

From: [William Ross](#)
To: [Planning Commission](#)
Cc: [Fred Balin](#); [Stump, Molly](#); [Lait, Jonathan](#); albert.yang@cityofpalotato.org; [Tanner, Rachael](#)
Subject: Planning and Transportation Commission Meeting of October 28, 2020 Agenda Item No. 2; Required Recusal of Commissioner Member
Date: Wednesday, October 28, 2020 5:04:58 PM
Attachments: [Templeton \(Planning and Transportation Commission Meeting of October 28, 2020 Agenda Item No. 2\) 10.28.20.pdf](#)
[Balin Communication.pdf](#)

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Please see the attached.

Thank you,

William D. Ross, Esq.

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File No: 1/10

October 26, 2020

VIA ELECTRONIC TRANSMISSION
Planning.Commission@CityofPaloAlto.org

The Honorable Carolyn Templeton, Chair
and Members of the Planning Commission
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

Re: Planning and Transportation Commission Meeting of October 28, 2020 Agenda
Item No. 2; Required Recusal of Commissioner Member

Dear Chair Templeton and Members of the Planning Commission:

This communication is submitted as a resident and taxpayer of the City of Palo Alto (“City”) requesting recusal of Commission Member Alcheck and a Commission rehearing on the September 9, 2020 action on the Final Environmental Impact Report (“FEIR”) for the Castilleja School Project under the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*, “CEQA”).

Recusal of Commission Member

All Commission Members and certain members of Commission Staff must comply with the provisions of AB 1234, commonly known as the Ethic Statutes (Government Code Section 53233, *et seq.*). AB 1234 sets forth a three-tiered standard for recusal of government decision makers (here, Members of the Commission), based on defined conflict of interests, financial interests and the appearance of impropriety.

References made to the October 26, 2020 communication of Mr. Fred Balin (copy enclosed) addressed to the City Attorney’s Office, Officials in the Planning Department and the City Council, concerning Commissioner Michael Alcheck and both, evidence and analysis, as to why Commissioner Alcheck should not be allowed to participate in this Agenda Item.

The Balin communication presents evidence advanced as to why there is not a conflict of interest as defined under Government Code Section 1090, because of the relationship of Counsel for Project Applicant, Castilleja, also representing business interests of Commissioner Alcheck,

The Honorable Carolyn Templeton, Chair
and Members of the Planning Commission
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including representation with respect to a land-use decision in which City Planning Staff was intricately involved.

Moreover, the third element of AB 1234 recusal requirements, that of avoiding the appearance of impropriety or common-law bias, is directly applicable.

If Commissioner Alcheck is allowed to participate (and his past participation bares on further issues which are the responsibility of the Commission as developed infra) you're practically allowing a Commissioner to make a decision on a matter where the Applicant's attorney has also been his attorney on a land-use matter before the City.

Even using common English there is an appearance of impropriety. This should be a matter that should be addressed, first with your Commission, in conjunction with whoever from the City Attorney's Office is present.

The Commission Hearing on the Sufficiency of the Project FEIR Should be Reopened

The recusal of Commissioner Alcheck is involved with the Commission decision as to whether to recommend approval of the Project EIR and the proceedings associated with your Commission's September 9, 2020, Regular Meeting of the Commission and requirements of the Brown Act (Government Code Section 54950 *et seq.*).

With respect to the September 9, 2020 meeting, the Staff Report was *not* made available until barely one (1) day before the hearing, and an Applicant's communication was forwarded to Members of the Commission and not made available to Members of the Public prior to your Commissions hearing.

At that hearing, a principal advocate for the sufficiency of the Project FEIR was Commissioner Alcheck. Among other things, Commissioner Alcheck referenced analysis by the Applicant as being the most thorough in his career as a land-use lawyer.

Under established authority, the additional "analysis" or "advocacy" by Commissioner Alcheck at the September 9, 2020 provides an additional basis for his required recusal.

Given the evidence advanced concerning for the recusal of Commissioner Alcheck as a basis for *ethical* recusal, it sets the basis for that same conduct at the Commissions last hearing to disqualification on the basis of bias. *See, Woody's Group Inc. v. City of Newport Beach* (215 233 Cal. App. 4th. 1012, 1021. *See also, Nasha v. City of Los Angeles* (2004) 125 Cal. App. 4th. 470, 483. (The comments made by a decision-maker before a hearing can be considered to constitute evidence of "unacceptable probability of bias"). Here, the comments were made *during* the hearing, that evidenced based conduct serves as a basis for disqualification based on bias.

The Honorable Carolyn Templeton, Chair
and Members of the Planning Commission
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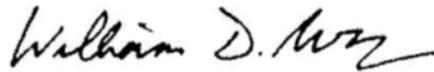
Given the restricted nature of this Commission's last hearing – substantial evidence concerning the Project's actual configuration and whether an alternative should be considered *after* public testimony *after* the lack of compliance with the seventy-two (72) requirement for Staff's position being available to the public merit reopening of the hearing on the Commission's determination on the sufficiency of the CEQA evaluation of this Project.

The Commission vote to recommend approval on the Project FEIR 4-1-2 (Commissioner Summa opposed, Roohparvar and Riggs absent) is not effective because of the unauthorized participation of Commissioner Alcheck.

Summary

It is respectfully requested that your Commission, City Staff, including the City Attorney, analyze this issue prior to any substantive consideration of Agenda Item No. 2.

Very truly yours,



William D. Ross

WDR:jf

Enclosure

cc: Fred Balin, fbalin@gmail.com
Molly Stump, molly.stump@cityofpaloalto.org
Johnathan Lait, jonathan.lait@cityofpalalto.org
Albert Yang, albert.yang@cityofpaloalto.org
Rachael Tanner, rachael.tanner@cityofPaloAlto.org

From: Fred Balin <fbalin@gmail.com>

Subject: Why Michael Alcheck Should Not Participate in Wed 10/28 PTC Castilleja QJ Hearing

Date: October 26, 2020 at 9:17:39 PM PDT

To: Molly Stump <molly.stump@cityofpaloalto.org>, Albert Yang <albert.yang@cityofpaloalto.org>, city.attorney@cityofpaloalto.org, Jonathan Lait <jonathan.lait@cityofpalalto.org>, Rachael Tanner <rachael.tanner@cityofPaloAlto.org>, Palo Alto City Council <city.council@cityofpaloalto.org>

To: City Attorney Molly Stump and Deputy City Attorney Albert Yang

To: Director of Planning Jonathan Lait and Assistant Director of Planning Rachael Tanner

To: Palo Alto City Council

City Legal and Planning Staff,

Planning and Transportation Commissioner Michael Alcheck should not participate in Wednesday's Item 2 at the commission -- Public Hearing/Quasi-Judicial: Castilleja School Project, 1310 Bryant Street [16PLN-00238], for the following reasons:

1. Alcheck retained the attorney for Castilleja for his personal interests while Castilleja's application was before the commission on which he served

Castilleja's current application first came to the PTC on February 8, 2017 for a public scoping meeting on the notice of preparation for an environmental impact report. Page 2 of the staff report (Attachment1 to this email) lists the legal counsel for Castilleja School as Mindie Romanowsky

In the summer of 2017 and in the aftermath of the illegal conversion of a carport to a garage on each of two residential properties in which Alcheck had an economic interest, one he owned and a second in which he was an investor, Romanowsky was hired to represent his interests. Attachment2 is a series of communications between Romanowsky and the city during that period.

Having a commissioner whose own attorney represents an applicant before him on quasi-judicial matters that the commissioner will rule on is a clear conflict of interest.

2. Alcheck violated Planning Commission protocols between the August 26 and September 9, 2020 PTC Meetings

On August 26th, after the close of the public hearing and discussion at the dais of the quasi-judicial Castellija EIR, the matter was continued to a future date.

Planning Commission Procedural Rule IV relates to quasi-judicial hearings. Its sub-section B-5-e entitled "No Contacts after Hearings" reads:

Following closure of the hearing, and prior to a final decision, Commissioners will refrain from any contacts pertaining to the item, other than clarifying questions directed to City staff.

After the start of the subsequent September 9 PTC continuation, Alcheck stated that he had contacted at least two representatives of Castilleja as well as some other schools (Attachment3). Neither is permissible under the commission's quasi-judicial protocols, and his disclosure at the meeting does not cure the violation.

Even a humble juror on the most basic cases is expected to comply with a principle that Alcheck disregards, now over 8 years since joining the commission.

3. Alcheck's Double Standard

At the September 9th PTC meeting on the Castilleja EIR, Alcheck argued that the explicit wording of a city ordinance should be ignored in favor of a past practice. Even though the code required a basement to be under the building's footprint, he claimed that a precedent in another project overrode the code.

But in 2015, as a commissioner, and arguing in regard to his own residential redevelopments, he advocated the exact opposite: that the explicit wording of an ordinance trumps any precedent. That ordinance prohibited a "garage" in the front half of his lots, but it did not explicitly exclude a "carport." (Attachment4)

When it worked in favor of Alcheck's personal interests, he advocated for a strict reading of the code, but when it benefited the Castilleja application, he spoke in favor of ignoring the clear reading of the code.

Final Word (to the city council)

The above are new examples of why Michael Alcheck has not met the ethical standards to remain a Palo Alto city official.

-Fred Balin
2385 Columbia Street

4 PDFs attached

From: [Tom Shannon](#)
To: [Planning Commission](#); [Council, City](#); [Architectural Review Board](#)
Subject: Castilleja PTC meeting tonight
Date: Wednesday, October 28, 2020 4:29:38 PM

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To: Members of the Planning and Transportation Commission

As a 30+ year neighbor living across the street from Castilleja, I have witnessed explosive growth that has had significant negative impacts on our residential neighborhood. The school has grown from a quiet boarding school with a dormitory across the street to an 18 hour/7 days a week operation.

Here are some examples that I hope can be corrected in the CUP Amendment currently under study:

On street parking is particularly troublesome. The city's parking ordinance is woefully inadequate for a high school that has sophomores, juniors and seniors driving to school and parking all day with no on-campus parking available to them. Note that upwards of 75% of the student body lives outside or Palo Alto so driving is their first choice option to get to school. Even with Castilleja's new design the parking is inadequate. I've tried to explain this to staff but no one seems to want to respond. Here are the approximate numbers:

Staff per the school's website:	140
Approximate students of driving age (sophomores, juniors and seniors)	200
Visitors and parents at any one time:	50
Total cars that needing parking:	390
Less proposed parking spaces on campus:	114
Parking shortfall: Cars that end up parking on surrounding streets	276

A shortfall of 276 parking spaces certainly does not support an enrollment expansion of the school. If I stand to be corrected, I would welcome that

explanation.

We have asked Castilleja staff to limit student drivers but they have refused saying you can't tell a newly licensed student not to drive to school. I would appreciate hearing the commission input on this matter.

Other examples of impacts that neighbors experience on a daily basis:

I think most would find these impacts detrimental to the neighborhood and the general welfare of our "vicinity" as defined in the City's Municipal Codes.

- Semi-tractor trailer trucks from Sysco and US Foods motoring down Kellogg Monday - Friday at **6 AM** to make food deliveries at Kellogg driveway. Noise, back up beepers, drop gates.
- Hacienda Fruit Company delivering fresh fruit at **midnight or 3 AM** for the students' morning snack. Noise, back up beeper, drop gates.
- Green Waste garbage trucks Monday - Friday at **6 AM** to unload the school's dumpsters. These trucks have to use Kellogg Ave. to access the school site. They are loud as most of you know from your weekly trash pick-up. Given this truck has to empty a dumpster, it's bigger and louder than the residential trucks used to pick up weekly residential trash. The dumpsters are dropped onto the truck carriage followed by back up beepers – all this as we try to sleep at 6 AM.
- Greyhound size buses numbering sometimes upwards of 5 - 7 at a time parking on Kellogg Ave. to pick up students for field trips. Engines left running for A/C comfort.
- School related commercial buses using Kellogg for various activities. I'm okay with the morning school bus for drop-offs and pick-ups given it arrives around 8 AM.
- Nightly activities/events that go on until 10 or 11 PM and again need to use on-street parking given the limited on-campus parking.

I realize the proposed CUP has buses and trucks pulling into campus but they still have to use Kellogg Ave. to access the entrance to campus. That

brings a significant amount of noise into the neighborhood at 6 AM – Monday - Friday.

Please study the draft conditions and HELP us restore our neighborhood to an R-1 environment. We need limitations placed on these impacts. After all, we are not the “conditional user.”

For starters, if all morning deliveries could begin past 8:00 AM (like construction hours) instead of 6 AM, that would be a big improvement to our neighborhood. If nightly activities could be kept to a minimum and end by 9 PM that also would be a great help. Other school CUPs in Palo Alto don't permit or severely limit nightly activities to 2 or 3 / year.

In addition to looking at these issues, I would ask that the public hearing tonight be continued to your next meeting. We've had only 4 days to digest a staff report of 114 pages and the expansive conditions of approval. It's complicated as I'm sure you realized when you tried to read through your packets. We deserve sufficient time to review these conditions and their ramifications on our neighborhood.

Thank you.
Tom Shannon
256 Kellogg Ave.

From: [John Hanna](#)
To: [Planning Commission](#)
Cc: [Kathy Layendecker](#)
Subject: Castilleja Action Item No. 2 on the Agenda
Date: Wednesday, October 28, 2020 3:31:17 PM
Attachments: [image006.png](#)
[image008.png](#)

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Dear Planning and Transportation Commissioners: I urge you to vote to recommend to the City council the approval of the amendment to the CUP to increase enrollment and the request for variance to replace Campus Gross Floor Area and for Subterranean Encroachment of the garage.

I have reviewed the legal brief sent September 8, 2020 to the Planning Commission by Special Council representing Castilleja School, and in my opinion it contains a very sound legal basis for moving the project forward, in complete compliance with CEQA requirements.

I am unimpressed with the legal arguments advanced by those opposing the project.

As for the other (non-legal) arguments coming from the opponents, they are not new arguments, but the same arguments they have been making for years, regardless of the number of students enrolled in Castilleja. The current application just gives them a new opportunity to trumpet their long held objections to having a school in their neighborhood. I doubt seriously if any of the objecting neighbors arrived here and purchased a home near the school more than a hundred years ago. Truth is, Castilleja has been there long before any of these Johnny-come-lately complaining neighbors moved into the neighborhood. One who buys a home next to a railway or an airport cannot expect to stop the trains from running or the planes from flying because they are annoying. Castilleja is, furthermore, a uniquely valuable asset to our community.

It is one of a few remaining single sex schools, devoted to giving elementary and secondary grade level girls the opportunity to grow and blossom into future leaders of our community and our nation. Castilleja is unmatched in its academic excellence and in the diversity (both economically and racially) of its student body. In short, we in Palo Alto are fortunate to have Castilleja in our community and should do everything that we can to ensure it continues providing outstanding educational opportunities to the young women of Palo Alto and the surrounding communities.

Respectfully,

John Hanna

John Paul Hanna, Esq.

HANNA & VAN ATTA | 525 University Avenue, Suite 600 | Palo Alto, CA 94301

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E-mail: jhanna@hanvan.com



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From: [Andie Reed](#)
To: [Planning Commission](#); [Architectural Review Board](#); [Council, City](#)
Subject: Castilleja Expansion
Date: Wednesday, October 28, 2020 2:23:58 PM

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Oct 28, 2020

PTC meeting, Castilleja School

Andie Reed
Melville Ave.

Dear Commissioners:

First, let's be clear that much of what is being said by school supporters is not contentious. Nobody disagrees that educating girls is valuable, and Castilleja has successfully educated girls in a single-gender setting for over 100 years. All of those girls over all of those years received a fine education.

Also, the school buildings need modernizing, rebuilding and upgrading.

Neighbors do not disagree with any of those things.

There are those who feel the school should be able to do anything they want, and they compare Castilleja to other schools that get to grow, so why can't Castilleja? Yes, other schools, like Paly (44 acres) and Menlo (62 acres) are not in residential neighborhoods and have much more capability to grow. Similarly, the staff report Packet Page 13 suggests Stanford Research Park and the Marriott Hotel and Palo Alto Medical Foundation are all allowed underground garages, even though they don't have a building on top of them. This does not compare apples to apples, as none of these examples are in R-1 zones, and are not relevant. Also, I hear that the neighbors want the garage and that the school had 50 meetings with "the neighbors" over the past 5 years. If you hear those statements, too, please note that they come from the school and not the actual neighbors.

Where we neighbors disagree with the school is a **land-use** dispute. The current plans add 30% more people into the same small site. The plans indicate an increase of total above-and-below ground square footage from 160,000 currently to 226,000 sq ft proposed. **40% more school; same 6 acres.**

1. Enrollment:

If Castilleja didn't grow, girls would still be educated. If there was no underground garage, girls would still be educated. The school has a deep well of resources and many options to educate more girls without overbuilding this site and abusing their neighbors. Why stop at 540? Make this site the main campus, and get creative; set up a satellite campus for STEM classrooms and robot workshops and language labs in one of the many commercial spaces for lease right now in Stanford Research Park, and even have the "Stanford" moniker attached to their satellite campus.

Rather than work within the rules that everybody else in the City of Palo Alto is required to follow, the school is asking for exceptions.

They are requesting a variance for almost twice the allowed Floor Area Ratio in order to replace 5 buildings currently spread out around campus with one large modern building the size of a Costco, and to build a neighborhood-incompatible underground garage, which, by the way, only adds **22 net new parking spaces**. Why should the school be granted 30% more students plus additional parents, volunteers, staff, faculty - just because they want it - bringing more traffic into a neighborhood already impacted by the school, Paly, the Bryant Street Bike Blvd, and the surrounding major arterials (Embarcadero and Alma). Shouldn't the City be determining what the next 20 years will look like in our neighborhood and not Castilleja?

The school has sufficient parking now to support current needs; if they rebuild and can show they can reduce traffic by more shuttling, then grant them an increase. Why 30%, why now, why here? Why should the City require this small, crowded neighborhood to bend to the needs of a private school's new pedagogical model? They have not been compliant for many years on at least two fronts, and yet you are considering giving them a huge increase.

2. Events: Packet Pg 17 says "the current CUP allows an unlimited number of events with over 100 attendees". That is factually inaccurate, and it is very disheartening that that sentence keeps being repeated. There is no mention in the report that the actual wording is "**5 major and several other**" events are allowed. The neighbors have been complaining for years, and even filed a formal complaint with the City attorney a few years ago, because there are currently 100 events – per school year! – obviously out of compliance. And now the school is asking you to legalize this exception that NO OTHER private school in an R-1 zone is allowed.

The 3 years during construction would be a good time for the school to

figure out how to achieve their events goals by using off-site venues. The neighbors are fine with the 5 Major Events at the campus, we can plan for them. But dozens of weeknight and weekend events shouldn't be allowed; that would be as though the City is congratulating the school for getting away with it for many years so now they will legalize it.

Packet Pg 18 says "for many years Castilleja has relied on certain events...". And lower number would "impact the school's academic and social interests". **Why do residents' interests rate below those of a private school?** This is blatant disregard for the residents surrounding the school and the City of Palo Alto as a whole.

At the 9-9-20 meeting, City Attorney Albert Yang made the point that where the commissioners disagree with staff's interpretation the relevant way to express that is to not make the findings. The staff report page 9 states that the PTC has broad discretion over whether findings can be made. Please make your own determination after listening to unaffiliated experts and attorneys and knowledgeable residents.

Thank you for your consideration.

--

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

From: [Daniel Mitz](#)
To: [Planning Commission](#); [Council, City](#); [Architectural Review Board](#)
Subject: Castilleja Expansion
Date: Wednesday, October 28, 2020 2:12:11 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

We are writing because we oppose the Castilleja expansion plans. You are rushing these plans through City Hall without considering the full impact on the neighborhood. And yes, we believe in women's education. We have two daughters.

We have lived in Palo Alto for 25 years, and moved down the street from Castilleja 14 years ago. When we moved to the Castilleja neighborhood, we thought of Castilleja as a friendly neighborhood school. Then, in 2013, when it came to light that Castilleja had been breaking its enrollment agreement for over a decade, we realized our trust in Castilleja was misplaced.

We are concerned about an increase in traffic, especially in light of the possible Churchill Avenue Closing. The EIR traffic study is inadequate. It does not include staff or events. The EIR doesn't look at the proposed two garage ingress or egress, along with two new loop driveways, two parking lot driveways and a delivery driveway. What is going to happen to Bryant Bike Boulevard. Is the city going to close it two hours a day when students come and go to school so bikers stay out of the car's way?

We are fine updating the physical plant at Castilleja. We have already lived through Castilleja construction. But this proposal will forever change the look and feel of the neighborhood, and make it more dangerous for residents. And did anyone think of the density of students per acre? It looks like more than twice other schools in Palo Alto. Have you surveyed residents—how many of them approve this project?

All other private schools that want to grow adapt to the neighborhood as they expand or split their campus. Castilleja should learn from them, and respect our residential neighborhood.

Daniel Mitz
Elizabeth Olson
144 Melville Avenue

From: [Beth Rosenthal](#)
To: [Architectural Review Board](#); [Planning Commission](#)
Subject: Castilleja
Date: Wednesday, October 28, 2020 12:41:16 PM

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Dear Commissioners:

The way the process regarding Castilleja's expansion plans has unfolded is astonishing to me. How can the requests of the residents living in the surrounding neighborhood be so completely ignored? Residents are asking that enrollment not be expanded by 30%. This merely enriches the coffers of the school and makes for additional car trips in a neighborhood already under siege by excessive traffic. They are asking for a reduction of the number of evening events that Castilleja is permitted to hold. 95 seems excessive. They are asking for no underground garage which just invites more traffic. When other private schools - Armstrong, Pinewood - have wanted to expand, they have relocated to properties that did not infringe upon the community they originally occupied. Why can't Castilleja follow suit? How can the requests of the residents be ignored in favor of an organization that has cheated on its enrollment numbers for years, does not pay taxes and has 75% of its enrollment coming from outside of the Palo Alto community? Please support residents appropriately.

Sincerely,

Beth Rosenthal, PhD

From: [Kimberley Wong](#)
To: [Planning Commission](#)
Cc: [Lait, Jonathan](#); [French, Amy](#); [Council, City](#); [Shikada, Ed](#)
Subject: Letter to the PTC for the October 28, 2020 PTC meeting re: Castilleja project
Date: Wednesday, October 28, 2020 10:57:34 AM

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Dear Planning and Transportation Commissioners,

Upon reading the latest CUP proposal drawn up between City Staff and Castilleja, I came to the same conclusion comparing Castilleja's proposed events and city staff rewriting of the CUP event rules which were very similar ... There are still too many events for a 9 month period. A 20% decrease in events is just like the decrease in parking spaces on large underground parking garage. Both are negligible in the large scheme of things! 10 vs 7 events per month is too much! 1-2 events per week is too much! Both will cause significant and unavoidable impact to the neighborhood any which way you reroute the attendees and cars. As a neighbor living here 24 years I remember the occasional dance party and back to school night. Over the last few years the school has increased events at an alarming rate, blowing way past the 5 major events and self-defining the "few events" in their CUP to mean over 100!

These are the points that stood out to me as I read the 44 pages of the October 28 PTC Packet (minus the Sept 9 PTC draft minutes and other items):

1. 100+ past few years overwhelmed the neighborhood with traffic, attendees parking down our block, and the slow trickle once the events had ended late into the night. The proposed events whether 90 by the school and 70 by city staff are all too much when compared to other private schools such as Pinewood (12), Stratford Palo Alto (0), Stratford Crestmoor (7) and Hillbrook (11), as gathered from their CUP agreements. These other schools host in a year what Castilleja wants to host in 1 month!
2. Furthermore a private school should NOT be able to use city resources for their personal gain especially when they do not pay their fair share of taxes as a non-profit. Paly should NOT be used as a overflow of events on their site.
3. In working under a conditional use permit, shouldn't the city be dictating what the school can and cannot be allowed and not let the school dictate to the city only what they want? Why are they "required" to have 70 events when other schools are fully operational with 0-12 events?

Castilleja has violated their CUP of 5 Major Events an a few more. They have taken the "few more" to mean 100+ events and subjected the neighbors to many back to back nighttime events, increased residential traffic at all hours, They should::

- 1) NOT be awarded a new CUP as they blatantly violated the old one
- 2) NOT use the current 100+ events as a baseline to set up a new CUP
- 3) NOT be allowed 10x more events than other private schools.

I propose we allow Castilleja only 5 onsite events per year as stated in their original CUP and allow these to last until 10pm if they wish. The rest of the time the school should only be allowed to open during business hours of operation from 8am-5pm with exception of sports until 6. The YMCA Ross Road, buried within midtown is beholden to certain hours and will face fines even 15 minutes earlier or past. It is what any good business within a residential neighborhood should do. If they violate those hours, they should be fined with reduced enrollment. 3 violations should result in the school losing its Conditional Use Permit and operating license.

As per the City of Palo Alto Municipal code, all residents should have the right to the peaceful enjoyment of their home, especially during business off hours.

Any other "required" events should be held off campus at venues such as the Flint center (where Paly has

hosted their baccalaureate for years) or Circus Club where Castilleja's most recent graduation was held. They should pair this with shuttling to events so no other neighborhood is subject to an influx of traffic either. With this, there will be no need to build an intrusive, destructive traffic inducing garage.

Should Castilleja follow these guidelines, they can host as many offsite events as they please to meet their "requirements", the neighbors can enjoy their homes in peace, and the city will have less events and traffic to monitor. Since self reporting, monitoring and staying accountable for Castilleja has been a big issue in the past, simplifying this CUP so it can be properly followed will be big win for all involved.

I urge the Palo Alto PTC to only accept proposals from schools and businesses that remain respectful to residents of the neighborhoods in which they operate. The city should be putting the residents of Palo Alto into consideration first and foremost. The neighbors have been willing to endure the increase of events for years. But we are not willing to let Castilleja to take advantage of our goodwill and legitimize their violation of the current CUP by setting this new overblown baseline into the new CUP.

I count on the Planning and Transportation to vote for what's right for the City of Palo Alto and for its residents.

Respectfully,
Kimberley Wong,
Longtime resident of Palo Alto and neighbor of Castilleja

From: [Andie Reed](#)
To: [Planning Commission](#); [Architectural Review Board](#); [Council, City](#); [Historic Resources Board](#)
Cc: [Lait, Jonathan](#); [French, Amy](#); [Stump, Molly](#)
Subject: Moncharsh PTC Letter re CUP Oct 28,2020
Date: Wednesday, October 28, 2020 9:59:26 AM
Attachments: [Moncharsh Letter re CUP w att. October 28, 2020.pdf](#)

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

Attached is Castilleja's neighbors' (PNQL's) Attorney letter in response to the expansion project's draft Conditions. Ms. Moncharsh asked me to forward it on to you.

Thank you,

Andie Reed
PNQL

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October 27, 2020

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

Re: Castilleja School – City Staff Report – Proposed Conditions

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

Attached is a copy of the 2016 use permit conditions for Head Royce School in Oakland where I represented the neighbors and worked cooperatively with the planner on the conditions. This 906 student school is located in the floor of a canyon with housing around the top of the hills making up the canyon. It had a long history of use permit noncompliance and the planner realized her initial conditions in a prior CUP were inadequate. The attached are revised conditions that I will talk about tomorrow at the hearing – what worked and what did not work.

This letter addresses the proposed conditions of approval for the Castilleja School CUP. The amount of time to address these is woefully inadequate even without a power outage (the power is still off here this morning!) At my end, I need to get feedback from my clients, make comments on each condition, show the draft to my clients, and make edits before sending you the final. That much work cannot be completed in time for the PTC to have any time to consider my client's specific input before the hearing tomorrow. The best that I can do is offer general suggestions and some examples from the proposed conditions.

The use permit conditions are not just one piece of the overall project – they are THE PIECE that potentially resolves the operational dispute between neighbors and an institution. It sets out rules for how the institution will avoid negatively impacting the residents and provides a

framework for residents to understand what they can expect from the institution in the future. While I heard a commissioner say that the school needed to “build trust with the neighbors” that really is not what happens with a school that has been persistently noncompliant. What the neighbors start to trust is that the school is going to follow the rules in the CUP and that if they do not, the City will enforce them, i.e., the neighbors will have predictability.

The best example of why these use permit conditions are so important is this project. I became involved *because of the use permit*, not only because the school wanted to physically expand its campus. At the time that I was contacted, the school was out of compliance with the enrollment cap, and despite a fine levied by the City, the school did not immediately get into compliance. It fought every inch of the way to avoid reducing enrollment. It was also way out of compliance with the number of events that it had been holding. The use permit for this school was unclear and poorly drafted. For example, the City has claimed that it did not really mean “several” when it limited events to 5 and “several others.”

Without city oversight in a use permit, all a neighbor can do with a private independent school is complain to the head of school and possibly the volunteers that make up the board of trustees, none of which are motivated to respond to neighbor complaints. I heard a commissioner complaining about the potential unfairness of private independent schools having to comply with conditions when other schools do not have that burden. It’s apples and oranges. The difference is that public and parochial schools have a hierarchy of authority that neighbors can go through when there are problems.

If a neighbor has a problem with a public school, he can go to the principal and then the school board representative, and all the way to the state superintendent to get the problem solved. Parochial schools have a hierarchy that includes a regional bishop as a source of help when there are problems. All neighbors of independent private schools can rely on to solve negatively impactful problems is the use permit conditions and the City’s willingness to enforce them. **When the conditions are inadequate, the penalty on the City is that one or both parties come back to the City repeatedly with complaints and requested changes to the use permit.**

The use permit conditions amongst independent private schools are not created equal because the schools have not performed equally in their relationships with neighbors. The vast majority of established private schools have old use permits with almost no conditions but they never come to the attention of city planning departments because they maintain excellent relationships with their neighbors.

General Comments

The proposed conditions, in some places, are not specific enough for future enforcement. In other places there is more detail than necessary, but it is confusing rather than helpful in understanding the rules. The conditions have the reader jumping back and forth to the MMRP instead of attaching the MMRP and then highlighting in the conditions (“including, but not limited to”) the ones that are most important to neighbors. Lay people should not have to decipher the rules from two separate documents.

In my experience, using averages and percentages is a recipe for confusion and they are difficult to decipher. I saw one place in the materials where it appeared that the school is supposed to have 23% of SOVs enter the school from one route and a different percentage for other SOVs. Really? Who is going to do the math and figure out how to apply that 23%, especially if the enrollment is going to be changing over the life of the permit?

Averages applied to car trips has not worked out well, in my experience. The argument in their favor is that it is unfair to expect a school to have no more than a set number of daily car trips because things go wrong, like buses breaking down, and then the school would be in violation of the permit. The down side of averaging car trips is that it opens the door for “gaming the system” by schools that just want to comply with that average number, instead of the number cap that they should be complying with. A solution is to allow a certain number of days available per semester when the school can bring more SOVs than the trip cap into the neighborhood for unforeseen and recorded emergencies that impact transportation.

I agree with the commissioner who felt that the school should not be burdened with too many conditions and would add that the conditions

should not be confusing or subject to multiple interpretations. The important conditions are the ones that resolve the dispute between neighbors and the school, along with the City's conditions to protect its interests and that of the public. For example, as explained below, is it really necessary to phase the number of students over time? Why? The proposed conditions have the City vesting the school with 540 students in incremental ways, which then creates confusion with other conditions, like how many SOVs are allowable when you increase the enrollment by each increment. A simpler way would be for the City Council to pick a reasonable number for the enrollment cap and leave it to the school to deal with how that number relates to the buildout. It can then pursue more student enrollment in a modified use permit later, if it so chooses.

As to the certificates of occupancy, those do not need to be on a schedule in the use permit, normally. As soon as a building is constructed and the school is ready to use it, the school will be required to have a certificate before using it. The portables need to be removed before the final certificate of occupancy. It would be clearer to state in a separate condition an outside number of years that the portables can be on the campus before they must be removed.

An example of where the rules do not seem to be very complete is the loud speaker. Is there an assumption that the school will be using a loud speaker at the swimming pool constantly? Why? Swimming lessons and lap swimming do not require amplified sound. The only time when one can imagine amplified sound would be necessary is if there is a swim meet. There should be a simple rule that restricts the use of amplified noise to swim meets, defined as a speed contest between the school and another school's swim team, and any other uses require a permit.

The conditions have the public school using the school 5 times a year. Again, why? The school is on six acres and the public high school is on 44 acres. There does not seem to be any need for bringing people into the neighborhood to serve a public school that has its own facilities. Similarly, there do not seem to be any specific rules about a summer program other than that the neighbors get one-week of peace out of their whole summer. I also do not see a prohibition against renting out the

school's facilities. There is no description of the traffic monitors, who should be adults hired by the school.

Yet, these are the things that are very disruptive for neighbors: loud speaker noise without any prior notice to the neighbors, a summer program with different parents than those who come to the campus during the school year and do not know or follow traffic rules (but are gone before anything can be done about it!); no real break over summer from school noise; events unrelated to the school put on by people who have no motivation to enforce school driving rules; excess nighttime events even when some of the events could just as well be located off-campus, cutoff times at night events that allow "cleanup" to go on into the wee hours of the morning with car doors slamming; vague operational hours, etc.

Below, are specific comments and suggestions:

ENROLLMENT:

Overall Comment: The enrollment phased approach is problematic for two reasons: 1) the condition grants enrollment of 540 students which then legally becomes a vested right. The City cannot "take back" any of that 540 student enrollment without modifying this use permit for reasonable cause and after providing a hearing required for due process reasons. 2) The phasing is tied together with a buildout schedule that may not occur due to subsequent modifications in the school's plans or may not ever occur due to financing. Yet, the City has granted a vested right for the applicant to obtain 540 students.

Suggestion: Remove the reliance on the buildout and simply grant the number of students that the City Council is comfortable granting at this time. Leave it to the applicant to come back to the City at a later date if it wishes to apply for modification of the use permit to increase the enrollment. That way, if funding does not work out or there are changes in the applicant's plans for the campus, there will not also be confusion as to when the 25 student increase is supposed to start.

Specific Comments:

c. Upon completion of all project construction (issuance of a final certificate of occupancy for all new buildings and facilities) and

removal of all portable/temporary modular classrooms, enrollment may begin to increase to a maximum 540 students.

Comment: This paragraph has a certificate of occupancy being granted before the portables are removed. I don't think that is what staff meant because once the certificate is issued the City has no more right to control the portables. Also, the condition limits removal to classrooms – what if the school wants to use some of the portables for purposes other than classrooms? Are those portables allowed to stay indefinitely on the campus?

Suggestion: Perhaps, if the City Council still wants to tie the increased enrollment to buildout of the campus, despite the overall comment above, reword this condition to read: Upon completion of all project construction, including removal of all portable/temporary modular structures followed by the grant of a final certificate of occupancy, the applicant may begin to increase enrollment to a maximum of, say, 450 students.

d. Student enrollment shall not increase by more than 25 students per academic year based on the lesser of the School's actual or permitted enrollment as documented by the School's independent auditor.

Comment: We applaud staff's recommendation to have an independent auditor watch the enrollment number to prevent a repeat of future over-enrollment. There is no explanation about this auditor – can it be the head-of-school's best friend? Is the City supposed to pay for this person? What exactly does the auditor look at. What about students who transfer in during the fall or spring semester – how are they counted?

Suggestion: Perhaps add a paragraph before this one that states something like: The school, at its expense, shall retain a CPA firm that has no ties with the school and has been approved by the Planning Director. By September 15 and again by January 1, the school will provide this CPA firm with the school directory and any other document requested by the CPA firm that lists each student attending the school. The auditor will provide a report of the number of students enrolled at the school to the Director by September 30 and January 30 of each year.

As to the language in “d,” it would be clearer if it read: Student enrollment shall not increase by more than 25 students per academic year based on the

permitted enrollment under condition 4 and as verified by the independent auditor. If the auditor determines that the enrollment has exceeded 25 students, they will include that information in the report to the Director.

That removes the word “actual” which could be a noncompliant number. It also sets up a system for planning to find out about it if more than 25 students were admitted.

5. Prior to March 1st each year, the School shall provide the Director of Planning and Development Services a letter from an independent auditor attesting to the number of students enrolled at the School, at the time of the audit, for that academic y

Comment: This paragraph could be deleted if the City Council accepts the recommendation to change the use permit language as recommended above. This paragraph does not account for changes in enrollment that often occur in any school due to families moving into the community. Enrollment is not static over an entire academic year in any school.

EVENTS:

Overall Comments: This section is one that is particularly important to neighbors and has been the topic of much discussion. Private school events are also a lively source of nuisance complaints and requests by neighbors for modifications to use permits. To avoid these parties reappearing at the City, it helps to have conditions that are very specific and readable. Staff obviously has made efforts to cover as much as possible, which is to the good.

In my experience, neighbors and institutions, including private schools rely on the use permit to resolve disputes between themselves. It takes a few times for the planning staff to refer both parties to the use permit, but after awhile they start to go there on their own and look at the conditions when they have disputes, which prevents problems brewing into unnecessary waste of city inspector and planner time.

The main problem with this section is that it has the neighbors and the school going back and forth between the use permit and the MMRP to figure out what the rules are. To the extent that the language in the

conditions is different in *any* way at all from the MMRP, the parties cannot rely on this use permit to figure out what is allowed or disallowed.

The second problem is that it is overly complicated. It starts out with a standard definition of “special events, but then drags the reader off to the MMRP to find out what it really means. In reality, the neighbors do not necessarily care about all of these divisions of types of events and it is unclear why there are so many rules. Neighbors want the number of events with 50 or more attendees limited. Down around subsection f, which talks about “half of the maximum allowed special events” we are totally confused.

Suggestion: Even though it may seem onerous, the way to prevent contradictions between a use permit and the MMRP is to include the exact language from the MMRP in the conditions. If there are too many rules in the MMRP to repeat, then repeat the ones that are most likely to involve the neighbors. A single paragraph that the conditions include those in the MMRP should suffice. I suggest attaching the MMRP and TDM to the conditions if you wish to reference them.

The use permit needs to focus on the number of cars, not the number of attendees. The number of attendees is irrelevant – it is the number of cars that are problematic for neighbors. Here is a much tighter provision for special events from the Head Royce CUP, attached that provides a suggested format and the PTC can fill in the numbers, if it likes use of this format:

The School and the Summer Program shall be permitted to hold Special Events at the Head Royce School campus subject to the following:

- a) A “Special Event” is defined as a gathering in which visitors (including parents) are invited to the campus in conjunction with a School or Summer Program-sponsored event or activity such as a Back to School night, a performance (play or musical), athletic event, dance, walk- a-thon, guest speaker, school fair, Admissions Open House, promotion or graduation ceremony, associated and carried out by the school (not hosted by an outside group or organization) and for which X or more visitor vehicles are expected. If more than one Special Event occurs on a single day, each Special Event

shall count as a separate event. Parking rules for Special Events are outlined in Condition 23. A Special Event does NOT include indoor activities involving only School students, faculty, staff and members of the board of trustees such as play rehearsals, standardized testing, band practices, and meetings of student organizations, faculty committees and meetings of the board of trustees. In addition, neighborhood meetings required or requested to be held on campus as a condition of this permit or otherwise by the City are not considered to be Special Events.

- b) The school shall post an annual calendar on its website and provide the website link to the Neighborhood Committee described in Condition 24 at the beginning of the School year listing all Special Events and the anticipated number of visitor vehicles that will be generated for each event. The School is permitted an additional X total weekday evening events that are not on identified on the annual calendar, provided that the Neighborhood Committee is provided a 30-day notice of such addition and those events shall not take place during weekends or the summer.
- c) During school academic, childcare and afterschool program hours of operation, Mondays through Fridays, the School is permitted an unlimited number of Special Events. However, those events for which X or more visitor vehicles are expected must follow Condition 23 procedures for Special Events.
- d) The school shall be permitted a maximum of X evening Special Events per school year during the hours of 7:00 p.m. -9:30 p.m. All Special Event participants shall have left the campus and the lot locked by 10:00 p.m. School dances shall end by 10:30 p.m. with all participants leaving by 11:00 p.m.
- e) The school shall be permitted a maximum of X Saturday daytime Special Events per school year during the hours of 9:00 a.m. to 6:00 and X Saturday evening Special Events per school year during the hours of 6:00 p.m. to 9:30 p.m. The school shall be permitted a maximum of X Sunday Special Events per school year during the hours of 9:00 a.m. - 6:00 p.m. The school shall be permitted a maximum of X single day summer Special Events during the hours of 9:00 a.m. - 6:00 p.m. ~~and~~ only on weekdays. X Special Event may take place on Saturday. There shall be no Sunday summer Special Events.

- f) No events shall be held that have not been published on the school calendar or a 30 day in advance or emailed to immediate neighbors one month in advance. The school is not permitted to rent or loan out any of its facilities.
- g) All Special Events shall be monitored by the School per the Condition of Approval.

This private school is almost twice as large as the applicant and is located far away from houses, so the numbers of allowed events should be reduced accordingly if the PTC wishes to use their format. Notice that the school is required to maintain a school calendar on its website so that neighbors can look at it and know what events are upcoming.

j. All special events shall comply with the approved transportation demand management. I think you want some special instructions for Special Events with over 100 cars coming to the campus. The drivers are likely not going to know anything about the rules for parent drivers in the TDM.

OPERATIONS-RELATED

8. Standard School hours are Mondays through Fridays 7am to 6pm. Co-curricular programming involving fewer than 50 students and confined to indoor spaces may occur outside of these hours.

What is meant by “standard school hours” and what is “co-curricular programming.” This section should go to the top of the use permit, and state the allowable hours of operation without qualifiers. Again, we don’t care about numbers of attendees or students, just vehicles. Unless there are cars coming to the school before 7:00 a.m. or after 6:00 p.m., this sentence could be crossed out. If there are cars coming before 7:00 a.m. or after 6:00 p.m., then this section needs a start and end time after defining “co-curricular programming.”

9. Summer school programs shall be subject to all conditions and restrictions that apply to school year programs, except that summer use of the playing fields or the pool shall not occur before 9:00am. The School shall provide a minimum one-week student break between the school year and the summer program(s). The School is prohibited from renting or

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loaning the campus to another summer school program, organization or group provider.

Request: This last sentence should apply to the school operation all year.

This is as far as I can go reviewing the proposed use permit conditions and still give the PTC time to review the comments. If the PTC provides a minimal continuance, I would be pleased to finish the suggestions and go over them with the planning staff so that the permit is as usable and just as importantly, enforceable.

Thank you for considering our comments.

Sincerely,

Leila H. Moncharsh

Leila H. Moncharsh, J.D., M.U.P.
Veneruso & Moncharsh

cc: City Attorney
Mr. Lait
Ms. French

**FINAL HEAD ROYCE CONDITIONS OF APPROVAL
CASE FILE: REV13-003**

Redlined version – June 7, 2016

Modifications to the conditions of approval as directed by the City Planning Commission at the **November 4, 2015** are indicated in underlined type for additions and ~~cross-out~~ type for deletions. Modifications made as part a resolution between Head Royce School and the Neighborhood Steering Committee withdrawing Appeal REV13-003-A01 on June 6, 2016 and subsequent administrative approval of the modifications (revised conditions of approval) by the Development Planning Manager on **June 7, 2016**, are indicated in underlined type for additions and ~~cross-out~~ type for deletions.

1. Approved Use.

Ongoing

The project shall be constructed and operated in accordance with the authorized use as described in the application materials, attached staff report, the preliminary PUD plans approved January 4, 2006, final PUD approved plans dated October 29, 2007, the approved plans dated July 28, 2009, and the plans submitted on September 11, 2014 to correct striping and make other minor improvements on existing parking spaces. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval.

- a) The action by the City Planning Commission (PUDF07-520) which includes:
 - i. Approval of a Final Planned Unit Development (“FPUD”) for the Head Royce Master Plan PUD, under Oakland Municipal Code Section 17.140.
 - ii. Approval of a Conditional Use Permit for 20 tandem parking spaces on the parking level extension.
- b) The action by the City Planning staff (DS09-224) approving construction of parking improvements to the existing east parking lot at the Head Royce School to accommodate 126 parking spaces (including restriping, paving, grading, and construction of retaining walls, and construction of a drilled pier supported retaining wall for tandem parking approved by the Planning Commission as part of PUDF07-520).
- c) The action by Building Permit PZ1400021 to provide an additional 31 parking spaces on campus for a total of 157 spaces.
- d) This action by the City (“this Approval”) (REV13-0003) includes the amendments to the PUD and the Conditions of Approval set forth below which includes but is not limited to clarifications for:
 - i. School Enrollment
 - ii. Hours of Academic and Childcare Operation
 - iii. Summer Program Enrollment / Operations
 - iv. Number of Special Events / Days and Hours of Operation, and
 - v. Implementation of a Transportation Demand Management Program.

Final Revised Conditions of Approval

- e) This approval does not permit Community Assembly or Group Assembly uses as defined in the planning code or use of the school facilities as a venue for hire by outside organizations. Notwithstanding the foregoing, this prohibition does not include, and the school shall be entitled to use of the school facilities for, all of the following: (i) any events in the normal operation of a school that include students, prospective students, parents, prospective parents, faculty, administration, staff and/or alumni; (ii) any school-related events in which outside organizations are invited to participate with members of the school community, such as league athletic events, shared testing days, school dances, performances, counseling or instruction by outside organizations for the school community, educational meetings for faculty or staff, neighborhood safety meetings, professional faculty and staff development, alumni events, fund raising events, or similar normal and customary school-related events, (iii) any shared use of the school's parking lots, field or gymnasium by the school's institutional neighbors (limited only to the Greek Orthodox Church, the Church of Latter Day Saints, all located on Lincoln Avenue), and (iv) use of school facilities on the weekends by neighbors with key cards.
- f) The Conditions of Approval for REV13-003 supersede the previous Conditions of Approval for PUD04-400, PUDF07-520 and DS09-224.

2. Effective Date, Expiration.

Ongoing

Unless a different termination date is prescribed, this Approval shall expire two years from the approval date, unless within such period the authorized activities have commenced. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body.

3. Scope of This Approval; Major and Minor Changes.

Ongoing

The project is approved pursuant to the Planning Code only. Minor changes to approved plans, conditions of approval, facilities or use may be approved administratively by the Director of City Planning or designee. Major changes to approved plans, conditions of approval, facilities or use shall be reviewed by the City Planning Commission as a revision to the PUD. Major changes shall include increases in the academic or summer program enrollment, number of summer program sessions or merger of residential lots with the campus. The Planning Director or designee shall, in his or her discretion, determine whether other proposed changes in conditions, facilities or uses constitutes a minor or major change upon submission of an application for such change. A determination of whether a change is minor or major is subject to appeal pursuant to the Oakland Planning Code.

4. Conformance to Approved Plans; Modification of Conditions or Revocation.

Ongoing

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere, or the

applicant demonstrates to the satisfaction of the Planning Director that abatement requires more than 60 days to implement.

- b) Violation of any term, Conditions/ Mitigation Measures or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions/ Mitigation Measures if it is found that there is violation of any of the Conditions/ Mitigation Measures or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions, including but not limited to the imposition of financial penalties. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

5. Signed Copy of the Conditions/Mitigation Measures.

With submittal of a demolition, grading, and building permit

A copy of the approval letter and Conditions/ Mitigation Measures shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

6. Compliance with Conditions of Approval.

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval and in all applicable adopted mitigation measures set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

7. Indemnification.

Ongoing

- a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, Oakland City Council, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss, (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (**collectively called "Action"**) against the City to attack, set aside, void or annul, (1) this approval or (2) implementation of this approval. The City shall promptly notify the project applicant of any claim, action or proceeding. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorney's fees.
- b) Within ten (10) calendar days of the filing of any Action as specified in subsection a above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

8. Severability.

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions and/or mitigations, and if one or more of such conditions and/or mitigations is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions and/or mitigations consistent with achieving the same purpose and intent of such Approval.

9. Subsequent Conditions or Requirements.

Ongoing

This approval shall be subject to the conditions of approval contained in any subsequent Tentative Tract Map, Tentative Parcel Map or mitigation measures contained in the approved environmental document for this project.

10. Compliance Review and Matrix

Within 1 year of implementation of the revised Conditions.

Planning staff shall submit a compliance status report to the Planning Commission one year after implementation of the revised Conditions with the exact date to be agreed upon between the two parties (School and neighborhood).

Ongoing. On October 1 of each year, the project applicant shall submit to the Planning and Zoning Division and the Building Services Division a Conditions/ Mitigation Measures compliance matrix that lists each condition of approval and mitigation measure, including those addressing the summer program, the City agency or division responsible for review, and how/when the project applicant has met or intends to meet the conditions and mitigations. The applicant will sign the Conditions of Approval attached to the approval letter and submit that with the compliance matrix for review and approval.

11. Mitigation Monitoring and Reporting Program.

Ongoing

The following mitigation measures shall be incorporated into the project. The measures are taken from the Mitigated Negative Declaration for the Head Royce Master Plan Project (2006). In addition, the applicant has proposed other measures as part of a Transportation Demand Management Plan. For each measure, this Mitigation Monitoring and Reporting Program (MMRP) indicates the entity (generally, an agency or department within the City of Oakland) that is responsible for carrying out the measure (“**Responsible Implementing Entity**”); the actions necessary to ensure compliance with the applicable measure (“**Monitoring Action(s)**”) and the entity responsible for monitoring this compliance (“**Monitoring Responsibility**”); and the time frame during which monitoring must occur (“**Monitoring Timeframe**”).

TRAFFIC AND CIRCULATION

Impact T1: The increase in enrollment at the completion of the 2006 Master Plan could result in extension of the parking queue (defined as the cars waiting curb-side along Lincoln) during the morning drop-off and the after-school pickup period.

Mitigation T1: The project sponsor shall monitor the morning drop-off and afternoon pick-up queue during the school year as well as during any summer program operations. The procedures and monitoring forms are included in the TDM Plan. The project sponsor shall implement the monitoring procedures by either: 1) retaining a qualified independent traffic consultant to

monitor the extent of the queue along Lincoln Avenue or 2) hire a qualified independent traffic consultant, approved by the Bureau of Planning, to train at least two (2) supervising monitors to implement and supervise the monitoring procedures. Any new supervising monitor must be trained directly by the independent traffic consultant. If the school's drop-off or pick-up queue extends for more than 60 seconds in any single monitoring period (excluding delays due to extenuating circumstances such as a traffic accident) past the school's upper driveway and the red "no parking" zone above the driveway along the north side of Lincoln Avenue and extending into the "Keep Clear" zone, the school shall implement as many of the following actions and continue to implement these actions as would be necessary to accomplish the necessary reduction in the length of the queue:

- Implement staggered morning drop-off and afterschool pickup times.
- Stagger the afterschool bus pick-up times so that the buses are loaded and leave prior to the start of pickup.
- Discourage early arrival for pickup within the Transportation Policy Guide and during an annual back to school traffic presentation.
- Increase public and private bus ridership in addition to those already in effect at the time of the queuing violation.
- If the previous measures do not reduce the queue, work with the City to restrict on-street parking during morning drop-off and afternoon pickup on Lincoln Avenue to allow for a longer queue. The School shall retain a qualified traffic consultant to prepare an analysis of the queue extension for review by the City's Transportation Services and Oakland Police Department Traffic Safety Divisions. The School shall pay any required review fee. The City may decline to restrict on-street parking to allow a longer queue, in which case other measures noted above must be pursued.

Responsible Implementing Entity: Bureau of Planning and Public Works Agency, Traffic Engineering Division

Monitoring Action(s): Monitoring and reporting shall take place for four one-week periods, once at the beginning of each School semester, and once at the beginning of each Summer Program session. After 2017, the number of monitoring sessions and the duration of the monitoring period for each school year shall be determined by the City of Oakland's Transportation Services Division, Oakland Traffic Safety Division and Bureau of Planning based in part of the school's performance in reducing the queue. In accordance with the TDM, either a qualified independent traffic consultant or two (2) trained monitors shall monitor the Lincoln Avenue queues during after-school pick-up (3:00 to 3:45 p.m.) and morning drop-off (7:55 to 8:30 a.m.) by recording observations of the length of the each queue, reporting on the number of vehicles in the queue every 15 minutes, and the maximum number of vehicles in the queue during the daily monitoring period using the form provided as an appendix to the TDM. The monitoring persons shall also note the number of buses in the queue at each monitoring time. The Director of Operations shall prepare a report at the end of every week during each monitoring period based on the information gathered, sign the report, and submit to the Bureau of Planning. In addition to monitoring forms, the School shall also submit video documentation of the queue during the time

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periods referenced above eight (8) days each year (two days during each of the four (4) monitoring weeks) for a total of sixteen (16) video clips.

If the results of any of the monitoring periods show that the queue of vehicles extends for a period of 60 seconds or more during each monitoring period past the school's upper driveway, the School shall consult with Bureau of Planning, Transportation Services Division, and Oakland Police Department Safety Division and determine which of the above actions shall be implemented in what order to reduce the length of the queue.

Monitoring and reporting shall continue for an additional three (3) weeks following implementation of each of the above actions and shall continue as long as the City deems necessary to show that it has been effective in reducing the length of the queue.

Monitoring and Reporting Responsibility: Head Royce School
Monitoring and Reporting Review: Bureau of Planning

12. School Grades/Enrollment / Verification.

Ongoing

- a) Head Royce School is permitted to operate a K-12 Community Education Facility.
- b) The School is permitted to increase its enrollment to 875 students with this approval. Enrollment may increase by up to 15 students each year The City met with the School in 2010 and agreed to stay enforcement proceedings if the School would come into compliance with its conditions of approval and submit a TDM program. The School hired a traffic consultant in 2011 to look at ways it could implement improvements to drop off and pick up operations and develop a TDM program. The maximum school enrollment at Head Royce School is 906 students. No enrollment fluctuation resulting in enrollment above 906 students is allowed.
- c) The school shall submit the enrollment numbers to the Bureau of Planning no later than October 15th each year.
- d) In accordance with state law, the school shall also submit its enrollment figures to the California Department of Education no later than October 15th of each year.

13. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management.

Ongoing

The project applicant may be required to cover the full costs of independent technical review and other types of peer review, monitoring and inspection, including without limitation, inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

14. Hours of Operations (Academic, Childcare and After School Program).

Ongoing

Head Royce School's hours of operation, which include academic, childcare and afterschool programs, are from 7:00 a.m. to 6:30 p.m. Monday through Friday. Athletic practices, including outdoor practices, may commence at 6:30 a.m. on weekdays. Outdoor athletic practices and games shall end by 7:30 p.m. or sundown, whichever is earlier. Indoor activities involving only School students, faculty, staff and members of the board of trustees such as play rehearsals, standardized testing, band practices, and meetings of student organizations, faculty committees

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and meetings of the board of trustees are not considered Special Events as defined in Condition 16 and may occur after 6:30 p.m. on weekdays and between 8:00 a.m. and 6:00 p.m. on weekends. No field-wide lighting may be installed on the athletic field.

15. Summer Program Enrollment / Operations.

Ongoing

- a) Summer Program hours are from 7:30 a.m. to 6:00 p.m. over the summer from Monday through Friday only.
- b) Summer Program includes two, three (3) week sessions spanning six weeks, generally beginning the third week in June through the last week in July.
- c) The Summer Program may have evening or weekend Special Events. However, those Special Events will be included in the maximum number of Special Events listed below.
- d) The maximum Summer Program enrollment is 780 children per session. The Director of Operations shall submit the enrollment numbers to the Planning and Zoning Division 2 weeks prior to each session of the Summer Program.
- e) The playing fields or pool shall not be used prior to 9:00 AM.
- f) The School shall operate the Summer Program and shall not lease, partner, or loan the Summer Program to another operator or organization.
- g) Unless otherwise noted, all Conditions of Approval that apply to School operations apply to the Summer Program.

16. Number of Special Events / Days and Hours of Operation.

Ongoing

The School and the Summer Program shall be permitted to hold Special Events at the Head Royce School campus subject to the following:

- a) A "Special Event" is defined as a gathering in which visitors (including parents) are invited to the campus in conjunction with a School or Summer Program-sponsored event or activity such as a Back to School night, a performance (play or musical), athletic event, dance, walk-a-thon, guest speaker, school fair, Admissions Open House, promotion or graduation ceremony, associated and carried out by the school (not hosted by an outside group or organization) and for which 50 or more visitor vehicles are expected. If more than one Special Event occurs on a single day, each Special Event shall count as a separate event. Parking rules for Special Events are outlined in Condition 23. A Special Event does NOT include indoor activities involving only School students, faculty, staff and members of the board of trustees such as play rehearsals, standardized testing, band practices, and meetings of student organizations, faculty committees and meetings of the board of trustees. In addition, neighborhood meetings required or requested to be held on campus as a condition of this permit or otherwise by the City are not considered to be Special Events.
- b) The school shall post an annual calendar on its website and provide the website link to the Neighborhood Committee described in Condition 24 at the beginning of the School year listing all Special Events and the anticipated number of visitor vehicles that will be generated for each event. The School is permitted an additional ten (10) total weekday evening events that are not on identified on the annual calendar, provided that the Neighborhood Committee is provided a 30-day notice of such addition and those events shall not take place during weekends or the summer.
- c) During school academic, childcare and afterschool program hours of operation, Mondays through Fridays, the School is permitted an unlimited number of Special Events. However, those events for which 50 or more visitor vehicles are expected must follow Condition 23 procedures for Special Events.

- d) The school shall be permitted a maximum of 85 evening Special Events per school year during the hours of 7:00 p.m. -9:30 p.m. All Special Event participants shall have left the campus and the lot locked by 10:00 p.m. School dances shall end by 10:30 p.m. with all participants leaving by 11:00 p.m.
- e) The school shall be permitted a maximum of 55 Saturday daytime Special Events per school year during the hours of 9:00 a.m. to 6:00 and 10 Saturday evening Special Events per school year during the hours of 6:00 p.m. to 9:30 p.m. The school shall be permitted a maximum of ~~ten (10)~~ eight (8) Sunday Special Events per school year during the hours of 9:00 a.m. - 6:00 p.m. The school shall be permitted a maximum of ten (10) single day summer Special Events during the hours of 9:00 a.m. - 6:00 p.m. ~~and only on weekdays.~~ One summer Special Event may take place on Saturday. There shall be no Sunday summer Special Events.
- f) No events shall be held that have not been published on the school calendar or a 30 day in advance or emailed to immediate neighbors one month in advance. The school is not permitted to rent or loan out any of its facilities.
- g) All Special Events shall be monitored by the School per the Condition of Approval.

17. Total Number of Employees.

Ongoing

- a) The Project Applicant shall submit the total number of employees to the Bureau of Planning no later than October 15th each year.
- b) In accordance with state law, the school shall also submit their employee numbers to the California Department of Education no later than October 15th of each year.

18. Master Plan May Be Required for Student Enrollment Increase or “Future Construction”.

Ongoing

The Project Applicant shall apply for a new or amended Planned Unit Development Permit for any student enrollment increase over 906 students on the Head Royce campus site, including but not limited to any physical expansion of Head Royce School’s operations at 4315 Lincoln Avenue or any other “Future Construction” associated with increasing Head Royce School’s operations. The City may require preparation of a campus-wide Master Plan for any such expansion. Future Construction is defined for purposes of this condition as: new, wholly reconstructed, or relocated school buildings, any expansion of floor area (as defined by Planning Code), new enclosed buildings or portions of buildings (i.e., storage shed, garage, attic on an existing building). For purposes of this condition, future construction does not include features such as unenclosed decks/balconies, stairs, walkways, patios, courtyards, fences, walls and retaining walls, trellises or other landscape features, interior remodeling of an existing building, or repair of existing building features. Any future Master Plan shall address, at a minimum, an adequate on-site pick-up and drop-off area, how the school will accommodate additional student growth, a comprehensive development plan for the entire School, including addressing all on-site parking, events, sports fields (if applicable) and traffic-related and vehicle access issues. The last enrollment and staffing form submitted to the California Department of Education shall be required as part of the application documents.

19. Operational Noise General.

Ongoing

Noise levels from the activity, property, or any mechanical equipment on site or as a result of school operations shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction

measures have been installed and compliance verified by the Planning and Zoning Division and Building Services. No outdoor amplified sound equipment shall be used on the campus without a permit from the City Manager's office. For the purposes of this permit, "amplified sound equipment" includes bull horns, air horns, or loud speakers.

20. Parking Requirement and Shared Parking

At maximum enrollment (906 students), the School shall provide a minimum of 157 off-street parking spaces and in all cases shall, at a minimum, maintain sufficient off-street parking to meet Oakland Planning Code section 17.116.070(C). These spaces may be provided either at 4315 or 4368 Lincoln Avenue, provided that the spaces used at 4368 Lincoln Avenue are not already allocated to the existing use permit governing uses at that site. The School may use surplus parking at 4368 Lincoln Avenue, the Greek Orthodox Church, Cerebral Palsy Center, Mormon Temple or other off-site locations for additional parking, provided that use of these facilities for parking is not in fulfillment of the School's obligation to provide 157 off-street parking spaces at maximum enrollment and are not required or needed for the uses governing those sites.

21. Whittle and Lincoln Avenue Properties.

Ongoing

The properties located at 4200, 4220, ~~and~~ 4180 and 4286 Whittle Avenue and 4233 Lincoln Avenue shall be limited solely to permitted residential uses as defined in the Oakland Planning Code and the School will not merge the lot without obtaining an amendment to the PUD as a Major Change. The school shall maintain the residential character and uses of these houses and ensure that the houses maintain their structural integrity. These properties shall not be used for additional School parking, School staging of materials or equipment, School storage (including storage of maintenance equipment) or school deliveries or student pick-up or drop-off. The gate in the existing fence between 4200 and 4220 Whittle and the School property shall be posted with a No Trespassing sign and locked (with keys provided only to residents of these properties), except a push bar or similar unlatching system may be installed on the School side of the gate only to allow for exit in an emergency.

22. Whittle Gate Access.

Ongoing

Access to the school through Whittle Gate shall be limited as follows: Deliveries to the School shall be directed to Whittle Gate in accordance with Condition 25. The project applicant may provide *pedestrian* card access to the Whittle Gate to students or employees who walk or bike to School and to neighbors who have been given card access keys. The 20 School employees that parked on Clemons Avenue are prohibited from receiving pedestrian access cards for the Whittle Gate. The School may provide up to 22 *vehicle* access cards to faculty, staff or disabled visitors to park in the parking spaces in the School's lower parking lot. Disabled students may be dropped off at Whittle gate. Each year, the School shall deactivate the cards and issue new cards. Monitoring of Whittle Gate shall take place in accordance with Condition 23, below. The number of pedestrian and vehicle passes distributed each year shall be submitted to the Planning and Zoning Division. The School shall install signs identifying the appropriate access points and access restrictions, if any, to the School.

23. Transportation Demand Management.

Ongoing

The applicant shall maintain a TDM plan attached as Exhibit A to these conditions during both the regular school year and during the Summer Program. Among other things, the TDM

implements Conditions 23 a-g as set forth below. The Conditions are the governing and enforceable conditions of approval.

a) Traffic Circulation and Management

The School shall continue to implement policies to ensure that 1) the drop-off and pick-up process is managed effectively and efficiently; 2) to minimize traffic on neighborhood streets; and to 3) encourage safe driving behaviors. These policies include:

- i. Continuation of before and after-school childcare programs to reduce the number of peak vehicles arriving and departing the campus.
- ii. Maintenance of detailed, written instructions of the vehicle pick-up and drop-off process for the purpose of increasing efficiency in the pick-up and drop-off operation. These procedures, which will be incorporated into a Transportation Policy Guide (Guide), shall include, but are not limited to, how to access the vehicle drop-off/pick-up lane from each direction (~~loops~~), a map showing the specific area where vehicle drop-off and pick-up is permitted, rules regarding safe practices for entering and exiting vehicles, and the area that queue cannot exceed. The School shall actively discourage and communicate the dangers of picking-up students on streets other than the designated drop-off area, as part of the Guide, parent meetings, Back to School nights and other means. The Guide shall specifically discourage early arrival for afternoon pickup. The summer program shall follow the Transportation Policy Guide.
- iii. Compliance with Mitigation Measure Mitigation T1 and Condition 11.
- iv. Mormon Temple Staging Area and Alternative: If the Mormon Temple Staging Area becomes unavailable for use during the pick up or drop off process, the School shall promptly institute one of the alternative means of maintaining the queue in compliance with these conditions as set forth in Condition 11. If an off-site staging area continues to be the preferred method to control the queue, the School shall institute that alternative within 30 days of the unavailability of the Mormon Temple in consultation with City staff. Alternative potential staging areas could include the parking lot of the Greek Orthodox Church, the Cerebral Palsy Center and/or the School's property at 4368 Lincoln,
- v. Circulation Assistants: During morning drop-off and afternoon pick-up periods, the project applicant shall assign 5 adults in the morning and 8 adults in the afternoon to assist with the efficient flow of pick-up and drop-off traffic in approximately the locations listed below, subject to refinement per discussion with the City planning staff. The circulation assistants shall be distinct from the traffic safety monitors.

Morning assistants:

1. One circulation assistant at the Lincoln Avenue crosswalk in front of the Gatehouse.
2. One circulation assistant at the bus loading zone on the north side of Lincoln.
3. One circulation assistant at the middle school gate above the bus loading zone on the north side of Lincoln.
4. One circulation assistant for the student drop off area zone on the south side of Lincoln

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5. One circulation assistant at the top of queue on the north side of Lincoln

Afternoon circulation assistants:

Same as morning with additional circulation assistants as follows:

6. One circulation assistant at the top of the main gate stairs matching parent vehicles to waiting students for pick-up.
7. One circulation assistant at the upper driveway to manage the queue.
8. One circulation assistant at staging area in the Church's overflow parking lot (or alternative)

The school shall have a sufficient number of qualified alternates on campus during every morning and afternoon drop-off time to ensure that the minimum number of traffic personnel is always met. All traffic assistants shall wear colored safety vests. The summer program shall have at least as many circulation assistants as the school year program.

b) Parking management strategies

The School shall implement parking management strategies to ensure that 1) the School minimizes parking in the neighborhood; 2) school-related parking does not disrupt traffic; and provides incentives to reduce single occupancy vehicles.

- i. Through its TDM and Transportation Policy Guide, the School's policy shall be to direct staff, students and visitors to park in the School's 157 off-street spaces, in the lot at 4368 Lincoln Avenue and on Lincoln Avenue above the Gatehouse and direct them not to park on the side streets in the neighborhood.
- ii. The School shall continue to pay for a Residential Permit Parking program on Alida Avenue, Alida Court and Linette Court through the City of Oakland unless the neighbors on these streets withdraw their request to maintain this permit program.
- iii. Staff who contract with the school to carpool shall be given on-site priority spaces relative to non-carpooling staff in order to reduce single occupancy vehicles,
- iv. Students shall be directed by the School to park in off-street parking on campus or on Lincoln Avenue above the Gate house. Students that contract with the school to carpool shall be given on-site priority spaces in order to reduce single occupancy vehicles.
- v. The School shall maintain the required number of parking spaces per Section 17.116.070(C) at all times, including the Summer Program (one (1) space for each three employees plus one space for each 10 high school students of planned capacity.) An increase in employees or high school students could require additional parking spaces to be provided to meet the Planning Code. Required parking may be provided either on the Head Royce campus itself, unless prohibited by other Conditions of Approval, or at 4368 Lincoln Avenue or at other off-street locations. Surplus parking spaces are defined as those spaces above and beyond the requirements of the Planning Code for the permitted use. City staff shall use the School staff and student enrollment information submitted to the State of California Department of Education to determine compliance with parking ratios.

- vi. In its Transportation Policy Guide, the School shall define “single occupancy vehicle” as a vehicle with the one driver and one non-driving student or child.

c) Auto Trip Reduction Program

The School shall discourage single-student and single parent/student driving in the Transportation Policy Guide and implement policies with a goal of reducing single occupant vehicles arriving or departing the School. The Auto Trip Reduction Program shall be included in the TDM and address all four modes of transportation (pedestrian, bicycle, carpooling/vanpooling, and transit), including:

- i. The project applicant shall continue to sponsor and provide private buses (or an equivalent service and capacity as existing conditions).
- ii. The project applicant shall continue to subsidize an AC Transit bus pass to students and faculty as long as AC Transit bus service is available. The project applicant shall assign a transportation coordinator who will provide carpooling and ridematching services to parents who are interested in carpooling.
- iii. The School shall commit to maintain an average of 27% of its school-year student enrollment traveling to school by modes other than single occupancy vehicles (e.g. driving or being driven alone) as long as AC Transit maintains the bus routes that serve the School. However, once the School achieves a maximum student enrollment of 906 students, the School shall commit to maintain an average of 30% of its school-year student enrollment traveling by modes other than single occupancy vehicles. A survey of alternative travel modes shall occur during each of the two independent monitoring periods carried out during the school year pursuant to Condition 23(g) and the counts shall be averaged over the two (2) monitoring periods. However, the School may elect to conduct additional third-party monitoring and the counts shall be averaged overall additional academic year monitoring periods. Alternative travel modes shall include walking, biking, carpooling or taking a bus. If AC Transit chooses to discontinue one or more of the routes that service the School, the average required by this condition will be lowered by the percent of students who used the discontinued transit line. The School and the City will then work together to determine transportation alternatives and a new, appropriate percentage of students that should be traveling to school by means other than single-occupancy vehicles.

d) Special Events

- i. The project applicant shall establish transportation procedures for Special Events to 1) ensure that Special Events are managed efficiently and effectively; and 2) minimize traffic and parking in the neighborhood. The project sponsor shall anticipate the attendance of Special Events and note this on the school’s calendar. At least two weeks prior to a Special Event, the School shall confirm the anticipated number of vehicles and distribute the appropriate parking locations and restrictions to the attendees and Neighborhood Liaison Committee. For all Special Events, the school shall direct visitors not to park on neighborhood streets and instead encourage them to park in off-street lots or on either side of Lincoln Avenue above the gatehouse.

- ii. For single or cumulative Special Events on the same day that will generate between 50 and 150 people, the School shall provide sufficient parking either at the main campus, 4368 Lincoln Ave. or Lincoln Ave. above the gatehouse. For single events or cumulative events on the same day expected to be between 150 and 400 people, the School shall provide sufficient parking on-site, at 4368 Lincoln Avenue, on Lincoln Avenue above the gatehouse, the Mormon Temple, the Greek Orthodox Church and/or Cerebral Palsy Center. For events exceeding 400 people, an off-site alternative, with a shuttle or valet system, is required.
- iii. Traffic Monitors during Special Events: The purpose of traffic monitors during Special Events is to direct cars away from neighborhood streets and into off-street parking or onto Lincoln Avenue above the gatehouse. Single or cumulative events with 50 or fewer visitor vehicles people are not considered Special Events per Condition 16 and do not require a traffic monitor. However, parking signs shall be posted along Lincoln Avenue. Single or cumulative events with 50-150 people shall require one monitor along Lincoln Avenue at the corner of Lincoln and Alida and another monitor at the Whittle Gate. Single or cumulative events between 50 and 200 people shall require four (4) monitors. Monitors will be stationed at the following streets to direct cars to parking provided for the event: Whittle Gate, Lincoln Avenue south of the gate house, Alida Street between Lincoln and Laguna Avenue, and Alida Court. Single or cumulative events over 200 people shall require six (6) monitors, unless an off-site shuttle service is used. In addition to the streets listed above, the monitors will be stationed at the following streets: Tiffin Avenue between Whittle and Lincoln Avenue, and Burlington Street.

The traffic monitors shall wear a colored safety vest, carry digital cameras, and provide adequate information to the school in order to identify the Special Event parking violators and for the school to implement the enforcement policy. Monitors shall be in the neighborhoods 15 minutes prior to any event.

The project applicant shall provide a live hotline number to reach an event manager during Special Events to be used to report violations or complaints. Enforcement of violations of Traffic Safety Rules (see subsection (f) below) observed during Special Events shall be handled in the manner set forth in subsection f below and the TDM.

e) Communication

- The project applicant shall establish communication protocols to 1) institutionalize and encourage good neighbor parking and driving behavior; 2) ensure that the School community drives in a safe manner; and 3) ensures the rules are clearly communicated, including:
- i. Traffic Safety Rules: The TDM contains a list of Traffic Safety Rules that are designed specifically to increase safety of the school community and the neighborhood. The TDM also includes a list of “Good Neighbor Rules” designed to decrease impacts to neighbors.
 - ii. The project applicant shall continue to maintain a Transportation Policy Guide. The Guide shall include, but not be limited to the following: Vehicle drop-off and pick-up procedures designed to promote an efficient operation; bus loading procedures; Traffic Safety Rules; “Good Neighbor Rules” including blocking driveways, u-turns in

neighbor's driveways; Transit Subsidy Program; Special Event Traffic and Parking Rules; and consequences for violations. If necessary to reflect the updated TDM Plan, the Transportation Policy Guide shall be submitted to Bureau of Planning, Transportation Services Divisions, and OPD-Traffic Safety for review. The project applicant shall distribute the Transportation Policy Guide to each student's parent/guardian. Each student's parent/guardian will need to provide written acknowledgement of receipt of the Policy Guide, and acceptance of its policies as a condition of enrollment. The School shall submit a record of each family's acknowledgement of receipt in a form acceptable to the City if requested. The project applicant shall hold a parent meeting at the beginning of each school year to discuss the traffic and parking. If rules change significantly, as determined by the Director of the Bureau of Planning, after the beginning of the school year, the project applicant shall hold another meeting. A City staff member may attend. The project applicant shall annually review the Transportation Policy Guide and submit the Transportation Policy Guide for review by the Bureau of Planning, Transportation Services Division, and OPD-Traffic Safety staff.

f) Enforcement of Traffic Safety Rules and Event Traffic and Parking

- i. The School shall implement and maintain a system to identify and track persons who violate the School's Traffic Safety Rules as set forth in the TDM. Good Neighbor Rules as set forth in the TDM shall not be considered Traffic Safety Rules subject to enforcement by the Bureau of Planning. Violations of the Vehicle Code are enforced by the Oakland Police Department.
- ii. During the pick-up and drop-off periods: The School shall assign four (4) traffic monitors to implement and monitor the Traffic Safety Rules. The monitors shall be placed at:
 - Whittle Gate,
 - ~~On the westbound loop (e.g. the intersection of Laguna and Alida)~~
 - ~~Two~~ Three traffic monitors for Lincoln Ave between the main entrance and upper driveway.

The traffic safety rule monitors shall wear a safety vest, carry digital cameras, and provide adequate information to the school in order to identify the rule violators and for the school to implement the traffic safety rule enforcement policy. Monitors shall be in the neighborhoods 15 minutes prior to scheduled pick-up and drop-off times.

g) Compliance Reporting

- i. The project applicant shall hire a qualified traffic consultant, (based on at least three recommendations from the Bureau of Planning), approved by the Director of Planning or designee, to monitor compliance with the traffic-related conditions in the Conditions of Approval and the approved TDM. Specifically, the independent monitors shall verify compliance by:
 - Counting the number of traffic assistants and monitors present during drop-off and pick-up periods.
 - Observing the drop-off and pick-up traffic flow and recommending measures to ensure smooth operations to the City.
 - Reviewing the length of the queue and check if it extends above the upper driveway.
 - Collecting the number of violations that have been reported from Head Royce's database and recommending measures to reduce violations.

- Recording parking occupancy in all Head Royce parking lots.
 - Monitoring Whittle Avenue and Alida for School –related parking.
 - Auto Trip Reduction Program and related documents as determined satisfactory by the Director of Planning, to meet the alternative transportation mode percentage.
- ii. The independent monitor (which shall be chosen by the School based on at least three recommendations from the Bureau of Planning), shall monitor the school’s compliance with the traffic-related conditions of approval as implemented by the TDM four times per year: once each semester, once during the Summer Program and once during a Special Event involving over 100 cars. The independent traffic consultant shall submit a written report within two weeks of the monitoring summarizing the results of the monitoring session. The reports shall include recommendations to remedy potential infractions of the traffic-related conditions of approval, if appropriate to the Bureau of Planning. Such measures proposed by the independent traffic consultant must be approved by the City of Oakland prior to implementation. The City of Oakland shall have one week to review and approve the submitted measures. Upon City of Oakland approval of enhanced or additional TDM measures, the project applicant shall be given four weeks after the approval to implement the recommended measures.
- iii. The School shall have one semester to cure any traffic-related violations of the conditions of approval. If after invoking enhanced or additional TDM measures the School still does not meet its traffic-related conditions of approval based on the independent monitors reports submitted to the City of Oakland, the Bureau of Planning may refer the matter to the City of Oakland Planning Commission for scheduling of a compliance hearing to determine whether the School’s approvals should be revoked, altered, or additional conditions of approval imposed. This could include a permanent reduction in enrollment. The City of Oakland can also impose penalties on a per infraction fee pursuant to the City’s Master Fee Schedule based on the observations of city officials, the Oakland Police Department, or the independent monitors. In determining whether reduced enrollment or other remedies are appropriate, the City of Oakland shall consider if the School has demonstrated a good faith effort to comply with the traffic-related conditions of approval. It will be up to the School to provide evidence to the City of Oakland of good faith efforts for review.

24. Neighborhood Liaison Committee /Point of Contact/Complaints.

Ongoing

The School shall invite interested representatives from the surrounding neighborhood streets, including but not limited to, Upper Lincoln, Lower Lincoln, Alida Court and Whittle Avenue neighborhood (Neighborhood Committee) to meet with a representative from the School administration, the Director of Neighborhood Relations (or his or her designee) and a member of the board of trustees, in order to resolve conflicts and maintain communications between the school and the surrounding neighborhoods. The School shall convene the Neighborhood Committee at least twice a year, with one meeting held at the end of the school year prior to the start of the Summer Program. The date/time/location shall be mutually agreed to by the Neighborhood Committee and the School. Invitations to the meeting with a written agenda shall be mailed at least 10 days prior to the scheduled meeting to the Neighborhood Committee, the City Council’s office for district 4, the planning director or designee, and all residents immediately abutting and adjacent to the School. The School shall increase the number of

meetings if determined to be necessary by City Bureau of Planning staff. School shall provide notice of these meetings to City staff who may attend.

No later than 30 days after this approval and ongoing

The Project Applicant shall designate a representative, or series of representatives, on site, to act as the primary point(s) of contact and as a complaint manager. The procedures and protocols to track and timely respond and resolve complaints/concerns raised by neighbors, or others relating to the school's operations, including but not limited to traffic, noise, etc. are contained in the TDM Plan. One of the purposes of this condition is to have the project applicant timely respond and resolve complaints prior to involvement by Building Services Code Compliance Division, unless the complaint is related to imminent threats to public health or safety. The School shall provide neighbors with a daytime and evening contact number for the complaint manager. Complaints will be responded to within 48 hours. In addition, the School shall provide neighbors with a 24-hour emergency hotline number for use in the event of an emergency.

25. Deliveries.

Ongoing

All deliveries, except US Mail, Fed-Ex and UPS trucks and a once a year mulch delivery to the playground area, must access the School via the Whittle Gate or the upper parking lot area. Except as noted above, no deliveries are permitted along Lincoln Avenue. Deliveries must be scheduled for 9 a.m. to 5 p.m. on weekdays, except for deliveries to the café which may commence at 7 a.m. on weekdays operation hours only and no overnight parking or idling is permitted. The School shall provide a live daytime and evening contact number for the complaint manager.

26. Emergency Management Plan.

Prior to the start of the next semester after Planning Approvals and Ongoing

The project applicant shall develop an Emergency Management Plan ("EMP"), and submit to Planning and Zoning Division, Transportation Services Division, OPD-Traffic Safety, and the Fire Marshall, for review and consultation. The Applicant shall implement the final EMP. The EMP shall include at least the following components:

a) Fire Protection Bureau Occupancy Review

Ongoing

The School shall cooperate and coordinate with the Fire Services Department to conduct yearly occupancy and fire safety inspections of the school, fire drills and unannounced future site visits. The resulting Fire Department report(s), and any follow-ups, shall be sent to the Planning and Zoning Division for review.

b) Emergency Preparedness Plan

With 6 months and Ongoing

The School shall submit an Emergency Preparedness Plan, within 6 months after this approval. The completed plan shall be submitted to the Planning and Zoning Division and the Fire Protection Bureau for review and consultation. The plan shall discuss emergency evacuation procedures that will facilitate emergency vehicle access to the neighborhood during School pick-up and drop-off operations. The plan shall be implemented.

c) Fire Department Site Visits

The project applicant shall coordinate with the Oakland Fire Marshal's Office to make periodic unannounced visits to the school (the frequency, timing, and types of visits should be

at the Fire Marshal's discretion based on need for visits and compliance by the school) to verify that adequate emergency vehicle access is being maintained during peak pick-up and drop-off periods. The Fire Marshal should consult with the School to identify modifications to the circulation rules, if emergency access problems are identified.

Applicant and/or Contractor Statement

I have read and accept responsibility for the Conditions of Approval, as approved by Planning Commission actions on _____ and all previous actions. I agree to abide by and conform to these conditions, as well as to all provisions of the Oakland Zoning Code and Municipal Code pertaining to the project.

Signature of Owner/Applicant:

(date)

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

Re: 1310 Bryant Street; Castilleja Expansion Project

Dear PTC Members,

Thank you for your time in this matter and your consideration of the feedback. As you are aware, the Staff report and Draft Conditions are lengthy and detailed as befitting a project of this scale and complexity. Trying to get assess all of the information in the hort time allotted has been difficult for all of us. I apologize in advance for the length of the notes and comments but in this case, specificity and detail are important to make the Conditions useful and effective.

General questions: and comments: Red highlights are specific suggestions for revisions.

Definitions of events:

- One of the problems with the existing CUP Conditions is the way events are not clearly delineated in references. This has led to neighborhood frustrations with Castilleja and the number of “events” that take place along with the allowable size of those events. This set of draft conditions appears to do the same in many instances. The terms major events, special events, large events, and events are used in many different locations. Staff should track the uses and be consistent in how the events are referred to relative to their size and the intent of the condition. Also, the conditions do not clearly differentiate between academic uses and events. An evening basketball game with an opponent and fans, for example, would seem to be an event under normal definitions. As we have seen from the garage/parking facility/non-basement debate ,there are other ways to look at things. This basketball game could by some be called an academic use since the participants are students and consequently not count as an “event” under the Conditions. For clarity, I submit that any gathering outside of the normal school hours of 8am -5pm, M-F must be considered an “event “ for the purposes of these conditions.

Construction Management Plan and Further Conditions:

- Why is the Staff recommending that the TDM be suspended during construction? The safety of the students attending the school and the surrounding neighborhood will be severely impacted by the construction traffic and parking. The proposed garage is inadequate for all vehicle traffic normally generated by faculty, staff and students and pick up and drop off locations will be compromised. An expanded TDM would seem to be required for the safety of students during the upheavals of construction.
- There has been no Construction Management Plan presented for parking, traffic and access to the campus during the estimated three years of heavy construction. City Transportation Department approval of a comprehensive and detailed Construction Management Plan including traffic patterns and parking plans should be a condition of the CUP approval.
- The City should track air quality on and around the site before, during, and after construction. This is relatively easy and inexpensive to do. There should be a condition added to any construction plan stating that if at any time the AQI is above 150 in the neighborhood, construction will cease immediately and not resume until the AQI is below 130.

Vehicle Trips:

- The EIR and Section 22 of the Conditions allow increases in both the Average Daily Trips (ADT) and AM peak trips. How can the City Staff and PTC recommend these increases after the Council recently argued that Stanford, as a condition of their GUP, should be held to a standard of **NO NEW TRIPS.**

Specific comments to the Conditions of Approval

- Given the limited time available prior to this meeting, these are limited to matters within the scope of the TDM, Sections 20-37 of the Draft Conditions of Approval

Section 20:

- A robust and effective TDM is the lynchpin of many EIR mitigations. Without an effective TDM the neighborhood risks being overwhelmed by traffic and parking with little recourse. **There should be no final approval of the CUP and construction without this crucial piece undergoing a study of its effectiveness by the City Transportation Department.**

Section 21:

- Detailed comments are difficult given the number of documents referred to in the various sections. These will be forwarded at a later date.

Section 22:

- The calculations in both 22a and 22d are open to question. The baseline for ADT (22.a) and AM peak trips (22.d) trips should reference the **currently allowed enrollment of 415 students**, not the existing **over-enrollment of 426.** **Using similar ratios, baseline ADT should be 1,137 and the AM Peak Trips baseline should be 373**
- 22.g and 22.h direct the school to install, monitor, and report the counts to the City. Rather, all work should be done by an **independent monitoring company hired by the City** as provided in Section 32.
- 22.g: Yes, vehicle counts should be monitored during construction, but they should also be tied to **a specific construction TDM.**
- 22.h: Trip counts on the surrounding streets **should also be used to determine violations of the TDM.** Increases over 5% in a reporting period should trigger the same violation review as other sections.
- 22.i: Currently, extra vehicle trips are generated by extra-curricular activities that occur after normal pick up hours. **Shuttle service** to train stations and outlying pick up points should be available from a minimum of **30minutes prior to the first student activity on campus until 30 minutes after the last scheduled activities** including and any time students are engaged in classroom or extracurricular activities on campus.
- 22.j: Does this section apply to all events over 20 people? 50 people? Shuttle service to train stations and outlying pick up points should be available at least 30 minutes prior and following the events.

Section 23

- 23.a: Reporting three times/year should be adjusted to have reporting **inform adjustments prior to semester start dates:**
 - Reporting period July through October available Dec 1
 - Reporting period November through March; available May 1
 - Reporting period April through June; available August 1
- 23.b: Reporting two times/year should provide reports on Feb 1 and August 1

Section 24

- 24.b.ii While events may be excluded from the ADT calculations, raw data for those days should be included in the report
- 24.b.vi: There is no metric here for how to gather this data and insure it is accurate.
- 24.b.viii: The conditions should specify times of day (or a one hour period) when the counts are taken and should be independently verified.
- 24.b.viii: Again, time of day for counts should be specified and include independent verification.
- 24.d: These devices should be installed, monitored and maintained by a City contracted company, not by Castilleja. See Section 34 for language.
 - 24.f: include not only the number but locations of onsite traffic and parking monitors

Section 25

Much of this section is vague and without metrics, monitoring, enforcement or penalties. The City used this method in 2000 and that CUP is unenforceable. Revise as needed.

- 25.1: By whom, how enforced, how penalized?
- 25.ii: How trained, monitored and enforced?
- 25.iii: Left turns into and out of the drop off driveways are unsafe AT ANY TIME. This section should be amended.
- 25.iv: There is nothing about training of monitors or enforcing parking locations
- 25.v: Specify the time of day (or a one hour range) when this should happen for consistency of assessments. Verification?
- 25.vi: There should be no parking permitted for Castilleja staff, faculty or students on the school side of the adjacent street. Castilleja has publicly committed to supporting an RPP area around the school once this is approved. The CUP should include a condition that the following blocks be posted as 2 hour parking between 8am and 6pm with RPP permits available to residents: 100 block of Melville, 100, 200 and 300 blocks of Kellogg Street, 1300 and 1400 blocks of Emerson, 1300, 1400 and 1500 blocks of Bryant Street. Public schools in the City do not have this right and neither should Castilleja.
Additionally, the City Transportation department should undertake a study of traffic calming measures that could be installed in the adjacent streets to mitigate cut-through traffic and make the intersections safer.
- 25.vii: Disciplinary consequences list should include staff and faculty, and should be published. All students, parents, faculty or staff who are disciplined shall be reported to the City for incident and compliance monitoring.
- 25.viii: Contacting the phone number to complain is like talking to the fox who broke into the henhouse. All complaint logs and outcomes should be made public by the City
- 25.x: Castilleja has maintained in the past that this was being done. Over the course of several years of regular monitoring I have seen fewer than 20 identifying decals on cars parked adjacent to the school. How will the use of these parking I.D.s be monitored, enforced and what are the consequences of non-compliance?
- 25.xi: Should include parking and traffic monitors to direct traffic to Spieker field.
- 25.xii, 25.xii are strategies for mitigations. They vague and unenforceable, why are they here?
- 25.xv: This should read "Castilleja shall coordinate all events over 50 people with the schedules of other institutions in the area including Palo Alto High School, Stanford and the City of Palo Alto and refrain from scheduling school functions at times that conflict with large functions at nearby locations. Examples would include but not be limited to - Paly graduation and back to school

functions, Stanford graduation, Stanford football games, City bicycle events utilizing Bryant Bike Boulevard, large events at the Gamble Gardens.”

- 25.xvi: ...list shall be published at least one month prior to the start of school...” Also, what is being monitored and/or enforced here. What metrics can be applied to these major events?
- 25.xvii: Does this section apply only to the Major events in the previous section or to all events? Parking and traffic plans and requirements for all events should be made available publicly on the school website at least seven (7) days prior to the event.
- 25.xviii: this should include all volunteers and visitors that come to campus., not just committees.
- 25.xix: Traffic and parking monitors should be required for all campus drop-off and pick-up times in addition to the loading monitors.
- 25.xx: Where will they be instructed to go? This will only encourage drop-offs and pick-ups in non-designated locations. Since staffing and student levels are lower during summer camps, all access should be through the garage where there is ample queuing available. A cap on camp enrollment should also be imposed and reported.
- 25.xxi: No metrics, monitoring, enforcement? Why is this here?

Section 26:

- This section should include a provision for a publicly noticed hearing to address the TDM insufficiency and alternate measures.

Section 27:

- This section should include a provision for a publicly noticed hearing to assess any changes of alterations to the TDM and/or redistribution of drop of/pick up redistributions.

Section 29:

- Given that the former City Manager notified Castilleja privately with no public comment or notice that they could refrain from enrollment reductions for several years, any and all written communication from the City to the school regarding non-compliance with any of the Conditions of Approval as well as any determinations by the Planning Director or City Manager shall be noticed to the PTC, the City Council and all residents within 600 feet of the school.

Section 34:

- Why is Kingsley and Alma the only intersection mentioned here? All adjacent streets will suffer degradation from the construction traffic.

Section 35:

- The wording in Parts a.i and a.ii clearly states that the TDM will be monitored and enforced during construction in contrary to other statements in the conditions. This section should apply. Part a.iii provides no metric or methodology to determine construction trips. How can they be excluded, and/or enforced?

Thank you for your service and for addressing these concerns,

Bruce McLeod
1404 Bryant Street
Palo Alto, CA

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

Re: 1310 Bryant Street; Castilleja Expansion Project

Dear PTC Members,

Over the last few days, I have spent many hours attempting to digest and comment on the 162 page Staff Report and Draft Conditions for Castilleja's expansion. This lengthy and dense report was released to you and the public only last Friday night. Once again, the City Staff has released a massive amount of material and given the public – and Commissioners – little time to adequately review and comment.

This latest package comes on the heels of a 400 page EIR that included a substantially modified project plan that was not subjected to a formal public comment. The City also scheduled Public hearings with the PTC, ARB and HRB beginning less than 20 days following the EIR release. Asking citizens and volunteer Commissioners, to make a fair and credible review of that immense document in that time frame was ludicrous by any standard of the democratic or transparent governance the City's citizens should expect.

Following the first PTC meeting where public comments were limited to 2 minutes, the subsequent PTC meeting considered, with no additional public comments, a 39 page Staff report that was released the evening before the meeting. Anyone who has a full time job, as I do, could not possibly digest the plethora of information, especially the complicated reading of the City Code as to when a garage is or is not a garage. Even staff struggled to explain this opinion form the Castilleja attorney. Without additional public comment and in the absence of two PTC Commissioners this body recommended approval of the EIR.

The lack of timely public access to materials should alone call this process into moral, if not legal, question. I continue to be appalled at the lack of consideration given to the public impacts in general – Embarcadero Road disruption, traffic in and out of the City, large events on the bike boulevard, etc - and more specifically to the households in the surrounding neighborhood who will bear the brunt of the construction, traffic and parking impacts of this project should it be approved.

I and other immediate neighbors have spent many hours over the past 5 years meeting with Castilleja and City staff, yet at no time has our desire to have a safe, quiet residential neighborhood been adequately addressed. None of us has ever questioned Castilleja's educational mission, but the school's desire to rebuild 80% of the campus with the "substantial and unavoidable" traffic that the additional enrollment will bring is too much for the surrounding neighbors to bear.

As Commissioners you should ask yourself how you would feel if this institution and its impacts – including at least three years of construction and earth moving – were to relocate across the street from your home. If your answer is bring it on, please feel free to propose that location to Castilleja. If your answer is no, you should not allow this project to go forward.

Please also heed the words of Palo Alto Planning Manager John Lusardi in 2000 when the current CUP and its 415 students were approved: “The City will not look favorably on any future enrollment increases.” It is time to deny this CUP application and the wholesale reconstruction of the campus until there is meaningful consideration of the City Code requirements to protect the historic residential character of our neighborhoods.

Thank you, for your time,

Bruce McLeod
1404 Bryant Street
Palo Alto CA

CC: Palo Alto City Council

From: [Carla Befera](#)
To: [Planning Commission](#); [Architectural Review Board](#); [Council, City](#)
Subject: Castilleja CUP
Date: Tuesday, October 27, 2020 9:37:51 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Members of the Planning and Transportation Commission:

As a 50+ year neighbor of Castilleja we have watched the school grow from a quiet boarding school to a bustling middle and high school that serves a population of students largely from out of town.

In reviewing the staff comments and draft conditions released last Friday, may I bring your attention to the following:

Relevant to staff's comments:

1. (Packet page 18): Staff notes "the requested 90 events over roughly 185 school year day is considerable, and this does not include a small number of academic competitions." Indeed this scheduling constitutes an event every 2 days. Other Palo Alto private schools operating in R-1 areas under a CUP, such as Stratford, are allowed no evening events at all – this seems an outsized allowance and out of balance with what other private schools are allowed. We heard Chair Alchek's comparison during the last meeting with Menlo School's unlimited events per year, praising how that school's events were unfettered by neighbor concerns. The commission should note that Menlo School is located on 62 acres, ten times the parcel size of Castilleja, with plentiful parking on site and many acres between the school buildings and any neighbors. Castilleja events generate hundreds of car trips, bumper to bumper street parking, noise and disruption. Neighbors request the PTC consider fewer events per year than the 70 staff recommends, and more stringent restrictions on mitigation of the neighborhood disruption.
2. (Packet page 20): Staff notes "A more aggressive performance metric would place the starting ADT at 1,137, which is the prorated target for 415 students and reflects the school's previously allowed enrollment cap." We agree that the school should be required to base its impact on the lower number – the cap which it agreed to maintain in 2000 but ignored for the next 15+ years. We question the staff's next statement: "there is insufficient empirical data to conclude the lowered ADT target is achievable." If the school is *required* to reduce its traffic impact, it may have to explore off-site drop-offs and shuttles, things it has been unwilling to consider to truly reduce ingress into the city and reduce its impact.
3. (Packet page 21): "Moreover, some in the community may consider the financial penalty established in the fee schedule as an insufficient deterrent to remedy violations." We very much agree that a \$500 fine, in exchange for failing to hire traffic monitors – surely a much higher expense - hardly seems a deterrent.
4. (Packet Page 22): "Staff recommends that during the construction phase (three years) of the project that the City stay enforcement of the ADT and AM peak trip performance metrics."

We strenuously object and indeed, ask that the **CUP require students to arrive ONLY via shuttle during the entire construction phase.** As other construction projects in Palo Alto have shown, thousands of truckloads of dirt will be removed during this process while construction vehicles and equipment block traffic lanes, and reduce street and sidewalk access throughout the area. To concurrently allow the school to bring hundreds of students to the area via single-passenger vehicles, with drop offs, pick-ups, and free parking on all adjacent streets, will exacerbate what neighbors already understand will be an excruciating process of noise, disruption, etc. The idea of allowing unmonitored access and parking during this process defies logic. Can the PTC name another instance where a parcel holder demolished 80% of its existing buildings, while continuing to occupy and do business on its site, in a residential area?

Relevant to Attachment A (Draft CUP and Variance findings for approval):

1. Page 26 item D (l) – evidently a typo, this item reads “toads (*sic*) only 114 net new daily trips (after implementation of Mitigation Measure 7a), which does not represent a significant, adverse environmental impact.” Assuming this is meant to read: “**Adds** only 114 net new daily trips” How does the PTC reconcile this with Palo Alto’s adamant requirement that Stanford adhere to a **No Net New Commute Trips** model, while allowing Castilleja to increase its impact? According to the City’s [own website](#): “... Stanford affiliates will have to use Caltrain and other mass transit services.” It also quotes the City Manager: “Stanford should be ‘required’ to work with lead agencies and contribute to increasing the accessibility, capacity, and efficiency of local access for Stanford affiliates to Caltrain and other local and regional mass transit services,” Shikada stated. Why is the City not requiring Castilleja similarly cap its trips?
2. Page 31 item 6 (g) notes: “The School shall minimize the number of special events occurring on consecutive days and, for larger events, occurring on consecutive weekends.” This is exactly the undefined CUP language that the school has exploited for the past 20 years. How does the PTC define “minimize”? What constitutes a violation of this provision? We urge more specific language such as: **“The school shall NOT schedule special events on consecutive days and shall NOT schedule large events on consecutive weekends.”**
3. Page 31 item 6 (i) indicates a list of events that does NOT include sporting events, intramural tournaments, etc. Among other enhancements, the school seeks a larger Olympic size pool in order to host full intramural swimming meets. Elsewhere in this document it is mentioned that the gym ‘cannot hold events with more than 500 persons.’ It does NOT specify if these events – which also draw cars, traffic, noise to the area, are included in the total number of events per year or are considered outside that scope. We urgently that the CUP make clear that ALL events which attract large groups to the school are counted under total events per year. *(Also addressed in Page 33, item 15 (a): Activities are not permitted in the lower basement level of the Physical Arts Building that would cause the number of occupants to exceed 500. No mention is made as to whether these activities are considered events.)*
4. Page 39 item 25 (A. viii) includes: “A log shall be kept of all communication (i.e. email,

telephone calls) and the expressed concerns which are received. School staff shall review the log for trends and respond to remedy any problems. If any neighbor feels their concern was not properly responded to, they should contact the number the School publishes for complaints (condition #19).” *After many years of having concerns brought to the school’s attention and ignored, neighbors ask that this log is posted publicly on a website so that neighbors can be assured that concerns are being addressed, and be able to show the City a specific accounting of when they are not.*

Finally, during the establishment of Castilleja’s 2000 CUP, the City staff met with neighbors to review the individual conditions and receive input. Why has this process not been created for this current, much more significant CUP? We urgently ask the City staff to schedule meetings with immediate neighbors of the school, to review the specific conditions and receive input from neighbors on how we might all agree on specifics.

Thank you for your consideration of these items, and for your service to the City and its residents.

- Carla Befera

From: [Lydia Callaghan](#)
To: [Planning Commission](#)
Subject: Support for Castilleja's modernization plan
Date: Tuesday, October 27, 2020 9:03:14 PM

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Dear PTC,

I'm writing today to offer my strong support for Castilleja's modernization plan and specifically their plans related to Traffic Demand Management. I live on Hamilton Avenue in Palo Alto and have no connection to the school. However, I think the deliberations about this project have dragged on for far too long, and it's time for the project to be approved.

The proposed project will not increase car trips, a fact which is confirmed by the FEIR. This is thanks to an extensive Traffic Demand Management plan, which the school developed in 2013 and has already reduced traffic by 25-30%. These mitigations will be expanded under the new project, which includes adding bus routes and Caltrain shuttles, encouraging alternative modes of transportation, and offering off-site parking for faculty. With such a successful TDM program -- a model for other businesses and schools in Palo Alto - Castilleja should be allowed to increase their high school enrollment. If they can enroll more students and give more opportunity to Palo Altans, and NOT increase traffic or cars in the neighborhood, why wouldn't you approve the project?

After such robust community discussions and the number of project evolutions, the resulting project is one that the neighborhood - and Palo Alto - can be proud of. That's why I encourage you to vote in favor of the requested conditions of approval later this month.

Thank you for your time,
Lydia Callahan

--
Lydia Callaghan
917/887-3995

Founder,
Bouclier

<http://www.boucliervisors.com>

From: [John Giannandrea](#)
To: [Planning Commission](#)
Subject: Letter of Support for Castilleja CUP and Master Plan
Date: Tuesday, October 27, 2020 6:13:28 PM

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Dear Planning Commission Members

I am a resident of the city of Palo Alto and I am writing in support of the Castilleja application for a revised Conditional Use Permit and in support of their Master Plan to upgrade the school classroom buildings.

This project is extremely important to Palo Alto because it continues to provide the community with a world class school which is at the forefront of women's education. The plan if approved increases access to a highly sought after education with private investment in modern and green buildings on an existing school site. I believe that the Environmental Impact Report also makes it clear that the project is clearly to the benefit of Palo Alto and supports the City Comprehensive Plan.

Thank-you.

John Giannandrea
1057 Ramona St
Palo Alto

From: [Michele Grundmann](#)
To: [Planning Commission](#)
Subject: Castilleja Reimagined
Date: Tuesday, October 27, 2020 5:35:26 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

As a Resident of Palo Alto since 1962 and a teacher at Castilleja School, now retired, I am writing this message to express my hope that Castilleja School will be granted permission to admit more students in improved facilities along with a garage which will keep cars from cluttering the streets around the school.

Since its foundation in 1907 Castilleja has been growing. When I first taught at Castilleja in the 1970's it was a boarding school and parents in several foreign countries were grateful that Castilleja was providing an education to their daughters when there was in some cases a lack of security at home. Many of those students remain attached to Castilleja. It is comforting to hear from them and their gratitude for having been educated at Castilleja.

Nowadays there are no foreign students but Castilleja continues being a school for students wanting to receive their education at Castilleja.

Those students live mostly in towns of Santa Clara and San Mateo counties. Some parents might be from India and work in Silicon Valley, some students might be ChineseAmericans.

It is also interesting to see more black students than in the Palo Alto schools.

My own children went to Palo Alto Schools starting with my son and my daughter wanted to go to Paly just like her brother. She was lucky got have had that choice.

I end this message with my hope that the qualified girls who want to receive their education at Castilleja School get that chance if the space is increased.

Respectfully,

Michele Grundmann
850 Webster St.Apt.918
Palo Alto, CA 9301

From: [Mary Sylvester](#)
To: [Planning Commission](#)
Subject: Fwd: Letter for the PTC for 10/28/20 Castilleja Discussion
Date: Tuesday, October 27, 2020 5:05:08 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

TO: PTC Commissioners, ARB Members, City Council Members, City Manager Shikada, City Attorney Molly Stump and Deputy Attorney Andrew Yang, HRB Members

FROM: Mary Sylvester

DATE: 10/27/20

RE: COMMENTS ON DRAFT CUP AND VARIANCE FINDINGS FOR APPROVAL: Castilleja School Project Staff Report for PTC Mtg 10/28/20

I received Ms. French's Staff Report from her last Fri (10/23/20) at 8:53 pm. It is a 158-page document that neighbors and Palo Alto residents were only given 5 days to review and comment upon before the PTC's scheduled meeting on 10/28 to review this document to recommend it for approval or denial. For anyone, like myself, who works and has other commitments than Castilleja, this is a totally inadequate review period for review and comment. The results of this CUP will affect my family and my neighbors significantly for our remaining tenure in this neighborhood.

The limited public comment period demonstrates great disrespect to neighbors who have tried to consult with the Planning Department for over a year about a new CUP, and even drafted a model CUP for consideration in 2019 that was sent to Planning staff. Neighbors nor the greater community included in the CUP drafting process, the result of which you have before you from Planning staff.

I am particularly concerned that Staff's Findings and CUP that you have before you is working to "make the case" for approval of Castilleja's Expansion Plan. This appears to be a one-sided document without a robust review of all sides of this controversial project. The Staff Report significantly understates the severity and extent of the environmental effects of this project on traffic congestion and exhaust, pedestrian and bicycle safety, and the threat to mature trees that contribute to reducing climate impacts and the visual character of our neighborhood. Further, the proposed CUP fails to provide for adequate mitigations to deal with these significant impacts and does not take into account the cumulative impacts of construction of the nearby high speed rail and closure of Churchill St.

I view the entire EIR process as a one-sided exercise in supporting Castilleja's Master Plan. Neighbors and the community-at-large have been left out of any meaningful role in this process and there has been a glaring lack of transparency by City staff, "special privileges" recommended on behalf of the school and, I would argue if this CUP and project are approved, a proposed "taking" of neighbors properties who will

lose the future enjoyment of their homes and neighborhood. Further, approving Castilleja's expansion plan with Staff's proposed CUP, essentially constitutes a re-zoning of a R-1 neighborhood to a commercial zone as to intensity of traffic, an underground garage, and construction of a Costco-size facility. Staff's Findings and CUP demonstrate that ordinances and the permitting process, which originally were designed to safeguard the public good, are being undermined by special interests. The Palo Alto citizenry is being asked to bear the full burden of the impacts of a private school that only serves 25% of the community's young women, while we're being asked to bear the full burden of the school's expansion effort.

As you read my comments below, please bear in mind that Castilleja operates under a Conditional Use Permit (PAMC Section 18.76.010), which is a privilege, neither a right or entitlement.

FINDINGS and PROPOSED CUP-as per Staff Report 10/23/20 (pp. 25-44)

#1 The proposed use at the proposed location will not be detrimental or injurious to property of improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare or convenience. (PAMC Section 18.76.010)

A project operating under a CUP cannot be detrimental to the public or adjacent property owners. There is no conceivable way, a massive construction project as proposed is not going to cause severe environmental and health impacts to the neighborhood with thousands of large truck construction trips demolishing buildings, hauling away dirt and refuse, laying foundations along with workers cars coming in out of the neighborhood along with student/parent drivers to the school for possibly 5 years of construction will not cause harm to the neighbor's general welfare.

Construction of underground garages with cement is one of the most environmentally unfriendly, unsustainable acts a project can undertake given how polluting cement production is. Further, once the facility is completed, the neighborhood will experience: partial loss of our mature tree canopy; operation of an underground garage venting toxic carbon monoxide fumes into the air and encouraging students, parents and staff to drive to school; 1477 car trips a day onto narrow neighborhood streets that cyclists and pedestrians regularly use; and ongoing noise and traffic issues with events. Staff argues though that this is not going to be detrimental to the neighborhood.

#1 (A) Despite Castilleja's 2000 CUP with a clearly designated cap on enrollment, the school within 1 year of approval began to secretly increase its enrollment until 2013. Despite an agreement with the City of Palo Alto to pay a fine and rollback enrollment to its legally allowed level, the school turned around and requested of then City Manager, James Keene, to halt the enrollment, which he did. Then neighbors in 2016 hired an attorney and began working with then Manager Keene and Planning Staff to reinstate the rollback of students enrolled to the legal limit of 415.

#1(B) Since 2012, a 28% reduction in morning traffic trips, based on what? Does this include student drivers, parents, staff, visitors and deliveries? How does the school count off-site drop offs apart from the school premises, on both sides of Embarcadero?

#1 (C) How is staff claiming that the Castilleja has worked cooperatively with City on enrollment and events. Once the school paid their minimal fine to the City (\$265,000 for \$12+ million in overenrollment revenue), they began asking the then-City Manager James Keene to stop the rollback to 2000 levels, which he granted. Neighbors met with Planning Director, Hillary Gitelman (2017-18) about violations of the school's CUP as to events. Ms Gitelman reported to neighbors that she had met and emailed with the school to discuss reducing events, which the school was unwilling to do and which she couldn't enforce because of the structuring of a very-vague 2000 CUP. City staff may speak about lessening the impact on neighbors, if that was the case, neighbors would have been consulted in the CUP drafting process.

#1 (D) (g) What are pedestrian scale fencing and gates? The City of Palo Alto in 1992 gave the 200 block of Melville to Castilleja, essentially doubling its usable, contiguous space, However, ingress and egress through the campus was allowed for the public. Castilleja decided to request that the City terminate that walk through, which cut off one part of the neighborhood from another and establishing a bunker like atmosphere around the school with bars and fencing.

#1(D) (h)& (i) Reference to meeting the City's sustainability goals as to lighting, water and electricity while important undermines a key aspect of the City's Sustainability Goal Plan of 2016 as to reducing carbon emission actions, such as SOV actions, The construction and maintenance of an underground garage only encourages students, parents, staff and visitors to drive instead of requiring that all students arrive at the campus via bus, shuttle or bicycle. Archer School for Girls in Los Angeles requires that 80% of students arrive by bus and Notre Dame School for Girls in San Jose forbid students, parents and staff driving to campus, but instead they must park at facilities leased by the school near the freeways they travel on.

#1 (D) (k) The City has repeatedly indicated that they have little interest and ability to police commercial entities for code violations, particularly Castilleja School .Please refer to former City Auditor Harriet Richardson's 2018 Audit on City Code Enforcement.

#1 (D) (l) While Castilleja is trying to only speak about about 114 new trips, with staff support, Castilleja's DEIR prepared by Dudek Co. refers to a total number of daily car trips as 1477 total trips a day to and from their campus (DEIR, June 10, 2020, Table 15 p 38), 114 net new trips is a result of creative traffic counting to reduce what will be a traffic nightmare for cyclists, pedestrians and neighborhood residents who live on narrow streets, some with poor visibility. What the EIR preparers are calling Dispersed Circulation, doesn't reduce the burdensome number of care trips to the neighborhood!

Dudek/W Trans substantially underestimated the volume of traffic associated with this

project as to students being dropped off throughout the neighborhood, on both sides of Embarcadero and never mentioned in the traffic analysis. Further, the school's evening and weekend events can be frequent and large and have not been measured in the school's traffic study. Please don't be confused by the creativity displayed in the metrics cited.

#1 (E) Removal of mature and protected trees as well as tree re-locations defeat the intent of the City's Tree Protection Ordinance. These trees belong to the citizenry of Palo Alto and are a vital community resource! By the time, replacement trees have reached maturity, the City will have been deprived of an important climate fighting resource for decades.

#1 (E) Many meritorious sounding resources are being mentioned in the findings, such as EV charging stations. It overlooks that the neighborhood and larger Palo Alto community shouldn't be having to accommodate privileged students and parents who want to use their SOV. Mandatory shuttling and bus use operate can work (e.g. Archer School for Girls which requires 80% bus use by students, no SOV. And Notre Dame School for Girls in S.J. require students to arrive by public transportation or by walking from offsite parking locations, leased by the school.

#1 (E) Again, what is considered the enhanced TDM, is going to be enforced by the City, which has shown no interest in monitoring and enforcing violations by commercial interests, including Castilleja. Use of an independent 3rd Party to monitor and enforce isn't reassuring when everyone reviewing Castilleja's compliance is being paid by the school. An independent citizen's review committee, with active neighborhood involvement is necessary, to review the actions of Castilleja and its compliance with City ordinances and its CUP.

VARIANCE

Castilleja is Being Allowed to Cherry Pick What Portions of the Municipal Code they Want to Follow and they Are Requesting Special Privileges

1. Castilleja operates under a CUP because it is not a confirming use in a R-1 neighborhood. The tortuous argument the school and City staff is trying to make about disparate impact to Castilleja is not applicable on the face of the matter. Castilleja seems to want all the privileges of operating in a R-1 neighborhood (e.g. basements that don't count toward F.A.R.) but none of the R-1 restrictions (e.g. underground garages, lot size coverage).

Further, Castilleja is a school, not a single family home and to say that they shouldn't be limited by adjacent property owners, and play by the same rules as neighbors, makes no sense. They know where they operate, why should they play by a different set of rules? There is no disparate impact to Castilleja, they wanted to continue to operate in a single family neighborhood when the City of Palo Alto designated this neighborhood as a residential neighborhood, not a commercial zone, so why do they get a free pass on not conforming to the law?

The school's continued existence in a residential neighborhood is a privilege, not an entitlement! Castilleja wants the benefit of claiming that it is allowed a garage because City ordinances don't specifically forbid garages for schools in R-1 neighborhoods, as if anyone could have envisioned a private school in a R-1 neighborhood decades ago requesting an underground garage, and then they have the temerity to also say we don't have to count the FAR of our garage, because you don't count in R-1 neighborhoods underground facilities that hold cars (aka known as a garage), just in commercial zones.

2.Castilleja wants to claim disparate impact on select items while saying on others they are NOT receiving any special privileges (as to height, setbacks, open space, parking requirements). Castilleja is requesting special privileges in a R-1 neighborhood as to construction of an underground garage, traffic, and failure to count the FAR of the underground garage. Neighbors and the community-at-large are being asked to make all of the concessions to the school but what does the community receive in return?

ENROLLMENT

4.Castilleja is already the most dense private school in the community. 540 students will only increase that density. No explanation is given for this significant increase in enrollment other than to say the school wants to serve more students and can offer more classes to to them (e.g. Mandarin). While these are laudable goals, are this the true reason? Or, is this a financially driven action given the economics of today's private school. Honesty would help, which has been in short supply over the years in dealing with Castilleja. Neighbors are asking, will the school stop at 540? Why not 740? In 2000, when the school's new CUP was negotiated, 415 was the absolute maximum. I would like Commissioners to ascertain the true reason for this growth and where will it stop?

EVENTS

There are far too many year round events for our R-1 neighborhood that directly impact the neighborhood's well-being. Between Castilleja's operation 9 months a year with over 100 events per calendar year along with a revenue generation summer school. Along with Castilleja's planned expansion, which includes an underground garage and additional traffic, and summer camps the neighborhood is being turned into a commercial zone for the privileged.

COMMUNITY ENGAGEMENT BY CASTILLEJA

In my 30 months of engagement with Castilleja's expansion program, there has never been a meeting where staff and board members were

honest and straightforward with neighbors about their plans. Neighbor questions about the underground garage, the school's TDM and their construction timeline and logistics were met with obfuscations and platitudes. Never was there an effort at collaboration and building community. An impartial monitor who is accountable to the public is required to ensure that the neighbors questions and concerns are addressed. And the PTC can play an active role in drafting a CUP that ensures accountability by Castilleja.

TRANSPORTATION DEMAND MANAGEMENT

Castilleja has not re-established a trusting relationship with the neighborhood since its over enrollment issue and must work to rebuild the neighborhood and community's faith in their word. Castilleja can't monitor itself nor should the public rely on the school's paid professionals. A citizen's advisory committee, which includes neighbors, needs to be monitoring the school's transportation issues. Further, I recommend an enforcement clause be inserted into Castilleja CUP requiring the posting of a \$500,000 bond to cover enrollment and TDM violations. A clearly articulated and narrowly drawn CUP with effective enforcement and penalty measures is one of the surest and best tested means to ensure compliance.

Sincerely,

Mary Sylvester
135 Melville Ave.
43-yr resident of P.A. at this residence

From: [Leannah Hunt](#)
To: [Planning Commission](#)
Subject: Castilleja Plan for Expansion
Date: Tuesday, October 27, 2020 3:00:33 PM

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Dear Commissioners:

I am writing to you in support of the pending Castilleja School request to approve their request to expand their enrollment and build an underground garage and rebuild several buildings to accommodate today's educational needs at the school. I have been a resident for over fifty years and my daughter attended Castilleja for seventh and eighth grades in the late eighties.

She enjoyed a wonderful school experience which well prepared her for her high school years at Palo Alto High. The plans for expansion which are under consideration by your Commission deserve full approval and will benefit our community. The proposed underground garage will alleviate on street parking problems and benefit the surrounding neighbors. I have lived in Old Palo Alto since 1973 and I am very familiar with traffic patterns over the years. The proposal before you has been considered for sometime by the community, and I believe that this institution which was built over one hundred years ago provides a wonderful alternative for schooling young women. It is a benefit to Palo Alto and should be allowed to change with the academic needs just as homeowners need to change their buildings as they age and deteriorate. Castilleja has reworked their original plans to accommodate neighbor concerns and their revised plan deserves approval and referral to the city council for ultimate approval. Please vote to approve and expedite to the Council.

Yours truly,
Leannah Hunt

650-475-2030



Leannah Hunt
REALTOR®

(650) 475-2030
lhunt@serenogroup.com
www.LeannahandLaurel.com
DRE # 01009791

From: [Dee Brown](#)
To: [Planning Commission](#)
Subject: I Support Castilleja!
Date: Tuesday, October 27, 2020 12:13:01 PM

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Dear Commissioners,

I hope his letter finds you well. I have been carefully following Castilleja's master plan, and as it nears its final approvals, I wanted to take a moment to send a note of support for the project focused on the Floor Area Ratio Variance. As a near neighbor and proud parent of two Castilleja Alumnae, I'm writing this letter in support of the school's project to modernize its campus and offer this unique educational opportunity to more girls and young women.

Castilla has been at its current location for nearly 111 years, and predates the zoning that was introduced in Palo Alto. For this reason, the City has set a precedent by issuing Castilleja the CUPs necessary to operate as a school, which include permission to build the structures necessary to support its function as an education institution. Supporting the requested variance would be consistent with the City's prior actions as it relates to Castilleja's campus.

I hope you will support Castilleja as it seeks to improve their campus that not only better contributes to their educational mission, but brings multiple benefits to the surrounding community.

Thank you for your time,
Dee Brown

From: [Andie Reed](#)
To: [Planning Commission](#); [French, Amy](#); [Architectural Review Board](#); [Council, City](#)
Subject: Castilleja Expansion Project
Date: Tuesday, October 27, 2020 11:34:48 AM

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Dear Amy French and Planning Commissioners:

Amy, could you please confirm my numbers below? In all the documents passed around over these last weeks, the actual numbers that make up the acronyms we throw around (GFA, FAR) are difficult to put one's hands on. So I supply them here, on one page, for your review and confirmation, so that they lose their "mystique" and become really easy to understand.

Thank you.
Andie Reed

Basic numbers everybody can agree on (numbers come from the Oct 22, 2020 plans prepared by the school):

1. The parcel size is 268,783 (top number on page G.001).
2. The proposed plans above-grade GFA is 113,667 (same page).
3. The existing (current) GFA is 116,297 (same page).
4. The allowed Floor Area Ratio (PAMC 18.12.040 Table 2) is .3028, which translates to 81,385 sq ft:
1st 5,000 sq ft @ .45 = 2,250
remaining sq ft @ .30 = 79,135 (268,783 - 5,000 = 263,783 x .30)
2,250 + 79,135 = 81,385
5. Therefore, the proposed GFA is 32,282 sq ft in excess of allowed GFA (in other words, proposed GFA is 32,282 higher than allowed GFA because 113,667 less 81,385 = 32,282).
6. 32,282 is 40% of 81,385 ($32282/81385=.40$); proposed GFA is 40% in excess of allowed GFA
7. The square footage of the underground garage is 32,480 sq ft (page AA2.02)

8. Total above-grade and below-grade combined for the current existing school is 160,210. Total above-grade and below-grade combined for the proposed project is 193,923 (page G.001) plus the below-grade garage (+ 32,480) is 226,403.

9. The proposed plans increase the total school build-out by 66,193 sq ft ($226,403 - 160,210 = 66,193$), which is 41% ($66193/160210$).

Thank you,
Andie Reed

--

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

From: [Emily Wang Wang](#)
To: [Planning Commission](#); [Council, City](#); [Castilleja Expansion](#)
Subject: Please Support Castilleja
Date: Tuesday, October 27, 2020 11:20:57 AM

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Dear Mayor Filseth and members of City Council,

My name is Emily Wang Wang and I live in Palo Alto, California. 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 I truly believe the school offers an exceptional program for intellectual and emotional development in girls. It supports and empowers young girls to become independent thinkers and confident leaders in areas of their choosing. As a parent, I would like to expand such program to benefit more girls in the community. More girls should be able to take advantage of what Castilleja has to offer..

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,

Emily Wang

From: [Amanda Brown](#)
To: [Planning Commission](#)
Subject: I Support Castilleja as a Lifelong Palo Altan, Castilleja Alumna, and Close Neighbor
Date: Tuesday, October 27, 2020 10:48:19 AM

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Dear Commissioners,

Thank you in advance for taking the time to read the following letter of support for Castilleja's master plan. As an alumna, Castilleja Neighbor, and lifelong Palo Altan, I care deeply about their efforts to modernize their campus and provide educational opportunities to more young women and girls.

To ensure minimal impacts to the community, Castilleja will only be allowed to gradually increase enrollment if strict car trip standards set by the City are met. It is worth noting that Castilleja has successfully reduced peak car trips by **25-30%, a HUGE accomplishment**, a success that will be continued by expanding TDM effort subject to third-party audits and setting a strong example for future projects in Palo Alto. The school is also reducing the number of events and providing off-site parking, ensuring that impacts from these activities will be minimized as well.

Castilleja has demonstrated incredible thought and collegiality through its efforts to modernize its campus, and I hope the resulting project is one that has earned your support.

Thank you,
Amanda Brown

From: [PNQL-Now](#)
To: [Council, City: Planning Commission](#)
Cc: [City Mgr](#)
Subject: Neighbors of Castilleja Summary Statement RE: Proposed Castilleja Expansion
Date: Tuesday, October 27, 2020 10:06:43 AM
Attachments: [Castilleja Neighbors Summary Statement_OCT2020.pdf](#)

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pnql



Castilleja School Expansion Summary Statement Prepared by Neighbors

Dear Planning Commissioners and City Council Members:

The attached **Castilleja Neighbors' Summary Statement** was written by neighbors who live on Kellogg, Bryant, Melville, and Emerson, surrounding the school. Please read it carefully and consider the impact of your decisions on our neighborhood and the greater Palo Alto.

All of the signatories on this letter have residences within two blocks of the school. We are a grass-roots group of actual neighbors who are appalled that this current proposed project, which will be so detrimental to our community, would even be considered for approval by the City of Palo Alto.

Building an underground garage at Bryant and Embarcadero and allowing a 200% FAR variance in an R1 neighborhood provides no benefit for Palo Alto, only increased pollution and traffic, and continued ill will.

SIGNED BY:

Al Kenrick, Melville Ave
Amber La, Kellogg Ave
Andie Reed, Melville Ave
Andrew Alexander, Emerson St
Angie Heile, Emerson St
Bill Schmarzo, Emerson St
Bill Powar, Emerson St
Bruce McLeod, Bryant St (SW corner Bryant and Kellogg)
Carla Befera, Bryant St (SW corner Bryant and Kellogg)
Carolyn Schmarzo, Emerson St
Chi Wong, Emerson St.
Chris Stone, Emerson St.
Daniel Mitz, Melville Ave
Daniel Vertheim, Emerson St.
David Quigley, Emerson St.
Debby Fife, Emerson St
Diane Rolfe, Emerson St (NW corner Emerson and Kellogg)
Ed Williams, Kellogg Ave
Erica Journey, Kellogg Ave
Elizabeth Olsen, Melville Ave
Emma Ford, Emerson St
Geegee Williams, Kellogg St
George Jemmott, Emerson St
Han Macy, Melville Ave
Hank Sousa, Melville Ave
Isaac Caswell, Kingsley
Jim Poppy, Melville Ave
Joan MacDaniels, Emerson St
Joseph Rolfe, Emerson St (NW corner Emerson and Kellogg)
Kathleen Judge, Churchill St
Kathy Croce, Emerson St (SW corner Melville and Emerson)
Kerry Yarkin, Churchill St
Kimberley Wong, Emerson St (NW corner Melville & Emerson)
Lee Collins, Embarcadero Rd
Lee Holtzman, Emerson St
Lisa Wang, Kingsley
Marie Macy, Melville Ave
Mary Joy Macy, Melville Ave
Mary Sylvester, Melville Ave
Matt Croce, Emerson St (SW corner Melville and Emerson)
Midori Aogaichi, Churchill St

Nancy Strom, Melville Ave
Nelson Ng, Emerson St
Neva Yarkin, Churchill St
Pam McCroskey, Emerson St
PatriciaWong, Emerson St
Pius Fischer, Emerson St
Richard Mamelok MD, Churchill St
Rob Levitsky, Emerson St
Robert Yamashita, Bryant St (NE corner Bryant and Kellogg)
Ruben Land, Kingsley
Stan Shore, Kellogg Ave
Val Steil, Kellogg Ave
Vic Befera, Bryant St
Wally Whittier, Bryant St
William Macy, Melville Ave
Ying Cui, Waverley St (SW corner Embarc & Waverley)
Yoriko Kishimoto, Embarcadero Rd
Yulia Shore, Kellogg Ave
Yuri Yamashita, Bryant St (NE corner Bryant and Kellogg)

Proposed Castilleja School Expansion

Summary Statement Prepared by Neighbors

CURRENT SITUATION: Castilleja, a private middle and high school located in an R-1 neighborhood, has submitted to the City of Palo Alto a proposal to significantly remodel its campus and increase enrollment by 30% (plus unspecified increases in faculty/staff). Neighbors challenge Castilleja's plan to increase the size and scope of its operation on this very small parcel. We urge the City to deny approval of an enrollment increase, and not permit the out-sized redevelopment proposals, for the following reasons:

- 1. Traffic congestion, crowded street parking, bike safety concerns on Bryant St. Bike Blvd.** Palo Alto seeks fewer traffics issues, not more. **75% of Castilleja's students and staff commute from outside Palo Alto**, with 4 car trips/day/student (drop-off and pick-up) adding congestion to all our main arteries. The neighborhood absorbs unrelenting impact from traffic, busses, parking, deliveries, events, sport meets, and more, on days, nights, weekends, and throughout the summer.
- 2. Out-sized nature of the project:** The school is proposing 200,000 sf of buildings on a one-block (268,000 sf) lot. For comparison, imagine a Costco ... or two City Halls or Home Depots ... located on one small block in a residential neighborhood.
- 3. Castilleja's Conditional Use Permit (CUP) is far more lenient than neighboring private schools' permits.** Other private schools in Palo Alto and nearby towns are held to much stricter standards, such as specified hours of operation, less density, few or no night events, and none are allowed an underground garage in a residential neighborhood. Why is Castilleja exempt from similar conditions? No local private schools are permitted more than 20 events per year, Castilleja hosts 100+ events per year.
- 4. The City should enforce its own Muni Code/Comprehensive Plan statutes.** Castilleja's use does not satisfy the City's definition of an R-1 conditional use which per PAMC 18.76.10 will "not be detrimental to the public health, safety, general welfare, or convenience (in the vicinity)" and shall "be located and conducted in a manner in accord with the Palo Alto Comprehensive Plan." The Comp Plan states that the city "seeks to promote community /commercial uses but not at the expense and quality of the residential neighborhoods." When the school was founded, it was a small boarding school. Its growth and future plans far exceed what is appropriate for this site.
- 5. City's prior directive assuring the neighborhood of no future expansion.** In 2000, Palo Alto Planning Director John Lusardi was forceful in his CUP approval letter to Castilleja: "*The approved Conditional Use Permit does not provide for any increase in students over 415, and any subsequent request for additional students will not be favorably looked upon by the City. ... the City is not willing to continue to approach increasing school enrollment for Castilleja School in an incremental manner.*" The neighbors did not realize this cap would be ignored by Castilleja starting in 2001, and violations would go unenforced by the City. Why would the City ignore its own 2000 directive, favoring the school's desire to grow over the needs of Palo Alto residents?
- 6. Continuous Violation -** Castilleja has exceeded its existing enrollment cap for the last 19 years, collecting millions of dollars from over-enrollment. The City is unable to enforce CUP violations, and neighbors have no viable enforcement or compliance leverage. Neighbors have no confidence that future CUP conditions will be met, nor that conditions will be improved with a significant increase in students, plus accompanying parents, teachers, staff, and visitors, coming daily to this small section of Palo Alto.

For years neighbors have asked the school to work together in good faith, asking the school to reduce enrollment to the allowed level, and institute a robust shuttle by which ALL students/staff would be delivered to campus. Instead the school has moved ahead with outsized plans.

NO neighborhood would welcome this type of unbridled growth from a private entity in its midst. The City Council has an obligation to protect and preserve the rights of its citizens, and to enforce its own codes.

We urge the City to oppose this application. If the school wishes to expand, the City should require it to follow the example of other private schools and divide into two appropriately-sized campuses, or move to a larger location which will support as many students as it desires, or require ALL arrivals/departures by shuttle from a satellite parking area, significantly reducing the impact not only on this neighborhood, and the Bike Boulevard, but on all Palo Altans.

– *Neighbors of Castilleja (immediately surrounding blocks)*
October 2020

Al Kenrick	Melville Ave
Amber La	Kellogg Ave
Andie Reed	Melville Ave
Andrew Alexander	Emerson St
Angie Heile	Emerson St
Bill Schmarzo	Emerson St
Bill Powar	Emerson St
Bruce McLeod	Bryant St (SW corner Bryant and Kellogg)
Carla Befera	Bryant St (SW corner Bryant and Kellogg)
Carolyn Schmarzo	Emerson St
Chi Wong	Emerson St.
Chris Stone	Emerson St.
Daniel Mitz	Melville Ave
Daniel Vertheim	Emerson St.
David Quigley	Emerson St.
Debby Fife	Emerson St
Diane Rolfe	Emerson St (NW corner Emerson and Kellogg)
Ed Williams	Kellogg Ave
Erica Journey	Kellogg Ave
Elizabeth Olsen	Melville Ave
Emma Ford	Emerson St
Geegee Williams	Kellogg St
George Jemmott	Emerson St
Han Macy	Melville Ave
Hank Sousa	Melville Ave
Isaac Caswell	Kingsley
Jim Poppy	Melville Ave
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Kerry Yarkin	Churchill St
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Mary Sylvester	Melville Ave
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Midori Aogaichi	Churchill St

Nancy Strom	Melville Ave
Nelson Ng	Emerson St
Neva Yarkin	Churchill St
Pam McCroskey	Emerson St
Patricia Wong	Emerson St
Pius Fischer	Emerson St
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Val Steil	Kellogg Ave
Vic Befera	Bryant St
Wally Whittier	Bryant St
William Macy	Melville Ave
Ying Cui	Waverley St (SW corner Embarc & Waverley)
Yoriko Kishimoto	Embarcadero Rd
Yulia Shore	Kellogg Ave
Yuri Yamashita	Bryant St (NE corner Bryant and Kellogg)

From: [Kyle Bordeau](#)
To: [Planning Commission](#)
Subject: Castilleja School Master Plan
Date: Tuesday, October 27, 2020 10:03:31 AM

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Dear Commissioners,

Thank you in advance for taking the time to read the following letter of support for Castilleja's master plan. As a near neighbor of the school and with a background in engineering, I care deeply about their efforts to modernize their campus and provide educational opportunities to more young women and girls.

The years of community input, review, revisions, and study of this plan have resulted in an extremely thoughtful and well-designed project for the Palo Alto community. With the massing broken up along different streets, the project as proposed blends well into the surrounding residential neighborhood. Many operational aspects of the building have been moved below grade, reducing noise and impact on the neighborhood. The landscape has also been beautifully designed to harmonize with the already existing environment. It's so clear that this project was designed with our community in mind and I think it's one Palo Altans can be proud of.

I encourage you to approve the project as it is an improvement upon the current campus, and more compatible with the neighborhood.

Thank you,
Kyle Bordeau

From: [Andie Reed](#)
To: [Planning Commission](#); [Architectoral Review Board](#); [Historic Resources Board](#); [Council, City](#)
Cc: [Lait, Jonathan](#); [French, Amy](#); [Stump, Molly](#)
Subject: Moncharsh Letter to PTC Oct 28, 2020 mtg
Date: Monday, October 26, 2020 2:59:31 PM
Attachments: [Moncharsh letter w. att. October 26, 2020.pdf](#)

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Dear Commissioners and Council Members:

Ms. Leila Moncharsh, the neighbors (PNQL) attorney regarding the Castilleja School expansion project being considered this week at the Planning Commission, asked me to forward the attached to you.

Thank you for your consideration.

Andie Reed
PNQL

--

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

DONNA M. VENERUSO (d.'09)
LEILA H. MONCHARSH

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October 25, 2020

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

Re: Castilleja School – City Staff Report

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

In this letter, we review Ms. French's staff report discussion of the variance findings for the October 28, 2020 PTC hearing. First, we note that five days is totally insufficient time to review and adequately comment on such a long staff report. It is also inadequate time to comment on draft conditions, draft findings for the illegal grant of a variance, and draft mitigations in the MMRP.

My office is in Oakland and as of this evening, the power will be shut off due to a windstorm and will not come back on before the night of October 26th. Both my home and office are located in the hills and when a wind storm hits that is strong enough to require a power shut-off, it is loud and dangerous due to falling trees and debris.

I have been requesting a copy of the draft conditions of approval for months now and each time, Ms. French has told me that they were not ready. Surely, they did not just get drafted on the date they were released to the public – at 8:00 p.m. on Friday, October 23, 3030, only five days before the PTC hearing to decide three important issues: the variance, the mitigation measures, and the conditions for the CUP. The public should be given sufficient time to study this staff report and comment on these important issues

The public now has a Hobson's choice – it can use its five days to try and deal with the staff report and thus, not give any comments to the PTC until the very last minute, or rush through the staff report making as many comments as possible, turning them in on Monday so that the PTC has some

opportunity to read them in time for the hearing. Choices such as these presented by a City send a message that the community means nothing and its comments are just a nuisance.

For all of these reasons, I am requesting a reasonable continuance of the PTC hearing scheduled for October 28th.

A. The Proposed Variance Findings Are Not Supported by Evidence, Do Not Address All of the Variance Test, and Contain Much Irrelevant Information in an Attempt to “Sell” the Project

We have previously submitted letters, dated September 18, 2018 and October 8, 2020 (attached as Exhibit 1), regarding the inability of the City Council, based on the record, to make legal findings supporting the grant of a variance from the zoning code floor area ratio (FAR) restriction. As expected, the proposed draft findings in support of a variance not only fail to meet the legal test for granting a variance, but also set a precedence for Palo Alto that any institution near housing in a residential zone may avoid the FAR restriction just by claiming that it owns a lot with more square footage than the square footage for surrounding homes.

Unless there is a newer version of the variance code section, not included in the readable version of the municipal code, the staff report does not accurately repeat the necessary findings as stated in PAMC section 18.76.030. Here is the relevant, full text from the code:

18.76.030 Variance

(a) Purpose

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.

(c) Findings - General

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

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

(A) The personal circumstances of the property owner, and

(B) Any changes in the size or shape of the subject property made by the property owner or his predecessors in interest while the property was subject to the same zoning designation.

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

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

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

Note that the four items above are in the conjunctive, meaning that the City Council will have to make *all* of these findings before granting the requested variance. (See PAMC section 18.04.020 (g)(1) - "And" indicates that all connected items or provisions shall apply.)

**a. The First Proposed Finding Based on the PAMC
Is Not Supported by the Record**

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

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

the subject property. Special circumstances that are expressly excluded from consideration are:

(A) The personal circumstances of the property owner,
and

(B) Any changes in the size or shape of the subject property made by the property owner or his predecessors in interest while the property was subject to the same zoning designation.

On page 28 of the report, staff recommends granting this first finding, which requires the City Council to conclude that there are special circumstances about the applicant's property that entitle it to a variance. These circumstances are meant to include things like a difficult topography such that the project cannot be constructed without a variance. The legal concept is that if the topography or location somehow prevents construction of a project and if other property owners in the vicinity and same zone have the privilege of constructing their projects, then the city should grant a variance. Otherwise, without a variance, the applicant would be denied the benefits enjoyed by others in the same zoning district and vicinity.

In response to this first finding, staff proposes that the City Council accept the applicant's argument that since it owns a big lot and the surrounding home owners own much smaller lots, then it is only fair for the applicant to receive a variance from the FAR restriction. If this were true, then every institution in the same zone and vicinity would be entitled to a variance as long as it owns a larger lot than the surrounding residential neighborhood lots. This exception basically swallows the rule and gives all institutional owners a "pass" on having to comply with the FAR restriction if they are located in a residential zone.

The record contains not one iota of evidence that there is something special about the subject lot that precludes complying with the FAR. There is also no evidence to support this statement in the staff report: "FAR limitations and maximum lot size (19,999 sf) would not support the physical space requirements of a *private school* and were not created with conditionally permitted *private school* uses in mind." (Emphasis added.) This statement is simply an admission by the City that it is violating its own code so that the applicant, a private school, can receive a special privilege not even enjoyed by other institutional uses. There is absolutely nothing in the record

that supports the conclusion that all private schools should be relieved of complying with the FAR restrictions. Had the City Council intended to create an exemption from the FAR restriction for all private schools, it could have legislated that exemption but it did not. Nor does the finding even say what about a private (versus a public) school is so special that it deserves a variance anytime it wishes to buildout more square footage than allowed under the zoning code.

Furthermore, subsection (A), left out of the variance test in the staff report, precludes the City Council from considering the “personal circumstances” of the owner when deciding if there are special circumstances necessitating a variance. Thus, the fact that the applicant is a private school cannot be considered in applying the variance test.

Additionally, subsection (B), also dropped out of the variance test in the staff report, precludes considering changes to the size or shape of the applicant’s property made over the years while the zoning code was in effect and cannot be considered a “special circumstance.” Accordingly, the fact that it chose to build out small buildings in the past and now wants to combine those buildings into one very large one, causing imposition of FAR restrictions due to the nonconforming regulations, cannot be viewed as a “special circumstance.”

b. The Second Proposed Finding Is Not Supported by the Record

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

This second proposed finding on pages 28-29 of the staff report has the City Council making a two-prong conclusion, unsupported by the record: 1) that the variance will not affect substantial compliance with the zoning and Comp Plan regulations and 2) that the grant of a variance will not constitute a “special privilege.” In the first prong, the word “affect” is defined as “to produce an effect upon” something, in this case substantial compliance with regulations. (Merriam-Webster definition.)

On page 28, staff has the City Council representing that, other than compliance with the FAR restrictions, the project is compliant with “all other R-1 development standards including. . . site coverage.” However, that is incorrect because the FAR restrictions are about site coverage – the large building and the garage gross floor area (GFA) exceed the amount of square footage on the lot allowed under the FAR restriction. It is not in substantial compliance with that development standard.

Staff then appears to have the City Council arguing in the finding that the amount of square footage above the FAR allowance is minimal because in actuality, the project decreases the amount of square footage of the buildings between what is there now and what will be built as part of the project. However, that argument overlooks the history of the property. The applicant constructed the extant structures before the City adopted the zoning code. Up until then, the applicant could build any amount of square footage that it wished because there was no FAR restriction. Currently, the FAR sets the amount of square footage the applicant can build in the R-1 residential zone such that its density is consistent with a surrounding residential neighborhood. As shown below, the reduction in square footage between what the applicant originally constructed on the property and what it can build under the zoning code FAR restriction is substantially less, and not less by just a few thousand square feet. (The original square footage, pre-zoning code, is not “grandfathered in” under the current zoning code once the applicant demolishes the extant buildings and builds a new one.)

If the City Council grants the variance as recommended by staff, it will be citing various calculations that on the surface seem to suggest that the amount of variance in square feet that it is granting to the applicant is rather minor. However, using staff’s own calculations along with the number that staff left out (the allowed square footage of 81,385) **demonstrates that the City Council will be granting a variance allowing a 40% or 32,282 square foot increase in square footage over the allowable FAR. If a court agrees that the garage square footage should have been included in the Gross Floor Area, the City Council will have granted a variance for 80% or 64,782 square footage increase over the allowable FAR.**

The second prong of the second finding is that the grant of the variance will not constitute a special privilege inconsistent with the

limitations upon other properties in the same zoning district as the applicant's property. This finding normally causes a City Council to cite other properties in the same vicinity and zoning district which have enjoyed the same privilege of avoiding the FAR restriction, i.e., the applicant is not receiving a special privilege unavailable to others under the zoning code.

FAR is a big issue and has been brought to the attention of City staff by neighbors many times. Here are the calculations in response to staff's claim that there would be no privilege in granting the requested variance. (See page 28, paragraph beginning "Except for the requested Floor Area Ratio standard..."): The second bullet describes the existing gross floor area on the campus parcel as 116,297, a FAR of .43. The lot size is 268,783 per the plans. The allowed FAR on the campus parcel is .3028, which translates to 81,385 square feet of Gross Floor Area, as determined by applying PAMC section 18.12.040 Table 2. The first 5,000 square feet of the lot in an R-1 zone allows .45 above grade square feet ($5,000 \times .45 = 2,250$) square feet of gross floor area, and lot size square footage in excess of 5,000 allows .30 ($268,783 \times .30 = 79,135$) square feet of gross floor area. The sum of those two figures is $2,250$ plus $79,135 = 81,385$ square feet allowed. The new plans show proposed square footage of 113,667. **The additional square footage requested in this variance is 32,282, which is a 40% increase in FAR ($32,282/81,385 = 40\%$) over current code. Additionally, the plans show an underground garage with 32,500 square feet, which increases the coverage to 64,782, or 80% more FAR being requested than is allowed.** We are not even looking at below-grade "total" square footage, only above-grade GFA and FAR. (See also, architect expert letter, attached as Exhibit 2.)

Furthermore, staff's reference to square footage of the new building which she states separately from buildings retained is distracting and irrelevant. It is the total square footage that counts, and you will **not** find here in the staff report description the allowed square footage (81,385) or how much the applicant is asking for in addition to that. We have provided that number from the record, above.

We find the next paragraph disconcerting: "The request is not to increase the gross floor area on campus, but to retain and slightly decrease the existing of above-grade gross floor area, which is most impactful on neighboring properties." How is the above-grade GFA most impactful on

neighboring properties? According to whom? An underground garage invites cars and will be a hive of activity, and an increase in enrollment brings large impacts to the neighborhood, even if you are hiding the students underground much of the time.

Staff then deviates away from the required finding into all the supposed benefits of violating the FAR, which has no relevance to a finding necessary for granting a variance under this finding. It is simply a way to distract the City Council away from the fact that it cannot make the findings necessary to grant the huge variance requested because it has no evidence to support it.

c. The Third Finding Cannot Be Made

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

This third proposed finding states that granting a variance would be consistent with the Comp Plan and the purposes of the zoning ordinance. The City Council would be referring to the EIR Table 4-1 listing various policies from the Comp Plan and stating that the project is consistent with them. However, we have already shown in our letter of September 18, 2018 all of the policies with which the variance would be in conflict. (See attached Exhibit 1, pages 9-12.)

d. The Fourth Finding Cannot Be Made

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

We discussed this finding and why it could not be made in our letter of September 18, 2018 on page 13 (Exhibit 1, attached) where we talked about the size and design of the large building. Since that time, the ARB has made substantial comments and asked for changes to this building. It is aesthetically unrelenting as it proceeds down the block. One of the commissioners asked for a plan drawing that showed the building without all

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of the trees in front of it because the trees were hiding what the neighbors would see for decades. That plan is attached as Exhibit 3 and shows an industrial style building that would easily be confused for a juvenile delinquency detention center or a county jail. It has tiny windows on the ground floor and bars on other windows that appear to prevent escape and otherwise, have no other purpose. At best, one might think that this building was part of an office complex but certainly not consistent with a residential neighborhood.

In conclusion, the purpose of variances is to allow some flexibility in the zoning code without rendering it meaningless due to gratuitous favors from city councils. The fact that, according to the record, the applicant has sought special treatment in the form of a generous zoning variance because it is a popular private school makes this project particularly vulnerable to the improper and illegal grant of a variance. Further demonstrating “special privilege” and thereby threatening the integrity of the City’s zoning code, staff has not come up with any examples of where any City Council has granted a variance for an additional 40%, let alone 80%, of square footage over the FAR applicable to a project site in the residential zone. It also has not shown where in Palo Alto, the City Council has ever granted, even for a private school, anything more than miniscule variances from zoning code restrictions as to setbacks and height.

The City Council is legally compelled to deny granting the requested variance. Thank you for considering our comments.

Sincerely,

Leila H. Moncharsh

Leila H. Moncharsh, J.D., M.U.P.
Veneruso & Moncharsh

cc: City Attorney
Mr. Lait
Ms. French

EXHIBIT 1

DONNA M. VENERUSO (d.'09)
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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 vehicular 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 wholesale, 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

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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.
Veneruso & Moncharsh

cc: City Attorney
Mr. Lait
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September 18, 2018

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

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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:

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- (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 2¹.) 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 disproportionately 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.

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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.App.4th 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 limitation 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.

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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

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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

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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.)

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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

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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,

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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

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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

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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 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.

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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

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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.**

B254636

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.

1 Cases that cite this headnote

[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.

****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

[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.

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 the 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.

WE CONCUR:

[BIGELOW](#), P.J.

[GRIMES](#), J.

***1317 DISPOSITION**

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

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."

EXHIBIT 2

Michael M. Lyzwa Sr.
Architect
144 Kingsley Avenue
Palo Alto, Ca. 94301

March 28, 2020

Dear PNQL,

PNQL is requesting a professional opinion regarding the numbers the school is using for Palo Alto Municipal Code allowed FAR and their proposed FAR.

As neighbors who live in the area surrounding Castilleja School, you have asked me, as a licensed architect currently living and working in the city of Palo Alto, to write to discuss Floor Area Ratios regarding the school's latest set of expansion plans submitted to the city of Palo Alto on 2/10/2020.

Below is the result of my review:

Table 2 of PAMC 18.12.040 requires that buildings on a lot size of 268,783 may have a floor area ratio of .303. The lot square footage is 268,783, and **proposed** above ground school buildings is 115,895, per 2/10/20 school plan submission, page G.001, which results in an FAR of .43.

Castilleja **currently** has a floor area ratio of .43, according to figures supplied by the school and published in the DEIR. Castilleja is requesting a variance to re-build the new school with an FAR of .43. Per 18.70.100(e) the school, which is demolishing 5 school buildings to reconstruct, would require reconstruction to be subject to current "applicable laws regulations and procedures", or a FAR of .303.

Additionally, per PAMC 18.12.060 (e), the school is required to add any underground garage square footage (35,310 square feet) to the FAR, which would require them to request a variance for an FAR of .56, which is a much bigger ask, almost doubling what muni code allows in this very large lot.

See attached calculations.

The school submitted a "request for variance" on March 22, 2018, asking for a floor area ration of .43 to be allowed, but the plans do not take the underground garage's square footage into consideration. The proposed FAR is .56.

In my opinion, in order for the school to maximize their school above ground square footage, the underground garage should be removed from the plans. Otherwise, the school buildings need to be reduced in size to allow for this facility and still keep within municipal code.

Very truly yours,



Michael Lyzwa Sr.
Architect



EXHIBIT 3

Kellogg Elevation



Original Kellogg Elevation



Updated Kellogg Elevation

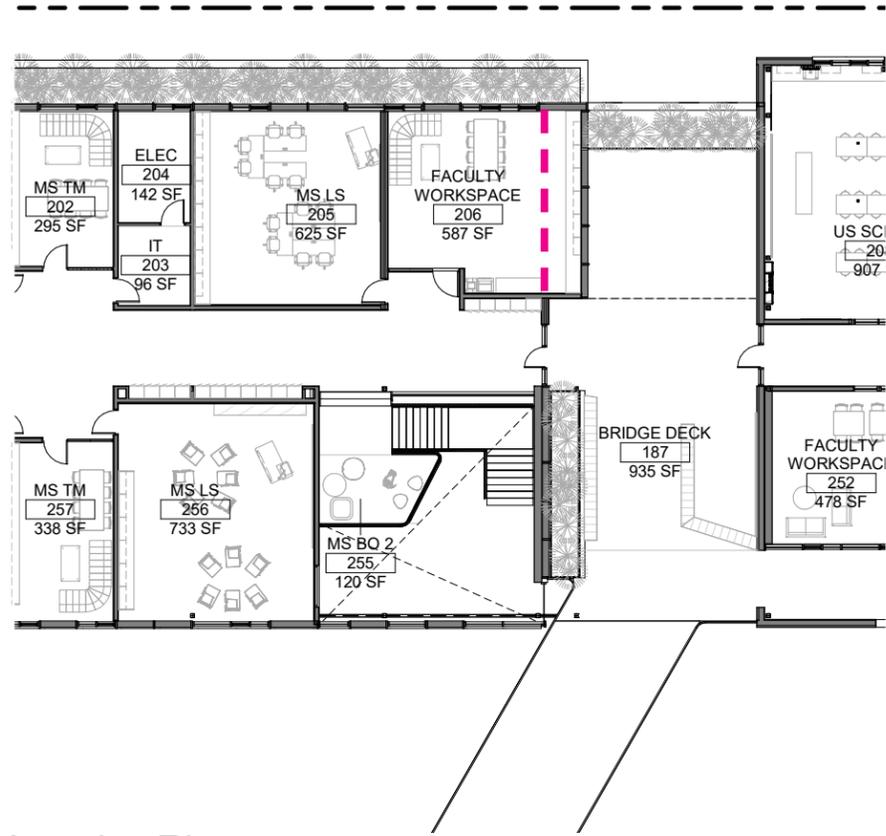
Kellogg Aerial - Original



Kellogg Aerial - Updated



Kellogg View



Level 2 Plan



Kellogg View



Bryant Elevation



Original Bryant Elevation



Updated Bryant Elevation

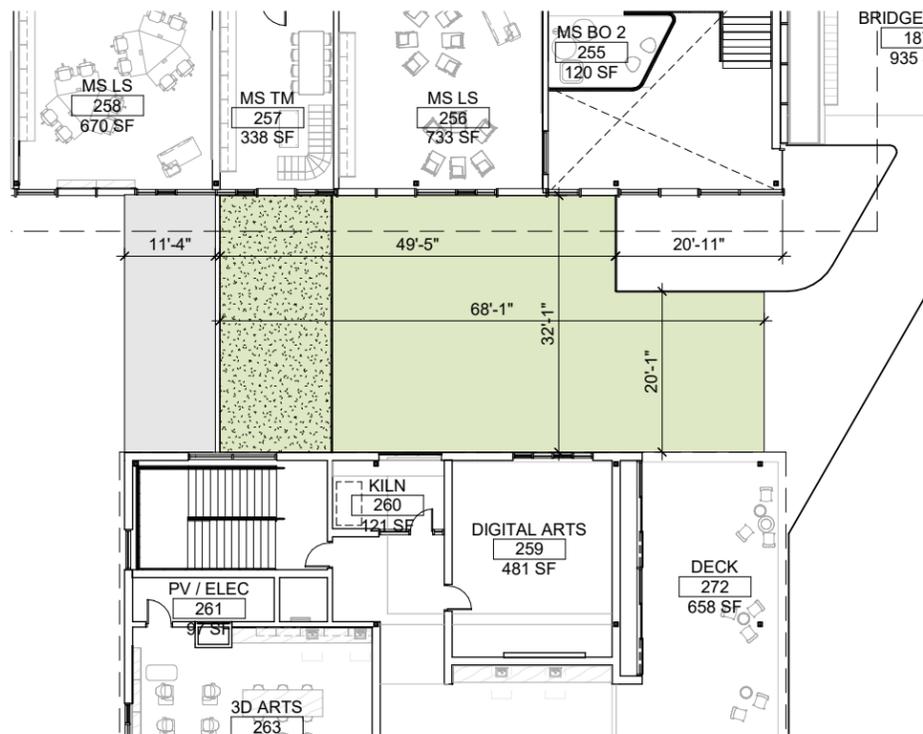
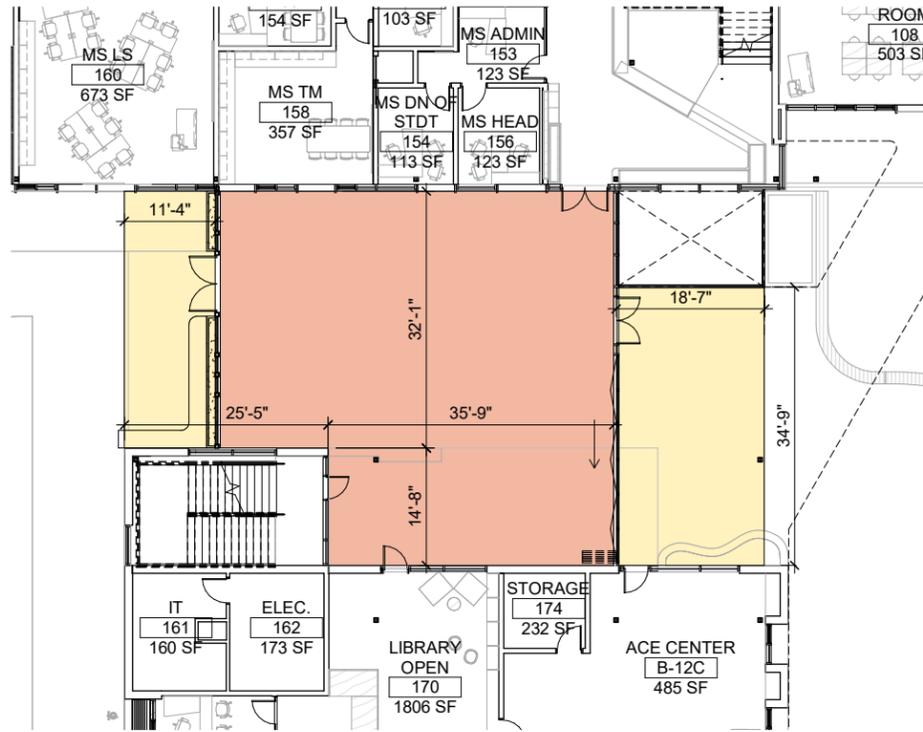
Bryant Aerial - Original



Bryant Aerial - Updated



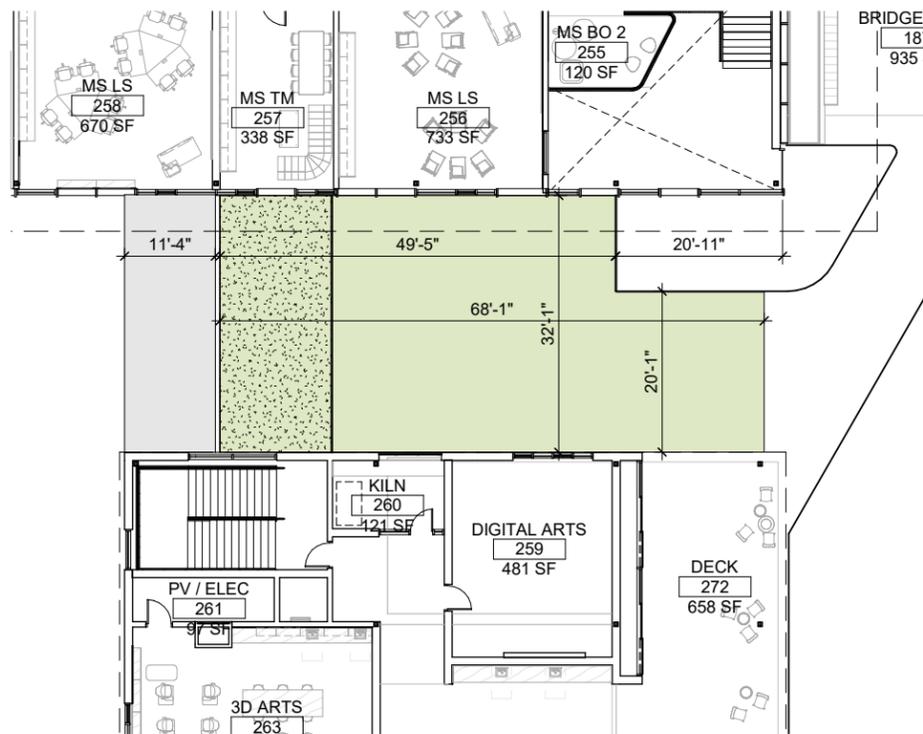
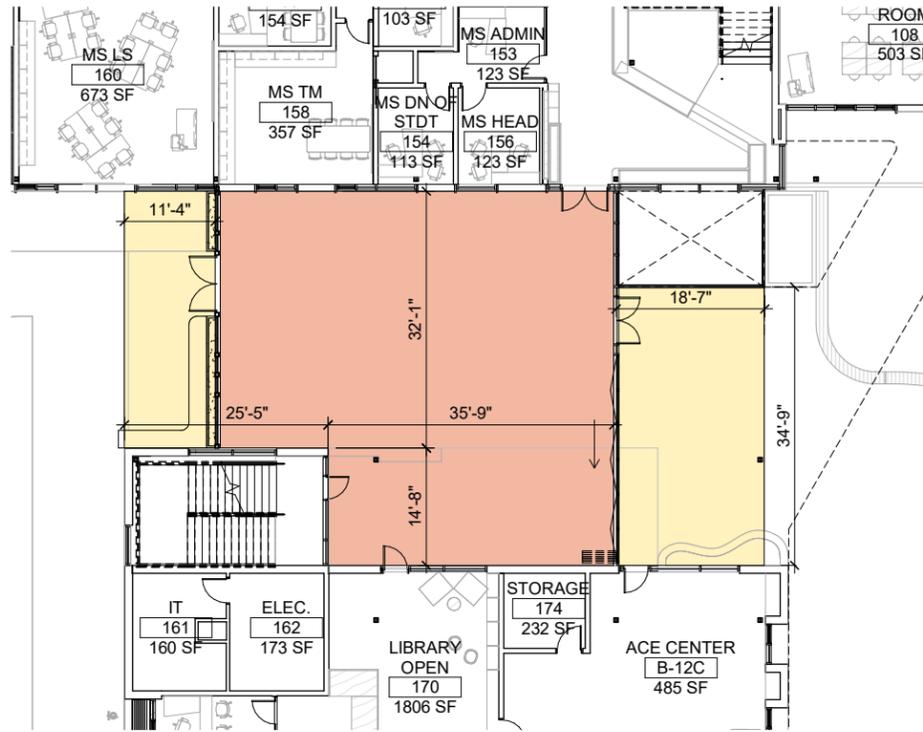
Bryant Porch - Option 1



- 2,136 sf enclosed space
- 1,002 sf open covered porch
- 1,954 sf deck/green roof on level 2

(porches deeper than 10' are included in area calculation)

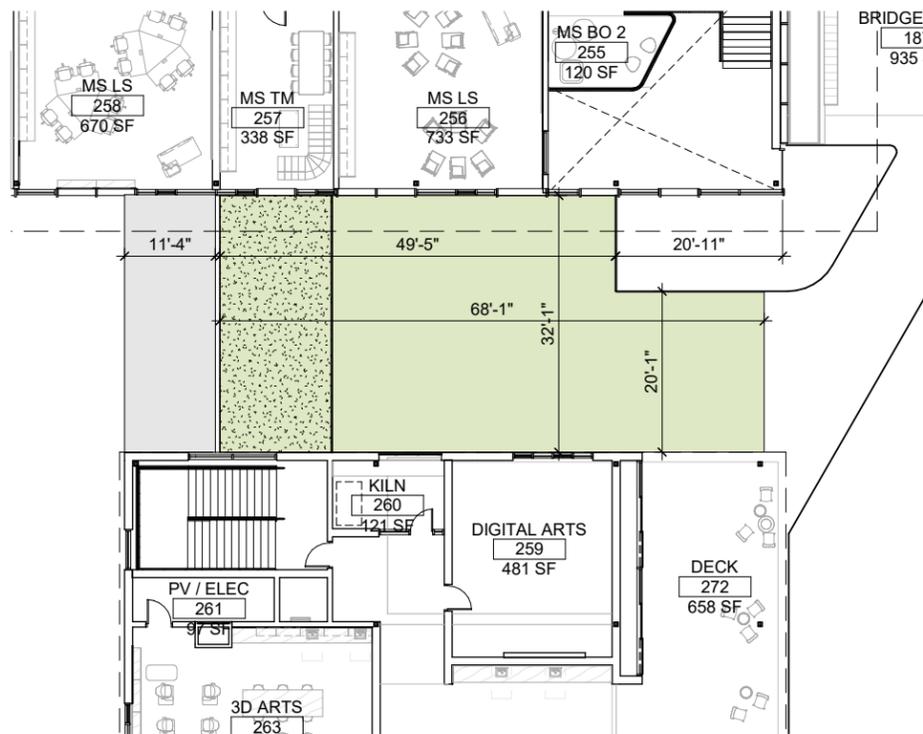
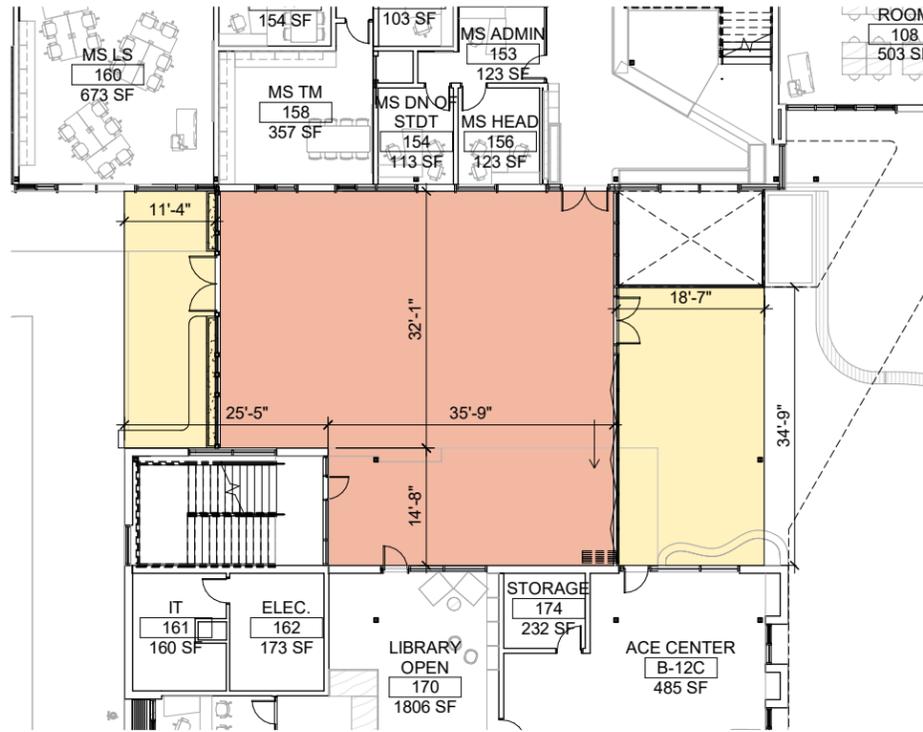
Bryant Porch - Option 2



- 2,136 sf enclosed space
- 1,002 sf open covered porch
- 1,954 sf deck/green roof on level 2

(porches deeper than 10' are included in area calculation)

Bryant Porch - Option 3



- 2,136 sf enclosed space
- 1,002 sf open covered porch
- 1,954 sf deck/green roof on level 2

(porches deeper than 10' are included in area calculation)

From: [Rita Vrhel](#)
To: [Planning Commission](#); [Architectural Review Board](#)
Subject: Castilleja
Date: Monday, October 26, 2020 1:00:51 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Hello: As a Castilleja parent, I remain deeply concerned about the last PTC meeting and the "green light" given to Castilleja.

I was shocked that such an important subject would be considered when 2 of the Commissioners were absent. It really seemed like a set up and a railroading of the issues. Particularly given the Staff report dropped at the dais shortly before the meeting with no notice or discussion allowed from the public who had not seen the document.

I must ask if this is even legal despite one Commissioners assurance that he had read the report. What about the rest of us? and PQLN's attorney? Wasn't due process aborted?

Castilleja, in their recent newspaper ad, touted the PTC's decision and seemed to indicate their expansion plans had been approved and little but a formality remained.

I can certainly see their point as if they can have Amy French convince the PTC that their garage can be now called a "basement, which only holds cars but is not under a building but in the building envelope and therefore not included in the FAR"; noting would seem impossible.

I wonder why it is labeled a garage in all their architectural drawings if it is really a basement?

I am anxious to hear Ms. French provide "historical" context for her outrageous definition of a basement. This was requested by Ms. Summa and hopefully will be offered. I doubt any examples will be provided, but I hope someone calls Ms. French on her previous statement.

I would also like to ask Ms. Templeton to ask all the Commissioners if they have had either professional or personal dealings with Ms. Romanowsky, Castilleja's attorney. I do not believe this question was ever asked or answered.

I believe it is important to set the record straight on this issue, given recent online posts.

Thank you so much.

From: [Alan Cooper](#)
To: [Planning Commission](#)
Cc: [Council, City](#); [Alan Home](#)
Subject: Castilleja: Air quality during construction
Date: Monday, October 26, 2020 12:51:17 PM
Attachments: [PurpleAir example near Castilleja.pdf](#)

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Planning Commission,

I have lived across the street from Castilleja for 34 years. If the Castilleja project is approved, I seek a guarantee that the air quality during construction will not be injurious to my health and that of my neighbors.

I propose a simple, straightforward and openly accessible way of continuously monitoring air quality, to assure that EPA safety standard for healthy air is achieved.

1. The City install at Castilleja's expense 2 to 4 Purple Air (www.purpleair.com) air quality monitors* around the school construction site and link these monitors to the web for everyone to see online (see attached example).
2. If air quality deteriorates and reaches the red=150: EPA PM2.5 AQI dangerous-to-health level, then construction at the Castilleja site would be temporarily halted until air quality improved to levels below red=150.
3. The project manager would be required to stop construction activities if he is notified by anyone that the purple air values around Castilleja exceed the red=150: EPA PM2.5 AQI level.

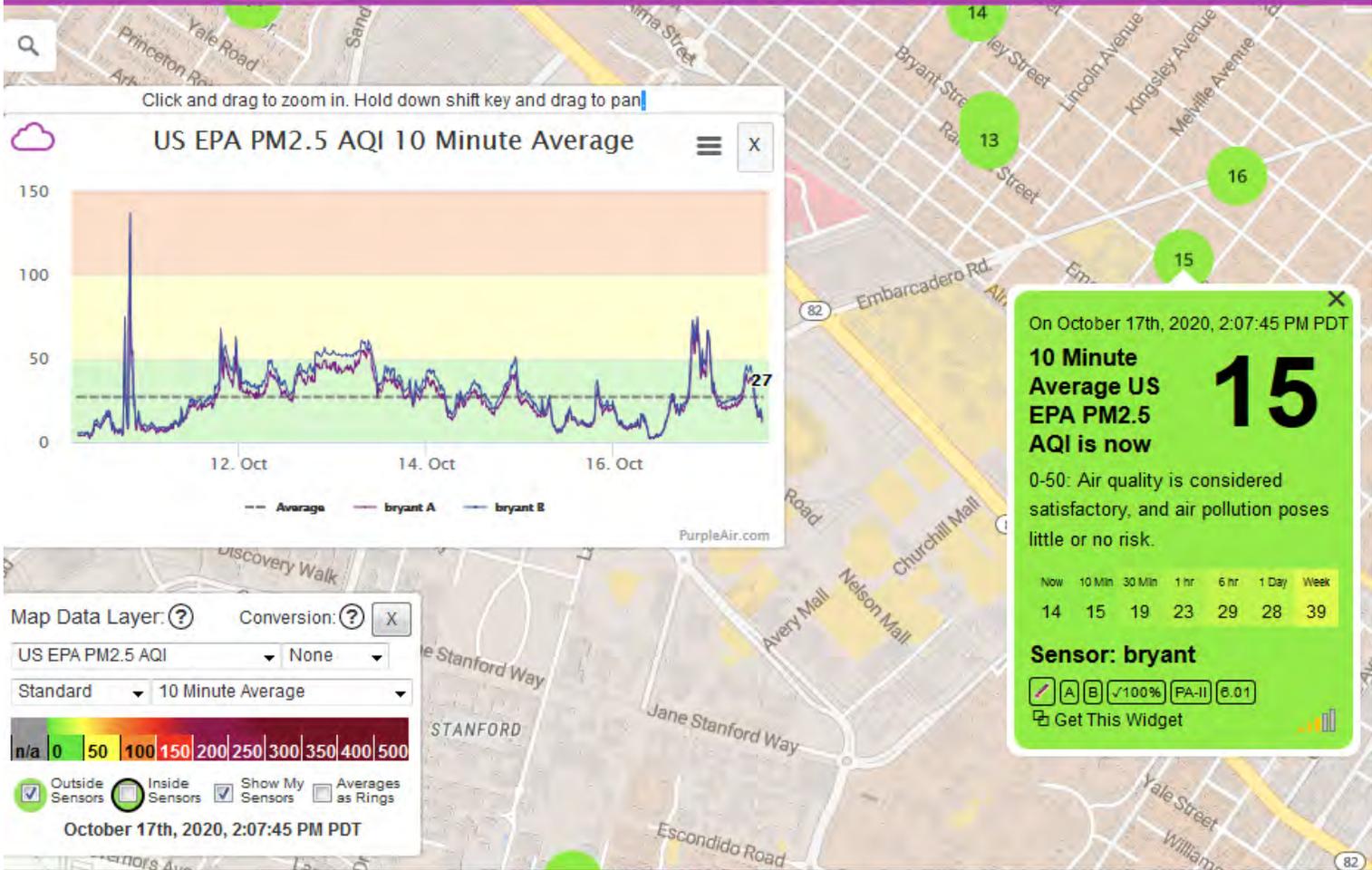
This method provides a relatively inexpensive (i.e., less than \$1K) way to assure and mandate that the construction project is NOT causing air quality and resultant health problems for the surrounding neighborhood.

Many of us that are adjacent to Castilleja's campus have homes built around 1910 and do NOT have air conditioning. Thus, our only ventilation is open windows. In the past, when Castilleja has re-roofed the Kellogg buildings or constructed the recent gymnasium, particulate matter was constantly in the air and in our homes. Now that Castilleja plans to demolish approximately 80% of its campus, I would ask that the city mandate the necessary procedures to measure and eliminate all particulate matter emanating from this massive demolition. Particulate matter is of great concern especially to the elderly as was evidenced in the recent fallout from the massive fires we experienced this past summer."

Thank you

Alan Cooper
270 Kellogg Ave
650-321-3644

*The attached graphic is an example of the online map of purple air sensors and the continuous "real time" measurements of EPA PM2.5 AQI values. The device of choice in case of legal challenge would be model PA-II-SD which has an internal recording capability.



From: [JIM POPPY](#)
To: [Council, City: City Mgr](#)
Cc: [Planning Commission](#)
Subject: Please do your due diligence on Castilleja
Date: Monday, October 26, 2020 12:24:06 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear City Council and City Manager,

The planning department has prepared a highly-biased and legally dubious report on Castilleja's proposed expansion that is going to the PTC this week.

There is a huge volume of material for this project which may be hard to read cover to cover, but the main items to pay attention to include:

1. The planning department has described the proposed underground garage as a basement, not a garage, in order to circumvent the FAR requirements. With the garage, the requested variance for FAR would be 200%.
2. The planning department has conveniently left out 3 mature oak trees from the protected resources section and has perverted the protected tree ordinance to state that the trees would interfere with the new construction, whereas the ordinance states that trees must be protected if new construction threatens their health.
3. There is no mention of how the proposed garage would PERMANENTLY compromise the safety of cyclists on the Bryant Bike Boulevard. Councilmember Kniss was instrumental in getting this landmark boulevard created and it would be a blatant disregard of the City's stated goals to protect and enhance alternate forms of transportation.
4. The report erroneously states that the new "dispersed" traffic flow solves the unmitigable impacts (identified in the EIR) of increased traffic from a 30% increase in enrollment, and ignores the traffic impacts of the additional staff and services that would come with increased enrollment. The traffic impacts should be studied again.

Neighbors have spent over \$25,000 on consultants and legal fees to contest the findings, but the planning department has ignored these in their report and left them as "public comment." **These communications set the groundwork for a lawsuit if the City chooses to ignore the significance of the zoning violations.**

Regards,
Jim Poppy
Melville Avenue

From: [bill Powar](#)
To: [Planning Commission](#); [Council, City](#)
Subject: Castilleja expansion plans
Date: Monday, October 26, 2020 12:14:55 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Members of the Planning and Transportation Commission and City Council,

I live directly across the street from Castilleja at 1320 Emerson Street. I have lived across from the school for almost 40 years. I supported the school in the past, even agreeing to move houses in 1993 to allow them to close the Melville cul-de-sac and build the playing field that is there now. When I moved in, there were fewer than 300 students, some of which lived in the dorms. Since then, the school has increase enrollment significantly and updated their facilities several times.

There is no question that the school provides a wonderful education to the young women fortunate enough to be from families that can afford the \$50,000 per year tuition, the vast majority of whom live outside of the Palo Alto. The primary question that needs to be addressed relative to the school's current application to increase enrollment, rebuild the entire school and add an underground garage is what is the maximum enrollment and square footage of facilities that can reasonably be accommodated in a parcel slightly over 6 acres in area in the middle of a single-family neighborhood and how much disruption must the neighbors live through associated with such a large construction project.

In 2000, the City granted a Conditional Use Permit taht allowed the school to increase enrollment to a level that far exceeded the student density of any other comparable school in the area. In fact, the City did not allow the school's enrollment to reach the level the school requested and told the school that the City would not look positively on any future requests to increase enrollment.

Over the years and except when they wanted something from the City, the school community has shown little or no sensitivity to the fact that the school exists in an R1 zone, including many years in which the conditions of the Conditional Use Permit granted by the City of Palo Alto were consciously ignored by the school's administration and board of trustees. In fact, they were out of compliance with that 2000 CUP virtually from the date it was effective both in terms of enrollment and the added requirements that were attached to that enrollment allowance. It was only after they were "caught" when they announced their expansion plans several years ago that they began any meaningful compliance with the various transportation, parking and event management efforts required.

My wife and I recognize that the school's facilities need updating. What we disagree with is an

increase of over 30% in the size of the student body (and the significant number of school events that the new enrollment will bring) on a site that is already too small in comparison with similar private schools, the need for an underground garage and the many years' of disruption to the neighborhood caused by the demolition and construction of the garage and all of the school's buildings except for the gym and admin buildings. We also think that the City will be setting a very bad precedent if it were to grant the considerable variances to the zoning and building codes that the school requires to carry out its plans. It appears that the school and the City staff have taken a very creative interpretation to things like square footage and basements that may become issues with other future developments.

Yours respectfully,

Bill Powar
1310 Emerson Street

From: [Megan Hutchin](#)
To: [Planning Commission](#)
Subject: In Support of Castilleja
Date: Monday, October 26, 2020 10:38:42 AM

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Dear PTC,

As a neighbor on Churchill, I want to speak in support of Castilleja. The very thorough and painstaking analysis in the Environmental Impact Report, which took years to research and produce, finds no significant impacts. These facts deserve your support.

I want to discuss the crucial role schools play in communities and the singular role that Castilleja plays in Palo Alto. Schools should always be part of residential neighborhoods; they sustain the children who live in the homes there, and those children secure the future of the entire community. Schools should not be driven out of residential zones; rather, they should be encouraged to thrive. Every other school in Palo Alto has grown and modernized their campus in recent years. Why shouldn't this very small all-girls school have the same opportunity?

Castilleja's mission to educate girls for leadership is absolutely critical to support the broader societal movement to place more women in positions of leadership. With a budget of \$3.5 million in Tuition Assistance to grant access to any deserving student despite her family's financial circumstances, Castilleja is actively working to rectify age-old disparities in access to education. Particularly important to me, Castilleja has a year-round program to support first generation college students as they prepare to take steps no one in their families has ever taken before. Supporting this should be a core value for our city; Palo Alto is a bellwether city, a community known for cutting a brave path into a better future. Castilleja is a core part of that effort working to amplify young women's voices.

With gratitude,
Megan

From: [Joseph Rolfe](#)
To: [Architectural Review Board](#); [Planning Commission](#); [Council, City](#)
Subject: Castilleja Expansion Plans
Date: Saturday, October 24, 2020 10:21:21 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Joe and Diane Rolfe
1360 Emerson Street
Palo Alto, CA 94301
October 24,2020

Dear Members of the Planning Commission,

Castilleja is rushing to push through what we see as an incomplete, poorly designed, and controversial expansion plan at the upcoming October 28 Planning Commission meeting. They seem to want to rush the plan to the City Council for a vote before an election that will significantly change the Council makeup. The life-style changes because of the pandemic and the upcoming Federal and State elections are a distraction from giving this a fair hearing.

Castilleja has been not a good neighbor. Their arrogant and indifferent treatment of their neighbors has destroyed trust. Castilleja has displayed rigidity and a closed mind to anything but what they want. As just one example, Castilleja's original Palo Alto Conditional Use Permit (CUP) requirement was for 415 students. For most of the last 20 years they have been out of compliance and they have been dishonest about this. They want 540 students. It would appear wise to consider all of their expansion plans with consideration of past behavior.

There are sound pedagogical reasons for separating the high school from the middle school. All of the other middle schools and high schools in Palo Alto are separated, but Castilleja rejects this idea out of hand. Castilleja has been rigid in that they will not separate the middle school from the high school. However, that one change in their proposal would simplify the Castilleja expansion plan immediately. (Castilleja already has 60+ students per acre and they want to increase this to about 90 students per acre – more than any school in the area).

Castilleja occupies 6+ acres in an R1 neighborhood. A win-win solution for all would be a land swap between Stanford and Castilleja. Castilleja would probably have more than 6 acres and could greatly expand their campus. This is not a new idea. Palo Alto High School, Gunn High School, Escondido, and Nixon Elementary Schools are on Stanford land. The present Castilleja site would become much needed mixed-use housing for Stanford staff and students.

Castilleja needs to reconsider the impact of their proposal on other problems facing the city and the region (for example Caltrain). They must consider how they can help the City of Palo Alto meet its housing needs and solve its traffic problems. It must also consider the impact of the proposed project

on its neighbors. Castilleja has done too much good in its past to hurt its students, parents, and neighbors in the future. Please Stop the rush and reconsider how we can all help one another in a final, positive proposal that will not cause further ill-will and litigation.

Sincerely,

Joe and Diane Rolfe

From: richard.mamelok
To: [Planning Commission](#)
Subject: Castilleja
Date: Thursday, October 22, 2020 10:42:28 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Planning Commissioners,

My wife and I have lived on Churchill Avenue for 41 years. When we moved here and for several years after Castilleja School was an unobtrusive neighbor and more or less remained so until they expanded enrollment in violation of their PUC and now potentially in a big way with their planned expansion and building of an underground garage. We urge you to vote against the current plans for expansion.

Their expansion and underground garage invites more traffic on and around the bike boulevard on Bryant Street and on Embarcadero, where traffic is already getting very bad at peak times of day including the start of a normal school day. In addition, whatever solution to the railroad crossing at Churchill and Alma the council eventually settles on, the patterns of traffic will be affected in the neighborhood near the school.

We support education for all and see the value of a school that enrolls only girls. The school has been successful for 100 years; if they need to grow, they have other options that have worked for other private institutions of education. Castilleja is a private school and draws most of its students from outside of Palo Alto. It pays no taxes and its events are not open to the public. Please do not grant them variances and exceptions that no other private entity would receive. It does not deserve special dispensation to disrupt an R-1 neighborhood.

Richard D. Mamelok, MD and Midori Aogaichi, MD
364 Churchill Avenue
Palo Alto, CA 94301
mobile: +1 650 924 0347
mamelok@pacbell.net

October 21, 2020

PLANNING & TRANSPORTATION COMMISSION

PALO ALTO CITY HALL
250 HAMILTON AVENUE
PALO ALTO, CA 94301

Dear PTC Members,

I am writing to express my support for the Castilleja Master Plan.

We have a daughter (Julia, a Palo Alto Youth Council member) who has had an outstanding experience at Castilleja. As a Chef and Culinary Instructor, I've had the opportunity to teach a few elective classes at the school and think so highly of the students and faculty.

I support the CUP as I think about the growth and development of Palo Alto. A thriving Castilleja with a beautiful, sustainable campus in the heart of the city will benefit our community for years to come.

I recommend your action to move Castilleja's plan forward as soon as possible. Thank you so much for the work you do for Palo Alto.

SINCERELY,

AMANDA B. ZEITLIN

October 20, 2020

PLANNING & TRANSPORTATION COMMISSION

PALO ALTO CITY HALL
250 HAMILTON AVENUE
PALO ALTO, CA 94301

Dear PTC Members,

I am writing to express my full support for the Castilleja Master Plan.

We have a daughter (Julia, a Palo Alto Youth Council member) who has had an outstanding experience at Castilleja—travelling by bicycle every day! I am also a Trustee, so have gained an extra level of appreciation for the school's values, leadership and operational strength.

My support for the CUP comes down to my own judgment about what's best for Palo Alto, as a resident thinking about the city over the long run. This project has been so thoughtfully planned. A thriving Castilleja with a beautiful, sustainable campus in the heart of Palo Alto will benefit our community in so many ways.

Thank you for your deliberate consideration of this topic. I strongly recommend your action to move Castilleja's plan forward as soon as possible.

SINCERELY,

ZAC ZEITLIN

From: [Deglin Kenealy](#)
To: [Planning Commission](#)
Subject: Support for increased enrollment at Castilleja
Date: Tuesday, October 20, 2020 12:39:14 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Members of the Palo Alto Planning Commission:

My name is Deglin Kenealy. I am a Palo Alto resident and parent of a Castilleja Alumna. I'm writing this letter to express my support for increasing enrollment at Castilleja School for the sole benefit of those who may not be allowed to attend due to a more limited enrollment. Any young woman who is allowed to attend Castilleja may very well see the course of her life forever changed for the better.

As a parent, I witnessed the growth of my daughter and her classmates, friends, and acquaintances. While my daughter and many others advanced academically from Castilleja's incredible faculty and the STEM program, in particular, she and her classmates also benefited from the learning about and being expected to live up to the "Five C's," Courage, Conscience, Courtesy, Charity and Character. Castilleja students come from a broad array of socio-economic, religious, racial, and educational backgrounds. With the school's full support, they learn from one another and share their hopes, dreams, struggles, and challenges. Where one student is challenged, others lift and support them and, in turn, are lifted when they need support, compassion and/or empathy.

Castilleja has committed to working within community guidelines to assure minimal or no impact on the neighborhood by increasing enrollment. In the past 8-years, Nanci Kauffman and the school have demonstrated good faith in proactively coming forward with a CUP violation and working directly with the community to address and repair the breach. Castilleja has continually worked with the city of Palo Alto and its neighbors as it seeks to prepare the campus for the next 100 years for the benefit of future students and our society in general.

Simply put, Castilleja changes the lives of young women who attend. In return, those young women improve the lives of hundreds or perhaps thousands of others throughout their lives. Keeping just one young woman from attending Castilleja to maintain current enrollment is a cost the residents of Palo Alto shouldn't have to pay.

Regards,

Deglin Kenealy

1032 Channing Ave
Palo Alto, CA 94301

Deglin Kenealy
650-485-1835

From: [Deglin Kenealy](#)
To: [Planning Commission](#)
Subject: Support for Castilleja underground garage
Date: Tuesday, October 20, 2020 12:37:59 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Members of the Palo Alto Planning Commission:

My name is Deglin Kenealy. I am a Palo Alto resident and parent of a Castilleja Alumna. I'm writing this letter to express my utmost support for allowing the building of the underground garage below the Castilleja campus.

Over the last few years, Castilleja has done a tremendous job of reducing the traffic flow around campus, which can be attributed to its ongoing operations. The underground parking will enhance the neighborhood's appearance by taking more vehicles off the street while also being consistent with Palo Alto's Comprehensive Plan and is the preferred alternative of the Environmental Impact Report. Adding these parking spaces will not increase the amount of traffic around the school and will instead make the neighborhood safer and more pleasant.

Regards,

Deglin Kenealy
1032 Channing Ave
Palo Alto, CA 94301

Deglin Kenealy
650-485-1835

From: [Deglin Kenealy](#)
To: [Planning Commission](#)
Subject: Support for Castilleja and Nanci Kauffman
Date: Tuesday, October 20, 2020 12:36:52 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Members of the Planning Commission:

My name is Deglin Kenealy. I am a Palo Alto resident and parent of a Castilleja Alumna. I'm writing this letter to express my full support for Castilleja School and its Head of School, Nanci Kaufman.

Nearly a decade ago, Nanci was named the head of school at Castilleja. Shortly thereafter, it was discovered that the previous administration had allowed the school to violate its Conditional Use Permit (CUP). Instead of sweeping the issue under the rug and quietly working to repair the violation, Nanci did the honorable and trustworthy thing, she came forward and notified the city about over-enrollment while offering a plan to correct the violation. The idea that Nanci or Castilleja cannot be trusted to choose the right path because the previous administration didn't is unfair and not in keeping with the ethos of Palo Alto or its residents.

Since coming forward, Castilleja has complied with mandated enrollment decreases, reduced traffic to the neighborhood by 30%, and has repeatedly modified plans to meet the neighbors' needs.

Regards,

Deglin Kenealy
1032 Channing Ave
Palo Alto, CA 94301

Deglin Kenealy
650-485-1835

From: [Tim Cain](#)
To: [Planning Commission](#)
Subject: Castilleja's plans
Date: Monday, October 19, 2020 3:14:17 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Planning Commission,

My name is Tim Cain, and I support Castilleja's plans to build a modern campus that better serves their students. As you can see by my address below, I live in Old Palo Alto. I have three daughters who all attended public school in Palo Alto, and I have no connection to Castilleja. But I feel that the school should be able to modernize their campus and increase enrollment after years of modifying their plans in order to meet their neighbors' needs.

I believe the school has held more than 50 meetings with the surrounding community and developed countless project iterations to ensure that the resulting plan was one that would be best-suited for the community. As a result of these conversations and feedback from the City, the project now plans for a reduced underground parking facility, both in terms of square footage and capacity; the preservation of two homes on Emerson street to provide much-needed housing; and a distributed drop-off plan to avoid traffic impacts. Further, the school moved food deliveries and garbage pickup away from the street to reduce noise. I also understand that they reduced the number of events that they hold in order to reduce neighborhood impact. And they redesigned their pool to be below-grade and behind a sound wall. The school has modified multiple plans and has been working on trying to please all involved for 8 years and I believe it is time to move forward -- recognizing the countless modifications the school has made.

I urge you to support this project, and thank you for your consideration.

Thank you for your time,
Tim Cain, South Court

From: [Ashmeet Sidana](#)
To: [Planning Commission](#)
Cc: [Yuko Watanabe \(yknabe@hotmail.com\)](#); [Emily McElhinney](#)
Subject: Castilleja plans
Date: Monday, October 19, 2020 1:00:18 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Palo Alto Planning and Transportation Commission,

We have lived in Palo Alto since 2006, and while I have watched our community transform over this time, I am so happy to see that it continues to maintain its residential, neighborhood character - one of the main reasons I am planning to stay.

This appreciation for our neighborhood quality also fits with the desire to provide more young women with an education on a modernized Castilleja campus. The school has gone to great lengths to ensure its impact on the surrounding neighborhood is minimal, especially as it relates to design, noise, and traffic. I am so happy to see a resulting project that is even better for the community than as it currently exists, and one that will preserve our community's residential feel.

I also feel the need to improve our local schools, increase equity in education, and prepare women for leadership is more pressing with every passing day. This is a project with NO SIGNIFICANT negative impacts on the neighborhood and countless positive impacts for the world.

I hope you will give this consideration as you consider supporting Castilleja's conditions for approval later this month.

Thank you for your time and continued attention on this project,

---Ashmeet Sidana
2130 Byron Street, Palo Alto, CA 94301

From: [Eugenie Van Wynen](#)
To: [Planning Commission](#)
Subject: Castilleja CUP and Master Plan
Date: Monday, October 19, 2020 11:25:25 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear PTC,

As a resident of Palo Alto, I write to offer my strong support for Castilleja's CUP and Master Plan. Having raised my family in this community, I care a great deal about the well-being of our neighborhoods. I also care deeply about the future of women's education and the future of Castilleja.

As a trustee, I want to assure you that Castilleja's board has taken the utmost care with respect to the planning behind our CUP application. The board is committed to ensuring a strong future for the school and serving the needs of our neighborhood and the communities around us.

I am particularly proud of Castilleja's commitment to environmental sustainability and the school's efforts to create a Master Plan that surpasses LEED Platinum certification guidelines, as well as the sustainability goals of both the City of Palo Alto and the state of California. This is achieved through environmental features such as entirely onsite renewable energy, high-efficiency water use, and the use of green construction materials.

Castilleja's plan is forward looking and very much in keeping with Palo Alto's spirit of innovation and record of strong environmental stewardship. I am hopeful that, working together, we will be able to implement the plan in the months ahead.

Best regards,
Eugenie Van Wynen

From: [Lucy Blake](#)
To: [Planning Commission](#)
Subject: Urging your strong support for the Castilleja Master Plan
Date: Sunday, October 18, 2020 8:20:48 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Palo Alto Planning & Transportation Commission
Via email

Dear Planning & Transportation Commissioners:

I am writing to express my strong support for Castilleja's campus improvements as outlined in their proposed master plan. As one of the oldest and most outstanding schools for girls in the country, Castilleja attracts girls from around the Bay Area who are interested in pushing themselves academically and intellectually in an all-girls environment. Our family moved to Old Palo Alto from elsewhere on the Peninsula specifically so our daughter could attend Castilleja, bicycle to school everyday, and be an active part of the Castilleja community. Interestingly, her best friends were from all around the Bay Area, including San Jose, Redwood City and San Mateo. All of them either took the train or carpooled with parents working at Stanford or elsewhere in Palo Alto.

As you know, Castilleja now seeks to upgrade its campus to better serve the needs of its students and, I hope, even more girls. The new campus will be more energy efficient and sustainable than the current campus, which was designed in a different era. In fact, the new campus will be entirely fossil-fuel free and will rely upon on-site energy generation through solar, heat recovery, and renewable credits. Castilleja is also implementing a series of new electric shuttle routes, creating charging stations for electric vehicles, and committing to drought-resistant landscaping and the preservation of existing trees.

Today we know so much more as a society about the importance of creating and maintaining walkable and bike-able communities served by excellent public transportation, communities where people can get to school, get to work, buy food and otherwise live their lives without getting into a car. Palo Alto is a living example of such a community and must remain so, even as we grow to embrace both more residents and greater economic and racial diversity.

Institutions like Castilleja — that have defined our community for more than a century — speak both to the best of Palo Alto's past (educational excellence) and to our community's commitment to serving the rich diversity of people in the Bay Area. Over 50% of the students at Castilleja are students of color and over 20% of all students receive some financial assistance, a number that the Castilleja community is deeply committed to expanding.

I hope that the Planning and Transportation Commission will enthusiastically embrace Castilleja's campus renovation and see it as an opportunity to celebrate the best of Palo Alto, both our history and our hopes for a more equitable and inclusive future.

Sincerely,

Lucy Blake
564 Santa Rita Avenue
Palo Alto, CA 94301

From: [Dave Baird](#)
Subject: Castilleja School Project - I am in Favor.
Date: Sunday, October 18, 2020 11:46:18 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Sir or Madam,

I live in Palo Alto and want to express my support for the project to update the Castilleja property. Castilleja is an asset to our community. They have demonstrated, for decades, the importance of educating young women and preparing them for leadership roles.

The school's plans for updating the school are necessary and exciting for the future of the school. They have been working diligently and effectively to accommodate the needs, desires, and concerns of interested City residents, City officials, and most importantly all the surrounding neighbors of the school.

I am in favor of the success of Castilleja's project. I hope you approve the project. A win-win for everyone!

Kindly,
Dave Baird

Dave Baird
3880 La Selva Drive
Palo Alto, CA 94396
Cell: (816) 868-1352
Email: Dave.w.Baird@Gmail.com

From: [Adam Tachner](#)
To: [Planning Commission](#)
Subject: letter in support of Castilleja
Date: Sunday, October 18, 2020 11:29:33 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Greetings,

As a Palo Alto resident, I'm writing to express my support for Castilleja school and its thoughtful and neighborhood-sensitive expansion plans. Casti's mission of educating girls of diverse backgrounds is exactly the sort of investment Palo Alto residents should be supporting, not resisting.

All the best,

-Adam Tachner
970 Matadero Ave, Palo Alto, CA 94306

From: [Susana Young](#)
To: [Planning Commission](#)
Subject: Castilleja Support
Date: Sunday, October 18, 2020 9:35:08 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Thank you for taking the time to read my email.

I live in Palo Alto and want to express my support for the project to update the Castilleja property. It is a vital asset to our community. It has demonstrated for decades the importance of educating young women and to prepare them for leadership roles. My own granddaughters, graduates of Castilleja, continue to amaze me with their intellect, competence, goal-oriented skills, and the deep desire to make a difference in our community.

Please know that I am deeply committed to the success of Castilleja's project. It has been a long journey to update the campus. My hope is that the project will be approved.

Best,

Susana Young

Susana Young
650-430-5397

From: [Aileen Lee](#)
To: [Planning Commission](#)
Subject: Letter in support of Castilleja's CUP and Master Plan
Date: Saturday, October 17, 2020 2:45:17 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Hello Palo Alto Planning Commission -

Writing to share my support of Castilla's CUP application and Master Plan.

I'm a Palo Alto Resident and Casti parent. We live near Castilleja and Paly, on the south side of Palo Alto High school on Churchill Avenue.

When we purchased our home in 2003, the reputation of Palo Alto schools and especially of Castilleja were a big draw to move to Palo Alto. We were thrilled when our twin daughters told us while attending Ohlone Elementary that they hoped to someday attend Castilleja. They started in 6th, and are now 9th graders.

As a Casti parent and now board member, I have been so impressed by the thoughtfulness and patience of Castilleja around their proposed project. From parent communication around respecting neighbors, consistent outreach to neighbors over the years, many iterations on the design and plans, and partnership efforts with the City of Palo Alto and beyond, Castilleja has accomplished the seemingly herculean task of incorporating the many interests of residents and our city into account. Their plan is extremely considerate of potential traffic, neighbor and environmental concerns and meets all the requirements set for them.

As a family that lives across the street from Palo Alto High School, we are disappointed by the vocal complaints of what seem to be an extremely small minority of Casti's neighbors. We know what school, sporting event and event traffic can be like, how it can grow over the years and how it can sometimes impede day to day living. Living near Casti versus living near Paly is a tale of two cities - in mornings or afternoons, disruption around Casti is barely perceptible versus around Paly.

That said, we knew we'd be living across from a great school when we purchased our home. We're proud Paly is such a world respected educational institution that serves so many and is a hub of activity. And Casti has been in Palo Alto for over 100 years, longer than any of us. Given the many hoops Casti has jumped through to appease concerns, we wonder if the vocal minority is more focused on their own convenience. They may have a misguided belief it's in their interest for Casti to slowly depreciate in attractiveness and value - in the end, this won't serve them, students, or our city well.

I strongly encourage the Council to support Casti's plans. They have done everything that has been asked of them to meet the City's requirements. The campus upgrades and enrollment expansion are needed to keep Castilleja as the world class institution it is and can continue to be, serving such an important mission in today's society - to educate compassionate women leaders.

Thank you for your attention.

Sincerely,

Aileen Lee

50 Churchill Avenue, Palo Alto CA 94306

Aileen Lee
Cowboy Ventures
cell: (650) 400-0232
tw: @aileenlee

pronounced "A-lean" not "I-lean" :)
pronouns: she/her

From: [Bill Schmarzo](#)
To: [Architectural Review Board](#); [Planning Commission](#); [Council, City](#); letters@paweekly.com; letters@padailypost.com
Cc: [Bill Schmarzo](#)
Subject: Re: The Negative Impacts of the Castilleja expansion to the Palo Alto Quality of Life
Date: Saturday, October 17, 2020 8:40:17 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Sorry, forgot my signature...

Bill Schmarzo
1550 Emerson St, Palo Alto, CA

On Saturday, October 17, 2020, 08:38:48 AM PDT, Bill Schmarzo <schmarzo@yahoo.com> wrote:

Dear City Council of Palo Alto,

Regarding the Castilleja expansion, let's be clear, this debate is not a referendum on women's education. Everyone in Palo Alto supports women's education.

And this is not a debate on the quality of education that Castilleja provides. Castilleja is a fine school, as we are bless with a number of fine schools in the area such as Paly, Gunn, Sacred Heart Prep, Menlo School and Pinewood.

The issue - and only issue on the table - is the question of Castilleja's efforts to bully its neighbors and all of Palo Alto in a money grab to expand it's already over-committed location to allow for more \$45,000 per year sources of revenue (a.k.a. students).

The issue is this: As reported in the DEIR report, "Traffic caused by the expansion of Palo Alto's Castilleja School was identified as a "significant and unavoidable" impact to the neighborhood, according to a draft Environmental Impact Report the city released yesterday" as reported in the July 17th Daily Post.

That's the only fact that matters; that the Castilleja expansion will have a negative impact on the traffic, quality of life, and safety to all of Palo Alto, with NOTHING of value being returned by the Castilleja expansion.

The sad point is that Castilleja has the wealth and resources to explore other expansion options. For example, look at what Harker and Pinewood did to expand by creating a second campus. And I'm sure that nearby cities would cherish the opportunity to have a bustling Castilleja campus in their community.

One last and interesting question: how many signs in support of Castilleja's expansion have you seen around Palo Alto. Sure, we see lots of signs supporting Castilleja the school or supporting women's education, but not a single sign supporting the unwelcome Castilleja expansion.

Hummmm.....

From: [Erica Brand](#)
To: [Planning Commission](#)
Subject: I support Castilleja's plans to update the campus and support the neighborhood
Date: Friday, October 16, 2020 10:52:52 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Planning and Transportation Commission Members,

My daughters just graduated from Paly, and I have many friends and colleagues with students at Castilleja. I enthusiastically support Castilleja's proposed project to modernize their campus and expand enrollment for the High School. Like our public schools that are benefitting from local bond measures to modernize, our private schools deserve the same opportunities to modernize their campuses as well.

The Castilleja community and designers have been very thoughtful on how to serve their student population with respect to the residences and other buildings on Embarcadero Way. I hope you will support Castilleja's proposals including the underground garage in your deliberations.

Sincerely,
Erica Brand

From: [Bertha Gouw](#)
To: [Planning Commission](#)
Subject: Planning and Transportation Commission
Date: Friday, October 16, 2020 5:49:35 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Commissioners,

We are Castilleja grandparents and Palo Alto Residents. We are truly grateful to live in a City whose elected officials have built a standard for environmental stewardship that serves as an example for not only our residents, but other communities. And we are proud that Castilleja's master plan lives up to - and in fact, exceeds - these high standards, which is one of the many reasons we support the school's campus modernization plan.

Having access to alternative modes of access, such as cycling, is an important aspect of both sustainability efforts and traffic demand management. This requires access to safe and accessible biking lanes, a quality that is maintained by Castilleja's master plan. In addition to providing increased bike parking, a distributed drop off plan also prevents any vehicle queuing, which ensures that Palo Altans can continue cycling in and around the neighborhood, safely.

We hope to see the City of Palo Alto support projects that expand accessibility to biking and promote the safety of cyclists, as the Castilleja plan does, and we urge you to provide the last round of approvals for this project.

Sincerely,
Bertha and Steve Gouw

From: [David Ko](#)
To: [Planning Commission](#)
Subject: Thank You For Listening!
Date: Thursday, October 15, 2020 8:36:59 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

To Whom It May Concern,

As a resident of Palo Alto for the past 12 years, I wanted to voice my support for Castilleja's CUP (increased enrollment) and Master Plan (modernized classroom buildings). It's an amazing school and staple of our community. I hope we can do everything in our power to support this amazing institution.

If you would like to speak further, please email me.

Best,

David

From: [J Stinson](#)
To: [Planning Commission](#)
Subject: Castilleja Conditional Use Permit and Master Plan
Date: Thursday, October 15, 2020 8:28:26 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Planning Commission,

I'm writing as a resident of Palo Alto to lend my strong support to the Castilleja School's proposed Conditional Use Permit and Master Plan.

There are many "City Planning" reasons Castilleja's plans should be approved:

- It meets the City code requirements
- There were no significant impacts in the Environmental Impact Report
- It adheres to the City's Comprehensive Plan

But more importantly, their plans should be approved because Castilleja is rare jewel among the many riches Palo Alto has to offer. For over 100 years, it has educated and grown female leaders -- on *any* national ranking of high schools, Castilleja is always in the top five girls' schools in the United States, typically either #1 or #2. This is absolutely remarkable and should be fostered and encouraged, not torn down or blocked from their mission.

For over four years, the school has tried diligently to work with neighbors to address any issues raised. Plans have been accommodated and adjusted, meetings have been held. But it seems that the goalposts just keep moving. In other words, it seems quite clear that those opposed simply want this amazing resource to be kept in their place with no ability to improve or grow their mission -- or to simply go away quietly.

It's not fair and it's not right. Castilleja has met all the requirements put forth by the City. Their plan is well balanced and measured. They've demonstrated patience, thoughtfulness and grace despite an opposition that has not responded in kind.

I strongly encourage the Planning Commission to support Castilleja's Conditional Use Permit and Master Plan.

Thank you,
Jason Stinson
50 Churchill Ave

From: [Theresa Gouw](#)
To: [Planning Commission](#)
Subject: Support for Castilleja School
Date: Thursday, October 15, 2020 6:51:38 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Members of the Palo Alto Planning Commission,

Today, I am writing in support of Castilleja's project as a strong Palo Alto residentialist, because I truly believe that both views can exist in harmony. I am a Casti parent and live across the street from the school.

I moved to Palo Alto 18 years ago because it is truly a community, composed of neighborhood streets lined with beautiful housing and children playing on the sidewalk. This is one of the many reasons I look forward to staying in this beautiful City for the foreseeable future. And I believe that I can be supportive of maintaining these residential qualities while also supporting Castilleja's modernization plans - and that is because their project does nothing to threaten the residential nature of our City. With a design that integrates seamlessly with the community, more trees and green space, reductions in noise, commitments not to increase traffic and to support bike safety, this provides a true benefit to our neighborhood - which is why I support this project.

I appreciate your taking the time to consider this point of view, and I truly hope we can count on your support.

Thank you,
Theresa

--

Theresa Gouw
theresiar@gmail.com

From: [Julie Wissink](#)
To: [Planning Commission](#)
Cc: [Julie Anne Wissink](#)
Subject: I SUPPORT Castilleja's plans
Date: Thursday, October 15, 2020 4:01:58 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Planning and Transportation Commission Members,

I have a son in Escondido Elementary and a son at Woodside Priory. Our daughter went to Girls Middle School as well as PAUSD schools. I am a fan of having fantastic education options and fully SUPPORT Castilleja's plans to modernize and upgrade including an underground parking garage.

Sincerely
Julie Wissink
800 Lathrop Dr
Stanford CA 94305

From: [Laura Stark](#)
To: [Planning Commission](#)
Subject: I support Castilleja's plans to modernize their campus and expand enrollment
Date: Thursday, October 15, 2020 12:28:21 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Planning and Transportation Commission Members,

I have a son at Palo Alto High School and a daughter at Castilleja. One of my favorite things about Palo Alto is the educational opportunity it offers to so many in our community. The strength of our public schools, private schools and access to Stanford University is what makes our community special, and keeps our property values strong. I enthusiastically support Castilleja's proposed project to modernize their campus and expand enrollment for the High School. Like our public schools that are benefitting from local bond measures to modernize, our private schools deserve the same opportunities to modernize their campuses as well.

Since the inception of Castilleja's project, the school has incorporated an underground parking facility in its plans in order to remove parking from surface streets and place it below ground. The garage will improve the aesthetics of the neighborhood according to the Final Environmental Impact Report, and the CUP will not allow for any additional car trips to the neighborhood. Stated again, the garage can not and will not bring additional cars to the neighborhood. The underground parking facility has gone through several iterations, and the preferred version in the FEIR is now 28% smaller and has 30 fewer parking spaces than earlier versions. And the FEIR found that a no-garage alternative is not environmentally feasible. Finally, the garage is 100% compliant with Palo Alto's Comprehensive Plan, which prefers underground to street parking. It is of note that the garage was initially included in the design because neighbors asked for it.

For all of these reasons, I hope you will support Castilleja's proposals including the underground garage in your deliberations.

Sincerely,
Laura Stark

--
Laura Stark 645 Hale St. Palo Alto, CA 94301

From: [Heather Kenealy](#)
To: [Planning Commission](#)
Subject: Castilleja School should increase enrollment for more opportunity
Date: Wednesday, October 14, 2020 2:28:12 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear PTC,

I am writing today as a Palo Alto resident and supporter of Castilleja School. I am a Palo Alto resident and parent of a Castilleja alumna.

Castilleja School should be allowed to increase their enrollment. Castilleja is an asset to this community and should be supported as such. The school has had an invaluable influence on our daughter's life, and it is the right thing to do to allow more girls to experience this opportunity and access its benefits.

Our daughter started at Castilleja School in the fall of 2008 as a 6th grader. At the time, we lived in Menlo Park. When our daughter began high school in the fall of 2011, we moved from Menlo Park to Palo Alto so that our daughter could bike or walk to school. We wanted to be close to the school and have our house be the local hub for our daughter and her friends after school. The exceptionally talented faculty and students greatly influenced our daughter during her time at Castilleja. In addition to the stellar academics, our daughter learned how to self-advocate, speak publicly, engage with a dynamic group of people, use and analyze data and research, and become an innovative thinker and a lifelong learner.

After our daughter graduated from Castilleja School, she attended Stanford University and received both her undergraduate and master's degrees in Computer Science in the Artificial Intelligence track. She now works at Google Brain in Mountain View and hopes to remain a resident of Palo Alto after Covid-19. Without the math, science, ethics, and critical thinking offered to our daughter during her time at Castilleja, she would not have been able to accomplish what she has to this point.

Please approve the proposal for Castilleja's increased enrollment and allow more girls access to the opportunities Castilleja offers. Thank you for your time and attention.

Sincerely,

Heather Kenealy
1032 Channing Avenue
Palo Alto, CA 94301

From: [Heather Kenealy](#)
To: [Planning Commission](#)
Subject: Why Trust Castilleja School...
Date: Wednesday, October 14, 2020 2:27:28 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear PTC,

I am writing today as a Palo Alto resident and supporter of Castilleja School and Nanci Kauffman. I am a Palo Alto resident and parent of a Castilleja alumna.

Nanci has worked hard to be straight forward with the neighborhood, the community, and the City. She came forward to the City about over-enrollment when she first became head -- a reason to trust her, not to deny trust. And since that day 8 years ago, the school has worked incessantly to re-earn the trust of the community. The school complies with city-mandated enrollment decreases, has modified plans to meet neighbor needs, and has reduced traffic to the neighborhood by up to 30%. The school should be given the opportunity to increase enrollment, and the new CUP should have strict accountability measures to enforce compliance.

Our daughter started at Castilleja School in the fall of 2008 as a 6th grader. At the time, we lived in Menlo Park. When our daughter began high school in the fall of 2011, we moved from Menlo Park to Palo Alto so that our daughter could bike or walk to school. We wanted to be close to the school and have our house be the local hub for our daughter and her friends after school. Castilleja School is an asset to this community and should be supported as such.

After our daughter graduated from Castilleja School, she attended Stanford University and received both her undergraduate and master's degrees in Computer Science in the Artificial Intelligence track. She now works at Google Brain in Mountain View and hopes to remain a resident of Palo Alto after Covid-19. Without the math, science, and ethics offered to our daughter during her time at Castilleja, she would not have been able to accomplish what she has to this point.

Please approve the proposal for Castilleja's increased enrollment with a new CUP with strict accountability measures to enforce compliance. Thank you for your time and attention.

Sincerely,

Heather Kenealy
1032 Channing Avenue
Palo Alto, CA 94301

From: [Heather Kenealy](#)
To: [Planning Commission](#)
Subject: Castilleja underground garage
Date: Wednesday, October 14, 2020 2:26:47 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear PTC,

I am writing today as a Palo Alto resident and supporter of Castilleja School.

As a resident and parent of an alumna, I know first hand the incredible diligence, thought, and care that Castilleja puts into all of their decisions. The underground garage proposed by Castilleja is no different. This proposal should be approved as it improves the aesthetics of the neighborhood and is preferred by the Environmental Impact Report. The underground garage removes cars from the neighborhood streets and is consistent with the city's Comprehensive Plan. Castilleja has been extremely conscientious in their effort to remove cars and traffic from the neighborhood. This proposal will not bring any additional cars to the neighborhood, as no new cars will be allowed in the neighborhood if Castilleja hopes to increase enrollment.

Our daughter started at Castilleja School in the fall of 2008 as a 6th grader. At the time, we lived in Menlo Park. When our daughter began high school in the fall of 2011, we moved from Menlo Park to Palo Alto so that our daughter could bike or walk to school. We wanted to be close to the school and have our house be the local hub for our daughter and her friends after school. Castilleja School is an asset to this community and should be supported as such.

After our daughter graduated from Castilleja School, she attended Stanford University and received both her undergraduate and master's degrees in Computer Science in the Artificial Intelligence track. She now works at Google Brain in Mountain View and hopes to remain a resident of Palo Alto after Covid-19. Without the math, science, and ethics offered to our daughter during her time at Castilleja, she would not have been able to accomplish what she has to this point.

Please approve the proposal for Castilleja's underground garage. Thank you for your time and attention.

Sincerely,

Heather Kenealy
1032 Channing Avenue
Palo Alto, CA 94301

From: [Deborah Goldeen](#)
To: [Planning Commission](#)
Subject: Castilleja
Date: Wednesday, October 14, 2020 1:03:11 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

If I'm not mistaken, the main complaint of the residents surrounding Castilleja is traffic. At one point, ten or more years ago, the school traffic was out of hand. They reined it in quite a bit. In fact Castilleja has done way more than any of the other schools that I know of to temper the manner and use of personal automobiles. But some traffic will always be there.

Residents of the northwest portion of old Palo Alto are upset about car traffic. Problem is, you can't talk about traffic unless you address the bigger issue of why people are driving in the first place. Palo Alto made the decision not to develop into a metropolitan center with dense/apartment housing, which would have enabled efficient public transit. Instead we are a community of insanely expensive, tiny properties with horrendous traffic. I don't think it's reasonable for to make Castilleja responsible for all of that.

From my ringside seat, it seems there is a lot of nit picking going on; If you can't win, wear your opponent down with trivialities. I think it is the responsibility of government boards and councils to put a stop to that kind of petty behavior when it goes too far. The Castilleja plan is a good one. No amount of further meetings or discussions is going to make this situation any better for the neighbors. All that needs to be done has been done. Please let this project move forward post haste.

Deborah Goldeen, 2130 Birch St., 94306, 321-7375

From: [Adu Expert](#)
To: [Planning Commission](#)
Subject: Invitation to ADU Summit 2020 event
Date: Wednesday, October 14, 2020 12:17:21 PM
Attachments: [Invitational Letter to ADU Summit 2020.docx](#)

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Planning Commission of Palo Alto,

My name is Danny Tao and I'm currently organizing an online Zoom/YouTube live stream event on November 14th, 2020 or January 15th, 2021 depending on the speaker's schedule. We're looking to promote ADU growth in California and would like to invite important guest speakers to the show that support ADUs. We would be really excited if you can have a representative to join us and have a panel discussion on how to boost ADU growth in Palo Alto.

I'm attaching the invitational letter for you to review. If you have any questions or concerns please let me know!

Kind regards,
Danny Tao
ADU Summit 2020 Event Facilitator
408-357-0555

--

ADU Expert
Your One-Stop Turn-Key ADU Solution Provider





ADU Summit 2020

With ADU Bills officially launched in California since 2017, ADU permits issued increased dramatically, from which we see the booming of ADU in the community. On behalf of the ADU Advocacy (CACP and ADU Expert) in California, we will be honored to invite you to join as our special guest to speak at the ADU Summit 2020!

This ADU Summit 2020 is a full-day event scheduled on **November 14 (Saturday), 2020**, from 10:30AM to 5:00PM via Zoom/YouTube live stream. The audience (estimated 300+) will consist of Homeowners, Real Estate Investors and Design-Build Professionals who pay close attention to current ADU regulations and potential investment.

The goal of this event is to further promote and build awareness of benefits from the state, municipal ADU regulations, permitting process and other related topics such as property appreciation, property taxes, and key practical plan-design-build process, etc. Your discussion on County Assessor will be of great value to our audience. We believe your voice would be an indispensable addition to the ADU Summit 2020!

Please let us know by **October 23 (Friday)** whether or not you would be available to speak at this event. We would greatly appreciate it if you can join us and we look forward to hearing from you.

Below are some topics to be covered and projected schedules for your reference. (Speakers are still under final confirmation).

Best Regards,

Danny Tao

ADU Summit Speaker Facilitator

Schedule	Topics	Intended Speaker
10:30am-11:00am	ADU policies, updates and future in California	Senate Bob Wieckowski
		HUD/ dwelling.org representatives
11:00am-12:10pm	Panel Discussion: How to boost your city's ADU growth?	Representatives from Municipal Government/Mayor, Planning Committee/Board, Planning Dept.
12:10-12:30pm	The ADU growth path and updates from Portland, OR	Kol Peterson
1:30pm-2:10pm	Panel Discussion: The ADU specific requirements on planning and building process?	Representatives from City Planning & Building Department
2:10-2:50pm	Panel Discussion: The differences on attached/detached/garage conversion ADU?	Designer/Builder
2:50-3:10pm	Different building solutions: Pre-Fab VS On-site construction build?	
3:10-3:30pm	How will the property value with an ADU be appraised?	Appraiser
3:30-3:50pm	How will an ADU change the property tax?	County Assessor
3:50-4:10pm	How to find properties with the best ADU potentials and its ROI Analysis	Real Estate Broker
4:10-4:30pm	How to make your Assets protected?	Attorneys
4:30-4:50pm	How the Turn-Key service will benefit your ADU project?	ADU Expert
4:50-5:00pm	Announcement of programs of ADU Academy, ADU Specialist Accreditation Program, CACP, etc.	
5:00pm	Closing comments	

About the Organizers

The Chinese American Construction Professionals (CACP) is a non-profit organization with the mission of educating its members to adapt in a competitive local and global market. Serving the community and the building construction, CACP helps to facilitate young professionals to learn the growing industry with business networking opportunities. CACP has established its chapters in both Southern and Northern California, members composed of many exceptional licensed architects, engineers, contractors, real estate professionals, etc. CACP also partners with other organizations and ethnic groups to enhance understanding and sensitivity to culture, gender, economic, education, racism and generation diversity to make the local communities a better place to live in.

www.cacpla.org

ADU Expert is one of the earliest initiators of ADU in Chinese community in California. The Founder of ADU Expert Catherine 文君 is the producer and host of a popular real estate and home show program in the Chinese media group. On her program on Nov. 16, 2016, she first reported the news of the passage of SB 1069, when she realized the ADU regulations and its future influence in the community. Since then, she kept programming the progress of ADU on her broadcast channels and hosted educational seminars on the updates of ADU state laws and municipal adoptions in the community.

ADU Expert is a licensed general contractor providing one-stop turn-key services related to ADU projects, including plan-design-build, project management, builder finance, pre-bid consultation, pre-evaluation on ROI, etc.

www.ADU-Expert.com

From: [Gina Bianchini](#)
To: [Planning Commission](#)
Subject: In Support of Castilleja's Plans
Date: Wednesday, October 14, 2020 11:12:57 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Planning Commission,

Thank you in advance for taking the time to read my note in support of Castilleja's plans to modernize their campus. This project is the result of eight years of community input, review, revisions, and study - some of the many reasons I believe it deserves your support. I don't have kids but think that having a world class women's school in Palo Alto is a huge asset we should embrace as citizens. I think the whole brouhaha around this project has been ridiculous.

Especially when Addison Elementary was able to build a monstrosity with impunity because it is public and Castilleja has had to go through so much to get to this point is, well, dumb.

By providing direct access to the onsite renewable energy consumption, high-efficiency water use, and general green building infrastructure, the building design and its sustainable features will be incorporated into future curriculum used for educational purposes. This ensures that we can bring up a generation that prioritizes these and other sustainable features in future development - a critical facet of any modern curriculum.

I hope the fact that this project not only exceeds, but sets, sustainability goals helps it earn your support.

Sincerely,
Gina Bianchini

630 Lincoln Avenue
Palo Alto, CA 94301
(650) 346-9947

From: [Anne-Marie Macrae](#)
To: [Planning Commission](#)
Subject: Castilleja
Date: Tuesday, October 13, 2020 8:50:07 PM

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To whom it may concern.

I know there is discussion planned about Castilleja and its plans.

I live in Palo Alto and have a daughter who attended middle school at Castilleja. In my experience the school was extremely focused on being an excellent neighbor and was very mindful of its obligations to those near it.

Sincerely,

Anne-Marie Macrae

From: [Sarah Sands](#)
To: [Planning Commission](#)
Subject: Please vote yet for Castilleja
Date: Tuesday, October 13, 2020 6:58:22 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Planning commission,

I am a Palo Alto voter and very much support Castilleja modernizing their campus and increasing enrollment so the education delivered is even better than the current amazing education. The buildings are old and the girls could benefit from a bit larger group for more class choices and diverse viewpoints.

Palo Alto is known for its educational opportunities, this one grows women leaders which are so necessary at this time.

Grateful for your time and energy on this super important issue

Please vote yes.

sarah sands

--

Sarah
650-303-5560

From: elenac1128@yahoo.com
To: [Planning Commission](#); [Council, City](#)
Subject: Castilleja redevelopment/expansion
Date: Tuesday, October 13, 2020 3:57:35 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear sirs/madams,

My family live two blocks from Castilleja(Casti) on 1570 Bryant St. One of the silver linings of this pandemic: We enjoy the quietness and reduced traffic around my neighborhood on Bryant St, Churchill and Embarcadero Street. Please kindly remember most of us and neighbors choose to live in a nice and quiet residential area. We do not agree the redevelopment/expansion of Casti. In addition, given the interaction of Churchill and Alma most likely would be closed permanently, we think the redevelopment/expansion of Casti would have a MAJOR impact in our neighborhood. Embarcadero St had already overloaded with the traffic from Stanford University, Stanford hospital, PAMF, Paly and Casti during rush hours on normal times. I couldn't imagine Casti adding the constructions and more traffic due to the increase enrollments which made the traffic unbearable to the neighbors. More than 75% of Casti students do not live in Palo Alto, they commute by cars. Also, just if there's any catastrophes happened(anything could happen after this year experience), everyone gridlocked and got stuck on these streets and hopelessly going nowhere. Our family definitely do not want to see a big construction and big development happened in our neighborhood and impact so many neighbors' lives. Please kindly consider this is a residential neighborhood. Thank you

Sincerely,
Elena Chiu
1570 Bryant St, Palo Alto

From: [Amy Rao](#)
To: [Planning Commission](#)
Subject: Letter in support of Castilleja
Date: Tuesday, October 13, 2020 1:06:59 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Commissioners,

I wanted to send you a note in support of Castilleja because I believe passionately that the work the school is doing to both modernize their campus and increase enrollment are both equally important. I have been a neighbor of Castilleja for many years (living on both Lowell avenue and now Seale avenue since 2000) and more importantly, I've attended numerous events the school has hosted and I've known many students whose lives have been impacted positively by the education and experiences they had at Castilleja. I'm also a proud board member of Castilleja. I feel strongly that the students both current and future deserve facilities that are modern and more functional for the types of learning that we know benefit girls and I'm equally passionate that we should increase the enrollment to utilize the proposed buildings to the best ability.

As a climate advocate, I specifically want to commend Castilleja for designing an entirely fossil fuel-free building and setting a new standard for environmentally-sound design and construction in Palo Alto. The plan surpasses current sustainability standards, and represents what I believe should be the new benchmark for development in our City. In addition to the onsite renewable energy, high-efficiency water use, and green construction materials that make this project environmentally friendly, the project architect has taken care to ensure that the campus upgrades positively impact the surrounding environment aesthetically. The massing of the buildings has been broken up along different streets, and the landscape has been designed to match and enhance the existing character of the community.

I have participated in numerous neighborhood gatherings and the support for the school grows with each conversation. It's the right thing to do and it's time.

I hope you will consider the community-driven process that resulted in a sustainable and environmentally-superior project, and join me in supporting Castilleja's conditional use permit and master plan.

Sincerely,

Amy Rao
228 Seale Ave.
Palo Alto, CA 94301

From: [Natalie Dean](#)
To: [Planning Commission](#)
Subject: Castilleja
Date: Tuesday, October 13, 2020 12:48:04 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear PTC,

Today I am writing to express my support for Castilleja's modernization plan that is nearing its final hearings. I have lived in Palo Alto my entire life and I went to Castilleja for high school. I can honestly say Castilleja was one of the best experiences of my life and it helped shape me into the confident woman I am today. After eight years of discussion, modifications, and evolution, the school's demonstrated commitment to the community is one of the reasons I support this project.

After countless meetings with neighbors and feedback from the City, Castilleja made numerous revisions to its plans to modernize its campus - and I am so happy to see a final plan come before you. With features including the preservation of additional trees, the placement of deliveries and garbage pick-up off-street and below grade, and a redesigned pool that sits below grade and behind a sound wall, the resulting project is one that truly minimizes its impact to the surrounding community. The Project Alternative #4 also preserves two homes on Emerson Street, preserves Redwood trees, and reduces the size of the garage in response to neighbor concerns. Castilleja has been held to a standard and review process that has ensured the best outcome for all involved. Now, it's time for our City to move forward with this project because it ensures no additional traffic will come to their neighborhood while providing educational opportunity for more Palo Alto high school students.

I hope you find this diligence and camaraderie as impressive as I do, and that they have earned your support. Thank you for providing the opportunity to offer my voice to this process.

Sincerely,
Natalie Dean, Matadero Avenue

From: [Hank Sousa](#)
To: [Architectural Review Board](#); [Planning Commission](#); [Council, City](#)
Subject: planned Castilleja expansion
Date: Tuesday, October 13, 2020 8:26:47 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Board, Commission and Council members:

My wife and I live less than 200 feet from Castilleja School and have been involved in the neighborhood group PNQL for more than four years. You often hear from a few of us, but that's because our neighbors count on us to do the work. We are not alone in our quest to ask the school to lower the profile of their extreme expansion plans, and sent you a Neighbors' Summary Statement signed by 60 close-in neighbors in September.

When your immediate area is involved with something as large in scope as the Casti plans it is understandable you'd want to be involved. I have heard at least a couple of the current city council members say they got involved in local politics because of an attention-getting issue in their neighborhoods. Although none of us PNQLers are interested in running for local office we want to continue to reinforce our message with you. During this campaign season we have heard a fair amount about "listening to the neighbors' concerns" and "empowering residents". Neighbors are not against Castilleja or its rebuilding.

Here are several bullet points you can keep at hand as the planned school expansion nears a voting phase:

1. a modest enrollment increase of 8% , which is what the school was granted in its current CUP, would likely be acceptable to the neighbors.
2. continue to utilize the 86 at-grade parking spaces on campus and require mandatory shuttling-in of most students after the school is re-built.
3. limit events to 10 - 20 per year. The 90 plus proposed events results in a couple per week and the constant coming and going of cars is too much for our mostly quiet neighborhood.
4. break up and redesign the block long planned building for Kellogg St. It is too massive and the style does not reflect the eclectic mix of home styles on that street.

Give us a fair hearing both at the commission and board levels and in the city council halls. We wish we had an ombudsman to champion our cause, but will continue to work hard for a resolution that is fair to both sides.

Many thanks,
Hank Sousa & Andie Reed
Melville Ave

From: [Rebecca Dehovitz](#)
To: [Planning Commission](#); [Architectural Review Board](#); [Council, City](#)
Subject: Support for Castilleja
Date: Monday, October 12, 2020 9:38:12 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

To those it may concern,

My name is Rebecca DeHovitz and I am a lifelong resident of Palo Alto. I am writing in support of Castilleja's Conditional Use Permit application. As a community member and an educator I have seen the positive impact that Castilleja has had in our community. I also see the diligence and careful consideration Castilleja has displayed in their application process and have full confidence that their proposal will have a positive on the school as well as meet the needs of the city. I am especially impressed their their plan will not increase car trips and is 100% compliant with Palo Alto's comprehensive plan. I urge you to approve their application and support Castilleja school.

Thank you for your consideration and your time,
Rebecca

From: [Todd Kaye](#)
To: [Planning Commission](#)
Subject: Castilleja
Date: Monday, October 12, 2020 9:13:01 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

To the Planning Commission,

My name is Julie Kaye, and I strongly support Castilleja's plans to build a modern campus that better serves their students and the surrounding community.

Balancing the varied interests that exist in our community is never easy, but Castilleja appears to have done so incredibly well. In regards to sustainability and tree preservation, the school has created a plan that truly serves as a new standard for future development in Palo Alto. The minimized construction footprint and plan to protect over 130 existing trees will ensure that the current neighborhood character is preserved. And it is incredibly heartening to see Castilleja take into account the community's comments by tweaking their plan to preserve - and add - trees that are so meaningful to the community.

I am encouraged by Castilleja's efforts to work with the neighborhood, and am incredibly excited to see the project nearing the finish line. I hope we can count on your approval at the upcoming hearing. Please note, I have no connection at all to the school. But I have admired the incredible lengths they have gone to accommodate neighbor requests, far beyond what should be expected. From their plans for protecting trees, reducing traffic, reducing noise, and mitigating impacts, Castilleja has set a high bar. It's time for the city to approve the school's proposal to modernize their campus and enroll more high school students.

Thank you for your consideration,
Julie Kaye
Jackson Drive

Dear City Council,

Palo Alto is home to some of the greatest educational institutions in the country, including schools like Castilleja, which is one of the many reasons I moved here. And I hope you will support Castilleja's master plan to provide even more girls and young women with access to educational opportunity. I live just a few blocks away from the school and have followed their application process carefully.

While I do believe that more students should be allowed to attend Castilleja, this is not the only reason I encourage you to support the school's plans. In addition, I'd like to point to the extensive and careful planning demonstrated by the recently-approved FEIR demonstrating how the school can achieve this goal while also protecting the neighborhood. Given that the school will expand traffic demand measures while also being subject to multiple yearly audits, the community can be assured that the impact from this great opportunity will be truly minimal.

I hope you will take these factors into account as you evaluate the school's proposal, and I am grateful for all the time you have dedicated so far to help ensure this project becomes a reality.

In Gratitude,
Michele Dulik
Lincoln Avenue

From: [JaWen Hernandez](#)
To: [Planning Commission](#)
Subject: ADU Utility Connection Regulations
Date: Monday, October 12, 2020 9:26:18 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Planning and Transportation Commission Members,

I spoke at the City Council meeting on Oct. 5th regarding the new Palo Alto Municipal Code adaption for ADU regulations. Specifically, regarding Planning Department's interpretation of the CA Gov Code on utility connections. Everytime this issue is brought up, Planning Staff responds with that it is a requirement of the State law that dictates (detached) ADU utility connection to be separate from the main house.

Here is California Government Code 65852.2 (f) that refers to utility connections:

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation **shall not** require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service. (emphasis mine)

This is stating the exact opposite of the Planning Staff's understanding. Moreover, the very next sentence in the Government Code states, "This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit."

Thank you for reviewing this matter, and I really appreciate the continued dialogue.

Best Regards,
JaWen Hernandez

From: [Craig Heimark](#)
To: [Planning Commission](#)
Subject: Castilleja CUP and Master Plan
Date: Monday, October 12, 2020 8:55:38 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Members of the Palo Alto Planning Committee,

I am writing to express my strong support for approval of the Castilleja CUP and Master Plan.

My wife and I have been residents of Palo Alto for over 20 years. In that time we have observed the value that Castilleja brings to the local community. We know many fine young women who have treasured their educational experience at Castellija. And we have first hand witnessed the poise of these young women when we have attended Anna Eshoo's Youth Council presentations.

Education is critical to the future of our community and country. We value the diversity of educational opportunities in the Bay Area from public, to denominational, to single sex schools. We feel that maintaining that diversity is extremely important as it allows parents choice and ownership of their children's educational journey, and parental ownership is a crucial factor in positive educational results.

In order to maintain the quality of educational experience, from time to time, capital investments have to be made to modernize the facilities and optimize the use of space,. In that light we strongly feel the Castilleja plan should be approved as fast as practical.

The proposal including a garage which will relieve pressure on street level parking is an excellent and thoughtful proposal that has been developed in conjunction with a dialogue of the entire community. The conversation between Castilleja and the community has been ongoing for over 7 years. We are very worried that our community is taking a lead from our Federal government and becoming so paralyzed by discord that we have become incapable of making any decisions. Paralysis will inevitably lead to decline, and, despite disturbing evidence to the contrary, we expect you to avoid that scenario.

Please do not delay this decision any longer. Please approve the Castilleja CUP and Master Plan.

Craig Heimark
2174 Waverley Street
Palo Alto

[Craig Heimark](#)
craig@hgroup.com
650 352 3519

From: [Julia Foug](#)
To: [Planning Commission](#)
Subject: Castilleja Master Plan
Date: Sunday, October 11, 2020 4:41:28 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear City Council,

As a 21-year resident of Palo Alto, I'd like to share some of the reasons why I strongly support Castilleja's carefully-thought out master plan. My kids did not go to Castilleja - they went to PAUSD schools - but I am still a strong supporter of Castilleja's proposal to modernize their campus and to increase their high school enrollment.

I believe one of the most frequently misunderstood topics by those in our community is the traffic impact associated with the project. Castilleja incorporated extensive and successful traffic reduction efforts starting in 2013, and has expanded this plan to ensure that these efforts will remain successful even with an enrollment increase. A detailed distributed drop-off plan combined with new shuttle routes, a reduction in deliveries, and the addition of off-site parking ensures that neighbors will experience a minimal impact. All of these points are validated by the recently-approved FEIR.

For all the reasons outlined above, I support Castilleja's project, and I hope you will too. Thank you for taking the time to read my letter, and I truly appreciate all you do for the City of Palo Alto.

Sincerely,

Julia Foug
650.714.1801

From: [Jeff Dean](#)
To: [Planning Commission](#)
Subject: Support for Castilleja
Date: Sunday, October 11, 2020 4:39:01 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Hello Palo Alto Planning Commission members,

My name is Jeff Dean. I have been a Palo Alto resident for the past 17 years, and my wife and I currently live in Barron Park. We have two daughters, Victoria (age 25) and Natalie (age 21), who both attended Castilleja School for high school. Both benefited greatly from the excellent education provided by Castilleja, and having the city support Castilleja in their efforts to rebuild parts of their campus infrastructure and to continue to bring excellent all-girls education to Palo Alto is extremely important to me and to many, many others in Palo Alto.

By allowing Castilleja to modernize their campus and to grow enrollment, more students will be able benefit from the type of education that my daughters received. Castilleja nurtured both my daughters' love of science and mathematics, and gave them both confidence and leadership skills. Both were active in the Castilleja robotics team, Gatorbotics, and pursued STEM majors as undergraduates at MIT and UCSB, and my older daughter Victoria is now a Ph.D. student at Carnegie Mellon University studying machine learning and robotics. As one of two Senior Fellows at Google (the highest technical position in the company) and as the SVP of Research and Health at Google, I can assure you that the world needs more female technologists, and supporting Castilleja can help in this regard!

I've also seen the effort that Castilleja has put into traffic planning, with the traffic at the school dramatically reduced compared with a few years ago (not that it was much of an issue to begin with!).

Please support Castilleja by approving their renovation plans and their new conditional use permit (CUP).

Thank you,
-Jeff

Jeff Dean
Barron Park, Palo Alto

From: [Cynthia Hess](#)
To: [Planning Commission](#)
Subject: Castilleja
Date: Sunday, October 11, 2020 4:13:59 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

To Whom it May Concern ,

As a long-time Palo Alto resident since 2002, I wanted to share a note of support regarding Castilleja and their campus modernization plans, particularly in regards to the underground parking facility. This project has been debated long enough in our community, and with a Final Environmental Impact Report supporting the project, it's time to move forward so the school can modernize its campus and offer opportunity to more young women.

The first thing I'd like to emphasize is that an underground parking facility will not result in increased traffic to campus. Rather, it will remove parking from neighborhood streets and place it below ground, which is the form of parking preferred by the Palo Alto Comprehensive Plan. The extensive and expanded traffic demand management measures, in combination with an emphasis on taking public transportation, help meet these efforts. And regular audits ensure compliance, with resulting reductions of enrollment if these goals are not met.

I hope that Castilleja and the young women it educates can count on your support for this project. Thank you for your time.

Sincerely,
Cindy Clarfield Hess
Partner, Fenwick & West LLP
Home address: 1012 Fulton Street, Palo Alto

From: [Victoria Dean](#)
To: [Planning Commission](#)
Subject: Support for the Castilleja CUP and Master Plan from an alumna in STEM
Date: Saturday, October 10, 2020 6:37:28 AM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Hello PTC members,

My name is Victoria Dean. I have been a Palo Alto resident for 15 years on Matadero Avenue. I am voicing my support for the Castilleja CUP and Master Plan.

I was a member of the Castilleja class of 2013 and was on the robotics team throughout high school. I was the Gatorbotics coach from 2017 to 2018.

Castilleja and Gatorbotics are where I developed my love of STEM. At Castilleja, I got to take Calculus Theory with 13 like-minded girls passionate about proofs. Being on an all-girls robotics team meant that I got to be the programming lead, a position that on most teams is filled by boys. Without these experiences, I would not have been confident in my computer science major at MIT.

As a junior on Gatorbotics, I was introduced to computer vision when we used a camera to auto-aim at basketball hoops. In 2017, I developed computer vision algorithms every day on the machine learning team at Waymo, using cameras to make self-driving cars a reality.

Gatorbotics showed me the challenges of control loops that combine software and hardware. I am a PhD Student in Robotics at Carnegie Mellon conducting research on robot learning.

I spend my free time mentoring young women in STEM because I know how much of a difference it can make.

I am one woman whose career has been shaped by Gatorbotics, and I assure you there are countless other women who have pursued STEM fields in college and beyond because of their experiences at Castilleja.

Please vote yes to increase enrollment and modernize Castilleja's campus, because when you support Castilleja, you're supporting each young woman with a passion for science and technology in a world that desperately needs more of us.

Thank you for your time,
Victoria Dean

From: [Karen Robin](#)
To: [Planning Commission](#)
Date: Friday, October 9, 2020 10:11:40 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Commissioners,

As Castilleja's master plan process nears its final approvals from the Planning and Transportation Commission, I wanted to take a moment to send a note of support for the project.

Castilleja educates and empowers the young women of our community. We, in turn, need to support Castilleja.

Environmental stewardship is important to the Palo Alto community, and accessibility to biking is a critical piece of our sustainability ecosystem. Biking has become a common, and even preferred, mode of transportation for many Palo Alto residents. This project's underground parking facility and distributed drop-off includes ample bike parking to encourage Castilleja students and faculty to continue commuting to the school by bike. And because the project prevents vehicle queueing, bike lanes will not be impacted and the existing biking infrastructure will not be impacted.

I appreciate that Castilleja has collaborated extensively with the community, and that the resulting project emphasizes bike safety. For these reasons, I encourage you to approve Castilleja's master plan.

Sincerely,

Karen Schilling-Gould

From: [Erik Carlson](#)
To: [Planning Commission](#)
Subject: Support for Castilleja Plan
Date: Friday, October 9, 2020 9:53:53 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Planning and Transportation Commission,

I am writing to express my support for the Castilleja CUP application process and building project. Our family has lived in the College Terrace neighborhood since 2010. We chose this neighborhood, in part, due to its proximity to Castilleja, which was our first choice school for our daughter after she graduated from Ohlone Elementary. We saw that the learning environment at Castilleja would be exceptional for our daughters, and were grateful for admission and financial aid to allow them to attend. One memory is that my older daughter joined forces with the student leaders at Paly to lead the students of both schools in March for Our Lives in 2018. I am also grateful that both of my daughters were able to attend the Student Diversity Leadership Conference, and have helped to serve the school as admissions ambassadors for outreach to black, Latinx, and under resourced communities.

Our family has taken seriously the clear and consistent messaging from the Castilleja administration to participate in the TDM program. We appreciate being a part of a community that has an immediate goal to encourage more sustainable transportation modes, and an ongoing goal to be a good neighbor. And we support the long term goal of expanding the enrollment with a new CUP. More students deserve the opportunities that have been afforded my daughters at Castilleja. The school has managed its resources so that every student is known and supported and challenged as scholars and citizens. I have tremendous confidence that if the enrollment were to expand, the students, families, and community would be enriched by the opportunity.

Sincerely,

Erik Carlson
California Ave.
94306

From: [Jeff Chang](#)
To: [Planning Commission](#); [Council, City](#); [Castilleja Expansion](#)
Subject: Please Support Castilleja
Date: Friday, October 9, 2020 8:22:33 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Dear Mayor Filseth and members of City Council,

My name is Jeff Chang 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 we greatly value the education that Castilleja provides to our daughter. Castilleja is a unique institution with a long history in Palo Alto, and has the mission of developing women leaders of tomorrow..

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,

Jeff

From: [Susan Dunn](#)
To: [Planning Commission](#)
Subject: Castilleja
Date: Friday, October 9, 2020 6:46:42 PM

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Dear Planning Commission:

We support Castilleja's CUP and Master Plan.

1. Castilleja is an asset to our neighborhood. It attracts student families, which increases property values. Castilleja's physical plant – current and planned – is tastefully designed and well-maintained.
2. Diverse uses make a city vibrant. We don't want to live in a single-family home monoculture. Businesses, schools, religious institutions, recreational facilities and government offices add variety and interest.
3. Palo Alto needs to do its part. Our residents take advantage of businesses, schools, churches and parks in other municipalities. Palo Alto needs to support its share of these amenities.
4. Castilleja has been working for a decade to obtain permission to modernize its campus. Castilleja has been forthright, cooperative, and professional. Palo Alto should reward those behaviors.

Regards,
Susan and Eric Dunn
509 Coleridge Avenue
Palo Alto, CA 94301

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

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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

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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](#)

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

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
9/19/2020 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 vehicular 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 Lous 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 classrooms 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	

116,300 (see att'd)

Attmt B

Where is Building Sq Ft?

ASSESSOR'S PARCEL NO.	SQ. FT.	ACRES
124-12-034	268,763	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
	100.374 SF (35.0%)	65,273 SF (24.3%)	72,240 SF (27%)

EXISTING FLOOR AREA RATIO	0.43
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PROPOSED FLOOR AREA RATIO	**0.43
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EXISTING GROSS FLOOR AREA	ABOVE GRADE SF	**116,297 SF	GFA
	BELOW GRADE SF	43,913 SF	

PROPOSED GROSS FLOOR AREA (INCLUDES EXISTING CAMPUS BUILDINGS)	TOTAL SQUARE FOOTAGE (INCL. LOWER LEVEL)	160,210 SF	TOTAL
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NO. OF STORIES	2 (1 LEVEL OF BASEMENT)
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TYPE OF CONSTRUCTION	TYPE II-B
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OCCUPANCY GROUPS	E (MAIN OCCUPANCY), A2, A3, B, S
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FIRE PROTECTION SYSTEM	FULL FIRE ALARM AND SPRINKLERS
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ZONE DISTRICT	R-1 (10000)
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SETBACKS	ALLOWED	EXISTING	PROPOSED
FRONT	24'-0"	108'-6"	108'-6"
SIDE	20'-0"	22'-0" - 52'-9"	20'-0" - 48'-1"
SIDE	20'-0"	20'-0" - 22'-0"	20'-0" - 78'-5"
REAR	20'-0"	27'-9" - 31'-8"	20'-0" - 32'-6"

MAXIMUM BUILDING HEIGHT	ALLOWED	EXISTING	PROPOSED
	***33'-0"	34'-5"	***30'-0"

EXISTING VEHICLE PARKING SPACES	EXISTING BELOW GRADE	EXISTING ABOVE GRADE
	0	82

PROPOSED VEHICLE PARKING SPACES	REQUIRED CAV SPACES	PROPOSED CAV BELOW GRADE	PROPOSED CAV ABOVE GRADE

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 LEV
	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	

WRNS G.0001
4/16/2020

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. <i>Following proposed:</i> 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	300	482	250	414
Density: Students/Acre	69	43	48.2	25	30
Bldg s.f./acre	24667	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

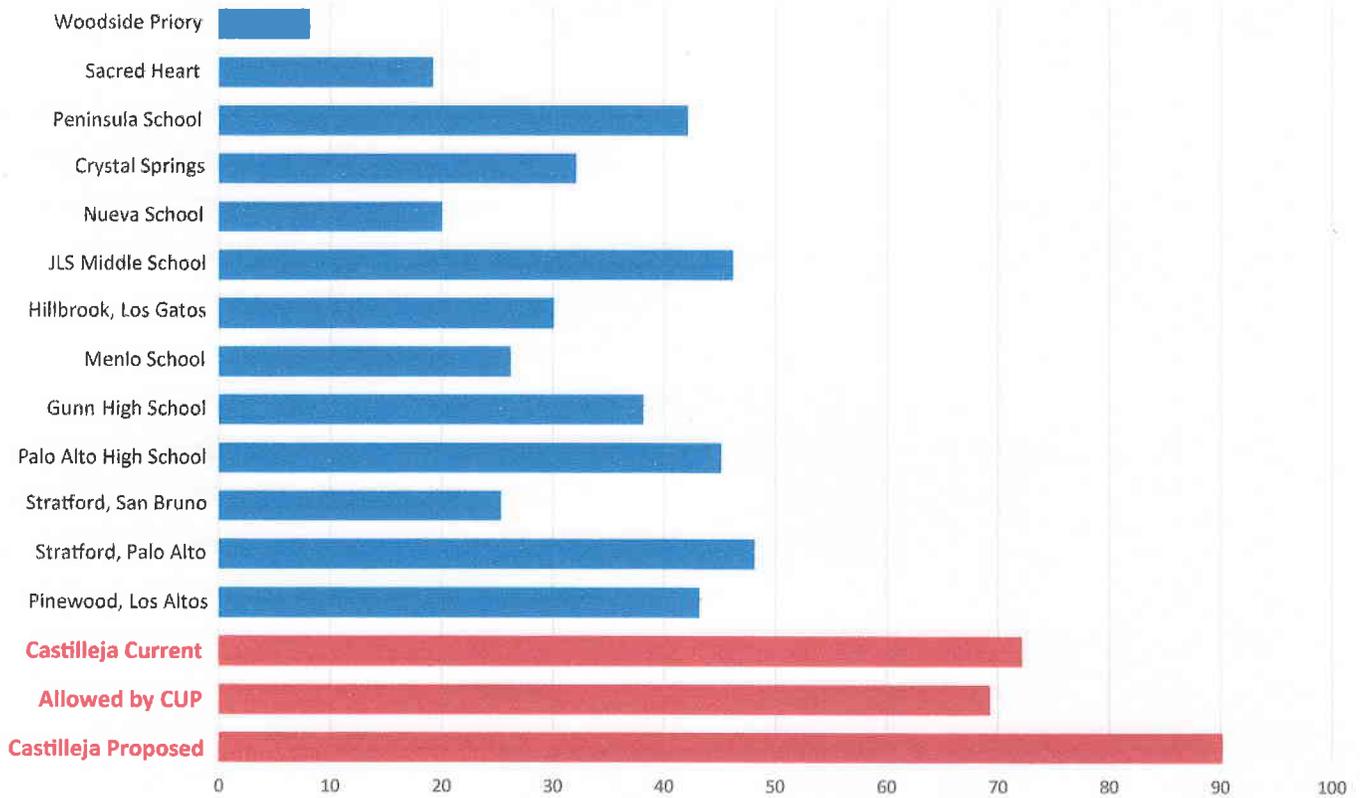
Floor Area Ratio, Gross Floor Area, and Total Floor Area

PNQL document 1

	Currently Existing	Proposed DCRGAlt	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

Comparison of Student Per Acre Density - Local Public and Private Schools



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

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

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 Expressway . 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](#)

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

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

DONNA M. VENERUSO (d.'09)
LEILA H. MONCHARSH

LAW OFFICES
VENERUSO & MONCHARSH
5707 REDWOOD ROAD, SUITE 10
OAKLAND, CALIFORNIA 94619
TELEPHONE (510) 482-0390
FACSIMILE (510) 482-0391
Email: 101550@msn.com

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**

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 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 vehicular 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 wholesale, 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

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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.
Veneruso & Moncharsh

cc: City Attorney
Mr. Lait
Ms. French

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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.

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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:

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- (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 2¹.) 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 disproportionately 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.

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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.App.4th 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 limitation 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.

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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

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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

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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.)

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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

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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,

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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

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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

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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 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.

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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

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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.**

B254636

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.

1 Cases that cite this headnote

[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.

****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

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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

[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.

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 the 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.

WE CONCUR:

[BIGELOW](#), P.J.

[GRIMES](#), J.

***1317 DISPOSITION**

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

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](#)

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 Council's 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?

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/accessible-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:

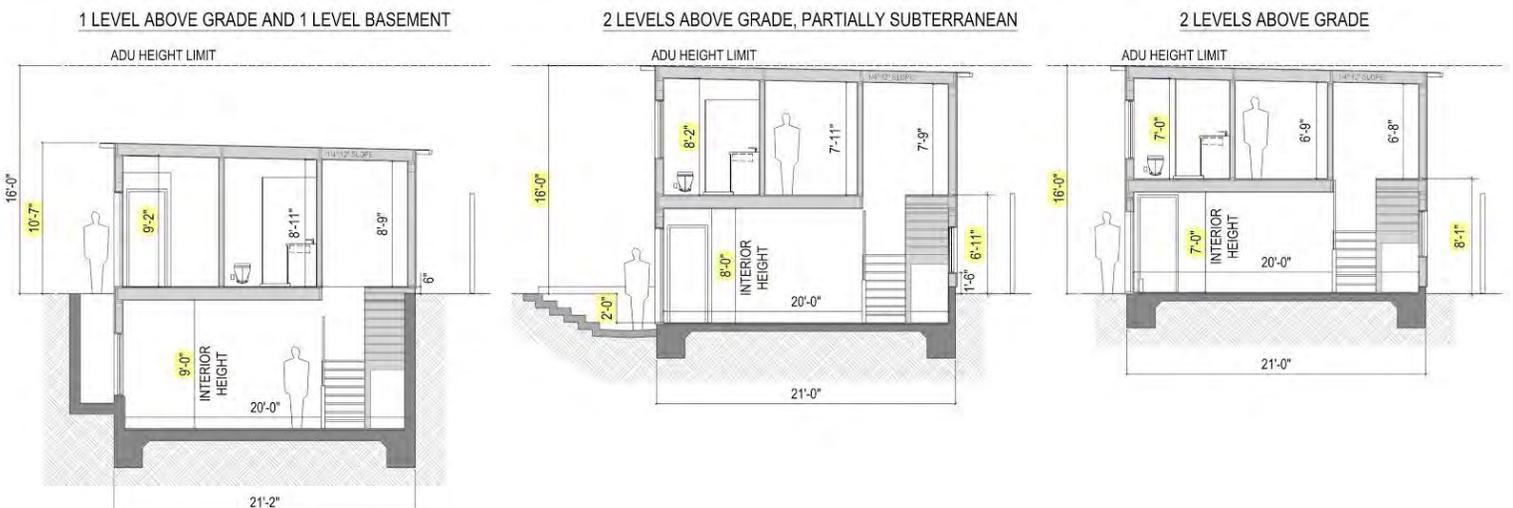
- i. ADUs higher than one story may be up to 22' tall at the peak, measured from average grade, and any portion of the structure that exceeds 16' in height must be set back a minimum of 5' from the side yard property line and 10' from the rear yard property line.
- ii. Exception: An ADU that faces an 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, the weighted ratio pushes the fee to be \$10k more.*
- 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

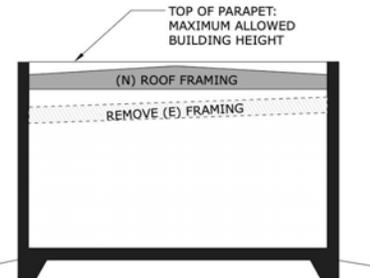
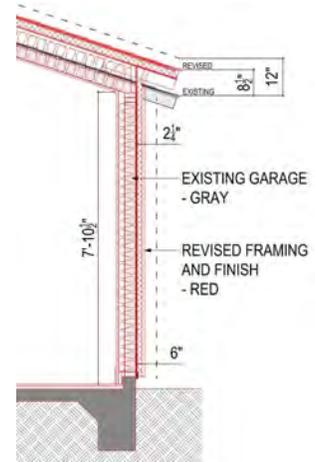
- a. Without some flexibility in this, floor to ceiling heights are substandard (+/- 7'-0"). Codifying this in a thoughtful way can provide tangible improvements in privacy management and enhancement to overall massing.
- b. Partially subterranean 1st floor lowers 2nd floor and allows 8' ceilings with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



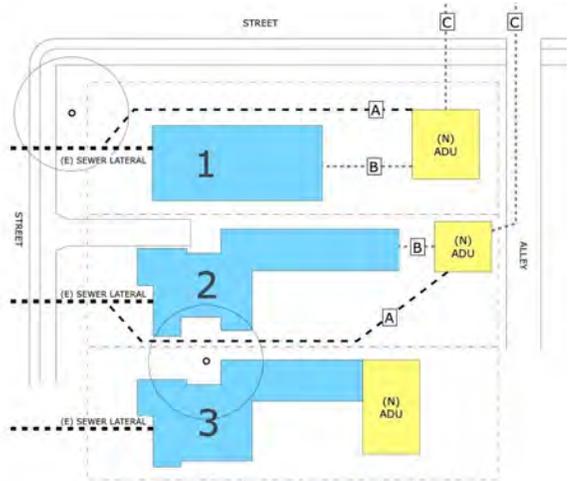
6. Utility Connections

- 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. Parcels 1 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

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-Marshall-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 nullifies 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 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.

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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.

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'	N/A	16'
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
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* 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]: @jkelly@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. Why...

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 ⁽¹⁾	Up to 500 sf ⁽²⁾
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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]: @jkelly@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 incentivize 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.

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

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;

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

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.

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: ¶

- 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).

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?

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

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

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

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](#)

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

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 accommodate 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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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

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

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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

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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
751 Southampton Drive
Palo Alto CA 94303
ph: 650 321-2871
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

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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](#)

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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! ¡Gana con Rebeca!
Rebecca Eisenberg for Palo Alto City Council
www.winwithrebecca.com



Join our Movement for a Fair Palo Alto!

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Twitter: [@RebeccaEisenbe4](#) ** [@rle](#)

Instagram: [@reisenberg2020](#)

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

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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