



DATE: December 18, 2013

AGENDA ITEM # 2

**TO:** Design Review Commission  
**FROM:** David Kornfield, Planning Services Manager  
**SUBJECT:** 13-V-16 – 789 Manor Way

**RECOMMENDATION:**

Deny variance application 13-V-16 subject to the listed findings

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**PROJECT DESCRIPTION**

This is a variance application for a house that is under construction to allow two basement projections beyond the footprint of a main structure, where no such projections are allowed by the zoning code. The variance includes allowing Bathroom No. 1 on the south elevation to extend into the adjacent light well and Bedroom No. 3 on the north elevation to extend into the adjacent light well.

The plans show the work previously approved by the City and the as-built changes requested to bring under a permit. Plan Sheets 4-1 through 5-3 show the as-built changes.

**BACKGROUND**

The City approved a new, single-story structure for the subject property that is presently under construction (application No. 09-SC-14). The original project received a commission-level review since it exceeded 20 feet in height. The project is nearing its final inspections and as part of our review we found that the applicant had extended the basement into the light wells without benefit of the required City approval. Since the basement projections violate the basement regulations the applicant has two alternatives: remove the work to conform or seek a variance.

It should be noted that the original project included what may appear as a basement projection next to the kitchen. This area was interpreted as within the building's footprint framed by the entry porch and pantry elements.

**DISCUSSION**

As basement construction has become more prolific the City's regulations have evolved to address concerns related to such construction limiting the height of floors above basements, providing minimum setbacks for light wells and limiting the extent of basements in general. In single-family zoning districts basements are defined as follows:

Basement means that portion of a structure located entirely below grade, with the exception of the top of such basement which may extend for a vertical distance not exceeding two feet from the outside grade to the finished floor above. As used herein, the term "grade" shall mean either the natural grade or finished grade adjacent to the exterior walls of the structure, whichever is lower. No portion of any structure with an exposed wall shall be considered a basement, with the exception of below-grade garages that are screened from public view by either topography or built improvements (Section 14.02.070 of the Municipal Code).

In accordance with Section 14.06.110 of the Municipal Code, basements:

- A. Shall not extend beyond the footprint of the main or accessory structure above;
- B. Light wells, ingress and egress wells, patio wells, and other similar elements shall not be permitted within a required front or exterior side yard setback. These elements may be permitted within an interior side or rear yard setback, but in no event closer than five feet to a property line; and
- C. Light wells, ingress and egress wells, patio wells, and other similar elements shall utilize vertical retaining walls. Contour graded slopes, which expose the basement as a story, are prohibited.

The City limited basements to the footprint of structures above to limit the intensity of such construction since basements do not count as floor area. Without such a limit basements could extend to the permitted building setbacks and substantially increase the intensity of development. Additionally, basements that project beyond a structure's footprint take away from landscape opportunities and create other impacts such as reducing the area to absorb storm water runoff.

To grant a variance the Commission must make three findings in accordance with Section 14.82.050 of the Municipal Code: 1) that it is consistent with the objectives of the zoning code, 2) that it is not injurious to persons or property; and 3) that there are special circumstances related to the size, shape, topography or surroundings of a property where the strict application of the regulations deprive the property owner of development privileges enjoyed by other similar properties. Additionally, the granting of a variance cannot constitute a special privilege.

In terms of the zoning code objectives, if granted, variances for basement projections would not promote growth along sound lines since it would be difficult to limit their extent since there is no objective limit such as the building footprint. Additionally, there are no special circumstances supporting the granting of the proposed variance; the basement projections are a design choice that could be accommodated within the zoning limits. To grant such variances would represent a special privilege afforded to this property owner. While the extent of the projections may seem minor, they raise an issue with the integrity of the basement regulations where the granting of such variances would be difficult for the City to limit other properties with similar circumstances since there is nothing setting this property apart from other properties.

Procedurally the Design Review Commission acts on the variance application. If approved, then staff would administratively approve the design since the project meets our design findings and Residential Design Guidelines.

## **ENVIRONMENTAL REVIEW**

This project is categorically exempt from environmental review under Section 15305 of the Environmental Quality Act because it involves a minor variance not resulting in the creation of any new parcel.

Cc: Thomas Kornei, Property Owner  
Mark Kornei, Applicant

### Attachments:

- A. Application
- B. Area Map and Vicinity Map

## FINDINGS

13-V-16—789 Manor Way

1. With regard to denying the variances to allow basement projections beyond the footprint of the main structure, the Design Review Commission finds the following in accord with Section 14.82.050 of the municipal Code:
  - a. That the granting of the variances is inconsistent with the objectives of the zoning plan set forth in Article 1 of Chapter 14.02 since it does not provide for growth along sound lines;
  - b. That the granting of the variances 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
  - c. That special circumstances applicable to the property do not exist where the strict application of the basement regulations deprive the property owner of development privileges enjoyed by other property in the vicinity and under identical zoning classifications.



## CITY OF LOS ALTOS GENERAL APPLICATION

Type of Review Requested: *(Check all boxes that apply)*

Permit # 1105936

<input type="checkbox"/> One-Story Design Review	<input type="checkbox"/> Sign Review	<input type="checkbox"/> Multiple-Family Review
<input type="checkbox"/> Two-Story Design Review	<input type="checkbox"/> Sidewalk Display Permit	<input type="checkbox"/> Rezoning
<input checked="" type="checkbox"/> Variance(s)	<input type="checkbox"/> Use Permit	<input type="checkbox"/> R1-S Overlay
<input type="checkbox"/> Lot Line Adjustment	<input type="checkbox"/> Tenant Improvement	<input type="checkbox"/> General Plan/Code Amendment
<input type="checkbox"/> Tentative Map/Division of Land	<input type="checkbox"/> Preliminary Project Review	<input type="checkbox"/> Appeal
<input type="checkbox"/> Subdivision Map Review	<input type="checkbox"/> Commercial Design Review	<input type="checkbox"/> Other:

Project Address/Location: 789 Manor Way Los Altos, CA 94024

Project Proposal/Use: Variance for an item in a new construction

Current Use of Property: New construction

Assessor Parcel Number(s) 189-16-027 Site Area: 20,614 sqft

New Sq. Ft.: 15 sqft (est.) Remodeled Sq. Ft.: n/a Existing Sq. Ft. to Remain: \_\_\_\_\_

Total Existing Sq. Ft.: 5,528 sqft Total Proposed Sq. Ft. (including basement): 5,543 sqft (est.) \*\*\*

Applicant's Name: Mark Kornei

Home Telephone #: 408-390-8754 Business Telephone #: \_\_\_\_\_

Mailing Address: 1561 Elmhurst Drive

City/State/Zip Code: Los Altos, CA 94024

Property Owner's Name: Thomas Kornei

Home Telephone #: 650-961-4411 Business Telephone #: \_\_\_\_\_

Mailing Address: 1561 Elmhurst Drive

City/State/Zip Code: Los Altos, CA 94024

Architect/Designer's Name: N/A Telephone #: N/A

\*\*\* If your project includes complete or partial demolition of an existing residence or commercial building, a demolition permit must be issued and finalized prior to obtaining your building permit. Please contact the Building Division for a demolition package. \*\*\*

(continued on back)



November 22, 2013

Los Altos Design Review Commission  
1 San Antonio Road  
Los Altos, Ca

Re: Variance Request  
789 Manor Way

Dear Commissioners:

### **Request for Variance**

The Kornei Family is requesting approval of a variance to the zoning code Section 14.06.110 that would allow for the retention of two 'enclosed' basement lightwell areas that protrude outside of the first floor footprint of the house. The variances apply to a small lightwell along the front of the house into the basement "Bathroom 1" and along the back of the house into "Bedroom 3." Both enclosures are located in previously approved open lightwells. Both enclosures were constructed in order to allow more direct natural light into said portions of the below ground basement area and were not constructed to increase the amount of interior living area of the already 5,528 sq. ft. house. And in fact the interior living area increases only in the "Bedroom 3" feature with 15 sq. ft. more living area or an increase of the overall house size by 0.27%. We are seeking the variances in order to allow the small conversions to remain as is and to allow us to receive our final building inspections for the newly constructed house at 789 Manor Way.

### **Background**

The Kornei Family began construction of a very eclectic and cutting edge single family home in January 2011. The single story home was designed to blend into to the surrounding single story neighborhood while utilizing a basement design and numerous cutting edge green design features. The project took approximately 3 years to complete due to its complexity and the surprise passing of Dr. Mary Kornei due to a battle with cancer. This sudden change of events impacted the overall timeline and more importantly the day-to-day management of the overall project. As a result of these items, the issue of the two lightwell enclosures was not discovered until requesting the building's final inspections.

### **Front Lightwell-Bathroom 1**

The approved plan set included a large lightwell, capped with skylights, feature along the front of the house, underneath the kitchen window. As noted on the attached photo, the lightwell to the left of the front door was approved to be fully enclosed and capped with skylight features. This design was authorized due to the lightwell being enclosed within the ground floor footprint of the house (pantry to the West and front porch to the East). Located just to the right of this feature is the subject Bathroom 1 lightwell. This lightwell was enclosed to match the lightwell on the other side of the front porch. This enclosure

merely allows for a continuation of the same architectural theme of the front yard and allows more natural light into the Bathroom 1 shower area. The enclosure covers a counter top installed within the bathroom and does not increase the square footage of the interior space. Overall the exterior treatment results in a clean continuous front elevation of the house. The enclosed lightwell does not project into any required setbacks as per City of Los Altos codes and does not violate any Building Codes.

### **Rear Lightwell-Bedroom 3**

Located along the rear of the house is a larger open light well off of the subject Bedroom 3. This open lightwell includes required first floor railing features that match all of the other exterior rails. An approximately 7' 6" portion of this lightwell was converted to the same enclosed/skylight design to match the front of the house thereby allowing more natural light exposure into this basement Bedroom 3. The new floor area created within the Bedroom 3 is merely a pop out without any interior use other than for light exposure.

### **Required Findings**

Three specific findings (paraphrased below) are required to allow the granting of our variance request.

1. Granting of the Variance will be consistent with Chapter 14.02-The subject variances will allow for the retention of 2 enclosed below grade lightwells. The variance will not impact any *community growth patterns* due to the compliance with all applicable Building Code sections, will not introduce any *disharmonious land uses* as the house is in compliance with the applicable General Plan and Zoning District Designation for the house, will not promote any conflicts or *changes to traffic circulation*, does not include or impact any *community facilities*, is not a *business related* issue, will not be a *detriment to any surrounding property values* of the neighborhood and in fact the value added tax assessment will be a benefit to both the surrounding homes and the City of Los Altos tax base and finally the variance will have no *impact on the City's beauty* as the improvements have been blended into the overall architectural theme of the house and neighborhood.
2. Granting of the Variance will not be detrimental to all who surround the site-The subject enclosures have been built and inspected in strict compliance with all applicable sections of the Building Code imposed on the project through all phases of inspections. No exceptions are being sought to any of the applicable Building Code requirements and all proper inspections have been completed. Therefore, both improvements are safe and will not cause any injurious events to any and all surrounding properties or their owners;
3. Granting of the variance allowed when special circumstances exist-The enclosed lightwells allow substantially more natural light into two basement areas of the house. The additional natural light helps achieve more goals of the house's green design by lessening energy consumption and natural ventilation. The site was made available for this new house construction by tearing down a previous circa 1950's ranch style home that was highly inefficient with regards to sustainability. In addition surrounding mature tree cover furthers the challenge to build a new cutting edge, highly efficient home that relies on as much natural light and

ventilation as possible. Therefore additional aggressive efforts to increase natural sustainable features challenged this building site. The same challenges will exist when and if any of the surrounding highly vegetated houses are contemplated for energy efficient upgrades in the future. Overall the variances will increase the buildings energy efficiency and maintain a consistent architectural theme throughout the exterior building design.

### **Conclusion**

We appreciate your consideration of our request. Granting of the variance will not lead to other rampant variance requests in the area and within the City of Los Altos due to the benign but worthy need to increase natural light into basement areas. The City of Los Altos has done a very good job encouraging full basement improvements both as a way of blending the larger house designs into the otherwise modest ranch style character of the circa 1950's homes and as a way of increasing the overall values and tax rate that benefits all. We have constructed a beautiful, energy efficient home that experienced a tragic challenge in mid-stream. We are pleased that our home has been well received by our surrounding neighbors and would ask for your support of our request.

We would like to make ourselves available to you at any time to answer any questions and to tour the home. We can join you at any time that fits your schedule. If you want to conduct a self-guided tour, the house is vacant with no dogs or locked gates. Please feel free to contact me or my father.

Sincerely,  
Mark Kornei  
1561 Elmhurst Drive  
Los Altos, CA 94024

Mark Kornei Contact:  
Email: [markkornei@gmail.com](mailto:markkornei@gmail.com)  
Phone: 408-390-8754

Thomas Kornei Contact:  
Email: [tk44@calalum.org](mailto:tk44@calalum.org)  
Phone: 650-961-4411



The bank of skylights to the left are the ones that were initially approved on the plans; the one on the right is referred to as "Bathroom 1" in the letter.

November 22, 2013

789 Manor Way

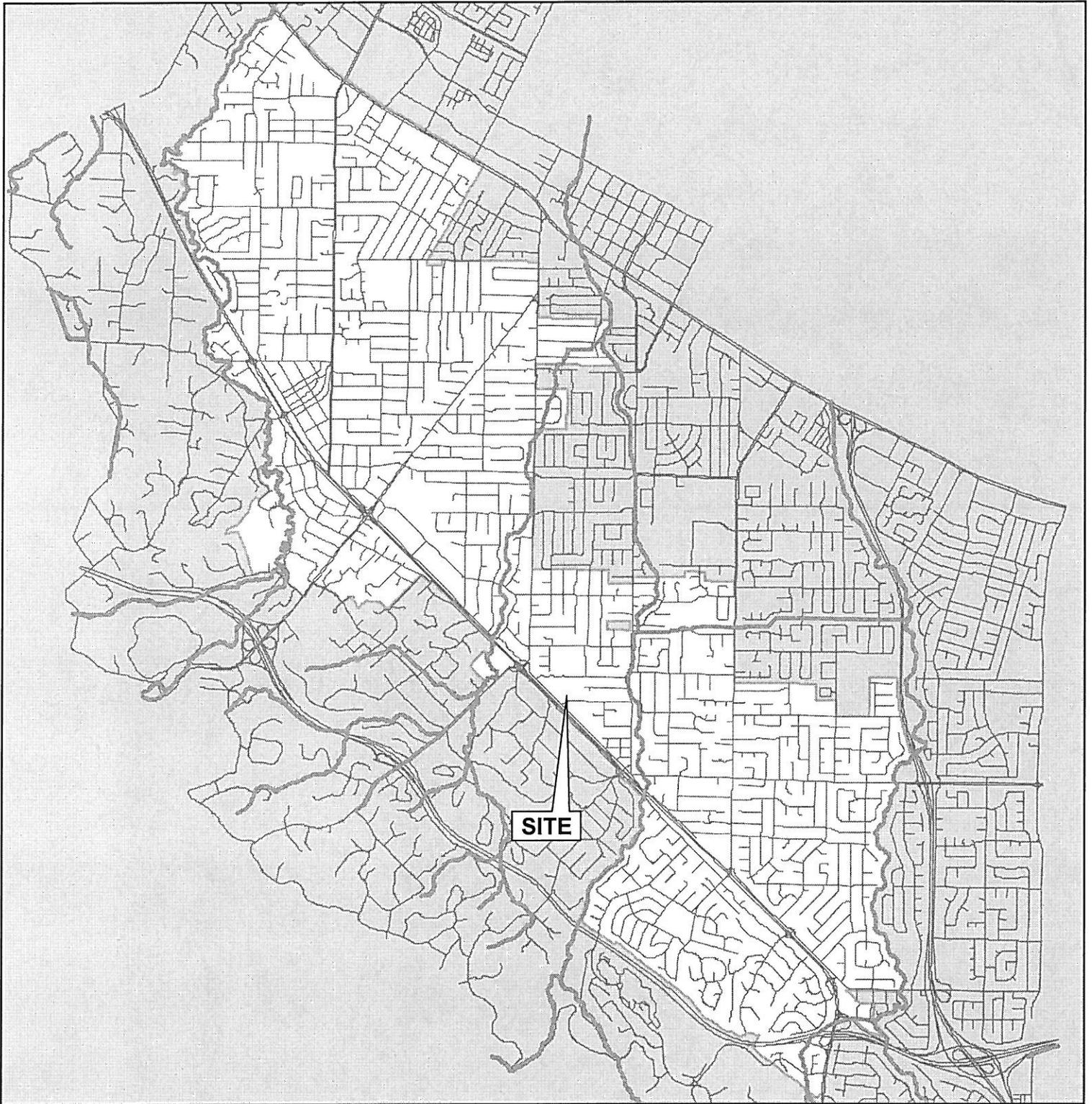
Los Altos, CA 94024

**Project Summary Table:** Skylight-well variance

The table represents only the changes that are affected by the skylight-wells. All existing figures were pulled from the current plans.

	Existing	Change In	Total Proposed
Lot Area	20,614 sqft		
% Front yard paving	n/a	n/a	n/a
Habitable Living Area	5,528 sqft	15 sqft (estimate)	5,543 sqft
Non-habitable area	n/a	n/a	n/a
	Existing	Change In	Allowed/Required
Lot Coverage	n/a	n/a	n/a
Gross Floor Area	n/a	n/a	n/a
Setbacks			
-Front	n/a	n/a	n/a
-Rear	n/a	n/a	n/a
-Right	n/a	n/a	n/a
-Left	n/a	n/a	n/a
Height	n/a	n/a	n/a

# AREA MAP



CITY OF LOS ALTOS

**APPLICATION:** 13-V-16  
**APPLICANT:** M. Kornei  
**SITE ADDRESS:** 789 Manor Way

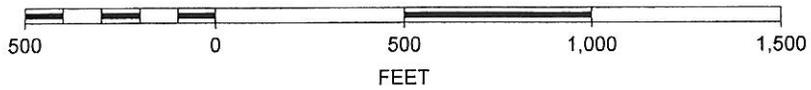


Not to Scale

# VICINITY MAP



SCALE 1 : 6,000



CITY OF LOS ALTOS

**APPLICATION:** 13-V-16  
**APPLICANT:** M. Kornei  
**SITE ADDRESS:** 789 Manor Way