this time.

Additionally, the project complies with all other development regulations for R1-6 zoned properties regarding mass and bulk, including, but not limited to, first floor building envelope, minimum setback regulations, and building height limitations. The residence exceeds all minimum setback requirements for the proposed first and second floors, and second-floor balcony. Furthermore, following the comment period, in order to address the mass and bulk issues raised, the applicant among other modifications, reduced the total building height from 25'-2" to 23', where a maximum building height of 28' is allowed by the R-1 Ordinance. The Code measures total building height from natural grade of the existing lot and does not account for differences in grade between neighboring properties at this time.

"The planning department's response on the CMC Chapter 19.28.140(A)(B)(3) says the applicant has worked with the staff to make significant design changes to be more harmonious in scale and design with the neighborhood...I can't see the significant design changes city mentioned in the revised design."

The applicant undertook design changes during the decision period to address the concerns submitted during the public comment period. Approved design changes included decreasing the overall building height, simplifying the roof lines on the first and second floor, decreasing the entry feature height, simplifying the two-story bay window feature, and making window forms more consistent throughout the design. Together, the reduced height and design changes provide better articulation of wall lines, reduce the visual mass of the exposed second story, and simplify the roofline, thus making the

project more harmonious in terms of scale and design with the surrounding neighborhood (*Figures 3 & 4*).

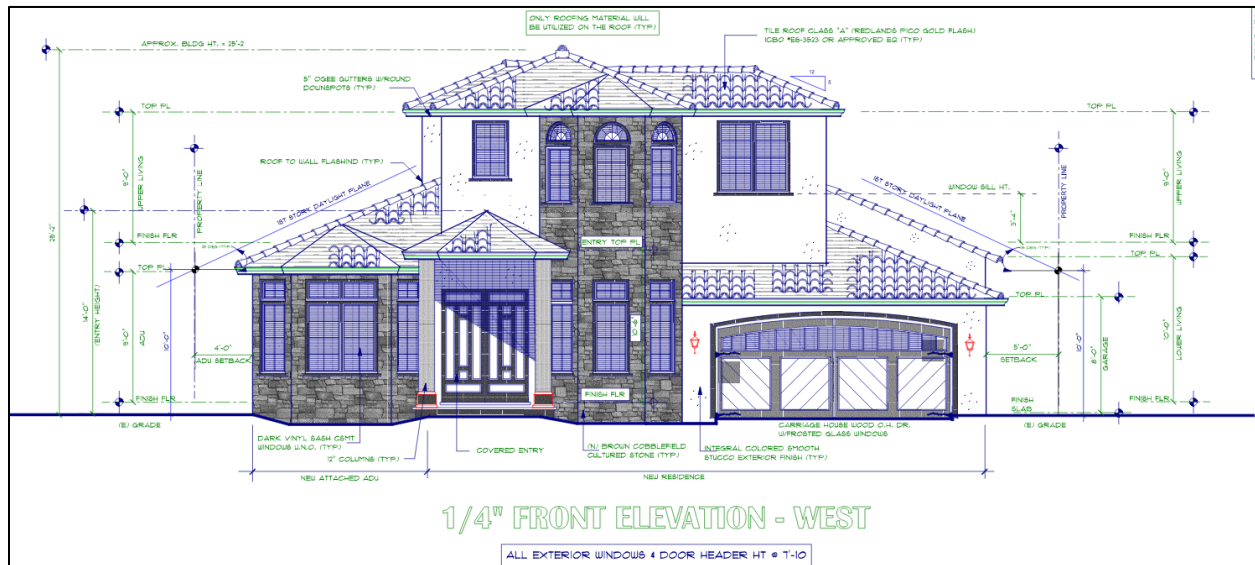


Figure 3. Previous front elevation

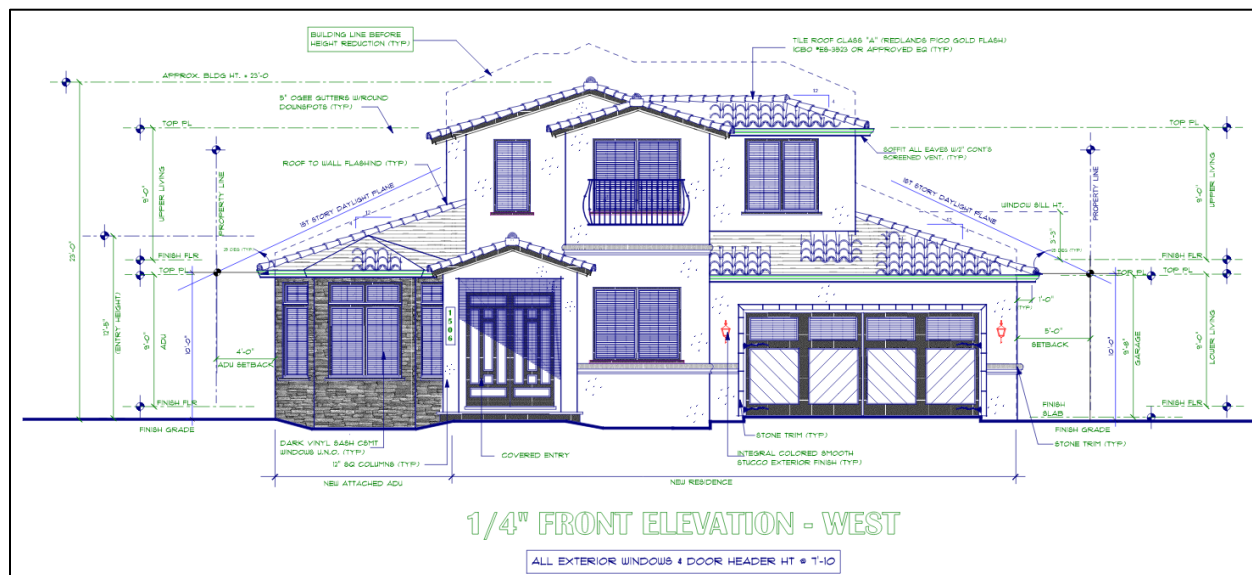


Figure 4. Revised front elevation

There is currently no architectural design overlay on this neighborhood per the Zoning map or Municipal Code requiring projects to adhere to a certain architectural style, therefore a specific architectural style cannot be mandated by the City. Below are examples of existing residences in the surrounding areas with a variety of architectural styles, which include stucco, steep roof lines, and wood or other siding (*Figure 5*).



Figure 5. Examples of surrounding residences

2. Privacy Impacts:

Appellant Lin:

"A backyard 2nd-floor balcony with a direct view into my backyard, master bedroom, bathroom, and living room creates mental stress to my family...privacy screening plans can't help to address this problem immediately and permanently"

"There are 12 windows facing the north side and will create a severe privacy issue for the neighbors or future residents."

Appellant Vadhia:

"The rear facing balcony raises severe privacy concerns. Irrespective of the privacy planting, the balcony has direct views into all my bedrooms and backyard. The height of the balcony, balcony wall height, and balcony side walls are detrimental to our privacy."

"Privacy plantings will not work. The height of the rear facing balcony requires very tall plantings. Those will take several years to grow. Additionally, power and communications cables run along the rear property lines..."

"There's a five foot grade difference between our home and the Primrose Way home. The height of the two story home, height of the balcony, and grade difference vastly increase my privacy concerns."

"The ADU has large windows on the side of the building and combined with the five foot grade difference post great privacy concerns. Those windows have line of sight into my bedrooms and backyard."

"The new residence plans do not include any 3-D line of sight drawing from the proposed residence projected into our bedrooms and backyard. My assessment is that the new residence will have direct line of sight into my bedrooms and backyard. The residence plans and the City need to demonstrate with adequate drawings by qualified surveyors that our privacy concerns have been addressed."

One of the purposes of the R-1 Ordinance is to ensure the provision of light, air, and a reasonable level of privacy to individual residential parcels (CMC Section 19.28.010). This is achieved by implementing objective requirements adopted in the R-1 Ordinance. Building envelope requirements for the first floor and setback requirements for the first and second floors ensure that a reasonable level of light and air is available for neighbors. The proposal for 1506 Primrose Way meets, and in some cases exceeds, all setback requirements for the R1-6 zoning district. The project proposes a first-floor rear-yard setback of 28'-5" where only 20' is required; a second-story rear-yard setback of 34'-6" where 25' is required; and a rear-yard balcony setback of over 26'-6" where 20' is required.

The R-1 Ordinance also allows property owners the ability to construct second-story windows and balconies as long as privacy protection trees and/or shrubs are planted and maintained as required by the ordinance. Per the R-1 Ordinance, the objective of privacy protection plantings is to provide substantial (not complete) screening within three years of planting to mitigate second-story window and balcony privacy impacts. The project complies with the privacy screening requirements of the R-1 Ordinance by providing privacy screening plantings for the second-story balcony and second-story windows with a sill height below 5-feet along the rear (eastern) property line (Figure 6). 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 adequate screening. The City's approved list of privacy plantings requires *Laurus nobilis* to be at least 15-gallon container size and have a minimum planting height of 6-feet. Privacy plantings for the right (southern) and left (northern) property lines are not required, as the applicant has obtained a signed privacy waiver form from the adjacent property owners at 1518 Primrose Way and 1492 Primrose Way.

Privacy protection plantings are considered Protected Trees under the City's Municipal Code (Chapter 14.18) and are recorded as such with a covenant against the property to inform current and future property owners about their protected status. Protected trees are not permitted to be removed without obtaining a tree removal permit and providing replacement plantings. The Code does not require privacy plantings for the first floor.

Furthermore, preservation of views is not one of the stated purposes of the R-1 Ordinance.

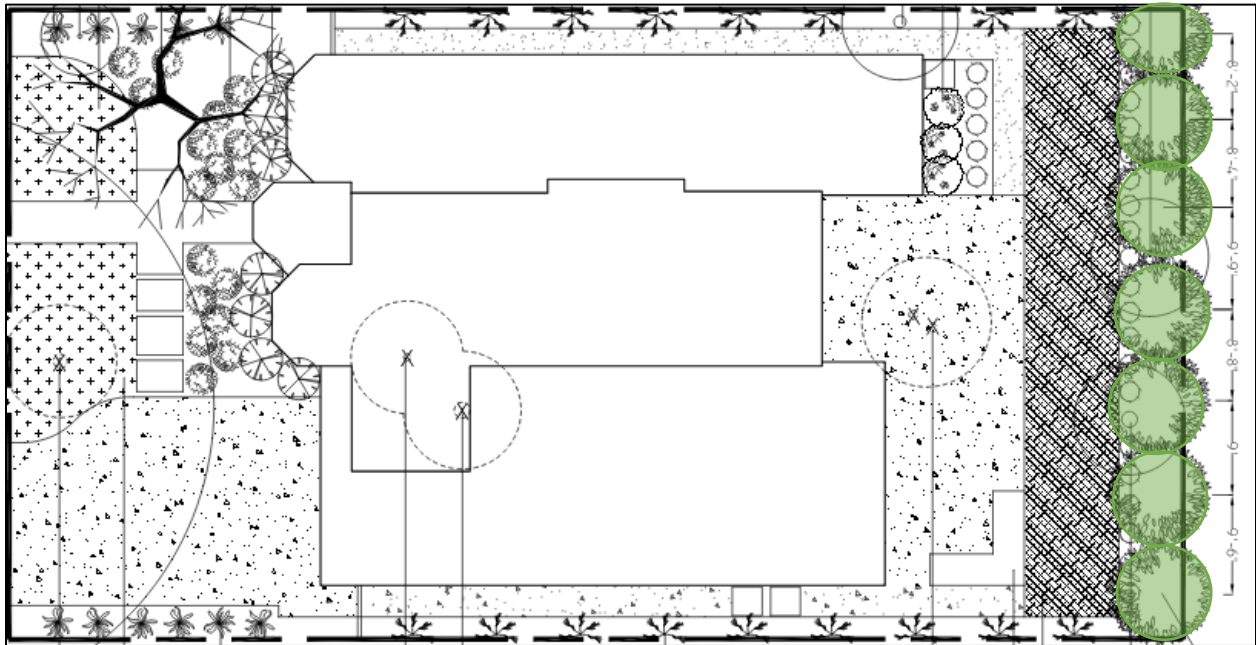


Figure 6. Proposed privacy plantings shown in green

3. **Other:** There are several other points raised by the appellants which are addressed below:

"Two permits on Primrose Way were only given single-story permission as approval by the City. The published permits state that single story was approved to ensure harmony in scale and design with the general neighborhood. The city appears to be using a different and unexplained set of principles for the permit in question."

The appellant's comment seems to be indicating that other applicants' in the neighborhood have chosen to propose single-story additions to their home. However, the Cupertino Municipal Code does not disallow two-story residences as there is no single-story overlay in the neighborhood. The surrounding neighborhood is transitional and comprised of a mixture of single-story and two-story residences, with 12 out of the 32 surrounding homes (see Figure 2) being two-story residences.

The project at 1506 Primrose Way required a Two-Story Permit for the new two-story residence and a Minor Residential Permit for the new second-story balconies. Both permit types underwent the required administrative review and approval by the Director of Community Development per CMC Chapter 19.12: Administration.

"The ADU is planned to be a separate unit even though it's attached to the main residence. Over the long run...the City has not demonstrated that the ADU and main residence will continue to be separate with inspections."

The proposed ADU complies with the site development regulations of the ADU Ordinance, Chapter 19.112 of the CMC in regard to setbacks, height, and parking requirements. Per the ADU Ordinance, the attached ADU shall remain separated from the principal dwelling unit, as written in the conditions of approval (Attachment 4).

"Cupertino is known for its great schools and peaceful neighborhood. Buyers pay a premium for living in Cupertino for these reasons. Cupertino School is losing students. Due to that, the school district is planning to close two schools. We need more housing for the family with school-age kids. Converting a suitable house to a mega one will further reduce the enrollment and harmony of the neighborhood."

There is no evidence provided related to the assertion that the proposed new residence with ADU would reduce the enrollment of Cupertino schools.

Environmental Review:

This project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) per Section 15303.

Public Noticing and Community Outreach:

The following table is a brief summary of the noticing for this appeal:

Notice of Public Hearing & Site Signage	Agenda
<ul style="list-style-type: none">▪ Site Signage (<i>at least 10 days prior to hearing</i>)▪ 14 notices mailed to property owners adjacent to the project site and residents who submitted a public comment prior to the Director's approval (<i>at least 10 days prior to the hearing</i>)	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (<i>five days prior to hearing</i>)▪ Posted on the City of Cupertino's Web site (<i>five days prior to hearing</i>)

No public comments were received at the time of production of this staff report.

Conclusion

The project complies with all R-1 Ordinance 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. Further, the applicant has revised the project design to reflect the concerns of surrounding property owners. Therefore, staff recommends that the Planning Commission deny the appeal and uphold the Community Development Director's decision to approve the Two-Story Permit through the Resolution for Application R-2020-035 and Minor Residential Permit through the Resolution for Application RM-2020-023.

With respect to the two-Story Permit and Minor Residential Permit, the following findings may be made:

1. *The project is consistent with the Cupertino General Plan, any applicable specific plans, zoning ordinance, and the purposes of the R-1 Ordinance; and*

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 or improvements in the vicinity, and will not be detrimental to the public health, safety, or welfare; and*

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 project is located within the R1-6 (Single Family Residential) zoning district, and will be compatible with the surrounding uses of the neighborhood. The project meets the building development regulations of the R-1 Ordinance and complies with the privacy protection measures to ensure that visual impacts to adjacent neighbors are mitigated.

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

The proposed project is located in a residential area consisting of single-family homes. The subject neighborhood contains a mix of single-story and two-story homes, making the proposed project compatible with the neighborhood. The proposed 2,992 sq. ft. two-story residence is comparable in size to the existing residences in the surrounding area and complies with the R-1 Ordinance regulations for floor area ratio. Additionally, the project complies with all other development regulations for R1-6 zoned properties regarding mass and bulk, including, but not limited to, first floor building envelope, minimum setback regulations, and building height limitations. Furthermore, 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. Together, the reduced height and design changes provide better articulation of wall lines, reduce the visual mass of the exposed second story, and simplify the roofline. 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 visual impacts on adjoining properties have been reasonably mitigated through adherence to the setback requirements and privacy protection measures of the R-1 Ordinance. The proposal for 1506 Primrose Way meets, and in some cases exceeds, all setback requirements for the R1-6 zoning district. The project proposes a first-floor rear-yard setback of 28'-5" where only 20' is required; a second-story rear-yard setback of 34'-6" where 25' is required; and a rear-yard balcony setback of over 26'-6" where 20' is required.

The R-1 Ordinance allows property owners the ability to construct second-story windows and balconies as long as privacy protection trees and/or shrubs are planted as required by the ordinance. The project complies with the privacy screening requirements of the R-1 Ordinance by providing privacy screening plantings for the second-story balcony and second-story windows with a sill height below 5 feet along the rear (eastern) property line and signed privacy waivers for the right (southern) and left (northern) property lines. Per the R-1 Ordinance, the objective of privacy protection plantings is to provide substantial screening within three years of planting. Privacy protection plantings are considered Protected Trees under the City's Municipal Code (Chapter 14.18) and are recorded as such with a covenant against the property to inform current and future property owners about their protected status. Protected trees are not permitted to be removed without obtaining a tree removal permit and providing replacement plantings.

Next Steps

The Planning Commission's decision on this project is final unless appealed within 14 days of the decision. If appealed, the City Council will hear the final appeal.

Prepared by: Erika Poveda, Associate Planner
Reviewed by: Piu Ghosh, Planning Manager
Approved by: Benjamin Fu, Director of Community Development

ATTACHMENTS

1. Draft Resolution for R-2020-035
2. Draft Resolution for RM-2020-023
3. Single-Family Residential (R-1) Ordinance
4. Action Letter with Conditions of Approval
5. Approved Plan Set
6. Chih-Lung Lin Appellant Letter and Supplemental Documents
7. Jitesh Vadhia Appellant Letter and Supplemental Documents