

**ATTACHMENT F
CORRESPONDENCE RECEIVED FOR THE SEPTEMBER 6, 2017
BOARD OF ZONING APPEALS MEETING**

John P. ("Pat") and Connie Reddy
800 Fairfield Circle
Pasadena, CA 91106

September 6, 2017

Board of Zoning Appeals
Current Planning Section, City of Pasadena
175 North Garfield Avenue
Pasadena, CA 91109

Re: Modification of Hillside Development Permit #6303

Dear Commissioners,

I have just read the letter submitted by former mayor Bill Bogaard dated September 5, 2017. It is a disturbing example of the influence and relationships that our neighbors, the McCormick's, have cultivated over the past forty years and are now taking advantage of. As much as we respect the former Mayor, the McCormick's have done him a disservice by providing him with false and misleading information that he relies on in his letter. Specifically:

1. "This application for modification and variance would not exist if the developer had not clearly violated the express provisions of the Permit and had not thereafter failed totally to comply with the express requirements of a covenant imposed by staff."

We did not violate our Permit conditions. As explained in my September 1, 2017 letter, we got City approval to pour a full foundation subsequent to the start of construction. We did not intend to build a full basement without obtaining further approvals. That would not have been possible as we could not obtain a Certificate of Occupancy at close of construction if we had unpermitted basement space. That makes absolutely no sense. Staff did not "impose" the covenant...it was our idea as a demonstration of good faith.

2. "Soon, within an estimated 60-75 days, and without any consultation with City staff, the contractor performed excavation to the extent of about 3000 square feet, ten times the amount permitted."

As explained in my letter of September 1, 2017, the foundation change was the direct result of ongoing soil testing. "As we began construction and started to excavate the basement level, Irvine Geotechnical performed ongoing tests for soil compaction. As the basement level samples were analyzed, IG determined that we needed to excavate deeper than initially planned and that a solid concrete foundation with shear walls under the entirety of the main floor made more sense (just as the original house had). Our architect went back to the City's Building and Safety department and after thorough review and evaluation by B&S staff, he got this change approved." Specifically, a member of Sarkis Nazarian's staff signed off on the change. We later learned that Building & Safety had not reviewed the change with the Planning

staff. This intra-agency snafu is what caused the work stoppage when Mr. McCormick contacted the Planning division. As explained in my letter, we worked all of this out with Planning and offered a covenant to make clear that we had no intention of building unpermitted space.

3. "The field engineer's report of one page submitted by the developer in an attempt to justify the excavation is ambiguous in its findings and is dated September 28, 2016, four months after the improper excavation took place."

The September 28, 2016 report was not for the basement but was for footings for the front of the house which were poured much later. Two soils reports for the basement were issued in April 2016 and we will have copies available this evening.

4. "Since then, the developer has made no move or effort to comply with the requirement under the covenant to restore the soil improperly excavated."

The house is still under construction with an expected completion date of January 2018. Depending on the outcome of this Variance proceeding, all unpermitted basement space will be backfilled to comply with the covenant before completion. Nothing sinister here.

5. "The granting of the modification and variance requested would involve the City's rewarding the developer for its improper action and inaction. It is respectfully urged that Pasadena not reward the perpetrators of zoning violations..."

Mr. McCormick has advanced a "conspiracy theory" that we set out to build an unpermitted basement from the outset and as explained in my September 1 letter, he has shared his theory with City officials including the former Mayor. This despite Mr. McCormick's admission that, "A subcontractor mentioned to us his understanding that an 'unauthorized second set of plans' had been used on the project but *we were never able to verify the story or get any information.*" It is shocking to us that the McCormick's would make these unsupported allegations and enlist the help of their friend, the revered former Mayor, to help with their smear campaign.

The proof of the falsity of the McCormick's claim is that the Planning staff has worked with us to allow construction to resume after sorting out their internal communications. Furthermore, they have helped us to evaluate a path forward to request approval of additional basement space. They have twice issued Staff reports that strongly support approval of our variance.

We hope that our Variance request will be decided on the merits and not on innuendo and false accusations by a neighbor with four decades of connections.

Sincerely,

John P. Reddy

*Connie Reddy
800 Fairfield Circle
Pasadena, CA 91106*

September 5, 2017

Board of Zoning Appeals
Current Planning Section, City of Pasadena
175 North Garfield Avenue
Pasadena, CA 91109

Re: Modification of Hillside Development Permit #6303

Dear Commissioners:

We are the homeowners applying for a Variance at 800 Fairfield Circle. We currently live in Houston, a city whose inhabitants, including many of our friends, are facing real problems. A natural disaster certainly does put things in perspective.

Anyone who takes the time to drive by our house will see that it looks perfectly in scale with the neighborhood, is nestled among many trees that we have worked hard to preserve, and offends no one. It is not an example of any sort of mansionization as some contend.

From the beginning, we also have been good citizens, kept our neighbors in the loop, promised to power wash their homes (made dirty by our construction), etc. We have been mindful of taking care of the trees, even moving our construction slightly forward, to preserve a huge old deodar cedar, positioned right next to the original house.

We are not the conniving rubes from Texas, exhibiting hubris, as some have described us. We are thoughtful, civic-minded people who actually appreciate and are sympathetic to the instincts of preservationists. The appearance of our traditional Cape Cod style home reflects this as well.

We also now have compromised our original request and are asking for a few hundred square feet to build a family room in our basement for our grandchildren to play in. This is not an unreasonable request, especially given that many houses on our side of the street have at least 3 stories facing Canon and 2 stories facing Fairfield. One house even has 4 stories facing Canon. These are indisputable facts, as shown in our aerial photos, taken because the previous hearing officer told us our pictures were "unclear".

We looked forward to returning to the area where we raised our 4 children 20 years ago. We loved the natural beauty and diverse culture of this historic, civic-minded city. Above everything else, I am saddened and disappointed to realize that we are moving into a neighborhood that has been polarized unnecessarily. A few preservationists (several who don't even live in our neighborhood) have created a boogeyman out of our house, and used it as a cause. This creates such divisiveness in neighborhoods.

I went door to door with my architect, explaining our project and got 15 signatures of approval. We had a cocktail party one afternoon and invited many neighbors to visit our construction, showing them our project. At our first hearing, we had 3 neighbors speak on our behalf and another 10 arrived in person, to show support. When my husband tried to acknowledge their presence and thank them for coming, the hearing officer cut him off. We did not want to subject our neighbors to this rudeness a second time, so we did not ask for their participation at this hearing. But, they have submitted a petition and letters of support, so please know that they still support us. I want the City to be reasonable. Neighbors are intended to be a source of support and foster a sense of

community, welcoming new people into their neighborhoods. These are the hallmarks of a solid citizenry.

Occasionally neighbors have reasonable requests. A 422-square foot family room for grandchildren's play is a reasonable request. Many of our neighbors on our street already have this. It hurts no one.

Every once in a while, it IS appropriate to grant a Variance request.

Connie Reddy

Connie B. Reddy

**John P. ("Pat") and Connie Reddy
800 Fairfield Circle
Pasadena, CA 91106**

September 1, 2017

Board of Zoning Appeals
Current Planning Section, City of Pasadena
175 North Garfield Avenue
Pasadena, CA 91109

Re: Modification of Hillside Development Permit #6303

Dear Commissioners,

Connie and I want to give you a little background information on us and the reasons for our variance request in advance of our appeal hearing on September 6th.

We raised our four children in San Marino and then moved to Texas for career reasons. While in Texas, we maintained our ties to Pasadena. I recently retired and we are building a new home in Pasadena to be near our adult children and grandchildren. We bought a teardown property on Fairfield Circle in June of 2014 and hired an architect (Jim Coane) to design our new home.

We applied to the City for approval of our plans in September of 2014. This is a lengthy process compounded by workload and staffing levels at the City. It took nine months for our plans to be approved at our hearing on June 17, 2015 and another eight months for the building permit to be issued in February 2016. We began construction with our builder (Tom Courtney) in April of last year.

Our lot falls under the Hillside Development Review (HDR) process which places limits on overall square footage and we developed our plans to conform. Our approved plans thus included a partial finished basement with post and pier supports for the unfinished portion below the main floor. Our soils engineer, Irvine Geotechnical, performed soil sampling during the permit process. While he determined that portions of our lot contained fill, his conclusion was that we should be able to complete construction as planned.

As we began construction and started to excavate the basement level, Irvine Geotechnical performed ongoing tests for soil compaction. As the basement level samples were analyzed, IG determined that we needed to excavate deeper than initially planned and that a solid concrete foundation with shear walls under the entirety of the main floor made more sense (just as the original house had). Our architect went back to the City's Building and Safety department and

after thorough review and evaluation by B&S staff, he got this change approved. This was a very expensive change for us as the cost of excavation and the basement foundation and footings totaled \$242,000. In addition, we have spent \$13,000 with our soils engineer including additional work that had to be done for ancillary structures like our garage (steel beams under foundation), cabaña and pool (greater depth of excavation) due to our soil compaction.

This development was a serious surprise and created a significant hardship for us. With the added cost for the slab, the original design of the house was no longer economic or sensible for the lot. This development surfaced *after* construction began and had we known at the outset of the additional cost, we might have pursued other options, including selling the lot. We certainly would not have undertaken the additional expense and taken the risk of getting a variance approved subsequent to the start of construction.

After the foundation slab was poured, the next step was to begin framing the basement level in June 2016. This task would only take a few weeks and we knew that we would need time to decide whether to seek approval from the City for additional finished basement space and if so, what avenues might be available. We have never built a house before, much less from a remote distance. Given the length of time it took to get our plans approved and to pull our construction permit, we knew it would take months to get to an answer.

In order to preserve future options for the basement, our contractor suggested framing some windows and doors that could be filled in if we were unable to get needed approvals. Shortly thereafter, and without first talking with us for an explanation, Mr. McCormick contacted the Planning department to accuse us of building an illicit basement. Because of this allegation, construction activity was stopped by the City to allow time to sort things out.

This was an unfortunate and unnecessary development. Our original permit restricted the amount of basement space to 280 sf. Our city inspector would not have signed off on unauthorized space and we would not be able to receive our Certificate of Occupancy at completion. As an indication of good faith, we suggested executing a covenant that would preclude us from completing the basement without future sign-off from the City – the same commitment as in our permit. This was our suggestion, not the City's.

Once construction resumed, we initiated discussions with Planning to explore our options. Over a two-month period, Staff researched alternatives including possibly making use of the proposed revisions to the HDR Zoning Code (Staff Report of April 26, 2017 – Phase 3) which have since been adopted. In the end, they concluded that filing for a variance was the only viable approach.

As you can see, the basement level looks exactly as approved from the exterior – no additional doors or windows. The project still meets all the development standards under the Hillside Ordinance, including Neighborhood Compatibility.



We thus are requesting the approval of only a variance to permit the buildout of an additional 483 s.f. of finished basement space (61 s.f. for a laundry room and 422 s.f. for a media room). We have reduced our request from our original filing to reflect comments from the Hearing Officer and community representatives at our May 17th hearing. Specifically:

Original Permit	Approved Square Footage	Included	Original Variance Filing	Included	Change from Permit	Revised Request	Change from Permit	Includes
1st & 2nd Floors	4,492 sf		4,492 sf		-	4,492 sf	-	
Basement	280 sf	Hallway to rear door, powder bath, wine cellar	2,091 sf (corrected)	Permitted space plus bedroom and bath, storage, laundry, gym and sauna	1,811 sf	763 sf	483 sf	Permitted space plus laundry and media room
Garage	620 sf		620 sf		-	620 sf	-	
Cabana Bath	57 sf		57 sf		-	57 sf	-	
Total sf	5,449 sf		7,260¹ sf		1,811 sf	5,932 sf	483 sf	

¹ Corrected number. Original application cover sheet transposed the requested basement square footage from 2,091 sf to 2,901 sf as correctly shown later in the application.

At the original variance hearing before Hearing Officer Novak on May 17th, comments in opposition included:

- HO Novak said he had never agreed to a basement square footage increase of more than 500 sf.² He also observed that adding another bedroom/bath has the potential to add to neighborhood traffic and parking in the future.
 - Our revised request eliminates the additional bedroom/bath and brings our requested increase in square footage below 500 s.f. Also, most of the homes on our side of Fairfield Circle have semi-circular driveways in the front and long driveways at the side leading to down slope garages, allowing for ample off-street parking.
- Nina Chomsky representing the Linda Vista – Annandale Association said she had never agreed to a basement increase in excess of 600 sf. Her Association represents a 2.5 square mile area above Colorado Blvd. It wasn't clear to us why her Association was given the same – or greater weight – than the 15 neighbors on our street who signed the Petition in support of our application. In any event, our revised request should satisfy her objection.
- Ken and Tracy McCormick, our neighbors at 790 Fairfield Circle, objected to virtually all aspects of our request, including the FAR ratio saying it would be one of the highest in the area.³ Our reduced request addresses that concern. We asked the McCormick's if they could support our revised request and they declined. They have also mischaracterized how we got to this point and that will be addressed below.

How We Got Here

Mr. McCormick told the Hearing Officer that, "A subcontractor mentioned to us his understanding that an 'unauthorized second set of plans' had been used on the project but we were never able to verify the story or get any information."⁴ What contractor? Who did Mr. McCormick speak to? Not to us. Further in the same letter, Mr. McCormick said, "We did not feel comfortable sharing this story with any friends in the neighborhood." Mr. McCormick did, however, feel comfortable contacting the former Mayor, the current Mayor, our City Council person and the head of the Planning department to make these unsupported allegations in an effort to head off approval. Notwithstanding these mischaracterizations, the original Staff report was strong and unequivocal in its support for our variance request. Staff would not have worked with us on options or issued such a strong report if they were convinced that we are rulebreakers.

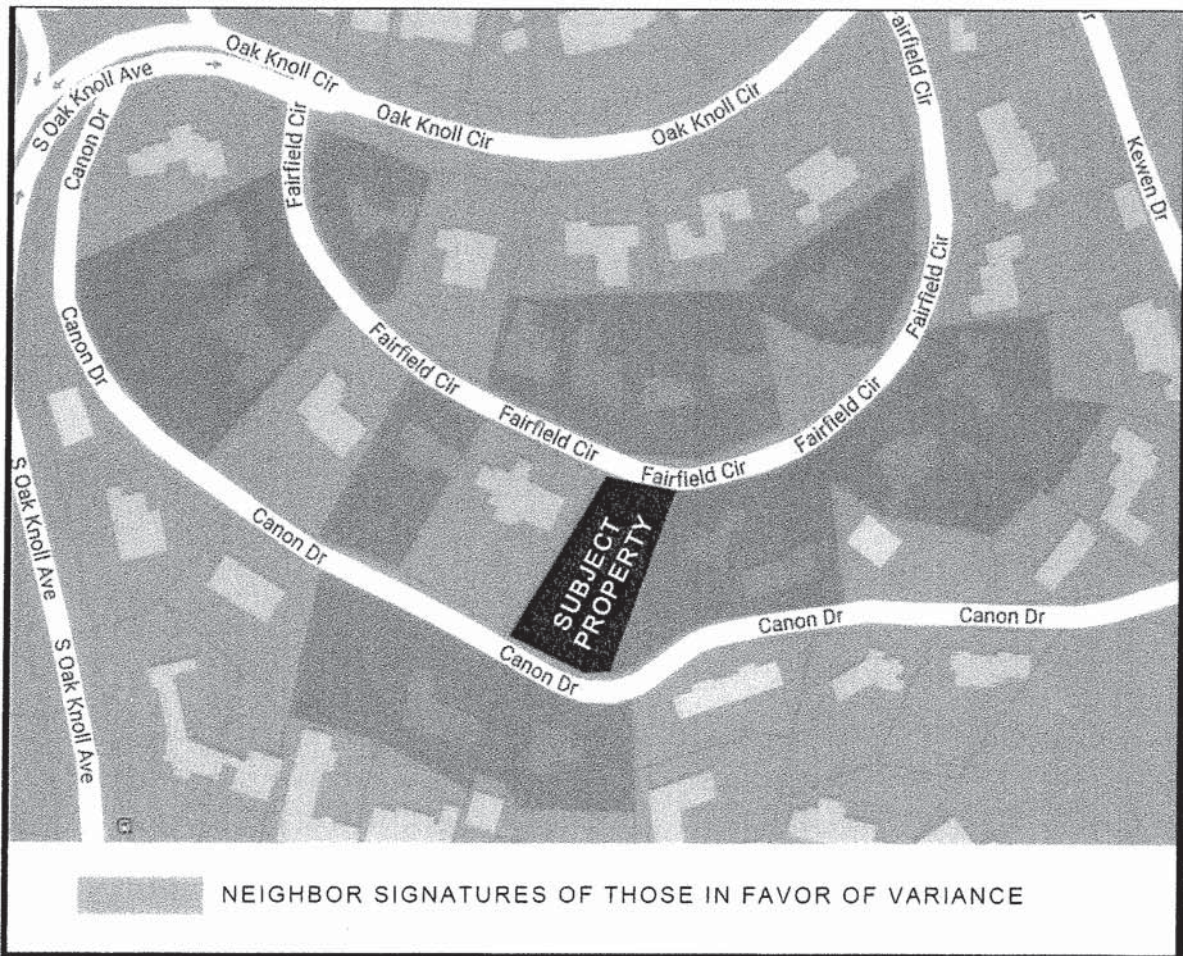
² In other proceedings with our architect, Jim Coane, HO Novak has approved more than 500 sf of basement space in excess of the Neighborhood Compatibility limitation. For example, earlier this year HO Novak agreed to an 800 sf increase for 1080 Glen Oaks Blvd. for the addition of two basement bathrooms and a media room.

³ McCormick letter of May 16, 2017 to Hearing Officer.

⁴ McCormick letter of May 16, 2017 to Hearing Officer, page 4.

Neighborhood Support

Mr. McCormick says that, "...we learned that the owners had hired a professional who was going door to door with an unclear petition asking for support to occupy their basement, without an explanation of what had transpired..."⁵ The paid professional is our architect, Jim Coane who accompanied my wife, Connie, to visit our neighbors and explain our request. Jim had "permitted" and "proposed" drawings to clearly illustrate our request. We also held an "open house" for our neighbors to show them the basement space and answer any questions. While we couldn't make contact with all of our neighbors on our limited visits to Pasadena, fifteen of our immediate neighbors signed our petition and five took time to accompany us to the May variance hearing to voice support.



Granting our variance request will not have any discernible effect on our neighbors. The height, envelope and footprint of the approved house is unchanged. Arguably, if any neighbor is

⁵ McCormick letter of May 16, 2017 to Hearing Officer, page 5.

impacted by our request, it would be the property at 832 Cañon Dr. at the base of our lot. But the property owner, Mrs. Congdon, has signed our petition and supports our request.

I understand the purpose of the HDR restrictions — in part to prevent Mansionization of hillside properties and to avoid changing the character of a neighborhood or restricting views. That is not the case with our home. Even with the requested modest addition to the basement, our home will be comparable to the surrounding properties on our side of the street. At the May 17th hearing, HO Novak asked Mr. McCormick if his home is one story in front and two stories in back and Mr. McCormick answered, “yes”. As you can see from these pictures, the McCormick’s home is two stories in front and three in back. Their home totals 7,708 square feet according to the tax rolls and has a “walkout” basement, a detached guest house and a concrete structure housing a former cistern. Under current rules, guest houses and outbuildings would be counted in square footage calculations.





790 Fairfield Circle
3 Levels in Back



790 Fairfield Circle
McCormick's Guest House



If our lot was not subject to the HDR square footage restrictions, we would be able to have 8,325 s.f. without a variance according to the Planning & Zoning Department.

Mansionization Concerns

I have also reviewed the recently adopted revisions to the HDR Zoning Code (Staff Report of April 26, 2017 – Phase 3) pertaining to Mansionization and our variance request is entirely consistent with those rules. Here is a picture that appeared in the *Pasadena Now* article announcing the Planning Commission public hearing to highlight ‘Mansionization’ concerns:



The envelope of our home is very consistent with surrounding homes on our side of Fairfield Circle and those fronting on Arden, unlike the situation above.

Specifically, regarding Staff's adopted revisions:

1. "The design, location, and size of proposed structures and/or additions or alterations to existing structures will be compatible with existing and anticipated future development on adjacent lots as described in Section 17.46.060(D) of this ordinance and in terms of aesthetics, character, scale and view protection." (Staff Report, Page 4) *Our application includes photos of homes on our side of Fairfield Circle which demonstrate that our request will result in a compatible structure.*
2. **Neighborhood Compatibility Standards.** "However, additional square footage beyond the 35 percent limit may be approved, on a case-by-case basis, following a review of site conditions and compliance with the remainder of the Hillside District standards." (Staff Report, Page 5)
3. Discussion: "Mansionization is commonly seen as a situation where a proposed house, addition, or remodel results in a structure that is out of scale, ill-proportioned, or out of character with its surrounding neighborhood." (Staff Report, Page 7) *As demonstrated in our application, our home is entirely consistent with the character of our surrounding neighborhood.*
4. "In cases where the standards significantly limit the size of a proposed project, the Hearing Officer may approve additional square footage beyond the 35 percent limit to allow for a reasonable use of private property." (Staff Report, Page 9) *As the Planning and Zoning Department Staff's report and recommendation affirms, to not approve our*

variance request would be to deny us the same economic benefit as that enjoyed by our immediate neighbors.

5. **Codify Existing Neighborhood Compatibility Standards.**“The combined guidelines/qualification thresholds are recommended to be:
 - a. Minimum lot size of 10,000 square feet;
 - b. No additional view impacts will occur to neighboring properties as a result of granting additional square footage; and
 - c. The massing, scale, and building articulation of the proposed dwelling or other structure is consistent in scale and proportion to the neighborhood.” (Staff Report, Page 10)
6. **Recommended Amendments: Limit Size and Location of Basements.** “Staff proposes to limit basements to the footprint of an existing or proposed main house...ties the maximum amount of basement space to the size of the above-ground house...staff recommends a maximum allowed depth of one level and an interior height of nine feet.” (Staff Report, Page 12)

Granting our limited variance will not affect neighbors’ views, will not present a ridgeline issue, will not affect the placement of exterior walls, the basement outline is the same as that of the upper floors, the basement area does not exceed that of the upper floors and basement height is less than nine feet.

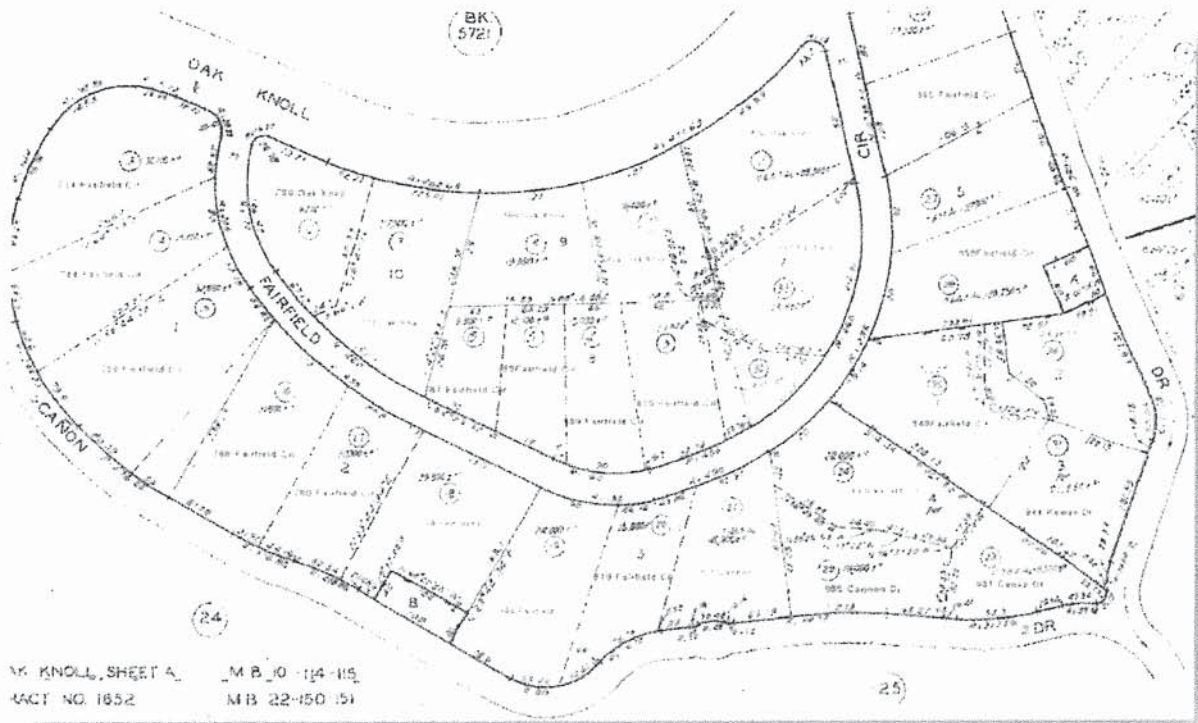
I hope that you will be able to visit our construction site as it would help you to see that nothing we are requesting will have an adverse effect on our neighbors.

Characteristics of Fairfield Circle

There was considerable confusion at the May 17th hearing about the composition of the homes on Fairfield Circle and a significant portion of our 15-minute presentation was taken up with trying to correct the record. Mr. McCormick represented that, “...only a few homes have three stories on Canon and two along Fairfield...”⁶ The Hearing Officer asked Mr. McCormick if his home was a single story in front and two in back and he responded “yes”. At the hearing, HO Novak said he drove through the neighborhood and in his August 15th Addendum, he says he visited the site in advance of the public hearing. Our full-time onsite construction manager says that no one from the City visited our site other than our assigned inspector. In any event, there was little consensus on the layout of homes on Fairfield Circle.

The 5 lots that front on the north side of Fairfield Circle are flat and subdivided with homes that front on Oak Knoll. 10 of the 12 lots on the south side (i.e., our side) of Fairfield Circle are large “through lots” that slope down to Canon as shown below.

⁶ McCormick letter of May 16, 2017 to Hearing Officer, page 7.



Lots are 85% larger on the south side of the street and homes are 60% larger.

Fairfield Circle Addresses

	North Side		South Side	
	Lot SqFt	Bldg SqFt	Lot SqFt	Bldg SqFt
787	9,348	1,828		
810			16,869	2,059
800			23,738	2,088
795	12,106	2,530		
830			23,662	2,609
809	14,789	2,744		
840			27,195	3,436
780			20,254	3,604
756			32,519	4,248
744			25,102	4,606
858			29,408	4,738
851	23,480	5,026		
815	17,042	5,480		
766			31,014	5,740
734			30,492	6,228
790			30,501	7,708
860			37,256	7,830
Median	14,789	2,744	27,255	4,427

Mr. McCormick provided the Hearing Officer with an attachment that set forth the FARs for 72 properties in the hillside district.⁷ According to his schedule, the average FAR is 14% and Mr. McCormick's FAR is 26%. If our reduced request is granted, our FAR would be 22%.

Significance of Granting Our Variance

The three objecting parties at our May 17th variance hearing emphasized the negative precedent that would be set if our request is approved. Their extreme position is that to grant any variance is to open the floodgates for similar requests. But the variance process is a rigorous one and is very fact specific. Latitude is provided if specific criteria can be met. To take the position that a variance can never be granted is to render the process meaningless. The facts and circumstances of our case are distinguishable from others and the Planning staff is highly knowledgeable and discerning in reviewing applications and can be relied on to uphold the integrity of the process. The Pandora's Box argument is a canard and a poor substitute for case-by-case justification.

Another area of discomfort for those who oppose variances outright is the notion that there can be room for an element of subjectivity and judgement. They are more comfortable with ratios and formulas. Start with a 500-foot radius, calculate floor area ratios, take the median, look at the standard deviation. Of course, that is the starting point and the overall governor on acceptable results. But there is also a role to be played by common sense and judgment. Look at the plat map. Look at the pictures. As the Planning and Zoning Department's report and recommendation affirms, to not approve our variance request would be to deny us the same economic benefit as that enjoyed by our immediate neighbors. Thank you.

Sincerely,

John P. Reddy

⁷ McCormick letter of May 16, 2017 to Hearing Officer, Attachment F.

Homes on the South Side of Fairfield Circle



Homes on the South Side of Fairfield Circle



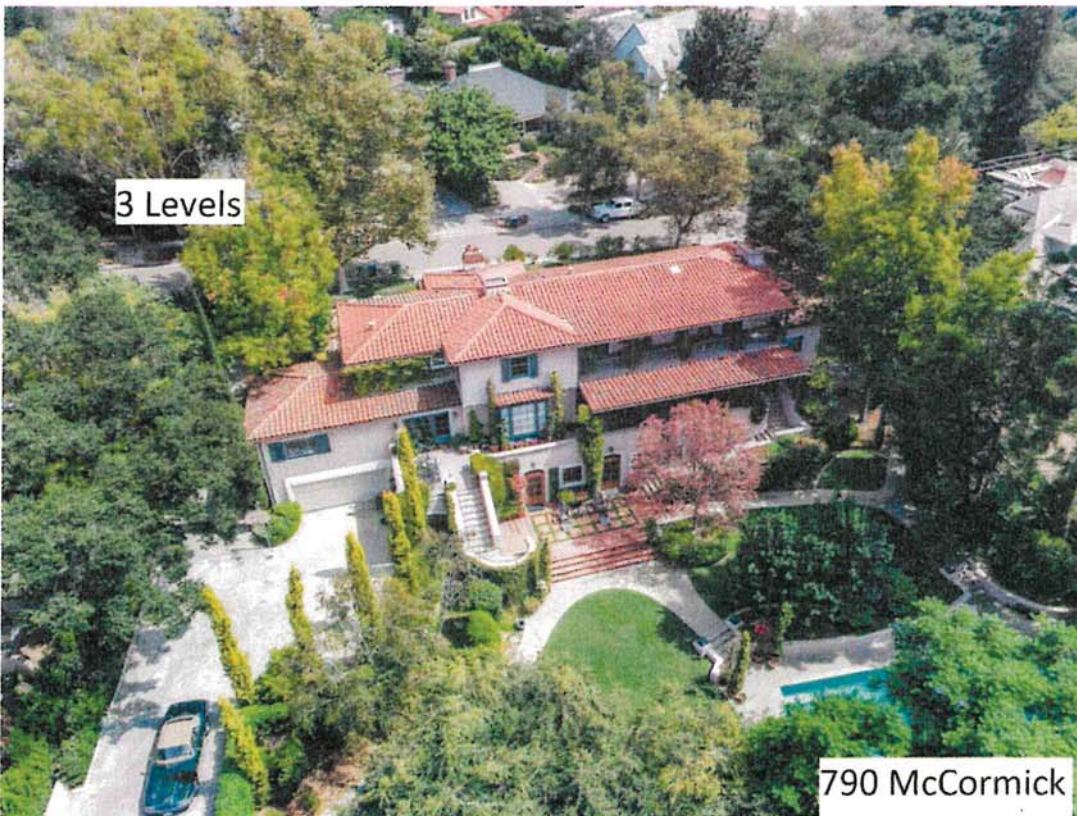
Homes on the South Side of Fairfield Circle



Homes on the South Side of Fairfield Circle



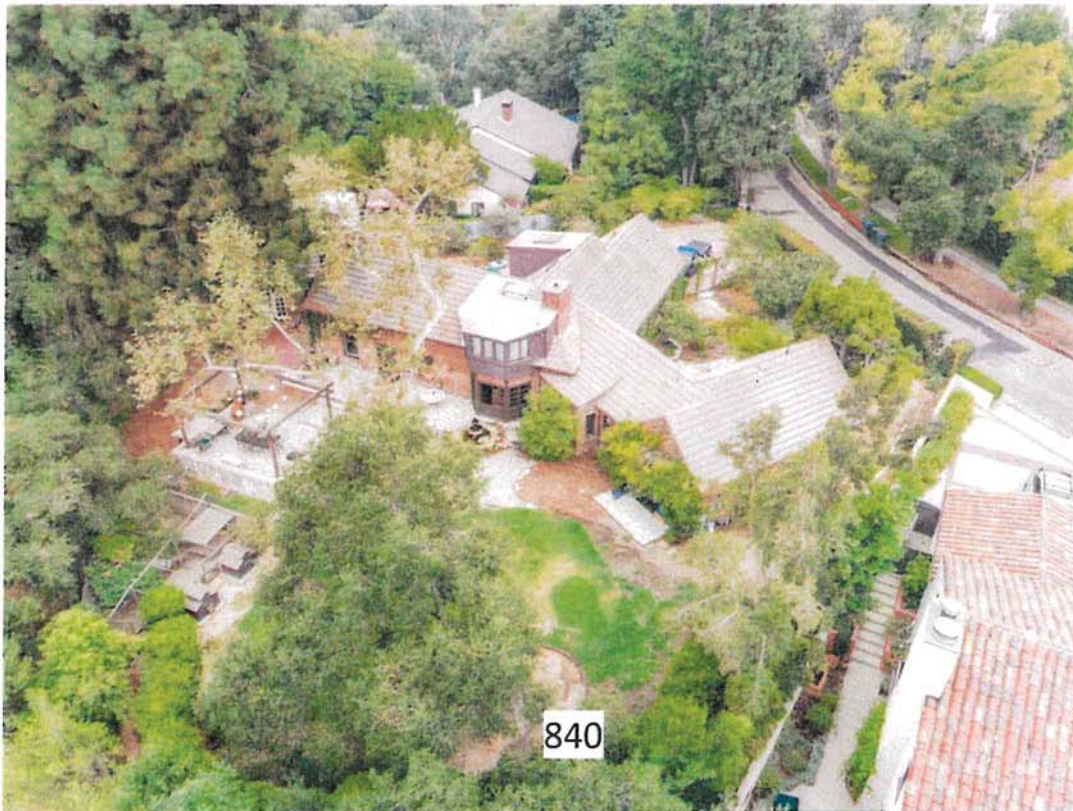
Homes on the South Side of Fairfield Circle



Homes on the South Side of Fairfield Circle



Homes on the South Side of Fairfield Circle



Homes on the South Side of Fairfield Circle



Homes on the South Side of Fairfield Circle



Kenneth McCormick
790 Fairfield Circle
Pasadena, California 91106

September 6, 2017

Mr. Michael Williamson, Chair, & Members of the
Pasadena Board of Zoning Appeals
c/o Mr. Luis Rocha
Senior Planning Officer
City of Pasadena
Planning & Community Development Department
175 North Garfield Avenue
Pasadena, California 91101

Dear Mr. Williamson & Board of Zoning Appeals Members:

I am writing to ask you to deny the variance being requested tonight for 800 Fairfield Circle. While the request has changed from the same matter heard by the Hearing Officer on May 17, 2017 in terms of proposed occupied square footage, all of my concerns remain, and the principles remain:

- You have not been given the full story behind the applicant's request or this staff recommendation, and the staff report makes unsubstantiated statements in its support of the applicant's position.
- You cannot make several of the findings. A brief summary of the lack of support for the findings is attached as Attachment E.

In a prior letter on this matter for the May 17, 2017 hearing, dated May 16, 2017, I laid out the background to the applicant's illegal construction activities. Only one additional piece of data was supplied by the applicant to refute this background, and in fact, the document supplied by the applicant supports rather than refutes the story of unpermitted construction.

After this appeal was launched, **I requested and reviewed all plans approved by the City of Pasadena and all emails and other correspondence on this matter between City officials, between City officials and the applicant, and between City officials and anyone else on this matter.**

Here are the facts from those reviews:

- 1) The applicant submitted a comprehensive permit application to build a 5,437 square foot home and a permit granted February 29, 2016.
- 2) Among the permit-required materials was a 22-page report from Irvine Geotechnical dated December 18, 2014 describing the "8 test pits to a maximum depth of 8 feet" – tests to examine the soil conditions of this site. Soils were tested and reported in a 10-page document from Soil Labworks. The conclusion of the report is that there was fill or loose

soil left from prior construction 3' deep in one of the test pits – Test Pit 6. The foundation was to be designed accordingly. The report also noted that “all grading, foundation and drainage excavations (to) be seen by a representative of the geotechnical engineer PRIOR to placing fill, forms, pipe concrete or steel.”

- 3) The approved plans also showed the 4'6" deep crawl space that was to remain unexcavated. In the normal course, if additional fill were encountered, a deeper footing would be dug out or a grade beam placed to span the fill area, depending on costs.
- 4) Within just two months of commencing construction in March, 2016, the applicant dug out an additional 4'6" of soil **across the entire foundation level. He then began pouring a basement slab.** Within another month he had framed out the entire downstairs foundation level creating an additional 2600 square feet of potentially inhabitable square footage.
- 5) When the City became aware of the overage in July, 2016, they red-tagged the construction site and ordered construction stopped.
- 6) In order to be allowed to commence construction again, the owner committed through a recorded covenant on August 31 to backfill the illegally excavated space to no more than 4'9".
- 7) On September 28, a representative of Irvine Geotechnical produced a report of a site visit on that date observing the foundations. It reads, "It is recommended to either place a grade beam or deepen (the footings) to native soil."

I need to stop there, as one who is involved in construction, to explain how impractical that suggestion was. By the time the report came, the foundations had been fully dug, and an entire basement slab had been poured.

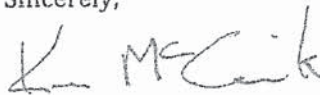
More importantly, in its most straightforward interpretation, the report simply says dig deeper footings or put in a grade beam – it makes no sense whatsoever that the applicant poured a basement floor, as he says he was directed to do by the geophysical engineer – a basement floor has no structural impact. And certainly the geophysical engineer did not say frame the new basement with doors and windows.

Also importantly, between mid-February and late July, there is not a single copy of any correspondence between the City and the applicant wherein the applicant asked for permission, filed an additional geophysical report alerting the City of the need for structural changes, or asked for permission to change his plans in any way. And the City granted no new plans.

- 8) The applicant proceeded to apply for a variance to occupy the entire square footage of the basement, claiming that he needed to build it that way based on recommendations from his geophysicist. The hearing on the variance was held in May and the variance was denied.
- 9) The applicant is now applying for a variance to occupy a smaller portion of the illegally constructed basement.

Thank you very much. We hope you deny this variance request.

Sincerely,



Ken McCormick

Attachments A, B, C & D

- Attachment A:** 22 page Irvine Geotechnical Inc. report December 18, 2014 prepared for the property confirming the testing through 8 bores and establishing the issue of "fill" and the need for sufficient footings
- Attachment B:** City-approved building plans of February 29, 2016 showing the maintenance of a 4'6" maximum crawl space
- Attachment C:** Photo of the subject property taken July 5, 2016 showing the illegally over-excavated foundation level to create a 9' basement with a poured slab and framed for doors and windows
- Attachment D:** Irvine Geotechnical Inc. report of field observations taken on September 28, 2016 recommending either a grade beam or deepening footing depths to native soil; received by the City May 17, 2017

IRVINE

GEOTECHNICAL Inc

GEOLOGIC AND SOILS ENGINEERING EXPLORATION
PROPOSED RESIDENCE, CABANA, GARAGE & POOL

APN 5325-020-019

PORTION OF LOT 3, TRACT 1652
800 FAIRFILED CIRCLE, CALIFORNIA

FOR CONNIE & PAT REDDY

IRVINE GEOTECHNICAL, INC. PROJECT NUMBER IC 14176-I

DECEMBER 18, 2014

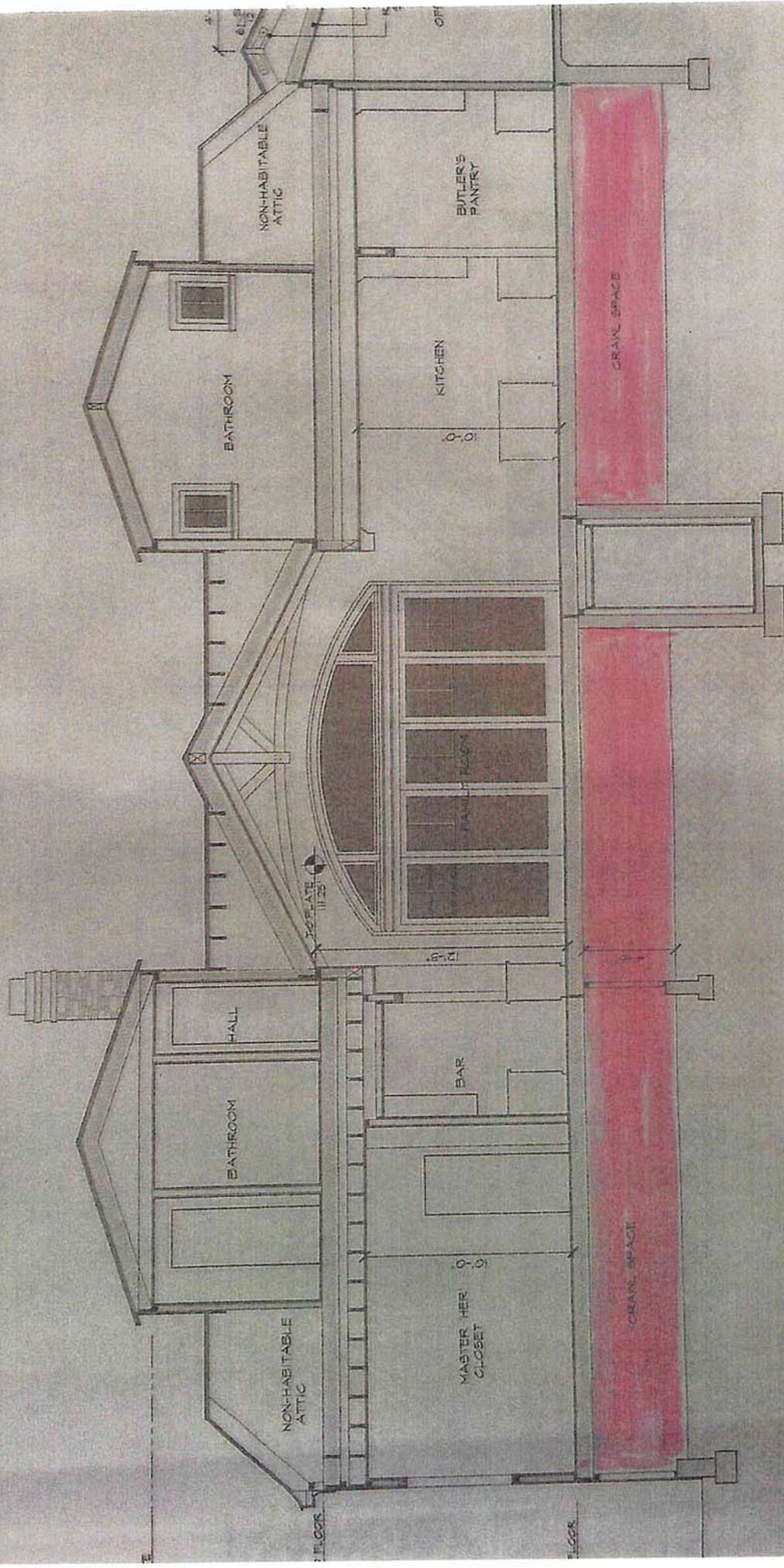
CITY SET

BLD 2017-00141, Bmn 2017-00186

CONTRACTOR

NEW DECORATIVE WOOD GATE AND FENCE

PROPOSED BUILDING SECTION



PROPOSED BUILDING SECTION



IRVINE GEOTECHNICAL

NOTICE OF FIELD OBSERVATION

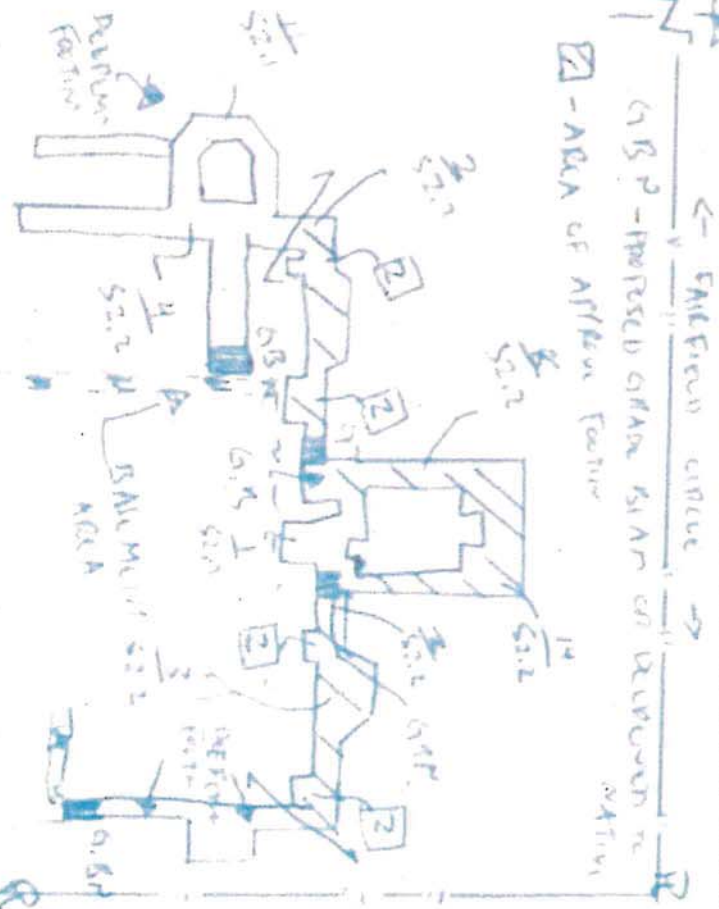
RECEIVED
MAY 17 2017

CLIENT: REDDY DATE: 9/28/16 TIME: 12:08 PM / 141710
 LOCATION: 800 FAIRFIELD CIRCLE
 REQUESTED BY: TOM COURTESY MET WITH: ISAAC
 SPECIAL CONDITIONS: (Title) (Title)

WE HAVE OBSERVED THE: (Weather, Job Shutdown, Advice Ignored, Safety)
1ST FLOOR FOOTINGS & PADS

APPROVED PER THE PLANS AS INDICATED CALL AGENCY INSPECTOR DISAPPROVED SEE BELOW

SKETCH OF FIELD CONDITIONS:



NOTES & CONDITIONS:

ARRIVED ON SITE AS REQUESTED FOR 1ST FLOOR FOOTING OBSERVATION. THERE IS A COUPLE OF ISSUES WITH FOOTINGS PORTION OF FOOTINGS THAT ARE PERPENDICULAR TO RAFTERS WALL ARE NOT COMPACTED. THE REST OF FOOTING IS IN NATIVE SOIL. IT IS RECOMMENDED TO EITHER PLACE A GRADE BEAM OR DEEMED TO NATIVE SOIL. THE FOOTINGS TO THE NORTH ARE ENCASED IN NATIVE SOIL. PER APPROVED WILL REPORT THE FOOTINGS HAVE BEEN LOCATED TO THE WIDTHS AND DEPTHS PER PLAN. WHERE ORGANICS & ROOTS ARE LOCATED AREA MUST BE REMOVED. NOTIFY OFFICE WHEN READY FOR NEXT OBSERVATION.

ADDITIONAL SITE VISIT(S): REQUIRED NOT REQUIRED POSSIBLY REQUIRED
 REPRESENTATIVE OF IRVINE GEOTECHNICAL: _____
 HOURS: 2 (2 Hour Minimum Charge) NOTICE LEFT WITH: ON-SITE

Attachment E

Objections to Specific Findings

3. Finding #3 says that the proposed use would be in conformance "... with the goals, policies and objectives of the General Plan Land Use Element." This statement is not supported. The brief paragraph in the Staff Report on page 8 on General Plan conformity discusses only the "massing, bulk and building envelope" of the proposed project, but does not address why the City has taken the opposite position on the occupancy of these types of spaces for many years under the Hillside Ordinance. The Staff Report does not take into account multiple other impacts to the community from the approval of the variance: economic impacts, social impacts, the negative aspects of "mansionization" that the Hillside Ordinance seeks to control and that are in being reviewed by various City bodies currently because of excesses like this proposed variance. This issue is discussed below under **General Plan Consistency**.
4. Finding #4 says that the use under this proposed variance would not be detrimental to "... the general welfare of persons residing or working in the neighborhood." Again, the Staff Report offers a very narrow analysis about the neighborhood's welfare, focusing exclusively on the visual impact, and it fails to address how this variance creates a back-door process for homeowners to mansionize their homes in excess of approved limits. It also fails to address the potential threat to other unprotected mid-century homes through this back-door process, potentially an issue requiring CEQA review.
5. Finding #5 relates to the general welfare of the City. Similar to the issues raised by Finding #4, the Staff Report fails to look at the consequences of the approval of this variance on the entire city, also discussed below under **Impact of Variance on Neighborhood and City**.
6. Finding #6 says that "... the proposed project would be compatible with the existing and future land uses in the vicinity in terms of ... scale." The finding is impossible to make. The variance will result in creating the largest home in FAR in the immediate Hillside District neighborhood of Fairfield Circle and Canon Drive, according to data from the County Assessor's website.
8. In Finding #8, the Staff Report does not directly address the concern that the "placement of the proposed additions avoids the most steeply sloping portions of the site." Staff may not appreciate the topography of the site, but the proposed FAR additions are actually directly on the most steeply sloping portion of the site, in direct contrast to the required finding.
9. In Finding #9, the Staff Report fails to articulate why this lot has "exceptional or extraordinary circumstances or conditions" different from many if not the majority of hillside lots subject to the Hillside Ordinance. There are 16 other homes in the Hillside District along Canon Drive, the canyon that creates this zoning. All of them have virtually the same topography as the applicant's house; lots spanning Fairfield Circle and Canon have about the same, or even more of a fall than this house. Of those 16 homes with lots on Canon, only two have actual three stories; two others have garages on a third story accessed from Canon. But the other 12 are two stories or less.

10. Finding #10. No property right is lost through the denial of the variance. The owner acquired the property within the last three years with an understanding that the maximum square footage allowable is close the current permit of 5,469 square feet. The variance would increase a property right, but the denial of a variance does not result in the loss of a property. This finding cannot be made.
11. Finding #4 again stresses the visual elements of the additional FAR footage. But the Zoning Code does not address visual impact of additional FAR, and instead uses a fair objective standard of what should be included in limiting the scale of new construction and occupancy. Under this finding, additional FAR footage could always be added as long as it couldn't be seen, particularly from the front street.
12. Finding # 12 recommends that there is a consistency between this project and the goals of the General Plan, but the report offers no analysis of the broader elements of the General Plan and avoids discussing the specific anti-mansionization paragraph of the General Plan. See the discussion of **General Plan Consistency** below.

Impact of Variance on Neighborhood and City

The impact on the neighborhood and the City of this mansionization would be significant. Architects, contractors and developers would look at this precedent for similar properties to acquire and transform. They may even look at the precise precedent as inspiration: receiving permission to build at one FAR level, proceeding to build at a more intense level, and if challenged, going back to a hearing for approval. Like most aspects of business, it becomes a calculated, quantifiable risk.

Among the most significant impacts is the potential for changing land values in hillside districts, particularly for smaller homes on larger sloping lots. Many such smaller homes are post-war, some of which have increasingly appreciated architectural significance. Often our hillside neighborhoods have older historic character, like the Fairfield/Canon area with a mix of homes from the 1920's and the 1950's. A variance approving increased FAR envelopes potentially threatens historic houses, threatens historic neighborhoods, and ultimately affects the natural resource elements that define a hillside district.

On a social level, approval of this variance arguably encourages questionable architectural practices, building code infractions, and most importantly, disillusion staff and civic leadership alike. The notion that this variance will not have an impact on the City and its neighborhoods, because the building is already built, cannot be supported.

General Plan Consistency

The Staff Report again presents the notion that this proposed variance is consistent with the General Plan because occupancy of the additional square footage would not greatly change the exterior of the building - "the overall appearance of the residence would not change nor change the overall character of the neighborhood."

The General Plan Land Use Element says little about has more to say about the quality of the City's housing development decisions, specific references that render this variance inconsistent:

- 21.9 Hillside Housing. Maintain appropriate scale, massing and access to residential structures located in hillside areas.
- 22.1 Appropriate Scale and Massing. Discourage mansionization by requiring building scale and massing that is compatible with existing development in single-family residential neighborhoods.

Both of these General Plan paragraphs reference scale and massing - the need for new construction to be appropriate and compatible. For years, architects, contractors and developers have been governed by a clear metric of scale and massing in the Zoning Code for ground floor basements or foundation levels, height: more than 5' has been counted toward FAR, less has been excluded. The General Plan doesn't make other references to exclusions for appearances, which would become an arbitrary standard.

Tracy S. McCormick
790 Fairfield Circle
Pasadena, CA 91106

Board of Zoning Appeals
c/o Mr. Luis Rocha
Senior Planner
City of Pasadena
Planning & Community Development Department
Planning Division, Current Planning Section
175 North Garfield Avenue
Pasadena, CA 91101

September 6, 2017

Dear Zoning Board of Appeals:

I am writing to express my opposition to the proposed Modification to Hillside Development Permit #6303.

It is very uncomfortable to be in this situation. I don't believe neighbors should be put in the position of enforcing zoning codes. I believe enforcement is the City's responsibility, so I am writing less as a neighbor and more as a citizen of Pasadena concerned about the violation of the City's zoning codes, in particular the Hillside Ordinance, which many people in this City have fought to protect and enforce since its implementation over 20 years ago.

On the surface, the request to add roughly 500 additional square feet doesn't seem like a terribly unreasonable one, particularly compared to the 2600 plus additional square feet requested four months ago. But nothing about this case has been simple or straightforward so a brief recap of the project's history is worthwhile and illuminating.

On June 17, 2015, the applicant received approval for a Hillside Development Permit which allowed for the construction of a residence and ancillary structures totaling 5437 square feet, roughly the maximum permitted amount under the Hillside Ordinance. The living space of the house was built on top of a large basement level, which was not counted in the allowable square footage calculation because the owners committed to keep it unexcavated and therefore unoccupiable, with the exception of 280 square feet comprised of a hallway leading from an elevator to a back door on the lower level.

A building permit was issued in February 2016 and by May of 2016, it was very clear that the house being built did not match the plans submitted to and approved by the City. My husband and I have photos taken at that time that show the basement level fully excavated and framed with multiple windows and doors on top of a concrete slab. When we asked the City if new plans had been submitted, the response was no. Work on the project ceased for roughly two months and on August 31, 2016, the owners signed a covenant under which they agreed with the City that not more than 280 square feet of the basement level would have a ceiling height greater than 5 feet and that all other areas of the basement level would be backfilled to comply with both the original plans and the covenant. Work proceeded on the residence but the excavated and framed basement remained unchanged.

In May of this year, notice was issued of a variance request to convert 2621 square feet of unimproved basement area into habitable space, increasing the gross floor area of the residence from 5437 square feet to 8070 square feet. The rationale for this request was that the basement space might as well be put to use now that a slab was in place and it had been framed for occupancy. In their letter to the Hearing Officer, the owners stated the reason for the concrete slab was based on the soil engineer's recommendation to address soil compaction issues. In our review of the publicly-available correspondence between the City, owners and architect, the only documentation we could find to support this claim was a one-page note from a field representative of the engineering firm that was not only ambiguous in its findings but dated September 28, 2016, a full 4 months after the basement was first excavated and framed.

The owners stated in their letter that finishing the basement and having French doors and windows would be "vastly preferable" to looking at a stone wall, yet the original plans submitted by them in May 2015 featured the stone wall. This was the owners' choice. They also wrote that they should be allowed to have three levels of living space like their neighbors. Their submitted plans featured two levels of living space. This was their choice.

The Hearing Officer found that there were no exceptional or extraordinary circumstances present and the variance request was denied.

So here we are again, albeit with a smaller request, but one that still exceeds the maximum square footage allowed under the Hillside Ordinance. Because there are no consequences for zoning violations, it is a smart strategy on the part of the owners to continue to press for more square footage than they are entitled to under the rules. Instead of fines and sanctions for violations, we

are discussing variance approvals. The Hillside Ordinance was in place when the owners purchased the property and has not changed during the construction period. There is still no valid reason for the requested increase.

Zoning rules matter. They provide the foundation for what makes Pasadena and our neighborhoods livable, graceful and unique. A strategy of build first and ask later should not be tolerated or accommodated. The zoning codes matter and they should be enforced.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy McCormick". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tracy S. McCormick

Bill Bogaard

581 Garden Lane
Pasadena, CA 91105-2825
626 864-9819 (mobile)
<[w j b@msn.com](mailto:wjb@msn.com)>

September 5, 2017

Michael Williamson, Chair,
and other members of the
Board of Zoning Appeals
100 North Garfield Avenue
Pasadena, California 91109

**Re: Hillside Development Permit #6303
800 Fairfield Circle**

Dear Mr. Williamson and BZA members:

This relates to the application for modification and variance pertaining to the above Hillside Development Permit, which is scheduled to be heard by the Board of Zoning Appeals on Wednesday, September 6. I regret that I am not able to attend this important hearing and I respectfully request that this letter be made a part of the public record, and that you consider my views as set forth below:

This case raises squarely the question whether the City has any intention to comply with and to enforce the provisions of the Hillside Development Ordinance adopted more than 20 years ago by the Pasadena City Council. This application for modification and variance would not exist if the developer had not clearly violated the express provisions of the Permit and had not thereafter failed totally to comply with the express requirements of a covenant imposed by staff.

A brief statement of the history of this project involving the construction of a new home at 800 Fairfield Circle will demonstrate why the integrity of the City's zoning rules is at stake.

The permit in this matter, which approved gross floor area of 5437 square feet, virtually all area allowed under the ordinance, was issued on February 29, 2016. Among other things, it provided for basement excavation of 280 square feet to accommodate an elevator and for use as a wine cellar and for ingress and egress between the house and the back yard. Soon, within an estimated 60-75 days, and without any consultation with City staff, the contractor performed excavation to the extent of about 3000 square feet, ten times the amount permitted. There is no

ambiguity in the Permit about the permitted square footage of excavation; it is 280 square feet.

The field engineer's report of one page submitted by the developer in an attempt to justify the excavation is ambiguous in its findings and is dated September 28, 2016, four months after the improper excavation took place.

When this violation of the Permit came to City staff's attention, staff promptly issued a stop work order prohibiting additional construction on the project until a covenant was negotiated between the staff and the developer, affirming the limit of 280 square feet of permitted basement excavation. The covenant was executed by both property owners, and then placed on the public record.

Since then, the developer has made no move or effort to comply with the requirement under the covenant to restore the soil improperly excavated. Had the developer not violated the original permit, and had the developer proceeded to comply with the covenant, there would be no need for the current application. *In lieu of the issuance of a modification and variance in this proceeding, the proper action at this time is for the developer to restore the soil improperly excavated.*

Contrary to the staff report in this hearing, the findings required to justify the granting of the relief sought by the developer simply cannot be made. The Permit granted the maximum gross floor area allowable under the ordinance, and nothing relevant to this issue has changed since then, except for the developer's improper action in violation of the Permit and its improper failure to take the required action under the covenant. The uses suggested for the additional square footage in the basement can readily be accommodated in other portions of this 5,437 square foot home.

The granting of the modification and variance requested would involve the City's rewarding the developer for its improper action and inaction. It is respectfully urged that Pasadena not reward the perpetrators of zoning violations, and that the relief requested in this hearing be denied.

Respectfully submitted,



BILL BOGAARD