

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
MAY 30, 2007
APPROVED JULY 11, 2007**

The meeting was held at the hour of 6:00 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

MEMBERS PRESENT: Chair; Ron Palmeri; Members, Jewell Spalding, Lester Friedman and Dawn Clark.

MEMBERS EXCUSED: Vice Chair; Frank Peixoto.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; Brian Washington, County Counsel; Yvonne Bea Grundy, Recording Secretary

SPECIAL MEETING: 6:00 p.m.

There were approximately 12 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 6:00 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair announced that there was a 3 minute time limit when addressing the Board. Responses to questions are deducted from speaking time.

OPEN FORUM:

Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes.

No one requested to be heard under open forum.

REGULAR CALENDAR

1. **AUFDERMAUER, SITE DEVELOPMENT REVIEW, S-2110 and VARIANCE, V-12051** – Variance application to allow construction of one house approximately 250 feet back from the front property line in an area between 25% and 30% slope where a 70 foot maximum setback as required by the Madison Area Specific Plan; and Site Development Review, SDR S-2110, application to build same as said house as required by the Madison Area Specific Plan; on one vacant parcel located approximately 1200 feet north of Sea View Avenue on Common Road, east side of Castro Valley Creek, in the R-1-B-40-CSU-RV (Single Family Residence, 40,000 square feet Minimum Building Site Area, 150 feet Minimum Lot Width, 30 foot front yard, Conditional Secondary Unit) Zoning District, and located within the Madison Area Specific Plan, unincorporated Castro Valley area of Alameda County, on Assessor's Parcel Number: 084C-0895-040-00.

Staff Planner, Lou Andrade introduced himself. The project is a request for a home 25 feet back from the front property line. The Madison Avenue Plan requires a minimum setback of 70 feet. The Madison Avenue Plan Area is unique, and has its own zoning rules that are not typical. A variance request is required as a result of the applicant's proposal to build a portion of the home in an area with a slope between 25% to 30%. The application was heard in conjunction with 2 other projects located adjacent to

the parcel by the Castro Valley Municipal Advisory Council on April 9, 2007. Each item was voted on individually. The CVMAC voted 3/2, to recommend denial of the variance.

Initial Board questions were as follows:

- Is the BZA solely considering the parcel front set back of 250 feet
- Why did CVMAC deny the application
- How many 2 story homes are located on Madison Avenue Common
- What is the average square footage of those homes
- If there is a conflicting requirement regarding the comment in the staff report that if the project were built within the required 70 foot setback, the proposal would be within an area of 30% slope vs. the request for a greater setback than allowed in the Specific Plan
- What is staff's interpretation of the order of precedence? Building in an area that is not on the canyon walls or building in an area of 30% slope or more
- What is the function of the BZA to interpret the Madison Avenue Plan regarding Policy #5, Preserve Existing Features, and Visual Importance
- What is the function of the BZA to interpret the Madison Avenue Plan regarding, Section #11, Regulations, Improvements, and Slope Control
- Have the slopes indicated in the proposal been averaged, or are they an exact calculation
- Are there areas of the lot that are less than 25% to 30% slope
- Can the proposed home be redesigned outside of a 25 slope % area to avoid the need for a variance
- Did subdivision of the property take place prior to the revision of the Madison Avenue Plan

Staff confirmed that the BZA was only considering one single lot, and the set back of 25 feet from the property line. Throughout discussion, CVMAC pointed out that the proposal did not follow the Madison Avenue Plan. The Plan requires that the front setback be within 70 feet of the road. This proposal did not meet that requirement. In addition, CVMAC said that the Madison Avenue Plan was recently revised. Staff was unsure of the exact number of homes recently built in the area. They believe approximately eight two story homes have been added within the past 20 years. Member Friedman said that he had gone to look at the site. The immediate area was confusing in the sense that he could not determine the exact location of the variance site. A portion of the area was also covered with blackberry bushes. In addition public noticing (signage) was posted across the street, not in front of the site. Staff explained that the property in question had a horse paddock at the front of the parcel. Multiple public noticing is done within the vicinity. Unfortunately sometimes people take County postings down. The property is unimproved pasture land. The horse paddock is the key feature.

County Counsel said that his reading of the Madison Avenue Plan's intent is not to build on any land area of a 30% slope or more. Whether canyon walls or rolling land. The BZA has the discretion to make a decision contrary to the Plan if they can provide a logical interpretation that would support the decision.

Staff interjected and told the Board that the proposed project will not be built on a slope greater than 30%. The project intrudes, partially into an area that is between 25% slope to 30% slope. The variance is for the *setback* in an area 25% to 30% slope. If the project proposal was to *build* on an area of 30% slope, that proposal would be a different type of variance request. Staff also clarified that the Madison Avenue Plan now states slope, as they are measured. Prior to the revision of the Plan, averaging was employed. A plot plan has been developed that indicates all slopes in the Madison Plan area. Therefore the stated slopes in the updated Plan are not averaged. They are, as measured. The applicant proposes to build the project within the 25% to 30% slope area. Avoiding as much of the areas that exceed 30% slope as possible. The footprint of the house is mostly within an area that is within 25% slope. There is a small corner of the footprint that would be within the 25% to 30% slope area. This triggers the 70 foot setback rule. If the applicant builds in an area outside of a 25% to 30% slope, a variance would not be needed. It is possible, to redesign the project to be in compliance with the Madison Avenue Plan. Staff then gave a history of the property. The lot was subdivided before the Madison Plan was revised. Staff did not have an exact date but they believe the lots were subdivided, approved, and deemed as 3 building sites in 1978. At the time, approval of the project was appealed to the Board of Supervisor's. View, was part of the discussion at the time of approval. The BOS decided to uphold the decision to deem the sites as building sites. The impact of view however is not discussed within the Madison Avenue Plan. Regarding the possible contradictory statements in the Madison Avenue Plan regarding setbacks of more than 70 feet vs. building in sloped areas of 30% or more, the issue has been somewhat anticipated. It is an unintended consequence that arose. In this case if the applicant built in a complying way his structure would be higher. It also may block views from above. Although blocking a view is not part of the Zoning Ordinance. The applicant's argument is that by building the structure as he proposes requires a variance, but it lowers the building and does not block views from other properties. Member Spalding pointed out that page #8 of the staff report said that the applicant could build the home farther toward the rear of the property, where the slope is less than 25% to 30%. Staff clarified that statement was not exactly correct. The applicant would still need a variance because the proposal would still encroach into a 25%, slope area. In addition a minimum 20 foot rear setback is required. Member Spalding asked staff if the applicant would still need a setback variance if they redesigned the project to fit entirely within an area less than a 25% slope. Staff explained that the front setback variance requirement would disappear. As this condition is only triggered when there is construction on slopes of 25% to 30% or more. Staff referred to submitted drawing C-2 and C-3. The portion near the steps of the dwelling is the main area that exceeds 25% to 30%. Member Spalding asked what percentage of the overall foot print exceeded the zoning allowance. Staff estimated approximately 500 feet. The Board can confirm the square footage of the area during applicant testimony. The estimated square footage of the house is 1,400 square feet on the upper level. The overall footprint is 3,000 square feet. Public testimony was opened.

The applicant, Mr. John Aufdermauer greeted the Board. He lives at 17580 Madison Avenue, and Madison Avenue Common in Castro Valley. His current home is 3 houses away from the proposed project. Mr. Aufdermauer said that he was involved with the entire revision of the Madison Avenue Specific Plan, as he also lives in within the Plan area. This included attending the meetings at Supervisor Nate Miley's Office, and the Planning Department meetings. As a property owner he had a vote regarding input. He was in support of revisions to the Madison Plan. When Mr. Aufdermauer purchased the property he is requesting the variance for, he spoke to the surrounding neighbors on Madison Avenue, and Madison Common. He also talked to neighbors on Center Street and Elaine Court to determine their preferences on height, and proximity of the dwelling on the lot. After canvassing all of the neighbors he developed 3 different plans. The home could have been moved closer to the frontage but a variance would have been required to build on a 30% slope. However all of the neighbors were adamant against that. There is an area on the top of the hillside that is less than 30 % slope. However if you build in that area it takes away the view of homes on Elaine Court. As a result Mr. Aufdermaur proposed the current design. The proposal preserves views, and is similar in size to newer homes, built in the area. Most of the homes built in the area in the past 12 to 15 years have been an average of 4,200 square feet. There are

7 total. The home he lives in is 3,350 square feet. The last home built in the area was the De Lima property. Including the secondary unit, the total square footage is 4,500 square feet. Mr. Aufdermaur's project proposal is designed to be consistent with other homes in the area. It is also designed to justify the selling price of the home. The plan encroaches 384 square feet into the 25% to 30% slope area. The footprint of the home would be 3,000 square foot. This allows the house roof line to remain below the neighbor's patio line. The neighbors would look over a roof, but not a 15 foot vertical wall. The northwest corner of the house is the only section that is within a 25% to 30% slope. Mr. Aufdermaur had a civil engineer lay out the design in a 10 foot grid to ensure the exact slope of the entire lot. After extensive discussion with the neighbors, the single story design was deemed to be the best option. Regarding grading, the location of the house will not change. The northwest corner would be shifted back 15 feet. The steps would also be moved back slightly. Grading will be kept to a minimum. The project will require approximately 3,600 cubic yards of dirt to be removed, to get to the road. Mr. Aufdermaur asked the neighbors if they would be willing to support a proposal to build within a 30% slope, if it would reduce grading. The neighbors were not in support of any variance to build in a 30% slope area. The current proposal is similar to existing homes in the area. The design will place the home at least 30 feet away from a home located on Elaine Court. The rear setback will be in compliance at 20 feet. The design provides better views for surrounding homes below the project, and above the project. If Mr. Aufdermaur were to build the project without a variance, the structure height would have to be raised 15 feet on the north side of the home. This would cause 3 homes on Elaine Court and Center Street to partially lose their views. He referred to page #3 of the staff report that detailed the location, patios, elevation, and impact to each of the surrounding properties. The proposed plan would allow homes to look over the property, and not destroy the view. None of the proposed dwelling is on a 30% slope or more. When Mr. Aufdermaur talked with neighbors and attended public hearings there were no issues raised about building on a 25% slope or more. There was only opposition to building in a 30% or greater, area of slope. One neighbor did raise the question later, and he appreciated the question being raised. Mr. Aufdermaur also wants to improve the creek during the application process. He had a creek flow study done of Coyote Canyon Creek, and Kelly Creek, at a cost of \$10,000 dollars. It was discovered that the culverts on the property are undersized, and need to be replaced. Mr. Aufdermaur met with Fish & Game, Army Corps of Engineers, and the Regional Water Quality Control Board. The creek will be restored to the recommended agencies specifications. Mr. Aufdermaur has already submitted the appropriate permits to each agency. The blackberry bushes on the property are a non native species of Himalayan Blackberry. The bushes will be replaced with a native California blackberry species. Three culvers will be removed. They will be replaced by two culverts which are designed to increase, net flow. About 30 feet of the creek bank will be restored. A single driveway will be used for the project parcel and the neighboring property which will shorten the water pipe from 100 feet to 60 feet. The applicant said that he had received letters in support of the project from people on Madison Avenue, Madison Common, Center Street and Elaine Court. He asked the Board to support the application and preserve views in the area, based on the information that had been presented. Grading will take place only during construction of the home. The construction process will also be temporary. In comparison, blocking someone's view is permanent.

Member Spalding asked to review the letters of support. Mr. Aufdermaur told the Board that he submitted the 32 original letters to Planning Staff. He showed the Board copies. After reviewing Mr. Aufdermaur's information and determining the exact location of the application request, Member Clark asked when he purchased the parcels. Mr. Aufdermaur clarified that he now owns, 2 lots. They were purchased in April, 2006. Member Clark asked the applicant to clarify if he encroached into the 30% slope area. Mr. Aufdermaur responded that he did not encroach into the 30% slope area, at all. By his calculations he only encroached into a 25% slope area. Member Clark asked if he could adjust the design to eliminate encroachment. Mr. Aufdermaur said that he could alter the design, but 6 of the neighbor's views would be impacted. The best way to preserve views is to allow the slight encroachment. If the variance were granted, views would not be impacted. On the north side of the property the proposal

would be 12 feet above grade. The Zoning Ordinance allows a maximum of 30 feet. He believes his design proposal is better. The garage, driveway, west, east and south side of the house will not change. Only the northwest side corner of the property moves back 15 feet. Member Clark asked what was the total footprint of the house. Mr. Aufdermauer said 3,000 square feet. One end is tucked into the hillside. The total square footage is 4,700 square feet, which is comparable to the other homes in the neighborhood. Member Spalding asked the applicant to clarify that his goal was to lessen the height of the structure to preserve views. The applicant acknowledged that was correct. Member Spalding asked what would be the total height of the home. The applicant confirmed the elevation was eleven feet in elevation from the existing grade, on the north side of the house. This would be the uphill side of the proposed home. On the side of the home that would face Center Street, the grade tapers down at a north to south taper. On the low side of the hill the height would be approximately 25 feet. A neighbor on Center Street would see an elevation height of 11 feet on the northeast side. Then as the grade tapers downhill, the height on the southeast corner of the house would be 25 feet.

Mr. Ed Copra, of 5385 Elaine Court said his home borders lot B, of the proposed development. He would be the neighbor that is most impacted by the project. Mr. Copra believed the applicant was building a mega mansion for profit. The proposed home is not a dream home that he will live in. There is nothing that requires him to build the proposed square footage. The applicant did talk to him, but the extent of the conversation was that if he opposed the plan. Mr. Aufdermauer would pursue a design that blocks his view. That was the extent of the dialog. The CVMAC rejected the project due to the grading, and the size of the house. He believes the rejection was a vote of 4/1 not 3/2, as previously stated. There are alternate sites on the parcel where the applicant can build. However it will not be a mega mansion. Mr. Copra said the he was concerned about erosion, and the amount of grading. Homes that have been built in the area prior to this application, have found it necessary to add retaining walls after initial construction to slow down erosion. One homeowner had to spend \$30,000 dollars. In addition, a freeway sized onramp driveway would be necessary for this project. The area next to the proposed driveway is environmentally sensitive, and has a natural water shed that drains there. In the future there is a potential liability for slides. He is shocked by the massive amount of soil that would be removed to build the project. This grading would take place next to a 30% slope area, located just beneath his property. The applicant should scale down the project. Mr. Copra presented photographs to the Board of area homes that were experiencing erosion, and that employed retaining walls. Mr. Copra pointed out that the issues all occurred, after plans were approved. He asked the Board to deny the application, and stick to spirit and intent of the Specific Plan. Member Clark asked Mr. Copra to identify the location of his home on a map of the area. She also asked how many times he spoke to the applicant prior to the development of the plans. Mr. Copra said he only spoke with the applicant once, after the plans were developed. He reiterated that he was also told the option if he was not in agreement with the design, was to have his view blocked. Member Friedman asked Mr. Copra to identify possible alternative sites that the applicant might use, and to point out if any of the sites were within the required 70 foot setback. Mr. Copra pointed out locations to Board Members but was unsure if any were within the 70 foot setback. Member Spalding asked Mr. Copra if he knew how many truck loads of soil were required to be removed. Mr. Copra did not have an exact number. The amount that was presented at the CVMAC Meeting in his estimate was astronomical, and beyond his comprehension. The Chair said he believed the amount to be approximately, 300 plus truck loads. Staff interjected. The original estimate for the project encompassed multiple lots.

Ms. Connie Deets, told the Board that she lives at 18413 Madison Avenue. She lives on the opposite side of the road from the proposed project. She is opposed to the project being built on a slope of more than 30%. She is also opposed to unnecessary variances to the Specific Plan. The portion of the parcel the applicant is attempting to use is deemed un-buildable, by the Specific Plan. Ms. Deets said she was extremely disappointed by the fact that the staff report states: consideration would also be given to other parcels. The County has a rule that each variance must stand on its own merits or demerits. It is

outrageous that staff would use previous variances to support findings. When the last project for the Madison Avenue Area was considered (De Lima), it was also to build on a slope of more than 30%. Ms. Deets said the language should be specific and tight with no loop holes. What happens is that projects are approved, but the grading continues. Grading is still going on at the De Lima property. Applicant's do grading on the weekend, and then submit "as build" changes. Once the permit is approved, as-build changes do not come back to the Board for review. If the Board chooses to grant the application, language must be added to limit grading to, Monday through Friday. This will allow the Grading Department or Code Enforcement to come to the site if the applicant goes beyond the variance conditions. It will also allow County staff to determine if grading is affecting the creek, or encroaching onto areas of 30% slope. The lots are speculative. For sale signs have already been placed. Language should also be added to the variance if granted that any changes must come before the BZA. Not done as "as build changes". The prior variance that was granted has exceeded the grading limitations. The secondary unit is now placed on the area that was a 30% grade. The next builder can take the plans and just build. There is no control. The Board should stick with the rules. There should be no building on slopes of 30% or more. During prior discussions of the project some people thought that a 25% grade should have been the threshold. But from an engineering standpoint, 30% is when a hill can slide, severely. During the De Lima project Ms. Deets counted 150 trucks of soil. The applicant reported a false amount. Ms. Deets again asked the Board to deny the project. She confirmed that Mr. Aufdermauer did invite the neighbors to his home to view the plans, 3 times. Each time those invited expressed that no building should take place on areas of 30% slope. Although the proposed homes are nice, they are speculative. If this project is approved, more speculative lots will follow. Strong language and controls must be implemented to ensure that developers cannot build on a 30% slope.

Mrs. Marsha Todd who resides at 18423 Center Street chose not to speak but asked the Board to refer to a letter of opposition that she had submitted. Her biggest concern regarding the project is that her quality of life will be disturbed. The proposal will completely change her environment. The home would be 20 feet from her back fence. She and her husband Al Todd have lived in their home for 19 years. She is not anti development, but she is opposed to development 20 feet from her back fence. Member Spalding asked Mrs. Todd if she had read the staff report, and where her property was in relation to proposed home. Mrs. Todd said she had not read the staff report but referred to a map to show her property in relation to the applicant's. She continued and said her home has three levels that face downhill. One level looks out onto a meadow. The property is terraced, and incorporates retaining walls. However many lots in the area do not have retaining walls.

Ms. Roxann Lewis told the Board she lives at 17750 Madison Avenue. She responded to Member Clark's earlier inquiry as to the location of the De Lima property. It is located at 17760 Madison Avenue. Ms. Lewis said that she did not understand why the Specific Plan was not being followed. The entire Upper Madison Avenue is a Riparian Area. There are also two creeks that run through the area. The Specific Plan was updated, less than 2 years ago to protect this fragile area. The Plan was adopted in July of 2006. When the application was submitted to CVMAC, the recommendation was denial because the project did not comply with the Madison Avenue Plan. Residents from the neighborhood worked on the revision of the Madison Plan with County staff. The intent is clear. Regarding the Chair's earlier reference to page 5 of the Plan, Slope Control, building in an area of 25% to 30% slope must be within 70 feet of the road. Ms. Lewis stated that the proposed size of the home at 4,700 square feet is twice that of houses in the immediate vicinity. The size of the proposed dwelling can be reduced, so building does not take place within areas greater than 25% slope. Then a variance will not be required. In addition, page #8, Condition #5 of the Specific Plan states that grading "shall" be kept to a minimum. This project will not do that. Another disturbing aspect of the Staff Report is Tentative Finding #2. Staff says that other properties would be given the same consideration. In the past the requirement has been each application must meet variance findings. An exception should not be made, as a precedent will be set to approve more applications of this type that do not adhere to the Madison Avenue Specific Plan. The Board must

uphold the Plan. The applicant was at the CVMAC Meetings. The recommendation was to reduce the home size to avoid building on a slope greater than 30%. Mr. Aufdermauer chose to ignore the Madison Avenue Plan when designing his spec home. Ms. Lewis said she was suspect that some of the letters of support the applicant referred to are from people that do not live within the Plan area. She asked the Board to deny the application. It does not comply with the Madison Avenue Plan. Member Friedman asked Ms. Lewis what size project would meet zoning, in her estimation. Ms. Lewis said the applicant should be able to design a home, minus the corner he states encroaches into the 25% to 30% slope area. The applicant knew the zoning rules before starting the project. In her opinion he should not ask for a variance to make the project larger to increase the price of the proposed home. She reiterated her concern that if the application is approved, there will be more projects built within an area of more than a 30% slope. The Board should hold to the Specific Plan.

Mr. Steve Phillips said he lived at 18411 Center Street. He then showed the Board where his property was located on a topographical map. His main concern was that the proposal be low in height, so he can retain his view. The applicant has been in communication with him, and he believes the proposal was done well. The design has a low roof line. Although he was not crazy about losing the meadow view from his house, he would not like a 2 story structure placed on the lot. Member Spalding asked Mr. Phillips if his site was to the East of Mr. Aufdermauer's. Mr. Phillips confirmed that it was. The front of the proposed home will have a deeper slope.

Ms. Diana Hanna told the Board that she does not live in the Madison Avenue Plan area but is a Castro Valley resident. She has been involved with the group of local residents concerned about the Riparian area and creeks. Recently she was appointed to the Creek Moratorium Taskforce Committee. Ms. Hannah has also worked with people involved in the Specific Plan update process. Ms. Hannah asked staff if the parcel was approved prior to the Creek Moratorium going into effect, as the lot is near 2 creeks. Staff confirmed the lot was established prior to the Moratorium. Ms. Hanna said her feeling was that the ink was hardly dry on the updated Madison Avenue Plan, and there is an application for an exception. Granting this application would invite others to ask for variances, as well. Ms. Hannah explained that she lived in a canyon too, and knows that soil slippage can be dangerous. The house can be re-designed, and reduced in size. This neighborhood is not suited for such a large house. Ms. Hannah also attended the CVMAC meeting, and confirmed Mr. Copra's comments on the vote count, and reason for denial were accurate. Ms. Hannah closed her testimony asking the Board to adhere to the Madison Avenue Plan, and deny the application.

Ms. Christine Sarantakis lives at 16727 Madison Avenue. She told the Board that she was also opposed to the application. She participated in the Madison Avenue Plan process. The process was hard and long. She agreed that the ink was hardly dry and there were already variance requests. Ms. Sarantakis said that she had done some research to see how surrounding counties dealt with areas with a high slope percentage. Petaluma was one of the 1st areas to study the affect of hillside development. They concluded that once hillside building is begun; trees are removed; erosion increases; larger driveways are specked for homes, and additional streets are added to the community. There is also an increase in public expenditures for disasters; Loss of vegetation, and loss of rural atmosphere. All of these effects actually decrease real estate values. Bellmont prohibits building in areas of 30% slope. San Benito County, says that building in areas of more than a 30% slope is environmentally hazardous. Orinda requires that areas of slope 26% or greater remain undeveloped. The City of Napa has 30% slope limit. Lafayette has an ordinance in the same spirit as the Madison Avenue Plan. Moraga has a 20% slope rule. Danville, 30% slope or less. The western hill area of Dublin, which is the hill area shared with Castro Valley has a 30% rule. In July 2006, 7 homes in Pittsburg had to be evacuated, due to slippage as a result of excessive grading. The applicant's proposal would require extensive grading within the 30% grade, to allow the driveway to get up to the house. Ms. Sarantakis asked the Board to please uphold the Specific Plan. Member Spalding asked Ms. Sarantakis if she had been a member of the Committee for the Madison Plan

update. Ms. Sarantakis said that she had not been on the Committee, but that she participated in the hearings and gave testimony.

Ms. Lora Chiles said that she lived at 17875 Madison Avenue. She would like the Board to adhere to the Madison Avenue Plan. There are two vacant lots in the area, and the owners are awaiting the outcome of this application. If approval is given for this project there will be more variance requests in the future. A lot of work went into the Madison Avenue Plan. The intent should be upheld. Public testimony was closed.

Member Spalding asked staff for additional information regarding, as build changes. Staff explained that as build changes refer to minor modification requests to plans submitted to the Building Department. Typically if the changes are minor the request is granted. Member Spalding asked if there was a set definition of "minor". Staff responded that the definition is not set, but the process is such that if there is a question, the application is referred to the Planning Commission. If an application has been submitted in conjunction with a Site Development Review, all applicable SRD rules must be followed. Member Spalding gave the example that a change to a window may be a minor change, but anything beyond that scope should not be considered minor. Member Spalding asked for further clarification on the following:

- Does the variance application apply to all 3 lots or to a single lot
- Is the proposed driveway over 200 feet

Staff clarified that originally the applicant had 2 lots for which he was requesting a variance. The application currently before the Board is for 1 single lot. Regarding the driveway, a permit would be needed from Planning but not from the Building Department. County Counsel then gave a definition of "building" Staff added that in this particular case, after recommendations from the CVMAC. The applicant modified the design. The driveway is no longer over 200 feet.

Member Clark asked staff if a geotechnical report had been completed on the property. Staff then distributed the report.

The Chair said that his determination was resting on the distinction between a 25% grade vs. a 30% grade. In addition would the driveway area be allowed in an area that exceeded a 30% grade. Staff confirmed that the driveway would have to be placed in an area more than 30%.

Member Friedman referred to Item #8 on page #9 of the staff report. In order for the applicant to limit the amount of impervious surface the driveway would have to be 200 to 250 feet long. The concept sounded contrary to the Ordinance. Staff confirmed that there are trade offs. The building does need a driveway. A hybrid of the plan design still has impervious surfaces, but there is alternate drainage. Obviously it would be better to limit impervious surfaces, but this would cause other issues. The proposed solution is the best, in this situation.

The Chair said he had a major problem with Condition #1. He is not opposed to mega mansions, as he owns one. At his property, one side has a view. At some point someone may build on the lot beneath him, and block his view. However the County does not have a view ordinance. Some Counties deal with the issue using CC&R's. In this case he does not believe the Madison Avenue residents have created any to his knowledge. The Chair shared the sentiment of neighbors, that the ink was barely dry on the Specific Plan. It was updated in 2006, and a lot of work went into the process. His concern was that the request was a, design variance. The proposed house is 4,300 square feet. It can be made smaller, or designed with a different configuration. Options are available to the applicant. He could not support the variance request, given the amount of work that went into the Specific Plan.

Member Spalding asked staff if the height limit indicated in the ordinance related to view, and how that related to the fact that 360 feet of property is within an area of 25% to 30% slope. The applicant has designed the project to protect neighboring views. Given that the County does not have a view ordinance, how could height limitation to protect views be a proposed condition of approval. Perhaps the applicant should be asked if they would agree to some altered conditions. Also if the other variance applications for the additional lots are going to move forward, it may be easier for the Board to consider them at the same time. Then the BZA can gain a true understanding of the entire scope of the project.

Member Friedman said he did not believe the applicant made the variance findings. There are options. If the house were designed, smaller, it doesn't necessarily mean views will be affected. There are no special circumstances. Strict adherence should be given to the Madison Avenue Specific Plan interpretation. A precedent should not be established, otherwise there will be more variance requests.

Member Clark said she shared the same concerns. It appears that there are competing interests. Views, and soil erosion. All of the needs will not be satisfied.

Member Spalding asked if the applicant wanted to consider a continuance. Perhaps he wants to bring the application back in conjunction with the applications for the neighboring lots. A continuation will also allow time to consider if he would like to move forward with building in the 25% to 30% slope area. Mr. Aufdermaurer clarified that originally he owned 3 lots. He has sold one. At this juncture he preferred to move forward with a decision.

Member Friedman motioned to deny the application. On the basis there are no special circumstances. It would be a special privilege to grant the application. Granting the variance would be a detrimental to the community based on testimony, and evidence presented. Member Clark seconded the motion. Motion to deny the application carried 4/0. Vice Chair Pexioto was excused.

STAFF COMMENTS & CORRESPONDENCE: Staff did not offer any comment.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Spalding asked staff to pass on the information submitted by Christine Sarantakis, regarding Hillside Development in Surrounding Communities. Member Spalding thought this may also be an opportune time to re-examine a "View Ordinance". Based on the information submitted, other areas find views important. Staff should review the material, and return to the Board with some suggestions.

ADJOURNMENT: There being no further business, the hearing adjourned at 7:44 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS