



# Architectural Review Board

## Staff Report (ID # 9555)

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**Report Type:** Action Items **Meeting Date:** 9/6/2018

**Summary Title:** 429 University: Condition Compliance - West Wall, Landscaping, Materials (2nd Formal)

**Title:** PUBLIC HEARING / QUASI-JUDICIAL. 429 University Avenue [18PLN-00240]: Recommendation on the Applicant's Request for Approval of a Minor Architectural Review Consistent With Condition of Approval #3, for a Previously Approved Mixed-Use Building (14PLN-00222), Requiring Architectural Review Board Approval for the Proposed West Elevation Wall Design, Landscape Details, and Exterior Building Materials, Colors, and Craftsmanship. Environmental Assessment: Use of Mitigated Negative Declaration Prepared for 14PLN-00222. Zoning District: CD-C(G)(P) (Downtown Commercial with Ground Floor and Pedestrian Shopping Overlay). For More Information Contact the Project Planner Adam Petersen at apetersen@m-group.us

**From:** Jonathan Lait

### Recommendation

Staff recommends the Architectural Review Board (ARB) take the following action(s):

1. Recommend approval of the proposed project to the Director of Planning and Community Environment based on findings and subject to conditions of approval.

### Report Summary

The subject project was previously reviewed by the ARB at the August 16, 2018 public hearing. The Municipal Code encourages the Director of Planning and Community Environment to make a decision on projects after two public hearings for Minor AR projects.

Earlier staff reports include background information, project analysis and evaluation of City codes and policies; these reports are available online; a copy of the August 16<sup>th</sup> report without

City of Palo Alto  
 Planning & Community Environment  
 250 Hamilton Avenue  
 Palo Alto, CA 94301  
 (650) 329-2442

prior attachments is available in Attachment H. Links to the full staff report and video of the meeting are provided below:

Document	Link
Staff Report	<a href="https://www.cityofpaloalto.org/civicax/filebank/documents/66300">https://www.cityofpaloalto.org/civicax/filebank/documents/66300</a>
Video	<a href="http://midpenmedia.org/architectural-review-board-74-2-3-2-2-2-2-2-2-2-2/">http://midpenmedia.org/architectural-review-board-74-2-3-2-2-2-2-2-2-2-2-2-2/</a>

The purpose of this report is to restate the comments made by the Board and detail the applicant's response to those comments. The analysis section below builds upon the information contained in earlier reports and modified to reflect recent project changes.

The ARB is encouraged to make a final recommendation to approve, conditionally approve or deny the project.

### Discussion<sup>1</sup>

The ARB last considered this project on August 16, 2018. The Board expressed the following comments:

ARB Comments	Project Response
<b>West Wall Plans:</b> The ARB requested clarification about how the west wall design relates to the entire building. The motion referenced that the design include more detail and layering, and better relay the architect design intent of resembling a tree like structure.	The proposed reveals have been revised to take the shape of an up-lifting tree-like pattern
<b>Craftsmanship:</b> The ARB noted in their motion that the applicant should include construction details that demonstrate the craftsmanship of the building.	The applicant has provided photos and construction level details of the building showing the elevations, with building sections, and details for the roof, windows and doors.
<b>Landscaping:</b> The ARB expressed concerns about how the landscaping would look over time and that the garden wall planter along the rear alley Lane 30 may be overbearing.	The applicant is proposing indigenous plant material in conformance with the ARB Findings. A detail of the proposed vine trellis is shown on Sheet L4.

Staff has prepared Architectural Review Findings and Conditions of Approval contained in Attachments B and C. The project plans are available as Attachment J of this staff report and they are also available online at the following link: [bit.ly/429University](http://bit.ly/429University).

<sup>1</sup> The information provided in this section is based on analysis prepared by the report author prior to the public hearing. The Architectural Review Board in its review of the administrative record and based on public testimony may reach a different conclusion from that presented in this report and may choose to take an alternative action from the recommendation in this report.

## Environmental Review

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. On February 6, 2017, the City Council approved the Initial Study and Mitigated Negative Declaration for this project, which is available online at:

<https://www.cityofpaloalto.org/civicax/filebank/documents/49897>

## Public Notification, Outreach & Comments

The Palo Alto Municipal Code requires notice of this public hearing be published in a local paper and mailed to owners and occupants of property within 600 feet of the subject property at least ten days in advance. Notice of a public hearing for this project was published in the Palo Alto Weekly on Monday, August 24, 2018 which is 13 days in advance of the meeting. Postcard mailing occurred on August 27, 2018, which is 10 days in advance of the meeting.

### Public Comments

Staff has received comments from the original appellant, Michael Harbour, and these are contained in Attached I.

## Alternative Actions

In addition to the recommended action, the Architectural Review Board may:

1. Approve the project with modified findings or conditions;
2. Continue the project to a date (un)certain; or
3. Recommend project denial based on revised findings.

### Report Author & Contact Information

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 (408) 340-5642 x 106  
[apetersen@m-group.us](mailto:apetersen@m-group.us)

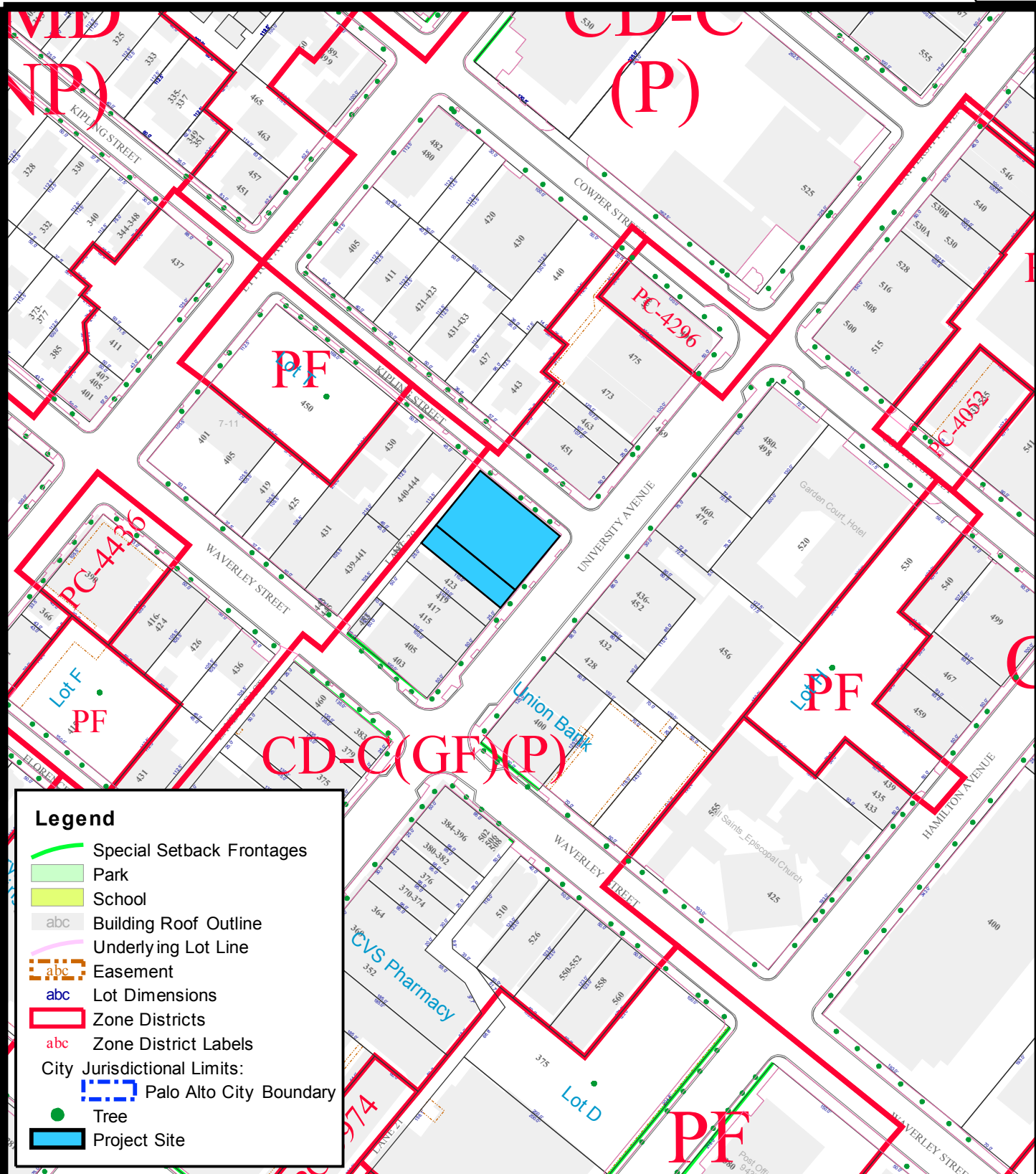
### ARB<sup>2</sup> Liaison & Contact Information

Jodie Gerhardt, AICP, Planning Manager  
 (650) 329-2575  
[jodie.gerhardt@cityofpaloalto.org](mailto:jodie.gerhardt@cityofpaloalto.org)

### Attachments:

- Attachment A: Location Map (PDF)
- Attachment B: Draft Findings for Approval (DOCX)
- Attachment C: Conditions of Approval (DOCX)
- Attachment D: February 6, 2017 City Council Staff Report w/o Attachments (PDF)
- Attachment E: February 6, 2017 City Council Action Minutes (PDF)
- Attachment F: February 6, 2017 City Council Transcript (PDF)
- Attachment G: Signed Record of Land Use Action and MMRP for Previous Project (PDF)
- Attachment H: August 16, 2018 ARB Staff Report w/o Attachments (PDF)
- Attachment I: Neighbor Comments (DOCX)
- Attachment J: Project Plans (DOCX)

<sup>2</sup> Emails may be sent directly to the ARB using the following address: [arb@cityofpaloalto.org](mailto:arb@cityofpaloalto.org)

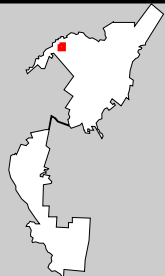


**Legend**

- Special Setback Frontages
- Park
- School
- Building Roof Outline
- Underlying Lot Line
- Easement
- Lot Dimensions
- Zone Districts
- Zone District Labels
- City Jurisdictional Limits:
  - Palo Alto City Boundary
  - Tree
  - Project Site



The City of Palo Alto



429 University Avenue  
[18PLN-00240]

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



**ATTACHMENT B**  
**ARB FINDINGS FOR APPROVAL**  
 429 University Avenue  
 18PLN-00240

The design and architecture of the proposed improvements, as conditioned, complies with the Findings for Architectural Review as required in Chapter 18.76 of the PAMC.

**Finding #1:** The design is consistent with applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides.

*The project is consistent with Finding #1 because:*

In conformance with the following Comp Plan Goals and Policies, the project will include high quality design compatible with surrounding development.

<i>Comp Plan Goals and Policies</i>	<i>How project adheres or does not adhere to Comp Plan</i>
The Comprehensive Plan land use designation for the site is Regional/Community Commercial	The project proposes landscaping, materials and color board, and decorative wall design treatment to a previously approved building that is consistent with the Regional/Community Commercial designation
<i>Land Use and Community Design Element</i>	
<b>Goal L-1:</b> A compact and resilient city providing residents and visitors with attractive neighborhoods, work places, shopping districts, public facilities and open spaces.	The project is a compact mixed-use development along University Avenue. It contributes to an attractive neighborhood through the use of long lasting materials with similar colors as surrounding buildings, and a decorative design to the interior property line wall.
<b>Policy L-1.3:</b> Infill development in the urban service area should be compatible with its surroundings and the overall scale and character of the city to ensure a compact, efficient development pattern.	The building is compatible with its surroundings because it uses similar materials and muted earth tone colors, similar to the surrounding buildings.
<b>Goal L-2:</b> An enhanced sense of community with development designed to foster public life, meet citywide needs and embrace the principles of	The project uses native indigenous landscaping and drip irrigation systems that represent sustainable principles of design.

sustainability.	
<b>Policy L-4.7:</b> Maintain and enhance the University Avenue/Downtown area as a major commercial center of the City, with a mix of commercial, civic, cultural, recreational and residential uses. Promote quality design that recognizes the regional and historical importance of the area and reinforces its pedestrian character.	The project consists of a quality designed building by treating the west wall elevation with a pattern that breaks up the façade, employs long lasting materials in the form of concrete, and strategically places landscaping in key open space areas of the building.

**Finding #2: The project has a unified and coherent design, that:**

- a. creates an internal sense of order and desirable environment for occupants, visitors, and the general community,
- b. preserves, respects and integrates existing natural features that contribute positively to the site and the historic character including historic resources of the area when relevant,
- c. is consistent with the context-based design criteria of the applicable zone district,
- d. provides harmonious transitions in scale, mass and character to adjacent land uses and land use designations,
- e. enhances living conditions on the site (if it includes residential uses) and in adjacent residential areas.

*The project is consistent with Finding #2 because:*

As conditioned, the proposed project is consistent with the finding in that the area is comprised of various uses with landscaping strategically placed to enhance the senses of entry to each specific use. Landscaping creates an internal sense of order and a desirable environment for occupants, visitors, and the community because it is generally located at the entrance of each floor. This positioning balances and softens the man-made environment with natural organic features.

This finding can be made in the affirmative in that the project provides a variety of architecture with differing visual elements. The west wall design provides appropriate visual attention that is also provided to the other sides of the building.

The proposed project has been reviewed with respect to the Context-Based Design Criteria set forth in PAMC 18.18.110. Section 18.18.110 notes that the project shall be:

- Responsible to its context and compatible with adjacent development, and shall promote the establishment of pedestrian oriented design (where “responsible to context” is not a desire to replicate surroundings, but provide appropriate transitions to surroundings), and

- Compatible with adjacent development, when apparent scale and mass is consistent with the pattern of achieving a pedestrian oriented design and when new construction shares general characteristics and establishes design linkages with the overall pattern of buildings so the visual unit of the street is maintained.

Pursuant to PAMC 18.18.110(b), the following additional findings have been made in the affirmative:

- (1) **Pedestrian and Bicycle Environment:** *The design of new projects shall promote pedestrian walkability, a bicycle friendly environment, and connectivity through design elements.* This finding can be made in the affirmative in that the project supports pedestrian environment by placing landscaping along the Lane 30 alley;
- (2) **Street Building Facades.** *Street facades shall be designed to provide a strong relationship with the sidewalk and the street(s), to create an environment that supports and encourages pedestrian activity through design elements.* This finding can be made in the affirmative in that the proposed street facades are designed to create an environment that supports and encourages pedestrian activity. The proposed placement and orientation of landscape elements are appropriate to create strong and direct relationships with the streets. Upper floors are setback and designed to provide a varied visual environment along University Avenue, and to fit in with the context of the neighborhood;
- (3) **Massing and Setbacks.** *Buildings shall be designed to minimize massing and conform to proper setbacks.* The project does not included components relative to massing and setbacks. However, this finding was made in the affirmative in that the project when it was approved, and the project would continue to incorporate a design with a series of recessed terraces and interchange in materials to break down the scale of building and provide visual interest;
- (4) **Low-Density Residential Transitions.** *Where new projects are built abutting existing lower scale residential development, care shall be taken to respect the scale and privacy of neighboring properties.* Although the parcels abutting the project site along Kipling Street have a commercial zoning designation, most of the built forms have a low density residential appearance. The addition of landscaping along the Lane 30 behind the alley softens the transition from the adjacent buildings to the proposed project;
- (5) **Project Open Space.** *Private and public open space shall be provided so that it is usable for residents, visitors, and/or employees of the site.* The design of the project has been approved with this finding made in the affirmative. The approval noted that the project provides open space with wider sidewalks, balconies, and a roof-top terrace. The proposed project incorporates landscaping elements in the project open space, which is visible to

residents, workers, visitors and the public;

- (6) **Parking Design.** *Parking needs shall be accommodated but shall not be allowed to overwhelm the character of the project or detract from the pedestrian environment.* This finding does not apply because the project consists of a review of landscaping, building materials, and the treatment of the west wall elevation;
- (7) **Large (Multi-Acre) Sites.** *Large sites (over one acre) shall be designed so that street, block, and building patterns are consistent with those of the surrounding neighborhood.* This finding does not apply;
- (8) **Sustainability and Green Building Design.** *Project design and materials to achieve sustainability and green building design should be incorporated into the project.* This finding can be made in the affirmative in that the project would comply with the City's green building ordinance, and the design includes overhangs, recesses, and other shading devices and techniques to reduce the solar heat gain and energy consumption related to the cooling of the building. Design is easy for pedestrian, bicycle and transit access. The project incorporates high efficiency LED light fixtures, low-flow plumbing fixtures and high efficiency HVAC equipment for efficiency energy and water use. Green building features will be incorporated to achieve CalGreen Tier 2 standards for the commercial portion and Green Point rated standards for the residential portion.

This finding can be made in the affirmative in that the landscaping elements, materials, and west wall design respect the adjacent lots' yards and respect the privacy of neighboring development. Further, the project is consistent with Finding #2 because the addition of landscaping elements enhances the living conditions on the site and the proposed west wall design contributes to an aesthetically pleasing environment in downtown Palo Alto.

**Finding #3: The design is of high aesthetic quality, using high quality, integrated materials and appropriate construction techniques, and incorporating textures, colors, and other details that are compatible with and enhance the surrounding area.**

*The project is consistent with Finding #3 because:*

The project has a high aesthetic quality, materials, construction techniques, textures, colors and other details that are compatible with and enhance the surrounding area. The buildings surrounding the site are comprised of concrete, stone, glass, brick, and metal and range in height from two to four stories along University Avenue. Along Kipling Street, buildings consist of cement, stucco, glass and brick structures. The proposed structure is comprised of high quality glass, concrete and steel design which is similar and representative of the materials found in the surrounding environment. Further, the materials, textures, and attention to detail in the structure is consistent throughout each visible portion of the elevations, which represents a high quality aesthetic design. Therefore, the project is consistent with Finding #3 because it consists of a high quality aesthetic design with integrated materials, textures, colors and other details that are compatible with the surrounding environment.



**Finding #4: The design is functional, allowing for ease and safety of pedestrian and bicycle traffic and providing for elements that support the building's necessary operations (e.g. convenient vehicle access to property and utilities, appropriate arrangement and amount of open space and integrated signage, if applicable, etc.).**

*The project is consistent with Finding #4 because:*

The project is consistent with this finding because landscaping is located in functional locations. Proposed landscaping will not impede pedestrian and bicycle traffic along Lane 30 because it is located on the project property. Further, landscaping is located in planters throughout the building that will also not interfere with pedestrian movement. Therefore, the proposed landscaping supports the building's necessary operations for commercial, office and residential uses.

**Finding #5: The landscape design complements and enhances the building design and its surroundings, is appropriate to the site's functions, and utilizes to the extent practical, regional indigenous drought resistant plant material capable of providing desirable habitat that can be appropriately maintained.**

*The project is consistent with Finding #5 because:*

The project is consistent with the finding because it preserves existing street trees along University Avenue and replaces trees along Kipling Street. The project's landscaping includes drought tolerant species and a variety of trees, shrubs and perennials suitable to the site. The plantings focus on the most logical locations in the building that consist of open circulation areas, and along areas accessible to the public, such as along the Lane 30 alley.

**Finding #6: The project incorporates design principles that achieve sustainability in areas related to energy efficiency, water conservation, building materials, landscaping, and site planning.**

*The project is consistent with Finding #6 because:*

In accordance with the City's Green Building Regulations, the building will satisfy the requirements for CALGreen Mandatory + Tier 2. A summary of the project's compliance is on sheet GB-1 of the plans. The project includes a number of measures to preserve water including using drip irrigation and proposing landscaping that is drought tolerant and is less than 500 square feet in size. The small area of landscaping and compliance with CALGreen Mandatory + Tier 2 will achieve sustainable principles related to energy efficiency and water conservation.

**ATTACHMENT C**  
**CONDITIONS OF APPROVAL**  
429 University Avenue  
18PLN-00240

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**PLANNING DIVISION**

1. CONFORMANCE WITH PLANS. Construction and development of said landscaping, materials, and west wall elevation shall conform to the approved plans entitled, "Condition of Approval Project Plan Set," stamped as received by the City on July 30, 2018 on file with the Planning Department, 250 Hamilton Avenue, Palo Alto, California except as modified by these conditions of approval.
2. BUILDING PERMIT. Apply for a building permit and meet any and all conditions of the Planning, Fire, Public Works, and Building Departments.
3. BUILDING PERMIT PLAN SET. The ARB approval letter including all Department conditions of approval for the project shall be printed on the plans submitted for building permit.
4. PROJECT MODIFICATIONS: All modifications to the approved project shall be submitted for review and approval prior to construction. If during the Building Permit review and construction phase, the project is modified by the applicant, it is the responsibility of the applicant to contact the Planning Division/project planner directly to obtain approval of the project modification. It is the applicant's responsibility to highlight any proposed changes to the project and to bring it to the project planner's attention.
5. PROJECT EXPIRATION. This project approval shall be valid until February 6, 2019, at which time approval for a new building at this location (RLUA No. 2017-2) will also expire. In the event a building permit(s), if applicable, is not secured for the project within the time limit specified above, the ARB approval shall expire and be of no further force or effect.
6. INDEMNITY: To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City for its actual attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its own choice.
7. DEVELOPMENT IMPACT FEES: Per PAMC 16.61.040, Development Impact Fees shall be paid prior to the issuance of the related building permit.

8. FINAL INSPECTION: A Planning Division Final inspection will be required to determine substantial compliance with the approved plans prior to the scheduling of a Building Division final. Any revisions during the building process must be approved by Planning, including but not limited to; materials, landscaping and hard surface locations. Contact your Project Planner, Adam Petersen at [apetersen@m-group.us](mailto:apetersen@m-group.us) to schedule this inspection.

#### **BUILDING DIVISION**

Include in plans submitted for a building permit:

1. The permit application shall be accompanied by all plans and related documents necessary to construct a complete project.
2. Separate submittals and permits are required for the following systems and components if utilized: E.V., P.V., and Solar Hot Water systems.
3. Deferred submittals shall be limited to as few items as possible.
4. A written outline/plan needs to be provide prior to building permit issuance to demonstrate compliance with CBC Section 3302 (Construction Safeguards) and Section 3306 (Protection of Pedestrians) during construction.
5. A demolition permit shall be required for the removal of the existing building on site.
6. The plans submitted for the building permit shall include an allowable floor area calculation that relates the mixed occupancies to type of construction.



**City of Palo Alto**  
**City Council Staff Report**

(ID # 7376)

**Report Type: Action Items**

**Meeting Date: 2/6/2017**

**Summary Title: 429 University Avenue: Appeal of Mixed Use Project**

**Title: PUBLIC HEARING: 429 University Avenue [14PLN-00222]: To Consider a Continued Appeal of the Director of Planning and Community Environment's Architectural Review Approval of a 31,407 Square-foot, Four Story, Mixed use Building With Parking Facilities on two Subterranean Levels on an 11,000 Square-foot Site. Environmental Assessment: Mitigated Negative Declaration was Circulated on November 17, 2014 to December 12, 2014. Zoning District: CD-C (GF)(P). The Council Previously Considered this Appeal on November 30, 2015 and Remanded it to the Architectural Review Board for Redesign and Further Review Based on Council's Direction**

**From: City Manager**

**Lead Department: Planning and Community Environment**

**Recommendation:**

Staff recommends the City Council direct staff to prepare a Record of Land Use Action to either:

- 1) deny the appeal, approve the Mitigated Negative Declaration (Attachments F-H) and Mitigation and Monitoring Plan (Attachment I) and approve a modified project (Option 1, 2, or 3) with or without conditions, directing staff to return with written findings for adoption;

Or

- 2) uphold the appeal and deny a modified project (Option 1, 2, and 3) based on the Architectural Review Board's recommendation of October 20, 2016 and a finding that proposed project modifications have not addressed the Council's previous concerns, directing staff to return with written findings for adoption.

*[Note: Option 1 is similar to that reviewed by the Architectural Review Board on September 1,*

*2016 and was revised and resubmitted by the Applicant on October 26, 2016 to address the Board's comments. Staff believes that with the adjustments discussed below Option 1 best addresses the Council's previous concerns. Option 2 was reviewed by the Architectural Review Board on October 20, 2016 and recommended for denial. Option 3 is a middle option submitted by the Applicant on December 8, 2016. All of these options can be considered for approval (with or without additional conditions) or denial based on required architectural review findings.]*

### **Executive Summary:**

The applicant is proposing redevelopment of three properties at the southwest corner of University Avenue and Kipling Street. The director's decision on the project was appealed and the Council remanded the project to the Historic Resources and Architectural Review Boards to address several specific design issues. It has been 18 months since the Council's initial appeal hearing and 12 months since the Council's second appeal hearing. In the elapsed time, the applicant has changed architects – and designs – several times, submitting revised project plans and extending the review time required to address Council direction and comments from the HRB and ARB.

Most recently, the ARB reviewed the iteration of the project referred to here as Option 2 (Attachment M) on October 20, 2016, and recommended the Council uphold the appeal and deny the project due to an inability to make the required findings. Prior to this recommendation, the ARB had reviewed a set of schematic drawings that reduced the proposed building mass at the fourth floor and resulted in about 3,000 square feet in less building area at a study session on September 1, 2016. Staff believes these plans (referenced in this report as Option 1 and available as Attachment L) were more responsive to Council and Board member comments. However, the applicant did not develop this schematic drawing further until after the ARB's October 20, 2016 meeting and recommendation.

Following ARB's recommendation, the applicant elected to submit additional information about Option 1, including some of the changes requested by the ARB at their study session. Rather than send the matter back to ARB, staff previously made this supplemental information available to the appellant and, through this report, to the public with the calendaring of this public hearing in front of the Council. Staff continues to have concerns with some elements of the design, which it believes can be remedied through the conditions discussed below, but on balance, the design presented here as Option 1 appears most responsive, compared to all other iterations, to earlier Council comments. Attachment D contains a link to these comments from the City Council meeting on November 30, 2015.

A third option (Option 3) was submitted by the applicant in December. According to the applicant, this design is essentially the September 1, 2016 study session proposal with the fourth floor from an earlier submission (discussed by the ARB on August 4, 2016). A summary of the square footages of the three options is provided below:

**Table 1. Summary of Current Design Options - 429 University Ave.**

Option	Non Res. Square Footage	Res. Square Footage	Total Square Footage	Res. Dwelling Units	Parking Spaces On Site	Notes
Option 1	20,407	8,140	28,547	3	34	Discussed at ARB Study Session 9/1/16 and subsequently modified to address comments.
Option 2	20,407	11,000	31,407	5	38	Recommended for denial by the ARB 10/20/16.
Option 3	20,407	10,750	31,157	4	34	Further modification submitted by the applicant 12/8/16 to address ARB and Council concerns.
Note: See Attachment E for a more detailed comparison of all three options with code requirements.						

Source: Palo Alto Planning & Community Environment, January 2017

### Background:

The subject project has been an active application since its filing in June 2014. The project as approved by the Director in February 2015 complied with the development standards of the code, but was appealed based on compliance with required findings. On November 30, 2015 the Council on 9-0 vote agreed that further refinement was needed to address a variety of concerns related to the project's mass and scale, transition to other buildings (contextual setting) and nearby historic properties, parking and loading, and other issues.

The project takes advantage of provisions in the code that allow a transfer of floor area, or development rights, to this building. Additionally, the project is located in the parking district and relies on parking in downtown garages due to the property owner's contributions to the parking district. Another concern raised with this project is the lack of an on-site loading space. Consistent with prior downtown approvals, including Council approved projects on appeal, the loading space is not provided on site and relies instead on other loading zone opportunities downtown and the alley immediately behind the building. Council has since directed staff to make changes to the code to clarify conditions when on-site loading is required; the Planning and Transportation Commission recently completed its review of a draft ordinance and the matter will be presented to the City Council in February.

Attached to this report (Attachment D) is a chronology of the project from the filing of the application to this appeal hearing. There are links provided within the chronology to all prior staff reports, minutes and videos available.

The architectural review findings and context-based criteria that apply to this project are included for the Council's reference as Attachments A and B, respectively.<sup>1</sup> The city's downtown urban design guidelines are available online at <http://www.cityofpaloalto.org/civicax/filebank/documents/6514>; these guidelines may be informative to the Council's review. A compliance review of the project (Options 1 and 2 and 3) to code development standards is also provided (Attachment E). Finally, to re-familiarize the Council with the project, a detailed project description is included that also reflects the project revisions and various interactions over time (Attachment C).

It should be noted that there have been 14 hearings before the ARB, HRB and Council, including the subject hearing, on this project. The applicant has also engaged four architects over the last 18 months, which has complicated reviews and extended the application processing timelines. Additionally, despite the various plan modifications over time, on balance, the project designs have not significantly deviated from the overall mass and size as first reviewed by the City Council in May 2015. Changes have been incremental and not responsive to the volume of information provided in the administrative record. Notwithstanding the above, staff believes there is one conceptual plan concept (Option 1) that was presented to the ARB in September 2016 that, among the various iterations, best responds to Council concerns.

### **Discussion:**

The City Council last reviewed the project on November 30, 2015. At that time, the Council requested the applicant explore project revisions with the ARB to advance the specific findings and criteria listed below.

While the applicant's proposal has generally been consistent with the Code's objective development standards, the appellant's objections have focused on the equally applicable subjective design standards contained in the Code. Due to the applicant's proposed lot consolidation of two parcels, the University Avenue facing side of the lot serves as a gateway to a vibrant downtown consisting of modestly scaled, but architecturally and historically significant buildings. On the other hand, the Kipling facing side of the building anchors an eclectic grouping of Victorian homes, at least one of which is still in residential use. The Council's earlier focus on the architectural findings and context-based design criteria summarized below provided guidance on how the proposal could be modified to address this design challenge.

### Architectural Review Findings:

Palo Alto Municipal Code (PAMC) Chapter 18.76.020(d)

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<sup>1</sup> Please note that on December 12, 2016, the City Council adopted an ordinance which consolidated and clarified the City's Architectural Review findings without making major, substantive changes. This ordinance became effective on January 12, 2017. While the revised findings will be applicable to the project at 429 University and will be cited in the final Record of Land Use Action, the findings in place at the time of the prior City Council and ARB reviews of this project have been used in this report. Both versions of the findings are included in Attachment A for the Council's reference.

- Finding 4: Architectural Review Findings in relation to design's compatibility with areas as having a unified design character or historic character
- Finding 12: Architectural Review Findings in relation to compatibility and appropriateness in materials, textures, colors, details of construction and plant materials to the project's function and to adjacent structures, landscape elements and functions

Context-Based Design Criteria to Consider:

PAMC Chapter 18.18.110

- (a)(1)(B): Contextual and Compatibility Criteria – Context: to provide appropriate transitions to those surroundings. "Context" is also not specific to architectural style or design, though in some instances relationships may be reinforced by an architectural response.
- (a)(2)(B)(i): Contextual and Compatibility Criteria – Compatibility goal in relation to siting, scale, massing and materials
- (a)(2)(B)(iii): Contextual and Compatibility Criteria – Compatibility goal in relation to pattern of roof lines and projections
- (b)(2)(B): Context-based Design Considerations and Findings – Street building facades in relation to eaves, overhang, porches and other architectural elements that provide human scale and help break up building mass

Option 1 has been the most responsive to concerns about the overall building mass and provides better transitions to neighboring properties than others. Nearly all commercial buildings in the immediate area have flat roof designs with false mansards/parapets facing the street, including the commercial property across Lane 30 on Kipling Street. Most of the commercial buildings have two story volumes or greater in height; the building across the alley being a notable exception. The character for the balance of properties north on Kipling Street has decidedly different architectural styles and building volumes that represent the residential origins of these structures.

The pattern of the commercial areas on University Avenue at times and within this area, have a rhythmic 25 foot (approximately) storefront design that contributes to a positive pedestrian experience. However, there are exceptions to this design feature as well. The Option 1 plans attempt to reflect this pattern of development with doorway and glazing spaced roughly 25 feet in width. It has a two-story volume adjacent to both streets and sets back the third floor five feet from both streets. One exception to this statement, however, is the stairway and elevator area adjacent to Kipling Street, which is at the property line. The stairway/elevator has been a repeated concern from Council from the outset and there has been limited adjustment of this design feature, except at the fourth floor.

Regarding the fourth floor, the Option 1 plan shows the fourth floor office area as setback between 37 and 40 feet from Kipling Street and University Avenue, respectively. There is the



elevator shaft setback eleven feet from Kipling Street; bathrooms six feet from the adjacent building at University Avenue (but all approximately 55 feet from University Avenue); and, the rear setback at this floor level is close to nineteen feet from the alley.

A refinement between the Option 1 plan submitted to the ARB and now presented to the City Council is the addition of a library at the third floor street corner. This is further addressed below along with other recommended conditions of approval for Council consideration, if there is interest in approving this design solution.

A challenge for this project is the massing dictated by its modern architectural style and development program. Unlike other older buildings in the area, which have more traditional design features, ornamentation and detailing, the proposal relies on a more modern expression. There has been a lot change on University Avenue and many buildings reflect the historic character of the street, but not all, including some in close proximity to the project site. As previously noted by Council, compliance with the architectural finding regarding the project's design compatibility with areas having a unified design character remains a discussion point. Approval or denial of the project may suggest there is or is not a unified design character along this portion of University Avenue. Consideration should also be given to the unified design and historic character of Kipling Street and to the extent that character should influence building design on University Avenue. The Historical Resources Board reviewed the project on September 10, 2015, and found that there are no offsite historical resources that would be affected by the project. Additional information, including the staff report and minutes, are linked in Attachment D.

#### Recommended Conditions of Approval

Should the Council's deliberation on this matter conclude that Option 1 warrants approval, staff recommends, in addition to typical conditions of approval, that the following conditions be added:

- Applicant shall submit detailed plans that demonstrate compliance with floor area and other applicable development standards

*The purpose for this condition is to ensure project compliance with development standards. This design solution evolved recently and staff has not had sufficient time to conduct a comprehensive review.*

- The fourth floor guardrails and planters shall be set back a minimum of five feet from the edge of the third floor roofline (all elevations), as modified by these conditions.

*The purpose for this condition is to reduce the building mass at that fourth floor.*

- The 'library' shown on the third floor, floor plans, at the street corner, shall be removed.

*The purpose for this condition is to reduce building mass at the street corner and third floor, provide building articulation and be consistent with the conceptual plans reviewed by the ARB and staff in September 2016.*

- The third floor roofline above the removed 'library' area shall be setback to follow the third floor building footprint; reducing the building mass at the street corner.

*The purpose for this condition is to reduce building mass at the street corner and third floor, provide building articulation.*

- A decorative wall design treatment, feature or element, shall be applied to the exterior walls immediately adjacent to the southern property line (project's south elevation) starting at an elevation equivalent to the building height of the adjacent structure and extending to the roofline of the proposed building, subject to review by the Architectural Review Board.

*The purpose for this condition is to address the blank wall that will be visible when approaching the site from University Avenue. The intent of this condition is to provide visual interest and minimize the appearance of mass with the understanding that a future development on the adjacent property may someday obscure this design feature. One way to comply with this provision may be to set the building back a couple of inches to create visual relief. Staff proposes that any lost floor area specifically related to this condition, up to 100 square feet, be relocated to the fourth floor to maximize a creative solution without reducing the proposed square footage.*

- The elevator adjacent to Kipling Street, inclusive of any associated mechanical equipment, shall not exceed fifty feet (50') in height.

*The purpose for this condition is to reduce building mass and provide a better transition to properties along Kipling Street.*

- The applicant shall return to the Architectural Review Board for review and recommendation to the Director of Planning and Community Environment for landscape details and plans for all proposed planting, including individual planters, the greenwall, and landscaping near the rooftop elevator.

*The project uses landscaping to provide visual interest; however, these have been conceptually discussed and a more focused discussion and review is needed to ensure these concepts can be successfully implemented.*

- The applicant shall return to the Architectural Review Board for review and recommendation to the Director of Planning and Community Environment of exterior building materials, colors and craftsmanship-related detailing associated with the project.

*The ARB reviewed only a schematic drawing of Option 1. The intent of this condition is to ensure the ARB reviews the exterior materials and colors and architectural details to improve design linkages, while still preserving the applicant's intent to construct a contemporary building.*

The above are staff recommended conditions should the Council find the project (Option 1) compliant with applicable findings, guidelines and other criteria. The City Council may augment or modify the above list as appropriate. One additional condition the Council may want to consider has to do with recessed pedestrian entries. The ARB has consistently sought to improve the pedestrian experience of this building, but there has been little refinement of this feature over the different iterations.

In addition, it should be noted that all of the options discussed in this report will be subject to more detailed review for code compliance at the building permit stage, if/when a single design option has been advanced.

### Options 2 & 3

For the purpose of this appeal hearing, staff agrees with the ARB that the project plans, identified in this report as Option 2, do not meet the required findings, based on the previously stated Council concerns. This plan set is provided to the Council for review and consideration in case there is a different perspective from staff and the ARB.

As noted earlier, Option 3 was submitted by the applicant on December 8, 2016 with the intention of reflecting the September 1, 2016 study session version (similar to Option 1), with a fourth floor similar to an earlier design reviewed by the ARB on August 4, 2106. Option 3 plans are included in Attachment N, and links to meeting minutes from the respective hearings are provided in Attachment D. Due to the lateness of the submittal the ARB has not reviewed the plans, nor has staff performed a detailed analysis other than to evaluate the project for code compliance. However, it is noted that the most substantive change between the staff supported Option 1 and Option 3 appears to be the addition of 2,610 square feet of floor area primarily at the upper floor level to accommodate an additional housing unit. The mass and scale of this option is similar to (and 250 square feet less than) Option 2, which was previously reviewed by the ARB. If the City Council is interested in exploring Option 3 further, staff

recommends the Council evaluate the proposal without referring the matter back to the ARB due to the limited progress made and extensive amount of staff time required to process this application. Moreover, this project has experienced an unusually protracted appeal hearing process due in large part to the incremental modifications and applicant-caused delays.

### **Next Steps:**

Staff recommends that the City Council direct staff to prepare a record of land use action to either approve or deny the project. Further remanding the project to the ARB, which has only three board members to deliberate on this matter due to two recusals, is not viewed by staff to be particularly constructive at this time, particularly in light of the progress made over the last eighteen months. Moreover, staff does not anticipate further continuances to generate a significant project design changes. Accordingly, staff anticipates returning to the City Council in March with a document to memorialize the Council's action this evening.

### **Environmental Review:**

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. Pursuant to Section 15270, CEQA does not apply to projects for which a public agency rejects or disapproves. Therefore, no CEQA action may be required if the Council denies the project.

However, if the Council elects to approve the project, the Council will have to approve the Initial Study/Mitigated Negative Declaration, which has previously been prepared for the project and is attached to this report. Pursuant to the requirements of the CEQA, a Draft Initial Study and Mitigated Negative Declaration was prepared and circulated along with the required 20-day public review. The public comment period for this project was from November 17, 2014 to December 12, 2014. The Initial Study and Mitigated Negative Declaration (MND) have been updated to include the findings of additional analyses, including the historic resources memorandum, shadow study and the traffic operations study (Attachments F through K). The plan revisions did not result in any additional impacts nor require additional mitigation measures. The original mitigation monitoring program remains the same (Attachment I).

### **Attachments:**

- Attachment A - Architectural Review Findings (DOCX)**
- Attachment B - Context-Based Design Criteria (DOCX)**
- Attachment C - Project Descriptions and Plan Modifications Overtime (PDF)**
- Attachment D - Public Hearing Chronology (DOCX)**
- Attachment E - Development Standards Preliminary Compliance Matrix (PDF)**

**Attachment F - CEQA 1 Updated - 429 University Initial Study and Mitigated Negative Declaration - 8-15-16 (PDF)**

**Attachment G - CEQA 2 429 University appendicies A-E (PDF)**

**Attachment H - CEQA 3 429 University appendicies F-I (PDF)**

**Attachment I - CEQA 4 Mitigation Monitoring Program (PDF)**

**Attachment J - Landscape Report (PDF)**

**Attachment K - Shadow Study (PDF)**

**Attachment L - Architectural Drawings: Option 1 (DOCX)**

**Attachment M - Architectural Drawings: Option 2 (DOCX)**

**Attachment N - Architectural Drawings: Option 3 (DOCX)**



# CITY OF PALO ALTO CITY COUNCIL ACTION MINUTES

Special Meeting  
February 6, 2017

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:05 P.M.

Present: DuBois, Filseth, Fine, Holman arrived at 5:08 P.M., Kou, Scharff, Tanaka, Wolbach arrived at 5:13 P.M.

Absent: Kniss

## Closed Session

1. CONFERENCE WITH LABOR NEGOTIATORS  
This item will not be heard this evening and will be rescheduled.
- 1A. CONFERENCE WITH CITY ATTORNEY-POTENTIAL LITIGATION  
Significant Exposure to Litigation Under Govt. Code Section 54956.9(d)(2)  
(One Potential Case, as Defendant/Respondent)  
429 University Avenue; Appeal of Director of Planning and Community Environment's Architectural Review Approval of a Development Application.

**MOTION:** Council Member DuBois moved, seconded by Council Member Holman to go into Closed Session.

**MOTION PASSED:** 7-0 Kniss, Wolbach absent

Council went into Closed Session at 5:09 P.M.

Council returned from Closed Session at 6:51 P.M.

## Study Session

2. THIS ITEM HAS BEEN MOVED TO THE END OF THE AGENDA.

# ACTION MINUTES

## Agenda Changes, Additions and Deletions

**MOTION:** Council Member Holman moved, seconded by Council Member Fine to continue Agenda Item Number 12- PUBLIC HEARING: Review and Adoption of an Ordinance Amending Chapter 18 (Zoning)... to March 6, 2017.

**MOTION PASSED:** 8-0 Kniss absent

## Minutes Approval

3. Approval of Action Minutes for the January 23, 2017 Council Meeting.

**MOTION:** Council Member DuBois moved, seconded by Council Member Filseth to approve the Action Minutes for the January 23, 2017 Council Meeting.

**MOTION PASSED:** 8-0 Kniss absent

## Consent Calendar

**MOTION:** Mayor Scharff moved, seconded by Council Member Holman to approve Agenda Item Numbers 4-9 including changes to Agenda Item Number 8- Fiscal Year 2017 Mid-year Budget Review... as outlined in the Staff Memorandum.

4. Review and Acceptance of the Annual Report on Development Impact Fees for Fiscal Year 2016.
5. Adoption of a Budget Amendment Closing the Fiscal Year 2016 Budget and Capital Projects, and Approval of the Fiscal Year 2016 Comprehensive Annual Financial Report (CAFR).
6. Resolution 9665 Entitled, "Resolution of the Council of the City of Palo Alto to Continue the Palo Alto CLEAN Program: (1) for Local Non-solar Resources, at a Price of 8.4 ¢/kWh to 8.5 ¢/kWh With no Capacity Limit; and (2) for Local Solar Resources, at a 16.5 ¢/kWh Price That Drops to Avoided Cost at 3 MW; and Approval of Associated Program Rules and Agreements."
7. 203 Forest Avenue [14PLN-00472]: Appeal of the Planning and Community Environment Director's Denial of an Architectural Review

# ACTION MINUTES

Application for a 4,996 Square Foot Residential Addition Above an Existing 4,626 Square Foot Commercial Building. Environmental Assessment: Not a Project. Pursuant to Section 15270, California Environmental Quality Act (CEQA) Does not Apply to Disapproved Projects. Zoning District: Downtown Commercial (CD-C (GF)(P)) District.

8. Fiscal Year 2017 Mid-year Budget Review, Approval of Budget Amendments in Various Funds and Approval of Amendments to Three Salary Schedules.
9. Approval to Issue a Contract Change Order to Contract Number C16163847 With Wadsworth Golf Construction Company in the Amount of \$198,850 for the Construction of a Prefabricated On-course Restroom at the Palo Alto Municipal Golf Course.

**MOTION PASSED:** 8-0 Kniss absent

## Action Items

10. PUBLIC HEARING: Resolution 9666 Entitled, "Resolution of the Council of the City of Palo Alto Ordering Weed Nuisance Abated."

Public Hearing opened at 8:04 P.M.

Public Hearing closed at 8:07 P.M.

**MOTION:** Mayor Scharff moved, seconded by Council Member Holman to adopt a Resolution ordering the abatement of weed nuisances in the City of Palo Alto.

**MOTION PASSED:** 8-0 Kniss absent

11. PUBLIC HEARING: 429 University Avenue [14PLN-00222]: To Consider a Continued Appeal of the Director of Planning and Community Environment's Architectural Review Approval of a 31,407 Square-foot, Four Story, Mixed use Building With Parking Facilities on two Subterranean Levels on an 11,000 Square-foot Site. Environmental Assessment: the Mitigated Negative Declaration was Circulated November 17, 2014 to December 12, 2014. Zoning District: CD-C (GF)(P). The Council Previously Considered This Appeal on November



# ACTION MINUTES

30, 2015 and Remanded it to the Architectural Review Board for Redesign and Further Review Based on Council's Direction.

Public Hearing opened at 8:20 P.M.

Public Hearing closed at 9:53 P.M.

**MOTION:** Mayor Scharff moved, seconded by Council Member Filseth to:

- A. Deny the Appeal; and
- B. Approve the Mitigated Negative Declaration and Mitigation and Monitoring Plan; and
- C. Approve a modified project (Option 1) with conditions included in the Staff Report, Pages 6-8; and
- D. Direct Staff to return with written findings for adoption.

**SUBSTITUTE MOTION:** Council Member Holman moved, seconded by Council Member Kou to deny the Project due to the inability to make Architectural Review Findings as part of the Council's prior review from Staff Report, Pages 4-5 and the Architectural Review Board recommendation to deny the Project.

**SUBSTITUTE MOTION FAILED:** 3-5 DuBois, Holman, Kou yes, Kniss absent

**AMENDMENT:** Council Member Holman moved, seconded by Council Member XX to add to the Motion, "that the height of the prominent First Floor concrete elements be lowered to be consistent with the prevailing street pattern."

**AMENDMENT FAILED DUE TO THE LACK OF A SECOND**

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion, "this approval is subject to the actual Project matching Option 1 as described by Staff." (New Part E)

# ACTION MINUTES

**MOTION AS AMENDED RESTATED:** Mayor Scharff moved, seconded by Council Member Filseth to:

- A. Deny the Appeal; and
- B. Approve the Mitigated Negative Declaration and Mitigation and Monitoring Plan; and
- C. Approve a modified project (Option 1) with conditions included in the Staff Report, Packet Pages 527-528; and
- D. Direct Staff to return with written findings for adoption; and
- E. This approval is subject to the actual Project matching Option 1 as described by Staff.

**MOTION AS AMENDED PASSED:** 5-3 DuBois, Holman, Kou no, Kniss absent

- 12. ~~PUBLIC HEARING: Review and Adoption of an Ordinance Amending Chapter 18 (Zoning) of the Palo Alto Municipal Code to Update Code Sections Regarding Accessory Dwelling Units.~~

~~STAFF REQUESTS THIS ITEM BE CONTINUED TO MARCH 6, 2017.~~

## Study Session

- 2. ~~Update on Stanford University's General Use Plan (GUP) Application to Santa Clara County.~~

This Agenda Item continued to February 27, 2017.

## Inter-Governmental Legislative Affairs

None.

## Council Member Questions, Comments and Announcements

Council Member Holman requested Council reconsider the placement of Programs within the Comprehensive Plan as part of the Comprehensive Plan Update.

# ACTION MINUTES

Council Member DuBois voiced his support of this reconsideration proposal.

Council Member Holman suggested that her statement be considered a Colleagues Memorandum.

Molly Stump, City Attorney advised that Colleagues Memorandum are typically submitted in writing to allow for Staff review and feedback. She also noted that Staff intends to return to Council for further direction regarding the Comprehensive Plan Update.

Council Member Holman shared her understanding that Staff plans to return with further discussion regarding the Comprehensive Plan Update based on Council's previous direction. She clarified that her request is for reconsideration of the Council's direction pertaining to the placement of Programs in the Comprehensive Plan.

Vice Mayor Scharff advised that this request appears to be a Motion for Reconsideration, which is not an option during Council Member Questions, Comments and Announcements pursuant to the City Council Procedures and Protocols.

Adjournment: The meeting was adjourned at 11:11 P.M.



# CITY OF PALO ALTO CITY COUNCIL TRANSCRIPT

Special Meeting  
February 6, 2017

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:05 P.M.

Present: DuBois, Filseth, Fine, Holman arrived at 5:08 P.M., Kou, Scharff, Tanaka, Wolbach arrived at 5:13 P.M.

Absent: Kniss

## Closed Session

1. CONFERENCE WITH LABOR NEGOTIATORS  
This Item will not be heard this evening and will be rescheduled.
- 1A. CONFERENCE WITH CITY ATTORNEY-POTENTIAL LITIGATION  
Significant Exposure to Litigation Under Govt. Code Section 54956.9(d)(2)  
(One Potential Case, as Defendant/Respondent)  
429 University Avenue; Appeal of Director of Planning and Community Environment's Architectural Review Approval of a Development Application.

Mayor Scharff: Now, we have a Closed Session, which is a conference with City Attorney regarding potential litigation, significant exposure to litigation under Government Code Section 54956.9(d)(2). One potential case is defendant/respondent, 429 University Avenue, appeal of Director of Planning and Community Environment's Architectural Review approval of the development application. Do we have any public speakers?

Beth Minor, City Clerk: Yes. You have a card there.

Mayor Scharff: Yes, I do. Herb Borock.

Herb Borock: Thank you, Mayor Scharff. First, I noticed on the Agenda that Vice Mayor Kniss might be participating.

Mayor Scharff: She won't be. I'll just ...

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schedule a contractor to perform the abatement. If we then still have to actually perform the abatement, it's the cost of the abatement plus \$434 to cover our costs because I'm here tonight as I am in several other jurisdictions. There is a lot of work involved in what we have to do to ensure that we're, one, dealing with the correct property owner, which is part of what I said we would take care of, making sure we weren't in the wrong spot, and to run through the process of being able to help people in case, like I said, there could be a misunderstanding or any of those things that we would like to address and make sure that we're accurate.

Council Member Kou: Thank you.

Mayor Scharff: With that, seeing no further lights, I will move the Staff recommendation which is to adopt the attached Resolution, Attachment A, ordering the abatement of weed nuisances in the City of Palo Alto.

Council Member Holman: Second.

**MOTION:** Mayor Scharff moved, seconded by Council Member Holman to adopt a Resolution ordering the abatement of weed nuisances in the City of Palo Alto.

Mayor Scharff: Second by Council Member Holman. If we could vote on the board. That passes unanimously with Vice Mayor Kniss absent.

**MOTION PASSED:** 8-0 Kniss absent

Mayor Scharff: I forgot to mention that Vice Mayor Kniss wanted me to say that the reason she is absent is she has a family emergency that she needed to take care of. That's why she's not here tonight.

11. PUBLIC HEARING: 429 University Avenue [14PLN-00222]: To Consider a Continued Appeal of the Director of Planning and Community Environment's Architectural Review Approval of a 31,407 Square-foot, Four Story, Mixed use Building With Parking Facilities on two Subterranean Levels on an 11,000 Square-foot Site. Environmental Assessment: the Mitigated Negative Declaration was Circulated November 17, 2014 to December 12, 2014. Zoning District: CD-C (GF)(P). The Council Previously Considered This Appeal on November 30, 2015 and Remanded it to the Architectural Review Board for Redesign and Further Review Based on Council's Direction.

Mayor Scharff: Now, we're moving onto Item Number 11. We are approximately 30 minutes behind schedule already. Does Staff have—let me go through a couple of things first. I knew we had something. A couple of

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things. This is a public hearing on 429 University Avenue, to consider a continued appeal of the Director's Architectural Review approval of a four-story mixed-use building. The Council previously considered this appeal on November 30th, 2015, and remanded it to the Architectural Review Board for redesign and further review based on the Council's direction. I wanted to review a little bit the procedure so everyone understands what we're doing tonight and everyone has a clear concept. The first thing is we'll do Council disclosures. Then, we're going to have a Staff presentation. Then, the appellant will have 10 minutes to present, and then the applicant will have 10 minutes to present. Then, we'll take public comment. It's going to be three minutes per speaker. Don't feel you have to use all three minutes. After public comments, the appellant and the applicant will each have three minutes for rebuttal. After we close the public comments, we'll do a round of Council questions and comments before we move onto general Council motions. First, we'll start with the Council disclosures of any ex parte communications. I, first of all, see Council Member Tanaka's light on.

Council Member Tanaka: The first question is actually for the City Attorney. As the City Attorney knows, I have received a donation from the applicant. Is there any legal reason that I need to recuse myself from this meeting?

Molly Stump, City Attorney: Based on that fact, there's not a legal requirement for recusal in this matter.

Council Member Tanaka: I do have some disclosures. Even though I'm not legally required to recuse myself, I decided because of the proximity of time of when I received the donation that I would return it. I did contact the applicant to return the donation. I talked to also the appellant, Michael Harbour. I spoke to him for about maybe 40 minutes, maybe almost an hour. What I learned in the meeting was that he opposed the project because he said it has too much square footage. The project was too large. That was his primary reason for opposing this project. I subsequently had an email exchange with Molly Stump copied on it where he was asking to meet with me in person. I told him that I would follow the policy I did on the PTC, which was that I would only meet with him if he would also meet with the applicant at the same time. He basically declined to do that and basically said that—he basically compared it to having a rape victim meet their rapist, which I didn't quite understand, but that was his comment. Those are the only disclosures I have. Thank you.

Mayor Scharff: Council Member DuBois.

Council Member DuBois: I had a short, probably about 10-minute, phone call with the appellant over a week ago. He notified me that Option 3 in the

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Packet was submitted after the last ARB meeting. He asked about recusals, and I pointed him to the public internet where there are descriptions of conflict of interest. Other than that, I did not learn anything that's not in the public record.

Mayor Scharff: Council Member Fine.

Council Member Fine: Thank you. I have met the applicant at social gatherings, I believe, at the Rotary Club, where she indicated she wanted a fair hearing. I responded to the appellant, and we did set up a meeting. After seeing where this was going, I canceled that meeting. I didn't learn anything from either of them outside of the record, just that both of them want a fair hearing. I appreciate them reaching out.

Mayor Scharff: Council Member Holman.

Council Member Holman: I had a couple of brief exchanges with the appellant. There was a message left for me, looking for contact information for, as I recall it, a couple of Council Members for whom contact information he was not able to find. By the time I could get back to him, he found them in other ways. The other communication I had from him, when I did speak with him, was that he contacted me regarding meeting procedures for appellants, was it required that the appellant, the applicant and the City Attorney all be present for a meeting with a Council Member regarding a project as had been requested of him. I indicated I was not aware of any such requirements. That would be something new to me.

Mayor Scharff: Council Member Wolbach.

Council Member Wolbach: I'm not sure if it's required at this point, but I may as well just mention that prior to, I think, our last discussion about this project back in 2015, I spoke with the applicant and also met with the appellant and did a site tour with the appellant. Nothing new since that time.

Mayor Scharff: Council Member Kou.

Council Member Kou: I had a phone call with the appellant. He just wanted to catch me up and find out if I was up-to-date on this project. I told him I was.

Mayor Scharff: Seeing no other lights except my own, I also had a short phone call with the appellant, Michael Harbour. Mr. Harbour informed me—we spoke about 10 minutes—about his opposition to the project. He thought it was incompatible with the Victorians on Kipling Street. That was basically

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the substance of the call. I did receive a voice mail from the applicant, talking about procedural issues regarding whether or not—why she did not want to put this matter off to a later date. With that, I think I'll now open the public hearing and first invite the Staff presentation.

Public Hearing opened at 8:20 P.M.

Jonathan Lait, Planning and Community Environment Assistant Director: Thank you, Mayor, and good evening, City Council. My name is Jonathan Lait. I'm the Assistant Director to the Planning and Community Environment Department. I'm joined by Director Hillary Gitelman and Mr. Petersen from M Group. He's our consulting planner, who has assisted us with this project. The Item that is before you this evening is an appeal of an Architectural Review Board approval for a proposed four-story, mixed-use project located at 429 University. The project includes two levels of subterranean parking, ground-floor retail and office and residential above that. The project was filed about—it was filed in June 2014 formally. The project received three formal hearings before the Architectural Review Board before the Director's decision was rendered in February 2015. An appeal was filed. City Council had pulled the Item off of Consent and scheduled it for a hearing. It had a hearing in May. At the hearing in May, the City Council had a number of questions that were asked, and the Council had remanded the matter to the Historic Resources Board and to the Architectural Review Board. At that meeting, the Council had discussed a number of issues related to the project, project findings, parking, loading zone requirements, the transfer of development rights, historic resources, and some other issues. The next couple of meetings before the HRB and the Architectural Review Board vetted out some of those issues. It returned to the City Council on November 30, 2015. Eleven months since that time, the applicant proceeded with modifying the project in an effort to respond to those comments and direction. In September last year, the applicant submitted a schematic drawing of a design scheme that Staff believed was heading in the right direction in terms of being responsive to the Council Members' comments. The Architectural Review Board also was supportive of the project; although, they did have some critical comments that they had asked the applicant to follow up on. At the subsequent meeting in October, the applicant had chosen to go a different path according to comments from individual Board Members, who felt that the project was actually now taking a step backwards. It was on this October 20th meeting that the Architectural Review Board recommended that the City Council uphold the appeal and deny the project. Following that action, the applicant submitted a refined version of that September 1 plan, which Staff is calling Option 1. Staff believes that that is the option that is most responsive to Council Member comments. In December, two months later, the applicant had



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submitted a third version, the third being an iteration of Option 1 that added another approximately 2,600 square feet of additional floor area at the fourth floor. Option 2 in our discussion is going to be the plan that the Architectural Review Board recommended denial on. That takes us to the meeting that we're having here this evening. Just to reorient or familiarize those unfamiliar with the project site, it is located at the corner of Kipling Street and University Avenue at 429 University. This is a photograph, the first one, looking southwest down University. The project site is toward the right, in the center-right of that photograph. The bottom photograph is taken from Kipling Street and down Lane 30. This is the area behind the subject project site. It's looking at the subject property; it's the rear property line. On November 30th, the City Council gave Staff clear direction—we should say that the comments that the City Council had offered at that point were focused on the context and design compatibility. The City Council gave specific comments with respect to four Context Based Design Criteria, which are set forth in the Municipal Code that the Council felt the project needed to respond to and additional Architectural Review Board findings. With respect to the Context Based Design Criteria, the Council was concerned that the proposed project—the contextual and compatible criteria set forth in the Code regarding the siting, scale, and mass of the project still needed some work; that the compatibility goal in relation to the pattern of rooflines and projections still needed to be evaluated; and that the proposed design, the street building facades needed some additional work to address the human scale and help break up the building mass. With respect to direction from the Council regarding Architectural Review Board findings, the Council expressed concern about the compatibility and appropriateness of the materials and textures; felt that the design's compatibility with the area as having a unified design character had not been achieved; that the design's compatibility with the immediate environment still needed to be addressed. With respect to that last point, this is a line diagram. The top part of the slide is showing the proposed project in relationship to the adjacent one and two-story buildings along University Avenue. The below photograph is a street view of those properties to the southwest or left of that project site. As viewed from Kipling, the proposed project separated by an alley from the one-story building on Kipling. As you continue down Kipling, there is the Victorian architecture that exists on both sides of the street. The photograph below is the street view of that one-story building looking toward the subject project site. Here's a summary of the three options that are presented to the City Council. Again, Option 1 is the one that Staff believes is most responsive to prior comments and direction. It has three residential dwelling units. Option 2 is the one that was rejected by the Architectural Review Board. That had five residential units. Option 3 is the plan that was submitted in December by the applicant. This is their plan that they are putting forth as

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their project. That's the one that they would like to have an action on. Some renderings of the different options. This is Option 1 as viewed from University Avenue. We don't have a rendering from Kipling Street as the applicant chose not to further develop that rendering for Kipling on this design. However, there is—the rendering for Option 3 is very similar to Option 1. You'll see that in just a moment. This is the Option 2 plan that was reviewed by the Board on October 20th and recommended for denial. Again, just to go back on Option 1 for a moment. The Architectural Review Board did review a schematic drawing of Option 1 on September 1. That plan was refined a little bit after the Architectural Review Board made its decision on this project. This is Option 2 from Kipling. Option 3, the design that was submitted in December, from University Avenue you can see there's additional building mass on the roof toward the left of the project. It also extends further toward the rear property line toward the alley. This is the view of Option 3 from Kipling Street. This same perspective is very similar to what we believe to be the Option 1 rendering as viewed from this perspective. As you shift further down Kipling, you would get a different perspective of the proposed Option 3 versus Option 1, but that's revealed in the line drawings. We can walk the Council through that if you're interested. Here's a collection of the three different options as viewed from University and viewed from Kipling. Again, we're suggesting that Option 1 and 3 from this perspective look similar. As I stated previously, Staff believes that Option 1 is the one that is most responsive to comments from the Council regarding building mass and transitions. If the Council is interested in pursuing this option or, frankly, any of the options—actually I would say Option 1 or Option 3—there are some conditions that Staff has considered. We've included those in the Staff Report; we can address these specifically if there's any interest in that. Again, the Architectural Review Board's recommending rejection of Option 2. The applicant's proposed alternative, Option 3, is included with this Packet for the Council's consideration. With that, Staff recommends that the Council direct the Staff to prepare a Record of Land Use Action to deny the appeal, approve the Mitigated Negative Declaration and Mitigation Monitoring and Reporting program, and approve either Options 1, 2 or 3 with or without conditions. Alternatively, the Council could choose to uphold the appeal and deny a modified project, Options 1, 2 and 3, based on the ARB's October 20th recommendation and a finding that the design modifications have not addressed the Council's previous concerns. Staff would return at a future date with that Record of Land Use Action to memorialize the Council's action. With that, I will turn it back to the Mayor. Thank you.

Mayor Scharff: Thank you. With that, we now go to the appellant. Dr. Harbour, are you here? You'll have 10 minutes.

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Michael Harbour, Appellant: Thank you, City Council Members and Mr. Mayor. Congratulations on your new appointments here, to be sure. These five buildings are the buildings that are slated to be torn down and the new development put there. Listed here are all the appellants; I'm representing the appellants here this evening. I want to remind people why we are here. On May 4, 2015, the Council spent a great deal of time making a Motion to the applicant about what the new plans should entail going forward. I've summarized these five points. Specifically, the project, number one, should have design linkages with the overall pattern of buildings so that the visual unity of both University and—this is important—Kipling Street are maintained. The plans were to be resubmitted to the ARB, and the ARB was specifically to look at the compatibility of the immediate environment; ensure design articulation and setbacks that minimize massing; to look at the roof, entries, setbacks, mass, and scale; and that they must conform to the Context Based Design Criteria. The building's façade shall have greater reinforcement of the relationship of the street. The upper floors shall have setbacks. Specifically I've highlighted there was an option of either third or fourth floors approved if they are visually compatible from the streets and had articulation and setback both from University and Kipling. The HRB had weighed in on this previously and unanimously, 5-0, rejected this plan. Most recently, the ARB 3-0 unanimously rejected the plans as well. Shadow studies and traffic studies were also indicated. What I want to let you know is that this appeal is rooted in violation of the Municipal Palo Alto Codes. The Palo Alto Municipal Code requires harmonious transition in scale and character and that are considerate of each other, in the Codes listed there. The design should follow the Context Based Design Criteria. In addition, the building should be responsive to the context and compatible with adjacent buildings, should have appropriate transitions, and have visible unity on the street. My argument has never been on size or square footage alone, as Council Member Tanaka incorrectly said. The appeal is also rooted in violation of the Comprehensive Plan and Downtown Development Guidelines. This massive building discourages the use of Downtown alleyways for pedestrian and bicycle only use and prevents shops from opening onto the alleyway. That's listed in the Comprehensive Plan and the Downtown Development Guidelines very specifically. Just as Centennial Alleyway has been developed to open up businesses there, this alleyway has been requested to do the same thing. Finally, Kipling Street is designated a secondary business district. There should be recognition and consideration for this as well, which has been ignored. Again, that's part of the Downtown Design Guidelines. We've seen many, many renditions. The applicant is on the fourth or fifth architect. The first design was deemed not compatible. It showed no shared characteristics or design linkages with the neighboring buildings. You can see the big white structure there. It was large and massive and detracted

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from pedestrian-oriented design. The next design was not compatible as well. The architect just moved the third and fourth floors back to the rear of the building, just stacking up all the massing at the rear of the building. It worsened the mass effect from Kipling Street and the alleyway. Today, you are miraculously being given three different designs with which to choose from. None of these—I want to point out this. This is so important. None of these in their exact form have been vetted or approved or even viewed by the ARB. Option 1, the original was rejected, and this is a modification of that. The ARB has not seen this or discussed this at all. Option 2 was seen and rejected. Option 3 has never been seen. If you view and approve Option 3, this has not even been seen by the ARB. I think it's inappropriate for you to be acting as architects here and approving a building that's never been seen by them. This is the scale of mass of this building. The size and mass is not compatible with the neighboring buildings. This is the view from Kipling Street. It's a four-plus-story structure. You need to know it's four stories plus an additional 15 feet for HVAC and elevator shafts. Parts of the building are 55—excuse me, 65 feet tall. This is the one-story building next door to it. It just hovers over it. There's no transition. The four-plus-story building overwhelms its one-story neighbors. Inappropriate size and massing, it's a massive building that will shadow Kipling Street and the alleyway. Then, unfortunately it turns the alleyway into a busy one-way street to service the in-and-out garage. This is the secondary business district that's listed in the Downtown Design Guidelines. Whether they are going to be adhered to or even recognized or given a nod, this is what it states there, that the Varsity Theatre, which is a mission revival designed building, is worthy of being consulted and looked at as part of whatever's across the street. Peet's Coffee is a Spanish mission-style building. It states right in the Guidelines that the new buildings should have tie-ins to the Varsity Theatre, which this building does not. I want to show you just how purposely—I'm saying purposely—misleading the view from the alleyway is to—the view of this building is from the alleyway. The architect has designed this brick-layered street, looking like it's a wide promenade with trees in the alleyway and flowers. The alleyway has no trees, no flowers at all. It's making this look like this is something that's being viewed from the front side. It's hard to see, but this corner is directly across the street from one of the residences on Kipling Street. It's a stairwell. It's a stairwell and elevator shaft. It's not a pedestrian or business-friendly corner, and it's not visibly appealing from those across at the residences. How would you like to look out your front door and see a stairwell or an elevator shaft? The other thing is this big alcove right here. An alleyway that has a big alcove (inaudible) people to hide in there. People will be scared walking down the street. It's just not appropriate, has not been well thought out. Here's the traffic on Kipling Street as it currently is. These are recent photos. This photo on the right was given to me by the owners just

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this week of Vino Locale, who are also one of the appellants here. This is standing on the front steps of Vino Locale, showing that cars can barely get by one another. The owner of Vino Locale, JC Andrade, told me that if he just stands out there long enough these cars keep hitting their side mirrors against each other. It's just a demolition derby all day long. Putting a big building with in-and-out traffic on the corner will just make this worse. Michaela Dieffenbach who has also appeared here before you is against this building. She says that it's going to—the traffic will destroy her business here as well as the construction. She owns Stapleton Flowers or Michaela's Flowers. Then, we have the big, massive wall that will be right across the street from Yoga Works. The peaceful entrance of Yoga Works destroyed by the 4 1/2-story, massed building along the alleyway and the in-and-out traffic. I will save the rest of my short presentation for the summary. What I'd like to do is have you ask me questions. I've been dealing with this for 2 1/2 years. I know it backwards and forwards. I've become an expert in Municipal Code, Downtown Development Guidelines, things that I never thought that I would have to learn before. Again, what we'll talk about in the summary is some of the ways forward hopefully. I don't think this is the appropriate way with which to deal with this. Unfortunately the applicants have stonewalled every attempt of working together. I have attended every ARB meeting for the past 2 1/2 years. I've attended every meeting with the architect, and I've met with the applicant multiple times. It is true I asked not to meet with the applicant again because I've been so harassed and harangued, been called names, that I did not want to go through that again. That was my reason that I told Council Member Tanaka that I did not want to go through that again. Thank you very much for your time.

Mayor Scharff: Thank you. Now, we'll go to the applicant. Applicant's team will have 10 minutes.

Timothy Kassouni, Attorney for the Applicant: Good evening, Honorable Mayor Scharff and fellow City Council Members. My name is Timothy Kassouni of the firm Kassouni Law. I represent the project applicant, Kipling Post LP. My full comments are contained in my two letters from January 30th and my most recent letter of February 2nd. As will be explained, the appeal should be denied and Option 3 of the project approved. My comments will be followed by those of the project architect wherein the specific details of the design will be explained. As you can see here, there's four primary legal aspects to be considered by the City Council. The first is a taking, which I'll get into a moment. Second is the City has illegally granted the appellant de facto veto power over the project's design. What you'll see here on the bottom is the original, approved design by the ARB. On the top is the Option 3 before the City Council right now. The question that anybody of a reasonable mind might ask is why is the top project being

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denied and the bottom one was approved by the ARB. Frankly, there is no reason other than pure politics. This project has a long history. To me in reviewing the record, it became very apparent that every step of the way the appellant simply liked the Victorian design and has used every conceivable, purely subjective excuse to impede approval. While it is appropriate for this City Council to consider the input of the appellant, that consideration has transmogrified into flat-out veto power in contravention of State law and the due process rights of Kipling Post. I have a few examples in my prior correspondence. Here's a few that bear repeating. In email dated August 31, 2016 between the City's Manager of Current Planning, Jodie Gerhardt, and the appellant, Ms. Gerhardt seeks the guidance and approval of the appellant regarding design changes. "If you can also describe what a compatible building would look like, that would be helpful. Should it only be two stories next to a one-story, existing building and step-up from there? Is three stories okay if the roofline is minimized?" In a November 22, 2016 email to me personally, Planning Director Hillary Gitelman wrote, "I hope that your client will preview her new plans with appellant to see if she can resolve his ongoing concerns." Not the concerns of the ARB, the appellant's concerns. At the March 17, 2016 ARB hearing regarding one of the numerous design revisions, Chair Gooyer stated, "I think we're in a situation. We've heard from the person who appealed it to the City Council. If we recommend a building like this, he'll just appeal it again." That the City's Architectural Review Board perceives itself as being held hostage to the whims of the appellant is an abrogation of its role as a neutral body, and that abrogation and undue deference has unfortunately permeated the Planning Department. As the Court of Appeal held in *Ross versus City of Yorba Linda* in 1991, "In restricting individual rights by exercise of the police power, neither a municipal corporation nor the State Legislature itself can deprive an individual of property rights by a plebiscite of neighbors. Such action is arbitrary and unlawful. In short, an exercise of approval power cannot be made to depend upon a count of noses." I want to reserve five minutes for the architectural team. If I could get maybe—where am I now, four minutes?

Mayor Scharff: Five minutes and (inaudible) seconds.

Mr. Kassouni: I'll just wrap up. This segues into a related constitutional defect in the City's Code, which imposes so many vague, ambiguous, and entirely subjective design criteria as to render them unworkable and meaningless on their face and as applied to Kipling Post. The project conforms to every objective design criteria. In this case, the vague Codes have been latched onto by the appellant as the only means by which to criticize the project. There is no explicit, textual limitations on the City's discretion. Unbridled discretionary grounds are inherent in phrases such as

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harmonious transitions, rhythmic patterns, design linkages. In its August 4th ARB hearing, one ARB Board Member felt that the project feels mysterious. These kinds of vague and unworkable standards should be rejected. There are also equal protection concerns and taking concerns under the Fifth Amendment, particularly with respect to the Kipling Post transferrable development rights. I encourage the City Council to review those letters. Thank you.

Mayor Scharff: Thank you.

Joseph Bellomo, Project Architect: Good evening. My name's Joseph Bellomo. I'm the architect for the project. I apologize; I'm not feeling well. I came down with the flu, but it's important that I'm here. I've lived and worked on Kipling and University Avenue for 35 years, so I'm familiar with the fabric of the Downtown. I designed the parking structure for the City of Palo Alto, the buildings on the circle, 116 and 102 University Avenue, served on the ARB, served on the Planning Commission here, worked on Johnson Park design. I love Palo Alto. I'm definitely here to stay. The project that you're seeing today is eclectic in nature. It's expresses the structural systems much like the project at 102 University Avenue. It's a sustainable concrete we've developed. It's a proprietary mix. The building here at 429 has a combination of steel, glass, honest materials expressing the structure and minimal layering. We'll approach LEED with a platinum here, for sure. A scale model would be helpful, to bring it up there. You guys want to see it? You guys okay? There's a (inaudible) in here. It's a 55-foot building here. Again, I apologize. I'll introduce Pratima Shah, and she'll take it from here. Thank you.

Pratima Shah, Bellomo Architects: I guess I have only two or three minutes left. I will quickly ...

Mayor Scharff: Two.

Ms. Shah: Two. I will quickly summarize. We have two levels of basement parking for 17 cars each, first floor retail, second floor commercial, third floor residential, three residences, and fourth floor one commercial and one residential unit. This is the program we are proposing for Council's review. This is the first-floor plan with retail space. We have kept the 20-foot storefront rhythm that we tried to maintain here. Second floor has 10-foot setback from the alley side, which can be used as a breakout space for offices. Third floor has seven-foot eight-inches setback from both Kipling Street and University Street and 10-foot setback from the alley. Fourth floor has a maximum setback of 37-foot from the Kipling Street, approximately 20-foot from University Avenue and 10-foot from the alley. This is the

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elevation from the Kipling side. As you see, the fourth floor is minimally visible. This is a sustainability slide which explains what we tried to achieve, basically honest building materials with exposed structure. This is a pedestrian-oriented design. What we tried to achieve is zero front and side line setbacks, building of varied architectural styles which is the eclectic style of Palo Alto Downtown, attractive street-facing window displays, and porticoes which demarcate the building entries. As per Municipal Code, we tried to use the overhangs which protect the openings of the buildings. This is a view of the alley and Kipling. As you see, we tried to minimize the massing on the corner of the Kipling and the alley. We have totally eliminated the mass which was earlier approved and proposed by earlier revisions. Done?

Mayor Scharff: Thank you.

Ms. Shah: Thank you.

Mayor Scharff: Now we'll return to the public. Our first speaker is Beth Bunnenberg, to be followed by Ray Hing.

Beth Bunnenberg: Hello, members of the City Council. I'm Beth Bunnenberg, 2351 Ramona Street in Palo Alto. I'm speaking tonight as an individual to review with you a little bit of the history of 429 University. News reports from September of 2015, in those I was quoted as saying that the new plans for this building changed the whole landscape of that section of University Avenue. It went on to say that there were several nearby buildings designed by Birge Clark, who really has been the, in some ways, architect of Palo Alto. They all have decorative fronts, often tile. Now, right across Kipling from this proposed building was the Swain Music Company building, but it probably is better known as the first Apple store. Who can forget the Apple store with Post-Its? When Steve Jobs died, all those windows were filled with comments. This is an important building in town. Across University Avenue, there's several small Birge Clark buildings that are fairly close to the Varsity Theatre. They also have some tile front. Some of them might be one building, but it appears to have two fronts. The HRB comments included the fact that the mass and scale of the building would be a very negative impact. The HRB voted in early September that the building plans were not compatible. I ask you to look at these new plans and keep in mind the concepts that the HRB was working for. Thank you very much.

Mayor Scharff: Thank you. Ray Hing to be followed by Amy Sung.

Yungluy (Ray) Hing: The Honorable Mayor, Council Members, this is my first time to participate in the City of Palo Alto Council meeting. Officially, my name is Ray Hing. My official name is Yungluy Hing. Officially I become a



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resident in February 2016. When I came over here, I met with a group of Chinese community, group of Chinese living in Palo Alto. They told me two things. I need to get involved and involved quickly. One is the election in 2016. One is 429 University Avenue. I did study; I did read this thick of the email. I find out the majority of people that against the building is because it's massive. It was a different architectural design. If Palo Alto's going to be the international favorite city for innovation and for going forward in the future, it's going to have change whatever the environment, the architect. After looking into it, after talking to (inaudible) Chinese New Year, last Saturday I believe—I attended so many Chinese New Year party I don't remember what it is. I come to the conclusion that after two—somebody said two, somebody said three, somebody four—four years of reviewing all this, after the changing from Option 1, Option 2, Option 3, one starts wondering why this is continuing to be delay on deny. Our community recommend that we go ahead and approve the building and move forward, looking for the better Palo Alto so all the public including the City can benefit from this development. Thank you.

Mayor Scharff: Thank you. Amy Sung to be followed by Cheryl Lilienstein.

Amy Sung: Good evening, Mayor, Council Members, Staff. My name is Amy Sung, and I live in Palo Alto. I'm a realtor, but tonight I'm here standing before you as somebody who's really interested in the future of Palo Alto. I'm here to seek and urge you to—I'm here to support the 429 University project. I urge you to grant it the permit that it seeks. Let me start by saying that this project really is good for Palo Alto's bottom line while it helps Palo Alto to achieve the goals that it wishes to achieve. First and foremost is that it will help with our goal of S/CAP and that is Sustainability and the Climate Action Plan. A new building is going to reduce the energy requirement and energy use. In addition to that, it will have to meet all the Green Building Codes. That will substantially reduce the energy use. That really fulfills the goal that Palo Alto is seeking. Number Two, this is a mixed-use building that encompasses retail spaces, offices and some housing units. If for nothing else, this could serve as a model to make a Downtown hub of living, working, and entertainment. This is the model, the lifestyle change that we're seeing everywhere. If for nothing else, for this four residential units that it proposes, we hope to remove four cars that occupies our busy streets and parking lot. Number three, it will help with Affordable Housing Fund. Because it is a new building, I don't know how much it will cost. I (inaudible) it cost a lot. The impact fees that it will contribute to the Affordable Housing Fund which, I think, is a good thing. That also will help us to achieve our goal for affordable housing. Finally, when the building is finally completed, it will really, really help our County for this tax reassessment. It will really help our bottom line to collect more property

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tax. That will in turn help our City coffer, our schools, and our park. Thank you.

Mayor Scharff: Thank you. Cheryl Lilienstein to be followed by Vita Borgunova.

Cheryl Lilienstein: In looking through the Staff Report, there is direction that says where new projects are built abutting existing, lower-scale residential development, care shall be taken to respect the scale and privacy of neighboring properties through transitions of development intensity from higher density development building types to building types that are compatible with lower-intensity, surrounding uses. Massing and orientation of buildings that respect and mirror the massing of neighboring structures by stepping back upper stories to transition to smaller-scale buildings including setbacks and daylight planes, etc. Respecting privacy of neighboring structures with windows and upper-floor balconies positioned so they minimize views into neighboring properties. Minimizing sightlines into and from neighboring properties. Limit sun and shade impacts on abutting properties. In looking at the Shadow Study that was produced by—who was that? Something ending with E-K. I forget. You can see that on the left here that's what it looks like today. That's the shadow. With the building proposed going in, that shadow is certainly going to be a lot different. Michael, can you get me to the shadow slides? The proposal shows the upper part. The upper schematic is what the situation would be at the winter solstice at 3:00 p.m., given the present condition. That's where the shadow is. The lower slide shows where the shadow will be if this building is allowed to be built as is. It certainly intrudes all the way over the yoga studio and also into the front yards and the front faces and the roofs, although it doesn't show it, of the buildings across Kipling. This is at 9:00 a.m. What does it do at 9:00 a.m.? Again, the upper slide shows where the building casts a shadow today and where that shadow would be cast if the building is allowed to be built. This is obviously not taking into consideration the quality of life for the people, the alleyway, the pedestrians, and the residents who are living alongside. It's really not compatible. I would like this to be sent back to the ARB. I wish that the requirements that the City Council established in 2016 were something that the applicant had responded to instead of just giving you another version of the same thing. Thank you.

Council Member Filseth: Thank you very much. The next speaker will be Vita Borgunova, to be followed by Mark Mollineaux.

Vita Borgunova: Hello again. I'm resident of Everett Avenue, about three blocks from the proposed project. I'm here to support an appeal of

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Mr. Harbour and urge you to deny proposed development plans. To my surprise, this project made it back to the Council. No changes were made, and concerns the Council had a year ago are not addressed. The building is still a huge brick taking over half the block and replacing three distinctly separate buildings. It's still utterly incompatible with the scale and character of the neighborhood. Airbnb actually says so. Developer just haphazardly slopped some architectural elements taken from already-approved buildings in Palo Alto and just played for time, waiting for the new Council to take over and hoping to influence you with donations. Now, they present it to us with a set of alternative facts. Honestly speaking, there is no alternative facts. There is facts of life. I see (inaudible) interest in it. They're getting five times square footage they have now and more than six times actually, if you count underground. I don't see what's in it for Palo Alto. It will worsen our parking problem Downtown. It will worsen our office/housing imbalance. It will definitely not going to be an architectural gem. Nothing to be proud of. All of that on top of not following City's rules and guidelines. Honestly speaking, this project reminds me of the Cinderella inside out. It's like the stepmother is forcing ugly daughter's shoe on Cinderella. It's still size 13, like nothing what you do. It doesn't (inaudible). Developer wasted already Staff time, resources, now wasting my taxes, my time and your time too. Please deny the project. Developer apparently has no intention to work with the City on making this project and have no regard for City's resources and for good of the community. It's not true there is no other way to build it here. Walk along University Avenue and you will see plenty of modern architecture buildings which are working with the old neighbors. Somehow the owners, I guess, were not that greedy. All the reason you need to deny is imagining the University Avenue full of those projects of the same buildings. Here I am. Thank you.

Mayor Scharff: Thank you. Mark Mollineaux to be followed by Rita Vrhel.

Mark Mollineaux: Hi there. My name is Mark Mollineaux. I graduated from Stanford, and I currently live in Redwood City. I live in a warehouse in Redwood City. Just this week, I learned that my landlord has sold the warehouse, so I am not going to be living there very soon. All us equal, I would like to live in Palo Alto. It's very close to Stanford University, and I do work at Stanford University. However, rents all through the Peninsula, especially in Palo Alto, are really not very affordable. Buying a place around here is just impossible. Let's be frank about it. The question is why is this the case. It's a matter of supply; there's just not enough supply for all the renters and all the homeowners to be able to live on this limited amount of land. One small part of this is the approval process. Here in the Palo Alto City Council, it has arbitrary standards. It can find any reason to deny something, inconsistent massing, design linkages, unharmonious transitions.

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You can make anything up to say why something shouldn't be approved. It's clear how this reflects a broken system. Homeowners, landowners in the area shielded from the effects of the limited supply through Prop 13 have every incentive to deny every single project. Why would they? Why would you allow a project? You don't really have any effect to you. You might make up any perceived slight to just shoot it down because there's really no balance to counteract it. In a more perfect world, residents who want to have a lower density living, they would pay for it with higher taxes. Prop 13 made this not the case. In any case, my tax dollars go to Palo Alto for its infrastructure, so I feel like I'm not getting my money's worth (inaudible) finding a place where I might be able to live. Anyway, the failure of Palo Alto to make an approval system that will actually supply this housing is catching the attention of Sacramento more and more every day. It's really up to Palo Alto to either solve its housing problem or have Sacramento try to solve it for them. I think Palo Alto has the potential to make it happen. Downtown Palo Alto, this is supposed to be the low-hanging fruit. You need to add housing. Three to five units in this place has become this massive train wreck of this approval process. How are you going to get any housing built if this blows up this way? You need to figure out big picture—what's your plan here? The problem's not going away. This is just one more example of how this is just kind of a wreck. Thanks very much for your time.

Mayor Scharff: Rita Vrhel to be followed by Neilson Buchanan.

Rita Vrhel: I have so much to say. I feel like we've seen this pig before. It keeps coming back, and it's got a little new dress on, but it's still the same fat pig that doesn't fit Downtown. I remember last year, Mayor Scharff, when you said when the applicant came back, "Why are you here?" The answer was that she couldn't get her way at the ARB. You said to her, "You need to follow the Codes." You actually shook your finger at her and said—do you remember this? I do. It was wonderful. You said, "We can take a very long, long time to approve your project." Why is this project back here again? You have the ARB, which apparently hasn't even seen some of these designs, and you're going to approve something. I think the attorney was a little disingenuous. I can see why Dr. Harbour feels like he has been slammed. I heard some very veiled threats on if you don't approve this project. To the young man who would like to live in Palo Alto, who spoke before me, these are luxury apartments. These are large, luxury apartments. All that the Planning and Transportation Commission and the ARB did was ask the applicant to reduce the size. I feel like this applicant is wasting your time, our time. Obviously it doesn't have the approval from most of the community. This is not a Chinese community versus the rest of us situation. This is an ugly building which is going to be replacing a very

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charming building next to a charming street. I really hope that you will send all of this back to the ARB with clear directions to follow the rules, the Codes and what you had previously said. Thank you very much.

Mayor Scharff: Thank you. Neilson Buchanan to be followed by Sam Arsan.

Neilson Buchanan: Good evening, Council. I would like to put a little bit different twist on the comments that have been made. A couple of voices have been echoing in my head for the last couple of weeks, thinking about this evening. One of those voices is Roxy Rapp. Several years ago when I first started hanging out in City Hall, Roxy made several presentations about the maximum use of the side streets that are perpendicular to University Avenue. I can't go through what he said, but basically he was saying those are treasures, and we should be developing those to draw people down the small streets for special places. I got confirmation of that in a course I'm taking at Stanford about Paris. Believe me, I'm not standing in front of you saying I've gone to four lectures, and I have the foggiest grasp of Paris. I do know, having learned a little about 300 or 400 years of Paris, that it's constantly changing, and that they really have paid great attention to special places. They recommended that you walk around town in daylight, prime hours, and evening hours at head level and take a look at the streets. I did that on the streets that radiate from Downtown North to University Avenue. I walked both ways and all the streets. I could rate the streets, but it really doesn't matter. Kipling is a very special opportunity. Anything that's built on Kipling should be special because it radiates from University Avenue like in Paris all the way to the park in Downtown North. That should be a very special pedestrian walkway. I don't think this building enhances it. Thank you.

Mayor Scharff: Thank you. Sam Arsan to be followed by Jared Bernstein.

Sam Arsan: Good evening. My name is Sam Arsan. I represent several landlords and tenants in Downtown Palo Alto. I also manage and lease several buildings in the Downtown area. I've been working in Downtown Palo Alto for over 20 years now. I think this building is very well designed, and it's very attractive. It's a welcome addition to this part of University Avenue. I have several tenants and landlords that are concerned about the delays that we've been having with this. The building is unfortunately in need of a lot of repairs, and it needs to be redeveloped and replaced. I'm hoping that you will approve this project. Thank you.

Mayor Scharff: Thank you. Jared Bernstein to be followed by Karin Alana.

Jared Bernstein: Hello. I'm Jared Bernstein, 1330 Tasso Street. I'm coming out of the blue because I wanted to talk to you guys for the last six months

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on this topic, but I didn't know it was so fraught. It's really amazing. I didn't expect this level of emotion on the topic. Maybe eight, nine years ago, I was planning to build a house. I went through the Building Code at the same time Elizabeth Wong was. I was reading about it in the newspaper. The neighbors didn't want Elizabeth Wong to build this building. I wondered why. If she's got the approval and she meets all the requirements, why can't she just build her house? It's a house on Webster somewhere. Never met Elizabeth Wong. Then, I saw this thing. It's like there's all of a sudden a building that's completely okay and conforms with all the rules. For some reason, it got stopped. This was maybe two years ago because I read the newspaper every week cover to cover. Recently, I figured out it's Elizabeth Wong again. Just recently, I met Elizabeth Wong somewhere. She had a nametag. I said, "You're Elizabeth Wong." I'm like, "Why is it that people are stopping you from building a building which apparently was originally perfectly approved?" The first time it was okay, and then somebody opposed it. For some reason, the tail is wagging the dog. If I own a property and I want to build a building and I follow all the rules, it ought to be okay. I think the same thing for every other person. We're trying to be a City of laws and not a City of people, if you know what I mean. All I'm saying is I think it should be approved somehow. I don't know which one, and I don't know all the details. The building is not too ugly; it's not too pretty; it's okay. Just a newspaper reader following it, I was puzzled. I said somebody is stopping this for who knows what reason. At any rate, thank you. You guys really put up with a lot of stuff. It's tough. You have my sympathy.

Mayor Scharff: Karin Alana to be followed by Jake Lowenheim.

Karim Allana: Good evening, Honorable Mayor and Council Members. Thank you for giving me the opportunity to speak. I live on 611 Webster, which is also in the Downtown area and own a business here as well. I own an architectural engineering company, Allana Buick and Bers in Palo Alto. We employ about 120 employees. I'm very happy to see this building go up. I think that it's a very sustainable building, which is my specialty. It's built out of concrete. It has very efficient daylighting and light and glass that is necessary today in energy efficiency. I'm also pleased to see that a building within the FAR allowable ratio and the zoning is what is allowed here. It's a mixed-use project, which is great, accommodates both people living and working, which is exactly what we need to cut down traffic and people. I also think the building is energy efficient and elegant in construction and architecture. What I am puzzled by is the opposition, especially Mr. Harbour's view. Why would a project that meets all of the City's zoning requirements, all of the FAR requirements face this type of scrutiny from a person that doesn't want it in his neighborhood? This is a NIMBY(Not in my

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back yard) issue. As much as I love Downtown Palo Alto, there are parts of it that I don't like. I don't want to be surrounded by tall buildings. I don't want to have a commercial building across my street either, but I take the good with the bad. This is where we live. This is Downtown Palo Alto. We've got to accept what the City allows us to build here. If we just arbitrarily allow people, individuals to put up a fight and listen to them and not allow construction to happen, it's going to be a bad thing. It's going to be bad for businesses like mine. I'm an architectural engineering firm. I depend on construction; I depend on development. I want to see sustainable things built. I want to see laws being followed. If people are following the rules and they're following the laws and they're building within the City guidelines, I just don't get it. I don't see why the City would allow an individual who disagrees with the development, for them to put up such a fight that the developer has to go through this many submissions and this many Architectural Review Board hearings. I thank you for your time.

Mayor Scharff: Thank you. Karim Allana to be followed by Jake Lowenheim.

Jake Lowenheim: You're off by one. I'm Jake.

Mayor Scharff: Yeah, I am. They haven't changed it there. They're supposed to have.

Mr. Lowenheim: I'm here, and I want to echo the words we just heard. I'm a little bit new to this. I realize there is a lot of you that have quite a lot of passionate feelings about this. For me—many of you may not know this. I was involved in some of the civic projects down here, especially the one that is always everyone's favorite, which is parking. From both sides, I was involved in it because a I'm resident of the neighborhood, but also there's parking and monitoring and other things that I initially got started here in the City. It made me very conscious of what goes on here in terms of pain points that the City has. I want to speak in favor of this project just very quickly because I like the idea that a building that's there at the moment, that is used for office space and other purposes, which does not have its own parking, now has built-in parking if this building goes there. I also like the idea that it's a green and sustainable building that's proposed to be built here. I'm not sure if everyone's aware, but the other pieces of property that are in that block, in between Waverley and Kipling, there's a lot of it that's at the moment under construction because there's earthquake-proof things being done. Actually, it's quite a painful process, so I like the idea of something new coming in. To echo also whatever one else says, I think it's fair as long as you are putting something in the footprint of what exists, and you're actually upgrading to what's going on and not expanding past it, and

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following the rules. It should be something that should be allowed. That's pretty much all I have to say about it. Thanks for your time.

Mayor Scharff: Thank you. Meredith Slaughter to be followed by Nikoo Namazian.

Meredith Slaughter: Good evening. My name is Meredith Slaughter, and I'm a resident of Downtown Palo Alto. I want to make three points tonight. The first has to do with the project site's close proximity to public transit, both the Caltrain station and the Lytton Avenue bus route. These close proximities make the project and other sites along University as well ideal for mixed-use design and to high-density uses. By building up and varying the land uses within a single project site, we are going to decrease the reliance on the automobile. The second thing I want to talk about tonight or to suggest to the Council is that, when you're considering the compatibility and context-based criteria under the Plan or the Code, the most appropriate application considers not only the existing uses of the immediate environment or the adjacent properties or the abutting properties, depending on the provision that applies, but also the potential uses under the Code. The project site is in the Downtown commercial district. Under the General Plan, it is in the regional center. It is considered a prime area for this type of development. Moreover, Kipling Street, as the appellant has made clear many times, is apparently the narrowest street in Downtown Palo Alto. That makes it even more compatible with a mixed-use, high-density design because narrower streets are inevitably more pedestrian-friendly because they encourage fewer automobiles to come down their travel way. The last thing I want to say tonight is that I hope the Council will consider the implications for future projects, not just this one but future projects that are proposed in the area if you deny this one and the limitations it will place on the City's development. Thank you.

Mayor Scharff: Thank you. Nikoo Namazian to be followed by Simone Sadri.

Nikoo Namazian: Hi. My name Nikoo Namazian. I've been resident of Palo Alto for last 30 years. I live on East Crescent Drive. I like to make it a little personal here. When we, my husband and I, graduated from college, we lived in Cambridge, Massachusetts, around Harvard and MIT and so on. We thought that we live in Cambridge, Massachusetts, forever. When the opportunity to came up and we moved to Silicon Valley and then we chose Palo Alto as our residence, we thought we would miss Cambridge, but we didn't. We never missed that place. This City has a unique and beautiful character. It has been great community to raise my daughter, my only child. This new wave of generation is trying to get to Palo Alto, rent



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somewhere, buy something and start up their company and then take it to public and bring a lot of money as taxpayers. When I heard about the proposal, building on 429 University, I was curious. I looked at the plan, and I looked at the architectural drawings. I truly believe that the proposed building is designed tastefully and complements its surroundings. I was very careful when I look at the detail of this project, and I didn't see anything wrong with it. I also believe that, knowing this great City, it keeps Palo Alto's character as diverse as possible. You see modern and traditional, and it's been in-between all over. I'm sure this plan is in benefit of our City too. It's going to bring a lot of tax money after it's built. Why are we waiting? What's the reason behind all these delays? I'd like the City Council approve this. Thank you for your time.

Mayor Scharff: Thank you. Simone Sadri to be followed by Henie Faghani.

Simone Sadri: Good evening. My name is Simone Sadri. I live on 1416 Hamilton Avenue. I'm in favor of this project, and I'm here to urge you to approve the project as it meets the building and Code requirements. It also provides a mix of retail, office and much needed residential units that would contribute to the vitality and vibrancy of a beautiful Palo Alto. Thank you.

Mayor Scharff: Thank you. Henie Faghani to be followed by Herb Borock.

Henie Faghani: Hi. My name is Henie Faghani. I work in Palo Alto; also I do live in Old Palo Alto. I am pro this project. I do think it's time for us to approve it, since it has met all the Building Code and requirements. The mass and scale has been addressed. It will improve retail, office, residential shortage plus this building has addressed the parking. Thank you for your time.

Mayor Scharff: Thank you. Herb Borock to be followed by Richard Brand.

Herb Borock: Mayor Scharff and Council Members, I urge you to uphold the appeal and to deny the project. The Council over a year ago on November 30, 2015, instead of denying the project sent it back to the Architectural Review Board and directed the applicant to make changes so that the project could be in a form that could be approved by the Council. However, I attended those ARB meetings and, from one meeting to the next, the ARB was prepared to say that the applicant hasn't responded appropriately to the Council's direction. They were ready to send it back to the Council and say they haven't done what you requested. The applicant repeatedly kept asking for more time to change it and sometimes made it worse compared to what the Council was asking the applicant to do. The only thing they've accomplished is to get a different City Council to review the project this evening than the one they had before. I've presented

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information based on substantial evidence that the project is larger than it is entitled to be because it is claiming to use bonus square footage from a demolished building and calling it seismic upgrade square footage. When you're presented a fair argument based on substantial evidence, as defined in the environmental law in this case, and it's not mitigated, you have to have an Environmental Impact Report if you want to proceed with the project. Perhaps you might think, "What we should do is direct the applicant to redesign the project after subtracting that amount of square footage." If you did that, you already know what the applicant's going to do. The applicant is not going to do that and will keep asking for more time, while you keep getting more revisions over and over again. Maybe after two years, there will be another Council that the applicant can try to convince what to do. I believe this has been going on too long. The only one who has kept it going this long is the applicant. Rather than following the direction that the Council had previously given the applicant and continuing to ask for more time and hoping that somehow she'll get approval for something that is worse than you saw before.

Mayor Scharff: Thank you. I'm just going to interrupt for a second. It's now 9:35. In five minutes, we're supposed to be starting the Stanford GUP. We're clearly behind. We've talked to Stanford, and they're willing to move their presentation to the next Council meeting on February 27th, I think it is. I think we're just going to go with that and do this tonight and not get to the Stanford Item. If you're here for the Stanford Item, we're going to do it on February 27th. Thank you. Richard, go ahead.

Richard Brand: Good evening, Council Members. Good to see everybody tonight. Mayor Scharff, it's interesting you're bringing this up because my issue here is policy and procedures. I'm really concerned about you taking your very precious time to deal with a project that should be at the ARB and being adjudicated and redone and looked at all the rules and regulation issue it brings up in the ARB. That said, I'm very concerned about this project. According to the Comp Plan, it's under-parked. You know my sensitivity about parking. One of the things that really concerns me about this is it's a very aggressive proposal. You've seen my note. My brother-in-law's picture is up there, Kirke Comstock. He died last year. He was a Mayor, worked a lot of time. Ethics was a big issue for him. He really felt that this Council was the epitome of how government should be run on a local basis. I'm concerned with the money being spent to push and influence potentially a project of this level on one of our most lovely streets in the City. I will say one thing about this. The appellant had mentioned about the shadow effect. We all love, at least I do, the Palo Alto Celebrates the Arts. In the afternoon in the summertime, if you walk along University Avenue for Palo Alto Celebrates the Arts, big buildings shadow that part of the celebration that

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goes on, on a weekend in August. If you have been to the area down east where we call the Bank of America building, the tall building there, that's a shadow area, and it's very cold in the summertime at Palo Alto Celebrates the Arts. This big building is oversized in massing in terms of what it does with the adjacent buildings. While it may meet the rules and regulations, what it doesn't do is meet the look and feel of what our City should be. It has some housing. I know the fellow was talking about housing in Palo Alto. Yes, we need that, but these are luxury apartments. I encourage you to turn this back to the ARB and reject it tonight. Thank you.

Mayor Scharff: Thank you. Bill Lou to be followed by Rene Wood.

Bill Lou: Good evening. Many words have been said before, so I found out the best way is talk about yourself and personal experience. I've been living here with my family for 18 years, worked at CalTech for a few years. I also lived in Europe for eight years, mainly in Zurich. In Palo Alto, I thought it was good thing to be a builder with watching my kids here. A few years ago, I decided to better use my intelligence, going back to renewable energy. Today's meeting made me feel like I did the right thing. I've been here a few times. ARB processes have not changed. I think today three things. Take away number one, it's still about people not about a Code, which is sad. Second thing, change is inevitable. It's very hard to do it here. Third thing is no brainer to me. The design came from the same architect group who has built here. The initial denial two years ago was clearly a mistake. I've been through that process a few years ago. I'm in support of both Elizabeth and Jaime. The architecture is a natural—it's good stuff. Thank you.

Mayor Scharff: Thank you. Rene Wood to be followed by Andrew Gottlieb.

Rene Wood: Good evening, Mayor and Council Members. My name is Rene Wood, and I'm not a resident of Palo Alto, but I visit here frequently and follow your politics intensely. The thing that I'm hearing tonight was an excellent presentation by City Staff, whereby they went through point-by-point the history on this project and pointed out very clearly to those who were listening what the ARB has asked for this design, Option Number 1. They were also very clear in pointing out that Option Number 2 and Option Number 3 have not been reviewed by the ARB, which is your process. The attorney and the architect for Ms. Wong came up, and there was a lot of hocus pocus in my view. There's a lot of shell-shifting going on. They did not address the points that were made by the City Staff. In fact, they basically insulted the City Staff by saying that selected emails which sought to bring together various people on this project, which every City

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department should try to do. Should I stop until the matter is cleared up back there?

Mayor Scharff: We can hear you just fine.

Ms. Wood: Thank you. I really take offense at the attorney and the architect and their comments. There's nothing wrong with a neighbor and a group of people who become very involved in City politics. This is their home. As we've heard multiple times, homes here are very, very expensive. They're just looking out for what they feel is their investment in Palo Alto as well as conforming to what the Planning Department said. I would urge you to not be taken in by this appeal and to realize that what it is, is an attempt to go around your clearly defined process, which is for your ARB to review these matters. I am struck, as someone who has been over 15 years in my hometown politics, at the patience with which this Council has given this matter and the basic disrespect that has been given to your process, in particular your ARB. For what it is worth, I would go with those people who have recommended that you deny this and send it back to the ARB. If it cannot be worked out, kill this matter because you have an applicant who is not respecting you, this town, its residents, or your process. Thank you.

Mayor Scharff: Thank you. Andrew Gottlieb to be followed by David Lieberman.

Andrew Gottlieb: Good evening. My name is Andrew Gottlieb. I'm a longtime resident of Downtown Palo Alto. Mr. Buchanan's comments struck me earlier as being very applicable. Kipling Street is a special street. In looking at and approving a building to go up on that street, the special nature of it should be taken into consideration. I think the Architectural Review Board was doing that. I think they were doing their job. I believe at this point they should continue to be able to do their job to either accept or reject this project and not circumvent the Council. I'd encourage the Council to allow them to do their job and not be influenced by other types of discussions going on tonight. Specifically the attorney for the applicant, I think they are denigrating the process in suggesting that a resident is taking over the process and not allowing a project to go forward. I think what's simply happening is a resident is exercising his right to object to a project and express the concerns of himself and apparently other members of the community. I'd encourage you to listen to that, listen to the appellant and the objections before the Council, and not be discouraged by the side conversation about an appellant taking over the process. It's simply not happening; he's encouraging it. He's just making sure the rules are being followed. Just following on that, there are reasons why the project has been delayed for several years based on objections because the applicant has not

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followed the suggestions of the ARB, has not followed the rules, and has not taken into consideration the concerns of the community. Finally, I'd like to say in this day and age, respect for the process and the public's confidence in the process is critical in local government and Federal government. Listening to Council Member Tanaka's expression of explaining why he's not recusing himself is a concern. I think even the appearance of impropriety is discouraging. I would encourage you to recuse yourself from this process based on the campaign contribution. Even though you refunded it, I think it creates a cloud and appearance of impropriety, which would undermine the public's confidence in the process if you didn't recuse yourself. Thank you.

Mayor Scharff: Thank you. David Lieberman.

David Lieberman: Hi. This project was first presented to the City in 2013. It was approved by the Planning Staff in 2015. It meets all building and Code requirements and requires no variances or exceptions. Yet, four years later here we are. Is Palo Alto governed by law or by ad hoc decisions based on individual whims? As a resident of Palo Alto, I am required to obey all municipal laws and regulations whether I like them or not, and frequently I don't. There is no exception to that requirement for Council Members. You members of the City Council have the ability to change the law, but you don't have the right to ignore it. Do the right thing. Obey the law. Approve this project. I'd just like to add one thing. If the nine of you went into a room and designed the site, designed a building, you would come out and you would vote it down.

Mayor Scharff: Now, we return to the appellant, who will have three minutes in rebuttal.

Mr. Harbour: I thought you said the applicant was first.

Mayor Scharff: Let me look at my thing here. I get that confused. Does the applicant object to going first? Nope, then the applicant can go first.

Jaime Wong, Applicant: Good evening. My name's Jaime Wong. I want to start by saying an earlier speaker talked about Birge Clark, and we're trying to honor Birge Clark. In fact, the American Institute of Architects elected to give the Birge Clark award for sustained architectural excellence to Joe Bellomo, my architect. People have tried to brand me as a developer. I don't object to that, but it's not a bad thing. I'm also your neighbor; I live here. I've raised my family here. I vote here. I shop here. Yes, I invest here. Everything for me is Palo Alto. I care about this town. I'd better because my whole future and the future of my family depends on it. We have seen the tactic of fearmongering here. People talk about ignoring the professionals who have said shadow studies, no impact. No, no, no,

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shadows are—nuclear winter is coming. Traffic and parking, no impact. Yet, we're supposed to stand there and watch cars ram into each other on Kipling Street. I don't believe that. Pictures opposing my project show flat elevations because we're required by City Code to present flat elevations. That puts the building in its worst light because nobody looks at a building that way. You look at it in 3-D. The Comprehensive Plan, you can find quotes in the Comprehensive Plan that oppose it, and the appellant has found many. I have found many that support it, and I've enclosed those in a letter to Council including quotes from the Comprehensive Plan and the Urban Design Guide. This project is good for Palo Alto; it's good for me. The Architectural Review Board has seen every page on that project except for the one with the sizes because the numbers changed a little bit, so I had to redo a new page. If you liked Option 1, you will love Option 3. All the pages are the same, and the ARB has seen all those drawings. The ARB went on record to say, "We need approval of the appellant or else the appellant will appeal again." I don't think that's right. To continue on with the presentation from earlier, here is a view of what it looks like from the alley right now. It's a service alley. It has dumpsters, and the garbage trucks come every day and pickup garbage from there, and cars park there. That's it. It's hardly used by pedestrians as the Traffic Study that we presented to the City shows. We have some slides about compatibility to show that Palo Alto is really a diverse collection of tall buildings, small buildings, modern buildings, older buildings. They take design cues from each other, but it's all diverse. This building does the same. Thank you.

Mayor Scharff: Thank you. Now, Michael Harbour.

Mr. Harbour: I wanted to summarize here and thank you again. This is a colossal building on the narrowest street in Downtown Palo Alto. I want to point out in terms of some metrics Bryant Street is 49 feet wide versus Kipling at 29. It's about 70 percent larger. That same four-story building, which would be allowed on Bryant, is going to appear much larger and have much greater impact on that narrow Kipling Street. We've heard many people come up and tell you emphatically that this building meets all the Code requirements, the FAR, the square footage. Code requirements do include FAR and square footage, but they also include the Municipal Codes about context and compatibility. Those are just as important, the Codes, as just the square footage alone. The only reason why we are at almost a 3.0 FAR is because of a transfer of development right, which the City has admitted probably would not be granted in this day and age. It doesn't mean that the applicant gets to use all of it. You have to look at the receptor site for this area. Don't feel sorry for the applicants here. The applicant went to the media. The front page of the newspaper in August, the applicant has agreed to reduce the size of the Downtown project. It was

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a bait and switch. She actually made the building smaller before she made it bigger and changed everything around and has gotten everybody confused. The options that you've seen here before are not her little, small project or smaller project. Please don't feel sorry for them. The applicant willfully did not address the issues outlined by the May 4th City Council Motion. There have been multiple violations that still exist with regard to size and massing. The Staff Report states the applicant has only partially been responsive and ignored other repeated requests. The total size and mass of the building is as large as it was when we filed our original appeal. The applicant and the architect have ignored repeated suggestions by the ARB to bring this project into compliance. Board Member Lew, who's here tonight, actually gave two separate slide presentations with photos—something I've never seen—demonstrating what success would be like. He brought these photos and showed how other applicants have done this. Again, deaf ears. I personally have met with every architect, applicant, attended every ARB meeting. The applicant has made the massing worse by enlarging the top floors. I want to make this very clear. This appeal is not meant to prevent the applicant from developing this piece of property. I am not against that. I actually come from a family of developers. One of the things that we do is actually work with the community to make sure that the needs are being met. This has not happened at all. Again, I've mentioned these here before. The only decision now is to reject the current plan. It's the only decision. The ARB hasn't even seen the existing plans of all three options and weighed in on them. Thank you very much.

Public Hearing closed at 9:53 P.M.

Mayor Scharff: Thank you. Now, we return to Council for questions and comments. I'm going to close the public hearing at this point as well. I just want to reiterate that for Council to take any action, it's going to take five votes. Council Member Wolbach.

Council Member Wolbach: I actually just want to make a couple of comments about the process and the kinds of things that we focus on tonight in response to some of the things we've heard from members of the public. First, on the question of who should be participating in this, we've heard a lot of discussion about this around other issues as well. There's no obligation for anybody to recuse themselves from this decision. There's no legal obligation. There was not even a legal obligation for anybody on Council to return any checks. The one person who saw that that might create the appearance of impropriety returned the check to remove that appearance of impropriety. Personally, I never took any money from developers when I was running for office, but everybody's able to make their own choices. When issues of Castilleja come back, I'm not going to

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encourage anybody to recuse themselves, because I think the accusations are ridiculous. I think the same thing applies here. I think the people can make informed, reasonable decisions regardless of what kinds of donations they took. This is, again, coming from somebody who decided not to take those donations myself. I just think that we should be fair to the process, and we should be honest, and we should be consistent. There's been a lot of accusations thrown around over the last year regarding the idea that just because somebody took a donation from somebody that influences their decision-making. Again, in this case it's not relevant. We've heard, frankly, from both sides of this discussion a lot of ad hominem attacks. I find that dismaying as well. This isn't a question of whether we feel some personal affinity for either the applicant or the appellant or we find their attitude to be in any manner offensive to our personal sensibilities. That's not the question in front of us. It's unfortunate that the acrimony is quite severe around this project. It would have been great if everybody had a kumbaya moment, but we're going to have disagreements. That's okay. I'm actually going to reserve—I'm actually not going to make a Motion. I want to listen to my Colleagues ...

Mayor Scharff: You can't make the Motion. So we're clear, it's supposed to be comments and questions.

Council Member Wolbach: Excellent. I'm not planning on making one. Whatever decision we make tonight, it should be very, very clear. We should focus on those issues that have not been resolved. Obviously, one of my biggest concerns previously was around the historic impact on neighboring buildings. HRB looked at it, said they were unable to come to a finding. We talked about this the last time it came before us. That issue wasn't a primary issue. The major questions here are around mass and scale and things like that and whether this project sufficiently meets the findings necessarily. I'm going to leave it to my Colleagues to weigh in on those. I'll be listening attentively.

Mayor Scharff: Council Member Filseth.

Council Member Filseth: A quick question to Staff. I know we talked about this in the last meeting. A couple of people brought up the issue of the applicability of TDRs. Can Staff comment briefly on that?

Mr. Lait: The Municipal Code sets forth the requirements and standards for having potential floor area transferred from one development site to another. There's a variety of requirements for that. Applicant has initiated that effort, has secured the Transfer Development Rights (TDRs) for the 429 University site. The area of conflict or concern that the community member



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was speaking to was that the new Apple store was one of the sites for which TDRs were granted. The Code's interest is to remove seismically vulnerable buildings and shore them up and replace them with buildings that meet the current standards. In the process of the building permit construction, it turned out that the existing walls that were to be retained couldn't be retained, and they were removed. The site was essentially demolished and built anew. That's not inconsistent with how some other projects in the City have been previously reviewed with respect to TDRs, but it did raise the conversation that the Council did talk about and directed Staff with respect to seismic upgrades of buildings where the Council had expressed an interest that Staff no longer allow complete demolition to be a means for meeting that standard. Now, you do have to retain and actually rehabilitate the existing structure. That was a conversation that happened subsequent to the City granting the TDRs for that site.

Council Member Filseth: Where does that leave this project? You're saying it was okay under the old rules but not the new rules. Did I understand that right?

Mr. Lait: We're saying that this project was evaluated consistent with City practice, and we believe that the TDRs are valid for this development site.

Mayor Scharff: Council Member DuBois.

Council Member DuBois: If it's all right with the Mayor, I see a member of the ARB. I wanted to ask a couple of questions.

Mayor Scharff: Sure, go right ahead. That's what you get for coming.

Council Member DuBois: I have two questions for you. The first one was—Option 3 has been described as highly similar to designs that you guys looked at. Do you agree with that?

Alexander Lew, Architectural Review Board Chair: I do want to be clear that normally when a representative for the Board comes here, we represent the whole Board's opinion. The Board has not seen Option 3, so I can't tell you what the Board thinks about Option 3. You're actually asking is Option 3 similar to Option 1. The Board only saw a preliminary drawing set of Option 1. It was like a pencil drawing set. Not all the drawings were included. We didn't have perspective renderings from different sides or whatnot. Option 1 really has not been thoroughly reviewed by the ARB.

Council Member DuBois: The second question is—in November of 2015 Council made a specific Motion to ask the ARB to evaluate the project on six specific findings. What was the result of that review?

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Mr. Lew: We did review those particular findings on one of the earlier schemes. I think that was in the second architect on the project. We're on the fourth architect now. I personally did go through all the context based findings in my last review of the project. The two other Board Members who reviewed the project said they may or may not agree with what I had said, but they didn't specifically cite where they would have a differing opinion. I couldn't give you something specific. If you looked at this last Staff Report, I did highlight areas where the Staff did not think that the context based criteria were met.

Council Member DuBois: Thank you.

Mr. Lait: Excuse me, Mayor. If I may supplement that. I concur with Chair Lew's response to that. I would note that the Motion that was made on October 20th was a reference to draft findings that were included in the Staff Report. The Motion stated to accept the draft findings that were included in the Report. That speaks to the findings that were made. I can quickly just summarize a few of those if that would be helpful for the ...

Council Member DuBois: This is against which option?

Mr. Lait: This would have been against Option 2. The findings that the ARB adopted, one had to do with the—we had a conversation of the old ARB findings. Finding 1, that the design was not consistent or compatible with the applicable elements of the Comprehensive Plan. Finding 16, that the design is not consistent with the purpose of architectural review, which has to promote orderly and harmonious development in the City, enhance the desirability of residential or investment in the City. It goes on to cite a couple of different components. Specifically with respect to those findings, the Board found that the building's size, scale, and mass would not enhance the pedestrian environment, that it would conflict with the following goals, and it listed, in policies of the Comprehensive Plan: Goal L-1, Policy L-5, to avoid land uses that are overwhelming and unacceptable due to their size and scale; Goal L-4 speaks to pedestrian scale; Policy L-20 speaks to reinforcing street corners or that form corner plazas; Policy L-23, promote the quality of design that recognizes the regional and historic importance of the area and reinforces the pedestrian character; Policy L-24, Goal L-6, creating well-designed buildings that create a coherent development pattern, enhance City streets and public spaces. It goes on. Finding 2, Finding 4, Finding 5 and 6 of the old findings were not supported with explanations as to why. Then, it went on to the design compatibility standards, which I can elaborate on further, but there's a whole set of findings that the Board found for Option 2 was not supportable.

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Council Member DuBois: Just a couple of quick comments. This project has been to Council twice. My impression is the applicant really hasn't been responsive to Council direction. I did ask the City Clerk—I think she did it—to provide the verbatims from our previous meetings. I hope my Colleagues got a chance to look through those or at least watch the videos. We've had very extensive discussion. I don't think we need to repeat that discussion tonight. Just quickly, I do think the issue with the loading dock remains. I think that's going to be addressed. The scale on the first floor and the eaves and the entryways, I think, does make the building appear to tower over its neighbors. The visual mass and scale along Kipling remains an issue. Just to clarify for some of the speakers that came—I think somebody else already said this earlier—the quantitative zoning is not a right to the maximum amount. It's up to that amount. It's not the starting point, and it's not the minimum. We did have extensive experience about Ordinance 18.18.110, which is our Compatibility Ordinance. Again, when I look at those conditions, it still appears that they have not been met. Thank you.

Mayor Scharff: Council Member Holman.

Council Member Holman: Thank you. It's always dangerous when you make a comment in the presence of somebody who's been around for a long time. Just to clarify the record, not that it's something that we're considering tonight but just to clarify the record because I think it's important to do so. TDRs for seismic improvement many years ago were allowed for demolition, but also a good number of years ago, probably—this I would have to guesstimate—a good 12 years ago, 10, 12 years ago, that practice was assured to the Planning Commission and the public that that practice would no longer continue because it seemed to be contradictory to the purpose of the seismic TDR Ordinance. To my knowledge, this is the only project in the recent past that has gotten seismic TDRs for a demolition. That said and understanding that's not in front of us, I just wanted to try to correct the record. As Council Member DuBois said, there are a couple of members of the ARB here. I know Board Member Lew has had a lot of experience with this. I'd like to ask you a question, if I could please.

Mayor Scharff: You may.

Council Member Holman: Thank you. Other cities—I know you do work in a lot of other cities—have more than just the numerical standards for project review and approval. Not to put you on the spot here, but I know San Francisco being one that you work in a fair amount. Can you describe what criteria they have that are not numerical or how they might relate to our findings that are required in our Context Based Design Criteria? We're not unusual in this, correct?

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Mr. Lew: No. I think I mentioned this in one of the ARB meetings about this project. Just as an example, in San Francisco for what they call their pedestrian areas, which are their neighborhood shopping areas, just for example, they would restrict lot mergers to a prescribed size. That's actually a numerical issue. The intent is to keep the pedestrian street attractive and variable. They actually discourage putting fake fronts, multiple storefronts on one big building in an attempt to mask it to make it look smaller. That's why they restrict the lot size, lot mergers. Also, they would require driveway curb cuts or garage entrances to be on an alley side and not facing any pedestrian street. They have requirements for clear glazing along pedestrian frontages. Is there something in particular that you're looking for?

Council Member Holman: I'm not familiar with San Francisco's Code, but I just use them because I know you are familiar with them. Is there any just quick thing that you want to describe about how they might deal with street rhythm?

Mr. Lew: That's one I was getting at ...

Council Member Holman: I know about the lot mergers, but ...

Mr. Lew: ... the first thing with the lot size. They prescribe a dimension for each street, each pedestrian street. Market Street, which is a big commercial street, has a larger dimension. Some of the more neighborhood-oriented streets would have a smaller dimension, say 50 or 60 feet; whereas, Market Street might have a maximum building frontage of 125 feet or 150 feet wide. That's to make the buildings scaled to the neighborhood to ensure new buildings are scaled to the neighborhood. They also have restrictions against chain stores. We've talked about this a little bit with the (inaudible) of California Avenue to try to keep the character of an established street.

Council Member Holman: Thank you very much. Just a couple of comments. I and, I would imagine, at least the Colleagues who have been here for a while and seen this project before think it unfortunate that this project is still coming before us and not having a particularly successful or popular response. You can pick any one of these sets of plans. I'll look at Option 3, for instance. Our Context Based Design Criteria and various other aspects of the non-numerical findings that have to be made talk about the rhythm of the street. The rhythm of the street is described as 25-foot storefronts and the differentiation. If you look at—it's in the Staff presentation. Slide 10 is actually not a bad representation of that. If you look at the other storefronts, they are differentiated by either different

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window treatments, different street-level window heights or a little bit of entry heights. On the second level, the same thing. They're all finer grained. If you look then at what is being proposed in either Option 1, 2 or 3, you have very dominant and prominent concrete features that step forward, that are as single units larger than the whole of an articulated building front adjacent to or down that block. If you look on the Kipling side, that's true not for the storefronts particularly, but that kind of larger-scale rhythm is very inconsistent with the rhythm of the houses on the street. That's of great concern. These proposals for the most part—depending on which one you look at, it's either more or less the case. This building has very strong horizontal elements that run the length of the project. There's not an attempt to break up the mass and scale of this building. There have been a lot of comments made about the size of the building. As I've said recently, it's not the square footage; it's how the square footage is expressed. If you look at a building that often gets referenced because it's so successful, if you look at what used to be the University Art Building, how a lot of people still think of it, where Shinola is now. That building is a very large building and adjacent to someone and two-story buildings. What it does to make itself presented to the public as a pedestrian-scale building is it has very much differentiated storefronts. The elements of the building—it's all one building. People don't even realize that sometimes when looking at it. The elements of the building have differentiated roof angles, roof shapes, roof heights, different window treatments. Those make for a very much more smaller-grained, fine-grained, more compatible building that is much more likely to be compatible with the surroundings. It's not about style. It's not at all about style. I want to be clear about that. It's about the design, which is not the same as style. This building, I think, does not respond to those transitions, does not respond to the rhythm of the street. The height of the first floor, I would have to say, also—again, these are very dominant, concrete, forward-setting elements. Those projections are about a story and a half tall. How I look at this. I think of it as, if you go through a neighborhood that's in a floodplain—if there's a replacement building and the replacement house has to be raised the three feet or sometimes three-foot-plus, it's how that house has a very negative impact on the other houses on that block or in that neighborhood. It stands out considerably. This building does that same thing. I'll stop there. Those are some of my comments.

Mayor Scharff: I have a couple of comments on this. First of all, I'd say that for me the issue is Kipling Street. University Avenue has no unified architectural feel to it. There's a 50-foot building virtually across the street from this building. It really comes down to how this interacts with Kipling Street for me. The Staff Report does a really good job really starting on Packet Page 526 when it talks about Option 1 being the most responsive to

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concerns about the overall building mass and provides better transitions to neighboring properties. As the Staff Report points out, most of the commercial buildings have two-story volumes, are greater in height on University, and the buildings across the alley are the ones in the exception. That's Kipling Street. The character of the buildings on North Kipling Street are Victorian homes. That's really the compatibility issue I think the community is struggling with. There's a stark transition between this building and Kipling Street. Whereas, on University Avenue, I don't think there's that issue at all, frankly. University Avenue is eclectic with many different styles of architecture, some 50-foot buildings, some 80-foot buildings, some much taller buildings, 525 University down the street. When we look at University Avenue, I don't think that's the issue in any way. I actually think that Option 1 works well as a three-story building. One of the frustrations for me in this is what seems to be important is the Kipling-facing rendering and what it looks like from Kipling Street. The applicant, frankly, hasn't provided that. The fact that the stairway and elevator goes up to 56 feet—I think the Staff Report is correct that that would need to be brought down. If we move forward on something similar to Option 1, we would need to bring it down. The problem I have with Option 1 is that I can't really tell on the pop-up residential there what the effect of the massing is and what that looks like from Kipling Street. For me, this should be a three-story building. That takes away the transition issues on Kipling Street, and that feels comfortable and, I think, meets the Architectural Review findings, which we have frankly in Attachment A. It's really Packet Page 533 and 532. As a three-story building, I think it meets the Architectural Review findings. As a four-story building, I don't think the design is compatible with the immediate environment of the site. I don't think it's compatible with the character of Kipling Street, which would really be Number 4. There's no harmonious transition in scale and character as a four-story building. As a three-story building, I think there is. I'm a little bit stuck on the issue that I can't see how this looks with the pop-up residential. That tends to make me feel that we should approve this, frankly, simply as a three-story building and bring the elevator height down as well to be in that same range as the three-story height. It could pop up a little bit over that three-story like we do normally in our Code on the three-story height, but not on the four-story height. That becomes a real problem. Option 1 has a lot of really good features in terms of moving us forward in that direction. I'm just primarily concerned about that transition to Kipling Street and how we make that transition work. I think as a three-story building it works. Thanks. Now, I see no further lights. Does anyone want to speak further or should we just move to Council Member motions and further comments and questions? Council Member Fine.

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Council Member Fine: This is actually following up on your question about the eclectic nature of Downtown. Given we have two members of the ARB here, I was wondering if you have any advice on whether the Downtown area does have a unified design character. If so or if not, how does that relate to the Downtown North neighborhood and how does that transition out along Kipling? If you could just give us some thoughts on that, if the Mayor will allow it.

Mayor Scharff: Yeah, I'll allow it. Mr. Lew.

Council Member Fine: I know it's an open, wide question.

Mr. Lew: You're going to put me on the spot, and I'm not speaking—I'm speaking off the cuff and not on behalf of the rest of the Board. I would just say that because of this project, I've started working on a Downtown map of all buildings. I'm actually going back in history too, back to like 1925. I think we just have to acknowledge a couple of things, because we have—this whole area, like Kipling Street and Lytton and Hamilton, was originally all Victorian houses. The zoning was changed, and they are intended to be—they're all in the commercial district. The City was doubling in size, and the City was trying to make room for growth Downtown. The original pattern of Downtown was based on the 25-foot module, which Karen and the Staff Report have mentioned. What is not quite correct, though, is that a lot of the storefronts, like around the Varsity Theatre, are actually only 15 feet wide. They're really narrow. They're actually narrower than any commercial developer would put in a new development. Typically a chain store would want something at least 20-feet or really in a shopping mall it would be at least 25-feet wide. It is diverse. Things have changed over time, but there is in that block, I believe, a unified pattern of narrow storefronts, low storefronts with balconies on the second floor. It's stronger, I would argue, than any of the other blocks Downtown. I could make an argument that—I think people are trying to make the argument that there are other big buildings Downtown, and there are. They're at 3.0 floor area Downtown. We don't get complaints about them. They're very attractive. It's entirely conceivable to me that a 3.0 floor area building could work on this site if it were designed to meet our Codes. My personal take is this one does not.

Council Member Fine: That's actually very helpful, especially the history there. Thank you.

Mr. Lew: We have another Board Member too. He's here if he wants to weigh in.

Mr. Lait: Council, just to advise you. The other Board Member who is here was actually conflicted on the hearing of the Item. I don't know if there's a

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perspective from a resident, but speaking for the Board I would discourage that engagement at this point.

Mayor Scharff: Council Member Kou.

Council Member Kou: I'm looking over here at the Packet that the applicant had submitted in terms of some of the other buildings that are here in Downtown. I'm looking at this, and I think one of the best examples is 626 Waverley Street, with its massive, tall building. The thing is Waverley is actually a wider street. You're putting a building of that mass and that size on a much smaller street. While it fronts University, which is also wider, there is also Kipling that is much more narrow. I think the diagrams that we've received show the lanes to be wider, so it takes it off—even these diagrams up here, you can see that the streets appear to be much wider, and there's a lot more room. When I drove down Kipling, I agree with JC Andrade. There were cars coming at me, and I thought I was going to lose my mirror also. It is not as wide as it looks over here. I do have a great concern in terms of the mass of this building and how it transitions to the rest of the street over there. I was actually looking at it from Lytton, looking down towards University. If this building goes up, it's just this big wall when you're looking down the street. I really can't see this as a good transition or harmonious to the neighborhood or even fitting with the Victorian homes that are on that street. It is a narrow street, and it is a very pretty street. I love walking down it and looking at the homes. It's a very different building.

Mayor Scharff: Council Member Filseth.

Council Member Filseth: Just really briefly, I think there's been some discussion gravitating toward Option 1 being in the direction that we had discussed some months ago. I just want to comment briefly on Options 2 and 3. Most of the discussion that we're really having, in fact that we had in the last meeting, was about harmonious transition, scale, and massing, and context. To me, again these things, as has been pointed out, have an element of subjectiveness to them. To me, Options 3 and 2, which are basically four-story buildings, the transitions are obviously pretty sharp. To me, that one obviously fails. Option 2 fails on Kipling, and Option 3 fails on University. I'll stop there.

Mayor Scharff: Council Member Holman.

Council Member Holman: Just a couple of things I hope we'll keep in mind here. Our alleyways are important connectors in our Downtown area. The City's actually looking to activate a number of alleyways in the very near future and recognize the importance of our alleyways. Again, if we're going to make a good environment and a pedestrian-friendly environment, we



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shouldn't overlook the alleyway either. Kipling especially at night is a street of very strong character, and it's very obvious. During the daytime, it is. At night time, it especially is. When looking at compatibility, rhythm, transition, and scale, we're not looking at 429 University Avenue in comparison to 525 University Avenue. We're looking at the building in its context of the more immediate vicinity, the more immediate environment. I would point to the recent Citizens Survey. What it seems to me is that when we have projects that don't comply with, aren't consistent with our Downtown Urban Design Guidelines and our Context Based Design Criteria and our ARB findings, projects are either appealed or they're very unpopular as we see and hear comments. The Citizens Survey has given us a declining score on development the last several years. I think it's really important that we pay attention to these matters. While they're not numerical, they are just as important. Board Member Lew has brought forward and I've mentioned too there are ways that buildings—not to repeat what I said earlier—there are ways that even this building could make itself more compatible and more transitional. I don't know why the applicant has been resistant to making those changes. To this point, they seem to have done that in ways that I've described previously and other Council Members have spoken to and members of the public.

Mayor Scharff: Council Member Tanaka.

Council Member Tanaka: I have a few questions for Staff. A lot of the public speakers and a lot of the emails that we got had concern around three topics. One was traffic; another was parking, and then the third was the idea of mass or square footage or FAR. I want to take each of these Items one-by-one. For traffic, with the studies that Staff has done, is there an issue with traffic here at this project?

Mr. Lait: Thank you, Council Member. We did do a Traffic Study. In fact, we also did a—what did we call it? We did a TIA, but then we also did the residential one, the traffic index—some other study that we don't typically require because of the concerns that we heard expressed about this issue. This was in support and concurrence with the applicant. The results of that showed that this did not trigger any threshold for significance in terms of traffic impacts related to this project.

Council Member Tanaka: What about parking?

Mr. Lait: Parking is a function of meeting Code. The project meets the development standards with respect to the parking. It is located within the Parking Assessment District. The property owner has been assessed parking spaces for contribution to the parking lot. There's a, I'll say, credit for those

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spaces not having to be provided on site. Some of the TDRs that we've talked about this evening were parking exempt TDRs, which is not a current standard that we allow in Code, but the applicant did have an opportunity to use that. The parking that is provided onsite assumes the Parking Assessment, the parking-exempt TDRs, and the balance is provided onsite in the two subterranean structures.

Council Member Tanaka: Is the accusation that the project is under-parked true or not according to your findings?

Mr. Lait: I guess what I can tell you is that the parking as required by the Municipal Code is met with the designs.

Council Member Tanaka: What about square footage and FAR? Is it within the limits of that? I've heard from some of the members of the public in letters that say it's way too much and it's not compliant. What is the truth there?

Mr. Lait: A mixed-use project is allowed to have up to a 1.0 FAR for commercial development and up to 1.0 for the residential development. With the transfer of development rights, the applicant is available to take up to another 1.0 FAR. In no instance shall the site exceed a 3.0 FAR. That would take it to—I think the collective parcels are 11,000 square feet. A 3.0 FAR would take it to 33,000 square feet, which they are compliant with.

Council Member Tanaka: Really we're left with the architectural aspects in terms of the compatibility.

Mr. Lait: I would refer the Council to the findings, the Architectural Review Board findings and the context compatibility findings.

Council Member Tanaka: When I looked at it, the rules did look very arbitrary, so it's kind of hard to know what the—exactly how do you compare. Let me give you an example. Let's say, for instance, adjacent to the building was a vacant lot. There's nothing; it was just vacant land. Is that (inaudible) compare against, a vacant lot, or would you compare it against other nearby buildings? I guess I'm trying to understand how close to the—what is the basis of comparison? A lot of the buildings next to it, I assume, could be built taller. Is that right or not?

Mr. Lait: What I would do is refer the Council to the different findings that are made and are required pursuant to the Code. One of the findings that the project is subject to is that it is compatible with the immediate environment of the site, that it is compatible with the adjacent and neighboring structures. That's the guidance that's provided in the Code.

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Council Member Tanaka: What I'm wondering about is two things. Is it what's there right now or what could be there? What I'm wondering is—let's say, for instance, it was a vacant lot. That means it has to be compared to a vacant lot or you compare it against a one-story building, which could actually be two stories? I'm just trying to understand how does this work.

Mr. Lait: Again, I would refer you to the finding language itself. It doesn't put forth that scenario. It just refers you to the neighborhood character and the context of the neighborhood setting.

Council Member Tanaka: How immediate is immediate? Does that mean next door or does it mean one block down? What does immediate mean?

Mr. Lait: I think that's a discussion that the Council has been having over the course of this project. There's certainly examples that the Council and the community members have drawn from, that are immediate to the subject site and then also drawn from other properties that are nearby.

Council Member Tanaka: This is kind of a technical question. Kipling is a very narrow street. I can't quite tell by looking at the picture on plan A.82. From Kipling, if I stood on Kipling, on the sidewalk across the street from the project, and looked up, could I see the fourth floor?

Mr. Lait: On Option 1 or ...

Council Member Tanaka: Three.

Mr. Lait: Three.

Council Member Tanaka: It's such a narrow street you can't—the picture in this plan looks like you're like—I don't know—pretty far from the project. I'm not even sure if I could see—how much I could see given such a narrow street?

Mr. Lait: I don't have the exact information about the perspective angle that this is taken from. Typically, it's taken from about a six-foot elevation. Kipling is narrow at 29 feet, I believe is the right-of-way. I think this is representative of what one might see out there, but I couldn't tell you for certain what the specific dimension of that would be.

Council Member Tanaka: Does maybe the applicant know or does anyone know can we see the fourth floor from the other side of Kipling if this was built?

Mr. Lait: I would direct that through the Mayor to see if that's something that you wanted to open up.

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Mayor Scharff: The question is you want to ask the applicant on Option 3 ...

Council Member Tanaka: Yeah. If we stood on Kipling, on the other side of the street from this project, on the sidewalk at ground level, could we see the fourth floor?

Mayor Scharff: I will allow the applicant to answer the question.

Elizabeth Wong, Applicant: That answer can be—we can estimate by looking at the real model. I also want to tell you on Options 1 and 3 the building is three stories high. There's no way to see the fourth story, because the fourth story is 39 feet from the property line on Kipling Street. The only thing that you see from Kipling Street is the elevator, and the glass structure next to the elevator is the landing from the third floor to the fourth floor, which we moved from the corner back 11 feet so that it would be less visible to the passerby. Basically, the Options 1 and 3 are identical on Kipling Street. The difference, if I could say only difference maybe with a little range of error, is that the difference from Option 1 and Option 3 is that we added the residential square footage on the fourth floor on the west side of the building. We cannot make that building any shorter. It is three stories on Kipling. This was done in deference to the appellant. We also made the structure for the elevator glass because the approved version was concrete, and he complained that the concrete was too much in his face. We moved the building on the alley side 10 feet away from the alley at that corner, again, to give him relief as he walked south on Kipling Street. Basically, the only way to get rid of the elevator to make it truly three-stories high is to get rid of the elevator. I'm not really sure that by Code you're allowed to have a floor where you cannot access by handicap rules. I'm pretty sure that you cannot eliminate the elevator to that floor, because then there would be—handicapped people cannot get to that floor. If you're going to have a fourth floor, then you're going to need the elevator. We did not pursue Option 1 because, after giving up 3,000 square feet of residential/office space, the appellant wrote to Jodie Gerhardt that is that all she's doing. If that's all she's doing, then let's put the square footage back, and let's put it away from Kipling so that he would not be able to see it.

Mayor Scharff: Thank you.

Council Member Tanaka: I just wanted to ask Staff. I'm not an architect ...

Male: Could I be recognized just one moment? I was a resident on Kipling ...

Mayor Scharff: Nope, nope, nope.

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Council Member Tanaka: I just wanted to ask Staff. This is the applicant's point of view. Is this true that you could only really probably see the elevator from the sidewalk on the other side or is ...

Hillary Gitelman, Planning and Community Environment Director: Thank you, Council Member Tanaka. Hillary Gitelman, the Planning Director. In our view, Option 1 and Option 3 are very similar from Kipling. From right across the street, we don't think very much would be visible at all. We would further enhance Option 1 with the condition we've suggested to bring the height of the elevator down, so it doesn't exceed 50 feet. You are going to be able to see the elevator and that other piece behind it, depending on where you are on Kipling, because you'll see it at an angle. It has to a large extent addressed what some of the other schemes had as a much more prominent fourth-floor mass on Kipling. The elevator and the stair tower were much more prominent. We do think that Option 1 and Option 3 are going in the right direction on the Kipling side.

Mayor Scharff: Are you done? One more. Go ahead.

Council Member Tanaka: Can you go back to the Code which says immediate. What I'm interested in knowing from Staff's experience is when we say immediate environment, for previous projects that's come before Staff, what did immediate environment mean?

Ms. Gitelman: Thank you, Council Member Tanaka. I think we shouldn't take one of these findings out of the context of all the other findings about context. It really takes some interpretation and thought when looking at these Architectural Review findings and the Context Based Design Criteria. While you could probably parse them and find some of them that are applicable to just the building right next door, I think as a whole they allow you to read projects and the site in a larger setting, both the immediately adjacent buildings and then the general vicinity, how these buildings are experienced on the street.

Council Member Tanaka: I see. You're saying that we should look at the larger picture, and there's actually a little bit of leeway. It's not just immediate, adjacent building.

Ms. Gitelman: Yes.

Council Member Tanaka: Thank you.

Mayor Scharff: I think Option 1 meets what we're looking for, for the most part, with what Staff has put forward on Packet Page 527 under recommended Conditions of Approval. I think it brings down the elevator

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adjacent to Kipling Street inclusive of any associated mechanical equipment shall not exceed the 50-foot height limit. With all of that, I think we would be good on Kipling Street. With that, I wanted to say that Staff has done a really good job on this project in terms of outlining Option 1 and how it moves us forward to be responsive to what Council suggested. I actually appreciate the applicant putting forth Option 1 on this process as we go through it. With that, I'll move that we do Option 1 with all of the recommended Conditions of Approval, which are on Packet Page 527 and Packet Page 528 and partly on Packet Page 529.

Council Member Filseth: I'll second.

**MOTION:** Mayor Scharff moved, seconded by Council Member Filseth to:

- A. Deny the Appeal; and
- B. Approve the Mitigated Negative Declaration and Mitigation and Monitoring Plan; and
- C. Approve a modified project (Option 1) with conditions included in the Staff Report, Pages 6-8; and
- D. Direct Staff to return with written findings for adoption.

Mayor Scharff: Let's first get the Motion up there. While we're doing that, I'll speak to my Motion. This has been a long road in the community. It's been a long road for the appellant and everyone. It's time to basically put this issue behind us. I think by going with Option 1, we're being responsive to the concerns on Kipling Street. We're being responsive to the concerns of the community, and we are putting this process forward for Mrs. Wong, who actually ends up with a project. She is entitled to have a project. By going through it in this way, I think Staff did a really good job on the Conditions of Approval. I hope you'll support it. Council Member Filseth.

Council Member Filseth: Thanks very much. I think there's been a lot of discussion about the pros and cons of this building with respect to the community. All of that stuff kind of isn't relevant for what we're talking about here. Just on that subject, because the public's talked about it, not because it's covered in the appeal, this makes our housing crunch worse, not better. It's bad for sustainability, not good for sustainability. It gets rid of 1,500 square feet of retail and so forth. That's not really what we're here to discuss. We're really here to discuss the applicant's property rights in the context of our Codes. The Codes include the compatibility and Context Based Design Criteria, and that's what we're looking at here. It's pretty obvious to me that Options 2 and 3 don't meet the compatibility criteria. It's

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not completely obvious to me that a three-story building does, but I can't be certain it doesn't, so I think we should support going forward. I think I concur with the Mayor that Staff's done a very good job on this. We've worked through our process, and I think it's going to produce an outcome which is consistent with our Codes. That's what's important here. Thanks.

Mayor Scharff: Council Member Kou.

Mayor Scharff: You want to pass. Council Member Holman.

Council Member Holman: I'm going to offer a Substitute Motion. My Motion is to deny the project due to inability to make the findings recorded as part of the Council's prior review of this project, found on Pages 4 and 5 of the Staff Report, and consistent with the ARB denial. I'll speak to the Motion after hopefully getting a second.

Council Member Kou: I'll second it.

**SUBSTITUTE MOTION:** Council Member Holman moved, seconded by Council Member Kou to deny the Project due to the inability to make Architectural Review Findings as part of the Council's prior review from Staff Report Pages 4-5 and the Architectural Review Board recommendation to deny the Project.

Mayor Scharff: Speak to your Motion.

Council Member Holman: Several things. Some of this is a repeat of some of the things I've said earlier, and some of it is not. This building continues to be prominently one design for the length of the University Avenue frontage. It's not broken down into matching the rhythm that's on the street. The same design elements that are larger in scale than other buildings in the vicinity continue to be prominent and dominant. The most forward of the concrete, large box design are not consistent with the pattern of the street, and they are the dominant elements. That's true whether it is the former Apple store across the street, across the corner, or whether it is the buildings on the same block on University Avenue. It's also true when looking at the Varsity Theatre. There aren't shared—I'm not talking about style here. Again, I'm talking about design. There aren't any shared criteria, no rhythm on the street, no pedestrian-scale elements that you find in the Varsity Theatre, which is the terminus of Kipling Street. On the Kipling side, it's very hard to see what we're going to get because that rendering was not provided along with the plans for Option 1. I'm not sure how clear it is what we would be adjusting or how it is or isn't compatible. Just looking at the line drawings, it looks like it suffers the same failings that it does on University Avenue. That's what it seems to be. Just as a

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comment, I actually don't find that Options 3, 2 and 1 are that similar. I think there are pretty significant differences among them. For instance, Option 3 differs in mass, scale, FAR, setback, design features including on the University Avenue side of the project nearest Kipling, and the number of parking places. That's a lot of differences if we're saying that they're similar. I don't see how we could actually say that. I will stop there. Again, focusing on the Council's prior review of this project and those findings that we could not make then on Pages 4 and 5 of the Staff Report and also on the ARB findings that they could not make as well in making the denial recommendation for the project.

Mayor Scharff: Council Member Kou.

Council Member Kou: I'll go back to my earlier comments. This is a massive building. The mass and the scale of it is very large. I brought up the 636 Waverley property. That's what I fear will be on that corner of Kipling and University. With Kipling being a narrow street, I just don't see a three-story with that kind of mass and scale as something that would be considered as compatible. Council Member Holman has mentioned the other parts of it. I still think that it is not compatible. Just going back for modified projects, it's looking at a building that's going to be there for 50-plus years, that is going to be an impact on the other houses on Kipling Street.

Mayor Scharff: Council Member DuBois.

Council Member DuBois: I've been listening to my Colleagues and looking at these various options. I've heard Option 1 referred to as a three-story building. Just to clarify, it is a four-story building. Correct? I still cannot make the findings that are consistent with our earlier meetings on Pages 4 and 5, particularly 18.18.110. I keep looking at these findings. I find that I will support the Substitute Motion because I don't believe I can make these findings.

Mayor Scharff: Seeing no further lights, let's vote on the Substitute Motion. The Substitute Motion fails on a 5-3 vote with Council Members DuBois, Kou, and Holman voting yes.

**SUBSTITUTE MOTION FAILED:** 3-5 DuBois, Holman, Kou yes, Kniss absent

Mayor Scharff: Now, let's vote on the—I see no lights, so now let's vote on the—you want to put your light on?

Council Member Holman: I don't think anybody's spoken to the main Motion except for the maker and seconder, I think.



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Mayor Scharff: Feel free to speak; I just saw no lights. I'm not ...

Council Member Holman: I think there are some basic design changes that we could recommend for this. It's not like you really want to design from the dais. That's not what's particularly a good thing to do. I strongly suggest that we incorporate into the Motion that the height of the, as I've referred to them, dominant and prominent first-floor concrete elements be lowered to be more consistent with what the first-floor pattern is on the street. That doesn't change the interior ceiling heights. It brings the exterior visual effect down to be more consistent with the street pattern.

Mayor Scharff: That's your (inaudible). I'd have to ask Staff. I noticed that the Staff Report talks about that the Option 1 plans reflect the pattern of development of doorway and glazing space, roughly 25 feet in width. I just ask Staff about that, about the ...

Council Member Holman: Can I comment first? If I could.

Mayor Scharff: Sure.

Council Member Holman: The reason that the 25-foot—it's hard to tell because dimensions weren't really well provided for this. I appreciate that the entrances are, in theory at least, at 25-foot intervals, but that's not the experience that one is going to have on the street. The experience one is going to have of this building is again these prominent and dominant concrete elements that are forward of the entrances, especially because they're lighter in color. The light's going to hit them. The doorways are recessed, which isn't necessarily a bad thing. The way that they're recessed here behind these sections, it's not the experience that you're going to have on the street.

Mayor Scharff: I'm waiting for Staff to respond.

Ms. Gitelman: Thank you. Through the Mayor, just quickly I'm not sure that I completely understand what the Council Member is suggesting in terms of design changes. We do have a condition that we're suggesting, that's been incorporated into the Motion, that the applicant would return to the Architectural Review Board for review and recommendations of exterior building materials, colors, and craftsmanship. While that wouldn't create room for a total redesign, some of these finish and design choices on the exterior could be addressed in that context.

Council Member Holman: This isn't materials or finishes. This is literally the design. It's literally design.

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Ms. Gitelman: I guess I'm having trouble understanding exactly what kind of changes you would be requesting.

Mayor Scharff: Council Member Holman. Council Member Holman, I'm not going to accept it. I think it's a little scary to be designing it from the dais, especially when Staff seems unclear on it. If there's a clearer sense—I guess I'm just not going to accept it. If you get a second.

Council Member Holman: Is there a laser I can point on the screen to what I'm talking about?

Mayor Scharff: I will allow, if there is such a thing, for you to explain if you want to.

Council Member Holman: Is there a laser anywhere? Can anybody see that? I'm talking about that element right there, that runs the—except for the one interruption in the sort of middle. That element, if it were lowered to be—if I can do this—if that element were lowered—I can't even find it now. Here we go. If this element, this design feature here—how do I get rid of that—was lowered down to about here so that it provides more of a cover and a pedestrian-scale cover over the entrances and is more consistent with what you see in the other buildings on the block like here—right now this is about at a story and a half when compared to the buildings next door. This goes half way up the parapet of the building next door.

Mayor Scharff: Would it satisfy you if we made that up to the discretion of the ARB?

Council Member Holman: Except that it's not in the Motion because the discretion of the ARB does not include design.

Ms. Gitelman: I'm afraid that that sounds like really a structural change to the building that would take—I don't think it's something we can do right here. I think it would require consultation with the architectural design team to determine whether that request could be accommodated.

Mayor Scharff: No, I can't accept that then.

Council Member Holman: How could we give some kind of guidance to the ARB? Again, I agree. It's not good to be sitting here and trying to design a project. I'm trying to point out things that are reasons that I can't make findings and trying to get the project closer to being able to make the findings, which is difficult given where we're starting here. Staff is being mum on how we can go about doing that.

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Mayor Scharff: Council Member Holman, I think we need to move on, unless you can get a second. Council Member Holman, are you done?

Council Member Holman: Yeah. I'm not hearing a second.

**AMENDMENT:** Council Member Holman moved, seconded by Council Member XX to add to the Motion, "that the height of the prominent First Floor concrete elements be lowered to be consistent with the prevailing street pattern."

## **AMENDMENT FAILED DUE TO THE LACK OF A SECOND**

Mayor Scharff: Council Member Fine.

Council Member Fine: Just very quickly. Being a newbie here on the Council, I'm still learning. It's very clear that this process did not work well on this project, whether we talk about Council, ARB, the applicant. In fact, I would commend you, Mr. Harbour. In many ways you've provided a very professional interaction here, presented good evidence around this issue and helped shape this project. Everything else, I think, has not been that professional. That said, I am going to support the Motion. I do believe Option 1 is compatible with our Downtown, which is a mixed area. As some others have mentioned here, property owners do have rights, which our City has a responsibility to uphold. While this isn't perfect, it is what it is. I will be supporting the original Motion.

Mayor Scharff: Council Member Wolbach.

Council Member Wolbach: I think I'm going to support the Motion, especially because it has the additional conditions that Staff took the time to stipulate. Those kind of seal the deal for me. Do I love the building? No, but that's not the question. The law is the law. The law doesn't say everybody must love the building. I certainly don't; it's not my favorite style. There's a limit to what we've allowed ourselves to do through the law. I do feel that it does meet the conditions barely, but I think it does. The impact on Kipling, there will be some. I'm not going to say that there's not going to be an impact. The question is whether it's compatible enough that we can allow the applicant to move forward. I just, again, want to commend Staff and the ARB and the applicant and the appellant for a tremendous amount of patience through a very long process. I'm just going to throw out a couple of things to think about. I don't want to get too deep into them because they're not exactly what's on our Agenda right now. A couple of things to think about as far as improving our process. We're talking about this gray area and this question and uncertainty about how many stories can you have next to X number of stories that are present. Our neighboring city

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of Mountain View, I know, has some step-down requirements. I don't know the details of how that works in Mountain View. I'd heard it works well to have—they have some clear rules maybe that we might want to look at about based on the surrounding buildings how high can you build next to that or across from that. Something to think about. It's also another example of why we should look at having mixed-use zoning that is more housing, more homes, and smaller unit homes over retail. As Council Member Filseth pointed out, this makes the jobs/housing imbalance worse, not better. That's what our zoning is. When this project started, the calls for more housing in the community weren't as strong as they are now. It just kind of reinforces the discussions that have been happening around the need to change the zoning priorities to be housing over retail. It's also a good example of where we might want to think about a future of having coordinated area plans as a more regular zoning tool. This kind of complex intersection of styles, not just streets, and the complexity of this area, I wish we'd had a better process, but it's the process that we have. I wish we had better zoning and better Codes, but they're the zoning and the Codes that we have. I'm not super thrilled with this, but I am going to support it reluctantly.

Mayor Scharff: Council Member DuBois.

Council Member DuBois: Staff talks about this would be subject to more detailed Code review when it comes to a building stage. If we're approving Option 1 here, do we have sufficient detail to know that Option 1 is what gets submitted?

Ms. Gitelman: I think we're going to have to make sure that what we get matches the Council's Motion here. We're committing to do that.

Council Member DuBois: I'd offer a friendly Amendment, "E," that this approval is subject to the actual project matching Option 1. Just because we've had so many variations, I think we need to be very clear that's what we're approving.

Mayor Scharff: That's fine. From what I understand, Council Member DuBois' Motion is that the approval is subject to the project actually matching Option 1 as described by Staff. Is that—I see no downside to that.

Council Member DuBois: Is that accepted then?

Mayor Scharff: Unless Staff has some objection, forever hold your peace.

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Ms. Gitelman: That would be how we would implement this Motion. I guess with the reiteration we would come back to you if we felt like the plan set we got was trending off in another direction.

Mayor Scharff: That's fine.

Council Member DuBois: That's what I'm asking for.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion, "this approval is subject to the actual Project matching Option 1 as described by Staff." (New Part E)

**MOTION AS AMENDED RESTATED:** Mayor Scharff moved, seconded by Council Member Filseth to:

- A. Deny the Appeal; and
- B. Approve the Mitigated Negative Declaration and Mitigation and Monitoring Plan; and
- C. Approve a modified project (Option 1) with conditions included in the Staff Report, Packet Pages 527-528; and
- D. Direct Staff to return with written findings for adoption; and
- E. This approval is subject to the actual Project matching Option 1 as described by Staff.

Mayor Scharff: I see no further lights. If we could vote on the board. That passes on a 5-3 vote with Council Members DuBois, Kou, and Holman voting no.

**MOTION AS AMENDED PASSED:** 5-3 DuBois, Holman, Kou no, Kniss absent

Mayor Scharff: Thank you all for coming tonight. Congratulations on your approval.

- 12. ~~PUBLIC HEARING: Review and Adoption of an Ordinance Amending Chapter 18 (Zoning) of the Palo Alto Municipal Code to Update Code Sections Regarding Accessory Dwelling Units.~~

STAFF REQUESTS THIS ITEM BE CONTINUED TO MARCH 6, 2017.

**APPROVAL NO. 2017- 2**  
**RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO LAND USE ACTION FOR**  
**425 AND 429 UNIVERSITY AVENUE: MAJOR ARCHITECTURAL REVIEW**  
**APPLICATION [14PLN-0022]**

On February 6, 2017, the City Council of the City of Palo Alto considered an appeal of the Planning and Community Environment Director's decision to approve a Major Architectural Review for the development of a four-story, 50-foot tall, 28,547 square-foot, mixed-use project at 429 University Avenue and directed staff to return to Council with the following findings, determinations and declarations to support their decision to adopt a modified project design:

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

A The project site is comprised of two lots, 425 and 429 University Avenue (APN Nos. 120-15-029 and 120-15-028, respectively) of approximately 11,000 square feet. The site contains two commercial structures bordered by University Avenue to the southeast, Lane 30 E to the northwest, and Kipling Street to the northeast. Single-story businesses border the site to the northeast along Kipling Street, and one and two story buildings border the project site along University Avenue.

B On June 19, 2014, Kipling Post LP applied for a Major Architectural Review for the development of a mixed-use project on an 11,000 square foot parcel ("The Project").

C On February 25, 2015, the Planning and Community Environment Director approved the Major Architectural Review.

D On March 11, 2015, a timely appeal was filed by Dr. Michael Harbour ("the Appellant") stating concerns related to parking, traffic and circulation concerns and safety issues, impacts to historical resources, and the size and massing of the project

E On May 4, 2015, the City Council remanded the project to the Historic Resource Board (HRB) and Architectural Review Board (ARB) for further review and requested project revisions to address issues of scale and compatibility. Specifically, the Council requested that the applicant redesign the project and return to the HRB and ARB to address a variety of concerns. The HRB was asked to review and comment on the historic resource evaluation report as it relates to the project's potential impact to other historic resources in the area; the applicable 'area of potential affect' pursuant to the California Environmental Quality Act (CEQA); the potential impact of the project's mass, scale and compatibility to existing historic properties; and whether the proposed building would change the setting of the historic properties on Kipling Street or University Avenue and have an impact under CEQA. The Council directed the ARB to evaluate the project's compatibility with the immediate environment of the site; neighborhood character; other buildings in the area; consistency with the roof lines, entries, setbacks, mass and scale with context based design criteria; shadow patterns; vehicular access to the site, including possible impacts to Lane 30 (alley) circulation; and, to provide direction on the design linkages with the overall pattern of development in the area. On September 10 and 17, 2015, the HRB and ARB, respectively, considered project revisions presented by the applicant. Their respective comments are available in the administrative record and meeting minutes. The HRB members expressed concern with various aspects of the project, notably related to the mass and scale of the proposed building and expressed concerns regarding the project's compatibility to nearby designed Birge Clark buildings and the Victorian-style structures on Kipling Street. The ARB had a variety of comments regarding the project, including expressing concerns with project compatibility when viewed from Kipling Street and encouraged further architectural

refinement to address other concerns expressed by Council. On November 30, 2015, the City Council remanded the project to ARB for further review and consideration as it relates to the following specific Architectural Review Findings and Context-Based Design Criteria:

PAMC chapter 18.76.020(d):

- (1): Architectural Review Findings in relation to design's consistency and compatibility with applicable elements of the Palo Alto Comprehensive Plan
- (2): Architectural Review Findings in relation to design's compatibility with the immediate environment of the site
- (4): Architectural Review Findings in relation to design's compatibility with areas as having a unified design character or historic character
- (12): Architectural Review Findings in relation to compatibility and appropriateness in materials, textures, colors, details of construction and plant materials to the project's function and to adjacent structures, landscape elements and functions

And PAMC Section 18.18.110

- (a)(2)(B)(i): Contextual and Compatibility Criteria – Compatibility goal in relation to siting, scale, massing and materials
- (a)(2)(B)(iii): Contextual and Compatibility Criteria – Compatibility goal in relation to pattern of roof lines and projections
- (b)(2)(B): Context-based Design Considerations and Findings – Street building facades in relation to eaves, overhang, porches and other architectural elements that provide human scale and help break up building mass

F On March 17, 2016 the applicant returned to the ARB with a revised project, consisting of two options prepared by Topos Architecture. The ARB preferred Option B with recommended changes to better reduce building scale and mass, and continued the project to May 19, 2016.

G On August 4 the applicant returned to the ARB with a revised project prepared by Jo Bellomo and Associates, the fourth design professional known to the City to be engaged by the applicant to prepare plans and make presentations regarding the project. Based on the administrative record, including meeting minutes, the ARB expressed concern that this latest iteration was not responsive to earlier ARB or City Council comments and requested staff prepare recommended findings to deny the project.

H On September 1, 2016, at the applicant's request, the ARB conducted a study session of a project that closely resembled Option 1. While ARB members continued to express concerns, the Board commented that this design concept showed progress toward addressing previously stated concerns regarding the project's compatibility to adjacent structures and neighborhood character.

I The ARB reviewed a project on October 20, 2016 (described as Option 2 in the February 6, 2017 City Council report). This design included changes that increased the mass of the building at the street corner on the third floor and additional mass on the fourth floor that was previously removed from the plans reviewed on September 1, 2016. The ARB forwarded a recommendation of denial of the project to the City Council.

J The Applicant submitted revised plans on October 26, 2016 (described as Option 1 in the February 6, 2017 City Council report), which was a refined version of the plans presented at a study session of the ARB on September 1, 2016, which addressed many of the Board's comments.

K The Applicant submitted revised plans on December 8, 2016 (described as Option 3 in on the February 6, 2017 City Council report), which represented another iteration of the Option 1 design, but included concepts previously reviewed by the ARB on August 4, 2016.

L The City Council reviewed Option 1, Option 2, and Option 3 of the project on February 6, 2017 and approved Option 1 based on the findings and subject to the conditions of approval included below.

SECTION 2. Environmental Review. The City as the lead agency for the Project has determined that the project is subject to environmental review under provisions of the California Environmental Quality Act (CEQA) under Guideline section 15070, Decision to Prepare a Negative or Mitigated Negative Declaration. An initial study was prepared for the project in 2014 and was updated in August of 2015 and it was determined that, with the implementation of conditions of approval, and mitigation measures no potentially adverse impacts would result from the development, therefore, the project would have a less than significant impact on the environment.

SECTION 3. Architectural Review Findings. Pursuant to Palo Alto Municipal Code Section 18.76.020(d), neither the director, nor the city council on appeal, shall grant architectural review approval, unless it is found that the project is consistent with certain adopted findings. At the time that the project application was filed and appealed to Council, the findings presented in this section were in use, and the Council finds that the project is consistent with them as follows:

**Comprehensive Plan and Purpose of ARB:**

Finding #1: The design is consistent and compatible with applicable elements of the Palo Alto Comprehensive Plan.

Finding #16: The design is consistent and compatible with the purpose of architectural review, which is to:

- Promote orderly and harmonious development in the city;
- Enhance the desirability of residence or investment in the city;
- Encourage the attainment of the most desirable use of land and improvements;
- Enhance the desirability of living conditions upon the immediate site or in adjacent areas; and
- Promote visual environments which are of high aesthetic quality and variety and which, at the same time, are considerate of each other.

*The project is consistent with Findings #1 and #16 because:*

On balance, the project is consistent and compatible with applicable elements of the Palo Alto Comprehensive Plan. The proposed project is in conformance with the following Comprehensive Plan Goals and Policies. The project is compatible with the surrounding development based on the building's size, scale and mass. The project reflects a similar massing and rhythm to other properties along University Avenue and includes building articulate and setbacks at the third and fourth floors that provide for an appropriate transition, particularly along Kipling Street, to the lower profile buildings nearby. Some of the goals and policies the project is in compliance with include the following:

- **Goal L-1:** A well-designed, compact city, providing residents and visitors with attractive neighborhoods, work places, shopping district, public facilities and open spaces.
- **Policy L-5:** Maintain the scale and character of the City. Avoid land uses that are overwhelming and unacceptable due their size and scale.
- **Goal L-4:** Inviting, pedestrian-scale centers that offer a variety of retail and commercial services and



provide focal points and community gathering places for the City's residential neighborhoods and Employment Districts.

- **Policy L-20:** Encourage street frontages that contribute to retail vitality in all Centers. Reinforce street corners with buildings that come up to the sidewalk or that form corner plazas.
- **Policy L-23:** Maintain and enhance the University Avenue/Downtown area as the central business district of the City, with a mix of commercial, civic, cultural, recreational and residential uses. Promote quality design that recognizes the regional and historical importance of the area and reinforces its pedestrian character.
- **Policy L-24:** Ensure that University Avenue/Downtown is pedestrian-friendly and supports bicycle use. Use public art and other amenities to create an environment that is inviting to pedestrians.
- **Goal L-6:** Well-designed buildings that create coherent development patterns and enhance city streets and public spaces.
- **Policy L-48:** Promote high quality, creative design and site planning that is compatible with surrounding development and public spaces.
- **Policy L-49:** Design buildings to revitalize streets and public spaces and to enhance a sense of community and personal safety. Provide an ordered variety of entries, porches, windows, bays and balconies along public ways where it is consistent with neighborhood character; avoid blank or solid walls at street level; and include human-scale details and massing.
- **Goal T-3:** Facilities, services and programs that encourage and promote walking and bicycling.
- **Policy T-21:** Support the use of Downtown alleyways for pedestrian- and bicycle-only use.
- **Policy T-23:** Encourage pedestrian-friendly design features such as sidewalks, street trees, on-site parking, public spaces, gardens, outdoor furniture, art, and interesting architectural details.

Option 1, as presented to the City Council on February 6, 2017, provides a transition in scale and character along University Avenue. The building's modern design blends and transitions with the surrounding buildings through similar materials and horizontal rooflines. The building reinforces the pedestrian character of University Avenue as required by Policy L-23 and Policy L-24 because it provides a widened sidewalk for pedestrians with sheltered entrances. These same pedestrian features are extended to Kipling Street as well, and the seating area at the rear of the building activates a pedestrian space in the alley. Conditions of Approval Nos. 2b, 2c, 2d, and 2e all reduce the massing and visual prominence of the building along Kipling Street, creating the appearance of a three-story structure. This design provides a smoother transition from the single and two-story structures along Kipling Street.

The proposed project incorporates similar pedestrian and human friendly features found in other buildings along University Avenue. The first floor plate height reflects the plate height of the buildings to the west along University Avenue. The surrounding buildings contain sidewalk dining areas, recessed entries, and are predominantly two-story structures, with a low first floor plate height to relate to a human and pedestrian scale. The project incorporates similar features with designated pedestrian areas at the entryways and natural building overhangs along University Avenue and Kipling Street. These design features create a project that is pedestrian friendly and designed at a human scale on elevations fronting rights-of-way. Condition of Approval No. 2e requires that the elevator tower height not exceed 54.5 feet and Condition of Approval No. 2b requires the fourth floor guardrails to be setback from the edge of the terrace along all streetscapes. These conditions reduce the visual prominence of the structure along Kipling Street, and they create the appearance of a three story building. The appearance of a three-story building helps the project achieve an orderly and harmonious design along Kipling Street, which has lower profile buildings.

#### **Compatibility and Character:**

Finding #2: The design is compatible with the immediate environment of the site.

Finding #4: This finding of compatibility with unified or historic character is not applicable to the project (there is no unified design or historic character).

Finding #5: The design promotes harmonious transitions in scale and character in areas between different designated land uses.

Finding #6: The design is compatible with approved improvements both on and off the site.

*The project is consistent with Findings #2, #4, #5 and #6 because:*

The project is compatible with the immediate environment of the site. Buildings located to the southwest of the site along University Avenue consist of two-story buildings. The first two floors of the project are consistent with the height of these buildings, while the third floor is setback approximately eight-feet. The fourth floor is setback approximately 40-feet. These features result in a gradual transition in scale thereby increasing the compatibility and character of the project with its immediate environment. Further, the design obscures the fourth floor from views along University Avenue. The setbacks along Kipling Street and Lane 30 also promote a design that is compatible with the immediate environment of the site and offer harmonious transitions. The setbacks on the fourth floor along Kipling Street obscure views of the building features above the third floor from many vantage points, thereby reducing the building scale and improving compatibility with smaller structures nearby. To accomplish this result, the conditions of approval require that the elevator tower height be reduced to a maximum of 54.5 feet and the elevator shaft is setback 11 feet from Kipling Street, while the stairs and office are setback approximately 20 feet and 37 feet, respectively. This condition and these design features will obscure views of the fourth floor and result in a building with a three-story appearance from vantage points that are close to the site on Kipling Street. This results in a harmonious transition from the two story structures along Kipling Street to the proposed project because it effectively only increases the height of the project by one story from the structure at the corner of Kipling and University and two stories from the business at Kipling Street and Lane 30.

Conditions of approval for the project also ensure that the design of the building will be compatible with the immediate environment of the site. Conditions No. 3b and 3c require that the applicant return to the ARB for approval of the materials, colors, craftsmanship and landscaping, and Condition No. 3a requires a decorative wall treatment, feature or element along the southern elevation of the building. These requirements will ensure that design features are compatible with the immediate environment of the site.

The design of the building offers a harmoniously compatible transition with the design character of the streetscape along University Avenue. The design of the project transitions from the mid-century designs found along University Avenue to a more modern looking building that defines the street corner. The project consists of rectilinear features in a glass and concrete style building. These features are consistent with the character of the surrounding buildings to the east of the site along University Avenue and the building located at the corner of Kipling Street and University Avenue.

The Historic Resources Memorandum notes that the historic character of the area has been compromised by intrusions including incompatible materials, height, massing and architectural features. Because the area has not been recognized as having a unified design or historic character, this finding is not applicable.

**Functionality and Open Space:**

Finding #3: The design is appropriate to the function of the project.

Finding #7: The planning and siting of the building on the site creates an internal sense of order and provides a desirable environment for occupants, visitors and the general community.

Finding #8: The amount and arrangement of open space are appropriate to the design and the function of the

structures.

*The project is consistent with Findings #3, #7, and #8 because:*

The design and arrangement of the open space is appropriate for the function of the project. The project proposes a seating area off the alley at the back of the project. The Comprehensive Plan encourages these spaces such as these to activate alley spaces for pedestrian use. Further, the project incorporates terraced areas around the third floor for the residential users and on the fourth floor for the office use. These areas serve as a functional open space for residents and tenants of the project and are easily accessible to the building users. Therefore, the design, amount, arrangement and planning of open space is appropriate and creates a sense of order for the project.

The planning and siting of the building on the site creates a sense of order and provides a desirable environment for visitors, occupants and the general community. The siting of the building is located along the back of the sidewalk, consistent with other buildings along University Avenue streetscape and forms an edge along Kipling Street consistent with the existing buildings along both streets. Vehicle access to the building from the alley provides convenient and safe accessibility that minimizes vehicle interactions along Kipling Street and University Avenue. Internally, stairs and elevators provide access to each floor, and these are conveniently reached from the street or the subterranean parking. The floorplans create individualized floors that separates the residents and commercial and office tenants. Occupants, visitors and the community are provided with a desirable environment because of this ease of access to the individualized uses on each floor. Therefore, the siting and floor plan create a sense of order and provide a desirable environment for occupants, visitors and the general public.

**Circulation and Traffic:**

Finding #9: Sufficient ancillary functions are provided to support the main functions of the project and the same are compatible with the project's design concept.

Finding #10: Access to the property and circulation thereon are safe and convenient for pedestrians, cyclists and vehicles.

*The project is consistent with Findings #9 and #10 because:*

The project contains sufficient ancillary functions to support the main functions. Access to the property and circulation thereon is convenient for cyclists because it provides long-term and short-term bicycle parking. The short term parking is easily accessible from the street and the long term parking is located in the garage where it is screened from public view.

Access to the property and circulation thereon are safe and convenient for all users. The alley provides a dedicated, separate access point to the project from the street. This will minimize vehicle interactions with other vehicles as well as pedestrians and cyclists. Further, the traffic study has determined that there is adequate site distance for exiting the alley onto Kipling Street. The project will incorporate mirrored installations at the parking garage ingress and egress to improve visibility and reduce conflicts between vehicles and pedestrians and cyclists. The onsite circulation was reviewed in accordance with generally accepted traffic engineering standards. Generally, the proposed plan would provide one main drive aisle that would lead to an underground parking structure. Parking is shown at 90 degrees to the main drive aisle. This drive aisle makes several 90 degree turns to spiral down to the farthest parking spaces. The City parking facility design standards specify a minimum width of 16 feet for two-way underground ramps; 25 feet for two-way drive aisles lined with 8.5 foot wide, 90 degree spaces; and maximum slope of 2% adjacent to accessible parking spaces. The proposed project

meets these standards. Further, the project was also found to meet the applicable parking requirements of the PAMC. Therefore, these features ensure access and circulation thereon are safe and convenient for all users.

The project is subject to the loading area requirements in the City's Zoning Code because it is a mixed-use project with commercial, office and residential uses. Consistent with past practice, the staff has recommended approval of an off-site loading area near the building rather than on the project site itself. There is a loading zone at Kipling Street and the alley provides sufficient loading space for the project and service alleys throughout downtown have historically been used for the purpose of shared loading and access. Using the alley is consistent with prior projects reviewed by the City and with previous iterations of the project design, and meets the intent of the City's Code requirement.

**Landscaping and Plant Materials:**

Finding #11: Natural features are appropriately preserved and integrated with the project.

Finding #12: The materials, textures and colors and details of construction and plant material are an appropriate expression to the design and function and compatible with the adjacent and neighboring structures, landscape elements and functions.

Finding #13: The landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment on the site and the landscape concept depicts an appropriate unit with the various buildings on the site.

Finding #14: Plant material is suitable and adaptable to the site, capable of being properly maintained on the site, and is of a variety that would tend to be drought-resistant and to reduce consumption of water in its installation and maintenance.

*The project is consistent with Findings #11- #14 because:*

The project will preserve existing street trees along University Avenue and will replace two perimeter trees along Kipling Street with ginkgo biloba. Two other street trees along Kipling Street will be retained. The project proposes appropriate, drought tolerant, sustainable landscaping in key open space areas that will complement and enhance the design of these spaces. The landscaping will form a soft edge and perimeter around the ground floor and terrace area on the third floor. Further, as conditioned, the project is required to return to the Architectural Review Board for review and recommendation to the Director of Planning and Community Environment for landscape details and plans for all proposed planting, including individual planters, the greenwall, and landscaping near the rooftop elevator. Therefore, the landscape design is appropriate and compatible for the project.

The proposed project is consistent with the above finding because it incorporates materials, textures, colors and details that are compatible with adjacent structures and functions. Adjacent structures employ brick, stucco and glass windows with a rough texture and organic colors. The proposed structure consists of concrete, glass windows, and metal mesh screens. These features compliment the adjacent buildings and the third and fourth floor consist of a similarly colored concrete as nearby buildings. Further, as conditioned, the project is required to return to the Architectural Review Board for review and recommendation to the Director of Planning and Community Environment of exterior building materials, colors and craftsmanship-related detailing associated with the project. Therefore, the project is compatible with the materials, colors and textures of adjacent buildings.

**Sustainability:**

Finding #15: The design is energy efficient and incorporates renewable energy design elements including, but not limited to:

- Careful building orientation to optimize daylight to interiors
- High performance, low-emissivity glazing
- Cool roof and roof insulation beyond Code minimum
- Solar ready roof
- Use of energy efficient LED lighting
- Low-flow plumbing and shower fixtures
- Below grade parking to allow for increased landscape and stormwater treatment areas

*The project is consistent with Finding #15 because:*

In accordance with the City's Green Building Regulations, the building will satisfy the requirements for CALGreen Mandatory + Tier 2.

SECTION 4. Architectural Review Findings. Revised Architectural Review Findings were adopted by ordinance of the City Council on November 14, 2016 (second reading December 12, 2016) and became effective on January 12, 2017. The Council finds that the project as modified is consistent with these findings and the Context-Based Design Criteria in PAMC 18.18.110 as follows:

**Finding #1: The design is consistent with applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides.**

The proposed project, as modified by the conditions of approval, is generally consistent with the Palo Alto Comprehensive Plan, including the following goals and policies:

- **Goal L-1:** A well-designed, compact city, providing residents and visitors with attractive neighborhoods, work places, shopping district, public facilities and open spaces.
- **Policy L-5:** Maintain the scale and character of the City. Avoid land uses that are overwhelming and unacceptable due their size and scale.
- **Goal L-4:** Inviting, pedestrian-scale centers that offer a variety of retail and commercial services and provide focal points and community gathering places for the City's residential neighborhoods and Employment Districts.
- **Policy L-20:** Encourage street frontages that contribute to retail vitality in all Centers. Reinforce street corners with buildings that come up to the sidewalk or that form corner plazas.
- **Policy L-23:** Maintain and enhance the University Avenue/Downtown area as the central business district of the City, with a mix of commercial, civic, cultural, recreational and residential uses. Promote quality design that recognizes the regional and historical importance of the area and reinforces its pedestrian character.
- **Policy L-24:** Ensure that University Avenue/Downtown is pedestrian-friendly and supports bicycle use. Use public art and other amenities to create an environment that is inviting to pedestrians.
- **Goal L-6:** Well-designed buildings that create coherent development patterns and enhance city streets and public spaces.
- **Policy L-48:** Promote high quality, creative design and site planning that is compatible with surrounding development and public spaces.
- **Policy L-49:** Design buildings to revitalize streets and public spaces and to enhance a sense of community and personal safety. Provide an ordered variety of entries, porches, windows, bays and balconies along public ways where it is consistent with neighborhood character; avoid blank or solid walls at street level; and include human-scale details and massing.
- **Goal T-3:** Facilities, services and programs that encourage and promote walking and bicycling.

- **Policy T-21:** Support the use of Downtown alleyways for pedestrian- and bicycle-only use.
- **Policy T-23:** Encourage pedestrian-friendly design features such as sidewalks, street trees, on-site parking, public spaces, gardens, outdoor furniture, art, and interesting architectural details.

More specifically, the project is consistent with Policy L-5, which seeks to maintain the scale and character of the City. Avoid land uses that are overwhelming and unacceptable due their size and scale. As conditioned, the approved project reduces the scale and visual prominence of the building along University Avenue and Kipling Street, creating the appearance of a three-story structure. This design provides a smoother transition from the single and two-story structures along University Avenue and Kipling Street, thereby maintaining the scale of the blocks. The building's modern design blends and transitions with the surrounding buildings and other buildings in the City through use of similar materials, design features, massing, and character.

The project is further consistent with Goals L-4 and Policies L-20, L-23 and L-24 and L-49, in that the project provides ground floor commercial space at a prominent intersection that serves as a focal point for a variety of retail uses that could occupy the space. The rhythmic position of the doors along University Avenue and Kipling Street also enhance retail vitality of the streets by locating retail uses immediately adjacent to the sidewalk and reflects the pattern of development along University Avenue. The project is consistent with Policy L-23 as it provides a mixture of commercial, office and residential uses comprised in a quality designed building. The project is consistent with Policies L-24, L-49, T-21 and T-23 because it provides a widened sidewalk for pedestrians with sheltered entrances. These same pedestrian features are extended to Kipling Street as well, and the seating area at the rear of the building activates a pedestrian space in the alley. The project is consistent with Goal L-6 and Policies L-48 and L-49 because the project is well designed, creates a coherent development pattern, is of high quality, and creative design that is compatible with surrounding development. Conditions of Approval Nos. 2b, 2c, 2d, 3b, 3c ensure that materials, landscaping and colors will be of high quality; reduce the massing and scale of the building to make it compatible with the surrounding buildings by limiting the elevator tower height, removing the library from the third floor, and reducing the projection of the eyebrow on the building; and setting back the guardrails and planters on the fourth floor to further reduce the massing and scale and enhance the buildings compatibility with the surrounding environment.

The project has also been reviewed to the objective development standards in the zoning code and found to be in compliance with the intent and regulations contained therein. A comprehensive review of the project to applicable development standards is included in the administrative record.

The project is consistent with the Downtown Urban Design plan. The project is located in the Commercial Core and more specifically the University Avenue District. The Urban Design plan notes that the alley from Kipling Street is designated for opportunities for pedestrian friendly use. The project satisfies this design requirement by providing a courtyard area with tables for pedestrians to use at the rear of the project site. The alley façade also incorporates a green wall which provides a sense of life to the alleyway. Other relevant goals in the plan include reinforcing University Avenue as the retail core by maintaining ground floor retail space, develop and enhance the qualities of University Avenue which make it an exciting outdoor and pedestrian environment with eclectic architecture, outdoor food, and entertainment and public amenities. The project maintains commercial uses along University Avenue by designating the ground floor area of the building for commercial spaces. The design of the project generates interests on the side streets. The clear glass windows allow pedestrians to see through the corner of the building which strengthens the pedestrian experience. The project provides pedestrian spaces through the recessed entries and widened sidewalk. The building is designed with attention to all facades. Kipling Street and University Avenue have the same attention to detail as the alley and southern elevation. The attention to detail in the alley is exhibited through the use of a green wall planter. Further, as conditioned, the southern elevation is required to incorporate a decorative wall treatment, feature or element.

Therefore, the project is conditioned and incorporates attention to detail on each façade. The ground floor of the project is primarily comprised of glass which is consistent with the plan's requirement for ground floor treatments that allow for easier pedestrian views of displays and merchandise.

Further, the project is located in the Kipling Street secondary district. The plan calls for Kipling Street between Lytton and University Avenue to retain older single family structures and the architectural character they provide. The project is not subject to this requirement because it does not propose to convert a single-family structure, and therefore its architecture, on Kipling Street. The project would convert commercial structures. The plan also calls for the terminus of Kipling Street and University Avenue to be enhanced through tie-ins to the Varsity Theater. The project would tie-in to the Varsity Theater by providing a structure that is of similar height and massing, located at the street front.

The project is not subject to any coordinated area plans.

**Finding #2: The project has a unified and coherent design, that:**

- a. creates an internal sense of order and desirable environment for occupants, visitors, and the general community,
- b. preserves, respects and integrates existing natural features that contribute positively to the site and the historic character including historic resources of the area when relevant,
- c. is consistent with the context-based design criteria of the applicable zone district,
- d. provides harmonious transitions in scale, mass and character to adjacent land uses and land use designations,
- e. enhances living conditions on the site (if it includes residential uses) and in adjacent residential areas.

*The project is consistent with Finding #2 because:*

The project has a unified and coherent design and creates an internal sense of order in that each use of the building is separated onto a specific floor. Each use also has access to own open space and the floor plans facilitate the proposed uses through appropriate layouts and configurations of the internal spaces. Internal spaces are provided with direct access and circulation routes and amenities like kitchen spaces for the commercial and office uses.

The project is designed to preserve, respect and integrate natural features. Natural features for this project consist of street trees along University Avenue and Kipling Street. The project site will preserve the existing street trees along University Avenue and will replace the ginkgo biloba trees along Kipling Street with new ginkgo biloba trees. The building respect the street trees by maintain setbacks from the vegetation and Condition of Approval No. 3b ensures that vegetation from the project will integrate with the street trees. Because the area has not been recognized as having a unified design or historic character, the finding for historic character is not applicable Therefore, the project will preserve, respect and integrate natural features that contribute positively to the site.

The project is consistent with the context-based design criteria for the applicable zone district:

The design and architecture of the proposed project has been reviewed with respect to the Context-Based Design Criteria set forth in PAM 18.18.110. Section 18.18.110 notes that the project shall be:

- Responsible to its context and compatible with adjacent development, and shall promote the establishment of pedestrian oriented design (where "responsible to context" is not a desire to replicate surroundings, but provide appropriate transitions to surroundings), and

- Compatible with adjacent development, when apparent scale and mass is consistent with the pattern of achieving a pedestrian oriented design and when new construction shares general characteristics and establishes design linkages with the overall pattern of buildings so the visual unit of the street is maintained.

Pursuant to PAMC 18.18.110(b), the following additional findings have been made in the affirmative:

- (1) **Pedestrian and Bicycle Environment.** *The design of new projects shall promote pedestrian walkability, a bicycle friendly environment, and connectivity through design elements.* This finding can be made in the affirmative in that the project supports widen sidewalk with recessed entries on primary pedestrian routes, at-grade bicycle racks near the building entrances, secured bicycle facility at ground level and within the underground parking garage.
- (2) **Street Building Facades.** *Street facades shall be designed to provide a strong relationship with the sidewalk and the street(s), to create an environment that supports and encourages pedestrian activity through design elements.* This finding can be made in the affirmative in that the proposed street facades are designed to create an environment that supports and encourages pedestrian activity. The building façade facing University Avenue preserves the existing storefront pattern with distinguish architectural elements to break up building mass. Entries are clearly defined and have a scale that is in proportion to the building functions. Elements that signal habitation such as entrances, stairs, and balconies are visible to people on the street. Proposed placement and orientation of doorways, windows and landscape elements are appropriate to create strong and direct relationships with the streets. Upper floors are setback, width of overhang is reduced and elevator shaft is oriented inward to reduce building mass and to fit in with the context of the neighborhood;
- (3) **Massing and Setbacks.** *Buildings shall be designed to minimize massing and conform to proper setbacks.* This finding can be made in the affirmative in that the project incorporates design with a series of recessed terraces and interchange in materials to break down the scale of building and provide visual interest. Variation in massing and materials create a façade with two distinctive frontages, which respect the existing storefront patterns and rhythms on University Avenue. Proposed design incorporates columns framework and tall display windows to reinforce the street corner. With the intent to minimize massing and ensure greater setback, proposed design has reduced the height of stairway tower and setback roofline for upper floor terrace at the corner of Lane 30 and Kipling Street;
- (4) **Low-Density Residential Transitions.** *Where new projects are built abutting existing lower scale residential development, care shall be taken to respect the scale and privacy of neighboring properties.* Although the parcels abutting the project site along Kipling Street have a commercial zoning designation, most of the built forms have a low density residential appearance. While the height is taller than most of the buildings in the neighborhood, the proposed building height of 50 feet is compliant with the height limit in the Downtown Commercial District. Proposed design includes at least a 10 feet setback with open terraces at the second and third floors to reduce the impact of the building height on to adjacent lower density neighborhood. Potential privacy concern is at a less than significant level as the buildings behind the project site are mostly one-story with commercial/office uses and mature trees along Kipling Street would provide some degree of screening. Proposed design includes storefront glass on both frontages to introduce a daylight source on the ground level.
- (5) **Project Open Space.** *Private and public open space shall be provided so that it is usable for residents, visitors, and/or employees of the site.* This finding can be made in the affirmative in that the project provides open



space with wider sidewalks, balconies, and a roof-top terrace. The balconies are accessible by residents on the site and are located on four sides of the building that encourage 'eyes on the street'. Proposed roof-top terrace is for office tenants and would provide ample solar exposure;

- (6) **Parking Design.** *Parking needs shall be accommodated but shall not be allowed to overwhelm the character of the project or detract from the pedestrian environment.* This finding can be made in the affirmative in that the project's parking is located within the below-grade garage and does not detract from pedestrian environment. The project includes a well-integrated garage entry, four feet setback, and mirrors that aid traffic and improve visibility on Lane 30. In addition, the project incorporates landscaping element to soften the exit of Lane 30. The intent is to enhance the character of pedestrian environment, while maintaining traffic visibility with low profile plant materials;
- (7) **Large (Multi-Acre) Sites.** *Large sites (over one acre) shall be designed so that street, block, and building patterns are consistent with those of the surrounding neighborhood.* This finding does not apply;
- (8) **Sustainability and Green Building Design.** *Project design and materials to achieve sustainability and green building design should be incorporated into the project.* This finding can be made in the affirmative in that the project would comply with the City's green building ordinance, and the design includes overhangs, recesses, and other shading devices and techniques to reduce the solar heat gain and energy consumption related to the cooling of the building. Design is easy for pedestrian, bicycle and transit access. The project incorporates high efficiency LED light fixtures, low-flow plumbing fixtures and high efficiency HVAC equipment for efficiency energy and water use. Green building features will be incorporated to achieve CalGreen Tier 2 standards for the commercial portion and Green Point rated standards for the residential portion.

Condition of Approval No. 2e requires that the elevator tower height not exceed 54.5 feet and Condition of Approval No. 2b requires the fourth floor guard rails to be setback from the edge of the terrace along all streetscapes. These conditions reduce the visual prominence of the structure along Kipling Street, and they create the appearance of a three story building. Along Kipling Street and University Avenue, the project would constitute a one to two-story increase in height from the adjacent structures. Additionally, the second and third floors are setback 10-feet from the alley way, and the third floor is setback approximately seven-feet off of Kipling Street and University Avenue. Condition Nos. 2c and 2d requires the library to be removed from the third floor at the intersection of Kipling Street and University Avenue and for the third floor roofline to follow the fourth floor plan, which further reduces the mass and scale of the building. These conditions and design feature help the project achieve a harmonious transition in scale and mass between adjacent land uses along Kipling Street and University Avenue.

Further, the project is consistent with Finding #2 because it enhances the living conditions on the site by providing residential units in downtown. The project enhances the adjacent residential areas because it provides space for employment and commerce that residences can access easily from surrounding areas.

**Finding #3: The design is of high aesthetic quality, using high quality, integrated materials and appropriate construction techniques, and incorporating textures, colors, and other details that are compatible with and enhance the surrounding area.**

*The project is consistent with Finding #3 because:*

The project has a high aesthetic quality, materials, construction techniques, textures, colors and other details that are compatible with and enhance the surrounding area. The buildings surrounding the site are comprised of concrete, stone, glass, brick, and metal and range in height from two to four stories along University Avenue. Along Kipling Street, buildings consist of cement, stucco, glass and brick structures. The proposed structure is comprised of high quality glass, concrete and steel design which is similar and representative of the materials found in the surrounding environment. Further, the materials, textures, and attention to detail in the structure is consistent throughout each elevation which represents a high quality aesthetic design. Lastly, the project, will have high quality materials, textures, colors and finishes because it is conditioned to return to the Architectural Review Board for review and recommendation to the Director of Planning and Community Environment of exterior building materials, colors and craftsmanship-related detailing associated with the project. Therefore, the project is consistent with Finding #3 because it consists of a high quality aesthetic design with integrated materials, textures, colors and other details that are compatible with the surrounding environment.

**Finding #4: The design is functional, allowing for ease and safety of pedestrian and bicycle traffic and providing for elements that support the building's necessary operations (e.g. convenient vehicle access to property and utilities, appropriate arrangement and amount of open space and integrated signage, if applicable, etc.).**

*The project is consistent with Finding #4 because:*

Access to the property and circulation thereon are safe and convenient for all users. The alley provides a dedicated, separate access point to the project from the street. This will minimize vehicle interactions with other vehicles as well as pedestrians and cyclists. Further, the traffic study has determined that there is adequate site distance for exiting the alley onto Kipling Street. The project will incorporate mirrored installations at the parking garage ingress and egress to improve visibility and reduce conflicts between vehicles and pedestrians and cyclists. The onsite circulation was reviewed in accordance with generally accepted traffic engineering standards. Generally, the proposed plan would provide one main drive aisle that would lead to an underground parking structure. Parking is shown at 90 degrees to the main drive aisle. This drive aisle makes several 90 degree turns to spiral down to the farthest parking spaces. The City parking facility design standards specify a minimum width of 16 feet for two-way underground ramps; 25 feet for two-way drive aisles lined with 8.5 foot wide, 90 degree spaces; and maximum slope of 2% adjacent to accessible parking spaces. The proposed project meets these standards. Further, the project was also found to meet the applicable parking requirements of the PAMC. Therefore, these features ensure access and circulation thereon are safe and convenient for all users.

**Finding #5: The landscape design complements and enhances the building design and its surroundings, is appropriate to the site's functions, and utilizes to the extent practical, regional indigenous drought resistant plant material capable of providing desirable habitat that can be appropriately maintained.**

*The project is consistent with Finding #5 because:*

The project will preserve existing street trees along University Avenue and will replace two perimeter trees along Kipling Street with ginkgo biloba. Two other street trees along Kipling Street will be retained. The project proposes appropriate, drought tolerant, sustainable landscaping in key open space areas that will complement and enhance the design of these spaces. The landscaping will form a soft edge and perimeter around the ground floor and terrace area on the third floor. Further, as conditioned, the project is required to return to the Architectural Review Board for review and recommendation to the Director of Planning and Community

Environment for landscape details and plans for all proposed planting, including individual planters, the greenwall, and landscaping near the rooftop elevator. Therefore, the landscape design is appropriate and compatible for the project.

**Finding #6: The project incorporates design principles that achieve sustainability in areas related to energy efficiency, water conservation, building materials, landscaping, and site planning.**

*The project is consistent with Finding #6 because:*

In accordance with the City's Green Building Regulations, the building will satisfy the requirements for CALGreen Mandatory + Tier 2.

SECTION 7. Conditions of Approval. The following conditions of approval shall be implemented as part of the modified project approved by this Record of Land Use Action. Condition numbers 2 and 3 are those specifically adopted by the City Council to ensure that the modified project is consistent with all applicable findings.

*Planning Division*

1. **SUBSTANTIAL CONFORMANCE.** The plans submitted for a Building Permit shall be in substantial conformance with plans received on October 26, 2016, hereby labeled as Option 1, containing 24 pages, except as modified to incorporate the following conditions of approval.
2. **BUILDING PERMIT PLAN SET.** A copy of this cover letter and conditions of approval, including Exhibit A (MMRP), shall be printed on the second page of the plans submitted for building permit. Project plans submitted for Building permits shall incorporate the following changes, to the satisfaction of the Director of Planning and Community Environment:
  - a. Applicant shall submit detailed plans that demonstrate compliance with floor area and other applicable development standards.
  - b. The fourth floor guardrails and planters shall be set back a minimum of five feet from the edge of the third floor roofline (all elevations), as modified by these conditions.
  - c. The 'library' shown on the third floor, floor plans, at the street corner, shall be removed.
  - d. The third floor roofline above the removed 'library' area shall be removed, except to allow a three-foot overhang.
  - e. The elevator adjacent to Kipling Street, inclusive of any associated mechanical equipment, shall not exceed fifty-four and one-half feet (54.5') in height.
3. **BOARD LEVEL ARCHITECTURAL REVIEW:** Prior to the issuance of building permits, the applicant shall return to the ARB for approval of the following items, to the satisfaction of the Director of Planning and Community Environment:
  - a. A decorative wall design treatment, feature or element, shall be applied to the exterior walls immediately adjacent to the southern property line (project's south elevation) starting at an

elevation equivalent to the building height of the adjacent structure and extending to the roofline of the proposed building.

- b. Landscape details and plans for all proposed planting, including individual planters, the greenwall, and landscaping near the rooftop elevator.
  - c. The exterior building materials, colors and craftsmanship-related detailing associated with the project.
4. Prior to issuance of a building permit, the project applicant shall demonstrate how interior and exterior lighting sources will be reduced after operating hours or when the use of the facility is reduced. This may require the use of timing devices for exterior and interior lights in order to minimize light glare at night without jeopardizing security of employees/residents.
5. PROJECT MODIFICATIONS: All modifications to the approved project shall be submitted for review and approval prior to construction. If during the Building Permit review and construction phase, the project is modified by the applicant, it is the responsibility of the applicant to contact the Planning Division/project planner directly to obtain approval of the project modification. It is the applicant's responsibility to highlight any proposed changes to the project and to bring it to the project planner's attention.
6. DEVELOPMENT IMPACT FEES: Estimated Development Impact Fees in the amount of **\$312,634.85** plus the applicable public art fee, per PAMC 16.61.040, shall be paid prior to the issuance of the related building permit.
7. REQUIRED PUBLIC ART. In conformance with Ordinance No. 5226, and to the satisfaction of the Public Art Commission, the property owner and/or applicant shall select an artist and received final approval of the art plan , or pay the in-lieu fee equivalent to 1% of the estimated construction valuation, prior to issuance of a Building permit. All required artwork shall be installed as approved by the Public Art Commission and verified by Public Art staff prior to release of the final Use and Occupancy permit. The Public Art requirements Application information and documents can be found at [www.cityofpaloalto.org/publicart](http://www.cityofpaloalto.org/publicart) under the "policies and documents" tab.
8. IMPACT FEE 90-DAY PROTEST PERIOD. California Government Code Section 66020 provides that a project applicant who desires to protest the fees, dedications, reservations, or other exactions imposed on a development project must initiate the protest at the time the development project is approved or conditionally approved or within ninety (90) days after the date that fees, dedications, reservations or exactions are imposed on the Project. Additionally, procedural requirements for protesting these development fees, dedications, reservations and exactions are set forth in Government Code Section 66020. IF YOU FAIL TO INITIATE A PROTEST WITHIN THE 90-DAY PERIOD OR FOLLOW THE PROTEST PROCEDURES DESCRIBED IN GOVERNMENT CODE SECTION 66020, YOU WILL BE BARRED FROM CHALLENGING THE VALIDITY OR REASONABLENESS OF THE FEES, DEDICATIONS, RESERVATIONS, AND EXACTIONS. If these requirements constitute fees, **taxes, assessments**, dedications, reservations, or other exactions as specified in Government Code Sections 66020(a) **or 66021**, this is to provide notification that, as of the date of this notice, the 90-day period has begun in which you may protest these requirements.

9. INDEMNITY. To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City for its actual attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its own choice.
10. MITIGATION MONITORING REPORTING PROGRAM (MMRP). The MMRP associated with the project and attached here as Exhibit A is incorporated by reference and all mitigation measures shall be implemented as described in said document.
11. PLANNING FINAL INSPECTION. A Planning Division Final inspection will be required to determine substantial compliance with the approved plans prior to the scheduling of a Building Division final. Any revisions during the building process must be approved by Planning, including but not limited to; materials, fenestration and hard surface locations. Contact your Project Planner at 650-329-2441 x0 to schedule this inspection.
12. EXPIRATION. The project approval shall be valid for a period of one year from the original date of approval. In the event a building permit(s) is not secured for the project within the time limit specified above, the ARB approval shall expire and be of no further force or effect. Application for extension of this entitlement may be made prior to the one year expiration.

*Building Division*

13. The permit application shall be accompanied by all plans and related documents necessary to construct the complete project.
14. A demolition permit shall be required for the removal of the existing building(s) on site.
15. The entire project is to be included under a single building permit and shall not be phased under multiple permits.
16. Separate submittals and permits are required for the following systems: E.V., P.V. and Solar Hot Water.
17. Design of building components that are not included in the plans submitted for building permit and are to be "deferred" shall be limited to as few items as possible. The list of deferred items shall be reviewed and approved prior to permit application.
18. The plans submitted for the building permit shall include an allowable floor area calculation that relates the mixed occupancies to type of construction.
19. The plans submitted for the building permit shall include allowable floor area calculations that relate the proposed occupancies to type of construction. This includes possible future installation of assembly occupancies such as large conference rooms or cafeterias, for example.

20. An acoustical analysis shall be submitted and the plans shall incorporate the report's recommendations needed to comply with the sound transmissions requirements in CBC Section 1207.

*Green Building*

21. Green Building Ordinance:

- a. Commercial Portion - CALGreen Tier 2: The project must meet the California Green Building Code Tier 2 requirements. Due to the size of the project, the team must engage a commissioning agent and fulfil on the commissioning requirements. Additional information may be found at the following link [http://www.cityofpaloalto.org/gov/depts/ds/green\\_building/default.asp](http://www.cityofpaloalto.org/gov/depts/ds/green_building/default.asp). The new Energy California Energy Code contains significant changes and Palo Alto is currently enforcing code minimum for the energy code. The details can be found at the following link. <http://www.energy.ca.gov/title24/2013standards/>
- b. Residential Portion- Green Point Rated: The project is required to achieve Green Point Rated Certification through Build It Green. The project team must engage a Green Point Rater. The required minimum points value is 70. The required prerequisite and points associated with exceeding the code shall be excused. Additional information may be found at the following link [http://www.cityofpaloalto.org/gov/depts/ds/green\\_building/default.asp](http://www.cityofpaloalto.org/gov/depts/ds/green_building/default.asp)

22. EV Parking Ordinance: The project is subject to meet the new Electric Vehicle Parking Ordinance that requires but is not limited to:

- a. Multi-family: One EVSE Ready or EVSE Installed per unit. For guest parking, either conduit only, EVSE Ready or EVSE Installed shall be provided for 25% of the parking. A minimum of 1 EVSE Installed for multi-family guest parking shall be provided.
- b. Commercial: For commercial parking, either conduit only, EVSE Ready or EVSE Installed shall be provided for 25% of the parking. A minimum of 1 EVSE Installed for commercial parking shall be provided.

*Urban Forestry*

23. STREET TREES: City street trees approved to remain shall be maintained and protected during construction per City of Palo Alto standard requirements as further described in the City's Tree Technical Manual and below:

- a. UNIVERSITY AVENUE: Two regulated street trees (London Plane) on University Ave frontage are to be retained and protected. Protection shall consist of Modified Type III for the entire trunk and will include primary branches on the building side. Prior to any clearance/pruning, the project applicant shall:
  - i. Submit a written Tree Care Application to [Dorothy.dale@cityofpaloalto.org](mailto:Dorothy.dale@cityofpaloalto.org),
  - ii. Receive approval of said Tree Care Application, and
  - iii. Shall coordinate with Urban Forestry for direct supervision by staff of private tree contractor.
- b. KIPLING STREET: Four trees in the right of way are approved for removal. Four replacement trees shall be installed, Ginkgo biloba 'Autumn Gold', Maidenhair, 36-inch box size, in 5'x5' Kiva tree grates, two irrigation bubblers per tree (PW Standard Detail # 603a and 513). A certified arborist for the applicant shall evaluate/select matching trees

for quality. Contractor shall coordinate an Urban Forestry inspection of the new trees, before they are planted in the ground.

- i. SIDEWALK BASE MEDIUM: As a root growing medium between the curb and building face, Silva Cell technology or approved equal, shall be designed as a suspended sidewalk element and provide low compaction area for long term root growth. A certified arborist for the applicant shall calculate how many cubic feet of soil and Silva cell material will be needed for each tree, for approval by the Urban Forester.

24. All landscape material shall be well maintained for the life of the project and replaced if it fails.

*Public Works Engineering Department*

PRIOR TO BUILDING PERMIT AND GRADING AND EXCAVATION PERMIT SUBMITTAL:

25. CERTIFICATE OF COMPLIANCE: The applicant has revised the project description to indicate that she is no longer pursuing the development of condominiums. Since the project site is located within two parcels 120-15-029 and 120-15-028 a certificate of compliance for a lot merger is required. Applicant shall apply for a certificate of compliance and provide the necessary documents. Certificate of Compliance shall be recorded prior to issuance of a building or grading and excavation permit.

PRIOR TO ISSUANCE OF A DEMOLITION PERMIT:

26. LOGISTICS PLAN: The applicant and contractor shall submit a construction logistics plan to the Public Works Department that addresses all impacts to the City's right-of-way, including, but not limited to: construction fence, construction entrance, stockpile areas, office trailer, temporary bathroom, measures for dewatering if needed, pedestrian control, traffic control, truck routes, material deliveries, contractor's parking, on-site staging and storage areas, concrete pours, crane lifts, work hours, noise control, dust control, storm water pollution prevention, contractor's contact. The plan shall be prepared and submitted along the Rough Grading and Excavation Permit. It shall include notes as indicated on the approved Truck Route Map for construction traffic to and from the site. Plan shall also indicate if the bus stop will need to be relocated.
27. Applicant shall schedule a meeting with Public Works Engineering and Transportation Division to discuss the existing building demolition, excavation and building construction logistics. Construction fence shall be located at the building property line, travel lane closures will not be permitted. Applicant shall propose a logistics plan that shows how pedestrian access is maintained and eliminating the least number of parking spaces during construction.

PRIOR TO ISSUANCE OF EXCAVATION AND GRADING PERMIT:

28. GRADING PERMIT: An Excavation and Grading Permit is required for grading activities on private property that fill, excavate, store or dispose of 100 cubic yards or more based on PAMC Section 16.28.060. Applicant shall prepare and submit an excavation and grading permit to Public Works separately from the building permit set. The permit application and instructions are available at the Development Center and on our website: [http://www.cityofpaloalto.org/gov/depts/pwd/forms\\_and\\_permits.asp](http://www.cityofpaloalto.org/gov/depts/pwd/forms_and_permits.asp)

29. ROUGH GRADING: provide a Rough Grading Plan for the work proposed as part of the Grading and Excavation Permit application. The Rough Grading Plans shall including the following: pad elevation, basement elevation, elevator pit elevation, ground monitoring wells, shoring for the proposed basement, limits of over excavation, stockpile area of material, overall earthwork volumes (cut and fill), temporary shoring for any existing facilities, ramps for the basement access, crane locations (if any), etc. Plans submitted for the Grading and Excavation Permit, shall be stand-alone, and therefore the plans shall include any conditions from other divisions that pertain to items encountered during rough grading for example if contaminated groundwater is encountered and dewatering is expected, provide notes on the plans based Water Quality's conditions of approval. Provide a note on the plans to direct the contractor to the approve City of Palo Alto Truck Route Map, which is available on the City's website.
30. BASEMENT SHORING: Provide shoring plans for the basement excavation, clearly including tiebacks (if any). Tieback shall not extend onto adjacent private property or into the City's right-of-way without having first obtained written permission from the private property owners and/or an encroachment permit from Public Works. During the ARB process and via email dated 9/25/14 the applicant indicated that the tiebacks will extend into the adjacent private property. As such provide a letter from the neighboring property owner to allow the encroachment of permanent tiebacks into their property. In addition the shoring plans shall clearly show the property line and the dimension between the outside edge of the soldier piles and the property line for City records. Also provide notes on the Shoring Plans for the "Contractor to cut-off the shoring 6-feet below the sidewalk elevation." AND "Contractor shall submit and obtain a permanent encroachment permit from Public Works for the tiebacks and shoring located within public right-of-way.
31. DEWATERING: Basement excavation may require dewatering during construction. Public Works only allows groundwater drawdown well dewatering. Open pit groundwater dewatering is not allowed. Dewatering is only allowed from April through October due to inadequate capacity in our storm drain system. The geotechnical report for this site must list the highest anticipated groundwater level. We recommend that a piezometer be installed in the soil boring. The contractor shall determine the depth to groundwater immediately prior to excavation by using a piezometer or by drilling an exploratory hole if the deepest excavation will be within 3 feet of the highest anticipated groundwater level. If groundwater is found within 2 feet of the deepest excavation, a drawdown well dewatering system must be used, or alternatively, the contractor can excavate for the basement and hope not to hit groundwater, but if he does, he must immediately stop all work and install a drawdown well system before he continues to excavate. Based on the determined groundwater depth and season the contractor may be required to dewater the site or stop all grading and excavation work. In addition Public Works may require that all groundwater be tested for contaminants prior to initial discharge and at intervals during dewatering. If testing is required, the contractor must retain an independent testing firm to test the discharge water for contaminants Public Works specifies and submit the results to Public Works.

Public Works reviews and approves dewatering plans as part of a Street Work Permit. The applicant can include a dewatering plan in the building permit plan set in order to obtain approval of the plan during the building permit review, but the contractor will still be required to obtain a street work permit prior to dewatering. The street work permit to dewater must be obtained in August to allow ample to time to dewater and complete the dewatering by October 31st. Alternatively, the applicant must include the above dewatering requirements in a note on the site plan. Public Works has a sample dewatering plan sheet and dewatering guidelines available at the Development Center and on our website:



[http://www.cityofpaloalto.org/gov/depts/pwd/forms\\_and\\_permits.asp](http://www.cityofpaloalto.org/gov/depts/pwd/forms_and_permits.asp)

The following links are included to assist the applicant with dewatering requirements:

<http://www.cityofpaloalto.org/civicax/filebank/documents/30978>

<http://www.cityofpaloalto.org/civicax/filebank/documents/51366>

<http://www.cityofpaloalto.org/civicax/filebank/documents/47388>.

32. **WATER FILLING STATION:** Applicant shall install a water station for the non-potable reuse of the dewatering water. This water station shall be constructed within private property, next to the right-of-way, (typically, behind the sidewalk). The station shall be accessible 24 hours a day for the filling of water carrying vehicles (i.e. street sweepers, etc.). The water station may also be used for onsite dust control. Before a discharge permit can be issued, the water supply station shall be installed, ready for operational and inspected by Public Works. The groundwater will also need to be tested for contaminants and chemical properties for the non-potable use. The discharge permit cannot be issued until the test results are received. Additional information regarding the station will be made available on the City's website under Public Works.
33. **GROUNDWATER USE PLAN:** A Groundwater Use Plan (GWUP) shall be submitted for review for any project which requires dewatering. The GWUP, a narrative that shall be included in or accompany the Dewatering Plan, must demonstrate the highest beneficial use practicable of the pumped groundwater. The GWUP shall also state that all onsite, non-potable water needs such as dust control shall be met by using the pumped groundwater. Delays in submitting the GWUP can result in delays in the issuance of your discharge permit as Public Works requires sufficient review time which shall be expected by the applicant.
34. **GEOTECHNICAL REPORT:** Shall clearly identify the highest projected groundwater level to be encountered in the area of the proposed basement in the future will be \_\_\_\_\_ feet below existing grade. Provide a note on the Rough Grading Plan that includes the comment above as a note.
35. **GAS METERS:** In-ground gas meters are not typically allowed by Public Works Utilities. If in-ground gas meters are not allowed, the above ground gas meter shall be located complete within private property. Plot and label the proposed location. If in-ground gas meters are permitted, applicant shall submit an email from Utilities that indicates in-ground gas meters are acceptable for this project.

#### PRIOR TO ISSUANCE OF A BUILDING PERMIT

36. **MAPPING:** Applicant has revised the project description to indicate that she is no longer pursuing the development of condominiums. If at any point the applicant intends to sell portions of the building a Minor or Major Subdivision Application will be required. Public Works' Tentative Maps and Preliminary Parcel Maps checklist must accompany the completed application. All existing and proposed dedications and easements must be shown on the submitted map. The map would trigger further requirements from Public Works, see Palo Alto Municipal Code section 21.12 for Preliminary Parcel Map requirements and section 21.16 for Parcel Map requirements.
37. **OFFSITE IMPROVEMENT PLANS:** Prior to submittal of Building and/or Grading permit applicant shall meet with Public Works to discuss off-site improvements. These may include but are not limited to new concrete or asphalt work, utility upgrades or relocations, and/or street resurfacing.

38. The following items were not addressed through the final ARB submittal and shall be shown on the plans.
- a. Explain how all of the site runoff will drain directly into the media filter. The media filter shall be located complete with the private property as shown on the approve ARB plans. The details provided indicate that the media filter is to be installed below ground and discharge would need to be pumped to the surface. However that is not reflected on the Utility Plan.
  - b. Plot and label the total the number of disconnected downspouts. The civil has indicated that the downspouts runoff will drain into the media filter, but it's not clear on the plans how this will be accomplished.
  - c. The site plan shall demonstrate how the runoff from the MFS flows by gravity into the gutter, provide pipe inverts and flowline grades. If a new separate structure is required to allow runoff to flow by gravity into the gutter or reduce the velocity, then the structure shall be located completely within the private property. The 4th and 5th resubmittal ARB plans show a junction box within the public right of way, this box shall be located completely within the private property.
  - d. The 5th submittal shows a planter box adjacent to the alley and the MFS has been relocated to be within this planter boxes. The plans submitted lack information, show how the roof runoff is directed into the mechanical treatment facility. Plot and label the pump, drain lines, downspouts. Show how all of the site runoff is treated by the proposed MFS.
  - e. It's not clear if the planter box is intended to provide C3 treatment. If LID treatment is proposed provide the surface drainage areas and calculations.
  - f. Resize the new planter box to allow the junction box to be within the private property and behind the Kipling Street sidewalk. The planter box and planting material shall be revised to meet the 4-ft by 6-ft clear site distance and height clearance. In addition the planter box shall be located 1-foot minimum away from the adjacent alley.
39. GRADING AND DRAINAGE PLAN: The plan set must include a grading & drainage plan prepared by a licensed professional that includes existing and proposed spot elevations, earthwork volumes, finished floor elevations at every at grade door entrance, area drain and bubbler locations, drainage flow arrows to demonstrate proper drainage of the site. See Palo Alto Municipal Code Section 16.28 Adjacent grades must slope away from the building foundation at minimum of 2% or 5% for 10-feet per 2013 CBC Section 1804.3. Downspouts and splashblocks should be shown on this plan, as well as any site drainage features such as swales. Grading will not be allowed that increases drainage onto, or blocks existing drainage from, neighboring properties. Public Works generally does not allow rainwater to be collected and discharged into the street gutter or connected directly to the City's infrastructure, but encourages the developer to keep rainwater onsite as much as feasible by directing runoff to landscape and other pervious areas of the site. Plan shall also include a drainage system as required for all uncovered exterior basement-level spaces such as lightwell, stairwells or driveway ramps.
40. BASEMENT DRAINAGE: Due to high groundwater throughout much of the City and Public Works prohibiting the pumping and discharging of groundwater, perforated pipe drainage systems at the exterior of the basement walls or under the slab are not allowed for this site. A drainage system is, however, required for all exterior basement-level spaces, such as lightwells, patios or stairwells. This system consists of a sump, a sump pump, a backflow preventer, and a closed pipe from the pump to a dissipation device onsite at least 10-feet from the property line, such as a bubbler box in a landscaped area, so that water can percolate into the soil and/or sheet flow across the site. The device must not

allow stagnant water that could become mosquito habitat. Additionally, the plans must show that exterior basement-level spaces are at least 7-3/4" below any adjacent windowsills or doorsills to minimize the potential for flooding the basement. Public Works recommends a waterproofing consultant be retained to design and inspect the vapor barrier and waterproofing systems for the basement.

41. IMPERVIOUS SURFACE AREA: The project will be creating or replacing 500 square feet or more of impervious surface. Accordingly, the applicant shall provide calculations of the existing and proposed impervious surface areas with the building permit application. The Impervious Area Worksheet for Land Developments form and instructions are available at the Development Center or on our website.
42. STORM WATER POLLUTION PREVENTION: The City's full-sized "Pollution Prevention - It's Part of the Plan" sheet must be included in the plan set. The sheet is available here: <http://www.cityofpaloalto.org/civicax/filebank/documents/2732>
43. STORM WATER TREATMENT: This project shall comply with the storm water regulations contained in provision C.3 of the NPDES municipal storm water discharge permit issued by the San Francisco Bay Regional Water Quality Control Board (and incorporated into Palo Alto Municipal Code Chapter 16.11). These regulations apply to land development projects that create or replace 10,000 square feet or more of impervious surface, and restaurants, retail gasoline outlets, auto service facilities, and uncovered parking lots that create and/or replace 5,000 square feet or more of impervious surface. In order to address the potential permanent impacts of the project on storm water quality, the applicant shall incorporate into the project a set of permanent site design measures, source controls, and treatment controls that serve to protect storm water quality, subject to the approval of the Public Works Department. The applicant shall identify, size, design and incorporate permanent storm water pollution prevention measures (preferably landscape-based treatment controls such as bioswales, filter strips, and permeable pavement rather than mechanical devices that require long-term maintenance) to treat the runoff from a "water quality storm" specified in PAMC Chapter 16.11 prior to discharge to the municipal storm drain system. Effective February 10, 2011, regulated projects, must contract with a qualified third-party reviewer during the building permit review process to certify that the proposed permanent storm water pollution prevention measures comply with the requirements of Palo Alto Municipal Code Chapter 16.11. The certification form, 2 copies of approved storm water treatment plan, and a description of Maintenance Task and Schedule must be received by the City from the third-party reviewer prior to approval of the building permit by the Public Works department. Within 45 days of the installation of the required storm water treatment measures and prior to the issuance of an occupancy permit for the building, third-party reviewer shall also submit to the City a certification for approval.
44. UTILITY PLAN: shall be provided with the Building Permit that demonstrates how the site's drainage flows by gravity into the City's system and is not pumped. Public Works generally does not allow downspout rainwater to be collected, piped and discharged directly into the street gutter or connect directly to the City's infrastructure. The utility plan shall indicate that downspouts are disconnected, daylight at grade, and are directed to landscaped and other pervious areas onsite. Downspouts shall daylight away from the foundation.

If pumps are required, plot and label where the pumps will be located on-site, storm water runoff from pumped system shall daylight onto onsite landscaped areas and be allow to infiltrate and flow by gravity

to the public storm drain line. Storm water runoff that is pumped shall not be directly piped into the public storm drain line.

45. TRANSFORMER AND UTILITIES: Applicant shall be aware that the project may trigger water line and meter upgrades or relocation, if upgrades or relocation are required, the building permit plan set shall plot and label utility changes. The backflow preventer, and above grade meters shall be located within private property and plotted on the plans. Similarly if a transformer upgrade or a grease interceptor is required it shall also be located within the private property.
46. WORK IN THE RIGHT-OF-WAY: The plans must clearly indicate any work that is proposed in the public right-of-way, such as sidewalk replacement, driveway approach, or utility laterals. The plans must include notes that the work must be done per City standards and that the contractor performing this work must first obtain a *Street Work Permit* from Public Works at the Development Center. This project may be required to replace the driveway approach the sidewalk associated with the existing driveway may be required to be replaced with a thickened (6" thick instead of the standard 4" thick) section.
47. SIDEWALK ENCROACHMENT: Add a note to the site plan that says, "The contractor using the city sidewalk to work on an adjacent private building must do so in a manner that is safe for pedestrians using the sidewalk. Pedestrian protection must be provided per the 2013 California Building Code Chapter 32 requirements. If the height of construction is 8 feet or less, the contractor must place construction railings sufficient to direct pedestrians around construction areas. If the height of construction is more than 8 feet, the contractor must obtain an encroachment permit from Public Works at the Development Center in order to provide a barrier and covered walkway. The contractor must apply to Public Works for an encroachment permit to close or occupy the sidewalk(s) or lane."
48. SIDEWALK, CURB & GUTTER: As part of this project, the applicant must replace all of the existing sidewalks, ramps, curbs, gutters or driveway approaches in the public right-of-way along the frontage(s) of the property. Applicant shall be responsible for replacing the two ramps immediately across the street from the project site. Applicant shall meet with Public Works and Transportation to discuss the potential for adding a bulb-out along the University Avenue side to widen the sidewalk. If construction of the new ramps and/or sidewalk results in a conflict with utilities or traffic signal than applicant will be responsible for adjusting to grade or relocating conflict and to bring the improvements to current designs standards. The site plan and grading and drainage plan submitted with the building permit plan set must show the extent of the replacement work. Provide references to the specific City's Standard Drawings and Specification. The plan must note that any work in the right-of-way must be done per Public Works' standards by a licensed contractor who must first obtain a *Street Work Permit* from Public Works at the Development Center.
49. RESURFACING: The applicant is required to resurface (grind and overlay) the entire width of the street on University Avenue and Kipling Street frontages adjacent to the project. In addition this project is required to resurface the full width of the Lane along the project frontage. Note that the base material for these 3 streets varies. Thermoplastic striping of the street(s) will be required after resurfacing. Include an off-site plan that shows the existing signage and striping that is to be replaces as part of this project and for the contractor's use.
50. DEMOLITION PLAN: Place the following note adjacent to an affected tree on the Site Plan and Demolition Plan: "Excavation activities associated with the proposed scope of work shall occur no closer

than 10-feet from the existing street tree, or as approved by the Urban Forestry Division contact 650-496-5953. Any changes shall be approved by the same”.

51. **STREET TREES:** The applicant may be required to replace existing and/or add new street trees in the public right-of-way along the property’s frontage(s). Call the Public Works’ arborist at 650-496-5953 to arrange a site visit so he can determine what street tree work, if any, will be required for this project. The site plan submitted with the building permit plan set must show the street tree work that the arborist has determined, including the tree species, size, location, staking and irrigation requirements, or include a note that Public Works’ arborist has determined no street tree work is required. The plan must note that in order to do street tree work, the applicant must first obtain a *Permit for Street Tree Work in the Public Right-of-Way* from Public Works’ arborist (650-496-5953).
52. **GARBAGE/TRASH RECEPTACLES:** The plans provided for preliminary review do not include the existing garbage/trash receptacle along University Avenue. This shall be shown on the Building permit plans and remain in its location for as long as possible during construction. If construction activities require the temporary removal of the receptacle, the contractor may remove during that construction activity but must place it back as soon as those activities have been completed. Prior to doing so, the contractor must notify the public works department to determine if Public Works Operations should pick it up for storage during that time.
53. **ADJACENT NEIGHBORS:** For any improvements that extend beyond the property lines such as tie-backs for the basement or construction access provide signed copies of the original agreements with the adjacent property owners. The agreements shall indicate that the adjacent property owners have reviewed and approved the proposed improvements (such as soldier beams, tiebacks) that extend into their respective properties
54. **“NO DUMPING” LOGO:** The applicant is required to paint the “No Dumping/Flows to San Francisquito Creek” logo in blue color on a white background, adjacent to all onsite storm drain inlets. Stencils of the logo are available from the Public Works Environmental Compliance Division, which may be contacted at (650) 329-2598. A deposit may be required to secure the return of the stencil. Include the instruction to paint the logos on the construction grading and drainage plan. Similar medallions shall be installed near the catch basins that are proposed to be relocated. Provide notes on the plans to reference that medallions and stencils.
55. **OIL/WATER SEPARATOR:** Parking garage floor drains on interior levels shall be connected to an oil/water separator prior to discharging to the sanitary sewer system. The oil/water separator shall be located within private property.
56. **GREASE INTERCEPTOR:** If a commercial kitchen is proposed requiring the installation of a grease interceptor, the grease separator shall be installed and located within private property. In no case shall the City of Palo Alto allow the right-of-way (ROW) to be used to satisfy this requirement.

**PRIOR TO BUILDING PERMIT FINAL:**

57. **STORM WATER TREATMENT:** At the time of installation of the required storm water treatment measures and prior to the issuance of any occupancy permit, a third-party reviewer shall also submit to the City a

certification for approval that the project's permanent measures were constructed and installed in accordance to the approved permit drawings.

58. **STORMWATER MAINTENANCE AGREEMENT:** The applicant shall designate a party to maintain the control measures for the life of the improvements and must enter into a maintenance agreement with the City to guarantee the ongoing maintenance of the permanent C.3 storm water discharge compliance measures. The maintenance agreement shall be executed prior to the first building occupancy sign-off. The City will inspect the treatment measures yearly and charge an inspection fee. There is currently a \$381 (FY 2015) C.3 plan check fee that will be collected upon submittal for a grading or building permit.
59. Contractor and/or Applicant shall prepare and submit an electronic (pdf) copy of the Off-Site Improvements As-Built set of plans to Public Works for the City's records. The as-built set shall include all the improvements within the public road right-of-way and include items such as: shoring piles, tiebacks, public storm drain improvements, traffic signs, street trees, location of any vaults or boxes, and any other item that was installed as part of this project.
60. Contractor shall submit and obtain an Encroachment permit for the permanent structures (shoring and tiebacks) that were installed within the public road right-of-way.

#### *Fire Department*

61. Residential sprinklers to be designed per NFPA 13. Fire sprinklers and fire alarm systems and standpipes required in accordance with NFPA 13, NFPA14, NFPA 24, NFPA 72 and State and local standards. Sprinkler, fire alarm and underground fire supply installations require separate submittal to the Fire Prevention Bureau.
62. Sprinkler main drain must be coordinated with plumbing design so that 200 gpm can be flowed for annual main drain testing for 90 seconds without overflowing the collection sump, and the Utilities Department approved ejector pumps will be the maximum flow rate to sanitary sewer.
63. Applicant shall work with Utilities Department to provide acceptable backflow prevention configuration.
64. All floor levels in multi-story buildings must be served by an elevator capable of accommodating a 24 x 84 inch gurney without lifting or manipulating the gurney.
65. All welding or other hot work during construction shall be under a permit obtained from the Palo Alto Fire Department with proper notification and documentation of procedures followed and work conducted.
66. Low-E glass and underground parking areas can interfere with portable radios used by emergency responders. Please provide an RF Engineering analysis to determine if additional devices or equipment will be needed to maintain operability of emergency responder portable radios throughout 97% of the multi-family buildings in accordance with the Fire Code Appendix J as adopted by the City of Palo Alto. A written report to the Fire Marshal shall be provided prior to final inspection.

#### *Utilities Electrical Engineering*

## GENERAL:

67. The applicant shall comply with all the Electric Utility Engineering Department service requirements noted during plan review.
68. The applicant shall be responsible for identification and location of all utilities, both public and private, within the work area. Prior to any excavation work at the site, the applicant shall contact Underground Service Alert (USA) at 1-800-227-2600, at least 48 hours prior to beginning work.
69. The applicant shall submit a request to disconnect all existing utility services and/or meters including a signed affidavit of vacancy, on the form provided by the Building Inspection Division. Utilities will be disconnected or removed within 10 working days after receipt of request. The demolition permit will be issued after all utility services and/or meters have been disconnected and removed.

## THE FOLLOWING SHALL BE INCORPORATED IN SUBMITTALS FOR ELECTRIC SERVICE:

70. A completed Electric Load Sheet and a full set of plans must be included with all applications involving electrical work. The load sheet must be included with the preliminary submittal.
71. Industrial and large commercial customers must allow sufficient lead-time for Electric Utility Engineering and Operations (typically 8-12 weeks after advance engineering fees have been paid) to design and construct the electric service requested.
72. Only one electric service lateral is permitted per parcel. Utilities Rule & Regulation #18.
73. This project requires a padmount transformer. The location of the transformer shall be shown on the site plan and approved by the Utilities Department and the Architectural Review Board. Utilities Rule & Regulations #3 & #16.
74. The developer/owner shall provide space for installing padmount equipment (i.e. transformers, switches, and interrupters) and associated substructure as required by the City.
75. The customer shall install all electrical substructures (conduits, boxes and pads) required from the service point to the customer's switchgear. The design and installation shall be according to the City standards and shown on plans. Utilities Rule & Regulations #16 & #18.
76. Location of the electric panel/switchboard shall be shown on the site plan and approved by the Architectural Review Board and Utilities Department.
77. All utility meters, lines, transformers, backflow preventers, and any other required equipment shall be shown on the landscape and irrigation plans and shall show that no conflict will occur between the utilities and landscape materials. In addition, all aboveground equipment shall be screened in a manner that is consistent with the building design and setback requirements.
78. For services larger than 1600 amps, the customer will be required to provide a transition cabinet as the interconnection point between the utility's padmount transformer and the customer's main switchgear.

The cabinet design drawings must be submitted to the Electric Utility Engineering Department for review and approval.

79. For underground services, no more than four (4) 750 MCM conductors per phase can be connected to the transformer secondary terminals; otherwise, bus duct must be used for connections to padmount transformers. If customer installs a bus duct directly between the transformer secondary terminals and the main switchgear, the installation of a transition cabinet will not be required.
80. The customer is responsible for sizing the service conductors and other required equipment according to the National Electric Code requirements and the City standards. Utilities Rule & Regulation #18.
81. If the customer's total load exceeds 2500 kVA, service shall be provided at the primary voltage of 12,470 volts and the customer shall provide the high voltage switchgear and transformers.
82. For primary services, the standard service protection is a padmount fault interrupter owned and maintained by the City, installed at the customer's expense. The customer must provide and install the pad and associated substructure required for the fault interrupter.
83. Any additional facilities and services requested by the Applicant that are beyond what the utility deems standard facilities will be subject to Special Facilities charges. The Special Facilities charges include the cost of installing the additional facilities as well as the cost of ownership. Utilities Rule & Regulation #20.
84. Projects that require the extension of high voltage primary distribution lines or reinforcement of offsite electric facilities will be at the customer's expense and must be coordinated with the Electric Utility.

**DURING CONSTRUCTION:**

85. Contractors and developers shall obtain permit from the Department of Public Works before digging in the street right-of-way. This includes sidewalks, driveways and planter strips.
86. At least 48 hours prior to starting any excavation, the customer must call Underground Service Alert (USA) at 1-800-227-2600 to have existing underground utilities located and marked. The areas to be checked by USA shall be delineated with white paint. All USA markings shall be removed by the customer or contractor when construction is complete.
87. The customer is responsible for installing all on-site substructures (conduits, boxes and pads) required for the electric service. No more than 270 degrees of bends are allowed in a secondary conduit run. All conduits must be sized according to National Electric Code requirements and no 1/2 – inch size conduits are permitted. All off-site substructure work will be constructed by the City at the customer's expense. Where mutually agreed upon by the City and the Applicant, all or part of the off-site substructure work may be constructed by the Applicant.
88. All primary electric conduits shall be concrete encased with the top of the encasement at the depth of 30 inches. No more than 180 degrees of bends are allowed in a primary conduit run. Conduit runs over 500 feet in length require additional pull boxes.



89. All new underground conduits and substructures shall be installed per City standards and shall be inspected by the Electrical Underground Inspector before backfilling.
90. The customer is responsible for installing all underground electric service conductors, bus duct, transition cabinets, and other required equipment. The installation shall meet the National Electric Code and the City Standards.
91. Meter and switchboard requirements shall be in accordance with Electric Utility Service Equipment Requirements Committee (EUSERC) drawings accepted by Utility and CPA standards for meter installations.
92. Shop/factory drawings for switchboards (400A and greater) and associated hardware must be submitted for review and approval prior to installing the switchgear to:

Gopal Jagannath, P.E.  
Supervising Electric Project Engineer  
Utilities Engineering (Electrical)  
1007 Elwell Court  
Palo Alto, CA 94303

93. Catalog cut sheets may not be substituted for factory drawing submittal.
94. All new underground electric services shall be inspected and approved by both the Building Inspection Division and the Electrical Underground Inspector before energizing.

AFTER CONSTRUCTION & PRIOR TO FINALIZATION:

95. The customer shall provide as-built drawings showing the location of all switchboards, conduits (number and size), conductors (number and size), splice boxes, vaults and switch/transformer pads.

PRIOR TO ISSUANCE OF BUILDING OCCUPANCY PERMIT:

96. The applicant shall secure a Public Utilities Easement for facilities installed on private property for City use.
97. All required inspections have been completed and approved by both the Building Inspection Division and the Electrical Underground Inspector.
98. All Special Facilities contracts or other agreements need to be signed by the City and applicant.

ADDITIONAL COMMENTS:

99. The following conditions apply to three-phase service and any service over 400 amperes:
  - a. A padmount transformer is required.

- b. The Utilities Director, or his/her designee, may authorize the installation of submersible or vault installed facilities if in their opinion, padmounted equipment would not be feasible or practical.
- c. Submersible or vault installed facilities shall be considered Special Facilities as described in Rule and Regulation 20, and all costs associated with the installation, including continuing ownership and maintenance, will be borne by the applicant (see Rule and Regulation 3 for details).
- d. The customer must provide adequate space for installation, or reimburse the Utility for additional costs to locate the transformer outside the property boundaries.

All service equipment must be located above grade level unless otherwise approved by Electric Engineering.

*Utilities Water Gas Wastewater Department*

PRIOR TO ISSUANCE OF DEMOLITION PERMIT:

100. Prior to demolition, the applicant shall submit the existing water/wastewater fixture unit loads (and building as-built plans to verify the existing loads) to determine the capacity fee credit for the existing load. If the applicant does not submit loads and plans they may not receive credit for the existing water/wastewater fixtures.
101. The applicant shall submit a request to disconnect all utility services and/or meters including a signed affidavit of vacancy. Utilities will be disconnected or removed within 10 working days after receipt of request. The demolition permit will be issued by the building inspection division after all utility services and/or meters have been disconnected and removed.

FOR BUILDING PERMIT:

102. The applicant shall submit completed water-gas-wastewater service connection applications - load sheets for City of Palo Alto Utilities for each unit or place of business. The applicant must provide all the information requested for utility service demands (water in fixture units/g.p.m., gas in b.t.u.p.h, and sewer in fixture units/g.p.d.). The applicant shall provide the existing (prior) loads, the new loads, and the combined/total loads (the new loads plus any existing loads to remain).
103. The applicant shall submit improvement plans for utility construction. The plans must show the size and location of all underground utilities within the development and the public right of way including meters, backflow preventers, fire service requirements, sewer mains, sewer cleanouts, sewer lift stations and any other required utilities.
104. The applicant must show on the site plan the existence of any auxiliary water supply (i.e. water well, gray water, recycled water, rain catchment, water storage tank, etc).
105. The applicant shall be responsible for installing and upgrading the existing utility mains and/or services as necessary to handle anticipated peak loads. This responsibility includes all costs associated with the design and construction for the installation/upgrade of the utility mains and/or services.
106. The applicant's engineer shall submit flow calculations and system capacity study showing that the on-site and off-site water and sanitary sewer mains and services will provide the domestic, irrigation, fire

flows, and wastewater capacity needed to service the development and adjacent properties during anticipated peak floor demands. Field testing may be required to determine current flows and water pressures on existing water main. Calculations must be signed and stamped by a registered civil engineer. The applicant is required to perform, at his/her expense, a flow monitoring study of the existing sewer main to determine the remaining capacity. The report must include existing peak flows or depth of flow based on a minimum monitoring period of seven continuous days or as determined by the senior wastewater engineer. The study shall meet the requirements and the approval of the WGW engineering section. No downstream overloading of existing sewer main will be permitted.

107. For contractor installed water and wastewater mains or services, the applicant shall submit to the WGW engineering section of the Utilities Department **four** copies of the installation of public water, gas and wastewater utilities improvement plans (the portion to be owned and maintained by the City) in accordance with the utilities department design criteria. All utility work within the public right-of-way shall be clearly shown on the plans that are prepared, signed and stamped by a registered civil engineer. The contractor shall also submit a complete schedule of work, method of construction and the manufacturer's literature on the materials to be used for approval by the utilities engineering section. The applicant's contractor will not be allowed to begin work until the improvement plan and other submittals have been approved by the water, gas and wastewater engineering section. After the work is complete but prior to sign off, the applicant shall provide record drawings (as-builts) of the contractor installed water and wastewater mains and services per City of Palo Alto Utilities' record drawing procedures. For contractor installed services the contractor shall install 3M marker balls at each water or wastewater service tap to the main and at the City clean out for wastewater laterals.
108. An approved reduced pressure principle assembly (RPPA backflow preventer device) is required for all existing and new water connections from Palo Alto Utilities to comply with requirements of California administrative code, title 17, sections 7583 through 7605 inclusive. The RPPA shall be installed on the owner's property and directly behind the water meter within 5 feet of the property line. RPPA's for domestic service shall be lead free. **Show the location of the RPPA on the plans.**
109. An approved reduced pressure detector assembly is required for the existing or new water connection for the fire system to comply with requirements of California administrative code, title 17, sections 7583 through 7605 inclusive (a double detector assembly may be allowed for existing fire sprinkler systems upon the CPAU's approval). Reduced pressure detector assemblies shall be installed on the owner's property adjacent to the property line, within 5' of the property line. **Show the location of the reduced pressure detector assembly on the plans.**
110. All backflow preventer devices shall be approved by the WGW engineering division. Inspection by the utilities cross connection inspector is required for the supply pipe between the meter and the assembly.
111. Existing wastewater laterals that are not plastic (ABS, PVC, or PE) shall be replaced at the applicant's expense.
112. Existing wastewater main is 5.4" PE on Kipling Street. (sewer lateral to be 4")
113. Existing water services (including fire services) that are not a currently standard material shall be replaced at the applicant's expense.

114. The applicant shall pay the capacity fees and connection fees associated with new utility service/s or added demand on existing services. The approved relocation of services, meters, hydrants, or other facilities will be performed at the cost of the person/entity requesting the relocation.
115. Each unit or place of business shall have its own water and gas meter shown on the plans. Each parcel shall have its own water service, gas service and sewer lateral connection shown on the plans.
116. A separate water meter and backflow preventer is required to irrigate the approved landscape plan. Show the location of the irrigation meter on the plans. This meter shall be designated as an irrigation account and no other water service will be billed on the account. The irrigation and landscape plans submitted with the application for a grading or building permit shall conform to the City of Palo Alto water efficiency standards.
117. A new water service line installation for domestic usage is required. For service connection of 4-inch through 8-inch sizes, the applicant's contractor must provide and install a concrete vault with meter reading lid covers for water meter and other required control equipment in accordance with the utilities standard detail. Show the location of the new water service and meter on the plans.
118. A new water service line installation for irrigation usage may require. Show the location of the new water service and meter on the plans.
119. A new water service line installation for fire system usage is required. Show the location of the new water service on the plans. The applicant shall provide to the Engineering Department a copy of the plans for fire system including all Fire Department's requirements. Please see a fire/domestic combination service connection for your provide- see City of Palo Alto standard WD-11.
120. A new gas service line installation is required. Show the new gas meter location on the plans. The gas meter location must conform with utilities standard details. Gas meter to be installed above ground.
121. A new sewer lateral installation per lot is required. Show the location of the new sewer lateral on the plans.
122. All existing water and wastewater services that will not be reused shall be abandoned at the main per WGW utilities procedures.
123. Utility vaults, transformers, utility cabinets, concrete bases, or other structures cannot be placed over existing water, gas or wastewater mains/services. Maintain 1' horizontal clear separation from the vault/cabinet/concrete base to existing utilities as found in the field. If there is a conflict with existing utilities, Cabinets/vaults/bases shall be relocated from the plan location as needed to meet field conditions. Trees may not be planted within 10 feet of existing water, gas or wastewater mains/services or meters. New water, gas or wastewater services/meters may not be installed within 10' of existing trees. Maintain 10' between new trees and new water, gas and wastewater services/mains/meters.
124. To install new gas service by directional boring, the applicant is required to have a sewer cleanout at the front of the building. This cleanout is required so the sewer lateral can be videoed for verification of no damage after the gas service is installed by directional boring.

125. All utility installations shall be in accordance with the City of Palo Alto utility standards for water, gas & wastewater.
126. All WGW utilities work on University Avenue is 1.5 times the stated fee due to traffic; existing conditions require the work to be done outside of regular work hours.

*Zero Waste/ Solid Waste*

PRIOR TO ISSUANCE OF A BUILDING PERMIT

127. Provide a garbage and recycling chute for the residential unit with either an additional chute or a bin space for compostables on the residential floor.
128. SERVICE LEVELS: Without a restaurant: the enclosure should be sized for 3-yard garbage bin, 4-yard recycling bin, 1-yard compostables bin; with a restaurant: With a restaurant: 3-yard garbage bin, 4-yard recycling bin, 2-yard compostables bin.
129. TRASH DISPOSAL AND RECYCLING (PAMC 18.23.020): (A) Assure that development provides adequate and accessible interior areas or exterior enclosures for the storage of trash and recyclable materials in appropriate containers, and that trash disposal and recycling areas are located as far from abutting residences as is reasonably possible. (B) Requirements: (i) Trash disposal and recyclable areas shall be accessible to all residents or users of the property. (ii) Recycling facilities shall be located, sized, and designed to encourage and facilitate convenient use. (iii) Trash disposal and recyclable areas shall be screened from public view by masonry or other opaque and durable material, and shall be enclosed and covered. Gates or other controlled access shall be provided where feasible. Chain link enclosures are strongly discouraged. (iv) Trash disposal and recycling structures shall be architecturally compatible with the design of the project. (v) The design, construction and accessibility of recycling areas and enclosures shall be subject to approval by the architectural review board, in accordance with design guidelines adopted by that board and approved by the city council pursuant to Section 18.76.020.
130. RECYCLING STORAGE DESIGN REQUIREMENTS (PAMC 5.20.120): The design of any new, substantially remodeled, or expanded building or other facility shall provide for proper storage, handling, and accessibility which will accommodate the solid waste and recyclable materials loading anticipated and which will allow for the efficient and safe collection. The design shall comply with the applicable provisions of Sections 18.22.100, 18.24.100, 18.26.100, 18.32.080, 18.37.080, 18.41.080, 18.43.080, 18.45.080, 18.49.140, 18.55.080, 18.60.080, and 18.68.170 of Title 18 of this code.
131. SERVICE REQUIREMENTS: (a) Collection vehicle access (vertical clearance, street width and turnaround space) and street parking are common issues pertaining to new developments. Adequate space must be provided for vehicle access. (b) Weight limit for all drivable areas to be accessed by the solid waste vehicles (roads, driveways, pads) must be rated to 60,000 lbs. This includes areas where permeable pavement is used. (c) Containers must be within 25 feet of service area or charges will apply. (d) Carts and bins must be able to roll without obstacles or curbs to reach service areas "no jumping curbs".
132. GARBAGE, RECYCLING, AND YARD WASTE/COMPOSTABLES CART/ BIN LOCATION AND SIZING:

- a. Office Building: The proposed commercial development must follow the requirements for recycling container space<sup>1</sup>. Project plans must show the placement of recycling containers, for example, within the details of the solid waste enclosures. Collection space should be provided for built-in recycling containers/storage on each floor/office or alcoves for the placement of recycling containers.
- i. Enclosure and access should be designed for equal access to all three waste streams – garbage, recycling, and compostables.
  - ii. Collection cannot be performed in underground. Underground bins locations require a minimum of 77” of vertical clearance. Pull out charges will apply. In instances where push services are not available (e.g., hauler driver cannot push containers up or down ramps), the property owner will be responsible for placing solid waste containers in an accessible location for collection.
  - iii. All service areas must have a clearance height of 20’ for bin service.
  - iv. New enclosures should consider rubber bumpers to reduce wear and tear on walls.

For questions regarding garbage, recycling, and compostables collection issues, contact Green Waste of Palo Alto (650) 493-4894.

- b. Restaurants and Food Service Establishments: Please contact Green Waste of Palo Alto (650) 493-4894 to maximize the collection of compostables in food preparation areas and customer areas.

For more information about compostable food service products, please contact City of Palo Alto Zero Waste at (650) 496-5910.

- c. Multi-family Residential: The proposed multi-family development must follow the requirements for recycling container space<sup>2</sup>. All residential developments, where central garbage, recycling, and compostables containers will serve five or more dwelling units, must have space for the storage and collection of recyclables and compostables. This includes the provision of recycling chutes where garbage chutes are provided. Project plans must show the placement of recycling and compostables containers, for example, within the details of the solid waste enclosures.
- i. Enclosure and access should be designed for equal access to all three waste streams – garbage, recycling, and compostables.
  - ii. Collection cannot be performed in underground. Underground bins locations require a minimum of 77” of vertical clearance. Pull out charges will apply. In instances where push services are not available (e.g., hauler driver cannot push containers up or down ramps), the property owner will be responsible for placing solid waste containers in an accessible location for collection.
  - iii. All service areas must have a clearance height of 20’ for bin service.
  - iv. New enclosures should consider rubber bumpers to reduce wear-and-tear on walls.

For questions regarding garbage, recycling, and compostables collection issues, contact Green Waste of Palo Alto (650) 493-4894.

133. COVERED DUMPSTERS, RECYCLING AND TALLOW BIN AREAS (PAMC 16.09.075(q)(2)):

<sup>1</sup> In accordance with the California Public Resources Code, Chapter 18, Articles 1 and 2

<sup>2</sup> In accordance with the California Public Resources Code, Chapter 18, Articles 1 and 2

- a. Newly constructed and remodeled Food Service Establishments (FSEs) shall include a covered area for all dumpsters, bins, carts or container used for the collection of trash, recycling, food scraps and waste cooking fats, oils and grease (FOG) or tallow.
- b. The area shall be designed and shown on plans to prevent water run-on to the area and runoff from the area.
- c. Drains that are installed within the enclosure for recycle and waste bins, dumpsters and tallow bins serving FSEs are optional. Any such drain installed shall be connected to a Grease Control Device (GCD).
- d. If tallow is to be stored outside then an adequately sized, segregated space for a tallow bin shall be included in the covered area.
- e. These requirements shall apply to remodeled or converted facilities to the extent that the portion of the facility being remodeled is related to the subject of the requirement.

It is frequently to the FSE's advantage to install the next size larger GCD to allow for more efficient grease discharge prevention and may allow for longer times between cleaning. There are many manufacturers of GCDs which are available in different shapes, sizes and materials (plastic, reinforced fiberglass, reinforced concrete and metal).

The requirements will assist FSEs with FOG discharge prevention to the sanitary sewer and storm drain pollution prevention. The FSE at all times shall comply with the Sewer Use Ordinance of the Palo Alto Municipal Code. The ordinances include requirements for GCDs, GCD maintenance, drainage fixtures, record keeping and construction projects.

134. CONSTRUCTION AND DEMOLITION DEBRIS (CDD) (PAMC 5.24.030):
- a. Covered projects shall comply with construction and demolition debris diversion rates and other requirements established in Chapter 16.14 (California Green Building Code). In addition, all debris generated by a covered project must haul 100 percent of the debris not salvaged for reuse to an approved facility as set forth in this chapter.
  - b. Contact the City of Palo Alto's Green Building Coordinator for assistance on how to recycle construction and demolition debris from the project, including information on where to conveniently recycle the material.

*Public Works Water Quality Control*

135. DISCHARGE OF GROUNDWATER (PAMC 16.09.170, 16.09.040): Prior approval shall be obtained from the city engineer or designee to discharge water pumped from construction sites to the storm drain. The city engineer or designee may require gravity settling and filtration upon a determination that either or both would improve the water quality of the discharge. Contaminated ground water or water that exceeds state or federal requirements for discharge to navigable waters may not be discharged to the storm drain. Such water may be discharged to the sewer, provided that the discharge limits contained in Palo Alto Municipal Code (16.09.040(m)) are not exceeded and the approval of the superintendent is obtained prior to discharge. The City shall be compensated for any costs it incurs in authorizing such discharge, at the rate set forth in the Municipal Fee Schedule.
136. UNPOLLUTED WATER (PAMC 16.09.055): Unpolluted water shall not be discharged through direct or indirect connection to the sanitary sewer system (e.g. uncovered ramp to garage area).

137. COVERED PARKING (PAMC 16.09.180(b)(9)): If installed, drain plumbing for parking garage floor drains must be connected to an oil/water separator with a minimum capacity of 100 gallons, and to the sanitary sewer system.
138. DUMPSTERS FOR NEW AND REMODELED FACILITIES (PAMC 16.09.180(b)(10)): New buildings and residential developments providing centralized solid waste collection, except for single-family and duplex residences, shall provide a covered area for a dumpster. The area shall be adequately sized for all waste streams and designed with grading or a berm system to prevent water runoff and runoff from the area.
139. ARCHITECTURAL COPPER PAMC (16.09.180(b)(14)): On and after January 1, 2003, copper metal roofing, copper metal gutters, copper metal down spouts, and copper granule containing asphalt shingles shall not be permitted for use on any residential, commercial or industrial building for which a building permit is required. Copper flashing for use under tiles or slates and small copper ornaments are exempt from this prohibition. Replacement roofing, gutters and downspouts on historic structures are exempt, provided that the roofing material used shall be prepatinated at the factory. For the purposes of this exemption, the definition of "historic" shall be limited to structures designated as Category 1 or Category 2 buildings in the current edition of the Palo Alto Historical and Architectural Resources Report and Inventory.
140. LOADING DOCKS (PAMC 16.09.175(k) (2)): (i) Loading dock drains to the storm drain system may be allowed if equipped with a fail-safe valve or equivalent device that is kept closed during the non-rainy season and during periods of loading dock operation. (ii) Where chemicals, hazardous materials, grease, oil, or waste products are handled or used within the loading dock area, a drain to the storm drain system shall not be allowed. A drain to the sanitary sewer system may be allowed if equipped with a fail-safe valve or equivalent device that is kept closed during the non-rainy season and during periods of loading dock operation. The area in which the drain is located shall be covered or protected from rainwater run-on by berms and/or grading. Appropriate wastewater treatment approved by the Superintendent shall be provided for all rainwater contacting the loading dock site.
141. CONDENSATE FROM HVAC (PAMC 16.09.180(b)(5)): Condensate lines shall not be connected or allowed to drain to the storm drain system.
142. SILVER PROCESSING (e.g. photoprocessing retail) (PAMC 16.09.215): Facilities conducting silver processing (photographic or X-ray films) shall either submit a treatment application or waste hauler certification for all spent silver bearing solutions. 650-329-2421.



- 143. COPPER PIPING (PAMC 16.09.180(b)(b)): Copper, copper alloys, lead and lead alloys, including brass, shall not be used in sewer lines, connectors, or seals coming in contact with sewage except for domestic waste sink traps and short lengths of associated connecting pipes where alternate materials are not practical. The plans must specify that copper piping will not be used for wastewater plumbing.
- 144. MERCURY SWITCHES (PAMC 16.09.180(12)): Mercury switches shall not be installed in sewer or storm drain sumps.
- 145. COOLING SYSTEMS, POOLS, SPAS, FOUNTAINS, BOILERS AND HEAT EXCHANGERS (PAMC 16.09.205(a)): It shall be unlawful to discharge water from cooling systems, pools, spas, fountains boilers and heat exchangers to the storm drain system.
- 146. UNDESIGNATED RETAIL SPACE (PAMC 16.09): Newly constructed or improved buildings with all or a portion of the space with undesignated tenants or future use will need to meet all requirements that would have been applicable during design and construction. If such undesignated retail space becomes a food service facility the following requirements must be met, in addition to other applicable codes: Grease Control Device (GCD) Requirements, PAMC Section 16.09.075; Drainage Fixture Requirements, PAMC Section 16.09.075; Covered Dumpsters, Recycling and Tallow Bin Areas PAMC, 16.09.075(q)(2); Large Item Cleaning Sink, PAMC 16.09.075(m)(2)(B).

PASSED: 5-3-1


AYES: Filseth, Fine, Scharff, Tanaka, Wolbach

NOES: DuBois, Holman, Kou,

ABSENT:

ABSTENTIONS: Kniss

ATTEST:


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 Director of Planning and Community Environment

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 Senior Asst. City Attorney

PLANS AND DRAWINGS REFERENCED:

Those plans prepared by Jo Bellomo Associates titled "429 University Avenue", consisting of 24 pages, dated October 26, 2016.

**Exhibit A**

# 429 University Avenue Project Mitigation Monitoring Program

## INTRODUCTION

Section 15097 of the Guidelines for the California Environmental Quality Act (CEQA) requires that, whenever a public agency approves a project based on a Mitigated Negative Declaration (MND) or an Environmental Impact Report (EIR), the public agency shall establish a mitigation monitoring or reporting program to ensure that all adopted mitigation measures are implemented.

This Mitigation Monitoring Program (MMP) is intended to satisfy this requirement of the CEQA Guidelines as it relates to the 429 University Avenue project. This MMP would be used by City staff and mitigation monitoring personnel to ensure compliance with mitigation measures during project implementation. Mitigation measures identified in this MMP were developed in the Initial Study prepared for the proposed project.

As noted above, the intent of the MMP is to ensure the effective implementation and enforcement of all adopted mitigation measures. The MMP will provide for monitoring of construction activities, as necessary, and in the field identification and resolution of environmental concerns.

## MITIGATION MONITORING PROGRAM DESCRIPTION

The City of Palo Alto will coordinate monitoring activities and ensure appropriate documentation of mitigation measure implementation. The table below identifies each mitigation measure for the 429 University Avenue Project and the associated implementation, monitoring, timing and performance requirements.

The MMP table presented on the following pages identifies:

1. the full text of each applicable mitigation measure;
2. the party or parties responsible for implementation and monitoring of each measure;
3. the timing of implementation of each mitigation measure including any ongoing monitoring requirements; and
4. performance criteria by which to ensure mitigation requirements have been met.

Following completion of the monitoring and documentation process, the final monitoring results will be recorded and incorporated into the project file maintained by the City's Department of Planning and Community Environment.

It is noted that the mitigation measure numbering reflects the numbering used in the Initial Study prepared for the 429 University Avenue Project (Dudek 2014).

## 429 University Avenue Project Mitigation Monitoring Program

No mitigation measures are required for the following resources:		
<ul style="list-style-type: none"> <li>▪ Aesthetics</li> <li>▪ Agricultural Resources</li> <li>▪ Air Quality</li> <li>▪ Geology, Soils, and Seismicity</li> </ul>	<ul style="list-style-type: none"> <li>▪ Greenhouse Gas Emissions</li> <li>▪ Hydrology and Water Quality</li> <li>▪ Land Use and Planning</li> <li>▪ Mineral Resources</li> </ul>	<ul style="list-style-type: none"> <li>▪ Population and Housing</li> <li>▪ Public Services</li> <li>▪ Recreation</li> <li>▪ Utilities and Service Systems</li> </ul>

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Timing	Performance Evaluation Criteria
<b>BIOLOGICAL RESOURCES</b>				
<p><b>Mitigation Measure BIO-1:</b> The following measures shall be implemented to reduce impacts to protected trees:</p> <ul style="list-style-type: none"> <li>• City of Palo Alto (City)-approved Modified Type III fencing shall be installed for the two street trees to be retained along University Avenue. City-approved tree protection signs shall be posted on all fencing.</li> <li>• Soil conditions for the four new trees to be planted along Kipling Street shall be improved by preparing a planting area at least 6 feet square for each tree and installing Silva Cells to reduce compaction. The Silva Cells shall be filled with proper soil amendments and growing medium as determined by the City Arborist.</li> <li>• Unless otherwise approved, each new tree shall be provided with 1,200 cubic feet of rootable soil area, utilizing Standard Drawing #604/513. Rootable soil is defined as compaction less than 90% over the area, not including sidewalk base areas.</li> <li>• Two bubbler drip irrigation units shall be installed for each new tree to adequately water the new planting area.</li> <li>• New sidewalk shall be installed such that the final planting space opening is at least 5 feet by 5 feet for each new tree.</li> </ul>	Applicant	City of Palo Alto Urban Forestry Group/Planning Division Arborist	<ul style="list-style-type: none"> <li>• Prior to issuance of demolition, grading, and building permits</li> <li>• During demolition, excavation, and construction</li> </ul>	<ul style="list-style-type: none"> <li>• Approved site plans reflect applicable conditions</li> <li>• Field inspections conducted to verify adherence to conditions</li> </ul>

## 429 University Avenue Project Mitigation Monitoring Program

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Timing	Performance Evaluation Criteria
<ul style="list-style-type: none"> <li>• Kiva tree grates shall be used around each new tree.</li> <li>• Replacement tree size shall be a 36-inch box, properly structured nursery stock.</li> <li>• Based on growth habit and proven performance, <i>Ginkgo biloba</i> "Autumn Gold" is highly recommended for the replacement trees. Other tree species may be approved by the City Arborist.</li> <li>• All work within the Tree Protection Zone, including canopy pruning of protected trees, shall be supervised by a Certified Arborist approved by the City.</li> </ul>				
<b>CULTURAL RESOURCES</b>				
<p><b>Mitigation Measure CUL-1:</b> Prior to commencement of site clearing and project grading, the project applicant shall retain a qualified archaeologist to train construction personnel regarding how to recognize cultural resources (such as structural features, unusual amounts of bone or shell, artifacts, human remains, or architectural remains) that could be encountered during construction activities. If artifacts or unusual amounts of shell or bone or other items indicative of buried archaeological resources or human remains are encountered during earth disturbance associated with the proposed project, the on-site contractor shall immediately notify the City of Palo Alto (City) and the Native American Heritage Commission as appropriate. All soil-disturbing work shall be halted within 100 feet of the discovery until a qualified archaeologist, as defined by the California Environmental Quality Act (CEQA) Guidelines (14 CCR 15000 et seq.) and the City, completes a significance evaluation of the finds pursuant to Section 106 of the National Historic Preservation Act. Any human remains unearthed shall be treated in accordance with California Health and Safety Code, Section 7050.5, and California Public Resources Code, Sections 5097.94, 5097.98, and 5097.99, which include requirements to</p>	Applicant	City of Palo Alto	Prior to and during earth disturbance	<ul style="list-style-type: none"> <li>• Training materials provided to construction contractors</li> <li>• Field inspections conducted to verify compliance</li> </ul>

## 429 University Avenue Project Mitigation Monitoring Program

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Timing	Performance Evaluation Criteria
<p>notify the Santa Clara County Medical Examiner's office and consult with Native American representatives determined to be the Most Likely Descendants, as appointed by the Native American Heritage Commission. Identified cultural resources shall be recorded on State Department of Parks and Recreation Form 523 (archaeological sites). Mitigation measures prescribed by the Native American Heritage Commission, the Santa Clara County Medical Examiner's office, and any Native American representatives determined to be the Most Likely Descendants and required by the City shall be undertaken before construction activities are resumed. If disturbance of a project area cultural resource cannot be avoided, a mitigation program, including measures set forth in the City's Cultural Resources Management Program and in compliance with Sections 15064.5 and 15126.4 of the CEQA Guidelines, shall be implemented.</p>				
<b>HAZARDS AND HAZARDOUS MATERIALS</b>				
<p><b>Mitigation Measure HAZ-1:</b> Prior to building demolition, the project applicant shall demonstrate to the satisfaction of the City of Palo Alto that a survey of the existing buildings has been conducted by a qualified environmental specialist who meets the requirements of the current U.S. Environmental Protection Agency regulations for suspected lead-containing materials (LCMs), including lead-based paint/coatings; asbestos containing materials (ACMs); and the presence of polychlorinated biphenyls (PCBs). Any demolition activities likely to disturb LCMs or ACMs shall be carried out by a contractor trained and qualified to conduct lead- or asbestos-related construction work. If found, LCMs and ACMs shall be disposed of in accordance with state and federal regulations, including the EPA's Asbestos National Emissions Standards for Hazardous Air Pollutants, the Cal-OSHA Construction Lead Standard (CCR Title 8, Section 1432.1), and California Department of Toxic Substances Control and EPA</p>	Applicant	City of Palo Alto Department of Planning and Community Environment	Prior to issuance of demolition permit and during demolition	Building survey report submitted LCMs and ACMs handled by qualified contractor and disposed of in accordance with the U.S. Environmental Protection Agency's (EPA) Asbestos National Emissions Standards for Hazardous Air Pollutants, the California Occupational Health and Safety's

## 429 University Avenue Project Mitigation Monitoring Program

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Timing	Performance Evaluation Criteria
<p>requirements for disposal of hazardous waste. If PCBs are found, these materials shall be managed in accordance with the Metallic Discards Act of 1991 (California Public Resources Code, Sections 42160–42185) and other state and federal guidelines and regulations. Demolition plans and contract specifications shall incorporate any necessary abatement measures in compliance with the Metallic Discards Act, particularly Section 42175, Materials Requiring Special Handling, for the removal of mercury switches, PCB-containing ballasts, and refrigerants.</p>				<p>Construction Lead Standard (CCR Title 8, Section 1432.1), and California Department of Toxic Substances Control and EPA requirements for disposal of hazardous waste.</p> <p>PCBs, mercury and other hazardous building materials handled by qualified contractor and disposed of in accordance with applicable regulations as identified.</p>
<b>NOISE</b>				
<p><b>Mitigation Measure NOI-1:</b> Residential Uses: Window and exterior door assemblies with Sound Transmission Class (STC) rating up to 45 and upgraded exterior walls shall be used in the residential portion of the proposed building to achieve the City’s maximum instantaneous noise guideline for residential uses. The City of Palo Alto shall ensure that these standards are met through review of building plans as a condition of project approval.</p> <p>Commercial Uses: Window and exterior door assemblies for the commercial portions of the building shall have a minimum STC rating of 32 at the corner of University Avenue and Kipling Street, and a minimum STC of 28 at all other commercial</p>	Applicant	City of Palo Alto Department of Planning and Community Environment	Prior to issuance of building permit	<p>Approved building plans shall include window sound transmission ratings and interior noise levels verification from a qualified acoustical consultant.</p>

## 429 University Avenue Project Mitigation Monitoring Program

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Timing	Performance Evaluation Criteria
locations within the proposed building to comply with the State of California CalGreen noise standards (maximum interior noise level of 50 dB during the peak hour of traffic). The City of Palo Alto shall ensure that these standards are met through review of building plans as a condition of project approval.				
<b>Mitigation Measure NOI-2:</b> The residential portion of the proposed building shall have a ventilation or air-conditioning system to provide a habitable interior environment when windows are closed.	Applicant	City of Palo Alto Department of Planning and Community Environment	Prior to issuance of building permit	Approved building plans shall include details of the residential ventilation system.
<b>Mitigation Measure NOI-3:</b> Noise levels from rooftop equipment shall be reduced to meet the City of Palo Alto Noise Ordinance requirements. An enclosure or other sound-attenuation measures at the exhaust fans shall be provided to reduce rooftop equipment noise is no greater than 8 dB above the existing ambient level at potential future neighboring buildings to meet the property plane noise limit. Use of quieter equipment than assumed in this analysis may support reduced mitigation, which shall be evaluated by a qualified acoustical consultant.	Applicant	City of Palo Alto Department of Planning and Community Environment	Prior to issuance of building permit	Approved building plans shall include garage exhaust fan manufacturer's information regarding equipment noise levels and noise attenuation details
<b>TRANSPORTATION AND TRAFFIC</b>				
<b>Mitigation Measure TRANS-1:</b> Mirrors shall be installed at the parking garage driveway to allow drivers to see when a pedestrian or vehicle is approaching in Lane 30.	Applicant	City of Palo Alto Department of Planning and Community Environment	Prior to issuance of building permit	Approved building plans shall include parking garage mirrors
<b>Mitigation Measure-TRANS-2:</b> Mirrors shall be installed at each turn within the parking garage to provide adequate sight distance.	Applicant	City of Palo Alto Department of Planning and Community Environment	Prior to issuance of building permit	Approved building plans shall include parking garage mirrors

## Certificate Of Completion

Envelope Id: 930BD3572B99456991C11551728AD75F	Status: Completed
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Source Envelope:	
Document Pages: 42	Signatures: 4
Supplemental Document Pages: 0	Initials: 0
Certificate Pages: 2	
AutoNav: Enabled	Payments: 0
Envelope Stamping: Enabled	Envelope Originator:
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	Yolanda Cervantes
	250 Hamilton Ave
	Palo Alto , CA 94301
	Yolanda.Cervantes@CityofPaloAlto.org
	IP Address: 12.220.157.20

## Record Tracking

Status: Original	Holder: Yolanda Cervantes	Location: DocuSign
4/21/2017 3:24:37 PM	Yolanda.Cervantes@CityofPaloAlto.org	

## Signer Events

Jonathan Lait  
Jonathan.Lait@cityofpaloalto.org  
Asst. Director Planning and Comm Environment  
City of Palo Alto  
Security Level: Email, Account Authentication (None)  
Electronic Record and Signature Disclosure:  
Not Offered via DocuSign  
ID:

## Signature

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Albert Yang  
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Security Level: Email, Account Authentication (None)  
Electronic Record and Signature Disclosure:  
Not Offered via DocuSign  
ID:

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Signed: 4/24/2017 8:56:17 AM

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Mayor  
City of Palo Alto  
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ID:

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<b>Certified Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Carbon Copy Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Notary Events</b>		<b>Timestamp</b>
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# Architectural Review Board

## Staff Report (ID # 9470)

**Report Type:** Action Items **Meeting Date:** 8/16/2018

**Summary Title:** 429 University: Condition Compliance - West Wall, Landscaping, Materials (1st Formal)

**Title:** PUBLIC HEARING / QUASI-JUDICIAL. 429 University Avenue [18PLN-00240]: Recommendation on the Applicant's Request for Approval of a Minor Architectural Review Consistent With Condition of Approval #3, for a Previously Approved Mixed-Use Building (14PLN-00222), Requiring Architectural Review Board Approval for the Proposed West Elevation Wall Design, Landscape Details, and Exterior Building Materials, Colors, and Craftsmanship. Environmental Assessment: Use of Mitigated Negative Declaration Prepared for 14PLN-00222. Zoning District: CD-C(G)(P) (Downtown Commercial with Ground Floor and Pedestrian Shopping Overlay). For More Information Contact the Project Planner Adam Petersen at apetersen@m-group.us

**From:** Jonathan Lait

### Recommendation

Staff recommends the Architectural Review Board (ARB) take the following action(s):

1. Recommend approval of the proposed project to the Director of Planning and Community Environment based on findings and subject to conditions of approval.

### Background

The subject project was reviewed and approved by the City Council on February 6, 2017. Condition of Approval #3 in the attached Record of Land Use Action (Attachment G) requires the project to return to the ARB to evaluate three specific items. These items are:

- a. A decorative wall design treatment, feature or element, shall be applied to the exterior walls immediately adjacent to the southern property line (project's south elevation)

- b. Landscape details and plans for all proposed planting, including individual planters, the greenwall, and landscaping near the rooftop elevator.
- c. The exterior building materials, colors and craftsmanship-related detailing associated with the project.

The previous staff report from the February 6, 2017 hearing includes extensive background information, project analysis and evaluation against City Codes and Policies. The report, action minutes, transcript, and video of the meeting are available online:

Document	Link
Staff Report	<a href="https://www.cityofpaloalto.org/civicax/filebank/documents/55707">https://www.cityofpaloalto.org/civicax/filebank/documents/55707</a>
Action Minutes	<a href="https://www.cityofpaloalto.org/civicax/filebank/documents/56154">https://www.cityofpaloalto.org/civicax/filebank/documents/56154</a>
Transcript	<a href="https://www.cityofpaloalto.org/civicax/filebank/documents/56868">https://www.cityofpaloalto.org/civicax/filebank/documents/56868</a>
Video	<a href="http://midpenmedia.org/city-council-115/">http://midpenmedia.org/city-council-115/</a>

Additionally, the project returned to City Council on March 20, 2017 as an item on the consent calendar for adoption of the findings and the Record of Land Use Action (ROLUA). The report, action minutes, transcript and video of the meeting are available online:

Document	Link
Staff Report	<a href="https://www.cityofpaloalto.org/civicax/filebank/documents/56356">https://www.cityofpaloalto.org/civicax/filebank/documents/56356</a>
Action Minutes	<a href="https://www.cityofpaloalto.org/civicax/filebank/documents/56839">https://www.cityofpaloalto.org/civicax/filebank/documents/56839</a>
Transcript	<a href="https://www.cityofpaloalto.org/civicax/filebank/documents/57427">https://www.cityofpaloalto.org/civicax/filebank/documents/57427</a>
Video	<a href="http://midpenmedia.org/city-council-120/">http://midpenmedia.org/city-council-120/</a>

Additional history is available on the City's project webpage at [bit.ly/429University](http://bit.ly/429University). A copy of the City Council staff report without prior attachments is available in Attachment D.

The purpose of this report is to detail the applicant's response to the condition of approval, as part of a Minor Architectural Review application. Other minor changes to the project are being reviewed through the building permit process, as is the City's standard process. The analysis section below builds upon information contained in earlier reports and is modified to reflect recent project changes.

## Analysis<sup>1</sup>

<sup>1</sup> The information provided in this section is based on analysis prepared by the report author prior to the public hearing. The Architectural Review Board in its review of the administrative record and based on public testimony may reach a different conclusion from that presented in this report and may choose to take an alternative action from the recommendation in this report.

The following discussion presents an analysis of the three items that are required to be reviewed by the ARB.

1) Decorative Wall Treatment:

The applicant proposes a treatment of the interior property line with chevron pattern lines, aluminum reveals, and exterior cement plaster assembly. The applicant notes that grey integral-colored stucco would be applied to the third and fourth level exterior with natural aluminum reveals. Vertical aluminum reveals are proposed to be three-inches while angular and horizontal reveals are proposed to be one-and-a-half inches. The lower level concrete masonry unit (CMU) wall would be treated with texcote paint where it is exposed above the adjacent building. Details of the proposed design are included in Attachment H.

2) Landscape Details:

The applicant proposes to replace the existing street trees along Kipling, add five planters and a garden wall on the ground floor, one planter on the second floor, three planters on the third floor, and three planters on the fourth floor. All planters would be watered by a drip irrigation system controlled by battery operated timers attached to water sources available next to each planter.

The five ground floor planters would be located around an open space area adjacent to the Lane 30 Alley and Kipling Street. Two rectangular planters, measuring three feet in length and four feet in length, are proposed at the rear corner of the site. Both planters are one-foot wide and one-foot tall. They are composed of fiberglass, metal, or fabricated on-site clad in 3-Form Chroma recycled acrylic sheet or equivalent. The applicant proposes California fuchsia or foothill penstemon plants in both planters. The three planters along the Alley would be 20 inches tall, 14 inches wide and 14 inches deep. The applicant proposes California grey rush in each of these three planters. The proposed garden wall planter would be four feet wide and seven feet tall, constructed with 3-Form Chroma recycled acrylic sheet or equivalent. The applicant proposes an "invisible wire" trellis built at the top of the garden wall with long nails and thin wires to hold the pink flowering California morning glory vine as it grows upwards.

The second floor balcony would contain a single round planter measuring two-feet in diameter by 18 inches tall. The material would be lightweight fiberglass or metal clad in 3-Form Chroma recycled acrylic sheet. The planter is proposed to contain pink flowering, shade tolerant, western azalea for this planter

The third floor would contain three round planters, measuring 18 inches in diameter and 22 inches tall. These planters would be located at the entrance to the hallway leading to the residential units. The applicant proposes shade tolerant sedge or giant chain fern.

The fourth floor would contain two five-foot long by one-foot wide and one-foot high rectangular planters that border the alley and Kipling Street sides of the elevator. The applicant

proposes that the planters will contain pink flowering California morning glory vine. Mounted on the wall will be trellises to allow the vine to grow upwards.

The applicant's proposed landscape plan and information sheets are contained in Attachment H. The proposed plant pallet is mostly consistent with Architectural Review Finding, which requires native, indigenous, drought tolerant plant species. The California morning glory vine on the first and fourth floors is primarily native to rocky areas of coastal chaparral and coastal sage scrub. The California fuchsia, California grey rush (common rush), foothill penstemon, and western azalea are indigenous to the Bay Area and Palo Alto region.

### 3) Material Board:

The applicant has supplied a color and material board and notes that that the materials are composed of integral colored concrete. The building would be composed of two colors – sandstone and silversmoke. These are a light tan and grey color. The applicant notes that the concrete is the same concrete that the Board previously reviewed. It is 70% slag, a bi-product of the iron extraction process. The windows are framed with natural anodized aluminum frames and the glass has clear glazing. On the fourth floor, the applicant proposes to use an exterior cement plaster assembly over a metal stud wall with gray and tan colors similar to the colored concrete.

The materials along the interior property line elevation are different from the remainder of the building. The applicant proposes a concrete masonry unit (CMU) wall with texcote paint where the wall is not obscured by the adjacent building. The applicant proposes a standard CMU wall where the adjacent buildings obscure the first two floors.

## **Environmental Review**

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. On February 6, 2017, the City Council approved the Initial Study and Mitigated Negative Declaration for this project, which is available online at:

<https://www.cityofpaloalto.org/civicax/filebank/documents/49897>

## **Public Notification, Outreach & Comments**

The Palo Alto Municipal Code requires notice of this public hearing be published in a local paper and mailed to owners and occupants of property within 600 feet of the subject property at least ten days in advance. Notice of a public hearing for this project was published in the Palo Alto Weekly on August 3, 2018 which is 13 days in advance of the meeting. Postcard mailing occurred on August 3, 2018, which is 13 days in advance of the meeting.

### Public Comments

As of the writing of this report, no project-related, public comments were received.

## Alternative Actions

In addition to the recommended action, the Architectural Review Board may:

1. Approve the project with modified findings or conditions;
2. Continue the project to a date (un)certain; or
3. Recommend project denial based on revised findings.

### Report Author & Contact Information

Adam Petersen, Contract Planner  
(408) 340-5642 x 106  
[apetersen@m-group.us](mailto:apetersen@m-group.us)

### ARB<sup>2</sup> Liaison & Contact Information

Jodie Gerhardt, AICP, Planning Manager  
(650) 329-2575  
[jodie.gerhardt@cityofpaloalto.org](mailto:jodie.gerhardt@cityofpaloalto.org)

### Attachments:

- Attachment A: Location Map (PDF)
- Attachment B: Draft Findings for Approval (DOCX)
- Attachment C: Conditions of Approval (DOCX)
- Attachment D: February 6, 2017 City Council Staff Report w/o Attachments (PDF)
- Attachment E: February 6, 2017 City Council Action Minutes (PDF)
- Attachment F: February 6, 2017 City Council Transcript (PDF)
- Attachment G: Signed Record of Land Use Action and MMRP for Previous Project (PDF)
- Attachment H: Project Plans (DOCX)

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<sup>2</sup> Emails may be sent directly to the ARB using the following address: [arb@cityofpaloalto.org](mailto:arb@cityofpaloalto.org)

**From:** Michael Harbour [mailto:dr.mharbour@gmail.com]  
**Sent:** Monday, August 27, 2018 1:48 PM  
**To:** Lait, Jonathan  
**Cc:** Gerhardt, Jodie; Adam Petersen; Yang, Albert; Keene, James  
**Subject:** Re: 429 University - Building Permits

Hi Jonathan,

Thanks for the update. I've read extensively and am obviously very familiar with the council Motion from February 6, 2017. I understand that Ms. Gitelman was the point for the Motion and it was not your issue at the time. The Motion specifically included the language from the Staff Report which need to be followed. It also states that Staff was to provide a written report back the City Council which was not done. I believe that you should have also notified the city council of the applicant's permit extension as a significant issue per the Motion. The Motion specifically mentions the following items (please note the highlighted items 7-9 and summary statement):

1. Applicant shall submit detailed plans for floor area and development standards
2. 4th floor guardrails and plantar to be set back
3. Library to be removed
4. Third floor roofline to be set back to follow third floor building footprint
5. Decorative wall design treatment, feature or element to be applied and have ARB approval
6. Elevator on Kipling St. no to exceed 50 feet
7. **Applicant to return to ARB for review and recommendations for landscaping review**
8. **Applicant to return to ARB for review and recommendation to Director of Planning of building materials, colors, and craftsmanship related detailing associated with building**
9. **Also recommended ARB consider recessed pedestrian entries as ARB has consistently sought to improve the pedestrian experience of this building, but there has been little refinement of the feature over the different iterations.**

Also, The staff recommendations state *"it should be noted that all of the options in this report will be subject to more detailed review for code compliance at the building permit state, if/when a single design option has been advanced."* (PDF page 8)

I will be closely following that these items are diligently followed per the city council motion.

Thanks,  
Michael Harbour

## Attachment I

### **Project Plans**

Hardcopies of project plans are provided to Board members. These plans are available to the public online and/or by visiting the Planning and Community Environmental Department on the 5<sup>th</sup> floor of City Hall at 250 Hamilton Avenue.

#### **Directions to review Project plans online:**

1. Go to: [bit.ly/PAPendingprojects](http://bit.ly/PAPendingprojects)
2. Scroll down to find "429 University Avenue" and click the address link
3. On this project specific webpage you will find a link to the project plans and other important information

#### **Direct Link to Project Webpage:**

<https://www.cityofpaloalto.org/news/displaynews.asp?NewsID=4338&targetID=319>