

RESOLUTION NO. _____

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S
APPROVAL OF A MINOR RESIDENTIAL PERMIT TO ALLOW A NEW SECOND-
STORY BALCONY LOCATED AT 1506 PRIMROSE WAY**

SECTION I: PROJECT DESCRIPTION

Application No.: RM-2020-023
Applicant: Smart Lily, LLC (Khan and Hafiz residence)
Appellants: Jitesh Vadhia and Chih-Lung Lin
Location: 1506 Primrose Way (APN: 366-15-018)

SECTION II: FINDINGS FOR A USE PERMIT:

WHEREAS, the City of Cupertino received an application for a Minor Residential Permit to allow the construction of a new second-story balcony; and

WHEREAS, the project is determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 of the CEQA Guidelines; and

WHEREAS, the necessary notices were given and the comment period for the application was provided as required by the Procedural Ordinance of the City of Cupertino; and

WHEREAS, the Director of Community Development made the findings required under Section 19.28.140(A) of the Cupertino Municipal Code and approved the application with conditions on April 19, 2021; and

WHEREAS, the notice of decision was mailed to the appropriate parties, including the applicant and any person who contacted City staff with comments during the comment period, notifying them about the possibility of appealing a project; and

WHEREAS, the Planning Commission of the City of Cupertino received two appeals of the Community Development Director's approval of the Minor Residential Permit; and

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the Planning Commission has held at least one public hearing in regard to the appeals; and

WHEREAS, the Planning Commission made the findings required under Section 19.28.140(A) of the Cupertino Municipal Code to deny the appeals and uphold the Director of Community Development's approval of the application with no amendments to the conditions of approval on June 22, 2021; and

WHEREAS, the City Council of the City of Cupertino received two appeals of the Planning Commission's approval of the Minor Residential Permit; and

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the City Council has held at least one public hearing in regard to the appeals; and

WHEREAS, the appellants have not met the burden of proof required to support said appeal; and

WHEREAS, the City Council finds as follows with regard to this application:

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 project complies with all other development regulations for R1-6 zoned properties, including, but not limited to, minimum setback regulations. The proposal for 1506 Primrose Way meets, and in some cases exceeds,

all setback requirements for the R1-6 zoning district by proposing a rear-yard balcony setback of over 26'-6" where only 20' is required. The project, as approved, is harmonious in scale and design with the general neighborhood. The proposed balcony is seven feet in depth and 16 feet in width. It is proportionate to the size of the proposed home and in scale with the proposed home.

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 proposed balcony for 1506 Primrose Way exceeds all setback requirements for the R1-6 zoning district by proposing a rear-yard balcony setback of over 26'-6" where only 20' is required, and side setbacks of 17'8" and 26' where only 15' is required.

The R-1 Ordinance allows property owners the ability to construct second-story 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 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 protected 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.

WHEREAS, the City Council is the approval authority for this project and is granted the authority by the Municipal Code to exercise its independent judgment, based on the record before it, for purposes of the California Environmental Quality Act; and

NOW, THEREFORE, BE IT RESOLVED that the City Council takes the following actions:

1. Exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15303. The Class 3 exemption applies to new construction of small structures, including a single-family residence, or a second-dwelling unit in a residential zone.

2. DENIES the appeal of an application for a Minor Residential Permit, Application no., RM-2020-023, and UPHOLDS the Planning Commission's approval of the Minor Residential Permit subject to the conditions which are enumerated in this Resolution beginning on PAGE 4 thereof. The conclusions and sub conclusions upon which the

findings and conditions specified in this resolution are based, including those contained in the Public Hearing record concerning Application no. RM-2020-023 as set forth in the minutes of City Council Meeting of October 5, 2021, are hereby incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPARTMENT

1. APPROVED EXHIBITS

The approval is based on a plan set entitled “Hafiz – New Residence, “consisting of fourteen (14) sheets labeled “A1, A2.1(1), A2.1(2), A2.2, A3, A4, A5, A6, A7, A8, L1, L2, L3, and TP,” stamped as approved on April 19, 2021, and a revised Sheet A2, stamped as approved on September 23, 2021; and 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. ANNOTATION OF THE CONDITIONS OF APPROVAL

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

3. 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 property data may invalidate this approval and may require additional review.

4. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file no. R-2020-035 shall be applicable to this approval.

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. 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.

9. 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.

10. 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.

11. BIRD SAFE ORDINANCE COMPLIANCE

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

12. INDEMNIFICATION AND LIMITATION OF LIABILITY

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 at a regular meeting of the City Council of the City of Cupertino this 5th day of October 2021, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date