

MARWAN & LISA EWAYS
5790 Arboretum Drive
Los Altos, CA

September 20, 2023

Honorable Mayor and esteemed Council Members:

I am Marwan Eways, a retired Technology Executive, and my wife, Dr. Lisa Eways, is a practicing Physician in our community. Our family has proudly called Los Altos home, actively participating in various community initiatives, schools, and our local Church since 2006.

As Los Altos residents, we are invested in the well-being of our city and are reaching out to address a matter of importance regarding our application for Variance V23-0002.

A meeting with the Planning Commission to consider our application on V23-0002 on 5/18 concluded with an informal split vote because a commissioner was absent. The Planning Commission recommended that we appeal. In order to allow our application to move forward with an appeal, the Commission voted 6 – 0 to deny our application.

Our application seeks approval to construct a second-story patio that is adjacent to the home's common area (family room and kitchen), above a small room addition on the first floor that serves as deck support and provides additional living space on the first floor. The design adheres to conventional construction, safety, and earthquake standards and is compatible with the design of our existing home.

Our proposed design aligns seamlessly with the existing hillside style of our home and remains within our allocated budget. The project includes an extension of our lower-level deck and establishes a connection to the upper patio with the addition of stairs, allowing access from the upper deck to the back yard. Our design objective is to create a safe and accessible inside-outside area that can accommodate our large extended family, including aging and disabled members. We aim to establish a space where our family can gather and enjoy quality time together.

We are grateful to have the support of our adjacent neighbors who live and own the properties at 5810 and 5770 Arboretum Drive, as well as the property owners behind our property at 2100 Woods Lane. All the surrounding neighbors have written letters or emails to the city supporting our design plans. Jerry Schoenig, who lives at 5810 Arboretum Dr and is our adjacent neighbor who was the builder of our home, spoke in favor of our project at a planning commission meeting.

We kindly request careful consideration of our Variance Appeal because our plans do not negatively impact the community and city as a whole, nor our neighbors. Attached are supporting materials for our appeal.

Thank you for your time and dedication to serving the citizens of Los Altos.

Sincerely,

Marwan and Lisa Eways

Overview



Our residence, located at 5790 Arboretum Dr, sits on one of the steepest lots in the Woodland area. Positioned downhill from the street, our home's entrance on the top (second) floor is accessed via a sloping driveway with a 12-foot elevation difference below the street. In total, our property spans a significant elevation change of 57 feet from top to bottom. Our house follows an inverted floor plan, with common areas (kitchen, family room, breakfast area and living room) on the top floor. Our bedrooms, a small media room, and the only access to the back yard are on the lower floor.

It is important to note that our home is a legally conforming property constructed in 2003 – 2004 in accordance with Santa Clara County standards with 15 foot side setbacks where 25 foot setbacks are required under current City code. We are in Woodland Acres, which was under Santa Clara county jurisdiction until it was annexed to the City of Los Altos in 2006.

Seeking to enhance our home, we are applying to build a deck **adjacent** to our family room and kitchen, extending along the existing nonstandard setback. This design aligns architecturally and aesthetically with our property and is similar to what is enjoyed by many of our neighbors.

The planning department expressed concern about a minor ~8 ft second-story setback difference. We firmly believe that the Los Altos setback code intends to address remodels where second-story additions may intrude upon neighboring homes, preventing privacy concerns. However, that is not the case with our neighbors. Our neighbors have two-story homes that are above and overlook our property and yard. Both neighbors support the addition of a second-story deck. Moreover, our proposed patio will be situated significantly lower down the hill, mitigating any potential privacy issues. The presence of trees and the incorporation of a partition to the south further ensure privacy (see above rendering).

The city did not support our design and variance application based on the following reasons:

1. Our lot is not considered “special” compared to others in the area.
2. Comparisons were made to homes built under county standards or legal construction following Los Altos standards.
3. Concerns were raised about setting a precedent with our request.
4. The city believes that we have other available options.

Background

We would like to provide background that supports our variance appeal by way of at least one example of the city applying inconsistent rulings and application of the zoning standards for the property at 5770 Arboretum next door to our property ([15-V-06 - 5770 Arboretum Drive - June 17, 2015](#)).

Specifically, we would like to address the city's lack of support for our variance application due to the perception that our lot does not qualify for “special circumstances”. However, our lot does qualify for special circumstances – development under County standards, location of common areas on the second floor, and the steepness of our lot.

The houses on both sides of our home have decks accessible from common areas – similar to what we are seeking and most all other homes in our neighborhood that are on flat lots have accessible outdoor areas adjacent to their common area. Our home is virtually the only home in the neighborhood with no useable outdoor space for entertainment adjacent to the home’s common area.

Variance application 15-V-06 for the adjacent property at 5770 Arboretum requested and received approval for a front yard setback and increased impervious surface for a paver driveway. The homeowners requested to deviate from the 50% impervious area limit to add pathways on their steep lot. In their application, the homeowners sought permission to use a nonstandard percentage of pavers for constructing walkways leading to their houses. Of note, the adjacent lots specifically referenced as precedents include our property at 5790 Arboretum Dr and 5810 Arboretum Dr, both of which were built under the county codes – not city codes with 15 foot side setbacks.

The city approved the variance for 5770 Arboretum Drive, accepting their justification based on the following factors:

- The topography of their lot was deemed "special," with a 10-foot difference between the street and their garage floor and a total elevation change from the front (high) to the rear (low) of 40 feet.
- They referenced other adjacent lots in the neighborhood that had similar features as justification for their request – notably lots developed under county codes.

In the Staff report for [15-V-06 - 5770 Arboretum Drive](#), Zachary Dahl, Senior Planner stated:

“There is a special circumstance applicable to the property due to the sloping topography of the lot. Strict application of the Zoning Code would deprive the subject property of privileges enjoyed by other property in the vicinity and under identical zoning classifications since many of the nearby properties have large driveways and impervious areas in their front yards.”

In contrast, 5770 Arboretum Dr has a **10-foot** drop from street and **40-feet** overall – the lot topography was deemed “**special.**” Our property at 5790 Arboretum Dr has a **12-foot** difference between the street and our garage floor and a total elevation change of front (high) to rear (low) of **57 feet**. However, our lot topography was deemed by staff as “**not special**”.

Only 7 homes in our neighborhood of over fifty homes have steeply sloping lots and only a very small percentage of lots in the entire City of Los Altos have steeply sloping lots. Of all the steeply sloping lots, very few have their common area located on the second floor. Very few lots in the City were developed under County codes.

We understand that the city has provided other design options in the staff report and during meetings. However, we would like to explain why the options are not viable alternatives for the following reasons.

- Moving the proposed patio to the north and suspending it 23 feet in the air: This approach would necessitate specialized engineering and the use of 23-foot pillars, which is uncommon in residential construction. It raises safety concerns and would also require the removal of one to two protected mature oak trees.
- The resulting design would create an odd addition, negatively impacting the flow and diminishing the overall value of our property - not aligning with commonly accepted home design nor the design of the house. Or it would require moving the kitchen and family room at infeasible expense and affecting the use and design of the first floor. In our interviews with several design professionals, all consistently proposed a deck adjacent to the existing common areas.
- Building a patio (with or without a pool) in the lower back yard for outdoor entertainment: This does not allow easy indoor/outdoor entertaining as the lower back yard is far away from the kitchen and is not readily accessible from the common areas on the second floor, nor is it accessible for elderly and disabled family members. [Lisa’s elderly mother fell going down the stairs to the lower floor since our variance hearing at the Planning Commission requiring hospitalization, surgery and recovery at an extended care facility.]
- The suggested options would not allow us to host gatherings where we can be in the common areas together, both inside and outside, as desired. The ideal flow would involve adjacent indoor and outdoor spaces for our guests to enjoy, like our neighbors’ properties and other properties in the neighborhood. Alternatives will also diminish the real property value of our home.

Precedent

We understand the city's concern about setting a precedent by approving our variance. However, we would like to provide some clarifications regarding this issue:

1. Unique lot: Our home is one of only seven properties in the area with steep lot topography zoned R1-20. It is part of Woodland Acres, a neighborhood that was annexed to the city of Los Altos in 2006.
2. Existing adjacent properties: Both of our adjacent neighbors already have decks and/or second-story patios adjacent to their common areas, deviating from the

standard setbacks. This indicates that a precedent already exists within our immediate vicinity.

3. Limited number of homes: In total, there are only seven homes with similar characteristics in our area, many if not all of which already have decks adjacent to their common areas. The number of properties that the city is concerned about setting a precedent for is exceedingly small.

We believe that the intent of the 25-foot second-story setback in the Los Altos code is to address privacy and daylight concerns and avoid mass and bulk when adding second-story space to older single-story homes. However, our home, like our neighboring properties at 5770 and 5810 Arboretum Dr, is relatively new. These properties are both nonstandard and located at higher elevations compared to ours. The proximity of these homes means that they can already overlook our common areas, and approving our variance would not significantly impact privacy concerns. Adding a deck to the roof of a legally permitted first floor addition does not add any bulk or mass the structure. [Note that the first floor addition meets all current setback requirements and is conforming and permitted – it is only the open deck on the second floor that requires a variance.]

It is worth noting that 5810 and 5790 Arboretum Dr were originally one lot that was split into two separate homes. Our home, which we purchased in 2006, has limited usable outdoor space due to the steepness of the lot and budget constraints. Access to our backyard is from the lower floor, away from the main common areas. In contrast, the Schoenig's at 5810 Arboretum Dr have a large deck accessible from the common areas (kitchen and family room) on the second floor, as well as an additional second-story deck overlooking our home -- all constructed according to the setback requirements of Santa Clara County (which do not appear to conform to current City setbacks). We aspire to enjoy similar outdoor spaces connected to our main living/common areas, providing better flow and gathering opportunities for our family.

In conclusion, we have provided specific responses to the main points raised in the city's staff report. Despite the city's assertion that our lot is not "special," we have demonstrated that our neighbor's lot, which was deemed special, had a less challenging topography than ours. We have also highlighted examples of homes built under county standards and legal construction, such as 5770 Arboretum Dr, which were allowed to deviate from standard setbacks.

Regarding the concern about setting a precedent, we argue that a precedent already exists based on the city's application of the code for 5770 Arboretum Dr, where homeowners were permitted to compare their property to any in the area, including legal non-conforming homes built under County standards. Moreover, we clarify that the alternatives proposed by staff are not feasible and would not achieve our objectives.

In presenting these examples, our intention is not to claim binding precedents, but rather to highlight the inconsistency in rulings considered for variance justifications. We believe it is crucial to ensure fair and equitable treatment for all homeowners when evaluating variance applications.

We believe that our proposed design and variance request align with our needs, preferences, and budget while respecting the existing aesthetics and functionality of our home and have no negative impacts on our neighbors or the City. Considering these arguments, we firmly believe that the information we have provided further justifies our design and variance findings, addresses the city's concerns, and warrants the approval of our appeal by the City Council.

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September 19, 2023

Los Altos City Council
City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022

Re: Variance Appeal – V23-0002 – 5790 Arboretum Drive

Honorable Mayor and City Council Members:

I represent Marwan and Lisa Eways, owners of 5790 Arboretum Drive, Los Altos in connection with their appeal of the denial of their variance application for a reduced side yard setback for a second story deck. We believe that staff and the Planning Commission have erred in their denial of the requested variance.

Based on my 27 years of experience as the City Attorney for the City of Menlo Park and reviewing similar applications, I can state unequivocally that there is more than ample evidence and precedent that the variance for the requested reduced side yard setback for the second story deck should be approved and the appeal should be granted. Based on the staff's recommendations/analysis, the City would never be able to approve a variance for a reduced side yard setback for a second story deck. If ever there ever was a circumstance in which a variance should be granted for a reduced side yard setback, this is it.

I urge you to grant the appeal and approve the variance based on the following proposed findings:

A. That the granting of the variance will be consistent with the objective of the zoning plan set forth in Article 1 of Chapter 14.02 of the Los Altos Zoning Code.

The design of the proposed modest size roof deck is consistent with the objectives of the zoning plan set forth in **Article 1 of Chapter 14.02**. The granting of the proposed variance is particularly consistent with the following objectives:

F. To protect and enhance real property values within the city; and

Adding an **accessible private outdoor space from the main upper level living space (family, breakfast, kitchen)** for enjoyment of the rear yard would be a tremendous enhancement to the real property value. It is currently very difficult to access the rear yard and requires traversing many stairs or inaccessible outdoor walkways.

G. To conserve the city's natural beauty, to improve its appearance, and to preserve and enhance its distinctive physical character.

Strict compliance with the required 25 ft side yard setback for the roof deck, would locate the start of the roof deck at the **mid-point of the family**, breakfast, kitchen space and shifting the deck toward the north interior of the property, off-set with the proposed lower level addition below intended to support the roof deck. This would require off-setting the addition on the lower level or it would require the addition of a steel support system for a portion of the deck, both of which would be functionally awkward and architecturally incongruous. Additionally, shifting the roof deck further north would interfere with an existing mature oak tree and would likely require its removal. Without the granting of an exception to the side yard setback, it would not be possible to sustainably design an outdoor deck directly accessible from the main living spaces on the main upper level of the residence to comply with the City's *Single-Family Residential Design Guidelines* for remodels and additions so that they "...look as if the original house design included the addition." (Sec. 5.2)

B. That the granting of the variance will not be detrimental to the health, safety, or welfare of persons living or working in the vicinity or injurious to property or improvements in the vicinity; and

The granting of this application will not be detrimental to health, safety, or welfare persons living or working in the vicinity or injurious to property or improvements in the vicinity. Due to the fact that the proposed roof deck is only 280 sf and is located entirely at the rear of the existing home, it will not be noticeable from the public view and will not negatively add to the bulk or mass of the existing structure. The elevation of the deck is also about 12 ft lower than the elevation of the street.

Additionally, the proposed roof deck poses no privacy issues with the only two affected side neighboring properties and the neighbors are supportive of the project. There are three primary reasons there are no privacy issues with the proposed roof deck. One, the proposed roof deck is not in alignment with the neighboring structure, two, there are existing mature trees and vegetation along the side yard between the roof deck and the neighboring property and three, we are proposing a 5'-6" high privacy wall on the side of the roof deck facing the neighboring property.

C. That variances from the provisions of this chapter shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the provisions of this chapter deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classifications.

There are several special circumstances applicable to this property, which justify a variance from the strict application the zoning code and they are outlined as follows:

1. The lot is very steeply sloping away from the street creating a significant challenge to access the private rear yard from the main interior living spaces of the home. While there are other sloping lots within the city, there are only a small percentage of lots with steeply sloping topography in this immediate neighborhood zoning district. This lot, by virtue of its topography, is generally inconsistent with the overall character of the neighborhood and the City at large. The vast majority of other properties in the neighborhood and City can simply walk out a few steps down from their residences to enjoy their private rear yard. Other homes with sloping lots have access to decks immediately adjacent to common areas (family room and kitchen).
2. Without the granting of an exception to the side yard setback, it would not be possible to design an outdoor deck directly accessible from the main living spaces on the main upper level of the residence to comply with the City's *Single-Family Residential Design Guidelines* for remodels and additions so that they "...look as if the original house design included the addition." (Sec. 5.2)
3. The home was built fairly recently, in 2005, yet because it was built to comply with the zoning standards of the County of Santa Clara, now that the property has been annexed to the City of Los Altos, the home is non-compliant for its side yard building setbacks. Both levels of the home have a side yard setback of 15 ft where the required setbacks are 20 ft for one story structures and 25 ft for two story structures. This particular circumstance is unique to the City and only a very small percentage of properties would have a similar situation.
4. Without the granting of an exception to the side yard setback, it would not be possible to design an outdoor space directly accessible from the main living areas on the upper level of the residence without removing a mature 24" diameter oak tree. The current proposed roof deck design preserves the tree.

Approval of the above findings and approval of the Eways' appeal and requested variance for a reduced side yard set back for a second story deck is within the City Council's discretion and authority and is amply supported by the application and the evidence submitted with their application and presented to the Planning Staff, the Planning Commission and the City Council.

We respectfully request you approve the appeal and approve the variance as requested. We will be available to answer any questions you may have.

Sincerely,



William L. McClure