From:	Nanou
To:	Council, City; Architectural Review Board; Planning Commission
Cc:	Jerome Guionnet
Subject:	Supporting Castilleja School Expansion
Date:	Friday, October 9, 2020 5:50:50 PM

Dear PTC and City Council,

Because I've been a member of the Palo Alto community since 1998, teaching in International schools in the Bay area, I've known that Castilleja School, at the heart of this city, is a critical asset to girls and young women.
I wanted to write a letter of support for their campus modernization plan. For years, I taught bright Middle School girls, all trilingual. Unfortunately for them, very few have been accepted at Casti because of the limited space and seats available (and not because they were not qualified, I can assure). The competition became so hard for them that even though the teachers and counselors would try to support their dream, some just turned away from considering this school, which is a pity. As a teacher, I felt I had a huge responsibility in their future when I was grading or writing comments, and the admission process just added stress to my job. With this renovation, the school could enroll and give a chance to more girls, putting less pressure on students, their parents, counselors, and teachers from the Bay Area.

As a result, I will support the school's request to expand educational opportunities to more young women and girls.

I'm confident that the measures taken both by the school and the city will ensure that Castilleja's neighborhood will maintain its peaceful, residential character while providing more girls and young women an opportunity for an all-girls education. For these reasons, I hope Castilleja can count on your support at the upcoming hearing.

Sincerely,
Anne Guionnet

863 Colorado Ave
Midtown PA

From:	Seyonne Kang
To:	Planning Commission
Subject:	letter in support of Castilleja
Date:	Friday, October 9, 2020 1:33:18 PM

Dear PTC:

Hope you have had a good week. I wanted to write to express the opinion that the City leadership should support Castilleja as a vital part of the Palo Alto community for the following reasons:

- Castilleja offers educational opportunity - Increasing enrollment in the high school means there will be more spaces for more girls who prefer an all-girls setting
- Castilleja has been part of Palo Alto nearly as long as the City has existed, and is integral to the excellent educational fabric in Palo Alto
- The mission to educate girls for leadership is critical to support the broader societal movement to place more women in positions of leadership
- Increased diversity within the student body works toward rectifying age-old disparities in access to education and ensures that these future leaders will be racially diverse.
- Every other school in Palo Alto has grown and modernized their campus. Why should an all-girls school not have the same opportunity?

Thank you.
Seyonne Kang

From:	Andie Reed
To:	Planning Commission; Council, City
Subject:	Castilleja PTC 9/9/20 meeting open items
Date:	Friday, October 9, 2020 9:06:13 AM
Attachments:	PTCattmtstoSept2020PNQLemail.PDF

Dear Planning Commissioners:
cc: Amy French

We have reviewed the 30-page staff report published the day of the Sept 9 PTC meeting. This included a chart, **Attmt B:PA Private Schools in Residential Zones**, page 25, that is missing some pertinent information (att'd).

A commissioner had requested a comparison of Castilleja's Conditions to other private schools in R-1 neighborhoods. However, a chart showing some comparisons, Attmt B:PA Private Schools in Residential Zones, has a blank box where "Building Square Footage" of Castilleja should be (#6). I attach **Attmt B** and the page from **WRNS** plans to document the number number that belongs there; 116,300 (which appears on the first page of every set of plans that have been produced over the last four years). Muni Code requires that willful replacement of oversized buildings needs to be compliant with current code; thus the school has applied for a Variance. However, the chart doesn't provide the pertinent information to show that the school currently has a FAR that exceeds what is allowed by current muni code, and, additionally to being required to abide by current code, would need to add the proposed underground garage square footage to the FAR variance request. See "Summary Floor Area" for numbers.

Also, please note that Keys School (#1) is not, as far as I can tell from looking at the Palo Alto zoning map, in an R-1 zone.

Also attached is a more rigorous **Comparison Chart**, using a few more similar schools to make the point. Hours of Operation and events limits are important points to compare. Castilleja has operated and continues to operate without complying with their Conditions of Approval regarding enrollment and events, despite neighbors' continual requests of the school and the City to enforce the CUP - making it unusual and exceptional. The 100 events per school year are 10X higher than allowed (assuming "several" means "several" and not something else). As one commissioner pointed out, we need to distinguish between the EIR and the land-use requests in deliberating the Conditions and the variance, but the EIR in using 100 events to be "reduced" to 95 as a mitigation doesn't make logical sense and may be misleading. It is important to understand the City's purpose has historically been to limit the school's events, and not to allow them to be unlimited (the school's position).

The **Summary Floor Area** chart is interesting because it allows one to see the big picture of what is going on with the proposed expansion. Per the architects' plans (G..001 and AA2-02), the school itself is increasing its build-out by 40%. **Forty percent more school on the same six acres.**

The **Density Chart** provides an interesting comparison. One commissioner mentioned that Menlo School didn't have to list their events (?) because they just had them whenever they wanted to. Please note, Menlo School shares 61 acres with Menlo College. Even using only half of that acreage for the Menlo School, Castilleja has similar enrollment numbers on 1/5th of the acreage, and is surrounded by homes. Paly's acreage includes fields and tennis courts, a point the school often brings up and the commissioner repeated. That is indeed what is meant by density; **students per acre**. Open spaces are healthy and good for our

kids. Crowding them into underground spaces, 10 lbs to a 5 lb box, isn't.

Thank you for giving this your attention.

Andie Reed
PNQL

ATTMTS:
Attmt B
WRNS G..001
Comparison Chart
Summary Floor Area
Density Chart

September 2020 Email to Planning Commission from PNQL:

ATTMTS:
Attmt B
WRNS G..001
Comparison Chart
Summary Floor Area
Density Chart

Attachment B: PA Private Schools in Residential Zones

Staff Report pgs 27
9/9/2020 PTC Mtg.

	School Names	APN	Address	Zoning Designation	Lot Size	Building SQFT[1]	Allowed FAR[2 & 3]	CUP	Variance	Notes
1	Keys School (Lower School)	132-03-193	2890 Middlefield Road, Palo Alto, CA 94303	R-1	124,830	32,560	38,199	CUP granted in 2010 allowing modifications to the previously approved CUP # 90-UP-21. The increase in FAR & number of classrooms would not intensify the use/ Increase student number and would provide the opportunity to improve the existing traffic situation.	A Variance was required for the placement of the new buildings within the rear setback. The distance between the new buildings and the rear property line would be no less than 10 feet, per the conditions of approval.	Located with a Church. Expansion of Modular classrooms in March 2010
2	St. Elizabeth Seton School -A Drexel School (Grades PK-8)	003-27-041	1095 Channing Av, Palo Alto, CA 94301	R-1	191,746	54,303	Allowed FAR 53,110 sqft, on ground 58,274 sqft	An amendment to CUP #87-UP-40 in 2012 for addition and operation of 3,383 sqft Pre K and K building adjacent to existing K-8 school. This allows additional student enrollment and better vehichular circulation.	A variance to allow a five foot exception to the height limit for a new structure to house wireless communication antennas.	The CUP # 87-UP-40 amended permits 59-UP-26 and 64-UP-7 which allowed them location of Church, Rectory, Convent and School
3	Torah Academy (Grades 4-5)	127-26-209	3070 Louis Rd, Palo Alto, CA 94303	R-1	19,310	4,230	6,543	CUP In 2013 for 5,524 sqft addition and remodel. The project combined APN # 127-26-067 and the total FAR allowed was 9,754 sqft. The proposed FAR was 9,752 sqft.	No Variance	This project was finally withdrawn in 2015.
4	Tru (Grades K-6)	003-43-045	1295 Middlefield Rd, Palo Alto, CA 94301	R-1	44,526	7,275	14,108	A CUP granted in 2009 to allow after school enrichment activities, homework assistance, and tutoring for up to 10 children at a time in the Sunday School class rooms of Trinity Lutheran Church.	No Variance	Located with Church. Expansion in 1994
5	Bowman School (Grades K-8)	167-05-020	4000 Terman Drive, Palo Alto, CA 94306	R-1(10,000)	63,318	23,500	19,745	On May 2017 CUP approved for amending CUP # 03-CUP-07 for reducing student enrollment number and allowing the students to enroll at the new annex campus located at 693 Arastradero Road.	No Variance	
6	Castilleja School (Grades 6-12)	124-12-034	1310 Bryant St, Palo Alto, Ca 94301	R-1(10,000)	268,782		81,385			
7	Athena Academy (Grades 1-8)	147-08-047	525 San Antonio Av, Palo Alto, CA 94306	R-1(8,000)	84,070	18,964	25,976	CUP approved in 2013 for private school and daycare use in PAUSD owned property	No Variance	

Where is Building Sq Ft?

116,300 (see att'd)

Attmt B

ASSESSOR'S PARCEL NO.		SQ. FT.	ACRES	
	124-12-034	268,783	6.17	
	124-12-033	EXCLUDED FROM PROJECT ALTERNATIVE		
	124-12-031	EXCLUDED FROM PROJECT ALTERNATIVE		
	TOTAL AREA	268,765	6.17	
NET LOT AREA	268,765 SF			
LOT COVERAGE	ALLOWED	EXISTING	PROPOSED	PAMC***** 18.12.030 TABLE 1
	100,374 SF (35.0%)	65,273 SF (24.3%)	72,240 SF (27 %)	
EXISTING FLOOR AREA RATIO	0.43			
PROPOSED FLOOR AREA RATIO	**0.43			
EXISTING GROSS FLOOR AREA	ABOVE GRADE SF	*116,297 SF GFA		
	BELOW GRADE SF	43,913 SF		
	TOTAL SQUARE FOOTAGE (INCL. LOWER LEVEL)	160,210 SF TOTAL		
PROPOSED GROSS FLOOR AREA (INCLUDES EXISTING CAMPUS BUILDINGS)	ABOVE GRADE SF	115,895 SF (SEE G.005)		GFA
	BELOW GRADE SF	76,543 SF (SEE G.004)		
	TOTAL SQUARE FOOTAGE (INCL. LOWER LEVEL)	192,438 SF TOTAL		
NO. OF STORIES	2 (1 LEVEL OF BASEMENT)			
TYPE OF CONSTRUCTION	TYPE II-B			
OCCUPANCY GROUPS	E (MAIN OCCUPANCY), A2, A3, B, S			
FIRE PROTECTION SYSTEM	FULL FIRE ALARM AND SPRINKLERS			
ZONE DISTRICT	R-1 (10000)			
SETBACKS	ALLOWED	EXISTING	PROPOSED	
FRONT EMBARCADERO	24'-0"	108'-6"	108'-6"	
SIDE BRYANT	20'-0"	22'-0" - 52'-9"	20'-0" - 48'-1"	
SIDE EMERSON	20'-0"	20'-0" - 22'-0"	20'-0" - 78'-5"	
REAR KELLOGG	20'-0"	27'-9" - 31'-8"	20'-0" - 32'-6"	
MAXIMUM BUILDING HEIGHT	ALLOWED	EXISTING	PROPOSED	PAMC***** 18.12.040 TABLE 2
	***33'-0"	34'-6"	***30'-0"	
EXISTING VEHICLE PARKING SPACES	EXISTING BELOW GRADE	EXISTING ABOVE GRADE		PAMC***** 18.52.040 TABLE 1
	0	82		
PROPOSED VEHICLE PARKING SPACES	REQUIRED CAV SPACES	PROPOSED CAV BELOW GRADE	PROPOSED CAV ABOVE GRADE	CG*******

WRNS G.0.001 4/16/2020

00 GENERAL

G..000	COVER SHEET
G..001	PROJECT ALTERNATIVE DIRECTORY, PROJECT ALTERNATIVE INF
G..002	DISTRIBUTED DROP OFF SITE PLAN DIAGRAMS
G..003	PROJECT ALTERNATIVE FLOOR AREA DIAGRAMS
G..004	PROJECT ALTERNATIVE BELOW GRADE CAMPUS FLOOR AREAS
G..005	PROJECT ALTERNATIVE ABOVE GRADE CAMPUS FLOOR AREAS
G..010	PROJECT ALTERNATIVE NEIGHBORHOOD CONTEXT AND ELEVAT
G..030	PROJECT ALTERNATIVE OPEN SPACE PLAN
G..034	PROJECT ALTERNATIVE CIRCULATION PLAN
AS..100	EXISTING CAMPUS PLAN
AS..102	PROJECT ALTERNATIVE ACCESSIBILITY PLAN

11

02 LANDSCAPE

T..2.0	PROJECT ALTERNATIVE TREE PROTECTION PLAN
T..3.0	PROJECT ALTERNATIVE TREE PROTECTION NOTES
L..2.1	PROJECT ALTERNATIVE TREE PLANTING PLAN

3

04 ARCHITECTURAL

AA1..00	PROJECT ALTERNATIVE CAMPUS SITE PLAN
AA1..02	PROJECT ALTERNATIVE ACCESSIBLE EXIT PLAN
AA2..01	PROJECT ALTERNATIVE GARAGE SITE / FLOORPLAN UPPER LEVI
AA2..02	PROJECT ALTERNATIVE GARAGE SITE / FLOORPLAN LOWER LEV
AA2..03	PROJECT ALTERNATIVE GARAGE EXHIBIT LOWER LEVEL - SQUAI ENCROACHMENT / PARKING COMPARISON TO ORIGINAL PROJEC
AA3..01	PROJECT ALTERNATIVE SITE SECTIONS
AA..302	PROJECT ALTERNATIVE GARAGE STREET VIEWS
AB..301	PROJECT ALTERNATIVE EMERSON STREET VIEW
AB..302	PROJECT ALTERNATIVE BUILDING ELEVATIONS

9

Comparison of Local Private School Conditional User Permits

	Castilleja			Pinewood HS (Los Altos)	Stratford @ Garland (Palo Alt	Stratford @ Crestmoor (San Br	Hillbrook School (Los Gatos)
Acreage	6			7	10	10	14
Building s.f.	148K sq ft(Current). *174K sq ft(Proposed)*			40K sq ft	32K sq ft	22K sq ft	55K sq ft
Hours of Operation	Currently, no limitations. *Following proposed:* *1. M-F 7am to 10pm* *2. Sat 10am to 4pm*			7:30 am to 5:30pm	8am - 4pm with childcare 7-8:15am and 3:45-6pm	7am to 6pm	mid-Aug to mid-Jun M-F 7:30am to 6pm. Up to 10 times 6pm to 9:30pm.
	Approved	**Current**	***Proposed***				
Max Enrollment	415	438	540	300	482	250	414
Density: Students/A	69	73	90	43	48.2	25	30
Bldg s.f./acre	24667	24667	29000	5714	3200	2200	3980
Events	Currently no limitation. Proposed 90 events per school year 1. M - F 8am to 10pm: 70 events 2. Sat 8am to 10pm: 20 events 700 Guests: 2 events 500 Guests: 1 event 400 Guests: 6 events 300 Guests: 13 events 200 Guests: 33 events 100 Guests: 35 events			No evening courses or events permitted. Limited to 12/yr; must be over by 11pm on weeknights & midnight on Fridays & Saturdays	No evening courses or events permitted	No evening events except for Parents Night not to exceed 4/yr. 3 open house events on Saturday 10am - 1pm	10 events per academic year 6pm to 9pm. 1 Open House on Saturday 7:30pm to 3:30pm
Faculty	Not Limited			Shall not exceed 50	No limitation	23	No limitation
Parking	Not Controlled - Ad hoc signs suggesting Castilleja students, staff, parents and visitors not to park on resident's side, but no real			No On Street parking. Parking only allowed on campus or 8 spaces in front of school.	No On Street parking. All faculty, staff & student must park on campus	No On Street parking. Drop-offs and pick-ups must be staggered and parking onsite	No On Street parking. Drop-offs and pick-ups must be on school ground
Sound	No Regulations			Outdoor sound amplification allowed 5x/yr 8:30am - 5pm, max 4 hrs/day	Outdoor sound amplification allowed 5x/yr 8am - 5:30pm	No outside use of buzzers, bells or loud speakers	One amplified DJ event per academic year
Summer School	No Regulations			Regulated	Regulated	Regulated	6 weeks between mid-Jun to mid-Aug M-F 8:30am to 1pm

Comparison Chart

PNRL

Castilleja School 9/9/2020

Floor Area Ratio, Gross Floor Area, and Total Floor Area **PNQL document 1**

	Currently Existing	Proposed DCRGAIt	Allowed per PAMC
The project adds 40% more School to the same Six Acres:			
(numbers come from sheet **G..001** of the April 2020 plans, **pg 1.a.**)			
Total above ground square footage:	116,300	115,900	81,400
Total below ground square footage:	43,900	76,500	
Total above & below ground sq ftg:	160,200	192,400	
Add underground garage sq ftg: (see plans **AA2-02, pg1.b.**)		32,500	
Total useable square footage:	160,200	**224,900**	
Percentage Increase in useable square footage:		**0.40**	

What is **Gross Floor Area?**

18.04.030 (a)(65)© "total covered area of all floors of a main structure and accessory structures .... Including garages and carports"

18.04.030(a)(65)(D)(ii) "Basements .... shall be excluded from the calculation of gross floor area..."

18.12.090(a) "Basements may not extend beyond the building footprint..."

What is **Floor Area Ratio**?

18.12.040(a) TABLE 2, R-1 Residential defines it as .45 of the first 5,000 sq ft; .30 of each 5,000 sq ftg thereafter

How is it calculated? GFA divided by Lot Sq Ftg

Gross Floor Area square footage	116,300	115,900	81,400
Lot = 268,800	268,800	268,800	268,800
What is the **FAR** of Castilleja?	0.43	0.43	0.3026

(these numbers come from **G..001** sheet of the plans)

Is the underground garage included in GFA?

If it is a basement, then no. Is it a basement?

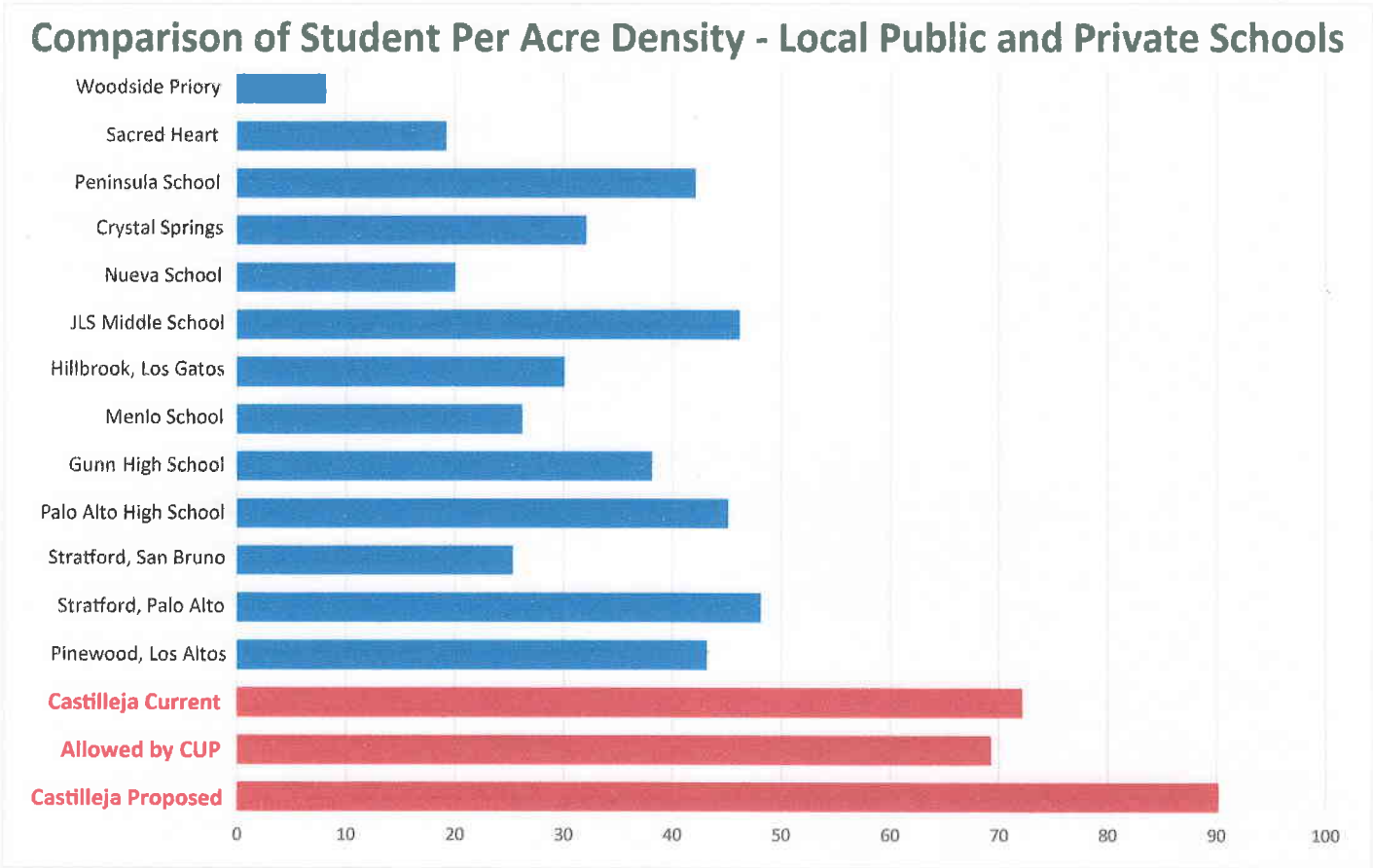
18.12.090(a) "Basements cannot extent beyond the building footprint... " *

18.12.090(b) "habitable space ... first floor is no more than 3' above perimeter"

If it is not a basement, then the FAR includes garage sq ftg

GFA		115,900	
underground garage square footage		32,500	
total GFA		148,400	
divided by Lot sq ftg		268,800	
proposed FAR (83% increase in FAR)		0.55	0.3026

Summary Floor Area - Pertinent Numbers



Private Schools data from websites & calling them. Public School data from PAUSD.

	ACREAGE	ENROLLMENT	DENSITY
Castilleja (current)	6	434	**72**
Castilleja (allowed by CUP)	6	415	**69**
Castilleja (proposed)	6	540	**90**
Pinewood - Los Altos	7	300	**43**
Stratford - Palo Alto	10	482	**48**
Stratford - San Bruno	10	250	**25**
Palo Alto High School	44.2	1994	**45**
Gunn High School	49.7	1885	**38**
Menlo School	31	795	**26**
Hillbrook - Los Gatos	14	414	**30**
JLS Middle School	26.2	1205	**46**
Nueva School K-8 & HIgh School	36	713	**20**
Crystal Springs Middle & High School	10	323	**32**
Peninsula School	6	252	**42**
Sacred Heart	64	1186	**19**
Woodside Priory	51	385	**8**

Density Chart

From:	Adrienne Lee Lee
To:	Planning Commission; Council, City; Castilleja Expansion
Subject:	Please Support Castilleja
Date:	Friday, October 9, 2020 12:05:54 AM

Dear Mayor Filseth and members of City Council,

My name is Adrienne Lee Lee and I live in Palo Alto, CA. I am writing to express my support for Castilleja School's new Master Plan and Conditional Use Permit application.

I am very happy that the DEIR found Castilleja's proposal to be 100% compliant with Palo Alto's Comprehensive Plan. The school and the City predate all of us and have a rich history together. Through this proposal, we hope to create the best possible future for the school, the neighborhood, and the City.

The DEIR supports Castilleja's project in many important and exciting ways, including a new campus design that is more compatible with the surrounding residential neighborhood; LEED Platinum Environmental measures that surpass Palo Alto's sustainability goals; a Traffic Demand Management Program that could allow for increased enrollment without increasing daily trips to campus; and an underground garage that is preferred over surface parking.

Castilleja was founded 112 years ago to equalize educational opportunities for women. I support Castilleja because the campaign against Casti has been unfair. The folks who live nearby had bought their home fully aware that it was near a school! My kids attended Duveneck Jordan and PALY so I have witnessed that Public schools have more cars and traffic than casti! Public schools have been modernizing buildings and have added ugly portable buildings at the edges of the property very close to residential neighbors. Public schools have built very tall 2 story buildings very close the residential homes. Public schools have very few trees and shrubs. Why attack casti? They have a Beautiful plan for new, spruced up landscaping and building modernization which always improves the neighborhood environment. Palo Altans are too quick to complain about changes in Palo Alto . the recent public landscape projects like CA Ave and San Antonio Road both of which had short term bareness due to old landscaping removal and brief grow-in periods which have revealed beautiful outcomes. Palo Alto has a small hyper-critical minority who should be patient and allow casti to upgrade the buildings and the landscaping for everyone's visual enjoyment.
If you ask residents in Palo Alto what Is their number 1 concern for their quality of life, they would tell you TOO many cars on the road! My feeling is that most of the vitriol against Casti's plans stem from this traffic dissatisfaction .
Casti is unfairly targeted for causing traffic by a vocal minority. The true cause of traffic which annoys residents like me is Stanford U workers ! They speed down Embarcadero Road 10-20 miles per hour over the limit from stop light to stop light! They true Traffic problem in our city is caused by commuters driving thru residential neighborhoods like Embarcadero Road. Most traffic is supposed to route thru Oregon Expresseay . ONLY local traffic should drive down Embarcadero Road!! This is the true cause of people's dissatisfaction of the roads. Our kids are in danger with the high volume and speeds caused by the commuters racing to work from 101. My own child was hit by a car while she was biking to Paly. I advocate for changing Embarcadero Road's 4 lanes to 2 lanes plus adding protected bike lanes. Charleston corridor road modifications have truly made it safer for biking . If Palo Alto wants to lighten traffic, we must make it safer to ride bikes and route thru traffic to Oregon THE EXPRESSWay..

I hope you will support Castilleja as it seeks to modernize its campus and gradually increase high school enrollment while minimizing its impact on the neighborhood.

Sincerely,

Adrienne Lee

From:	Andie Reed
To:	Planning Commission; Architectural Review Board; Historic Resources Board; Council, City
Cc:	French, Amy; Lait, Jonathan; Stump, Molly
Subject:	Moncharsh Variance Letter 10-8-20
Date:	Thursday, October 8, 2020 3:35:43 PM
Attachments:	Moncharsh FAR and Variance Letter with attmts 10-8-20.pdf

Dear Board Members and Commissioners, City Council members and City Attorney:
CC: Amy French, Jonathan Lait

Attached is PNQL's Attorney letter in response to the Castilleja expansion project's Request for Variance. Ms. Moncharsh asked me to forward it on to you.

Thank you,

Andie Reed

--
Andie Reed CPA
160 Melville Ave
Palo Alto, CA 94301
530-401-3809

LAW OFFICES
VENERUSO & MONCHARSH
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October 8, 2020

Palo Alto City Council
ARB, HRB, and PTC
By email

Re: Castilleja School application for variance

Honorable Members of the City Council
Honorable Members of the ARB, HRB, and PTC:

In this letter, we address whether the City should have included the underground garage square footage along with the square footage for the large building in its determination that a variance is required for Castilleja's project. We also dispute Castilleja's contention that its project qualifies for a variance.

This project is suddenly moving very quickly through the City's process. The speed has disrupted the established order of boards and commissions making recommendations to the PTC and then the PTC making recommendations to the City Council. There are multiple hearings jammed together on the calendar and with little time between them for preparation of response letters such as this one.

Granting a variance for an exception to the zoning code is a serious matter, especially here when the grant would almost double the size of the project beyond what the code allows. Courts carefully review the record and send back projects for which a city made findings unsupported by evidence. As shown below, the necessary findings cannot be made as to this project.

I strongly recommend that the City Council and the commissions remember that granting permits at breakneck speed often does not end with the train stopping at a project under construction. Instead, the train slows as the project goes not to a contractor but to a judge and even an appellate court. The City Council and commissions can avoid litigation by carefully considering the issues without emotion, preferences for one stakeholder over another, or undue

speed, and by complying with the duty to serve all of Palo Alto's citizens, with respect for the City's zoning code.

A. The City Planning Department Must Include the Garage Square Footage in Its FAR Calculations Because the Garage Is an Accessory Facility and Use

We accept Castilleja's and the City's conclusion that the Palo Alto Municipal Code (PAMC) §18.12.030 describes the proposed underground garage in the R-1 residential zone as an "accessory facility and use". On page 2 of her September 8, 2020 letter, Ms. Romanowsky, Castilleja's attorney, referred the commission to PAMC §18.12.80 (a)(1) defining accessory facilities as: "facilities and uses customarily incidental to permitted uses with more than two plumbing fixtures (but with no kitchen), and in excess of 200 square feet in size, but excluding second dwelling units."

Actually, the definition of an accessory structure is contained in PAMC §18.04.030, subd. 15: "'Accessory building or structure'" means a building or structure which is incidental to and customarily associated with a specific principal use or facility, and which meets the applicable conditions set forth in Section 18.12.080."

Ms. Romanowsky noted that this type of accessory facility is subject to regulations including a CUP and that PAMC §18.12.080 provides, in relevant part:

> 18.12.080 Accessory Uses and Facilities
>
> Accessory uses and facilities, as allowed in Section 18.12.030, shall be permitted when incidental to and associated with a permitted use or facility in the R-1 district. . . or. . . when incidental to and associated with an allowable and authorized conditional use therein, subject to the provisions of subsection (a), below (Types of Accessory Uses).
>
> (a) Types of Accessory Uses
>
> Accessory uses and facilities include, but are not limited to, the following list of examples; provided that each accessory use or facility shall comply with the provisions of this title:

> (1) Residential garages, carports, and *parking facilities*, together with access and circulation elements necessary thereto. (Emphasis added.)

The next obvious question, which Ms. Romanowsky does not answer in her letter, is whether the proposed garage should be included in Ms. French's computation of the gross floor area (GFA) for the project. If so, then the garage square footage must be figured into the Floor Area Ratio (FAR). Once we have the FAR, then Ms. French is required to determine if the FAR for the entire project complies with the limitation on square footage for FAR on the project site and whether a variance related to both the large building and the garage is required for the project.

Table 3 of PAMC §18.12.040 states: "Accessory structures greater than 120 sq. ft." must be included in GFA. There is a second reference to garages and carports in this table that states they must also be included in GFA. Presumably, this reference to garages and carports relates to residential uses and we have already agreed with Ms. Romanowsky that the proposed underground garage is an accessory structure.

Therefore, Ms. French must include the proposed garage in the GFA and factor it into the FAR calculation. Because she has already determined that the proposed large new building exceeds the allowable FAR, it is reasonable to assume that the further addition of the underground garage square footage to the GFA, and then factoring it into the FAR, will result in an even greater violation of the FAR restriction. This result of including the square footage of the large building with the square footage of the garage means that Castilleja is required to obtain a variance for the entire GFA that exceeds the permissible FAR.

Just as it appears Ms. Romanowsky and PNQL have agreed on the characterization of the underground garage as an accessory facility and use, she suddenly, instead, defines it as a "basement" on page 2 of her letter:

> The proposed below grade parking facility falls within the definition of "basement," defined as "…that portion of a building between the lowest floor and the ceiling above, which is fully below grade or partly below and partly above grade, but so located that the vertical distance from grade to the floor below is more than

> the vertical distance from grade to ceiling. PAMC 18.04.030 (15)." (Romanowsky letter, p. 2.)

This is a strange new position to take because basements are *not* accessory facilities or uses and they are not listed as such in PAMC §18.12.040, the very same code section above that Ms. Romanowsky relied on for her conclusion that the garage is an accessory facility and use. Furthermore, the definition for a basement that she quotes above in PAMC §18.04.030 (13) does not match the underground garage at issue here because the garage is not a "portion of a building" since there is no building above the garage. The Merriam-Webster definition of "basement" is: "the part of a building that is wholly or partly below ground level." This definition also does not support calling the underground garage a "basement" since it is not "part of a building." Nevertheless, PNQL agrees that the code does not allow including the square footage of basements in the GFA.

On page 3 of her letter, Ms. Romanowsky changes her mind about the correct definition of the underground garage and now calls it a "parking facility," instead of an accessory facility and use, or a basement. A parking facility is defined as: "Parking facility" means an area on a lot or within a building, or both, including one or more parking spaces, together with driveways, aisles, turning and maneuvering areas, clearances, and similar features, and meeting the requirements established by this title. "Parking facility" includes parking lots, garages, and parking structures. (PAMC §18.04.030 subd. 111.)

Ms. Romanowsky has now taken us on a complete circle back to where she started. She initially claimed that the underground garage was an accessory facility and use – we agreed and showed that a parking facility is an accessory facility and use, and more to the point it required Ms. French to include the square footage of the underground garage in the GFA, and then in calculating the FAR. (PAMC §§18.12.080 (a)(1) and 18.12.040.) We must now turn to Ms. Romanowsky's September 11, 2020 letter to see where she takes us in her attempt to find something, really anything, in the PAMC that will prevent the City from properly requiring a variance for the FAR as applied to the large building *and* to the underground garage but we find that her September 11, 2020 letter is silent on this topic. Next we examine planner Ms. French's interpretation and explanation of why she did not include the underground garage in the GFA and then in her FAR calculation.

B. Staff Report Regarding the FAR Issue

On page 5 of her September 9, 2020 staff report, Ms. French reiterates the following question from the PTC:

> 4. Please explain how subterranean areas are accounted for in the project's gross floor area (GFA) and/or floor area ratio (FAR). Explain what underground areas are counted towards FAR and GFA, which are not, and why. Please note any other similar underground areas that were accounted for in a similar or different manner.

Ms. French starts out by incorrectly claiming that the PAMC does not address non-residential parking garages:

1. Below grade parking facility

> The City's Gross Floor Area regulations do not directly address the treatment of non-residential parking, which are generally known as "parking facilities." An underground parking facility would be excluded from Gross Floor Area because it does not constitute habitable space.

As shown in Ms. Romanowsky's September 8, 2020 letter, the proposed underground garage is an accessory "parking facility" and we agree. Ms. French's statement above that the zoning code does not apply to non-residential parking facilities is incorrect, as shown above. Further, parking facilities are included in the zoning code's GFA, also as shown above.

To support her interpretation, Ms. French takes us on an excursion into the language in the zoning code that only applies to residential uses but we already know that the table for inclusion in the GFA includes *both* residential "garages and carports," and accessory facilities and uses greater than 120 square feet such as "parking facilities." Here is that table:

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TABLE 3
SUMMARY OF GROSS FLOOR AREA FOR SINGLE FAMILY RESIDENTIAL DISTRICTS

TABLE 3
SUMMARY OF GROSS FLOOR AREA FOR SINGLE FAMILY RESIDENTIAL DISTRICTS

Description	Included In GFA	Excluded from GFA
Accessory structures greater than 120 sq. ft.	*	
Second floor equivalent; areas with heights >17'	* (counted twice)	
Third floor equivalent: areas with heights > 26'	* (counted three times)	
Third floor equivalent, where roof pitch is > 4:12		* up to 200 sq.ft. of unusable space
Garages and carports	*	
Porte cocheres		*
Entry feature < 12' in height, if not substantially enclosed and not recessed	* (counted once)	

Thus far, there is no evidence to support Ms. French's statements about the GFA.

Next, Ms. French, like Ms. Romanowsky, takes a stab at calling the proposed underground garage a "basement", which would not be included in GFA:

> A non-residential, below-grade parking facility meets the definition for "basement." "Basement" means that portion of a building between the lowest floor and the ceiling above, which is fully below grade or partly below and partly above grade, but so located that the vertical distance from grade to the floor below is more than the vertical distance from grade to ceiling."

(Staff report, p. 5.)

There are two problems with this interpretation of the code: 1) The underground garage does not meet the PAMC definition of a "basement", and 2) The City, Ms. Romanowsky and PNQL all agree that the underground garage *is* an

accessory facility and use, specifically a “parking facility”. Therefore, under the table above, it must be included in the GFA.

On page 4 of her staff report, Ms. French provided the section in the PAMC defining “basement”, and she concludes: “However, because the sentence references a “main residence,” staff has previously interpreted this section to apply only to residential uses. Staff have applied that interpretation to Castilleja’s application.” Thus, staff incorrectly applied the “basement” definition to the underground garage. However, as admitted by Ms. French, the definition of “basement” does not match the proposed underground garage because the garage is a separate structure from any other building and is not residential.

On page 5 of her staff report, Ms. French finally takes the defensive position that since the city in the past has failed to include an accessory facility and use, specifically, a parking facility in the GFA for another project (Kol Emeth’s underground garage,” in violation of its own PAMC, then it was alright to ignore its legal obligation to include it for the Castilleja project. This paragraph on page 5 does not even make sense:

> Related Case
>
> In a similar manner to the Castilleja proposal, the Kol Emeth property on Manuela Avenue also requested a CUP approval for religious institutional use in an R-1 zone district, with Architectural Review of an underground parking facility. That project’s below grade parking facility was viewed as an accessory facility/use to the primary use. Because the underground parking was not associated with single family use, it was allowed as an accessory facility, and did not require approval of a variance, and did not count toward the FAR/GFA (see PAMC Section 18.12.030(e) above).

If the CUP application included an underground parking lot that was an accessory facility and use, as stated above, Ms. French should have counted the square footage in her GFA. If that square footage exceeded the FAR, she should have required a variance. Assuming she failed to comply with the zoning code with another project lends nothing to our discussion here. (Her reference to PAMC §18.12.030 is just the definition of accessory facilities and uses, which we all

agree fits the proposed underground garage. There is no subsection (e).) If she did not require a variance because the square footage was within the FAR, the example is meaningless. If she calculated the FAR incorrectly by leaving out the GFA of the underground parking garage, and in fact there was a violation, that violation has now been waived unless any opposition to the project pursued it in court in a timely manner. Further, her mistake with one project that is not even located near the proposed project site, hardly sets up a precedence or in some other way opens the door for Castilleja to profit from Ms. French's mistake.

Here, Castilleja's project already violated FAR just as to the large building before we even get to the discussion of the GFA of the underground garage and whether it should have been included in the FAR. Accordingly, the PTC has no evidence that would support findings that the underground garage is: 1) a "basement," 2) is not covered in the PAMC, and 3) that the PAMC allows the City to ignore its requirement to include this "accessory facility and use", specifically a "parking facility", in calculating the GFA. The variance that the City called out for the large building because it violates the FAR should have also included the underground garage.

C. The Project Does Not Qualify for A Variance

On September 11, 2020, Ms. Romanowsky responded to our letter of September 18, 2018 (attached) and failed to meet her client's burden to show that other properties have received the same privilege that she seeks for Castilleja. Her legal burden was to show the City that there have been other properties in the same vicinity and zone that have received substantially the same variances as she is requesting. Not only has she failed to meet that burden, but in Attachment B of Ms. French's September 9, 2020 staff report, she has provided a chart that shows the very few variances the City has granted in the past to *any* private school. Only two of them were granted variances and a review of them is instructive:

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	School Names	APN	Address	Zoning Designation	Lot Size	Building SQFT[1]	Allowed FAR[2 & 3]	CUP	Variance	Notes
1	Keys School (Lower School)	132-03-193	2890 Middlefield Road, Palo Alto, CA 94303	**R-1**	124,830	32,560	38,199	CUP granted in 2010 allowing modifications to the previously approved CUP # 90-UP-21. The increase in FAR & number of classrooms would not intensify the use/ increase student number and would provide the opportunity to improve the existing traffic situation.	A Variance was required for the placement of the new buildings within the rear setback. The distance between the new buildings and the rear property line would be no less than 10 feet, per the conditions of approval.	Located with a Church. Expansion of Modular classrooms in March 2010
2	St. Elizabeth Seton School -A Drexel School (Grades PK-8)	003-27-041	1095 Channing Av, Palo Alto, CA 94301	**R-1**	191,746	54,303	Allowed FAR 53,110 sqft, on ground 58,274 sqft	An amendment to CUP #87-UP-40 in 2012 for addition and operation of 3,383 sqft Pre K and K building adjacent to existing K-8 school. This allows additional student enrollment and better vehichular circulation.	A variance to allow a five foot exception to the height limit for a new structure to house wireless communication antennas.	The CUP # 87-UP-40 amended permits 59- UP-26 and 64-UP-7 which allowed them location of Church, Rectory, Convent and School

The two variances that were granted out of numerous ones that did not receive variances involved minor adjustments to height or a setback.

Ms. Romanowsky again argues on page 1 of her September 11, 2020 letter that other properties in the neighborhood somehow are receiving a privilege that Castilleja would be denied if it could not obtain a variance. However, the argument made no sense two years ago and it has not improved with time. Her burden is not to show that single-family houses got to use more of their lots than Castilleja would be allowed if it were a single-family house, but whether there is any similar situation in the same vicinity and R-1 zone where the City has been granting permits to allow similar properties as Castilleja's property to violate the FAR. For example, she needed to show where, in the same vicinity and R-1 zone, the City granted a variance to allow an institution to practically double the amount of GFA square footage on its land. This she has not done. Looking at the paucity of variances the City has granted to other schools throughout the City, it appears that historically, Palo Alto has not issued

any variances, such as the one Castilleja seeks here, for any such major variations to its zoning code requirements.

D. There Is No Showing That Castilleja Would Suffer A Substantial Hardship Without a Variance

In our September 18, 2018 letter opposing Castilleja's request for a variance, we cited PAMC §18.76.030, which states the purpose of a variance. It has two initial criteria:

> (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.

For an example of a court decision interpreting almost verbatim the same language in the context of an application for a zoning variance, we cited *Walnut Acres Neighborhood Assn. v. City of Los Angeles* (2015) 235 Cal.App.4th 1303 (*Walnut Acres*). The court stated the following:

> "Unnecessary hardship" is a term of art generally used in the context of evaluating a zoning variance. For example, under the Los Angeles Municipal Code, no variance may be granted unless " 'the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations.' " (cite.) Although the test includes both "practical difficulties" and "unnecessary hardships," the focus should be on "unnecessary hardships" and not "practical difficulties," which is a lesser standard. (cite.)

(*Walnut Acres*, *Id*., at p. 1305.)

We showed that the trial court and then the appellate court rejected an argument that a variance for an eldercare facility should be granted because otherwise the developer would have to reduce the square footage and would suffer a financial

loss. Just as here, there was nothing in the record that would support the claim of "hardship." (*Walnut Acres*, *Id*., at p. 1315.)

In her reply letter on page 2, Ms. Romanowsky incorrectly states: "First and foremost, the *Walnut Acres* is not a variance case; rather, it is about a Los Angeles municipal ordinance which governs the permitting process for eldercare facilities." She could not have been more wrong and a copy of the case is attached to our letter. Having misread this variance case, Ms. Romanowsky goes on in her letter to conflate the first criteria with the second, and goes back to her argument about the differences in physical layouts between Castilleja's property and its neighbors. However, the two criteria in PAMC §18.76.030 are in the conjunctive with the use of the word "and" between them. Ms. Romanowsky needed to show both "physical constraints" and under the code section "substantial hardship." Ms. Romanowsky showed neither and her client's request for a variance must be denied.

The problem is that there does not appear to be anything in the record even showing a necessity for the school to be expanding in the first place, let alone by exceeding the FAR with the large building and the underground garage. The record seems to only show that the school wants more modern buildings and it would like to have more students. It does not even go as far as the developer in *Walnut Acres* by showing some sort of financial problem, or any problem at all that would cause a substantial hardship without a variance. As such, the City Council has no evidence to support the findings for granting a variance and it must deny the request.

Castilleja's reliance on *Committee to Save Hollywood Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168 (*Save Hollywood*) is misplaced for the reasons that we already discussed in our September 18, 2018 letter. Ms. Romanowsky now continues conflating the first two criteria, cited above, by mixing together uniqueness of physical features of a property with the second criteria about substantial hardship. Her argument on page 2 of her recent letter simply continues the conflation of that criteria and does not make sense:

> As outlined in our Variance Request, the large size of Castilleja's property both makes their property distinct in character from other nearby properties (it is the only one of its size) and deprives Castilleja of an additional 7.2% floor area ratio enjoyed by nearby property owners in the same zoning district. As such,

> there is substantial evidence in the record supporting that conclusion that the uniqueness of the Property creates an unnecessary hardship and justifies the approval of a variance based on case law precedent.

Just stating that Castilleja is the only large property in the neighborhood does not equate with identifying "special physical constraints, resulting from natural or built features" that would necessitate a variance from the FAR restriction. All she has shown is that her client's property is larger than other properties, which is not the test. Further, the type of physical constraints for which the cases allow minor exceptions to the zoning code restrictions do not include wholescale, great square footage increases. In *Save Hollywood*, the granted variance was for extra inches of height for a fence and a minor reduction in the three-foot setback. (*Id.*, at p. 1184.) The findings for granting the variance were supported by evidence in the record regarding the physical constraints of the property and the hardship if it were denied. Here, Castilleja has stated none.

In our letter of September 18, 2018, we distinguished the facts of *Eskeland v. City of Del Mar* (2014) 224 Cal.App.4th 936 (*Eskeland*), cited by Castilleja, from the facts here. In *Eskeland*, the court upheld a variance from a 20-foot front yard setback on the grounds that there were physical constraints because the applicant's proposed rebuilt house site was on a steep hillside. Without a setback variance, the property owner would not be able to enjoy the same amenities as his neighbors and would be restricted to building his house in a way that would impact the steep slope and landform. If the city denied the variance, the driveway to the house would be "very steep and dangerous." (*Id.*, at pp. 936, 952.)

In response, Castilleja claims that we misread the *Eskeland* case and that the real reason the court upheld the variance was because of aesthetic considerations:

> In *Eskeland*, when the city approved the variance, it considered design alternatives and concluded that the design with the variance was "the best alternative." In upholding the grant of the variance, the court found "the city may consider—among other things—whether there would be an adverse impact on aesthetic goals such as preserving open spaces."

(Ms. Romanowsky's letter, p. 2.)

This interpretation of *Eskeland* makes no sense – the test for granting variances is not the same as the city's discretionary decision regarding which alternative in the EIR is the best aesthetic choice. It is telling that Ms. Romanowsky leaves out any citations to page numbers for her numerous interpretations of this case. Her general impressions of the case are simply wrong.

This statement is also incorrect: "Thus, case law supports the City's ability to approve the variance and allow Castilleja to maintain the floor area it has maintained through its historic use permits and from long standing practice, before the City established a zoning limitation on floor area." (Letter, p. 3.) The *Eskeland* found that nonconformity with the zoning code, *by itself*, was not grounds to disallow a variance:

> *As long as the requirements for a variance are met*, the municipal code does not preclude the City from approving a variance that will expand the degree of nonconformity of a nonconforming structure.

(*Eskeland*, *supra*, 224 Cal.App.4th at 942 – emphasis added.)

Here, we are challenging the granting of a variance not because it would allow nonconformity but because Castilleja has not shown that its variance application meets the requirements under the zoning code for granting a variance. Without that showing, the City cannot make the necessary findings for granting a variance.

The remainder of Ms. Romanowsky's letter relies on the EIR for evidence that the variance should be granted. However, she is focusing on only one of the eight elements she needed to demonstrate for the grant of a variance. Further, the EIR is considering environmental impacts, not code compliance, when it describes why its preparer thinks the project's aesthetics are desirable. A failing of the EIR is that it does not discuss the inconsistency between the request for a variance and the zoning code. However, that is a topic for another letter concerning the deficiencies in the EIR.

For all of the foregoing reasons, Castilleja has not and cannot produce evidence to support the grant of a variance for a sizeable exception to the zoning

code, which would allow it to almost double the FAR over what the City's zoning code permits.

Thank you for considering our comments.

Sincerely,

Leila H. Moncharsh

Leila H. Moncharsh, J.D., M.U.P.
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cc: City Attorney
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LEILA H. MONCHARSH

September 18, 2018

Amy French, Chief Planning Official
City of Palo Alto
250 Hamilton, 5th Floor
Palo Alto, CA 94301

Re: Castilleja School Application for Variance for One 84,572 Square Foot Building in Violation of Zoning Code Floor Area Ratio Restriction

Dear Ms. French:

My client, PNQL, opposes Castilleja School's application for a zoning variance allowing construction of an 84,572 square foot institutional above-ground structure, which exceeds the allowable floor area ratio (FAR) under the zoning code. Castilleja is also not entitled to the variance because the proposed structure violates the Comprehensive Plan. The proposed building is incompatible with the surrounding residential neighborhood. Granting the variance would illegally bestow a special privilege on Castilleja since the city has not allowed other properties in the same zone and vicinity to exceed the FAR restriction in the zoning code.

Furthermore, if Castilleja eventually moves in the future, the city could find itself burdened with an 84,572 square foot structure on the property that will be hard to repurpose due to its size. Developers generally are hesitant to pay the repurpose or demolition costs for such a large building. Today's decisions about the configuration of the property may well dictate the city's options for future uses of the property. The city council should deny the request for a variance.

A. Requested Variance for A Combined Building of 84,572 Square Feet

On March 22, 2018, Castilleja applied for a variance that would facilitate demolishing five existing buildings and then combining the square footage of those five demolished buildings into one new large building. The school believes that the city planner's decision to require a variance is due to "unintended consequences because the floor area ratio" will exceed the current FAR for residential properties in the R-1 zone. It argues that the construction of the 84,572 square foot building is necessary because the older buildings it wishes to demolish cannot be brought up to today's green and seismic building standards. Further, the community will receive benefits because the single structure will allow for a half-acre community park and a public bike pavilion. Castilleja also argues that historically, the city has granted permits for Castilleja's requests to develop its property as it wishes. Therefore, reasons Castilleja, the city should issue a variance now and continue allowing Castilleja to develop its property as it pleases. We disagree with the school's analysis.

The city planning department is requiring a variance because the square footage of the proposed new large building violates the zoning code. The five buildings Castilleja wishes to demolish were constructed on the school property before Palo Alto adopted a particular type of density restriction into its zoning code. The use of the FAR calculation was incorporated into city zoning codes during the 20th century as a way for cities to control rapid growth. Today, city planners use it for restricting planning permissions, setting a limit on the "load factor" generated by new developments, beyond which the proposed project may place undue stress on a city and its public infrastructure. The calculation also allows cities to control the density of use in given zones. By containing the size of a building on a given lot, the FAR restriction allows the city to limit the number of persons who will be using that building.

It appears that the five buildings Castilleja wishes to demolish would not be permitted today without a variance because their square footage would violate the current zoning code FAR for the zone where the school is located. Combining the square footage of all the five buildings Castilleja wishes to demolish and placing the square footage all in one huge building does not prevent the need for a variance from the FAR restriction. It would just convert five small buildings into one huge, very institutional appearing building, in the middle of a single-family residential neighborhood.

As of this writing, Castilleja has not yet submitted plans showing the details of the proposed 84,572 square foot building. Therefore, the planner cannot determine by how much the proposed new building exceeds the FAR for the zone. However, there is no dispute from Castilleja that its proposed project requires a variance for the proposed 84,572 square foot building.

Castilleja did not include the 84,572 square foot building in its plans to help the neighborhood by providing a park and bicycle way station. It is driven exclusively by the school's desire to increase the number of students and employees. That desire and the rest of the reasons Castilleja offers to support its request for a variance do not justify granting one, which will open the door for other institutions in the same zone and vicinity to claim they are also entitled to the equal privilege. Eventually, the FAR would become meaningless. As shown below, Castilleja has not met its burden to demonstrate with facts and law that it is eligible for a variance under the city's zoning code.

B. Castilleja Has Failed to Demonstrate that It Is Entitled to A Variance

The city code provides that variance permits are intended to address unique constraints that would make it a hardship for the developer to comply with the zoning code restrictions:

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; 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.

(Section 18.76.030)

No particular physical constraints or hardships are preventing the campus from being used in ways similar to other sites such that it would qualify for a variance from the zoning FAR restriction. Therefore, Castilleja is not entitled to the grant of one.

a. There are no unique physical constraints on the Castilleja campus

Castilleja argues that it meets the criteria because it has a unique history. It built its structures before the city's adoption of the zoning code with FAR density restrictions. After the passage of the zoning code, the city allowed the school to build and remodel structures in compliance with a conditional use permit but did not enforce the FAR restriction. Further, the FAR applies to residential properties, not institutions. (3/22/18 Letter, page 2[1].) However, the burden was on Castilleja to show that its physical constraints due to natural or built features prevented it from being used in ways similar to other sites in the same vicinity or zoning district. (*Walnut Acres Neighborhood Assn. v. City of Los Angeles* (2015) 235 Cal.App.4th 1303, 1313-1315 (*Walnut Acres*).) The city historically allowing Castilleja to construct larger buildings than would be permitted today does not meet that test.

b. There is no showing that Castilleja would suffer a substantial hardship without a variance

Castilleja contends that if the city denied a variance from the FAR restriction, it would disproportionally constrain Castilleja's property compared to other parcels in the vicinity. (Letter, page 3.) However, zoning regulations are designed to restrict the use of properties. Whether they do so disproportionately is not relevant to the legal requirement that the applicant demonstrates "substantial hardship" to qualify for a variance. For example, hardship is something that would prevent profitability. *Walnut Acres*, *supra*, is instructive. In that case, the developer applied for permits to build a 50,289 square foot eldercare facility in a low-density

[1] All citations to a "Letter" are referring to the one written by Castilleja's attorney, Mindie Romanowsky, to city planner Amy French and dated March 22, 2018.

residential neighborhood, similar to the one surrounding Castilleja. The Los Angeles zoning code restricted the FAR to 12,600 square feet. The developer argued that the growing demand for senior care was so great that if it reduced the square footage to comply with the zoning code, it could only provide 16 rooms instead of 60 rooms and thus, would deprive Los Angeles of needed senior services. The city council granted the variance requested by the developer and the neighborhood association filed a lawsuit. The superior court ruled in favor of the neighbors and set aside the permit. The court of appeal rejected the property owner's reasons for its appeal because there was no substantial evidence of a hardship:

> There was no evidence that a facility with 16 rooms could not be profitable. Eldercare homes apparently include small homes with four to 10 beds, according to the zoning administrator's report. There was no evidence that necessary support services demanded additional rooms in order to generate a profit. Just as in *Stolman v. City of Los Angeles*, supra, 114 Cal.Appage4th at page 926, there was no "information from which it [could] be determined whether the profit [was] so low as to amount to 'unnecessary hardship' "

(*Walnut Acres, supra,* at page 1315.)

Like the developer in *Walnut Acres* Castilleja submits no evidence that if it is required to construct buildings on its property that comply with the FAR restriction it will become unprofitable or that running a private school, of necessity requires larger structures than the FAR limitation would allow. Accordingly, it has not demonstrated that it will suffer "substantial hardships, constraints, or practical difficulties that do not normally arise on other sites in the same vicinity and zoning district." (Zoning Code Section 18.76.030.[2]) Accordingly, the city council should deny Castilleja's request for a variance to construct an 84,572 square foot structure.

There also is no showing by the school that the FAR would only apply to residences and not to institutions. Typically, the city would apply the FAR limitiation to the institution's location. We expect that the FAR applicable to institutions in downtown Palo Alto or its industrial area would be more flexible for an institution wishing to build there than a FAR that applies to single-family zones. There is nothing in Castilleja's argument that shows complying with the current FAR would prevent the school from using its property due to physical or natural constraints, which do not exist for other similar properties. Nor does it show that compliance with the FAR restriction would create a hardship that would not apply to other institutions in the same zone and vicinity. The school's problem is that it wants to re-arrange its structures so that it can accommodate a much higher enrollment than what it has now, but that is the very reason for

[2] All section references are to the Palo Alto Zoning Code.

the FAR restriction – to prevent a high level of density incompatible with the institution's surrounding neighborhood.

Without the variance requirement, and just relying on the existing conditional use permit for density, as the school would prefer, the school would be able to keep seeking modifications of its conditional use permit for more enrollment. The variance requirement prevents the school from building its property to accommodate unfettered growth that depends on the "politics of the day." Instead, the variance restriction relates to the city's interest in not having the project site use excessive city resources, to the detriment of the overall, surrounding infrastructure maintained by the city. For example, the larger the allowable density, the more people who can be on the campus. That means more cars parking on the streets, more traffic for students and employees on city streets, and more city services to maintain those streets, provide protection, arrange for garbage disposal, and the like.

It is not in the city's interest to grant a variance. Furthermore, the city council does not have the factual or legal basis for making the findings for granting a variance.

C. The City Council Does Not Have a Basis for the Findings Necessary to Grant a Variance

The zoning code only allows the city council to grant an application for a variance by making specific findings. It would have to find, in relevant part, *all* of the following:

1. That there are special physical circumstances that exist on the property which would cause the strict application of the FAR to deprive Castilleja of privileges enjoyed by other property in the vicinity and the same zoning district as Castilleja's property;

2. That the special personal circumstances peculiar to Castilleja does not form any consideration for granting a variance;

3. That the granting of the application would not affect substantial compliance with the zoning regulations;

4. That the grant of a variance will not 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;

5. That the granting of the variance is consistent with the General Plan; and

6. That 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.

(Section 18.12.030, subd. (c).)

1. There are no unique physical circumstances that exist on Castilleja's property which would cause the strict application of the FAR to deprive Castilleja of privileges enjoyed by other property in the vicinity and the same zoning district as Castilleja's property

On page 3 of the Letter, it correctly states that the school's parcel is different from the parcels with housing because it is much larger in square feet, but that is irrelevant when determining whether a variance would grant a privilege to Castilleja that is not enjoyed by other property in the same zone and vicinity. Castilleja had the burden to list properties in the same zone and vicinity where the city has granted the privilege of exceeding the FAR. It has failed to do so. For that reason alone, the city council should deny the application for a variance.

Castilleja relies on several cases to support its position that in considering whether to grant a variance, it should look at the "disparities between properties, not the treatment of any individual property's characteristics in the abstract." (Letter, page 4.) That is true but is out of context. A city can properly grant a variance when strict enforcement of the FAR restriction would prevent safety problems or a property owner from enjoying the same amenities enjoyed by owners of properties in the same zone and vicinity.

For example, in *Eskeland v. City of Del Mar* (2014) 224 Cal.App.4th 936, cited by Castilleja, the appellate court upheld the grant of a variance, keeping in mind that other houses in the same area were able to build with amenities that the property owner wanted to include in his rebuilt home. The variance application requested a variance from the setback zoning restriction so that the owner of a house could rebuild it on a very steep hillside. The city based its decision to grant a variance because the steepness of the hill restricted its development potential. Unlike Castilleja, the property owner demonstrated that without a variance, he could not construct a house with the same amenities as other houses within the same area. The lack of a variance would restrict him to build a house that would adversely impact the steep slope and landform. Also, if the city denied the variance, the driveway to the house would be "very steep and dangerous." (*Id.* at 952.)

In *Save Hollywood Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, another case cited by Castilleja, the appellate court upheld the grant of a variance from the three-foot setback requirement and the height restriction because there was an adequate showing of substantial hardship if the city had denied it. The property owner had constructed a wooden fence

on top of a 1920s historic masonry wall, instead of three feet back from the wall. (*Id.*, at page 1172.) The court concluded that there was evidence of hardship if the city had required a three-foot setback. The subject property was a three-parcel site without a backyard, and all of the property faced a winding street. Much of the yard was below grade, which made enforcing the three-foot setback problematic. (*Id.*, at page 1184.) Also, the three-foot setback, if applied, would cause a gap between the wall and yard, which would cause a safety hazard:

> Further, the property sits below grade on a winding street, and enforcing the requirement would create a more significant risk by providing a gap between the wall and yard into which persons and debris could fall. The fact that other properties in the area may have a similar below-grade configuration and do not have such fences does not detract from the necessity of ameliorating the substantial safety hazard which would remain if the City strictly enforced the setback requirement.

(*Id.*, at page 1184.)

Castilleja's third cited case also does not support its position that the city should compare the size of residential lots and the size of Castilleja's property, and on that basis alone, grant a variance from the FAR restriction. In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506 (*Topanga*), the California Supreme Court determined that the city did not make sufficient findings to support the grant of a variance, allowing a 93-space mobile home park within an acreage zoned for light agriculture and single-family houses with a one-acre minimum lot size. (*Id.*, at page 510.) The court recounted the support for granting the variance, including the desirability of satisfying a growing demand for new low-cost housing, presumably through use of mobile homes, that the project could provide a fire break, and that other uses such as for single-family houses would necessitate costly grading. (*Id.*, at page 520.) Then, the court explained that these considerations were legally irrelevant:

> These data, we conclude, do not constitute a sufficient showing to satisfy the (cite) variance requirements. [Variances are permitted] "only when, because of special circumstances applicable to the property, . . . the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification." This language emphasized disparities between properties, not the treatment of the subject property's characteristics in the abstract. It also contemplates that at best, only a small fraction of any one zone can qualify for a variance.

(*Id.*, at page 520.)

Here, Castilleja has not shown in what way it cannot construct its improvements by staying within the FAR restriction. It also has not demonstrated that other properties near it have been allowed to build in contravention to those restrictions. Thus, there is no substantial hardship preventing Castilleja from constructing new buildings due to safety problems, land configuration limitations, or otherwise as occurred in two of its cited cases. Nor has it shown that the city has waived the same restrictions for surrounding property owners.

Like the developer in *Topanga*, Castilleja has only come up with irrelevant arguments to support its variance application. For example, it argues that the following supports its position: the difference in the square footage of surrounding properties compared with its square footage, the history of the city granting permits for buildings on the site, that the new building will be seismically up-to-date, that the new plan will be beneficial to the neighborhood, and that the building will be architecturally attractive. (Letter, page 5.) None of these arguments suffice to show that the school cannot build on its campus without a variance.

Castilleja argues that it needs the variance to meet current code and seismic standards, but it does not show why the lack of a variance prevents it from upgrading its existing buildings or constructing one or more new buildings less than 84,572 square feet and complying with the FAR limitation. Increasing square footage with a new plan that incorporates this large, institutional building may be an advantage, but it does not satisfy any legal requirement for obtaining a variance from the FAR restriction. Similarly, even if Castilleja believes that the new, sizeable institutional building will be attractive and compatible with the neighborhood, that also does not qualify as showing "substantial hardship" or that the neighbors are receiving some advantage that Castilleja does not enjoy.

The city council should deny the variance application.

2. Granting the variance will affect substantial compliance with the regulations and will constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity or same zone

Castilleja contends that its master plan substantially complies with the zoning code (Letter, page 5.) Its contention evidences a lack of reality. A project that substantially meets the zoning code is one that requires a building permit, not a slew of discretionary permits including variances that are exceptions to the rules for the zone. Here, Castilleja is requesting a conditional use permit, encroachments into public easements, a variance to construct a building that violates the FAR, and for another variance to get around the setback requirements by encroaching into the sidewalk for a proposed underground garage. The city does not have to grant any of these permits – each is discretionary. These requested permits represent privileges that the city could grant, not rights that the city must grant to Castilleja. They are also privileges that Castilleja has

failed to show nearby neighbors are enjoying. PNQL is aware of nobody else in the neighborhood, who has exceeded the FAR or obtained a variance to do so.

The fact that historically, the city has granted permission to build out the site in a way that exceeds the current FAR restriction is not a legally cognizable reason to grant a variance, as discussed above. Castilleja has cited no cases that would support such an interpretation of the city's requirement to make specific findings. For this reason, also, the city should deny the application for a variance.

3. Granting the Requested Variance is Inconsistent with the Comprehensive Plan

Castilleja references goals and land use policies in its Letter (page 7) to support the construction of the proposed 84,572 square foot building. However, policies, not goals, are binding upon the city. (See definitions of "policies" and "goals" on page 6 of the Comprehensive Plan (CP). Also, the CP contains several "elements," and the planner has to consult each in determining whether the application for a variance violates the CP. Below are the relevant sections from each, the housing and land use elements:

Policy H1.4 Ensure that new developments provide appropriate transitions from higher density development to single-family and low-density residential districts to preserve neighborhood character. (Housing Element.)

An 84,572 square foot building next to a residential neighborhood does not conform with the above policy. The policy requires avoiding placing large buildings in close proximity with single-family homes in a neighborhood such as the one surrounding Castilleja, which is low-density, residential.

Policy L-1.1 Maintain and prioritize Palo Alto's varied residential neighborhoods while sustaining the vitality of its commercial areas and public facilities. (Land Use element.)

Policy L-1.5 Regulate land uses in Palo Alto according to the land use definitions in this Element and Map L-6.

Policy L-1.6 Encourage land uses that address the needs of the community and manage change and development to benefit the community.

Policy L-1.7 Use coordinated area plans to guide development, such as to create or enhance cohesive neighborhoods in areas of Palo Alto where significant change is foreseeable. Address both land use and transportation, define the desired character and urban design traits of the areas, identify opportunities for public open space, parks and recreational opportunities,

address connectivity to and compatibility with adjacent residential areas; and include broad community involvement in the planning process.

Policy L-1.11 Hold new development to the highest development standards in order to maintain Palo Alto's livability and achieve the highest quality development with the least impacts.

These policies, above, demonstrate that the city has prioritized its residential neighborhoods. Given the city's problems with providing sufficient housing, these policies require preservation of existing housing and avoidance of disturbing the characteristics of residential areas. Part of maintaining these neighborhoods is assuring that substantial buildings, with questionable future uses, are not placed near single-family houses. The institutional structure that Castilleja seeks to build will not contribute to maintaining the residences around it. When Castilleja is done with the site and moves on to another one, the proposed campus will present problems for repurposing it into much-needed housing. The demolition cost of a substantial institutional building is sufficient to discourage developers from building on the site.

Policy L-2.3 As a key component of a diverse, inclusive community, allow and encourage a mix of housing types and sizes, integrated into neighborhoods and designed for greater affordability, particularly smaller housing types, such as studios, co-housing, cottages, clustered housing, accessory dwelling units and senior housing.

Policy L-2.7 Support efforts to retain housing that is more affordable in existing neighborhoods, including a range of smaller housing types.

Policy L-2.8 When considering infill redevelopment, work to minimize displacement of existing residents.

Policy L-2.9 Facilitate reuse of existing buildings.

Policy L-3.1 Ensure that new or remodeled structures are compatible with the neighborhood and adjacent structures.

The subject neighborhood includes a mixture of cottages, small single-family houses, small to medium sized apartment buildings, rentals, and secondary units. If the city continues to allow Castilleja to "institutionalize" the neighborhood by tearing down housing for its institutional uses, building large institutional buildings, and disturbing the neighborhood with its activities, eventually the city will lose this diverse residential neighborhood. It is evident from a site visit that over time, the school has already encroached deeply into the neighborhood. The

city should follow the above policies and stop the encroachments, including allowing construction of a huge institutional building and garage in the middle of the neighborhood.

Castilleja's argument that it wishes to tear down old buildings for seismic and code reasons violates policy L2.9, which requires the city to facilitate reuse of existing buildings. The proposed huge building also directly violates L-3.1 because its proposed new building is not compatible with the surrounding single-family housing, which is why it is seeking a variance from the FAR restriction.

Ordinance No. 5446: In May 2018, Palo Alto citizens gathered sufficient signatures to place an initiative on the ballot to cap the amount of office and R/D (research and development) development at 850,000 square feet. On July 30, 2018, the Palo Alto City Council passed Ordinance 5446, amending portions of the 2030 Comprehensive Plan to include this cap. The Ordinance contains the following finding:

> 2. Palo Alto Cannot Tolerate More Traffic: According to the City's own study, there are already about three jobs in the City for every employed resident. As a result, the City has one of the highest commuter ratios in the nation for cities with populations of more than fifty thousand. Excessive new office/R&D development in Palo Alto-as the recently adopted 2030 Comprehensive Plan allows-will lead to even more jobs and thus exacerbate traffic congestion and parking shortages in the City. Two-thirds of City residents cite these issues as major concerns. (Ordinance 5446, page 2.)

While the Ordinance caps new office and R&D development, it includes the finding above, indicating an intention to reduce traffic from commuters in the city. The only reason Castilleja is seeking to construct an 84,572 square foot building is because of its concomitant plan to add over 100 more students and eventually become a school of 540 students, along with employees to serve them. A substantial institutional building accommodating increased enrollment on the campus will further add to traffic congestion from commuter students and employees, in contradiction to the citizens' amendment to the Comprehensive Plan.

Castilleja cites two other CP policies, but they are relevant to different parts of Palo Alto than residential neighborhoods. (Letter, page 7.) Policy 6.1 applies to Employment Districts -- the design of buildings and public space (CP, pages 45-46) and Policy 9.6 applies to Parks and Gathering places - public streets and public spaces (CP, pages 50-51). Furthermore, Castilleja's arguments under these two policies are illogical and irrelevant to the legal test for whether the city should grant a variance.

For example, Castilleja contends that demolishing older buildings and building one new colossal structure will allow "for more site improvements and foster[] an enhanced sense of

community" including a bike pavilion at the corner of Bryant and Kellogg and a half-acre community park at Emerson Street and Melville Avenue. Castilleja does not explain how any of these items will build a sense of community. The neighbors never requested a bike waystation or a park open to the public. A park in the midst of housing can become a nuisance very quickly due to noise, lack of supervision and maintenance, and inappropriate behavior by patrons, especially after dark. To PNQL's knowledge, no neighbor has asked for inclusion of either a public park or bike waystation in the school's master plan. The residents are not looking for a "sense of community" that would mean expanding their involvement with people who do not live in the neighborhood or opening up their neighborhood for public uses for "a more welcoming environment with enhanced views and gathering spaces." (Letter, page 7.) As would be true with any neighborhood, the residents desire a peaceful place to live, not a way to open up their neighborhood to the public.

Castilleja describes all of the design features it intends to include in the new building as positive improvements. (Letter, pages 6-8.) The CP stresses the importance of maintaining and reusing existing buildings. Castilleja presents no evidence that it cannot remodel its existing structures with the improvements Castilleja describes. Moreover, as shown above, a robust transportation demand management plan, an excellent education for young girls, an underground garage, increased open space, and the like are not relevant to the legal question of whether the city should grant a variance from the FAR restriction.

Contrary to its claim that it complies with the R-1 zone restrictions, Castilleja's proposed master plan violates its zoning prohibition against the encroachment of schools into this primarily residential zone. Its proposed master plan proposes demolition of two houses with no replacement housing:

> The R-1 single-family residential district is intended to create, preserve, and enhance areas suitable for detached dwellings with a strong presence of nature and with open area affording maximum privacy and opportunities for outdoor living and children's play. Minimum site area requirements are established to create and preserve variety among neighborhoods, to provide adequate open area, and to encourage quality design. Accessory dwelling units, junior accessory dwelling units and accessory structures or buildings are appropriate. *Community uses and facilities, such as churches and schools, should be limited unless no net loss of housing would result.* (3/22/18 letter, page 8; Zoning Code, section 18.12.010, subd. (a) – emphasis added.)

Castilleja attempts to get around the zoning restriction by arguing that it is contributing to the neighborhood a park and a bike waystation, which does not address the R-1 intent that the neighborhood consists of primarily single-family housing. It also does not address the loss of housing at a time when the need is at an all-time high in Palo Alto.

4. Granting the variance would be detrimental and injurious to property in the vicinity and to the general welfare

As discussed above, placing large, institutional buildings near residential neighborhoods presents two problems: 1) they are incompatible in size and design, and 2) they are challenging to repurpose given their surroundings. While Castilleja emphasizes that one colossal building will allow for a community park, the neighbors do not want a park, and it should not be up to Castilleja to force one upon them. The CP requires reuse of existing buildings to prevent waste and excessive filling of land dumps. The growth of the school population is the underlying cause for a substantial institutional structure, and with increased enrollment comes exacerbation of noise, deliveries, traffic, and the like.

For all for the above reasons, the city council should refuse to grant a variance.

D. The City Must Include in the DEIR A Discussion About the Impacts of the Master Plan Due to it Not Conforming with the Zoning and Comprehensive Plan

As I understand the timeline, the variance issue arose after the scoping session. Dudek completed the initial study in January 2017, and the Notice of Scoping Session was dated February 8, 2017. However, the application for a variance as to the new building was not sent to the city until a year later on March 22, 2018. PNQL did not realize that Castilleja planned to seek a variance to the FAR restriction at the time of the scoping comment period and public hearings. This is primarily due to Castilleja dribbling its plans and documents to the city, instead of having all of its documents ready for submission when the planner requested them. Even at this very late date, the plan showing the 84,572 square foot proposed structure has not been submitted to the city and therefore, it has not been made available to the public.

Under "Land Use and Planning," Dudek, the author of the Initial Study (3.10) states: "The proposed project has the potential to have significant impacts related to compatibility with neighboring land uses and thus land use impacts will be analyzed in the project EIR." (Page 31.) It concludes that no mitigations are necessary. However, it does not identify the conflict between the proposed project with the CP and the zoning code. The Initial Study requires study if the project would:

> Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including . . . general plan . . . zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

CP policy L-2.9 (facilitating reuse of buildings) and L-3.1 (compatibility with adjacent structures) are related to environmental effects. L-2.9 removes the need for unnecessary disposal

of building materials, and L-3.1 applies equally to the preservation of historic districts and structures, which are evident in the neighborhood surrounding Castilleja. Ordinance 5446, by its terms, was designed to make changes to the CP as a way to reduce traffic impacts, an environmental effect.

We look forward to the city council requiring Castilleja to submit a revised master plan that does not include requests for variances. Thank you for considering our comments.

Very truly yours,

Leila H. Moncharsh,, J.D., M.U.P.
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235 Cal.App.4th 1303
Court of Appeal, Second District, Division 8, California.

WALNUT ACRES NEIGHBORHOOD ASSOCIATION et al., Plaintiffs and Respondents,
v.
CITY OF LOS ANGELES et al., Defendants,
John C. Simmers et al., Real Parties in Interest and Appellants.

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Filed 3/18/2015

Synopsis
Background: Objectors petitioned for writ of mandate challenging city's approval of zoning variance for eldercare facility. The Superior Court, Los Angeles County, No. BS139318, Luis A. Lavin, J., granted petition. Developer appealed.

Holdings: The Court of Appeal, Flier, J., held that:

[1] desire for economy of scale did not present "practical difficulties or unnecessary hardships" supporting zoning variance for eldercare facility to have more than 16 bedrooms, but

[2] evidence supported city's finding that housing services for the elderly were in demand.

Affirmed.

West Headnotes (6)

[1] Zoning and Planning🔑What constitutes in general

Under city zoning ordinance providing that no variance may be granted unless "the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations," the focus should be on "unnecessary hardships" and not "practical difficulties," which is a lesser standard.

2 Cases that cite this headnote

[2] Zoning and Planning🔑Residential facilities and daycare

City zoning ordinance limiting building square footage and number of guest rooms did not "result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations" as applied to a planned 60-room eldercare facility that would be limited to 16 rooms if it was not granted a variance from the ordinance, and thus city could not approve a permit for the facility, even though the developer sought to achieve an economy of scale to provide the level of on-site support services and amenities required for a population that would include 25 percent persons with Alzheimer's or dementia, where eldercare facilities had been operated in the city with as few as four beds, absent evidence that a facility with 16 rooms could not be profitable.

[3] Mandamus🔑Scope of inquiry and powers of court
Mandamus🔑Scope and extent in general

When evaluating the validity of a city's administrative decision on a petition for writ of mandate, both the trial court and appellate court perform the same function: they will affirm the city's decision if it is supported by substantial evidence.

[4] **Mandamus**Presumptions and burden of proof

In considering a petition for writ of mandate challenging the validity of a city's administrative decision on a zoning variance requiring the city to make and expressly state certain findings, Court of Appeal does not presume that the city's decision was based on the required findings or that those findings are supported by substantial evidence.

[5] **Zoning and Planning**Residential facilities and daycare

City's finding that a proposed eldercare facility project would provide housing services to the elderly to meet citywide demand, in approving a permit for the facility, was supported by substantial evidence, including a statement in a zoning ordinance that eldercare facilities "provide much needed services and housing for the growing senior population of the City," articles and studies from the United States Census Bureau predicting an increasing senior population, and evidence that staff from the city planning department concluded that the elderly demanded a wide variety of housing types.

1 Cases that cite this headnote

[6] **Zoning and Planning**Residential facilities and daycare

City zoning ordinance requiring a finding that a proposed eldercare facility project would provide housing services to the elderly to meet citywide demand, to approve a permit for such a facility, does not require evidence of how services at other facilities compare with the planned facility's proposed services.

See 8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 1053 et seq.

1 Cases that cite this headnote

****872** APPEAL from a judgment of the Superior Court of Los Angeles County, Luis A. Lavin, Judge. Affirmed. (Super. Ct. No. BS139318)

Attorneys and Law Firms

Alston & Bird, Los Angeles, Edward J. Casey and Andrea S. Warren for Real Parties in Interest and Appellants.

Law Offices of Mark Shipow and Mark S. Shipow for Plaintiffs and Respondents.

Opinion

FLIER, J.

***1305** [1]"Unnecessary hardship" is a term of art generally used in the context of evaluating a zoning variance. For example, under the Los Angeles Municipal Code, no variance may be granted unless " 'the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations.' " (*West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1514, fn. 4, 130 Cal.Rptr.3d 360.) Although the test includes both "practical difficulties" and "unnecessary hardships," the focus should be on "unnecessary hardships" and not "practical difficulties," which is a lesser standard. (*Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 925, 8 Cal.Rptr.3d 178; *Zakessian v. City of Sausalito* (1972) 28 Cal.App.3d 794, 799, 105 Cal.Rptr. 105.)

Just as with variances, Los Angeles Municipal Code section 14.3.1, which governs the permitting process for eldercare facilities, provides that approval of the eldercare facility is warranted only if the zoning administrator finds "that the strict application of the land use regulations on the subject property ***1306** would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations." (§ 14.3.1(E).)[1]

[2]In this case, the zoning administrator for the City of Los Angeles (City) approved a permit for an eldercare facility

that exceeded the building square footage and number of guest rooms allowed under zoning regulations. Nearby residents challenged the facility arguing that the zoning administrator failed to make all of the necessary findings, including a finding of "unnecessary hardship." The trial court found no substantial evidence supported the finding of "unnecessary hardship."

After review, we agree with the trial court that the zoning administrator's determination that the strict application of the land use regulations to the proposed eldercare facility would result in "unnecessary hardship" was not supported by substantial evidence. Although the developer argued the unnecessary hardship was based on its purported lost "economy of ****873** scale," no evidence supported that claim. The record contained no evidence that following the zoning regulations and building a less dense facility would cause either financial hardship or unnecessary hardship. We therefore affirm the trial court's judgment requiring the City to rescind its approval of the proposed eldercare facility.

FACTS AND PROCEDURE

1. Section 14.3.1

Prior to the enactment of section 14.3.1, developers seeking to build an eldercare facility were required to obtain several zoning permits and/or variances for each proposed development.[2] The Los Angeles City Planning Department in a 2003 report recommended the City adopt the ordinance eventually codified in section 14.3.1, explaining: "The growing number of senior citizens in Southern California is more active than previous generations and they are demanding a wide variety of housing types and services. Those who need special living environments and services find that there is an inadequate supply of these housing types in the state. Although, the development community is meeting these demands by providing different types of ***1307** housing, government can assist by assuring the efficient delivery of these developments and a streamlining of their applications. [¶] This proposed ordinance ... would enable the City of Los Angeles to expedite the review process for these much-needed Eldercare Facilities." The city attorney reviewing the draft ordinance described it as follows: "This draft ordinance would amend the Los Angeles Municipal Code to add definitions for new and previously undefined uses, provide development standards for Alzheimer's/Dementia Care Housing, Assisted Living Care Housing, Senior Independent Housing and Skilled Nursing Care Housing, create a single approval process for these uses and facilitate the processing of applications of Eldercare Facilities."

In 2006, the Los Angeles City Council (City Council) passed ordinance No. 178,063, codified as section 14.3.1. As stated in the ordinance, section 14.3.1's purpose is to "provide development standards for Alzheimer's/Dementia Care Housing, Assisted Living Care Housing, Senior Independent Housing and Skilled Nursing Care Housing, create a single process for approvals and facilitate the processing of application of Eldercare Facilities. These facilities provide much needed services and housing for the growing senior population of the City of Los Angeles." (§ 14.3.1(subd., A).)

Pursuant to section 14.3.1(subdivision E), to approve an eldercare facility, the zoning administrator is required to make several findings. As previously noted, "The Zoning Administrator shall not grant the approval unless he or she finds that the strict application of the land use regulations on the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations." The zoning administrator also is required to find compatibility with the surrounding neighborhood, an absence of adverse impacts on street access in the surrounding neighborhood, a scale compatible with the surrounding neighborhood, as well as compatibility between the ****874** project and the general plan. (§ 14.3.1(subd. E)(1), (3)-(5).) Finally, the zoning administrator is required to find "that the project shall provide services to the elderly such as housing, medical services, social services, or long term care to meet citywide demand." (§ 14.3.1(subd. E)(2).)

2. The Parties and Proposed Project

The owners of the property, John C. and Thomas Simmers and the developer Community MultiHousing, Inc., sought a permit under section 14.3.1 to build an eldercare facility at 6221 North Fallbrook Avenue in Woodland Hills. They are collectively referred to as appellants.

***1308** With limited exceptions, owners of neighboring single family residences strongly opposed the development of the eldercare facility in their neighborhood. Their neighborhood association—Walnut

Acres Neighborhood Association—and some individual residents Mohammad Tat, Jack Pomakian, Dawn Stead, and Donna Schuele—challenged the development. They are collectively referred to as respondents.

The site of the proposed facility is a one and a half acre lot zoned RA–1 and designated for only very low intensity residential uses. The front of the proposed building is located on Fallbrook Avenue, which is classified as a major highway, and in some areas has commercial uses. The commercial uses are not immediately adjacent to the proposed facility, which instead is surrounded by single family homes. Variances previously had been granted to construct a private school on the site, but the school failed to comply with the conditions of its variance approval.

The proposed eldercare facility would house persons 62 years old or older. The proposed project exceeded the maximum allowable density and floor area of the residential zone. Zoning regulations limit a structure to 12,600 square feet, and the proposed facility would contain 50,289 square feet, including over 20,000 square feet devoted to common areas. The proposed facility would have 60 guest rooms and 76 guest beds, with 25 percent of the beds allocated to persons with Alzheimer's or dementia. Application of the zoning regulations would limit the site to 16 guest rooms. The height of the project was consistent with that allowed in the RA–1 zone.

The developer submitted a proposal to the City in connection with its requested permit. The proposal explained: "[S]tatistics reported in the City's Housing Element ... show that while approximately nine percent of the City's population is currently aged 65 years and older, the age distribution is expected to shift, and almost triple by 2040 in the greater Los Angeles area." An article on aging statistics was included in the record before the zoning administrator. It provides that people over 65 are expected to grow to 19 percent of the population by 2030, doubling from 2000. The projection for California was even higher at 22.8 percent of the population. The United States Census Bureau projected rapid growth nationwide of persons over 65, projecting that by 2030 one in five residents would be age 65 or older.

According to the developer's proposal, limiting the project to the zoning requirements at the proposed site "poses a significant practical difficulty and an unnecessary hardship in that with this restriction would limit development of the Project Site to a maximum of approximately 12,600 total square feet of residential floor area.... [¶] This development limitation represents a vast and inappropriate underutilization of the Project Site, which is inconsistent ***1309** with the basic purposes and intent of the LAMC [Los Angeles Municipal Code] and would not allow the highest ****875** and best use of the Project Site, given the clear existing and projected future market demand for Eldercare Housing. It would also be at cross purposes to the proposed Eldercare Facility's objective, which is to provide Eldercare Housing in sufficient quantity so as to contribute meaningfully to the current and projected future demand for such housing consistent with the City's Regional Housing Needs Assessment and in a manner that is compatible with and enhances the character of the established surrounding residential neighborhood." Limiting the project size would present a "practical difficulty" to the developer who would lose "the economy of scale required for the economic operation of an Eldercare Facility if [the developer is] not allowed to develop the 60 guest rooms as proposed."

As we shall now describe, the proposed eldercare facility was reviewed multiple times with different results.

3. Zoning Administrator's Decision

In connection with the proposed eldercare facility, city staff drafted a report, that described the property, the project, and the surrounding area. The report did not consider whether limiting the facility to 16 rooms would pose an unnecessary hardship. The report contained no information regarding economy of scale in the construction or running of the project.

On May 2, 2012, the zoning administrator approved the project. He concluded that the "strict application of the land use regulations on the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations." (Boldface omitted.) The zoning administrator explained: "According to the applicant, the strict application of the FAR [floor area ratio] limitation of the RA Zone in this case would limit the proposed Eldercare facility to only 12,600 square feet and would reduce the building envelope to a level where only a maximum of 16 guest rooms would be feasible on the site because of the need to accommodate the required common areas needed to support the residents." "The strict application of the zoning regulations to the proposed elder care facility ... would limit the site's ability to provide needed on-site amenities and support services to the detriment of the project's occupants or would limit the site to only 16 guest rooms, which would result in significant underutilization of the site and would not

permit the operator to achieve the economy of scale required to provide the level of on-site support services and amenities required for the eldercare facility's unique population. Denial of the request would therefore preclude the provision of much needed housing for the elderly population."

***1310** The zoning administrator also found as follows: "The project will provide services to the elderly such as housing, medical services, social services, or long term care to meet the citywide demand." (Boldface omitted.) The approval explained that the facility would have 60 guest rooms with 76 beds. "The facility's model is to provide long-term care in a home-style setting and to provide a wide range of supportive services tailored to the individual needs of each resident." A 75 percent average occupancy rate in assisted living facilities was the norm in the industry. Although local residents argued that there were high vacancy rates in nearby facilities they provided no data to support their claims.

The zoning administrator further found that residential care facilities were becoming more popular. A Forbes magazine article indicated that eldercare facilities range from small homes with four to 10 beds to large institutions with over 100 beds. The zoning administrator relied in ****876** part on data from the developer, explaining: "The applicant noted that the proportion of the population over the age of 75 is expected to double in the next 20 years generating a strong need and demand for eldercare facilities. Again, data was not submitted to substantiate this assertion. However, the shift in population as baby boomers age is well known." Census data is not available for the City. Nationwide data show that the elderly population will almost double between 2000 and 2030. "The City Housing Element cites approximately 9 percent of the City's population is currently aged 65 years and older. One-fifth of all households citywide ... are headed by elderly persons...."

4. Appeal to the South Valley Area Planning Commission

Appellants appealed the zoning administrator's approval to the South Valley Area Planning Commission. A public hearing was held June 28, 2012. Dan Chandler, one of the developers, testified that the area adjacent to the housing project had a "tremendous shortage of senior housing." The developer's representative stated that forcing the project to comply with zoned density requirements would reduce the project by more than 75 percent. "There's no evidence that the citywide demand for these services has been satisfied in the six years since the ordinance was adopted...."

The hearing officer for the zoning administrator testified as follows: "And yes, we granted relief from the zoning regulations to allow a 50,000 square foot facility when the maximum floor area is 12,600 square feet. We were allowed to do that under the eldercare provisions in order to facilitate these types of facilities, as long as we make the finding of practical difficulty, which I didn't get too much into that finding, but again, it's just a matter of logic and practicality that you really can't, if you were to limit the site to ***1311** 12,600 square feet, you would end up with a maximum of 16 guest rooms. And with the level of support services that this type of facility needs, it really wouldn't be feasible."

Property owners near the proposed facility argued that the zoning administrator merely echoed statements made by the developer, which according to them were not supported by any evidence. They claimed there was no evidence of a demand either in the area adjacent to the eldercare facility or citywide for the eldercare services proposed by the project. "The National Association of Real Estate Investment Trust, a national trade association, has indicated that there may be overbuilding in the eldercare industry...." Appellants stated that there were 20 facilities within a one-mile radius of proposed facility and that those facilities had vacancies.

The South Valley Planning Commission concluded that the facility was not appropriate for the neighborhood. One commissioner described it as a "lovely facility" but inappropriate for the chosen location. Another was concerned about the windows in the eldercare facility overlooking the adjoining single family residences. The facility was described as "too massive" and "too dense" for a single family neighborhood. One commissioner would have affirmed the zoning administrator's decision, only adding mature landscaping. Overall, four commissioners voted to grant the appeal and one to deny it.

5. Planning and Land Use Management Committee

The City Council asserted jurisdiction and voted to send the proposal for the eldercare facility to the City's planning and land use management committee.

On August 15, 2006, the planning and land use management committee recommended ****877** that the City Council adopt the findings of the zoning

administrator. The City Council voted consistently with the committee, thereby overruling the decision of the South Valley Planning Commission.

6. Superior Court

Respondents petitioned for a writ of mandate in the superior court. Appellants and the City opposed the petition. (The City is not a party on appeal.)

In a lengthy order, the superior court concluded the majority of findings by the zoning administrator were supported by substantial evidence. Because those findings are not challenged on appeal, we have not described them in detail. With respect to the findings challenged on appeal, the superior court ***1312** found no substantial evidence supporting unnecessary hardship or citywide demand for senior housing.

First, the trial court found that the zoning administrator's finding that the strict application of the land use regulations on the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulation was not supported by substantial evidence. Citing *Stolman v. City of Los Angeles, supra*, 114 Cal.App.4th at page 926, 8 Cal.Rptr.3d 178, the court explained that unnecessary hardship did not include reduced profits. The court concluded that appellants failed to present evidence that restricting the proposed eldercare facility to 16 guest rooms and 12,600 square feet would result in practical difficulties or unnecessary hardships.

As the court explained: "Here, there is no substantial evidence in the administrative record that the RPIs [appellants] will not be able to make a profit or provide assisted living services if the facility is limited in size to 12,600 square feet.... The only evidence in the record of any difficulty or hardship to the RPIs if the Eldercare Facility is limited to 12,600 square feet with 16 rooms is that the RPIs 'would be denied the economy of scale required for the economic operation of an Eldercare Facility if they are not allowed to develop the 60 guest rooms as proposed.' " That is outside the meaning of practical difficulties or unnecessary hardship as those terms are defined in the case law.

The court also found no substantial evidence supported the finding that the project would provide services to the elderly such as housing to meet citywide demand. The court found no evidence of a citywide demand for the services offered by the project. The court concluded that the developer should have provided information regarding other facilities to compare the other facilities with their facility.

The court issued a judgment ordering the City to set aside its decision granting appellants a permit to construct the proposed eldercare facility.

DISCUSSION

[3] [4]"When evaluating the validity of an administrative decision, both the trial court and appellate court perform the same function: we will affirm the City's decision if it is supported by substantial evidence. In doing so, we review the entire record. We may not interfere with the City's discretionary judgments and must resolve reasonable doubts in favor of the administrative findings and decision. [Citations.] We may not substitute our judgment for the City's and reverse because we believe a contrary finding would have been equally ***1313** or more reasonable. [Citation.] However, although the City was required to make and expressly state certain findings, we do not presume that the City's decision was based on the required ****878** findings or that those findings are supported by substantial evidence." (*Committee to Save Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1182, 74 Cal.Rptr.3d 665.)

1. No Substantial Evidence Supported the Zoning Administrator's Conclusion That "[t]he Strict Application of the Land Use Regulations on the Subject Property Would Result in Practical Difficulties or Unnecessary Hardships Inconsistent with the General Purpose and Intent of t he Zoning Regulations"

The zoning administrator found the strict application of land use regulations would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations.

The zoning administrator concluded: "According to the applicant, the strict application of the FAR limitation of the RA Zone in this case would limit the proposed Eldercare facility to only 12,600 square feet and would reduce the building envelope to a level where only a maximum of 16 guest rooms would be feasible on the site...." "The strict application of the zoning regulations to

the proposed elder care facility, a unique use relative to other uses generally permitted by-right in the RA Zone, would limit the site's ability to provide needed on-site amenities and support services to the detriment of the project's occupants or would limit the site to only 16 guest rooms, which would result in significant underutilization of the site and would not permit the operator to achieve the economy of scale required to provide the level of on-site support services and amenities required for the eldercare facility's unique population. Denial of the request would therefore preclude the provision of much needed housing for the elderly population."

As we explain the finding is not supported by substantial evidence. Prior to reviewing the evidence we discuss the requirements for "unnecessary hardship." We reject appellants' basic premise that "unnecessary hardship" should be defined differently in the context of section 14.3.1 from the identical language in the context of a variance.

A. Section 14.3.1 Requires a Showing of "Unnecessary Hardship"

Section 12.27 governs variances. Once the applicant completes a form, the zoning administrator shall consider the application and may approve it in whole or part, deny it, or require conditions. (§ 12.27(subd. B).) "[N]o variance may be granted unless the Zoning Administrator" makes ***1314** several findings including "that the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general proposes and intent of the zoning regulations...." (§ 12.27, subd. (D.1).)

In *Stolman v. City of Los Angeles, supra,* 114 Cal.App.4th 916, 8 Cal.Rptr.3d 178, Division Four of this court considered the requirement in section 12.27 that no variance may be granted unless the zoning administrator finds that "the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships...." *Stolman* involved a gasoline station operator who sought to extend services provided by the gas station to include auto detailing. The court assumed that a "financial hardship" may constitute an "unnecessary hardship." (*Stolman,* at p. 926, 8 Cal.Rptr.3d 178.) But the court found no evidence of a financial hardship. There was no "information from which it [could] be determined ****879** whether the profit [was] so low as to amount to 'unnecessary hardship.' " (*Ibid.*) There was no evidence the property could not be put to use as a gasoline station without the automobile detailing operation. (*Ibid.*) " 'If the property can be put to effective use, consistent with its existing zoning ... without the deviation sought, it is not significant that the variance[ ] sought would make the applicant's property more valuable, or that [it] would enable him to recover a greater income....' " (*Ibid.*)

Although *Stolman v. City of Los Angeles* did not involve section 14.3.1, its analysis of "unnecessary hardships" is persuasive because the court considered the identical language at issue under section 14.3.1 (subdivision E). It is appropriate to interpret the identical language in sections 12.27 and section 14.3.1 to mean the same thing. (*Estate of Griswold* (2001) 25 Cal.4th 904, 915–916, 108 Cal.Rptr.2d 165, 24 P.3d 1191 [where statutory language has been judicially construed subsequent use of the language is presumed to carry the same construction unless contrary intent appears].) This is especially warranted in this case as section 14.3.1 was an effort to create an approval process for eldercare facilities, which prior to its implementation required applying for numerous entitlements and variances. Although section 14.3.1 does not require all of the same findings as required for a variance under section 12.27, the requirement of "unnecessary hardship" is the same.

Wollmer v. City of Berkeley (2009) 179 Cal.App.4th 933, 102 Cal.Rptr.3d 19 exemplifies a statute requiring *no* finding of "unnecessary hardships" and instead requiring concessions to developers who seek to build affordable housing. In *Wollmer,* the court considered Government Code section 65915, which provided that "[i]f a developer agrees to dedicate a certain percentage of the overall units in a development to affordable or senior housing, ... the municipality [must] grant the developer a density bonus...." (*Wollmer,* at p. 943, 102 Cal.Rptr.3d 19.) The statute at issue was " 'designed to ***1315** encourage, even require, incentives to developers that construct affordable housing.' " (*Ibid.*) *Wollmer* does not shed light on the meaning of section 14.3.1 because it does not include the "unnecessary hardship" language at issue here. In contrast to Government Code section 65915 that requires concessions unless findings are made, section 14.3.1(subdivision E) prohibits concessions unless "strict application of the land use regulations on the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations." If anything, *Wollmer* shows that a statute may be drafted in a way to allow a density bonus, which is not sanctioned under section 14.3.1.

B. Appellants Show No Substantial Evidence of Unnecessary Hardship

As in *Stolman,* we assume that financial hardship may be sufficient for purposes of obtaining a permit under section 14.3.1 to show unnecessary hardship, but find no evidence supporting the claimed financial hardship. The developer's proposal indicated the space would be underutilized if the density requirements were imposed and it would lose its "economy of scale" because it would be limited to 16 rooms instead of the proposed 60 rooms. Appellants also emphasize the following testimony on behalf of the zoning administrator: "And yes, we granted relief from the zoning regulations to allow a 50,000 square foot facility when the maximum floor area is 12,600 square feet. We were allowed to do that under the eldercare provisions in order to facilitate these types of facilities as long as we make the finding of practical ****880** difficulty, which I didn't get too much into that finding, but again, it's just a matter of logic and practicality that you really can't, if you were to limit the site to 12,600 square feet, you would end up with a maximum of 16 guest rooms. And with the level of support services that this type of facility needs, it really wouldn't be feasible."

There was no substantial evidence of an unnecessary hardship. There was no evidence that a facility with 16 rooms could not be profitable. Eldercare homes apparently include small homes with four to 10 beds, according to the zoning administrator's report. There was no evidence that necessary support services demanded additional rooms in order to generate a profit. Just as in *Stolman v. City of Los Angeles, supra,* 114 Cal.App.4th at page 926, 8 Cal.Rptr.3d 178 there was no "information from which it [could] be determined whether the profit [was] so low as to amount to 'unnecessary hardship.' "

We need not dwell on appellants' argument that we must give substantial deference to City planners or City staff because neither City planners nor City staff conclude 16 rooms would pose an unnecessary hardship or any hardship at all. No report presented either by appellants or by City staff documented the consequence of limiting the development to 16 rooms.

***1316** Appellants' argument that cases have granted variances without a showing of financial information is not persuasive because the cases they cite do *not* rely on a financial hardship to show unnecessary hardship. For example, *Committee to Save Hollywoodland Specific Plan v. City of Los Angeles, supra,* 161 Cal.App.4th 1168, 74 Cal.Rptr.3d 665 involved a setback requirement, and substantial evidence supported an unnecessary hardship because much of the yard was below grade "rendering enforcement of the three-foot setback problematic" and potentially hazardous. (*Id.* at p. 1184, 74 Cal.Rptr.3d 665.) *Committee* expressly distinguished its facts from a case involving economic hardship. (*Id.* at p. 1184, fn. 12, 74 Cal.Rptr.3d 665.) Similarly in *Eskeland v. City of Del Mar* (2014) 224 Cal.App.4th 936, 949, 169 Cal.Rptr.3d 112, the court found an unnecessary hardship for a setback because of the lot's shape, topography, location, and surroundings. The appellate court found substantial evidence supported the finding that the lot had unique characteristics. (*Id.* at p. 951, 169 Cal.Rptr.3d 112.) In contrast to those cases involving a question of whether the property had special features, here appellants seek to maximize their economy of scale—their only stated basis for an unnecessary hardship. Because financial hardship is their sole basis for unnecessary hardship, there must be some evidence supporting it.

2. Substantial Evidence Supported the Zoning Administrator's Finding That the Project Would Provide Housing Services to the Elderly to Meet Citywide Demand

[5]We now turn to appellants' argument that the court erred in concluding no substantial evidence supported the finding that the project would provide housing services to the elderly to meet citywide demand. Respondents argue that there was no evidence to show citywide demand. We disagree.

[6]Section 14.3.1's purpose statement makes clear that eldercare facilities "provide much needed services and housing for the growing senior population of the City of Los Angeles." (§ 14.3.1(A).) Thus the ordinance indicates that the senior population in the City is growing and services and housing are needed. The administrative record further documents the increasing ****881** senior population in articles and studies from the United States Census Bureau. Further, as noted staff from the City's Planning Department concluded that the elderly are demanding a wide variety of housing types. This evidence amply supported the inference that there will be a citywide demand for housing such as that provided by the proposed eldercare facility. Appellants were not required to present evidence of how services at other facilities compared with their proposed services. The code did not demand that specific finding.

***1317 DISPOSITION**

The judgment is affirmed. Respondents are entitled to costs on appeal.

WE CONCUR:

BIGELOW, P.J.

GRIMES, J.

All Citations

235 Cal.App.4th 1303, 185 Cal.Rptr.3d 871, 15 Cal. Daily Op. Serv. 3664, 2015 Daily Journal D.A.R. 4181

Footnotes

1 Undesignated citations are to the Los Angeles Municipal Code unless otherwise noted.

2 For example the Los Angeles City Planning Department in a report dated May 8, 2003, explained: "A project that required four separate actions was filed for an 'assisted living/Alzheimer's facility'.... It was to contain 47 Assisted Living Care units and 35 Alzheimer's/Dementia Care units (totaling 82 units). The applicant requested a Conditional Use permit to allow deviations from the Min–Shopping Centers and Commercial Corner Development Regulations, a Zone Variance to allow the facility in a P Zone, a variance for reduced parking, and a Site Plan Review to approve the project."

From:	Jessica Resmini
To:	Planning Commission; Council, City
Cc:	Tanner, Rachael; Lait, Jonathan; Popp, Randy
Subject:	ADU Task Force | PTC | Staff Working Session
Date:	Thursday, October 8, 2020 11:52:32 AM
Attachments:	Council ADU Questions - ADTF.pdf Untitled attachment 00013.htm Letter to Council regarding ADU Ordinance_RP-JR.pdf Untitled attachment 00016.htm ADU Taskforce questions_with Comments.pdf Untitled attachment 00019.htm

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Dear Planning and Transportation Commission,

As directed by Council, we would like to schedule a working session to review the in-depth letter we provided to staff and Council as they review the Approved ADU Ordinance. The ADU Task Force has met and would like to schedule this at your earliest convenience preferably before Councils second reading in early November.

Attached please find:

1) ADUTF response to Council Questions
2) Letter to City Council prior to October 5th Hearing
3) Letter to Staff on September 14th

Our goal is to have a dialogue session in advance of a formal staff report that will allow us to establish what needs to be studied further. Please see the attached letter to council for our suggested points of discussion.

Respectfully,

Randy Popp and Jessica Resmini on behalf of the ADU Task Force

--

ADU|Collective

Build smart for flexible living.

Jessica Resmini
Architect, LEED AP
Mobile +1 415 823 3213

October 8th, 2020

Dear Mayor Fine, Vice Mayor DuBois and City Council Members,

Thank you for all your thoughtful questions Monday night. Below is additional information, based on our understanding, for further clarification regarding a few of your questions. We recognize this may differ from what you have been told, but our research in this area leads us to the interpretations we have shared with you and now intend to discuss with the PTC. Our greatest hope is to partner with the city to help streamline and incentivize the ADU process. We apologize on behalf of the Task Force for not addressing the PTC review in May. It was a very rough time for many in the community and most were reeling from Covid. In addition, each new project gives us the opportunity to test the regulations giving additional information.

Greg Tanaka

Green Building question:

ADUTF does not support removing Green Building standards from ADU development but would recommend an adjustment to the policy as it currently stands. There is a discrepancy in the current code: if a homeowner proposes either a new or conversion 400sf detached ADU, the project is required to comply with the same Green building requirements as would a new 6,000sf home.This requirement costs around $4,000 to have an independent inspector (PAGE 1, rows 1&2 of the document link below). However, if a homeowner proposes an attached 900sf ADU, there is **no** Green building Inspection requirement ($0). This burden for detached ADUs is inconsistent with our green building efforts and hinders the streamlining of ADUs. We recommend the ordinance be altered to allow detached ADUs the same leeway as the “attached” ADU category. Row 3 in the linked document should be modified to read: “Alterations, additions and ADUs of multi-family or single-family construction projects less than 1,000 sq. ft. AND the scope increases the building's conditioned area, volume, or size.”: https://cityofpaloalto.org/civicax/filebank/documents/74915.

Can a rear Sewer line run through the house:

We recognize this is a technical issue and the Director, in discussion with the Chief Building Official has determined there is no flexibility in interpretation but we respectfully suggest otherwise. There is an exception in the Plumbing Code, recognized in many California jurisdictions, to avoid the cost and complexity this causes (often greater than $9,000). This item needs to be evaluated through the same lens as the Green Building Standards. If the sewer for an attached ADU is permitted to connect through the Main House plumbing and on to the sewer, why would we not allow for an exception that offers the same opportunity for a detached ADU. Of course we recognize that the construction of a separate line is almost always possible, but the cost and impact to established landscaping or damage to trees can be significant. The Code sections other jurisdictions recognize are:

> ***CPC 102.4.1 Building Sewers and Drains*** *Existing building sewers and building drains shall be permitted to be used in connection with new buildings or new plumbing and drainage work where they are found on examination and test to be in accordance with the requirements governing new work, and the proper Authority Having Jurisdiction shall notify the owner to make changes necessary to be in accordance with this code. No building, or part thereof, shall be erected or placed over a part of a drainage system that is constructed of materials other than those approved elsewhere in this code for use under or within a building.*

> ***CPC 301.5 Alternative Engineered Design*** *An alternative engineered design shall comply with the intent of the provisions of this code and shall provide an equivalent level of quality, strength, effectiveness, fire resistance, durability, and safety. Material, equipment, or components shall be designed and installed in accordance with the manufacturer's installation instructions.*

Allison Cormack

Pre-Approved Designs: What's holding it up?

The ideal scenario is that ADUs are pre-fab or pre-designed, but the development of ADUs is a type of urban infill that takes a very delicate and thoughtful approach. Especially in a city like Palo Alto, it takes careful consideration of an existing home style, privacy, infrastructure and accessibility especially in the tight neighborhoods we have. This is why flexibility, support and streamlining is still critical for the custom design. Even if the city dedicates significant resources toward Pre-Approved designs, a majority of homeowners and project sites will likely still require a level of customization that may not be able to be accommodated with pre-approved designs. What the city may want to consider instead of pre-approved designs is a pre-approved set of architectural plans. This would include a standard title sheet, green building checklist, public works requirements, floor plan sheet with keynotes, elevations with standard keynotes with a fill-in the blank options, standard slab on grade details and other standard construction details. The only sheets that would be custom would be the site plan and floor plan. This would allow the homeowner to place windows, doors and develop elevations in a custom manner. It may still require the help of a professional, but it would be a very manageable set for the city to produce and much more streamlined, and therefore less expensive, for the homeowner. The city could include its preferred details for sewer connections, electrical panel upgrade, EV charging requirements. This is where we would suggest putting the city's energy. Before investing effort and funds toward pre-designed ADUs, we would recommend a survey of other jurisdictions who have already taken this approach to evaluate the success of the program.

Impact Fees question:

The fees are currently based on a ratio of the ADU to the main house. If you propose an 800sf ADU and you have a 1,800 house, you will be charged 44% of the typical Impact Fees while someone who has a 3,000 house will pay only 27% for the same 800sf ADU. The city should charge fees either on a tiered basis, a flat fee that is consistent for all, or adopt a position of no fees to further incentivize ADU development. By basing fees on a ratio of the existing house size, this will perpetuate discriminatory zoning standards.

Adrian Fine

Compliance with state law question: Can Staff explain why they believe sections 65852.2 (a) thru (c) do not include and expand upon the obligations of section 65852.2 (e)? The ADUTF seems confident the limitations stated in Table 2 can only be applied once the boundary of the Statewide Exemption ADU has been exceeded. It seems this would only occur in the event of an ADU >800sf.

It is the understanding of the ADUTF that limited restrictions may be imposed, once the Statewide Exemption ADU described in section 65852.2 (e) has been exceeded, but no portion of an ADU, may be restricted in regard to **GOVERNMENT CODE Section 65852.2** (c) (1) (C) as cited below.

Tom Dubois

Is the proposed ordinance consistent with state law?

October 8th, 2020

Item #1

ADU Task Force (ADUTF) understands the goal of imposing a daylight plane restriction, identified as a constraint in Table 2, but believes it is in conflict with code section ***65852.2*** *(c)(2)(C)* below. (Note that the ADUTF encourages Council to consider increased height beyond 16', with additional constraints that could then include daylight plan compliance).

> ***GOVERNMENT CODE Section 65852.2*** *(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. (2) Notwithstanding paragraph(1), a local agency shall not establish by ordinance any of the following:*
> *(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.*
> *(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:*
> *(i) 850 square feet.*
> *(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.*
> *(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit* ***at least*** *an 800 square foot accessory dwelling unit that is* ***at least*** *16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.*

Item #2

The restriction preventing subterranean construction is an over-reach and is not supported in any of the Government Code language. It is a fact that lowering the level of the 1st floor will naturally also lower the level of the second floor, making the management of privacy issues more easily solved. Staff has no basis for imposing this limitation and as it contradicts the ability to provide quality residential space, it is incompatible with the intent of the Government Code.
GOVERNMENT CODE Section 65852.2 (c)&(e)

Item #3

The last 4 words of the adopted ordinance section 18.09.040 (k) iv contradict the language of section **65852.2** (c)(2)(C). An applicant must be permitted "at least" 800 sf and to reduce that for parking, that is not an obligation of ADU development and is an inconsistent taking.

> *18.09.040 (k) Parking*
> *iv. If covered parking for a unit is provided in any district, the maximum size of the covered parking area for the accessory dwelling unit is 220 square feet. This space shall count towards the total floor area for the site but does not contribute to the maximum size of the unit* ***unless attached to the unit****.*

City Of Palo Alto ADU Ordinance, First Reading, Meeting Date 10/5/2020 Agenda Item #8

To the Members of The Palo Alto City Council:

We want to begin by expressing commendation for what has been done to date by Council and PTC but particularly by Staff. This is a complex political and technical topic and we consider the ordinance to be mostly in alignment with the State Statutes. We applaud the effort where choices have been made to exceed limitations in a reasonable way, and understand clearly the boundaries established by State legislation.

What we need to remember is that the State is promoting this legislation to incentivize and streamline the creation of ADUs. We should also remember to view all of this through the local lens of prioritizing residential development as a clearly stated Palo Alto goal. As professionals, we seek a clear and precise set of rules we can rely on in the design process to achieve a predictable result for our clients.

A number of individuals spoke in warning when we came before Council in January, and we have been proven correct in stating Palo Alto's urgency ordinance was seriously flawed. Many elements did not properly conform to State legislation. Since then, Staff has adjusted their interpretations, in some cases after being challenged by the professional community, and partly when influenced by input from HCD. The updated document before you makes good progress toward alignment, but we still fall short in some important areas.

The Palo Alto ADU Task Force (PAADUTF), now approximately 20 individuals and growing, was created out of a grassroots desire for peer communication between professionals who are active in ADU development. Sharing information regarding regulatory interpretations, design methodology, and construction strategy, this group came together to evaluate the August 17 staff report and associated ordinance language. Unfortunately, we were not aware of the May 27 PTC hearing and recognize this was a missed opportunity to interact with staff. Over the course of five meetings conducted during August and September, the group developed a narrative along with an annotated review of the proposed ordinance. As indicated, two additional meetings were conducted with staff included to review and discuss the information. Several significant points from that discussion have been captured in your staff report. There are others that were not, that we nonetheless feel are critical to implement as part of this update.

Through direct and frequent interaction with HCD and supported by other experts active in ADU regulatory action, The PAADUTF has identified several specific areas where the proposed local ordinance departs from the State intent. We recognize Staff feels they have rigorously evaluated the language presented to you tonight, but we do not believe they are entirely correct. The HCD ADU Handbook, released just last week, seems to confirm a few areas where the proposed language is in conflict with HCD's guidance. As you have heard, if inconsistency is not corrected, there is a significant possibility the ordinance will be challenged and potentially deemed invalid.

The most significant issue is the approach taken in the ordinance regarding the Statewide Exemption ADU and how that language relates to all other units, particularly those exceeding 800 square feet.

> **Gov. Code, § 65852.2, subd. (c)(2)(C)** *"Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards."*

Staff's interpretation of this section includes a vision that the Exemption Unit is an isolated obligation. In fact, the Statute language says clearly *"**at least**"*, so we have been told any attempt at creating limitations for units which are larger (daylight plane restrictions, placement on the lot, a limitation for subterranean construction, or basement construction) is simply inconsistent with the State Statute.

Another significant departure is the approach taken in regard to 2-story construction. Staff is seeking to create limits on the basis of privacy, but the restrictions they have offered are inconsistent with the statutes. It is important to remember that the State put these new rules in place to shake up the norms, and we need to understand and align with that intent. As an example, HCD has described a scenario where if a lot is so small that 800 sf cannot be accommodated on one level, then 2-stories can be the only option. Because of this, HCD has confirmed there can be no restriction against 2-story units, under any condition. Whether in conformance with an Exemption ADU or larger, 2-story construction must be embraced. We would offer that Santa Cruz has done an excellent job in this area and has elected to allow 22' of height with additional restrictions for distance from the property line once beyond 16' of height. (https://www.cityofsantacruz.com/government/city-departments/planning-and-community-development/accessory-dwelling-units-adus)

Again, there are a number of specific areas of improvement in the proposed ordinance, and we applaud that. What we ask of you tonight is the consideration of 15 areas of concern we identify below, some of which have already been described by Staff. We believe all of these are important and nuanced topics that are truly necessary to implement. Some are changes only included to simplify the development of ADUs, but others are very technical responses to costly or avoidably complex limitations. We ask that you remember our pace is 1,000 units short of our RHNA requirement and that we need to do better and move faster. This set of considerations provides an easy way to encourage the development of additional units with minimal collateral impact when compared to larger, more dense projects with their significant timelines and approval hurdles.

15 Suggestions for Consideration:

1. **Alignment with Gov. Code, § 65852.2, subd. (c)(2)(C)**
    a. Remove language that improperly restricts daylight plane, placement on the lot, limitation for subterranean construction, or basement construction.
2. **Two-Story**
    a. Provide definition for subterranean 1st level construction. (1st level partially recessed in the ground)
        i. Clarify how deep this can be without being interpreted as a 'basement'
            1. Suggest 36" max below existing natural grade as the threshold
    b. Confirm Staff's recommendations for privacy management
        i. Windows obscured when sills are below 5' above adjacent finish floor on walls parallel to property lines when the structure is within 8' of a property line
        ii. Set sills at 5' above adjacent finish floor on walls parallel to property lines when the structure is within 8' of a property line
        iii. Sleeping rooms endeavor to have egress windows located on walls non-adjacent to property lines
        iv. Use of (operable) skylights in bathrooms and other spaces where windows could be considered optional
        v. No exterior lighting mounted above 7' on walls adjacent to property lines to keep it at or below maximum fence height
    c. Consider adopting language similar to that used in Santa Cruz:

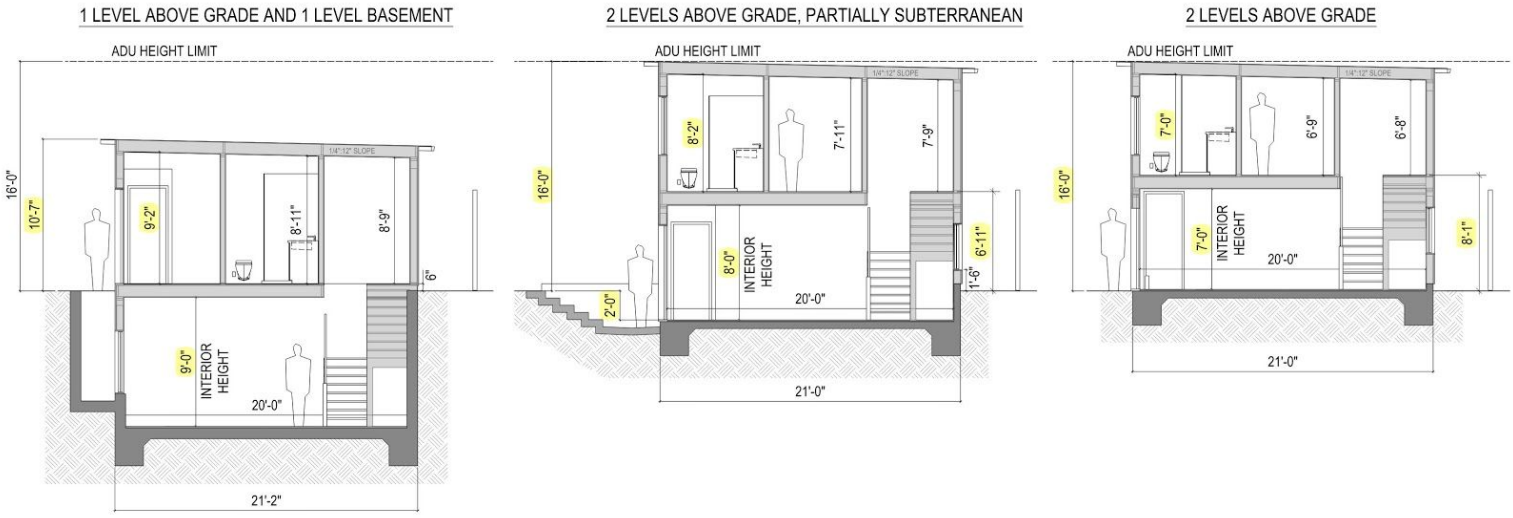
i. ADUs higher than one story may be up to 22’ tall at the peak, measured from average grade, and any portion of the structure that exceeds 16’ in height must be set back a minimum of 5’ from the side yard property line and 10’ from the rear yard property line.
ii. Exception: An ADU that faces an alley or street can be up to 22’ tall and any portion of the structure that exceeds 16’ in height must be set back 5’ from the side and rear property lines.
iii. Detached New Construction ADUs higher than one story shall limit the major access stairs, decks, entry doors, and windows to the interior of the lot or an alley if applicable. Windows that impact the privacy of the neighboring side or rear yards should be minimized or otherwise restricted as in (b.) above

3. Fees

a. Significant cost is incurred relative to fees for Plan Check, Building Permit, Planning Impacts, Specialty Consultants, School Fees, etc. They are not always levied in a relative fashion.
i. Why not just charge a flat fee based on ADU floor area?
ii. Included in that methodology, remove some of the fees to further incentivize ADU construction.
b. It is important to note that the proportionate language in regard to Planning Impact Fees for units >750 sf contained in Gov. Code, § 65852.2, subd. (f)(3)(A) creates a significant disincentive for individuals with existing small homes. Please note the following examples:
i. Project #1, Demolish an existing detached garage and replace it with a new conforming detached ADU.
1. **Main house at 3,427 sf** and new **ADU at 800 sf** = 23.3% = **$4,511.47**
ii. Project #2, Convert an existing detached garage and construct an addition to create a new detached ADU.
1. **Main house at 1,209.6 sf** and new **ADU at 882 sf** = 73.0% = **$14,101.46**
c. *Both are roughly the same scope but because of the more modest house on Project #2, <u>the weighted ratio pushes the fee to be $10k more</u>.*
d. Add to this about $9,000 for: School Impact Fees ($3,000), Plan Check Fees ($2,800) and Building Permit Fees ($3,300) - That puts the fees for Project #2 at around $23k, or almost 11% of the total anticipated project construction cost!

4. Subterranean/Basement Construction

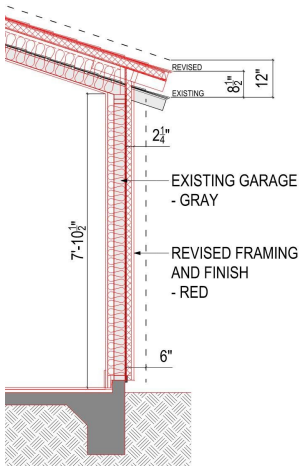
a. Without some flexibility in this, floor to ceiling heights are substandard (+/- 7’-0”). Codifying this in a thoughtful way can provide tangible improvements in privacy management and enhancement to overall massing.
b. Partially subterranean 1st floor lowers 2nd floor and allows 8’ ceilings with a reasonable roof slope



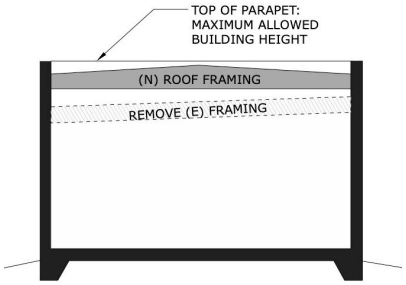
c. Adding a basement could reduce an entire floor of height/massing
    1. Reduce impact to neighbors
    2. Required exclusionary excavation techniques remove any concerns related to dewatering
ii. Tree root impacts could be conditioned since the 800 sf exemption ADU is not obligated in regard to underground space
iii. Add clarifying language requiring the interior basement FA to count toward the 800 sf exemption triggering the additional area beyond 800 sf to be deducted from overall site FA
iv. No further encroachment other than that required for emergency egress.
v. Consider, as an additional incentive, allowing a 1200 sf max ADU if 50% of FA is below grade?

5. Minimal increase to non-conforming structures

a. Create an allowance to avoid complete demolition or unnecessary complexity due to energy or structural upgrades
    i. Clarify that it can only be accessed for compliance with energy or structural obligations
        1. Grant an additional 12" of height – increase framing depth above top plate rather than hanging, which is structurally complex and reduces ceiling heights.
        2. Note that the structure height will still be restricted by the 16' height limit.
        3. Grant an additional 6" in plan on any side for structural seismic sheathing, exterior insulation, or replacement siding, so long as no portion of the structure encroaches beyond the property line.



    ii. Add a clarification regarding structures with existing parapets. A non-conforming portion of the structure may be modified up to the height of the existing parapet. This can be done without creating an increased impact to neighbors. Previous interpretation of 'shrink-wrap' rules should not apply to recessed roof areas below the top of the parapet. This flexibility will allow the interior to be a reasonable residential height.

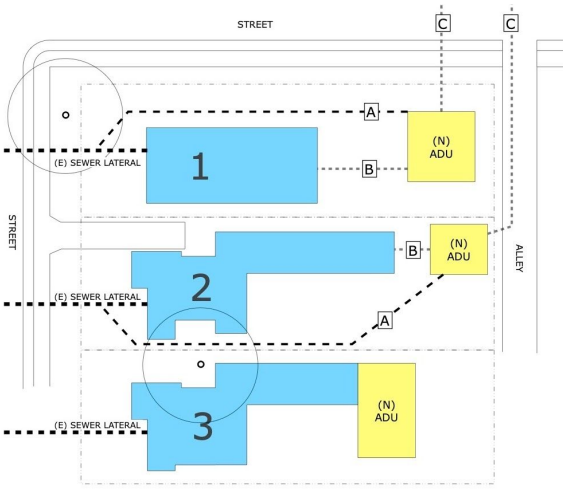


6. Utility Connections

a. Separate meters placed only at the owner's discretion
b. The requirement to provide a separate sewer line for detached ADUs has been directed by the Chief Building Official.
    i. There is an exception in the Plumbing Code recognized in many jurisdictions to avoid the significant cost this causes (often greater than $9,000) CPC 311.1 *Exception: Where one building stands in the rear of another building on an interior lot, and no private sewer is available or can be constructed to the rear building through an adjoining court, yard, or driveway, the building drain from the front building shall be permitted to be extended to the rear building.*
        1. Recognize that the high cost can be viewed as the basis for applying the exception
        2. Question - If no separate line is required for an attached ADU, why obligate the cost and complexity for a detached ADU. The outcome is the same so why regulate differently?
        3. An alternative to this might be a study performed by experts under CPC 301.3 "Alternate Materials and Methods of Construction Equivalency" with the establishment

of standards for equipment (backflow prevention) and cleaning/inspection schedules. Once established in the City, this could be relied on as an alternate approach.

c. Routing of utilities at the discretion of property owner (rear alley or another alternate to avoid disruption to landscape or trees)
    i. This graphic compares three lots with an alley behind. Parcel 3 has an attached ADU and the sewer may connect to the main house line. There is no impact to the site. Parcels1 and 2 have detached ADUs and are currently required to run their sewer line shown as 'A', around the main house, and out to the street at the front yard. This is highly problematic, especially if there are protected trees on site. A reasonable option would be to allow the sewer line placement shown by the 'B' or 'C' routing.



7. Garage replacement associated with Detached ADU

a. When replacement covered parking is provided, and attached to an ADU, that area should not count against the 800 sf 'bonus'
    i. Staff has not indicated agreement with this.
    ii. It represents a significant disincentive toward the creation of covered parking spaces.
    iii. The space designated as a garage should count against the overall FA and not be allowed if the FAL or Lot Coverage will be exceeded as a result.

8. Retroactive Actions for all ADUs in process after 1/1/2020 (for projects without Building Final)

a. Retract all enacted Deed Restrictions which are not in compliance with the updated regulations
    i. Require new Deed Restrictions in conformance with the updated requirements
b. Refund any overpayment of fees for all projects in process (between approvals and Building Final) since January 1, 2020 for:
    i. Proportionate Impact Fees, if they remain in place
    ii. Other fees as adjusted by the revised ordinance
    iii. Council could elect to refund the full amount or an adjusted amount according to 16.06.110/R108.5 at 80%?

9. Green Building

a. The current detached ADU regulations require Tier 2 with exceptions
    i. Tier 2 obligates requirements for third party preparation of documents and site evaluation which comes at significant cost
b. If a homeowner proposes an addition/alteration to their home under 1,000sf, a third party is not required and the project is only required to meet CALGreen Mandatory measures
c. To streamline the ADU permitting and construction process, detached ADUs under 1,000 sf should only be required to comply with CALGreen Mandatory for consistency

10. Noise producing equipment

a. Allow placement at any location on the property as long as documentation is provided which confirms noise level will be below the 66 decibel limit at the property line. What should be codified for these issues are rules that direct the desired result. Don't overcomplicate what can be achieved simply.
    i. Equipment should be <66 dB without accessories such as blankets (can fail/degrade over time)

ii. Asking for site-specific studies creates an additional unreasonable cost burden and must be avoided

11. Doorway between ADU and Primary Unit

a. This really should be allowed as long as it is a hotel style communicating door. Note that it is allowed for a JADU so why not for an ADU?
   i. Provides indoor access to care for or interact with the occupant but can be closed if privacy or separation is needed
b. Don't create rules people will routinely circumvent - just remove the unnecessary regulation - Some may take advantage but there is little stopping them anyway

12. 60-day Processing

a. Sets unrealistic expectations without clear narrative
b. Explain how this will be interpreted/implemented
c. Note that HCD has indicated the State says once an application is submitted, the City must approve within 60 days or it is automatically approved.
   i. It is assumed that the clock is stopped when waiting for applicant response to comments, but there is nowhere this is codified and creates frustration for homeowners

13. Sprinkler requirements

a. Clarify rules relative to the California State Fire Marshal Information Bulletin 17-001 (1/24/17)
   i. Current PA implementation is not in alignment with Senate Bill 1069
   ii. Safety concerns and physical constraints must be balanced against compliance with the State language

14. Flood Zone

a. Better articulate requirements and permitted exceptions
   i. Consider an example of the Exemption 800 sf ADU in the flood zone on a small lot – if reconstructing a non-conforming structure, it must be allowed to go higher than the 16 foot limitation by the delta between existing grade and the project site base flood elevation to raise the first floor level.

15. Remove requirement to convert "existing" garage/carport

a. Only applies to projects where a new home is constructed with the intent of the garage or carport being converted to an ADU as a second 'step' after final inspection.
b. Allow for a one-phase process
   i. Offer incentive for streamlining
      1. Cannot be setbacks, height, etc. as these are enshrined in Gov. Code, § 65852.2, subd. (c)(2)(C)
      2. Could offer an additional fee reduction for saved staff time or something similar

While we recognize the Ordinance before you has been in process for the better part of a year, your action tonight will set the tone for what is possible until the next iteration of this language evolves. We are hopeful the commitment you have voiced toward incentivizing residential development, aligned with a stated goal of streamlining the approval of ADUs, will lead you to adopt some version of the 15 points we have presented. As professionals serving as guides to those who wish to construct an ADU, and being tasked with implementing the regulations, we want you to understand how important we believe these items are. If anything, we hope you might consider this as a starting point. We welcome your willingness to perhaps go further and, as many other cities have done, consider the adoption of additional language which will make ADUs more livable, desirable, and affordable.

Respectfully submitted,

Jessica Resmini, Architect Randy Popp, Architect

Palo Alto City Council Item #_____ **10/5/20**
RE: Staff Report #11118, 8/17/20

The “ADU Task Force” is a group of Architects and other professionals interested in better understanding the ADU laws at the state and local level and seeking to streamline their implementation. It is estimated that these individuals have a collective recent experience of designing, submitting or constructing over 60 ADU’s under the new California ADU laws.

The City of Palo Alto and its leaders have demonstrated great initiative in green building and planning for the future. The Staff report accurately states that the City Council would like to lead the way to “streamline and simplify ADU regulations, ensure compliance with state laws, and promote the production of ADUs and JADUs.”

We recognize these new laws have created more questions than answers for staff and that the transition has been challenging. We recognize the magnificent effort by staff to digest the new state laws while considering the unique challenges at our local level.

This task force has met four times over the past month to review the proposed ordinance. The deliverable of the task force includes four major items: Questions, Recommendations and suggested refinements to the proposed Ordinance. In a number of topic areas, we have sought to challenge the notion that similar conditions have not been granted the same flexibility or opportunity. We hope to simplify the regulations by reflecting a logic we see as reasonable and appropriate consistent with the stated direction received from City Council.

Questions

1. Permit Streamlining:
    a. Provide further clarity on the permit processing time for homeowners. Perhaps the required sequence of application steps within the 60 days can be outlined more clearly. The 60-day statement, without further clarification, sets unrealistic expectations.
2. Provide a Definitions Section for clarity. See attached example ordinance.
    a. Should ADU definitions be located with the general definitions of PA Muni Code or with ADU Ordinance?
3. Government Code Compliance:
    a. Why is the focus of PA ADU ordinance on Gov. Code § 65852.2 subd. (e) to the exclusion of other subdivisions of that statute, especially subs. (a) and (c)?
    b. Why are subdivisions (a)-(d) and other portions of that statute not referenced as part of the ADU ordinance? Subd. (e) defines an absolute minimum a city must permit, but this is not included or referenced in the ordinance. Just seems confusing and incomplete. Consider citing the entire code per example ordinance.
    c. Much of the language or constraints could be worded more directly, in simple language, to minimize questions
        i. Consider replacing the table with suggested ADU & JADU ordinance sections at the end of the document.
    d. Why is there so much language about “not approving ADUs”?
4. Deed Restrictions for JADU
    a. Consider removing it. It adds cost and time and more barriers, confusion and is not enforceable. Why is JADU Deed restriction required?
5. FAR 800sf development rights:

a. The state has issued 800sf of development rights per Government Code Section 65852.2 (a)(8) states that "an accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. *The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.*"
b. Treating the 800 square foot exemption provided by the State as a 'bonus' provided under the statute will simplify implementation. We believe that such exemption is intended to continue after the statute changes in 2025, but we would like to confirm that this is the City's understanding as well.
c. We are concerned that City staff's interpretation of the State statute inverts the relationship between ADU development rights, created by the statute, and development rights for main dwellings that pre-exist under Palo Alto's local zoning ordinances. In effect, City Staff's interpretation results in a usurpation of such local development rights that was never intended by the legislature and that surprises citizens throughout Palo Alto. When asked, "Do you believe that building an ADU will limit your ability to expand your home in the future?" most Palo Alto citizens will say, "No." Furthermore, we believe that this interpretation is both inconsistent with the state statute and not something that the City Council had in mind in enacting the emergency ordinance in January, 2020.
    i. Will the 800sf of the ADU remain as "bonus" or exemption as long as it's used as an accessory dwelling unit?
    ii. State language clearly indicates the parcel should not lose "headroom" in their base FAR by building an ADU.
    iii. Can a parcel retain their base FAR, exclusive of up to 800 sf of existing ADU once constructed?
d. If the goal is to encourage ADUs, the ordinance should preserve full property development options for future phased improvements. If that is not the Council's decision, language in the ordinance should be clear about what is lost or protected, to prevent confusion as homeowners masterplan current and future projects.

6. JADU & ADU combined area exemption:
    a. We wish to clarify the 800 sf exemption is guaranteed by State statute, and the City has indicated that exemption can be used in combination development between ADU and JADU when both are created on a single parcel.
    b. In addition to that, Palo Alto has, in the past, provided an additional 50 sf when a JADU is constructed. In place of this, the City may want to consider including a bonus of 150 sf, consistent with the 150 sf exemption mandated for creation of JADU ingress or egress. If you can gain this area otherwise, why not allow it always. See (e)(1)(A)(i) in the statute.
    c. If the city's intent is to encourage building ADUs and JADUs, there's nothing that prevents them from providing additional incentives.
    d. It seems as though combining the two operates to remove the absolute minimum exemption of 800 sf provided by the statute for ADUs. Lofts
    e. Lofts can make very small ADU's more livable. Fire egress requirements are code defined. Can building officials refine safe, acceptable, internal access to ADU lofts? Ladder? Split riser stair? Ship's ladder?.
7. HVAC: Confirm HVAC equipment setback requirements - currently noted as 4'. If the goal is to protect adjacent properties from noise we need clear language to that effect in the code.

    a. Recommendation is to use the already defined maximum decibel level at property line without a setback requirement. Why does the location matter if equipment is in conformance with the noise regulation? This is a good example of how to simplify by stating the goal rather than creating spatial restrictions that remove design flexibility.
8. ADU Height: Why did the ADU height outside of the 4' get reduced to 16'? This puts ADUs approved and completed to date out of compliance. (Prior height was 17' w/ daylight plane).
    a. Including the accessory structure daylight plane requirements, then making an exception to allow 16' height is confusing. 18.42.040 (a) 8 D.
    b. Daylight plane restriction as stated does not conform to State language.
    c. Another 18" will allow flexibility in providing solutions that promote quality residential space. Two-story is allowed so let's enact regulations that incentivize good design, mitigate privacy issues, and allow for residential units that will be desirable within the RHNA quota.
9. Basements: ADUs/JADUs basement in Ordinance.
    a. Why create different rules for Main Residence vs. ADU - if Palo Alto allows basements without being FAR counted, this should also apply to ADUs. An option would be to allow uncounted basement FAR only if a single-story ADU, not for two-story or ADUs with a loft.
10. Second Floor Attached ADU:
    a. Consider adding a section on when 2nd floor Attached ADU's may be created. Clarify in Ordinance when ADUs may be built on the 2nd floor, with what access, size, etc. .
11. Parking: Municipal Code Section 18.19.040 (k)(iv) states, "If covered parking for a unit is provided in any district, the maximum size of the covered parking area for the accessory dwelling unit is 220 square feet. This space shall count towards the total floor area for the site but does not contribute to the maximum size of the unit unless attached to the unit Clarify covered parking requirements for ADU relative to City of Palo Alto.
    a. Current language is disincentivizing people to provide parking because it is deducted from the ADU. If they have available FAR to provide parking, and choose to do so, it provides a benefit to the neighborhood and should be encouraged not penalized.
12. Sprinklers: Coordinate with Fire Marshall to add language clarifying when sprinklers are required in an ADU. Make reference to examples to explain when sprinklers will be required:
    a. If there are 3 structures, or >150' from a (fire truck/hydrant) (ROW)? access. (Any new structure over 500sf?) Coordinate with Fire Marshall to provide City of Palo Alto Bulletin.
    b. The State Fire Marshall Memo seems to contradict what the local interpretation is. (*See* California State Fire Marshal, "Information Bulletin 17-001," https://www.hcd.ca.gov/policy-research/docs/Fire-Marshal-IB.pdf
    c. These need to be coordinated.
13. Flood Zones:
    a. Is an existing garage in a flood zone and below the BFE allowed to be converted into an ADU without raising the floor level? What if the scope of the work is below 50% of the valuation of the entire property?
14. Conversions:
    a. Please add a definition of Conversion and provide an example of a scenario when an addition can be added.
    b. Consider adding language about allowing the ability to increase zoning non-conformance to comply with energy or structural building code requirements. Example: replacement of shallow roof framing with deeper framing to accommodate required insulation. Not being able to set the new framing on the plate is structurally complicated and the minor

increase to the 'non-conformance' is insignificant. There should be some practical flexibility in this area.

15. Utilities:
    a. The utility question is a particularly big deal for ADUs, because the upfront costs of providing analysis and direction can be burdensome where this could be resolved in construction in a more efficient manner. The associated cost and complications can be a huge deterrent for building an ADU and need to be simplified.
    b. It is our suggestion that the property owner may choose to use existing utilities or create new connections. Connections shall be per the California Building and Plumbing Code.
        i. All City departments need to be coordinated on the incentive to get ADUs permitted quickly. This has been a bottleneck in the past that can be avoided through better coordination.
    c. Running a dedicated sewer line from the rear of a property is expensive and can often be very disruptive. If a sewer line for an attached ADU does not need to be run separately, why does a detached ADU need a separate run? CPC 301.3 provides an exception path that PA could expand for ADUs specifically to reduce cost burden.
    d. Although CPC 311.1 requires an ADU sewer to connect to the front lateral between the main house and the sidewalk "where available", exception 1 could be extended for ADUs, with the cost burden as the basis, with backflow prevention to address sanitary concerns.
    e. This approach offers 2 opportunities for cost savings: the trenching itself, plus replacement costs for driveway and/or landscape damage. This can approach a $15,000-$20,000 range. Note: Extensive trenching often impacts trees, a valuable PA resource,
    f. There needs to be some flexibility. Sometimes it might make more sense to connect directly to the street out a rear alleyway, or on a corner lot rather than traversing 100' to the front property line.
    g. It is our recommendation that the City allow connection to the existing main house system(s), empower the homeowner's consultants (licensed professional/plumber) to determine the most efficient run and have city staff/inspectors make the best effort to approve the most efficient and safe solution. With housing as a stated priority, we need to simplify the creation of ADUs, consistent with the City Council's stated intention and the spirit of the State legislation and this is a major area of cost and complexity that can be resolved.
    h. Instead of a one size fits all solution to the sewer line, there should be an opportunity to allow a licenced professional plumber to implement the best solution for the site.
16. Minor Ordinance Language adjustments:
    a. Should "Range" be changed to "cooktop" or just 'built-in' cooking appliance in reference to kitchen requirements?
    b. Make clear that an accessory structure may be rebuilt for any reason as long as it does not increase the degree of non-conformance, not just because it's "non-conforming" as noted. Coordinate this with the language of 14.b
    c. The privacy requirements (frosted second story windows facing neighbors) is vague.
        i. The task force thinks it is a good goal to protect privacy from 2nd floor glazing while still promoting ADUs. Therefore additional clarity defining how window glazing may be obscured is needed. There is a question of whether changing to obscure glass voids the NFRC rating Consider allowing applied films so that the NFRC thermal rating is not affected .
17. Graphic Examples: On page 46 of staff reports are figures of ADUs. Could staff identify which ones and what size each may be?
18. Building Code Changes

a. Could staff provide a bulletin outlining building code changes?

_____

Other Recommendations

Many professionals on the Task Force will use this ordinance as the guide to design and permit ADUs the community wishes to build. We have reviewed the proposed ordinance through the lens of "streamlining, simplifying, complying with state laws and promoting ADUs". While we are very supportive of seeing an ordinance passed, there are additional recommendations that may help streamline and incentivize ADUs:

COST

Cost is often the major barrier for building ADUs. While city policy does not have control over the construction market, it has control of Permit/Impact fees and other regulatory requirements that cause a project's cost to increase. Bearing these extra costs can be a major burden for some homeowners. If the City is serious about incentivizing housing, many of these costs could be mitigated to lower the threshold for people who would otherwise struggle to finance ADU development. We would like to recommend Council request data on costs associated with obtaining a permit for ADUs and review the fees in detail. Based on the data, what is the average permit cost for an ADU since January 2020 and is it reasonable?

Cost Categories

A. While the State statute has directed Impact Fees be waived for ADUs under 750 sf, the proportional application of these fees for ADUs greater than 750 sf creates an inconsistent result. Properties with small main homes pay a disproportionately higher amount than those with larger main homes. Due to the wording of the statute, Impact Fees must be handled in this way. We would ask Council to evaluate the benefit of Impact Fees relative to the goal of incentivizing ADU development and perhaps consider waiving this cost in favor of some other consideration.
B. Plan Check and Building Permit Fees for a variety of departments are generated based on square footage relative to a locally adjusted construction cost average. There should not be any need for construction cost data beyond this. Applicants are asked for this information but it is often understated and inaccurate due to unfounded concerns for associated increased fees. Accepting this associated effort will be consistent with the size of the unit is a reasonable expectation.
C. In addition to the basic City fees, there are a variety of other costs such as School District Impact Fee, specialty professionals such as Arborist, Green Building, and Energy Compliance, and other City fees which can include Comp Plan Maintenance, C&D Residential, and Landscape Review.
D. Regulatory requirements can also add cost to a project that may be unnecessary. Some examples include: the sewer requirements which could be reduced by exception, tree protection measures due to the current sewer connection requirement interpretation, and green building requirements which are more consistent with large home demolition and construction. While it is not the City's job to save homeowner money, each additional requirement should be weighed against the City Council's intention to promote ADU construction.

PROGRAMS THAT PROMOTE AND INCENTIVIZE

The simplest approach to incentivize ADU production is to recognize the 800sf exemption for an ADU created under state law, to protect homeowners' pre-existing FAR rights, and to allow a maximum of up to 1,200sf if a site size allows, consistent with the state law. This would be a great support for the city of Palo Alto/City Council goal to incentivize housing beyond mandated minimums. (Making clear that the exemptions of at least 800 sf arising under the Gov. Code are applied first is especially important to prevent homeowners and other owners of residential property from being surprised if development

of an ADU results in the improper and unintended losses of FAR and lot coverage for the primary dwelling.) As it stands, the proposed ordinance adopts the very minimum allowances laid out in the Gov. Code § 65852.2 subd. (e) and lays out two very complicated tables that are inconsistent with the State statutes and highly confusing:

- Table 1 Units Required to be Approved Under State Law
- Table 2 All Other Units That do not qualify for approval under section 18.09.030

The title of Table 2 suggests the ordinance is going above and beyond what would be required by state law, however, Table 2 reflects the minimum required allowance per Gov. Code 65852.2 subd. (c) whereas a local ordinance may in fact adopt a maximum allowable ADU sf of 1,200sf. City Council may consider discussing the political implications of allowing 1,200sf and future housing stock. The 1,200sf ADU, where feasible, could allow real, livable area for multi-generational housing, especially older couples. It is our experience that many homeowners in Palo Alto who see themselves moving into their ADU in the future have a difficult time envisioning living in 800sf. Measures like this could be considered as a program that aggressively promotes and incentivizes ADU construction and could be used to satisfy RHNA requirements.

RESOURCES AND CONSULTANTS

The staff has done a tremendous job digesting the new state laws, but we are saddened by the amount of time that it's taken to get this far and the loss of potential units in that time. Because housing laws will be changing more in the future, the city may want to consider hiring a consultant to expedite future state law adoption around housing, coordinated with the city attorney, and/or hiring a housing advocate who can be more proactive with engaging HCD and other pro-housing organizations.

Thank you for reviewing our input. We hope, by giving our input, we can help to streamline and simplify the ADU regulations, ensure compliance with state laws, and promote the production of ADUs and JADUs.

ADU Task Force Members

Judith Wasserman, AIA
Randy Popp, Architect
Phoebe Goodman Bressack Architect
Keleigh Grim, LEED AP, Associate AIA
JaWen Hernandez, Architect
Peter Baltay, AIA Architect
Dan Garber, FAIA
Michael Chacon, Architect
Jessica Resmini, Architect
John Kelley, Citizen
Heather Young, Architect

Ordinance No.
Ordinance of the Council of the City of Palo Alto Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Amend Requirements Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. Housing in California is increasingly unaffordable. In 2017, the average California home cost about 2.5 times the national average home price and the monthly rent was 50% higher than the rest of the nation. Rents in San Francisco, San Jose, Oakland, and Los Angeles are among the top 10 most unaffordable in the nation.

B. Housing in Palo Alto is especially unaffordable. The average Palo Alto home currently costs about 8 times the national average home price and the monthly rent is about 2.5 times the national average.

C. Palo Alto has a jobs/housing imbalance. When addressing this imbalance, the City must not only provide housing but also ensure affordability.

D. Assembly Bills ("ABs") 68, 587, 671, and 881 and Senate Bill ("SB") 13 ("State ADU Law") pertain to accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs") and were approved by the California Legislature on September 13, 2019 and signed by the Governor on October 9, 2019. These bills, codified primarily in California Government Code sections 65952.2 and 65952.22, are intended to spur the creation of lower cost housing by easing regulatory barriers to the creation of ADUs and JADUs.

E. This ordinance is adopted to comply with the mandates of the State ADU Law.

SECTION 2. Section 18.42.040 (Accessory and Junior Accessory Dwelling Units) of Chapter 18.42 (Standards for Special Uses) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is deleted in its entirety.

SECTION 3. Chapter 18.09 (Accessory Dwelling Units and Junior Accessory Dwelling Units) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is added to read:

18.09.010 Purpose

The intent of this Chapter is to provide regulations to accommodate accessory and junior accessory dwelling units (ADU/JADU), in order to provide for variety to the city's housing stock and additional affordable housing opportunities. These units shall be separate, self-contained living units, with separate entrances from the main residence, whether attached or detached. The standards below are provided to minimize the impacts of units on nearby residents and throughout the city, and to assure that the size and location of such dwellings is compatible with the existing or proposed residence(s) on the site and with other structures in the area. The purpose of these standards is to allow and regulate accessory dwelling units (hereinafter referred to as ADUs) and junior accessory dwelling units (hereinafter referred to as JADUs) in compliance with Government Code Sections 65852.2 and 65852.22. Effect of Conforming. An ADU or JADU that conforms to the standards in this section shall:

1. Be deemed to be consistent with the City's general plan and zoning designation for the lot on which the unit is located.
2. Not be deemed to exceed the allowable density for the lot on which the unit is located.
3. Not be considered in the application of any local ordinance, policy, or program to limit residential growth.
4. Not be required to correct a "nonconforming zoning condition".

18.09.020 Applicable Zoning Districts
The establishment of an accessory dwelling unit is permitted in zoning districts when single- family or multi-family residential is a permitted land use.

18.09.030 Units Approved Notwithstanding Other Local Regulations

a. Government Code section 65852.2, subdivision (e) provides that certain units shall be approved notwithstanding other state or local regulations that may otherwise apply. The following types of units shall be governed by the standards in this section. In the event of a conflict between this section and Government Code section 65852.2, subdivision (e), the Government Code shall prevail.

Commented [1]: This really applies further down, but it's worth mentioning here. The failure of the Emergency Ordinance to include language required by (a)(1)(C) itself nullies the Emergency Ordinance under (a)(4), among other things (e.g., the street side setback requirement, which I think is in the the Emergency Ordinance, and, more comprehensively, the Inverted, Vanishing Exemption Interpretation, which violates (a)(8).

Commented [2]: Another way to express these points might be simply incorporate the express language of the statute. For example, one could write something like. "It is also the intent of this Chapter to acknowledge the effects of the following provisions of of Gov. Code § 65852.2 subd. (a), as set forth in their original statutory language : "

And then quote:

(a)(1) introductory language and (a)(1)(C); (a)(5); (a)(6); and (a)(8)

Commented [3]: Consider Referring to the Government Code Sections in their entirety.

i. An ADU or JADU within the existing space of a single-family dwelling or an ADU within the existing space of an accessory structure (i.e. conversion).

ii. An ADU or JADU within the proposed space of a single-family dwelling.

iii. A detached, new construction ADU on a lot with a proposed or existing single-family dwelling, provided the ADU does not exceed 800 square feet, sixteen feet in height, or four-foot side and rear (i.e. interior) setbacks.

iv. ADUs created by conversion of portions of existing multi-family dwellings not used as livable space.

v. Up to two detached ADUs on a lot with an existing multi-family dwelling.

b. The Development Standards for units required to be approved pursuant to Government Code Section 65852.2, subdivision (e) are summarized in Table 1.

Commented [4]: This language is inconsistent with the organization and precise statements included in the State statute including but not limited to subdivisions (a) and (c). This pulls from various locations and the result creates a conflicting set of statements.

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Table 1: Units Required to Be Approved Under State Law Subdivision (e)

	Single-Family			Multi-Family	
	Conversion of Space Within an Existing Single-Family Home or Accessory Structure	Construction of Attached ADU Within the Space of a Proposed Single-Family Home	New Construction of Detached ADU	Conversion of Non-Habitable Space Within Existing Multi-family Dwelling Structure	Conversion or Construction of Detached ADU
Number of Units Allowed[1]	1 ADU and 1 JADU)		1 (ADU and 1 JADU	25% of the existing units (at least one)	2
Minimum size[2]	150 sf				
Maximum size[2]	N/A[3]		800 sf	N/A	
Setbacks	N/A, if condition is sufficient for fire and safety	Underlying zone standard for Single Family Home (ADU must be within space of Single- Family Home)	4 feet from side and rear lot lines; underlying zoning for front setback	N/A	4 feet from side and rear lot lines; underlying zoning for front setback
Daylight Plane	N/A		N/A		
Maximum Height	N/A		16[4]	N/A	16[4]
Parking	None				
State Law Reference	65852.2(e)(1)(A)	65852.2(e)(1)(A)	65852.2(e)(1)(B)	65852.2(e)(1)(C)	65852.2(e)(1)(D)

1. Lofts where the height from the floor level to the underside of the rafter or finished roof surface is 5' or greater shall count towards the unit's floor area.
2. Up to 150 sf may be added for ingress and egress. Would this be exempt from FAR?
3. Units built in a flood zone are not entitled to any height extensions granted to the primary dwelling.

a. Development standards stated elsewhere in this Section or Title 18, including standards related to FAR, lot coverage, and privacy, shall not be considered in approval of ADUs or JADUs that qualify for approval under this section.

a. The establishment of accessory dwelling units and junior accessory dwelling units pursuant to this section shall not be conditioned on the correction of non-conforming zoning conditions; provided, however, that nothing in this section shall limit the authority of the Chief Building Official to require correction of building standards relating to health and safety.

a. The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

a. Rental of any unit created pursuant to this section shall be for a term of 30 days or more.

Deleted: (

Deleted: or

Deleted:)

Commented [5]: Does the State Code say this?

Commented [6]: @randy@rp-arch.com As far as I can tell, it really only applies to (e)(1)(A). See (e)(1)(A)(iii). If I'm reading Table 1 correctly, it may be in the right column.

Commented [7]: This is from section (e)(1)(B). Applies only applies to existing accessory structures where both the ADU and JADU are proposed within?

Commented [8]: @jessica@aducollective.com Very hard to tell where the footnotes are in this table! Maybe we could add a note saying that font for the footnote references should be much larger :)

Commented [9]: Why include this restriction? Should an ADU not be considered equal to the Main Dwelling?

Commented [10]: What does this mean? Why are we setting up options to not approve an ADU and what are the standard that will govern the approval?

Commented [11]: I agree. At a minimum, perhaps we could refer to the list in (a)(1)(B)(i) as a benchmark.

Commented [12]: Add more detail to this - there are conditions where they can be required

a. Attached units shall have independent exterior access from a proposed or existing single- family dwelling. Except for JADUs, attached units shall not have an interior access point to the primary dwelling (e.g. hotel door or other similar feature/appurtenance).

a. Conversion of an existing accessory structure pursuant to Government Code section 65852.2(e)(1)(A) may include reconstruction in-place of a legal or non-conforming structure, so long as the renovation of reconstruction does not substantially increase the degree of non-compliance, such as increased height, envelope, or further intrusion into required setbacks. A permitted increase may include only changes necessary to allow conformance with energy requirements or for mandatory structural improvements to comply with current regulations or standard construction practice.

b. Street addresses shall be assigned to all units prior to building permit final to assist in emergency response.

c. The unit shall not be sold separately from the primary residence.

a. JADUs shall comply with the requirements of Section 18.09.050.

18.09.040 All Other Units

a. This section shall govern applications for ADUs and JADUs that do not qualify for approval under section 18.09.030.

b. The Development Standards for units governed by this section are provided in Table 2.

Table 2: All other Units to be approved under State Law Section 65852.2 Subdivisions (c) and (d)

	Attached	Detached	JADU
Number of Units Allowed[1]	1		1
Minimum size	150 sf		
Maximum size	900 sf or 1,000 sf for two or more bedrooms; no more than 50% of the size of the single-family home	900 sf or 1,000 sf for two or more bedrooms	500 sf
Setbacks	4 feet from side and rear lot lines; underlying zone standard for front setback		
Daylight Plane Initial Height Angle	8 feet at lot line		
	45 degrees		
Maximum Height[3] Res. Estate (RE) Open Space (OS) All other eligible zones	30 feet		
	25 feet		
	16 feet		
Parking	None		

Commented [13]: This is unnecessary - People will just illegally add a door if this language is maintained. Perhaps adding a requirement for a hotel-style adjoining door arrangement (for security) would be appropriate but people often build these to care for those they need to support - forcing them to go outside to get to them is unreasonable. Yes, some may take advantage of this to just add extra space but they will do that regardless of this language - best to not unnecessarily regulate like this.

Commented [14]: this is a subjective criteria. may cause problems later.

Commented [15]: We need to find a way to have a modest amount of flexibility - The language I suggest at the end of the paragraph seeks to limit what might be allowed

Commented [16]: consider adding this to qualify only the changes necessary for structural improvement or energy compliance

Commented [17]: Sometimes people rebuild because it's so expensive to retrofit while "non-increasing the degree of non-conformity. Consider allowing flexibility to meet energy (insulation) and structural regulations.

Deleted: Increased degree of non-conformity may be approved to allow for structural or energy code compliance…

Commented [18]: This is confusing. What does this mean and why do we need to differentiate ADUs that do qualify for approval? Either the rules apply or they don't and if an application is compliant, it should be approved?

Commented [19]: @jessica@aducollective.com Perhaps the staff can cite an example where this might apply?

Commented [20]: I would change this to "Subdivisions (a)-(d)," although this really gets into a much bigger discussion. If they were to follow this multi-table approach, they should really have three tables:

Table 1 for subd. (e), the absolute minimum that the statute provides;

Table 2 for subds. (a)-(d); and

...

Commented [21]: @jkelley@399innovation.com Great suggestion

Commented [22]: Clarify approval process? How does it differ?

Commented [23]: Why have limit which are less than the state recommendation - We must choose to prioritize housing or admit that we intend to resist it but these subjective limits seem to be without basis. Whe...

Commented [24]: @randy@rp-arch.com I agree, although the 900 sf is better for the studio/1-bedroom.

Square Footage Exemption	Up to 800 sf[4]	Up to 500 sf[4]

1. An attached or detached ADU may be built in conjunction with a JADU on a lot with an existing or proposed single family home
2. Lofts where the height from the floor level to the underside of the rafter or finished roof surface is 5' or greater shall count towards the unit's floor area.
3. Units built in a flood zone are not entitled to any height extensions granted to the primary dwelling.
4. Lots with both an ADU and a JADU may exempt a maximum combined 800 square feet of the ADU and JADU from FAR, Lot Coverage, and Maximum House Size calculations.

a. A single-family dwelling shall exist on the lot or shall be constructed on the lot in conjunction with the construction of an ADU/JADU.

a. ADU and/or JADU square footage shall be exempt from FAR, Lot Coverage, and Maximum House Size calculations for a lot with an existing or proposed single family home, as provided in Table 2. ADU and/or JADU square footage in excess of the exemptions provided in Table 2 shall be included in FAR, Lot Coverage, and Maximum House Size calculations for the lot.

a. Attached units shall have independent exterior access from a proposed or existing single- family dwelling. Except for JADUs, attached units shall not have an interior access point to the primary dwelling (e.g. hotel door or other similar feature/appurtenance).

b. No protected tree shall be removed for the purpose of establishing an accessory dwelling unit unless the tree is dead, dangerous or constitutes a nuisance under Section 8.04.050. Any protected tree removed pursuant to this subsection shall be replaced in accordance with the standards in the Tree Technical Manual.

a. For properties listed in the Palo Alto Historic Inventory, the California Register of Historical Resources, the National Register of Historic Places, or considered a historic resource after completion of a historic resource evaluation, compliance with the appropriate Secretary of Interior's Standards for the Treatment of Historic Properties shall be required.

a. Noise-producing equipment such as air conditioners, water heaters, and similar service equipment, shall be located to conform with maximum permitted Decibel level at the property line. All service equipment must meet the city's Noise Ordinance in Chapter 9.10 of the Municipal Code.

a. Setbacks

   i. Detached units shall maintain a minimum three-foot distance from the primary unit, measured from the exterior walls of structures.

   i. No basement or other subterranean portion of an ADU/JADU shall encroach into a setback required for the primary dwelling.

   i. Projections, including but not limited to windows, doors, mechanical equipment, venting or exhaust systems, are not permitted to encroach into the required setbacks, with the exception of a roof eave of up to 2 feet.

a. Design

   i. Except on corner lots, the unit shall not have an entranceway facing the same lot line (property line) as the entranceway to the main dwelling unit unless the entranceway to the accessory unit is located in the rear half of the lot. Exterior staircases to second floor units shall be located toward the interior side or rear yard of the property.

   i. Second Story ADUs may be developed when converting existing space of an existing home or adding onto an existing home or when proposing a new home. The second story ADU must comply with the underlying zoning standards or not increase the degree of non-conformity of a structure.

   ii. Privacy

      A. Second story doors and decks shall not face a neighboring dwelling unit. Second story decks and balconies shall utilize screening barriers to prevent views into adjacent properties. These barriers shall provide a minimum five- foot, six-inch, screen wall from the floor level of the deck or balcony and shall not include perforations that would allow visibility between properties.

Commented [26]: Still really hard to read these footnotes. I think the font size should be increased considerably.

Commented [27]: Must be stated as being exclusive of existing or available FAR.

Commented [25]: This belongs in a separate table dealing with subds. (a)-(d).

Commented [28]: How will this exemption affect future permits?

Commented [29]: Maybe I'm missing it, but it's not clear to me how this addresses the "cannibalization" issue that arises if you're trying to build an that's larger than 800 sf.

Commented [30]: This is unnecessary - People will just illegally add a door if this language is maintained. Perhaps adding a requirement for a hotel-style adjoining door arrangement (for security) would be appropriate but people often build these to care for those they need to support - forcing them to go outside to get to them is unreasonable. Yes, some may take advantage of this to just add extra space but they will do that regardless of this language - best to not unnecessarily regulate like this.

Commented [31]: Can this be enforced? If you are allowed an 800 sf ADU on a lot with an existing home and there is a tree in the way, I think you can remove it. I don't like the idea of this but I think that is what the law says.

Commented [32]: @randy@rp-arch.com I think you're saying this doesn't apply to 800 sf ADUs, and, if so, I agree with that. See my comments above about separating out these provisions into three tables. If there were three tables, I think this would only apply to Table 3.

Commented [33]: This type of unnecessary restriction is too limiting - if the equipment is quiet enough to comply with the decibel requirement at property line, what difference does it make where it is located? This could cause someone to be forced to place a condensing unit in an unaesthetic location or force a strange design to accommodate the 4' restriction when the structure can be at 4'

Deleted: outside of the setbacks for the ADU/JADU.

Deleted: four feet from the rear and side yard, and outside the front setback. All such equipment shall be insulated and housed, except that the planning director may permit installation without housing and insulation, provided that a combination of technical noise specifications, location of equipment, and/or ...

Commented [34]: This prohibits basements on detached ADUs - needs to be reconsidered if basements are to be allowed

Commented [35]: Further develop the language around when a 2nd floor ADU is acceptable.

A. Second story or Loft windows, excluding those required for egress, shall have a five-foot sill height as measured from the second-floor level, or utilize obscured glazing on the entirety of the window when facing adjacent properties. Second story egress windows shall utilize obscured glazing on the entirety of the windows which face adjacent properties.

A. Second story or Loft windows shall be offset from neighbor's windows to maximize Privacy.

(k) Parking

i. Replacement parking is not required when a garage, carport, or covered parking structure is converted to, or demolished in conjunction with the construction of, an ADU.

ii. New parking is not required with construction of a new freestanding ADU on a previously developed property or with construction of a new home with an ADU and/or a JADU.

i. Replacement parking is not required when an existing attached garage is converted to a JADU. These replacement spaces may be provided as uncovered spaces in any configuration on the lot including within the front or street side yard setback for the property.

A. The Director shall have the authority to modify required replacement parking spaces by up to one foot in width and length upon finding that the reduction is necessary to accommodate parking in a location otherwise allowed under this code and is not detrimental to public health, safety or the general welfare.

A. Existing front and street side yard driveways may be enlarged to the minimum extent necessary to comply with the replacement parking requirement above. Existing curb cuts shall not be altered except when necessary to promote public health, safety or the general welfare.

i. When parking is provided, the unit shall have street access from a driveway in common with the main residence in order to prevent new curb cuts, excessive paving, and elimination of street trees, unless separate driveway access will result in fewer environmental impacts such as paving, grading or tree removal.

i. If covered parking for a unit is provided in any district, the maximum size of the covered parking area for the accessory dwelling unit is 220 square feet. This space shall count towards the total floor area for the site but does not contribute to the maximum size of the unit unless attached to the unit.

a. Miscellaneous requirements

i. Street addresses shall be assigned to all units prior to building permit final to assist in emergency response.

i. The unit shall not be sold separately from the primary residence.

i. Rental of any unit created pursuant to this section shall be for a term of 30 days or more.

i. The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

18.09.050 Additional Requirements for JADUs

a. A junior accessory dwelling unit shall be created within the walls of an existing or proposed or addition to the primary dwelling (including an attached or detached garage), existing or proposed accessory structure.

a. The junior accessory dwelling unit shall include an efficiency kitchen, requiring the following components: A cooking facility with appliances, and; food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

a. A cooking facility with appliances shall mean, at minimum a one burner installed cooktop, an oven or convection microwave, a 10 cubic foot refrigerator and freezer combination unit, and a sink that facilitates hot and cold water.

i. A food preparation counter and storage cabinets shall be of reasonable size in relation to a JADU if they provide counter space equal to a minimum 24-inch depth and 36- inch length.

a. For the purposes of any fire or life protection ordinance or regulation or for the purposes of providing service for water, sewer, or power, a junior accessory dwelling unit shall not be considered a separate or new unit.

Commented [36]: I tend to agree with Heather about not requiring parking for JADU garage conversions. As noted above, if that is accepted, then there are two related points: (a) I think the same should apply also to carports and covered parking structures (as in (k)(i), above); and (b) if the parking requirement for garage JADU conversions, then I don't think you need the rest of this section, because it seems to deal with how replacement parking for JADU garage conversions can be provided.

Commented [37]: If JADU garage conversions do not require parking, then I believe this should be deleted as well, unless someone can think of a good reason for keeping it.

Commented [38]: Consider encouraging applicants to provide covered parking rather than discouraging. One of the complains is that ADUs might negatively impact parking. Give people the 800sf bonus and let them decide how to spend the remaining SF.

Commented [39]: Any added covered parking that is attached to an ADU and replaces converted or removed required covered parking should not be counted as ADU FAR if site has available FAR to accommodate. Why reduce the size of an ADU to provide optional parking if it helps the neighborhood? This whole item needs to be retooled

Commented [40]: Maybe: "existing, proposed, or proposed addition to the primary dwelling..." I think that might be a bit clearer.

Deleted: range

a. The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a primary residence either the primary dwelling or the junior accessory dwelling. Owner-occupancy is not required if the owner is a governmental agency, land trust, or housing organization.

a. Prior to the issuance of a building permit for a junior accessory dwelling unit, the owner shall record a deed restriction in a form approved by the city that includes a prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, requires owner-occupancy consistent with subsection (m)(iv) above, does not permit short- term rentals, and restricts the size and attributes of the junior dwelling unit to those that conform with this section.

b. A JADU qualifies for up to a maximum of 500sf FAR exemption

QUESTION

SECTION 4. Subsection (g) of Section 16.58.030 of Chapter 16.58 (Development Impact Fees) of Title 16 (Building) of the Palo Alto Municipal Code ("PAMC") is amended to read:

(g) Accessory dwelling units (ADU) less than 750 square feet in size. Any impact fees to be charged for an accessory dwelling unit of 750 square feet or more shall be proportional to the square footage of the primary dwelling unit ~~established by the conversion of an existing garage or carport, provided that the existing garage or carport was legally constructed, or received building permits, as of January 1, 2017, and is converted to an ADU with no expansion of the existing building envelope~~;

SECTION 5. Subsections (a)(4) and (a)(75) of Section 18.04.030 (Definitions) of Chapter 18.04 (Definitions) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read: [. . .]

1. "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single- family dwelling is situated. An accessory dwelling unit also includes the following:

A. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

A. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

In some instances this Code uses the term second dwelling unit interchangeably with accessory dwelling unit. For the purposes of this definition, in order to provide "complete independent living facilities," a dwelling unit shall not have an interior access point to another dwelling unit (e.g. hotel door or other similar feature/appurtenance).

[. . .]

1. "Kitchen" means a room designed, intended or used for cooking and the preparation of food and dishwashing. Kitchen facilities include the presence of major appliances, utility connections, sink, counter, for storing, preparing, cooking, and cleaning.

A. For ADUs, major appliances shall mean a minimum two burner installed cooking appliance, and an oven or convection microwave, as well as a minimum 16 cubic foot freezer and refrigerator combination unit. Kitchens shall also include counter space for food preparation equal to a minimum 24-inch depth and 36-inch length, and a sink that facilitates hot and cold water.

Commented [41]: If we want to encourage JADU production, then we should delete "as a primary residence..." There are many homeowners in Palo Alto with other houses elsewhere, many of whom may maintain those other houses as their primary residences. Particularly if they live in other places for significant amounts of time, they may be interested in having people live on their lots, although not in the main house. We would be missing an opportunity to build more JADUs with this requirement. It may also be difficult and invasive to enforce.

Commented [42]: @jkelley@399innovation.com If our goal is to create more housing, why do we care who lives in it? So what if it is a rental - what is needed is more and this type of restriction will potentially cause a capable unit to sit vacant.

Commented [43]: In general, I don't think these deed restrictions are a good idea.

Commented [44]: Nor do I

Commented [45]: Is there any place in here where we could beef up and make rigorous both (a) the 60-day evaluation requirement, which should apply to most ADUs, unless (b) one were specifically applying under subd. (e), in which case there should be a presumption of a much faster, and perhaps, over-the-counter approval process.

Commented [46]: Consider a fixed fee to provide streamlining and clarity. Construction Cost for ADUs is not based on a SF basis. It's more on the components: 1 kitchen, 1 bathroom, sewer line and utilities do not change based on SF. Also, if we are trying to incetivize and streamline, consider a fixed fee for ANY ADU for ANY size.

Commented [47]: To further clarify what Jess says above, because the State requires impact fees be proportional, we could have a fixed, all encompassing ADU fee that is independent from being defined as an impact fee. The other option is to just release ADUs from Impact Fees as an incentive for providing minimally impactful housing that helps the City with the RHNA quota. In that way, the City helps to subsidize the costs. Right now, the proportional calculation creates an unfair dynamic.

Commented [48]: Doesn't this conflict with JADUs being dwelling units? Also, as I believe @randy@rp-arch.com noted above with regard to attached ADUs, why prohibit hotel doors or similar feature/appurtenances in attached ADUs.

Commented [49]: Consider moving to the ADU ordinance the same way the JADU kitchen definition is to be consistent.

Deleted: cooktop

Deleted: range

[. . .]

SECTION 6. Any provision of the Palo Alto Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 7. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8. The Council finds that the adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines sections 15061(b)(3), 15301, 15302 and 15305 because it constitutes minor
adjustments to the City's zoning ordinance to implement State law requirements related to accessory dwelling units as established in Government Code Section 65852.2, and these changes are also likely to result in few additional dwelling units dispersed throughout the City. As such, it can be seen with certainty that the proposed action will not have the potential for causing a significant effect on the environment.

CONSIDER CREATING AN ADU DEFINITIONS SECTION:

1. Accessory Dwelling Unit: As defined by Government Code Section 65852.2, an ADU is an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. An ADU also includes an efficiency unit as defined in Section 17958.1 of the Health and Safety Code and a manufactured home as defined by Section 18007 of the Health and Safety Code.
2. Accessory Structure: For purposes of this section, an accessory structure is a structure that is accessory and incidental to a dwelling located on the same lot.
3. Attached Accessory Dwelling Unit: An attached ADU is an ADU that shares at least one wall with the primary dwelling.
4. Converted Accessory Dwelling Unit: A converted ADU is an ADU that is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and that has side and rear setbacks that are sufficient for fire safety.
5. Detached Accessory Dwelling Unit: An ADU is detached if it does not share any walls with the primary dwelling unit or existing attached accessory structure.
6. Efficiency Kitchen: In accordance with Government Code Section 65852.22(a)(6), an efficiency kitchen includes the following: (a) a cooking facility with appliances and (b) food-preparation counter space with a total area of at least 15 square feet and food-storage cabinets with a total of at least 30 square feet of shelf space.
7. Increasing the degree of Non-Conformity
8. Junior Accessory Dwelling Unit: As defined by Government Code Section 65852.22, a JADU is a unit that is no more than 500 square feet in size and contained entirely within an existing or proposed single-family structure. A JADU may have only an efficiency kitchen and may include separate sanitation facilities or may share sanitation facilities with the primary dwelling.
9. Livable Space: A space within a building designed for living, sleeping, eating or food preparation, including but not limited to a den, study, library, home office, sewing room, or recreational room and excluding such areas as garages.
10. Living Area: As defined by Government Code Section 65852.2, the interior habitable area of a dwelling unit including basements and attics but not including a garage or any accessory building or structure.
11. Natural Person: An individual and living human being, as opposed to a legal person which may be a private (i.e. business entity or non-governmental organization) or public (i.e. government) entity.
12. Nonconforming zoning condition: A physical improvement on a property that does not conform with current zoning standards.
13. Passageway: A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
14. Proposed dwelling: A dwelling that is the subject of a permit application and that meets the requirements for permitting.
15. Public Transit: A location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are

available to the public. Examples include, but are not limited to, Altamont Commuter Express (ACE), Bay Area Rapid Transit (BART), AC Transit, Valley Transportation Authority (VTA) bus service and light rail, and paratransit.

CONSIDER REPLACING TABLE 1 AND TABLE 2 WITH MORE SIMPLE LANGUAGE/FORMAT AROUND ADUS AND JADUS. AS A SUGGESTION, THIS WAS PULLED FROM OTHER CITY ORDINANCES THAT STREAMLINE AND CLARIFY THE ADOPTION OF ADUS:

18.03.030 Accessory Dwelling Units

An ADU may be built in conjunction with a JADU on a lot with an existing or proposed single family home. An ADU may be created in several ways: converted from an existing garage, home or accessory structure; constructed as an addition and attached to the existing single family home or accessory structure; or may be constructed as a new, detached accessory building.

1) Number of Units allowed: 1 ADU
2) Min size: Efficiency unit 150sf
3) Max size: 900sf or 1,000sf providing more than one bedroom.
4) Allowable FAR exemption: 800sf. ADU and/or JADU square footage shall be exempt from FAR, Lot Coverage, and Maximum House Size calculations for a lot with an existing or proposed single family home. ADU and/or JADU square footage in excess of the exemption shall be included in FAR, Lot Coverage, and Maximum House Size calculations for the lot.
5) Setbacks: Rear, Side and Street Side Yards to be 4 feet. Detached units shall maintain a minimum three-foot distance from the primary unit, measured from the exterior walls of structures. No basement or other subterranean portion of an ADU/JADU shall encroach into a setback required for the primary dwelling. Projections, including but not limited to windows, doors, mechanical equipment, venting or exhaust systems, are not permitted to encroach into the required setbacks, with the exception of a roof eave of up to 2 feet. Underlying zoning standards for front setback apply to ADUs.
6) Height: ADUs below 800sf may be 16' high, 4' from property line and reach 17' high within the daylight plane (Initial Height 8' at lot line and at an angle of 45 degrees). ADUs over 800sf may be 17' high, but must comply with daylight plan (Initial Height 8' at lot line and at an angle of 45 degrees). ADUs in (RE) zone may be 30 feet high and in the (OS) zone may be 25 feet high.
7) Attached units shall have independent exterior access from a proposed or existing single- family dwelling and shall not have an interior access point to the primary dwelling (e.g. hotel door or other similar feature/appurtenance).

18.03.040 Junior Accessory Dwelling Units

A JADU may be built in conjunction with an ADU on a lot with an existing or proposed single family home. An ADU may be converted from an existing home, attached garage or accessory structure. A JADU may be constructed as an addition and attached to the existing single family home. A JADU may be a combination of conversion and addition.

1) Number of Units: 1 JADU
2) Min size: Efficiency unit 150sf
3) Max size: 500 sf
4) Allowable FAR exemption: 500sf, may not be combined with ADU FAR exemption.
5) Setbacks: Underlying zoning district for the main dwelling.
6) Height: Underlying zoning district for the main dwelling.
7) New Junior Accessory Dwelling Unit: A

Commented [50]: Consider a Definitions Section to provide clarity.

Commented [51]: As noted above, I think there should be three tables. In addition, if you're rewriting this, I think you'd need to include such things as:
-language acknowledging the City's duties under the statute
-language making clear that the state-provided exemptions apply first, before any Unused Local Zoning Density Rights to build ADUs, and
-rejecting the Discriminatory, Inverted, Vanishing Exemption Interpretation of the statute

Commented [52]: The two tables are very concerned about referencing the state laws. Consider writing the code as Palo Alto wants ADUs to be built while complying with the state law.

Deleted: ¶

Commented [53]: This prohibits basements on detached ADUs - needs to be reconsidered if basements are to be allowed

Commented [54]: This language seems to be contradictory to the State Language. If you must permit at least 800 sf at 16', how can you limit the area beyond 800 sf with a daylight plane?

8) Converted Junior Accessory Dwelling Unit: A converted JADU is space contained within the existing space of a single-family residence or accessory structure that has independent exterior access from the existing residence, and that has side and rear setbacks that are sufficient for fire safety.

9) The junior accessory dwelling unit shall include an efficiency kitchen, requiring the following components:

   a) A cooking facility with appliances, and; food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

   b) A cooking facility with appliances shall mean, at minimum a one burner installed cooktop, an oven or convection microwave, a 10 cubic foot refrigerator and freezer combination unit, and a sink that facilitates hot and cold water. A food preparation counter and storage cabinets shall be of reasonable size in relation to a JADU if they provide counter space equal to a minimum 24-inch depth and 36- inch length.

10) For the purposes of any fire or life protection ordinance or regulation or for the purposes of providing service for water, sewer, or power, a junior accessory dwelling unit shall not be considered a separate or new unit.

11) The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a primary residence either the primary dwelling or the junior accessory dwelling. Owner-occupancy is not required if the owner is a governmental agency, land trust, or housing organization.

12) ~~Prior to the issuance of a building permit for a junior accessory dwelling unit, the owner shall record a deed restriction in a form approved by the city that includes a prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, requires owner-occupancy consistent with subsection (m)(iv) above, does not permit short- term rentals, and restricts the size and attributes of the junior dwelling unit to those that conform with this section.~~

From: neva yarkin
To: Planning Commission
Subject: from neva yarkin
Date: Wednesday, October 7, 2020 9:20:03 PM

Oct. 7, 2020

Dear Cari Templeton,

I think it is important at the PTC meeting on Oct. 14, 2020
you have a timer or be able to shut the mic off so Commissioners
do not go over their allotted time.

I also believe that commissioners, or city staff, should not interrupt when other people are speaking.

Good luck at that meeting.

Neva Yarkin
Churchill Ave.
nevayarkin@gmail.com

From:	Palo Alto Forward
To:	North Ventura Coordinated Area Plan
Cc:	Council, City; Planning Commission
Subject:	Public Comment on NVCAP Working Group Alternatives
Date:	Wednesday, October 7, 2020 4:02:57 PM
Attachments:	NVCAP WG - Oct 8.pdf

Dear NVCAP Working Group members and staff,

Palo Alto Forward is a non-profit organization focused on innovating and expanding housing choices and transportation mobility for a vibrant, welcoming, and sustainable Palo Alto. We are a broad coalition with a multi-generational membership, including new and longtime residents.

Thank you for your work over these last two years to identify options and craft alternatives for the area plan. After reviewing all three alternatives in the staff report, we have some concerns around what will be proposed to the public. You must expand Alternative 3 to include additional homes. Currently the range of plausible options fails to provide a bold housing alternative.

Palo Alto residents, City Council, and Planning and Transportation Commission members deserve the opportunity to evaluate an alternative that meets our city's housing needs. Since the last NVCAP Working Group meeting, we have learned that our RHNA target will include 10,050 new homes. If we are ever going to meet the serious need for homes at every income level, we must identify sites and policies to do that.

Land in Palo Alto is too scarce and development is too expensive to miss opportunities like this one. While we believe that every neighborhood must make space for new neighbors, it's important to recognize that NVCAP is uniquely positioned as a great site for new housing. It is close to services, shopping, transit, and jobs, which would set new families and low-income residents up for success. In order to ensure this happens, we must adjust our height limits, parking policies, fees, and FAR to accomodate for more homes and make it economically feasible to build. Lastly, without identifying dedicated funding to subsidize affordable housing construction we will not see the number of ELI and VLI homes we need.

Please increase the range to a minimum of 3,000 new homes in Alternative 3 in order to meet our total housing needs and create more opportunities for low-income residents. We can and should create vibrant, diverse, and inclusive communities here in Palo Alto.

Sincerely,
Palo Alto Forward Board

PALO ALTO FORWARD

October 6th, 2020
Re: October 8th North Ventura Coordinated Area Plan (NVCAP) Working Group Meeting
To: NVCAP Working Group members and City of Palo Alto Staff

Dear NVCAP Working Group members and staff,

Palo Alto Forward is a non-profit organization focused on innovating and expanding housing choices and transportation mobility for a vibrant, welcoming, and sustainable Palo Alto. We are a broad coalition with a multi-generational membership, including new and longtime residents.

Thank you for your work over these last two years to identify options and craft alternatives for the area plan. After reviewing all three alternatives in the staff report, we have some concerns around what will be proposed to the public. You must expand Alternative 3 to include additional homes. Currently the range of plausible options fails to provide a bold housing alternative.

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Sincerely,
Palo Alto Forward Board

From:	slevy@ccsce.com
To:	North Ventura Coordinated Area Plan; Council, City; Planning Commission
Cc:	Lait, Jonathan
Subject:	NVCAP
Date:	Tuesday, October 6, 2020 10:55:18 AM

Dear Community Working Group members and staff,

I have reviewed the staff memo (thank you) and have two requests for your October 8th meeting.

One, please expand on staff's alternative 3 to add some additional housing.

There are five reasons for this

--It is an alternative (go bold on housing) that is favored by some committee members and many in the community who I know including me. I interpret the committee's job to bring forward a range of plausible options that have support so they can be evaluated.

--Since the last committee meeting, Palo Alto has been recommended to have given a RHNA target of 10,050 units so we will need to identify a much broader set of sites and policies than was expected in previous working group meetings.

--this is a great site for housing. it is close to services, shopping, transit and jobs.

--Staff has identified policies that can lead to more housing starting on page 10 of the staff memo.

--the staff memo finds that alternative 3 and by extension more housing will have many benefits and reduced impacts compared to alternatives 1 and 2 EXPECIALLY WITH REGARD TO INCREASING THE NUMBER OF UNHITS FOR LOW INCOME RESIDENTS.

Two and this is for staff

Please work on two areas for the committee and council and PTC.

--please make sure that everyone understands the rationale for the ABAG allocation--1) to provide more low income families access to live in high opportunity areas and 2) to move housing closer to jobs to help those workers, their families and the environment.

--please provide information on the new laws and intent of HCD with regard to evaluating a city's effort to meet their target.

I am sure that SV@Home, ABAG and HCD staff would make themselves available to the city.

Stephen Levy

From:	Judith Wasserman
To:	Planning Commission
Cc:	Jessica Resmini
Subject:	ADU issues
Date:	Tuesday, October 6, 2020 10:03:27 AM

Greetings, Planning Commission -

I have the following concerns regarding designing ADU's:

1. Cost. Building costs in Palo Alto are already high. Adding development fees, utility fees, public works requirements, etc, is very discouraging to homeowner who wants to rent an ADU to a low-income worker, which is exactly the the situation we want to encourage.

2. Location of equipment. Since the ADU's are already small, we all want to locate the equipment - space and water heaters - outside. If the purpose of the location regulations is to protect neighbors from noise, rewrite them to regulate noise in decibels, not distance in feet. The new rules for equipment in the ADU setback is contradictory to the standard rules for equipment in the 20 foot setback. If the equipment is quiet enough for a 4 ft setback, then the standard rules should be changed.

3. Green building. I am a big fan of green building, but requiring Tier 2 for a 400 sf building is onerous. Even the GB-1 Tier 1 sheet says, "For construction over 1000 sf."

4. Sewers. I believe this has already well covered.

I think the work done so far by your commission, the council and the ADU working group has gone far in the right direction. I hope we can finish with a flourish!

Judith Wasserman AIA

Bressack & Wasserman Architects
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Palo Alto CA 94303
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fx: 650 321-1987
www.bressackandwasserman.com

From:	Matt Leary
To:	Planning Commission
Cc:	Matt Leary
Subject:	Castilleja School Proposal
Date:	Thursday, October 1, 2020 3:37:22 PM

Dear Planning Commission,

I am writing in support of the Castilleja Proposal you are reviewing. As a community that values education, Palo Alto has supported the modernization and enrollment growth in its other schools – public and private. Castilleja should be allowed the opportunity to do the same.

Castilleja has demonstrated respect for the City and its neighbors by proposing a solution that allows the school to grow without adversely impacting neighbors. The new Proposed Alternative has taken feedback from the City and neighbors into account and has no significant impacts on the neighborhood, while preserving homes and trees. Castilleja has met with neighbors over 50 times and iterated its plans meaningfully in response to the variety of opinions in the neighborhood.

After seven years of Castilleja listening, learning, and adapting to feedback from neighbors and the City, it is time for the City to take action and approve this excellent compromise.

Thank you for your consideration,
Matt Leary
765 Moreno Avenue, Palo Alto

From:	Rebecca Eisenberg
To:	Planning Commission
Subject:	Answers to Michael Alcheck"s Questions
Date:	Wednesday, September 30, 2020 8:16:20 PM
Attachments:	image.png

Hi ,

Sorry - I could not find Michel Alcheck's direct email, but I'm here to say:
I'm "that speaker!" :)

First, I didn't have time to say - if you want to find renters, you can start with the public school community, since PAUSD surveys report an overwhelming majority (60-75%?) of public school students live in households who rent.

Second,-- and this is not to Commissioner Alcheck but rather to a different Commissioner who spoke tonight -- I disagree that people who live in homes they own can understand (let alone represent) the anxiety felt by those of us who rent, especially those of us who have children in school. This feels particularly true when there is no renter on the commission. I think it might be more honest to recognize the lack of tenant representation on the commission as an issue to be addressed, and work harder to ensure that tenants are represented on the planning commission in the future. Perhaps this can be done by expanding the commission. But no one in a rough spot likes hearing that someone in a more protected spot is capable of speaking for them.

To answer Commissioner Alcheck's questions:

I am aware of several individuals who received between $50,000 to $100,000 in Coronavirus relief for landlords. I am positive to the level of speaking in person to the person, not hearing firsthand. I believe that I misspoke in calling it PPP loans; I think instead they are technically coronavirus SBA loans -- part of the same CARES Act, just a different subsection.

I am also aware of several companies that received PPP funding that included rental property income.

Lucky you if you are not aware of the SBA CARES Act Website. Lots of data there:

https://www.sba.gov/funding-programs/loans/coronavirus-relief-options

Other resources:

One of the speakers spoke on behalf of the California Apartment Association. I am familiar with them and have used their leases. Here is the LA AA's web page about using CARES Fund grants to reimburse landlord costs

https://aagla.org/2020/04/the-cares-act-help-for-landlords-through-the-small-business-administration/

And more resources that came up with a quick google search:

https://www.domu.com/chicago/apartments-for-rent/coronavirus/how-landlords-can-get-a-small-business-loan-from-the-coronavirus-cares-act

https://medium.com/zubyapp/landlords-are-eligible-for-financial-relief-from-sba-b8fd111d8ddb

https://www.reedsmith.com/en/perspectives/2020/04/cares-act-provisions-that-can-help-landlords#:~:text=CARES%20Act%20provisions%20that%20can,landlords%20concerned%20about%20their%20mortgages

Please feel free to contact me at any time with questions. My contact information is below. I appreciate your hard work on this extremely important matter.

Warm regards,
Rebecca

rebecca@winwithrebecca.com * 415-235-8078
Win With Rebecca! iGana con Rebeca!
Rebecca Eisenberg for Palo Alto City Council
www.winwithrebecca.com

Join our Movement for a Fair Palo Alto!
Facebook: Rebecca Eisenberg for Palo Alto City Council
Twitter: @RebeccaEisenbe4 ** @rle
Instagram: @reisenberg2020

From: Angie Evans
To: Planning Commission
Subject: Tenant Relocation Programs
Date: Wednesday, September 30, 2020 8:01:58 PM

Hi Commissioners,

Piggy backing on Commissioner Alcheck's question about what might help. I think it would be helpful to look at Tenant Relocation policies, which legally could apply to single family homes. Menlo Park's housing commission designed a TRA policy that was unfortunately not passed but would have applied to our often family occupied renter housing stock. Happy to share my analysis on this topic if that's helpful. Renters may move more often but that's not because we don't want and deserve stability.

High income renters move across city lines but low income renters do not. They stay where their services and network are - and double and triple up.

Happy to chat more about any of this.

Best,
Angie