

RESOLUTION NO. 15-024

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT AMENDMENT NO. SA14-0002 FOR SITE AND BUILDING MODIFICATIONS TO AN EXISTING HILLSIDE HOME, LOT LINE ADJUSTMENT AND RECONFIGURATION OF EXISTING OPEN SPACE EASEMENT LOCATED AT 1000 COUNTRY CLUB DRIVE (APN: 029-03-014)

WHEREAS, on November 5, 2002, the City Council approved a Planned Unit Development (PUD) and Environmental Assessment for the construction of a new 12,571 square foot house and various site improvements on a 4.62 acre parcel. The PUD approval allowed the home to be constructed within the crestline zone of protection, combining the total square footage of the main residence and second family unit, reduced rear setback, and exempted unconditioned space (garage, covered pool and unconditioned basement) from the square footage calculations.

WHEREAS, on May 26, 2004, the Planning Commission approved a one-time, eighteen month time extension for Planned Unit Development permit approvals for the 12,571 square foot hillside home and associated site improvements.

WHEREAS, the construction for the new home began in 2005. There are active building permits that have been extended to allow completion of the home.

WHEREAS, on August 7, 2014, an application was submitted by Theresa Pan with SAN Partners LLC, P.O. Box 610910 San Jose, CA 95161 to allow for minor building and site modifications to a hillside home that is currently under construction. The request also includes a lot line adjustment and reconfiguration of an existing open space and landscape easement located at 1000 Country Club Drive. The property is located within Single Family Residential with Hillside Combining Zoning District (APN: 29-03-014).

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt under CEQA.

WHEREAS, on July 8, 2015, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The Planning Division conducted an environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is categorically exempt from further CEQA review under Section 15301, Section 15303 (New Construction of Small Structures) 15304 (Minor Alterations to Land) of the California Environmental Quality Act (CEQA). The project entails minor site and building modifications such as façade changes to an existing home, installation of minor structures include outdoor patios and trellis, and minor grading to site to adjust the slope of an existing driveway.

Section 3: Site Development Permit (Section XI-10-57-03(F) - The Planning Commission makes the following findings based on the evidence in the public record in support of Site Development Permit (Section XI-10-57-03-1(F):

- 1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The project will provide for a compatible and aesthetic development in that site layout and design of the proposed home provides an appropriate scale, massing and blends the natural setting. The proposed modifications such as the squared window openings, stone cladding and landscaping treatments minimizes the appearance of bulk, provides for a visually solid base that grounds the building, and provides architectural interest. The proposed colors and material are in keeping with natural earth tones and would complement the natural hillside setting.

- 2. The project is consistent with the Milpitas Zoning Ordinance.*

The project is consistent with the Milpitas Zoning Ordinance. The project complies with the hillside development standards and comply with the setback, height, maximum square footage, and impervious surface coverage regulations as summarized in the Table 1 below. In terms of the architectural guidelines, the proposed modifications improves the bulk and massing of the building with the proposed window openings, stone cladding and landscaping treatments. The proposed colors and material are in keeping with natural earth tones and would complement the natural hillside setting.

Table 1:
Summary of Development Standards in the Hillside Combining District

Development Standards	Required	Existing/ Previously Approved	PUD	Proposed	Complies
Lot Area (Acres)*	14.1	4.6		8.7 (with lot line adjustment)	No
Setbacks					
Front	40	210'			Yes

Development Standards	Required	Existing/ Previously Approved	PUD	Proposed	Complies
Side	40	245' and 127'		245' and 127'	Yes
Rear	40	20	E1	670'(with lot line adjustment)	Yes
Size of Main Dwelling	10,000	12,571 sq. ft.	E2	11,658 sq. ft.	Yes
Impervious Surface Coverage	10% of lot, not to exceed 30,000 s. f.	19,347 s. f.		27,811 s. f.	Yes
Height	One-story, max. ht. 17' on the westside of crestline, Two-story max. ht. 27 on eastside of crestline		E3		Yes
Parking	7 (8 bdrm)	6		6 covered, 10 uncovered	Yes

The project will not create unreasonable views or obstructions in that the project proposes minor exterior façade changes to the existing unfinished residence. The existing building form, location and height of the building remain unchanged from the previous approval. However, the roof lines would be lower on certain portions of the roof. Furthermore, the project will not impair light or air considering the home is located approximately 600-feet from the nearest adjacent home.

Grading and disturbance of existing contours (*natural & man-made*) will not be significant and limited developed portions of the site. Existing trees are to remain and protected in place.

3. *The project is consistent with the Milpitas General Plan.*

The project is consistent with the General Plan in terms of land use and density. The project is entails site and building modifications to a previously approved hillside residence that is under construction. The project is also consistent with the following General Plan policies and principles:

- 2.a-G-3, which encourages a variety of housing types and densities that met the needs of individuals and families.
- 2.a-l-18: retains the natural character of the hillside by utilizing designs, colors, and materials that blends with the environment and terrain.

- 5.a-1-2: minimizes the threat to life and property through identification of active fault traces and geologic hazard zones.

Section 5: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 15-024 approving Site Development Permit Amendment No. SA14-0002 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on July 8, 2015.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on Hearing Date, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

EXHIBIT 1

**CONDITIONS OF APPROVAL
PAN RESIDENCE - SA14-0002 – 1000 COUNTRY CLUB DRIVE**

General Conditions

1. General Compliance. The applicant, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Site Development Permit Amendment No. SA14-0002 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Division.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the

indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on July 8, 2015, in accordance with these Conditions of Approval.
16. Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**
17. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**

Site Development Permit:

18. Climate Action Plan Compliance. Prior to issuance of any building permit, the Permittee shall revise the building plans to show the following:
 - a. Pre-wired for solar photovoltaic systems.
 - b. Provide exterior electrical outlet for gardening equipment
19. Lighting Plan. Prior to issuance of any building permit, the Owner or Designee shall submit a lighting and iso-illumination plan that shall demonstrate 1) safe and adequate lighting of the project site and 2) lighting is contained and does not spill over onto adjacent properties or create unwanted glare. Proposed light fixtures shall be high quality and complement the architectural style of the home. **(P)**
20. Architectural Elevations. Prior to issuance of any building permit, the Permittee shall revise building elevations to reflect high quality material, finishes, and articulation. Such revisions to the building architecture are subject to Planning Director review and approval and includes the following:

- a. The stucco shall be a sand finish on the body of the building with smooth stucco finish on all window, door, and other trims. The permittee shall provide a sample mock-up of the stucco finish for the body and trim prior its application for Planning Director approval. (P)
- b. Final color selection for the building shall be submitted to the Planning Director for review and approval. (P)
- c. All roof eaves shall provide substantial exposed beams/rafter tails, corbels or brackets, subject to Planning Director review and approval. (P)
- d. Decorative cornice treatment shall be provided for the balcony located over the guest deck on northeast elevation.

Windows and Doors

- e. All windows shall be designed to provide a range of 2 to 4-inch recess on all elevations, subject to Planning Director approval. (P)
 - f. The Permittee shall incorporate design elements such as decorative headers or lintels above the window opening and/or projecting bottom sills where appropriate and reinforces the architectural style and design of the home. (P)
 - g. All pedestrian and garage doors shall be decorative, distinctive, and reinforce the architectural style of the home and include ornamentation such as, but not limited to recessed or grooved panels, metal studs and decorative hardware. (P)
21. Encroachment Permit: A City encroachment permit is required for any work in the area within City's jurisdiction, right of way (ROW), Public Service Utility Easement (PSUE), or Public Utility Easement (PUE). The Contractor must apply, pay for and obtain the encroachment permit prior to starting work. (E)
22. Utility Protection: All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep-rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas. (E)
23. Solid Waste Management: Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, Permittee shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, Permittee shall subscribe to and pay for solid waste services rendered. (E)
22. Demolished Material Removal: All demolished materials including, but not limited to, broken concrete, asphalt paving, pipe, vegetation, excess earth, building debris, and other unsuitable materials, etc., shall be removed from the job site for recycling or disposal by Permittee to the satisfaction of the City Engineer. Permittee shall to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction of the site. Permittee shall recycle all building and paving materials including, but not limited to roofing materials, wood, drywall, metals, and miscellaneous and composite

materials, aggregate base material, asphalt, and concrete. Permittee's contractor shall perform all recycling and/or disposal by removal from the job site. (E)

23. Construction Storm Water Quality: Permittee shall comply with the requirements of the National Pollution Elimination Discharge System (NPDES) permit as administered by the California State Water Resources Control Board (State Board) and the San Francisco Bay Regional Water Quality Control Board (Regional Board). Prior to the issuance of any building, demolition, or grading permit, Permittee shall submit an Erosion and Sediment Control Plan (Erosion Control Plan) as a part of the improvement plan submittal. The erosion control plan shall show all construction best management practices (BMPs) and shall comply with the requirements of the NPDES, the Municipal Regional Permit Order R2-2009-0074 (MRP), and the City's stormwater and urban runoff pollution control standards and guidelines (City's Clean Water Program). Permittee shall ensure that all contractors and sub-contractors install and regularly maintain all construction BMPs as required by the approved erosion control plan, the COMC, and the City's Clean Water Program. (E)
24. Construction Storm Water Quality: The Contractor shall perform all elements of the best management practices for compliance with the requirements of the National Pollution Elimination Discharge System Permit as regulated by the San Francisco Bay Regional Water Quality Control Board. The Contractor is responsible for compliance.
25. Flood Zone. The property is in Flood Hazard Zone Area X, (flood insurance is not required), 06085C0059J, 2/19/14. This is provided for your information only.
26. Agency Approval: It is the responsibility of the Permittee to obtain any necessary permits/approvals from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Union Pacific Railroad, Southern Pacific Railroad, Santa Clara Valley Transportation Agency, and City of Milpitas Engineering Division. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division.
27. Right of Entry. Prior to building permit issuance, the Permittee shall obtain a right of entry from the neighboring property to perform any work.
28. Underground Service Alert (USA): Permittee shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities.
29. Recycled Water for Construction Activity: The City Council has declared a water supply emergency and enacted a Water Shortage Contingency Plan. The project is required to use recycled water for construction purposes such as dust control and compaction.
30. Tree Removal Permit: In accordance with COMC Chapter 2, Title X (Ord. 201), Permittee may be required to obtain a permit for removal of any existing tree(s). Contact the Public Works Department at (408) 586-2600 to obtain the requirements and forms. (E)

31. Deferred Landscaping: The City Council has declared a water supply emergency. The applicant shall defer the planting of landscaping until such time as the water supply shortage is over.
32. Water Well: Prior to building permit issuance, the proposed water well shall be review and approved by Santa Clara Valley Water District and County Health Department.
33. Water Well: Prior to building permit issuance, the plans shall clarify the use of the well water and provide protection on the City water system by installing a RP Backflow device right after the water meters. The plans shall show plumbing and the intent of the water tank.
34. Lot Line Adjustment: Prior to building permit issuance, a copy of the recorded lot line adjustment shall be provided to Land Development.
35. Open Space and Landscaping Easement: Prior to building permit issuance, the existing landscape easement per L490 O.R. 695 shall be abandoned and a proposed landscape easement shall be approved by City Council per City of Milpitas requirements.
36. Plan Corrections: Prior to building permit issuance, the Permittee shall revise the following:
 - a. Detail 3 on Sheet C6.0 shall be revised to reflect the current design of the driveway.
 - b. Detail 2 on Sheet L5.0 conflicts with Sheet C3.3 regarding the knockout for the drainage swale, the plan shall be revised.

(P) = Planning
(B) = Building
(E) = Engineering
(F) = Fire Prevention
(CA) = City Attorney