Summary Title: 840 Kipling: Variance Approval

Title: 840 Kipling Street [18PLN-00185]: Variance Associated With an Individual Review Application for Modifications to an Existing Historic 1,192 SF, One-Story Single-Family Home Allowing: (1) a Second-Story Home Addition on a Substandard, Irregular R-2 Zoned Lot, and (2) Extension of a Non-Complying Wall That Encroaches 2.5 Feet Into an Interior Side Setback; On February 26, 2020, the Planning and Transportation Commission Unanimously Recommended Approval of the Variance. This Project is Exempt from the California Environmental Quality Act (CEQA) in Accordance with CEQA Guidelines Section 15301(e).

From: City Manager

Lead Department: Planning and Development Services

Recommendation:
The Planning and Transportation Commission (PTC) recommends Council approve the Record of Land Use Action (Attachment A) approving the requested variance application at 840 Kipling for:

- A second-story addition with a height of 26 feet 8-¼ inches to a historic home on a substandard lot, where development is otherwise limited to one habitable floor with a maximum height of 17 feet, and
- A six-foot horizontal extension of a noncomplying wall encroaching 2 feet 6 inches into the required six-foot side setback, providing additional area at the first floor and basement levels.

Executive Summary:
This report recommends the City Council approve on consent calendar the variance application requests for a two-story single-family home on a substandard, R-2 zoned lot. The project site is located within the boundaries of the South of Forest Area I Coordinated Area Plan (SOFA I). The director of planning and development services (Director) tentatively approved applications for a
variance and the individual review (IR). A representative of the neighboring 441 Channing Avenue property requested a hearing on the variance.

The PTC is the reviewing body for variances when a public hearing has been requested following the Director’s tentative decision. On February 26, 2020, the PTC held a public hearing and unanimously recommended City Council approve the requested variances. If three Council members vote to remove the project from the consent calendar, the Council would have the opportunity to hear the variance application de novo at a future, noticed hearing.

Background:
The property is developed with a 1,192 square floor (sf) single-story single-family residence and a detached garage containing 336 sf of floor area. The main residence is a one-story bungalow with an attic, constructed in 1912. The residence is located on a substandard R-2 zoned lot. The home is a noncomplying facility, due to the 2’-6” encroachment into the right-side yard setback.

The applicant requested approvals for an IR and variance applications to allow:
- a 184 sf ground floor addition at the rear part of the main residence,
- a 397 sf partial basement beneath the rear addition, and
- a 489 sf second floor addition.

Along with the proposed additions, the applicant proposes modifications to existing windows and doors for all exterior walls of the building.

In 1998, the Historic Resources Board (HRB) determined the existing residence was eligible as a ‘contributing residence’. The HRB reviewed the project on February 14, 2019 and December 12, 2019. The HRB found the project, as conditioned, is consistent with all ten Secretary of Interior’s Standards for Rehabilitation (SOI standards).

City staff determined the project conforms with all applicable zoning and municipal code requirements, including the Single-Family Individual Review Guidelines and Variance regulations set forth in the Palo Alto Municipal Code (PAMC) Chapter 18.76.030. The Director tentatively approved the project applications on January 15, 2020 (Attachment B). The Director’s determination was based upon a review of all information contained in the project file, which included neighbor letters received during the review process.

On January 23, 2020, a representative of the neighboring property at 441 Channing Avenue submitted a hearing request on the variance application. The requestor initially asked for a

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1 February 14, 2019 HRB staff report can be found at this link: https://www.cityofpaloalto.org/civicax/filebank/documents/68958
2 December 12, 2019 HRB staff report can be found at this link: https://www.cityofpaloalto.org/civicax/filebank/documents/74373
hearing of the IR application, but later withdrew that request. The Director’s approval of the IR application is effective, subject to City Council’s approval of the requested variance.

Discussion:
On February 26, 2020, the PTC conducted a public hearing, received public testimony and provided its recommendation to City Council in support of the Variance application, with minor modifications to staff’s recommended variance findings (Attachment D). In addition to hearing from the 441 Channing hearing requestor, PTC received one written letter from a neighbor and heard from three other speakers who were in support of the project.

The hearing requestor’s issues appeared in a letter to PTC, dated February 3, 2020 (Attachment C). In summary, the hearing requestor expressed concerns that:

- The project would not meet findings for the granting of two variance requests.
- The project, with the proposed density and setbacks, would conflict with the R-2 zoning designation.
- The design option of a one-and-one-half story addition was not considered.
- A rear addition is possible if the tree protection zone (TPZ) is reduced, in the same way TPZ reductions occurred for nearby recent developments.

The PTC reviewed the information on file, received public testimony, and unanimously recommended City Council approve the two variance requests. The PTC concluded that the project would meet all four Variance approval findings and recommended including these additional findings:

- The request to exceed the 17-foot height limit is a privilege supported by development on other properties in the immediate neighborhood.
- The requested encroachment into the right-side yard would replace an existing encroachment.

These PTC-recommended modifications to the findings appear in Variance Finding 2 in the draft Record of Land Use Action (Attachment A).

Design Alternatives
During the hearing, PTC commissioners considered other potential design alternatives given the site constraints. Commissioner Hechtman noted his support for the appropriate placement of a portion of the permitted floor area at the second story. He compared the current project with a potential alternative that would place all permitted floor area at grade—an option that would need a lot coverage variance. He also concurred that the project would enable the preservation of protected trees and historic resource, which are in alignment with existing policies in the SOFA I and Comprehensive Plan. Though his comments were not included in the formal motion
for recommendation, PTC commissioners suggested inclusion of these comments in Council staff report.

The PTC also acknowledged that:
- Additions and alterations to the front façade are generally discouraged as they would alter the character of a building having historic merit.
- Along with the R-2 zone regulations, the oddly shaped lot and the location of existing structures limit the configuration of floor area on the ground floor.
- The recommended 35-foot TPZ constitutes the remaining undisturbed open area that is crucial to preserve the two protected trees, but will limit buildable area at the rear side.
- Aside from the variance requests, the first- and second-floor additions substantially comply with the R-2 zoning regulations and other applicable requirements.
- The first-floor addition would replace an existing and similar side-setback encroachment, extend to the edge of the TPZ, and enable detached garage access.
- The second-floor addition, with an appropriate height within the daylight planes and permitted building envelope, will respect the privacy and scale of neighboring properties.
- Granting a variance to allow a second story addition for this property is appropriate relative to other design options that will further intrude into the tree protection zone.

The excerpt minutes of the PTC hearing on February 26, 2020 are attached (Attachment D).

City Council Purview:
The Council’s purview is limited to the variance request allowing:
(1) A second-story addition with a height of 26 feet 8 ¼ inches on a substandard lot, on which development is limited to one habitable floor with a maximum height of 17 feet, and
(2) An approximately 6’-4” horizontal extension to the existing noncomplying first floor and basement walls on the west elevation that encroaches 2’-6” into the required six-foot, right-side yard setback.

City Council is requested to approve the variance on consent calendar, consistent with existing municipal code procedures. Three councilmembers would be needed to pull the item off the consent agenda to schedule a public hearing.

Policy Implications:
The process for evaluating a variance is set forth in PAMC Chapter 18.76.030. A variance is intended to provide a way for a site with special physical constraints to be used in ways similar to other sites in the same vicinity and zoning district. Variances provide a way to grant relief from strict application of the zoning regulations. Strict application of codes can subject
development of a site to substantial hardships, constraints, or practical difficulties that do not normally arise on other sites in the same vicinity and zoning district. Variance applications are evaluated to specific findings. All findings must be made in the affirmative to approve the project. City Council may approve the variance requests, as recommended by staff and PTC, in accordance to the objectives and findings for variance as outlined in the Municipal Code.

**Timeline:**
If three Council members vote to remove the project from the consent calendar, the Council would have the opportunity to hold a future public hearing on the variance application. If approved on consent, the decision is effective immediately.

**Environmental Review:**
Staff assessed the potential impacts of the subject project in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The project is exempt from the provisions of the California Environmental Quality Act per CEQA Guidelines Section 15301(e) (Additions to Existing Structure).

**Attachments:**
- Attachment A - Record of Land Use Action
- Attachment B - Proposed Director’s Approval Letter and Findings dated January 15, 2020
- Attachment C - Hearing Requestor Letter dated February 3, 2020
- Attachment D - Excerpt Minutes of PTC Hearing dated February 26, 2020
- Attachment E - Project Plans
On April 20, 2020, the City Council held a duly noticed public hearing, and after considering all of the evidence presented, upheld the Planning and Development Services (PDS) Director’s January 15, 2020 decisions to approve Variance to allow (1) a second-story addition to a historic home on a substandard, irregular lot; and (2) an horizontal extension of a noncomplying wall that encroaches 2’-6” into a 6-foot side setback (File No. 18PLN-00185).

SECTION 1. Background. The City Council of the City of Palo Alto (“City Council”) make the following findings, determination and declarations:

A. On June 6, 2018, the applicant filed Variance, Individual Review and Historic Review Applications for exterior modifications and additions to a historic residence on a substandard, irregular Lot in the R-2 zone district within the boundaries of South of Forest Area I Coordinated Area Plan (SOFA I).

B. The project was reviewed by Staff in conformance to applicable zoning and municipal code requirements, including the Single-Family Individual Review Guidelines and the Variance regulations set forth in the Palo Alto Municipal Code Chapter 18.76.030.

C. On January 15, 2020, the PDS Director tentatively approved the applications, following review by the Historic Resource Board on February 14, 2019 and December 12, 2019. Notices of the Director’s decision were mailed to adjacent neighbors.

D. Timely hearing requests on both Variance and Individual Review applications were made by a representative of the neighboring property at 441 Channing Avenue.

E. The Planning and Transportation Commission (PTC) is the reviewing body for Variance applications for which a hearing has been requested after the Director has issued a tentative decision. On February 26, 2020, the PTC held a duly noticed public hearing, at which evidence was presented and all person were afforded an opportunity to be heard in accordance with the Palo Alto Municipal Code and the Council’s Policies and Procedures.

F. A Director’s Hearing is the reviewing body for Individual Review applications for which a hearing has been requested after the Director has issued a tentative decision. A Director’s Hearing was initially scheduled on March 5, 2020. However, the hearing
requestor withdrew the hearing request following the PTC hearing on February 26, 2020.

G. On April 20, 2020, the City Council held a duly noticed public hearing to act on the Variance application, at which evidence was presented and all persons were afforded an opportunity to be heard in accordance with the Palo Alto Municipal Code and the Council’s Policies and Procedures. The decision on the Variance, Individual Review and Historic Review applications will become final upon City Council’s approval on the Variance application.

SECTION 2. Environmental Review.
The project is exempt from the provisions of the California Environmental Quality Act per CEQA Guidelines Section 15301(e) (Additions to Existing Structure).


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.

The subject site was developed in 1912 with a detached garage and a single-story residence that is non-complying with regards to the right-side yard setback. The subject site has a lot area of 4,893 square feet (SF) and a lot width of 39.5 feet. The site is considered as substandard because it does not meet the minimum lot width of 50 feet and the lot area is less than 4,980 SF (83% of the minimum 6,000 SF) than what are allowed in the R-2 zoning district.

Most of the substandard lots found on this block have a lot width of 25’ and the lot areas are ranging from approximately 1,970 SF to 2,840 SF, where the remaining properties on this block have a consistent lot width of 50’ and consistent lot area of 5,625 SF. The subject property with a lot width of 39.5’ and lot area of 4,983 SF is unique to the general lot pattern found in the neighborhood, which offers reasonable space for a second story addition to meet the daylight plane requirement unlike other substandard lots in the area.

The subject property includes a residence with historic merit. In order to be consistent with the Secretary of Interior’s Standards for Rehabilitation (SOI standards), additions and alterations to the front façade are generally discouraged as they would alter the historic
character of the building. Therefore, this historic home is limited to expansion on the rear part of the building.

The subject property is the only lot on the block that has a non-rectangular shape. The oddly shaped lot includes setbacks that limit the configuration of buildable area. Furthermore, two protected redwood trees in diameters of 42” and 26” are identified in the rear side of the subject property. These trees share a tree protection zone (TPZ) of 35’ in radius. After considering prior impacts and existing intrusions to the root system within the TPZ area, the 27% of undisturbed area is crucial to maintain for the preservation of these trees. The TPZ of 35’ in radius in the rear yard limits the property owner’s ability to construction by approximately 530 SF of the 2268 SF buildable area on the subject property.

The purpose of the granting of a variance, as outlined in PAMC Section 18.76.030(a) is to provide a way to grant relief when strict application of the zoning regulation would subject development of a site to substantial hardships, constraints, or practical difficulties that do not normally arise on other sites in the vicinity and same zoning district.

As noted above, the subject property may share similar zoning and historic characteristics as other properties within the immediately vicinity. While the unique size present opportunities for expansion, the shape and natural surrounding impose constraints to the configuration and the size of the buildable area. These site characteristics differentiate this property from other substandard and regular lots within the same zoning district.

2. *The granting of the application shall not affect substantial compliance with the regulations or constitutes a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zoning district as the subject property, and*

The R-2 zoning regulation prohibits second floor additions on substandard lots and encourages expansion on the ground floor. As noted above, the subject property presents various limitations for expansion on the ground floor.

With the loss of approximately 530 SF development potential within the buildable area on the ground floor, the project will expand about 184 SF on the first floor outside of the TPZ to preserve the protected trees and requests a 489 SF addition (roughly 22% of total floor area) to be placed on the second floor. The additions would be built within the limitations set forth for floor area and lot coverage in the R-2 zoning district.

The granting of second story addition is in compliance with the regulations of daylight planes and setbacks. The project with a variance request to exceed the 17-foot height limit is a privilege that is supported by other properties in the immediate neighborhood. The proposed second floor addition is consistent with the height restriction for two-story development in the R-2 zoning district. It will not constitute a grant of privileges inconsistent with the limitation upon other properties in the vicinity and in the same zoning district as the subject property.
The granting of an approximate 6 foot extension of the existing legal non-complying wall, that is setback 3.5 feet from the west side property line, is minor in nature. The project with a variance request to encroach into the right side yard would replace an existing encroachment. This request would normally fit within the specific limits set forth for Home Improvement Exception. The design of this small addition will be consistent with the SOI standards. With the objective to locate available floor area for the site on the first floor, the granting of this extension will not constitute a grant of privileges inconsistent with the limitation upon other properties in the vicinity and in the same zoning district as the subject property.

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

The project is generally consistent with the objectives and relevant policies in the Comprehensive Plan. The project will rehabilitate a residence with historic merit by preserving its historic integrity consistent with the SOI Standards (Policy L-2.9, L-6.4, L-7.1, L-7.8). The proposed site plan is sensitive to surrounding landscape and will minimize impact to two protected trees (Policy N-2.9, N-2.10). The project includes additions with appropriate scale and height that are compatible with the neighborhood and adjacent structures (Policy L-3.1, L-6.1). The proposed additions will preserve natural light exposure for nearby single-family residences by complying to current regulations for daylight planes and setbacks (Policy L-6.8). The project is consistent with the Comprehensive Plan as a whole.

The subject property is located within the South of Forest Area Phase I Coordinated Area Plan (SOFA I CAP) area. It is in a transitional area between R-2 and DHS (Detached Housing on Small Lots) zoning districts. The project, with increased living space, will support a range of housing options for various ages, household sizes, lifestyles and incomes in the neighborhood (Policy H-6). Through a request of granting exception to development standards, the project will reconfigure the house footprint and massing to preserve significant trees (Policy DC-7). The project is designed to be consistent with the SOI standards, which will reinforce its original architectural style and use (Policy DC-9). Overall, the project is compatible with the historical patterns of the surrounding single-family areas and is generally consistent with the SOFA I CAP objectives and policies.

The purpose of R-2 zoning district is ‘intended to allow a second dwelling unit under the same ownership as the initial dwelling unit on appropriate sites in areas designated for single-family use by the Palo Alto Comprehensive Plan, under regulations that preserve the essential character of single-family use.’ (PAMC 18.10.010(b)). The project will maintain its original use as single-family residential and the proposed additions will be consistent with the existing architecture to preserve the essential character of single-family use. Although two dwelling unit is encouraged on appropriate sites within the area, the project site will not meet the minimum site area of 7,500 square feet, that was established by the
Comprehensive Plan (Housing Element) and R-2 zoning regulations, to permit additional residential units. The project may, however, include a separate, self-contained accessory dwelling unit for rental. Such option is available but is not mandatory for developments in the R-2 zoning district. Given the site constraints, the project is generally consistent with the purpose of R-2 zoning regulations.

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

The granting of the variance application would not be detrimental or injurious to property or improvements in the vicinity. The subject property is not located in proximity to designated view corridors or scenic routes. Obstructed view from neighboring properties is not considered as detrimental or injurious in nature. Though, the granting of the variance application shall consider neighbor’s concerns with respect to privacy, height and scale at the neighborhood scale.

The proposed additions are in substantial compliance with the five Individual Review Guidelines for single-family homes with the goals to promote new construction that is compatible with existing residential neighborhoods.

The proposed second story window size and placement with above 5’ sill height on both left and right elevations will mitigate privacy impact by minimizing the opportunity for direct sight lines into windows and patios of neighboring properties. The proposed second floor addition is rectangular in shape and is setback from the first floor wall planes so that massing is not highly expressed from all sides. In addition, the proposed second floor addition will be built within the required side and rear daylight planes at a height of about 26’-8”. The existing building height is 18’ and the height limit for two-story development in the R-2 zoning district is 30’. The overall height is still considerably lower than some nearby homes on this block.

The existing west side wall is setback 3’ 6” from the west interior property line, therefore this wall is non-conforming. The project will replace one window on this existing wall. This replacement will not exceed the thresholds contained within Code Section 18.70.100, therefore the wall may remain. Additionally, an approximate 6 foot extension to this existing 40.5 foot wall will be added to the rear part of the home and will not be visible from the street. The proposed extension will not decrease privacy and the scale is compatible with the existing home. The proposed extension will not be detrimental to public health and safety, general welfare or convenience.

As conditioned, the project is required to be in compliance with the Municipal Code and other relevant regulations. The proposed additions are not found to pose potential risk to public health, safety, general welfare or convenience. The granting of the variance
application would not be detrimental or injurious to property or improvements in the vicinity.

SECTION 4. CONDITIONS OF APPROVAL

PLANNING DIVISION CONDITIONS:

1. CONFORMANCE WITH PLANS. Construction and development shall conform to the approved plans entitled, “Reyna/Kutlu Residence, 840 Kipling Street, Palo Alto, CA 94301, APN 120-17-028,” stamped as received by the City on November 20, 2019 on file with the Planning Department, 250 Hamilton Avenue, Palo Alto, California except as modified by these conditions of approval.

2. BUILDING PERMIT. Apply for a building permit and meet any and all conditions of the Planning, Fire, Public Works, and Building Departments.

3. BUILDING PERMIT PLAN SET. A copy of this cover letter and conditions of approval shall be printed on the second page of the plans submitted for building permit. Project plans submitted for Building permits shall incorporate the following changes:
   
   a. Eliminate all windows in the proposed stairway under the gable on the east elevation
   b. Replicate the size and style of the existing small historic window on the east elevation (Sheet A5) and locate the said window in the proposed new bathroom on the first floor.
   c. Allow the relocation of existing double French doors from the proposed entry hall to the living room on the first floor.
   d. Allow the relocation of the single door from the proposed living room to the entry hall on the first floor. A new sidelite shall be installed to fill in the existing opening facing the street.

4. HISTORIC BUILDING. As conditioned above (Condition #3), all exterior alterations and additions proposed in the building permit submittal shall be in substantial compliance with the Secretary of the Interior’s Standards for Rehabilitation. All exterior changes shall not impact the historic nature of existing home and shall not affect the primary façade that retains architectural integrity. Any work involving with the removal or modification of the historic character of the existing home is subject to review by the Chief Planning Official for compliance with the Secretary of the Interior Standards.

5. SOI STANDARDS. The ten Secretary of the Interior’s (SOI) Standards for Rehabilitation shall be printed on one of the initial sheets of the Building Permit Plan Set.

6. NONCOMPLYING FACILITY WALLS. The applicant has agreed to maintain all non-complying walls with the exception of proposed windows changes as shown on Sheet A5.2. These
improvements have been reviewed and found to be in conformance with PAMC Section 18.70.100(b) as described below. Any additional changes would require prior Planning approval.

a. When the damage or destruction of a noncomplying facility affects a portion of the facility that constituted or contributed to the noncompliance, any replacement or reconstruction to such damaged portion shall be accomplished in such manner as not to reinstate the noncompliance or degree of noncompliance caused by the destroyed or damaged portion of the facility, and otherwise in full compliance with this title; however, if the cost to replace or reconstruct the noncomplying portion of the facility to its previous configuration does not exceed fifty percent of the total cost to replace or reconstruct the facility in conformance with this subsection, then the damaged noncomplying portion may be replaced or reconstructed to its previous configuration. In no event shall such replacement or construction create, cause, or increase any noncompliance with the requirements of this title.

7. PROJECT MODIFICATIONS. All modifications to the approved project shall be submitted for review and approval prior to construction. If during the Building Permit review and construction phase, the project is modified by the applicant, it is the responsibility of the applicant to contact the Planning Division/project planner directly to obtain approval of the project modification. It is the applicant’s responsibility to highlight any proposed changes to the project and to bring it to the project planner’s attention.

8. REQUIRED PARKING. All single family homes shall be provided with a minimum of one covered parking space (10 foot by 20 foot interior dimensions) and one uncovered parking space (8.5 feet by 17.5 feet).

9. UTILITY LOCATIONS. In no case shall utilities be placed in a location that requires equipment and/or bollards to encroach into a required parking space. In no case shall a pipeline be placed within 10 feet of a proposed tree and/or tree designated to remain.

10. NOISE PRODUCING EQUIPMENT. All noise producing equipment shall be located outside of required setbacks, except they may project 6 feet into the required street side setbacks. In accordance with Section 9.10.030, No person shall produce, suffer or allow to be produced by any machine, animal or device, or any combination of same, on residential property, a noise level more than six dB above the local ambient at any point outside of the property plane.

11. DAYLIGHT PLANE. The daylight plane must clear the point where the wall plane intersects the top of the roof material.

12. IMPERVIOUS SURFACE. A minimum of 60% of the required front yard shall have a permeable surface that permits water absorption directly into the soil (Section 18.12.040 (h)). The building permit plan set shall include a diagram demonstrating compliance.
13. REQUIRED IR LANDSCAPING/TREES. The following landscaping is required to ensure the project’s conformance with the City’s IR Guidelines and therefore must remain for the life of the structure. Required screening trees and shrubs shall be a minimum size of 24 inch box and measure at least eight (8) feet tall.
   a. All shrubs and/or trees, shown on the site plan, shall be maintained on the property.
   b. Two existing redwood trees protected by construction fencing located along the rear property line on the site plan shall be maintained.

14. NO NET LOSS OF CANOPY. Any proposal of tree removal must be reviewed or approved by Planning Division prior to signing off the final inspection for the building permit.

15. PROJECT ARBORIST. The property owner shall hire a certified arborist to ensure the project conforms to all Planning and Urban Forestry conditions related to landscaping/trees.

16. TREE PROTECTION FENCING. Tree protection fencing shall be required for the front street tree and the rear yard redwood trees.

17. FENCES. Fences and walls shall comply with the applicable provisions of Chapter 16.24, Fences, of the Palo Alto Municipal Code (PAMC). Heights of all new and existing fencing must be shown on the Building Permit plans.
   a. Where the existing fence is located off the subject property and/or where the existing fence is failing, a new Code compliant fence shall be constructed.

18. BASEMENT WALLS: Basement retaining walls shall not extend beyond the exterior wall plane of the first floor of the house, excluding lightwells, below grade patios and approved extensions, to the satisfaction of the Director of Planning.

19. BASEMENT CONSTRUCTION WALLS: Any walls, temporary or otherwise, installed to facilitate construction of a basement shall be removed or constructed in such a way as to not significantly restrict the growth of required landscaping, to the satisfaction of the Director of Planning.

20. DECONSTRUCTION SURVEY: A Deconstruction Survey is required for demolition permit applications submitted on or after January 1, 2017. This survey submittal shall include a list of materials that are salvageable from the project as well as the values of such materials. At this time, the City’s only approved vendor for this service is The ReUse People. Contact them to schedule this FREE service by phone (888)588-9490 or e-mail info@thereusepeople.org. More information can be found at www.TheReusePeople.org. If you have further questions, please contact Scott McKay at scott.mckay@cityofpaloalto.org.

21. PLANNING FINAL INSPECTION. A Planning Division Final inspection will be required to determine substantial compliance with the approved plans prior to the scheduling of a
Building Division final. Any revisions during the building process must be approved by Planning, including but not limited to; materials, fenestration and hard surface locations. Contact your Project Planner at the number below to schedule this inspection.

22. PERMIT EXPIRATION. The project approval shall be valid for a period of **two years** from the original date of approval. Application for a one year extension of this entitlement may be made prior to expiration, by emailing the Current Planning Support Staff (Alicia Spotwood - Alicia.Spotwood@CityofPaloAlto.org). If a timely extension is not received, or the project has already received an extension and the applicant still wishes to pursue this project, they must first file for a new Planning application and pay the associated fees. This new application will be reviewed for conformance with the regulations in place at that time.

23. INDEMNITY: 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 for 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.

**GREEN BUILDING & ENERGY REACH CODE REQUIREMENTS:**

**NOTICE FOR PERMIT APPLICATIONS SUBMITTED ON OR AFTER 1/1/17:** Please be advised that the Palo Alto City Council has approved Energy Ordinance 5383 and Green Building Ordinance 5393 for all new permit applications with an effective date for January 1st, 2017. To review the upcoming changes, visit the Development Services webpage. On the left-hand side under “EXPLORE”, hover over “Green Building” and select “Compliance.” For information regarding the Model Water Efficient Landscape Ordinance, please see the Outdoor Water Efficiency Webpage for compliance documentation. You may also email Green Building at GreenBuilding@cityofpaloalto.org for specific questions about your project.

24. GREEN BUILDING CONDITIONS OF APPROVAL

a) The project is a residential addition or alterations that increased the building’s conditioned area volume, or size and the altered area is less than 1000 square feet and therefore must meet the California Green Building Code mandatory requirements outlined in Chapter 4, (with local amendments). (Ord. 5393 §1, 2016)

b) Model Water Efficient Landscape Ordinance (MWELO): The project is a residential new construction project with an aggregate landscape area of 500 square feet or more included in the project scope of work and therefore shall comply with the requirements of the Landscape Documentation Package (§492.3). Please see the Outdoor Water Efficiency Webpage for compliance documentation. (MWELO Title 23, Chapter 2.7)
c) The project includes a residential alteration or addition that is not considered a repair or maintenance and therefore the building permit applicant shall replace all noncompliant plumbing fixtures within the building with water conserving plumbing fixtures in compliance with California Senate Bill 407. (SB 407/California Civil Code Sections 1101.1 through 1101.8, 2013 CGBC Section 301)

d) The project is a residential construction project of any size and therefore must meet the enhanced construction waste reduction at Tier 2 (80% construction waste reduction). PAMC 16.14.260 (Ord. 5393 § 1 (part), 2016)

25. LOCAL ENERGY REACH CODE CONDITIONS OF APPROVAL

a) The project includes new residential construction of any size and therefore triggers the Local Energy Efficiency Reach Code. For all new single-family residential there are two compliance options and one all-electric exception.

i) Single-Family Residential Options:
   (1) OPTION 1: Performance: New single-family residential construction projects without a solar photovoltaic (PV) system, the performance approach specified within the 2016 California Energy Code shall be used to demonstrate that the TDV Energy of the proposed building is at least 10% less than the TDV Energy of the Standard Design, if the proposed building does not include a PV systems.
      (a) Solar Ready Infrastructure: A dedicated solar zone shall be located on the roof or overhang of the building and have a total area no less than 500 square feet. Install a conduit extending from the roofline and terminating at the electrical panel.
   (2) OPTION 2: Performance: New single-family residential construction projects with a solar photovoltaic (PV) system, the performance approach specified within the 2016 California Energy Code shall be used to demonstrate that the TDV Energy of proposed single-family residential construction is at least 20% less than the TDV Energy of the Standard Design, if the proposed building includes a photovoltaic system.
      (a) Solar Ready Infrastructure: A dedicated solar zone shall be located on the roof or overhang of the building and have a total area no less than 500 square feet. Install a conduit extending from the roofline and terminating at the electrical panel.

b) All Electric Exemption:
   i) All-Electric Exception to the Local Energy Reach Code: New single-family residential construction that is designed and built to be all-electric shall be exempt from the requirements of Section 100.3. Local Energy Efficiency Reach Code.

26. Additional Green Building and Energy Reach Code information, ordinances and applications can be found at http://www.cityofpaloalto.org/gov/depts/ds/green_building/default.asp. If
you have any questions regarding Green Building requirements please call the Green Building Consultant at (650) 329-2179.

PUBLIC WORKS URBAN FORESTRY CONDITIONS – Walter Passmore walter.passmore@cityofpaloalto.org

PRIOR TO DEMOLITION, BUILDING OR GRADING PERMIT ISSUANCE

27. TREE PROTECTION COMPLIANCE. The owner and contractor shall implement all protection and inspection schedule measures, design recommendations and construction scheduling as stated in the TPR & Sheet T-1, and is subject to code compliance action pursuant to PAMC 8.10.080. The required protective fencing shall remain in place until final landscaping and inspection of the project. Project arborist approval must be obtained and documented in the monthly activity report sent to the City. The mandatory Contractor and Arborist Monthly Tree Activity Report shall be sent monthly to the City (pwps@cityofpaloalto.org) beginning with the initial verification approval, using the template in the Tree Technical Manual, Addendum 11.

28. PLAN CHANGES. Revisions and/or changes to plans before or during construction shall be reviewed and responded to by the (a) project site arborist, or (b) landscape architect with written letter of acceptance before submitting the revision to the Building Department for review by Planning, PW or Urban Forestry.

29. TREE DAMAGE. Tree Damage, Injury Mitigation and Inspections apply to Contractor. Reporting, injury mitigation measures and arborist inspection schedule (1-5) apply pursuant to TTM, Section 2.20-2.30. Contractor shall be responsible for the repair or replacement of any publicly owned or protected trees that are damaged during the course of construction, pursuant to Title 8 of the Palo Alto Municipal Code, and city Tree Technical Manual, Section 2.25.

30. GENERAL. The following general tree preservation measures apply to all trees to be retained: No storage of material, topsoil, vehicles or equipment shall be permitted within the tree enclosure area. The ground under and around the tree canopy area shall not be altered. Trees to be retained shall be irrigated, aerated and maintained as necessary to ensure survival. Minimal excavation work shall be allowed within the tree enclosure area. Air, water movement to the soil and soil compaction shall be protected to the possible extent. Landscape changes may enhance root growth or health in areas outside the limit of construction. The project arborist shall be responsible for supervising any construction activities within the tree protection zone.

31. BUILDING PERMIT SUBMITTAL- PROJECT ARBORIST CERTIFICATION LETTER. Prior to submittal for staff review, attach a Project Arborist Certification Letter that he/she has; (a) reviewed the entire building permit plan set submittal and, (b) affirm that ongoing Contractor/Project Arborist site monitoring inspections and reporting have been arranged with the contractor or owner (see Sheet T-1) and, (c) understands that design revisions (site
or plan changes) within a TPZ will be routed to Project Arborist/Contractor for review prior to approval from City.

32. TREE PROTECTION VERIFICATION. Prior to any site work verification from the contractor that the required protective fencing is in place shall be submitted to the Urban Forestry Section. The fencing shall contain required warning sign and remain in place until final inspection of the project.

33. EXCAVATION RESTRICTIONS APPLY (TTM, Sec. 2.20 C & D). Any approved grading, digging or trenching beneath a tree canopy shall be performed using ‘air-spade’ method as a preference, with manual hand shovel as a backup. For utility trenching, including sewer line, roots exposed with diameter of 1.5 inches and greater shall remain intact and not be damaged. If directional boring method is used to tunnel beneath roots, then Table 2-1, Trenching and Tunneling Distance, shall be printed on the final plans to be implemented by Contractor.

PRIOR TO OCCUPANCY

34. PROJECT ARBORIST INSPECTION LETTER. The contractor shall call for a final inspection by the Project Arborist to evaluate all trees to be retained and protected, as indicated in the approved plans, of the activity, health, welfare, mitigation remedies for injuries, if any, and for the long term care of the trees for the new owner. The final project arborist letter report shall be provided to the Planning Department prior to written request for temporary or final occupancy. The final report may be used to navigate any outstanding issues, concerns or security guarantee return process, when applicable.

PUBLIC WORKS ENGINEERING CONDITIONS – Christina Thurman Christina.thurman@cityofpaloalto.org

35. GRADING & DRAINAGE PLAN: The plan set must include a basic grading & drainage plan that includes drainage flow arrows to demonstrate proper drainage of the site. Adjacent grades must slope away from the house a minimum of 2% or 5% for 10-feet per 2013 CBC section 1804.3. Downspouts and splash blocks should be shown on this plan, as well as any site drainage features such as swales, area drains, bubbler, etc. Grading that increases drainage onto, or blocks existing drainage from neighboring properties, will not be allowed. Public Works generally does not allow rainwater to be collected and discharged into the street gutter, but encourages the developer to keep rainwater onsite as much as feasible by directing runoff to landscaped and other pervious areas of the site. See the Grading & Drainage Plan Guidelines for New Single Family Residences on the City’s website. http://www.cityofpaloalto.org/civicax/filebank/documents/2717

36. Provide the following note on the Site Plan and adjacent to the work within the Public road rightof-way. “Any construction within the city’s public road right-of-way shall have an approved Permit for Construction in the Public Street prior to commencement of this work.
37. Provide the following note on the Site Plan and Grading and Drainage Plan: “Contractor shall not stage, store, or stockpile any material or equipment within the public road right-of-way.” Construction phasing shall be coordinate to keep materials and equipment onsite.

38. 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 on our website http://www.cityofpaloalto.org/civicax/filebank/documents/27325.

39. Provide the following as a note on the Site Plan: “The contractor may be required to submit a logistics plan to the Public Works Department prior to commencing work that addresses all impacts to the City’s right-of-way, including, but not limited to: pedestrian control, traffic control, truck routes, material deliveries, contractor’s parking, concrete pours, crane lifts, work hours, noise control, dust control, storm water pollution prevention, contractor’s contact, noticing of affected surrounding properties, and schedule of work. The requirement to submit a logistics plan will be dependent on the number of applications Public Works Engineering receives within close proximity to help mitigate and control the impact to the public-right-of-way. If necessary, Public Works may require a Logistics Plan during construction.”

PUBLIC WORKS ELECTRIC ENGINEERING CONDITIONS – Gregory McKernan
Gregory.mckernan@cityofpaloalto.org

GENERAL
40. The applicant shall comply with all the Electric Utility Engineering Department service requirements noted during plan review.

41. The applicant shall be responsible for identification and location of all utilities, both public and private, within the work area. Prior to any excavation work at the site, the applicant shall contact Underground Service Alert (USA) at 1-800-227-2600, at least 48 hours prior to beginning work.

42. 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.

SUBMITTALS FOR ELECTRIC SERVICE
43. A completed Electric Load Sheet and a full set of plans must be included with all applications involving electrical work. The load sheet must be included with the preliminary submittal.
44. Only one electric service lateral is permitted per parcel. Utilities Rule & Regulation #18.

45. If this project requires padmount transformers, the location of the transformers shall be shown on the site plan and approved by the Utilities Department and the Architectural Review Board. Utilities Rule & Regulations #3 & #16 (see detail comments below).

46. The developer/owner shall provide space for installing padmount equipment (i.e. transformers, switches, and interrupters) and associated substructure as required by the City.

47. The customer shall install all electrical substructures (conduits, boxes and pads) required from the service point to the customer’s switchgear. The design and installation shall be according to the City standards and shown on plans. Utilities Rule & Regulations #16 & #18.

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

49. 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.

50. For underground services, no more than four (4) 750 MCM 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 a transition cabinet will not be required.

51. The customer is responsible for sizing the service conductors and other required equipment according to the National Electric Code requirements and the City standards. Utilities Rule & Regulation #18.

52. 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. Utilities Rule & Regulation #20.

53. Projects that require the extension of high voltage primary distribution lines or reinforcement of offsite electric facilities will be at the customer’s expense and must be coordinated with the Electric Utility.
**DURING CONSTRUCTION**

Contractors and developers shall obtain permit from the Department of Public Works before digging in the street right-of-way. This includes sidewalks, driveways and planter strips.

54. 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 check by USA shall be delineated with white paint. All USA markings shall be removed by the customer or contractor when construction is complete.

55. 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 National Electric Code Page 3 of 3 requirements and no 1/2 – 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.

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

57. The customer is responsible for installing all underground electric service conductors and other required equipment. The installation shall meet the National Electric Code and the City Standards.

58. Meter and switchboard requirements shall be in accordance with Electric Utility Service Equipment Requirements Committee (EUSERC) drawings accepted by Utility and CPA standards for meter installations.

59. Shop/factory drawings for switchboards (400A and greater) and associated hardware must be submitted for review and approval prior to installing the switchgear to: Gregory McKernan, P.E. Power Engineer Utilities Engineering (Electrical) 1007 Elwell Court Palo Alto, CA 94303

60. Catalog cut sheets may not be substituted for factory drawing submittal.

61. All new underground electric services shall be inspected and approved by both the Building Inspection Division and the Electrical Underground Inspector before energizing.

**AFTER CONSTRUCTION & PRIOR TO FINALIZATION**

62. The customer shall provide as-built drawings showing the location of all switchboards, conduits (number and size), conductors (number and size), splice boxes, vaults and switch/transformer pads. PRIOR TO ISSUANCE OF BUILDING OCCUPANCY PERMIT 1. The applicant shall secure a Public Utilities Easement for facilities installed on private property for City use.
63. All required inspections have been completed and approved by both the Building Inspection Division and the Electrical Underground Inspector.

64. All fees must be paid.

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

SECTION 5.  Variance Approved.

This Record finds that the project was approved with conditions.

INTRODUCED AND PASSED:

AYES: ()

NOES: ()

ABSENT:

ABSTENTION:

ATTEST:

__________________________  ______________________________
City Clerk                        Mayor

APPROVED AS TO FORM:              APPROVED:

__________________________  ______________________________
Deputy City Attorney             City Manager

____________________________
Director of Planning and Development Services

____________________________
Director of Administrative Services
January 15, 2020

Martin Bernstein Architect  
POB 1261  
Palo Alto, CA 94301  
Email: martinberstein617@gmail.com

SUBJECT: 840 Kipling Street; 18PLN-00185 Individual Review, Variance and Historic Review Approval

The Director of Planning and Community Environment has conditionally approved your Individual Review, Variance and Historic Review application, to allow exterior modifications and construction of a 184 square foot first-story addition and a 489 square foot second-story addition to an existing single-story residence on a substandard parcel. The Variance is requested to allow second-story addition on a substandard lot and to allow an approximately 6.3 foot extension to the existing non-complying first-floor wall on the west elevation, where the existing home is located 3.5’ from the interior side property line. Environmental Assessment: Exempt from CEQA in Accordance with Guideline Section 15301 (Additions to Residential). Zoning District: R-2 (Two Family Residential District). This approval was granted pursuant to the Palo Alto Municipal Code Sections 18.76.030 and 18.77.075. As conditioned, the project complies with the R-2 Zone District development regulations.

The Individual Review approval will become effective 14 days from the postmark date of this letter, unless the Planning Department receives a written request for a Directors Hearing prior to the end of the business day 14 calendar-days after the postmark date. Only an applicant, or the owner or tenant of an adjacent property may request a hearing. In accordance with the provisions of PAMC Chapter 18.77.060(c), any person may request a hearing of the Variance decision before the Planning and Transportation Commission. Such request must be made in writing to the Planning Division within 14 calendar days of the publication or mailing of this decision. As the plans may have been revised since the original submittal, interestec parties may wish to review the tentatively approved plans online at the City’s Planning Application webpage http://bit.ly/PABuildingEve. If you need assistance reviewing the plans, you may visit the City’s Development Center at 285 Hamilton Avenue.

This letter and attached conditions and findings shall be printed onto building permit plans relating to this approval. If the building permit has not been issued and construction commenced within two year from the effective approval date, this approval will expire. A written request for an extension may be submitted prior to the expiration date. The Director may grant a one-year extension of this approval. Should you have any questions regarding this approval, please do not hesitate to call Christy Fong, Project Planner, at (408) 340-5642 x 110 or e-mail at cfong@m-group.us

Sincerely,

Jodie Gerhardt, AICP  
Manager of Current Planning

cc: Neighbor notification list (600 ft)  
Property Owner  
Attachment: Conditions of Approval
VARIANCE FINDINGS

Variance approval is based on the findings indicated under PAMC Section 18.76.030 (c) and is subject to the Conditions of Approval listed below:

(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.

The subject site was developed in 1912 with a detached garage and a single-story residence that is non-complying with regards to the right-side yard setback. The subject site has a lot area of 4,893 square feet (SF) and a lot width of 39.5 feet. The site is considered as substandard because it does not meet the minimum lot width of 50 feet and the lot area is less than 4,980 SF (83% of the minimum 6,000 SF) than what are allowed in the R-2 zoning district.

Most of the substandard lots found on this block have a lot width of 25’ and the lot areas are ranging from approximately 1,970 SF to 2,840 SF, where the remaining properties on this block have a consistent lot width of 50’ and consistent lot area of 5,625 SF. The subject property with a lot width of 39.5’ and lot area of 4,983 SF is unique to the general lot pattern found in the neighborhood, which offers reasonable space for a second story addition to meet the daylight plane requirement unlike other substandard lots in the area.

The subject property includes a residence with historic merit. In order to be consistent with the Secretary of Interior’s Standards for Rehabilitation (SOI standards), additions and alterations to the front façade are generally discouraged as they would alter the historic character of the building. Therefore, this historic home is limited to expansion on the rear part of the building.

The subject property is the only lot on the block that has a non-rectangular shape. The oddly shaped lot includes setbacks that limit the configuration of buildable area. Furthermore, two protected redwood trees in diameters of 42” and 26” are identified in the rear side of the subject property. These trees share a tree protection zone (TPZ) of 35’ in radius. After considering prior impacts and existing intrusions to the root system within the TPZ area, the 27% of undisturbed area is crucial to maintain for the preservation of these trees. The TPZ of 35’ in radius in the rear yard limits the property owners ability to construction by approximately 530 SF of the 2268 SF buildable area on the subject property.

The purpose of the granting of a variance, as outlined in PAMC Section 18.76.030(a) is to provide a way to grant relief when strict application of the zoning regulation would subject development of a site to substantial hardships, constraints, or practical difficulties that do not normally arise on other sites in the vicinity and same zoning district.

As noted above, the subject property may share similar zoning and historic characteristics as other properties within the immediately vicinity. While the unique size present opportunities for expansion, the shape and natural surrounding impose constraints to the configuration and the size of the buildable area. These site characteristics differentiate this property from other substandard and regular lots within the same zoning district.
(2) The granting of the application shall not affect substantial compliance with the regulations or constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zoning district as the subject property, and

The R-2 zoning regulation prohibits second floor additions on substandard lots and encourages expansion on the ground floor. As noted above, the subject property presents various limitations for expansion on the ground floor.

With the loss of approximately 530 SF development potential within the buildable area on the ground floor, the project will expand about 184 SF on the first floor outside of the TPZ to preserve the protected trees and requests a 489 SF addition (roughly 22% of total floor area) to be placed on the second floor. The additions would be built within the limitations set forth for floor area and lot coverage in the R-2 zoning district.

The granting of second story addition is in compliance with the regulations of daylight planes and setbacks. The proposed second floor addition is consistent with the height restriction for two-story development in the R-2 zoning district. It will not constitute a grant of privileges inconsistent with the limitation upon other properties in the vicinity and in the same zoning district as the subject property.

The granting of an approximate 6 foot extension of the existing legal non-complying wall, that is setback 3.5 feet from the west side property line, is minor in nature. This request would normally fit within the specific limits set forth for Home Improvement Exception. The design of this small addition will be consistent with the SOI standards. With the objective to locate available floor area for the site on the first floor, the granting of this extension will not constitute a grant of privileges inconsistent with the limitation upon other properties in the vicinity and in the same zoning district as the subject property.

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

The project is generally consistent with the objectives and relevant policies in the Comprehensive Plan. The project will rehabilitate a residence with historic merit by preserving its historic integrity consistent with the SOI Standards (Policy L-2.9, L-6.4, L-7.1, L-7.8). The proposed site plan is sensitive to surrounding landscape and will minimize impact to two protected trees (Policy N-2.9, N-2.10). The project includes additions with appropriate scale and height that are compatible with the neighborhood and adjacent structures (Policy L-3.1, L-6.1). The proposed additions will preserve natural light exposure for nearby single-family residences by complying to current regulations for daylight planes and setbacks (Policy L-6.8). The project is consistent with the Comprehensive Plan as a whole.

The subject property is located within the South of Forest Area Phase I Coordinated Area Plan (SOFA I CAP) area. It is in a transitional area between R-2 and DHS (Detached Housing on Small Lots) zoning districts. The project, with increased living space, will support a range of housing options for various ages, household sizes, lifestyles and incomes in the neighborhood (Policy H-6). Through a request of granting exception to development standards, the project will reconfigure the house footprint and massing to preserve significant trees (Policy DC-7). The project is designed to be consistent with the SOI standards, which will reinforce its original architectural style and use (Policy DC-9). Overall, the project is compatible with the historical patterns of the surrounding single-family areas and is generally consistent with the SOFA I CAP objectives and policies.
The purpose of R-2 zoning district is ‘intended to allow a second dwelling unit under the same ownership as the initial dwelling unit on appropriate sites in areas designated for single-family use by the Palo Alto Comprehensive Plan, under regulations that preserve the essential character of single-family use.’ (PAMC 18.10.010(b)). The project will maintain its original use as single-family residential and the proposed additions will be consistent with the existing architecture to preserve the essential character of single-family use. Although two dwelling unit is encouraged on appropriate sites within the area, the project site will not meet the minimum site area of 7,500 square feet, that was established by the Comprehensive Plan (Housing Element) and R-2 zoning regulations, to permit additional residential units. The project may; however, include a separate, self-contained accessory dwelling unit for rental. Such option is available but is not mandatory for developments in the R-2 zoning district. Given the site constraints, the project is generally consistent with the purpose of R-2 zoning regulations.

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

The granting of the variance application would not be detrimental or injurious to property or improvements in the vicinity. The subject property is not located in proximity to designated view corridors or scenic routes. Obstructed view from neighboring properties is not considered as detrimental or injurious in nature. Though, the granting of the variance application shall consider neighbor’s concerns with respect to privacy, height and scale at the neighborhood scale.

The proposed additions are in substantial compliance with the five Individual Review Guidelines for single-family homes with the goals to promote new construction that is compatible with existing residential neighborhoods.

The proposed second story window size and placement with above 5’ sill height on both left and right elevations will mitigate privacy impact by minimizing the opportunity for direct sight lines into windows and patios of neighboring properties. The proposed second floor addition is rectangular in shape and is setback from the first floor wall planes so that massing is not highly expressed from all sides. In addition, the proposed second floor addition will be built within the required side and rear daylight planes at a height of about 26’-8”. The existing building height is 18’ and the height limit for two-story development in the R-2 zoning district is 30’. The overall height is still considerably lower than some nearby homes on this block.

The existing west side wall is setback 3’-6” from the west interior property line, therefore this wall is non-conforming. The project will replace one window on this existing wall. This replacement will not exceed the thresholds contained within Code Section 18.70.100, therefore the wall may remain. Additionally, an approximate 6 foot extension to this existing 40.5 foot wall will be added to the rear part of the home and will not be visible from the street. The proposed extension will not decrease privacy and the scale is compatible with the existing home. The proposed extension will not be detrimental to public health and safety, general welfare or convenience.

As conditioned, the project is required to be in compliance with the Municipal Code and other relevant regulations. The proposed additions are not found to pose potential risk to public health, safety, general welfare or convenience. The granting of the variance application would not be detrimental or injurious to property or improvements in the vicinity.
The approval is subject to compliance with the following conditions. The property owner is solely responsible for the conditions of approval being met. Planning staff recommends the property owner discuss the conditions of approval with the contractor, designer, etc. and contact Planning staff with any questions.

The approval is subject to the following conditions:

**PLANNING DIVISION CONDITIONS:**

1. **CONFORMANCE WITH PLANS.** Construction and development shall conform to the approved plans entitled, “Reyna/Kutlu Residence, 840 Kipling Street, Palo Alto, CA 94301, APN 120-17-028,” stamped as received by the City on November 20, 2019 on file with the Planning Department, 250 Hamilton Avenue, Palo Alto, California except as modified by these conditions of approval.

2. **BUILDING PERMIT.** Apply for a building permit and meet any and all conditions of the Planning, Fire, Public Works, and Building Departments.

3. **BUILDING PERMIT PLAN SET.** A copy of this cover letter and conditions of approval shall be printed on the second page of the plans submitted for building permit. Project plans submitted for Building permits shall incorporate the following changes:
   
   a. Eliminate all windows in the proposed stairway under the gable on the east elevation
   b. Replicate the size and style of the existing small historic window on the east elevation (Sheet A5) and locate the said window in the proposed new bathroom on the first floor.
   c. Allow the relocation of existing double French doors from the proposed entry hall to the living room on the first floor.
   d. Allow the relocation of the single door from the proposed living room to the entry hall on the first floor. A new sidelite shall be installed to fill in the existing opening facing the street.

4. **HISTORIC BUILDING.** As conditioned above (Condition #3), all exterior alterations and additions proposed in the building permit submittal shall be in substantial compliance with the Secretary of the Interior’s Standards for Rehabilitation. All exterior changes shall not impact the historic nature of existing home and shall not affect the primary façade that retains architectural integrity. Any work involving with the removal or modification of the historic character of the existing home is subject to review by the Chief Planning Official for compliance with the Secretary of the Interior Standards.

5. **SOI STANDARDS.** The ten Secretary of the Interior’s (SOI) Standards for Rehabilitation shall be printed on one of the initial sheets of the Building Permit Plan Set.

5. **NONCOMPLYING FACILITY WALLS.** The applicant has agreed to maintain all non-complying walls with the exception of proposed windows changes as shown on Sheet A5.2. These improvements have been reviewed and found to be in conformance with PAMC Section 18.70.100(b) as described below. Any additional changes would require prior Planning approval.
a. When the damage or destruction of a noncomplying facility affects a portion of the facility that constitutes or contributed to the noncompliance, any replacement or reconstruction to such damaged portion shall be accomplished in such manner as not to reinstate the noncompliance or degree of noncompliance caused by the destroyed or damaged portion of the facility, and otherwise in full compliance with this title; however, if the cost to replace or reconstruct the noncomplying portion of the facility to its previous configuration does not exceed fifty percent of the total cost to replace or reconstruct the facility in conformance with this subsection, then the damaged noncomplying portion may be replaced or reconstructed to its previous configuration. In no event shall such replacement or construction create, cause, or increase any noncompliance with the requirements of this title.

7. PROJECT MODIFICATIONS: All modifications to the approved project shall be submitted for review and approval prior to construction. If during the Building Permit review and construction phase, the project is modified by the applicant, it is the responsibility of the applicant to contact the Planning Division/project planner directly to obtain approval of the project modification. It is the applicant’s responsibility to highlight any proposed changes to the project and to bring it to the project planner’s attention.

8. REQUIRED PARKING: All single family homes shall be provided with a minimum of one covered parking space (10 foot by 20 foot interior dimensions) and one uncovered parking space (8.5 feet by 17.5 feet).

9. UTILITY LOCATIONS: In no case shall utilities be placed in a location that requires equipment and/or bollards to encroach into a required parking space. In no case shall a pipeline be placed within 10 feet of a proposed tree and/or tree designated to remain.

10. NOISE PRODUCING EQUIPMENT: All noise producing equipment shall be located outside of required setbacks, except they may project 6 feet into the required street side setbacks. In accordance with Section 9.10.030, No person shall produce, suffer or allow to be produced by any machine, animal or device, or any combination of same, on residential property, a noise level more than six dB above the local ambient at any point outside of the property plane.

11. DAYLIGHT PLANE: The daylight plane must clear the point where the wall plane intersects the top of the roof material.

12. IMPERVIOUS SURFACE: A minimum of 60% of the required front yard shall have a permeable surface that permits water absorption directly into the soil (Section 18.12.040 (h)). The building permit plan set shall include a diagram demonstrating compliance.

13. REQUIRED IR LANDSCAPING/TREES. The following landscaping is required to ensure the project’s conformance with the City’s IR Guidelines and therefore must remain for the life of the structure. Required screening trees and shrubs shall be a minimum size of 24 inch box and measure at least eight (8) feet tall.
   a. All shrubs and/or trees, shown on the site plan, shall be maintained on the property.
   b. Two existing redwood trees protected by construction fencing located along the rear property line on the site plan shall be maintained.

14. NO NET LOSS OF CANOPY. Any proposal of tree removal must be reviewed or approved by Planning Division prior to signing off the final inspection for the building permit.

15. PROJECT ARBORIST. The property owner shall hire a certified arborist to ensure the project conforms to all Planning and Urban Forestry conditions related to landscaping/trees.
16. TREE PROTECTION FENCING. Tree protection fencing shall be required for the front street tree and the rear yard redwood trees.

17. FENCES. Fences and walls shall comply with the applicable provisions of Chapter 16.24, Fences, of the Palo Alto Municipal Code (PAMC). Heights of all new and existing fencing must be shown on the Building Permit plans.
   a. Where the existing fence is located off the subject property and/or where the existing fence is failing, a new Code compliant fence shall be constructed.

18. BASEMENT WALLS: Basement retaining walls shall not extend beyond the exterior wall plane of the first floor of the house, excluding lightwells, below grade patios and approved extensions, to the satisfaction of the Director of Planning.

19. BASEMENT CONSTRUCTION WALLS: Any walls, temporary or otherwise, installed to facilitate construction of a basement shall be removed or constructed in such a way as to not significantly restrict the growth of required landscaping, to the satisfaction of the Director of Planning.

20. DECONSTRUCTION SURVEY: A Deconstruction Survey is required for demolition permit applications submitted on or after January 1, 2017. This survey submittal shall include a list of materials that are salvageable from the project as well as the values of such materials. At this time, the City’s only approved vendor for this service is The ReUse People. Contact them to schedule this FREE service by phone (888)588-9490 or e-mail info@thereusepeople.org. More information can be found at www.thereusepeople.org. If you have further questions, please contact Scott McKay at scott.mckay@cityofpaloalto.org.

21. PLANNING FINAL INSPECTION. A Planning Division Final inspection will be required to determine substantial compliance with the approved plans prior to the scheduling of a Building Division final. Any revisions during the building process must be approved by Planning, including but not limited to; materials, fenestration and hard surface locations. Contact your Project Planner at the number below to schedule this inspection.

22. PERMIT EXPIRATION. The project approval shall be valid for a period of two years from the original date of approval. Application for a one year extension of this entitlement may be made prior to expiration, by emailing the Current Planning Support Staff (Alicia Spotwood - Alicia.Spotwood@CityofPaloAlto.org). If a timely extension is not received, or the project has already received an extension and the applicant still wishes to pursue this project, they must first file for a new Planning application and pay the associated fees. This new application will be reviewed for conformance with the regulations in place at that time.

23. INDEMNITY: 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 for 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.
GREEN BUILDING & ENERGY REACH CODE REQUIREMENTS:

NOTICE FOR PERMIT APPLICATIONS SUBMITTED ON OR AFTER 1/1/17: Please be advised that the Palo Alto City Council has approved Energy Ordinance 5383 and Green Building Ordinance 5393 for all new permit applications with an effective date for January 1st, 2017. To review the upcoming changes, visit the Development Services webpage. On the left-hand side under “EXPLORE”, hover over “Green Building” and select “Compliance.” For information regarding the Model Water Efficient Landscape Ordinance, please see the Outdoor Water Efficiency Webpage for compliance documentation. You may also email Greer Building at GreenBuilding@cityofpaloalto.org for specific questions about your project.

24. GREEN BUILDING CONDITIONS OF APPROVAL

a) The project is a residential addition or alterations that increased the building's conditioned area volume, or size and the altered area is less than 1000 square feet and therefore must meet the California Green Building Code mandatory requirements outlined in Chapter 4, (with local amendments). (Ord. 5393 §1, 2016)

b) Model Water Efficient Landscape Ordinance (MWELO): The project is a residential new construction project with an aggregate landscape area of 500 square feet or more included in the project scope of work and therefore shall comply with the requirements of the Landscape Documentation Package (§492.3). Please see the Outdoor Water Efficiency Webpage for compliance documentation. (MWELO Title 23, Chapter 2.7)

c) The project includes a residential alteration or addition that is not considered a repair or maintenance and therefore the building permit applicant shall replace all noncompliant plumbing fixtures within the building with water conserving plumbing fixtures in compliance with California Senate Bill 407. (SB 407/California Civil Code Sections 1101.1 through 1101.8, 2013 CGBC Section 301)

d) The project is a residential construction project of any size and therefore must meet the enhanced construction waste reduction at Tier 2 (80% construction waste reduction). PAMC 16.14.260 (Ord. 5393 §1 (part), 2016)

25. LOCAL ENERGY REACH CODE CONDITIONS OF APPROVAL

a) The project includes new residential construction of any size and therefore triggers the Local Energy Efficiency Reach Code. For all new single-family residential there are two compliance options and one all-electric exception.

i) Single-Family Residential Options:

(1) OPTION 1: Performance: New single-family residential construction projects without a solar photovoltaic (PV) system, the performance approach specified within the 2016 California Energy Code shall be used to demonstrate that the TDV Energy of the proposed building is at least 10% less than the TDV Energy of the Standard Design, if the proposed building does not include a PV systems.

(a) Solar Ready Infrastructure: A dedicated solar zone shall be located on the roof or overhang of the building and have a total area no less than 500 square feet. Install a conduit extending from the roofline and terminating at the electrical panel.

(2) OPTION 2: Performance: New single-family residential construction projects with a solar photovoltaic (PV) system, the performance approach specified within the 2016 California
Energy Code shall be used to demonstrate that the TDV Energy of proposed single-family residential construction is at least 20% less than the TDV Energy of the Standard Design, if the proposed building includes a photovoltaic system.

(a) Solar Ready Infrastructure: A dedicated solar zone shall be located on the roof or overhang of the building and have a total area no less than 500 square feet. Install a conduit extending from the roofline and terminating at the electrical panel.

b) All Electric Exemption:
   i) All-Electric Exception to the Local Energy Reach Code: New single-family residential construction that is designed and built to be all-electric shall be exempt from the requirements of Section 100.3. Local Energy Efficiency Reach Code.

26. Additional Green Building and Energy Reach Code information, ordinances and applications can be found at http://www.cityofpaloalto.org/gov/depts/ds/green_building/default.asp. If you have any questions regarding Green Building requirements please call the Green Building Consultant at (650) 329-2179.

PUBLIC WORKS URBAN FORESTRY CONDITIONS – Walter Passmore walter.passmore@cityofpaloalto.org

PRIOR TO DEMOLITION, BUILDING OR GRADING PERMIT ISSUANCE

27. TREE PROTECTION COMPLIANCE. The owner and contractor shall implement all protection and inspection schedule measures, design recommendations and construction scheduling as stated in the TPR & Sheet T-1, and is subject to code compliance action pursuant to PAMC 8.10.080. The required protective fencing shall remain in place until final landscaping and inspection of the project. Project arborist approval must be obtained and documented in the monthly activity report sent to the City. The mandatory Contractor and Arborist Monthly Tree Activity Report shall be sent monthly to the City (pwps@cityofpaloalto.org) beginning with the initial verification approval, using the template in the Tree Technical Manual, Addendum 11.

28. PLAN CHANGES. Revisions and/or changes to plans before or during construction shall be reviewed and responded to by the (a) project site arborist, or (b) landscape architect with written letter of acceptance before submitting the revision to the Building Department for review by Planning, PW or Urban Forestry.

29. TREE DAMAGE. Tree Damage, Injury Mitigation and Inspections apply to Contractor. Reporting, injury mitigation measures and arborist inspection schedule (1-5) apply pursuant to TTM, Section 2.20-2.30. Contractor shall be responsible for the repair or replacement of any publicly owned or protected trees that are damaged during the course of construction, pursuant to Title 8 of the Palo Alto Municipal Code, and city Tree Technical Manual, Section 2.25.

30. GENERAL. The following general tree preservation measures apply to all trees to be retained: No storage of material, topsoil, vehicles or equipment shall be permitted within the tree enclosure area. The ground under and around the tree canopy area shall not be altered. Trees to be retained shall be irrigated, aerated and maintained as necessary to ensure survival. Minimal excavation work shall be allowed within the tree enclosure area. Air, water movement to the soil and soil compaction shall be protected to the possible extent. Landscape changes may enhance root growth or health in areas outside the limit of construction. The project arborist shall be responsible for supervising any construction activities within the tree protection zone.
31. BUILDING PERMIT SUBMITAL- PROJECT ARBORIST CERTIFICATION LETTER. Prior to submittal for staff review, attach a Project Arborist Certification Letter that he/she has; (a) reviewed the entire building permit plan set submittal and, (b) affirm that ongoing Contractor/Project Arborist site monitoring inspections and reporting have been arranged with the contractor or owner (see Sheet T-1) and, (c) understands that design revisions (site or plan changes) within a TPZ will be routed to Project Arborist/Contractor for review prior to approval from City.

32. TREE PROTECTION VERIFICATION. Prior to any site work verification from the contractor that the required protective fencing is in place shall be submitted to the Urban Forestry Section. The fencing shall contain required warning sign and remain in place until final inspection of the project.

33. EXCAVATION RESTRICTIONS APPLY (TTM, Sec. 2.20 C & D). Any approved grading, digging or trenching beneath a tree canopy shall be performed using ‘air-spade’ method as a preference, with manual hand shovel as a backup. For utility trenching, including sewer line, roots exposed with diameter of 1.5 inches and greater shall remain intact and not be damaged. If directional boring method is used to tunnel beneath roots, then Table 2-1, Trenching and Tunneling Distance, shall be printed on the final plans to be implemented by Contractor.

PRIOR TO OCCUPANCY

34. PROJECT ARBORIST INSPECTION LETTER. The contractor shall call for a final inspection by the Project Arborist to evaluate all trees to be retained and protected, as indicated in the approved plans, of the activity, health, welfare, mitigation remedies for injuries, if any, and for the long term care of the trees for the new owner. The final project arborist letter report shall be provided to the Planning Department prior to written request for temporary or final occupancy. The final report may be used to navigate any outstanding issues, concerns or security guarantee return process, when applicable.

PUBLIC WORKS ENGINEERING CONDITIONS – Christina Thurman Christina.thurman@cityofpaloalto.org

35. GRADING & DRAINAGE PLAN: The plan set must include a basic grading & drainage plan that includes drainage flow arrows to demonstrate proper drainage of the site. Adjacent grades must slope away from the house a minimum of 2% or 5% for 10-feet per 2013 CBC section 1804.3. Downspouts and splash blocks should be shown on this plan, as well as any site drainage features such as swales, area drains, bubblers, etc. Grading that increases drainage onto, or blocks existing drainage from neighboring properties, will not be allowed. Public Works generally does not allow rainwater to be collected and discharged into the street gutter, but encourages the developer to keep rainwater onsite as much as feasible by directing runoff to landscaped and other pervious areas of the site. See the Grading & Drainage Plan Guidelines for New Single Family Residences on the City’s website.
http://www.cityofpaloalto.org/civicax/filebank/documents/2717

36. Provide the following note on the Site Plan and adjacent to the work within the Public road right-of-way. “Any construction within the city’s public road right-of-way shall have an approved Permit for Construction in the Public Street prior to commencement of this work. THE PERFORMANCE OF THIS WORK IS NOT AUTHORIZED BY THE BUILDING PERMIT ISSUANCE BUT SHOWN ON THE BUILDING PERMIT FOR INFORMATION ONLY.”

37. Provide the following note on the Site Plan and Grading and Drainage Plan: “Contractor shall not stage, store, or stockpile any material or equipment within the public road right-of-way.” Construction phasing shall be coordinate to keep materials and equipment onsite.
38. 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 on our website http://www.cityofpaloalto.org/civicax/filebank/documents/27320.

39. Provide the following as a note on the Site Plan: “The contractor may be required to submit a logistics plan to the Public Works Department prior to commencing work that addresses all impacts to the City’s right-of-way, including, but not limited to: pedestrian control, traffic control, truck routes, material deliveries, contractor’s parking, concrete pours, crane lifts, work hours, noise control, dust control, storm water pollution prevention, contractor’s contact, noticing of affected surrounding properties, and schedule of work. The requirement to submit a logistics plan will be dependent on the number of applications Public Works Engineering receives within close proximity to help mitigate and control the impact to the public-right-of-way. If necessary, Public Works may require a Logistics Plan during construction.”

PUBLIC WORKS ELECTRIC ENGINEERING CONDITIONS –
Gregory McKernan Gregory.mckernan@cityofpaloalto.org

GENERAL

40. The applicant shall comply with all the Electric Utility Engineering Department service requirements noted during plan review.

41. The applicant shall be responsible for identification and location of all utilities, both public and private, within the work area. Prior to any excavation work at the site, the applicant shall contact Underground Service Alert (USA) at 1-800-227-2600, at least 48 hours prior to beginning work.

42. 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.

SUBMITTALS FOR ELECTRIC SERVICE

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

44. Only one electric service lateral is permitted per parcel. Utilities Rule & Regulation #18. Page 2 of 3

45. If this project requires padmount transformers, the location of the transformers shall be shown on the site plan and approved by the Utilities Department and the Architectural Review Board. Utilities Rule & Regulations #3 & #16 (see detail comments below).

46. The developer/owner shall provide space for installing padmount equipment (i.e. transformers, switches, and interrupters) and associated substructure as required by the City.

47. The customer shall install all electrical substructures (conduits, boxes and pads) required from the service point to the customer’s switchgear. The design and installation shall be according to the City standards and shown on plans. Utilities Rule & Regulations #16 & #18.
48. Location of the electric panel/switchboard shall be shown on the site plan and approved by the Architectural Review Board and Utilities Department.

49. 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.

50. For underground services, no more than four (4) 750 MCM 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 a transition cabinet will not be required.

51. The customer is responsible for sizing the service conductors and other required equipment according to the National Electric Code requirements and the City standards. Utilities Rule & Regulation #18.

52. 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. Utilities Rule & Regulation #20.

53. Projects that require the extension of high voltage primary distribution lines or reinforcement of offsite electric facilities will be at the customer’s expense and must be coordinated with the Electric Utility.

**DURING CONSTRUCTION**

54. Contractors and developers shall obtain permit from the Department of Public Works before digging in the street right-of-way. This includes sidewalks, driveways and planter strips.

55. 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 check by USA shall be delineated with white paint. All USA markings shall be removed by the customer or contractor when construction is complete.

56. 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 National Electric Code Page 3 of 3 requirements and no 1/2 – 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.

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

58. The customer is responsible for installing all underground electric service conductors and other required equipment. The installation shall meet the National Electric Code and the City Standards.

59. Meter and switchboard requirements shall be in accordance with Electric Utility Service Equipment Requirements Committee (EUSERC) drawings accepted by Utility and CPA standards for meter installations.
60. Shop/factory drawings for switchboards (400A and greater) and associated hardware must be submitted for review and approval prior to installing the switchgear to: Gregory McKernan, P.E. Power Engineer Utilities Engineering (Electrical) 1007 Elwell Court Palo Alto, CA 94303

61. Catalog cut sheets may not be substituted for factory drawing submittal.

62. All new underground electric services shall be inspected and approved by both the Building Inspection Division and the Electrical Underground Inspector before energizing.

AFTER CONSTRUCTION & PRIOR TO FINALIZATION

63. The customer shall provide as-built drawings showing the location of all switchboards, conduits (number and size), conductors (number and size), splice boxes, vaults and switch/transformer pads. PRIOR TO ISSUANCE OF BUILDING OCCUPANCY PERMIT 1. The applicant shall secure a Public Utilities Easement for facilities installed on private property for City use.

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

65. All fees must be paid.

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

End Project Conditions
February 3, 2020

Planning and Traffic Commission
City of Palo Alto
Planning & Community Environment
250 Hamilton Avenue
Palo Alto, CA 94301

Re: 840 Kipling Street - 18PLN-00185

Dear Chair and PTC Members:

I am writing today on behalf of Alexander Gubbens and Karen Han, owners of 441 Channing Avenue, in connection with the variance and Historic Resource applications submitted by the owners of 840 Kipling Street, their immediate neighbors. The owners of 840 Kipling are seeking a variance to add a 489 square foot second story to their property. The applications have been conditionally approved by City Staff.

Mr. Gubbens and Ms. Han want to make it clear that they do not oppose an addition. Rather, they oppose a second story addition for the simple reason that the ground floor has ample space on which to build an addition, whereas a second story requires a variance and would be injurious to the value and enjoyment of the Gubbens/Han home.

It is important to note at the outset that Mr. Gubbens and Ms. Han first informed the owners of 840 Kipling of their opposition to a second story addition in January 2016 and proactively informed the City’s Planning Department of their concerns back in May 2017, more than a year before any plans were even submitted. Mr. Gubbens and Ms. Han have, since the very beginning, supported an addition on the ground floor. Despite this, the property owners have steadfastly refused to look at options available to them that would avoid a second story and use more of the ground floor.

From various written communication Mr. Gubbens and Ms. Han have seen they are further concerned that the owners of 840 Kipling were not required to fully study a number of feasible alternatives to a second story addition but were instead required to make only minor revisions to their design and obtain conditional approval of their proposed second-story addition. Since a variance should be a last resort, City Staff should have required additional studies be done.

Mr. Gubbens and Ms. Han believe, as shown below, that such a zoning-compliant reward
expansion is highly feasible and should be explored. Thus, we are asking that the PTC deny the variance. 840 Kipling is zoned R-2 which Zone is entitled “Low Density Residential”. 840 Kipling is also part of the South of Forest Avenue Coordinated Area Plan Phase I (“SOFA I CAP”) and has been determined to be an historic property by the Historic Resources Board (“HRB”).

Within the R-2 zone 840 Kipling, is a substandard lot meaning that it is less than 50 feet wide and the total area of the lot is less than 83% of the minimum lot size. (Palo Alto Municipal Code §18.10.040(b)(1)(A)). Thus, to even be classified as a substandard lot is already a statement that the lot is very small.

Palo Alto Municipal Code § 18.10 contains the regulations that determine what can and cannot be built on 840 Kipling. § 18.10.040(a) provides that the minimum lot size for an R-2 zoned property is 6,000 square feet. The parcel at 840 Kipling is 4,893 square feet and is therefore a substandard lot under Municipal Code § 18.10.040(b). Moreover, at thirty-nine (39) feet, the width of the 840 Kipling lot is less than 80% of the minimum fifty-foot width required in the Palo Alto Municipal Code for a standard lot in the R-2 Zone. Thus, when viewing the property from the street, the proposed remodeled home all but overwhelms the substandard lot size.

As a substandard lot the Municipal Code expressly provides that “[t]here shall be a limit of one habitable floor.” Municipal Code § 18.10.040(b)(1)(B)(ii) (emphasis added). Thus, the law in Palo Alto is clear that no second story is allowed on a substandard lot in the R-2 zone. Because of that limitation, the property owner applied for a variance.

Palo Alto Municipal Code § 18.76.030(c) (1) (A) specifically states that

“Special circumstances that are expressly excluded from consideration are . . . The personal circumstances of the property owner.”

However, in arguing in favor of their request for a variance to build a second story, the property owners made it expressly clear that the need for the second story addition was driven entirely by personal circumstances. As the property owner told the City Staff:

“We were actually looking originally for a three bedroom two bathrooms so that we could have some space to grow in because we were looking for a family. Then when we walked into 840 Kipling this was home. This was the first home we’d walked into that just grabbed us and said this is where we want to live. You know it’s smaller than we wanted but the beauty of it the charm of it just made our decision when we walked in … Now we’ve been there 20 years. We now have a teenage son we have two aging moms that want to visit and take of as best we can and this two in one is just not working.”
While it is understandable that the property owner wants a larger home than the one purchased due to family concerns, the fact is that such personal issues are not a proper consideration for the granting of a variance. "Special circumstances that are expressly excluded from consideration are . . . The personal circumstances of the property owner." Palo Alto Municipal Code § 18.76.030(c) (1) (A). Thus, whether or not the property owner’s family is getting larger is not a proper basis on which to grant a variance.

In addition, the house at 840 Kipling is also only 3.5 feet away from the property line with its nearest neighbor at 836 Kipling versus the 6-foot interior side yard setback that is required. 836 Kipling, also a substandard lot, has only a 2.5 ft side yard setback with 840 Kipling and no side yard setback at all with 834 Kipling. 836 in fact overhangs 2 ft into 834’s lot! 840 and 836 together have only 6 ft of interior side yard setbacks, far short of the total 18 ft (3 x 6 ft) required by current zoning. This section of Kipling is already far too densely developed. This overall configuration should have been given significant consideration by City Staff, but it does not appear from the January 15, 2020 letter that it did.

Plan Sheet C.0 of the plans submitted for 840 Kipling, shows that there is ample room in the rear yard of the property to construct an addition that would comply with the “one habitable floor” limit for a substandard lot in the R-2 zone. It appears from the Findings, that one of the primary features about this property that make it appropriate for a variance, at least according to City Staff, is the thirty-five foot (35’) Tree Protection Zone (TPZ). In fact, the property owner has pointed out that the intrusion into the Tree Protection Zone is already seventy-three percent according to Plan Sheet T2. What the property owner neglects to address is that most of the intrusion is from structures owned by neighbors, including a neighboring home, cottage and garage. All of these structures intrude much further than the property owners would even if they built the entire addition in the rear yard! Moreover, it appears that there was no attempt to look at whether there were roots in the area where a ground floor addition could be built and whether or not those roots could be cut or blocked without harming the tree. Again, why such a study was not required prior to staff conditionally granting a variance is unknown.

The property owners also do not address that back in 2013 they dug a trench and cut major roots within feet of the very trees that they now claim are so sensitive and important to protect! Finally, neither the City nor the property owner address that just on the other side of the Gubbens/Han property, at 400 Channing, new development with basements was allowed wherein the new homes all but touch a number of protected oak and redwood trees!!

There were three different reports prepared by the property owner relating to the TPZ. One concludes that it should be twenty-five feet, another thirty-five feet and another 42 feet! Clearly this is not an exact science and given how close other structures, including
the garage at the property, are to the trees, some additional consideration, engineering and study could have and should have been done to determine whether the entire addition could be built in the real yard.

As to the TPZ being a critical aspect for granting the variance, as suggested by the Findings, there is no explanation for how those findings are consistent with even just the three new construction projects nearest to the property that received City approval. 441 Channing was built with a basement within 10 feet of a large protected oak tree. 458 Channing was built deep into the TPZ of an even larger protected oak tree than the trees on 840 Kipling. The development at 400 Channing is right now finishing two new homes with basements within 10 feet of a number of protected oak and redwood trees. All of the trees at 400, 458 and 441 Channing continue to do very well despite the far more significant intrusion into the tree protection zone on those properties than is being considered here!

In addition, in early correspondence with the assigned planner, Mr. Gubbens and Ms. Han were promised that the applicants would be required to fully expand the first floor before the City would even consider a variance for a second-floor addition. It does not appear, however, that such a policy was meaningfully applied in this case.

Every substandard lot presents special circumstances and so under that rationale, every substandard lot should be granted a variance to allow construction not in conformance with existing law. However, other than the substandard lot, which should not in and of itself be a factor, and the heritage trees which could be addressed in the same manner as they were addressed in the three most recent projects closest to 840 Kipling at 441, 458 and 400 Channing, there are really no other extraordinary circumstances that would justify the granting of a variance in this matter.

The January 15, 2020 decision letter states:

The purpose of the granting of a variance, as outlined in PAMC Section 18.76.030(a) is to provide a way to grant relief when strict application of the zoning regulation would subject development of a site to substantial hardships, constraints, or practical difficulties that do not normally arise on other sites in the vicinity and same zoning district.

The term “and same zoning district” in this case must be used when comparing to other substandard lots, not to other standard lots. Of course, substandard lots have their limitations, that is why the designation exists and that is why certain types of development, such as the development being proposed here, are prohibited. The constraints imposed by zoning rules for substandard lots cannot be used as the argument to ignore them. Allowing that argument would render any zoning regulations irrelevant.
The Findings also claim that the granting of the application does not constitute a grant of special privilege. As noted above, however, many projects have been approved that clearly have structures built well within the TPZ and clearly structures, including mostly neighboring structures, were built in the TPZ of the trees on this property. Back in 2013, the City allowed the property owners of 840 Kipling to trench and cut roots within feet of the trees. There is, however, no finding that root cutting would even be required were the entire addition to be constructed in the rear yard. In addition, the initial historical study, which will be discussed in more detail below, opposed the project as submitted and recommended a rear one-and-one-half story addition to reduce the overall impact that the proposed construction would have on the historical aspects of the home. There appears to have been no effort at all to study that option.

The granting of a variance should require extraordinary circumstances. In an effort to see what has been done in similar situations, a search on the City of Palo Alto’s Building Eye application was done for the term “variance.” The search, which goes back to January 1, 2014 revealed only nine instances in which the term was even used and after looking at the details of each of these nine instances there were none in which a variance was granted in a similar situation. In fact, in almost all of these instances the variance application was denied and none of them presented facts as contrary to the existing Municipal Code as those presented in this instance. Thus, it appears that this application was, for some reason, treated more favorably than most others. That should not happen.

In this case the owners of 840 Kipling and the City Staff appear to have gone out of their way to use the TPZ as the very reason to justify a second story addition. In addition, as noted above, the property owners were never required to do a fuller study and better explore a ground-floor only addition. Allowing the second story addition based on the TPZ would be treating this property different from the treatment afforded to others. One need only look only at the nearest three other projects at 441, 458 and 400 Channing where the construction was allowed deep into many TPZs. The fact is that even if the full 673 square foot addition that the 840 Kipling property owners desire is built on the ground floor, the intrusion into the TPZ would be significantly less than what was allowed at 400 Channing, 458 Channing and 441 Channing. Also conveniently ignored are the existing deck and back yard hard surfaces that could readily be for a rearward expansion with no impact on the trees.

Turning next to the review by the HRB which is referenced in the Findings, the original March 19, 2019 report the City commissioned from Page & Turnbull specifically recommended against allowing the proposed development:

*Overall, the project as currently designed does not appear to be in compliance with the Secretary of the Interior’s Standards for Rehabilitation.*

**RECOMMENDATIONS**
This section includes recommendations to better comply with the Secretary of the Interior’s Standards for Rehabilitation:

- Consider a rear, one-and-a-half story addition, rather than a second story addition, which would have a more minimal impact on the historic roofline and form of the residence

When compared to the second report which recommended approval, it is readily clear that there were very few changes. Moreover, as noted above, alternatives such as a rear one-and-one-half story addition were completely disregarded. In fact, all that changed were a few windows and a few exterior treatments, but when the plans for the proposed house with the new addition is compared to the existing house, it seems that there was a significant disregard for the fact that the structure has historic significance.

Additionally problematic, is the fact that the property owners were represented at the HRB by its chair. While it appears that he obtained a letter saying that the Fair Political Practices Act did not prohibit him from representing the property owner, the fact is that it presents the appearance of unfair practice. I spent four years as a Planning Commissioner and then nine years as a member of the Foster City City Council with two terms as mayor. Much like you, I took the required ethics programs and from those I remember, and hope you do as well, that what is legal is not necessarily what is ethical. Appearance of impropriety can often be as problematic as actual impropriety.

In this case, Mr. Bernstein first sat as the Chair of an HRB meeting and then stepped down to recuse himself to represent the property owners in a hearing before the very same body. In fact, the original minutes of the meeting refer to him as Chair Bernstein even though he had recused himself. Later, the minutes were changed to refer to him as Mr. Bernstein. If City Staff was confused as to his role, imagine how the public and other interested parties must have felt. While perhaps this is not the forum to address this issue, it seems to be an issue that should be addressed as the public and residents have a right to have an unbiased government and for their processes and hearings to appear unbiased as well.

Finally, 840 Kipling is located in the SOFA I CAP, and so that too is relevant to the Findings and is therefore addressed therein. Having reviewed the SOFA I CAP Report myself it appears to me that the proposed addition at 840 Kipling does not comply with the policies established. The Report, in Chapter II states:

“The livability and the walkability of the neighborhood will be preserved and enhanced through the provision of open space with a proposed neighborhood park, through the maintenance of pedestrian scale urban design improvements, the calming of traffic on area streets, and the creation of new housing for a variety of household types. The area’s traditional grid street pattern, its historical buildings, its mature tree canopy, and its mix of land uses will also be preserved.”
“Land vacated by PAMF adjacent to existing lower density residential uses on Channing Avenue between Waverley and Kipling Street will be developed with detached single family homes on small lots (typically 5,000 square feet) consistent with the existing development pattern of these neighborhoods. The Plan allows increased floor area ratios (FAR) as incentives to construct second units as accessory cottages in the rear of the property, usually beside or above the garage, or attached second units as found in many older Palo Alto neighborhoods. These second units will expand the range of available housing types and will increase the total number of housing units in the area.”

Housing and a mix of housing types seems a common theme of the Report. “The Plan has also addressed the City’s desire to create housing for a variety of users beyond the traditional single family neighborhood. This interest has been furthered by the desire to maintain compatibility of land uses and density with the surroundings and has resulted in the plan facilitating a range of housing types. These include moderately-sized detached single family homes on small lots with or without rear cottages, multiple-family attached apartments and/or condominiums, and rental housing units in mixed use projects, along with provisions for the inclusion of special housing types such as affordable housing, senior housing, or co-housing.” Chapter III(C) (emphasis added). This is specifically addressed in Policy H-2 which calls for lower density housing in the area where 840 Kipling is located with increased density closer to downtown and Alma Street.

This policy of preserving neighborhoods and having a broad variety of residential unit types would be violated by allowing the variance requested by the applicant. One need not look very far to see that small detached “starter homes” like what is currently located at 840 Kipling are being developed into larger, more expensive and less affordable homes at an alarming rate. Allowing the type of development requested by the variance application in this case will only serve to reduce the pool of “starter homes” in Palo Alto by yet one more, making it difficult, if not impossible for young people and young families to own anything other than a condominium. A pool of “starter homes” is essential for diversity and opportunity and from my reading of the SOFA I CAP Report, a clear and strong policy adopted by the City of Palo Alto. At the very least that issue should be evaluated, and a determination made as to whether yet one more overbuilt lot is a better community option than stabilizing the already limited pool of “starter homes.”

As stated above, the granting of a variance should require exceptional circumstances. It seems from the initial application itself that the basis for the addition consisted of circumstances personal to the property owners, which is circumstances are under the Palo Alto Municipal Code expressly excluded from consideration. It also appears from the January 15, 2020 that the primary factor relied up by City Staff was the Tree Protection Zone. As discussed above in detail, further study could have an should have been done. In addition, the City has been inconsistent in applying the TPZ ordinance, allowing a
number of developments in the neighborhood to be built well into the TPZ. At the very least, credible further study should be done.

The January 15, 2020 decision letter also seems to disregard the problems and potential solutions offered in the first Page & Turnbull letter, including the possibility of a one-and-one-half story rear yard addition. Clearly those options should be explored before a variance is granted.

In general, we see nothing that would support the granting of a variance in this instance. There is nothing exceptional about the particular lot or situation and the neighborhood is already much denser than current zoning requirements would allow. Making it even more dense by granting a variance for no compelling reason is, in my opinion, poor policy and legally it fails to meet the applicable standards set forth in the Palo Alto Municipal Code. It also makes it problematic for other residents who select particular properties to purchase understanding what can and what cannot be built on adjacent lots. As shown on the very first page of the Plans submitted by the property owners, this property is being built out to the maximum allowed and obtaining a variance to do so. Allowing what is prohibited by the current law be built by the granting of a variance, undermines the expectations of adjacent property owners and creates problems where none would exist by the simple application of the existing laws. These laws have a reason and there should therefore be compelling reasons to ignore them. That the property owners are nice people and would like a large home to care for their growing family is, for better or worse, not a compelling reason and certainly no reason to give them a variance to do so.

In summary:

- 840 Kipling is a substandard lot with only one habitable story allowed under the Palo Alto Municipal Code.
- The existing zoning regulations allow the owners of 840 Kipling to expand on the ground floor without having to build a second story.
- 840 Kipling does not suffer substantial hardships, constraints, or practical difficulties that do not normally arise on other substandard sites in the vicinity and same zoning district that should allow a variance for a second story addition.
- The owners of 840 Kipling clearly describe their desire for a variance as driven entirely by personal circumstances. Palo Alto Municipal Code § 18.76.030(c) (1) (A) expressly excludes such personal circumstances from being considered.
- Allowing a second story addition to 840 Kipling would be injurious to the value and enjoyment of 441 Channing.
- 840 Kipling has only a 3.5 side yard setback with 836 Kipling. 836 Kipling Kipling has only a 2.5 ft side yard setback with 840 Kipling and no side yard setback at all on the other side. 840 and 836 Kipling together have only 6 ft of the required total 18 ft side setback. From a street side perspective this section of Kipling is already much denser than
allowed by current zoning. Allowing a second story would increase the density even further directly in conflict with the R-2, Low Density Residential zoning designation.

- The City’s commissioned historic review by Page & Turnbull specifically recommended against allowing the proposed development recommending instead a rear one-and-one-half story addition. There is no evidence that this credible option was seriously considered.
- There are significant ethical concerns with respect to the HRB review given that its chair was representing the owners of 840 Kipling at the same meeting at which he presided.
- Adding a rear one-and-half story addition to the “allowable” square footage would leave a significant TPZ. In fact, the TPZ would still be much more than was left for all of the protected oak and redwood trees at the 3 nearest and most recent developments at 400, 441, at 458 Channing Ave.
- The project history shows the owners shifted to a strategy using the TPZ as the reason to justify a variance allowing a second story addition. However, back in 2013 these same owners dug a trench and cut major roots of the two redwood trees much closer to the trees that they would be with a ground floor addition. No attempt was made to see if the trees could be protected with a ground floor only addition. That should have been required as it would be much less intrusive and much more consistent with the applicable zoning than granting a variance.
- A rearward addition on the ground floor is readily possible in ways that do not or only minimally affect the trees. An above ground suspension should, for instance, be considered. Such a construction method was used for instance at 458 Channing.
- The property owners of 840 Kipling were not but should have been asked to seriously consider obvious alternatives to a second story addition. At the very least, the project should be returned to staff and the owners to undertake such a study.
- The owners of 840 Kipling understood the limitations of their substandard lot and accordingly purchased 840 Kipling at the lower price these properties sell for. Mr. Gubbens and Ms. Han trusted they understood what could and could not be built on 840 Kipling and accordingly paid a higher price for the enjoyment they believed was guaranteed with their property. Granting a variance here directly undermines the very reasons zoning regulations exist and makes it impossible for future property owners who select particular properties to purchase understanding what can and what cannot be built on adjacent lots.

We respectfully ask that the variance for a second story addition be denied.

Thank you for reading and considering our concerns,

Charles S. Bronitsky
Attorney at Law
Planning & Transportation Commission
Excerpt Minutes: February 26, 2020
Council Chambers
250 Hamilton Avenue
6:00 PM

Call to Order / Roll Call
6:05pm

3. PUBLIC HEARING / QUASI-JUDICIAL. 840 Kipling Street [18PLN-00185]:
Recommendation on a Variance to allow (1) a Second-Story Addition to a Historic Home on a Substandard, Irregular Lot, and (2) an Extension of a Noncomplying Wall That Encroaches Into a Side Setback. Environmental Assessment: Exempt from CEQA in Accordance with CEQA Guidelines Section 15301 (Additions to Existing Structure). Zoning District: R-2 (Two Family Residential). For More Information Contact the Project Planner Christy Fong at cfong@m-group.us

Chair Templeton: Ok we’re going to move onto Item Three and there’s a lot of moving parts in this item. I believe the first step is for us to deal is disclosures. So, we’ll go down the line start with Commissioner Riggs for any contacts on these matters including meetings, conversations with individuals, site visits, mailings or presentations where substantial factual information was obtained by the Commissioner. Will disclose any contact in which the Commissioner learned new and pertinent information that’s not part of the public record, explain the nature of the contact and a substance of the information learned. Contacts and receiving of information prior to the PTC is not by itself grounds for disqualification unless they have affected your ability to make an impartial decision. So, you may have engaged with the participants in this discussion but it may not be disqualifying so just speak to your engagement. Huh?
Commissioner Riggs: Yeah so, the applicant called me to try to schedule a visit but I declined.

Commissioner Lauing: I met with the applicant of 840 Kipling and reviewed plans and took a site tour.

Vice-Chair Roohparvar: The applicant emailed me to schedule a site visit, I met with them, reviewed plans, took a tour. I learned information about trenching on the two-neighbor side that impacted the tree growth but I do believe that that’s included on Sheet T.2 but I did want to point that out.

Chair Templeton: Thank you. I have not had any contact with the participants in this hearing.

Commissioner Hechtman: I met with the applicants at 840 Kipling, had them explain to me some of the information that’s in the Staff report and the associated documents. So that’s already part of the record and did the site with them and looked at a couple of trees in the neighborhood that are referenced in the site report... sorry in the record.

Commissioner Summa: I also met with the applicant at 840 Kipling, at their home, and looked at the plans and associated documents and did a site tour.

Chair Templeton: Thank you and brief hold while we are seeking our last input. Alright sorry about that Commissioner Alcheck you’re on for disclosures.
Commissioner Alcheck: I met with the I guess Reyna family if I’m pronouncing it correctly of 840 Kipling yesterday. They walked me through many of the comments they made in the letters. I don’t believe they shared any information with me that wasn’t already in the Packet and I asked them that same question and they confirmed that. So other than that meeting I have nothing else to disclose.

Chair Templeton: Great thank you and just to check in with our legal team, do we feel comfortable proceeding with no recusals?

Ms. Sandra Lee, Assistant City Attorney: Yes, Madam Chair.

Chair Templeton: Thank you very much. Alright so oh I have the Order of Operations here, please hold. Vice-Chair to the rescue, thank you so much. Alright so the way we’re going to proceed through this is we will start with a Staff report and then we’ll hear from the hearing requester for 15-minutes and the applicant for 15-minutes. That’s… after that, we will do public comment and I have the cards here but if there’s anyone who has not filled out a public comment card please hand them into that box behind Ms. French. Alright, then the hearing requester and applicant will each have a 3-minute rebuttal after public comment in case there’s topics that come up that you’d like to address and then the Commission will discuss, alright? Thank you very much.
Ms. Rachael Tanner, Assistant Director of Planning: So, Commissioners I want to introduce Christy Fong who will be doing our Staff report this evening. Christy has over 9-years of planning experience including subdivisions, long-range planning, current planning and she began her planning career in Canada but we are very happy to have her working on this project. As you have seen the project history, this project has been underway for some time and so we are happy we are bringing it before you for its next phase. I’ll hand it over to Christy, thank you.

Ms. Christy Fong, Planner: Thank you for the introduction and good evening Board Members [note – Commissioners]. I’m the project planner for the proposed project located at 840 Kipling Street.

So just to give you some history on the project, the project is presented at PTC tonight in respond to a hearing request made by a neighbor residing at 441 Channing Avenue. This project involves an Individual Review and a Variance Application at 840 Kipling Street when the project was first submitted in 2018. Since this property is a historic resource the Historic Review Board reviewed this project on February and December of last year for its consistency with the Secretary of Interior Standard. Upon review, the Director of Planning and Development Services determined that the project is in conformance with the applicable zoning requirements and tentatively approved the project which is the Individual Review and the Variance applications on January 15 of this year. A Timely Hearing request was received from the neighbors at 441 Channing Avenue on the Tentative Decision. PTC is the reviewing body for the Variance after
the Director has issued a Tentative Decision, your recommendations will be forward to the City Council for final decision.

For tonight’s agenda, the PTC will review the project, conduct a public hearing, receive public testimony, and provide recommendation to City Council on the Variance request for 840 Kipling Street. The Variance Request includes a second story addition to a historic resource on a substandard, irregular R-2 zoned lot, a 6-foot extension to a non-complying wall which is currently encroaching 2 ½-feet into the required 6-foot required side yard setback on the West elevation.

Just to give you some information on the context of where the project site is. 840 Kipling Street is located that the southwest corner of Kipling Street and Channing Avenue in the SOFA South of Forest Area Coordinated Area Plan Phase I, SOFA CAP I. The project site is zoned as R-2, two-family residential surround by single-family, low density and multi-family residential uses. The area north and rest of the site are zoned R-2 and the area east to the site is zoned has DHS, Detached Housing on Small Lot. It is a special zoning district created by SOFA I. The hearing requester is locating at 441 Channing which is on the left side of the subject property. 836 Kipling is a substandard lot with a smaller, one-story home located on the left side of the subject property.

The project is located on a non-rectangular shape substandard lot. This lot is considered substandard because it does not meet the minimum lot requirement in the R-2 Zone District.
The subject area has a width of 39.5-feet where the minimum width for a regular lot in the R-2 Zone District is 50-feet. The lot area for this project site is 4,893-square feet where the minimum lot requirement for a standard lot in an R-2 Zone District 4,980-square feet.

The existing property has 1,192-square feet single-family residences with a one-car detached garage at the back. The main residence is a single-story bungalow with an attic that was constructed in 1912. This residence was previously determined by the Historic Review Board as a contributing residence as it retained historic merit.

So, this diagram is to provide you some information on the project. The project involves an Individual Review and Variance application for 184-square feet ground floor additions at the rear part of the residence, 397-square feet of partial basement beneath the rear addition, and 489-square feet of second-floor addition. The project site has two protected trees, they are Redwood, at the rear property line at the back which shares a Tree Protection Zone of 35-feet in radius from the tree location. The Tree Protection Zone limits part of the buildable area by the rear side of the property. The need to maintain these Tree Protection Zone from further intrusion qualifies this project site as unique and is eligible to request for a Variance.

The PTC review for this project is the two proposed Variance requests which included the height and the side yard setback encroachment. There are zoning regulations restricting development on substandard lot with one habitable floor at a maximum height of 17-feet. The
proposed project includes a second story addition and the proposed height would be 26-feet 8-inches that would require a height Variance.

The existing main residence is non-complying facility with a wall on the west elevation that is located 2 ½-feet into the required side yard setback. The project would extend approximately 6-feet to the rear part of the home which would not be visible from the street. This request would normally fit within the specific limit set forth in the Home Improvement Exemption that would allow a legal, nonconforming wall building that is located 3 ½-feet from the side property line to be extended to a quarter of the length of the existing wall or 10-feet horizontal, whichever is lesser. To clarify on the point that we state in the Staff report at Packet Page 18 because this project would alter just above 25 percent of the existing wall and it becomes ineligible to request for a Home Improvement Exception.

As noted above the subject property presents limitations for ground for expansion. The PTC can review the project, assess the property conditions, and determine whether the project would meet the four findings for granting of a Variance. This is the generic findings that is in our code right now. Proposed finding on a tentative decision is presented in Packet Page 46 in the Staff report. In summary, Staff found that the 35-feet Tree Protection Zone for the two protected Redwood trees on-site would restrict the subject property to expand on the ground floor when such expansion is allowed in the R-2 Zone District for a substandard lot. The project with the granting of the request height side setback Variance would not affect the project’s compliance with other R-2 Zone Development Standards. The project meets the Individual Review
Guidelines and also meets the Secretary of Interior Standards for rehabilitation. The project is generally consistent with the goal and policy identified in the Comprehensive Plan and in SOFA CAP I. The proposed second story addition would be built within the required building envelope and the proposed extension to the first-floor wall to an existing noncomplying wall is appropriate in scale and would not reduce the current side setback. At last, the proposed additions were not found detrimental and would not pose potential risks to public health, safety, general welfare, or convenience. PTC can assess whether the current project would meet the four findings for Variance and Staff would forward your recommendation to City Council on Consent Calendar.

The hearing requesters have also requested for Director’s Hearing for the Individual Review application which is scheduled for March 5, 2020. If the Director hearing decision is appealed the Individual Review application will be placed on the same Consent Calendar with the Variance and that concludes Staff’s presentation.

Chair Templeton: Thank you very much. Alright so let’s move onto the hearing requester and Vice-Chair please set for 15-minutes.

Ms. Tanner: Did you have a presentation?

Mr. Charlie Bronitsky: Pardon?
Ms. Tanner: Did you have a presentation?

Ms. Fong: No.

Mr. Bronitsky: No, I have... unfortunately, every thing’s printed but I think you all have it. It’s that. So, pardon me for starting so rudely but Commissioner... excuse me, Chair Templeton and Commissioners, good evening. My name is Charlie Bronitsky and I’m here today representing Alexander Gubbens and Karen Han, they own 441 Channing which is right next door to 840 Kipling. My apology that is paper, I usually don’t do paper but I just had a minor technology explosion today, so I hope you’ll forgive me for that.

What we’re going to talk about today really is whether or not a Variance should be granted to build a second story at 840 Kipling. And the critical thing that I’m going ask you to remember is that Variance are rare and exceptional.

My background, real estate land-use lawyer for 33-years, I live in Foster City, 4-years on its Planning Commission, 9-years on its City Council. I think in all those years and all those capacities I’ve done six Variance requests. And the reason that Variances are unusual and exceptional is because you’re asking someone to make an exception to the law. So, the law, in this case, would say that the property owner at 840 Kipling cannot build a second story and why is that, because it’s a substandard lot. There’s no dispute, the applicant agrees with that, the City agrees with that, we agree with that. And so, the issue is whether or not there’s something
about this particular property that allows for a Variance and it should be exceptional because otherwise, the reliance on the rule of law dissolves into chaos. And what I’m going to talk about today is that there is no... there are no... excuse me, there is nothing exceptional that would allow for the granting of a variance in this case.

So, let’s, if you wouldn’t mind, let’s turn to the second page of the... this is from... your Packet 20... Page 12 and it talks about... mostly about things we agree with. And on the first section, it says that because the lot is substandard the law in Palo Alto is that development is limited to one habitable floor with a maximum height of 17-feet and as we saw the house is already 18-feet. The next paragraph talks about extending an existing nonconforming wall but what I mostly want to draw your attention to is the third paragraph here which Staff says there’s really two reasons to grant a Variance. One is the tree in the rear yard and the need for a 35-foot Tree Protection Zone and the other is the odd shape of the lot.

I’d also like to note that there’s kind of an anomaly here in that and I’ll show you the numbers as I go through this. If the law were just applied the largest house that could be built on that would be a little over 1,900-square feet but if you then grant a Variance there’s an additional several hundred square feet that’s allowed. So not only is this lot going to... the proposal is to build this lot to a second-story which isn’t allowed, but to a great extent than what would be allowed if the law as applied and it was only limited to 1,900-feet. So, I know on the bottom is says 64 percent but that’s my hopefully only other mistake. It should be 57 percent. I think I corrected it in the other areas.
So as Staff pointed out this project went through the Historic Resources Board and the City retained Page and Turnbull who prepared the initial report. And I have the first and last page are the next two pages and if you turn to the second page I have here it talks about Page and Turnbull’s recommendation to consider a rear 1 ½-story addition rather than a second-story addition. And I’ve been graciously been given access to pretty much everything that was submitted to the City by the applicant and there was absolutely no attempt to do that. Instead, the applicant continued to go forward wanting to build a second-story on this lot where second-stories are not permitted.

So, I’m going to talk about the two issues, the first if the Tree Protection Zone. So, if you turn to the next page, this is I believe also part of the Staff report, you can see that the Tree Protection Zone of 35-feet has already been violated in numerous times. Including once by the applicant themselves when they not only dug trenches but cut roots and as I’m about to show you there is some significant disagreement among various arborists as to what the appropriate Tree Protection Zone should be here to actually protect the tree. And what concerned me was that there was no request by the City and no attempt by the applicant to actually do a little bit of digging and see where the roots are. Could you extend this property out a little bit more than 35-feet and not harm the tree? We really don’t know that. All that was ultimately applied was a formula. So, turning to the next page, it’s the Kielty Arborist letter of May 27th and on the second page of that letter in the highlighted red box, Kielty believes 25-feet is sufficient to protect the tree. And then on the third page of that letter Kielty goes on to talk about the
potential for root cutting, the potential for trenching [unintelligible] and or excuse me, excavation. A number of alternatives that could have been but weren’t studied that would have made a Variance unnecessary. So, for reasons that I’m not privy to a second arborist report was done, if you just turn two pages in it’s the August 14, 2018 letter from Dave Doctor. And back on August 14, 2018, Mr. Doctor concludes that the Tree Protection Zone ought to be 42-feet but again it’s not very clear whether any studies where done, any excavation was done, any investigation was done into where the actual roots of this tree are located. And then for some reason just a little under a year later there’s yet another letter, it’s the June 23rd letter, also from Mr. Doctor and he now for reasons that aren’t really clearly explained in the letter goes from 42-feet to 35-feet. So exactly what’s needed here isn’t really supported by any, as I can see it, valid arborist report. They’re all disagreeing with one another and no one’s bothered to go into the yard and actually find out. When the applicant needed to do some trenching, at that point it was ok to cut roots of the tree but apparently, in this instance, it’s not even appropriate to investigate. And I would ask this Commission to at the very least send them back to do further investigation because it might make it possible that the Tree Protection Zone can be shortened and the house expanded just on the first floor as the law provides and there would be no need for a Variance.

I also heard that a number of you went out there and I hope that you took a walk along the 400 block of Channing because you’ll see that there are at least a half of dozen trees that I saw today that are clearly protected trees, Redwoods and Oaks, and clearly within what should be calculated as the Tree Protection Zone. In fact, right across the street at 400 Channing there’s
two new houses and there’s... the next document I have here is the plan for that. And as you can see from the plan for 400 Channing in these two new homes these protected trees are vertically challenged and I’m not sure that I could lay myself down between the truck of the tree and the house. And right after that, you’ll see in my package is a photograph of just how close that tree is and really if you go out there it looks even closer. So, this is a pretty recent project, these houses are just now being put up for sale. So, from a community basis and you represent the community here, why the 35-foot Tree Protection Zone that requires... that’s there... then gives them a basis for a Variance on one side of the street and yet allow construction of two homes on what had formally been a lot with one home on it within 5 to 10-feet of protected trees? My client’s own property, 441, there’s an Oak in the front. That Oak if you went ten times the diameter is to close to the house. There’s... I think it’s 465 or 456, I think it’s 4... it’s got to be 456 because it's across the street. There’s a house there also there’s I think both a Redwood and an Oak and both of those are well within what would be the calculated amount.

So, it seems to me that as to the Tree Protection Zone, further study should have been done or there should have been some consideration of allowing for a Variance from just the technical calculation. So, you can have up to the 1,900 and so square feet on that first floor and again, no Variance is required.

So, Staff showed us kind of the generic code for Variances and the next page I have here is just some comments I have on that as to just how they apply in this case. So, what’s shown as
Attachment C, it’s also part of your packages Page 22, and among the things that you’re not supposed to consider in connection with granting a Variance are the personal circumstances or the property owner. And if you turn to the very next page you’ll see a statement from the property owner when they first got started on trying to get this Variance basically saying they needed it because they had a growing family. I understand that I started out the first time shortly after I got married at a condo in Daily City and we had a child and moved to a house in San Mateo. And our family continued to grow and we moved to a bigger house in Foster City. So, I understand that but this house has been on a substandard lot since long before the current owners have it. It’s had those restrictions on it to not build a second-story for quite some time and so there are alternatives if you’re personal circumstances require that you have a larger home but among those is not granting a Variance under the Palo Alto Municipal Code.

The other thing is B, changes in the size or shape of the subject property made by the property owner. So, I mean technically it’s not a change in the size or the shape of the property but the decision as shown in the Tree Protection Plan diagram to have trenched and cut roots is something that they chose to do which ultimately impacts where we are today. So, if they didn’t do that perhaps the Tree Protection Zone wouldn’t need to be as large as it is, could be investigated further but again, they chose to take action and there appears to be no consequences to that.

Again, the granting of the application shall not affect substantial requirements where there are regulations or constitute a grant of special privileges. Like I said and I think if you look at the
next to last page, it was Attachment B but it’s the next to the last page of what I have, you’ll see
that if this was a single-story it would be limited 1,957.2-square feet but the proposed
development is going to be 2,201.4-square feet. So as a result of a Variance they get to
burden... overburden that lot by an additional 57 percent beyond what they could build if they
just were required to follow the law. So, if they’re required to follow the law they could build
about 420 or 440-square feet but they get to build 600 and some square feet on that very same
lot.

I see I got a little yellow light so I’m going to make the following points quickly. There’s a... this...
so it’s showing you the lot layout. Again, the lot layout doesn’t constrict development, if it was
a square lot it would have actually fewer square feet and therefore you could put a smaller
home on it. Nothing about the slightly odd shape of this lot is actually a constraint. It’s actually
an advantage because it gives you additional square footage. Which gets me again to my point
that’s shown in the map, Building Eyes, one of your systems. I don’t know if your... I assume
you’re familiar with it but basically you can go on there and look at all the things the Planning
Staff has done. Since 2014... am I done?

Chair Templeton: Yes, your 15-minutes have passed.

Mr. Bronitsky: Ok.

Chair Templeton: You’ll have more time during rebuttal if anything comes up.
Mr. Bronitsky: Understood, thank you.

Chair Templeton: Thank you. Alright and we’re ready for applicant, thank you. Alright please begin.

Mr. Martin Bernstein: Thank you, Chair Templeton. I’m Martin Bernstein, architect for Steve and Aysen, I’m also a member of the Palo Alto Historic Resources Board, and I just wanted to for members to the public to know that I’ve gotten authorization from the California Fair Pollical Practice Commission that as the architect and without any employees, that the state of California allows me to present this project in front of the Commission. The purpose for that is twofold one, the state of California Fair Pollical Practice Commission doesn’t expect a homeowner to know the technical aspects of building constructions or processes nor does the state of California expect homeowners to be able to respond to question regarding technical aspects from the Commission. So that’s why I have authorization to present this to you, thank you.

Two simple statements one, during the course of the project we received excellent counsel from the Historic Preservation consultant for the City of Palo Alto, Page and Turnbull and we’ve incorporated all of their recommendations into their report into our project. And then also we’ve received good counsel from the City of Palo Alto’s Individual Review consultant Mammarella and we’ve incorporated all of his comments into that project.
So, my... just my three simple statements are with all these recommendations that have been incorporated into the project, Historic Review has been approved by the Planning Department, the Individual Review process has been approved the Planning Department and the Variance has been approved by the Planning Department. So now I’d like to introduce Mr. Reyna, the property owner, to continue. Thank you.

Mr. Steven Reyna: Chair Templeton, Commissioners, good evening. Chairperson Roohparvar [note -Vice-Chair] could you give me the proverbial 2-minute warning?

Vice-Chair Roohparvar: Yes.

Mr. Reyna: Ok thank you. Good evening, my name is Steve Reyna, my wife Aysen Kutlu and I are the owners of 840 Kipling. We’re here this evening to present our project to you which includes a Variance application for a modest second story addition to our house. Our application has already received as Mr. Bernstein had said, tentative approval for Variance, Individual Review, and Historic Review from the Director of Planning.

From the beginning, our goal has been a modest addition to our historic house which is compatible with the neighborhood and maintains and expands on its historic character. Per R-2 zoning we have 673-square feet of unused FAR and due to the new unique circumstances of our
irregular lot and restrictions on how we can place the square footage, we needed to apply for a second-story Variance.

Alright so some of the unique properties of the lot itself, it is irregular. As you can see we have... we’re not a rectangle, we’re like a box on a box. One of the... this lot and location of the associated driveway has existed since before 1924 and it’s documented on a 1924 sandboard map. Since the house was building in 1912 the lot is probably 108-years old as you see it. The irregular lot shape and the driveway access along the left side significantly constrains how we can utilize our buildable area. Any additions towards the rear are confined within a very narrow width exactly behind the house and the lot does however had adequate Daylight Plane to support our second story addition.

Here’s a quick picture of the driveway with the easement itself show on the right-hand side and the 1 ½-foot extra land for the exclusive and... exclusive use Variance in perpetuity. Sorry. There’s always... wait a minute. Pardon me.

Another unique condition of our property is that is effectively a conforming lot. The lot we fully own which is shown in light blue up there is 4, 893 so we are only 87-square feet less than a conforming lot. And with that exclusive use easement there which is 1 ½-feet by 75, that’s another 112-square foot, our total useable land is 5,005-square feet. We are effectively a conforming lot and as such we would not have needed a Variance for this project. We have an administrative problem with that but in terms of useable land, we effectively have 5,005-square
feet. I would add that the easement itself acts as a zoning function. It acts as additional side setback next to the house where it’s needed most to provide additional open space between us and the adjacent property. Now we go to the picture of the driveway and you can see the easement there and to the person on the street, it is indistinguishable from the property that we own. So, anybody standing on the street, this would look exactly like a conforming lot.

We talk again... we’re back to the Tree Protection Zone. You know about the trees, the two protected Redwoods in the back right there show with the green circles with a 35-foot TPZ. So, this TPZ is significantly impacted by the structures and the features around there. The dark black are the garage and the cottage next to us and whatnot and when you total up the total intrusion impact on the TPZ its 73 percent impacted. When Planning and Forestry allows up to a 25 percent intrusion. In addition to the structures and the driveway around it, the previous owner of the property behind us in this are up there, we found out that they had trenched along that fence line for their own irrigation and had installed root blocks. And that’s the left-right dash line there and the remaining 27 percent undistributed TPZ is shown in green. The areas essentially only what’s between the trees and the back of our house and in forward back direction and the driveway and essentially our property line on the right-hand side. Back in 2013, 2013 we became concerned about potential damage between our trees and the neighbor’s cottage at 836 Kipling on the right-hand side because of how close they were. We consulted with arborist Kevin Raftery who advised us to dig a trench and look for... look at what roots are there and we discovered significant roots going directly underneath the cottage. Under advisement from Kevin Raftery, we cut those roots going... we cut those roots to prevent
damage to the cottage and to preserve our Redwood trees. If we had not done that we would eventually have been forced to remove those trees because of the hazard they would cause to the cottage. We did not want to damage our neighbor’s cottage, we did not want to lose our Redwood tree which is a very real possibility because it happened to our neighbors. Our neighbors at 836 Kipling, the one-story next to us, use to have, use to have a very large and healthy Redwood tree whose diameter is substantially bigger than ours. There’s a picture on the left as it uses to exist and then there’s the... you can see the picture of where it is referenced to the back of the house. They loved this tree, we loved it too but because of ongoing issues with the tree and the house, they felt it necessary to call in an arborist to say what’s going on with this? And the arborist told them this house is destroying your foundation... I’m sorry, this tree is destroying your foundation, this tree is pushing in on your house. Reluctantly to perverse the house they removed the tree and that’s what happened. We all lost a beautiful large Redwood tree, we don’t want this to happen to our trees, we don’t want this to happen to our house.

Turning now to the how the project would present itself to the neighborhood. We have an expert of the streetscape from the plan set. As you can see the proposed second story addition is centered on the house and significantly imbedded into the roof. In fact, more than 50 percent of the second story is embedded in the existing house structure. So, this can reasonable be called a 1 ½-story house or addition. It’s a modest addition, it fits well within the neighborhood, it’s compatible in size, and even smaller than some of the nearby R-2 homes off to the right and is much smaller in height and massing than the DHS home on the far left, 441 Channing. One
point I’d like to highlight here is that the primary concern that the City Council has with second-story additions on substandard lots is the violation of Daylight Planes and setbacks. Our lot, almost a conforming lot by 87-square feet we’re missing it, has sufficient Daylight Plane to support our addition. And the second story addition fits entirely within the R-2 Daylight Plane, including the eaves.

Here’s a brief chart that shows the comparison of living space between the different lots along the streetscape. Living space, in this case, is all the built space above ground, not including garages. So, as you can see, first of all including our proposal, almost all the houses on that street are two-story already and that the R-2 houses range from 38 to 40 percent FAR. The DHS house on the far left, 441 Channing, .58 FAR.

Now the submission from the appellant is actually fairly vague about what they are opposed... why they are opposing our application. On the first page, second paragraph of their written submission from the beginning they write “whereas a second story requires a Variance and would be injurious of the value and enjoyment of the Gubbens/Han home. Now the submission doesn’t explain this statement but the owners have been very focused and very consistent over the last 4-years about they are concerned about. Up there are quotes, one is an email directly to us, the other three are in your Packet, these are emails to the City. The most recent one was on December 2nd of 2019, that was only 3-months ago. I won’t read all of this but I’ve added emphasis to the key points. Its views from their second-story windows across our property and the most clear expression is the third bullet down, July 2018, which starts out “I realize that the
second-floor addition... that with the second-floor addition we would not be able to see sunsets anymore.” And jumping down to the last sentence “with some very nice views over 840 Kipling, those would disappear.” The most... they have been consistently reiterating this primary concern over the years. However, I’d like to bring some more historic context into the views of owners that the owners of 441 Channing are concerned about. Above is a dictation of the condition of the property as they bought it in 2007. There were a row of Canary Island Pine Tree, 40-foot plus height along the common property line. These trees existed prior to the construction of their home and were designated protected trees by the then Director of Planning Ed Goff back in 2001 as a part of the SOFA I process. In 2009 Mr. Gubbens approached us asking if he could remove those and replace them with new screening trees because there were maintenance issues for him.

Vice-Chair Roohparvar: Two minutes.

Mr. Reyna: Aw, thank you. Had the original... sorry. They became a maintenance issue for us, these trees were removed in 2009 when the owners 441 Channing were first able to enjoy the views across our property. Here’s a Google street view, on the top you can see the trees as it existed in 2008; very substantial. We are very heavily shaded there. On the bottom left, 2-years after the trees it’s... there’s nothing there and in May of last year, you can see that the screening trees are still not there. So, what is the appellant asking for? The owners of 441 Channing are asking the City to deny our second story Variance request in order to protect their views across our property. A view they created when they removed the tall Canary Island Pine
screen trees between our properties. The remedy being requested is for the City to violate its own Tree Protection Code to force the addition onto the ground floor, jeopardizing the trees as well as the future structural integrity of the house. I’d like to emphasize that even without the screening trees, there is no significant impact of our second story addition to their house. We fully fit within the Daylight Plane and their second story is 48-feet away from our second story. And if owners of 441 Channing are suffering an injurious loss of light from our second story addition, then anyone building a second story addition would be causing injurious loss to their neighbors even when adhering to the Daylight Plane.

I’ll skip that. I’ll skip that. This is a picture that shows the neighbor's support. Three adjacent neighbors including two of them here. Thank you.

Chair Templeton: Than you very much. Just a reminder you’ll have an opportunity to respond as well after public comment. Alright so public comment cards, I have some that were submitted earlier on. Have any additional cards been handed in Ms. French?

Ms. Tanner: No more cards.

Chair Templeton: No more cards, ok. We’re going to start with Charlie Bronitsky.

Mr. Bronitsky: (from the audience) Well, that’s me. I’m sorry.
Chair Templeton: Oh, yeah you don’t need to submit a card. Ok and then William Cane followed by Kevin Morris and Steven Chanin and we only have three so you can have 3-minutes each. Thank you.

Mr. William Cane: My name is William Cane, I live at 832 Kipling, I’ve lived there since 1918...1995. The house was built in 1895 or so and when Steve Reyna first approached me, he’s kept me apprised of this project from the beginning, I was really pleased to discover that he was planning to just to enlarge and make an addition to his house and not to sell it because of his needs. Because it were sold, what I see driving around town is houses like his get torn down, being replaced by things that would not be nearly as consistent with the architect in our neighborhood. And so, I think this project is very deserving, it will add I think to the neighborhood, it will probably improve my property value, and I think it’s very modest. So, I hope you will approve it. Thank you.

Chair Templeton: Thank you very much for your comments, Mr. Cane. Kevin Morris.

Mr. Kevin Morris: Hi, good evening, my name’s Kevin Morris, I live at 836 Kipling Street, we bought our house in 2011 and I just want to say we’re very supportive of this project. We’re obviously the neighbors on the other side. Steve and Aysen invited us over several... almost... more than a year ago now to kind of be considerately show them the plans for the project. We’re fully in support of the project.
That large Redwood... we’re the owner that actually had the large Redwood tree in the back of our house that we had to take down. Again, there were some tears in our house because when we got... that tree was kind of the flagship of our backyard. If... you didn’t see, it’s the picture of the foundation where our foundation is literally was kind of bent by the tree. That tree was planted before we purchased the house and it was one of the reasons why we purchased the house in 2011 because it was just gorgeous. So obviously you have... trees are an issue in this hearing and actually, we were the ones that lost the tree. And I just wanted to kind of let the Commission know that we’re fully in support of the project. So, thank you very much.

Chair Templeton: Thank you very much for your comments, Mr. Morris. Steven Chanin.

Mr. Steven Chanin: So, I’m just... I’m 857 Waverley so on one of the two greenhouses on the Waverley side. Just wanted to say that I’m speaking in support of the project as well. My wife and I both understood what was going on a couple years ago and Steven came by and explained that they were trying to do this. And our take basically is that the whole community benefits by people who are investing and improving their house and the housing stock in the area. It keeps things well maintained, in good condition, it adds value to the neighborhood, it contributes taxes that pay for schools and services we all benefit from. So, we look at it as the community wins when people invest in improving their housing so anyway. You know and every change has impacts so right now we’re... our backyard faces the subject properties back yard and our master bedroom is on the backside of our house. So, we have a whole bunch of windows. Right now, if you look out those windows you don’t see anybody else because there’s walls and
garages and trees. The only thing that you’d really see would be the place where the second story addition is going to go and our takes is it’s nice that we had this privacy windfall for all these years since we moved in 2008 but it’s not like god grated us the right to have nobody to be able to see through our window ever. So, we have curtains if we’re going to run around butt naked after getting out of the shower, we’ll pull our curtains closed. But it’s not (interrupted)

Chair Templeton: Let’s keep it appropriate Mr. Chanin.

Mr. Chanin: Exactly but it’s… you got to look at it as if I were... I look at it as if I were on the other side and now we’re trying to change... build an addition on my house or renovate it, how would I feel about somebody blocking me because they don’t want to lose this privacy windfall that they’ve had any right to in the first place? They just benefited from and so I think you got to adapt and be reasonable. And so anyways so my take is you should approve the project and we’ll close our curtains and I think everybody will be better off.

Chair Templeton: Thank you very much for your comments, Mr. Chanin. At this time, we will close public comment and begin the rebuttal period. So, hearing requester will have 3-minutes followed by the applicant. Thank you.

Mr. Bronitsky: Thank you. The gentleman who just spoke is right, God didn’t grant anybody rights, the City of Palo Alto has a Municipal Code and that granted the rights. The right is a substandard lot, this is a substandard lot, it’s not near a standard lot, it’s a substandard lot. I’m
not near 6-feet, it’s a substandard lot. There’s really no argument about that. We’re sorry about the loss of someone’s else tree. Is this tree going to be lost if they expand further? We don’t know that. We had three different opinions from three different arborists. This isn’t simply just granting someone an addition, this is granting them a Variance. Meaning that we’re not going to require you to follow the law in this case. We’re going to say that there’s something unique about this and what did the Staff say? Two things, the Tree Protection Zone, and the odd shape of the lot. I showed you the odd shape of the lot really isn’t a constraint and the Tree Protection Zone. We prepared a little chart and I’ll... if someone could (interrupted)

Chair Templeton: Ms. French? Ms. French?

Mr. Bronitsky: I can come up there. (off mic) Here’s some extras. You could build the full... as you’ll see in this and we’re not architects or engineers. It’s just sort of trying to eyeball this. You’ll see in this chart that you could go to the full 1,900 and some odd square feet on the first floor and still be more than 30-feet away from this tree and no Variance would be necessary. And if there is a Variance necessary because of the Tree Protection Zone calculation then it should be granted for that purpose because again, just like everybody bought their home and enjoyed their views. So, did Alexander and Karen and they bought their home because the place next... in part because the place next door was on a substandard lot and no second story could ever be added to it. And they’ve enjoyed those views and really if you look at the reasons for a Variances, the very last one is an impact. That’s an impact. Again, this property could be expanded, it doesn’t necessarily have to be expanded to the full 1,900 and some odd feet. If
they’re concerned about staying out of the 35-foot zone they could expand to about 1,900-feet and you could still fit a significant expansion in that property. No Variance ever needs to be granted and the law should be applied.

Again, what we’re asking you to do is apply the law and not grant the Variance because the exceptional circumstances required for a Variance simply done exist in this instance. Thank you all very much.

Chair Templeton: Thank you very much for your comments. Applicant?

Mr. Reyna: Good evening, thank you. So, I guess it’s a collection of things to comment on. He talked about 25-feet, 35-feet, 42-feet from the arborist. The 25-foot was a typo and we could not get ahold of that arborist to correct it. The 42-feet was the recommending addition space because of the Redwood trees and he’s trying to deal with the... the arborist is recommending additional space to deal with the Redwood tree’s aggressive root growth tendencies. However, in a meeting on September 12th, 2018 the arborist with the City came to an agreement that 35-feet is acceptable and the house and the trees would be fine. Hence 35-feet showed up in his final report.

So, I’d also like to point out or at least point out here that granting of the Variance is to grant relief from strict application of the law. This is not breaking the law. Zoning is a general process where you try to capture as much as you can but the understanding... the recognition is that
there are cases where the general zoning doesn’t necessarily apply. And therefore, the Variance is created as a process to deal with those cases one by one. So, to apply for a Variance, it’s not breaking the law. To be granted a Variance is not breaking the law, it’s following the law if we meet the findings and Staff and the Director of Planning agree that we meet the findings. And the question before you is do you agree with that? And I have to say that the City’s Tree Protection Regulations, they align well with our wish to preserve our trees because they matter to us at least.

And one thing that is kind of clear is that as the appellant raises issues about not seeing this done, not seeing that done, all I can say is that they have not been apart of the process. They don’t see what we’ve gone through. We’ve reviewed and reviewed and tried all… considered all sorts of options including the ones that they have suggested but considering that with the narrow bit of land that we have between the driveway and the property and the setback on it and between the TPZ and the house that we have. As we extend back we cannot recreate multiple bedrooms back there because of the narrowness. You can’t a room and hallway and a kitchen across a very narrow stretch of land there which is a consequence of the irregular lot and the driveway access. We have limitations, we have a lot of limitations and they are strong limitations that have crossed the threshold for a Variance. Thank you very much.

Chair Templeton: Thank you very much for your comments. Before we turn it over to the Commission I want to ask advice. Would it be alright if we asked the hearing requestor and the applicant to stay in case we have questions directly for them or should we only ask Staff?
Ms. Tanner: I believe that they can... you can ask the hearing requestor or applicant questions.

Chair Templeton: Ok so if you wish to stay in case any of the Commissioners have questions you’re welcome too. Alright, so the first light I see is Commissioner Alcheck.

Commissioner Alcheck: Great, good evening. I just want to thank all of you who’ve spoken tonight, for making the effort to participate in our local process. This sort of shared perspective is the essence of why our meetings take place. So, thank you for coming if this is your first time.

I want to start this discussion at the end by talking about the findings and what I’m going to do is I’m going to talk about Findings Two and Findings Three first. Presuming that those are sort of less complex and maybe if that’s the case then we can avoid having to rehash each of the four findings as we go through. So, I’m going to start with the second finding that needs to be made; the granting of the application shall not affect substantial compliances of the regulations or constitute a grant of special privileges inconsistent with the limitations upon other properties in this vicinity and in the same zone district as the subject property. I think that this finding can be made based on the information we’ve received tonight from the Staff report and from the several letters that we’ve got. I think the remarkable component here is that the second floor complies with R-2 zoning regulations and in particular as well within the envelope of our Daylight Plane which is the right that... which is the threshold that we use to evaluate the inconsistency and compliance, so I think that finding can be made. I also think that the
secondary Variance element, the issue with the wall also considering that if this was just an HIE discussion, it would be compliant. I think that suggests plainly that this finding can once again be made because this wouldn’t violate again the substantial compliance with our regulations if this had sort of felled within the HIE exemption; the improvement exemption.

Ok, I’m going to move to Finding Three, that the application is consistent with the Palo Alto Comprehensive Plan and the purposes of the title. And I think in this case Staff did a good job of outlining that in their determination. I’m happy to go through this if we need but unless somebody feels strongly that our Comprehensive Plan policies somehow are violated. I think that the Staff report speaks strongly to the case that the Comprehensive Plan as a whole and particularly the policies that were enumerated in our Staff report satisfy Finding Number Three.

But I’m happy too (interrupted)

Chair Templeton: Pardon me Commissioner Alcheck. I want to just clarify.

Commissioner Alcheck: I know this is not from Staff.

Chair Templeton: Oh, I want... who provided this document? Ok, the applicant. Thank you, I just wanted to clarify that. Thank you.

Commissioner Alcheck: No, I mean I’m referring to Packet Page 18 for the findings that we need and then I thought in particular if we are... hold on a minute (interrupted)
Chair Templeton: Thank you for helping us follow along with your thoughts Commissioner Alcheck.

Commissioner Hechtman: [unintelligible – off mic]

Commissioner Alcheck: Yeah (interrupted)

Commissioner Lauing: 47 as well.

Commissioner Alcheck: And then Page... I was going to say Packet Pages 46 through (interrupted)

Commissioner Lauing: 47.

Commissioner Alcheck: 49 or excuse me 49 are the crux of the Director’s report and I think that if... unless there’s... I’m happy to double back on it but I’m going to suggest that the statements made on Packet Page 48 regarding Finding Number Three are... really sufficiently make the case that the finding can be made and I would agree with that analysis.

Ok, I’m going to go to Finding Four which I think is a little more complicated and in particular the question about whether the applications would be detrimental or injurious to property or
improvements in the vicinity. And then how it reflects on the public health and public safety and general welfare and general convenience. I think one of the... one of our speakers tonight has spoke quite humorously and elegantly about this notion of privacy and you know we’ve grappled with these ideas of single-story overlays in the past. And one of the things that I use when I consider these notions of second story... single story overlays, our code creates a set of strict regulations regarding Daylight Planes and second story additions for example within our R-2 zones like this one. And I think that if a Variance requested some flexibility with respect to encroaching over a Daylight Plane this would be a very different story. And I think when I think about the notion that we’re going to evaluate whether something can be detrimental or injurious to a property or an improvement in the vicinity I think about value. And from my perspective the bar of determining whether you can be injured by the execution of let’s say an improvement on your property is whether it would conflict with the standards that we set within a zoning... within a zone that applies to all projects within that zone. So regardless whether a lot is substandard in the R-2 Zone, I don’t... I would suggest that we consider injury to be present when a project would exceed regulations general to the zone as opposed to specific to the lot. And the reason why is because if you don’t then the entire concept of a Variance is impossible. If adhering to your zone’s regulations would injury your neighbor then you couldn’t evaluate a property for its special circumstance to determine whether it should theoretically be allowed to do something that it would otherwise would be allowed to do except for X, Y, and Z. That wouldn’t be possible and so I think this would be an entirely different scenario if for example what was being asked and supported by the planning Staff was something that would actually cross the line of what is permitted in an R-2. So, considering that the application is
within the envelope for example, because we talked a lot about privacy and views, within the envelope of the Daylight Plane. I think that should reflect how we evaluate whether such an improvement could injury a neighboring property. And so that’s how I’m approaching the finding in number four, that the expectation should not be that the neighboring properties entitled to anything more than what is strictly provided for by the zone. And if the zone allows for this Daylight Plane than anything up to that daylight plan, in theory, can’t by definition injure the property.

Ok, I’m going to move on. I’m not sure it bears mentioning but I think that the alternative build-out suggestions here if they did in fact negatively impact trees I think we could be in a very similar situation. Were a lawful application to develop on this site, if somehow could be approved by the City in contradiction to the City’s arborist findings could theoretically be appealed because if it did pose a risk to a tree. That could very much be a qualitative injurious to the community so it’s sort of interesting. Not that the part of the evaluation from a Variance perspective but I just wanted to add that.

Ok, I’m going to move now to Finding One and I appreciate you guys letting me have all this extra... extended time. The special... the critical Finding Number One which goes to the heart of all Variances; 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 regulations prescribed in this title substantially deprives the property... such property owner such property privileges enjoyed by other property in the vicinity and in the
same zoning district as the subject property. We’re not to consider the personal circumstances of the owner and any changes in the size or shape of the subject property made by the owner or its predecessor in interest. So, I’ll just acknowledge one thing, I was not made aware of personal circumstances of the owner except for in the letters that I received from the applicant of this matter. So, I’m not sure if that was a component, I imagine it wasn’t of the Staff’s review considering their familiarity with the code. I think that... well let me say this, I... first I appreciate the invitation by the project applicant to sort of get out there. I think so much of our review requires us to assess factors like size, shape, topography, and the opportunity to get out in the community and see these things is profoundly helpful. And so, for those of you that we’re able to do that I think it probably improved your analysis. So, one of the components of the finding that I think or one of the components of why I think this first findings can be made is number one, they’re irregularly shaped lot. I think that the shape of the lot has forced us to approach any improvements on the site in a unique way and then but for the TPZ Zone we would be able to do something very different here. So, it’s not necessarily that they’re irregularly shaped lot causes all the problems but the irregularly shaped lot in conjunction with the TPZ Zone set by the arborist creates an almost impossible situation where the homeowner, despite being able to improve the lot based on his current size, can’t effectively do so. And I think it’s... there was an interesting discussion about the easement. I’m not really clear why this easement stretches almost the length of the property was recorded as an easement as opposed to a lot line adjustment. It seems... I don’t know that it falls within the special circumstances precisely but the notion that there is effectively a non-legal defined property line that encompasses enough land to make this potentially not substandard. I don’t know if that would still be the case
because of the width but potentially not a substandard lot I think is interesting. I don’t know that it is a component of... I don’t know that it is a valid special circumstance because if for example, the property owner acquired the land that forms that easement, that would be a change in the size of the lot which is something we’re not supposed to consider. Although I will say that we have experienced in our review on this Commission situation like this that go back before time. That’s what... anything that happened 112-years ago is essentially prehistoric and one of the things that I think is problematic here is that looking at the shape of the lot you have to wonder why was it set up like this? So, I don’t know that that falls into the category of special circumstances but it is a component that I would suggest should be considered by the Council when they review it.

So, one of the arguments that the appellant or applicant... I’m not really sure what the title is. Is it applicant tonight?

**Commissioner Alcheck:** The appellant is the applicant?

**Ms. Tanner:** The applicant is the applicant and the person who’s bringing this before us is the hearing requester.

**Commissioner Alcheck:** The hearing... ok, I will continue... so all previous references to appellant is hearing requestor and from now on I’ll use that word. So, I’ll suggest some of the comments made by the hearing requestor that... regarding the arborist report. Look, it's been
my experience that Dave Doctor may be the most highly regarded arborist in this City. Am I surprised that his initial finding was 42-feet and Staff and whoever pushed and he went down to 35, not surprising. I feel like arborists are consistently pushed into corners and asked to be more conservative. My impression is that he’s spent more than enough time evaluating the TPZ which is a significant component of the special circumstances that I think make Finding One possible. And I think it would be a waste of time to reassess or reinvestigate and a waste of resources. I think we should be able to rely on those two reports just based on his tenor.

And then I would add that I think when you review the Staff report, I’m drawing your attention to Packet Page 47, the Staff... so Staff addresses all these special circumstances. That there’s a historic relevance here that makes this property unique so reshaping it or demolishing it or rebuilding would be an undesirable result to achieve the solution within the framework that’s allowed.

Yeah and... I’ll end on this because I feel like I’m taking to much time. I’ll end on this. This is not the first Variance that I’ve reviewed as a Commissioner in 8-years but it is, to the best of my recollection, the first time Staff has recommended approval of one. And I mention that because it is true, Variances are supposed to... Staff has set an exceedingly high bar for Variances and but if we never grant one, in particular, one with this much supportive evidence then it’s essentially not a tool that our City uses. So, I take the recommendation by Staff to be quite influential on my conclusion but that’s it for me tonight. Thank you.
Chair Templeton: Thank you very much. Commissioner Riggs followed by Commissioner Summa.

Commissioner Riggs: Well, I’ll be simple, I have four points. I evaluated the application in the Packet and I don’t really have questions. Point number two, I can make the findings and I think that too irritated the points that were just made. I find this a very good case for the application of a Variance, particularly I think some of the special considerations that Commissioner Alcheck mentioned. The tension with the Tree Protection Zone as well as the... I find the easement really provocative and I’m ready to move to the Staff recommendation when everybody else is ready.

Chair Templeton: Thank you very much, Commissioner Riggs. Commissioner Summa.

Commissioner Summa: Thank you very much and thank you to the Staff and all the presenters. There was a lot of really great information here and I have to say that I agree with the comments of Commissioner Alcheck. I think the fact this Variance... we have a Variance so it can be used basically and used in the right way. And this project has checked all the boxes in IR, Daylight Plane. It is effectively a... in terms of lot size compliant. I mean it’s odd to have an easement that only one property owner has a right to so it’s effectively part of their lot since there’s no other party that has any access or rights to that easement.
I am also struck by the thorough review of this project and in addition to making the findings which I won’t go into detail because I think Commissioner Alcheck did a great job. I also think that this property and this applicant adds value to the neighborhood. They are preserving a historic resource and a precious tree resource for the whole community. And I don’t... I’m not sure it’s appropriate really for someone else to suggest how they might build on their property but I think that it does look like kind of a half story from the front. More like a dormer than a full story and I think it’s appropriate with the architecture.

And I think also that substandard lots in really old part of Palo Alto, there’s all kinds of crazy lot lines in situations that people... that you want to resolve in the best way for a homeowner that wants to bring all this value to the community. And I’m also struck by the support from nearly all of the neighbors and the fact that they feel this will improve their property values. So, I’m also ready to move the Staff recommendation.

Chair Templeton: Thank you, Commissioner Summa. Commissioner Lauing.

Commissioner Lauing: Yes, first I’d just like to acknowledge that this is a very complicated issue relative to Staff presentation and I thought it was just an unusually thorough report that came to us to really lay this thing out. And if you don’t come to every meeting you realize... you don’t realize that I don’t say that every meeting.

Commissioner Riggs: (off mic) Nice job.
**Commissioner Lauing:** So, it’s particularly well done, really well done. I wanted to ask a couple questions before getting back to the substance. From the applicant... of the City from the applicant’s letter and so... no, not the applicant, the appeal person.

[note – many people spoke at once:] Hearing requester.

**Commissioner Lauing:** On Page 62.

**Vice-Chair Roohparvar:** Hearing requester.

**Commissioner Lauing:** Right we’ll work this out later. Page 62 which is the letter from Mr. Bronitsky and the last three paragraphs on that are basically all talking about the Tree Protection Zone and that’s been addressed by the homeowner as well. So, I take it... I’m just confirming this, I take it that the City is very comfortable saying that 35-feet is the thing that we’re supposed to be looking at right now?

**Ms. Tanner:** That’s a great question Commissioner Lauing. We are comfortable with that 35-foot Tree Protection Zone. We do have a member of the Urban Forestry Staff here if you do have further questions. She can go into detail about the calculation method used for that zone if that was desired by the Commission.
Commissioner Lauing: No, I just wanted to confirm that that’s the City’s firm position and then on the next Page 63 there was also reference to a number of other properties that seem to be closer than 25. And assuming that’s true, can we just get some guidance on how that could occur? What’s there or? I know they’re not part of the Variance but I understand the appealer’s question there.

Ms. Tanner: Yeah, I don’t think we need slide Christy but in case we do you’ll have the… mise well bring it back over here. Ms. Fong did look into other properties that we were made aware of by the hearing requester. And we did look at the Redwoods that were similar there and of similar size and stature and found that I think the Tree Protection Zone was consistent. There are certainly other types of trees on some of those properties, Oaks mainly, that are also protected but of a different size and stature and different root system than the Redwood trees. And so, we did compare the Redwood tree Tree Protection Zone on those neighboring properties. Do you want to speak to that any further Ms. Fong?

Ms. Fong: So, I just want to speak on that from my planner perspective. I was looking at those trees and evaluated past permits and also the existing situation there. It appeared that those Tree Protection Zone is consistent with the previous building footprint. So basically, what is new right now on the site is pretty similar to a previous situation on-site when the development was built close to the tree. So, we are not supporting anything more than we are currently seeing on-site from the existing situation. We are just basically approving what was existed there.
Commissioner Lauing: Approving what? I didn’t hear that.

Ms. Fong: What is existing on-site right now. So, we are not pushing the new building more toward the tree, we are maintaining what is already there as an existing impact.

Commissioner Lauing: Ok and then I also just wanted to confirm what I think we’re saying and this is on the plan T-2 where it just shows that... I don’t know if I can get this number that quickly but it seems like about 75 percent because of the neighbor’s houses and cottages and so of the existing tree zone is already been penetrated. So, if I understand that graph correctly that makes even more severe that fact that these trees are going to be at higher risk if there’s anymore building than what’s left of the free root growing zone for that tree are, correct?

Ms. Tanner: Yes, I believe you’re referring to the neighboring properties where the root system of this tree stretch and there are perhaps some challenges maybe for the root system that currently exists.

Commissioner Lauing: That’s right.

Ms. Tanner: Yeah, we certainly wouldn’t... I think that’s part of what we want to look at with this tree is not just what is on property but the totality of the root system of the tree. And so, we certainly want to make sure that it is protected. Christy, do you want to speak to the impact? Are you asking if there are other proposed plans on the rest of the root system?
Commissioner Lauing: No.

Ms. Tanner: Just the current condition?

Commissioner Lauing: No, I’m asking if the situation is particularly severe because (interrupted)

Ms. Tanner: Because of that.

Commissioner Lauing: So much of the complete circle has already been penetrated and so there’s not as much left. It looks like a reasonable portion on this property is left but in terms of the entire growing area for the trees (interrupted)

Ms. Tanner: That is correct.

Commissioner Lauing: There’s not much left.

Ms. Tanner: Yes, that is correct Commissioner Lauing.

Commissioner Lauing: So, the severity is increased in this particular location because there were some comments from the folks that appealed that there’s another invasion in there so
why can’t we have an invasion and that’s the answer. Because there are already too many invasions and we need some space for that tree to spread its roots.

Without going off on a tangent I think in some cases homeowners can say I need to take these trees out in order to continue... like the neighbor but in order to do my building and I can’t get it done. But the choice if the City or we are trying to opine on that of removing two Redwood trees or having a small addition as a second floor, I think is just... there’s no sense of spending any time on that as opposed to having it recorded that as a position.

And just a comment on the perceived problem here, the perceived problem from the one who is appealing is that it is the views of a house I guess instead of nature but they took the trees down. The large trees so there are other large trees that can be put up at frankly any size depending on how much you want to spend per tree. That can be happening in the next month.

So, I am... I just want to associate my thoughts on this thing with what Commissioner Alcheck had already said and what Commissioner Summa added. I do think the findings could be made and I’d be supportive.

Chair Templeton: Thank you very much. Commissioner Hechtman.

Commissioner Hechtman: Thank you. I’d like to actually start with a question before I begin my remarks. In the hearing requesters remarks tonight as in one of their... their second letter, the
Council second letter, he referred to the Page and Turnbull report. We saw the first page of it here in the Packet... in the supplemental Packet dated March 19th, 2019 discussing the possibility of I think a 1 ½-story addition in the back of the property. But as you read in the Staff report ultimately Page and Turnbull found ten of the ten factors for this proposed... the proposed plan before us tonight. And so, I’m wondering if was there a Page and Turnbull letter after the March 19th, 2019 that... and perhaps that could be explained to me.

Ms. Tanner: Ms. French who is our historic expert will answer that question.

Ms. Amy French, Chief Planning Official: Well, at least I’m the Historic Resources Board liaison. I see a lot of these things. So, the Secretary of Interior Standards, ten of them, yes, Page and Turnbull submitted a subsequent letter. This was an early version so we have version control issues. You’re not seeing the later version that the HRB did have a look at and did get to consider as they were looking at the revised plans that came back in. So, they did make the findings that all ten Secretary of Interior Standards for rehabilitation where met with the proposed plans.

Commissioner Hechtman: Ok thank you for that clarification. So, I’d like to start with the function of the Variance generally and of course, it’s a state law. Same Variance findings apply in every jurisdiction throughout the state. We actually had a couple more to the state law, the Findings Three and Four but the... really the function is to look at a site and ask that if... ask if it's constrained in some unique way from enjoying the same privileges its neighbors do in the
same zoning district. And those constraints it says clear in case law, those constraints are often physical like a creek running through your property that squeezes you toward a setback but they can also be legal. Legal constraints on your property are constraints and those count too and so that was kind of the framework that I came with when I looked at this application for these Variances. And so, what I see is today there’s a single-story house on that property and there is some room at the front of that house between the face of that house where the door is and the front setback where there could be an expansion but there’s a law that says you can’t build out that direction. And that’s a law of the City and it has to do with the historic nature of this property and the importance of retaining the historic façade and so that is a constraint of this site. That’s one reason limiting available development moving forward and then looking backward from the back of the house where the current design does move back to the... basically to almost the edge of the 35-foot recommended setback from the tree. We have another legal constraint and that’s the TPZ and so this house is squeezed at front and back. And that raises the question of whether some modification of some law of the City is appropriate to allow this house to enjoy the same benefits of its neighbors in the R-2 Zone.

So, I do appreciate the concerns of the neighbors at 441 and your articulation both in your personal emails and the comments and letters of your counsel. But one place that I felt that I was constrained in considering them and that is that our decision, our recommendation needs to be based on something called substantial evidence. And those are essentially facts and expert opinions on expert subjects supported by facts. One thing that’s clear and I know this better than most as a land-use lawyer who is occasionally reminded of this, lawyers’ arguments
are not substantial evidence. They can contain facts that are evidence but they are not themselves substantial evidence and so while I was interested in the position the 441 neighbors have on whether or not a further incursion into the TPZ is advisable. Recognizing as I know they do that the recommend incursion is 27 percent leaving 73 percent unininvaded and in fact, it’s already squeezed down to only 27 percent unininvaded. But recognizing that I don’t have in front of me an arborist analysis that says it’s ok to further invade that. The one I have says it’s not ok and I do understand that the TPZ is not just an issue of distance of a tree from a structure. I know it’s more complicated than that because that’s evident in the record. And so, to me, that’s one of the things that I found constraining in my desire in wanting to give full credit to that position and look at the… whether the TPZ could be reduced. I don’t have any… I don’t have an arborist it could be.

Another aspect that of substantial evidence that I think is… that I’m guided by is, of course, it needs to be relevant. And I thought the neighbors at 441, their counsel made a good point that the personal circumstances of the applicant are not relevant and I agree with that and but I note that in the Director’s findings which are the findings from which the hearing request springs. Those didn’t make reference to those personal circumstances so I don’t believe that they’re part of the findings. So, while I agree with the point I think that Staff and the Director appropriately handled those.

Another frankly irrelevant in my view aspect which I’ve heard in both directions here is value. That’s not apart of any finding here and I think experts may... well, we had a disagreement in
this room as to whether value would be affected. But I can... it’s not to my thinking part of any of the findings.

So, as I’m looking at this what I am seeing is we have a Director’s decision with a series of findings and I’ve reviewed those and I agree with the findings. There are three additional findings that I think support the granting of a Variance and I’d like to... and those are all based on information in the record. I’d like to provide those because I don’t think they are clearly delineated in the Director’s findings. And so, I’d ask to the extent my fellow Commissioners are intending to support the Staff recommendation, that they'd consider whether or not they’d want to include these additional findings of fact with the findings that are made by the Director.

So, the first one is a finding of fact supporting the Findings One and Two, these are the... the Findings One and Two are the state law findings for a Variance. As reflected on Sheet A 2.0 of the current plan, 840 Kipling has a current height of approximately 18-feet. And the adjacent properties at 836, 834 and 832 Kipling, all of which are in the same zoning district as 840, are approximately 18-feet, 23-feet, and 26-feet respectively. So, therefore, exceeding the 17-foot height is a privilege enjoyed by other properties in the same R-2 Zoning District. And I think again that is a finding of fact that supports the granting of this Variance, the first Variance, which is to allow construction to exceed 17-feet.

Then the second additional finding of fact, this also addresses the state law Findings One and Two. This one relates to the other Variance which is at the side... the side... the rear sidewall of
the property. The 6-foot segment of wall which is the subject of the second Variance is replacing an existing 6-foot wall segment which currently encroaches in the side yard set back area. The replacement does not lengthen the area of encroachment and modestly reduces the square footage which would otherwise have been added to the second floor.

And then the last additional finding of fact, this one supports Finding Number Three which relates to the Comp Plan and the local area plan, the SOFA CAP. The plan is proposed for two-stories, it’s consistent with the .35 site coverage max which is applicable to a... as I understand it to a two-story home in the R-2 and to the .45 FAR max which again, is applicable to the R-2 Zone. And incidentally that .45 FAR max does not require a Variance so that plan is consistent with the applicable site coverage max and the FAR max but it does require a Variance to exceed 17-feet in height. If alternatively, we take the 489-square feet which... and construct those on the first floor at the back of the house, in addition to further invading the TPZ against the recommendation of the arborist, it would require another Variance for a 40... for a .45 site coverage where .4 site coverage is allowed for a single-family home. So really here what we have is not a choice between a Variance and no Variance but a choice between two different Variances. One to go up and one to go back and again, that’s ignoring the TPZ. In this choice between the two Variances, the Variance to exceed 17-feet is more consistent with the Comprehensive Plan and the SOFA CAP because both of these plans include policies to protect and preserve Heritage Trees. And so that’s the third, again supplemental finding of fact that I would suggest be included with the recommendation to the Council. Thank you.
Chair Templeton: Thank you very much, Commissioner Hechtman. Commissioner Roohparvar [note -Vice-Chair Roohparvar] did you... you’re good? Ok. I just have a few quick comments before we move onto the considerations of the findings. So first of all, I just want to thank Ms. Fong for a very thorough presentation and report. We all found it... a lot of the details we were looking for were already there and it just an absolute pleasure to read so thank you. I would also like to thank the hearing requester and the applicant. You both gave very compelling presentations and presented your case very strongly.

I will also be agreeing with my fellow Commissioners who have spoken about moving forward with this Variance request for all the reasons that were given. Specifically, or especially that the Variance is meant to... the Variance process is meant to address edge cases like this. I particularly appreciated Commissioner Alcheck’s point about the Variance being specific to a lot but that the proposals conforms with the zone requirements.

I also wanted to say that many of the constraints where addressed on an individual basis rather the problem is we have these multiple constraints and because like Commissioner Hechtman said because we have the multiple constraints you can’t address them individually. You have to think of them in a combination so I think that strengthens the justification for approval of this Variance.

Also, I appreciate Commissioner Hechtman’s comments about legal constraints and site coverage. I thought those were good points that we had not seen through that lens earlier.
And then another comment about the push/pull aspect of how we can view this and it may help the hearing requester come to terms. I would also say that the view could be harmed if the tree were to be damaged or to die as well. Like there are multiple ways that a view can change and it’s not just the building of a structure. There are a variety of risks that have been evaluated by the team, by the Staff and the applicant. And I think that it is admirable to the extent to which that the applicant has been thoughtful and considerate and engaging in the various processes and getting the input and the feedback from as many applicable sources as possible including the HRB and the tree protection.

So those are the reasons I’m inclined to support the Variance request. Thank you. It looks like we two comments, Commissioner Riggs and then Vice-Chair Roohparvar.

**Commissioner Riggs:** I was going to make a motion so Vice-Chair Roohparvar.

**Chair Templeton:** Oh thanks.

**Vice-Chair Roohparvar:** Yeah, I’ll be brief. I just had one follow up question for counsel, City Council [note – she addressed her question to legal Staff]. Correct me if I’m wrong, does a property owner have a right to their view? I don’t believe they have a legal right to views. I think that (interrupted)
Chair Templeton: (off mic) Daylight Plane.

Vice-Chair Roohparvar: No, no, not Daylight Plane, just plane right to it.

Ms. Lee: Yes.

Vice-Chair Roohparvar: Do they have a right... you have a right to (interrupted)

Ms. Lee: You’re correct Commissioner [note – Vice-Chair]. Under California law, there’s no general right to a view.

Vice-Chair Roohparvar: Right to a view. Ok, that’s right, there’s Daylight Plane privacy but no general right to a view. That’s just the point of clarification I wanted, thank you.

Commissioner Lauing: That’s actually stated on Page 49 of the report so.

Vice-Chair Roohparvar: Thank you.

Commissioner Lauing: In different words so.

Chair Templeton: Thank you though it’s a good point to bring up for both of you. Alright, Commissioner Riggs, you wanted to make a motion?
MOTION

Commissioner Riggs: Yes, so I’ll make a motion to support the Staff recommendation to support the second story addition and the Variance and I’ll... but also, I recommend that Staff include the three additional findings suggested by my fellow Commissioner. The first two being tied to Findings One and Two and you can correct me, Commissioner Hechtman. The first two are exceeding the 17-foot height limit is a privilege supported by other landowners. The second one would be the rear side wall replaces an existing encroachment. I’m just paraphrasing and then the third finding that he had which supported I believe Finding Three was the idea that you have limitations with regards to site coverage and FAR. And basically, you’re choosing between two different Variances and a 17-foot Variance is more consistent with the neighborhood than adjusting the FAR given the limitations of the site. Hopefully, Staff can adjust those but I think that we should include those in the recommendation.

SECOND

Commissioner Lauing: I’ll second.

Chair Templeton: You beat me to it. I was going to recognize Commissioner Roohparvar... Vice-Chair Roohparvar. Alright so seconded by Commissioner Lauing. Any discussion? Commissioner Alcheck.
Commissioner Alcheck: Ok so I just... I have to ask because we’re going to vote on it. I didn’t take note while you were talking but it is the notion that there is... this is to the number three. Is the notion that there is... it’s a choice between two Variances. Is the notion that because of the... excluding the TPZ for the moment which I don’t think we need to do that but excluding the TPZ Zones, that the theoretical FAR there allowable would exceed the lot coverage requirement somehow would be (interrupted)

Commissioner Riggs: (off mic) Consistent with R-2.

Commissioner Alcheck: Relevant to (interrupted)

Commissioner Lauing: With R-2.

Commissioner Alcheck: Pursuing a Variance? And the reason I ask that is because if you are theoretically allowed to add a certain amount of FAR but your site coverage would be violated. My impress was you’re not entitled to that FAR. So, it wouldn’t necessarily be something that you could (interrupted)

Commissioner Hechtman: Right that was the... that’s the point. Sorry through the Chair, so the point was if they wanted to pursue that same square footage, right now they have .45 FAR,
right which happens to be in two levels. If you push the top level down to the bottom, it’s still .45, it's just all on the ground level which makes it a .45 site coverage and a .45 FAR, right?

Commissioner Alcheck: Right, no (interrupted)

Commissioner Hechtman: So, the .45 FAR is allowed but the site coverage would exceed and you’re correct that the law doesn’t allow it but if you wanted it, you’d be seeking a Variance.

Commissioner Alcheck: Right no I guess what I’m suggesting is I would find it would unlikely that Staff would support the rationale for a Variance in that particular situation. You take for example a single-overlay area, they’re not entitled to a second story, they may be entitled by the... it’s hard to imagine a scenario where they’re lot size would entitle them to a FAR that would be larger than their site coverage maximum. It seems like those are intentionally similar but (interrupted)

Chair Templeton: Commissioners I’m going to reign you in here on this one. It’s a bit of a hypothetical and I love the thought (interrupted)

Commissioner Alcheck: Yeah, it’s a little (interrupted)

Chair Templeton: I love the thought exercise but (interrupted)
Commissioner Riggs: Alright, wait, can I weigh in? I (interrupted)

Chair Templeton: Is there any adjustment you’d make? Yes, Commissioner Riggs.

Chair Templeton: Well I think that we can condition it by tweaking the motion a little. That we can make them that Staff consider these suggestions in the report to Council. I don’t know that we need to be prescriptive on these because there will be a Staff report to Council. These were suggestions by Commissioner Hechtman. If we build them into the motion as suggestions to Staff then they’ll be presented as such if appropriate. And so, I would assume that spirit would be carried forward in the motion. If I need to be explicative in the motion I will.

Commissioner Alcheck: Can I... I’ll just say this. I did find it very compelling the notion that the SOFA guidelines specifically made a preference for tree preservation. So, I think from that perspective that is a good finding of fact and I actually think that adding the finding of facts would be great so I support the idea of making a hard recommendation. I just... forget it. Forget I said anything. I apologize. I just got... it was confusing and complex and I apologize for asking the question.

Chair Templeton: Alright I have to check in with our seconder, do we want to make the change that (interrupted)

Commissioner Riggs: I believe Staff (interrupted)
Chair Templeton: Oh, did you... ok, Staff?

Ms. Tanner: I just wanted to, if I may support what Commissioner Riggs is suggesting. I think it would be unlikely for us to... in the findings and not that this is what Commissioner Hechtman was suggesting, to compare it to a hypothetical Variance because that’s not what’s before us. But what I did take from that and do appreciate is both the Comprehensive Plan and SOFA how they would prefer for tree preservation, historic source preservation which is in line with the spirit of what you’re saying and kind of the thrust of that. So, whether you need to amend the motion to be that Staff consider the spirit of these things, I will say that’s what I was taking from that and if that is indeed the spirit of the suggestion. I think that is fine and consistent with what Staff would be comfortable pursuing.

Chair Templeton: Commissioner Riggs.

Commissioner Riggs: Thanks. I mean given what I think what this dialog we just had, I think the motion is fine it said. I think the way I phrased it was that they consider Commissioner Hechtman’s suggestions and I think Staff... I would trust that Staff would carry those forward to Council. So, I would prefer to just leave the motion as is.

Chair Templeton: Sounds good. Seconder, we’re good?
Commissioner Lauing: Yeah no I thought you were going to try to take them out again which I think they should... they should stay in there. Ok, we got... aright vote.

VOTE

Chair Templeton: I... any other discussion? Alright, let’s vote. If you are in support of the motion on the table by Commissioner Riggs please raise your hand. Alright, any opposed? Any abstain? Oh no, I’m just kidding. We’re... it was a 7 to 0 so. Alright well thank you very much and thank you again for your time and coming before us. And especially to the folks outside the application process who came to chime in, I appreciate that so much.

MOTION PASSED 7(Summa, Alcheck, Hechtman, Templeton, Roohparvar, Lauing, Riggs)-0

Commission Action: Motion by Riggs, seconded by Lauing. 7-0
Attachment E

Project Plans

Hardcopies of project plans are provided to Director’s Hearing members. These plans are available to the public online and by visiting the Planning and Community Environmental Department on the 5th floor of City Hall at 250 Hamilton Avenue.

Directions to review Project plans online:

1. Go to: https://paloalto.buildingeye.com/planning
2. Search for “840 Kipling Street” and open record by clicking on the green dot
3. Review the record details and open the “more details” option
4. Use the “Records Info” drop down menu and select “Attachments”
5. Open the attachment named “Proposed Approved Plan- Received on November 20, 2019”