

**ATTACHMENT C**  
**APPEAL APPLICATION OF BOARD OF ZONING APPEALS' DECISION**  
**RECEIVED SEPTEMBER 18, 2017**

# APPEAL APPLICATION

CITY CLERK  
17 SEP 18 01:51PM

GENERAL INFORMATION: (Please print)

Date: 9/18/17

Appellant: Kenneth + Tracy McCormick

Mailing Address: 790 Fairfield Circle

City: Pasadena State: Ca. Zip: 91106

Phone #: (day) 626-233-5288 (evening) Same Fax #: ---

Contact Person: Ken McCormick Phone #: 626-233-5288

E-mail Address of Contact Person: ksmcc@pacbell.net

Applicant (if different from appellant): \_\_\_\_\_

## APPEAL APPLICATION

Application # PLN2017-0012 Date of Decision 9/12/17 Appeal Deadline 9/18/17

Property Address: 800 Fairfield Circle

I hereby appeal the decision of the: Board of Zoning Appeals

The decision maker failed to comply with the provisions of the zoning ordinance in the following manner:

Please see attached

If necessary, please attach additional sheets

K McCormick

Applicant's Signature

9/18/17

Date of Application

Activity # _____	Appeal Hearing Date _____
Application Fee: \$ _____	Received by: _____
Date Received: _____	

**ATTACHMENT TO APPEAL OF BOARD OF ZONING APPEALS DECISION  
MODIFICATION TO HILLSIDE DEVELOPMENT PERMIT #6303  
800 FAIRFIELD CIRCLE**

The following errors or omissions by City staff, the Hearing Officer and/or the Board of Zoning Appeals (BZA) are the reasons for this Appeal:

1. CEQA Determination is Incorrect. The staff, and/or the Hearing Officer, and/or the BZA erred in determining that the proposed project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA), and also erred in failing to require an Initial Study under CEQA.

California Code of Regulations, Title 14, Section 15300.2, subdivision (c) provides that a "categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." The California Supreme Court ruled in *Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal 4th 1086 (2015), that an agency must determine whether there are "unusual circumstances" based on a substantial evidence standard of review, and then determine whether there is a reasonable probability that those circumstances will cause a significant environmental impact. As to the proposed Project, there is substantial evidence that the proposed Project involves "unusual circumstances", and, therefore, there is a reasonable probability that these circumstances will cause, or have caused, a significant environmental impact requiring environmental review.

The unusual circumstances, including location, justifying an exception to the asserted categorical exemption include, but are not limited to, the following:

(a) Land Use and Planning. The proposed Project is located in the Hillside Overlay District, and involves special circumstances and impacts that do not apply to residential locations in non-hillside areas of Pasadena, and which have not been adequately considered and studied. The proposed Project is not consistent with, and conflicts with, Pasadena's General Plan and Pasadena's Zoning Code, including, but not limited to, the Hillside Overlay Ordinance. The proposed Project is not consistent with or compatible with, and conflicts with, Pasadena's applicable land use policies, including, but not limited to, development patterns in Pasadena's hillside single family neighborhoods and as codified in Pasadena's Hillside Overlay Ordinance. The entitlement process applied to the proposed Project is not consistent with and conflicts with Pasadena's applicable procedural policies and rules for required entitlements, approvals and permits.



(b) Geology and Soils. The proposed Project, as opposed to the first project approved by the original Hearing Officer, includes extensive additional basement excavation, native soils displacement, unusual construction techniques including the reputed need for the installation of a large structural slab, and, additional unusual and atypical engineering techniques, considerations and impacts, none of which have been adequately considered and studied. The original Geotechnical report has not been further reviewed or updated to take into consideration the additional significant excavation and basement construction now included in the proposed Project, and to analyze potential substantial adverse effects. The proposed Project is located in a known earthquake fault area.

(c) Hydrology and Water Quality. As stated in (b) above, the proposed Project includes extensive excavation and additional basement construction. The original Hydrology report has not been further reviewed or updated to take into consideration the additional significant native soils excavation and basement construction now included in the proposed Project, and to analyze potential substantial adverse effects.

(d) Transportation/Traffic; and Public Services. The proposed Project is located on a narrow, circular hillside street with limited on-street parking and reduced emergency vehicle access. All additional gross floor area project square footage over and above the maximum allowed by applicable Zoning will add to traffic and parking and will be detrimental to health and safety, all leading to potential substantial adverse effects which have not been adequately considered and studied; and

2. The staff and/or the BZA erred in determining that any of the recommended Findings 1 through 13 inclusive can be made,; and

3. The staff and/or the BZA made errors and omissions in interpreting and applying all applicable provisions of the City's Zoning and other Codes and City procedures to the proposed Project, including, but not limited to, the applicable Hillside Overlay District Ordinance and other relevant City Codes. These errors and omissions include, but are not limited to, improperly interpreting and applying the applicable purposes of the Hillside Ordinance, and, fully, adequately and correctly considering all special or unusual circumstances applicable to the subject property, including, but not limited to, applicable basement construction and grading policies and rules, and, executing and applying correctly and adequately all proper City, City department, and Zoning administrative procedures and approvals to the subject case; and

4. The decision of the BZA is invalid in that the record includes numerous and significant errors, omissions, inaccuracies, contradictions and inconsistencies in the description and analyses of the proposed Project, and, in applying and executing proper administrative procedures to the proposed Project; and

FINAL 3(3)

5. The BZA's decision ignored and failed to consider significant, substantial and relevant evidence submitted concerning the proposed Project; and,
6. The BZA's decision is not supported by substantial evidence; and
7. The BZA's decision is arbitrary and capricious and is in error, and, constitutes a breach of both administrative discretion and quasi-judicial procedure and process.