

HAYWARD CITY COUNCIL

RESOLUTION NO. 18-

Introduced by Councilmember \_\_\_\_\_

RESOLUTION ADOPTING THE MITIGATED NEGATIVE DECLARATION AND THE MITIGATION MONITORING AND REPORTING PROGRAM AND APPROVING THE SITE PLAN REVIEW WITH GRADING PERMIT AND VARIANCE APPLICATION NO. 201705626 PERTAINING TO CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 2398 RAINBOW COURT

WHEREAS, on September 28, 2017, Siddiq Miaknail (Applicant) submitted Site Plan Review No. 201705626, requesting a Site Plan Review with Grading Permit and Variance approval to construct a new single-family residence on a 0.13-acre steeply sloped, vacant lot located at 2398 Rainbow Court, Assessor Parcel Number 425-0410-031-00; and

WHEREAS, an Initial Study and Mitigated Negative Declaration were prepared to assess the potential environmental impacts of the Project; and

WHEREAS, the Planning Commission considered the Project at a public hearing held on March 22, 2018, and recommended that the City Council adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program; and approve the Site Plan Review with Grading Permit and Variance application; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on April 3, 2018.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines as follows:

CALIFORNIA ENVIRONMENTAL QUALITY ACT

1. Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15220, an Initial Study ("IS") was prepared for this project with the finding that a Mitigated Negative Declaration ("MND") was appropriate because all potential impacts could be mitigated to a level of less than significant with the implementation of Mitigation Measures that were incorporated as Conditions of Approval for the Project.
2. That the proposed MND was prepared by the City of Hayward, acting as the Lead Agency, and that the MND was circulated with a minimum twenty (20) day public review period between March 2, 2018 and March 22, 2018.

3. That the proposed MND was independently reviewed, considered and analyzed by the City Council and reflects the independent judgment of the City Council; that such independent judgment is based on substantial evidence in the record (even though there may be differences between or among the different sources of information and opinions offered in the documents, testimony, public comments and such responses that make up the proposed MND and the administrative record as a whole); that the City Council adopts the proposed MND and its findings and conclusions as its source of environmental information; and that the proposed MND is legally adequate and was completed in compliance with CEQA.
4. That the proposed MND identified all potential adverse impacts and based on the MND and the whole record before the City Council, there is no substantial evidence that the project will have a significant effect on the environment.
5. That the project complies with CEQA, and that the proposed MND was presented to the City Council, which reviewed and considered the information contained therein prior to approving the project. The custodian of the record of proceedings upon which this decision is based in the Development Services Department of the City of Hayward located at 777 B Street, Hayward, CA 94544.

SITE PLAN REVIEW

**A. The development is compatible with on-site and surrounding structures and uses and is an attractive addition to the City**

The proposed single-family residence is compatible and consistent with other single-family dwellings in the vicinity and would be designed to be an attractive addition to the City. The proposed two-story, "Eichler-type" contemporary home will incorporate a flat roof and be constructed using metal-framing and finished in a combination of stucco and aluminum panels (light and dark gray colors) with decorative stone veneer elements on the side and front façades. The trim elements and the garage door will be painted in a dark gray color to match the façade color. The proposed home will be built to a maximum height of 28 feet, 3 inches and will comply with the height restriction of the previously approved Tentative Map.

The architecture design of the home and choice of building materials and colors will provide a smooth visual transition between the proposed two-story home and the natural surroundings. The proposed project reduces the building bulk and mass by adding significant window detailing, a mixture of materials (stucco and stone veneer) and neutral color palette to the building design.

**B. The development takes into consideration physical and environmental constraints**

The development of the proposed single-family residence takes into consideration the physical and environmental constraints in that it's designed to blend into the existing slope. The proposed architectural design of the single-family residence is consistent with the City's Hillside Design and Urban/Wildlife Interface Guidelines. The Hillside and Urban/ Wildfire Interface Guidelines requires that new buildings within the development exhibit varied elevations, floor plans, setbacks, and a quality architecture to enhance the hillside setting. The proposed home has incorporated well-articulated front and street side elevations with well-proportioned windows, a flat roof and a variety of textures. Additionally, the proposed retaining walls are going to be buffered by new landscaping, which will also minimize bulk and mass from the street and adjacent properties.

**C. The development complies with the intent of City development policies and regulations**

The proposed single-family residence complies with applicable City development policies, including but not limited to the Hayward 2040 General Plan, the Hayward Municipal Code, and the City's Hillside Design and Urban/Wildlife Interface Guidelines. In addition, the development consistent with the following Hayward 2040 General Plan goals related to Land Use and Community Character:

*Land Use Policy LU-1.7 Design Guidelines:* The City shall maintain and implement commercial, residential, industrial, and hillside design guidelines to ensure that future development complies with General Plan goals and policies.

*Land Use Policy LU-3.7 Infill Developments in Neighborhoods:* The City shall protect the pattern and character of existing neighborhoods by requiring new infill developments to have complimentary building forms and features.

The project also incorporates new drought-tolerant landscaping in compliance with the Bay Area-Friendly Water Efficient Landscape Ordinance and will enhance the visual quality and character of the existing vacant site. The project will also conform to the City's Tree Preservation Ordinance, which requires preservation of existing trees to the greatest extent feasible and mitigation for the proposed removal of existing protected tree. The applicant proposes a new landscape plan for the site consisting of shrub, flowering, and ground cover plantings and will plant ten trees as mitigation measures for the removal of one Coast Live Oak tree.

**D. The development will be operated in a manner determined to be acceptable and compatible with surrounding development.**

The proposed single-family residence, as conditioned, will be compatible with the surrounding residential development as the project will be subject to all applicable provisions of the HMC including construction, maintenance, landscaping, etc. In addition, the proposed development of one single-family residence will be located within an already established single-family residential neighborhood, consistent with the land use pattern and character of the surrounding homes in the vicinity.

The proposed single-family residence will include both on- and off-site improvements. On-site improvements will include the installation of drought-tolerant landscaping, erosion control measures, storm drains, utility under-grounding, and shall incorporate Best Management Practices (BMPs) to construction noise, grading and construction activities to prevent adverse negative impacts onto adjacent properties. Other site improvements would include a new driveway, play and outdoor kitchen areas, SPA, concrete step pads for walkways, stairs, landscaped planters, and retaining walls.

VARIANCE

**E. There are special circumstances applicable to the property including size, shape, topography, location, or surroundings, or other physical constraints.**

The development is constrained by the size, shape, and topography of the lot. The property is located on an irregular shaped, corner lot with a 26 percent slope. Most of the properties around the area have rectangular lot shapes with a lot depth of 80 feet. The northeast section of the lot has a depth of 56 feet. Based on the project review, there are special circumstances applicable to this parcel that create a unique hardship related to the size, shape and topography of this lot.

**F. Strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity under the same zoning classification.**

The strict application of the Zoning Ordinance would deprive the subject property of a privilege enjoyed by other similar properties in the District because the property has a depth of only 56-feet at the northeast corner of the site, where an 80-foot depth is required per the RS zoning district. The proposal is located on a site with a 26 percent slope and the home was designed to blend in with the existing slope. While a home of similar design could be built, it would present significant design challenges that would result in unsatisfactory and usable interior living spaces, as well as create an extraordinary exterior design, which would be inconsistent with similar two-story homes in the area.

**G. The Variance does not constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.**

The granting of this Variance would not constitute a grant of a special privilege inconsistent with the limitations of other properties in the vicinity as the variance would allow the applicant to develop a 2,672 square-foot, two-story home, which is consistent and compatible with the size of other single-family homes in the RS, single-family district that do not have a unique hardship related to size, shape and topography.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program, acknowledges review of the proposed grading plans and approves Site Plan Review with Grading Permit and Variance Application No. 201705626, subject to the attached conditions of approval.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2018

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

**CITY OF HAYWARD PLANNING DIVISION  
SITE PLAN REVIEW WITH GRADING PERMIT  
AND VARIANCE APPLICATION NO. 201705626  
CONDITIONS OF APPROVAL**

**GENERAL CONDITIONS OF APPROVAL:**

1. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
2. All outstanding fees owed to the City, including staff time spent processing this application, shall be paid in full prior to issuance of a building permit or certificate of occupancy.
3. The proposed single-family residence shall be operated according to these conditions of approval and the narrative/plans on file with the Planning Division stamped "Exhibit A".
4. Any proposal for alterations to the proposed site plan and/or design, which does not require a variance to any zoning code, must be approved by the Planning Director prior to implementation.
5. A copy of these conditions of approval shall be included on a full-sized sheet(s) in the building permit plan set.
6. Prior to final inspection all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director.
7. This approval shall be void three years after the effective date of approval unless a building permit application with plans matching the approved plans have been submitted and accepted for processing by the Building Official.
8. If determined to be necessary for the protection of the public peace, safety and general welfare, the City of Hayward may impose additional conditions or restrictions on this permit. Violations of any approved land use conditions or requirements will result in further enforcement action by the Code Enforcement Division. Enforcement includes, but is not limited to, fines, fees/penalties, special assessment, liens, or any other legal remedy required to achieve compliance including the City of Hayward instituting a revocation hearing before the Planning Commission.
9. The property owner/applicant shall apply for and obtain approval from the Department of Public Works, in conjunction with approval by the City Council, to modify the existing red curb fronting the subject site prior to issuance of a building permit.

10. Prior to the submittal of an application for a building permit, the applicant shall submit to Planning staff a final design plan for the retaining walls including proposed colors and materials.

**MITIGATION MEASURES**

1. The applicant shall be responsible for adhering the Mitigation Monitoring and Reporting Program (MMRP) for the adopted Mitigated Negative Declaration in compliance with the California Environmental Quality Act (CEQA) Guidelines.
  - a. The applicant shall be responsible for scanning a copy of the adopted MMRP into the Building Division plan check submittal.
  - b. The applicant shall be responsible for implementing the recommendations and mitigations measures identified in the Geotechnical Engineering Report prepared by Wayne Ting & Associates (dated July 25, 2017) regarding seismic design, site preparations, foundations, retaining walls, concrete slab-on grade, and drainage in accordance with the MMRP.
  - c. The recommendations and mitigation measures shall be incorporated into the grading permit application and final construction level drawings (civil, drainage, landscape, site plans) and shall be submitted to the Building Division, Public Works Department – Engineering Division, Landscape Division, and Planning Division for review and approval.

**Landscape**

1. A comprehensive arborist report prepared by a certified arborist shall be submitted for all existing trees within the property. The report shall include appraised value of existing trees that are subjected to Tree Preservation Ordinance. Subjected trees, Protected Tree, in accordance with Tree Preservation Ordinance are California native trees with trunk diameter of equal or larger than four inches measured at fifty-four inches above ground, and non-native trees with equal or larger than eight inches in diameter measured at fifty-four inches above ground. When Protected Trees are removed to create space for development, removed trees shall be replaced with equal value to the appraised within the property above and beyond required tree planting. See Municipal Code Tree Preservation Ordinance (HMC Chapter 10, Article 15) for guidelines in preparing an arborist report.
2. A tree mitigation summary chart shall be provided on the landscape plan listing trees to be removed, value of trees to be removed, trees with assigned identification numbers in the arborists report, total value of mitigation, and proposed tree sizes and their value equaling the mitigation value. Tree mitigation shall be provided above and beyond providing required trees such as street trees, front yard trees, parking shade trees and screening trees.
3. Landscape and irrigation plans shall include landscape compliance statement: "I have complied with the criteria of City of Hayward Bay-Friendly

Water Efficient Landscape Ordinance and applied them for the efficient use of water in the landscape and irrigation design plan.”

4. The landscape and irrigation base information shall include the accurate location of the bio-retention area that matches the civil plan C1. The concrete stepping pads shown on the landscape plan shall be revised to be completely out of the bio-retention area. In addition, minimum two feet clearance shall be provided from the edge of bio-retention to the edge of concrete stepping pads for stability of the stepping pads. Planting and irrigation plans shall be revised accordingly.
5. All trees shall be planted a minimum of five feet away from any underground utilities, a minimum of fifteen feet from a light pole, and a minimum thirty feet from the face of a traffic signal, or as otherwise specified by the city.
6. Trees shall be planted according to the City Standard Detail SD-122 and the detail shall be included in the landscape plans.
7. Planting plan may be diagrammatic; however, shrub that is shown on top of catch basin shall be removed.
8. The detail of the “laundry to landscape” shall be included in the plumbing plan and shall be plan checked by the Building Division during the building permit process. Landscape plan shall refer to plumbing plan to provide CA Plumbing Code compliant “laundry to landscape” plumb-ready system, and to contact Building Official Gary Nordahl.
9. Municipal Code Article 12 Section 10-12.15 requires providing minimum one fifty (50) gallon covered rain catchment device at easily accessible location.
10. Mulch shall be organic recycled chipped wood in dark brown color.
11. Irrigation water budget calculation provided only Estimated Total Water Use. Maximum Applied Water Allowance shall be provided.
12. Trees shall be irrigated with two tree bubblers not exceeding 0.25GPM for each bubbler on a separate valve.
13. Backflow prevention device conform to the City Standard Detail SD-202 shall be provided and the detail shall be included on the plan. Anti-siphon valve shall not be allowed when the highest elevation is located at the northeastern corner of the property.



**Prior to obtaining a grading permit:**

1. A tree removal permit shall be obtained prior to the removal of any tree in addition to grading permit and building permit.
2. If any of existing protected trees would be preserved, a tree preservation bond equaling the total appraised value of the trees for preservation in the approved arborist report shall be submitted to City Landscape Architect. The bond shall remain in effect throughout the construction period and until completion of the entire project improvements. If any trees that are designated as saved are removed or damaged during construction shall be replaced with trees of equal size and equal value.
3. Trees shall be preserved in accordance with the Tree Preservation Ordinance. Prior to the commencement of clearing and grading operations, tree protection measures in compliance with the project arborist's recommendation and the City codes shall be installed.

**Prior to issuance of Certificate of Occupancy:**

1. Final tree location shall be field verified by the project landscape architect prior to planting for the final coordination to avoid all unforeseen conflict with utilities and other site elements.
2. All landscape and irrigation shall be completed in accordance to the approved plan and accepted by the City Landscape Architect. Before requesting an inspection from the City Landscape Architect, the project landscape architect shall inspect and accept landscape improvements and shall complete Appendix C. Certificate of Completion in the City's Bay-Friendly Water Efficient Landscape Ordinance. The completed Certificate of Completion Part 1 through Part 7 or applicable parts shall be faxed/e-mailed/turn in prior to requesting an inspection from the City Landscape Architect.
3. Park Dedication In-Lieu Fees are required for all new dwelling units. Fees shall be those in effect at the time of issuance of the building permit.

**Maintenance:**

1. Landscaping shall be maintained in a healthy, weed-free condition at all times and shall maintain irrigation system to function as designed to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which contribute pollution to the Bay. Three inches deep mulch should be maintained in all planting areas. Mulch shall be organic recycled chipped wood in the shades of Dark Brown Color, and the depth shall be maintained at three inches deep. All nursery stakes shall be removed during tree installation and staking poles shall be removed when the tree is established or when the trunk diameter of the tree is equal or larger to the diameter of the staking pole. Irrigation system shall be tested periodically to maintain uniform distribution of irrigation water; irrigation controller shall

be programmed seasonally; irrigation system should be shut-off during winter season; and the whole irrigation system should be flushed and cleaned when the system gets turn on in the spring.

2. All trees planted as a part of the development as shown on the approved landscape plans shall be “Protected” and shall be subjected to Tree Preservation Ordinance. Tree removal and pruning shall require a tree pruning or removal permit prior to removal by City Landscape Architect. Any damaged or removed trees without a permit shall be considered a violation in pursuant to the Municipal Code, Tree Preservation Ordinance.

**Building**

1. The proposed project will require a building permit application and the associated plan review process. During the building permit review process, additional comments will be made related to technical aspects of the design.
2. The spiral stairway to the roof deck will need to comply with 2016 CRC section R311.7.10.
3. The proposed project will need to comply with the 2016 California Green Building Standards Code.

**Engineering**

**On and Off-Site Improvements**

**Grading and Land Disturbance**

1. A grading permit is required and shall be approved prior to issuance of building permits. Additionally, the grading permit will require approval by City Council (Municipal Code Section 10-8.23) as the average slope of the project site has been determined to be 26%.
2. Effective measures for adjacent property protection, soil erosion protection, sediment control, storm water pollution prevention and dust control must be in-place before start of any construction or land disturbing activity. Such measures shall be as per the plans approved by the City Engineer and must include Best Management Practices. The plans shall provide details for soil erosion and dust/sediment control during and after construction periods until ground cover is re-established.
3. Driveway(s) to the property shall be as per the City Standard Details SD-108A. Existing driveway is not ADA compliant because it lacks a minimum 4-ft. wide accessibility compliant walkway along its back with cross-slope not exceeding 2%.
4. City street excavations shall be repaired with 95% relative compaction backfill and pavement of strength not less than the existing. Multiple trenches in the

street will require pavement resurfacing with a single patch of minimum 2-inch thick hot-mix asphalt concrete overlay extending over all excavations.

5. The project geotechnical consultant shall review and indicate his approval on the final improvement and building plans to ensure that site grading, foundation designs, sub-drainage, etc. are in accordance with the project consultant's recommendations.
6. All grading or clearing construction activities which require a City Grading Permit shall be performed only during the hours of 7:30 a.m. to 7:30 p.m., Monday through Friday. No work shall be performed on Saturdays, Sundays, or holidays.

**Solid Waste**

1. Please submit the completed and signed Applicant section of the attached Construction and Demolition Debris Recycling Statement at the time of your building permit. The Contractor section is to be completed upon completion of the project, and submitted to the Utilities and Environmental Services Department, along with all weigh tags, for final building inspection approval. You can also find the form online at <http://www.hayward-ca.gov/services/city-services/construction-and-demolition-debris-disposal>

**Utilities**

1. Water & Sewer Service are available and subject to standard conditions and fees in effect at time of application and payment of fees:
  - a. Water Services – Based on the water fixtures shown on the plans, it is estimated the finished structures will have a potential domestic water demand of 37.5 fixture units, which requires a minimum ¾" domestic water meter. Note that this estimate does not include any allowance for residential fire sprinklers or irrigation. A separate fire permit is required for the fire sprinkler system installation. The water meter size will be determined by the Fire Department's requirements for that permit; however, the minimum size water meter for residential fire sprinklers is 1". Residential combined domestic and fire services are allowed, per City Standard SD-216 (copy attached). Per SD-216, flow-through fire sprinkler systems do not require the installation of an above ground backflow prevention assembly. They do require the installation of a N36 meter box or a B16 and a B9 meter box. The owner/developer is required to pay water facilities fees and installation charges for connections to water mains and work performed by City forces. The Improvement Plans for Rainbow Court (Tract 3992) show that the property has an existing ¾" water service line and meter box with no meter. If this service line cannot be reused, it must be abandoned at the owner's/applicant's expense.

- b. Sewer Services – The owner/developer is responsible for payment of sewer connection fees at the current rates that the time the application for water and sewer service is submitted.
2. If the property will have more than 5,0 square feet of irrigated landscape, a separate irrigation water meter must be installed. Irrigation water meters must be protected by a Reduced Pressure Principal Backflow Prevention Assembly, per SD-202.
3. Water meters must be located a minimum of two feet from top of the driveway flares as per City Standard Detail 213 thru 218.
4. Water mains and services, including the meters, must be located “at least 10 feet horizontally from and one foot vertically above, any parallel pipeline conveying untreated sewage, ...” (such as a sanitary sewer lateral) per the current California Waterworks Standards, Title 22, Chapter 16, Section 64572. Note that the CA Waterworks Standards allow for horizontal separation of water and sewer lines to be less than 10’ “by utilizing upgraded piping material” and is approved by the “Department.” “Upgraded piping material” generally means to use piping material with a pressure rating at least 1 grade above the minimum pressure rating that is required for the application.
5. The sanitary sewer lateral shall be installed per City Standard Detail SD-312. Cleanouts shall be installed at the house connection and changes in alignment.

**Fire**

1. Submit for proper building permits for the construction of the building to the COH Building Department.
2. Residential buildings are required to install a fire sprinkler system in accordance with NFPA 13D.
3. Maximum 80 PSI water pressure design criteria should be used when water data indicates a higher static pressure. Residual pressure should be adjusted accordingly.
4. Underground fire service line serving NFPA 13D sprinkler system shall be installed in accordance with the Hayward Public Work Department SD-216. Water meter shall be minimum one-inch in diameter.
5. An audible alarm bell (device) shall be installed on the fire sprinkler system riser.

6. An interior audible alarm device shall be installed within the dwelling in a location so as to be heard throughout the home. The device shall activate upon any fire sprinkler system waterflow activity.
7. All bedrooms and hallway areas shall be equipped with smoke detectors, hard-wired with battery backup.
8. CO detectors should be placed near the sleeping area on a wall about 5 feet above the floor. The detector may be placed on the ceiling. Each floor needs a separate detector.
9. A minimum 4" self-illuminated address shall be installed on the front of the dwelling in a location so as to be visible from the street. Otherwise, a minimum 6" address shall be installed on a contrasting background and shall be in a location approved by the Fire Department.
10. **Materials and Construction Method for Exterior Wildfire Exposure** – The building is located within the City of Hayward Wildland/Urban Interface Area and shall meet the construction requirements (as reflected on the approved plans) as stated in the City of Hayward Hillside Design and Urban/Wildland Interface Guidelines, which includes Class A roofing materials and exterior non-combustible siding materials (stucco), double-pane windows. Do not use wood shake or treated wood shake roofs. The building construction shall comply with the requirements contained in the 2016 California Residential Code Section R327.
11. Provide spark arrestors with 1/4" metal mesh screens on all chimneys. Homeowners should inspect spark arrestors every year to ensure mesh screen integrity.
12. Restrict outdoor storage of firewood, kindling, or compost material within 30 feet of any structure, unless the material is stored in an approved bin or enclosure.
13. Locate chimney at least ten feet away from existing tree canopies.
14. Attic vents shall be covered with metal mesh in accordance with COH Urban Wildland Interface Guidelines. The dimensions of mesh openings shall be a minimum 1/16-inch and shall not exceed 1/8-inch.