ATTACHMENT A
Action NO. 2008-XX
RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO LAND USE ACTION
FOR 278 University Avenue: Architectural REVIEW APPLICATION
[FILE NO.08PLN-00082]
(KEN HAYES, APPLICANT)

On September 15, 2008, the City Council approved Architectural Review Board application for a new four story commercial mixed use retail/office building including design enhancement exceptions to exceed the maximum height and floor area, and a variance application for an encroachment into the Bryant Street special setback in the CD-C (GF)(P) zone district, making the following findings, determination and declarations:

SECTION 1. Background. The City Council of the City of Palo Alto ("City Council") finds, determines, and declares as follows:

A. On March 19, 2008, Ken Hayes, on behalf of Roxy Rapp, applied for an Architectural Review Board application for construction of a new four story commercial mixed use retail/office building including design enhancement exceptions to exceed the maximum height and floor area, and a variance application for an encroachment into the Bryant Street special setback ("The Project").

B. Following staff review, the Architectural Review Board (ARB) reviewed the project on June 5, 2008 and recommended approval.

SECTION 2. Environmental Review. The City as the lead agency for The Project has determined that the project is subject to environmental review under provisions of the California Environmental Quality Act (CEQA) under Guideline section 15070, Decision to Prepare a Negative or Mitigated Negative Declaration. An Environmental Impact Assessment (EIA) was prepared for the Project and it has been determined that no potentially adverse impacts would result from the development that cannot be mitigated, therefore, the Project would have a less than significant impact on the environment. The Negative Declaration was available for public review beginning May 16, 2008 through June 05, 2008. The Environmental Impact Assessment and Negative Declaration are attached to CMR: 364:08


(1) The design is consistent and compatible with applicable elements of the Palo Alto Comprehensive Plan. This finding can be made in the affirmative in that the project incorporates quality design that recognizes the regional and
historical importance of the area as described in the Comprehensive Plan and reinforces its pedestrian character.

(2) The design is compatible with the immediate environment of the site. This finding can be made in the affirmative in that the project is located at a prominent corner of the commercial downtown in an environment with other large retail/office buildings. The building has been designed to encourage pedestrian activity.

(3) The design is appropriate to the function of the project. This finding can be made in the affirmative in that the design would accommodate the proposed retail and office uses. The proposed building would have ample storefront glass, recesses, and awnings to create an inviting retail and pedestrian environment.

(4) In areas considered by the board as having a unified design character or historical character, the design is compatible with such character. This finding is not applicable to this project in that this area does not have a unified design or historic character.

(5) The design promotes harmonious transitions in scale and character in areas between different designated land uses. This finding is not applicable in that this project is not situated in a transition area between different designated land uses.

(6) The design is compatible with approved improvements both on and off the site. This finding can be made in the affirmative in that the new building is compatible with the existing context of the retail/commercial downtown environment.

(7) The planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community. This finding can be made in the affirmative in that the building location is shifted four feet away from the Bryant Street curb to provide a wider sidewalk to encourage pedestrian activity down Bryant Street.

(8) The amount and arrangement of open space are appropriate to the design and the function of the structures. This finding can be made in the affirmative in that the building has provided an adequate amount or recesses to the zoning requirements of the "P" overlay and the intent to add interest at the ground floor for pedestrians.

(9) Sufficient ancillary functions are provided to support the
main functions of the project and the same are compatible with the project's design concept. This finding can be made in the affirmative in that the basement is proposed to house all the necessary mechanical equipment and keep them out of public view.

(10) Access to the property and circulation thereon are safe and convenient for pedestrians, cyclists and vehicles. This finding can be made in the affirmative in that the project has been designed to encourage pedestrian activity with its greater setback on Bryant Street.

(11) Natural features are appropriately preserved and integrated with the project. This finding can be made in the affirmative in that the existing city street trees adjacent to the proposed building will be preserved.

(12) The materials, textures, colors and details of construction and plant material are appropriate expression to the design and function. This finding can be made in the affirmative in that the proposed colors and materials are will add detail and interest and are compatible with the commercial retail environment.

(13) The landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment. This finding is not applicable in that there is no proposed landscaping.

(14) Plant material is suitable and adaptable to the site, capable of being properly maintained on the site, and is of a variety which would tend to be drought-resistant to reduce consumption of water in its installation and maintenance. This finding is not applicable in that there is no landscaping proposed.

(15) The project exhibits green building and sustainable design that is energy efficient, water conserving, durable and nontoxic, with high-quality spaces and high recycled content materials. The following considerations should be included in site and building design:
  - Optimize building orientation for heat gain, shading, daylighting, and natural ventilation;
  - Design landscaping to create comfortable micro-climates and reduce heat island effects;
  - Design for easy pedestrian, bicycle and transit access;
  - Maximize on site stormwater management through landscaping and permeable paving;
  - Use sustainable building materials;
- Design lighting, plumbing and equipment for efficient energy and water use;
- Create healthy indoor environments; and
- Use creativity and innovation to build more sustainable environments.

This finding can be made in the affirmative in that the project incorporates several mandatory and voluntary features included in the LEED project checklist. With the adoption of the new mandatory Green Building Ordinance the project will be required to reach at least 33 points on the LEED checklist.

(16) The design is consistent and compatible with the purpose of architectural review as set forth in subsection 18.76.020(a). This finding can be made in the affirmative in that the project design promotes visual environments that are of high aesthetic quality and variety.

SECTION 4. ARCHITECTURAL REVIEW APPROVALS GRANTED.
Architectural Review Approval is granted by the City Council under Palo Alto Municipal Code Section 18.77.070 for application 08PLN-00082, subject to the conditions of approval in Section 5 of the Record.

SECTION 5. Context Based Design Considerations and Findings

Pursuant to PAMC 18.18.110(b), in addition to the findings for Architectural Review contained in PAMC 18.76.020(d), the following additional findings have been made in the affirmative:

(1) Pedestrian and Bicycle Environment. The design of new projects shall promote pedestrian walkability, a bicycle friendly environment, and connectivity through design elements. This finding can be made in the affirmative in that the new building is moved away from Bryant Street to open up the sidewalk to draw pedestrian traffic from University Avenue to the retailers along Bryant Street. In addition to the greater setback, the proposal incorporates recesses, ample storefront glass, and a rhythm of canvas awnings to enhance the pedestrian experience.

(2) Street building Facades. Street facades shall be designed to provide a strong relationship with the sidewalk and the street(s), to create an environment that supports and encourages pedestrian activity through design elements. This finding can be made in the affirmative in that the building
has been to encourage pedestrian activity by stepping the third and fourth floor back such that the building does not appear too tall and imposing and relating to the retail scale of the district. The rhythm of clear glass windows and awnings also enhance the pedestrian experience.

(3) **Massing and Setbacks.** Buildings shall be designed to minimize massing and conform to proper setbacks. This finding can be made in the affirmative in that the building would be setback further on Bryant Street to enhance pedestrian connectivity to the Bryant Street retailers and the setbacks and recesses at the third and fourth floors reduce the perceived height and mass of the building.

(4) **Low-Density Residential Transitions.** Where new projects are built abutting existing lower scale residential development, care shall be taken to respect the scale and privacy of neighboring properties. This finding can be made in the affirmative in that the building is not adjacent to residential development.

(5) **Project Open Space.** Private and public open space shall be provided so that it is usable for residents, visitors, and/or employees of the site. This finding can be made in the affirmative in that the project includes outdoor patio areas for the office users of the building.

(6) **Parking Design.** Parking needs shall be accommodated but shall not be allowed to overwhelm the character of the project or detract from the pedestrian environment. This finding can be made in the affirmative in that project is not required to provide any additional parking as all new square footage added is through seismic bonus and Transfer of Development Rights.

**SECTION 6. DESIGN ENHANCEMENT EXCEPTION FINDINGS**

The requested Design Enhancement Exceptions (DEE) are consistent with the following findings as stated in PAMC 18.76.050 (c). Section 18.76.050 provides for Design Enhancement Exceptions (DEE) to permit minor exceptions to site development regulations.

The following Design Enhancement Exceptions are requested:

Exception #1: A five foot encroachment into the 50 foot height
limit for a total height of 55 feet.

1. There are exceptional or extraordinary circumstances or conditions applicable to the property or site improvements involved that do not apply generally to property in the same zone district, in that:

   The subject property is a narrow corner lot that is only 60 feet wide. Each of the other parcels at this intersection are wider than the subject property.

2. The granting of these Exceptions will enhance the appearance of the site or structure, or improve the neighborhood character of the project and preserve an existing or proposed architectural style in a manner which would not otherwise be accomplished through strict application of the minimum requirements of Title 18 and the standards for review set forth in this Chapter, in that:

   The exception will allow for increased floor-to-floor height that will help the retail environment at the ground floor level. The higher retail floors allow for taller retail store front windows that will enhance the pedestrian experience.

3. The Exception is related to a site improvement that will not be detrimental or injurious to property or improvement in the site vicinity, and will not be detrimental to the public health, safety, general welfare or convenience, in that:

   Due to the setback of the upper floors, they are not readily visible from the public right of way and will not have a negative impact.

   Exception #2: To exempt the basement form the Far calculation.

1. There are exceptional or extraordinary circumstances or conditions applicable to the property or site improvements involved that do not apply generally to property in the same zone district, in that:

   The property has an existing full basement.

4. The granting of these Exceptions will enhance the appearance of the site or structure, or improve the neighborhood character of the project and preserve an existing or proposed architectural style in a manner which would not otherwise be accomplished through strict application of the minimum requirements of Title 18 and the standards for review set forth in this Chapter, in that:
The floor area exception allows the equipment to be located within the basement instead of on the roof or the outside of the building, thus improving the look of the building and possibly reducing the height.

5. The Exception is related to a site improvement that will not be detrimental or injurious to property or improvement in the site vicinity, and will not be detrimental to the public health, safety, general welfare or convenience, in that:

Floor area limits are established to control the intensity of use for commercial properties. The floor area granted through this exception would not add to the intensity of use being that the space would only house equipment and not office or retail space.

SECTION 7. Variance Findings

Variance approval is based on the findings indicated under PAMC Section 18.76.030 (C)

1. Because of special circumstances applicable to the subject property, including (but not limited to) size, shape, topography, location, or surroundings, the strict application of the requirements and regulations prescribed in this title substantially deprives such property of privileges enjoyed by other property in the vicinity and in the same zoning district as the subject property.

Special circumstances that are expressly excluded from consideration are: (A) The personal circumstances of the property owner, and (B) Any changes in the size or shape of the subject property made by the property owner or his predecessors in interest while the property was subject to the same zoning designation.

21. The existing building is built to the property line as are many buildings within the commercial downtown district. The special setback of seven feet, imposed upon this property, only occurs in limited locations within the downtown. Most properties within the commercial downtown have no setback requirement. This corner parcel, at only 60 feet wide, is narrower than the other parcels at this corner. The other parcels range from 75 feet to 100 feet wide.

22. The granting of the application shall not affect substantial compliance with the regulations or constitute a grant of special privileges inconsistent with the limitations placed upon other properties in the vicinity and in the same zoning district as the subject property.
23. The granting of the exception would result in a three foot encroachment into the required 7 foot special setback. The project would provide a four foot setback which is four feet wider than the typical setback of zero feet in the downtown.

24. 

3. The granting of the application is consistent with the Palo Alto Comprehensive Plan and the purposes of this title (Zoning).

The proposal is consistent with several policies of the Comprehensive Plan as outlined in Attachment F.

4. The granting of the application will not be injurious to property or improvements in the vicinity and will not be detrimental to the public health, safety, and general welfare, or convenience.

The proposed four foot setback will improve the sidewalk width over the existing condition. It will increase the setback from 8 feet to 12 feet and will open Bryant Street to pedestrian traffic from University Avenue. The three foot encroachment into the special setback would not result in a detrimental impact as it is an improvement over the existing situation which is zero setback in this location.

SECTION 8. Conditions of Approval.

PLANNING DIVISION

1. The project shall be implemented as shown on plans submitted May 29, 2008 on file with the City of Palo Alto Planning Division except as modified by these conditions of approval.

2. A copy of the approval letter shall be printed on the plans submitted for building permit.

3. The approval shall be conditioned upon the approval of the lot line adjustment to acquire 68.75 square feet from the adjacent parcel. The map shall be recorded prior to building permit issuance.

4. Prior to building permit issuance the applicant must submit a revised LEED checklist that indicates the project will reach at least 33 points. The project is required to reach the LEED Silver level.
5. This project is subject to Chapter 16.47 of the Municipal Code and payment of a housing in-lieu fee based on 6206 square feet of net new commercial floor area will be required. The fee rate as of May 8, 2007 is $16.52 per net new square feet for a total estimated fee of $102,523.12. The total fee is due and payable in full at building permit issuance. The actual, final fee amount will be calculated based on the net increase in commercial square footage as shown on the final building permit plans and the fee rate in effect as of the date of building permit issuance. The fee rate is adjusted annually as of May 8th.

6. In addition to the housing in-lieu fee there are other Development Impact fees that would be required for the proposed development. The estimated total of the Development Impact Fees, including the $ housing fee, is $175,487.36. These fees must be paid prior to building permit issuance.

7. If during grading and construction activities, any archeological or human remains are encountered, construction shall cease and a qualified archaeologist shall visit the site to address the find. The Santa Clara County Medical Examiner's office shall be notified to provide proper direction on how to proceed. If any Native American resources are encountered during construction, construction shall cease immediately until a Native American descendent, appointed by the Native American Heritage Commission of the State of California, is able to evaluate the site and make further recommendations and be involved in mitigation planning.

8. The following controls shall be implemented for the duration of project construction to minimize dust related construction impacts:
   - All active construction areas shall be watered at least twice daily.
   - All trucks hauling soil, sand, and loose materials shall be covered or shall retain at least two feet of freeboard.
   - All paved access roads, parking areas, and staging areas at the construction site shall be swept and watered daily.
   - Streets shall be swept daily if visible soil material is carried onto adjacent public streets.
9. Construction activities shall comply with Chapter 9.10 (Noise) of the PAMC (limiting construction between the hours of eight a.m. and six p.m. Monday – Friday, nine a.m. and six p.m. on Saturday, and construction activities prohibited on Sunday and Holidays) to reduce construction-related noise impacts to less than significant levels.

10. During construction, the site shall be kept clear of debris on a daily basis.

11. To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City its actual attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its own choice.

UTILITIES ELECTRIC

1. Existing two electrical services to the building would be eliminated and instead only one electric service will be provided.

2. Applicant will ensure that the new electric service size does not exceed the combined loads/sizes of existing two electric services. Applicant shall submit supporting documents for the new service e.g. load calculations based on National Electrical Code.

3. Applicant shall (at his/her expense) install additional substructure or do modifications to the existing substructure that is deemed necessary by the Utilities for providing new electric service.

4. Applicant shall be responsible for accepting the service at a different voltage (277/480Y Volts); if due to any reason the existing submersible transformer (500KVA) exceeds its operating limits. At that time, the substructure required shall be installed by the applicant.

5. The Applicant shall submit a request to disconnect all existing utility services and/or meters including a signed affidavit of vacancy, on the form provided by the Building Inspection Division. Utilities will be disconnected or removed within 10 working days after receipt of request. The
demolition permit will be issued after all utility services and/or meters have been disconnected and removed.

6. A completed Electric Load Sheet and a full set of plans shall be included with all building permit applications involving electrical work. The load sheet shall be included with the preliminary submittal.

7. The electric vaults in the alley shall not have any permanent or temporary structures placed on top or immediately adjacent to it. This includes any type of seating and/or dining furniture.

8. If applicant plans on using the area directly above or immediately adjacent to the electric vaults for seating, applicant shall provide space for a padmount transformer. The location of the padmount transformer shall be shown on the site plan and approved by the Utilities Department and the Architectural Review Board. The transformer shall have three (3) feet of clearance on all sides and eight (8) feet of clearance in front (measured from the pad).

9. The developer/owner shall provide space for installing padmount equipment (i.e. transformers, switches, and interrupters) and associated substructure as required by the City. In addition, the owner shall grant a Public Utilities Easement for facilities installed on private property as required by the City.

10. Applicant shall meet with the City's Electric Engineering staff to determine the electric utility design requirements for equipment and associated substructure work.

11. Location of the electric panel/switchboard shall be shown on the site plan and approved by the Architectural Review Board and Utilities Department.

12. All utility meters, lines, transformers, backflow preventers, and any other required equipment shall be shown on the landscape and irrigation plans and shall show that no conflict will occur between the utilities and landscape materials. In addition, all aboveground equipment shall be screened in a manner that is consistent with the building design and setback requirements.

13. No more than four 750MCM conductors per phase can be connected to the transformer secondary terminals; otherwise, bus duct must be used for connections to padmount transformers. If customer installs a bus duct directly between the transformer secondary terminals and the main switchgear, the installation of transition cabinet will not be required.
14. The customer is responsible for sizing the service conductors and other required equipment according to the City of Palo Alto Electric Service Requirements.

15. Projects that require the extension of high voltage primary distribution lines shall be coordinated with the Electric Utility. Additional fees may be assessed for the reinforcement of offsite electric facilities.

16. Any additional facilities and services requested by the Applicant that are beyond what the utility deems standard facilities will be subject to Special Facilities charges. The Special Facilities charges include the cost of installing the additional facilities as well as the cost of ownership.

**During construction**

17. At least 48 hours prior to starting any excavation, the customer must call Underground Service Alert (USA) at 1-800-227-2600 to have existing underground utilities located and marked. The areas to be checked by USA shall be delineated with white paint. All USA markings shall be removed by the customer or contractor when construction is complete.

18. The customer is responsible for installing all on-site substructures (conduits, boxes and pads) required for the electric service. No more than 270 degrees of bends are allowed in a secondary conduit run. All conduits must be sized according to CPAU requirements and no ½-inch size conduits are permitted. All off-site substructure work will be constructed by the City at the customer’s expense. Where mutually agreed upon by the City and the Applicant, all or part of the off-site substructure work may be constructed by the Applicant.

19. All primary electric conduits shall be concrete encased with the top of the encasement at a depth of 30 inches. No more than 180 degrees of bends are allowed in a primary conduit run. Conduit runs over 500 feet in length require additional pull boxes.

20. All new underground conduits and substructures shall be installed per City standards and shall be inspected by the Electrical Underground Inspector before backfilling.

21. The customer is responsible for installing all underground electric service conductors, bus duct, transition cabinets,
and other required equipment. The installation shall meet CPAU standards.

22. Prior to fabrication of electric switchboards and metering enclosures, the customer must submit switchboard drawings to the Electric Metering Department at 3201 East Bayshore Road, Palo Alto 94303 for approval. The City requires compliance with all applicable EUSERC standards for metering and switchgear.

23. All new underground electric services shall be inspected and approved by both the Building Inspection Division and the Electrical Underground Inspector before energizing. **Prior to issuance of a building occupancy permit**

24. The applicant shall secure a Public Utilities Easement for facilities installed on private property for City use.

25. All required inspections have been completed and approved by both the Building Inspection Division and the Electrical Underground Inspector.

26. All fees must be paid.

27. All Special Facilities contracts or other agreements need to be signed by the City and applicant.

**Additional comments**

*Load calculations based on National Electrical Code must be submitted.*

This project may require the relocation of existing distribution lines. Relocation of utilities (if feasible and required) will be at developer’s expense. Developer must schedule a meeting with Utilities Engineering Department (650-566-4516/4533) and obtain all the engineering details prior to submitting plans to the Building Department.

These are only preliminary comments and should not be construed as final review or approval for the project. Utilities Engineering will provide detailed comments as well as cost estimate when plans are submitted to the Building Department for review and approval. The City recommends customers/developers to contact Utilities Engineering (650-566-4533/4516) and obtain Utilities Standards and Requirements prior to finalizing plans.

**BUILDING DIVISION**

1. The means of egress at the basement shall have a ceiling height of not less than 7'-6".

2. The location of the building’s electrical service shall
require prior approval by the Building Division and shall be located at an exterior location or in a room or enclosure accessible directly from the exterior.

3. Due to the scale of the overall project, the applicant shall be required to utilize a 3rd party plan check agency to conduct the building code plan review. A list of the agencies approved by the City of Palo Alto is available at the Development Center. The City’s Building plan check fees are reduced by 75% when a 3rd party plan check agency is utilized.

TRANSPORTATION
1. On sheet C-0 show the existing traffic signal pole on the Bryant/University corner.

2. On sheet C-1 or on the appropriate construction sheet, a note must be added to the plans indicating the traffic signal pull boxes and street light pull boxes are to be adjusted to grade.

3. Any detector loops that are damaged must be replaced.

PUBLIC WORKS ENGINEERING DEPARTMENT
1. BASEMENT: Basements for new structures are not allowed in the right-of-way.

2. SIDEWALK & ALLEY: The applicant must replace the public sidewalk along the University and Bryant frontages of the property per Public Works’ standards. Public Works and Planning must approve any special finishes. The applicant must repair any damage caused during construction to the alley along the back of the property. The applicant will be required to provide street furniture, such as bike racks, benches and trash/recycling receptacles, as approved by the Planning Division, along all frontages.

3. BRYANT STREET SIDEWALK: Unless the Planning Division grants an exception to the required setback, Public Works requires the Bryant Street façade of the proposed building to be set back 7 feet from the property line, creating a 15-ft wide sidewalk.

4. PUBLIC ACCESS BASEMENT: Prior to opening the sidewalk to public use, the property owner will be required to dedicate a public access easement for the portion of the Bryant Street sidewalk that is on private property.

5. BASEMENT UNDER THE BRYANT SIDEWALK: The applicant is allowed a basement upon the portion of the Bryant Street
sidewalk that is on private property. However, a physical separation of the sidewalk and the basement ceiling will be required so that future maintenance or replacement of the sidewalk will not damage the basement ceiling.

6. LOT LINE ADJUSTMENT: In order to adjust a lot line, the applicant must apply to the Public Works Department for a Certificate of Compliance. An application form and a checklist of the required documents are available on our website and at the Development Center. The lot line adjustment must be recorded prior to the issuance of a building permit.

7. RECYCLING ROOM: The building must include a recycling room. The existing trash/recycling room on Centennial Walk, for use by the various businesses on the block, may continue to be used for trash and cardboard recycling only. All other recycling must be accommodated within the proposed building as the trash and recycling needs for the block have outgrown the trash/recycling room’s capacity. Furthermore, if food service is proposed within this building in the future, the building owner will be required to accommodate food scrap and grease storage within the building.

The following comments are provided to assist the applicant at the building permit phase. You can obtain various plan set details or forms from Public Works at the City's Development Center (285 Hamilton Avenue) or on Public Works’ website: www.cityofpaloalto.org/depts/pwd/forms_permits.asp.

Include in submittal for building permit:

8. BASEMENT DRAINAGE: Due to high groundwater throughout much of the City and Public Works prohibiting the pumping and discharging of groundwater, perforated pipe drainage systems at the exterior of the basement walls or under the slab are not allowed for this site. A drainage system is, however, required for all exterior basement-level spaces, such as lightwells, patios or stairwells. This system consists of a sump, a sump pump, a backflow preventer, and a closed pipe from the pump to a dissipation device onsite at least 10 feet from the property line, such as a bubbler box in a landscaped area, so that water can percolate into the soil and/or sheet flow across the site. The device must not allow stagnant water that could become mosquito habitat. Additionally, the plans must show that exterior basement-level spaces are at least 8” below any adjacent windowsills or doorsills to minimize the potential for flooding the basement. Public Works recommends a waterproofing consultant be retained to design and inspect the vapor barrier and waterproofing systems for the basement.
9. **BASEMENT SHORING:** Permanent shoring for the basement, including tiebacks, is not allowed to encroach into the ROW, unless the applicant applies for and receives an encroachment permit from Public Works. Also, shoring, including tiebacks, is not allowed on or under adjacent private property without written permission from the property owner.

10. **DEWATERING:** Basement excavations may require dewatering during construction. Public Works reviews and permits dewatering plans as part of a Permit for Construction in the Public Street ("street work permit"). Public Works strongly recommends that groundwater dewatering only be done during the dry season (April 15 through October 1). If groundwater dewatering occurs during the wet season, the contractor will be required to determine the capacity of the storm drain system and will only be allowed to use 25% of that capacity.

The applicant can include a dewatering plan in the building permit plan set in order to obtain approval of the plan during the building permit review, but the contractor will still be required to obtain a street work permit during construction. Public Works has a standard dewatering plan sheet that can be used for this purpose and dewatering guidelines are available on Public Works' website. Alternatively, the applicant can add the following note to the site plan:

11. "If dewatering the basement excavation becomes necessary during excavation or construction, all construction must stop and the contractor must prepare and submit a dewatering plan to Public Works at the Development Center. Upon approval, the plan will be included in a Permit for Construction in the Public Street ("street work permit"). The contractor will be required to pay a street work permit fee and a dewatering fee. The dewatering system can then be installed, but must be inspected by Public Works' construction and water quality inspectors prior to commencing dewatering and resuming construction. Public Works may also require the water to be tested for contaminants prior to initial discharge and at intervals during dewatering. If testing is required, the contractor must retain an independent testing firm to test the discharge water for the contaminants Public Works specifies and submit the results to Public Works. Public Works strongly recommends that groundwater dewatering occur only during the dry season (April 15 through October 1). If wet season groundwater dewatering is proposed, the contractor will be required to determine the capacity of the storm drain system and will only be allowed to use 25% of that capacity."
12. DRAINAGE PLAN: The plans must include a drainage plan showing where rainwater outlets. Outlets are allowed under the sidewalk and into the gutter, but the downspouts should not encroach into the right-of-way.

13. STORM WATER POLLUTION PREVENTION: The City's full-sized "Pollution Prevention - It's Part of the Plan" sheet must be included in the plan set. Copies are available from Public Works at the Development Center or on our website.

14. IMPERVIOUS SURFACE AREA: The project will be creating or replacing 500 square feet or more of impervious surface. Accordingly, the applicant shall provide calculations of the existing and proposed impervious surface areas with the building permit application. The Impervious Area Worksheet for Land Developments form and instructions are available at the Development Center or on our website.

15. STREET TREES: Show all street trees in the public right-of-way or state that there are none. Any removal, relocation or planting of street trees; or excavation, trenching or pavement within 10 feet of a street tree must be approved by Public Works' arborist, Eric Krebs (phone: 650-496-6905). This approval shall appear on the plans.

16. WORK IN THE RIGHT-OF-WAY: The plans must clearly indicate any work that is proposed in the public right-of-way, such as sidewalk replacement or utility lateral work. The plans must include notes that the work must be done per City standards and that the contractor performing this work must first obtain a Permit for Construction in the Public Street ("street work permit") from Public Works at the Development Center. The plans show flush in-ground lighting in the public sidewalks. This will have to be reviewed and approved by the Public Works Operations Division, who is responsible for sidewalk maintenance. If allowed, the applicant may be required to maintain the sidewalk adjacent to the lighting.

17. SIGNS ENCROACHMENT PERMIT: The building owner may be required to apply for an indefinite encroachment permit from Public Works for any signs that extend into the public right-of-way. This permit is obtained from Public Works at the Development Center. Scaled plans (elevations) of the signs are required and must show how far the signs extend into the right-of-way and how much clearance there is from the sidewalk to the bottom of the signs (8 feet minimum).

18. ENCROACHMENT PERMIT: The work will occupy and/or impact the public right-of-way. Accordingly, the contractor will be required to obtain an encroachment permit. Encroachment permits are issued by Public Works at the Development
Center. However, for large, downtown projects that also include work in the ROW, Public Works typically only issues a street work permit to the general contractor, allowing the encroachment permit to be subsumed within the street work permit, but both permit fees are charged.

19. LOGISTICS PLAN: Work in a commercial area that impacts the public right-of-way requires a logistics plan. The plan will include, but is not limited to: noise control, dust control, storm water pollution prevention, work hours, contractor’s parking, truck routes, traffic control, pedestrian control, material deliveries, crane lifts, concrete pours, and noticing of affected properties. Logistics plan guidelines are available on our website. Logistics plans are typically attached to a street work permit.

PUBLIC WORKS OPERATIONS RECYCLING

1. Per PAMC 5.20 the trash/Recycling enclosure must be on the same parcel as the project. For this project you will be permitted to continue to use the alley trash room for trash and cardboard. All other recyclables, including but not limited to, paper, glass, plastic, food scraps, and tallow, must be accommodated on site.

2. The enclosure must be designed for unrestricted access by the service provider and users of bins/carts.

3. The enclosure must be within 25’ from serviceable area to qualify for standard level service.

Enclosure guidelines are attached.

4. Enclosure should be sized for the following bins/carts:
   Qty 8-96 gallon recycling carts

Prior to Building Permit issuance

5. PAMC Chapter 5.24- requires salvage and recycling of construction and demolition debris. Salvage for reuse is required. Visit www.cityofpaloalto.org/devcenter/cd for requirements.

Deconstruction/Salvage resources:
Reusable Lumber (salvages more than lumber)- Jim Steinmetz- 650-867-8970
The Reuse People- Ted Reif- 888-588-9490
Whole House Building Supply- Paul Gardner- 650-328-8731

PUBLIC WORKS WATER QUALITY

1. PAMC 16.09.032(B)(17) Covered Parking  Drain plumbing for parking garage floor drains must be connected to an
oil/water separator with a minimum capacity of 100 gallons, and to the sanitary sewer system

2. **PAMC 16.09.032(b)(8) Condensate from HVAC** Condensate lines shall not be connected or allowed to drain to the storm drain system.

**Undesignated Retail Space:**

3. In the event this building houses a future restaurant, they will be required to have a minimum 750 gallon grease removal device installed. Also, the facility will be required to house all recycle containers, food scrap containers, tallow bins (used cooking oil containers) and any restaurant related waste onsite in a covered enclosure.

4. **PAMC 16.09** Newly constructed or improved buildings with all or a portion of the space with undesignated tenants or future use will need to meet all requirements that would have been applicable during design and construction. If such undesignated retail space becomes a food service facility the following requirements must be met:

5. **PAMC Section 16.09.103(a) Grease Control Devices for Food Service Facilities**

A grease control device (GCD) shall be installed with a minimum capacity of 750 gallons. The GCD must be sized in accordance with the 2007 California Plumbing Code. The sizing calculation must be submitted with the plans. All grease generating drainage fixtures shall be connected to the GCD. The connection of any dishwashers or pasta cookers to a GCD is prohibited. All large, in-ground interceptors shall have a minimum of three manholes to allow visibility of each inlet piping, baffle (divider) piping and outlet piping to ensure accessibility for inspection, cleaning and removal of all contents. The plans shall clearly indicate the number of manholes on the GCD and a list of all drainage fixtures connecting to the GCD.

6. **PAMC 16.09.103(e) Prohibition Against Garbage Disposals**
The installation of a garbage grinder at any food service facility is prohibited after January 1, 2003. The kitchen cannot utilize a garbage grinder for food waste disposal to the sanitary sewer.

7. **PAMC 16.09.032b(16) Large Item Cleaning Sink for Food Service Facilities**

Food service facilities shall have a sink or other area for cleaning floor mats, containers, and equipment, which is connected to a grease interceptor and the sanitary sewer.

**FIRE DEPARTMENT**
1. A fire sprinkler system shall be provided which meets the requirements of NFPA Standard No. 13, 2002 Edition. (PAMC15.04.160) Fire Sprinkler system installations require separate submittal to the Fire Prevention Bureau. (PAMC15.04.083)

2. Install a NFPA 13 Fire Sprinkler, NFPA 14 Standpipe and NFPA 72 Fire Alarm System complying with local amendments.

3. All sprinkler drains, including those for floor control valves and inspector’s test valves, shall be directed to an approved landscape location or to the sanitary sewer system. NOTE: Please check with Roland Ekstrand in Utilities for maximum flow capacity of sanitary sewer in the area. Main Drain test discharge flow rate shall be impounded and attenuated to below sanitary sewer capacity before discharge.

4. Elevator car shall be sized for Fire Department gurney access requirements based on gurney dimensions of 24 in. x 84 in. plus a minimum of two emergency response personnel.

5. Solar Shading canopy near roofline will interfere with Fire Department aerial apparatus operations. Extend at least 1 stairway to roof.

6. Building exterior to be provided with Fire Department key box.

7. Site address to be prominently posted. (2001CFC901)


9. An exterior bell shall be provided, and an approved audible sprinkler flow alarm to alert the occupant shall be provided in the interior of the building in an approved location. 2001CBC904.3.2) Fire Alarm system installations require separate submittal to the Fire Prevention Bureau. PAMC15.04.083)

SECTION 9. Term of Approval.

Architectural Review Board Approval. In the event actual construction of the project is not commenced within one year of the date of council approval, the approval shall expire and be of no further force or effect, pursuant to Palo Alto Municipal Code Section 18.77.090(a).
PASSED:
AYES:
NOES:
ABSENT:
ABSTENTIONS:
ATTEST: 

______________________________
City Clerk

APPROVED: 

______________________________
Director of Planning and Community Environment

APPROVED AS TO FORM:

______________________________
Senior Deputy City Attorney

PLANS AND DRAWINGS REFERENCED:

1. Development Plans prepared by Ken Hayes, of the Hayes Group, consisting of 18 pages, received May 29, 2008.
CITY OF PALO ALTO
Office of the City Clerk

APPEAL FROM THE DECISION OF DIRECTOR OF PLANNING
AND COMMUNITY ENVIRONMENT*

For appeals of final decisions on Architectural Review Board and Home Improvement Exception applications (rendered after public hearing), this appeal form shall be completed and submitted by appellant within fourteen days from date of the Director's decision. Appeals of final decisions on Individual Review applications (rendered after public hearing) must be submitted within ten days of the Director's decision. Complete form, the current fee and a letter stating reasons for the appeal shall be submitted to front desk staff of the Planning Division, 5th floor, City Hall, 250 Hamilton Avenue, except for 980 Fridays when City Hall is closed, when these items shall be submitted to Planning staff at the Development Center, 265 Hamilton Avenue (glass storefront across from City Hall on the corner of Bryant and Hamilton).

* Director of Planning includes his designees, which are Planning Managers or the Chief Planning Official.

Appeal Application No. ___________________________ Receipt No. __________
Name of Appellant LYNNE CHIAPPELLA Phone 650-326-4311
Address 6031 COLORADO AVE PALO ALTO 94306
Street City ZIP

LOCATION OF PROPERTY SUBJECT TO APPEAL:
Street Address 278 UNIVERSITY AVENUE

Name of Property Owner (if other than appellant) ___________________________

Property Owner's Address ___________________________ Street ___________________________ City ___________________________ ZIP ___________________________

The decision of the Director of Planning and Community Environment dated JUNE 2008
whereby the application OBPLN-00082 by KEN HAYES (file number) (original project applicant)
was Approved , is hereby appealed for the reasons stated in the attached letter (in duplicate)

Date: 6-30-2008 Signature of Appellant LYNNE CHIAPPELLA

PLANNING COMMISSION RECOMMENDATION TO THE CITY COUNCIL (TO BE FILLED OUT BY STAFF):
Date ___________________________ Approved ___________________________ Denied ________

Remarks and/or Conditions:

CITY COUNCIL DECISION (TO BE FILLED OUT BY STAFF):
Date ___________________________ Approved ___________________________ Denied ________

Remarks and/or Conditions:

SUBMITTAL REQUIREMENTS SATISFIED:
1. Letter stating reasons for appeal ___________________________ Received by ___________________________
2. Fee (currently $151.00) ___________________________ Received by ___________________________
Dear City Council:

There are several issues concerning 278 University that should be decided at the City Council level, rather than the Architecture Review Board (ARB). In addition, the rules for calculating maximum Square Footage (SF) using Transfer of Development Rights (TDR) and seismic upgrade bonuses need clarification in cases where the original building is demolished and replaced with new construction.

278 University Avenue is a 60' X 100' parcel with a Special Setback of 7 feet on Bryant Street, as per Attachment A. The current building has no setback, contains 12,000 square feet (SF) above ground and 6000 SF below ground and extends 7' into the Special Setback. How does a building qualify for seismic rehabilitation when it is actually a “tear down”? On what basis is basement square footage included in the formula for increasing the above ground FAR for new construction? In other words are basements used for calculating the seismic bonus and then NOT counted in the FAR rebuild?

All other buildings on the same block of Bryant meet the requirements of a 7' setback giving Bryant Street 6 more feet of width. At the intersection of Bryant and University along the exterior side of 278 University Avenue, Bryant Street is 6 feet narrower than the rest of the block. The Special 7' Setback on this block of Bryant Street appears to apply specifically to the 278 University Avenue site. (Curiously the site at 310 University is now requesting the same variance at the July 3, 2008 ARB meeting.)

What happened to the vision of former City Councils and Comp Plans which stressed Downtown vitality, beautification, and pedestrian friendliness. Is it your intention to permanently narrow Bryant Street to 6 feet less than the rest of the block? Perhaps the Special 7' Setback was established in order to bring this narrow section of Bryant Street up to the same standard as the rest of the street.

VARIANCE

The new building at 278 University Avenue will extend 3 feet into the special 7 foot set back on Bryant Street enlarging the building site from 5300 SF to 5600 SF. As approved, the building precludes making the needed improvements to the intersection for parking, standard tree protection wells, a 12 foot sidewalk, and a visual entrance to and a view of the businesses on Bryant, as planned for by previous City Councils that approved and maintained the special 7 foot setbacks in the Downtown area.

None of our Boards, City Councils, staff, or Comp Plans have recommended reviewing or changing these Special Setbacks. Ignoring these setbacks permanently reduces the width of Bryant Street by 6 feet. The opportunity to complete the vision for Bryant Street will be gone and by extension Waverley Street, which also has a similar Special Setback of 7 feet. Comp Plan L-22, L23, L-49, L-66, and B-17 can never be fully implemented. The findings #10 in Attachment B and #1 and 3 in Attachment C will not adequately be met.

I will request that staff provide you a copy of the special setback map for the Downtown and hope that you will take a second look at the intersection. Notice that the parking spaces on the Bryant side of 278 University protrude 30” to 36” into the street, as compared to the parking spaces further south on Bryant. The situation is similar at the demolition site at 300 University, which is requesting a similar variance at the July 3, 2008 ARB meeting, as per staff report.

278 University Avenue is the KEYSTONE for the redevelopment of all corner properties at the intersection of Bryant and University, as well as Waverley and University. These intersections are at the heart of Downtown. Both streets are narrow where they intersect with University Avenue and were built-up prior to the establishment of Special 7' Setbacks. The most likely scenario for the Special 7' Setback was that City Council wanted to create a more uniform street width that would benefit pedestrian and vehicular traffic, improve safety, and provide better physical and visual access to side street commercial areas.
Attachment F provides you a list of the addresses and status of properties that qualify for a 25% seismic bonus. Has the City done any calculations on the total square footage available in Downtown for seismic bonuses, including the below ground square footage?

SOLUTION

Inclusion of below ground square footage in the seismic bonus calculation should be the exception, not the rule for projects which demolish rather than rehabilitate the existing building. At 278 University Avenue 50% of the increased square footage above ground is derived from the seismic bonus calculation. In Attachment G I have calculated alternative maximum square footages.

In preparing this appeal I found that no copies of the PAMC were available at the libraries for reference or check-out. Therefore I had to rely on old reports, CMRs, librarians, techno-friends, and luck to find some of the information. Attachments to CMRs, such as the relevant zoning codes, were not included in some of the on-line versions.

In conclusion, 278 University brings up four very important issues that I believe the City Council should consider in this appeal.

The first is the variance to build in the Special 7’ Setback which irrevocably sets the tone for the Bryant and Waverley intersections and creates the future look of Downtown for many years to come.

The second is the method of seismic bonus calculations on sites where buildings are not rehabilitated, but demolished. How do seismic bonuses apply to new construction which must conform to current building standards? Should basement square footage apply to seismic bonus calculations, especially when new construction rather than rehabilitation is planned?

The third is the 50’ height limit. Has there been a policy change to the 50’ height limit? The community was assured that the Jewish Community Center in south Palo Alto was a one time exception. If this DEE was not granted for the 5’ height exception, would this project be able to accommodate four floors? Could all four story buildings with ground floor retail qualify for a DEE height exception on the same basis?

The fourth is use of DEEs for extra floor area ratio for the 5600 SF basement, as per Attachment A, Floor area (gross floor area), row 2. In row2, column 4 entitled “Conformance” staff writes that a DEE is requested for the 5600 SF over the FAR. PAMC 18.76.050(B)(4) states that a DEE cannot be used to allow extra floor area ratio.

Please reject the variance, retain the 7’ Special Setback on Bryant, and direct Public Works to consider a project to improve the narrow end of Bryant as per the vision of the Comp Plan. The basement DEE should be rejected and the square footage counted as floor area.

Please reevaluate the seismic bonus rules to determine if demolition qualifies for the same square footage bonuses as rehabilitation. Below ground square footage should not be included in the calculations for new construction unless habitable. Lastly please consider the DEE for an height limit exception.

Respectfully,

Lynn Chiapella
I believe the ARB should have looked at the big picture to revitalize the Downtown side streets, as well as University Avenue. The Special Setbacks on Bryant and Waverley enhance the pedestrian experience, provide good visual access to Bryant street businesses and provide the City an opportunity to make Bryant Street sidewalks and parking at the intersection with University conform to the rest of the block.

SOLUTION: Deny the variance. Request Public Works to consider widening this narrow end of the street to align the parking spaces on the Bryant side of 274 University to conform with the rest of the parking spaces on the block. The two City street trees will have to be replaced and a new curb and gutter installed with the 12-foot sidewalk. If the City and applicant time their projects together, there might be less disruption to the Downtown.

DEE

DEE 1 adds 5' of height over the 50' limit and may need further consideration. Nothing prevents the future addition of cell towers or other rooftop equipment to extend 15 feet above the roof to a maximum of 70'. The findings for the approval of the DEE may apply to many buildings in the Downtown. There are quite a few properties that are only 60 feet wide and some of these are on corners.

Finding 1: This property has neither exceptional or extraordinary circumstances or conditions.

Finding 2: It could be argued that "increased floor-to-floor height that will help the retail environment at the ground floor level" and "higher retail floors allow for taller retail store front windows that will enhance the pedestrian experience" would apply to nearly every retail property.

I believe the FAR has been overstated due to a very loose interpretation of the Seismic Bonus rules in 18.18.07(a)(2). See attachment D. The DEE may be unnecessary if the square footage calculation is incorrect. If the square footage calculation is upheld, then a height DEE may be necessary in order to maintain the 7' Special Setback.

DEE 2 is an exception to exceed the allowable FAR by 5600 square feet for a basement. How does this DEE meet PAMC 18.76.050(b)(4)? See Attachment E.

The new basement is excluded from the square footage calculation because it will only be used for equipment normally allowed in the 15' height above the rooftop. It is unclear whether a lessee(s) could also use the basement area, which might allow a more intensive use of the above ground areas. I could not find anything in the on-line PAMC that would prevent a tenant from making use of the basement.

If this DEE is valid, the City Council should reduce the basement square footage to 5300 square feet. This is necessary to allow the 7' Special Setback on the Bryant side of this property which is necessary to allow the narrow portion of Bryant Street to be widened to conform to the rest of the block. Alternatively, the 5300 SF basement should be part of the 18,206 SF maximum floor area that the City plans to give the applicant.

BONUS CALCULATIONS

It is my understanding that the origin of seismic bonus was to encourage property owners to rehabilitate their buildings up to current standards by giving them an incentive to improve their buildings, as per 18.18.070(a)(2). Does this code also apply to new construction replacing a demolished building that did not conform to seismic standards?

Is the seismic bonus intended to include the below ground square footage in the calculation for new construction? This can increase the maximum above ground square footage up to 50% of the new building. If the current basement is inhabited, then the argument can be made to include it in the seismic bonus calculation. Otherwise, it should be excluded. See Attachment F.
## ATTACHMENT E
### ZONING COMPLIANCE TABLE
310 University Avenue / File No. 08PLN-00120

<table>
<thead>
<tr>
<th>DEVELOPMENT STANDARDS FOR CD-C(GF)(P) ZONE DISTRICT</th>
<th>ZONE DISTRICT STANDARD</th>
<th>PROPOSED PROJECT</th>
<th>CONFORMANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site coverage (building footprint)</td>
<td>None required</td>
<td>9,691 Sq ft</td>
<td>conforms</td>
</tr>
<tr>
<td></td>
<td></td>
<td>78%</td>
<td></td>
</tr>
<tr>
<td>Floor area (gross floor area)</td>
<td>1.0:1</td>
<td>37,500 including the partial basement</td>
<td>conforms</td>
</tr>
<tr>
<td></td>
<td>3:1 w/ allowed floor area bonuses = 37,500 sq. ft.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building setback</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front (University Ave.)</td>
<td>0'</td>
<td>0'</td>
<td>conforms</td>
</tr>
<tr>
<td>Rear (Alley side)</td>
<td>0'</td>
<td>15’</td>
<td>conforms</td>
</tr>
<tr>
<td>Interior Side</td>
<td>0'</td>
<td>0’</td>
<td>conforms</td>
</tr>
<tr>
<td>Street side (Bryant street)</td>
<td>Special setback of seven feet required</td>
<td>4 feet 1 and ½ inches</td>
<td>Variance requested for 2 feet 10 and ½ inch special setback encroachment</td>
</tr>
<tr>
<td>Special setback requirement</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building height</td>
<td>50’</td>
<td>48’</td>
<td>conforms</td>
</tr>
<tr>
<td>Pedestrian recessed entry/arcades</td>
<td>Area equivalent to 1.5 x frontage length = 309 sq. ft.</td>
<td>376 square feet</td>
<td>conforms</td>
</tr>
<tr>
<td>Parking Spaces (In Parking Assessment District)</td>
<td>1 space for each 250 square feet of gross floor area.</td>
<td>None required – additional floor area from TDR and seismic bonus are exempt from parking requirements</td>
<td>Conforms</td>
</tr>
</tbody>
</table>
(9) Sufficient ancillary functions are provided to support the main functions of the project and the same are compatible with the project’s design concept. This finding can be made in the affirmative in that the basement is proposed to house all the necessary mechanical equipment and keep them out of public view.

(10) Access to the property and circulation thereon are safe and convenient for pedestrians, cyclists and vehicles. This finding can be made in the affirmative in that the project has been designed to encourage pedestrian activity with its greater setback on Bryant Street.

(11) Natural features are appropriately preserved and integrated with the project. This finding can be made in the affirmative in that the existing city street trees adjacent to the proposed building will be preserved.

(12) The materials, textures, colors and details of construction and plant material are appropriate expression to the design and function. This finding can be made in the affirmative in that the proposed colors and materials are will add detail and interest and are compatible with the commercial retail environment.

(13) The landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment. This finding is not applicable in that there is no proposed landscaping.

(14) Plant material is suitable and adaptable to the site, capable of being properly maintained on the site, and is of a variety which would tend to be drought-resistant to reduce consumption of water in its installation and maintenance. This finding is not applicable in that there is no landscaping proposed.

(15) The project exhibits green building and sustainable design that is energy efficient, water conserving, durable and nontoxic, with high-quality spaces and high recycled content materials. The following considerations should be included in site and building design:
   - Optimize building orientation for heat gain, shading, daylighting, and natural ventilation;
   - Design landscaping to create comfortable micro-climates and reduce heat island effects;
   - Design for easy pedestrian, bicycle and transit access;
   - Maximize on site stormwater management through landscaping and permeable paving;
   - Use sustainable building materials;
   - Design lighting, plumbing and equipment for efficient energy and water use;
   - Create healthy indoor environments; and
   - Use creativity and innovation to build more sustainable environments.

This finding can be made in the affirmative in that the project incorporates several mandatory and voluntary features included in the LEED project checklist. With the adoption of the new mandatory Green Building Ordinance the project will be required to reach at least 33 points on the LEED checklist.
ATTACHMENT D
FINDINGS FOR APPROVAL
CONTEXT-BASED DESIGN CONSIDERATIONS AND FINDINGS
278 University Avenue / File No. 08PLN-00000-00082

Pursuant to PAMC 18.18.110(b), in addition to the findings for Architectural Review contained in PAMC 18.76.020(d), the following additional findings have been made in the affirmative:

(1) **Pedestrian and Bicycle Environment.** The design of new projects shall promote pedestrian walkability, a bicycle friendly environment, and connectivity through design elements. This finding can be made in the affirmative in that the new building is moved away from Bryant Street to open up the sidewalk to draw pedestrian traffic from University Avenue to the retailers along Bryant Street. In addition to the greater setback, the proposal incorporates recesses, ample storefront glass, and a rhythm of canvas awnings to enhance the pedestrian experience.

(2) **Street building Facades.** Street facades shall be designed to provide a strong relationship with the sidewalk and the street(s), to create an environment that supports and encourages pedestrian activity through design elements. This finding can be made in the affirmative in that the building has been to encourage pedestrian activity by stepping the third and fourth floor back such that the building does not appear too tall and imposing and relating to the retail scale of the district. The rhythm of clear glass windows and awnings also enhance the pedestrian experience.

(3) **Massing and Setbacks.** Buildings shall be designed to minimize massing and conform to proper setbacks. This finding can be made in the affirmative in that the building would be setback further on Bryant Street to enhance pedestrian connectivity to the Bryant Street retailers and the setbacks and recesses at the third and fourth floors reduce the perceived height and mass of the building.

(4) **Low-Density Residential Transitions.** Where new projects are built abutting existing lower scale residential development, care shall be taken to respect the scale and privacy of neighboring properties. This finding can be made in the affirmative in that the building is not adjacent to residential development.

(5) **Project Open Space.** Private and public open space shall be provided so that it is usable for residents, visitors, and/or employees of the site. This finding can be made in the affirmative in that the project includes outdoor patio areas for the office users of the building.

(6) **Parking Design.** Parking needs shall be accommodated but shall not be allowed to overwhelm the character of the project or detract from the pedestrian environment. This finding can be made in the affirmative in that project is not required to provide any additional parking as all new square footage added is through seismic bonus and Transfer of Development Rights.
A building that is in Seismic Category I, II, or III, and is undergoing seismic rehabilitation, but is not in Historic Category 1 or 2, shall be allowed to increase its floor area by 2,500 square feet or 25% of the existing building, whichever is greater, without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts.
enclosures for the storage of recyclable materials in appropriate containers. The design, construction and accessibility of recycling areas and enclosures shall be subject to approval by the architectural review board, in accordance with design guidelines adopted by that board and approved by the city council pursuant to Section 16.48.070.

(Ord. 4923 § 4 (part), 2006)

18.18.070 Floor Area Bonuses

(a) Available Floor Area Bonuses

(1) Minor Bonus for Buildings Not Eligible for Historic or Seismic Bonus

A building that is neither in Historic Category 1 or 2 nor in Seismic Category I, II, or III shall be allowed to increase its floor area by 200 square feet without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts.

(2) Seismic Rehabilitation Bonus

A building that is in Seismic Category I, II, or III, and is undergoing seismic rehabilitation, but is not in Historic Category 1 or 2, shall be allowed to increase its floor area by 2,500 square feet or 25% of the existing building, whichever is greater, without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts.

(3) Historic Rehabilitation Bonus

A building that is in Historic Category 1 or 2, and is undergoing historic rehabilitation, but is not in Seismic Category I, II, or III, shall be allowed to increase its floor area by 2,500 square feet or 25% of the existing building, whichever is greater, without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts, except as provided in subsection (5).

(4) Combined Historic and Seismic Rehabilitation Bonus

A building that is in Historic Category 1 or 2, and is undergoing historic rehabilitation, and is also in Seismic Category I, II, or III, and is undergoing seismic rehabilitation, shall be allowed to increase its floor area by 5,000 square feet or 50% of the existing building, whichever is greater, without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts, except as provided in subsection (5).
<table>
<thead>
<tr>
<th>Address</th>
<th>Occupant</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>525 Alma</td>
<td>Yoga Source</td>
<td>Strengthened UCBC</td>
</tr>
<tr>
<td>529 Alma</td>
<td>Q Billiards</td>
<td>Strengthened UCBC</td>
</tr>
<tr>
<td>539 Alma</td>
<td>Fasani Carpets</td>
<td>URM wall removed</td>
</tr>
<tr>
<td>657 Alma</td>
<td>Calif Craft &amp; Floral</td>
<td>Vacated due to Seismic Report (unoccupied since 1988)</td>
</tr>
<tr>
<td>705 Alma</td>
<td>Ellison's Garage</td>
<td>#995138-1997 UBC w/ 25 % increase</td>
</tr>
<tr>
<td>841 Alma</td>
<td>City of Palo Alto</td>
<td>Hollow Clay Tile wall removed</td>
</tr>
<tr>
<td>901 Alma</td>
<td></td>
<td>Demolished</td>
</tr>
<tr>
<td>425-31 Cali</td>
<td></td>
<td>No Change</td>
</tr>
<tr>
<td>437-41 Emer</td>
<td>Barker Hotel</td>
<td>Strengthened UCBC</td>
</tr>
<tr>
<td>530-32 Emer</td>
<td>Right Touch</td>
<td>No Change</td>
</tr>
<tr>
<td>544 Emer</td>
<td>Madalana’s</td>
<td>No Change</td>
</tr>
<tr>
<td>611-19 Emer</td>
<td>Thoits</td>
<td>Strengthened #2000973 – xfer 25 % increase</td>
</tr>
<tr>
<td>626-40 Emer</td>
<td>Gordon Biersh</td>
<td>Strengthened Permit # 871446 (Concrete Frm w/ infill)</td>
</tr>
<tr>
<td>744 Emer</td>
<td>Whole Foods</td>
<td>Strengthened Permit 871186</td>
</tr>
<tr>
<td>847 Emer</td>
<td>SOS Grocery</td>
<td>No Change – Exempt from Ordinance</td>
</tr>
<tr>
<td>949-51 Emer</td>
<td></td>
<td>No Change</td>
</tr>
<tr>
<td>150-56 Hami</td>
<td>House of Foam</td>
<td>No Change</td>
</tr>
<tr>
<td>411 High</td>
<td>1185 Design</td>
<td>Strengthened Permit 981074 UCBC</td>
</tr>
<tr>
<td>542 High</td>
<td>Jungle Copy</td>
<td>No Change</td>
</tr>
<tr>
<td>160 Fore</td>
<td>PA Weekly/Reach</td>
<td>Strengthened Permit # 902932</td>
</tr>
<tr>
<td>151 Home</td>
<td>Keenan</td>
<td>No Change</td>
</tr>
<tr>
<td>230 Home</td>
<td>City of Paris</td>
<td>Strengthened Permit # 952276</td>
</tr>
<tr>
<td>232 Home</td>
<td>Peninsula Plating</td>
<td>Strengthened Permit # 952276</td>
</tr>
<tr>
<td>265 Home</td>
<td></td>
<td>Demolished</td>
</tr>
<tr>
<td>Building</td>
<td>Owner</td>
<td>Description</td>
</tr>
<tr>
<td>------------</td>
<td>----------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>401 Flor</td>
<td>Russo &amp; Hale</td>
<td>Strengthened Permit # 91104</td>
</tr>
<tr>
<td>431-39 Flor</td>
<td>First Am. Title</td>
<td>Demolished New const w/ 25% inc</td>
</tr>
<tr>
<td>522 Ramo</td>
<td>Munsey</td>
<td>Strengthened UCBC</td>
</tr>
<tr>
<td>634-36 Ramo</td>
<td>Bright Star Learning</td>
<td>No Change</td>
</tr>
<tr>
<td>820 Ramo</td>
<td></td>
<td>Demolished 2002</td>
</tr>
<tr>
<td>140 Univ</td>
<td>Chop Keenan</td>
<td>Strengthened UCBC</td>
</tr>
<tr>
<td>150 Univ</td>
<td>Thoits</td>
<td>Demolished New const w/ 25% inc</td>
</tr>
<tr>
<td>171-77 Univ</td>
<td>Palo Alto Bicycle</td>
<td>Demolished New const w/ 25% inc</td>
</tr>
<tr>
<td>172-74 Univ</td>
<td>Premiere Props Dr. Eu</td>
<td>No Change</td>
</tr>
<tr>
<td>180-82 Univ</td>
<td>Ross</td>
<td>Strengthened Permit # 933333 UCBC</td>
</tr>
<tr>
<td>201-07 Univ</td>
<td>World Wraps</td>
<td>Strengthened Permit # 941359</td>
</tr>
<tr>
<td>227 Univ</td>
<td>Packard</td>
<td>Demolished #040514</td>
</tr>
<tr>
<td>233-35 Univ</td>
<td>Mills Florist</td>
<td>No Change</td>
</tr>
<tr>
<td>270 Univ</td>
<td>Congdon &amp; Crome</td>
<td>Demolished # 032636</td>
</tr>
<tr>
<td>274-78 Univ</td>
<td>Starbucks/Noah's/Jims</td>
<td>No Change</td>
</tr>
<tr>
<td>275-83 Univ</td>
<td>Restoration Hardware</td>
<td>Strengthened Permit # 95939 UCBC</td>
</tr>
<tr>
<td>380-82 Univ</td>
<td>Sushia/Footware etc.</td>
<td>No Change</td>
</tr>
<tr>
<td>384 Univ</td>
<td>Decker Oaks</td>
<td>Strengthened UCBC</td>
</tr>
<tr>
<td>403-05 Univ</td>
<td>Taxi's / Fratelli Deli</td>
<td>Strengthened Permit # 950778 Change of Occ.</td>
</tr>
<tr>
<td>406 Univ</td>
<td>Union Bank</td>
<td>No Change</td>
</tr>
<tr>
<td>424 Univ</td>
<td></td>
<td>Demolished New const w/ 25% inc</td>
</tr>
<tr>
<td>499 Univ</td>
<td>Roxy's</td>
<td>Demolished New const w/ 25% inc</td>
</tr>
<tr>
<td>700 Welc</td>
<td>Stanford Barn</td>
<td>Strengthened Permit # 871528</td>
</tr>
</tbody>
</table>

Total Number: 47
Strengthened: 20 (43%)
Demolished: 10 (21%)
URM removed: 2 (4%)
Vacated: 1 (2%)
Exempt: 1 (2%)
No Change: 13 (28%)
# Category II Seismic
(Buildings constructed prior to 1936 with more than 100 occupants)
July 2004

<table>
<thead>
<tr>
<th>Address</th>
<th>Occupant</th>
<th>Status</th>
<th>Permit #</th>
</tr>
</thead>
<tbody>
<tr>
<td>450 Bryant</td>
<td>City of Palo Alto/Senior Center</td>
<td>Strengthened</td>
<td>95109</td>
</tr>
<tr>
<td>518-26 Brya</td>
<td>42nd Street</td>
<td>Strengthened</td>
<td></td>
</tr>
<tr>
<td>661 Bryant</td>
<td>Church of Christ Scientist</td>
<td>Strengthened</td>
<td>902764</td>
</tr>
<tr>
<td>205-25 Hami</td>
<td>Mullen</td>
<td>Strengthened</td>
<td>851796</td>
</tr>
<tr>
<td>231-47 Hami</td>
<td>Cardinal Hotel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>255-67 Hami</td>
<td>Univ Art Center</td>
<td></td>
<td></td>
</tr>
<tr>
<td>475 Home</td>
<td>Women=s Club</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1305 Midd</td>
<td>City of Palo Alto/Stern Center</td>
<td>Strengthened</td>
<td>91689</td>
</tr>
<tr>
<td>211 Quar</td>
<td>Hoover Pavillion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>223 Univ</td>
<td>Stanford Theater</td>
<td>Strengthened</td>
<td>Permit #</td>
</tr>
<tr>
<td>251-55 Univ</td>
<td>Fidelity Investments</td>
<td>Strengthened</td>
<td>91455</td>
</tr>
<tr>
<td>300-14 Univ</td>
<td>Wallgreens</td>
<td>Strengthened</td>
<td>931963</td>
</tr>
<tr>
<td>340-46 Univ</td>
<td>Z Gallery</td>
<td>Strengthened</td>
<td>95943</td>
</tr>
<tr>
<td>456 Univ</td>
<td>Border’s Books</td>
<td>Strengthened</td>
<td>951243 25% Inc.</td>
</tr>
<tr>
<td>480-98 Univ</td>
<td>President Apartments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25 Univ</td>
<td>McArthur Park</td>
<td></td>
<td></td>
</tr>
<tr>
<td>745 Wave</td>
<td>St. Thomas Aquinas Church</td>
<td>Strengthened</td>
<td>871141</td>
</tr>
<tr>
<td>2300 Well</td>
<td>City of Palo Alto/Library</td>
<td>Strengthened</td>
<td></td>
</tr>
</tbody>
</table>

Total Number: 19
Number Strengthened: 12 (66%)
Number Demolished: 0
Historic: 14
## Category III Seismic
(Buildings constructed prior to 1976 with more than 300 Occupants)

**August 1997**

<table>
<thead>
<tr>
<th>Address</th>
<th>Occupant</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>200 Arbo</td>
<td>Nordstroms</td>
<td></td>
</tr>
<tr>
<td>601 Cali</td>
<td>Varian Assoc</td>
<td>Demolished</td>
</tr>
<tr>
<td>975 Cali</td>
<td>Novartis</td>
<td></td>
</tr>
<tr>
<td>1451 Cali</td>
<td>Earnst &amp; Young</td>
<td>Strengthened Permit # 932441</td>
</tr>
<tr>
<td>1501 Cali</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1601 Cali</td>
<td>Hewlett Packard</td>
<td>Strengthened Permit # 891372</td>
</tr>
<tr>
<td>3333 Coyo</td>
<td>Xerox</td>
<td></td>
</tr>
<tr>
<td>1069 East Me</td>
<td>Loral</td>
<td>Strengthened Permit # 89669</td>
</tr>
<tr>
<td>180 ElCa</td>
<td>Macy=s</td>
<td></td>
</tr>
<tr>
<td>180 ElCa</td>
<td>Bloomingdales</td>
<td></td>
</tr>
<tr>
<td>3000 ElCa</td>
<td>Palo Alto Square</td>
<td></td>
</tr>
<tr>
<td>4249 ElCa</td>
<td>Elk=s Club</td>
<td></td>
</tr>
<tr>
<td>4290 ElCa</td>
<td>Hyatt Hotels</td>
<td>Strengthened Permit # 971284</td>
</tr>
<tr>
<td>3825 Fabi</td>
<td>Loral</td>
<td>Strengthened Permit # 92859</td>
</tr>
<tr>
<td>3939 Fabi</td>
<td>Sun Microsystems</td>
<td>Strengthened Permit # 89612 (85 Code)</td>
</tr>
<tr>
<td>285 Hami</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4001 Mira</td>
<td>Fairchild</td>
<td>Demolished</td>
</tr>
<tr>
<td>1651 Page</td>
<td>Systemics</td>
<td></td>
</tr>
<tr>
<td>1801 Page</td>
<td>Multiple Tenants</td>
<td>Strengthened Permit # 991605</td>
</tr>
<tr>
<td>3172 Port</td>
<td>Matadero Creek</td>
<td></td>
</tr>
<tr>
<td>500 Quar</td>
<td>Sak=s</td>
<td></td>
</tr>
<tr>
<td>865 Stan</td>
<td>LDS Church</td>
<td></td>
</tr>
<tr>
<td>525 Univ</td>
<td>Tower</td>
<td></td>
</tr>
</tbody>
</table>

Total Number 23

Strengthened 7 30%

Demolished 2 9%
Seismic Bonus Calculations

A. Calculation including Basement

12,000 SF Above ground
6,000 SF Below ground

\[ \text{Total} = 18,206.25 \text{ SF} \]

Seismic Bonus of 4,500 SF

Total maximum floor area = 18,206.25 SF

B. Calculation without basement

12,000 SF Above ground

\[ \text{Total} = 15,206.25 \text{ SF} \]

Seismic bonus of 3,000 SF

Total maximum floor area = 15,206.25 SF

C. If the basement is habitable, calculation A may be correct. Otherwise, calculation B should be used.

Lastly, basement square footage should be included in FAR:

\[ \frac{5,320.00}{12,290.25} \text{ SF of above ground development} \]
Dear City Council:

There are several issues concerning 278 University that should be decided at the City Council level, rather than the Architecture Review Board (ARB). In addition, the rules for calculating maximum Square Footage (SF) using Transfer of Development Rights (TDR) and seismic upgrade bonuses need clarification in cases where the original building is demolished and replaced with new construction.

278 University Avenue is a 60' X 100' parcel with a Special Setback of 7 feet on Bryant Street, as per Attachment A. The current building has no setback, contains 12,000 square feet (SF) above ground and 6000 SF below ground and extends 7' into the Special Setback. How does a building qualify for seismic rehabilitation when it is actually a "tear down"? On what basis is basement square footage included in the formula for increasing the above ground FAR for new construction? In other words are basements used for calculating the seismic bonus and then NOT counted in the FAR rebuild?

All other buildings on the same block of Bryant meet the requirements of a 7' setback giving Bryant Street 6 more feet of width. At the intersection of Bryant and University along the exterior side of 278 University Avenue, Bryant Street is 6 feet narrower than the rest of the block. The Special 7' Setback on this block of Bryant Street appears to apply specifically to the 278 University Avenue site. (Curiously the site at 310 University is now requesting the same variance at the July 3, 2008 ARB meeting.)

What happened to the vision of former City Councils and Comp Plans which stressed Downtown vitality, beautification, and pedestrian friendliness. Is it your intention to permanently narrow Bryant Street to 6 feet less than the rest of the block? Perhaps the Special 7' Setback was established in order to bring this narrow section of Bryant Street up to the same standard as the rest of the street.

VARIANCE

The new building at 278 University Avenue will extend 3 feet into the special 7 foot set back on Bryant Street enlarging the building site from 5300 SF to 5600 SF. As approved, the building precludes making the needed improvements to the intersection for parking, standard tree protection Wells, a 12 foot sidewalk, and a visual entrance to and a view of the businesses on Bryant, as planned for by previous City Councils that approved and maintained the special 7 foot setbacks in the Downtown area.

None of our Boards, City Councils, staff, or Comp Plans have recommended reviewing or changing these Special Setbacks. Ignoring these setbacks permanently reduces the width of Bryant Street by 6 feet. The opportunity to complete the vision for Bryant Street will be gone and by extension Waverley Street, which also has a similar Special Setback of 7 feet. Comp Plan L-22, L23, L-49, L-66, and B-17 can never be fully implemented. The findings #10 in Attachment B and #1 and 3 in Attachment C will not adequately be met.

I will request that staff provide you a copy of the special setback map for the Downtown and hope that you will take a second look at the intersection. Notice that the parking spaces on the Bryant side of 278 University protrude 30” to 36’ into the street, as compared to the parking spaces further south on Bryant. The situation is similar at the demolition site at 300 University, which is requesting a similar variance at the July 3, 2008, ARB meeting, as per staff report.

278 University Avenue is the KEYSTONE for the redevelopment of all corner properties at the intersection of Bryant and University, as well as Waverley and University. These intersections are at the heart of Downtown. Both streets are narrow where they intersect with University Avenue and were built-up prior to the establishment of Special 7' Setbacks. The most likely scenario for the Special 7' Setback was that City Council wanted to create a more uniform street width that would benefit pedestrian and vehicular traffic, improve safety, and provide better physical and visual access to side street commercial areas.
I believe the ARB should have looked at the big picture to revitalize the Downtown side streets, as well as University Avenue. The Special Setbacks on Bryant and Waverley enhance the pedestrian experience, provide good visual access to Bryant street businesses and provide the City an opportunity to make Bryant Street sidewalks and parking at the intersection with University conform to the rest of the block.

SOLUTION: Deny the variance. Request Public Works to consider widening this narrow end of the street to align the parking spaces on the Bryant side of 278 University to conform with the rest of the parking spaces on the block. Two City street trees will have to be replaced and a new curb and gutter installed with the 12 foot sidewalk. If the City and applicant time their projects together, there might be less disruption to the Downtown.

DEES

DEE 1 adds 5' of height over the 50' limit and may need further consideration. Nothing prevents the future addition of cell towers or other roof top equipment to extend 15 feet above the roof to a maximum of 70'. The findings for the approval of the DEE may apply to many buildings in the Downtown. There are quite a few properties that are only 60 feet wide and some of these are on corners.

Finding 1: This property has neither exceptional or extraordinary circumstances or conditions.

Finding 2: It could be argued that "increased floor-to-floor height that will help the retail environment at the ground floor level" and "higher retail floors allow for taller retail store front windows that will enhance the pedestrian experience" would apply to nearly every retail property.

I believe the FAR has been overstated due to a very loose interpretation of the Seismic Bonus rules in 18.18.07(a)(2). See attachment D. The DEE may be unnecessary if the square footage calculation is incorrect. If the square footage calculation is upheld, then a height DEE may be necessary in order to maintain the 7' Special Setback.

DEE 2 is an exception to exceed the allowable FAR by 5600 square feet for a basement. How does this DEE meet PAMC 18.76.050(b)(4)? See Attachment E.

The new basement is excluded from the square footage calculation because it will only be used for equipment normally allowed in the 15' height above the rooftop. It is unclear whether a lessee(s) could also use the basement area, which might allow a more intense use of the above ground areas. I could not find anything in the on-line PAMC that would prevent a tenant from making use of the basement.

If this DEE is valid, the City Council should reduce the basement square footage to 5300 square feet. This is necessary to allow the 7' Special Setback on the Bryant side of this property which is necessary to allow the narrow portion of Bryant Street to be widened to conform to the rest of the block. Alternatively, the 5300 SF basement should be part of the 18,206 SF maximum floor area that the City plans to give the applicant.

BONUS CALCULATIONS

It is my understanding that the origin of seismic bonus was to encourage property owners to rehabilitate their buildings up to current standards by giving them an incentive to improve their buildings, as per 18.18.070(a)(2). Does this code also apply to new construction replacing a demolished building that did not conform to seismic standards?

Is the seismic bonus intended to include the below ground square footage in the calculation for new construction? This can increase the maximum above ground square footage up to 50% of the new building. If the current basement is inhabited, then the argument can be made to include it in the seismic bonus calculation. Otherwise, it should be excluded. See Attachment F.
Attachment F provides you a list of the addresses and status of properties that qualify for a 25% seismic bonus. Has the City done any calculations on the total square footage available in Downtown for seismic bonuses, including the below ground square footage?

SOLUTION

Inclusion of below ground square footage in the seismic bonus calculation should be the exception, not the rule for projects which demolish rather than rehabilitate the existing building. At 278 University Avenue 50% of the increased square footage above ground is derived from the seismic bonus calculation. In Attachment G I have calculated alternative maximum square footages.

In preparing this appeal I found that no copies of the PAMC were available at the libraries for reference or check-out. Therefore I had to rely on old reports, CMRs, librarians, techno-friends, and luck to find some of the information. Attachments to CMRs, such as the relevant zoning codes, were not included in some of the on-line versions.

In conclusion, 278 University brings up four very important issues that I believe the City Council should consider in this appeal.

The first is the variance to build in the Special 7' Setback which irrevocably sets the tone for the Bryant and Waverley intersections and creates the future look of Downtown for many years to come.

The second is the method of seismic bonus calculations on sites where buildings are not rehabilitated, but demolished. How do seismic bonuses apply to new construction which must conform to current building standards? Should basement square footage apply to seismic bonus calculations, especially when new construction rather than rehabilitation is planned?

The third is the 50' height limit. Has there been a policy change to the 50' height limit? The community was assured that the Jewish Community Center in south Palo Alto was a one time exception. If this DEE was not granted for the 5' height exception, would this project be able to accommodate four floors? Could all four story buildings with ground floor retail qualify for a DEE height exception on the same basis?

The fourth is use of DEEs for extra floor area ratio for the 5600 SF basement, as per Attachment A, Floor area (gross floor area), row 2. In row2, column 4 entitled “Conformance” staff writes that a DEE is requested for the 5600 SF over the FAR. PAMC 18.76.050(b)(4) states that a DEE cannot be used to allow extra floor area ratio.

Please reject the variance, retain the 7' Special Setback on Bryant, and direct Public Works to consider a project to improve the narrow end of Bryant as per the vision of the Comp Plan. The basement DEE should be rejected and the square footage counted as floor area.

Please reevaluate the seismic bonus rules to determine if demolition qualifies for the same square footage bonuses as rehabilitation. Below ground square footage should not be included in the calculations for new construction unless habited. Lastly please consider the DEE for an height limit exception.

Respectfully,

Lynn Chiapella
## ATTACHMENT E
### ZONING COMPLIANCE TABLE
278 University Avenue / File No. 08PLN-00082

<table>
<thead>
<tr>
<th>DEVELOPMENT STANDARDS FOR CD-C(GF)(P) ZONE DISTRICT</th>
<th>ZONE DISTRICT STANDARD</th>
<th>PROPOSED PROJECT</th>
<th>CONFORMANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site coverage (building footprint)</td>
<td>None required</td>
<td>5276 Sq ft</td>
<td>conforms</td>
</tr>
<tr>
<td></td>
<td></td>
<td>88%</td>
<td></td>
</tr>
<tr>
<td>Floor area (gross floor area)</td>
<td>1.0:1 3:1 w/ allowed</td>
<td>18,206 sq. ft.</td>
<td>5,600 sq. ft. over the</td>
</tr>
<tr>
<td></td>
<td>floor area bonuses=</td>
<td>Plus full basement</td>
<td>FAR</td>
</tr>
<tr>
<td></td>
<td>18,206.25 sq. ft.</td>
<td>5,600 sq. ft.</td>
<td>DEE requested</td>
</tr>
<tr>
<td>Building setback</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front (University Ave.)</td>
<td>0’</td>
<td>0’</td>
<td>conforms</td>
</tr>
<tr>
<td>Rear (Alley side)</td>
<td>0’</td>
<td>0’</td>
<td>conforms</td>
</tr>
<tr>
<td>Interior Side</td>
<td>0’</td>
<td>6 and 1/3 inches</td>
<td>conforms</td>
</tr>
<tr>
<td>Street side (Bryant street)</td>
<td>Special setback</td>
<td>4 feet</td>
<td>Variance requested</td>
</tr>
<tr>
<td>Special setback requirement</td>
<td>of seven feet</td>
<td></td>
<td>for 3 foot special</td>
</tr>
<tr>
<td></td>
<td>required</td>
<td></td>
<td>setback encroachment</td>
</tr>
<tr>
<td>Building height</td>
<td>50’</td>
<td>55’</td>
<td>DEE requested for 5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>foot height exception</td>
<td></td>
</tr>
<tr>
<td>Pedestrian recessed entry/arcades</td>
<td>Area equivalent</td>
<td>263</td>
<td>conforms</td>
</tr>
<tr>
<td></td>
<td>to 1.5 x frontage</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>length = 240 sq. ft.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Significant trees</td>
<td>N/A</td>
<td>6 street trees retained</td>
<td></td>
</tr>
<tr>
<td>Parking Spaces (In Parking Assessment District)</td>
<td>In conformance</td>
<td>None required –</td>
<td>Conforms</td>
</tr>
<tr>
<td></td>
<td></td>
<td>additional floor area</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>from TDR and</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>seismic bonus are</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>exempt from parking</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>requirements</td>
<td></td>
</tr>
</tbody>
</table>
(9) Sufficient ancillary functions are provided to support the main functions of the project and the same are compatible with the project's design concept. This finding can be made in the affirmative in that the basement is proposed to house all the necessary mechanical equipment and keep them out of public view.

(10) Access to the property and circulation thereon are safe and convenient for pedestrians, cyclists and vehicles. This finding can be made in the affirmative in that the project has been designed to encourage pedestrian activity with its greater setback on Bryant Street.

(11) Natural features are appropriately preserved and integrated with the project. This finding can be made in the affirmative in that the existing city street trees adjacent to the proposed building will be preserved.

(12) The materials, textures, colors and details of construction and plant material are appropriate expression to the design and function. This finding can be made in the affirmative in that the proposed colors and materials are will add detail and interest and are compatible with the commercial retail environment.

(13) The landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment. This finding is not applicable in that there is no proposed landscaping.

(14) Plant material is suitable and adaptable to the site, capable of being properly maintained on the site, and is of a variety which would tend to be drought-resistant to reduce consumption of water in its installation and maintenance. This finding is not applicable in that there is no landscaping proposed.

(15) The project exhibits green building and sustainable design that is energy efficient, water conserving, durable and nontoxic, with high-quality spaces and high recycled content materials. The following considerations should be included in site and building design:

- Optimize building orientation for heat gain, shading, daylighting, and natural ventilation;
- Design landscaping to create comfortable micro-climates and reduce heat island effects;
- Design for easy pedestrian, bicycle and transit access;
- Maximize on site stormwater management through landscaping and permeable paving;
- Use sustainable building materials;
- Design lighting, plumbing and equipment for efficient energy and water use;
- Create healthy indoor environments; and
- Use creativity and innovation to build more sustainable environments.

This finding can be made in the affirmative in that the project incorporates several mandatory and voluntary features included in the LEED project checklist. With the adoption of the new mandatory Green Building Ordinance the project will be required to reach at least 33 points on the LEED checklist.
ATTACHMENT D
FINDINGS FOR APPROVAL
CONTEXT-BASED DESIGN CONSIDERATIONS AND FINDINGS
278 University Avenue / File No. 08PLN-00000-00082

Pursuant to PAMC 18.18.110(b), in addition to the findings for Architectural Review contained in PAMC 18.76.020(d), the following additional findings have been made in the affirmative:

1. **Pedestrian and Bicycle Environment.** The design of new projects shall promote pedestrian walkability, a bicycle friendly environment, and connectivity through design elements. This finding can be made in the affirmative in that the new building is moved away from Bryant Street to open up the sidewalk to draw pedestrian traffic from University Avenue to the retailers along Bryant Street. In addition to the grater setback, the proposal incorporates recesses, ample storefront glass, and a rhythm of canvas awnings to enhance the pedestrian experience.

2. **Street building Facades.** Street facades shall be designed to provide a strong relationship with the sidewalk and the street(s), to create an environment that supports and encourages pedestrian activity through design elements. This finding can be made in the affirmative in that the building has been to encourage pedestrian activity by stepping the third and fourth floor back such that the building does not appear too tall and imposing and relating to the retail scale of the district. The rhythm of clear glass windows and awnings also enhance the pedestrian experience.

3. **Massing and Setbacks.** Buildings shall be designed to minimize massing and conform to proper setbacks. This finding can be made in the affirmative in that the building would be setback further on Bryant Street to enhance pedestrian connectivity to the Bryant Street retailers and the setbacks and recesses at the third and fourth floors reduce the perceived height and mass of the building.

4. **Low-Density Residential Transitions.** Where new projects are built abutting existing lower scale residential development, care shall be taken to respect the scale and privacy of neighboring properties. This finding can be made in the affirmative in that the building is not adjacent to residential development.

5. **Project Open Space.** Private and public open space shall be provided so that it is usable for residents, visitors, and/or employees of the site. This finding can be made in the affirmative in that the project includes outdoor patio areas for the office users of the building.

6. **Parking Design.** Parking needs shall be accommodated but shall not be allowed to overwhelm the character of the project or detract from the pedestrian environment. This finding can be made in the affirmative in that project is not required to provide any additional parking as all new square footage added is through seismic bonus and Transfer of Development Rights.
enclosures for the storage of recyclable materials in appropriate containers. The design, construction and accessibility of recycling areas and enclosures shall be subject to approval by the architectural review board, in accordance with design guidelines adopted by that board and approved by the city council pursuant to Section 16.48.070.

(Ord. 4923 § 4 (part), 2006)

18.18.070 Floor Area Bonuses

(a) Available Floor Area Bonuses

(1) Minor Bonus for Buildings Not Eligible for Historic or Seismic Bonus

A building that is neither in Historic Category 1 or 2 nor in Seismic Category I, II, or III shall be allowed to increase its floor area by 200 square feet without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts.

(2) Seismic Rehabilitation Bonus

A building that is in Seismic Category I, II, or III, and is undergoing seismic rehabilitation, but is not in Historic Category 1 or 2, shall be allowed to increase its floor area by 2,500 square feet or 25% of the existing building, whichever is greater, without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts.

(3) Historic Rehabilitation Bonus

A building that is in Historic Category 1 or 2, and is undergoing historic rehabilitation, but is not in Seismic Category I, II, or III, shall be allowed to increase its floor area by 2,500 square feet or 25% of the existing building, whichever is greater, without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts, except as provided in subsection (5).

(4) Combined Historic and Seismic Rehabilitation Bonus

A building that is in Historic Category 1 or 2, and is undergoing historic rehabilitation, and is also in Seismic Category I, II, or III, and is undergoing seismic rehabilitation, shall be allowed to increase its floor area by 5,000 square feet or 50% of the existing building, whichever is greater, without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts, except as provided in subsection (5).
18.76.050 Design Enhancement Exception (DEE)

(a) Purpose

The purpose of a design enhancement exception is to permit a minor exception to zoning regulations when doing so will:

(1) Enhance the design of a proposed project without altering the function or use of the site, or its impact on surrounding properties; or

(2) Enable the preservation of the architectural style of existing improvements on the site.

(b) Applicability

(1) Design enhancement exceptions may be granted to the site development and parking and loading requirements otherwise applicable under this title (Zoning), as part of the architectural review process, when such exceptions will enhance the appearance and design of commercial and multiple-family development and other development subject to architectural review.

(2) Items for which design enhancement exceptions may be granted include, but are not limited to, dormers, eave lines, roof design, bay windows, cornices, parapets, columns, arcades, fountains, art, ornamentation, atriums, balconies, trellises, moldings, balustrades, stairs, entry features, and other minor architectural elements and design features.

(3) Generally, design enhancement exceptions are limited to minor changes to the setback, daylight plane, height, lot coverage limitations, parking lot design and landscaping configuration, and additional flexibility in the required proportion between private and common open space.

(4) No design enhancement exception shall be granted under this section that would increase floor area, decrease the number of required parking spaces, decrease the amount of required on-site landscaping, or decrease the required open space.

(c) Findings

Neither the director, nor the city council on appeal, shall grant a design enhancement exception unless it is found that:

(1) There are exceptional or extraordinary circumstances or conditions applicable to the property or site improvements involved that do not apply generally to property in the same zone district;

(2) The granting of the application will enhance the appearance of the site or structure, or improve the neighborhood character of the project and preserve an existing or proposed architectural style, in a manner which would not otherwise be accomplished through strict application of the minimum requirements of this title (Zoning) and the architectural review findings set forth in Section 18.76.020(d); and

(3) The exception is related to a minor architectural feature or site improvement that 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.
## Category I Seismic
(Unreinforced Masonry including In-fill)

**July 2004**

<table>
<thead>
<tr>
<th>Address</th>
<th>Occupant</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>525 Alma</td>
<td>Yoga Source</td>
<td>Strengthened UCBC</td>
</tr>
<tr>
<td>529 Alma</td>
<td>Q Billiards</td>
<td>Strengthened UCBC</td>
</tr>
<tr>
<td>539 Alma</td>
<td>Fasani Carpets</td>
<td>URM wall removed</td>
</tr>
<tr>
<td>657 Alma</td>
<td>Calif Craft &amp; Floral</td>
<td>Vacated due to Seismic Report (unoccupied since 1988)</td>
</tr>
<tr>
<td>705 Alma</td>
<td>Ellison’s Garage</td>
<td>#995138-1997 UBC w/ 25 % increase</td>
</tr>
<tr>
<td>841 Alma</td>
<td>City of Palo Alto</td>
<td>Hollow Clay Tile wall removed</td>
</tr>
<tr>
<td>901 Alma</td>
<td></td>
<td>Demolished</td>
</tr>
<tr>
<td>425-31 Cali</td>
<td></td>
<td>No Change</td>
</tr>
<tr>
<td>437-41 Emer</td>
<td>Barker Hotel</td>
<td>Strengthened UCBC</td>
</tr>
<tr>
<td>530-32 Emer</td>
<td>Right Touch</td>
<td>No Change</td>
</tr>
<tr>
<td>544 Emer</td>
<td>Madalana’s</td>
<td>No Change</td>
</tr>
<tr>
<td>611-19 Emer</td>
<td>Thois</td>
<td>Strengthened #2000973 – xfer 25 % increase</td>
</tr>
<tr>
<td>626-40 Emer</td>
<td>Gordon Biersh</td>
<td>Strengthened Permit # 871446 (Concrete Frm w/ infill)</td>
</tr>
<tr>
<td>744 Emer</td>
<td>Whole Foods</td>
<td>Strengthened Permit 871186</td>
</tr>
<tr>
<td>847 Emer</td>
<td>SOS Grocery</td>
<td>No Change – Exempt from Ordinance</td>
</tr>
<tr>
<td>949-51 Emer</td>
<td></td>
<td>No Change</td>
</tr>
<tr>
<td>150-56 Hami</td>
<td>House of Foam</td>
<td>No Change</td>
</tr>
<tr>
<td>411 High</td>
<td>1185 Design</td>
<td>Strengthened Permit 981074 UCBC</td>
</tr>
<tr>
<td>542 High</td>
<td>Jungle Copy</td>
<td>No Change</td>
</tr>
<tr>
<td>160 Fore</td>
<td>PA Weekly/Reach</td>
<td>Strengthened Permit # 902932</td>
</tr>
<tr>
<td>151 Home</td>
<td>Keenan</td>
<td>No Change</td>
</tr>
<tr>
<td>230 Home</td>
<td>City of Paris</td>
<td>Strengthened Permit # 952276</td>
</tr>
<tr>
<td>232 Home</td>
<td>Peninsula Plating</td>
<td>Strengthened Permit # 952276</td>
</tr>
<tr>
<td>265 Home</td>
<td></td>
<td>Demolished</td>
</tr>
<tr>
<td>Address</td>
<td>Name</td>
<td>Change Description</td>
</tr>
<tr>
<td>-----------</td>
<td>-------------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>401 Flor</td>
<td>Russo &amp; Hale</td>
<td>Strengthened Permit #91104 25%inc</td>
</tr>
<tr>
<td>431-39 Flor</td>
<td>First Am. Title</td>
<td>Demolished New const w/ 25% inc</td>
</tr>
<tr>
<td>522 Ramo</td>
<td>Munsey</td>
<td>Strengthened UCBC</td>
</tr>
<tr>
<td>634-36 Ramo</td>
<td>Bright Star Learning</td>
<td>No Change</td>
</tr>
<tr>
<td>820 Ramo</td>
<td></td>
<td>Demolished 2002</td>
</tr>
<tr>
<td>140 Univ</td>
<td>Chop Keenan</td>
<td>Strengthened UCBC</td>
</tr>
<tr>
<td>150 Univ</td>
<td>Thoits</td>
<td>Demolished New const w/ 25% inc</td>
</tr>
<tr>
<td>171-77 Univ</td>
<td>Palo Alto Bicycle</td>
<td>Demolished New const w/ 25% inc</td>
</tr>
<tr>
<td>172-74 Univ</td>
<td>Premiere Properties</td>
<td>No Change</td>
</tr>
<tr>
<td>180-82 Univ</td>
<td>Ross</td>
<td>Strengthened Permit #933333 UCBC</td>
</tr>
<tr>
<td>201-07 Univ</td>
<td>World Wraps</td>
<td>Strengthened Permit #941359</td>
</tr>
<tr>
<td>227 Univ</td>
<td>Packard</td>
<td>Demolished #040514</td>
</tr>
<tr>
<td>233-35 Univ</td>
<td>Mills Florist</td>
<td>No Change</td>
</tr>
<tr>
<td>270 Univ</td>
<td>Congdon &amp; Crome</td>
<td>Demolished #032636</td>
</tr>
<tr>
<td>274-78 Univ</td>
<td>Starbucks/Noah's/Jims</td>
<td>No Change</td>
</tr>
<tr>
<td>275-83 Univ</td>
<td>Restoration Hardware</td>
<td>Strengthened Permit #95939 UCBC</td>
</tr>
<tr>
<td>380-82 Univ</td>
<td>Sushia/Footware etc.</td>
<td>No Change</td>
</tr>
<tr>
<td>384 Univ</td>
<td>Decker Oaks</td>
<td>Strengthened UCBC</td>
</tr>
<tr>
<td>403-05 Univ</td>
<td>Taxi's / Fratelli Deli</td>
<td>Strengthened Permit #950778</td>
</tr>
<tr>
<td>408 Univ</td>
<td>Littman Bank</td>
<td>No Change</td>
</tr>
<tr>
<td>424 Univ</td>
<td></td>
<td>Demolished New const w/ 25% inc</td>
</tr>
<tr>
<td>499 Univ</td>
<td>Roxy's</td>
<td>Demolished New const w/ 25% inc</td>
</tr>
<tr>
<td>700 Welc</td>
<td>Stanford Barn</td>
<td>Strengthened Permit #871528</td>
</tr>
</tbody>
</table>

Total Number: 47  Strengthened: 20 (43%)  Demolished: 10 (21%)  URM removed: 2 (4%)  Vacated: 1 (2%)  Exempt: 1 (2%)  No Change: 13 (28%)
## Category II Seismic
(Buildings constructed prior to 1936 with more than 100 occupants)
(July 2004)

<table>
<thead>
<tr>
<th>Address</th>
<th>Occupant</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>450 Bryant</td>
<td>City of Palo Alto/Senior Center</td>
<td>Strengthened Permit #95109</td>
</tr>
<tr>
<td>518-26 Brya</td>
<td>42nd Street</td>
<td>Strengthened</td>
</tr>
<tr>
<td>661 Bryant</td>
<td>Church of Christ Scientist</td>
<td>Strengthened Permit #902764</td>
</tr>
<tr>
<td>205-25 Hami</td>
<td>Mullen</td>
<td>Strengthened Permit #851796</td>
</tr>
<tr>
<td>231-47 Hami</td>
<td>Cardinal Hotel</td>
<td></td>
</tr>
<tr>
<td>255-67 Hami</td>
<td>Univ Art Center</td>
<td></td>
</tr>
<tr>
<td>475 Home</td>
<td>Women's Club</td>
<td></td>
</tr>
<tr>
<td>1305 Midd</td>
<td>City of Palo Alto/Stern Center</td>
<td>Strengthened Permit #91689</td>
</tr>
<tr>
<td>211 Quar</td>
<td>Hoover Pavillion</td>
<td></td>
</tr>
<tr>
<td>223 Univ</td>
<td>Stanford Theater</td>
<td></td>
</tr>
<tr>
<td><strong>251-55 Univ</strong></td>
<td>Fidelity Investments</td>
<td>Strengthened Permit #91455</td>
</tr>
<tr>
<td>300-14 Univ</td>
<td>Wallgreens</td>
<td>Strengthened Permit #931963</td>
</tr>
<tr>
<td>340-46 Univ</td>
<td>Z Gallery</td>
<td>Strengthened Permit #95943</td>
</tr>
<tr>
<td>456 Univ</td>
<td>Border's Books</td>
<td>Strengthened Permit #951243 25% Inc.</td>
</tr>
<tr>
<td>480-98 Univ</td>
<td>President Apartments</td>
<td></td>
</tr>
<tr>
<td>25 Univ</td>
<td>McArthur Park</td>
<td></td>
</tr>
<tr>
<td>745 Wave</td>
<td>St. Thomas Aquinas Church</td>
<td>Strengthened Permit #871141</td>
</tr>
<tr>
<td>2300 Well</td>
<td>City of Palo Alto/Library</td>
<td>Strengthened</td>
</tr>
</tbody>
</table>

Total Number: 19  
Number Strengthened: 12  (66 %)  
Number Demolished: 0  
Historic: 14
### Category III Seismic
(Buildings constructed prior to 1976 with more than 300 Occupants)
August 1997

<table>
<thead>
<tr>
<th>Address</th>
<th>Occupant</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>200 Arbo</td>
<td>Nordstroms</td>
<td></td>
</tr>
<tr>
<td>601 Cali</td>
<td>Varian Assoc</td>
<td>Demolished</td>
</tr>
<tr>
<td>975 Cali</td>
<td>Novartis</td>
<td></td>
</tr>
<tr>
<td>1451 Cali</td>
<td>Earnst &amp; Young</td>
<td>Strengthened Permit # 932441</td>
</tr>
<tr>
<td>1501 Cali</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1601 Cali</td>
<td>Hewlett Packard</td>
<td>Strengthened Permit # 891372</td>
</tr>
<tr>
<td>3333 Coyo</td>
<td>Xerox</td>
<td></td>
</tr>
<tr>
<td>1069 East Me</td>
<td>Loral</td>
<td>Strengthened Permit # 89669</td>
</tr>
<tr>
<td>180 ElCa</td>
<td>Macy=s</td>
<td></td>
</tr>
<tr>
<td>180 ElCa</td>
<td>Bloomingdales</td>
<td></td>
</tr>
<tr>
<td>3000 ElCa</td>
<td>Palo Alto Square</td>
<td></td>
</tr>
<tr>
<td>4249 ElCa</td>
<td>Elk=s Club</td>
<td></td>
</tr>
<tr>
<td>4290 ElCa</td>
<td>Hyatt Hotels</td>
<td>Strengthened Permit # 971284</td>
</tr>
<tr>
<td>3825 Fabi</td>
<td>Loral</td>
<td>Strengthened Permit # 92859</td>
</tr>
<tr>
<td>3939 Fabi</td>
<td>Sun Microsystems</td>
<td>Strengthened Permit # 89612</td>
</tr>
<tr>
<td>285 Hami</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4001 Mira</td>
<td>Fairchild</td>
<td>Demolished</td>
</tr>
<tr>
<td>1651Page</td>
<td>Systemics</td>
<td></td>
</tr>
<tr>
<td>1801 Page</td>
<td>Multiple Tenants</td>
<td>Strengthened Permit # 991605</td>
</tr>
<tr>
<td>3172 Port</td>
<td>Matadero Creek</td>
<td></td>
</tr>
<tr>
<td>500 Quar</td>
<td>Sak=s</td>
<td></td>
</tr>
<tr>
<td>865 Stan</td>
<td>LDS Church</td>
<td></td>
</tr>
<tr>
<td>525 Univ</td>
<td>Tower</td>
<td></td>
</tr>
</tbody>
</table>

Total Number 23

**Strengthened** 7 30%

**Demolished** 2 9%
SEISMIC BONUS CALCULATIONS (25%)

A. Seismic calculation including existing BASEMENT

12,000 Square Feet (SF) above ground
6,000 SF below ground basement

\[
\text{Total proposed above ground floor area} = 18,206.25\text{ SF}
\]

\[
\text{Seismic Bonus} = 25\% \times 18,206.25 = 4,550\text{ SF}
\]

B. Seismic calculation without basement

12,000 SF above ground

\[
\text{Total maximum floor area allowed} = 15,206.25\text{ SF}
\]

C. If the current basement is habitable, calculation A may be correct.

Otherwise, calculation B should be used.

Lastly, if basement square footage is used to calculate seismic bonus for new construction, it should not be included in the maximum floor area.
March 18, 2008

Mr. Russ Reich
Project Planner
City of Palo Alto
Department of Planning & Community Environment
250 Hamilton Avenue, 6th floor
Palo Alto, CA 94303

RE: 278 University Avenue
Variance Request

Dear Mr. Reich,

As we discussed, the application for the subject property requires the following request for a variance:

Reduce the special setback along Bryant Street from 7 feet to 4 feet.

SPECIAL SETBACK VARIANCE

The Special Setback imposed by PAMC Title 20 (chapter 20.08.020) is unique to this small parcel (60 feet x 100 feet) on the southwest corner of University Avenue and Bryant Street. In the CD-C (P) (GF) zone, there are no setback requirements applicable to commercial development. Of course, for a mixed-use project consisting of retail and office uses where street frontage is so critical to the success of the retail shopping experience, this additional setback, representing more than a 10% reduction in the site width, is excessive.

The proposed project provides a setback of 4 feet from the property line along Bryant Street where 7 feet is the special setback requirement.

There are four findings necessary to grant the reduced special setback variance under PAMC 18.76.030:

1. There are special circumstances applicable to the property.
278 University Avenue is a corner property in the vibrant retail district of University Avenue where University Avenue street frontage is vital to the success of retailers along this retail corridor. 278 University has a unique situation in that it is only 60 feet in width. The three other parcels at this downtown intersection where the special setback occurs on Bryant Street range in width from 75 feet to 100 feet. That translates into 25% - 67% greater width than the subject property.

2. Granting the variance shall not affect substantial compliance with zoning regulations.
The approved project will be in compliance with the current zoning ordinance’s site development requirements for commercial development in the CD-C (P) (GF) zone. In fact, with a setback of 4 feet it will exceed the requirement.
3. **Granting of the variance is consistent with the Comprehensive Plan;**
Policy L-20 of the Comprehensive plans states: "Encourage street frontages that contribute to retail vitality in all Centers. Reinforce street corners with buildings that come up to the sidewalk or that form corner plazas." Commentary on the above policy continues:

"Well-designed storefronts with attractive display windows and building entries at frequent intervals are inviting to shoppers. They help support retail vitality by encouraging people to stay in the area and move from store to store. These features are particularly important at corners because they draw shoppers across streets to continue shopping. They also provide opportunities to convey the image and character of the center to motorists."

The opposite corner on Bryant Street, directly across the street from the subject property, also has a special setback requirement of 7 feet, increasing the combined distance between the buildings an additional fourteen feet, thereby, impacting the ability to "draw shoppers across streets to continue shopping."

4. **Granting of the variance will not be injurious to other properties in the vicinity and shall not be detrimental to the health, safety or welfare of the general community.**
Providing minor relief to the special setback requirement will have no deleterious impact on the community or on neighbors.

Sincerely,

[Signature]

Ken Hayes, AIA
Principal

cc  Roxy Rapp, 278 University Investors, LLC
    Joe Martignetti, 278 University Investors, LLC
July 7, 2008

Mr. Russ Reich
Project Planner
City of Palo Alto
Department of Planning & Community Environment
250 Hamilton Avenue, 5th floor
Palo Alto, CA 94303

RE: Appeal of Director’s decision
278 University Avenue

Dear Mr. Reich,

I am writing in response to the appeal of the director’s decision written by Ms. Lynn Chiapella, submitted to the City of Palo Alto on June 30, 2008 regarding the planning application for 278 University Avenue.

In her appeal letter, she cites four aspects of the approved project application for council’s consideration:

1. Variance approval for reduced Bryant Street setback;
2. Seismic bonus floor area calculation;
3. DEE approval for height increase;
4. DEE approval for unusable basement utility area.

I will address each of these items below.

1. Variance: There is a Special Setback of seven feet imposed on this parcel along the Bryant Street boundary. A variance was sought and findings made to reduce the setback to 4 feet. The four-foot setback results in a sidewalk width from the curb to the building of twelve feet. The twelve-foot sidewalk standard width is one that has been supported for commercial projects in areas where pedestrian friendly activities are reinforced throughout the community. The twelve-foot sidewalk is 50% wider than the existing sidewalk. Please see the attached variance findings for reference.

2. Seismic Bonus Area calculation: PAMC 18.18.070a(2) permits bonus floor area, exempt from FAR calculation, for un-reinforced masonry buildings, in categories I and II on the City of Palo Alto’s Seismic Program Inventory list, which meet the objective of the program. The objective of the program is to reduce the seismic risk associated with these vulnerable structures. Historically, qualifying for the bonus has been accomplished by either strengthening the existing building to current code or demolishing the building and constructing a new building. Hayes Group has been involved on at least four of these buildings in the downtown where the bonus was awarded through the demolition of the existing building and two projects where basement floor area was included in the existing floor area calculation. The parking assessment district in the downtown has assessed basement floor area in their calculations of existing floor area and these figures are usually
used for this determination. The existing parking assessment for 278 is based on 18,000 SF and this figure is used for the seismic bonus calculation. The four projects Hayes Group has completed are:

<table>
<thead>
<tr>
<th>Project</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>705 Alma (100 Forest)</td>
<td>nearly complete demolition of existing building, no basement</td>
</tr>
<tr>
<td>171 University</td>
<td>complete demolition, no basement</td>
</tr>
<tr>
<td>499 University</td>
<td>complete demolition, existing basement area included in calc</td>
</tr>
<tr>
<td>270 University</td>
<td>complete demolition, existing basement area included in calc</td>
</tr>
</tbody>
</table>

3. **DEE approval for height: increase:** PAMC 18.18.060 (a) Table 2 provides that the maximum height as defined by PAMC 18.04.030 (76) is 50 feet. This project is 55 feet tall. The additional height was sought so that a more desirable ground-floor retail space could be provided along with three floors of commercial uses above.

Greater massing is encouraged at street corners and this project, at four stories, accomplishes this goal in a sensitive way; by stepping the stories up to the set-back fourth floor the street wall is only three stories tall and forty-four feet high at the corner. The roof screen above has been reduced in height to about five feet to conceal low profile condensing units. Roof screens are permitted to encroach up to fifteen feet above the maximum building height.

Please see the attached DEE findings for reference.

4. **DEE approval for unusable basement utility area:** PAMC 18.04.030 (65) defines Gross Floor area in terms of inclusions and exclusions. Basements are to be included in Gross Floor area if the area "deemed" useable by the director of planning. The proposed basement is not useable in terms of useable for a permitted use as defined in PAMC 18.04.030 (143D). This project proposes to house building utilities in the basement including mechanical systems, pumps, surge tanks, electrical switch gear and service panels, telephone room, fire riser and other facilities that provide service to the building and that are often on the exterior of the building along walls and on the roof and NOT included in the Gross Floor area. We sought the DEE for this project because we believe this is a superior way to house this type of equipment in a downtown pedestrian shopping environment and not filling the existing basement is consistent with the city's green building initiative.

Please see the attached DEE findings for reference.

I hope that this explanation assists you in your evaluation of the appeal of the director's decision. We look forward to hearing staff's comments and those of the council at the hearing.

Sincerely,

Ken Hayes, AIA

Encl: DEE Request
      Variance request
May 27, 2008
July 23, 2008

Mr. Russ Reich
Project Planner
City of Palo Alto
Department of Planning & Community Environment
250 Hamilton Avenue, 5th floor
Palo Alto, CA 94303

RE: 278 University Avenue
Project Description

Dear Mr. Reich,

Attached is Hayes Group's submission package for 278 University Avenue for a Major ARB review. The project sponsor is Hayes Group on behalf of the owner, 278 University Investors, LLC.

This package consists of 16 sets of plans (two full size and 14 half size) and includes zoning analysis, area diagrams, site photos, site plan, preliminary grading plan, proposed floor plans, elevations, sections, enlarged wall sections and schematic details. Additional materials include the Environmental Assessment Worksheet, Request for Design Enhancement Exception, Request for Variance, Certification of Transfer of Development Rights and a copy of the agreement to adjust the adjacent property line between 270 and 278 University Avenue.

EXISTING CONDITIONS

278 University Avenue is located in the Downtown Commercial District, with Ground Floor Pedestrian Shopping Combining District overlay, CD-C(GF)(P), on the corner of University Avenue and Bryant Street. Centennial Alley, a pedestrian shopping amenity, connects to the Bryant Street Alley system at the rear of the building and is used for deliveries and service to the building in accordance with the Alley Owners Use and Maintenance Agreement.

The existing building is a two-story, un-reinforced masonry (URM) building that is listed on the City of Palo Alto's Seismic Hazards List as a Category I seismic hazard (listed as 274 University Avenue). There is a full basement below the building, extending under the University Avenue sidewalk. According to the city's records, the total existing square footage is 18,000 GSF and the owners have paid on a parking deficit of 72 cars. This floor area is divided equally between the floors.

PROPOSED PROJECT

We propose to demolish and recycle, in accordance with Palo Alto's waste and recycling requirements, the existing building above grade and maintain the existing basement configuration. A new four-story, 18,206 GSF, above-grade, commercial building with ground floor retail and office on upper floors is proposed.

The project will receive Seismic Bonus Area (FAR exempt floor area) in accordance with PAMC Section 18.18.070 (a) 2, as well as TDR Area (FAR exempt floor area) from 650 Waverley Street in accordance with PAMC Section 18.18.080. In addition, the existing parcel size is being expanded pursuant to that purchase agreement between the owners of 270 University Avenue and 278...
University Investors, LLC from 6,000 SF to 6,068.75 SF by means of a property line adjustment of 8.25'. A square footage analysis of the project and supporting documentation is provided in the submittal package.

The project was presented to the city's Architectural Review Board in a preliminary session on December 6, 2007. We believe we have addressed the concerns raised at that hearing generally regarding the scale of the facades by reducing the street wall height, the number of openings and the introduction of canopies. The ARB supported the project with regard to a four-foot setback along Bryant Street and the DEE to increase building height. A variance request is being submitted with this application for consideration of the 4-foot setback.

The new building reinforces the corner of the block with increased height and creates a welcoming retail image on University Avenue and Bryant Street by means of the two-story retail wall. Pedestrian-friendly interaction with the building is encouraged through the use of clear glass windows, canopies and a rhythm of openings along the sidewalks.

The building seeks to use sustainable materials, including high efficiency glazing systems, abundant day-lighting and solar shading systems as well as rooftop photovoltaic panel arrays and a cool roof. The LEED goal for the project is Silver as indicated on the attached LEED spreadsheet point summary.

Materials include integrally colored, tooled-limestone plaster facades, honed, stone detailing, frameless glazing and painted, steel frame windows with high performance clear glazing and aluminum panel cladding. The sunshades are painted metal to match the steel window systems.

TRASH/RECYCLING

Trash/recycling areas for the project and all businesses bordering Centennial Alley are provided pursuant to the 250 University Avenue Access and Maintenance Agreement dated October 11, 1990 by and between 250 University Avenue Associates and the City of Palo Alto, copy attached. As part of the 250 University Avenue project PC application and the requirement to provide public benefit, 250 University Avenue Associates, and its successors, agreed to be financially responsible for providing maintenance for the entire subterranean garage, including the city parking, as well as the alleyways along Centennial Alley. This obligation became a condition of approval and was documented in several recorded documents. Paragraph 9 of the 250 University Access and Maintenance Agreement obligates 250 University Avenue to provide "ready access at all times" to designated dumpster and trash facilities for all businesses within the block delineated by Hamilton Avenue, Bryant Street, University Avenue and Ramona Street.

Per the 250 University Avenue Access and Maintenance Agreement, 278 University has utilized the designated trash dumpsters in compliance with all terms, conditions and obligations of the parties. It is our intent to continue such use for the proposed new building and to fully comply with the terms of the agreement. The trash and recycling facilities are located in the buildings at 265 Hamilton Avenue and 250 University Avenue. It is our understanding that the existing facility at 250 University Avenue, the closest facility, historically used by 278 University Avenue, has 4-4yd refuse dumpsters, 2-2 yd cardboard dumpsters, 2 plastic/glass recycling bins.

We anticipate that the trash and recycling volume for the proposed new 18,206 square foot building will be much less than what was historically generated by the existing 18,000 square foot building. The existing building historically supported three restaurant uses on the ground floor including Starbucks, Noah's Bagels and a Mediterranean restaurant. As you are aware, restaurants generate a very large volume of garbage and recycling. We anticipate that the ground floor of the proposed new building will be for soft good uses such as clothing stores, not for restaurant uses. Thus, the volume of garbage and recycling will be greatly reduced.

Lastly, the proposed new building will provide a recycling room to house eight 96 gallon recycling containers as requested by staff to support the new commercial recycling program.
PARKING

As stated above, the current parking deficit is 72 cars for 18,000 SF. This reflects the number of parking spaces being assessed to the property. Since basement floor area is being made unusable for commercial purpose and the building is being expanded with Exempt Floor Area, the parking deficit would be reduced to 48; although a deficit of 72 spaces will continue to be assessed.

We are submitting this package for your review. We look forward to a positive review and approval so that we may proceed with the development of this project. Please feel free to call me if you have any questions.

Sincerely,

[Signature]

Ken Hayes, AIA
Principal

cc  Roxy Rapp, 278 University Investors, LLC
    Joe Marlignetti, 278 University Investors, LLC
PLANNING & TRANSPORTATION DIVISION

STAFF REPORT

TO:       PLANNING & TRANSPORTATION COMMISSION
FROM:     Russ Reich, Planner
          DEPARTMENT: Planning and Community Environment
AGENDA DATE: July 30, 2008
SUBJECT:  278 University Avenue: Request for hearing and Planning and Transportation Commission recommendation regarding the Director of Planning and Community Environment’s approval of a Variance application for a three foot encroachment into the Bryant Street special setback for a new, four-story mixed use retail/office building at 278 University Avenue.

RECOMMENDATION:
Staff recommends that the Planning and Transportation Commission (P&TC) recommend that the City Council approve the Variance request for a three foot encroachment into the Bryant Street Special Setback for the project located at 278 University Avenue.

P&TC PURVIEW
The P&TC’s purview is limited to the Variance request only. The Commissioners comments and recommendation on this application should be specifically related to the Special Setback Variance. Section 18.77.070(f) of the Zoning Ordinance requires that an appeal of the Director’s decision on an ARB application is to go directly to the City Council for their consideration. The appellant has submitted an appeal of the ARB application but this application is unique in that it also includes a Variance component. Section 18.77.060(e) requires that hearing requests for a Variance be heard by the P&TC, which then makes a recommendation to City Council. The appellant did not specifically submit a hearing request for the Variance but the appeal included the setback encroachment as one of the issues in the appeal letter. For this reason staff has recommended that the City Council continue their review of this item to September 15, 2008. The continuance allows for Council to receive the P&TC’s recommendation on the Variance in conjunction with their review of the appealed ARB application facilitating a final decision on all project components at the same time.
BACKGROUND

Process History
The application was reviewed by the Architectural Review Board (ARB) on June 5, 2008. The ARB unanimously recommended approval of the project, including Design Enhancement Exceptions (DEEs) for height and to exclude basement area from square footage calculations. The approved design also included a three foot encroachment into the required seven foot special setback on Bryant Street. The Director of Planning and Community Environment (Director) approved the project and the Variance request on June 12, 2008. On June 30, 2008 the approval was appealed by Palo Alto resident Lynn Chiapella.

Project Description
The applicant has proposed to demolish the existing two-story, un-reinforced masonry building and to construct a new 18,206 square foot, four-story, office and retail building. The first and possibly the second floors would be retail and the third and fourth floors would be office. The building would have a two-story retail base with a rhythm of clear storefront glass and awnings at the ground floor reinforcing the pedestrian experience. The third floor would be smaller and set back from the first and second floors to reduce the apparent height and mass of the building. The fourth floor would be set back even further than the third floor to further reduce the apparent height and mass.

SUMMARY OF LAND USE ACTION:
The existing two-story building on the property is currently built to the property line and is a legal non-complying structure relative to the seven foot special setback on Bryant Street because the building was built prior to the implementation of the special setback. According to Section 18.18.120(b) of the Palo Alto Municipal Code (PAMC), the building could be replaced in the current location without the need to comply with the required seven foot special setback. Due to the fact that other exceptions are requested, however, specifically the DEE for height and the DEE to exempt the basement from the FAR calculation, the applicant must request a Variance for the proposed encroachment into the special setback. If the other exceptions had not been requested, the applicant would not have needed to request a Variance for the encroachment. The building would still have been subject to design review through the ARB process, however, during which the width of the existing sidewalk would be considered.

The applicant is required to apply for the Variance rather than a DEE to achieve the encroachment because Special Setback requirements are outlined in Title 20 (Section 20.08.020) of the Municipal Code, as distinct from the Zoning Ordinance and its established setbacks, which are outlined in various sections of Title 18. Where Special Setbacks apply, the Zoning Ordinance provides reference to Title 20 (such as in Table 2 in Section 18.18.060), but the setback requirement is not part of the Zoning Ordinance. Section 18.76.030(b)(3) of the Zoning Ordinance specifies that Variances may be granted to deviate from the requirements of Title 20, which includes the Special Setbacks. Section 18.76.050(b)(1) indicates that DEEs are applicable to permit exceptions to the “site development and parking and loading requirements otherwise applicable under this title (Zoning)...” Since Special Setbacks are not part of Title 18, staff has
interpreted this language as not allowing DEEs for Special Setback encroachments, and has directed applicants to request Variances instead.

**SUMMARY OF KEY ISSUES:**
The issue for the P&TC’s consideration is the proposed setback encroachment along Bryant Street. The zoning map shows a seven foot special setback at key locations in the core of the Downtown. It occurs at both the Bryant and Waverley Street intersections on both sides of University Avenue. The applicant has requested a Variance for a three foot encroachment into the required seven foot special setback along Bryant Street, resulting in a four foot setback from the property line. The side walk between the existing building and Bryant Street is currently eight feet wide, four feet narrower than the typical 12 foot wide sidewalks of the Downtown. The sidewalk narrows at the street trees to less than six feet wide.

Full implementation of the special setback, imposed by the special setback map at this location, would open the sidewalk width to 15 feet, leaving just over 12 feet between the new building and the existing city street trees. This would open up Bryant Street to the pedestrian activity coming from University Avenue. It would appear that the intent of the required wider setback is to draw pedestrian traffic from University Avenue, allowing for views of retail shops on Bryant Street from University Avenue. The wider sidewalk and more importantly the shift of the building mass would improve the pedestrian experience and enhance the opportunity for retail activity along Bryant Street. Implementation of the four foot setback would result in the new building having a closer alignment with the front edge of the buildings along Bryant Street but it would still be forward of them. The applicant has provided an image on page A3.6 of the plans that shows four different setback scenarios. The applicant has requested the three foot encroachment to reduce the loss of valuable ground floor retail square footage and to reduce the gap between the retail buildings on either side of Bryant Street. The applicant’s proposal would result in nine feet between the trees and the face of the building, and 12 feet between the building and the face of curb. The ARB concurred that the four foot setback would be adequate to open Bryant Street to pedestrian traffic from University Avenue.

The appellant asserts that the Special Setback was intended to widen Bryant Street at the intersection of University Avenue. This is not the case. The City has no plans to widen the intersection. To widen the street would hinder pedestrian safety rather than improve it. The current condition reduces the distance from curb to curb to encourage and enable pedestrians to cross the street safely. If the distance from curb to curb were to be increased it would increase the crossing distance for pedestrians and increase the amount of time they are exposed to vehicular traffic. The narrow intersection slows vehicles and reduces the amount of time people spend in the street, thereby increasing pedestrian safety. The appellant also asserts that the project as proposed would preclude improvements to the intersection for parking, standard tree wells, a 12 foot wide sidewalk, and a visual entrance to and a view of the businesses on Bryant Street. The project would not preclude these things. The four foot setback will allow for a 12 foot wide sidewalk, standard street tree wells, and will open Bryant Street to pedestrian traffic and enhanced views from University Avenue. No Comprehensive Plan policy cited in the appellant’s letter is compromised by the proposed design. The project’s compliance with the Comprehensive Plan is outlined in Attachment F.
Attachment A outlines staff’s recommended findings for approval of the Variance. In particular, staff believes that special circumstances applicable to this property include a) its narrow width, such that compliance would reduce the site size by 11%, and b) the nonconforming nature of the existing building, such that a project without the DEEs would be allowed to rebuild without requiring a Variance. The project would not adversely impact neighboring properties and would be consistent with the Comprehensive Plan land use and policies.

**POLICY IMPLICATIONS:**
The project is consistent with Comprehensive Plan policies and downtown code and policies to encourage redevelopment of downtown properties.

**TIMELINE**
- Application submittal: March 19, 2008
- Application Deemed Complete: April 17, 2008
- Negative Declaration Circulated: May 16, 2008 - June 5, 2008
- ARB hearing: June, 5, 2008
- Director’s Approval: June 12, 2008
- Appeal: June 30, 2008
- P&TC Hearing: July 30, 2008
- Tentative City Council Hearing: September 15, 2008

**ENVIRONMENTAL REVIEW:**
Pursuant to the requirements of the California Environmental Quality Act (CEQA), an Initial Study and Negative Declaration were prepared and circulated, with a required 20-day public review and comment period beginning on May 16th and ending on June 5, 2008. No public comments were received.

**ATTACHMENTS:**
- A. Variance Findings
- B. Conditions of Approval
- C. Location Map
- D. Appellant’s Letters, Dated June 30, 2008 and July 9, 2008*
- F. Comprehensive Plan Table
- G. Zoning Table
- H. ARB Staff Report Dated June 5, 2008
- I. Negative Declaration and Initial Study
- J. Plans (Commission only)**

* Prepared by Appellant  
** Prepared by Applicant; all other attachments prepared by Staff or others
COURTESY COPIES:
Lynn Chiapella
Roxy Rapp
Ken Hayes

PREPARED BY: Russ Reich, Planner

REVIEWED BY: Amy French, Manager of Current Planning

DEPARTMENT/DIVISION HEAD APPROVAL: Curtis Williams, Interim Director
Attachment F

Architectural Review Board

Staff Report

Agenda Date: June 5, 2008

To: Architectural Review Board

From: Russ Reich, Planner

Department: Planning and Community Environment

Subject: 278 University Avenue [08PLN-00082]: Request by Ken Hayes on behalf of 278 University LLC for Preliminary Architectural Review of a proposed four story commercial mixed use retail/office building at 278 University Avenue. The ARB review request now includes Design Enhancement Exceptions (DEEs) to exceed the maximum height and floor area. A Variance for an encroachment into the setback along Bryant Street is also requested.

RECOMMENDATION

Staff recommends that the Architectural Review Board (ARB) consider the findings for DEE and recommend approval of the proposed project to the Director of Planning and Community Environment (Director), based upon the findings in Attachment A and subject to the conditions of approval in Attachment B.

BACKGROUND

Site Information

The project is located at the southwest corner of the intersection of University Avenue and Bryant Street with the Centennial Alley bordering the property to the rear. This site is located near the center of the Downtown core. The site is approximately 6,000 square feet and is currently occupied by a two story, 18,000 square foot, unreinforced masonry, retail/office building with a full basement. The building previously housed three retail tenants on the ground floor including Starbucks, Kan Zeman, and Noah’s Bagels. The second floor of the building is office. The site is zoned Downtown Commercial District with Ground Floor and Pedestrian Shopping District overlays (CD-C(GF)(P)).

Project Description

The applicant has proposed to demolish the existing building and to construct a new 18,206 square foot, four story, office and retail building. The first and possibly the second floors would be retail and the third and fourth floors would be office. The building would have a two story retail base with a rhythm of clear storefront glass and awnings at the ground floor reinforcing the pedestrian
pedestrian experience. The third floor is smaller and is set back from the first and second floors to reduce the apparent height and mass of the building. The fourth floor is set back even further than the third floor to further reduce the apparent height and mass. Additional project details are included in the applicant's project description included as Attachment I.

**DISCUSSION**

**Setback Variance**

The zoning map shows a seven foot special setback at key locations in the core of the Downtown. It occurs at both the Bryant and Waverley Street intersections on both sides of University Avenue. The applicant has requested a variance for a three foot encroachment into the required seven foot special setback along Bryant Street, resulting in a four foot setback from the property line. The current side walk between the existing building and Bryant Street is currently eight feet wide, four feet narrower than the typical 12 foot wide sidewalks of the Downtown. The sidewalk narrows at the street trees to less than six feet wide.

Implementation of the special setback, imposed by the special setback map at this location, would open the sidewalk width to 15 feet, leaving just over 12 feet between the new building and the existing city street trees. This would open up Bryant Street to the pedestrian activity coming from University Avenue. It would appear that the intent of the required wider setback is to draw pedestrian traffic from University Avenue, allowing for views of retail shops on Bryant Street from University Avenue. The wider sidewalk and more importantly the shift of the building mass would improve the pedestrian experience and enhance the opportunity for retail activity along Bryant Street. Implementation of the special setback would result in the new building having a closer alignment with the front edge of the buildings along Bryant Street but it would still be forward of them. The applicant has provided an image on page A3.6 of the plans that shows four different setback scenarios. The applicant has requested the three foot encroachment to reduce the loss of valuable ground floor retail square footage and to reduce the gap between the retail buildings on either side of Bryant Street. The applicant’s proposal would result in nine feet between the trees and the face of the building, and 12 feet between the building and the face of curb.

**Design Enhancement Exceptions**

The building is proposed to be 55 feet tall, five feet taller than the zoning height limitation of 50 feet. Retail environments are typically more desirable with higher ceiling heights. With possibly two floors of retail proposed, the applicant requests the height exception to create inviting retail spaces. The third and fourth floors would be recessed at the front, back, and street side, to achieve a reduction in the perceived height of the building. The height limit in Palo Alto is 50 feet with exceptions for equipment etc.

The existing building currently has a 6,000 square foot basement. Rather than completely fill in the basement, the applicant has requested a DEE to grant an exception to the FAR limitation to use the basement for mechanical equipment, utilities, electrical switch gear, sump pumps, ejector pumps, recycling room, fire surge tanks, and HVAC equipment. The resulting basement would be 5,600 square feet. Draft DEE findings are included in Attachment A. The ARB is requested to provide a recommendation on the DEEs.
Trash Enclosure
Currently the trash for 278 University Avenue is taken to a common trash room across the alley at 250 University Avenue that serves the other buildings on the alley as well. There has been a history of issues with the common use of the trash room on the alley. The management at 250 University has submitted a letter requesting that 278 University provide its own facilities for trash and recycling, expressing their belief that the expansion of 278 University is the appropriate opportunity to expand the trash capacity on the alley. We have also received a letter from an adjacent property owner requesting that 278 University not build a trash room on the alley at the back of the building. There is concern about the negative impacts that are typically associated with such facilities. An enclosure at the back of the building would possibly have negative impacts to the alley in this location that currently is not accessed by vehicles. In addition to the possible resulting damage to the alley surface, trash enclosures tend to have other negative impacts such as debris and smell. The alley currently provides outdoor dining for the Three Seasons Restaurant in this location. Staff has reviewed the issue and has required that the project incorporate a recycling room within the new building to accommodate the city’s new commercial recycling program but did not require the project to provide facilities for regular trash due to the existing agreement that allows the continued use of the alley trash room in 250 University Avenue.

Parking
The project site is within the Downtown Parking Assessment District. PAMC 18.18.090(b)(1)(B) exempts on-site parking requirements for square footage increases as a result of seismic and historic rehabilitation bonuses. The property is currently assessed for 72 parking spaces based on the existing 18,000 square foot building. The new building will be larger at 18,206 square feet, but no additional parking is required due to the exemptions for the bonus square footage.

Signage
The proposed sign will be submitted as a separate architectural review application and is not part of this review.

Downtown Urban Design Guide
The Downtown Urban Design Guide is meant to advise the applicant, staff and the ARB regarding development and design in the downtown area. The Downtown Urban Design Guide divides the downtown area into districts, each having a unique identity and design characteristics. The project site is in the University Avenue District, which is the identifiable center of the downtown area. Within this area, the Downtown Urban Design Guide recommends reinforcing the retail core by maintaining a strong concentration of ground floor retail and developing and enhancing the qualities which make an exciting outdoor and pedestrian environment, including vibrant and eclectic architecture. Staff finds that this project, with its rhythm of clear glass storefront windows, recesses, and canopies, contributes significantly to the goal of creating and exciting pedestrian environment. The guidelines also encourage additional height for buildings at corners.

Context-Based Design Considerations and Findings
In addition Architectural Review approval findings, Context-Based Design Considerations and Findings would be applicable to projects in the CD district and sub-districts pursuant to PAMC
18.18.110(b). For ARB discussion, context-based design considerations for the project are provided as Attachment D.

**Green Building**
The applicant has provided a Leadership in Energy and Environmental Design (LEED) checklist to demonstrate the level of green building they hope to achieve. It is included in the applicant's project description booklet (Attachment I). The checklist indicates that they would achieve 26 points. Some of the proposed green building attributes are the use of high efficiency glazing, abundant day lighting, solar shading systems, photovoltaics, a cool roof, and sustainable materials. With the adoption of the city's mandatory green building ordinance, the proposal will be required to earn an additional 7 points to reach the required silver level with a minimum of 33 points.

**Lighting**
There is a unique feature proposed in this project that is not typical of other buildings within the downtown. The proposal includes uplighting in the sidewalk at each pillar along the Bryant Street and University Avenue frontages. The lighting would shine up, washing the pillars in light creating a dramatic effect in the evening. This effect can be seen at the water district building across from the HP Pavilion in San Jose. Due to the fact that this is not typical of other buildings in the downtown, staff requests the ARB specifically discuss this element of the proposal. An encroachment permit would be required from Public Works for the lighting in the sidewalk along University Avenue.

**ENVIRONMENTAL REVIEW**
Pursuant to the requirements of the California Environmental Quality Act (CEQA), a Draft Initial Study and Negative Declaration have been prepared and circulated, with a required 20-day public review and comment period beginning on May 16th and ending on June 5, 2008.

**ATTACHMENTS**
A. ARB Findings
B. Conditions of Approval
C. Location Map
D. Context-Based Design Considerations
E. Zoning Compliance Table
F. Conformance with Comprehensive Plan Policies
H. Draft Initial Study and Negative Declaration
I. Applicant's Project Description Booklet received May 29, 2008 (Board Members only)
J. Plan Set received May 29, 2008 (Board Members only)

**COURTESY COPIES**
Roxy Rapp, Owner
Ken Hayes, Architect

**Prepared By:** Russ Reich, Planner

**Manager Review:** Amy French, Manager of Current Planning
Planning and Transportation Commission
Verbatim Minutes
July 30, 2008

EXCERPT

NEW BUSINESS
Public Hearings:

1. **278 University Avenue** – Request for Hearing and Commission recommendation regarding Director’s Approval of a Variance application for a three-foot encroachment into the Bryant Street special setback for a new, four-story commercial mixed use retail/office building. Note: Approval of major architectural review by the ARB and Director has been appealed to the City Council. Environmental Assessment: A Negative Declaration for the architectural review, including the Variance, was approved by the Director.

   **Mr. Russ Reich, Planner**: Thank you. Good evening Chair Holman and Planning Commissioners. The item before you this evening is a request for a hearing of the proposed Variance application of 278 University Avenue. The applicant has requested a Variance to allow the encroachment of three feet into the required seven-foot special setback along Bryant Street for the construction of a new four-story building. The Architectural Review Board applicant including the Variance was approved by the Director of Planning and Community Environment on June 12 after the ARB’s unanimous recommendation for approval on June 5. This approval was appealed by Palo Alto resident Lynn Chiapella on June 30.

   The Municipal Code requires that an appeal of the Director’s decision shall go directly to City Council but the Variance must come before the Planning and Transportation Commission first. The Commission’s purview is limited to the Variance and Staff has requested that the Commission’s discussion and recommendation be limited to the Variance request. Following the Commission’s recommendation on the Variance the appeal is tentatively set for the City Council review on September 15.

   The existing two-story un-reinforced masonry building is currently built to the property line. The provisions of Section 18.18.120(b) of the Municipal Code would allow the grandfathered elements such as the encroachment into the special setback to be replaced in their current location provided that no other aspects of the project are exceeding the zoning limitations. Since the applicant has proposed other exceptions the Variance is required for the special setback encroachment.

   Staff has researched the question that many of the Commissioners have asked. What was the original purpose of the special setback in this location? The original intent of the special setback is unknown. Staff was able to find Council action that repealed Ordinance 1321 and 1330 and established the new setback map. We refer to this map as the Special Setback Map. To gain a deeper understanding Staff attempted to locate those ordinances but they are not included in the
City archives in the City Clerk’s Office. Staff also searched further back during 1959 to try to find the discussion of this item at previous Council hearings and no discussion could be found.

It would be helpful to have this historical understanding of why they were originally put in place but without that we now have the opportunity to decide what makes sense in this location now and how it may impact the Downtown for the future. It would appear that the intent of the required wider sidewalk to draw pedestrian traffic from University Avenue allowing for views of retail shops on Bryant Street from University. The wider sidewalk and more importantly the shift of the building mass would improve the pedestrian experience and enhance the opportunity for retail activity along Bryant Street.

Implementation of the four-foot setback would result in the new building having a closer alignment with the front edge of the buildings along Bryant Street but it would still be three feet forward of them. The applicant has provided an image on page A3.6 of the plans that shows four different setback scenarios. The applicant has requested the three-foot encroachment to reduce the loss of valuable ground floor retail square footage and to reduce the gap between the retail buildings on either side of Bryant Street. The applicant’s proposal would result in nine feet between the trees and the face of the building and 12 feet between the building and the face of curb. The ARB has concurred that the four-foot setback would be adequate to open Bryant Street to pedestrian traffic from University Avenue.

The appellant asserts that the special setback was intended to widen Bryant Street at the intersection of University. This may or may not have been the original intent we do not know. What we do know is that the City has no plans to widen the street in this location.

Transportation and Public Works have reviewed this application and have been asked that specific question. They both have determined that the street does not need to be widened. To widen the street would hinder pedestrian safety rather than improve it. The current condition reduces the distance from curb-to-curb and encourages and enables pedestrians to cross the street safely and slows vehicular traffic. If the distance from curb-to-curb were to be increased it would increase the crossing distance for pedestrians and increase the amount of time they exposed to vehicular traffic. The narrow intersection slows vehicles and reduces the amount of time people spend in the street thereby increasing pedestrian safety.

The appellant also asserts that the project proposed would preclude improvements to the intersection for parking, standard tree wells, 12-foot wide sidewalk, and a visual entrance to and a view of the businesses on Bryant Street. The project would not preclude these things. The four-foot setback would allow for a 12-foot wide sidewalk, standard street tree wells, and will open Bryant Street to pedestrian traffic and enhance views from University Avenue. No Comprehensive Plan policy cited in the appellant’s letter is compromised by the proposed design. Attachment A outlines Staff’s recommended findings for approval of the Variance. The project would not adversely impact neighboring properties and would be consistent with the Comprehensive Plan land use policies.

A letter was provided to you earlier this week from Bill Stenkovic who is the owner of the closest adjacent property on Bryant Streets supporting the approval of the application. Staff recommends that the Planning and Transportation Commission forward a recommendation to
uphold the Director’s approval of the Variance to City Council and is available to answer any
questions you may have.

Also, I would like to add that there are a large number of additional items that have been put at
places. This is as a result of requests from various Commissioners, some from yesterday and
some from today. That is Section 18.18.120(b), which is the grandfather clause within the
commercial downtown section of the code; the applicability and Variance findings and
applicability and findings for the DEE; the Special Setback Ordinance 20.08.020; and a letter
from Sandy Sloan that discusses Section 18.18, which apparently she wrote when she was City
Attorney here. There is also a Special Setback Map that shows where the special setbacks occur
in the Downtown. Lastly, there are also answers to one of the Commissioner’s questions that we
were able to put together answers for. Today unfortunately were not able to get written answers
to the other questions. Thank you.

Chair Holman: Curtis.

Mr. Curtis Williams, Interim Planning Director: Those questions are Commissioner Keller’s
questions and the responses to those. We would be glad to elaborate on those if he feels that is
necessary. The other set of questions was from Commissioner Fineberg and I thought I would
quickly run through those for you. They mostly have to do with some of the basis for Variance
findings and Variances generally and special setbacks. We will try, we have not had time to do
any real research on some of this, but I think most of it is more in the nature of what serves as
precedent and when our Variance is appropriate and not appropriate.

So are the reasons special setback was enacted still valid today? I think Russ responded to that
some. It is our feeling that that special setback was there for the purpose of trying to provide for
wider sidewalks in that location and better align with the other buildings on Bryant Street not
specific to the widening of the roadway itself. Are those goals still consistent with the
Comprehensive Plan? I think those goals are as far as trying to provide wider sidewalks
Downtown and pedestrian orientation, and we do want to accomplish those goals. Is there a
public purpose for granting the Variance? Will the community receive some substantive benefit
for allowing the building to encroach three feet into the required setback? First of all a Variance
doesn’t require a public benefit to be granted. The applicant may argue that there is some public
benefit in terms of the design and being able to accomplish a project that has a lot of retail
frontage that maybe they could not otherwise if they were forced to pull it back and that there
might be some benefit to that. I don’t know that Staff feels that particularly there is a public
benefit to granting the Variance. I think the next question is more to the issue. Is there some
circumstance that makes strict enforcement of the current zoning regulation a hardship upon use
or enjoyment of the applicant other than a smaller building? I think it generally manifests itself
as a smaller building but it is a matter of whether there is something unusual about this site that
is particularly constricting that is not typical of the other sites that this zoning district and their
sizes. So for instance, the next question is about the narrower lot being considered the cause of a
hardship and is a narrow lot always a basis for a Variance? The answer is no. Just because a lot
is narrow doesn’t necessarily mean that but in this particular case our sense was that the
narrowness of this lot was unusual enough in Downtown and the percentage of seven feet out of
it is like 11 percent of the lot. It is a big chunk of the property that would not be able to be used
in an area where typically most buildings use 100 percent of the lot. So you are taking off a big
chunk. If that lot had been wider, like virtually all of the other lots are around there, then that
level of seven-foot indent there would not be as significant. That is a judgment call. That is
certainly something the Commission can consider. In this particular instance we thought that
was appropriate. If all of the lots were the same or in the same condition, if all of the lots were
the same width as this lot in that area or the predominant size lots were this width, and in this
case you have frontages on two sides of the lot which is somewhat unique but every corner has
that then I don’t think that would have been a basis for a Variance because this would not be
unusual. It would be a standard lot in an area of narrow lots. So in this case this is an unusually
narrow lot for the area and it is unusually impacted by the amount of the setback that was
required. We felt was justified if the other criteria which generally are or is it adversely
impacting some neighboring property, is it serving the overall purpose of the setback and the
Comprehensive Plan? If those can be met as well, and we feel that they were, if the
implementation of the Zoning Ordinance is considered a hardship because it limits the size of
structure then why should a setback ever be enforced? Again it is not just because it limits it is it is
relative to everything around it. Is it being impacted in a way that is unusual and perhaps overly
burdened with that compared to other lots in similar situations? Why is Staff considering the
typical setback of Downtown CDC buildings when determining if the findings are present? Is
the fact that the special setback doesn’t exist in most of zone mean that it should not be
enforced? No, the special setback should generally be enforced but in this case again it goes
back to is this lot unusual in this area? We believe it is. Is it being unduly burdened by this
setback? Again, we believe it is but those are judgment calls and if the Commission doesn’t feel
then you shouldn’t approve the Variance or you should approve a lesser degree of the
Variance, which is an option that you have as well.

So overall, again I don’t want to make the applicant’s case for them but we think there are
unusual circumstances. We think the goals of having wider sidewalks, having better exposure
down Bryant Street are being met with the four-foot rather than the seven-foot setback in this
case and that is why we were supportive of the Variance. I think we could go into some of the
circumstances around the nonconforming provisions that Russ mentioned. Russ, did we end up
with that as part of the findings? There are provisions relative to these nonconforming structures
in Downtown, this is only in Downtown and does not apply in the rest of the city, that were
instituted to allow for rebuilding existing structures and could be rebuilt in many cases without
having required a Variance. However, because of the DEEs they requested they are creating
some additional nonconformity which then takes them out of the realm of this grandfathered
provision and we went around with the applicant on that and determined that we feel that that
was justification for not allowing them to just rebuild as it was said you need to have a Variance.
We can make that distinction for you that is not being required on 310, the Walgreen’s building
across the street because they did not create any additional nonconformities on their site. They
met all the basic standards so they are building also to three feet into the setback rather than back
at the seven-foot line.

My last comment and Donald can add to this if he would like, I know and appreciate that there
are a number of other issues on this project that are of interest to the Commission and I can
understand that. However, the jurisdiction of the Commission and the reason we brought this
forward is because the code requires the Commission to review Variances that are requested for

Page 4
hearings. We have treated this as a request for hearing although the appeal was to the whole project. So the other issues related to the DEEs and any interpretations of square footages, etc. are issues the Council will consider at its hearing on September 15 and are not before you tonight. I would be glad to give some brief explanation if there are some of those questions you would like to have a response to as to our thinking on it or the ARB’s consideration of those but your action should be directed to whether the Variance should be upheld, denied, or modified in some way to be different than what we have approved to date. Thank you.

Mr. Donald Larkin, Senior Assistant City Attorney: Since Curtis invited me to elaborate I will. I know that there is some interest in the DEE issue and I think maybe a general comment or two on whether the DEEs should have been Variances might be appropriate. In the event that this goes to Council and Council determines that they should be reviewed as Variances it could come back to the Commission and any comments about the merits of those DEEs would then preclude any Commissioner that made those comments from participating.

Chair Holman: Would you repeat that? My understanding was in pre-Commission that Commissioners could make comments about the applicability of the DEEs, just make comments, but the Commission would not undertake deliberation about the DEEs and certainly no action. So if we made comments for instance as general as that we didn’t think X should be a DEE but rather a Variance without some reason for why we didn’t think so then Council would go why? What? So could you clarify that for the Commission, please?

Mr. Larkin: We have discussed this issue before. Commissioners can’t take the public position on specific projects prior to having the public hearing on those. So that if this was to become a public hearing at the Planning Commission then Commissioners that had already taken a position on the merits of whether or not the features that are being added as part of the DEEs were appropriately granted then I think that would show a bias on the part of the Commissioner and that could preclude Commissioners who made such comments from participating.

Chair Holman: So one more clarification on that if I might. So would it be giving an opinion about whether we thought an exception was warranted or not if we just stated for instance that perhaps a DEE should have been a Variance that is not indicating an outcome that is just indicating we think something should be a Variance instead of a DEE?

Mr. Larkin: That is okay. There should not be a lengthy discussion on that because that is not before you but certainly those comments, as long as it doesn’t turn into an extensive debate on that issue should be fine.

Chair Holman: Likewise if there are other comments that Commissioners want to make because there are some policy issues that are going to be in front of the Council if Commissioners wanted to just comment on their thoughts of some of the policy issues that the Council might wish to look at that is okay we just will not discuss or deliberate or certainly make recommendation on those items. Is that correct?
Mr. Larkin: As long as they are within the realm of the Commission’s purview that is correct. It is hard to talk about that in the abstract but what I will say is if you get off track I will interrupt and try to get things back on track.

Chair Holman: We look forward to your intervention. Commissioner Keller, you were first. Clarifying questions for Staff.

Commissioner Keller: Thank you. Just to make clear what Chair Holman was referring we can say X, which was a DEE probably should have been a Variance for Y reason but not talk about whether or not that Variance or DEE should have been granted. Is that the distinction? If we stay away from whether it should have or not been granted but stick to why it should be a Variance or a DEE that is safe.

Mr. Larkin: Within limits.

Commissioner Keller: Okay thank you. The second question I have is with respect to this thing that has been handed to us, 1818.120 in particular paragraph (b) subparagraph (2). There is a list of things labeled A through D. I am wondering whether the legal interpretation of that is the four of them are ‘anded’ together or ‘ored’ together because it matters.

Mr. Williams: I am going to take a stab at this before Donald does because we went around and around with this. This was very poorly written originally and it was translated not well also. What it really should be is under D, shall not increase, there should probably be a section of D that says expect pursuant to the exceptions should be a separate line on here so that it doesn’t do any of these things – as long as it doesn’t result in these increases etc., etc. except for any of those four. Except pursuant to the exceptions to floor area regulations set forth. So those floor area regulations allow certain things to be done and as long as those are done without creating any additional nonconformities than those increases in terms of floor area and footprint and such are allowed. That is the way it has been interpreted since the mid 1980s.

Commissioner Keller: So just to make this clear what you are saying is A through D are ‘anded’ together however the except applies to all of them as opposed to applies just to D.

Mr. Williams: Right.

Commissioner Keller: And that should be on a separate line left aligned.

Mr. Williams: Right.

Commissioner Keller: Thank you.

Mr. Larkin: The reason that that interpretation is the one that I believe is correct is that otherwise D has no effect. That is the only way D has any effect is if that exception applies to all four.
Commissioner Keller: Okay. Maybe the next time we get around to a Zoning Ordinance Update we can fix that.

Mr. Williams: We were hoping to get there.

Commissioner Keller: My last question has to do with this wonderful diagram, the Special Setback Frontages Downtown Area Map. Correct me if I am wrong but it looks like there are eight parcels that are if you will horizontal like the Bryant Street parcel in question for which there is a seven-foot setback. It looks like there are four on Bryant and University and four on Waverley and University. What I am wondering is it appears that all of these eight parcels have the same characteristic namely that the amount that they stick out towards Bryant Street is greater than the adjacent parcels by what might be seven feet. I am wondering if this means that it may have been the intent was so that the buildings on the corners of University Avenue are recessed to the same extent that the other parcels are. I am just wondering and trying to divine that. I am trying to clarify the issue of the nature of that because not everybody can see as well as I can on this and it is sort of hard to see.

Mr. Williams: I think that is what we indicted we think one of the reasons was probably to try to line up with those other buildings. We have always had some concern about the facts. I know some of the businesses along Bryant Street for instance have concerns about the fact that when you are on University it is hard to see down there and see those businesses. They lose exposure compared to some other streets like that because these are out seven feet. What I don’t think this setback map considered at the time was what was going to be the impact on those parcels to take seven feet off of them. So that is something that can be addressed in a Variance. I think what the ARB was comfortable with from a design standpoint was that if you take four feet off this side and four feet off the other side that is an additional eight feet and I think the applicant has some graphics to show that gives a much improved sightline to those parcels and was sufficient to accomplish that purpose. Again, that is what ultimately what the question before the Commission is tonight.

Commissioner Keller: Right. I am not going to ask this question I am just going to telegraph it to you so you can try to figure this out, if you look at the parcel on Bryant and University.

Chair Holman: If we are into comments then let’s hold that.

Commissioner Keller: I am just going to ask him this so he can figure this out for later. I don’t want the answer I just want them to try to figure it out. I am wondering since the width of this parcel, the frontage on University is in question and since there are eight parcels like this I am wondering how the width of this parcel on the frontage on University compares with the other parcels of the eight in question. I think that seems to be germane. That is the category of parcels.

Ms. Amy French, Current Planning Manager: I would like to comment on that. What you are seeing with this map there are some parcels over which the buildings cross so you are not going to get, as far as for instance the Wells Fargo Private Banking Services kitty-corner to this one takes up more than just the slender lot there. It crosses over. The map is not good as far as if
you are looking for dimensions based on this map. We don’t have those dimensions. They are
combined lots there for buildings that are existing. So we are not going to be able to answer that
based on this map tonight.

Commissioner Keller: Okay, thank you.

Chair Holman: Commissioner Lippert.

Commissioner Lippert: I have a couple of clarifying questions here. If we were to apply the
same standards to the other properties would we in fact allow them to also encroach into the
setback? So if I look at the Wells Fargo property that you just cited diagonally across the street
if that building went away would we still look at it the same way and permit that property or for
that matter the Restoration Hardware store if those were demolished and rebuilt would we allow
those to be rebuilt and encroach into the special setback?

Ms. French: Again, because this Variance is on a case-by-case basis the ones you mentioned
have different lot widths than this and so those would be taken into consideration. In those cases
both the lot width and depth and the entirety of the lot and how much percentage we were taking
away by making them go back all the way to seven feet.

Commissioner Lippert: Then if we were to look at the special setback does it only apply to the
first floor or would it also apply to any floors above that? What I am thinking of is when we do
have setbacks for second floors does this in fact say explicitly it is a building setback or is it a
first floor setback?

Ms. French: You have in front of you the 20.08 it is not super specific. If there is an
interpretation or intent in the history of this thing that says the reason we are doing this is maybe
on these streets it is for pedestrian comfort, maybe on Middlefield through the residential district
it is for some other reason, but it doesn’t say. So 20.08.030 says buildings between street line
and setback line prohibited so it does say ‘buildings.’

Commissioner Lippert: If the intent is for pedestrian access you don’t have pedestrian access at
the second floor you could very well arcade the building.

Mr. Williams: That is an option of a way to treat it through a Variance but that is not an option
for interpreting this. This section the way it applies is the building so first, second, third floor
needs to be setback. Now, when you are in a Variance situation theoretically you could say the
second floor could be three feet encroaching but the first floor has to be back seven feet.

Commissioner Lippert: I am not trying to read into anything here but is it a possibility that the
special setback exists because Bryant Street is a bicycle boulevard and the intent was that those
were pinch points for the bicycle boulevard and so they wanted to try to maintain the width for
the bicycle lane?

Ms. French: Not sure in 1959 if there was a bike boulevard.
Mr. Reich: it is also less likely because those setbacks do occur in other locations that are not the bike boulevard. So it is really unknown but it does seem to be like other people indicated in order to get the buildings to align and widen the sidewalks. We are guessing but that seems to be the purpose.

Commissioner Lippert: Okay. One last question. How would the special setback treat canopies or awnings? Would we permit canopies or awnings to project into a special setback?

Ms. French: We wouldn’t see a canopy or awning as a building wall unless it was supported to the ground with a post of some sort. So a true canopy or projection could be seen as just an encroachment into right-of-way as long as it is high enough above the right-of-way.

Mr. Reich: Setbacks in generally allow for a two-foot encroachment into the setback anyway so we would assume that would be applied to the special setback as well.

Commissioner Lippert: Okay, thank you very much.

Chair Holman: Commissioner Tuma, clarifying questions.

Commissioner Tuma: Actually the first thing I want to do is ask Commissioners a question and it goes to the procedural issue that you were talking about before. Maybe this is the plan. Does it make sense for us to, because there was some discussion about whether people have comments about other things that were DEEs that maybe should be Variances? It seems to me that it might be efficient for us to first put to bed the issue about the Variance that is in front of us and then turn to those other issues that people have concerns about. I don’t know if there was any discussion about that at pre-Commission but it seems like a way to keep this issue clean, decide it, put it to bed, and then move on to the others.

Chair Holman: Agreed.

Commissioner Tuma: Okay. One question for City Attorney, which I assume the answer is yes but this letter of July 8 questioning whether a Variance is required, has the City taken a position on that one way or another? I am assuming we have and the answer is it is required otherwise it wouldn’t be in front of us but I think we should put that on the record.

Mr. Larkin: You are absolutely correct. We have taken a position and our position is the Variance is required for this project.

Commissioner Tuma: Okay. We are going to hear from the applicant, right? Good.

Chair Holman: Commissioner Fineberg, clarifying questions.

Commissioner Fineberg: When Staff is considering the characteristics of properties in the same zone with the goal of determining the impact on the pedestrians, how friendly it is for people to see the sightlines, does it make sense to look at the broader business district that is five blocks long or does it make sense to say if you are standing at University and Bryant what are the
conditions there that a pedestrian would face? How does that building compare with its immediate neighbors, the ones next to it, the ones across the street from it? If the goal of granting the Variance is for the pedestrian experience they are only going to experience what is at that corner. So how would it compare with the properties immediately adjacent, across the street to it? Are they wider? Are they narrower? Are they encroaching in the setbacks? Are they conforming?

Mr. Reich: All the different properties up and down University were not studied to know that. It does appear in general that properties up and down University have a 12-foot wide sidewalk. So we felt that a 12-foot wide sidewalk in this location would be appropriate. To implement the full seven-foot setback would actually create a greater sidewalk than exists up and down University.

Commissioner Fineberg: Does it matter though that it is divergent from the immediately adjacent properties?

Mr. Reich: The adjacent properties in terms of Restoration Hardware?

Commissioner Fineberg: Going down Bryant.

Mr. Reich: I guess that is the question before you as to how much that matters. It will be divergent by three feet so the existing is now seven feet, five inches forward of the building faces along Bryant Street. With the approval of this application it would be three feet forward. So the determination is whether that is enough, whether that is adequate to serve the purposes of the community, is the community harmed by that three-foot projection of the building? The ARB felt the four foot was adequate to open that up and provide a wider sidewalk.

What I didn’t mention in the beginning is we do have a representative from the Architectural Review Board here. Chair Clare Malone Pritchard is here if you have questions of her as well.

Commissioner Fineberg: Okay, and one more quick one on that. If Staff is applying the logic that because this is a small parcel it carries an undue burden compared to other similar parcels that are wider or bigger or deeper or something different where the setback isn’t as large of a proportion of the property then should we consider some time in the future some kind of change in the Zoning Ordinance? Are we creating a de facto policy and should we just change zoning rather than granting Variances or is this an appropriate place for a Variance and one doesn’t change the zoning?

Mr. Reich: I think because the special setback doesn’t occur very frequently I don’t know that a zone change would be necessary. I think looking at them on a case-by-case basis and determining what is appropriate in those cases through a Variance is the appropriate way to do it.

Commissioner Fineberg: Wouldn’t the zone change apply to where there is that setback requirement? I guess I am thinking of the zoning change changing the setback requirement not everything else.
Mr. Williams: First of all it is not a zoning change because a Setback Map is in Title 20 so it would be a change to the Setback Map. I guess going along the lines of what Russ is saying this is so infrequent that this is an issue that I am not sure it is worth it to go in and try to evaluate that because it really wouldn’t be productive unless you did a pretty thorough look at a minimum of everything in Downtown that might have a special setback and perhaps even broader than that. It really ends up being ultimately a site-by-site analysis. You could do that but it seems that it takes less time to consider the Variance merits of the few that might come in than taking a lot of time to do a site-by-site analysis of all of these special setbacks.

Commissioner Fineberg: Okay. My last question is for City Attorney. If we do approve this does it become precedent that the next applicant becomes entitled to the same Variance for the same reasons?

Mr. Larkin: No because the Variance is due to the unique circumstances of this parcel. So I believe that it would not because there is no other parcel with this special setback that is the same size with all of the same factors that go into this analysis.

Chair Holman: Commissioner Keller, did you have a follow up to one of those questions? Then Vice-Chair Garber.

Commissioner Keller: Yes. With respect to the particular intersection of University Avenue and Bryant Street there are obviously four corners with four parcels. The subject property has a seven-foot setback for which an approximate three-foot Variance is being granted. The property across Bryant Street has a seven-foot setback for which a three-foot exception is being....

Mr. Larkin: No, they are entitled to build to their old footprint and they are not. They are actually going to be increasing the setback but they are entitled to build to their full footprint. So there is no exception.

Commissioner Keller: I see. So there is no exception. Thank you for the clarification. That one is being built to a four-foot setback as well. There is the Wells Fargo Bank which appears to have a pretty large setback and I am wondering if you know whether that is built to the full seven-foot setback or not and if you have an idea whether Restoration Hardware that doesn’t look like it has quite as much setback and what is that built to? We don’t know?

I think it might be helpful when this goes to the Council if you would find out that information for this particular intersection because I think it sort of puts things in context. Thank you.

Chair Holman: Vice-Chair Garber.

Vice-Chair Garber: My question was asked and answered by Commissioner Tuma.

Chair Holman: I have one question. I will hold any other questions for later. I have been reading the Variance findings but also trying to better understand the thought process that went into the Variance application and consideration by Staff. Is the consideration that this is an improvement so even if it doesn’t satisfy the map that is better, which is what it reads like in
here, is it because full compliance would reduce the amount of retail square footage for the
applicant and/or for the city? What is the major issue there or is it both of those? I think this
was asked earlier, if someone buys a parcel and it is what it is so what is the City Staff
perspective on that?

Mr. Williams: The retail square footage issue relative to the applicant or the City is there but it
isn’t a paramount reason for granting the Variance. I think regardless of the use the sort of
percentage of the parcel that is taken away is what is significant or determined to be either
significant or not significant relative to other parcels in the area. The second part of it was what?
I am sorry I lost that.

Chair Holman: That while this isn’t conforming to the Setback Map it is good enough because it
is an improvement. What kind of weight was that given?

Mr. Williams: Well, I think the weight that is given is determining that it is satisfying the intent
of to some extent the setback and the Comprehensive Plan and Downtown Design plans and such
to provide adequate sidewalk width and adequate view shed corridor to the Bryant Street
properties. So to the extent that it was deemed to meet those criteria then it was felt to be
adequate not that is just better than what is there now. So if it were one foot instead of four foot
that it had been moved back I don’t think we could make that same determination. We wouldn’t
have a 12-foot wide sidewalk, which is what we look to have in a pedestrian oriented area like
that. There was the last part of your question that wasn’t that.

Chair Holman: The zoning can totally change on a parcel for instance and whoever buys it buys
what it is.

Mr. Williams: Absolutely they buy what it is but they also have the right to request a Variance
and make a case. Whether they thought about that going in or they are 20 years into ownership
and decide that they would like to rebuild something on it that is a potential they have. I go back
to it again it is not I don’t think a compelling basis for granting the Variance. The Variance has
to stand on its own but realistically if they would bring this building down a few feet and fill in
the basement we wouldn’t be here today and they could be two feet from that property line
instead of four feet. So we do think this is a great improvement and it does provide the necessary
pedestrian passageway and view corridor into Bryant Street.

Chair Holman: Commissioner Fineberg you had another clarifying and then we will move on.

Commissioner Fineberg: Can Staff talk a little bit about whether the application of the Variance
language and City policies how they relate to any obligation the City has to allowing an applicant
to have the highest use of the property or simply the uses allowed? How should we frame our
thoughts on that?

Mr. Williams: I think I will rely on Donald to help me out here. I think the Variance findings
are there, they are subjective, and so I don’t think the intent is that we have to allow the
maximum amount of square footage or that we have to allow the highest use or most intense use
of the property. Again when comparing the rights on this property to the rights on similarly
situated property in the vicinity are they in some ways being more penalized than those other
ones and more constrained than those because of this. So that is kind of the determination you
have to make. Again, it is somewhat subjective as to how far to go. In this case it is subjective.
There are situations I have seen in Palo Alto and elsewhere where it is very clear that if you have
a certain setback you are essentially taking the property and not able to build on it anymore. You
have a setback from one side and the other side and you leave a ten-foot strip in the middle then
you get in a place where you are taking the whole property if you do it. That is not the case here
it is really just a matter of the degree of the Variance whether it is significant enough to make
those findings or not.

Mr. Larkin: I think the best way to look at it is if you look at what the purpose of the Variance is
it is to provide a way for a site with physical constraints resulting from natural or built features to
be used in ways similar to other sites in the same vicinity and zoning district and to provide a
way to grant relief when the strict application of the zoning regulations would subject the
development of a site to hardships, constraints, or practical difficulties that do not normally arise
on other sites in the same vicinity and zoning district. So it is really just a way to help an
unusually small or unusually shaped or unusually configured property achieve a normal use that
is consistent with what other properties in the same area have.

Chair Holman: Vice-Chair Garber.

Vice-Chair Garber: Two questions. Regarding the email from Bill Stenkovic are they the
adjacent property owners?

Mr. Reich: The own the property across the alley which is behind 278 as well as the Three
Seasons restaurant behind that.

Vice-Chair Garber: Okay. My second question is going back to the letter of July 8, which we
received at places. I have not had a chance to review this. Are there other aspects of it that
should be brought to our attention for this evening to be considered this evening?

Mr. Williams: No, I think Commissioner Tuma stated that accurately. It was essentially the
applicant making the case that there should not be a Variance required for this project and our
response was because you are doing some things that are creating additional nonconformities in
areas apart from the setback that you then have a Variance requirement.

Mr. Reich: The main purpose of that and why Commissioners asked we provide you with that
letter is that it explained why the thing that Don talked about in terms of the exception stated in
D becomes ineffective if it doesn’t apply to all of those items. So that was the main focus of the
reason why we provided that letter.

Chair Holman: Thank you. Procedurally we have an Appellant, and we have two cards
representing the Applicant so they will have a combined 15 minutes. We also have a
representative from the ARB who does not have a card in. So what was Staff’s intention is the
ARB representative here to answer questions or to make a brief presentation?
Mr. Reich: I believe she is just here to answer questions but she is welcome to make a presentation if she would like. She does not like so she is here to answer questions.

Chair Holman: Okay. We will then go to the Appellant, Lynn Chiapella and you will have 15 minutes. Just a reminder that if you have graphics to stay on the mike. If you want to setup we will give you time to do that. The same of course applies to the Applicant.

Ms. Lynn Chiapella, Appellant: Well, you have discussed a lot of things I didn’t know were going to come up so some of what I had in my packet is related to that. I have the disadvantage of going to the library but not being able to find a copy of the city code especially when you refer back and forth. So I had to do the best I could on the internet, which is not easy.

As I read what you have before you, which is Chapter 20, it looks to me that a Variance is required if you are going to build into the seven-foot setback. As far as I know in the past before maybe you changed it last year or the year before it always was required because there was some reason why that setback was there. A Variance was always required on properties that built into that. I have noticed lately that those properties are going into the setback right and left.

The reason this is a concern to me is that at one point I was talking to one of the engineers on the Oregon Expressway and he had the feeling that they had built into the setback so much that you could never fix the Alma Street bridge. So I have always kept a little signal up here about setbacks and what was intended and this kind of thing.

So when I looked at the map I didn’t think it was so extraordinary. It didn’t look much different than that one. As it turns out that is quite a large parcel because I think they bought the parcels next door. When I look at this map I thought 274 was part of that parcel and now it shows that 274 is a separate property. I really don’t know. When I went down and looked at it I thought the line was pretty clear but whatever. So when I looked at this there are small properties, large properties, some of them are on corners, there is every kind of property in the world down there. This seven-foot setback I think was put on for specific reason and I think a great deal of it was to improve the business atmosphere on Bryant Street and to extend the business past University and not get into a mindset of just walking up and down University. When I went down it the first time the first thing I noticed was how narrow, this isn’t a very good drawing it is the best I can do, but when you look on University and you are looking down Bryant Street what you see is a very large wall and then you see none of the businesses behind it. My feeling is it was always intended to continue the business down Bryant and make that a more vibrant, vital kind of an area. I do think this is a keystone property. If you don’t do it now in here it is really a gone opportunity that will not come back again until the next century when who knows what will happen.

The same I think is true on University on the other side. I think the ARB’s prerogative was to actually do the seven-foot setback and bring all of those properties in line again. I am sure it is a hardship but as I looked at it I thought you could easily develop your Bryant Street side of that building and bring people around the corner, make a really nice vibrant building that brings people around the corner that fulfills what I think was the plan they had many years ago. You will notice that it is 60 feet wide at Hamilton and then it narrows down right there. When you
have service trucks and big trucks parked here, I am not worried about the pedestrian crosswalk here, the atmosphere feels cramped because there are cars there and you have some nice large trees. I do feel that it would be a benefit actually to take a look at that area to make it more welcoming to walk down and not feel like a dark crowded little area. Four feet is good. Seven feet is much better. That was my take on that.

I am just briefly going to talk about the seismic rehabilitation bonus. You know, when I came to those meetings years ago that was about actually rehabilitating your buildings and they gave all kinds of wonderful examples of buildings that we don’t want to tear down. But what it really has turned into is you can demolish, build to the Building Code, and still get your 25 percent bonus. I think that is a big diver. It is a heck of a lot easier to knock your building down and get your 25 percent bonus and go home. Just build to the Building Codes.

I live in an old house and believe me it is a lot of work to try to keep things going in an older building and certainly to bring it up to seismic standards is a monster job. So I think it is frankly unfair that you can knock it down and build a new building and get your bonus or that someone who really goes the full bore and tries to keep the building and restore it or rehabilitate it gets the same bonus. I think there are apples and oranges there.

I commented on 20.08 and I do think 310 University, since that was brought up, should have a Variance as any other property with a special setback. Apparently as I say the code got changed a year or two ago and that disappeared. I don’t know when it disappeared for sure.

I did read the Staff Reports and the comments by the Applicant for this project but here is my take on it. The project represents spot zoning by the ARB in my opinion without addressing the big picture, which are all the other properties in Downtown that also have a special seven-foot setback. I do think that whatever you decide to do is going to be applicable to all the properties down the road. I do think that is fair. It is not fair to put one person at seven feet or one person at four. Because I think this project is keystone to the vision of Downtown that previous City Councils and Planning Commissions had whether in the late 1950s or whatever this has been on the books for 50 years or more and I think it is important that the Planning Commission and the City Council take part in this ARB decision rather than have it done at a rather, in my opinion, Byzantine kind of a meeting with the ARB because most people are not really coming to the ARB nor understand how to approach that. I think it is very difficult at the ARB for public citizens to attend at eight in the morning. We used to go to Zoning Administrator Hearings where you could do that.

So I do believe that the setback four feet is better. I hope you will agree that seven feet is the best. The Director of Planning indicates that setbacks are not part of the zoning code and indicates that if the Applicant had not requested the Design Enhancements he would have been entitled to build in the entire seven-foot setback. The ARB does have control over that and they can also rule in that instance.

I don’t know how Chapter 18 and Chapter 20 relate to each other. I find that very confusing so I leave that up to you to solve.
The Applicant has requested two DEEs and he is planning to build a 23,806 square foot building on a 6,068 square foot lot. That is a lot of building. The way he is going to do it is he is going to exempt the entire 5,600 basement and get 18,206 square feet as tenant rental on top or above ground. He has increased the above ground tenant square footage by 50 percent using his seismic rehabilitation bonus. I don’t know that a DEE is justified to this 5,600 square foot basement. I do think 2,000 feet or more of that basement would serve the tenants of the building and should be included in the square footage. Since I believe this a keystone building and it is going to be there for many years I think it is a shortsighted approval not to look at the whole picture, which the ARB didn’t have to do. I think they did discuss it briefly.

I hope that you will uphold that seven-foot setback. I think it will accomplish the following goals. It is going to expand the Downtown area to include more side street interest and activity. I think that is really important going into the next 50 years. It opens up Bryant Street visually. Now it is really closed. I think the four feet is not enough so that as you look toward Hamilton you will really see those businesses and you may want to walk down there and see what else is down there. I think it is going to develop a more vibrant business district on Bryant between University and Hamilton and maybe down the road Waverley. I think it will increase your foot traffic, pedestrian interest down Bryant. I think that is important. There are businesses on Hamilton they might even get to Hamilton and go around the corner. I think it allows the possibility of bringing Bryant Street into conformity if that is desired where it narrows down at the two buildings, 310 and 278, where it narrows down by six feet or so. The reason that might be important is the visibility is reduced in terms of there are cars and trucks parked there. I notice when you look down there you really see a very narrowed vision when you have the shade of the trees, the trucks, the cars, and bicycles I think would enjoy a little bit more space in that area.

So I see the establishment of that seven-foot setback as a really good start to the above vision to make a more viable Downtown and improve more blocks. By coincidence 310 and 278 are coming up together and I think that would actually complete a really good picture. Just one of those little opportunities, I think it is a golden opportunity, and I hope that you will consider doing that.

I did calculate because I know the Applicant’s square footage is a big problem he needs his 18,206 square feet. In my opinion he could get it on three floors easily by including 2,000 feet in the basement, which would be for tenant use for storage, for restaurant use, just as Walgreen’s across the street uses that basement for all of their storage the Applicant could use that also for storage or for ancillary uses for the upstairs. So I don’t see the hardship in those terms and I do see the possibilities especially on Bryant Street and maybe even bringing his business around Bryant Street. Thank you.

Chair Holman: Thank you. Next we have 15 minutes for the Applicant. We have two speakers, Joe Martignetti and Ken Hayes.

Mr. Joe Martignetti, Applicant: Chair Holman, members of the Planning Commission, City Staff good evening. I am representing the owner and the Applicant tonight for 278 University. I think the first order is to thank you for allowing us to be item number one on the agenda. Usually I am
called between ten and eleven o’clock to come down for public testimony so this is a real treat for me. I do have mixed feelings about being on the agenda but we are happy that we are number one, so thank you for that.

We are here to ask the Planning Commission’s support of the Staff recommendation and that is to support the Variance. There has been a lot of discussion about the setback and I wanted to go through a few points and then basically turn the presentation over to Ken Hayes, who is our architect to go through some of the mechanics of how we determined the width of that setback.

I know Staff has mentioned that the retail component of this building was not an overwhelming finding to determine the setback size. As a project goal I have to say it was one of the top priorities of this project from the beginning was to try to keep and maintain as much of that retail footprint as we possibly could. The existing building, which is 18,000 square feet, has a 6,000 square foot retail component on that ground level. Ideally we would love to stay as close as we could to that and would certainly like to maximize that. So a goal of the project has always been to certainly comply with the zoning and the intent of the setback but try to maximize that retail component. As a property owner we do see retail being a very vital component of the Downtown and although the setback does diminish part of that retail square footage I think any loss to the Downtown of retail square footage is a real loss to the community. So hopefully we will get your support on that.

The project has gone through a lot of iterations. I want to note and tell you that it has been a very collaborative effort between Staff and the ARB and the group as an Applicant. The original project as submitted did not have the four-foot setback. It was less of a setback but after meeting with Staff and going through some of the intent of what the setback was for and the dynamics of how University worked with Bryant and also going through a fairly lengthy preliminary ARB and getting feedback from the ARB members we felt it was the right move to try to set this building further back and comply with what we heard as being the general consensus that that four foot setback would meet the intent of what the City was looking for there.

What I would like to do now is basically turn the podium over to Ken Hayes who will go through a little bit and show you some graphics of how that four-foot setback was determined and how it blends and works with the unique characteristics of the site. We do think it is a unique site. The footprint is smaller than what you typically find on these corners. It has an alley on one side and University on the other so there is a three-dimensional component to how this retail needs to work and I think that is one unique attribute of this parcel that others don’t share in this Downtown. So we feel again, we would love to promote that retail synergy. We think by setting back it does draw you down Bryant Street and gives you enough of a visual access from University to promote the continuation. If we set the building back further we feel that it starts to inhibit that free flow as pedestrians get to the corner. So let me turn the microphone over to Ken and he can tell you a little bit about the building. One other note before he jumps in is we definitely will be looking for retail on this ground floor. Again, there is a possibility retail would go in on the second floor as well. That was another project goal to see if there was a way that we could expand the retail. So as the building does sit back it does have a cumulative effect on the retail because it may not just be the first floor it could be the second floor. Ken.
Mr. Ken Hayes, Applicant: Thank you Joe. Good evening Chairman Holman and Commissioners. I am with Hayes Group Architects. I would first like to thank Staff for all their help in navigating through the planning process on this. They have been just exceptional. I also want to thank the ARB for their unanimous approval of the project on June 5, I think it was.

I want to just briefly walk through sort of how we determined the findings for the Variance. I may have some diagrams here that Commissioner Keller was asking for. This was shown to the ARB. The project goal was to create a new retail/office mixed use building that really can attract like Joe said high-end retailers and office tenants in the Downtown and also serve the environmental initiative of the larger community. Since we had initiated this project we have the new LEED Ordinance in town. We had proposed a Silver project and it will still be a Silver project by ordinance now.

This is a diagram of the Bryant Street – University Avenue, the four buildings. You can see 278 here, the 310 project is located here, the Wells Fargo building is located here you can that it is setback a little bit from 310 so I suspect that it has some or maybe acknowledging that part of that is special setback. The CDC-PGF as Staff pointed out has no setback requirement in general. There again is our parcel, the 310 parcel, the parcel across the street Wells Fargo, and Restoration Hardware. The number there is the frontage on University Avenue, 60 feet for our parcel, 100, 175 feet as we go around that intersection. The seven-foot setback represents about 11 percent of our parcel width and it represents about six percent or seven percent of the parcel width here and here. Coincidentally the four-foot setback on our property represents 6.67 percent of our site width if you were to try to do a comparative that way, seven feet to 100 or four feet to 60. At 60 feet 278 in our minds is unique in that it is the smallest property at this intersection. The four other properties are between 25 percent and 67 percent greater in terms of frontage on University Avenue.

Right now there are 60 feet between the building faces and 44 feet curb-to-curb as best we can determine. With the special setback at seven feet on each side there would be 74 feet between the two façades and we believe that that starts to at some point diminish the pedestrian connection from this block to this block. It is real critical to keep pedestrians interested with storefront and with activity. Seventy-four feet is a lot different than it is now at 60 feet, however, we are proposing a 12-foot wide sidewalk, which results in 68 feet now between the two buildings if 310 University has the same.

So if we were to stand at the corner and look at a comparative view looking down Bryant Street, and this is what we showed to the ARB, we were originally at two feet when we first came to the ARB. So the project went through revision based on feedback that we received from them. So that was at two feet and you start to see the Bryant buildings beyond. Then at four feet they really come into view when you are standing on the corner. So we feel like that is a good connection down Bryant Street without trying to give priority to the Bryant Street sidewalk. There needs to be a hierarchy in my opinion between University Avenue and the ancillary cross streets.

A view coming the other way at the four-foot setback you end up with a look like this. I think this is important because it does add variety and vitality. As you are walking down Bryant Street
and we are proposing a big showroom window at that corner. So it starts to bring people into the whole pedestrian shopping experience as opposed to it being a straight line where that would not be possible. If you think about some of the most exciting shopping districts they have that variety that adds interest to the shopping experience. People can kind of stand out of the way, look in a window, or get view corridors down streets or sidewalks to windows.

The 12-foot sidewalk width was not just arbitrary. There is plenty of precedent in town. This is the original two-foot diagram we showed the ARB. This is where the building was originally at two feet back. We then revised it at four foot back resulting in a 12-foot wide sidewalk, which is consistent with other sidewalks in town. In fact, in the Urban Design Guidelines for the Downtown, I am trying to find out why the special setback is there as well and I went back to the 1992 Downtown Urban Design Plan on page 17 it emphasizes 12-foot sidewalks in the Downtown Commercial District. If you go to the El Camino Real Guidelines, I know this isn’t El Camino Real but it is the same thing, 12-foot effective sidewalk widths.

So the Variance findings under special circumstances applicable to the property and yes I think there are we are only 60 feet in width and the other properties are much greater. So the setback has a far greater impact on our property. Will the granting of the Variance effect the substantial compliance with zoning regulations? Well there is no setback required in this zone so the four foot will actually exceed the general setback requirement for the district. Is granting the Variance consistent with the Comprehensive Plan? I don’t need to read the Comprehensive Plan but the seven-foot special setback required at our property and the 310 University will add 14 feet in width between the buildings if we are at seven feet. In my opinion I already stated that I think that starts to disrupt the continuous shopping experience and it also diminishes the definition of the urban street wall. Will the granting of the Variance be injurious to other properties? I think Staff covered that already and they said no they don’t see where it would have any impact on the community or on the neighbors. So this is the project and we look forward to your comments. Thank you.

Chair Holman: Commissioners, we can ask questions of the Applicant. I note that there is not a place on the agenda for questions of the Appellant but there is a place for questions of the Applicant. What is the process the Attorney would like us to follow?

Mr. Larkin: This is probably the time to ask all of the questions. I know we have already had extensive questioning of Staff. The other option Curtis said was the Commission is free to ask questions of any of the speakers. If you wanted to ask questions of the remaining speakers and then ask questions of all of them that would be appropriate as well.

Chair Holman: Okay. Commissioners, why don’t we take questions for the Appellant first then, in the order of their speaking? Are there questions for the Appellant?

Commissioner Fineberg: I don’t know if it would be appropriate but I am wondering if there are any of our members of the public who might have been here in 1959 and if they have any recollections of that discussion if we could draw that out.
Chair Holman: I think we will get to that when we get to the speakers and we can ask questions of them at that time. Any questions for the Appellant? Seeing none are there any questions for the Applicant? I have some lights. Commissioner Tuma I believe you were first.

Commissioner Tuma: I wanted to understand, I could not see anywhere on the plans Ken, the area that currently has the brick that goes around the corner at Bryant and University.

Mr. Hayes: On the sidewalk?

Commissioner Tuma: On the sidewalk there, right. How far from the current edge of the building to the end of that brick, what is that distance? Do you know?

Mr. Hayes: I have a survey in here. So that would be to the edge of the planter then, right?

Commissioner Tuma: Right, because to the edge of the sidewalk as I understand it is currently eight feet, right?

Mr. Hayes: Right. I think that there is probably five feet there. I am guessing a little bit there but five feet between the building and the edge of the planter.

Commissioner Tuma: Okay, so it comes out to about 13 feet then total something like that?

Mr. Hayes: I am misunderstanding your questions. So from the existing building wall out to the edge of the brick, which I think, is where the tree wells are I think is five feet.

Commissioner Tuma: And to the curb?

Mr. Hayes: I would probably say that is close to 16 feet.

Commissioner Tuma: Okay, 16 feet. So if we went all the way back to seven feet then you would have 23 feet?

Mr. Hayes: If we went all the way back to seven feet, yes.

Commissioner Tuma: In your view as an architect you talked about sort of the streetscape and the feeling there. If you had 23 feet there accompanied by a 15-foot sidewalk what kind of feel does that give to the pedestrian experience there?

Mr. Hayes: Let me just defer to the Urban Design Guidelines again. I didn’t mention this in the presentation because I didn’t want to get off topic but those same design guidelines have diagrams in this book that show this corner. In fact it shows the whole block of Bryant Street and they are trying to increase the mass. It says in this area we feel like three and four story buildings should be encouraged in order to try to create sort of a heart to the Downtown that then reinforces Centennial alley as a connection to City Hall and eventually to Gogswell Park. I think there needs to be a hierarchy and the University Avenue that same dimension but turned 90 degrees is about 16 feet. So all of a sudden now you are going to have a larger signal to
peDESTrians to say hey there is something down bryant street when in fact you really want to try
to create the mass to keep university as sort of the main street and then these are ancillary streets
off of that. so i think it would be too wide. it would almost start to approach plaza size and i
don’t know what we would do in the space.

**Commissioner Tuma:** Okay, thanks.

**Chair Holman:** Commissioner Lippert.

**Commissioner Lippert:** Ken i have a similar question. when you did the schematic design on
this did you at all look at arcading or stepping back the building?

**Mr. Hayes:** Those are discussions we had at the ARB, yes.

**Commissioner Lippert:** Then also in terms of the very corner element did you look at doing
something similar at all to say 200 hamilton, which is at the corner of hamilton and emerson?

**Chair Holman:** i’m sorry to interrupt but we are not here to redesign the project. if you can
frame your question such that it has to do with whether the variance ....

**Commissioner Lippert:** I am doing that if you would allow me.

**Chair Holman:** i would appreciate that, thank you.

**Commissioner Lippert:** Where the corner has been carved away to allow for pedestrian access
under the tower element.

**Mr. Hayes:** Right, so the tower comes out to the property line but you can kind of traverse and
cross cut the corner.

**Commissioner Lippert:** Plaza ramona does the same thing.

**Mr. Hayes:** right. we had considered that and just through the process it was something that
the owners and we agreed that we wanted to keep that as actual building form so that you had
retail right there on the corner. we have doors down bryant street as well so it is most likely
going to be some multiple tenants on the ground floor where we have an entrance off of
university avenue and then another entrance down bryant street to try to get some pedestrian
activity down there. so carving out that corner started to fight that plan on trying to have
flexible ground floor retail space where we could have some multiple tenants but have distinct
locations for their entries.

**Commissioner Lippert:** i guess what it unique about the site is that you have the bulb out right at
the corner there where it does become significantly wider. did you at all at stepping back
the building as you got to centennial walk to meet the setback so that maybe you were closer at
the corner but as you move down bryant street towards centennial walk the building stepped
back to what the required setback would be?
Mr. Hayes: We didn’t look at the building stepping back at that point. We were always working with a linear façade but trying to provide enough apertures or window openings in that façade to create the texture and the ability to sort of – we were interested in seeing through the building to the alley in fact itself. So we felt like keeping the building more rectilinear on the ground floor reinforced the alley so that the alley didn’t quite open up as much to the street but also allowed us to get windows at the street and create opportunities to see throughout but we never looked at stepping the building back to respond to that setback.

Commissioner Lippert: Okay, thank you very much.

Chair Holman: Thank you Commissioner Lippert. Commissioner Keller.

Commissioner Keller: Thank you. Could you go a couple of slides back to the one where you were showing the setbacks and the parcel opposite each side? Keep on going back. That diagram, yes. So there is 60 feet, there is 74 feet. I am wondering whether that 74 feet is to scale.

Mr. Hayes: It should be.

Commissioner Keller: It looks like the green lines at 74 feet are setback beyond the lines at the parcel that says 61. Do you see the parcel that says 61, 518-520 Bryant?

Mr. Hayes: Here? I see.

Commissioner Keller: Right. I am wondering what the relationship is between that dotted green and the parcel that is labeled parcel 61.

Mr. Hayes: Let me go back to the aerial photo. The Bryant string of buildings here their property line is out here. So the property line when you look at that parcel map has nothing to do with or you can’t tell where the building is from this map. The building is here. The Bryant Street properties extend into the site, they extend past the front wall of the buildings.

Commissioner Keller: Do you have an idea of how far parcel 61 is from if you go down a few parcels from the edge further down Bryant Street?

Mr. Hayes: No, I don’t.

Commissioner Keller: How wide that width is from building on one side to building on the other side? Do you have an idea how wide that is?

Mr. Hayes: Do you mean how wide this width would be here?

Commissioner Keller: Or the width further down.

Mr. Hayes: No I didn’t measure the building there.
Commissioner Keller: I think parcel 94 is the telephone building and then there are some buildings beyond that.

Mr. Hayes: Yes the telephone building and there is an alleyway/driveway here, then there are small retail buildings here. I don’t have that here I am not sure what that distance is. I was thinking I may have a photograph but no.

Commissioner Keller: I realize if I ask you to guess you might not guess but would you guess it would be comparable to 74 feet or would you guess it would be less or more? I am just curious what you think it might be.

Mr. Hayes: I think the seven feet here probably lines up with the building façade edge here. So if it is 74 to here I am not sure what that dimension is. It is probably around 74 feet, or 70 feet probably, 70 feet because I think these step back in here. I am not convinced what happens here so I don’t want to speculate on that.

Commissioner Keller: I think what actually happens is the telephone building is recessed a certain amount.

Mr. Hayes: Then the other ones come back out.

Commissioner Keller: The ones on the other side of the alley are further.

Mr. Hayes: Probably like this one.

Commissioner Keller: Yes, there is actually the alley between 57 and 94.

Mr. Hayes: There is one here and then there is a driveway here.

Commissioner Keller: Exactly, and then when you go beyond that driveway it is recessed.

Mr. Hayes: It comes back out. Oh, recessed further or comes back out?

Commissioner Keller: I think it is recessed even further.

Mr. Hayes: To bad I cut the photograph off. I don’t know.

Commissioner Keller: Okay. Thank you.

Chair Holman: Commissioner Fineberg.

Commissioner Fineberg: Could you go back to the photograph that was the colored rendering of the corner? Yes. If you look at that and also our Diagram A03, which is the existing photographs, there is a pole with a traffic light and a street light.
Mr. Hayes: A pole, right. The streetlight?

Commissioner Fineberg: Yes the streetlight and the traffic light. So clearly that will have to stay.

Mr. Hayes: Yes.

Commissioner Fineberg: It is not reflected in the diagram. So my question for you is what will the distance be between the corner of your proposed building and that traffic pole because that is the effectively the usable width of the sidewalk.

Mr. Hayes: Probably 1.414 times four feet because it is probably a 45 degree angle. The drawings that I have here are not to scale.

Commissioner Fineberg: Is there a City standard of how far in the traffic poles go from the curb? Okay. I got head shaking no.

Mr. Hayes: It looks like it is eight feet or something like that.

Commissioner Fineberg: So it would be fair to assume then that with the building placed as you would propose the usable sidewalk unless you are walking very, very close to the street between the pole and the street, would be about eight feet.

Mr. Hayes: It might be eight to ten somewhere in that range.

Commissioner Fineberg: Okay, thank you.

Chair Holman: Vice-Chair Garber, you have no questions at this time?

Vice-Chair Garber: I do not, thank you.

Chair Holman: I have one maybe two. If you go back to the map that shows the parcel sizes Ken if you would. My question is this. Some of these buildings predate this setback, most of them do, many of them do. I am wondering if we are really looking at a bit of a mirage because, and I am wanting some perspective on this, because 281 University really is not a 75-foot parcel it is three 25-foot parcels just as the subject property is a parcel of 25 feet and 35 foot width. The same with 301, 309, and 315 that is really not a 100-foot parcel it is four 25-foot parcels. So I am just kind of wondering what the approach is or what the thinking is in terms of how we address these. If these other properties were going to redevelop would they have a similar argument say if they wanted to build something different at 309 and 315 and then say that they are 50 foot wide lots and 301 was narrower. So how do we justify and rationalize what we are saying here.

Mr. Williams: I don’t think that is a question for the Applicant it is a question for Staff. I think the difference is there is a building that covers all four of those lots in one case and all three of those lots in another case. If someone came in and was going to tear that down we would look at
that specific circumstance and not say well you have three small lots there. You can’t just
replace one of those small lots. You are replacing the whole building that is covering 75 feet of
width. So I don’t see that as being a similar circumstance to what is being done here. This is all
one connected, maybe three different businesses but one connected whole and that is even more
so. It is basically one space on those two lots.

Chair Holman: Okay. Then similarly Staff or Ken I had asked for the dimensions on or is there
any map that shows the other corner, the Waverly corner where the same setback applies. I
know it is a little bit odd because of the buildings that are on them perhaps.

Ms. French: We did not bring a map such as that. This is the Applicant’s map that looks like
this and we have this other one but it is the only one we brought.

Chair Holman: I had asked for those dimensions actually. Since the findings for a Variance
require that it is special so that is why I had asked for that.

I see no other questions for the Applicant. So we have four members of the public who would
like to speak. Our first speaker is Elaine Meyer to be followed by Bob Moss.

Ms. Elaine Meyer, Palo Alto: Good evening Chair Holman and members of the Commission.
There wasn’t a picture of the building. This is the first time I saw the building and it is a big
building. I was almost moved to tears at how tiny the building was and how this setback was just
going to create such a big problem. It is not a small building at all. It is big.

I want to speak in general about – I didn’t realize you are only allowed to speak on a very narrow
subject but I will speak about the project, about my frustration about this project in general but
first about the Variance. Setbacks matter. Setbacks matter to pedestrians. It is the only
protection a pedestrian has against an overwhelming four-story building that looms above it. For
another example of a four story building is 800 High Street wouldn’t nearly be so offensive to
the eye if it had proper setbacks. The building wouldn’t overwhelm the pedestrian as it does.
Setbacks matter a lot.

Now I want to say a couple of things about the project in general, which has been extraordinarily
frustrating to read about. When a developer asks for reduced setbacks, increased heights, other
exceptions, several Variances, exclusions from the FAR, seismic bonuses, TDRs, and Design
Enhancement Exceptions on one project something unusual is going on. It seems to me this isn’t
just an application for a building but it is also a test of how big a fool can the developer make of
the City’s zoning and planning.

Unfortunately, so far from what I have been reading it seems to be working. This project is like
a test case for the City’s zoning. The question I would pose is how far can a developer go in
making a mockery of the planning process?

When the City allows one development to exceed the zoning rules it encourages the next one to
ask for even more. By approving so may deviations from the rules the City is corrupting the
process, it is encouraging greed, and enabling more and more greed. The next thing you know a
developer might try to get one of his architects appointed to the ARB just before the project
comes up to that body, but no, that wouldn’t happen in Palo Alto would it?

If breaking the rules contributed to the production of well-designed buildings there might be an
argument for this manipulation but in fact the outcome is quite the opposite, bigger buildings are
not better designed. They are usually less attractive than smaller buildings.

The City is indebted to Lynn Chiappella for bringing this matter up to you and I personally feel
that she has done a very good job. I appreciate it.

Changing the subject, I have a small question for the Staff. I wondered why the property
owner’s name is missing from the CMR document and only the architect is given as the
proposer. Thank you.

Chair Holman: Thank you. Our next speaker is Bob Moss to be followed by Joy Ogawa.

Mr. Robert Moss, Palo Alto: Thank you Chairman Holman and Commissioners. I have a couple
of problems with this basic approach. The first one is process. The City Council specifically
adopted the section in Chapter 20 that talks about widening sidewalks Downtown. We should
not be overturning the City Council’s explicit conditions on a Variance. If we think the
conditions have changed then you should go back to the Council, talk about it intelligently, and
decide what you want to do.

Let me tell you what the reasons were. We have a problem. Staff, Planning Commission, and
City Council have almost no institutional memory for what happened in this town 30 or 40 years
ago. So we have to depend on yo-yos like me.

Let me tell you why that was put in. Thirty-five years ago if you walked into the Downtown
Palo Alto at six or seven o’clock at night it was vacant. You could shoot a cannon down the
street. There would be nobody there. Everyone was shopping at Stanford Shopping Center. The
City was desperate to do something to improve Downtown’s vitality. So what they wanted to do
was widen the sidewalks but not on University, the main street, but on the side streets in order to
make them more pedestrian attractive and to allow tables for example for restaurants. They also
wanted to have space for benches, planters, and other furniture. Again, in order to do that they
needed a wider sidewalk. That is why the sidewalks were widened at Waverley and at Bryant.
The bulbs that were put in were done later. They were not done to make it easier and safer for
pedestrians to cross the street. There has never been a problem with pedestrians being able to get
across Bryant or Waverley or University safely. It was done as a bulb out in order to provide
space because the sidewalks had not been widened because the buildings had not been torn down
so they could put in those amenities like the benches and the planters.

When you talk about the need for a Variance Commissioner Keller asked if this was unique.
Look at Attachment C. I scaled those. The property at 403 and 405 University, the property at
396 University, 383 University, and the single lot at 301 University are all 55 to 60 feet wide.
There are eight properties on these two corners, which are impacted by the requirement for
setbacks. Four of those eight are the same width or narrower than this one. If you look at the
actual map over here the lot, which is 55 feet wide, is the one, which existed, there was no
building that covered all of those lots at the time that the requirement was put in by the City
Council. What happened was somebody bought the lots, didn’t combine them, and built a
building across them. If you talk about lot size it is 55 feet. So this is not a unique property.
This is not a unique lot width. It is common to the properties on those four corners.

The application talks about how it is grandfathered in so they can have the setbacks, which
existed previously. If you look at 1818.120 if you are going to cry out that I want it to be
grandfathered it explicitly stated ‘shall not result in increased floor area.’ So you can’t have the
third and fourth floor if you are going to say I have to have it grandfathered in in order to have
the setbacks, which exist today.

There is also talk about how we are going to get a bonus for upgrading for seismic and safety.
You are not upgrading for seismic safety when you tear the building down. Other buildings
which have been upgraded for seismic safety where they actually reinforced the building they
have taken the 25 percent bonus and sold it to somebody else who is going to be building in the
Downtown area. There are all kinds of concern that if you have additional setback that you
won’t be able to make it viable for retail. That is nonsense. You can walk all the way down
Downtown and see buildings that are setback farther than this that are retail that are quite viable
and do quite well like the property on lot 61, which is setback.

So you do not have to approve the Variance in order to preserve some entitlement or some
requirement for viability of this building. It is inappropriate to do it without having the Council
look at the entire issue.

Chair Holman: Thank you. Joy Ogawa to be followed by our final speaker Herb Borock.

Ms. Joy Ogawa, Palo Alto: I also want to thank Lynn Chiapella for bringing this appeal forward
and anybody who helped Lynn bring the appeal forward. I really think this issue provided an
important public service and has helped preserve the public’s legal options in this particular
project application.

My first question is since when has the height of a building exceeding 50 feet been the subject of
a Design Enhancement Exception and not requiring a Variance? Design Enhancement
Exceptions are supposed to be for minor exceptions to the zoning regulations. It states it right
there in DEE regulations. A 55-foot high building is simply not a minor exception. It just
annoys me that Staff would consider this to be a minor exception. I am afraid that this is going
to turn into a prime example of why we cannot trust Staff to make decisions or determinations on
what is or is not a minor exception. Sometimes I feel like I just don’t understand. It is surreal to
me that Palo Alto is turning into George Orwell’s Animal Farm or something.

I understand that Staff has admonished you not to consider or comment on DEEs but I hope that
you are able to comment to Staff that exceeding the 50-foot height limit is not a minor exception
and it should definitely be the subject of a Variance in the future.
Comprehensive Plan policies, I just want to mention that the Comprehensive Plan is full of programs and policies talking about pedestrian friendly and I highlighted some of those that pertain to Downtown. I will point out Program L-18 that talks about widening sidewalks. Policy L-23 that talks about limiting project size, limiting height and floor area to encourage preservation, etc. Policy L-24 that says, ensure that University Avenue Downtown is pedestrian friendly and supports bicycle use and creating an environment that is inviting to pedestrians. So there is plenty of stuff in there reinforcing this pedestrian friendly thing and I really don’t understand how you can spin it. No matter how you spin it the Variance would diminish the sidewalk widening policies that are goals of the Comprehensive Plan and it would diminish it to less than what the seven-foot setback would provide. So I really don’t understand how you can make findings that this Variance would be consistent with the Comprehensive Plan.

Next, Staff has conveniently provided a copy of Chapter 20.08 of the Municipal Code regarding setback lines. I am reading this and it says 20.08.030 buildings between street line and setback line prohibited. It shall be unlawful for any person, firm, or corporation to erect or locate any building or structure within the space between the street line and setback line. It shall be unlawful. So it seems to me that the Variance is basically saying okay, you can go ahead and do something that the code says is unlawful. I don’t think so. To me, it is very clear and I would think that a court of law would think it is very clear that it is just not something that the City can do to say that you can do something that the code says is unlawful.

Finally, I guess I want to respond to Mr. Hayes’ comment that you don’t want to divert people down Bryant as though there was something down Bryant. There is something down Bryant, City Hall is down Bryant. The Downtown Library is down Bryant. Heritage Park is down Bryant. Hopefully soon the Palo Alto Museum will be down Bryant. Don’t we want to encourage people to walk to the Palo Alto Museum? It seems to me there are important things down Bryant and I don’t think it is a matter of diverting people from University. I think is providing an inviting pedestrian friendly way to get to other things and important buildings.

Thank you.

Chair Holman: Thank you and our final speaker is Herb Borock.

Mr. Herb Borock, Palo Alto: Good evening Chair Holman and Commissioners. I support the appeal. A Variance is supposed to serve a purpose for properties that have something special about them and that are different from others. You have the Special Setback Map of Downtown that shows a large number of properties with the seven-foot setbacks so there is nothing special about this property.

The question that Joy Ogawa just raised about the subdivision code, Title 18 Zoning Ordinance provides a way of getting Variances to the zoning code. It doesn’t provide a way of getting Variances to the subdivision code. When you file a subdivision map is the way of getting exceptions to that. The Variance process has nothing to do with the section of the Title 20 subdivision ordinance that was cited by the previous speaker.

Some of you may say that people have been getting Variances for those things for a long time. The best I can do is paraphrase Senator Sam Irvine from the Watergate hearings that just because
people have been getting away with murder and larceny doesn’t make murder meritorious or
larceny legal. When someone wants to challenge something they can still do it. The fact that it
is violating the law before doesn’t enable you to do it again.

Another reason why you don’t need a Variance is that the current project has a 6,000 square foot
basement so you clearly could build floor area in the basement instead of building it above
ground. It is not a valid reason to create a Variance so after the building square footage is all
built above ground Roxy Rapp can cheat and rent space in the basement, which is what I think he
would do. This is the first time in the current regime an advice that you get from the City
Attorney’s Office that restricts you as to what you can consider and does the same thing with the
ARB. Previous City Attorney Staff who appeared to staff the Planning and Transportation
Commission and its predecessor the Planning Commission never did that. You didn’t hear that
from Marlene Prendergast and Sandy Sloan when they were job sharing. You didn’t hear that
from Sue Case, you didn’t hear that from Wynn Furth all land use experts. The purview is rather
wide.

There was kind of a silly diagram put up by the Applicant showing you how the width between
buildings would change based upon the setback. Well that was in effect the pedestrian crossing
the street and it doesn’t matter how far apart the buildings are or how wide the right-of-way is it
is how wide the street is and the width of the street is not changing. What would be the
difference is how wide a sidewalk would be for a pedestrian to traverse it and the wider width
would be better.

In terms of the history of the setback map and changes to the setback map prior to the changes in
the Zoning Ordinance four years ago you used to get different kinds of Staff Reports. You
would get a history of a property that would cover these things. The City Manager directed the
Planning Department that what you simply get is a report telling you what your choices were.
The kinds of analysis that the Planning Commission regularly got from Planning Staff is no
longer rewarded by City Management. I don’t know whether the new City Manager will be
different but clearly needs support and direction from the City Council to restore things to the
way they used to be.

In summary, this is a symptom of what has been going on and it is rare when there is a challenge
that is followed through because of the time, energy, and mostly cost in taking something to
court. As Harold Hobach has learned, and as the Palo Alto Golf and Country Club, when there
are people with the resources to challenge something the City’s advice to the Council and this
Commission turned out to be wrong.

Chair Holman: Thank you. Our next thing to address is we have an Applicant who has three
minutes for closing comments and an Appellant who then has three minutes for closing
comments.

Mr. Martignetti: Chair Holman in view of the time I think we will pass and just ask for your
support on the Staff recommended Variance. Thank you.

Chair Holman: The Appellant, you have three minutes.
Ms. Chiapella: It is getting late and I am getting tired and discombobulated. I want to thank the
speakers for coming out tonight bringing up points that I wasn’t very clear on. I did want to
mention that I did try to go through the zoning code and then also the chapters in the PAMC and
there is Chapter 22. It appeared to me that in Chapter 22 when you needed to build into the
special setbacks they actually had a specific ordinance that said that there was a change to that
setback so that whatever could be either built into the setback or the setback was just plain
changed through Chapter 22 rather than through a Variance process of Chapter 18. I think that is
something that the City Attorney needs to take a look at. It is very difficult for residents who
don’t have access to all of this information or who get it piecemeal to actually make sense of
what is going on. I did try to call and find out more information. It has been a nightmare I have
to tell you. One code led to another code led to another code led to another code led to another
chapter and trying to make heads or tails of any of it was really a nightmare. I know I am getting
old. I am not as sharp as I used to be, but it was a nightmare to try to figure this thing out. So I
would suggest that maybe that would be an avenue to look at down the road when you get more
of these requests. So I think what you have here is basically a clear choice between, I don’t
know what the right word is, I will just say for the two visions, two different ideas of what
should be done. I think you just have to choose what you think is going to be the best and also
what you think meets the code and the intent of these districts. Thank you.

Chair Holman: Thank you. I think there are a couple of questions for Staff. Commissioner
Sandas.

Commissioner Sandas: Thanks. Based on some of the comments I heard I have a couple of
questions for you. I hope the Applicant’s ear is open too because they might be able to help you
answer this question if you can’t answer it directly. Back when we were reviewing Alma Plaza,
and I will try to make this brief, there was the question of retail on the second floor of the
grocery store building or the commercial buildings there. It was determined at that time that
heck no, no second story retail it doesn’t make a lot of sense. So when I was looking at this
application and then also looking at the height of the building I noticed that the building height is
55 feet to accommodate two floors of retail. Bearing in mind that second floor retail over at
Alma Plaza wasn’t a good idea I would like to know if second floor retail a) is a good idea in the
Downtown, and b) if second floor retail isn’t such a good idea will the overall height of the
building be reduced by the number of feet because I think the understanding is that retail calls for
a little bit higher of a ceiling. So if that second story isn’t retail will the ceiling height come
down and therefore will the height of the building come down? I have one more question after
that.

Mr. Williams: If the second floor is not intended to be retail then my guess is they could bring
the height of the second floor and the overall height of the building down. To answer the
question, the Applicant can answer as far as the economics in this case. I think the feasibility of
doing second floor retail if it is one business on both floors, you have seen clothing stores like a
GAP or something like that that will be two stories. What we were looking at in Alma Plaza
probably was a grocery store. If it is not a two-story grocery store, which you do see some of,
Draeger’s and things like that, then it is pretty unlikely somebody is going to go upstairs or up an
elevator to go to an entirely different establishment. If you are in it and it just happens to be two
floors of clothing or food or whatever then it might be feasible and it is feasible in some
locations. So I am guessing and they can tell us whether it is true or not that they are looking at
one retailer that would be on those two floors. We have also had another request elsewhere in
Downtown that potentially could become something like that where it would be two stories of
retail.

**Commissioner Sandas:** Okay, that makes sense to me. That cleared it up in my head. Then the
second question I have for Staff is I am still a little confused about when the seven-foot setback
requirement was adopted. I know you were digging and digging and couldn’t find anything.

**Mr. Williams:** Well, in the code it shows the special setback section being adopted in 1959.
When the Downtown special setback was imposed whether it was at that point or later there is
another date of 1984 on there too. So we are not sure which one. I looked back and didn’t get
those specific ordinances to see. There were a number of others that also affected it. So we are
not sure when. It was some time ago but whether it was with the original 1959 or not I don’t
know.

I also did want to clarify that there was suggestion about the fact that this is Title 20 where the
special setbacks are and it was referenced I think by one of the speakers as a subdivision
ordinance and it is not the subdivision ordinance number one. Number two, the Variance
provisions in the zoning code specifically say that a Variance may be granted from the
provisions of Title 20 relative to special setbacks. So it is in the zoning code that Variances may
be granted from this specific title.

**Mr. Larkin:** To elaborate Title 20 also references the zoning code as being applicable. So there
is a reference in Title 20 that allows for Variances from those. While I am elaborating on that I
was asked to just point out on the agenda it is not entirely clear that this is quasi-judicial. So in
case it is not entirely clear to the Commissioners this is a quasi-judicial matter.

**Commissioner Sandas:** I noticed that on the agenda too. I was looking for that thing that comes
after the asterisk. Okay, back to that Title 20 business. In our process of updating the Zoning
Ordinance is that something that gets updated? I noticed we haven’t gotten into that high of a
number of 20 so is that something?

**Mr. Williams:** That is an entirely different Title of the code. As we were mentioning before to
go through and specifically go through all the special setbacks in the city is quite a task. Even
just doing the Downtown ones it is pretty site specific or street specific. A lot of the residential
collectors and arterials have special setbacks along them but they differ depending on which one
you are on.

**Commissioner Sandas:** Thanks.

**Chair Holman:** Commissioner Tuma, do you have questions?
Commissioner Tuma: I do. I have two questions for Staff. The first one is in the Downtown Central Business District on the streets that run perpendicular to University how common is it to have a sidewalk wider than 12 feet? Do you know?

Mr. Williams: I don’t know if Russ knows better than I but just imagining them I think it is very uncommon to wider than that. I don’t think it is wider or much wider down Bryant either because the curb comes back.

Commissioner Tuma: Right.

Mr. Williams: It is not like the sidewalks on those go out as far as the sidewalks up at the corner at University.

Commissioner Tuma: Right but what I am saying is if we were to go all the way back to the seven-foot setback we would have a 15-foot wide sidewalk even beyond the bulb out, correct?

Mr. Williams: Right.

Commissioner Tuma: Okay. The second question is do we know who owns parcel 59?

Mr. Williams: You mean the one right next to this one?

Mr. Martignetti: NGJ Associates, Jim Patrick.

Commissioner Tuma: Maybe this is another question for you Ken. Is there any business relationship between that owner and the owner of parcel 60 that you are aware of?

Chair Holman: If you could clarify the relevance, Commissioner Tuma, to the Variance.

Commissioner Tuma: The relevance has to go to the point you were making earlier which has to do with the size of the various parcels, 25 feet, 25 feet, 25 feet. For example where the Wells Fargo building is I am just wondering whether this is really three 25-foot parcels plus a 35-foot parcel under the same ownership or whether it is separate.

Chair Holman: I appreciate that. Thank you.

Mr. Hayes: They are completely different owners. There is no relationship between the two owners of the parcels there. The only thing that we have talked to Mr. Patrick about doing is there is a strip of land between parcel 59 and parcel 60. Once this building is torn down on parcel 60 there is an agreement with parcel 59 to buy that eight and one-quarter inches by 100 feet, which I think is described in your report as well, but there is no common ownership between those two parcels.

Commissioner Tuma: Okay, great. Thank you.

Chair Holman: Commissioner Keller, questions.
Commissioner Keller: The first question is with respect to Section 18.18.070(a)(2), which is floor area bonuses, available floor area bonuses, seismic rehabilitation bonus, which is something that I think is being applied to this parcel. I am specifically reading the last sentence in the paragraph. For those of you it happens to be somewhere in this thing which is where I am getting it from. There is something labeled Attachment D but I think it is Attachment D of something. This sentence says, such increase in floor area shall not be permitted for buildings that exceed an FAR of 3.0:1 in the CD-C sub-district. This is the CD-C sub-district. I notice that what we have here is a floor area ratio of 3.0 plus various bonuses and exceptions. So could you tell me with the various bonuses and exceptions what the compliance is with respect to the seismic rehabilitation bonus?

Mr. Williams: It is 3.0:1 is what is proposed with the bonuses in place. Just to ask a question of the Chair, I thought the process was going to be deliberation specifically on the Variance and then discussing other ancillary issues.

Commissioner Keller: Okay. The next question is with respect to 20.08.030 and it states that or there was a claim by one of the speakers. This thing was attached to the response to me for people who want to find a copy of it. It says it shall be unlawful for any person, firm, or corporation to erect or locate any building or structure within the space between the street line and the setback line. I am wondering the interpretation of that with respect to the ability to put Variances that apply to this section.

Mr. Larkin: Both Title 20 and the zoning code allow for Variances from those provisions.

Commissioner Keller: So is there a Variance section that is part of Chapter 20 or are we relying on the Variance section that is part of Chapter 18?

Mr. Larkin: There is a Variance section in Title 20 that references the Variance section in Title 18.

Commissioner Keller: Because the Variance section in Chapter 18 on 18.76.030(b)(3) refers to the requirements of Title 20 Precise Plans. So I am trying to understand. This section’s setback lines I think do not apply to Precise Plans.

Mr. Larkin: Precise Plans is the name of Title 20.

Commissioner Keller: Of all of Title 20?

Mr. Larkin: All of Title 20 is titled Precise Plans.

Commissioner Keller: Okay, thank you that is helpful. So setback lines are part of Precise Plans. Thank you.

Mr. Larkin: These special setback lines are part of Precise Plans.
Commissioner Keller: Thank you. The last question I am going to ask here at this point, I may have some more later, is with respect to build to lines. One of the things I have been understanding about this notion of formed based code is this idea of build to lines. There is a notion that you want the various buildings to be in some sense have a consistent frontage, in other words, the front of the buildings to line up. I am wondering since that seems to be where we have been heading what the relationship is with respect to build to lines whether it is desirable for the parcel in question to be built to the lines that are associated with the parcels across the alley, let’s label this parcel 61 on the screen.

Mr. Williams: The intent of the build to lines is not for a precise line but it is to bring buildings generally up to the sidewalk so that from a pedestrian standpoint there is a pedestrian orientation to the buildings. So it wouldn’t be good to have them staggered like ten feet back and then right up to the front and that kind of thing. So you need to have some sort of consistency. In this case, we are talking about going across an alley and back three more feet and then you have a consistent line there. So I think it is very much in line with the intent of build to lines. On both Bryant Street and on University you have essentially the structures built up to the sidewalk and oriented toward the pedestrian along the sidewalk but I don’t think there is an expectation that build to lines are going to give you a street where every building is at the same distance back. In fact, what we did in the zoning code for all the commercial districts was had essentially a range in the build to lines like zero to five or zero to ten feet and left it to the Architectural Review Board in its review to determine what the right configuration is there. In some cases they may be very consistent and in some it may be appropriate to have a little bit of relief or stagger or something like that. So it is a design question that is best answered in the design of the specific site in terms of the ARB’s review. We don’t want to get too far off again we are not trying to get ten feet or 20 feet back with one building and the next one being right up front. We want to have some level of consistency but three feet is not a major difference especially when there is an alley that breaks that line in between.

Commissioner Keller: Considering your answer perhaps this is a good point to ask the Chair of the ARB for her opinion, if that is okay, of ARB’s rational for whether or not it made sense to have or what the tradeoff was in terms of the sidewalk width versus a consistent build to line with the adjacent properties on Bryant Street. Thank you.

Clare Malone Pritchard, Chair, Architectural Review Board: The ARB did take a look at the building in a preliminary review before the formal application came to us. As the Applicant stated at that point they were showing the building only with a two-foot setback. So there was a great deal of discussion as to what the appropriate setback should be in that location. We did discuss the seven-foot special setback and tried to ascertain what the reason was for it. We were not successful in doing that. So what we looked at to determine what an appropriate setback might be was what the other setbacks were of the buildings further down Bryant Street and whether or not there would be a good visible view from University Avenue to those buildings, and whether that felt like a comfortable sidewalk width. So it was our determination that the 12-foot sidewalk width that results from the setback they are requesting was an appropriate sidewalk width and also provided an appropriate amount of view down Bryant Street.
Commissioner Keller: So if I may follow up on that. Considering that your design criterion was that what made sense was to have an effective 12-foot sidewalk beyond the bulb out and it did not make as much sense to have a wider setback does that mean in some sense that for the other eight parcels in the general vicinity that we have talked about at Bryant Street and at Waverley that the similar rule applies and you would think that a four foot setback to get an effective sidewalk width of 12 would make sense and that maybe it makes sense to amend the ordinance requiring a seven-foot setback?

Ms. Pritchard: I couldn’t answer that as a representative of the Board. If you want my personal opinion I can give you that but the Board did not discuss that.

Commissioner Keller: Okay. You did do that with respect to 310 University.

Ms. Pritchard: We did it with respect to 278 University. We considered 310 University under different circumstances.

Commissioner Keller: There was an ARB review of 310 University, is that correct?

Ms. Pritchard: There was, yes.

Commissioner Keller: You could have as part of ARB required a seven-foot setback.

Ms. Pritchard: No, actually they were allowed to build out to their current building line.

Commissioner Keller: But you did get a four-foot setback there?

Ms. Pritchard: We did end up with a four-foot setback but we did not specifically require a four-foot setback. That is how the project was presented to us.

Commissioner Keller: Okay, thank you.

Chair Holman: Commissioner Fineberg, questions.

Commissioner Fineberg: My question was answered.

Mr. Larkin: Before we go on just for the sake of the Staff that is here for the third item this is the time of the meeting when the Commission needs to make a decision whether or not it thinks it will get to the second and third items on the agenda.

Chair Holman: I believe we will at least get to two if not to three. Three is an initiation so we may well get to three as well. What is the sense of the Commission? Do you think we will get to all three? This end of the dais?

Vice-Chair Garber: I would say we should be able to get through two relatively easily, and three if we stick just to the recognition that this is the initiation of action and don’t have much discussion about it specifically I think we can get through it.
Chair Holman: So if Commissioners will adhere to that we will complete the agenda this evening? Commissioner Sandas confirms she can do that. Commissioner Sandas, do you have questions?

Commissioner Sandas: No.

Chair Holman: Commissioner Tuma, do you have questions? Commissioner Lippert, do you have questions?

Commissioner Lippert: I just wanted to thank the City Attorney for reminding me that this is quasi-judicial and I was contacted by the property owner, Roxy Rapp, and I did not enter into a discussion with him on the project.

Chair Holman: Vice-Chair Garber has no questions. I have just a couple. One is the visibility down Bryant Street, I am sorry I didn’t ask this ahead of time, 518 Bryant and that set of buildings I believe those are historic so that those frontages will not be moving closer to the street. Can Staff confirm or not?

Ms. French: Is 518 the old school?

Chair Holman: No, 518 is on the same side of the street as this project. It is the retail shops there. I believe those are Berg Clark historic buildings.

Mr. Reich: Are you talking about the Bill Stenkovic buildings?

Chair Holman: No, well immediately to the south is that?

Mr. Reich: Yes, right adjacent to the alley.

Chair Holman: Okay, yes. Are those? This speaks to the visibility and the Variance going down the street.

Mr. Reich: The question is are they historic?

Chair Holman: Yes.

Mr. Reich: I don’t know.

Chair Holman: The reason I am asking the question is because if there is any anticipation that those buildings might at some point be developed and closer to the street then there would be no harm no foul for this building to be less than the seven-foot setback. That is the purpose of the question.

Mr. Reich: We don’t anticipate that they will be rehabilitated.
Chair Holman: I’m sorry?

Mr. Reich: We don’t anticipate that they will be torn down in the near future.

Mr. Williams: The Applicant indicates that those are historic.

Chair Holman: So they would not be. Near future is not the answer I am looking for. It is will they or won’t they potentially. Okay. So that helps to answer that question.

One other question is I am a little bit confused about the larger concern of Staff was the 11 percent if full compliance to the setback. The loss of square footage for the parcel but then there are other exemptions granted that essentially provide more square footage that would more than make up for that. So I am a little bit confused how that was the concern.

Mr. Williams: Well, those things worked out given that they did not go to seven feet back and they were at six and a half or seven percent of the lot set aside. If they had gone to the seven feet I think that would be very constraining on it which isn’t to say there couldn’t be some way to make it happen but you are looking at further exceptions or forcing use of the basement, which particularly from a retail standpoint might be undesirable. So it is just a sort of more mathematical thing of how much of the site is being given away to a setback.

Chair Holman: Thank you for the clarification. Commissioner Lippert do you have questions? No, okay. So we are ready for comments. Commissioner Sandas.

MOTION

Commissioner Sandas: I am ready to make a motion. We can entertain comments from there. I move that the Planning and Transportation Commission recommend that the City Council approve the Variance request for a three-foot encroachment into the Bryant Street Special Setback for the project located at 278 University Avenue.

SECOND

Commissioner Tuma: Second.

Chair Holman: Commissioner Tuma, was that you that seconded? Commissioner Sandas would you care to speak to your second?

Commissioner Sandas: I would. After reading this and thinking about this and listening to the public comment I find that I believe that this is an improvement, a great improvement upon what is there. While it is not perfection it is progress. First of all, pedestrians get four additional feet for walking. I have been in the existing building many, many times and I know the space in that building isn’t planned optimally and certainly not by today’s standards anyway. The open visual space from pushing that building back four feet going south on Bryant draws pedestrians. There are interesting businesses that are on Bryant Street and I think that this will benefit them particularly since the building is going to have windows on the Bryant Street side and apparently
it sounds like a big door opening into a retail business. The City will benefit from the greater retail sales tax revenue, the Downtown will be more interesting, and the Downtown will get a more useful building out this. I believe that the arguments in favor of granting the Variance are sensible and compelling.

One of the things that I also want to point out is I was thinking a lot about how retailers now seem to require a higher ceiling. It made me realize that we have come a long way in the last 100 years or 150 years from shopping in dark, narrow, 25-foot wide establishments. We don’t do that anymore. We are not shopping in dark, narrow, hardware stores. We are in a different era. It just made me think about when the seven-foot setback requirement was put in place our design standards were way different. Think about the 1950s and 1960s and the super-block and the suburbs and we are moving away from that now. Our standards in this era are different. What happened when the seven-foot special setback was ordained, if in fact it was, in those days some of those design standards proved not to work and we don’t use them now. So I see that the design reasons for the four-foot setback Variance encroachment three feet into the setback makes sense for what we are trying to accomplish today in drawing people into our vibrant Downtown.

Chair Holman: I realize I have two questions for the City Attorney. One is a confirmation. In making the motion and voting on the motion that Commission needs to make the findings not have an opinion about whether this is a good project or not. So we need to literally legally make the findings.

Mr. Larkin: Yes, by adopting Staff recommendation you are making those findings. I don’t think they need to be necessarily spelled out because that is in the Staff recommendation it is in the Record of Land Use Action that would go with it.

Chair Holman: So for clarity going forward, anyone speaking for or against the motion then should state whether they agree with the findings that Staff has made and that will make sure that we are all on the same page.

Commissioner Sandas: So in that case to reiterate I said the arguments in favor and I meant to say the findings in favor of granting the Variance are sensible and compelling.

Chair Holman: Thank you for that clarification. Commissioner Tuma.

Commissioner Tuma: I would associate myself with the comments from the maker of the motion. Additionally I do find specifically with respect to the Variance findings that there are special circumstances applicable to this property in that the size of the property and the location vis-a-vis other properties I believe that requiring the entire setback would unnecessarily hamper this particular property. Additionally I do not think that it impacts the compliance with the regulations or that it is a grant of special privileges with respect to other properties in the area that do enjoy the ability to provide this type of space and still provide a reasonable pedestrian experience. With respect to the finding of granting of the application being consistent with the Comprehensive Plan I do find that it is consistent with the Comprehensive Plan for the reasons that Staff has stated. Additionally in my view it would not be injurious to the property or improvements to the vicinity would not be detrimental to the public safety, health, and general
welfare convenience. In fact, quite to the contrary I think it would substantially increase the
public welfare and experience in the district.

I say all of this and I am supportive of the motion because what we are talking about tonight is
with respect to the Variance and what the Variance does. I am not going to get into a discussion
about the other aspects and I don’t want in any way for support of the motion to be referenced
dealing with those issues.

*Chair Holman:* That actually was the second question that I had for the City Attorney that I
didn’t follow up on. We are going to make recommendation on the Variance there are other
comments that I know Commissioners have so unusually might we vote on the Variance and
then make our comments before we close this item on the other aspects of this project as
previously discussed?

*Mr. Larkin:* It could either be done at the end of the item or at the end of the meeting. The end
of the item might be appropriate if that is the Chair’s desire.

*Chair Holman:* I think during this item would be a cohesive way to address it and would inform
Applicant and Appellant of our concerns. Commissioner Lippert you are next.

*Commissioner Lippert:* I am in support of the motion. I agree with the comments of my fellow
Commissioners. I come at it from a different point of view and I think part of it is good urban
design or planning principles.

First of all I just want to say that at the time that this special setback was enacted I would say that
it really wasn’t pedestrian oriented. I believe that it was auto centric in which it was actually
looking at Bryant Street as being perhaps a grand auto boulevard or cross-connector of
University Avenue. In fact, this existed prior to the bulb outs that this went into place. It could
very well be meant to eliminate all parking along Bryant Street and the widening of Bryant with
maintaining the sidewalks and thereby making it possibly two lanes of traffic in each direction.
Now I am just reading into this but I would urge Staff to continue to find what the City Council’s
reasoning behind these special setbacks were at the time. I am sure that is embodied in the
planning principles that were in effect back in 1959, which were really based on automobiles.

What this proposal seeks to do are a couple of things. Number one, it does widen the sidewalk
there and right now I think probably the thing that is the most disconcerting to me is the fact that
you come around the corner, you are drawn around the corner by these storefronts, and you are
confronted by a wall. In fact, if Walgreen’s was still on the corner across the street you walk
along that and you are confronted by not activity going on in these stores but display windows
which are also a wall. If you go across the street to Restoration Hardware again you are
assaulted by another wall. If you go across the street to the Well Fargo building well, even
though it is glass again you are assaulted by the fact that they have been frosted over and there
are blinds there and they have pushed walk workstations up against the windows. So again you
are assaulted by a wall.
What this building seeks to do is to actually create a pedestrian experience. That is it draws you around the corner, invites you down Bryant Street, it doesn’t reveal everything along Bryant Street although it makes it a much more pleasurable experience, and then it draws you around the corner again and down Centennial Walk. That is what architecture is all about.

So with the constraint that this is a narrower parcel than the other ones on the other corners where the setback applies I would allow or permit a Variance here where I might not be as inclined to do so for the other three corners. What also happens is that the height of this building by building a volume on a corner does what in good planning principles is it adds a piece of punctuation at the corner. What that also does is it defines place, it defines locale, it gives pedestrians a sense of place, and a way to identify where they are in the city. So with that I support the Variance and will vote in support of the motion.

Chair Holman: Vice-Chair Garber.

Vice-Chair Garber: I support the motion. I support the Staff’s recommendation. Although I could support it for the reasons that the maker and the seconder have stated relative to the findings I actually have a slightly different reason for supporting that. I find myself in alignment with the high points of the letter of July 8 from the attorney, Sandy Sloan. If I am understanding it in my brief read essentially if the DEEs were not being requested we would not be here tonight in that the Applicant has the opportunity to place the building wherever they would like within their property with the exception of the requirements that were created by the ARB, which I therefore support and would hold to their recommendations.

What is Orwellian is not the Staff’s inability to find fault with an applicant’s submittal what is Orwellian is the fact that the way that the code and the law reads is that we are not allowed to talk about the content of the DEEs but we are then asked to revisit a Variance that wasn’t there in the first place. So in that particular case my take is fairly mechanical. Items number one and two in the Variance essentially are moot. That all said I would like to thank the Appellant, Lynn Chiapella, for bringing this to our attention because I think her very sensitive presentation this evening is well taken although I think that the comments have less to do with the building than it does about our approach to planning and the way that our zoning and Comprehensive Plan and the law is structured. I am not surprised by her confusion and the amount of time that it takes to get through this stuff. I have the same issues. Most of us do. There are people that have spent a good portion of their lives trying to understand these things and it ain’t easy. I think it raises some very good points that are worth discussing. Should building heights that exist on University Avenue be allowed to exceed 50 feet? If you like I am happy to summarize those later.

Chair Holman: Yes, let’s summarize those later, please.

Vice-Chair Garber: So I will then conclude that and pick up with my comments later then. So I do support the motion, thank you.

Chair Holman: Commissioner Keller.
Commissioner Keller: Well, I realize since we have already had four Commissioners who are indicating themselves in favor of this motion that I will be on the losing end of this motion. However, I believe that I cannot find this proposal that the first finding regarding special circumstances applicable to the subject property applies to this particular parcel. The reason is that there are eight parcels that are in consideration here not just this parcel and these four corners. As I am looking at the map that was provided of the special setback frontages for the Downtown area map it appears that three of the parcels on the corners of Waverley and University which are similarly subject to the same thing. There are eight parcels here not just four. Three of those are subject to the same constraint the fourth being the United Bank I think it is. That one looks like it has a larger frontage on University Avenue but the other three parcels on Waverley, there is the sofa store, there is the building on the corner where the Taxi’s Burgers is, and there is the other one kitty-corner from Taxi’s Burgers and I forget what is over there, Chico’s thank you. Those three seem to be relatively similar or smaller in their frontage on University Avenue than the subject property has. Therefore of the eight parcels in question subject to this rule four of them have this circumstance and that to me does not make this a special circumstance when half of the parcels subject to this rule have this circumstance. So I cannot make that finding in this particular case.

I believe that the reason for the special setback of seven feet for these particular eight parcels is as I alluded to earlier in my questioning to Staff is that these parcels stick out. The fronts of the parcels stick out on the cross streets in comparison to the adjacent parcels further in from the street. My divining is that it may not have been for cars or whatever but it was in order to provide even build to lines so that all the buildings would line up as they got redeveloped.

I do point out that even if Vice-Chair Garber were correct that there was no Variance that would apply here nonetheless because there are DEEs that apply the Appellant would nonetheless still have a right to make that appeal in this particular case. So I just wanted to point that out.

I will have comments later about the applicability of DEEs versus Variances after this item is voted.

Chair Holman: Commissioner Fineberg, comments.

Commissioner Fineberg: I too find myself in a position of knowing that I will be on the minority side or possibly be on the minority side of this decision or recommendation to Council. I cannot find that the requirements to recommend Staff’s approval of the Variance are present. The findings simply are not present. I would echo all of Commissioner Keller’s comments.

I agree absolutely with his comments about the special circumstances do not exist that it doesn’t present an undue hardship. I agree with the logic of how he arrives at that but I also come to the same conclusion in a different way. Saying that the small size of the parcel causes an undue hardship it just on its face is completely illogical. If there are uneven and differing lot sizes in an area then by definition half of the parcels in that area will be smaller than the majority of the parcels in that area. So any parcel that is then smaller than the majority, half of them, would have an undue hardship, which means half of those parcels shouldn’t have the setback requirement applying to them. So how on earth do you apply standard criteria? How do you
apply your setback? How do you apply the ordinances if you can’t to half of the properties? So I just don’t find that as a compelling reason that there is an undue hardship.

I do believe that granting the Variance would be a special privilege to the Applicant. I find that it would be injurious to the experience of the pedestrians and the adjacent businesses continuing down Bryant Street. I believe it would be a capricious application of the special setbacks based on what was described earlier as the comfort of current ARB with a 12-foot sidewalk rather than a uniform application of our setback. I think it is significant that the only reason that we are here tonight discussing this is because the Applicant chose to encroach in the setback, which triggered the Variance. It is the Applicant’s choice not to build in that area or to build in that area. Because they are choosing to build in that area we then have the responsibility to make a decision on only one part of this property. Our purview only goes to the side face of that property. I think it is important that it shows what I consider, if I can echo Commissioner Garber’s comments, an absolutely Orwellian process that we are reviewing – if you think of it in terms of a box, the building as a box, and it has six dimensions. ARB’s purview as the up and down direction and the front to back direction and our purview is the left direction, the side-to-side direction on one side. It is Orwellian that we can’t discuss five of the six dimensions. We get one of them.

Chair Holman: If you could save those comments.

Commissioner Fineberg: Well, I am not saying whether they are right or wrong I am just saying....

Chair Holman: I understand but those will be comments not having to do with the Variance.

Commissioner Fineberg: So I just cannot see that any of the required findings are present.

Chair Holman: First off I will close the public comments. Second, this one is a bit of a struggle regarding the Variance but ultimately where I come down is I agree with many of the comments that Vice-Chair Garber made, I also find myself agreeing with the comments in terms of findings made by Commissioner Keller and Commissioner Fineberg. Findings are findings and I struggle with being able to make them for this. I don’t believe that there are special circumstances for this parcel relative to the other parcels. It is not just this one corner we are dealing with. So that is one I don’t believe there are particularly special circumstances for this particular parcel.

The second finding I find with all due respect, and I do have considerable respect, the second finding, the granting of the application shall not affect substantial compliance with the regulations. Then the finding that is written is the granting of the exception would result in a three-foot encroachment into the required seven-foot setback, the typical setback within the Downtown CD-C district zone is no setback. But that is totally not what we are talking about here. We are talking about a situation where there is a special setback zone. So we are saying that this would be compliant because it would be compliant by something else that doesn’t have the setback on it. So I just can’t go with that one. It is just not an apt comparison.
Also in that same finding it references the exception being granted although I guess it is not an exception but the three-foot encroachment at 310 University Avenue while that one is nonconforming we are comparing a nonconforming and saying this one is justified because it conforms to a nonconforming situation. It is circuitous language to me and I am sorry it is that way but it is.

Then finding number four, the granting of the application will not be injurious to property improvement in the vicinity. The Staff Report itself on page three makes the argument why full compliance would be a better outcome, quite frankly, talking about better visibility down Bryant. Understanding that there is a letter from an owner of 518 if am understanding that correctly the conditions go with the land and the property not with the owners. So another owner might not think that this was the best outcome. Bringing into closer alignment is not an argument for making the exception. So I am afraid I have to disagree with the findings for the Variance.

Just one other comment I think. Some of the comments that I have heard in wanting to approve the Variance to my understanding have confused the desirable aspects of the building design with the findings that we have to make. So there are ways that the building — and I am not disagreeing, one might say that the building will attract people or get people to come to that area, that corner, but that is the building design. It is not whether the encroachment of the setback is justified or not. So unfortunately, and it is unfortunately, I think it is the wrong approach. I think we don’t do this piecemeal. I think it is the wrong approach to apply a Variance or I think we need to look at the setback issue.

Are there comments that others truly need to make? I have lights from Commissioner Keller and Commissioner Lippert and Commissioner Fineberg. Are they necessary comments or can we vote on the motion? Keller’s are after the motion. Commissioner Lippert? Necessary. Commissioner Fineberg? Okay. Commissioner Lippert.

**Commissioner Lippert:** Just to briefly state when I made my comments it is not in the purview of design it is in the purview of utility or use that because of the configuration of the building that it would be used in a different way. It would be better utility or use and that is what the purview of this Commission is.

**Chair Holman:** Thank you for the clarification. Just to be clear, I wasn’t referring to only your comments specifically there were others too but thank you for the clarification.

**Commissioner Lippert:** I know but I stressed that.

**Chair Holman:** Thank you. Commissioner Fineberg.

**Commissioner Fineberg:** I would also like to add that granting the Variance is not in support of the Comprehensive Plan’s goals to improve the walkability of our neighborhoods to make it a desirable intersection for pedestrians. The loss of those four feet make it difficult for pedestrians with children, with strollers, with the crowds that are there it is tough to negotiate. Those extra four feet I believe complying with the setback requirements will be consistent with the Comprehensive Plan and granting the Variance will not. Thank you.
Chair Holman: Commissioner Sandas.

Commissioner Sandas: I disagree.

MOTION PASSED (4-3-0-0, Commissioners Fineberg, Keller, and Holman opposed)

Chair Holman: I think we are ready for a vote. So all those in favor of the motion to approve the Variance and accept the findings as stated by Staff say aye. (ayes) All those opposed? (nays) That motion carries on a four to three vote with Commissioners Tuma, Lippert, Sandas, and Garber in favor and Commissioners Fineberg, Keller, and Holman opposed.

So we will now entertain other comments. Vice-Chair Garber, point of order?

Vice-Chair Garber: Yes. I was just going to interrupt our proceeding for a brief moment and ask Mr. Hayes, there are actually three people to your party this evening. I was wondering who the third one might be and if that person might like to be introduced.

Mr. Hayes: Thank you for that opportunity Commissioner Garber. My son has been working in my office this summer. He is interested in the profession of architecture so I thought this would be a good introduction for him.

Vice-Chair Garber: I guess that remains to be seen but he is very welcome.

Mr. Hayes: So this is Mason Hayes.

Vice-Chair Garber: Pleased to know you. Welcome.

Chair Holman: Okay, Commissioners comments not relevant to the Variance, but comments having to do with other perhaps procedural or applicable issues. Again, not speaking to findings.

Mr. Larkin: I am poised at the microphone, by the way.

Chair Holman: Duly noted. Commissioner Fineberg I think you had your light on.

Mr. Larkin: Actually, Curtis had a suggestion and I think it is a good one. In order to avoid having an extensive discussion I think if the Chair agrees I think the way to do it would be to just down the row and just give everybody one shot.

Chair Holman: Yes. We are not going to discuss. So if you have comments to make and I think pretty much everybody at least has comments, remember we are not going to be discussing. So we are not going to be going back and forth. Commissioner Fineberg did you want to go first?

Commissioner Fineberg: I said some of the things I said before because I felt that they did apply to whether or not the Variance should be granted. So I felt it was necessary to have that piece of what my thoughts were in the conversation before we voted. I think that this really strongly
points to the need for us to look at process, how we review projects, how we review the
application review, and the approval process. It is crazy that two Commissions have different
purviews on the same building and you have to ignore five dimensions of one building when
considering the sixth. There is the adage about a horse designed by a committee becomes a
donkey. I don’t think that we can optimize the outcomes of our projects when we can’t look at
them as a whole building, when we can’t look at a project and what its impacts are in its entirety.
It is kind of like the grain of rice getting lost in the box. I think that we will have some
opportunities going forward to look at how we might consider restructuring process so that my
hope would be that we don’t face these kinds of situations where we have disjointed and
piecemeal review.

Chair Holman: Commissioner Keller, are you prepared?

Commissioner Keller: Yes, thank you. Firstly, I would expand on what Commissioner Fineberg
said. It seems to me that the decision of the streamlining ordinance to have appeals go directly to
the City Council and not to the Planning Commission in those cases when there is no Variance
that is being appealed is part of the problem. It seems to me that if the issue were that any appeal
got to the Planning Commission and then to the City Council that would have given us purview
over the entire matter. Considering that there are relatively few appeals that happen it is not
clear whether that is a problem for streamlining that has been an historical issue.

The second thing is I do appreciate the Chair of the ARB being here during the discussion of the
item until the vote happened but for the record I note that the Chair of the ARB walked out after
the vote happened and is not listening to these comments regarding DEEs. That is just noted for
the record.

I believe that the DEE in terms of the floor area ratio should have been a Variance and in
particular I point to the notion of Section 18.76.050(b)(2). This section refers to Design
Enhancement Exceptions, (b) is applicability, and (2) indicates the items for which. I am going
to read this into the record to make it convenient.

Chair Holman: I think if you reference the code you don’t need to read it into the record. I am
also wondering if that is going a little further than what City Attorney had anticipated.

Mr. Larkin: I think it probably is. I think you have made the point. It is fine to read the code in
but going beyond that and starting to interpret the code I think it is fine to refer that to Council
because it is really Council’s direction that is going to ..... 

Commissioner Keller: The reason I am doing this because of a question I asked of Staff and I
would like to tie it together so that it is convenient for Council. So the issue is this paragraph
says, items for which Design Enhancement Exceptions may be granted include but are not
limited to dormers, eave lines, roof design, bay windows, cornices, parapets, columns, arcades,
fountains, art, ornamentation, atriums, balconies, trellises, moldings, balustrades, stairs, entry
features, and other minor architectural elements and design.
In response to a question I asked of Staff it was whether there are other kinds of things for which a DEE applies would be along that. This is illustrative and other things would be along this category. A DEE for FAR in terms of allowing the basement to not be counted as part of FAR doesn’t seem to fit into this category and that is why I think it would more likely be a Variance. I haven’t spoken to whether I think the Variance should be granted or not or whether the DEE should be granted or not. I am just talking about whether it should be a DEE or a Variance.

Similarly, once you have a DEE which says that you allow for additional FAR the FAR is not nonexistent. It exists. The idea that exempt FAR is considered weighted at zero seems to be a weird situation. Therefore the exempt FAR if it counts – in other words, by exempting the FAR you are allowing that FAR to go over the allowance. You are not saying it doesn’t exist and therefore a Variance is required for Section 18.18.070(a)(2) in terms of the requirement for the floor area bonuses because this causes an FAR to exceed 3.0. For that additional Variance is required because the FAR does exceed it if it is counted even if it is exempt, even if you apply that FAR above the 3.0 limit it still applies to this paragraph.

Finally, the DEE with respect to height also does not satisfy the applicability paragraph 18.76.050 (b)(2) and therefore a Variance should really apply to that as well. So it seems to me that I personally would feel more comfortable, and I am wondering whether other Commissioners do or not but I guess we can’t have that discussion, whether DEEs should truly be limited to those things which are applicable under the issues of paragraph (b) of 18.76.050. I think part of the concern that members of the community have is that many of the Design Enhancement Exceptions have gone far beyond the applicability as indicated in the code. Thank you.

Chair Holman: Vice-Chair Garber.

Vice-Chair Garber: So I will return to my comments. I think Ms. Chiapella’s appeal and sensitive iteration of the various issues was extraordinarily helpful because it allows us to have these conversations that otherwise we would have completely missed entirely. I think among the issues that it raises that I would be very interested to be a part of the discussion of include the following: the roll of the ARB versus the Planning and Transportation Commission when it comes to Variances and DEEs; definition and use of the DEE and Variance as begun to be discussed by my esteemed colleague to my right; the roll intent of FAR, it is used to constrain volume and mass as it is used in the R-1 districts and others versus intensity of use as it is being described and used as it is used in the CD-C district and others; should the building heights on University Avenue be allowed to go over 50 feet or not. Those are all good conversations and discussions that I would be very happy to be a part of. Thank you.

Chair Holman: Commissioner Tuma.

Commissioner Tuma: I thought we were going down the line.

Chair Holman: Commissioner Sandas would you care to go next?

Commissioner Sandas: Nothing to add.
Chair Holman: Commissioner Lippert.

Commissioner Lippert: Having served on the ARB and being familiar with the use of DEEs the one thing that I see here is that the application of the DEEs in this case they are not substantive to the outcome. So I would not look at them in terms of being Variances. If the 50 foot height limit might be applied all the way around the entire building where the building came out to the street face, yes I would say that would definitely require a Variance. But looking at the building does step back and it doesn’t happen continually throughout I don’t think it is substantive I think it is well within the purview of the ARB.

With regard to the additional floor area again I don’t think that is substantive. I believe it is what is applied to other properties. If this was in isolation by itself, yes it would require a Variance but in this case it applies to all properties in the Downtown the same way so I believe it is equitable.

Chair Holman: Commissioner Tuma.

Commissioner Tuma: I don’t want to repeat too many of the things that have been said but the one that strikes me as the most important to this discussion right now is that this process is broken. It is just so weird for me to sit here and go through this discussion about the Variance without the ability to look at the other issues and the issues that brought rise to the Variance in the first place. So I am not sure that I have the answers nor do I really want to get into a discussion of what the right process is here at this point but as I alluded to in my support of the motion it is just very weird to decide on this one component of the overall project without being able to take into account the very things that gave rise to this requirement for the Variance. So I do think it needs to be reexamined. Looking, as I said before, just at the Variance I stand by my positions earlier but that is the point I would make and reiterate what several of my colleagues have said is that this process seems broken and I think it needs to be addressed.

Chair Holman: I have a couple of comments to make about the conditions of approval on this project having not to do with the Variance that I would like to bring to Council’s attention, if Staff will indulge me. One of them is if the basement is going to be exempted from floor area ratio then one of the conditions of approval should include that the space will not be used for other than mechanical equipment as it is indicated on the plans. Otherwise we have no control over what happens in the future. I would also note that it appears that mechanical equipment could take up much less square footage in the basement than is currently occupied allowing for other uses down there, which might be beneficial.

Also, an issue and policy that the Council needs to weigh in on is a Public Works and Engineering Department condition, Condition 9, Basement Shoring. It says that permanent shoring for the basement including tiebacks is not allowed to encroach into the right-of-way, ROW, unless the Applicant applies for and receives an encroachment permit from Public Works. Also, shoring including tiebacks is not allowed on or under adjacent private property without written permission of the property owner. Any property owner owns land to the center of the Earth from their property line down. So what I have understood to be the case in the past is that
the City has allowed free of charge for applicants, developers, to build or use space for shoring
up underneath or on City land and to allow that without fee, without financial cost to an applicant
is giving away public resources. So those are two aspects of the conditions of approval I would
like the City Council to weigh in on. They are policy based.

Having to do with DEEs, DEEs have been an item of interest for this Commission for some time.
In fact we have a subcommittee that has met a couple of times to address this very issue. The
DEEs purpose and applicability is for minor exceptions. The application of Design
Enhancement Exceptions seems to proliferate the more time goes on. How they are being
applied seems to be getting greater and greater. I agree with comments made by other
Commissioners that the process is very broken. It is frustrating, lacks comprehensive approach
when a Commission who is the land use advisory body to the Council cannot sit here and make
comments about major exceptions to an application. For those reasons I also would like to
congratulate or thank Lynn Chiapella for bringing these issues forward so we can discuss these
in a public forum.

The policy issues that need to be decided in a policy manner and not on a case-by-case basis are
50 foot height limit, is it going to be exceeded or not? The special setbacks, are we going to
keep them in place or not? Are we going to allow exemption of basement square footage for
equipment? There are very positive aspects to that but are we then, again it is a policy and land
use issue, are we in fact precluding how much viability of retail that we are going to get because
we are eliminating storage and office space and other uses that retail businesses actually need?
That is often times Downtown what they use is the basements. In conjunction with that is are we
actually going to be losing retail sales square footage by eliminating our basements?

The issue of code changes versus exceptions, conditions of approval. I would like to see us look
as a city, as recommending bodies, and as a Council at more buttoned up findings. I find
sometimes that there is very good work that goes into Staff Reports and findings and other times
I find that they are just circuitous arguments and I have raised this on a number of occasions. I
have great difficulty with the findings that are stated for the Variance in the packet tonight.

Also the policy for the seismic bonus for demolitions I think that is also a policy. I know it is
what has been implemented for some time at least in the Downtown. When we had the SOFA II
Working Group we had considerable discussion there. That Working Group thought almost
unanimously that it was counter-intuitive and not meeting the intention to give a seismic bonus
for buildings that were being demolished but rather it was as it says it is for rehabilitation and
that means retaining the existing building and rehabilitating it.

The other aspect of DEEs, because they are being used for such major components, I believe the
Council and I don’t what the extent of this is, but the Council has raised issues in the past about
what the purview of the Architectural Review Board should be. As a pedestrian who sometimes
tunes in, it looks like that especially because the use DEEs have encountered or have been
entailing more and more major exceptions that the ARB is affecting major land use policies in
the community. I think and hope that that has covered all of my issue.
One last one, also because you can’t appeal a DEE is my understanding. You can appeal a DEE? But it goes straight to Council. So again this body doesn’t get to weigh in on it just as this. So again the process is broken. The other thing that is broken is the policy and it is written in a very convoluted way and it is most unusual to this community is that you can have a nonconforming building and I think and have understood in the past and understand most currently that if you have a nonconforming building and there is an act of God that destroys it you can replace that same building. But to have a redevelopment and still be able to replace a nonconforming situation and not even be the same building but be a different building with different setbacks and different size envelope that is quite unique to this community. So not only is the code written in a very convoluted way but it is also a most unique situation. Every other place in town except the Downtown when you remove a nonconformity the expectation and requirement is that you bring it into conformance. So that is a really unusual situation. That concludes my lengthy, thank you for enduring comments. Commissioner Lippert.

Commissioner Lippert: I just want to make a brief comment here.

Mr. Larkin: As long as they are off subject of what has been discussed before because this is an opportunity to make comments but we don’t want to get into a discussion.

Commissioner Lippert: It is. May I? Just one other comment that I forgot to make going around the last time. What it really has to do with is FAR. There is the zoning FAR and that really when you talk about a retail component or an office component really has to do more with the intensity in terms of the planning aspects of things. In reality when it comes to applying the Building Code the Building Code makes distinction between retail and businesses and office uses. The retail component is actually more intensive than the office component meaning that it takes more square footage. The occupant load for offices is less than if it was a retail space. You are seeing more people in retail. So in this case when you are looking at two stories of retail from a Building Code point of view you are looking at an intensification of the use there. What I wanted to just basically say is that I think that is something that is desirable because it begins to generate more activity in terms of this building. So for the applicant this is a desirable aspect of it having two floors of retail. I know that the basement would be used as mechanical space but I wish there was more retail.

Chair Holman: Commissioner Keller, you had a quick comment?

Commissioner Keller: Yes. I have a comment about sort of the philosophy of how things are approved. In general the idea is to try to figure out how much FAR you can get and then figure out how you can design to that FAR by having all kinds of exceptions and Variances that fit that FAR. What it seems to me is that the Zoning Ordinance has a couple of constraints, a number of different constraints, and you are supposed to satisfy all the constraints. If satisfying the various constraints means that you can’t achieve the FAR that I don’t think that FAR is an entitlement per se. The FAR is simply a maximum. If the other constraints mean that you can’t achieve that FAR then that is what happens as opposed to you get this FAR as an entitlement and then you get to figure out how to except that FAR through all sorts of design processes.
Chair Holman: So before I close this item there was one question to pose to Commissioners. As it happens the subcommittee on DEEs and Variances is meeting next week. At the pre-
Commission meeting it did come up as a possibility if the Commission so desired that we could have a meeting on DEEs and Variances come to the Commission not pertinent to this project but in general prior to the September 15 hearing by the Council. So I just want Commissioners to say thumbs up or thumbs down on that. Curtis, could it be a study session?

Mr. Larkin: I think this is more appropriately put at the end. This is not on the agenda for tonight.

Chair Holman: Okay, very good. Then we will close this item and take a five-minute break. Then we will come back and go quickly through the next two.
City of Palo Alto

Department of Planning and Community Environment
250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301
(650) 329-2441 FAX (650) 329-2154
www.cityofpaloalto.org

ENDORSED
MAY 16 2008

REGINA AL COMENDRAS, County Clerk-Recorder

Notice of Intent to Adopt a Negative Declaration

A notice, pursuant to the California Environmental Quality Act of 1970, as amended (Public Resources Code 21000, et seq.) that the following project will not have a significant effect on the environment.

<table>
<thead>
<tr>
<th>File Number</th>
<th>TAZ</th>
<th>APN(s)</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>08PLN-00000-00082</td>
<td></td>
<td>120-26-060</td>
<td>5/16/2008</td>
</tr>
</tbody>
</table>

Project Name
278 University Avenue

Project Type
ARB

Owner
278 University L.L.C.

Applicant
Ken Hayes

Project Location
278 University Avenue
Palo Alto, California 94301

The project site is located in the northern section of the City of Palo Alto, in the northern part of Santa Clara County, west of U.S. Highway 101 and east of State Route 82 (El Camino Real), as shown on Figure 1, Regional Map. The parcel is contained within the city block bounded by University Avenue to the northwest, Ramona Street the northeast, Bryant Street to the southwest and Hamilton Avenue to the southeast, as shown on Figure 2, Vicinity Map.

Project Description

The project consists of the demolition of an existing two story office retail building and the construction a new 18,206 square foot four story mixed use office/retail building. The first and possibly the second floors would be retail and the third and fourth floors would be office. The building is proposed to have a recess at the third floor, on the Bryant Street side, with the parapet continuing through to maintain a consistent line at the third floor level. A variance is requested to encroach three feet into the required seven foot special setback along Bryant Street and a Design Enhancement Exception is requested to exceed the 50 foot height limit by five feet.

Purpose of Notice

MAY 16 2008

POSTED ON THROUGH JUN 05 2009
IN THE OFFICE OF THE COUNTY CLERK-RECORDER
REGINA AL COMENDRAS, COUNTY CLERK
To notify the public of the City's intent to adopt a Negative Declaration and give the public the opportunity to review and comment on the document.

|-----------------------|-------------------|-----------------|

Public Comments regarding the correctness, completeness, or adequacy of this negative declaration are invited and must be received on or before the hearing date. Such comments should be based on specific environmental concerns. Written comments should be addressed to City of Palo Alto, Department of Planning and Community Environment, Attention Russ Reich, Planner, 250 Hamilton Avenue, Palo Alto, CA 94301. Oral comments may be made at the hearing. A file containing additional information on this project may be reviewed at the Planning Office under the file number appearing at the top of this form. For additional information regarding this project and the Negative Declaration, please contact Russ Reich, Planner at (650) 617-3119.

The Negative Declaration and Initial Study may be viewed at the following locations:

1. City Hall, 250 Hamilton Avenue 5th floor, Palo Alto, CA 94301
2. The Development Center, 285 Hamilton Avenue, Palo Alto, CA 94301
3. Santa Clara County Clerks Office, 70 West Heading, San Jose, Ca 95112

Responsible Agencies that received a copy of this document:

County of Santa Clara

Prepared by: Russ Reich
Print Name

Signature

Date 5/16/08

Approved by: Gayle Likens
Print Name

Signature

Date 5/16/08
ENVIRONMENTAL CHECKLIST FORM
City of Palo Alto
Department of Planning and Community Environment

PROJECT DESCRIPTION

1. PROJECT TITLE

278 University Avenue
Palo Alto, California 94301

2. LEAD AGENCY NAME AND ADDRESS

City of Palo Alto
Department of Planning and Community Environment
250 Hamilton Ave.
Palo Alto, CA 94303

3. CONTACT PERSON AND PHONE NUMBER

Russ Reich, Planner
City of Palo Alto
650-617-3119

4. PROJECT SPONSOR’S NAME AND ADDRESS

Ken Hayes
2657 Spring Street
Redwood City, CA 94063

5. APPLICATION NUMBER

08PLN-000000-0082

6. PROJECT LOCATION

278 University Avenue
Palo Alto
Parcel Numbers: 120-26-060

The project site is located in the northern section of the City of Palo Alto, in the northern part of Santa Clara County, west of U.S. Highway 101 and east of State Route 82 (El Camino Real), as shown on Figure 1, Regional Map. The parcel is contained within the city block bounded by University Avenue to the northwest, Ramona Street the northeast, Bryant Street to the southwest and Hamilton Avenue to the south east, as shown on Figure 2, Vicinity Map.
7. **GENERAL PLAN DESIGNATION:**

278 University is designated as Regional Community Commercial in the Palo Alto 1998 – 2010 Comprehensive Plan. This land use designation includes office and retail.

8. **ZONING**

The site is zoned Downtown Commercial with a “Ground Floor” and “Pedestrian” combining district CD-C (GF) (P). The CD-C (GF) (P) zone district is designed to accommodate office and retail uses. The project is a permitted use in this zone district.

9. **PROJECT DESCRIPTION**

The project consists of the demolition of an existing two story office retail building and the construction a new 18,206 square foot four story mixed use office/retail building. The first and possibly the second floors would be retail and the third and fourth floors would be office. The building is proposed to have a recess at the third floor, on the Bryant Street side, with the parapet continuing through to maintain a consistent line at the third floor level. A variance is requested to encroach three feet into the required seven foot special setback along Bryant Street and a Design Enhancement Exception is requested to exceed the 50 foot height limit by five feet.

10. **SURROUNDING LAND USES AND SETTING**

278 University is located close to the center of the Commercial Downtown zone district (see Figure 2, Vicinity Map). Surrounding land uses included office and retail uses. The site is 60 feet wide by 100 feet deep. To the rear of the site is a public alley.

11. **OTHER PUBLIC AGENCIES**

- County of Santa Clara, Office of the County Clerk-Recorder

---

**ENVIRONMENTAL CHECKLIST AND DISCUSSION OF IMPACTS**

---

**EVALUATION OF ENVIRONMENTAL IMPACTS**

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. [A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).]

2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. Potentially Significant Impact” is appropriate if there is substantial evidence that an effect may be significant. If there are one or more “Potentially Significant Impact” entries when the determination is made, an EIR is required.

4) “(Mitigated) Negative Declaration: Less Than Significant With Mitigation Incorporated” applies where the incorporation of mitigation measures has reduced an effect from “Potentially Significant Impact” to a “Less than Significant Impact.” The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section 17, “Earlier Analysis,” may be cross-referenced).

5) Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063 (C)(3) (D). In this case, a brief discussion should identify the following:
   a) Earlier Analysis Used. Identify and state where they are available for review.
   b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
   c) Mitigation Measures. For effects that are “Less than Significant with Mitigation Measures Incorporated,” describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g. general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) The explanation of each issue should identify:
   a) the significance criteria or threshold, if any, used to evaluate each question; and
   b) the mitigation measure identified, if any, to reduce the impact to less than significance.

DISCUSSION OF IMPACTS

The following Environmental Checklist was used to identify environmental impacts, which could occur if the proposed project is implemented. The left-hand column in the checklist lists the source(s) for the answer to each question. The sources cited are identified at the end of the checklist. Discussions of the basis for each answer and a discussion of mitigation measures that are proposed to reduce potential significant impacts are included.

A. AESTHETICS

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Substantially degrade the existing visual character or quality of the site and its surroundings?</td>
<td>1, 5</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

278 University Avenue
<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b) Have a substantial adverse effect on a public view or view corridor?</td>
<td>1, 2, 5 Map L4</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>c) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?</td>
<td>1, 2, 5 Map L4</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>d) Violate existing Comprehensive Plan policies regarding visual resources?</td>
<td>1, 2, 5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>e) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?</td>
<td>1, 5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>f) Substantially shadow public open space (other than public streets and adjacent sidewalks) between 9:00 a.m. and 3:00 p.m. from September 21 to March 21?</td>
<td>1, 5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

**DISCUSSION:**
The subject site is located within a view corridor as identified in the Comprehensive Plan 1998 - 2010. While the project is within the view corridor (University Avenue) it will not impede the view through the corridor. The project is subject to final review by the Architectural Review Board (ARB), which will ensure a design that is aesthetically pleasing and compatible with its surroundings. The project has been designed to be compatible with the scale of the surrounding development in the downtown area.

**Mitigation Measures:** None

**Significance after Mitigation:** NA

**B. AGRICULTURAL RESOURCES**
In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland.

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>
DISCUSSION:

The site is not located in a “Prime Farmland”, “Unique Farmland”, or “Farmland of Statewide Importance” area, as shown on the maps prepared for the Farmland Mapping and Monitoring Program of the California Resources Agency. The site is not zoned for agricultural use, and is not regulated by the Williamson Act.

Mitigation Measures: None

Significance after Mitigation:

C. AIR QUALITY

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

a) Conflict with or obstruct with implementation of the applicable air quality plan (1982 Bay Area Air Quality Plan & 2000 Clean Air Plan)?

1

X

b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation indicated by the following:

i. Direct and/or indirect operational emissions that exceed the Bay Area Air Quality Management District (BAAQMD) criteria air pollutants of 80 pounds per day and/or 15 tons per year for nitrogen oxides (NO), reactive organic gases (ROG), and fine particulate matter of less than 10 microns in diameter (PM10):

1

X

ii. Contribute to carbon monoxide (CO) concentrations exceeding the State Ambient Air Quality Standard of nine parts per million (ppm) averaged over eight hours or 20 ppm for one hour (as demonstrated by CALINE4 modeling, which would be performed when a) project CO emissions exceed 550 pounds per day or 100 tons per year, or b) project traffic

1, 10

X
<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>would impact intersections or roadway links operating at Level of Service (LOS) D, E or F or would cause LOS to decline to D, E or F; or c) project would increase traffic volumes on nearby roadways by 10% or more?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>d) Expose sensitive receptors to substantial levels of toxic air contaminants?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>i. Probability of contracting cancer for the Maximally Exposed Individual (MEI) exceeds 10 in one million</td>
<td>1</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>ii. Ground-level concentrations of non-carcinogenic TACs would result in a hazard index greater than one (1) for the MEI</td>
<td>1</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>c) Create objectionable odors affecting a substantial number of people?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>f) Not implement all applicable construction emission control measures recommended in the Bay Area Air Quality Management District CEQA Guidelines?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

**DISCUSSION:**

The subject site is in an area of mixed uses including commercial retail, office and residential uses in Downtown Palo Alto. According to the Comprehensive Plan, the property is not located in an area that contains uses or activities that are major pollutant emitters. The project is not expected to result in a significant impact on air quality.

The project will result in temporary dust emissions during demolition, grading and construction activities. The impacts are expected to be greatest during demolition. Therefore, conditions of approval, incorporated as part of an approved demolition and construction management plan secured before building permit issuance.

- Demolition activities shall be conducted in such a manner that will minimize dust and another airborne particulate matter. The contractor or builder shall water debris after demolition and before transport to an off-site facility.
- Areas of exposed earth surfaces during demolition, grading and construction shall be watered in the early morning and early evening.
- Avoid overloading of trucks so that potential spillage in the public right-of-way is minimized. The contractor shall be required to clean up all spillage in the public right-of-way.
- Submit a plan for the recovery/recycling of demolition waste and debris before the issuance of a demolition permit.

The standard conditions would result in impacts that are less than significant.

**Mitigation Measures:** None

**Significance after Mitigation:** NA

---

### D. BIOLOGICAL RESOURCES

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</td>
<td>1, 2, MapN1</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, including federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?</td>
<td>1, 2, MapN1</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?</td>
<td>1, 2, MapN1</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or as defined by the City of Palo Alto's Tree Preservation Ordinance (Municipal Code Section 8.10)?</td>
<td>1, 2, 5</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e) Conflict with any applicable Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?</td>
<td>1, 2</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
DISCUSSION:
Three mature London Plane street trees are located in front of the site within the right of way on University Avenue. There are also two Potocarpos and two London Plane trees on Bryant Street. The project would contain standard conditions that would protect the street trees during demolition, grading and construction. The trees would be protected to the satisfaction of the Planning Division and Public Works Department Arborists, based upon the requirements of the City of Palo Alto's Tree Technical Manual. Any damage to the trees would be treated in accordance with the Tree Technical Manual. The standard conditions would result in impacts that are less than significant.

Mitigation Measures: None

Significance after Mitigation: NA

E. CULTURAL RESOURCES

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Directly or indirectly destroy a local cultural resource that is recognized by City Council resolution?</td>
<td>1, 2, 5, L7</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to 15064 5?</td>
<td>1, 2, MapL8</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?</td>
<td>1, 2, MapL8</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>d) Disturb any human remains, including those interred outside of formal cemeteries?</td>
<td>1, 2, MapL8</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>e) Adversely affect a historic resource listed or eligible for listing on the National and/or California Register, or listed on the City’s Historic Inventory?</td>
<td>1, 2, 5, MapL7</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>f) Eliminate important examples of major periods of California history or prehistory?</td>
<td>1, 5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

DISCUSSION:
The project site is located in an area of high sensitivity in terms of archaeological resource areas, as indicated in the City of Palo Alto Comprehensive Plan, 1998-2010. The proposed project includes one existing basement level. Based on existing conditions and the extent of the proposed project, no significant impacts are expected. If approved, the project would contain conditions in the form of instructions in the case of the discovery of any cultural resources during demolition or construction. The standard conditions would result in impacts that are less than significant.

Mitigation Measures: None
Significance after Mitigation: NA

### F. GEOLOGY, SOILS AND SEISMICITY

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:</td>
<td>See below</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.</td>
<td>6</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>ii) Strong seismic ground shaking?</td>
<td>2, MapN10</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>iii) Seismic-related ground failure, including liquefaction?</td>
<td>2, MapN5</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>iv) Landslides?</td>
<td>2, MapN5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>b) Result in substantial soil erosion or the loss of topsoil?</td>
<td>1, 5</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>c) Result in substantial siltation?</td>
<td>1, 5</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>d) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?</td>
<td>2, MapN5</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>e) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?</td>
<td>MapN5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>f) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>g) Expose people or property to major geologic hazards that cannot be mitigated through the use of standard engineering design and seismic safety techniques?</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>
DISCUSSION:
The existing building is built out over the entire site. The new building footprint will be slightly smaller but the existing basement will be maintained. Site soil modifications are not expected to result in significant adverse environmental impacts.

The entire state of California is in a seismically active area and the site located in a strong seismic risk area, subject to strong ground shaking in the event of an earthquake. Seismic ground failure, including liquefaction and subsidence of the land are possible, but not likely at the site. No known faults cross the project site; therefore fault rupture at the site is very unlikely, but theoretically possible. All new construction will be subject to the provisions of the most current Uniform Building Code (UBC), portions of which are directed at minimizing seismic risk and preventing loss of life and property in the event of an earthquake.

The City’s required standard conditions of approval ensure that potential impacts on erosion and soil will not be significant. Project conditions of approval will require the applicant to submit a final grading and drainage plan subject to review by the Department of Public Works prior to issuance of any grading and building permits.

Mitigation Measures: None

Significance after Mitigation: NA

G. HAZARDS AND HAZARDOUS MATERIALS

Note. Some of the thresholds can also be dealt with under a topic heading of Public Health and Safety if the primary issues are related to a subject other than hazardous material use.

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Create a significant hazard to the public or the environment through the routing transport, use, or disposal of hazardous materials?</td>
<td>1, 11</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?</td>
<td>1, 11</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?</td>
<td>1, 11</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>d) Construct a school on a property that is subject to hazards from hazardous materials contamination, emissions or accidental release?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>e) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a</td>
<td>1, 2, 5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td></td>
<td></td>
<td>MapN9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>f)</td>
<td>For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?</td>
<td>1</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>g)</td>
<td>For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working the project area?</td>
<td>1</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>h)</td>
<td>Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?</td>
<td>1, 2, 11 MapN7</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>i)</td>
<td>Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?</td>
<td>2 MapN7</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>j)</td>
<td>Create a significant hazard to the public or the environment from existing hazardous materials contamination by exposing future occupants or users of the site to contamination in excess of soil and ground water cleanup goals developed for the site?</td>
<td>1</td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

**DISCUSSION:**

No known conditions exist on the site regarding existing materials that may be deemed harmful or hazardous. The site is not located near any known hazardous materials facilities.

**Mitigation Measures:** None

**Significance after Mitigation:** NA

---

**H. HYDROLOGY AND WATER QUALITY**

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Violate any water quality standards or waste discharge requirements?</td>
<td>1, 12</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>b)</td>
<td>Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land</td>
<td>2 MapN2</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Uses or planned uses for which permits have been granted?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?</td>
<td>1, 5</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?</td>
<td>1, 5, 9</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?</td>
<td>1, 9</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Otherwise substantially degrade water quality?</td>
<td>1, 5, 12</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?</td>
<td>1, 5, 2 Map N6</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Place within a 100-year flood hazard area structures which would impede or redirect flood flows?</td>
<td>2 MapN6</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expose people or structures to a significant risk of loss, injury or death involve flooding, including flooding as a result of the failure of a levee or dam or being located within a 100-year flood hazard area?</td>
<td>2, 6 MapN6 N8</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inundation by seiche, tsunami, or mudflow?</td>
<td>2, 6 MapN6 N8</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Result in stream bank instability?</td>
<td>1, 5</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**DISCUSSION:**
The site is in Flood Zone X, which is not a special flood hazard zone. During demolition, grading and construction, storm water pollution could result. Runoff from the project site flows to the San Francisco Bay without treatment. Nonpoint source pollution is a serious problem for wildlife dependant on the waterways and for people who live near polluted streams or baylands. Therefore, conditions of approval, incorporated as part of an approved demolition and construction management plan (secured before building permit issuance) would include the following:

**Recommended Conditions of Approval:**
- Before submittal of plans for a building permit, the applicant shall submit a drainage plan which includes drainage patterns on site and from adjacent properties.
The Applicant shall identify the Best Management Practices (BMP's) to be incorporated into a Storm Water Pollution Prevention Plan (SWPPP) for the project. The SWPPP shall include both temporary BMP's to be implemented during demolition and construction.

The standard conditions would result in impacts that are less than significant.

Mitigation Measures: None

Significance after Mitigation: na

### I. LAND USE AND PLANNING

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources Would the project:</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Physically divide an established community?</td>
<td>1, 5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?</td>
<td>1, 3, 5</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c) Conflict with any applicable habitat conservation plan or natural community conservation plan?</td>
<td>1, 2, Map N1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>d) Substantially adversely change the type or intensity of existing or planned land use in the area?</td>
<td>1, 2, 3, 5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>e) Be incompatible with adjacent land uses or with the general character of the surrounding area, including density and building height?</td>
<td>1, 5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>f) Conflict with established residential, recreational, educational, religious, or scientific uses of an area?</td>
<td>1, 5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>g) Convert prime farmland, unique farmland, or farmland of statewide importance (farmland) to non-agricultural use?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

**DISCUSSION:**
The site is designated for Regional/Community Commercial use in the City of Palo Alto's Comprehensive Plan, 1998-2010. This land use provides a variety and depth of goods, services and uses usually not available in the neighborhood shopping areas. The replacement of an office retail building is consistent with this land use and the surrounding area. The site is located within the Downtown-University Avenue District according to the Downtown Urban Design Guide and the proposal is consistent with the recommendations for this district. The project is subject to final review by the Architectural Review Board, which will ensure a design that is aesthetically pleasing and compatible with its surroundings.
Mitigation Measures: None

Significance after Mitigation: NA

J. MINERAL RESOURCES

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?</td>
<td>1,</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?</td>
<td>1,</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

DISCUSSION:

The project will not impact known mineral or locally important mineral resources.

Mitigation Measures: None Required.

K. NOISE

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?</td>
<td>1, 2, 5,</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>b) Exposure of persons to or generation of excessive ground borne vibrations or ground borne noise levels?</td>
<td>1, 2, 5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>e) For a project located within an airport land use plan or, where such a plan has not been adopted, would the project expose people residing or working in the project area to excessive noise levels?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>f) For a project within the vicinity of a private airstrip, would the project expose people</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Issues and Supporting Information Resources</td>
<td>Sources</td>
<td>Potentially Significant Issues</td>
<td>Potentially Significant Unless Mitigation Incorporated</td>
<td>Less Than Significant Impact</td>
<td>No Impact</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>---------</td>
<td>-------------------------------</td>
<td>-----------------------------------------------------</td>
<td>-----------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>residing or working in the project area to excessive noise levels?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>g) Cause the average 24 hour noise level (Ldn) to increase by 5.0 decibels (dB) or more in an existing residential area, even if the Ldn would remain below 60 dB?</td>
<td>5</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>h) Cause the Ldn to increase by 3.0 dB or more in an existing residential area, thereby causing the Ldn in the area to exceed 60 dB?</td>
<td>5</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>i) Cause an increase of 3.0 dB or more in an existing residential area where the Ldn currently exceeds 60 dB?</td>
<td>5</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>j) Result in indoor noise levels for residential development to exceed an Ldn of 45 dB?</td>
<td>5</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>k) Result in instantaneous noise levels of greater than 50 dB in bedrooms or 55 dB in other rooms in areas with an exterior Ldn of 60 dB or greater?</td>
<td>5</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>l) Generate construction noise exceeding the daytime background Leq at sensitive receptors by 10 dBA or more?</td>
<td>5</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

**DISCUSSION:**
Noise from the proposed office/retail use would primarily be generated by roof top mechanical equipment. This will consist of HVAC equipment on top of the fourth floor. Most of the mechanical equipment will be located within the basement, reducing any possibility that it will be perceived off site.

Demolition and Construction Activities will result in temporary increases in local ambient noise levels. In addition, there may be increases in ground-borne vibrations resulting from demolition and construction. Therefore, conditions of approval, incorporated as part of an approved demolition and construction management plan (secured before building permit issuance) would include the following:

**Recommended Conditions of Approval:**
- Require implementation of and compliance with the City of Palo Alto's Noise Ordinance (PAMC 9.10). In addition, construction hours shall be established as per the construction management plan to minimize disturbance to surrounding residents, visitors, and businesses.

**Mitigation Measures:** None

**Significance after Mitigation:** NA
### L. POPULATION AND HOUSING

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?</td>
<td>1, 5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>d) Create a substantial imbalance between employed residents and jobs?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>e) Cumulatively exceed regional or local population projections?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

**DISCUSSION:**
The project does not eliminate any housing units and would not increase population growth or displace substantial numbers of existing housing units or create the need for replacement housing elsewhere.

**Mitigation Measures:** None

**Significance after Mitigation:** NA

### M. PUBLIC SERVICES

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:</td>
<td>11</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Fire protection?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Police protection?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issues and Supporting Information Resources</td>
<td>Sources</td>
<td>Potentially Significant Issues</td>
<td>Potentially Significant Unless Mitigation Incorporated</td>
<td>Less Than Significant Impact</td>
<td>No Impact</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>---------</td>
<td>-------------------------------</td>
<td>-----------------------------------------------------</td>
<td>-----------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Schools?</td>
<td>1</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Parks?</td>
<td>1</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Other public facilities?</td>
<td>1</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

**DISCUSSION:**
There would not be any substantial change in required services, including Fire, Police, Schools, Parks and other public facilities as a result of the proposed project.

**Mitigation Measures:** None

**Significance after Mitigation:** NA

---

**N. RECREATION**

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?</td>
<td>1</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?</td>
<td>1</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

**DISCUSSION:**
There would not be any substantial change to the demand of recreation services as a result of the proposed project.

**Mitigation Measures:** None

**Significance after Mitigation:** NA
### O. TRANSPORTATION AND TRAFFIC

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Cause an increase in traffic which is</td>
<td>1, 10</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>substantial in relation to the existing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>traffic load and capacity of the street</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>system (i.e., result in a substantial</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>increase in either the number of vehicle</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>trips, the volume to capacity ratio on</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>roads, or congestion at intersections)?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b) Exceed, either individually or</td>
<td>1, 10</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>cumulatively, a level of service standard</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>established by the county congestion</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>management agency for designated roads or</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>highways?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c) Result in change in air traffic patterns,</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>including either an increase in traffic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>levels or a change in location that results</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>in substantial safety risks?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d) Substantially increase hazards due to a</td>
<td>1, 5</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>design feature (e.g., sharp curves or</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>dangerous intersections) or incompatible</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>uses (e.g., farm equipment)?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>e) Result in inadequate emergency access?</td>
<td>1, 11</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>f) Result in inadequate parking capacity?</td>
<td>1, 10</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>g) Conflict with adopted policies, plans,</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>or programs supporting alternative</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>transportation (e.g., pedestrian, transit &amp;</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>bicycle facilities)?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>h) Cause a local (City of Palo Alto)</td>
<td>1, 10</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>intersection to deteriorate below Level of</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service (LOS) D and cause an increase in</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>the average stopped delay for the critical</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>movements by four seconds or more and the</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>critical volume/capacity ratio (V/C) value</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>to increase by 0.01 or more?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i) Cause a local intersection already</td>
<td>1, 10</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>operating at LOS E or F to deteriorate in</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>the average stopped delay for the critical</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>movements by four seconds or more?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>j) Cause a regional intersection to</td>
<td>1, 10</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>deteriorate from an LOS E or better to</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LOS F or cause critical movement delay at</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>such an intersection already operating at</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LOS F to increase by four seconds or more</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>and the critical V/C value to increase by</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0.01 or more?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>k) Cause a freeway segment to operate at</td>
<td>1, 10</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>LOS F or contribute traffic in excess of</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1% of segment capacity to a freeway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>segment already operating at LOS F?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>l) Cause any change in traffic that would increase the Traffic Infusion on Residential Environment (TIRE) index by 0.1 or more?</td>
<td>1, 10</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>m) Cause queuing impacts based on a comparative analysis between the design queue length and the available queue storage capacity? Queuing impacts include, but are not limited to, spillback queues at project access locations, queues at turn lanes at intersections that block through traffic, queues at lane drops, queues at one intersection that extend back to impact other intersections, and spillback queues on ramps</td>
<td>1, 10</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>n) Impede the development or function of planned pedestrian or bicycle facilities?</td>
<td>1, 10</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>o) Impede the operation of a transit system as a result of congestion?</td>
<td>1, 10</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>p) Create an operational safety hazard?</td>
<td>1, 11</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

DISCUSSION:

An annual monitoring report on the Commercial Downtown zoning area is mandated by the Comprehensive Plan Programs L-8 and L-9 that require reporting of non-residential development activity and trends within the CD zone district. These reports are also required as a result of final action on the Downtown Study adopted by the City Council in 1986. The Downtown Study incorporated a growth limit of 350,000 square feet of additional floor area over the total floor area existing in 1986, and provided for a re-evaluation of the CD regulations when new development reaches 235,000 square feet. Since 1986, a total of approximately 105,945 square feet of non-residential uses have been added in the Downtown area. The existing building consists of 18,000 square feet of floor area. The proposed project would add an additional 206 square feet of floor area which would minimally contribute towards the limit of 350,000 square feet of additional floor area.

Temporary impacts to transportation, traffic and pedestrian circulation will result from demolition and construction activities. Therefore, conditions of approval, incorporated as part of an approved demolition and construction management plan (secured before building permit issuance) would include the following:

Recommended Conditions of Approval:
Traffic control measures during demolition and construction, removal of demolition debris, delivery of construction materials, retention of parking spaces for construction workers and on-site staff, shall be detailed as part of the construction management plan.

Mitigation: None

Significance after Mitigation: NA
### P. UTILITIES AND SERVICE SYSTEMS

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?</td>
<td>1, 12</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?</td>
<td>1, 12</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?</td>
<td>1, 12</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?</td>
<td>1, 12</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has inadequate capacity to serve the project’s projected demand in addition to the provider’s existing commitments?</td>
<td>1, 12</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>f) Be served by a landfill with sufficient permitted capacity to accommodate the project’s solid waste disposal needs?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>g) Comply with federal, state, and local statutes and regulations related to solid waste?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>h) Result in a substantial physical deterioration of a public facility due to increased use as a result of the project?</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

### DISCUSSION:
The proposed project would not significantly increase the demand on existing utilities and service systems, or use resources in a wasteful or inefficient manner. As standard conditions of approval, the applicant shall be required to submit calculations by a registered civil engineer to show that the on-site and off site water, sewer and fire systems are capable of serving the needs of the development and adjacent properties during peak flow demands. Trash and recycling facilities are proposed in the project to accommodate the expected waste and recycling streams that would be generated by the expected uses within the building.

**Mitigation Measures: None**

**Significance after Mitigation: NA**
## MANDATORY FINDINGS OF SIGNIFICANCE

<table>
<thead>
<tr>
<th>Issues and Supporting Information Resources</th>
<th>Sources</th>
<th>Potentially Significant Issues</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Does the project have the potential to</td>
<td>1, 2</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>degrade the quality of the environment,</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>substantially reduce the habitat of a fish</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>or wildlife species, cause a fish or</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>wildlife population to drop below self-</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>sustaining levels, threaten to eliminate a</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>plant or animal community, reduce the</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>number or restrict the range of a rare</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>or endangered plant or animal or eliminate</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>important examples of the major periods of</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>California history or prehistory?</td>
<td>1, 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b) Does the project have impacts that are</td>
<td>1, 2</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>individually limited, but cumulatively</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>considerable? (“Cumulatively considerable”</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>means that the incremental effects of a</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>project are considerable when viewed in</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>connection with the effects of past projects,</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>the effects of other current projects, and</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>the effects of probable future projects)?</td>
<td>1, 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c) Does the project have environmental</td>
<td>1, 2</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>effects which will cause substantial adverse</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>effects on human beings, either directly or</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>indirectly?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## DISCUSSION:

The project does not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal. The proposed project would not eliminate and important example of California history.

The project does not have impacts that are individually limited, but cumulatively considerable nor does it have substantial environmental effects which will cause substantial adverse effects on human beings either directly or indirectly. The project is located within the City’s commercial downtown area where there are other projects that are under review and planned for the future. These projects are redevelopment projects where existing buildings are either rehabilitated or demolished and replaced. This infill development does not result in considerable effects to the environment.

**Global Climate Change Impacts**

Global climate change is the alteration of the Earth’s weather including its temperature, precipitation, and wind patterns. Global temperatures are affected by naturally occurring and anthropogenic generated atmospheric gases, such as carbon dioxide, methane, and nitrous oxide. These gases allow sunlight into the Earth’s atmosphere, but prevent radiative heat from escaping into outer space, which is known as the “greenhouse” effect. The world’s leading climate scientists have reached consensus that global climate change is underway and is very likely caused by humans. 20 Agencies at the international, national,
state, and local levels are considering strategies to control emissions of gases that contribute to global warming. There is no comprehensive strategy that is being implemented on a global scale that addresses climate change; however, in California a multiagency "Climate Action Team", has identified a range of strategies and the Air Resources Board, under Assembly Bill (AB) 32, has been designated to adopt the main plan for reducing California's GHG emissions by January 1, 2009, and regulations and other initiatives for reducing GHG emissions by January 1, 2011. AB 32 requires achievement by 2020 of a statewide greenhouse gas emissions limit equivalent to 1990 emissions, and the adoption of rules and regulations to achieve the maximum technologically feasible and cost-effective greenhouse gas emissions reductions.

By 2050, the state plans to reduce emissions to 80 percent below 1990 levels. While the state of California has established programs to reduce greenhouse gas emissions, there are no established standards for gauging the significance of greenhouse gas emissions. Neither CEQA nor the CEQA Guidelines provide any methodology for analysis of greenhouse gases. Given the "global" scope of global climate change, the challenge under CEQA is for a Lead Agency to translate the issue down to the level of a CEQA document for a specific project in a way that is meaningful to the decision making process. Under CEQA, the essential questions are whether a project creates or contributes to an environmental impact or is subject to impacts from the environment in which it would occur, and what mitigation measures are available to avoid or reduce impacts.

The project would generate greenhouse gases primarily through electricity generation/use and generation of vehicle trips. Efforts to reduce the project's greenhouse gas emissions by reducing electricity demand and reducing vehicle trips and miles, therefore, should be implemented. The proposed project would conform to the City's Comprehensive Plan and other policies to reduce vehicle trips and miles traveled.

Given the overwhelming scope of global climate change, it is not anticipated that a single development project would have an individually discernable effect on global climate change (e.g., that any increase in global temperature or rise in sea level could be attributed to the emissions resulting from one single development project). Rather, it is more appropriate to conclude that the greenhouse gas emissions generated by the proposed project would combine with emissions across the state, nation, and globe to cumulatively contribute to global climate change.

Declaring an impact significant or not implies some knowledge of incremental effects that is several years away, at best. To determine whether the proposed project would have a significant impact on global climate change is speculative, particularly given the fact that there are no existing numerical thresholds to determine an impact. However, in an effort to make a good faith effort at disclosing environmental impacts and to conform with the CEQA Guidelines [§16064(b)], it is the City's position that, based on the nature and size of this redevelopment project, its location within an established urban area served by existing infrastructure (rather than a greenfield site), the transit oriented nature of the project's nominal percentage increase in greenhouse gas emissions, the proposed project would not impede the state's ability to reach the emission reduction limits/standards set forth by the State of California by Executive Order S-3-05 and AB 32. Over the long term, the expectation from regional planning agencies is that intensifying land uses near transit will lead to reduced dependence on the automobile and increased transit ridership. For these reasons, this project would not make a cumulatively considerable contribution to global climate change associated with greenhouse gas emissions.
emissions. The project is required to reach the Silver level on the United States Green Building Council’s Leadership in Energy and Environmental Design (LEED) checklist. Implementation of these green building strategies will help to reduce the impact on climate change.

The proposed project would result in less than significant global climate change and cumulative impacts.

**Mitigation:** None

**Significance after Mitigation:** Not significant

**SOURCE REFERENCES**

1. Project Planner’s knowledge of the site and the proposed project
2. Palo Alto Comprehensive Plan 1998-2010 & Maps L-4, L-7, L-8, L-9, N-1, N-2, N-3, N-5, N-6, N-8, N-10, T-7, T-8
3. Palo Alto Municipal Code, Title 18 – Zoning Ordinance
4. Required compliance with the Uniform Building Code (UBC) Standards for Seismic Safety and Windload
5. Project Plans, dated May 12, 2008
6. Alquist-Priolo Earthquake Fault Zoning Map 2002
8. FEMA Flood Map, Community Panel Map #060348 0005DX, dated 9/6/89
9. City of Palo Alto Public Works Engineering Division, written comments on project, March 31, 2008
10. City of Palo Alto Transportation Division, written comments on project, April 3, 2008
11. City of Palo Alto Fire Department, written comments on project, April 7, 2008
**DETERMINATION**

On the basis of this initial evaluation:

<table>
<thead>
<tr>
<th>I find that the proposed project <strong>COULD NOT</strong> have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.</th>
<th>X</th>
</tr>
</thead>
<tbody>
<tr>
<td>I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.</td>
<td></td>
</tr>
<tr>
<td>I find that the proposed project <strong>MAY</strong> have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.</td>
<td></td>
</tr>
<tr>
<td>I find that the proposed project <strong>MAY</strong> have a &quot;potentially significant impact&quot; or &quot;potentially significant unless mitigated&quot; impact on the environment, but at least one effect: 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.</td>
<td></td>
</tr>
<tr>
<td>I find that although the proposed project <strong>COULD</strong> have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.</td>
<td></td>
</tr>
</tbody>
</table>

---

**Project Planner**

Date: 5/16/08

**Director of Planning and Community Environment**

Date: 

---

278 University Avenue

Page 24

Negative Declaration
Reich, Russ

From: Williams, Curtis
Sent: Tuesday, September 09, 2008 2:16 PM
To: Reich, Russ
Subject: FW: 278 University Ave. project

Fyi – please send to applicant.

From: Emslie, Steve
Sent: Monday, September 08, 2008 7:38 AM
To: Williams, Curtis
Cc: Keene, James; Morariu, Kelly
Subject: FW: 278 University Ave. project

FYI

From: CRAIGK1@aol.com
Sent: Sunday, September 07, 2008 7:37 PM
To: Council, City
Subject: 278 University Ave. project

Honorable City Council Members;

I am writing to you in opposition to the exceptions to existing zoning regulations that have been requested by the developer of the proposed project at 278 University Ave.

The increased height, the reduced setbacks, the increased Floor Area beyond current zoning allowances, and the inappropriate use of the Seismic Bonus all add up to another downtown building whose the mass and scale will have serious and permanent effects on the architectural aesthetic of our downtown. When will this blatant pushing of the envelope by developers end?

Respectfully

Kathleen Craig
101 Waverley Street
Palo Alto, CA  94301

Psssst...Have you heard the news? There's a new fashion blog, plus the latest fall trends and hair styles at StyleList.com.
Fyi. Please send to applicant.

-----Original Message-----
From: Emslie, Steve
Sent: Monday, September 08, 2008 7:39 AM
To: Williams, Curtis
Cc: Keene, James; Morariu, Kelly
Subject: FW: 278 University Ave.

-----Original Message-----
From: Robert Gamburd, M.D. [mailto:rgamburg@yahoo.com]
Sent: Sunday, September 07, 2008 5:18 PM
To: Council, City
Subject: 278 University Ave.

Dear Council Members,

I would like to express my support for the proposed project put forth to the city for 278 University Ave. I think the new building would enhance the corner and replace a seismic hazard. I feel the objections raise about a small variance in the height etc. are just the usual noise makers objecting to any change in Palo Alto. These changing the small differences from the code significantly degrade the aesthetics of a lovely proposal, and have no real effect on the citizens and our community.

Thank you,

Robert Gamburd, M.D.
Reich, Russ

From: Williams, Curtis
Sent: Tuesday, September 09, 2008 2:14 PM
To: Reich, Russ
Subject: FW: 278 University Ave. -Sept 15 agenda

Fyi – please send to applicants.

From: Emslie, Steve
Sent: Tuesday, September 09, 2008 1:54 PM
To: Williams, Curtis
Subject: FW: 278 University Ave. -Sept 15 agenda

FYI

From: Elaine [mailto:meyere@concentric.net]
Sent: Tuesday, September 09, 2008 12:36 PM
To: Council, City
Subject: 278 University Ave. -Sept 15 agenda

To: Palo Alto City Council

September 8, 2008

From: University South Neighborhood Association Board -
Richard Brand, Janet Dafoe, Joette Farrand, Carol Kiparsky, Hal Luft, Elaine Meyer, Shulamith Rubinfien, Joe Shakes

The Board of the USNA recommends denial of the following inappropriate zone changes for 278 University Avenue:

1. Two DEEs.

* According to the code, Design Enhancement Exceptions are intended for "minor architectural elements." Adding 5 feet to a 4-story, 50-foot high building is not a "minor" change. Making a building larger does not enhance its design.

Is it the council's intention to change the long-established 50' height limit downtown?
Setting this precedent will encourage other developers to ask for the same special privilege, and even more. Unless the City Council intends to change the height limit policy for University Avenue, this spot-zone should be denied.

* The developer wants to exclude the 5,600 square foot basement from calculation of Floor Area Ratio (FAR), which would allow for a much larger building. This cannot be considered a "minor" exception or enhancement. Furthermore, DEEs cannot be used to increase the FAR, but they are being used here for that purpose.

2. Variance. The setback on Bryant Street allows for a view that is beneficial to the stores and restaurants on Bryant. Reducing this view by giving a special privilege to this large building seems unfair to those businesses.

3. Seismic Bonus. A strange and inappropriate request arises in the calculation of FAR and Seismic Bonus. The developer requests the exclusion of the 5,600 square foot basement from calculation of FAR
(a DEE). At the same time he wants to include the same basement in calculating a Seismic Bonus. Seismic Bonuses were created as an incentive to encourage renovation of older buildings. It is entirely inappropriate to apply this bonus to new construction.

Oversized buildings are a source of complaint all over Palo Alto. Allowing these code deviations adds to the frustration of residents who believe they are not being heard. Why reinforce this unpopular trend?

4. University Avenue has many similar lots and corners. There are no special circumstances here that warrant breaking so many rules. By approving so many zoning deviations, the city is in danger of corrupting the planning process. Isn’t it up to the City Council to uphold our zoning laws? and to stand behind the staff charged with enforcing them?

- We are indebted to Lynn Chiupella’s careful analysis of this project. See CMR 319:08 -