

APPROVAL NO. 2024-_____

**RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO LAND USE APPROVAL FOR 949 SCOTT STREET:
VARIANCE (22PLN-00410)**

On January 22, 2024, the Council held a duly noticed public hearing and, after considering all of the evidence presented, approved the Variance application to encroach into the front, side, and rear setbacks for the first floor and basement of a new single story, single-family home. The Variance application also requested to deviate from the below grade patio side and rear setback, and number of parking stall requirements required by the R-2 Zoning District regulations. In approving the application, the Council could make the following findings, determination and declarations:

SECTION 1. Background.

A. A Variance to allow encroachments into the front, side, and rear setbacks for the first floor and basement of a new single story, single-family home. A Variance to allow deviations from the below grade patio side and rear setback, and number of parking stall requirements in the R-2 Zoning District regulations. ("The Project").

B. The project was reviewed by Staff and approved in a Director's Decision on October 26, 2023.

C. The neighbor requested a PTC Hearing, pursuant to PAMC 18.77.060, on November 13, 2023.

D. On December 13, 2023, the Planning and Transportation Commission held a duly noticed public hearing, at which evidence was presented and all person were afforded an opportunity to be heard in accordance with the Palo Alto Municipal Code and the Council's Policies and Procedures.

E. On January 22, 2024, the City Council held a duly noticed public hearing, at which evidence was presented and all person were afforded an opportunity to be heard in accordance with the Palo Alto Municipal Code and the Council's Policies and Procedures.

SECTION 2. Environmental Review.

The proposed project has been determined to be Categorically Exempt per section 15303 (New Construction) of the California Environmental Quality Act Guidelines.

SECTION 3. Variance Findings.

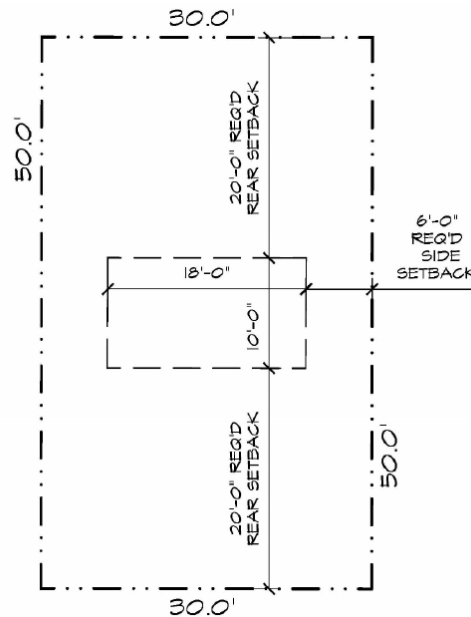
1. *Because of special circumstances applicable to the subject property, including (but not limited to) size, shape, topography, location, or surroundings, the strict application of the requirements and regulations prescribed in this title substantially deprives such property of privileges enjoyed by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

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

(B) Any changes in the size or shape of the subject property made by the property owner

or his predecessors in interest while the property was subject to the same zoning designation.

The City's standard dimensions for a new R-2 lot are 60 feet wide by 100 feet deep while the property's dimensions are 30 feet wide by 50 feet deep as shown in the image below. When applying the standard setbacks to the property it leaves an area of 180 square feet to develop a new single-family home where a 675 square foot home is permitted to be developed based on the City's Floor Area Ratio (FAR) allowance of 45% of the first 5,000 square feet. The existing building is roughly 840 square feet and the applicant's proposal will replace it with a home that is below the City's allowed FAR – at 673 square feet. While the property at 362 Channing Avenue is similar in size, neither represent a predominant pattern in the neighborhood as most properties are wider and deeper than the subject property. Due to this uniqueness, strict application of the standard requirements would deprive the homeowner of their ability to build a home close to the size permitted by the City's zoning code.



2. *The granting of the application affects substantial compliance with the regulations or constitutes a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zoning district as the subject property, and*

The current building exists at a roughly 2'-8" rear setback, 3' to 3'-11" interior side setbacks, and 10'-9" front setback. The proposed building will result in the rear and interior side setbacks being improved to a four foot setback, which is a consistent setback requirement for new ADUs and homes built through the Senate Bill 9 process, and the front yard setback will remain the same. The substantial changes made to the design of the building will be the inclusion of one on-site parking space, where there are currently none, and a basement underneath the footprint of the ground floor above it, which will not be visible to residents off-site. Per the Zoning Code, basements are not included in the floor area for the site and are not permitted in the setbacks for the property, outside of where the primary house can expand into. As noted in Finding 1, however, strict application of

those rules would only permit a 180 square foot basement under the first floor of the structure which may lead to design challenges and functional limitations to a building meeting those standards. Due to the unique size of this parcel and physical limits of where a house can be built, allowing a basement under the proposed building would not grant this property owner a special privilege that other owners in the vicinity do not already enjoy.

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

The proposed development is consistent with the purposes of the Zoning Ordinance in that it replaces an existing single-family home with another single-family home and seeks to improve on legal, non-conforming conditions to the site related to FAR, parking, and setbacks. In addition, the application is consistent with the following Comprehensive Plan policies:

Policy L-1.3: *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 proposed building will be compatible with its surroundings in that it is designed as a single-family home. The building will be designed as a single-story structure and the ground floor footprint will be reduced from the existing conditions on site, which will help to ensure the scale of the building is in keeping with the existing, surrounding buildings. Additionally, the new building is designed to meet the single-family daylight plane requirements in the R-2 zone district so there will be no added massing to the structure that will overly impact neighboring properties.

Policy L-3.5: *Avoid negative impacts of basement construction for single-family homes on adjacent properties, public resources, and the natural environment.*

The proposed basement will not impact adjacent properties as it will be contained within the boundaries of the property. The construction of the basement will not affect any adjacent trees on neighboring properties. The City has adopted a dewatering process for basement construction in the event the water table is high within this area to accommodate this construction.

Policy N-2.8: *Require new commercial, multi-unit and single-family housing projects to provide street trees and related irrigation systems.*

The proposed application will include two street trees: one as a replacement adjacent to the property in the right of way and another within a half mile from the property in the right of way. This will benefit public health by expanding tree canopy coverage within the public right of way where it does not currently exist.

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

The proposed structure would not be detrimental or injurious to property or negatively impact the

public health, safety or general welfare of those in the nearby vicinity. All proposed construction would be located within the lot's area. While one existing street tree will be removed to accommodate the proposed driveway, the City will be receiving two replacement trees: one adjacent to the property and another placed within a half mile from the property, both in the public right of way. This will benefit public health by expanding tree canopy coverage within the public right of way where it does not currently exist.

SECTION 4. Conditions of Approval.

PLANNING

1. **CONFORMANCE WITH PLANS:** Construction and development shall conform to the approved plans entitled, "Tong Residence," stamped as received by the City on August 29, 2023 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 and Building Departments.
3. **BUILDING PERMIT PLAN SET:** A copy of this cover letter and conditions of approval shall be printed on the second page of the plans submitted for building permit.
4. **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. **LANDSCAPE MAINTENANCE.** All landscape material shall be well maintained and replaced if the plant material dies or if the irrigation equipment fails. Planters shall not drain onto sidewalk, ground, or public right of ways.
6. **PROJECT EXPIRATION.** The project approval shall automatically expire after two years from the original date of approval if, within such two year period, the proposed use of the site or the construction of buildings has not commenced pursuant to and in accordance with the provisions of the permit or approval. Application for a one-year extension of this entitlement may be made prior to the expiration. (PAMC 18.77.090(a))
7. **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.

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, Garrett Sauls at Garrett.Sauls@CityofPaloalto.org to schedule this inspection.

BUILDING

9. A building permit is required for the proposed structure.

URBAN FORESTRY

10. The proposed removal of street tree #1, a six-inch Crepe Myrtle, to accommodate a new designated driveway for at 949 Scott Street is approved. The replacement requirement is two new 36-inch box, drought tolerant trees. One tree will be planted near frontage of address in the public right of way and the other planted in the ROW within a half mile radius. The offsite replacement tree location is to be determined once work commences. The applicant must keep Urban Forestry updated on the time of proposed home demolition in order for a 14-day Public notice to be posted to the street tree prior to its removal. A no-fee TRE application will be applied to the building permit when submitted.

ZERO WASTE

11. **REQUIRED DECONSTRUCTION.** In conformance with PAMC 5.24, deconstruction and source separation are required for all residential and commercial projects where structures (other than a garage or ADU) are being completely removed, demolition is no longer allowed. Deconstruction takes longer than traditional demolition, it is important to plan ahead. For more information, visit www.cityofpaloalto.org/deconstruction.
12. **SALVAGE SURVEY FOR REUSE.** A Salvage Survey is required for deconstruction permit applications. The survey shall be conducted by a City approved reuse vendor. The survey submittal shall include an itemized list of materials that are salvageable for reuse from the project. The applicant shall source separate and deliver materials for reuse. Certification is required indicating that all materials identified in the survey are properly salvaged. Contact The ReUse People to schedule this FREE survey by phone (888) 588-9490 or e-mail info@thereusepeople.org. More information can be found at www.TheReusePeople.org. Please upload a completed copy to the deconstruction permit.
13. **SOURCE SEPARATION FOR RECYCLING.** The applicant shall source separate deconstruction materials into specific categories for recycling. Additional staging areas for source separated materials will need to be considered. All materials shall be delivered to one of the City approved materials recovery facilities listed in Green Halo, all records shall be uploaded to www.greenhalosystems.com. For more information, refer to www.cityofpaloalto.org/deconstruction.

FIRE

14. Install a NFPA 13-D fire sprinkler system with coverage throughout the house including closets and bathroom.

PUBLIC WORKS ENGINEERING

15. PUBLIC WORKS STANDARD CONDITIONS SHEET: The Department of Public Work's full-sized "Standard Conditions" sheet shall be included in the improvement plans and the applicant shall comply with all conditions listed in the sheet. The sheet can be obtained at the following link under "Public Works Plan Review Documents":
<https://www.cityofpaloalto.org/Departments/Public-Works/Engineering-Services/Forms-and-Permits>
16. SIDEWALK, DRIVEWAY, CURB & GUTTER: The applicant shall meet with a Public Works inspector by calling 650-496-6929 to determine portions of sidewalk, curb, gutter, and driveway approaches that shall be replaced along the project frontage. These portions shall be indicated on the site improvement plans. In addition, a Site Inspection Directive sheet shall be completed, signed by the inspector, and scanned onto the plan set. The sheet can be obtained at the following link: https://www.cityofpaloalto.org/files/assets/public/public-works/engineering-services/webpages/forms-and-permits/other-guidelines/pwe-siteinspection-directive_rev-2021.pdf
17. DRIVEWAY APPROACHES: The applicant shall comply with all regulations in PAMC Chapter 12.08 for driveway approaches. A summary of those regulations can be obtained at the following link:
<https://www.cityofpaloalto.org/civicax/filebank/blobdload.aspx?t=69580.09&BlobID=66035>
18. STORM WATER POLLUTION PREVENTION SHEET: The City's full-sized "Pollution Prevention - It's Part of the Plan" sheet shall be included in the improvement plans. The sheet can be obtained at the following link under "Public Works Plan Review Documents":
<https://www.cityofpaloalto.org/Departments/Public-Works/Engineering-Services/Forms-and-Permits>
19. IMPERVIOUS SURFACE AREA WORKSHEET: The applicant shall fill out and include with the building permit submittal the Impervious Area Worksheet for Land Developments. The sheet can be obtained at the following link under "Public Works Plan Review Documents":
<https://www.cityofpaloalto.org/Departments/Public-Works/Engineering-Services/Forms-and-Permits>
20. GRADING & DRAINAGE PLAN: The plan set shall include a grading & drainage plan prepared by a licensed professional. See the Grading & Drainage Plan Guidelines for New Single Family Residences: <https://www.cityofpaloalto.org/files/assets/public/public-works/engineeringservices/webpages/forms-and-permits/grading-drainage-residential-guidelines.pdf>

21. C.3 STORMWATER REGULATIONS: This project creates or replaces over 2,500 square feet of impervious surface area. The applicant shall implement one or more of the following site design measures on improvement plans:
- a. Direct roof runoff into cisterns or rain barrels for reuse.
 - b. Direct roof runoff onto vegetated areas.
 - c. Direct runoff from sidewalks, walkways, and/or patios onto vegetated areas.
 - d. Direct runoff from driveways and/or uncovered parking lots onto vegetated areas.
 - e. Construct sidewalks, walkways, and/or patios with permeable surfaces.
 - f. Construct driveways, and/or uncovered parking lots with permeable surfaces.
22. STREETWORK PERMIT: All improvement plans shall include the following note adjacent to proposed work in the public right-of-way. "Any construction within the public right-of-way requires an approved Street Work Permit from Public Works Engineering".
23. DEMOLITION PLAN: The following note shall be placed adjacent to all affected trees on the Demolition Plan: "Excavation and trenching is restricted within the Tree Protection Zone (refer to T-1 Tree Protection Sheet) or as approved by the Urban Forestry Division at 650-496-5953. Any changes shall be approved by the same".
24. CONSTRUCTION STAGING: All improvement plans shall include the following note on the Site Plan and the Grading & Drainage Plan. "All construction materials and equipment shall be staged, stored, and stockpiled onsite and not on any public street".
25. EXCAVATION & GRADING PERMIT: The site plan shall include an earthworks table showing the cut and fill volumes. If the total is more than 100 cubic yards, an Excavation and Grading Permit shall be obtained per PAMC Chapter 16.28 prior to building permit approval. The permit application and all required documents shall be submitted to Public Works Engineering. The application can be obtained at the following link:
<https://www.cityofpaloalto.org/Departments/Public-Works/Engineering-Services/Forms-and-Permits>
26. CONSTRUCTION DEWATERING: This project may require dewatering during construction due to the groundwater level relative to the excavation. Refer to the following link and navigate to "Construction Dewatering Plan Design Guidelines" for more information:
<https://www.cityofpaloalto.org/Departments/Public-Works/Engineering-Services/Forms-and-Permits>
27. BASEMENT DRAINAGE: A drainage system is 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 back of sidewalk and 3 feet from side and rear property lines, such as a bubbler box in a landscaped area. NOTE: Perforated pipe drainage systems at the exterior of the basement walls or under the slab are not allowed for sites on the bay side of Foothill Expressway.

28. EXCAVATION SHORING: Shoring Plans prepared by a licensed professional engineer shall be submitted with the Grading and Excavation Permit. Shoring and tiebacks shall not extend onto adjacent private property or into the City right-of-way without having first obtained written permission from the private property owner(s) and/or an encroachment permit from the Department of Public Works.

- a. LOGISTICS PLAN: A construction logistics plan shall be provided addressing all impacts to the public including, at a minimum: work hours, noticing of affected businesses, bus stop relocations, construction signage, dust control, noise control, storm water pollution prevention, job trailer, contractors' parking, truck routes, staging, concrete pours, crane lifts, scaffolding, materials storage, pedestrian safety, and traffic control. All truck routes shall conform to the City of Palo Alto's Trucks and Truck Route Ordinance, Chapter 10.48, and the route map. NOTE: Some items/tasks on the logistics plan may require an encroachment permit. Logistics Plan Preparation Guidelines can be found here: <https://www.cityofpaloalto.org/files/assets/public/public-works/engineering-services/webpages/forms-and-permits/logistics-plan-preparation-guidelines-2021.pdf>

SECTION 5. Variance Approved. This Record finds that the project was approved.

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

APPROVED:

City Clerk

Director of Planning and
Community Environment

APPROVED AS TO FORM:

Senior Asst. City Attorney

PLANS AND DRAWINGS REFERENCED:

1. Those plans prepared by Young and Borlik Architects titled "Tong Residence", consisting of 17 pages, and received August 29, 2023.