

**LETTER OF APPEAL TO  
THE BOARD OF SUPERVISORS**

**RECEIVED**

on 02/19/2021

CDVR19-01051

By Contra Costa County

Department of Conservation and Development

**VR-19-1051 APPEAL TO BOARD OF SUPERVISORS**

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To: Contra Costa Board of Supervisors

Title: Appeal

County File(s): VR-19-1051,

Applicant: Ryan Bosworth

Owners: Ryan Bosworth and Tommy Tran

Site Address/Location: 58 Canyon Lake Drive, Port Costa, California

Commenter: Ryan DeGooyer

Commenter's Address: 54 Canyon Lake Drive, Port Costa, California

Date: February 19, 2021

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To Whom it May Concern,

Please accept this letter as a timely appeal of the February 10th, 2021 Planning Commission approval of VR-19-1051.

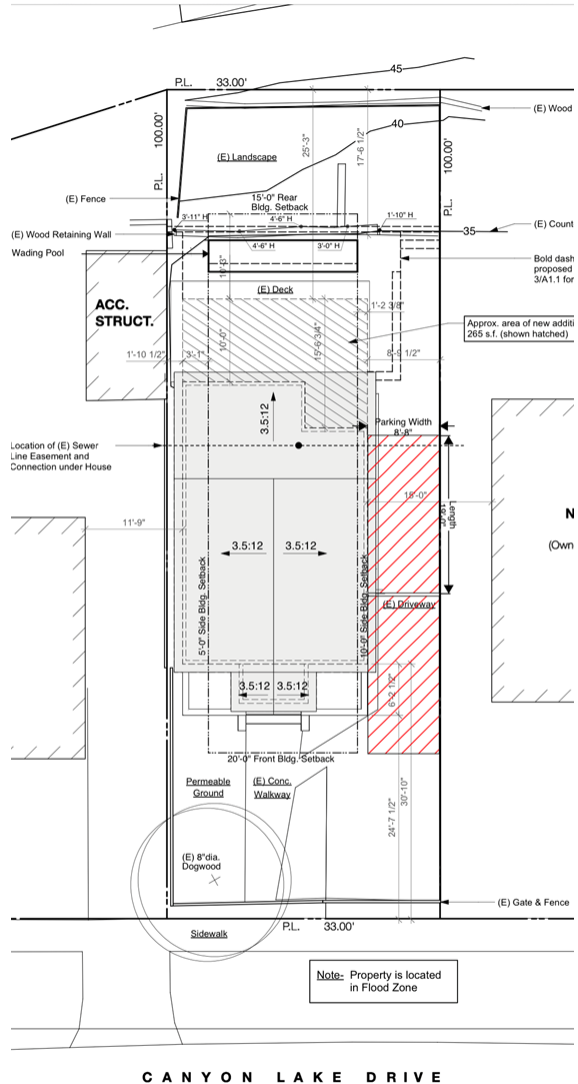
SETBACKS: The Planning Commission abused their discretion when allowing the Applicant to swap front and back yard setbacks (or principal and secondary frontages) in order to build up to 15' on Canyon Lake Drive without requesting a front yard or principal setback variance that would likely be denied. Canyon Lake Drive is the main road driving through Port Costa. While Canyon Lake Drive was correctly identified and approved as the principal setback in the ZA proposal, it was incorrectly identified and approved as the secondary setback in the PC proposal. While the ZA proposal correctly placed the front of the house behind the 20' setback on Canyon Lake Drive, the PC Proposal builds up to 15' on Canyon Lake Drive without requesting a necessary front yard variance. The PC findings were not supported by the evidence as the front of the house and driveway face Canyon Lake Drive, the main road in Port Costa. Additionally, the property has no access to Prospect Avenue a small one lane road cut into a 45-degree angled hill at the rear of the fenced off property. It is an abuse of discretion to approve an inaccessible one lane road at the rear of the property as a primary setback and the two lane road in front of the home as the secondary, especially considering the home and driveway faces the two lane road (Canyon Lake Drive). The switching of setbacks was arbitrary and capricious and produced absurd findings in which neighbors are held to more stringent front yard setbacks on Canyon Lake Drive than the applicant. Accordingly, the appellant requests the revised application for VR-19-1051 be denied due to findings not supported by the evidence and abuse of discretion regarding application of principal and secondary or front and rear yard setbacks.

EASEMENT: The revised drawings error in the size and location of the culvert and the calculation of the required easement. This error is solely advantageous to the applicant and detrimental to the safety of the community. The Planning Commission abused their discretion when they did not consider additional evidence from the appellant supporting concerns that the applicant had incorrectly mapped the size and

location of the culvert. Appellant requests a neutral third party map the culvert as she was previously told in writing by public works would occur or a mediation of varying credible culvert mapping to ensure applicant does not build on top of culvert responsible for keeping Port Costa from flooding. This is exceedingly important as Port Costa lies within a flood zone. Accordingly, this commenter requests the revised application for VR-19-1051 be denied as it errors in the calculated width and placement of the required easement resulting in possible house addition placement directly on the culvert. This could cave in the culvert and result in flooding damage to our home.

**FRONT AND BACK YARD SETBACKS AND VARIANCE REQUEST**

The applicant’s principal structure and front yard faces Canyon Lake Drive, the main street running through Port Costa. The applicant’s rear yard faces Prospect Avenue, a tiny one lane road running to a handful of houses up the hill. The rear yard has no access to Prospect Avenue as it sits above the homes up an approximately 45-degree angled hill. The property does not sit on a corner lot. It is a through-lot with neighbors on each side. Accordingly, the plain meaning of the R-6 setback ordinance as applicable



R-6 Zoning District Standards	
Minimum lot area:	6,000 sq. ft.
Minimum average width of lot:	60 feet
Minimum lot depth:	90 feet
Maximum building height:	2-1/2 stories or 35 feet
Minimum front setback:	20 feet
Minimum side yard / aggregate:	5 feet minimum / 15 feet aggregate
Minimum rear yard:	15 feet
Minimum side & rear yards for accessory structures:	3 feet if set back a minimum 50 feet from front property line

CANYON LAKE DRIVE

to the main structure is a 20' front yard setback on Canyon Lake Drive and a 15' rear yard setback on Prospect Avenue.

The County Zoning Administrator Staff Report clearly summarizes the boundaries of the property and then properly applies the plain meaning of the ordinance as exemplified in the chart provided by the planner on page 11 of the ZA Staff report and included above.<sup>1</sup> Application of the plain meaning of the ordinance is also exemplified on the VR19-1051 Revised Drawing which was presented to the Zoning Administrator, a portion of which has been included above.<sup>2</sup> Taken in conjunction, the drawing and the chart reflect the plain meaning of the ordinance with a front yard setback of 20 feet fronting Canyon Lake Drive and a rear yard setback of 15 feet fronting Prospect Avenue.

However, the application approved by the Planning Commission reinterprets the plain meaning of Contra Costa County Ordinance Code 84-4.1004 and 84-4.1006 and then applies to reinterpretation in an arbitrary and capricious manner. The reinterpreted language of the ordinance as exemplified in the new R-6 Zoning District Standards Chart (included below) appears to be:<sup>3</sup>

The minimum front setback for corner lots or double frontage lots is 20 feet for the principal setback and 15 feet for the other setback.

The rear yard setback is not applicable for corner lots or double frontage lots.

<b>R-6 Zoning District Standards</b>	
Minimum lot area:	6,000 sq. ft.
Minimum average width of lot:	60 feet
Minimum lot depth:	90 feet
Maximum building height:	2-1/2 stories or 35 feet
Minimum rear yard:	15 feet / n/a for corner/double frontage lots
Minimum side & rear yards for accessory structures:	3 feet if set back a minimum 50 feet from front property line
Parking	Two off-street parking spaces

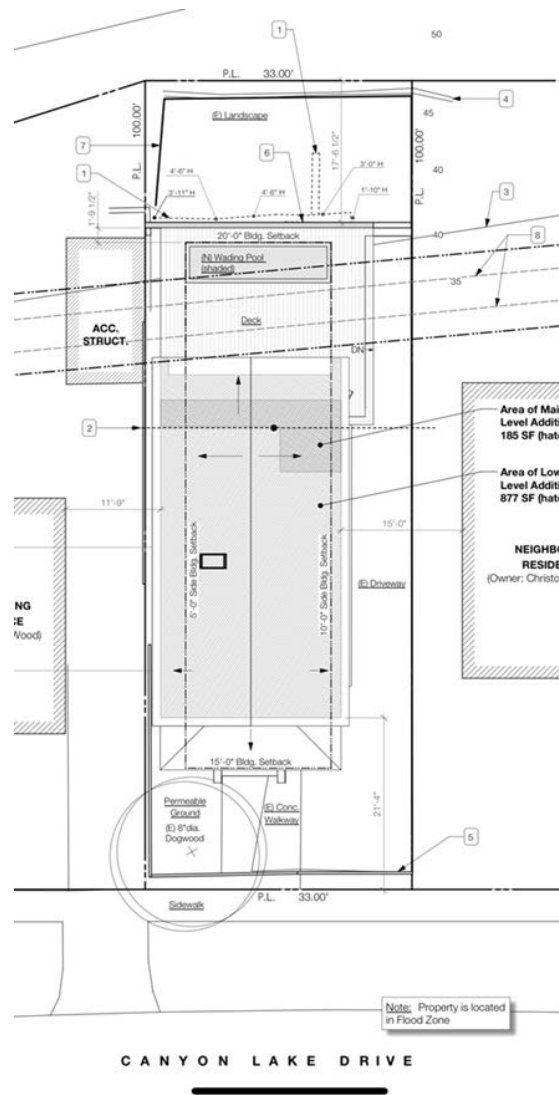
<sup>1</sup> ZA – July 6, 2020, County File # VR19 – 1051, Page 11 of 12

<sup>2</sup> VR19-1051 Revised Drawings Received Contra Costa County Dept. of Conservation & Development January 31, 2020 and presented for consideration at July 6, 2020 Zoning Administrator Meeting

<sup>3</sup> CPC – February 10, 2021 County File # CD VR19 - 0 1051 Pages 5 & 6 of 12

Regarding through-lots, it is possible to take this reinterpretation and end up with a proposal that enforces the plain meaning and intent of the ordinance. In fact, this reinterpretation, when applied to the ZA proposal above, would have done exactly that. The Zoning Administrator Staff Report states, ““The property has two frontages: the primary frontage is along the north side of Canyon Lake Drive with the secondary frontage along the south side of Prospect Avenue.” Applying the Planning Commission Staff Report reinterpretation to the Zoning Administrator Staff Report would have led to a synonymous result. The front yard facing Canyon Lake Drive, correctly identified as the primary frontage, was required to have a 20-foot setback. The rear yard, fronting Prospect Avenue, was required to have a 15-foot setback.

However, the Planning Commission Staff Report reinterpretation can also produce results which directly contradict the plain meaning of the ordinance. The potential for arbitrary results in the second interpretation becomes clear when considering the newly revised drawings approved by the Planning Commission, a portion of which has been included below.<sup>4</sup>



<sup>4</sup> VR19-1051 Revised Drawings Received by Contra Costa County Dept. of Conservation & Development on October 22, 2020 and presented for consideration at February 10, 2021 Planning Commission

As can be seen in the Planning Commission submission, the applicant utilized the new interpretation to flip his front and back yard setbacks. The applicant designated his back-yard frontage as his "principal" frontage, thus necessitating a 20' variance. Conversely, the applicant designated his front yard as his "secondary" frontage, which he believes invalidates the necessity of a 20' front yard setback. He then proposes to build up to the erroneously reinterpreted and inaccurately applied 15' setback secondary frontage in his front yard with no request for a 15' front yard variance. Clearly, this is not consistent with the plain meaning of the ordinance which is to provide a 20' front yard setback and a 15' rear yard setback.

The appellant understands that with some through-lots it may be difficult to determine which is the front or principal and which is the rear or secondary. However, it is not indeterminable at 58 Canyon Lake Drive as the County Planning Commission Staff Report clearly states, "The front of the residence faces Canyon Lake Drive, and the rear of the residence faces Prospect Avenue." Accordingly, allowing this switch is an abuse of discretion.

The absurdity of this reinterpretation can be seen when applied to neighboring yards. For example, my neighbor's house fronts Canyon Lake Drive. While Prospect Avenue sits behind their property, they do not have double frontage. Their rear yard fronts open space and Prospect Avenue runs through the open space. This reinterpretation would grant the applicant a 15' setback in his front yard while also requiring my neighbor to have a 20' setback in my front yard. Both homes face Canyon Lake Drive. Both have a driveway off Canyon Lake Drive. Both of homes have a culvert running through their rear yards. Both of the lots are 100' in length. Both rear yards look upon Prospect Avenue approximately 20 feet up a 45-degree angled hill. Neither have rear yard access to Prospect Avenue due to the extreme angle. Clearly the intent of the ordinance is not to result in varying front yard setbacks between these two similarly situated homes.

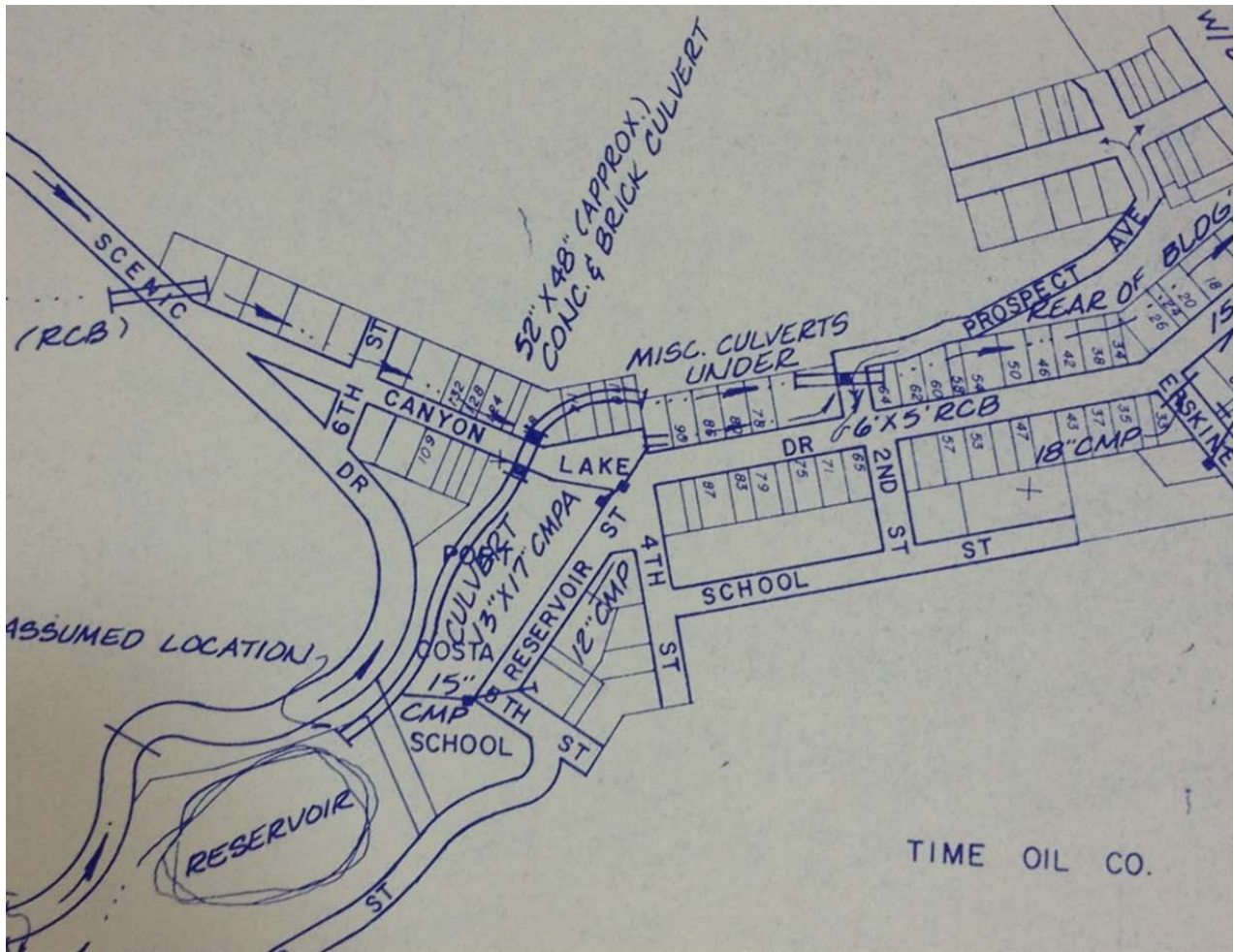
Preparing for the Planning Commission Meeting, we spent significant time watching previous meetings to ensure understanding and respect for the process. In most cases, and rightly so, the Planning Commission considers the appeal with the presumption that the planner got it right because interpreting ordinances is what planners do for a living. However, in this situation, the planner submitted before the Planning Commission an interpretation of the ordinance that directly conflicts with the original interpretation the planner submitted to the Zoning Administrator. They cannot both be right. One states a 20' setback is needed in the front yard along Canyon Lake Drive and one states a 15' setback is needed in the front yard along Canyon Lake Drive. Either the ordinance itself is arbitrary and capricious or it was interpreted inaccurately.

It's also worth noting why the applicant flipped the setbacks instead of simply asking for a 15-foot front yard variance. While the appellant cannot say for certain, the appellant believes a front yard setback variance finding is likely not supported by the evidence. While the width of the applicant's lot is substandard, the length, at 100', is not. Additionally, the applicant cannot claim the culvert presents an individual hardship, as it runs through all our rear yards. Therefore, the applicant creatively attempted to circumvent a front yard variance request by stating the front yard should be given a rear yard setback of 15' instead of a front yard setback of 20'. Accordingly, we appeal the revised application granted by the Planning Commission as it erroneously excludes the front yard setback of 20 feet on Canyon Lake Drive as required by County Ordinance Code 84-4.1006 and fails to request the 15-foot front yard variance necessitated by the plans submitted for consideration.

**CLOSED CONDUIT**

The Zoning Administrator appeal was submitted after the commenters concerns regarding the applicant's proposal to build on top of a rear yard culvert were disregarded. The applicant's original proposal, approved by the Zoning Administrator, stated no closed conduit existed in the rear yard of the applicant's home. In the Zoning administrator hearing, we provided both a hand drawn survey from public works that included the closed conduit as well as pictures of the closed conduit. We have included them again.

The Bull Valley Creek and Bull Valley Watershed runs through a series of open and closed conduits built in the late 1800's to keep the town of Port Costa from flooding. This is exceedingly important as Port Costa lies in a designated flood zone.





In the Planning Commission Staff Report, some headway was made regarding the closed conduit, and we are thankful for it. The applicant stated a 4-foot-wide culvert runs through the rear portion of the yard fronting Prospect Avenue. However, the revised drawings error in both the size and location of the culvert, thus by extension the calculation of the required easement, in a manner solely advantageous to the applicant and detrimental to the safety of the community.

As the plain reading of the ordinance can imply a few different interpretations, the appellant puts forth the interpretation provided by Randolph Sanders, Contra Costa County Public Works Department: Engineering Services who, in an email to the appellant dated 7/7/2020, provides the example of 3' closed conduit and concludes, "the easement using the method for 3 feet outside diameter would be 9' (4.5' from centerline each side) but as that is less than 10' the easement should be 10' (5' from the centerline each side).



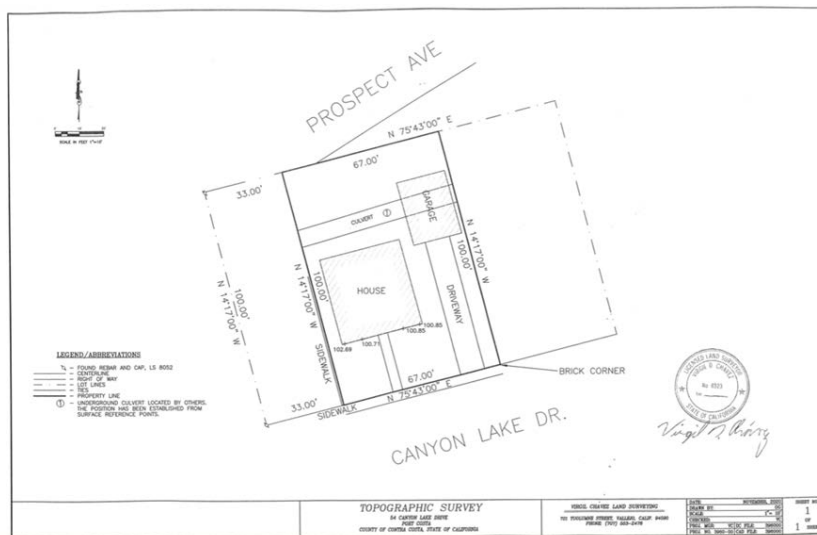
Accordingly, using Mr. Sanders' interpretation of the plain reading of the ordinance, a closed culvert easement should be 3' from the **outside diameter** of the closed conduit on both sides (if this totals less than 10' then the easement should be 10')

The applicants state the outside diameter of the culvert is 4' and propose a 10' minimum easement on their new drawings (the minimum required for all easements). The submittal approved by the Planning Commission did not contain any information on how the culvert location or size was determined other than to say, "subsequent to the Zoning Administrator's approval, the applicant hired a surveyor and plotted the approximate location of Bull Valley Creek on the revised site plan and proposed a 10-foot drainage easement over the culvert."<sup>5</sup> However, simple viewing of the culvert where it surfaces down the street shows the culvert, with its thick stone and mortar walls, is larger than 4 foot in diameter from its exterior walls.

This past summer the appellant hired Simon Taylor, owner of Foresite Engineering Surveys and Utility Studies. Mr. Taylor has 37 years of extensive experience mapping lost conduits and utility lines on decommissioned military bases, so we thought he was probably up to the task of mapping our culvert. Our mapping was multi-purpose as we have considered putting an addition on our own home and wanted to understand if this was possible.

Mr. Taylor utilized Ground Penetrating Radar and visual inspection of the interior of culvert to determine location and size. The report written by Mr. Taylor, that we submitted with our appeal, states, "the inside tunnel dimension could be approximately 5 feet wide...The walls of the structure of the structure appear quite thick, approximately 18-24 inches." Mr. Taylor marked the dimensions of the culvert in our rear yard and provided us GPS coordinates.

After Mr. Taylor scanned, we informed him of the applicant's intentions. We asked him how the applicant could map the culvert in their rear yard. He responded that the applicant would be "unable to determine the exterior dimensions of the culvert with current deck placement." The burned down pergola the applicants constructed obstructs almost the entirety of the rear yard.



The applicant proposes the culvert is 4 feet in diameter including exterior walls. Mr. Taylor proposes the culvert is 8-9 feet including exterior walls. The applicant's proposal would require a 10-foot variance. Mr. Taylor's assessment would require a 14-15-foot variance. We recognize the relevance depends on where the culvert lies on the applicant's lot. Accordingly, we hired Virgil Chavez Land Surveying to make a survey of our property and place

<sup>5</sup> CPC – February 10, 2021 County File # CD VR19 - 0 1051 Pages 4 of 12

the culvert identified by Mr. Taylor on our survey. Our survey maps the culvert and does not include any lines for proposed easement. We then transposed the applicant's survey over our survey and mapped out the differences in closed conduit angles and width.



In the picture above, the applicant's closed conduit mapping is in blue and our closed conduit mapping is in green. The red line is where the neighbors are requesting a variance to propose install a 6-foot retaining wall in their rear front yard. This becomes important in determining which line is more likely to be correct, as the retaining wall is where all our rear yards become steep. Again, the green and blue lines do not include the necessary 3-foot easement on both sides of the culvert. These surveys can also be transposed



over the hand drawn survey provided by public works. As can be seen, the culvert mapping provided by the applicant moves steeply uphill. Crossing the red line delineating the hill at approximately 50 and 46 Canyon Lake Drive. Conversely, the culvert mapping provided by the appellant remains in front of the hill for the entirety of the line. Surprisingly, as this survey was not shown to Simon Taylor, Foresite Engineering, at any time during his mapping of the closed conduit, the appellant's line also follows relatively the same line as the hand draw survey delineating the line as well.

It is also notable that according to the mapping of the closed conduit, the corner of the applicant's structure may still lie on top of the 100+ year old culvert responsible for keeping our town from flooding. Moreover, the entirety falls within the required easement.

Accordingly, the appellants find themselves requesting relief from the Board of Supervisors. The appellant understands the Planning Commission grants the Planner and County Works the presumption of accuracy because they are in the business of determining such things. However, once again, the appellant proposes this has already been determined incorrectly by the Planner and Public Works. Both the Planner and Public Works stated there was no culvert. This was not true. They now state there is a culvert and the location and size has been accurately determined. This is also not true as the applicant's proposed location would have the closed conduit running straight up a 45-degree angled 30' hill. In previous email conversations with Randolph Sanders, he stated the community would hire someone to assess the location of the culvert. This did not happen. In fact, at no time has the applicant or planner disclosed who mapped the alleged location of the culvert they previously insisted did not exist. Accordingly, the appellant requests the Board of Supervisors give the planner, appellant, and applicant time to work together to determine a true and accurate location and width of the culvert which runs through our rear yards. If the applicant could remove their rear deck, we'd be happy to hire Mr. Taylor to record the culvert in both yards. If the applicant does not think this is sufficient, we could each hire a representative and have them work side by side to determine the location of the culvert. We are more than happy to do whatever is needed to reach a speedy and accurate resolution of this issue. However, it is vitally important the location of the closed conduit be determined accurately as the culvert keeps our town from flooding and it appears the applicants design builds directly on top of the culvert.

## **CONCLUSION**

To conclude, the revised plans approved by the Planning Commission inaccurately applied the plain language of Contra Costa County Ordinance Code 84-4.1004 – Yard - Setback and 84-4.1006 – Yard - Rear. Additionally, the revised drawings error in the size and location of the culvert and the calculation of the required easement. This error is solely advantageous to the applicant and detrimental to the safety of the community. Accordingly, this commenter requests the revised application for VR-19-1051 be denied (or appeal upheld) as it erroneously excludes the required front yard setback of 20 feet on Canyon Lake Drive, fails to request a 15-foot front yard (or principal) variance, and errors in the calculated width and placement of the required easement resulting in house addition placement directly on the culvert. Additional appellant concerns regarding solar impact and building outside of original footprint would be substantively addressed alongside these concerns.

One final note. During this entire process we have repeatedly reached out to the Planner to offer assistance and ask how we could help. We have been transparent with our concerns and offered evidence to assist with determining a reasonable resolution. Not once has the planner reached out to us to get our thoughts on possible solutions. We like our neighbors. The night of the fire, my first thought after

awakening to a wall of flames was to ensure their safety. We want our neighbors to rebuild their home. However the home they are trying to build is too large for the lot on which they reside. This is evident in the front yard/back yard setback flip. This is evident in the inaccurate width and placement of the culvert. The plan does not fit.