

**GUIDELINES AND PROCEDURES
FOR
PRESERVATION OF VIEWS WHERE
STRUCTURES ARE INVOLVED
(HEIGHT VARIATION PERMITS)**



CITY OF RANCHO PALOS VERDES

**ADOPTED ON AUGUST 23, 1993
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Silhouette Construction Criteria

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I. PURPOSE

The intent of this document is to provide guidelines and procedures for protecting views which may be impaired by development of new residential structures or additions to existing residential structures. As specified in Proposition M, which was passed by the voters of Rancho Palos Verdes and became effective on November 17, 1989, the purposes for the regulations are to:

a. Protect, enhance and perpetuate views available to property owners and visitors because of the unique topographical features of the Palos Verdes Peninsula. These views provide unique and irreplaceable assets to the City and its neighboring communities and provide for this and future generations examples of the unique physical surroundings which are characteristic of the City.

b. Define and protect finite visual resources by establishing limits which construction and plant growth can attain before encroaching onto a view.

c. Insure that the development of each parcel of land or additions to residences or structures occur in a manner which is harmonious and maintains neighborhood compatibility and the character of contiguous subcommunity development in the General Plan.

d. Require the pruning of dense foliage or tree growth which alone, or in conjunction with construction, exceeds defined limits.

These guidelines and procedures apply to any person proposing to construct a residential structure above the sixteen foot height limit, as defined in section 17.02.040 of the Rancho Palos Verdes Municipal Code, except that paragraph H of Section 2 - Removal of Foliage as Condition of Permit Issuance, applies to any residential structure, regardless of height. The 16-foot height limit is commonly referred to as the "by-right" height limit, provided that no grading, as defined in section 17.76.040 of the Rancho Palos Verdes Municipal Code, is to be performed in connection with the proposed construction and all applicable residential development standards are or will be met.

II. DEFINITIONS

A. Viewing Area

Section 17.02.040 (A)(15) of the Rancho Palos Verdes Municipal Code defines "viewing area" as follows:

"Viewing area" means that area of a structure (excluding bathrooms, hallways, garages or closets) or that area of a lot (excluding the setback areas)

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where the owner and City determine the best and most important view exists. In structures, the finished floor elevation of any viewing area must be at or above the existing grade adjacent to the exterior wall of the part of the building nearest to said viewing area."

B. Section 17.02.040(A)(14) of the Municipal Code defines "View" as follows:

"On the Palos Verdes Peninsula, it is quite common to have a near view and a far view because of the nature of many of the hills on the peninsula. Therefore, a 'view' which is protected by this Section is as follows:

"a. A 'near view' which is defined as a scene located on the peninsula including, but not limited to, a valley, ravine, equestrian trail, pastoral environment or any natural setting; and/or

"b. A 'far view' which is defined as a scene located off the peninsula including, but not limited to, the ocean, Los Angeles basin, city lights at night, harbor, Vincent Thomas Bridge, shoreline or off-shore islands.

"A 'View' which is protected by this Section shall not include vacant land that is developable under the city code, distant mountain areas not normally visible nor the sky, either above distant mountain areas or above the height of off-shore islands. A 'View' may extend in any horizontal direction (three hundred and sixty degrees of horizontal arc) and shall be considered as a single view even if broken into segments by foliage, structures or other interference."

III. ESTABLISHING THE VIEWING AREA

A. Section 17.02.040 (B)(5) establishes the procedure for determining the "viewing area" as follows:

The determination of a viewing area shall be made by balancing the nature of the view to be protected and the importance of the area of the structure or lot from where the view is taken. Once finally determined for a particular application, the viewing area may not be changed for any subsequent application. In the event the city and owner cannot agree on the viewing area, the decision of the city shall control. A property owner may appeal the determination of viewing area. In such event, the decision on the viewing area will be made by the body making the final decision on the application. A property owner may preserve his or her right to dispute the decision on viewing area for a subsequent application without disputing the decision on a pending application by filing a statement to that effect and indicating the viewing area the property owner believes to be more

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appropriate. The statement shall be filed with the city prior to consideration of the pending application by the City.

B. The "viewing area" of the applicant's property is where the best and most important view is taken. The determination of the "viewing area", is made "by balancing the nature of the view to be protected and the importance of the area of the structure or lot from where the view is taken".

1. On undeveloped lots, the viewing area may include all of the areas of the lot, excluding the required setback areas.

2. On developed lots, the "viewing area" may be located on any level surface within the house (excluding bathrooms, closets, hallways or garages) which is at or above the existing grade adjacent to the exterior wall of the part of the building nearest to the "viewing area" or within the buildable area of the lot. A viewing area may be located on a patio, deck, balcony or lawn area which is adjacent to the primary structure (generally within 10 feet) and which is located on the same general grade on the lot as the primary structure, excluding the required setback areas and used as a gathering area. In determining the viewing area on a developed lot, greater weight generally will be given to locations within the primary structure where a view is taken than to locations outside of the primary structure where a view is taken, unless no view is taken from within the primary structure.

3. On properties where the applicant claims that he or she has a view from one or more locations either within or outside of the primary structure, it must be determined where the best and most important view is taken to determine the "viewing area" which is to be protected. The "viewing area" may only include multiple rooms or locations on the applicant's property if those locations share the same view.

4. The "viewing area" may only be located on a second (or higher) story of a structure if:

a. The construction of that portion of the structure did not require approval of a Height Variation Permit or Variance, pursuant to Chapter 17.02.040 of the Rancho Palos Verdes Municipal Code, or would not have required such a permit if that Section had been in effect at the time that portion of the structure was constructed; or

b. The viewing area is located in a part of the structure that constitutes the primary living area of the house, which is the living room, dining room, family room, or kitchen. However, the viewing area may be located in the master bedroom, if a view is not taken from one of the rooms comprising the primary living area, and the master bedroom is located on the same story of the house as the primary living area.

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5. In documenting the views, Staff will usually conduct their view analyses in a natural standing position. In those cases where the view is only enjoyed from a seated position, Staff will verify if that is the case, and if so, will conduct the view analysis from the seated position in that area at a height of not less than three (3) feet, six (6) inches, up to a full standing position.

IV. EARLY NEIGHBOR CONSULTATION

Section 17.02.040(C)(1)(b) of the Municipal Code requires that, for all proposed Height Variations:

"The applicant shall take reasonable steps established by the City Council to consult with owners of property located within 500 feet of the applicant's property. The applicant shall obtain and submit with the application the signatures of the persons with whom the applicant consulted. Where a homeowners' association exists in the neighborhood affected and has provided written notice to the Director of its desire to be notified of Height Variation applications, the applicant shall mail a letter to the association requesting their position on the application. A copy of this letter and the response of the association, if any, shall be submitted with the application."

Early neighbor consultation may be deemed adequate by the Director of Planning, Building, and Code Enforcement only if the signatures of at least 60% of the landowners within 500 feet; or 70% of the landowners within 100 feet **and** 25% of the total number of landowners within 500 feet (*including* those within 100 feet) is obtained; or if mailed proof of notification of all landowners within 500 feet is provided, as well as proof of notification of the homeowners' association, if one exists. The required percentages stated above shall be based on property located in the City. An applicant is not required to obtain signatures from the owners of property that are located outside the City boundary limits (ie. Palos Verdes Estates, Rolling Hills Estates, etc.). Fewer signatures may be deemed adequate by the Director if other evidence of early neighbor consultation is provided.

Acceptable efforts for obtaining the necessary signatures for satisfying the "early neighbor consultation" requirements shall include at least one of the following, as outlined below:

A. Direct Contact

1. Door-to-door contact with the landowners within 500 feet, describing the proposed project and showing and explaining plans. Verification of this

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contact shall be provided by obtaining signatures from the landowners (signatures from renters or lessees are unacceptable) on the attached Acknowledgement of Proposed Construction form available from the City (no exceptions). The form indicates that the intent of the signature process is to acknowledge that the landowner has been made aware of the applicant's intentions, and is not meant to signify support of the project. The form also delineates what project plans, if any, were exhibited to the landowners. Landowners must acknowledge that they have seen a depiction of the project which reasonably describes the applicant's proposal, in order for their signature to qualify towards the required percentage totals.

2. Holding an "Open House" to inform landowners of the proposed plans, with previous written or oral invitations to the potentially affected property owners. Verification of this contact shall be provided as described above.

B. Mailing

Only as a last resort, if the previous two methods have not been proven satisfactory, proof of notification may consist of a notice and reduced copies of the depiction of the project (no larger than 8 1/2" x 14") sent by the applicant by registered mail to all landowners within 500 feet of the subject property, **or** by providing addressed, stamped/pre-paid postage envelopes, a copy of the mailing list, reduced copies of the plans, and a letter with a description of the proposed project, along with a \$10.00 fee, to the City for mailing. Using this method must be approved by the Director of Planning, Building, and Code Enforcement.

In addition to contacting the neighbors, a letter to the area's homeowners association requesting their opinion on the proposal, if any, shall be mailed.

Please note that in addition to completing the Early Neighborhood Consultation requirements stated herein, the City strongly encourages applicants proposing a project that includes the Neighborhood Compatibility analysis, such as a Height Variation application, to complete a "Pre-application Process."

The Neighborhood Compatibility "Pre-application Process" is a voluntary step in the residential development process that has been found to be helpful in addressing neighborhood issues early in the process, which may cause delays in the formal process and added expense to the applicant.

For further information regarding the suggested "Pre-application Process" please refer to Planning Staff, the Neighborhood Compatibility Handbook available at Planning Department at City Hall, or the City's Website at www.palosverdes.com/rpv. —

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V. TEMPORARY SILHOUETTE FRAME

Section 17.02.040(C)(1)(d) of the Municipal Code states that:

"The applicant shall construct on the site at the applicant's expense, as a visual aid, a temporary frame of the proposed structure.

1. The temporary silhouette shall, at a minimum, consist of wood posts (or other sturdy and rigid material - 2" x 4"s are typical) at all corners of the structure(s) and at either end of all proposed ridgelines, with a taut rope (of 1/2" diameter) marked with triangular flagging (ribbons are **not** acceptable) connecting the posts (see attached diagram).

2. The top one foot of the posts shall be **painted red or orange** to better demarcate the height of the proposed structure in photo analyses, and a similar mark shall be placed using a **different**, but equally visible color on the posts at the 16-foot height limit, as measured pursuant to Section 17.02.040(B). Please consult with your case planner regarding the applicable method for determining the 16-foot height limit.

3. The temporary silhouette frame can only be erected after the waiver form, which absolves the City of any liability associated with construction of or damage by the temporary silhouette frame, has been submitted to the Director by the applicant. The waiver form (see attached) must be submitted along with the application package. In order to minimize costs involved in constructing a certified silhouette, it is advised that a property owner not construct the required certified silhouette until directed to do so by the case planner assigned to the project. This is recommended because a project may undergo revisions before being deemed complete for processing. Once given direction to construct the certified silhouette, the applicant shall notify the City when the silhouette is in place.

Furthermore, once the silhouette is constructed, a licensed engineer or architect shall certify that the silhouette accurately depicts the location and height (including the color demarcation of the silhouette posts) of the proposed development. The required certification form (see attachment) must be accompanied by a site plan that identifies the location of the silhouette posts, the existing grade elevation call-outs at the base of the posts (if posts touch existing grade), and the elevation call-outs for the top of the posts. If the silhouette is constructed entirely above an existing structure so that the posts supporting the silhouette do not touch existing grade, then the site plan must include the existing grade elevation closest to the existing structure and the supporting silhouette posts. **A project will not be deemed "complete" for processing without the certification.**

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4. Staff will conduct a site inspection to review the adequacy of the silhouette's depiction of the proposed project. Adequacy will be based on an accurate depiction of the proposed project's envelope, accurate delineation of ridgelines, and the proper triangular flagging. **Ribbons or other materials which tend to bend or sag are not acceptable.** An application will not be considered "complete" for processing without an adequately constructed silhouette in place.

5. **The frame must remain in place and be maintained in good condition throughout the required notice period for the Height Variation application or the Neighborhood Compatibility analysis process, the decision process and, if necessary, any appeal periods.** The frame may not be removed until the City's appeal process has been exhausted and a final decision has been rendered. **The applicant must remove the frame within seven (7) days after a final decision has been rendered and the City's appeal process has been exhausted.**

VI. BUILDING HEIGHT

1. Proposed residential building height cannot exceed 26 feet. If a greater height is desired, a Variance application is required, rather than a Height Variation Permit.

Section 17.02.040(B)(1) of the Municipal Code states that:

" Any individual or persons desiring to build a new structure or an addition to an existing structure shall be permitted to build up to sixteen feet in height pursuant to Section 17.02.040(B) of this Chapter provided there is no grading, as defined in Section 17.76.040 of this Chapter, to be performed in connection with the proposed construction, and further provided that no Height Variation is required, and all applicable residential development standards are or will be met. In cases where an existing structure is voluntarily demolished or is demolished as a result of an involuntary event, a Height Variation application will not be required to exceed sixteen feet in height, provided that the replacement structure will have the same or less square footage and building height as the existing structure and will be reconstructed within the building envelope and footprint of the pre-existing structure. Approval for proposed structures or additions to existing structures exceeding sixteen feet in height, may be sought through application for a Height Variation permit, which, if granted pursuant to the procedures contained herein, will permit the individual to build a structure not exceeding twenty-six feet in height, except as provided in Section 17.02.040(B)(1)(d) of this chapter, or such lower height as approved by the city, measured as follows:."

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2. Height is measured based on whether the subject lot is considered an uphill, downhill, or other (pad) lot relative to the street of access, and based on the extent to which the structure slopes with the lot. Section 17.012.040(B)(1) of the Code defines height measurements as follows:

- (a) “For sloping lots which slope uphill from the street of access or in the same direction as the street of access and for which no building pad exists, the height shall be measured from the pre-construction (existing) grade at the highest point on the lot to be covered by the structure to the ridge line or the highest point of the structure.”
(Uphill Sloping Lot figure on next page):

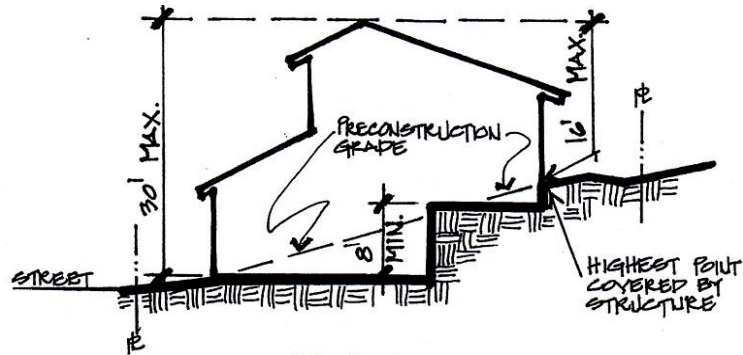


FIGURE 1

- (b) “For sloping lots which slope downhill from the street of access and for which no building pad exists, the height shall be measured from the average elevation of the setback line abutting the street of access to the ridge line of the highest point of the structure.” Lots sloping downhill are defined as those with a minimum slope of greater than 5% over the width or length of the buildable area (whichever is the downhill direction).

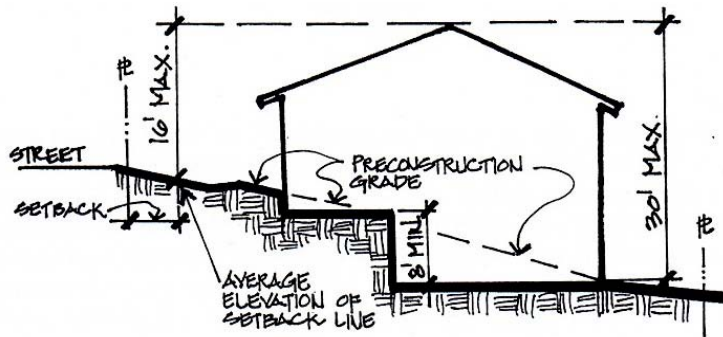
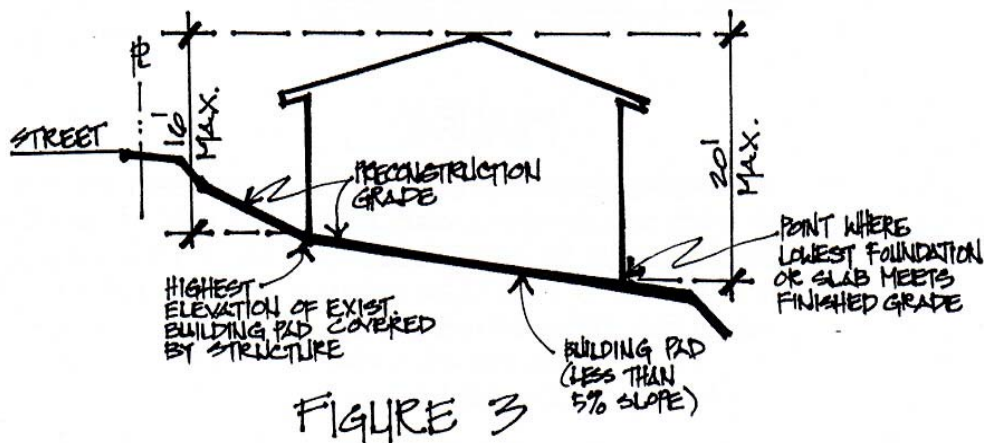


FIGURE 2

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- (c) “For lots with a "building pad" at street level or at a different level than the street or lot configurations not previously discussed, the height shall be measured from the pre-construction (existing) grade at the highest elevation of the existing building pad area covered by the structure to the ridge line or highest point of the structure. Portions of a structure which extend beyond the "building pad" area of a lot shall not qualify as the highest elevation covered by the structure, for the purposes of determining maximum building height. Structures allowed pursuant to this subsection shall not exceed twenty (20) feet in height, as measured from the point where the lowest foundation or slab meets finished grade, to the ridgeline or highest point of the structure. Otherwise, a Height Variation Permit shall be required.” (Pad Lot figure below):



- (d) “On sloping lots described in sections 17.02.040(B) (1)(a) and 17.02.040(B)(1)(b), the foundation of the structure shall contain a minimum eight (8) foot step with the slope of the lot. However, no portion of the structure shall exceed thirty (30) feet in height, when measured from the point where the lowest foundation or slab meets finished grade to the ridge line or highest point of the structure. The thirty (30) foot height shall not exceed a horizontally projected sixteen (16) foot height line (from the high point of the uphill step of the structure).” (See figure below): If there is not a minimum eight (8) foot step in the structure’s foundation, a Height Variation Permit and/or a Variance will be required.

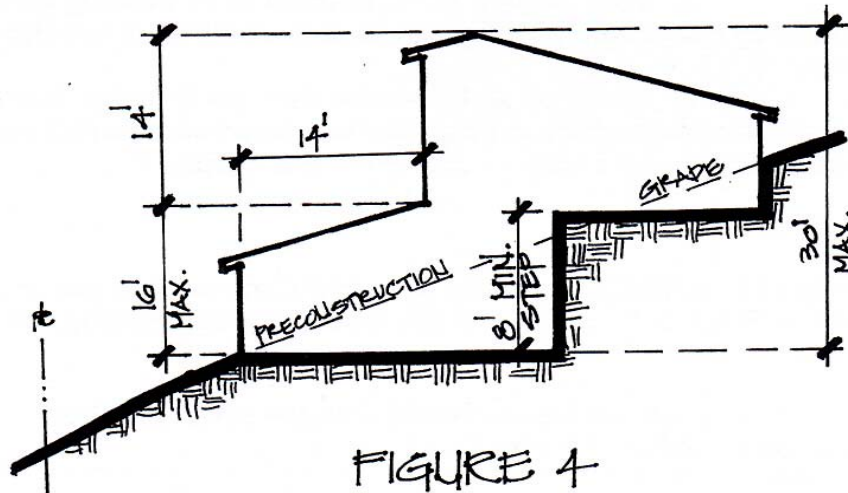
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VII. SETBACKS FOR SLOPING LOTS

Section 17.02.040(B)(2) of the Municipal Code requires that:

"On lots sloping uphill from the street of access and where the height of a structure is in excess of sixteen (16) feet above the point where the lowest foundation or slab meets the ground, areas in excess of the sixteen (16) foot height limit shall be set back one (1) foot from the exterior building facade of the first story, most parallel and closest to the front property line, for every foot of height in excess of sixteen (16) feet, as measured from the point where the lowest foundation or slab meets the ground."

This provision applies to uphill lots only and covers height at any point on the structure in excess of 16 feet above the grade at the downslope side of the structure. The figure below (Height Setbacks) illustrates how a structure would need to fit within the stepped-back setback envelope.



VIII. CRITERIA FOR REVIEW

A. Administrative or Planning Commission Review

Section 17.02.040(C)(1) provides criteria for the initial review of Height Variation applications by either the Director of Planning, Building, and Code Enforcement or the Planning Commission.

- 1. "Any person proposing to construct a structure above sixteen (16) feet shall submit a Height Variation Permit application to the City. A**

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determination on the application shall be made by the Director in accordance with the findings described in Section 17.02.040(C)(1)(e). The Director shall refer an application for a Height Variation Permit directly to the Planning Commission for consideration under the same findings, as part of a public hearing, if any of the following is proposed:

a. Any portion of a structure which exceeds sixteen (16) feet in height extends closer than twenty-five (25) feet from the front or street-side property line; or

b. The area of the structure which exceeds sixteen (16) feet in height (the second story footprint) exceeds seventy-five percent (75%) of the existing first story footprint area (residence and attached garage);

c. Sixty percent (60%) or more of an existing garage footprint is covered by a structure which exceeds sixteen (16) feet in height (a second story); or

d. The portion of a structure that exceeds sixteen feet in height is being developed as part of a new single-family residence; or

e. Based on an initial site visit, the Director determines that any portion of a structure which is proposed to exceed sixteen (16) feet in height may significantly impair a view as defined in this chapter.”

IX. MANDATORY FINDINGS

Section 17.02.040(C)(1)(e) of the Municipal Code requires a Height Variation Permit be issued to build a new structure or an addition to an existing structure either of which exceeds sixteen (16) feet in height up to the maximum height permitted in section 17.02.040(B)(1), if the City can make the following nine mandatory findings:

1. **"The applicant has complied with the early neighbor consultation process established by the City."**

Staff will review the submittal to be sure that the methods of early neighbor consultation, as outlined above on pages 4 and 5 of these Guidelines, are adequate.

2. **"The proposed new structure that is above sixteen feet in height or addition to an existing structure that is above sixteen feet in height does not significantly impair a view from public property (parks, major thoroughfares, bike ways, walkways or equestrian trails) which has been identified in the city's general plan or coastal specific plan, as city-designated viewing areas."**

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Any public park or right-of way will be considered for view analysis under this provision. Other sites will be limited to those specifically delineated in the General Plan, Coastal Specific Plan, or areas specifically set aside as public viewing areas. "Significantly impair" is defined in section (6) below.

3. "The proposed structure is not located on a ridge or promontory."

A ridge is defined in Section 17.96.1550 as "an elongated crest or a linear series of crests of hills, bluffs, or highlands". A promontory is defined in Section 17.96.1420 as "a prominent mass of land, large enough to support development, which overlooks, or projects onto a lowland or body of water on at least two sides". The analysis of ridges and promontories relates to protection of public views and vistas overlooking or looking up at ridges or promontories. The Director or Planning Commission will make a determination as to the degree of visual impact associated with construction over 16 feet in height on a "ridge or promontory" when viewed from a park, public roadway, or a designated public viewing point.

The "ridge or promontory" must be prominent in relation to the 16 to 26 foot range of heights permitted under the Height Variation Permit process. Geologic structures which would not be noticeable in relation to the size of the proposed structure probably will not be affected by development of a proposed structure, and accordingly no public view benefit would be provided by prohibiting construction on such ridges or promontories.

4. The area of a proposed new structure that is above sixteen feet in height or an addition to an existing structure that is above sixteen feet in height, as defined in Section 17.02.040(B) of this Chapter, when considered exclusive of existing foliage, does not significantly impair a view from the viewing area of another parcel. If the viewing area is located in a structure, the viewing area shall be located in a portion of a structure which was constructed without a height variation permit or variance, or which would not have required a height variation or variance when originally constructed had this section, as approved by the voters on November 7, 1989, been in effect at the time the structure was constructed, unless the viewing area located in the portion of the existing structure which required a height variation permit or variance constitutes the primary living area (living room, family room, dining room or kitchen) of the residence;

(a) "Significant view impairment" will be determined by the Director or Planning Commission based on (a) the severity (extent, magnitude, etc.) of impairment of an existing view, and/or (b) the impairment of features of significance, including but not limited to Catalina Island and other offshore islands, Point Fermin or

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other notable coastal promontories, or the Vincent Thomas bridge or other prominent manmade landmarks, etc.

(b) The "viewing area" may only be located on a second (or higher) story of a structure if:

i. The construction of that portion of the structure did not require approval of a Height Variation Permit or Variance, pursuant to Chapter 17.02.040 of the Rancho Palos Verdes Municipal Code, or would not have required such a permit if that Section had been in effect at the time that portion of the structure was constructed; or

ii. The viewing area is located in a part of the structure that constitutes the primary living area of the house, which is the living room, family room, dining room or kitchen.

(c) If a master bedroom exists on the same level as the primary living area of the house, and if no views are enjoyed from the other primary living areas, views from the master bedroom will be considered.

(d) Views will be analyzed without respect to foliage existing on properties within 1000 feet of the property from which the view is taken. The impact of a proposed structure if the foliage did not exist will be estimated as best as can be determined. However, if the foliage blocking the view is located on the property from which the view is taken, such foliage must be removed prior to the view analysis or that foliage will be considered as remaining in the view.

5. If view impairment exists from the viewing area of another parcel but it is determined not to be significant, as described in Finding No. iv, the proposed new structure that is above sixteen feet in height or addition to an existing structure that is above sixteen feet in height is designed and situated in such a manner as to reasonably minimize the impairment of a view;

(a) An applicant proposing to construct a new structure that exceeds 16-feet in height or an addition to existing structure that exceeds 16-feet in height is encouraged to design the structure so that it minimizes a view impairment from the viewing area of another parcel even when a view may not be significantly impaired.

(b) View impairment may be minimized by redesigning a structure to relocate or reduce the size of the portion of the addition over 16 feet in height to lessen the view impact.

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(c) Redesign to minimize view impairment may include relocation or reorientation of the addition, deletion of a balcony, revised roof pitch, or other measures which generally maintain the scope of the addition.

(d) Minimizing a view impairment does not apply to proposed construction or proposed additions to existing structures 16-feet or less in height, even when attached to and a portion of the overall addition which includes construction which exceeds 16 feet in height. Notwithstanding, residents are encouraged, but not required, to take their neighbor's view into account when designing a project below 16-feet in height.

6. There is no significant cumulative view impairment caused by granting the application. Cumulative view impairment shall be determined by: (a) considering the amount of view impairment that would be caused by the proposed new structure that is above sixteen feet in height or addition to a structure that is above sixteen feet in height; and (b) considering the amount of view impairment that would be caused by the construction on other parcels of similar new structures or additions that exceed sixteen feet in height;

(a) Significant cumulative view impairment will be considered when the individual structure may not significantly impair views, but when the effect of the structure could, in combination with other similar structures, create significant view impairment.

(b) The Director or Planning Commission will determine which other nearby parcels within the viewshed from a particular property or public place may be developed, consistent with this Section; which would further impair a view. The evaluation will usually not extend beyond three or four parcels adjacent to the subject property.

(c) The criteria for determining the significance of the cumulative view impairment is the same as for significance for the individual structure, as outlined below in paragraph 6.

7. "The proposed structure complies with all other Code requirements."

Any proposed structure will be evaluated to assure compliance with zoning, General Plan, and Specific Plan requirements, including but not limited to setbacks and open space restrictions, as well as any specific conditions associated with the pertinent tract approval. If other discretionary permits are required for the second story addition, approval of the Height Variation Permit shall be contingent on the approval of those other discretionary permit.

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8. "The proposed structure is compatible with the immediate neighborhood character."

"Neighborhood character" is defined to consider the existing characteristics of an area, including:

- (a) Scale of surrounding residences, including total square footage and lot coverage of the residence and all ancillary structures.
- (b) Architectural styles, including facade treatments, structure height, open space between structures, roof design, the apparent bulk or mass of the structure, number of stories, and building materials.
- (c) Front, side and rear yard setbacks.

The Director's or Planning Commission's determination of compatibility with neighborhood character will be based on a review of the above criteria relative to the immediate neighborhood which is normally considered to be at least the twenty (20) closest residences within the same zoning district, and on property owner response to the required notification. Increases in scale, height, bulk or mass or decreases in setbacks or open space may be considered incompatible.

9. "The proposed new structure that is above sixteen feet in height or addition to an existing structure that is above sixteen feet does not result in an unreasonable infringement of the privacy of the occupants of abutting residences."

"Privacy is defined as the reasonable protection from intrusive visual observation."

- (a) The burden of proving an "unreasonable infringement of indoor and/or outdoor privacy" shall be on the property owner claiming infringement of privacy. The Director or Planning Commission will make a determination on a case by case basis.
- (b) Given the variety and number of options which are available to preserve indoor privacy, greater weight generally will be given to protecting outdoor privacy than to protecting indoor privacy.

Redesign to minimize invasion of privacy may include using translucent material in (upper floor) windows, eliminating windows, reducing and/or relocating balconies, or eliminating balconies.

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X. HEIGHT VARIATION PERMIT PROCEDURES

A. Height Variation Permit Application

The attached "Height Variation Permit Application" must be submitted to the City's Department of Planning, Building, and Code Enforcement to initiate a request for a Height Variation Permit.

B. Height Variation Permit Process

The following sequence of steps shall occur in order to process a Height Variation Permit application:

1. The applicant consults with property owners within 500 feet of the proposed project.
2. The applicant completes and submits an application form to the City's Department of Planning, Building, and Code Enforcement along with the appropriate fees. The application must be accompanied by proof of early neighbor consultation (including letter from subject Homeowners Association, if any) and the waiver form for the temporary frame.
3. The applicant erects the temporary frame and notifies Staff that the frame is in place.
4. Staff reviews the application to assure that it is complete, and inspects the site to assure that the temporary frame is in place and adequately constructed. A letter will be sent to the applicant not later than 30 calendar days after submittal indicating that the application is complete for review or what additional information or corrections are required to make the application complete for review.
5. The Director shall refer an application for a Height Variation Permit directly to the Planning Commission for consideration under the same findings, as part of a public hearing, if any of the following is proposed:
 - a. Any portion of a structure which exceeds sixteen (16) feet in height extends closer than twenty-five (25) feet from the front or street-side property line; or
 - b. The area of the structure which exceeds sixteen (16) feet in height (the second story footprint) exceeds seventy-five percent (75%) of the existing first story footprint area (residence and attached garage);

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c. Sixty percent (60%) or more of an existing garage footprint is covered by a structure which exceeds sixteen (16) feet in height (a second story); or

d. The portion of a structure that exceeds sixteen feet in height is being developed as part of a new single-family residence; or

e. Based on an initial site visit, the Director determines that any portion of a structure which is proposed to exceed sixteen (16) feet in height may significantly impair a view as defined in this chapter.”

6. Staff mails notice to all property owners within a five hundred foot radius and to the affected homeowners' association, if any, and informs them that any objections to the proposed construction must be submitted to the City within 30 days after the date of the notice.

7. Staff will conduct view analyses to determine whether the nine review criteria are being met from properties whose owners have expressed concern regarding the proposed construction and any additional properties that Staff feels may be impacted by the proposed project.

8. Based on the view analyses, review of the plans, review of the surrounding area, and the decision criteria outlined in the Municipal Code, a decision will be rendered approving the application, approving the application with conditions, or denying the application. Letters of interest that have been received will be taken into consideration when evaluating the project based on the criteria mentioned previously. Either the Director or the Planning Commission will render the initial decision pursuant to section VIII(A) of these Guidelines (Administrative or Planning Commission Review).

9. The Director's or Planning Commission's decision will be mailed to the applicant and any person who responded to the original notice. However, only written correspondence or testimony before the Planning Commission will be considered as a response entitling a person to appeal the Director's or Planning Commission's decision.

10. The Director's decision may be appealed to the Planning Commission by the applicant or by any person who provided written correspondence to the Director prior to the Director's decision. The decision of the Planning Commission may be appealed to the City Council by any person who commented orally or in writing to the Planning Commission. The appeals must be filed in writing (stating the reason(s) for the appeal) within 15 calendar days of the date of the decision notice, accompanied by the appropriate appeal fee.

11. The Planning Commission or City Council will conduct a public hearing to consider the Height Variation Permit appeal. Notice of the public hearing will

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be mailed at least 30 days in advance of the hearing. Notice will be provided to all persons within 500 feet of the structure in question as well as any additional property owners previously determined by the City to be affected by the proposal.

12. The Director's decision shall be final if no appeal is filed to the Planning Commission. The Planning Commission's decision shall be final if no appeal is filed to the City Council. The decision of the City Council is final.

XI. REMOVAL OF FOLIAGE AS CONDITION OF PERMIT ISSUANCE

Section 17.02.040(B)(4) of the Municipal Code requires that:

"The City shall issue no Conditional Use Permit, Variance, Height Variation Permit, Building Permit or other entitlement to construct a structure, or to add livable area to a structure on a parcel utilized for residential purposes, unless the owner removes that part of the foliage on said lot exceeding sixteen (16) feet in height, or the ridge line of the primary structure, whichever is lower, that significantly impairs a view from the viewing area of another parcel. The owner of the property is responsible for maintaining the foliage so that the views remain unimpaired. This requirement shall not apply where removal of the foliage would constitute an unreasonable invasion of privacy of the occupants of the property on which the foliage exists and there is no method by which the property owner can create such privacy through some other means allowed within the Development Code that does not significantly impair a view from a viewing area of another property. The initial decision on the amount of foliage removal required or the reasonable degree of privacy to be maintained shall be made by the Director, the Planning Commission or the City Council, as appropriate for the entitlement in question. If the permit issuance involves property located within the Miraleste Recreation & Park District, the findings of Section 17.02.040(C)(2)(c)(vi) shall apply. A decision by the Director may be appealed, with the appropriate fee, to the Planning Commission, and any decision of the Planning Commission may be appealed to the City Council."

Foliage analysis will be conducted for any project which either adds 120 square feet or more of habitable space or involves a structure which can be used as a gathering space and viewing area, such as decks or covered patios (also, 120 square feet or more). Excluded are projects which are clearly not habitable or which are just minor architectural features (antennas, skylights, solar panels, tool sheds, garden windows, etc.). Each such planning permit will include a condition, based upon a site inspection, requiring that specified foliage be pruned or removed prior to issuance of a Building Permit.

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Indoor privacy can be achieved in many unobtrusive ways such that obstructive foliage should generally not be preserved to protect indoor privacy. The burden of proof of "unreasonable" intrusion of privacy shall be on the foliage owner.

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