



## City of Palo Alto City Council Staff Report

(ID # 6168)

---

**Report Type: Consent Calendar**

**Meeting Date: 11/16/2015**

**Summary Title: 224 Churchill Setback Variance**

**Title: Approval of a Record of Land Use Action for a Variance 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 Located at 224 Churchill Avenue**

**From: City Manager**

**Lead Department: Planning and Community Environment**

### **Recommendation**

Adopt the findings and recommendation of the Planning and Transportation Commission to approve a variance for the property at 224 Churchill Avenue as documented in the attached Record of Land Use Action.

### **Executive Summary**

This report transmits the Planning and Transportation Commission's (PTC) recommendation supporting a variance to reduce the contextual front setback from approximately 37 feet to 32 feet. This decision is supported in part due to the substantial front yard setback on the neighboring property, which was used to calculate the contextual setback for the subject property. While staff did not initially support the requested variance, favoring instead a zoning text amendment, the granting of the variance is not detrimental to the neighborhood or in conflict with the Comprehensive Plan.

### **Background**

The applicant proposes to construct a new 4,644 two story single family residence with an attached garage, carport and 1,723 square foot basement in the Seale Addition neighborhood. The project complies with all applicable code requirements, except for one notable provision, which is the reason for the subject variance. Properties on this block are subject to a front yard contextual setback. For the subject property, the setback is 37 feet 1-1/4 inches; the applicant proposes a 32 foot setback.

### **Project Site**

The project site is located on Churchill Avenue near the Emerson Street intersection. The

property is a conforming 13,000 square foot rectangular interior lot, 100 foot wide by 130 foot deep. The site is currently developed with a 3,818 square foot single family residence and 1,500 square foot basement that is proposed to be demolished. The property is located within the R-1 (10,000) zone district and is subject to a special setback of 24 feet along Churchill Avenue as well as the contextual front setback.

#### Conceptual Front Setback

A front yard residential setback is the minimum distance a home may be placed in relation to its front property line. The standard setback in the residential district is 20 feet. However, in some areas, there are also special setbacks with a greater distance requirement. The subject property has a 24 foot special setback. The code also has a third front setback criteria called a conceptual front setback which is designed to protect neighborhoods which have developed over time with greater setbacks. For block faces with five or more qualifying properties, homes that have the greatest setback and the shortest setback are removed from the calculation eliminating the outlier properties. Certain properties are not included in the calculation, notably lots with three or more units, flag lots and corner lots.

Based on an evaluation of the subject property relative to the three other (four total) qualifying parcels, the conceptual front setback back for the project is 37 feet 1-1/4 inches. Because there are only four qualifying parcels (including the subject property) the outlier properties are not excluded from the averaging calculation. On this block existing front yard setbacks range from approximately 22 – 69 feet. The larger setback is provided on a property with a deeper lot and a home that was constructed in 1927 with approximately 3,000 square feet of gross floor area.

#### Director's Determination

The director reviewed a request for a variance to encroach into the required conceptual front setback by approximately 5 feet for a 32 foot setback from the front property line. When reviewing a request for a variance, the director, and City Council on appeal, must consider the following findings:

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.
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

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

While able to support Findings 2, 3, 4 above, the Director was not able to support Finding 1. Specifically, the application of the conceptual setback did not appear to deprive the owner of privileges enjoyed by other property owners in the vicinity and that there was nothing about the lot that created a special circumstance. The additional five foot setback did reduce the amount of private rear yard space available, but it did not reduce the buildable potential of the lot. Moreover, the applicant submitted plans in compliance with the conceptual front setback that is being processed through development services department, in case the variance was denied. To staff, this underscored the perspective that the conceptual front yard setback was an inconvenience to the preferred design solution, but did not result in a special circumstance necessitating a variance. The director's decision was made on May 18, 2015 and a request by the applicant for hearing followed on June 2, 2015.

#### Planning & Transportation Commission

The PTC unanimously supported (Chair Tanaka absent) the applicant's request for the variance. The Commission noted that the adjacent parcel with the approximate 69 foot setback was an outlier that, consistent with the intent of the code, ought to be excluded from the calculation to determine the conceptual front setback. Commissioners cited the Comprehensive Plan and the desire to maintain neighborhood character as reasons to support the variance, noting that a 32 foot setback was more in keeping with the neighborhood. Commissioners commented that the objective of the special setback was not met as a result of the conceptual setback requirement and further observed that averaging all these parcels had the effect of pulling all front setback lines further away from the street. Commissioners noted the high cost of land values in the city and the desire for larger backyards and related the increased setback to the loss of enjoyment to this property owner. The absence of any neighborhood opposition was also noted by the Commission.

Based on the PTCs deliberation, staff prepared variance findings, which are documented in the Record of Land Use Action and added a list of standard conditions that will apply to the project. The Record of Land Use Action is provided in Attachment B.

#### Council Review Authority

The Palo Alto Municipal Code (PAMC) outlines that variances are generally approved or denied by the Director of Planning and Community Environment. The Code allows, however, for anyone to request a hearing before the PTC, as was made by the applicant in this case. PAMC Section 18.77.060(f) states the recommendation of the Planning and Transportation

Commission shall be placed on the Consent Calendar of the Council for final decision. The Council may:

1. adopt the findings and recommendation of the Planning and Transportation Commission; or
2. remove the recommendation from the consent calendar, which shall require three votes, and
  - a. discuss the application and adopt findings and take action on the application based upon the evidence presented at the hearing of the Planning and Transportation Commission; or
  - b. direct that the application be set for a new hearing before the City Council, following which the City Council shall adopt findings and take action on the application.

The decision of the Council is final.

### **Discussion**

This report transmits the PTC's recommendation on the variance as required by the municipal code. While staff initially reached a different conclusion on the variance, this difference in perspective is rooted in process as opposed to outcome. Staff does not consider the applicant's request detrimental to adjacent or surrounding properties or inconsistent with the General Plan. However, to affect this change, staff recommended a zoning text amendment that would modify the existing standard of excluding outlier properties from the contextual front setback determination. Because the results of a future text amendment could be similar to the PTCs recommendation, staff supports moving the project forward and not being pulled off consent.

### **Policy Implications**

Each variance is evaluated on a case by case basis and staff does not anticipate any concerns about setting a precedent if the City Council were to support the PTC recommendation. While there may be other more appropriate pathways to effectuate the applicant's request, the reduction in the contextual front yard setback from 37 to 32 feet is not significant and not detrimental to the neighborhood.

### **Environmental Review**

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

#### **Attachments:**

- Attachment A: PTC Staff Report with attachments (PDF)
- Attachment B: Record of Land Use Action (DOC)
- Attachment C: Excerpt Minutes of September 9, 2015 P&TC Meeting (PDF)
- Attachment D: Map of Churchill Avenue Estimated Existing Front Setback (PDF)

- Attachment E: Project Plans (DOCX)



## 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 &amp; 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](mailto:ranu@mplanninggroup.com).

Sincerely,

Amy French  
Chief Planning Officialcc: Bogdon and Oana Cocosel,  
800 High Street, # 217  
Palo Alto, CA 94306

Attachment: Findings for Denial (page 2)



CityOfPaloAlto.org

## 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.*





A California Corporation

www.klopfarchitecture.com

2180 Bryant Street, Ste. 203  
 San Francisco, CA 94110  
 phone: 415.287.4225 fax: 415.558.9685

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 16 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 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

A handwritten signature in dark ink, appearing to be 'Oana', is written over a horizontal line.

## 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		0.29	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		
		setback to Churchill st side		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 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.

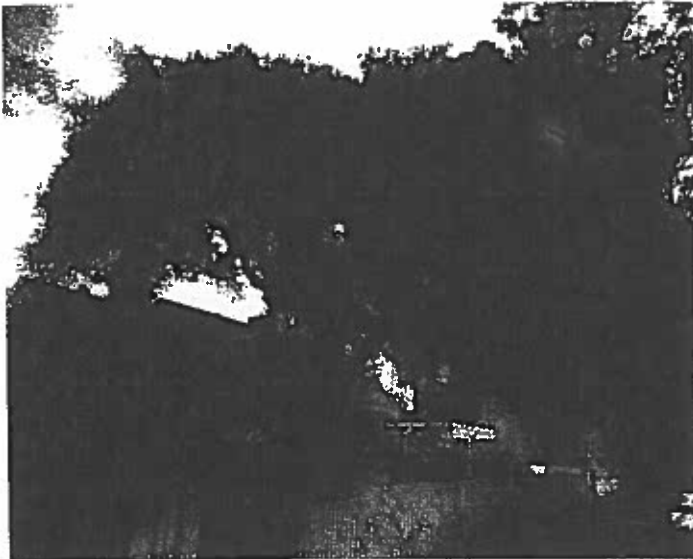
An Exploratory trench was dug on Monday, to help locate roots and help predict root loss. A Supersonic Air Knife was used for the trenching. The air knife uses compressed air to dig the trench. The use of the air knife reduces root damage when digging the trench. A sliding handled soil probe was also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

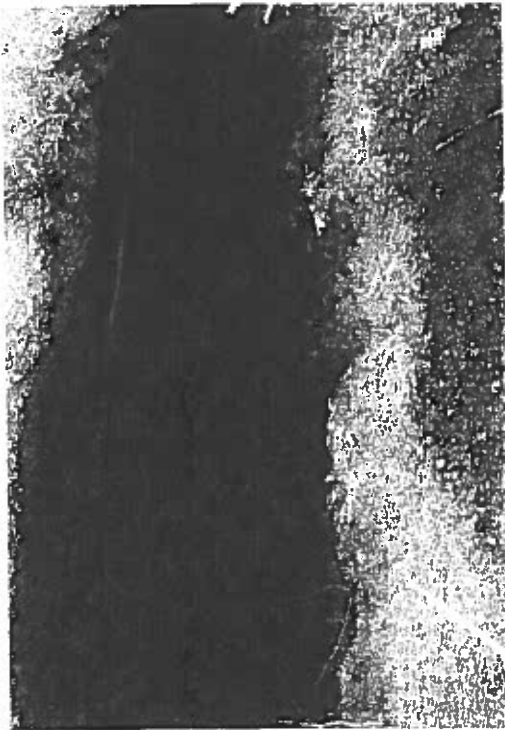
A hand drawn diagram showing the cavity and the sound wood depth will be provided.

**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.

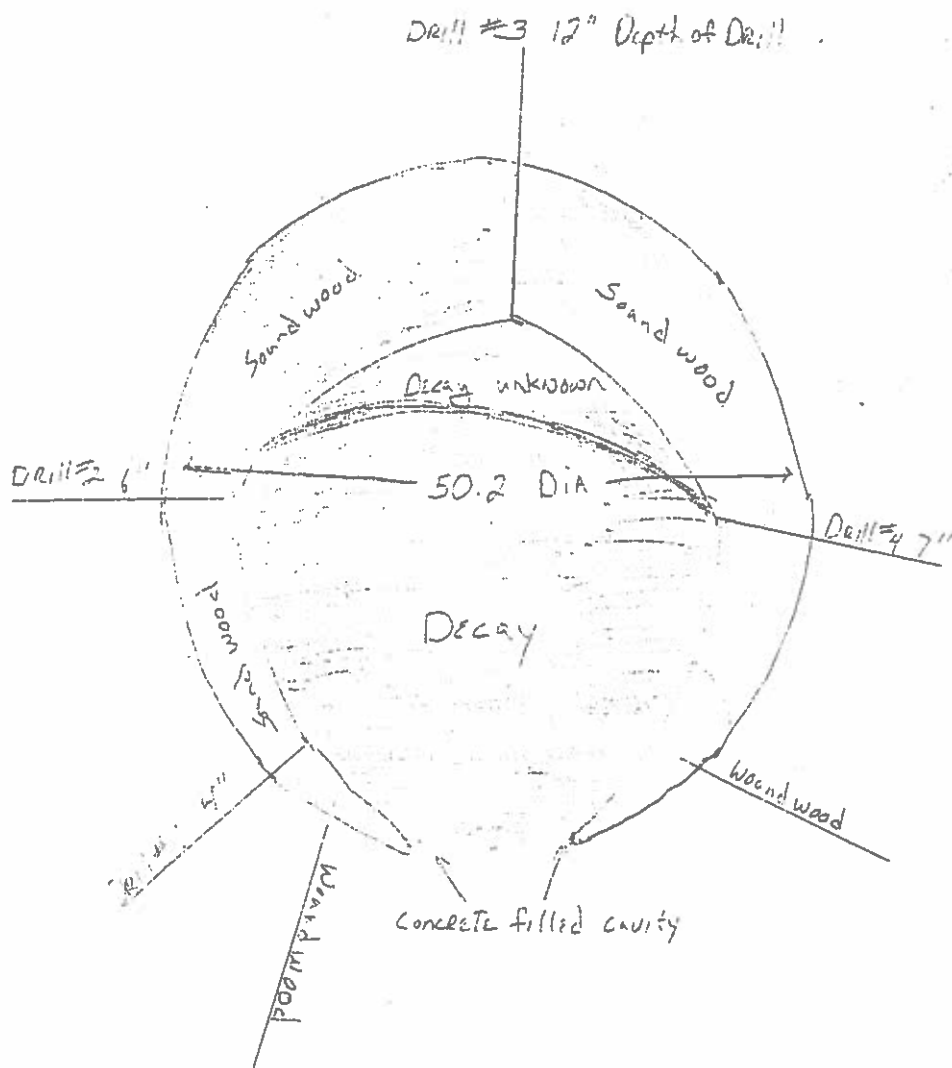
Normal irrigation should be maintained throughout the entire length of the project. The imported trees on this site will require irrigation during the warm season months. Some irrigation may be required during the winter months depending on the seasonal rainfall. During the summer months the trees on 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



Tree #4 1' Above ground level

**ACTION NO. 2015-\_\_\_\_**

**RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO LAND  
USE ACTION FOR 224 CHURCHILL AVENUE: VARIANCE  
APPLICATION (14PLN-00364)**

On November \_\_\_, 2015, the Council of the City of Palo Alto approved the Variance application for a 32 foot front setback, 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 in the R-1 (10,000) Residential Zoning District, making the following findings, determination and declarations:

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

A. Request by Geoff Campen for a Variance to allow the construction of a new two story approximately 4,644 sq ft house with a 1,723 sq ft basement in the R-1(10000) Zoning District. The request includes a variance request for the contextual front setback. (“The Project”).

B. The project site is located on Churchill Avenue near the Emerson Street intersection. The property is a conforming 13,000 square feet rectangular interior lot, 100 foot wide by 130 foot deep. The property is located within the R-1 (10,000) zoning 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.

C. The Planning and Transportation Commission (Commission) reviewed and recommended approval of the Project on September 9, 2015. The Commission’s recommendations are contained in CMR # 6168 and the attachments to it.

**SECTION 2. Environmental Review.** The City as the lead agency for the Project has determined that the project is exempt from environmental review under provisions of the California Environmental Quality Act (CEQA) Section 15303, New Construction or Conversion of Small Structures.

**SECTION 3. Variance Findings**

The decision to approve the Variance was based upon the following findings indicated under PAMC Section 18.76.030(c), and subject to 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.*

The subject parcel has a shallower lot depth (130 feet) compared to the other three parcels on the block (200 feet) that are considered in the evaluation of the contextual front yard setback. Contextual setbacks are derived from averaging the setback of the three other properties, including the adjacent property which has a residential structure set back approximately 69 feet. Other structures in this block are setback between 21 and 32 feet. The resulting contextual setback for the subject property is approximately 37 feet. This additional setback pushes the otherwise compliant residential structure further on the lot reducing the depth of the rear yard. The combination of the shallow lot depth and strict application of the zoning code deprives the owner privileges enjoyed by the three other, Churchill Avenue facing, properties on the block.

*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 variance does not convey a grant of special privilege. The existing structure on the subject property has a setback of 22 feet. The new setback authorized by the variance would require a 32 foot setback. Other Churchill Avenue facing properties on this block have setbacks that range from 25 to 31 feet, excluding the one outlier property with an approximate 69 foot setback. Accordingly, the subject property will be more in line with other structures on the block. Moreover the project with the variance remains compliant with other regulations and is compatible with the general character of the area.

*3. The granting of the application is consistent with the Palo Alto Comprehensive Plan and the purposes of the Zoning Ordinance.*

The project is consistent with the following Comprehensive Plan Policy L-12, which seeks to preserve the character of residential neighborhoods by encouraging new or remodeled structures to be compatible with the neighborhood and adjacent structures;

*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 proposed improvements to the existing single-family home are compatible with the surrounding residential neighborhood and will, subject to this variance approval, will be compliant with all the City's regulations (Planning, Building, Fire, etc.) and, therefore, will not be detrimental to public health, safety, and welfare. Moreover, the reduced front yard setback is compatible with other front yard setbacks in the area.

#### SECTION 5. Variance Approvals Granted.

Variance Approval is granted by the City Council under Palo Alto Municipal Code Section 18.77.060 for application 14PLN-00364, subject to the conditions of approval in Section 6 of the Record.

SECTION 6. Conditions of Approval.

**PLANNING DIVISION CONDITIONS:**

1. **CONFORMANCE WITH PLANS.** Construction and development shall conform to the approved plans entitled, "Cocosel Residence 224 Churchill Avenue Palo Alto, California ,” stamped as received by the City on August 3, 2015 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.
4. **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).
5. **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.
6. **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.
7. **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)).
8. **PRIVACY PANELS:** The privacy panels shown at the side of upper floor balcony are required to ensure the project's conformance with the City's IR Guidelines and therefore are required as permanent features of the design and must remain for the life of the structure.
9. **BALCONY:** The upper floor balcony shall be open above as shown on the Square Footage Diagram, Second Level (Sheet A0.9). The openings above the balcony are required for compliance with the Floor Area requirements of the Palo Alto Municipal Code (PAMC) and must remain open for the life of the structure.
10. **REQUIRED LANDSCAPING/TREES.** Additional landscaping shall be added near the left, rear corner of the lot to include two medium-sized evergreen screening trees (one to each side of the existing tree shown on Sheet A0.4, Neighborhood Privacy Diagram) to improve the privacy condition. The trees shall be 24-inch box planting size and be shown on the site plan filed for a building permit noted by botanical name. This 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.

11. PROJECT ARBORIST. The project (certified) arborist shall ensure that the project conforms to all Planning and Urban Forestry conditions related to landscaping/trees.
12. TREE PROTECTION FENCING. Tree protection fencing shall be required as shown on the Site Plan (Sheet A0.2)
13. 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.
14. 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.
15. GREEN BUILDING & ENERGY REACH CODE REQUIREMENTS.

*NOTICE FOR PERMIT APPLICATIONS SUBMITTED ON OR AFTER 6/22/15.: Please be advised that the Palo Alto City Council has approved Energy Ordinance 5326 and Green Building Ordinance 5326 for all new permit applications with an effective date for June 22<sup>nd</sup>, 2015, as summarized below. To review the specific changes, visit the [Development Services webpage](#). On the left hand side under “explore”, hover over “Green Building” and select “Compliance” You may also email Melanie Jacobson at [Melanie.Jacobson@CityofPaloAlto.org](mailto:Melanie.Jacobson@CityofPaloAlto.org) for specific questions about your project.*

**1) GREEN BUILDING CONDITIONS OF APPROVAL**

- a) The project is a new construction residential building of any size and therefore must meet the California Green Building Code mandatory requirements outlined in Chapter 4, (with local amendments) plus Tier 2 minimum pre-requisites and electives outlined in Appendix A4\* (with local amendments). The project must hire a Green Building Special Inspector for a pre-permit third-party design review and a third-party green building inspection process. The project must select a Green Building Special Inspector from the City’s list of approved inspectors. PAMC 16.14.080 (Ord. 5324 § 1 (part), 2015)

\*Note: Projects subject to Tier 1 or Tier 2 shall not be required to fulfill any requirements outlined in Appendix A4.2 Energy Efficiency. All energy efficiency measures are found in the 2013 California Energy Code and the Palo Alto Energy Reach Code PAMC 16.17 & 16.18 as described in the Energy Reach Code section below.

- b) EMERGENCY DROUGHT REGULATIONS: The project is a residential new construction project with a landscape of any size included in the project scope and therefore must comply with Potable water reduction Tier 2 in accordance with the Emergency Drought Regulations effective June 1st, 2015. Documentation is required to demonstrate that the Estimated Total Water Use (ETWU) falls within a Maximum Applied Water Allowance (MAWA) using the ET adjustment factor (ETAF) of 0.55 for landscaped areas. Vegetable gardens and other areas that qualify as Special Landscape Areas (SLA) will be given an ETAF of 1.0. (PAMC 16.14 (Ord. 5324 § 1 (part), 2015) and the Emergency Drought Regulations link below. The project applicant shall indicate the requirements on the Permit Plans.  
<http://www.documents.dgs.ca.gov/bsc/2015TriCycle/BSC-Meetings/Emergency-Regs/HCD-EF-01-15-ET-Pt11.pdf>
- c) The project is a residential construction project of any size and therefore must meet the enhanced construction waste reduction at tier 2 (75% construction waste reduction). PAMC 16.14.160 (Ord. 5324 § 1 (part), 2015)
- d) The project is a new detached single-family dwelling and therefore shall comply with the following requirements for electric vehicle supply equipment (EVSE) as shown in :
  - (a) The property owner shall provide as minimum a panel capable to accommodate a dedicated branch circuit and service capacity to install at least a 208/240V, 50 amperes grounded AC outlet (Level 2 EVSE). The raceway shall terminate in close proximity to the proposed location of the charging system into a listed cabinet, box, enclosure, or receptacle. The raceway shall be installed so that minimal removal of materials is necessary to complete the final installation. The raceway shall have capacity to accommodate a 100-ampere circuit.
  - (b) Design. The proposed location of a charging station may be internal or external to the dwelling, and shall be in close proximity to an on-site parking space. The proposed design must comply with all applicable design guidelines, setbacks and other code requirements. PAMC 16.14.420 (Ord. 5234 § 2, 2015)

## **2) 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, the performance approach specified within the 2013 California Energy Code shall be used to demonstrate that the TDV Energy of the proposed building is at least 15% less than the TDV Energy of the Standard Design. (Ord. 5324 § 1 (part), 2015)
- 3) Additional Green Building and Energy Reach Code information, ordinances and applications can be found at [http://www.cityofpaloalto.org/depts/ds/green\\_building/default.asp](http://www.cityofpaloalto.org/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**

1. **WALKWAYS:** Walkways must be constructed at grade using a base such as geo-grid or structural soil. No compaction or excavation is permitted within tree protection zones.
2. **LANDSCAPING:** Landscaping must be compatible with oaks growing on the property.
3. **LANDSCAPE PLANS:** Landscape plans, including but not limited to plants, lighting, and irrigation must be certified by the landscape architect and/or project arborist and then approved by the urban forestry group.
4. **TREE PROTECTION FENCING.** Tree #5 is required to be protected with Type I fencing.
5. **TREE PROTECTION VERIFICATION.** Prior to demolition, grading or building permit issuance, a written verification from the contractor that the required protective fencing is in place shall be submitted to the Building Inspections Division. The fencing shall contain required warning sign and remain in place until final inspection of the project.
6. **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.
7. **PLAN CHANGES.** Revisions and/or changes to plans before or during construction shall be reviewed and responded to by the (a) project site arborist, (Kielty Arborist Services, 650-515-9783), 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.
8. **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.
9. **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.

## **PUBLIC WORKS ENGINEERING CONDITIONS**

The following comments are required to be addressed prior to any future related permit application such as a Building Permit, Excavation and Grading Permit, Certificate of Compliance, Street Work Permit, Encroachment Permit, etc. These comments are provided as a courtesy and are not required to be addressed prior to the Planning entitlement approval:

1. **SIDEWALK, CURB & GUTTER:** As part of this project, the applicant must replace those portions of the existing sidewalks, curbs, gutters or driveway approaches in the public right-of-way along the frontage(s) of the property that are broken, badly cracked, displaced, or non-standard, and must remove any unpermitted pavement in the planter strip. Contact Public Works' inspector at 650-496-6929 to arrange a site visit so the inspector can determine the extent of replacement work. The site plan submitted with the building permit plan set must show the extent of the replacement work or include a note that Public Works' inspector has determined no work is required. The plan must note that any work in the right-of-way must be done per Public Works' standards by a licensed contractor who must first obtain a Street Work Permit from Public Works at the Development Center.
2. **STREET TREES:** As part of this project, the applicant is required to plant two new 24-in box Autumn Blaze Maple street trees in the public right of way adjacent to the property frontage. One tree shall replace the existing Black Locust and the second shall be planted 30-ft from the existing Magnolia (Tree T3) within the planter strip. Illustrate the tree on the architectural site plan and the grading and drainage plan with the following note: "New street tree required: Plant 24-in box Autumn Blaze Maple per Public Works Engineering detail #604 and install automatic irrigation per #513. Contact Public Works Urban Forestry at 650.496.5953 prior to planting to inspect tree stock and irrigation adequacy.
3. **BASEMENT DRAINAGE:** Due to high groundwater throughout much of the City and Public Works prohibiting the pumping and discharging of groundwater, perforated pipe drainage systems at the exterior of the basement walls or under the slab are not allowed for this site. A drainage system is, however, required for all exterior basement-level spaces, such as lightwells, patios or stairwells. This system consists of a sump, a sump pump, a backflow preventer, and a closed pipe from the pump to a dissipation device onsite at least 10 feet from the property line, such as a bubbler box in a landscaped area, so that water can percolate into the soil and/or sheet flow across the site. The device must not allow stagnant water that could become mosquito habitat. Additionally, the plans must show that exterior basement-level spaces are at least 7-3/4" below any adjacent windowsills or doorsills to minimize the potential for flooding the basement. Public Works recommends a waterproofing consultant be retained to design and inspect the vapor barrier and waterproofing systems for the basement.
4. **BASEMENT SHORING:** Shoring for the basement excavation, including tiebacks, must not extend onto adjacent private property or into the City right-of-way without having first obtained written permission from the private property owners and/or an

encroachment permit from Public Works. Additionally, please be advised that slope-cut shoring will likely be infeasible for this project given proximity to the existing Oak tree in the front yard. The applicant shall include a shoring plan prepared by a licensed engineer which utilizes a method that minimizes soil disturbance associated with the excavation adjacent to the protected tree. Slope-cut shoring or other methods may be applied to other areas provided it won't encroach on neighboring properties, impact existing structures or disturb other protected trees

5. **DEWATERING:** Basement excavations may require dewatering during construction. Public Works only allows groundwater drawdown well dewatering. Open pit groundwater dewatering is disallowed. Dewatering is only allowed from April through October due to inadequate capacity in our storm drain system. The geotechnical report for this site must list the highest anticipated groundwater level. We recommend a piezometer to be installed in the soil boring. The contractor must determine the depth to groundwater immediately prior to excavation by using the piezometer or by drilling an exploratory hole if the deepest excavation will be within 3 feet of the highest anticipated groundwater level. If groundwater is found within 2 feet of the deepest excavation, a drawdown well dewatering system must be used, or alternatively, the contractor can excavate for the basement and hope not to hit groundwater, but if he does, he must immediately stop all work and install a drawdown well system before he continues to excavate. Public Works may require the water to be tested for contaminants prior to initial discharge and at intervals during dewatering. If testing is required, the contractor must retain an independent testing firm to test the discharge water for the contaminants Public Works specifies and submit the results to Public Works. Applicant shall install a water station for the reuse of dewatering water. This water station shall be constructed next to the right-of-way and shall be accessible 24 hours a day for the filling of water carrying vehicles (i.e. street sweepers, etc.). The water station shall also be used for onsite dust control. Applicant shall meet with Public Works to coordinate the design details.  
Public Works reviews and approves dewatering plans as part of a Street Work Permit. The applicant can include a dewatering plan in the building permit plan set in order to obtain approval of the plan during the building permit review, but the contractor will still be required to obtain a street work permit prior to dewatering. Alternatively, the applicant must include the above dewatering requirements in a note on the site plan. Public Works has a sample dewatering plan sheet and dewatering guidelines available at the Development Center and on our website.
6. **WATER FILLING STATION:** Due to the California drought, applicant shall install a water station for the non-potable reuse of the dewatering water. This water station shall be constructed within private property, next to the right-of-way, (typically, behind the sidewalk). The station shall be accessible 24 hours a day for the filling of water carrying vehicles (i.e. street sweepers, etc.). The water station may also be used for onsite dust control. Before a discharge permit can be issued, the water supply station shall be installed, ready for operational and inspected by Public Works. The groundwater will also need to be tested for contaminants and chemical properties for the non-potable use. The discharge permit cannot be issued until the test results are received. Additional information regarding the station will be made available on the City's website under Public Works.

7. **GRADING & DRAINAGE PLAN:** The plan set must include a grading & drainage plan prepared by a licensed professional that includes existing and proposed spot elevations and drainage flow arrows to demonstrate proper drainage of the site. Adjacent grades must slope away from the house a minimum of 2%. Downspouts and splashblocks should be shown on this plan, as well as any site drainage features such as swales. Grading will not be allowed that increases drainage onto, or blocks existing drainage from, neighboring properties. 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: <http://www.cityofpaloalto.org/civicax/filebank/documents/2717>
8. **GRADING PERMIT:** The site plan must include an earthworks table showing cut and fill volumes. If the total is more than 100 cubic yards, a grading permit will be required. An application and plans for a grading permit are submitted to Public Works separately from the building permit plan set. The application and guidelines are available at the Development Center and on our website.
9. **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. The sheet is available here: <http://www.cityofpaloalto.org/civicax/filebank/documents/2732>
10. **STREET TREES:** Show all existing street trees in the public right-of-way. Any removal, relocation or planting of street trees; or excavation, trenching or pavement within 10 feet of street trees must be approved by Public Works' arborist (phone: 650-496-5953). This approval shall appear on the plans. Show construction protection of the trees per City requirements.
11. **WORK IN THE RIGHT-OF-WAY:** The plans must clearly indicate any work that is proposed in the public right-of-way, such as sidewalk replacement, driveway approach, or utility laterals. The plans must include notes that the work must be done per City standards and that the contractor performing this work must first obtain a Street Work Permit from Public Works at the Development Center. If a new driveway is in a different location than the existing driveway, then the sidewalk associated with the new driveway must be replaced with a thickened (6" thick instead of the standard 4" thick) section. Additionally, curb cuts and driveway approaches for abandoned driveways must be replaced with new curb, gutter and planter strip.
12. **IMPERVIOUS SURFACE AREA:** The project will be creating or replacing 500 square feet or more of impervious surface. Accordingly, the applicant shall provide calculations of the existing and proposed impervious surface areas with the building permit application. The Impervious Area Worksheet for Land Developments form and instructions are available at the Development Center or on our website.
13. **RESIDENTIAL STORM WATER TREATMENT:** This project may trigger the California Regional Water Quality Control Board's revised provision C.3 for storm water regulations (incorporated into the Palo Alto Municipal Code, Section 16.11) that apply to residential land development projects that create or replace between 2,500 and 10,000

square feet of impervious surface area. The applicant must implement one or more of the following site design measures:

- Direct roof runoff into cisterns or rain barrels for reuse.
- Direct roof runoff onto vegetated areas.
- Direct runoff from sidewalks, walkways, and/or patios onto vegetated areas.
- Direct runoff from driveways and/or uncovered parking lots onto vegetated areas.
- Construct sidewalks, walkways, and/or patios with permeable surfaces.
- Construct driveways, and/or uncovered parking lots with permeable surfaces.

SECTION 7. Term of Approval.

Variance Approval. In the event actual construction of the project is not commenced within two years of the date of council approval, the approval shall expire and be of no further force or effect, pursuant to Palo Alto Municipal Code Section 18.30(G).080.

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

APPROVED:

---

City Clerk

---

Director of Planning and  
Community Environment

APPROVED AS TO FORM:

---

Senior Asst. City Attorney

**Planning and Transportation Commission  
Verbatim Minutes  
September 9, 2015**

**EXCERPT**

**Public Hearing**

1. **224 Churchill [14PLN-00364]: \*Quasi-Judicial** 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. For more information, contact Jodie Gerhardt at [Jodie.gerhardt@cityofpaloalto.org](mailto:Jodie.gerhardt@cityofpaloalto.org)

Acting Chair Fine: Item Number 2 is 224 Churchill. This is a quasi-judicial matter and a request for hearing and Planning and Transportation Commission (PTC) recommendation regarding the Director of Planning and Community Environment's denial of a variance application, deny a front setback. Are there any disclosures?

Commissioner Downing: I'm not sure if this is exactly applicable, but I did look up this property on Google Maps. I did look up a satellite image of this just for your information (FYI) because I wasn't quite getting a full picture of it just from the description.

Acting Chair Fine: Thanks. Can we go with the presentation please.

Jodie Gerhardt, Interim Planning Manager: Yes, thank you. My name is Jodie Gerhardt, Interim Current Planning Manager. The subject property in front of you is located at 224 Churchill Avenue and is a 100 by 130 deep lot located on Churchill Avenue in the R-1 10,000 zoning district. The proposal would demolish an existing single family home and construct a new two-story home with an attached garage and a basement level. The individual review, this project does have two components and so the individual review component of the project, which is the two-story home which included a compliant setback was recently approved on September 8<sup>th</sup> and the variance would allow a 5 foot 1.25 inch encroachment into the front contextual setback was denied in May and the property owner has requested this hearing.

So just to give a little bit of background about how we arrived at this front setback, this particular property does in a sense have three front setbacks. There is the standard 20 foot setback for any R-1 zoned property, there is also a special setback that is on Churchill Avenue and that is 24 feet in this case. Also contained in the code in the R-1 section of the code is the contextual front setback which in this case averages out to the 37 feet 1.1 inch and a fourth, one and a fourth inches. So hence given all of the different requirements the contextual front setback being the greatest is actually the front setback that needs to be applied on the property.

So we do have a diagram that shows how that contextual front setback was arrived at. I believe the applicant will go into a little bit more detail about that, but we do take out the smallest and the largest property, we take out any corners that are facing another street and that sort of thing before we look at the average. Then just to give you an idea about how the existing house sits on the property there is an existing front porch that's about 26 feet back and the main house is 34 feet back from the front property line. And then the proposal the IR proposal that was approved actually shows the house all the way back at the 37 feet; however, the proposal before you today with the variance is to have a 32 foot front setback.

So in the attachments we do have the findings for the variance that further explain why the project was denied. There, we believe that there are no special circumstances related to this project and actually

1 there is an oak tree that's located in the front yard. So having the house set back further is actually  
2 helpful to that oak tree giving it more room to breathe. The granting of the variance would be a special  
3 privilege that would be inconsistent with other properties and it would be inconsistent with the  
4 Comprehensive Plan, the individual review guidelines, and the intent of the contextual front setback. This  
5 concludes staff presentation, thank you.

6  
7 Jonathan Lait, Assistant Director: If I could just make one clarification, maybe ask Jodie to help me out  
8 with this. I believe in the presentation there was a comment that the greatest setback and the  
9 shallowest setback are thrown out in the discussion, but I think that's when there's five or more parcels  
10 in play and here there are less than five. So those, those extremes are not removed in the consideration  
11 of the subject proposal.

12  
13 Acting Chair Fine: And I believe the applicant would like to make a presentation?

14  
15 Bogdan Cocosel: Hi, I'm Bogdan Cocosel, my wife. Actually we own basically the property at 224  
16 Churchill and so thank you very much for taking the time actually to listen to kind of our point of view  
17 here. And we have been residents of Palo Alto for almost eight years now and this is our first house. We  
18 had no idea what we were getting into. So now we know a lot more. So in interest of time, actually I'm  
19 going to pass the microphone along actually to Richard which will explain basically some of the definitions  
20 that are applicable kind of here and then John who's our architect actually will present basically the  
21 design implications and the contextual setback issues.

22  
23 Richard McDonald, Hopkins & Carley: Good evening, Commissioners; my name is Richard McDonald. I'm  
24 an attorney with Hopkins & Carley. I represent the applicant, the property owners, Mr. and Mrs. Cocosel.

25  
26 My contribution tonight is very brief. I just wanted to point out to the Commission that the manner in  
27 which we're, we have tried to frame our appeal as well as the project itself would be to allow this  
28 Commission to make the findings necessary under the code to find, to grant a variance and with  
29 particular regard to the issue of substantial hardship. As a lawyer I look at case law and the cases that  
30 have looked at and evaluated the issue of substantial hardship define it in a way that we are trying to  
31 frame our appeal and it would allow the Commission to find the variance. A substantial hardship under  
32 the cases and I'm citing now a case for the record and ready reference is the Committee to Save the  
33 Hollywood Land Specific Plan versus City of Los Angeles in which the granting of a variance was upheld.  
34 And the case cites the definition of unnecessary hardship as where the natural condition or topography of  
35 the land places the land owner at a disadvantage vis-à-vis other land owners in the area such as  
36 peculiarities of the size, shape, or grade of the parcel. The Zach Keysian case also discerned in the  
37 hardship requirement an additional finding that the hardship be substantial and that the exception sought  
38 must be in harmony with the intent of the zoning laws. I can provide the legal side of 161 Cal Ave.  
39 fourth at Page 1168. So we've attempted to again frame this appeal in the context that would allow the  
40 Commission to make the findings necessary in a manner consistent with the case law and that is indeed  
41 in our view and I'll let the architect describe the project on its merits in more detail and I thank you for  
42 your time.

43  
44 John Kluf, Kluf Architecture: The diagram that's up or sorry, I'm sorry. My name is John Kluf of Kluf  
45 Architecture, thank you for hearing our case. If you take a look at the diagram that's up on the board  
46 the block has a special setback of 24 feet which was mentioned and the subject house, our project, 37  
47 foot setback. The purpose, the reason behind that setback is an oversized setback at the neighboring  
48 property which is clearly an outlier on this block. And we're asking for a still quite large setback of 32  
49 feet, which is farther back than all the other houses on the block except for this outlying property.

50  
51 You can see from the diagram the outlying lot is the largest on the block and it's also much deeper than  
52 our lot. So deep in fact that if we had to set our house back to match theirs for some reason on a  
53 contextual basis our house would be deep into the rear setback and would not even be buildable. That's  
54 the difference in the lots.

1 Also the tree was mentioned. We all love big oak trees and the arborist's report indicates that the oak  
2 tree on the lot will be protected with a setback of 32 feet. We're not asking to go any farther forward  
3 than what the arborist approved for the tree. Next slide.  
4

5 This shows what the contextual setback would be if the outlying properties were excluded. The staff  
6 report contains our variance application and on Page 2 of our letter we cite an excerpt from the  
7 Committee of the Whole from June 18, 2001, and it indicates that the committee intended to exclude  
8 outliers from the contextual setback calculations, but because the way the law was drafted this intention  
9 to eliminate outliers is not always borne out in practice. For blocks with three or fewer houses not  
10 applicable because there's no contextual setback requirement. For blocks with four houses the  
11 contextual setback applies, but outliers can't ever be excluded. For blocks with five or six houses the  
12 contextual setback applies, but it's a crap shoot whether the outliers would or would not be excluded.  
13 That's our situation.  
14

15 We lost the dice roll because both the corner lots have front doors that face the side street. Please note  
16 that the garages of the front, of the corner lots face Churchill. So for all intents and purposes these  
17 houses are part of the perceived street wall on Churchill, but because their front doors face the side  
18 streets they don't count in the calculation. So we're left with four houses and the outliers may not be  
19 eliminated. If one of these houses were remodeled so that the front door faced Churchill, but no other  
20 changes were made we'd have five houses that count on this block and outliers would be excluded.  
21 Furthermore, if there was one more house on this block for a total of seven the outliers would be  
22 excluded. If the outliers were excluded we'd have a contextual setback calculated just under 32 feet and  
23 we're asking for 32 feet. So if one front door changed on this block or there were one more house on  
24 the block our requested setback would comply with the contextual setback. Our proposal clearly  
25 complies with the intent of the code which is to remove outliers and respond to context. Only the  
26 technicalities of one front door happens to be facing on a corner lot or how many lots are on a block  
27 determines that we need a larger setback. Next slide please.  
28

29 This one further explores the intent of the committee on contextual setbacks. The committee excerpt  
30 and our variance letter also states contextual setbacks should not be applied for blocks with special  
31 setbacks. Clearly this did not make it into the law since our block has a special setback, but we're still  
32 subject to the contextual setback requirement. To explore this briefly without the contextual setback the  
33 special setback of 24 feet would govern and so our 32 foot setback is far in excess of that. This diagram  
34 also illustrates that our setback request of 32 feet exceeds the hypothetical contextual setback had say  
35 both the corner houses had their front doors and not just their garages facing Churchill. Next slide  
36 please.  
37

38 The intent of contextual setbacks is to minimize the effects of outliers. This diagram shows that as each  
39 property develops over time on this block each house would be pulled back farther and farther because  
40 the contextual setback is increased each time. The effect over time of the outliers pulling back the other  
41 houses on the block creates divots in the street wall and leaves void spaces. And pages five, the next  
42 two slides show this is the larger block in the current situation and the next slide shows that over time as  
43 contextual setbacks would be applied on these blocks that have five or six houses you're creating divots  
44 that pull these houses back from the street wall and are contrary to the idea of working into context.  
45

46 So in conclusion, the conditions that disadvantage our client are that their block has one huge property  
47 with a very deep front setback. This house is an outlier and pulls all the other houses back as the  
48 contextual setback is currently calculated. Without this house the 32 foot setback we're asking for would  
49 fit nicely within the contextual setback on this block. The block also has six houses on it, not seven, and  
50 of the six houses both front doors of both corner houses happen to face the side streets. If there were  
51 just one more house or if just one more corner lot had a front door facing Churchill the outlying  
52 properties would be eliminated and our requested setback would be in compliance technically as well as  
53 with the intent of the code.  
54

55 These conditions on the block disadvantage our clients forcing them to move their house further back on  
56 the lot leaving a large unusable front yard and a smaller rear than their neighbors. Our request complies

1 with the intent of the contextual setbacks which was to eliminate outliers and create a more uniform  
2 street wall. Because the number of our houses on the block and because of the fact that both corners  
3 happen to have front doors on the side streets the law taken literally means that our property would have  
4 to be setback farther from the street wall than what would make sense for its contextuality. As Ms.  
5 Gerhardt stated in her staff report, blocks with our number of houses are not well thought through in this  
6 code. Her recommendation was to change the code, but variances are the vehicle for allowing projects  
7 like ours that comply with the intent of the code on lots like ours that have hardships as defined in the  
8 case law to be approved while the law is reconsidered. Therefore, we respectfully ask you to overturn  
9 the denial of our variance and support our appeal. Thank you.

10  
11 Acting Chair Fine: Thank you. I'd like to open up any public comments. Do we have any speaker cards  
12 on this issue? None? Ok, then let's turn it over to the Commission. Maybe let's have five minutes for  
13 questions. We'll start that side. Commissioner Downing.

14  
15 Commissioner Downing: Sure. So if I can get some clarity on the property is there a pool at the back of  
16 the property in the backyard?

17  
18 Mr. Cocose: No.

19  
20 Commissioner Downing: No pool, ok. And then have you had any conversations with your neighbors  
21 about your intended designs? Have they expressed any concerns or issues?

22  
23 Mr. Cocose: We have, we had conversation with them. Their only concern was basically to postpone the  
24 build for a year so that doesn't affect the school schedule.

25  
26 Commissioner Downing: Ok and then the last question I have is the difference, the difference here that's  
27 being asked between the 37 feet and the 32 feet it's not a particularly large one. It's five feet difference,  
28 but I guess I'm wondering if there's a particular significance there? Like if there's something you're  
29 planning for that backyard that would, that this would get in the way of or is it just that it creates more  
30 unusable space for you?

31  
32 Mr. Cocose: It's basically the unusable space. If you look actually on the diagram actually the yard  
33 actually is very small in the back because most of it is actually in the front. And the connectivity within  
34 the city backyards that actually creates a view for all of these city properties actually like all our  
35 neighbors actually have very low fences in order to kind of enjoy visiting each other's back yards and if  
36 we move the house basically [unintelligible] the, their view, right? And similarly for us of course, but it's  
37 also for them.

38  
39 Commissioner Downing: Ok, thank you.

40  
41 Acting Chair Fine: Commissioner Gardias. I'm just going to go down the line.

42  
43 Commissioner Gardias: Thank you, Mr. Chairman. So the question is to the staff. Could you please tell  
44 us what is the history behind those parcels where those houses subject of that great outliers are? There  
45 is couple of the properties here on this considered block and on the adjacent block where the middle  
46 houses are pretty much set back farther and I was just passing by them yesterday and I thought that  
47 maybe there was some historical reason that those houses maybe were developed earlier and then would  
48 be a change in the habits or accommodations or the design style that was causing the properties just to  
49 farther flow toward the street that was changing the, pretty much the nature of how the houses were  
50 placed on the property. But this could have been just my thinking so if you could just put some historical  
51 layer on top of this I would appreciate this. Thank you.

52  
53 Mr. Lait: I appreciate your observation on that. Unfortunately we don't have any historical knowledge  
54 about the pattern of development in the block and why this property that we're talking about was  
55 setback further or on the other block why it was setback further.

1 Commissioner Gardias: But the house in the middle is earlier? It's much older? 1929, so it's a earlier  
2 property than the adjacent properties, right?

3  
4 Mr. Cocose: The property that is newer is actually the one next to the outlier the one to the right of the  
5 outlier, which is 1988 I think so it's a few years before contextual setback. So they were not subject to  
6 contextual setback when they did it. They were subject to [unintelligible].

7  
8 Commissioner Gardias: Ok. So the observation I had could be right? Those houses in the middle of  
9 those two blocks were developed earlier.

10  
11 Mr. Cocose: Pretty old. 1939 this one.

12  
13 Commissioner Gardias: Ok. Thank you.

14  
15 Acting Chair Fine: Acting Chair Rosenblum. Acting Vice-Chair.

16  
17 Acting Vice-Chair Rosenblum: Hi, my question's for staff. I found the argument by the applicant pretty  
18 compelling, which is that the intent of the setback is to have uniformity in our neighborhoods. And it  
19 does seem that there is a mathematical issue with only having a couple of houses to compare which  
20 means that you have to have the outliers included and the technicality of the two corner lots happening  
21 to have their doors on the other side, but if you look at not only this block, but the two adjacent blocks  
22 the two blocks or the three blocks across from those blocks it's much more uniform to comply with the  
23 applicant's wishes. They would put the neighborhood into much greater uniformity. So I'm curious in  
24 your opinion is that not the spirit of the setback ruling? I understand and you stated very clearly that this  
25 is in violation of the letter of the ruling and I agree with that. There's a ruling that if there are five, if  
26 there are fewer than five properties then the outlier shall not be included and therefore at least this  
27 mathematical anomaly of having a major outlier included in the sample, but I'm curious if you also think  
28 that this is in violation of the spirit of what's trying to be achieved which is uniformity?

29  
30 Mr. Lait: No, I don't believe that it is in violation of the spirit of the contextual... I mean I think the fact  
31 that you have an outlier is part of the context and that is repeated on this block and it's on the adjacent  
32 block and I don't know that because you have an outlier that suddenly the argument of context is pushed  
33 aside. At some point the drafters when they when this was adopted made a very deliberate decision to  
34 make a distinction between four and five lots and the corner lots and the outliers. So I'm clearly  
35 empathetic to the condition that the applicant that they find themselves in, but I don't believe it  
36 inconsistent with the intent to approach it the way that the staff's approached it. I don't think it's  
37 particularly inconsistent the way the applicant's proposed it, but all things being equal what we have to  
38 fall back on is how the code is drafted and how this particular project applies to that circumstance.

39  
40 Acting Vice-Chair Rosenblum: Except that the code asks us to do a balancing test around the contextual  
41 environment which is again I think any kind of plain reading of this is that what they're proposing is much  
42 more in line. If we took them the deviation of their lot versus the others you're getting a higher deviation  
43 by going with staff proposal than what they are doing, which would be a lower deviation and so I think  
44 that that's why you bring it in front of humans to help with that judgement. They've applied the  
45 algorithm citywide and I think this is a weird circumstance that you happen to have two houses that don't  
46 count and then you get below the minimum so this kind of strange outlier does count and therefore I  
47 mean I don't think all these things can be made by machines. So anyway I think you've answered my  
48 question and I get it. I think that's my only question. So thank you.

49  
50 Acting Chair Fine: I tend to agree with Acting Vice-Chair Rosenblum that the issue really is that the  
51 outliers can't be excluded and that the contextual setback may need an update as mentioned in the  
52 report. So I think something I would comment on, so I'm questioning it. I guess my question is more  
53 that in the Director's opinion this variance doesn't meet the findings, but I had some specific questions  
54 about that. Finding Number 1 is about special circumstances for size, shape, topography, location, and  
55 surroundings. Doesn't this fit the definition of location and surroundings?

1 Mr. Lait: I think you have to continue reading the [unintelligible] finding which talks about how those  
2 conditions would deprive the property owner from the privileges enjoyed by the properties. And the fact  
3 that they can build an otherwise good compliant structure and achieve the same floor areas that the  
4 other properties in the area can achieve that the setbacks there's nothing about the setback itself that  
5 constrains the development.

6  
7 Acting Chair Fine: So I guess maybe the privilege I'm speaking of then is the extra five feet in the private  
8 backyard. I think it's also laudable of them that they might want to share with their neighbors a little bit  
9 in terms of sight lines and stuff. But everybody wants a little bit more space in the backyard and it  
10 seems like this contextual setback in this issue is doing exactly that to make this five feet in front rather  
11 than behind. Does that count as a privilege?

12  
13 Mr. Lait: From staff's perspective it does not.

14  
15 Acting Chair Fine: Ok, why not?

16  
17 Mr. Lait: Well we speak of privilege I think what we're talking about is how other similarly zoned similarly  
18 shaped properties enjoy and develop their property based on this, these standards that are set forth with  
19 the height, the setbacks, the floor areas, and so forth and yeah there's a greater setback that's required  
20 in front, but that's not denying the property owner use or enjoyment of the property. And I guess I  
21 mean again I'm very empathetic to the condition and I think where we find ourselves is that it's the it's  
22 more of a process to how to get it's a process of getting the applicant from where they are to where they  
23 want to be and if it is the case that the finding cannot be met we don't approve a finding a variance  
24 when really what we need to do in this particular case is amend the code which we think is the solution.  
25 I think if we, I appreciate the purpose section we're trying to do and the interest in wanting to solve the  
26 problem, but I think there's the proper way to solve the problem and that's kind of and that's why we  
27 landed on the decision point that we did with respect to the variance part of it.

28  
29 Acting Chair Fine: So I'm not going have you repeat Commissioner Rosenblum's question about the spirit  
30 of variances and how they are meant to be a stop gap or escape valve. Hypothetically what happens if  
31 the City approves a variance without meeting the findings? Is that even possible? Does it open loop  
32 hole?

33  
34 Mr. Lait: Well, so I think decision maker and I'll let the attorney speak to the legal aspect of it, but this  
35 body so the Director makes a decision based on a set of circumstances, the administrative record, so on  
36 so forth. This body in its review of the administrative record may very well come to a different  
37 conclusion and that's perfectly fine. It would be based, I mean you would articulate your reasons why  
38 you believe the finding could be made. And that information would be then moved forward to the City  
39 Council for their deliberation.

40  
41 Acting Chair Fine: Those are my questions. Commissioner Michael.

42  
43 Commissioner Michael: So in no particular order, I'm inclined to think that the applicant's case is  
44 persuasive to me. I was particularly interested in the comments from the applicant's architect and share  
45 some of the thoughts expressed by Vice-Chair Rosenblum. I'm not certain that there's this bar that has  
46 to be crossed of amending the code. One of the words in the code might be something that we could  
47 interpret in conjunction with findings and that's the word average. When I went to this first of all  
48 knowledge I did a Google search and it directed me to Wikipedia. It turns out that average has many  
49 meanings and I think that the staff report clearly applies the arithmetic mean and by no means is it clear  
50 to me that the arithmetic mean is an appropriate formula or methodology for average in this setting. So  
51 without amending the code I mean the other most common applications of average are mean, median,  
52 and mode. If there's probably because the limitations of the small data set you really can't use mode,  
53 but if you had median it would be 32 feet with the three other parcels. So without amending the code  
54 you should adopt the methodology of median rather than arithmetic mean and we're done.

1 I think that the anomalies that are created in the historic application of this code section I mean there's  
2 three or fewer parcels or five or more are indications of the requirement of a judgement. I think the  
3 taking out the smallest and the largest when there's five or more is application of the methodology of the  
4 truncated mean. The truncated mean is probably a preferred or more accurate methodology when  
5 determining an average. And so in that case you would without question take out the 236 Churchill  
6 property and then and work the analysis from there.  
7

8 On the substantial hardship question I really think that the issue of the usability of the backyard in  
9 relationship to the overall lot size is a question of potential or actual substantial hardship and just as a  
10 disclosure I have a property which has an unusable backyard because there's a very small rear setback.  
11 And we've had some problems with how we would use the site which we had to do sort of a planning  
12 battle in that community until we get a solution, but I think that the forcing the house to be located  
13 further back because of this I think stretched interpretation of contextual setback does in fact lead to a  
14 finding of depriving a property owner of privileges owned by other adjacent properties and I would  
15 support that as a finding.  
16

17 And then I'm a retired lawyer and so the looking into the intent of the committee is something that I  
18 think is of great importance with the issue of whether or not if there's a special setback applicable to a  
19 block then this would be carved out from the contextual setback applications. I think that may be a  
20 finding that you come to looking at the committee proceedings and another justification for deciding in  
21 favor of the applicant. I think that the whether or not to exclude the outlier is not really the right  
22 question. I think the other questions that I raised earlier could be dispositive and that's the basis on  
23 which I would suggest that we at the appropriate time side with the applicant's request.  
24

25 Mr. Lait: There's not a question to staff, but I just wanted to make two comments if that's ok? So the  
26 code sets forth the, what a required rear setback is and it's 20 and in this case the applicant's proposing  
27 46. So from at least the code perspective that minimum number of yards is provided for amply. And  
28 with the comment about the definition of average the code actually tells us what average is, there's a  
29 definition that says average means and it talks about the distance between the property line to the front.  
30 So I don't think there's means for interpretation with the code that is, speaks to that, that definition. And  
31 that's in the contextual front setbacks portion of the code.  
32

33 Commissioner Michael: I think in the Comprehensive Plan there's some great deference given to the  
34 character of existing, the existing character of neighborhoods. And I think the notion that there should  
35 be sort of a cookie cutter 20 foot backyard setback isn't in the character of this neighborhood. I think it's  
36 a more ample lot and in proportion the balance between the front and the rear that may in fact be a  
37 substantial hardship so I would quibble with the application of a cookie cutter measurement in this  
38 particular neighborhood. And what was the other comment? I didn't...  
39

40 Mr. Lait: Average.  
41

42 Commissioner Michael: Oh, so I think your citation of the code still doesn't address the question of  
43 whether you use the arithmetic mean, the truncated mean, the median, or some other methodology that  
44 might be appropriate. If in fact this code section should be revised that in Palo Alto will be sort of a  
45 never ending process and we need to make a decision with this property sooner than that revision can  
46 happen.  
47

48 Commissioner Alcheck: Ok, thank you for your report. In my ongoing effort to be thorough and concise  
49 I'll start at the end. I would enthusiastically support recommending that City Council grant this variance  
50 and there's a little bit of irony here. Tonight we're going to hear on Item 5 areas where we can create  
51 greater clarity in our code because it's not really precise and it doesn't achieve all of its objectives on the  
52 way we intended it to. And I think this is sort of a great example of how there was an intent that is not  
53 being met in this particular block and unfortunately our code can't really serve every possible scenario  
54 well. And that's why it's and we have an ongoing process of editing it as we discover issues we try to  
55 address them and sometimes we don't and I think when we don't do it as quickly as theoretically  
56 humanly possible some people suffer as a result and I think that this could be interpreted as a hardship.

1  
2 There's a lot of unique things going on on this site. The neighbor who has the enormous setback, I'm  
3 guessing here, but I would be interested to know if that property is half an acre. It looks like it's over  
4 20,000 square feet (sf). And it's very convenient for the largest parcel on this map or on this on the map  
5 I have to have a huge setback because it doesn't impact his ability to have a house the maximum size  
6 home you can have in Palo Alto is 6,000 sf. If you have a 20,000 plus square foot lot 6,000 is your limit  
7 even theoretically the equation to determine your square footage could get you higher, 6,000 is your cap.  
8 I don't know if the lot's 20,000, but I'm guessing because of its width and depth. And so this individual  
9 could theoretically put their lot anywhere within the setbacks and still have ample use of the space. So I  
10 think that the fact that that particular home is set back so far suggesting that there is a disadvantage on  
11 all the lots.  
12

13 I also think that I am not a huge fan of contextual applications of our code because in this particular  
14 instance there's a special setback so 90 percent of our R-1 or maybe more is subject to the standard  
15 setback of 20 and then we have certain streets where we have a special setback, in this case 24, which  
16 means that there was an intent that the homes come within 24 feet as opposed to 20. Which I would  
17 argue 20 is actually a very small setback in residential neighborhoods which then implies that we do have  
18 a preference for homes being kind of close to our streets and a preference for larger backyards. And the  
19 fact that in this particular street they set a special setback of 24 implies that they had this secondary  
20 standard and I think you see that in many of the homes on both sides of the street and all along the rest  
21 of the street past these, this block.  
22

23 I think that I know the, I know that according to the letter of the law you can't, you can't not include this  
24 parcel and I think that's why the basis for the Director's decision and for the Planning staff's decision is  
25 coming from. I think we're in a position to determine whether or not there should be some flexibility  
26 because of the hardship created by that calculation. I don't think we need to sort of get too heavy into  
27 the definition of average. I think we can accomplish this by suggesting that this outlier shouldn't be  
28 included. Again it's extremely convenient for the, this size lot to have the largest setback and as a result  
29 he's affecting the parcels all around him.  
30

31 I really think it's a mistake to assume that our code is perfect. And I think there are always going to be  
32 some technicalities that we, that should be considered at this level and I think that if we assume that the  
33 implications of the code, I think it's I also think it's can be a dangerous game to sort of evaluate intent. I  
34 feel much more comfortable looking at the street and saying look, maybe the, I'll end here. Maybe the  
35 definition of contextual setback is X, but when you think of the context of the actual street the suggested  
36 36 foot setback is that what it is? 37 foot setback doesn't seem contextual at all. It seems like it would  
37 create another outlier, which I think would be unfortunate and for that reason I maintain my original  
38 statement which is that I would enthusiastically support a Motion to recommend that the Council grant  
39 this applicant a variance.  
40

41 Acting Chair Fine: Thank you. Commissioner Downing, another question?  
42

43 Commissioner Downing: Well, I'd like to make a comment. So in terms of whether or not this is  
44 compliant with our Comprehensive Plan, there's actually a policy in the Comprehensive Plan which  
45 specifically says that you cannot build a tall fence in front of your property and which specifically says  
46 that the view of the house should not be obstructed. The Comprehensive Plan itself says that we want  
47 neighborhoods where you can walk down the street and you can actually see the houses. That's one of  
48 our aesthetic goals, it's one of our preferences. The house that is the outlier and the house which now  
49 this house is supposed to emulate actually doesn't follow that policy, you can't even see that house from  
50 the street it's so far back and so wooded in front of it. And so following the house that's already not  
51 compliant with the Comprehensive Plan I think is odd and I don't think that's really where we want to go.  
52

53 And I agree that within this language without needing to go any further we can find, I think we can find  
54 the things that we need. This talks about special physical constraints. I think the fact that this is the  
55 only lot that's so short on that, this entire street is a real physical constraint. That is weird. It is a  
56 peculiarity for that particular street. I would also add that in terms of constraints I sort of hear well, they

1 still get a big backyard, but this larger house has enough room that it has an accessory dwelling unit. I'm  
2 not sure that if this setback were permitted as it were that it would actually still have room for an  
3 accessory dwelling unit or if it did whether or not it would still look as nice and give as much space as  
4 one would want. So I think that not being able to build such a unit or being able to build it with further  
5 constraints really does impinge on this, these people's enjoyment of their property. So I think there are  
6 real physical constraints here.  
7

8 And I think that it's also, I do think that this rule qualifies for rule cleaning up because it's a very odd  
9 rule. Because it's a rule that only applies in blocks of four. How odd. We have one rule for five and up  
10 and we have one rule for three and under and then we have yet another rule for four. Really? Really  
11 four deserved a special rule? So I would definitely put this on the list of things that we should go back  
12 and we should look at and I agree with the applicants that I mean if you follow this rule to its logical  
13 conclusion all the houses on this street end up being pulled back, all of them over time. Which again  
14 runs counter to an explicit goal we actually have in the Comprehensive Plan and it makes this street less  
15 walkable, it makes it less enjoyable, it makes it feel less safe when you can't actually see any of the  
16 houses. So that's my thought.  
17

18 Acting Chair Fine: Thank you. Commissioner Gardias.  
19

20 Commissioner Gardias: Thank you, Mr. Chairman. So I'm going to offer a different perspective on this. I  
21 believe that when I read the code and when I walk around this neighborhood it makes sense. It pretty  
22 much reflects this was happening in this neighborhood a hundred years ago when this neighborhood was  
23 created or maybe a little bit earlier. But nonetheless this is R-1 10,000 sf lots and then pretty much  
24 when they were built back then that was pretty much the style and the setback as it is expressed in the  
25 code it pretty much follows the style of this neighborhood and doesn't allow just to create the uniform  
26 line specifically just to preserve the way of life that the citizens of this neighborhood had decided to erect  
27 many years ago. So I believe that this makes sense from this perspective, but then of course there is a  
28 question on this specific property and approach to this four lot calculation of the property so just  
29 agreeing with the specifics of this, of this code pronunciation I want to just go back to the property for a  
30 moment. So because, because this property is truly affected by this one, one building and then by  
31 building new house the owner loses the privilege of just having the house being closer to the street  
32 where actually the house already is, right? We're just because of this restrictions we're just we're forcing  
33 the owner to set the house farther back because of this regulation. So giving that loss of right I would  
34 support some, some ease on this property to allow this proposal as it was presented, but of course as I  
35 just mentioned before I totally support the way that this neighborhood is zoned with the existing setback  
36 because I think this reflects the historical nature of the and the intent of the zoners. Thank you.  
37

38 Acting Chair Fine: Acting Vice-Chair Rosenblum.  
39

40 MOTION  
41

42 Acting Vice-Chair Rosenblum: Yes, I'd like to make a Motion that we accept the applicant's call for an  
43 approved variance.  
44

45 SECOND  
46

47 Commissioner Alcheck: Second.  
48

49 Acting Chair Fine: Would you like to speak to your Motion?  
50

51 Acting Vice-Chair Rosenblum: Sure. I'll just repeat some of the points that have already been made. I  
52 do believe that this represents a substantial hardship. Palo Alto land is scarce. We enjoy any bit of land  
53 that allows us to sit in our backyard with slightly less obstructed views. Neighbors will also appreciate  
54 that. That is I think the value to any of us living in Palo Alto we know that is significant. So I accept that  
55 this is a substantial detriment to their life. At the same time I think that actually their application makes  
56 the neighborhood more consistent, which is the intent of the setback, of our setback codes. So I think

1 this both makes the neighborhood more consistent and does allow the applicant and their neighbors  
2 something better. So I think sort of triumph of human logic over the algorithm.

3  
4 Acting Chair Fine: Would you like to speak to your second?

5  
6 Commissioner Alcheck: I'll just add that I want to clarify that I support this Motion not because I think  
7 that this we need to create equity among parcels that are different. I think that the underlying theme  
8 here is: are we, is the intent of the special setback and more particularly the context of the neighborhood  
9 being preserved here or not? And I want to add another point that I think is just really relevant. We are  
10 very aware of how involved our community is in decisions like this and I think it's very telling that allow  
11 me to make an assumption here that the neighbors were notified about the meeting and the fact that we  
12 don't have a neighbor here suggesting otherwise I think speaks volumes about this. We didn't get any  
13 emails about this item from any neighbors suggesting they were opposed to this decision and or this the  
14 potential for this decision and I think that that's also very telling. So that's it.

15  
16 Acting Chair Fine: Any other comments from the Commission? I'll just say I want to thank the applicant  
17 and their team for coming. I especially found the diagrams extraordinarily helpful and I do want to echo  
18 the issue that I think over time this does have a downhill effect on the neighborhood especially with  
19 regard to the Comp Plan. That said I just want to put it out there does the Commission feel we could  
20 provide the proper findings to accept this variance? A number of us have each touched on those various  
21 three findings we need to make and then we're going to focus one to explicitly address in our Motion.  
22 Commissioner Downing.

23  
24 Commissioner Downing: I feel that this Commission has made pretty good arguments for why we do see  
25 this as a real constraint, why we see actual physical constraints on this property and the way that this  
26 property is shaped as well as the lack of actual lack of enjoyment that this kind of hole makes.

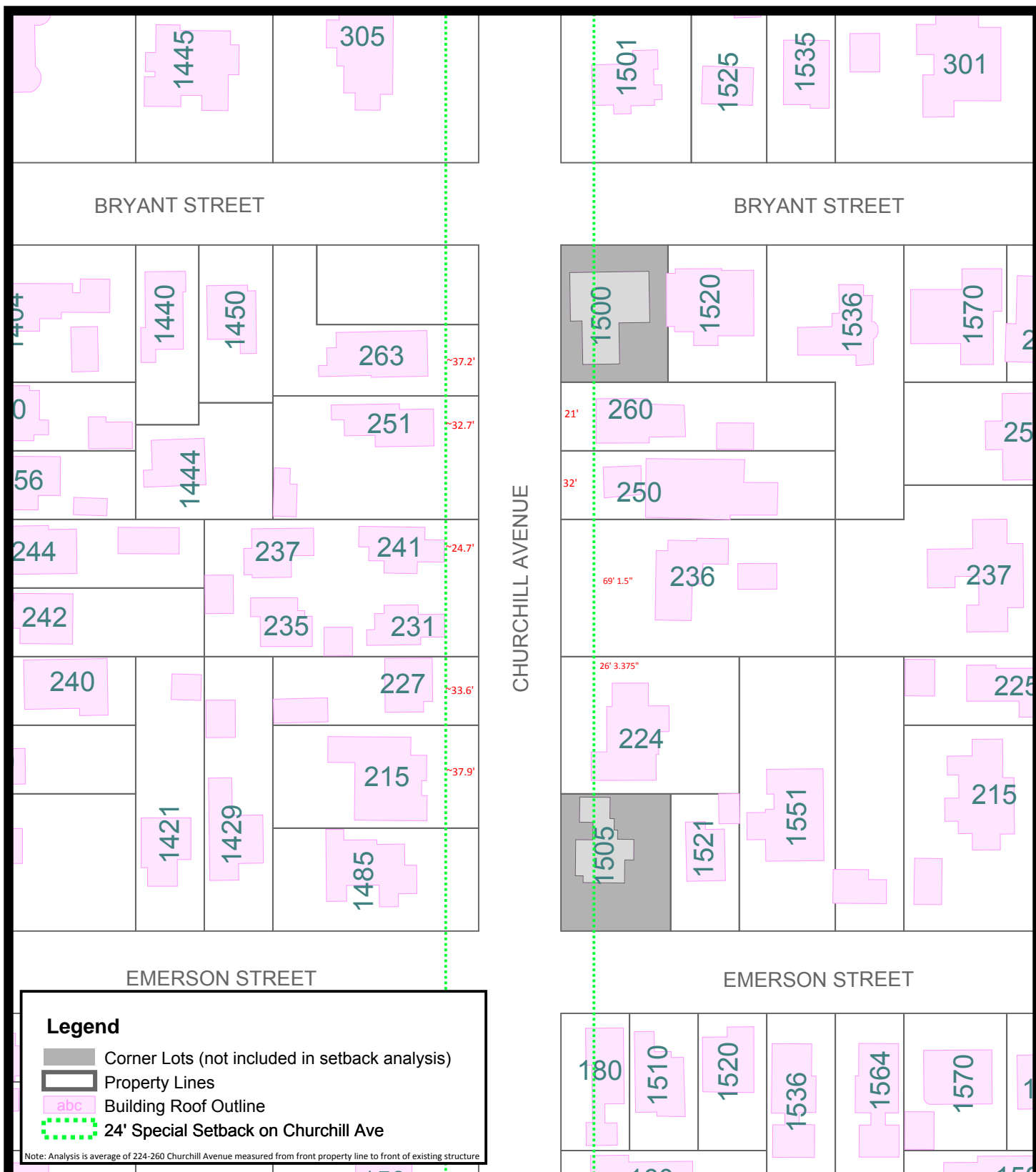
27  
28 MOTION

29  
30 Acting Chair Fine: Anything else? Let's take a vote. All those in favor? Great, so the Motion passes and  
31 just for the record the Motion that we... we're talking, the Motion passes unanimously. Thank you. And  
32 we were using the staff recommendation, but instead of the word uphold we say reject. Great, thank  
33 you so much.

34  
35 MOTION PASSED (6-0-1, Chair Tanaka absent)

36  
37 Mr. Cocose: Thank you very much.

38  
39 **Commission Action**: Motion by Acting Vice-chair Rosenblum, second by Commissioner Alcheck to  
40 accept Applicants request for variance. Motion passes unanimously (6-0-1, Chair Tanaka absent)



### Legend

- Corner Lots (not included in setback analysis)
- Property Lines
- Building Roof Outline
- 24' Special Setback on Churchill Ave

Note: Analysis is average of 224-260 Churchill Avenue measured from front property line to front of existing structure



The City of  
Palo Alto



## 200 Block of Churchill Avenue Estimated Existing Front Setbacks

Average Front Setback = 37' 1.25"

This map is a product of the  
City of Palo Alto GIS



## Attachment E

Hardcopies to Councilmembers and Libraries Only

Plans for the project can be viewed by clicking the link below:

[http://www.cityofpaloalto.org/gov/depts/pln/new\\_projects/residential\\_projects.asp#C](http://www.cityofpaloalto.org/gov/depts/pln/new_projects/residential_projects.asp#C)