

CARLSON & NICHOLAS, LLP
Attorneys at Law

140 South Lake Avenue, Ste. 251
Pasadena, California 91101
(626) 356-4801
www.carlsonnicholas.com

Scott@carlsonnicholas.com
Frank@carlsonnicholas.com
RMcDonald@carlsonnicholas.com

October 19, 2017

Mayor Terry Tornek
Vice-Mayor John J. Kennedy
Hon. Council Members Madison, Gordo, McAustin, Masuda, Hampton, and Wilson
City Council of the City of Pasadena
100 North Garfield Avenue, Rm. S249
Pasadena, California 91109

Re: HDP No. 6303 for 800 Fairfield Circle

Dear Mayor Tornek, Vice-Mayor Kennedy, and Honorable Members of the City Council:

On Monday, October 23, 2017, your Agenda includes Ken and Tracy McCormick's appeal of the Board of Zoning Appeals' ("BZA") September 6, 2017 decision to approve a minor modification to Hillside Development Permit ("HDP") No. 6303 for 800 Fairfield Circle, and its resulting variance.

Under the rubric of no good deed going unpunished, at its core, this appeal is about nothing more than 463 square feet of usable living space in a basement that is neither visible, nor accessible to anyone other than the applicants, Pat and Connie Reddy. That is why all of the neighbors, except the Appellants, have supported this request to modify the original approval and not appealed the BZA's decision.

The Appellants, however, feel compelled to wax and wane about the City's processing of the applications for this project for some unknown reason. They attended the original permit hearing, the initial modification hearing before the Hearing Officer, and the appeal hearing before the BZA to make their case about it.

However, the chronology of events that will be explained by Planning Staff shows that no error was committed and that everyone has acted in good-faith.

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More importantly, at no point before this appeal hearing did the Appellants ever question or challenge Staff's determination that the project is categorically exempt under CEQA. In fact, the first time they raised this objection was to justify this appeal. One would think that a legitimate objection to the use of a categorical exemption would be made at the very first hearing on either the original application or the application to modify the original approval. That it was not made until now raises serious questions about the merits of this appeal.

With that in mind, your Staff report provides you with the Appeal Application, which shows that many of the arguments being asserted are either general, non-factual, or conclusory assertions lacking in evidentiary support.

To rebut them, the Staff Report explains the project (i.e., the construction of a new single-family residence), and how substantial evidence supports each of the Findings to be made for the modification requested and its resulting variance.

Rather than repeat those points, we write to add the following legal explanation to support the Reddy's request that you deny this appeal and otherwise affirm the BZA's decision based upon the substantial evidence in the record.

First, it is a fact that the proposed single-family residence fully complies with all of the development standards set-forth in the Zoning Code for hillside developments other than the additional 463 square feet of gross floor area being requested. The development standards for height, setbacks, all other square foot dimensions, all Hillside Ordinance formulas, and even Neighborhood Compatibility are met.

Second, contrary to Point 1(a) in the Appeal Application, the proposed residence is in conformity with the General Plan and applicable zoning district. It thus poses no threat or detriment to any adjacent properties or the neighborhood regardless of what the Appellants may say.

Third, Title 14, Article 19, Section 15303 of the California Code of Regulations specifically states that single-family residences are categorically exempt from the requirement to perform an initial study, MND, or EIR:

“Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

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(a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.”

This categorical exemption is routinely used by the City for its environmental determinations on the construction of single-family residences. To preclude the use of it here, however, the Appellants contend that the “unusual circumstances exception” to it applies because the project is not consistent with the City’s plans and has not studied all of the potential environmental impacts resulting from it.

Appellants base their argument on the California Supreme Court’s decision in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086 (“*Berkeley Hillside*”).¹ In so doing, however, Appellants misread and misapply *Berkeley Hillside* by mistakenly mixing-up the two required analytical steps set-forth in the Court’s decision.

In particular, the CEQA Guidelines do not define the term “unusual circumstances”, nor what is required to prove it. *See, e.g., San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1023. *Berkeley Hillside*, therefore, first clarified that a party must show an unusual circumstance by demonstrating that the project has some characteristic or feature that distinguishes it from others in the exempt class. *Berkeley Hillside, supra*, 60 Cal.4th at p. 1105.

In so doing, the Supreme Court held that the “unusual circumstances” exception can only be used to preclude the use of a categorical exemption if an “unusual circumstance” that differentiates the project *from the general class of similarly situated projects*, and, if so, when that unusual circumstance creates a “reasonable possibility” that the project may result in a “significant environmental impact.” The Court expressly rejected the appellate court’s interpretation of the “unusual circumstances” test, finding that “the Court of Appeal erred by holding that a potentially significant environmental effect itself constitutes unusual circumstances.”

1. In *Berkeley Hillside*, the applicant sought a hillside permit for a 6,478-square-foot house with an attached 3,394-square-foot 10-car garage, covering 16% of a steeply sloped (about 50%) lot in a heavily wooded area on Rose Street in Berkeley. The trial court denied the petition for a writ of mandate by the neighborhood group holding there were not unusual circumstances to the project, but the Court of Appeal reversed and granted it. The Supreme Court then took up the issue of how the unusual circumstances exception to categorical exemptions should be analyzed and applied by lead agencies such as the City.

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Following the Supreme Court's decision, the First District Court of Appeal filed its opinion affirming the trial court's judgment, and later ordered its opinion to be published. *Berkeley Hillside Preservation, et al. v. City of Berkeley* (2015) 241 Cal. App. 4th 943. The opinion states that a party challenging a categorical exemption decision by seeking to establish the unusual circumstances exception cannot prevail merely by providing substantial evidence that the project may have a significant environmental effect. Rather, such a party must first establish an unusual circumstance by distinguishing the project from others in the exempt class.² "A challenger must prove **both** unusual circumstances **and** a significant environmental effect **that is due to those circumstances**. In this method of proof, the unusual circumstances relate to some feature of the project that distinguishes the project from other features in the exempt class." *Id.* "Once an unusual circumstance is proved under this method, then the 'party need only show a *reasonable possibility* of a significant effect **due to that** unusual circumstance." *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn.* (2015) 242 Cal.App.4th 555, 574. (Emphasis added).

Whether a project presents unusual circumstances also is a factual inquiry subject to the traditional substantial evidence standard of review. *Berkeley Hillside, supra*, 60 Cal.4th at p. 1114. Under CEQA, therefore, "[s]ubstantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. . . . **It does not** include '[a]rgument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly inaccurate or erroneous. . . . Complaints, fears, and suspicions about a project's potential environmental impact likewise do not constitute substantial evidence. . . . Members of the public may . . . provide opinion evidence where special expertise is not required. . . . However, "[i]nterpretation of technical or scientific information requires an expert evaluation. Testimony by members of the public on such issues does not qualify as substantial evidence. . . . "[I]n the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence." *Joshua Tree Downtown Business Alliance v County of San Bernardino* (2016) 1 Cal. App. 5th 677 (Citations omitted; Emphasis added).

As such, Appellants must prove both parts of this two-pronged test and cannot prevail simply by claiming that the project may have a significant environmental effect, which is what they are doing and the mistake they have made.

As the record reflects, as to the first prong, there is no evidence, let alone substantial evidence, of any unusual circumstance. The proposed residence is located in a residential neighborhood and the modification of the house involves the use of a basement that is no different in size or orientation than the former house that was on the site. Further, its proposed size is well within the limits imposed by the neighborhood compatibility requirements of the Hillside Ordinance; and, contrary to the conclusory statements in the Appeal Application, noise, hydrology, and all other requirements of the Code have been considered, studied, and met. In

2. On February 3, 2016, the California Supreme Court denied further review of the case, thus letting the Court of Appeal's decision stand, i.e., there were no unusual circumstances that precluded the use of the categorical exemption for the proposed residence.

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fact, the house has been built with no environmental impacts of any kind. It thus defies reason and logic to say that the project presents “unusual circumstances” precluding the use of the categorical exemption for single family residences set-forth in Section 15303.

Because Appellants have not met their burden of producing any evidence showing an unusual circumstance based on the features of the project, let alone substantial evidence, you do need not to address the second prong of the test, i.e., whether there is a reasonable possibility of a significant environmental impact as a result of unusual circumstances. *Citizens, supra*, 242 Cal.App.4th at p. 588, fn. 24. (“A negative answer as to the question of whether there are unusual circumstances means the exception does not apply” and the use of the categorical exemption is affirmed).

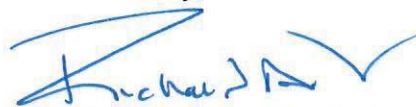
But, even if you were to address it, none exist. “A significant effect on the environment” is “a **substantial** adverse change in the physical conditions which exist in the area affected by the proposed project.” CEQA Guidelines, § 15002, subd. (g). (Emphasis added). Here, changing the basement foundation to a full slab had no environmental impact because the original house had a partial basement that aligns with the current home, and the envelope of the house did not change with a full slab. No significant quantity of soil was trucked away either because it was used elsewhere on the lot. The storm water drainage plan also is unaffected; and, there is no environmental impact from street traffic or parking that results from finishing a basement that is neither accessible, nor visible from the public street.

In sum, the construction of this new home does not involve any unusual circumstances precluding the use of the normal categorical exemption for the construction of a single-family home, nor any environmental impacts as Appellants contend. Further, Appellants’ arguments are not supported by substantial evidence, and many are simply frivolous.

For the reasons set-forth in your Staff report, above, and in the record, we therefore ask that you deny this appeal and unanimously affirm the BZA’s decision.

Thank you for your consideration. Please do not hesitate to contact me if you have any questions. Thank you again.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard A. McDonald". The signature is stylized with a large, sweeping initial "R" and a checkmark-like flourish at the end.

Richard A. McDonald, Esq.

CC: City Manager, City Attorney & City Clerk

Connie Reddy
800 Fairfield Circle
Pasadena, CA 91106

October 19, 2017

Mayor Terry Tornek
City Council Members
100 N. Garfield Avenue, Room S228
Pasadena, CA 91109-7215

Re: Modification of Hillside Development Permit #6303

Dear Mayor Tornek and City Council Members,

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, have faced real problems. My sister lives in Santa Rosa and almost lost her home in the horrific fires last week. Such natural disasters certainly do put our Fairfield Circle problems 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), replace their hedges, etc. We have been mindful of taking care of our 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 appreciate and are sympathetic to the instincts of preservationists. The appearance of our traditional Cape Cod style home reflects this as well.

We 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 one hearing officer told us our pictures were "unclear". The BZA was complimentary of our efforts to work with one neighbor's complaints by drastically reducing our original request.

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 (two 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 wine and cheese 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 6 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 again, so we did not ask for their participation at the BZA hearing or at this hearing. It is an abhorrent concept to me to ask neighbors to comment publicly about fellow neighbors. But, we have submitted a petition and letters of support, so please know that they still support us. 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 what we are asking for. It hurts no one. I want the City to be use common sense, and approve our very reasonable request.

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

Sincerely,
Connie Reddy

Mr. Rocha:

My wife Jennifer and I live at 780 Fairfield Circle.

I am writing regarding the home being constructed two doors down from us at 800 Fairfield Circle by Pat and Connie Reddy.

The Reddy's are constructing a home, the design of which we feel is not only consistent with the fabric of the neighborhood, but also the entire Pasadena community.

It is very tastefully done and architecturally significant.

The exterior elevation of the home facing Fairfield is a two story home and the exterior elevation of the rear of the home is a three story element.

Our understanding is that the Reddy's are seeking a modification to construct approximately 480 square feet within the lowest level of the house. Our understanding is

that it is not a full basement buildout. It is also our understanding that the request for modification of hillside permit #6303 has been deemed as appropriate

by city staff and city planner David Reyes.

We support the Reddy's request for a modification as submitted.

Best Regards,

Mark and Jennifer Montoya



Mark Montoya

Vice President, Multi Family

d | (949) 225-3208

c | (626) 741-8428

Snyder Langston | Residential | Optym [in](#)

Oct 18, 2017

Dear Mayor Tornek and City Council Members,

I am writing to express support for the Reddy's request for a variance for their project at 800 Fairfield Circle. We live directly across the street from the Reddy's and have gotten to know them during their trips to Pasadena. They are delightful people and will make wonderful neighbors.

The home the Reddy's are building is exactly in keeping with the other homes on their side of the street. The view of the front and the back is consistent with their neighbors' homes and does not stand out from a height or massing perspective. It is certainly not an example of "Mansionization".

We support their request to build out a portion of their unfinished basement; in fact, we and fourteen other immediate neighbors were in favor of the Reddy's original request to complete the full basement. Doing so would have no adverse impact on the block. Neighbors will see no difference on the outside of the home since the existing envelope is unchanged. There will be no increase in traffic or parking needs.

As far as I know, only one neighbor has objected to the variance application. Your perception of this neighbor may have been over the years as a man who has the community's best interests at heart, is a reasonable and thoughtful man. I have seen the true side of him. He is a bully. He harassed my family and me during my restoration project. He caused significant delays during my project, scared away my sub-contractors and has gone so far to use profane language AT my wife. It is very clear to me that he has a personal agenda. He repeatedly called the city to complain during my restoration. Every building and safety staff member that came to my restoration recognized the issue was unwarranted and it was one neighbor wasting everyone's time.

I am very familiar with construction and issues that may arise with neighbors. That being said, I met every neighbor, including this one, to extend an olive branch to call me if anything becomes an issue. I was never contacted once by him! The times I met him face to face was when he was yelling at the sub-contractors and cussing AT my wife. He shouldn't have sole authority over the issue. In fact, I am surprised that one neighbor has this much authority. Please feel free to call me at 818-324-1298 if you have any specific questions. I am happy to help.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Hedman". The signature is written in a cursive, flowing style with a large initial "S".

Sean Hedman

809 Fairfield Circle

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

October 19, 2017

Mayor Terry Tornek
City Council Members
100 N. Garfield Avenue, Room S228
Pasadena, CA 91109-7215

Re: Modification of Hillside Development Permit #6303

Dear Mayor Tornek and City Council Members,

Connie and I want to give you a little background information on us and to explain the reasons we asked to modify our original HDP approvals, which are the subject of the McCormick's appeal on October 23.

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 was a lengthy process. 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) shortly thereafter.

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 April 2016 basement level samples were analyzed, IG determined that we needed to excavate deeper than initially planned (see attached letter from Jon Irvine). As a result, 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 discussions with 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 filing for a variance to permit additional basement buildout. We certainly would not have undertaken the additional expense along with the risk of getting a variance approved after 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 sections containing 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 square feet. Our city inspector would not have signed off on unauthorized basement space and we would not be able to obtain 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 staff 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.

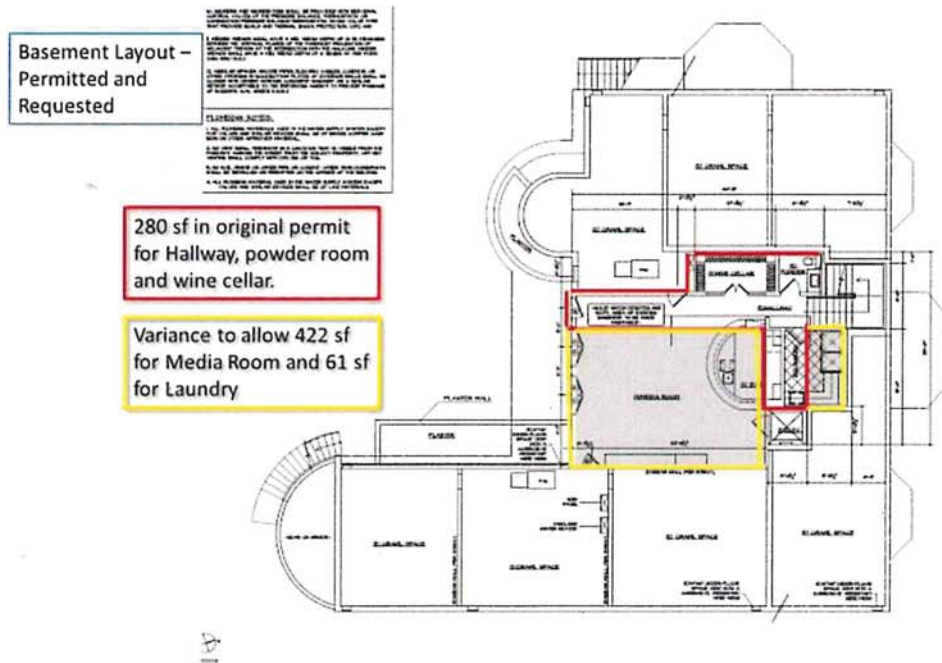
Accordingly, we applied for the modification and variance in March of this year. In their report of May 17, 2017 to our Hearing Officer, the Planning staff supported our request for a full buildout of available basement space which totaled roughly 1,800 incremental square feet. As explained elsewhere in this letter, the HO denied our applications based upon the McCormick's objections. So, in filing our appeal with the Board of Zoning Appeals, and taking into account those objections, we decided to reduce our request for additional space down to 483 square feet and to fill in all of the framing so that it matched what was approved. We also have agreed to backfill with gravel any space that isn't ultimately authorized. Unfortunately, our efforts to address the McCormick's objections in a reasonable manner have had no effect on their opposition, which resulted in their appeal of the BZA approvals.

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 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). Specifically:

Original Permit	Approved Square Footage	Included	Original Variance Filing	Included	Change from Permit	Revised Request	Change from Permit	Includes
1 st & 2 nd 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	



II. Opponents’ Appeal of the Board of Zoning Appeals’ Approval of Variance

At their September 7, 2017 hearing, the Board of Zoning Appeals approved the modification to our HDP and the necessary variance for that. The McCormick’s filed an appeal of that decision.

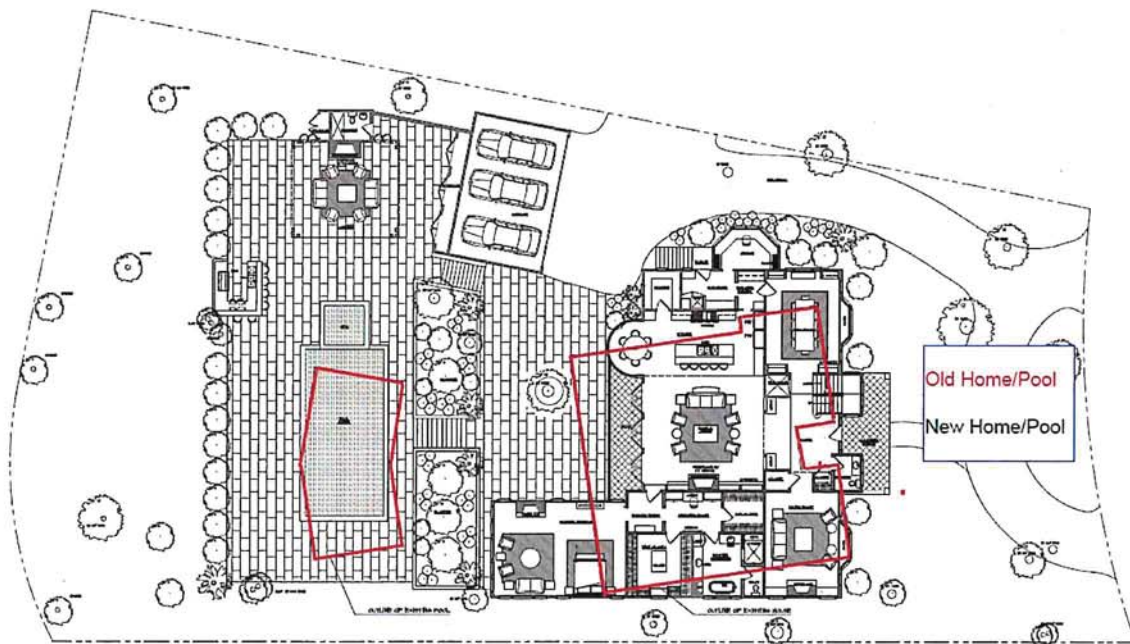
¹ Corrected number. Original application cover sheet transposed the requested basement square footage from 2,091 sf to 2,901 sf as correctly shown later in the application.

Raising CEQA Now as the Basis for Appeal is a Pretext

The Planning staff's report will rebut the CEQA claims in detail, but I would like to make some common-sense observations.

- The McCormick's attended the original permit hearing, the initial variance hearing before the Hearing Officer and the appeal before the BZA. At no point have they challenged Planning staff's conclusion that CEQA doesn't apply to our project – until now.
- Changing our basement foundation to a full slab had no environmental impact. The original house had a partial basement that aligns with the current home (see drawing, below). The envelope of the house did not change with a full slab. No significant quantity of soil was trucked away – it has been used elsewhere on the lot. The storm water drainage plan is unaffected.
- There is no impact on street traffic or parking by granting our request to finish a laundry room and a TV room in the basement level.

The following drawing shows the footprint of the new home overlaid on the original.





Original Home Had Partial Basement -
New Basement in Same Location

①-Tech MLS



Original House With Partial
Walkout Basement

①-Tech MLS

Opponents Have Shifted Their Focus to the “City Process” and Away from Merit

Having won our appeal before the Board of Zoning Appeals, our opponents have shifted their emphasis away from Hillside Overlay Ordinance formulas and calculations and are emphasizing “process” matters. They don’t believe we have a valid permit for our basement slab. But the Planning Staff has told them – and us – that that is not the case. We have not breached our permit, the building code or the covenant that we entered into regarding any unpermitted basement space.

Our opponents’ due process rights have not been affected by the sequence of events. Had we known at the outset what we know now, it would have been vastly preferable to seek a variance as part of our original permit application. Had we done so, the McCormick’s could have objected and made their arguments. Instead, we find ourselves well into the construction of our home and ten months into the variance process. The McCormick’s have had the same opportunity to challenge our variance request and they have done so.

Our Variance Request is Broadly Supported by Our Neighbors

Fifteen of our immediate neighbors signed our petition in support of a variance as described later in this letter. The lone dissenters are the McCormicks. At our BZA hearing last month, the Commissioners were complimentary about our efforts to engage our neighbors, educate them on our request and seek their input. Commissioners commented that they would like to see more of this type of collaboration, with fewer matters going to hearing. Through our visits to Pasadena to check on construction, we have begun to get to know our neighbors and Connie and I are very much looking forward to rejoining the community. Overall, our experience has been positive and our neighbors welcoming.

In our brief experience with our neighborhood, it appears that the McCormick’s have taken a similar approach to other situations with neighbors. Last December, the McCormick’s opposed a neighbor’s variance request to locate a swimming pool closer to the street than the code allows. In addition to objecting to a precedent being set, the main objection appeared to be that passersby might hear the sound of children splashing in the pool.

Our neighbors directly across the street from us bought their home a few years before we did and got plans approved to remodel. They had very unpleasant interactions with Mr. McCormick who objected to noise, dust, construction vehicles and a host of related issues. He called the police department so many times to complain that one officer asked our neighbor if there wasn’t something they could do to placate Mr. McCormick so that he would stop pestering them.

Recently, their neighbors to the west approached the McCormick’s to let them know that an aged oak tree had reached the end of its life expectancy and needed to be removed. The tree was on the neighbor’s side of the property line but branches extended over the McCormick’s lot. The McCormicks said they wanted to have their own arborist inspect the tree and their neighbors agreed. The McCormick’s arborist said the tree had at least 10 years of useful life left and the tree should be spared. Two weeks later, the tree fell over, damaging the roof of the

McCormick's guest house. The McCormick's asked the neighbor to use their insurance to pay for the damage.



Connie and I believe that these interactions are not typical of Pasadena's welcoming and friendly reputation. We are looking forward to moving in and we will be good neighbors but we are saddened that we have had to involve our other neighbors in this unnecessary controversy.

III. Hearing Officer and Board of Zoning Appeals Hearings

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

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.

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.

Neighborhood Support

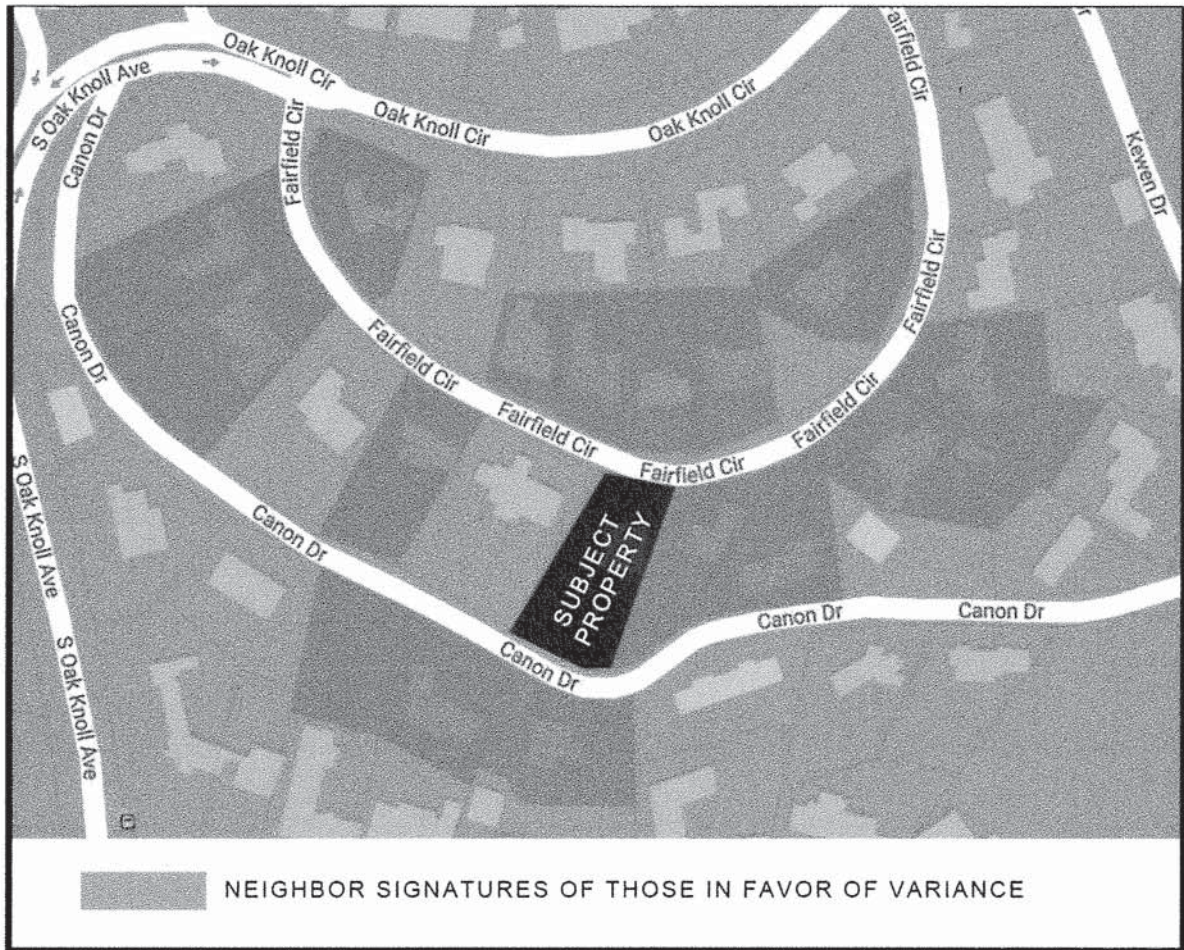
Mr. McCormick says that, "...we learned that the owners had hired a professional who was going door to door with an unclear petition asking for support to occupy their basement, without an explanation of what had transpired..."⁵ The paid professional is our architect, Jim Coane who accompanied my wife, 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 during our limited visits to Pasadena,

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

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

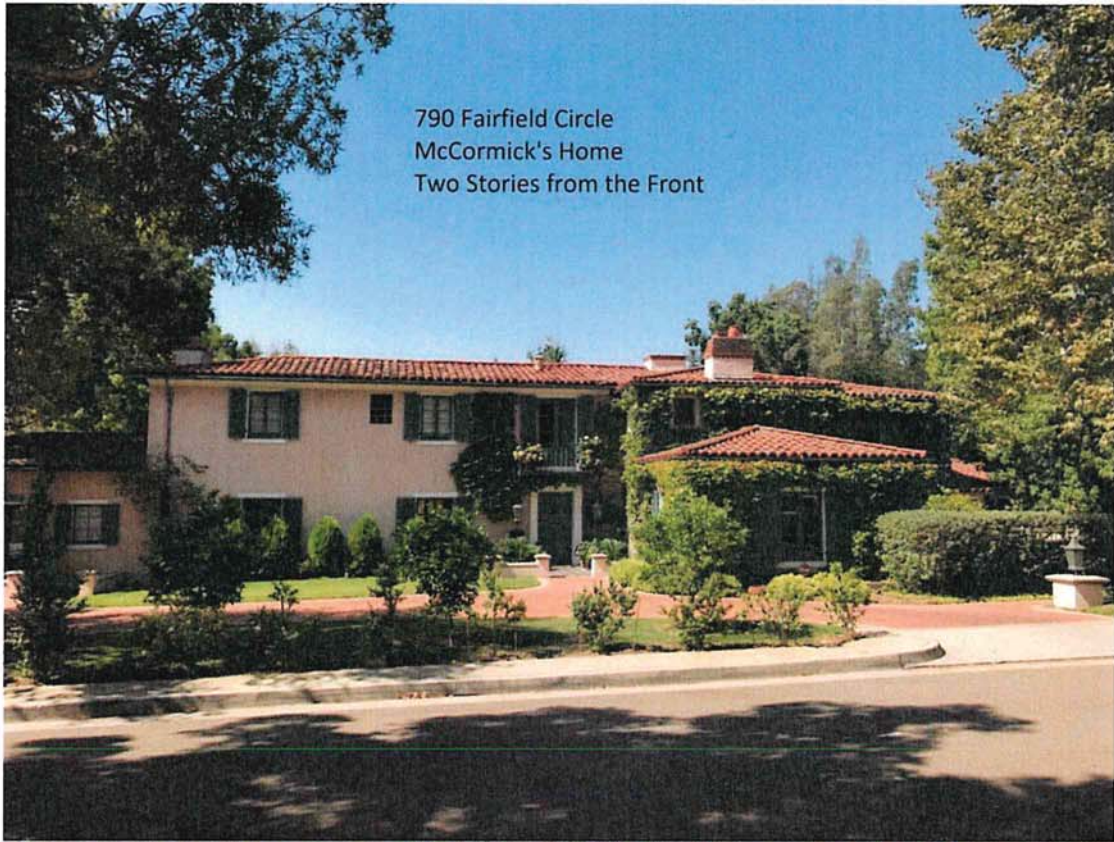
⁵ McCormick letter of May 16, 2017 to Hearing Officer, page 5.

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 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.

We 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
McCormick's Guest House



790 Fairfield Circle
Concrete Building Over Cistern

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

The McCormick's have asserted from the outset that our home is an example of the Mansionization of neighborhoods that the City wants to prevent. Nothing could be further from the truth. In fact, at our BZA hearing Planning Commissioner Don Nanney observed that "in a neighborhood of mansions, the McCormick's mansion is the largest."

We have 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 property rights and benefits as those 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)

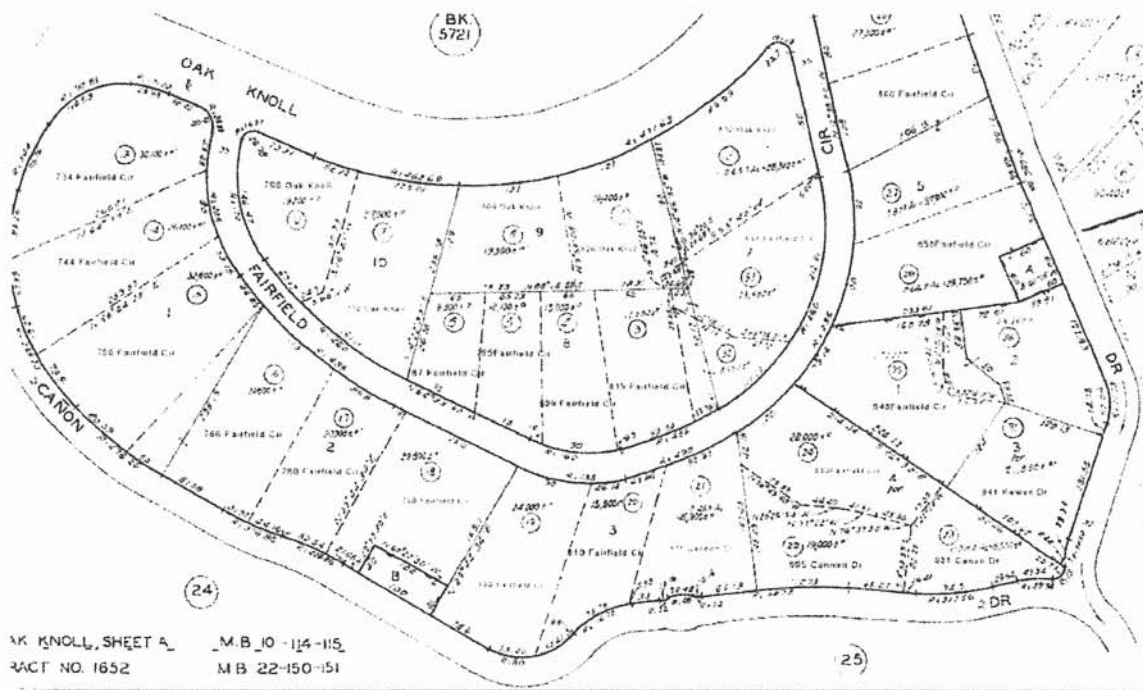
Granting our limited variance will not affect neighbors’ views, will not present a ridgeline issue, will not affect the placement of exterior walls, the basement outline is the same as that of the upper floors, the basement area does not exceed that of the upper floors and basement height is less than nine feet. Ironically, if only 3 feet of our basement wall was exposed, none of the basement square footage would count.

We 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 sizable 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.



Lots are 85% larger on the south side of the street and homes are 60% larger as shown in the following table.

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

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.

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

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 reject our variance request would be to deny us the same property rights and benefits as those enjoyed by our immediate neighbors. Thank you.

Sincerely,

John P. Reddy

Homes on the South Side of Fairfield Circle



734 FC Rear – Three Levels Including Garage



734 FC Front – Two Levels

Homes on the South Side of Fairfield Circle



744 FC Front – Two Levels



744 FC Rear – Three Levels Including Garage

Homes on the South Side of Fairfield Circle



766 FC Front – Two Levels



766 FC Rear – Three Levels With Attic

Homes on the South Side of Fairfield Circle



Homes on the South Side of Fairfield Circle



790 FC Front (McCormick's) – Two Levels



790 FC Rear (McCormick's) – Three Levels

Homes on the South Side of Fairfield Circle

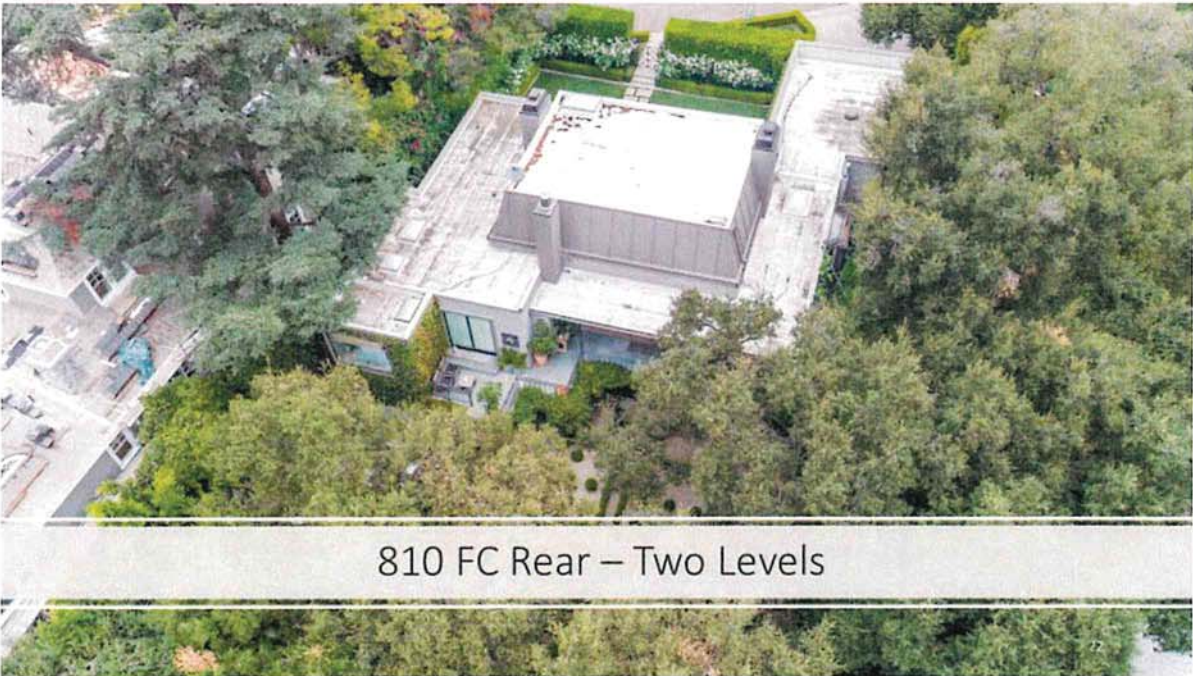
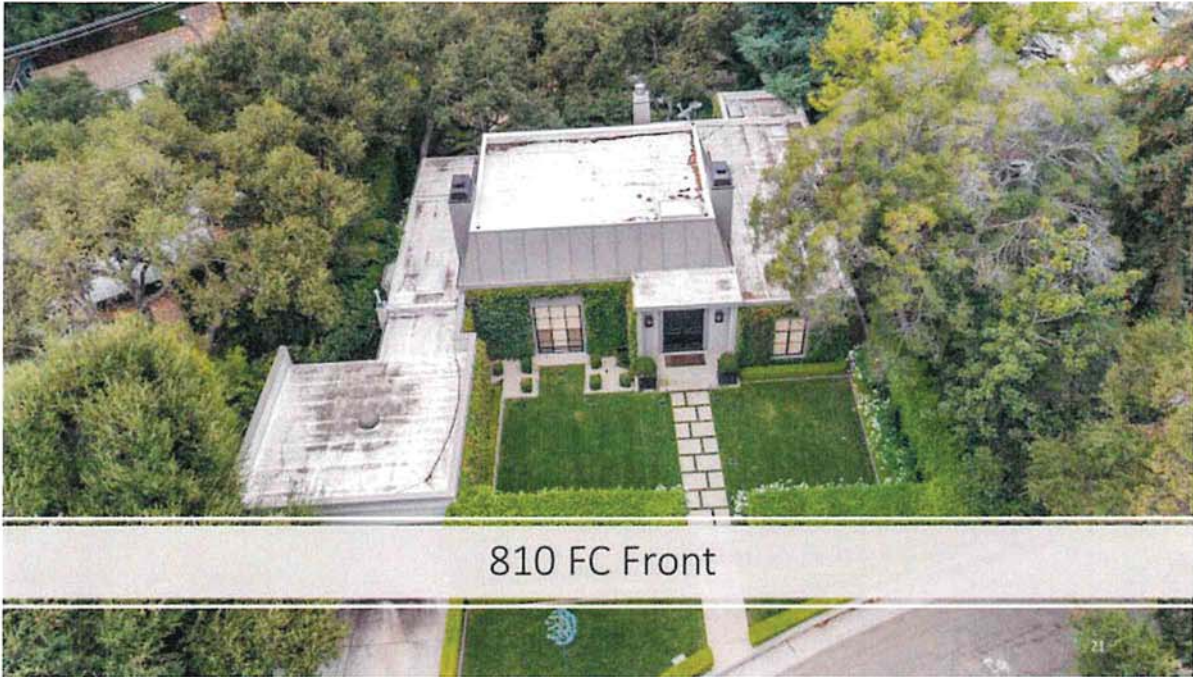


790 FC Rear (McCormick's) – Three Levels



800 FC Rear (Reddy's) – Three Levels

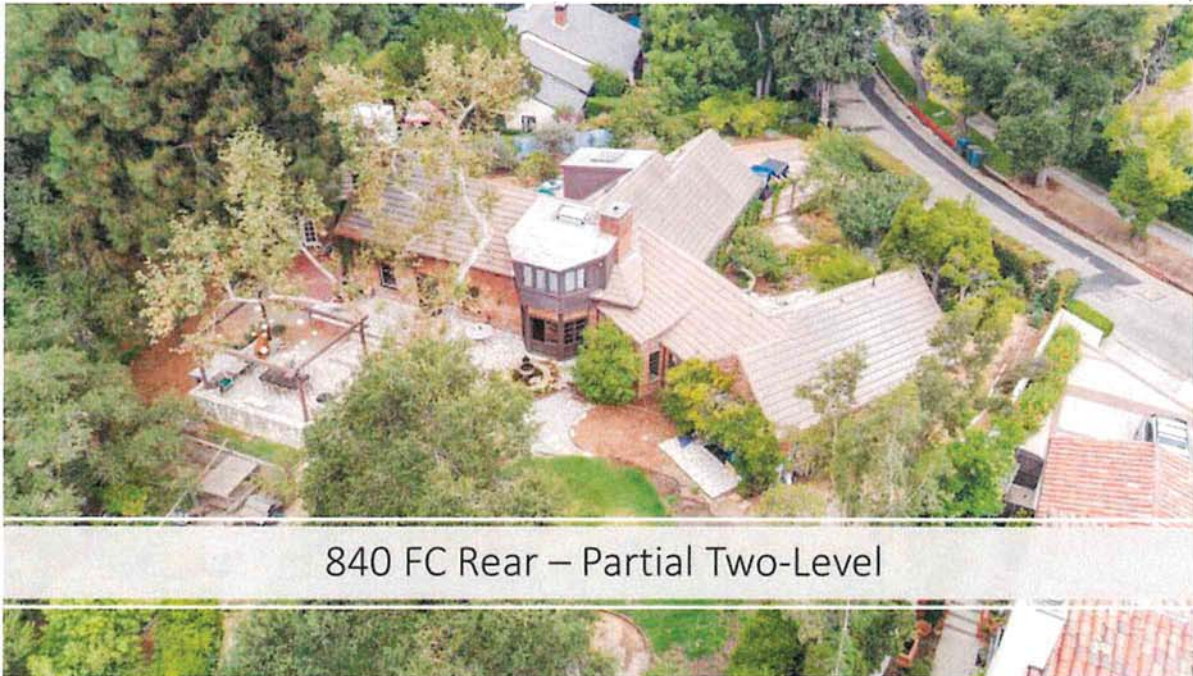
Homes on the South Side of Fairfield Circle



Homes on the South Side of Fairfield Circle



830 & 840 FC Front – Single Level



840 FC Rear – Partial Two-Level

Homes on the South Side of Fairfield Circle



858 FC Front – Two Levels



858 FC Rear – Two Levels

Homes on the South Side of Fairfield Circle



October 18, 2017
IC 14176-I



Connie & Pat Reddy
800 Fairfield Circle,
Pasadena, California 91106

Subject

Geologic and Soils Engineering Memorandum
New Residence, Cabana, Garage & Pool
APN 5325-020-019
Portion of Lot 3, Tract 1652
800 Fairfield Circle,
Pasadena, California

Reference: Report by Irvine Geotechnical, Inc.:

Geologic and Soils Engineering Exploration, Proposed Residence, Cabana, Garage & Pool, APN 5325-020-019, Portion of Lot 3, Tract 1652, 800 Fairfield Circle, Pasadena, California, dated December 18, 2014

Dear Mr. & Mrs. Reddy;

Irvine Geotechnical has prepared this geologic and soils engineering memorandum summarizing site conditions that required deepening of foundations and other remedial grading performed during construction of the project. This memorandum follows site inspections and testing performed during grading of the site, construction of the residence, garage and cabana, and review of our project file.

Test pits excavated as part of the preliminary exploration and report indicated that the native soils on the site were blanketed by 1 to 3 feet of fill. The fill was found to thicken toward the south, which is typical for this area of southern Pasadena near the Langham Huntington Hotel, where the natural terrain slopes toward the south. Fill was generally placed along the downhill sides of lots to create level to terraced building pads.

October 18, 2017

IC 14176-I

Page 2

The fill was found to be loose, not compacted, and not suitable for support of slabs and foundations. Removal and recompaction of the fill were recommended to support slabs and patios along the downhill side of the residence and to support foundations for the garage and cabana.

Numerous oak trees and associated root systems are present on the lot. The native soil with a high concentration of roots was also determined to be not suitable for support of foundations. Deepened pads and piers were recommended to support portions of structures adjacent to oak trees.

The fill and unsuitable root zones were identified in the field by the project geologist, who directed the contractor to deepen foundations as needed into the recommended bearing material identified in the referenced report. The contractor was first notified of the unsuitable fill and soil in the attached Notice of Field Observation dated April 5, 2016. On April 26, 2016, the contractor was notified again of areas of concern regarding fill and soil at the southeast corner of the residence. The contractor was notified to deepen footings along the south side of the residence on May 2, 2016. The footings in question were deepened the same day and approved in the attached field notice. The contractor was notified to deepen footings along the west side of the residence to reach the approved bearing material on September 28, 2016.

The primary areas of deepened foundations occurred along the western, southwestern, and southeastern portions of the residence and the eastern edge of the garage. The as-built depths and conditions of the foundations are considered in conformance with the soils report and approved plans and suitable for the intended use.

Irvine Geotechnical appreciates the opportunity to provide our service on this project. Any questions concerning the data or interpretation of this or the referenced report should be directed to the undersigned.

Respectfully submitted,
Irvine Geotechnical, Inc.


Jon A. Irvine
E.G. 1691/G.E. 2891

R:\ICprojects\2014 Projects\IC14176 Reddy\IC14176 Reddy Memo.wpd



Enc. Notice of Field Observations

IRVINE GEOTECHNICAL
NOTICE OF FIELD OBSERVATION

CLIENT: Reddy DATE: 4/5/16 TIME: 2:30 IC: 14176
LOCATION: 800 Fairfield Circle
REQUESTED BY: Mike MET WITH: Mike
(Title) (Title)
SPECIAL CONDITIONS: ∅
(Weather, Job Shutdown, Advice Ignored, Safety)
WE HAVE OBSERVED THE: site conditions

APPROVED PER THE PLANS CALL AGENCY INSPECTOR DISAPPROVED SEE BELOW

SKETCH OF FIELD CONDITIONS:

NOTES & CONDITIONS:

met with Mike to discuss soil conditions and observe proposed pad area

dense terrace soils are exposed over 3/4 of the pad with a small wedge of fill/soil on the down hill '14.

Also mention and soil overly the lower yard area below the proposed garage.

Remove all fill and soil in areas of slash or hard scrapes. Expose dense soils and call for bottom inspection

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

IRVINE GEOTECHNICAL

NOTICE OF FIELD OBSERVATION

CLIENT: 800 Fairfield Circle Proj. DATE: 4/26/16 TIME: 9:00 IC: 14176

LOCATION: 800 Fairfield Circle

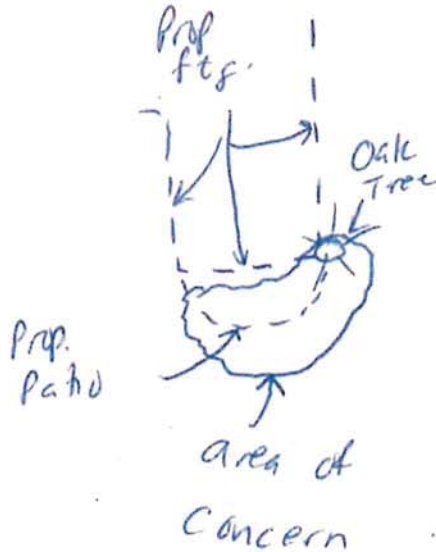
REQUESTED BY: Rich/mike MET WITH: Rich/mike
 (Title) (Title)

SPECIAL CONDITIONS: Ø
 (Weather, Job Shutdown, Advice Ignored, Safety)

WE HAVE OBSERVED THE: site conditions SE corner of Res

APPROVED PER THE PLANS CALL AGENCY INSPECTOR DISAPPROVED SEE BELOW

SKETCH OF FIELD CONDITIONS:



NOTES & CONDITIONS:

up to 4 to 5' of loose soil overlies the area of the proposed patio area. Based on our conversations, the loose soil will be removed and recompact, for slab and patio ftg support. 3' below to 4' beyond footings will be removed.

Notify Irvine Geo when ready.

ADDITIONAL SITE VISIT(S): REQUIRED NOT REQUIRED POSSIBLY REQUIRED

REPRESENTATIVE OF IRVINE GEOTECHNICAL: [Signature]
 HOURS: 2 (2 Hour Minimum Charge) NOTICE LEFT WITH: Rich/mike

IRVINE GEOTECHNICAL

NOTICE OF FIELD OBSERVATION

CLIENT: Fairfield DATE: 5/2/16 TIME: 12:30 IC: _____

LOCATION: Fairfield Circle

REQUESTED BY: Rick MET WITH: Rick

SPECIAL CONDITIONS: _____ (Title) _____ (Title)

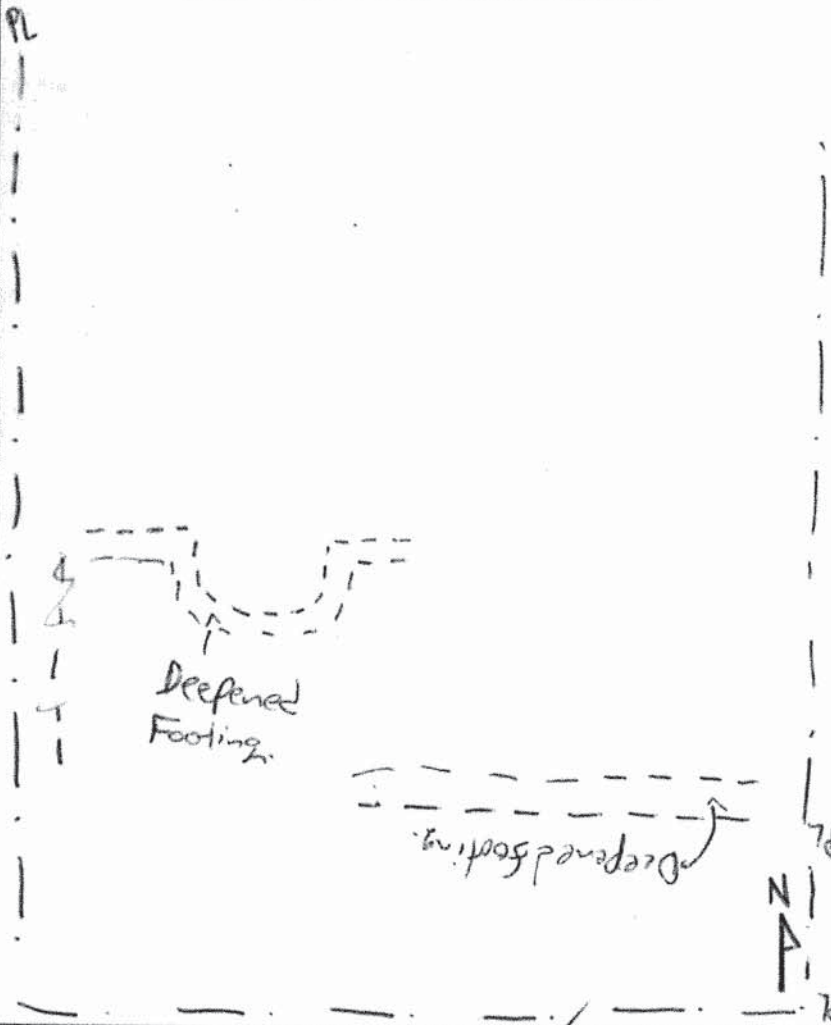
(Weather, Job Shutdown, Advice Ignored, Safety)

WE HAVE OBSERVED THE: Footings Bottoms

APPROVED PER THE PLANS CALL AGENCY INSPECTOR DISAPPROVED SEE BELOW

SKETCH OF FIELD CONDITIONS:

NOTES & CONDITIONS:



Arrived on site as requested to observe footing bottoms that were requested by the geologist to be deepened to natural alluvial terrace. Footing have been deepened per request and are approved by the geologist

ADDITIONAL SITE VISIT(S): REQUIRED NOT REQUIRED POSSIBLY REQUIRED

REPRESENTATIVE OF IRVINE GEOTECHNICAL: Dale Th

HOURS: 0 (2 Hour Minimum Charge) NOTICE LEFT WITH: Rick

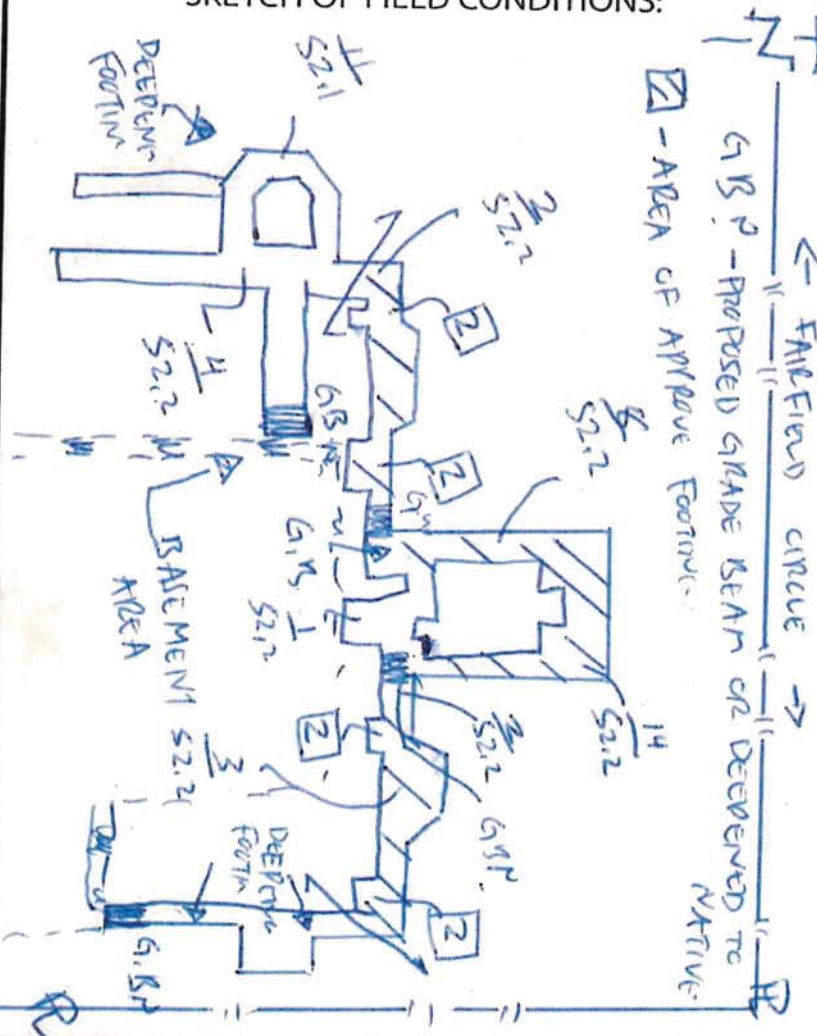
IRVINE GEOTECHNICAL

NOTICE OF FIELD OBSERVATION

CLIENT: REDDY DATE: 9/28/16 TIME: 12:08PM 14176
 LOCATION: 800 FAIRFIELD CIRCLE
 REQUESTED BY: TOM COURTNEY MET WITH: ISAAC
 (Title) (Title)
 SPECIAL CONDITIONS: _____
 (Weather, Job Shutdown, Advice Ignored, Safety)
 WE HAVE OBSERVED THE: 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 BASEMENT WALL ARE IN COMPACTED ^{FILE} THE REST OF FOOTING SIT IN NATIVE SOILS. IT IS RECOMMENDED TO EITHER PLACE A GRADE BEAM OR DEEPEM TO NATIVE SOILS. THE FOOTINGS TO THE NORTH ARE EMBEDDED INTO NATIVE SOILS PER APPROVED SOILS REPORT. THE FOOTINGS HAVE BEEN EXCAVATED TO THE WIDTHS AND DEPTHS, PER PLAN.
 WHERE ORGANICS & ROOTS ARE LOCATED AREA MUST BE DEEPEM. 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