

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

RESOLUTION NO.

OF THE ADMINISTRATIVE HEARING OFFICER OF THE CITY OF  
CUPERTINO APPROVING AN ARCHITECTURAL AND SITE PERMIT  
TO ALLOW FACADE AND LANDSCAPE MODIFICATIONS AT AN  
EXISTING BANK OF AMERICA  
LOCATED AT 20563 STEVENS CREEK BLVD

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SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2020-007  
Applicant: Melissa Lee (Gensler Architecture Firm)  
Location: 20563 Stevens Creek Blvd (APN 326-34-044)

SECTION II: FINDINGS

WHEREAS, the City of Cupertino received an application for an Architectural and Site Approval (minor) to consider allowing façade and landscape modifications at an existing bank (Bank of America) located in a Planned Development Zoning District (Crossroads Area of Heart of the City Specific Plan), 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 July 22, 2021 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 proposed project includes exterior building façade, landscape, and site modifications to an existing commercial office building occupied by Bank of America that would improve the design of the site and upgrade building materials. The exterior façade enhancements incorporate a fresh coat of paint to the stucco, accent paint to the window trim, a new metal seamed roof, and metal clad design at the main entrance. The landscaping on the south and west elevations of the building would be improved with new drought-tolerant plantings that frame the building entrances. Additional site improvements include a new waste collection area with garbage, recycling, and organics bins and curb to provide separation from the parking lot, restriping of parking stalls, and adding a pedestrian pathway to better delineate pedestrian access. Staff has also conditioned the project to remove the prohibited flood lighting, unless required by State law, and submit a lighting plan to be reviewed and approved by the Planning Division prior to building permit issuance to reduce the spill-over of light to adjoining property owners. There are no changes to the existing building square footage, height, location, or intensity of use on the site. The exterior building façade, landscape, and site 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 project scope includes exterior façade modifications that do not increase floor area, lot coverage, or height of the existing building on the project site. The proposed exterior façade modifications include new paint on existing stucco walls, a new standing seam metal roof, adding four additional windows, and a metal cladding design at the main entrance. The south and west elevations also include new landscaping along the building façade to break up massing of the building and provide visual interest of the site. The building design would be an improvement to the shopping center and would not be modified in height or bulk compared to existing buildings within the vicinity. 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 exterior and landscape modifications are harmonious with the existing building form and are compatible with the proposed design upgrades of the adjacent buildings within the area. The neutral color palette of the design would be compatible with the existing office buildings at the rear and suitable for the location. The project site is located in a developed area with various commercial and office uses that consist of similar materials and colors as the proposed project. The proposed project does not include tree removal and staff has conditioned the project to maintain the trees on-site as protected development trees. Additionally, the proposed landscape improvements would provide visual interest to the main entrance of the building. Staff has also conditioned the project to remove the unpermitted, prohibited flood lighting, unless required by State law, and submit a lighting plan to be reviewed and approved by the Planning Division prior to building permit issuance to reduce the spill-over of light to adjoining property owners. Furthermore, the project includes restriping parking stalls and adding a decorative pedestrian pathway which would increase pedestrian access and would complement the new building design for the site.*

- 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. Proposed signage would be reviewed and approved to the satisfaction of the Community Development Department upon submittal for Building Permits.*

- 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 4 thereof,

The application for an Architectural and Site Approval, Application No. ASA-2020-007 is 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. ASA-2020-007 as set forth in the Minutes of the Administrative Hearing Meeting of July 22, 2021 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 Gensler, titled "Bank of America" consisting of 19 sheets labeled A0.00, A0.01, A0.01a, A0.02, A0.02a, A0.03, A0.04, A4.00, A4.01, A4.02, A9.00, A9.01, A9.02, A9.03, A9.20, A9.21, A9.30, L1.0, and L1.1, 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. 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, to determine

that the proposed plans comply with Building and Fire Codes in effect at the time of application for a building permit.

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. 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.

7. 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.

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. PEDESTRIAN PATHWAY MATERIAL MODIFICATION

The applicant/property owner shall propose an alternative color and/or material(s) for the proposed paved pedestrian pathway from the public right-of-way to the building to comply with the Heart of the City Specific Plan Sections 1.01.040(A)(1) and 2.01.040(A). Paving materials for pedestrian pathways recommended per the Heart of the City Specific Plan include stone, such as slate or granite, brick pavers, concrete unit pavers, or poured-in-place concrete with any of the following treatments: integral pigment color, special aggregate, special scoring pattern, ornamental insets (e.g., tile), or a stamped pattern. All concrete walks should be tinted to reduce glare. The Building Permit construction drawings shall indicate the revisions on the site plan and materials sheet. The pedestrian pathway modification shall be reviewed and approved to the satisfaction of the Planning Division to verify that the intent of a required decorative pathway is met pursuant to the Heart of the City Specific Plan, prior to issuance of Building Permits.

10. DARK SKY COMPLIANCE

Prior to issuance of Building Permits, the applicant/property owner shall submit final plans in compliance with the approved lighting plans to comply with

development standards of Cupertino Municipal Code Section 19.102.040 Outdoor Lighting Requirements. In the event changes are proposed from the approved plans, said changes must be reviewed and approved by the Director of Community Development or their designee. The applicant shall provide all documentation required to determine compliance with the Municipal Code.

**11. LIGHT FIXTURE REMOVAL**

Prior to issuance of Building Permits, the applicant/property owner shall submit construction drawings indicating the removal of the existing flood lights installed on the existing building to comply with Cupertino Municipal Code Section 19.102.040 Outdoor Lighting Requirements, unless explicitly required by State law. The proposed lighting replacement shall be reviewed and approved to the satisfaction of the Planning Division prior to issuance of Building Permits.

**12. PARKING STALL DIMENSIONS**

The applicant/property owner shall indicate parking stall dimensions on the building permit plan set that comply with the Cupertino's Public Work's Department standards, which shall be reviewed and approved to the satisfaction of the Planning Division, prior to issuance of Building Permits.

**13. BICYCLE PARKING**

Prior to issuance of Building Permits, the applicant/property owner shall indicate the required Class I Facility parking spaces on the building permit set in accordance with the City's Parking Regulations under Chapter 19.124 of the Cupertino Municipal Code.

**14. DRIVEWAYS AND MOBILITY**

The property owner shall not propose development (e.g., walls, traffic barriers, or obstructions) along the shared property lines of the existing curb cuts that would obstruct driveway or curb cut access to vehicles or pedestrians accessing the subject parcel without further review and approval to the satisfaction of the Community Development Director.

**15. 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.

#### 16. 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.

#### 17. SIGNAGE

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

#### 18. 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.

19. PLANTING PLAN MODIFICATIONS (SOUTH SIDE)

Prior to issuance of Building Permits, the applicant/property owner shall submit a revised landscape and planting plan that incorporates a variety of shrub types that grow at different heights and/or various color profiles to be installed along the main entrance to the building along the south elevation.

20. EXISTING TREES RETAINED ON-SITE

Prior to issuance of Building Permits, the applicant/property owner shall submit a landscape and site plan that verifies the existing trees per the approved Building Permit (Permit No. 11060151) are maintained. The protected development trees shall be retained on-site.

21. TREE AND LANDSCAPE MAINTENANCE

The property owner shall be responsible for ensuring that the existing trees and newly planted trees are properly maintained including but not limited to ensuring that there is adequate soil drainage, that the soil is well-aerated, and irrigation systems are thoroughly tested to provide sufficient water to landscaped areas while reducing water waste.

22. TREE PROTECTION

As part of the demolition or building permit drawings, a tree protection plan shall be prepared by a certified arborist for the trees to be retained. In addition, the following measures shall be added to the protection plan:

- For trees to be retained, chain link fencing and other root protection shall be installed around the dripline of the tree prior to any project site work.
- No parking or vehicle traffic shall be allowed under root zones, unless using buffers approved by the Project Arborist.
- No trenching within the critical root zone area is allowed. If trenching is needed in the vicinity of trees to be retained, the City's consulting arborist shall be consulted before any trenching or root cutting beneath the dripline of the tree.
- Wood chip mulch shall be evenly spread inside the tree projection fence to a four-inch depth.
- Tree protection conditions shall be posted on the tree protection barriers.
- Retained trees shall be watered to maintain them in good health.
- A covenant on the property shall be recorded that identifies all the protected trees, prior to final occupancy.

The tree protection measures shall be inspected and approved by the certified arborist prior to issuance of building permits. The City's consulting arborist shall inspect the trees to be retained and shall provide reviews prior to issuance of demolition, grading or building permits. A report ascertaining the good health of the trees mentioned above shall be provided prior to issuance of final occupancy.

### 23. 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.

**24. 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.

**SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT**

**25. STREET IMPROVEMENTS**

Street improvements along the project will be required to the satisfaction of the Director of Public Works. Street improvements shall include the removal of concrete panels in the park strip along Stevens Creek Blvd. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

Additional comments will be provided and shall be incorporated prior to Building Permit approval.

**26. DRAINAGE**

Drainage shall be provided to the satisfaction of the Director of Public Works. Hydrology and pre- and post-development hydraulic calculations must be provided to indicate whether additional storm water control measures are to be constructed or renovated. The storm drain system may include, but is not limited to, subsurface storage of peak stormwater flows (as needed), bioretention basins, vegetated swales, and hydrodynamic separators to reduce the amount of runoff from the site and improve water quality. Any storm water overflows or surface sheeting should be directed away from neighboring private properties and to the public right of way as much as reasonably possible.

All storm drain inlets shall be clearly marked with the words “No Dumping – Flows to Creek” using permanently affixed metal medallions or equivalent, as approved by the Environmental Programs Division.

**SECTION IV: CONDITIONS ADMINISTERED BY THE ENVIRONMENTAL PROGRAMS DIVISION**

**27. WASTE DIVERSION & SOLID WASTE/RECYCLING MANAGEMENT**

Prior to issuance of Building Permits, the project shall be reviewed and approved by Cupertino's Environmental Services Division for compliance with all requirements related to construction and demolition waste diversion and waste/recycling management of the business operations.

PASSED AND ADOPTED this 22<sup>nd</sup> day of July 2021 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:

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Erika Poveda  
Associate Planner

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Albert Salvador  
Assistant Director of Community Development