

Jonathan Lait, Director  
Planning & Development Services  
City of Palo Alto

July 12, 2021

Dear Jonathan:

We're concerned about what appears to be a substantial discrepancy between recent Planning Department staff statements about the 35 foot height rules and Planning Department project reports and approvals. We hope you can address these discrepancies and clarify them for staff and for the community.

Specifically, your staff has made both written and oral statements to the Planning and Transportation Commission (PTC) claiming that our lowered height rules only apply to 50 feet from nearby residential properties. Here's an example from page 11 of the June 9, 2021 staff report<sup>1</sup> to the PTC:

The most confusing section and where staff believes the most significant change is needed is the CN, CC, CC (2), and CS development standards. Section 18.16.060 development standards for mixed use (including residential) projects specify special lower height limits with the following parameter:

“Within 150 ft. of a residential zone district (other than an RM-40 or PC zone) abutting or located within 50 feet of the side.”

This has long been interpreted to require the portion of a proposed building's height must be lower when it is within 50 feet of the side of the parcel that abuts residential property (R-zoned property other than RM-40 or a residential PC). If the proposed building is to be placed at least 50 feet from the abutting residential property line, the new building does not need to meet a lower height limit in the CN, CC, CC (2) or CS zones.

The claim above that “the portion of a proposed building's height must be lower when it is within 50 of the side of the parcel” does not seem to comport with the actual law quoted above saying the lowered height extends for 150 feet. In fact, the claim seems to ignore the mention of 150 feet in the law altogether.

**Counterexample #1:** The claim that “this has long been” the interpretation does not match your October 23, 2017 staff report<sup>2</sup> to the City Council regarding the 3001 El Camino Real (Mike's Bikes) project from page 48, which clearly refers to the rule being for 150 feet:

The proposed buildings are both set back substantially further than required from the property lines and the project is consistent with height requirements within the 150 foot radius of single-family residential uses.

An earlier report<sup>3</sup> to the Architectural Review Board (ARB) on this same project said it even more clearly on page 5:

The proposed mixed-use building along El Camino Real would be built to a maximum height of 50 feet along the El Camino frontage, and step down to 35 feet within 150 feet of residentially zoned areas as required by code. There is an approximately 75 to 100-foot setback between the

Note that neither of the above mention any 50 foot distance whatsoever.

**Counterexample #2:** Here’s an excerpt from page 6 of the June 15, 2015 staff report<sup>4</sup> to the City Council for 441 Page Mill showing that the city believed that the project was limited to 35 feet in height:

Maximum Allowed under CS Zone	
Height	35'

That site abuts R-1 parcels in the rear and is 134 feet and 7 inches deep. If staff had believed that the 35 foot height restriction only applied to 50 feet from the R-1 parcels, then the front part of the mixed-use CS-zoned project could have been 50 feet in height. The only reason to state in the staff report that the site was restricted to 35 feet in height is if that restriction applied to 150 feet from the R-1 parcels.

**Counterexample #3:** Here’s another example from the December 21, 2017 staff report<sup>5</sup> to the ARB for 380 Cambridge Avenue. Page 8 of the report says:

development on the ground floors. The maximum height allowed for structures in the district is 37 feet, however, if the property is located adjacent to certain residential districts, then the height is limited to 35 feet. Since the site is adjacent to RM-30 district (to the rear of the site), the height for the property is limited to 35 feet. This is the situation for many of the properties

The CC(2) parcel is 100 feet deep. Had staff interpreted the 35 foot height restriction to only apply to 50 feet from the RM-30 parcels in the rear, the front half of the building could have been 37 feet in height and the staff report would presumably have indicated that.

**Counterexample #4:** This excerpt from page 3 of the March 8, 2017 staff report<sup>6</sup> to the PTC for 3877 El Camino Real (“Compadres”) project quotes the 150 foot distance requirement:

Proximity to Residential Uses or Districts (150’): Yes.

There would be no reason to mention the 150 foot proximity had staff believed the 35 foot lowered height rule only applied to 50 feet. Furthermore, the entire CS portion of the project limited itself to approximately 35 feet in height. Given that portion’s depth of approximately 140 feet, 90 feet of the front could have been 50 feet in height had it been following the 50 foot interpretation staff now claims.

**Erroneous Example #1:** At the June 9, 2021 PTC meeting, staff offered two examples to support its contention that it had interpreted the lowered height limit to apply only 50 feet from neighboring residential properties. One example staff cited was the Wilton Court project at 3703 El Camino Real. However this project uses our Affordable Housing (AH) zoning and its height is governed by 18.30(J).090 Table 1, which says the 35 foot height only applies to “[w]ithin 50 ft of a R1, R-2, RMD, RM-20, or RM-30 zoned property.” So that project clearly was approved under a different zone’s height rule that doesn’t even mention 150 feet and thus cannot have been an interpretation of the CN, CC, CC(2) and CS rule regarding 150 feet.

**Erroneous Example #2** The other project cited by staff on June 9, 2021 was the 4216 El Camino Real (Hilton Hotel) project, which is zoned CS and does abut RM-30. However, neither the December 15, 2011 nor the May 24, 2012 staff reports to the ARB for this project mention the existence of its RM-30 neighbor nor cite the lowered height of 35 feet that the neighbor triggers, whether that would be for 50 or 150 feet. Instead, the May 24, 2012 report simply states on page 91 that the height limit for the project is 50 feet everywhere:

Building Height	50'	49'6"	Conforms
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So those reports do not demonstrate any interpretation of the 35 foot height rule but rather suggest a lack of awareness of both the rule and actual circumstances at the site.

In short, staff's recent claim appears to be contradicted by actual recent projects while neither example offered to support staff's claims is relevant. Please help us understand your perspective on this situation, as we believe it urgently needs to be addressed.

Thank you,

For Palo Alto Neighbors, based on a unanimous vote at the July 8, 2021 PAN meeting  
Sheri Furman, Co-Chair  
Rebecca Sanders, Co-Chair  
Jeff Levinsky, Executive Committee Member

**References:**

<sup>1</sup>June 9, 2021 PTC Staff Report: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2021/ptc-6.9-Objective-Standards.pdf>

<sup>2</sup>October 23, 2017 City Council Staff Report for 3001 El Camino Real:  
<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2017/8257.pdf>

<sup>3</sup>November 3, 2016 ARB Staff Report for 3001 El Camino Real:  
<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/architectural-review-board/archive-table-layout-2011-and-newer/2016/3001-el-camino-real-id7273.pdf>

<sup>4</sup>June 15, 2015 City Council Staff Report on 441 Page Mill Road:  
<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2015/id-5832.pdf>

<sup>5</sup>December 21, 2017 ARB Staff Report on 380 Cambridge Avenue:  
<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/architectural-review-board/2017/380-cambridge.pdf>

<sup>6</sup>March 8, 2017 PTC Staff Report on 3877 El Camino Real:  
<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2017-agendas-minutes-and-reports/3877-ecr-7660.pdf>