



City of Palo Alto

(ID # 5904)

Planning & Transportation Commission Staff Report

Report Type:

Meeting Date: 9/9/2015

Summary Title: 224 Churchill Setback Variance

Title: 224 Churchill Avenue [14PLN-00364]: Request for hearing and Planning and Transportation Commission recommendation regarding the Director of Planning and Community Environment's denial of a Variance application to allow for a reduction in the required front setback (contextual) from 37 feet-1 1/4 inches to 32 feet for a new, two story single family residence at 224 Churchill Avenue.

From: Jodie Gerhardt, Interim Planning Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that the Planning and Transportation Commission (PTC) recommend that the City Council uphold the Director's decision to deny the Variance request for a 5 foot 1 ¼ inch encroachment into the required front (contextual) setback along Churchill Avenue for the construction of a new two story single family residence.

Background

Process History

On September 18, 2014, the applicant, Geoff Campen of Klop Architecture submitted an Individual Review application on behalf of Bogdan and Oana Cocosel for demolition of an existing single family residence with basement and the construction of a new two story single family residence with an attached garage, carport and expanded basement at 224 Churchill Avenue. The application included a variance request to locate the proposed residence 5 feet 1 ¼ inch closer to the front property line than allowed by the front (contextual) setback of 37 feet 1 ¼ inches required for this site. This proposal would result in a front setback of 32 feet.

The application was reviewed for conformance with both the Individual Review and Variance regulations. During the review process, the applicant was informed the Individual Review component of the application may proceed forward subject to revisions in the location of the proposed building to meet the required front (contextual) setback and other applicable requirements of the Palo Alto Municipal Code (PAMC) and the Individual Review Guidelines. In August, the applicant submitted a complete, revised plan set with a proposal that met the

required front (contextual) setback in addition to other applicable requirements and was tentatively approved on September 8, 2015.

The request for variance was denied by the Director of Planning and Community Environment (Director) on May 18, 2015 for non-conformance with the three required findings for variance approval set forth in the Palo Alto Municipal Code (PAMC) Section 18.76.030(c) (Attachment A). This determination was based upon a review of all information contained in the project file and the review of the variance proposal in comparison with all applicable zoning and municipal code requirements. On June 2, 2015, the applicant filed an appeal of the Director's decision to deny the variance and requests a public hearing by the PTC.

Project Description

The applicant proposes to demolish the existing 3,818 square foot (sf) single family residence with 1,500 square foot basement and construct a new 4,644 two story single family residence with an attached garage, carport and 1,723 sf basement in the Seale Addition neighborhood. The existing, minimal traditional style home was built in 1940 and later modified. The survey provided in the plan set:

1. Does not show a garage,
2. Shows the forward-most wall of the existing home located a distance of 34.9 feet from the front property line, and
3. Shows two posts supporting the covered landing for the entry placed approximately 28 feet from the front property line.

The property is located within the R-1(10,000) zone district and is subject to a special setback of 24 feet along Churchill, as well as a contextual setback of 37 feet 1 ¼ inches from the front property line.

The proposed home has a modern architectural language and use of materials. Roofs are flat with either parapets expressed or deep horizontal overhangs. Primary materials are fiber cement board panels, channel glass (vertically channeled panels), horizontal composite siding, smooth stucco, and painted wood (at fascias). The window frames are aluminum with clear glass and no divisions/muntins.

PTC Purview

The Variance request for this project was submitted in conjunction with an Individual Review application for the construction of a new, two story single family residence. The PTC's purview is limited to the Variance request for the house to encroach into the front (contextual) setback only. The Commissioners comments and recommendation on this application should be specifically related to the front (contextual) setback variance.

Discussion

The subject property is a 100 foot wide by 130 foot deep interior lot (13,000 square feet) located on Churchill Avenue near the Emerson Street intersection, in the Single Family

Residential zoning district (R-1, (10,000)). The site is currently developed with a single family residence with a covered porch in front that is setback approximately 28 feet 11 inches from the front property line. This building is proposed to be demolished for the construction of a new two story residence. The block in which the site is located has a wide variation of lot sizes, widths, and depths.

Development standards for the R-1 (10,000) zoning district require a front setback of 20 feet. In addition, Churchill Avenue has a 24 foot "special setback" on both sides of the street, between Alma Street and Embarcadero Road. Lastly, Section 18.12.040(e) of the PAMC, states the minimum front setback shall be the greater of twenty feet (20') or the average setback, if the average front setback is 30 feet or more. This side of the block has an average front setback is 37 feet 1 ¼ inches. Hence, the minimum required front setback for this property is 37 feet 1 ¼ inches. The applicant must request a variance to encroach in this setback.

Summary of Key Issues

The issue for the PTC's consideration is the proposed front setback encroachment. In accordance with Section 18.14.040 (e) of the PAMC, the front contextual setback is calculated as follows:

(e) Contextual Front Setbacks

The minimum front yard ("setback") shall be the greater of twenty feet (20') or the average setback, if the average front setback is 30 feet or more. "Average setback" means the average distance between the front property line and the first main structural element, including covered porches, on sites on the same side of the block, including existing structures on the subject parcel. This calculation shall exclude flag lots and existing multifamily developments of three units or more. For calculation purposes, if five (5) or more properties on the block are counted, the single greatest and the single least setbacks shall be excluded. The street sideyard setback of corner lots that have the front side of their parcel (the narrowest street-facing lot line) facing another street shall be excluded from the calculations. For blocks longer than 600 feet, the average setback shall be based on the ten sites located on the same side of the street and nearest to the subject property, plus the subject site, but for a distance no greater than 600 feet. Blocks with three (3) or fewer parcels are not subject to contextual setbacks. Structures on the site in no case may be located closer than twenty feet (20') from the front property line.

In the case of this project, there are a total of six lot on the same side of the block. With the exclusion of the corner lots, which front other streets, there are four properties that factor into the average setback calculation. These properties include:

| Property | Existing Front Setback |
|---|------------------------|
| 224 Churchill Avenue (subject property) | 28' 11 1/16" |
| 236 Churchill Avenue | 69 1 1/2" |

| | |
|----------------------|-----|
| 250 Churchill Avenue | 32' |
| 260 Churchill Avenue | 21' |

The average of these setbacks is 37 feet 1 ¼ inches which, according to the contextual setback regulations constitutes the minimum required setback for the proposed development at 224 Churchill Avenue.

The applicant has contended that the deep setback of the adjacent lot (236 Churchill Avenue) is an “outlier” whose inclusion in calculating the average setback yields deeper front setback for the subject property than the properties in the vicinity and reduces backyard space on the subject lot as the basis of the argument in favor of the variance for a reduced front setback. (Attachment B and Attachment C)

Section 18.76.030, Variance, of the PAMC outlines the purpose of a variance and the findings that shall be made for the granting of a Variance. The purpose of a variance in accordance with Section 18.76.030 is as follows:

- 1) Provide a way for a site with special physical constraints, resulting from natural or built features, to be used in ways similar to other sites in the same vicinity and zoning district; and
- 2) Provide a way to grant relief when strict application of the zoning regulations would 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.

The subject property is a 13,000 square foot conforming lot. It is 3,000 square foot larger than the minimum lot size for the R-1 sub district in which it is located with no special natural or built physical constraints on site that would preclude the construction of a two family residence in conformance with the Site Development Standards applicable to all properties in the zoning district. The existing buildings including a single family residence and an accessory structure are proposed to be demolished. The trees on the site are not located in the building envelope. However, encroachment in the front (contextual) setback would bring the proposed development closer to a 42 inch diameter oak tree (protected tree) located in the front yard of the subject property. As such the development if a single family residence can occur on this lot in compliance with the development standards that would be applicable to all lots in the vicinity and in the R-1 zoning district. While the relatively deeper setback of the adjacent property impacts the average, the resulting setback is still much less than the set back of the neighboring lot at 236 Churchill Avenue.

Regulations pertaining to contextual setback calculation include a provision for excluding lots with the greatest and least setback in the case of five or more lots, in this instance would mean including four lots in the average setback calculation to determine the front setback for the

subject lot. However, the strict application of this regulation does not constitute a substantial hardship, constraint, or practical difficulty for the development of the property as demonstrated by the development plans (Attachment D). It appears that the Variance request is a function of the applicant/owner's desire for a larger backyard, which is understandable, but also a personal preference/circumstance. Personal circumstance is not a criterion for evaluating a variance request.

Attachment A outlines staff recommended findings for denial of the Variance. Particularly staff believes that 1) there are no special circumstances that the strict application of requirements and regulations would deprive the subject property of the privileges enjoyed by other properties in the vicinity and in the same zoning district, 2) the granting of the variance would be a grant of a special privilege inconsistent with the limitations on other properties in the vicinity and the applicable zoning district and that it would be 3) inconsistent with the Palo Alto Comprehensive Plan, the Individual Review Guidelines and the intent of the contextual setback requirements which direct site planning to take cues from adjacent properties.

Alternatives

If the Director's decision to deny the variance is upheld, the applicant would have the following options:

1. Build the home as approved in the Individual Review application (14PLN-00364), which provides a front setback of 37 feet 1 ¼ inches, in conformance with the required front (contextual) setback requirement.
2. Retain 75 percent of the exterior walls of the main dwelling, which would allow retention of the existing legal non-conforming front setback.

Policy Implications

The granting of the variance would not be consistent with the Site Development Standards in the applicable zoning district and Individual Review Guidelines that direct site planning to take cues from adjacent property conditions. It is noted that the adjacent property does have a substantial front yard setback that results in a greater setback for the subject property. The code contemplates these outlier conditions, but only when five or properties are being referenced. If the PTC agrees that the conditions create an unanticipated negative affect for the applicant, the proper remedy is to modify the zoning code to account for these circumstances. Granting a variance for this condition is, from staff's perspective, not the proper path to address the issue.

Environmental Review

The project is exempt from the provisions of the California Environmental Quality Act per CEQA Guidelines Section 15303, New Construction or Conversion of Small Structures.

Courtesy Copies:

Geoff Campen

Oana Cocosel

Attachments:

- Attachment A: Director's Denial Letter and Findings (PDF)
- Attachment B: Applicant's Variance Request Letter (PDF)
- Attachment C: Letter of Appeal (PDF)



PLANNING & COMMUNITY ENVIRONMENT

CITY OF
**PALO
ALTO**
250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301
650.329.2441

May 18, 2015

Geoff Campen
2180 Bryant Street, Suite 203
San Francisco, CA 94110

Subject: 224 Churchill Avenue, Palo Alto, CA, Variance Denial

Dear Mr. Campen:

I am writing to inform you of my decision on behalf of the Director of Planning and Community Environment regarding your request for variance approval. Your request is hereby denied because not all of the three required findings for variance approval set forth in Palo Alto Municipal Code (PAMC) Section 18.76.030(c) could be made. This determination is based on the review of all information contained within the project file, all public comments received and the review of the proposal in comparison to all applicable zoning and municipal code requirements. Responses by staff as to how the project does not meet all of the three findings are attached to this letter.

PROJECT DESCRIPTION

Demolition of an existing single family residence and the construction of a new two story single family residence with a basement, attached garage and carport at 224 Churchill Avenue, Palo Alto, and a request for a variance to locate the proposed residence closer to the front property line (32 feet) than the applicable contextual setback (37'1/4") would allow.

In accordance with the provisions of PAMC Chapter 18.77.060 (c), any person may request a hearing of this item 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. Should you have any questions regarding the Director's determination, please do not hesitate to contact the Project Planner, Ranu Aggarwal, at (650) 938-1111 or ranu@mplanninggroup.com.

Sincerely,

Amy French
Chief Planning Official

cc: Bogdon and Oana Cocosel,
800 High Street, # 217
Palo Alto, CA 94306

Attachment: Findings for Denial (page 2)



FINDINGS FOR DENIAL OF VARIANCE REQUEST

At least one of the required Variance findings was not met in the proposal submitted for staff review. The finding(s) that were not met are listed below and clarified in relation to the submitted proposal.

(1) There are special circumstances applicable to the subject property, including (but not limited to) size, shape, topography, location, or surroundings, such that 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.

The following special circumstances are expressly excluded from consideration:

- (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.

There are no special circumstances applicable to the subject property in that the site is not a substandard lot or a non-conforming lot with respect to square footage or dimensions in the R-1 Zoning district that could potentially limit the conformance with the applicable setback requirements pursuant to the Palo Alto Municipal Code (PAMC) Section. 18.12.040(e). The rear yard that would result from following the zoning code would be 50 feet deep and 100 feet wide, which is substantial at 2.5 times the minimum yard area that would result from the application of the rear yard standard on this lot (100 feet by 20 feet). Also many lots, particularly larger lots, in Palo Alto, have deep setbacks in the front yard, so a deeper front yard is not unusual. Therefore, the strict application of the requirements and regulations prescribed in this title does not substantially deprive the subject of privileges enjoyed by other property in the vicinity and in the same zoning district as the subject property.

(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.

The granting of the application shall affect substantial compliance with the regulations in that the contextual setback for the subject property is derived from the application of the requirements of the PAMC that are applicable to lots in the vicinity and the R-1 zoning district as a whole. Although the contextual setback applicable to the subject property is influenced by the deep setback of the immediate neighbor to the northern side of the subject property, that property is only one of the four that determine the average/contextual setback and the resulting setback for the subject property is much less than the neighbor's deep setback. Furthermore, the same restrictions, under the same circumstances, would factor into the calculation of the contextual setback for the other three lots in the block were they to redevelop. As a result granting of the application for a variance from the contextual front setback requirements applicable to all four properties in the subject lot would 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.

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

The granting of the application is inconsistent with the Palo Alto Comprehensive Plan and the purposes of this title (Zoning) in that the intent of the contextual setback requirements pursuant to the PAMC is to direct site planning to be a custom fit with site and neighborhood that take cues from adjacent property conditions. In this case, that would mean using a deeper front setback than the minimum front setback applicable to the subject property (24 feet special setback) to achieve the purpose of having homes along the street relate in front setback depth by not having the proposed home place too far forward of the neighbor's house. Furthermore there is a large oak tree in the front yard whose preservation is better ensured with a deeper setback than proposed.



08/25/2014

City of Palo Alto
Planning and Community Environment
250 Hamilton Avenue
5th Floor - City Hall
Palo Alto, CA 94301

RECEIVED

JAN 27 2015

Department of Planning &
Community Environment

Project Request Letter for Variance at 224 Churchill Avenue

We are seeking a variance for a new residence at 224 Churchill Avenue. The variance is for extending portions of the residence forward of the front setback, which is a required contextual setback. The existing and required setback information is as follows:

- The front setback of the existing residence is 26'-3 3/8". This setback is calculated from the property line to the face of the existing columns at the covered front entry porch.
- The setback of the face of the existing front exterior wall is 34'-11".
- The calculated contextual setback based on the (4) houses facing Churchill Street on this side of this block is 37'-1 1/4". The setbacks of the (3) adjacent houses included in the contextual setback calculation is 21', 32, and 69'-1 1/2". The houses at either corner (not included in the calculation) have setbacks of 23'-8" and 14'.
- If the contextual setback did not apply, the standard setback for this street/area would be 24'.

We are proposing a setback distance of 32', which is deeper than the setback of the existing house, but 5'-1 1/2" forward from the required contextual setback. The reason we are proposing this variance is because one house on the block disproportionately affects the contextual setback for our project and reduces our backyard space, which is already smaller than the neighboring lots due to the more shallow nature of our lot.

We believe the following "findings" can be supported:

1. *The granting of the application will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.*
 - This variance proposal does not affect in any way property or improvements in the vicinity, and does not affect the public spaces, and in turn public health, safety, general welfare or convenience.
2. *The granting of the application is consistent with the Palo Alto Comprehensive Plan and the purposes of Title 18 (Zoning).*
 - The proposal does not exceed the standard front setback for this area, and does not result in the residence standing forward of any other house on the block aside from the single outlier. We believe this proposal to be in compliance with the intent of the setback requirements in the area. The application of the contextual setback in this case gives one

property with an extremely large setback too much influence over the setbacks for the remaining lots on the block, which does not follow the intent of the zoning code to create a more uniform setback condition through contextual setbacks.

3. *Because of special circumstances, including (but not limited to) size, shape, topography, location, or surroundings, the strict application of the requirements and regulations prescribed in Title 18 substantially deprives such property of privileges enjoyed by other properties 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.*
- B. *Any changes in the size or shape of the property made by the property owner or his predecessors in interest while the property was subject to the same zoning designation.*
- **The contextual setback, if strictly applied, would push the proposed residence further back on its lot than the majority of the houses on this block and general area. This would negatively reduce the size of the backyard, especially as this lot is not as deep (130') as many of the lots on the block and general area (200').**

4. *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.*

- **The proposed setback would still be in compliance with the standard setback on Churchill Street (24') with room to spare, and would result in a front setback behind all of the properties on this side of the block except the outlying neighbor with the 69'-1 1/2" setback. We are not asking for any special privilege that would separate the proposed project from other properties in the area.**

There are a few additional points to consider with regard to this variance:

- There is an existing protected oak tree in the front yard that we intend to retain. The existing house on this lot (and basement below) are about 12'-0" away from the edge of the trunk. The proposed 32' setback would place the face of the building wall in that area at about the same distance away from the trunk as existing. Because both the existing house and the proposed house have basements, the root structure would have the same room in the new condition as in the existing.
- The following excerpt from a report Revised for Committee of the Whole 6/18/01 on Zoning regulation indicates that lots with extreme setbacks should not be included in the calculations:

4. CONTEXTUAL FRONT SETBACK

Existing Regulation(s): The city requires a 20' front setback for most R-1 lots with "special setbacks" along certain identified streets. The regulations allow eaves, cornices, and fireplaces to project 4 feet and bay windows to project 2 feet into the setback. Covered porches (i.e., meeting the definition of "enclosed") are not permitted to project into the front yard setback.

Purpose: Define the minimum front yard setback (Contextual Front Setback) based on neighborhood front setback patterns. To enhance the streetscape, the proposal also permits porches, bay windows, and balconies to project into the front setback.

Proposed Regulation: A Contextual Front Yard Setback standard based on the average front setback for houses on the same side of the block. The Advisory Group consensus was the contextual front setback would only be applicable for houses when the average front setback is greater than the current 20' minimum. This standard would not apply on lots located in Special Setback areas. Planning Staff, using the following, would determine the average setback:

1. Contextual Front Yard Setback Formula: The average distance from the front property line to the first main building wall of houses on the same side of the entire

block (Note: porches and bay windows would not be considered a main building wall). Vacant lots. lots with extreme setback variation from the block, and lots with street facing corner side yards would not be included in the calculation. (Note: for blocks longer than 600', the contextual front setback would be based on the adjacent 10 houses)

2. Allowed Projections into Contextual Front Yard Setback: The following building elements would be permitted to project into the Front Yard

Therefore, the exclusion of the lot with the extreme setback (236 Churchill Avenue at 69'-1 1/2") from the calculation for the contextual setback matches the initial intent of the contextual setback regulation. If this house were excluded in this case, the setback would be 26'-5".

- The proposed design of the residence intends to soften the impact on the street by closely following the recommendations in the "Single Family Individual Review Guidelines", and by providing a setback upper level on the sides and most of the front elevation. Additionally the front elevation will not have a flat front elevation and will be broken up and set-back further in places (in other words only a portion of the front elevation will not be as far forward as the proposed setback). Specific setbacks of each part of the front elevation are shown on the drawing set, A0.2.
- If the proposed design were to follow the contextual setback, the new residence would be closer to the neighbors' homes at 236 Churchill and would more likely bring up potential privacy issues with their 2nd floor windows. Additionally, with the house placement further back on the site, it would be more visible to the backyard from 1505 and 1521 Emerson Street. We have proposed a sensitive side elevation to each of these neighbors, however bringing the house forward to the proposed setback would reduce this potential impact.

We appreciate your attention to this matter and remain available should more information be required.

Sincerely,

John Klopf

From: Oana and Bogdan Cocosel
as owners of 224 Churchill Palo Alto 94301

Date: June 1, 2015

To: City of Palo Alto
Planning and Community Environment
250 Hamilton Ave 5th Floor City Hall, Palo Alto 94301

Subject: 224, Churchill Ave, Appeal for Variance Denial
Request in response to your mailing of Denial post date May 21 2015

Hearing request before the Planning Division
File # 14PLN-00364

Dear Ms. French and Planning Commission Members,

Please accept our appeal of the denial of the requested variance based on the following:

Section 18.76.030 of the Code makes clear that the purpose of a variance is to:

- (1) Provide a way for a site with **special physical constraints**, resulting from natural or built features, to be used in ways similar to other sites in the same vicinity and zoning district,
- (2) Provide a way to grant relief when strict application of the zoning regulations would 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.

The variance should be granted here because through no fault of our own, we are being subjected to unnecessary constraints that do not normally arise on other sites in the neighborhood.

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

Addressing your findings letter specifically:

1. *There are no special circumstances applicable to the subject property in that the site is not a substandard lot or a non-conforming lot with respect to square footage or dimensions in the R-1 Zoning district that could potentially limit the conformance with the applicable setback requirements pursuant to the Palo Alto Municipal Code (PAMC) Section. 18.12.040(e). The rear*

yard that would result from following the zoning code would be 50 feet deep and 100 feet wide, which is substantial at 2.5 times the minimum yard area that would result from the application of the rear yard standard on this lot (100 feet by 20 feet). Also many lots, particularly larger lots, in Palo Alto, have deep setbacks in the front yard, so a deeper front yard is not unusual. Therefore, the strict application of the requirements and regulations prescribed in this title does not substantially deprive the subject of privileges enjoyed by other property in the vicinity and in the same zoning district as the subject property.

We respectfully disagree. This building zone is listed R-1 (10000) and all lots in this area are larger than the average lot in Palo Alto. Their respective dimensions are correspondingly larger than the minimums allowed in other areas which is why any comparisons should be made only against other properties in the immediate area as explicitly listed in PAMC 18.76.030 (b)(1).

The deep setback is unusual in this neighborhood. We have measured existing setbacks for every house on Churchill Ave. on a 3 block radius (see attached exhibit A). Properties with lot sizes between 12000 and 13999 sq.ft have an average setback of 23.13ft. The 6 properties in the 200 Churchill block have setbacks of 14ft, 26.92ft, 69.125ft, 32ft and 19ft. Thus, the strict application of the zoning regulation significantly constraints this property but not others in the same area.

2. The granting of the application shall affect substantial compliance with the regulations in that the contextual setback for the subject property is derived from the application of the requirements of the PAMC that are applicable to lots in the vicinity and the R-1 zoning district as a whole. Although the contextual setback applicable to the subject property is influenced by the deep setback of the immediate neighbor to the northern side of the subject property, that property is only one of the four that determine the average/contextual setback and the resulting setback for the subject property is much less than the neighbor's deep setback. Furthermore, the same restrictions, under the same circumstances, would factor into the calculation of the contextual setback for the other three lots in the block were they to redevelop. As a result granting of the application for a variance from the contextual front setback requirements applicable to all four properties in the subject lot would 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.

Again, we respectfully disagree. The setback is not simply "influenced" by the deep setback of a single property but controlled almost entirely. In absence of this single outlier property, the contextual setback calculated as defined by PAMC rules and including all other properties, would be 27.98ft. Including this one outlier, moves the contextual setback to 37.1ft which is a 75% increase.

Granting this variance request does not constitute special privilege. Quite the contrary, all other properties on the block (except exactly one) enjoy setbacks at 32ft or less, with the large majority below 27ft. Our variance request is simply asking for the same setback as what other properties already have. Furthermore, out of the 4 lots in question, our lot is only 130ft deep while the other 3

lots are 200ft deep. Thus, a deep setback affects us far more than anyone else on this block which qualifies this variance request under PAMC Section 18.76.030 (a)(2)

There is a single outlier setback for the property at 236, Churchill Ave which is at 69.125ft. Outlier setbacks like this are normally excluded from calculation for all blocks with 5 or more non-corner properties. The contextual setback rule itself also does not apply for blocks that have 3 or fewer properties. Both of these well thought-out rules defined in PAMC Section 18.12.040(e) are explicitly there to provide relief to owners for being unreasonably impacted by outlier properties. 200 Churchill block has only 4 non-corner properties though, which means neither rule applies. Thus, this particular rule unreasonably impacts our property and deprives us of benefits enjoyed by other properties (see exhibit B for the substantial beneficial effect to other properties)

3. The granting of the application is inconsistent with the Palo Alto Comprehensive Plan and the purposes of this title (Zoning) in that the intent of the contextual setback requirements pursuant to the PAMC is to direct site planning to be a custom fit with site and neighborhood that take cues from 1 adjacent property conditions. In this case; that would mean using a deeper front setback than the minimum front setback applicable to the subject property (24 feet special setback) to achieve the purpose of having homes along the street relate in front setback depth by not having the proposed home place too far forward of the neighbor 's house. Furthermore there is a large oak tree in the front yard whose preservation is better ensured with a deeper setback than proposed.

The variance request is consistent with PAMC intent. The building currently at 224, Churchill has been part of this neighborhood in substantially the same form since 1947 and its current setback is set at 26.92ft. All other houses on this block and across the street are already lined up at pretty much the same setback with minor variations around 24ft setback line. All except a single property.

Respectfully, the intent of the contextual setback is to reduce the effect of outliers not exacerbate it which is why we believe our variance request is in line with the intent of the PAMC contextual setback. The strict imposition of the contextual setback in this case (to 37.1ft) is actually a net negative for the neighborhood as it imposes a large change where there wasn't one before.

The reference to the oak tree being affected does not consider actual facts on the ground. As you can see from the attached arborist report (see earlier exhibit C from our submittal), an onsite investigation was performed on Nov 14, 2014 specifically to examine possible impact of proposed construction on the oak tree. The report found that there are no significant roots extending toward the house, and that the tree is not likely to be affected by the proposed construction. This report was produced recently by a licensed arborist, was based on an actual onsite investigation (which included core drills and exploratory trenches) and represents the best known facts available on this matter.

Conclusion

The current house is set back 26.91 ft and we are only requesting a modest variance for 32ft which is respectfully in line with room to spare, harmonized in character with the vast majority of the neighborhood setbacks and the neighborhood house walls visual outline, it is sensitive to the spirit and intent of the setback calculation and is also respectful of the oak tree.

We believe that we have brought numerous good and rational arguments in our correspondence with the Planning department that our architects Geoff Campen and John Klopff wrote to you starting 8/25/14, 1/15/15, 4/29/15 and also through the present request and exhibits which we present ourselves for your evaluation.

In the spirit of fairness, we believe this variance should be granted.

Sincerely yours,
Oana and Bogdan Cocosel,
owners, 224 Churchill Ave



Exhibit A

Measured setbacks per lot size on Churchill Ave and surrounding areas.

| Number | Street | Notes | Setback | extra info | | Lot size sq ft | Average setback per lot size |
|--------|-----------|------------------------------|---------|---|------|----------------|------------------------------|
| 369 | Churchill | | 80 | | 1.12 | 48787 | 80.00 |
| 305 | Churchill | | 58 | | 0.6 | 25958 | |
| 237 | Coleridge | | 48.4 | | 1 | 23750 | |
| 215 | Coleridge | setback to Emerson st | 21.4 | | 0.52 | 22500 | 42.60 |
| | | setback to Coleridge side | | | | | |
| 340 | Churchill | | 63.8 | | 0.46 | 20000 | |
| 236 | Churchill | | 69.1 | | 0.46 | 20000 | |
| 237 | Churchill | | 27.7 | Multifamily unit complex | 0.46 | 20000 | 57.68 |
| 335 | Churchill | | 23.5 | | 0.35 | 15117 | |
| 1536 | Bryant | | 30.2 | | 0.34 | 15000 | |
| 1492 | Emerson | setback to churchill side | 56.7 | corner house Churchill^Emerson | 0.34 | 15000 | |
| | | setback to emerson side | | | | | |
| 1551 | Emerson | | 52.8 | | 0.32 | 14000 | 35.50 |
| 251 | Churchill | | 26.2 | | 0.31 | 13500 | |
| 224 | Churchill | | 26.91 | | 0.3 | 13000 | |
| 1501 | Bryant | setback to Churchill st side | 14 | corner house between Bryant and Churchill | 0.29 | 12825 | 26.56 |
| 1485 | Emerson | setback to Churchill st | 48.3 | corner house Churchill^Emerson | 0.26 | 11325 | excluded |
| 215 | Churchill | | 40.3 | | 0.26 | 11250 | |
| 352 | Churchill | | 40 | | 0.26 | 11375 | |
| 259 | Coleridge | | 26 | | | 11250 | |
| 364 | Churchill | | 17.2 | | 0.27 | 11813 | 30.88 |
| 250 | Churchill | | 32 | | | 10000 | |
| 260 | Churchill | | 21 | | | 10000 | |
| 140 | Churchill | | 25.3 | | | 10000 | |
| 136 | Churchill | | 24.5 | | | 10000 | |

| | | | | | | | |
|------|-----------|-------------------------------------|--------------|--|-----|------|-------|
| 328 | Churchill | | 25.4 | | 029 | 9750 | |
| 263 | Churchill | | 39.1 | | | 9656 | 27.88 |
| | | | | | | | |
| 1505 | Emerson | setback to Emerson st side | 37.6 | | | 8000 | |
| | | <i>setback to Churchill st side</i> | <i>18.96</i> | | | | |
| 1500 | Bryant | setback to Churchill st | 19 | | | 7800 | |
| 265 | Coleridge | setback to Coleridge side | 26.1 | | | 7500 | |
| | Coleridge | <i>setback to Bryant side</i> | <i>24.3</i> | | | | |
| 1570 | Bryant | | 20 | | | 7500 | |
| 225 | Coleridge | | 39.4 | | | 7500 | |
| 227 | Churchill | | 23.2 | | | 7500 | |
| 160 | Churchill | | 22 | | | 7500 | |
| 150 | Churchill | | 23.4 | | | 7500 | |
| 128 | Churchill | | 25.5 | | | 7500 | |
| 119 | Churchill | | 24.4 | | | 7500 | |
| 129 | Churchill | | 24 | | | 7500 | |
| 159 | Churchill | | 16.8 | | | 7500 | |
| 118 | Churchill | | 34.5 | | | 7405 | |
| 151 | Churchill | | 45.3 | | | 7405 | |
| 1520 | Bryant | | 20.3 | | | 7200 | 26.77 |
| | | | | | | | |
| 102 | Churchill | | 22.2 | | | 5500 | |
| 143 | Churchill | | 23.6 | | | 5300 | |
| 1521 | Emerson | | 38 | | | 5000 | |
| 105 | Churchill | | 25.2 | | | 5000 | |
| 111 | Churchill | | 24 | | | 5000 | |
| 135 | Churchill | | 26.8 | | | 4979 | |
| 180 | Churchill | | 19 | | | 4791 | |
| 112 | Churchill | | 22.5 | | | 4500 | 25.16 |

Exhibit B

Setback calculations with and without the PAMC allowed outlier exceptions.

| Number | Street | Notes | Setback ft | 2nd Street setback (ft) | LOT SIZE (sq ft) | Avg. Churchill block setback | Avg. setback excluding outliers |
|---|-----------|-------------------------------------|------------|-------------------------|------------------|------------------------------|---------------------------------|
| EVEN sidewalk | | | | | | | |
| <i>Block between Alma and Emerson</i> | | | | | | | |
| 180 | Churchill | | 19 | | 4791 | | |
| 160 | Churchill | | 22 | | 7500 | | |
| 150 | Churchill | | 23.4 | | 7500 | | |
| 140 | Churchill | | 25.3 | | 10000 | | |
| 136 | Churchill | | 24.5 | | 10000 | | |
| 128 | Churchill | | 25.5 | | 7500 | | |
| 118 | Churchill | | 34.5 | | 7405 | | |
| 112 | Churchill | | 22.5 | | 4500 | | |
| 102 | Churchill | | 22.2 | | 5500 | 24.32 | 23.63 |
| <i>Block between Emerson and Bryant</i> | | | | | | | |
| 1505 | Emerson | setback to Emerson st side | 37.6 | | 8000 | | |
| | | <i>setback to Churchill st side</i> | | 18.96 | | | |
| 224 | Churchill | | 26.91 | | 13000 | | |
| 236 | Churchill | | 69.1 | | 20000 | | |
| 250 | Churchill | | 32 | | 10000 | | |
| 260 | Churchill | | 21 | | 10000 | 37.25 | 29.46 |
| 1500 | Bryant | setback to Churchill st | 19 | | 7800 | 33.60 | 26.64 |
| 1520 | Bryant | | 20.3 | | 7200 | | |
| <i>Block between Bryant and Waverley</i> | | | | | | | |
| 328 | Churchill | | 25.4 | | 9750 | | |
| 340 | Churchill | | 63.8 | | 20000 | | |
| 352 | Churchill | | 40 | | 11375 | | |
| 364 | Churchill | | 17.2 | | 11813 | 36.60 | 32.70 |
| Average setback all existing Churchill houses from Alma and Waverley odd side # | | | | | | 32.94 | |
| ODD sidewalk | | | | | | | |
| <i>Block between Waverley and Bryant - 3 properties only on the block!</i> | | | | | | | |
| 369 | Churchill | | 80 | | 48787 | | |
| 335 | Churchill | | 23.5 | | 15117 | | |
| 305 | Churchill | | 58 | | 25958 | 53.83 | None |
| <i>Block between Bryant and Emerson</i> | | | | | | | |
| 263 | Churchill | | 39.1 | | 9656 | | |
| 251 | Churchill | | 26.2 | | 13500 | | |

| | | | | | | | |
|--|-----------|----------------------------------|-------|---|-------|-------|-------|
| 237 | Churchill | | 27.7 | | 20000 | | |
| 227 | Churchill | | 23.2 | | 7500 | | |
| 215 | Churchill | | 40.3 | | 11250 | 31.30 | 31.00 |
| 1485 | Emerson | setback to Churchill st | 48.3 | | 11250 | | |
| 1501 | Bryant | setback to Churchill st side | 24 | | 12825 | | |
| <i>Block between Emerson and Alma</i> | | | | | | | |
| 105 | Churchill | | 25.2 | | 5000 | | |
| 111 | Churchill | | 24 | | 5000 | | |
| 119 | Churchill | | 24.4 | | 7500 | | |
| 129 | Churchill | | 24 | | 7500 | | |
| 135 | Churchill | | 26.8 | | 4979 | | |
| 143 | Churchill | | 23.6 | | 5300 | | |
| 151 | Churchill | | 45.3 | | 7405 | | |
| 159 | Churchill | | 16.8 | | 7500 | 26.26 | 24.67 |
| Average setback all existing Churchill houses from Alma and Waverley even side # | | | | | | 37.13 | |
| 1492 | Emerson | setback to Churchill side | 56.7 | | 15000 | | |
| | | <i>setback to Emerson side</i> | | 18.3 | | | |
| 1521 | Emerson | | 38 | | 5000 | | |
| 1551 | Emerson | | 52.8 | | 14000 | | |
| 215 | Coleridge | setback to Emerson | 21.4 | | 22500 | | |
| | | <i>setback to Coleridge side</i> | | 73.6 | | | |
| 225 | Coleridge | | 39.4 | | 7500 | | |
| 237 | Coleridge | | 48.4 | | 23750 | | |
| 259 | Coleridge | | | | 11250 | | |
| 265 | Coleridge | setback to Coleridge side | 26.1 | | 7500 | | |
| | Coleridge | setback to Bryant side | 24.3 | | | | |
| 1570 | Bryant | | 20 | | 7500 | | |
| 1536 | Bryant | | 30.2 | | 15000 | | |
| house count | | 49 | 31.61 | average setback all houses measured | | | |
| houses on Churchill | | 33 | 31.59 | avg setback Churchill st from Alma to Waverley | | | |

Exhibit C
Arborist report

Kielty Arborist Services

Certified Arborist WE#0476A

P.O. Box 6187

San Mateo, CA 94403

650- 515-9783

January 19, 2014, Revised November 30, 2014

Oana Cocosel
224 Churchill, Palo Alto
Palo Alto, CA 94306

Site: 224 Churchill, Palo Alto, CA

Dear Oana,

As requested on Friday, January 10, 2014, I visited the above site for the purpose of inspecting and commenting on the trees. A new home is planned for this site and your concern as to the future health and safety of the trees has prompted this visit. The latest site plan A0.2 dated September, 18, 2014 was reviewed to form my opinions as to possible tree damages.

Method:

All inspections were made from the ground; the tree was not climbed for this inspection. The tree in question was located on a site plan provided by you. The trees were then measured for diameter at 54 inches above ground level (DBH or diameter at breast height). Each tree was given a condition rating for form and vitality. The trees' condition rating is based on 50 percent vitality and 50 percent form, using the following scale.

| | |
|----------|-----------|
| 1 - 29 | Very Poor |
| 30 - 49 | Poor |
| 50 - 69 | Fair |
| 70 - 89 | Good |
| 90 - 100 | Excellent |

The height of the trees were measured using a Nikon Forestry 550 Hypsometer. The spread was paced off. Comments and recommendations for future maintenance are provided.

An Exploratory trench was dug on Monday, to help locate roots and help predict root loss. A Supersonic Air Knife was used for the trenching. The air knife uses compressed air to dig the trench. The use of the air knife reduces root damage when digging the trench. A sliding handled soil probe was also to attempt to locate roots below the depth of the trench.

A drill test was performed on tree #4 to help assess the amount of sound wood in the lower trunk. A Resi 300 attached to a cordless drill was used to collect the data. A 12 inch long 1/16" diameter drill bit was used for the test. The concrete filled cavities on the trunk has made a mallet test impossible.

Survey:

| Tree# | Species | DBH | CON | HT/SP | Comments |
|-------|--|-------|-----|-------|--|
| 1 | Coast live oak (<i>Quercus agrifolia</i>) | 20.2 | 60 | 35/35 | Fair vigor, fair form, codominant at 8 feet with a fair crotch formation. Located in a 3'x8' planting strip. |
| 2 | Black locust (<i>Robinia Pseudoacacia</i>) | 5.4 | 60 | 35/20 | Good vigor, fair form, upright form, scar on base. |
| 3 | Southern magnolia (<i>Magnolia grandiflora</i>) | 8.0 | 65 | 30/30 | Fair vigor, fair form, in landscape strip. |
| 4 | Coast live oak (<i>Quercus agrifolia</i>) | 40.1 | 55 | 40/55 | Good vigor, fair form, cavity at base filled with concrete. Heavy lateral limb over Street. |
| 5 | Coast live oak (<i>Quercus agrifolia</i>) | 21.3 | 65 | 50/35 | Good vigor, fair form, multi leader at 20 feet, 1 foot from driveway. |
| 6* | Redwood (<i>Sequoia sempervirens</i>) | 36est | 70 | 70/40 | Good vigor, good form, 3 feet from property line. |

*indicates neighboring trees



Summary:

The trees on site are a mix of protected trees and street trees. The street trees are protected as they are located in the public right of way. The street trees are in fair condition and can be retained with type 2 tree protection.

The native oaks on the site are in fair to good condition with no exceptional trees. The neighbor's redwood will not be affected by the proposed construction.

Oak tree #4 in the front of the house. Construction of the new home will be within the dripline of this tree.

Oak Tree #5 is along the existing drive and impacts should be minor. Oak tree #4 is quite large for the small front yard and has a cavity at the base. Removal and replacement of this tree is an option. A permit would be required for removal of this tree.



Drill Test Observations:

The lower trunk of the tree was measured for diameter at 1 foot above ground level, the location of where the drill test was performed. The location for the test is in the center of the concrete filled cavity located on the southern side of the trunk. Four locations were drilled at the one foot level. The following depths of sound wood were observed. The inner trunk beyond the drilling depth is decayed. The following measurements are the depths. Of the sound wood:

Concrete filled cavity at base of Tree #4. Filling cavities with concrete has not been an accepted practice since the 1970s. The drill test was carried out at this height (1 foot above ground level)

The circumference of the trunk at 1 foot is 164 inches (50.2 inches diameter) with an 8 inch wide open cavity. The cavity is 19 inches tall with 17 inch wide woundwood developed on the edges.

- Drill point #1 Street side has 4 inches of sound wood.
- Drill point #2 Northeast side has 6 inches of sound wood.
- Drill point #3 southeast side has 12 inches of sound wood (depth of drill)
- Drill point #4 Southwest side has 7 inches of sound wood.

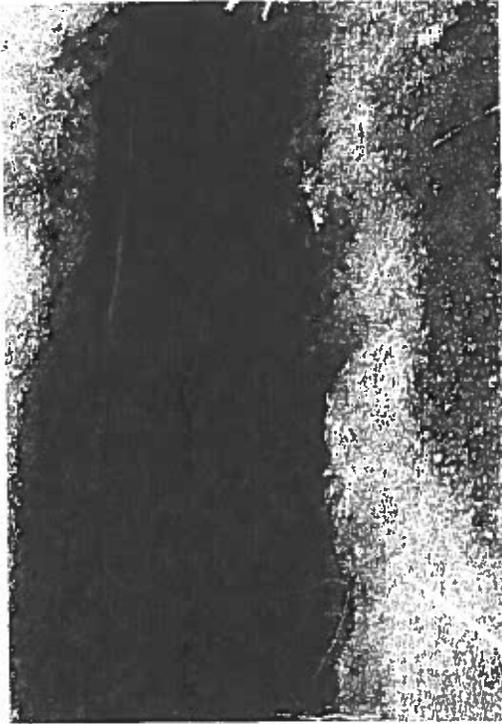
A hand drawn diagram showing the cavity and the sound wood depth will be provided.

Exploratory Trench Observations:

A 12 foot long and 30 inch deep exploratory trench was dug using a supersonic air knife. The trench was located near where the over-excavation for the home foundation will be located. The foundation in this area will be of a spread footing type with the basement wall being several more feet from the trunk. The trench is located 6.5 feet from the trunk on the southeast (house) side. No significant roots were damaged during the digging of the trench.

The following roots were unearthed during the excavation:

- No roots over 2 inches.
- 1 root 1.5 inches in diameter.
- 3 roots .5 inches-1 inch.
- Several roots less than .5 inches.



Summary of Testing:

As expected the lower trunk of the tree has significant decay in its core. The drill testing results are evidence of this. The use of concrete to fill the cavity was carried out more than 40 years ago as cavity filling was discontinued in the early 1970s. The filling of the cavity has masked the decay but has not lessened the trees chance of failure or slowed the spread of the decay.

The results of the drill test has exposed significant structural problems. Two options are available for this tree. Option #1 is to reduce the foliar canopy to help reduce the size of the tree. This method reduces wind sail and the chances of tree failure at the decayed trunk. Option #2 is to remove and replace the tree as removal is the only method that eliminates all hazards associated with the tree.

The exploratory trench 6.5 feet from the trunk unearthed no significant roots.

The planned home location will have little negative effect on the large oak. Root loss will be minimal and the trimming required will have no long term effect on the tree. Areas where the basement will be dug inside the dripline of the oak should utilize vertical shoring to reduce the over-excavation required by OSHA. The site arborist will be on site during the excavation process and future irrigation and fertilizing recommendations will be provided at that point.

Pruning Specifications:

To facilitate the construction of a two story house the following limb removal will be required:

- 1 limb 6 inches in diameter will be removed.
- 4 limbs 3 inches in diameter will be removed.
- Several small insignificant limbs and branches will be removed.

The entire canopy of the tree should be thinned using end-weight reduction to lessen the wind sail and reduce stress on the compromised trunk. The trimming should be carried out by a licensed tree care provider with experience in trimming trees of this size. No more than 25 percent of the total canopy should be removed. Timing of the trimming should be prior to the start of the proposed construction.

Tree Protection Plan:

Tree protection zones should be established and maintained throughout the entire length of the project. Fencing for the protection zones should be 6 foot tall metal chain link supported by metal poles pounded into the ground (type one tree protection). The support poles should be spaced no more than 10 feet apart on center. The location for the protection fencing should be as close to the dripline as possible still allowing room for construction to safely continue. Signs should be placed on fencing signifying "Tree Protection Zone - Keep Out". No materials or equipment should be stored or cleaned inside the tree protection zones.

The following minimum distances for protective fencing should be maintained throughout the entire project:

- Tree #1-#3 street trees the minimum distance for the fencing will be at the edge of the sidewalk and curb and extend to 10 feet when possible (Type 2 tree protection).
- Coast live oak #4 (if retained) the fencing minimum distance should be 4 feet on the construction side and extend to 20 feet where possible.
- Coast live oak #5 will have the trunk wrapped with wooden planks or straw wattle and wrapped with orange plastic fencing (Type 3 protection).
- The neighbor's redwood will be protected by the existing property line fence.

Trenching for irrigation, electrical, drainage or any other reason should be hand dug when beneath the driplines of protected trees. Hand digging and carefully laying pipes below or beside protected roots will dramatically reduce root loss of desired trees thus reducing trauma to the entire tree. Trenches should be backfilled as soon as possible with native material and compacted to near its original level. Trenches that must be left exposed for a period of time should also be covered with layers of burlap or straw wattle and kept moist. Plywood over the top of the trench will also help protect exposed roots below.

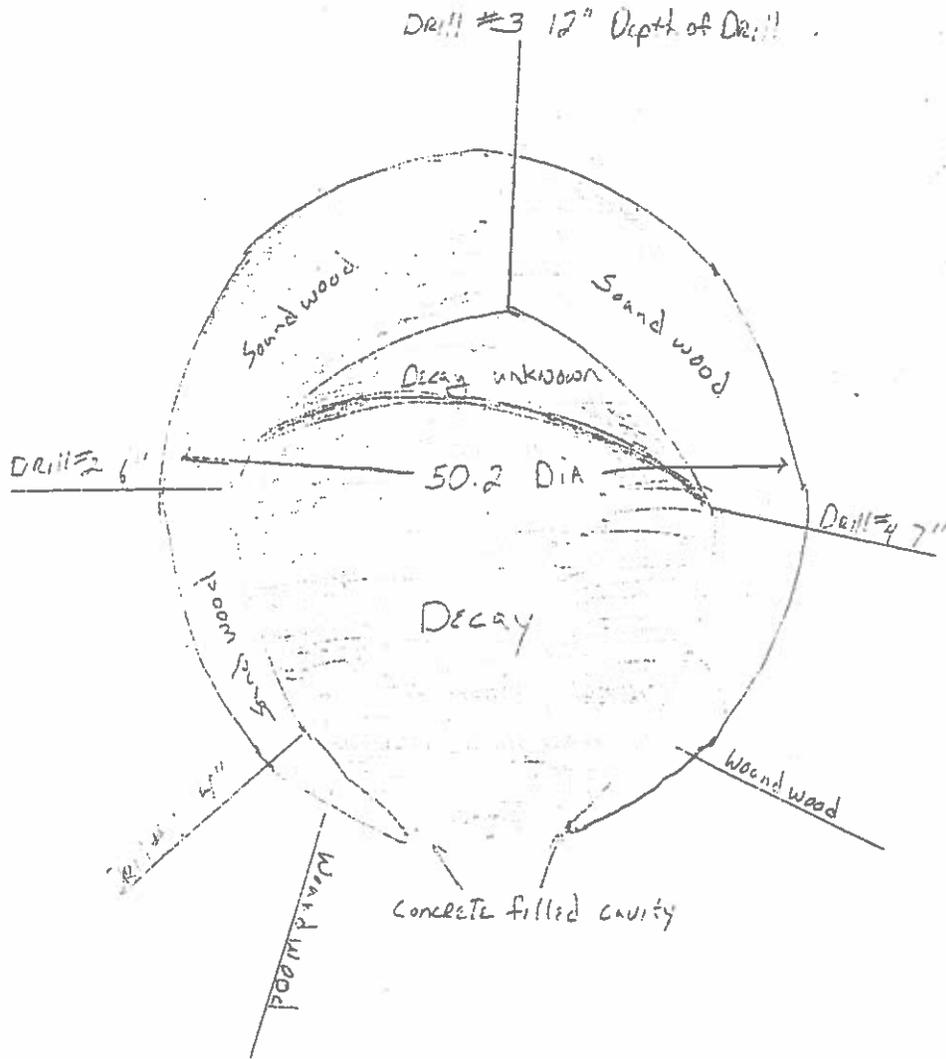
Normal irrigation should be maintained throughout the entire length of the project. The imported trees on this site will require irrigation during the warm season months. Some irrigation may be required during the winter months depending on the seasonal rainfall. During the summer months the trees on this site should receive heavy flood type irrigation 2 times a month. During the fall and winter 1 time a month should suffice. Mulching the root zone of protected trees will help the soil retain moisture, thus reducing water consumption. Due to the low rainfall in this calendar year the oaks also should receive regular irrigation.

Monthly inspections are required for projects of this nature. Inspections will be made during the first week of each month and will continue until the project is complete. Reports will be sent to the owner each month. The information included in this report is believed to be true and based on sound arboricultural principles and practices.

Sincerely,

Kevin R. Kielty
Certified Arborist WE#0476A

Drill Test Tree #4 at 1 Foot above Ground Level



TRAIL #4 1' Above ground level