

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

RESOLUTION NO.

OF THE DESIGN REVIEW COMMITTEE OF THE CITY OF CUPERTINO  
APPROVING AN R-1 EXCEPTION PERMIT TO ALLOW A REDUCED SIDE-  
YARD SETBACK OF 5-FEET TO ACCOMMODATE A NEW GARAGE  
ADDITION TO AN EXISTING SINGLE-FAMILY RESIDENCE WHERE A  
COMBINED SIDE-YARD SETBACK OF 15-FEET IS REQUIRED IN THE R1-7.5  
ZONING DISTRICT

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SECTION I: PROJECT DESCRIPTION

Application No.: EXC-2021-0051  
Applicant: Raghu Kumar Devarakonda  
Location: 10300 Imperial Avenue; APN: 357-19-052

SECTION II: FINDINGS

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

WHEREAS, the Project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15301 Class 1 (Existing facilities); and

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

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

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

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

*The project is consistent with the intent of the R-1 Ordinance in that it minimizes visual impacts to adjacent residential properties and that it is compatible with other homes in the neighborhood. The reduced five-foot side yard setbacks are appropriate to allow for a functional*

*floor plan, to accommodate a 20-foot by 20-foot garage that is required for all single-family residences, and a balanced, aesthetically pleasing front elevation, that is not dominated by a two-car garage door, on a substandard lot.*

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

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

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

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

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

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

**NOW, THEREFORE, BE IT RESOLVED:**

That after careful consideration of the maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 thereof, the application for an Exception to the Single-Family Residential Ordinance regulations, Application no. EXC-2021-001 is:

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

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

no. EXC-2021-001 as set forth in the Minutes of Design Review Committee Meeting of October 21, 2021 and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

The approval is based on the plan set titled "Devaradonda Residence, 10300 Imperial Ave., Cupertino, CA 95014," consisting of 13 sheets, labeled "A1, A2, A2.1, A3, A3.1, A3.2, A3.3, A4, A5, A6, A8, L1, and SS1," except as may be amended by the Conditions contained in this Resolution.

2. R-1 EXCEPTION

The R-1 Exception to allow a reduced side-yard setback of 5-feet shall only apply to the left (northerly) side-yard setback of the attached garage addition. Any future additions along the north side shall be set back at least 9'-5" from the north side property line in order to provide a combined side yard setback of 15 feet. Any proposed extension of the northerly 5-foot setback shall be subject to discretionary approval of the Design Review Committee in accordance with the Single-Family Residential (R-1) Ordinance.

3. ACCURACY OF THE PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

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

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. COMPLIANCE WITH PUBLIC WORKS CONFIRMATION FORM

The project shall comply with the requirements indicated on the Public Works Confirmation form dated December 1, 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.

7. LANDSCAPE PROJECT SUBMITTAL

Prior to issuance of building permits, the applicant shall submit a full Landscape Documentation Package, per sections 14.15.050 A, B, C, and D of the Landscape Ordinance, for projects with landscape area 500 square feet or more or elect to submit a Prescriptive Compliance Application per sections 14.15.040 A, B, and C for projects with landscape area between 500 square feet and 2,500 square feet. The Landscape Documentation Package or Prescriptive Compliance Application shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits, and additional requirements per sections 14.15.040 D, E, F, and G or 14.15.050 E, F, G, H, and I will be required to be reviewed and approved prior to final inspections.

8. 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.

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. DUST CONTROL

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

- a) Water all exposed surfaces areas (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- b) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d) All vehicle speeds on unpaved roads shall be limited to 15 mph.
- e) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- f) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- g) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h) Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- i) The applicant shall incorporate the City's construction best management practices into the building permit plan set.

## 12. 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.

## 13. 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.

#### 14. 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.

**15. 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.

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PASSED AND ADOPTED this 21<sup>st</sup> day of October 2021, at a regular meeting of the Design Review Committee of the City of Cupertino by the following roll call vote:

AYES: MEMBERS:  
NOES: MEMBERS:  
ABSTAIN: MEMBERS:  
ABSENT: MEMBERS:

ATTEST:

APPROVED:

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Erika Poveda  
Associate Planner

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Steven Scharf, Chair  
Design Review Committee