

Exhibit #7

Formal Appeal of Planning Commission Decision – 200 Sydney Drive, Alamo
County File #VR14-1021

My name is Giyan Senaratne. I live at 201 Sydney Drive, Alamo, CA. My property is located on the same cull-du-sac next door to the subject proposed development at 200 Sydney Drive

I am submitting this letter as a formal "Appeal" for the decision made at the Planning Commission on February 24, 2015. County File # VR14-1021.

I am a California registered Structural Engineer and Civil Engineer. I own my own company, West Coast Code Consultants, Inc. (WC³) with over 70 employees operating in multiple states. All of WC³'s clients are governmental institutions (Federal, State, and County) serving Building, Planning, Public Works, Fire and Health Departments.

I have worked in the building code industry for over 30 years and I am currently the Chief Building Official for a class "A" jurisdiction in California. Over the years I have attended hundreds of public hearings related to building construction. I am concerned that important information related to this project has not been provided. In addition, critical information related to the number of stories, has been misrepresented. This resulted in a Commission decision that is not in accordance with the County's zoning ordinances.

I have presented my appeal related to the ordinance in two parts:

Section 1: Number of Stories.

Section 2: Procedural issues and events that have occurred, which have been detrimental and misleading

SECTION 1

The most critical issue at hand is the number of stories and story height being proposed. This serious issue will affect the property values, views, and livability of surrounding homes. The plans must be studied very carefully to realize how the grade and heights are being represented.

Number of Stories

The first and primary concern with this project has always been that it violates the County Ordinance in regard to the number of stories. I have included testimony on this at every hearing.

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The County Ordinance reads:

82-4.266 - Story.

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement or cellar is more than six feet above grade at any point, such basement or cellar shall be considered a story.

(Ords. 1781, 1760, 1759, 1569, 1469: prior code § 8102(nn); Ords. 1269, 1264, 1224, 939, 933, 382).

82-4.214 - Building height.

"Building height" means the vertical distance measured from grade to the top of structure directly above with exceptions noted elsewhere in the code. Height may be measured from finished grade when such grade is below natural grade. Height shall be measured from natural grade when the finished grade is higher than natural grade.

(Ords. 96-4 § 2, 1781, 1760, 1759, 1569, 1469: prior code § 8102(pp); Ords. 1269, 1264, 1224, 939, 933, 382).

- It has been well established by the Zoning Administrator, and is even stated in the staff report for the Planning Commission, that whether or not the area is enclosed, is not a factor. The measure is for determining story limits and height limits.
- As stated in the ordinance, if the finished floor above is more than 6 feet above grade at any point, it is a story. The proposed structure includes heights that routinely measure approximately 10 feet and go up to more than 14 feet above grade. This is far in excess of the 6 feet defined in the ordinance.
- There is no question that the proposed residence is a three-story building. Either the plans should be revised to be in compliance with the County ordinance or a three-story variance should be part of the variance application.

Possible Solution/Resolution:

Add the following condition to the variance #VR14-1021:

The applicant shall submit plans to Contra Costa County Planning Department that shows compliance to Section 82-4.266 and Section 82-4.214 of the County Zoning Code. Submitted plans shall show that the finished floor of the lowest floor is not more than six (6) feet from the existing natural grade. This dimension shall be verified by planning staff prior to approval of requested variance.

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In addition, this dimension shall be verified as follows:

- A. The applicant is required to establish the existing natural grade by providing a report from a licensed surveyor. This report must be included with the building permit application.**
- B. Contra Costa County Building Department staff will verify that the finished floor of the lowest floor is not more than six (6) feet from the existing natural grade prior to issuance of a building permit.**
- C. The applicant is required to establish that the finished floor of the lowest floor is not more than six (6) feet from the existing natural grade prior to framing the second floor by providing a report from a licensed surveyor.**

SECTION 2

While the number of stories is the primary concern, there are other problems which have contributed to the need for this appeal:

➤ **Planning Commission was not provided important information.**

The staff report states that revised plans for the proposal were received in December 29, 2014. Why were these plans not included in the Planning Commission meeting materials? As an appellant on record, why was I not notified? These new drawings make it much easier to identify how much the proposed structure exceeds the "6 feet at any point" limit in the ordinance.

In addition, the planning process includes various hearings to gain the benefit of public input. The neighbors on Sydney Drive have been active participants at more than 5 different hearings. For the Zoning Administrator, we prepared a "'Neighbor's Request for Denial" that was signed by every property owner on the street, from the cul-de-sac at the top of the hill, to the end of the street where this project is located. This petition opposes the project on a number of considerations, including that it is three stories. (It should be noted, people do not oppose development of the lot. It is what is proposed that is the problem.). This was not part of the Planning Commission meeting materials, although it was presented to the Zoning Administrator in October.

➤ **Misrepresentation by the Applicant.**

This is possibly the most serious basis for this appeal. Instead of being able to look at the revised drawings, the Commissioners had to rely on testimony from the applicant.

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Commissioner Wright asked the applicant how many feet in height were under the house. The applicant began talking about a variety of related topics. Commissioner Terrell interjected: *"How many feet? How many feet?"*. Again, the applicant started with an ambiguous explanation and Commissioner Clark indicated: *"I do not think you are answering the question."*

Commissioner Wright then restated the question: *"Let me make it real simple. Anything that exceeds 6 feet, by my understanding is considered a story. So I'm just trying to understand. How many feet do you have underneath there?"*

The Applicant answered that he had 3 feet in one area and 5 feet in the other area. This is clearly an incorrect answer to what was being asked. I will leave it to those who wish to view the video to determine if this was an error, or a purposeful effort at misinformation.

This 3 to 5 feet misrepresentation influenced the decision. Right before the final vote, Commissioner Stewart again asked about the different testimonies in regard to the height. Commissioner Terrell (meeting Chair) responded that the applicant had stated it was no more than 5 feet, so the third story issue did not apply.

Analysis of this proposal, using the applicant's own data, clearly shows that the 3 to 5 feet representation is not only inaccurate, but the proposal significantly exceeds the 6 foot measure at many points above grade.

➤ Existing Grades and Topography

The lot survey and topo map provided is from 1985. That is 29 years ago. What are the current grades and topo? Why is a current topographic map not required at this time when variances are being considered? Without a current survey, how can anyone be confident with critical measures, such as building height? At the Zoning Administrator's hearing we pointed out that one of the roof peaks exceeded the 35 foot limit by more than two feet. The staff report for the Planning Commission states that has been corrected, but without a current and accurate topo, how can one be sure?

I do not understand why the rather routine requirement for a current survey is being resisted by the applicant and not enforced by the County? In a previous meeting Mr. Rassai was informed that to minimize cost, a total lot survey was not needed, from our perspective. The survey could be limited to the building and driveway areas (and not necessarily include the whole hillside).

Additionally, has the developer received permission from the surveyor who signed the topo map? On the survey being used, the staff report states the stamp is "faint". Normally, one would expect a current survey with a wet stamp and signature.

Even his Darwin Myers Geological Peer Review report (included in the meeting materials) refers to the topo map as "incomplete/inadequate" and says it should be wet signed and stamped. (see pages 6 and 7 of report).

➤ Tree preservation and inaccurate tree report.

The size and boxiness of the home is essentially affecting the number of trees that are being removed. As was testified by a representative from the Alamo Improvement Association, the tree report omits two additional code protected trees on the south east corner of the lot. The plans show a driveway in this area.

Summary

My only objective is to make sure that the information being submitted to the County is ACCURATE so that an informed, correct, and legal decision can be made. Unfortunately, it appears that relevant and important information has not been provided and misrepresentations have been made. I respectfully request that the County rescind the decision **or include the suggested condition in Section 1 to variance #VR14-1021.**

I make my living in the world of code compliance. This is a three-story structure and this should be recognized now. This should not be "punted" to the Building Department. The ordinance is very clear and there has been expert testimony that it is three stories. The three-story determination can have impact on the front entry, driveway grading, garage location and other aspects of the proposed project.

I also want to point out that at different times throughout this process, I have attempted to reach out and communicate with Mr. Rassai. I have even offered my assistance in helping him understand and overcome these problems. I have not received a reply.

In conclusion, I have never "protested" nor "contested" anything in my life before. All I want to do is make sure that Mr. Rassai builds a house that is compatible with the neighborhood and is built to meet the planning regulations for the R-20 district.

Please let me know if you have any questions. My cell (925) 766-5600.

Thank you.

Mr. Giyan A. Senaratne, S.E., P.E., LEED AP, CASp
California Registered Structural Engineer.
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