

October 2, 2014

Page 1 of 14

Mayor Helene Schneider & City Council Members
c/o City Clerk's Office
735 Anacapa Street
Santa Barbara, CA 93101-2203

Hand Delivered

**RE: Appeal of Single Family Design Board September 22nd Denial of Single Family Residence
3626 San Remo Drive, Lot 2 (Case No. MST2013-00505)**

Madame Mayor and Councilmembers:

Vanguard Planning LLC (hereinafter "VPLLC") Represents Capital Pacific Development Group, Inc (hereinafter "Appellant") the applicant for a single family residence (the "Residence") proposed for construction on the above referenced property (the "Subject Property"). This is an Appeal to the City Council (the "Appeal") of the Single Family Design Board (the "SFDB") action to deny the Project on September 22, 2014, and is made pursuant to Santa Barbara Municipal Code (the "SBMC") Sections 22.69.080 and 1.30.

The Subject Property is Lot 2 of a four lot subdivision originally approved October 14, 2010 per Planning Commission Resolution No. 015-10 incorporated herein by reference. A revised four lot subdivision was approved August 14, 2014 per Planning Commission Resolution No. 022-14 incorporated herein by reference. Planning Commission approval of the revised subdivision was not appealed by any party and that approval is now final and non-appealable.

1.0 SUMMARY OF BASIS FOR APPEAL

Appellant has pursued approval of the Residence by the City of Santa Barbara (the "City") SFDB since January of 2014. As set forth in Section 2.0 below, the SFDB did not provide an objective review of the Residence consistent with adopted City ordinances, standards, and guidelines. The SFDB also repeatedly ignored substantial evidence presented at multiple hearings, and which is now part of the administrative record. The SFDB's denial of the Project on September 22, 2014 was arbitrary and was made without reference to facts or evidence presented during any SFDB hearing at which the Residence was considered. The SFDB simply stated that the "mass and bulk" of the residence were acceptable and compatible with the surrounding neighborhood, and that the Residence was being denied purely due to its square footage statistic. The SFDB did not provide even a cursory explanation that would allow the Appellant or any other party to understand how the square footage of the Residence, considered in isolation, affects its compatibility/incompatibility with the surrounding neighborhood or serves as a legitimate basis for the SFDB's action. Specifically, the SFDB did not identify how any feature or characteristic of the Residence, including its square footage, would prevent the SFDB from making the Neighborhood Preservation Findings set forth in SBMC 22.69.050 (the "Required Findings"). A copy of the Required Findings is included as **ATTACHMENT A**.

Furthermore, Fred Sweeney (hereinafter “Mr. Sweeney”) the current chairperson of the SFDB, refused to step down from the SFDB’s review of the Project despite having two prior relationships that create an obvious perception of conflict of interest as identified in the Code of Conduct section of the City’s adopted Guidelines for the City of Santa Barbara Advisory Groups (hereinafter the “Code of Conduct”). A copy of the Code of Conduct is included as **ATTACHMENT B**. Appellant provided written notice to the City of this apparent conflict of interest on two occasions, and City Staff discussed the issue with Mr. Sweeney. Rather than stepping down, as provided for in the Code of Conduct, Appellant believes Mr. Sweeney insisted on participating during consideration of the Residence so that he could directly influence the outcome of the hearings *in favor of a project opponent* with whom Mr. Sweeney has a long-term business and personal relationship, and *against the Residence architect*, who elected to terminate her previous employment with Mr. Sweeney’s firm due to a hostile work environment. This is discussed further in Section 3.0 below. Mr. Sweeney, as chairperson of the SFDB, had the unique ability to control and manipulate the manner in which hearings for the Residence were carried out.

2.0 SFDB’s DENIAL IS ARBITRARY AND IS NOT SUPPORTED BY EVIDENCE IN THE ADMINISTRATIVE RECORD

2.1 Evidence in the Administrative Record

The following facts were presented to the SFDB at multiple hearings and are part of the administrative record for the Residence preceding its September 22nd action to deny the Residence:

- The area directly adjacent to the approved subdivision within which the Residence is proposed includes two-story attached condominiums, two-story garden apartments, two-story single family dwellings (hereinafter “SFD’s”) and one-story SFD’s. An aerial photograph of the approved subdivision property and the surrounding neighborhood, and photographs of existing structures adjacent to the property are included in **ATTACHMENT C**.
- Condominiums and Apartments are located directly across San Remo Drive from the approved subdivision.
- The proposed Residence cannot be seen from any public street.
- The proposed Residence is not visible to the public in context with any existing structure near the Subject Property.
- The proposed Residence will be on a 14,094 s.f. lot. This lot is substantially larger than many lots in the surrounding neighborhood.
- The Residence has a 0.22 Floor Area Ratio (hereinafter “FAR”) calculated using the City’s adopted FAR formulas. An FAR calculation performed using the City’s standard spreadsheet template is included as **ATTACHMENT D**.
- The proposed 0.22 FAR falls in the 43rd percentile of FAR’s for the 20 closest existing homes to the Subject Property (i.e. 11 existing SFD’s out of the 20 home sample have larger FAR’s).
- The City’s adopted methodology for performing a “20-Closest-Homes Analysis” excludes all existing structures other than SFD’s (condominiums and apartment structures are not included).
- Existing visible multi-family structures are part of everyone’s perception of the neighborhood surrounding the Residence.
- FAR is the standard tool used by the SFDB to determine whether any proposal is compatible with the surrounding neighborhood.
- The City’s adopted Single Family Residence Design Guidelines (the “Design Guidelines”) encourage applicants to “...*design homes under 85% of the maximum square footage for their lot size whenever possible to help ensure neighborhood compatibility.*” The Design Guidelines are incorporated herein in their entirety by reference. Excerpts from the Design Guidelines are included as **ATTACHMENT E**.
- The proposed residence is 74% of the maximum FAR calculated using the City’s adopted formulas.
- The City’s Single Family Residence Design Guidelines Worksheet (the “Design Guidelines Worksheet”) does not require an FAR compatibility analysis (i.e. “20-Closest-Homes Analysis”) unless a proposal is greater than 85% of the maximum FAR. A copy of the Design Guidelines Worksheet is included as **ATTACHMENT F**.

- The Design Guidelines Worksheet asks applicants: *“Have excessive building heights (25’ in most neighborhoods) been avoided?”*
- Maximum height of the proposed Residence is 22’-4”.
- There are no direct sight lines from the proposed Residence into existing homes or yards nearby.
- The closest existing residence in the surrounding neighborhood (216 Adair Drive) is located approximately 60’ away from the proposed Residence. Its rear property line is located approximately 36’ from the proposed Residence.
- No modifications are required for the proposed Residence. It complies with all applicable ordinances and standards of the E-3 zone district, which is the zoning for the Subject Property. The design surpasses ordinance requirements in most cases (e.g. provides larger setbacks than required). A copy of the City’s E-3 zone district is included as **ATTACHMENT G**.

2.2 SFDB Review

The SFDB considered the proposed Residence at five public hearings:

- January 13, 2014
- March 24, 2014
- June 2, 2014
- July 14, 2014
- September 22, 2014

Minutes for the September 22, 2014 hearing are not yet available as of the date of this Appeal. Minutes for the other SFDB hearings listed above are included in **ATTACHMENT H**. All of the hearings listed above were also videotaped by the City. The proceedings are available on the City’s website and are incorporated herein, in their entirety, by reference. In the following sections, all previous design iterations of the proposed single family dwelling and the current design are collectively referred to as the Residence.

2.2.1 January 13, 2014 SFDB Hearing

The proposed Residence concept presented at the January 13th hearing included 2,820 s.f. of habitable area within a two story structure, and a 500 s.f. attached garage for a total area 3,230 s.f. area. The minutes for the hearing erroneously reflect a 3,230 s.f. residence *and* a 500 s.f. attached garage resulting in a 3,820 s.f. area. The FAR for the Residence is also erroneously listed as *“90% of the required floor-to-lot-area ratio (FAR).”* in the adopted minutes. The actual FAR of the Residence presented at this hearing is 78% of the maximum allowable FAR per the City’s adopted formulas. FAR calculations for both the erroneous statistics in the minutes, and the actual statistics of the Residence considered at the January 13th SFDB hearing, created using the City’s FAR calculation spreadsheet, are included as **ATTACHMENT I**.

Currently, Appellant does not believe that the incorrect project statistics cited in the minutes were intentionally misrepresented by City staff, but rather that these are the result of a simple math error which resulted in the garage being counted twice. However, Appellant does assert that the presentation of inaccurate size and FAR statistics, the first time the Residence was considered before the SFDB, is *substantive* in this case in light of the City’s adopted guideline that instructs applicants to *“Strive for a project which falls in the ‘less than 85% of maximum FAR’ range for the project lot size.”* The initial concept for the Residence came in well within this guideline but the SFDB appears to have believed that it did not comply.

Although the proposed Residence would not be visible from any public street, and complied with all applicable City ordinances and guidelines, the SFDB asked the Appellant to “*Study reducing square footage*” without articulating any specific design goal to be accomplished by the reduction, or how the such reduction related to the SFDB’s ability to make the Required Findings. Other direction from the SFDB was far more specific.

2.2.2 March 24, 2014 SFDB Hearing

At the March 24th SFDB hearing, Appellant presented a modified design for the Residence comprising 2,792 s.f. of habitable area and a 499 s.f. attached garage. The statistics for the Residence were accurately cited in the agenda and minutes: a proposed total of 3,292 s.f. representing 78% of the maximum allowed FAR.

Vince Amore, project manager for the Appellant, indicated to the SFDB that the statistics previously cited in the January 13th minutes were incorrect and that the proposed Residence had never been over the 85% of maximum FAR target identified in the Design Guidelines Worksheet.

The SFDB again requested a reduction in the proposed square footage, and again failed to cite any basis for the reduction. Specifically, no member of the SFDB provided any information to indicate why a proposed single family home, not visible to the public, and well under the 85% of maximum FAR design standard needed to be made smaller in order to be compatible with the surrounding neighborhood of SFD’s, condominiums, and apartments. Other direction provided by the SFDB was more specific and directly related to clearly identified components of the proposed design.

Additionally, Appellant was required to provide story poles for the proposed Residence. Given: a) the location of the Residence, over 190 feet from San Remo drive, and behind existing structures on Adair Drive; b) the fact that the Residence was well under the 85% of maximum FAR design goal specified in the Design Guidelines; and c) the fact that there are no public views of the Residence, this was an extraordinary request.

The City’s Visual Aid Requirements for Development Applications (hereinafter the “Story Pole Requirements”) are included as **ATTACHMENT J**. The Story Pole Requirements indicate that Story Poles:

“will be required for new single family residential buildings...when the floor:lot area ratio exceeds 0.40, the height of the building substantially exceeds that of surrounding buildings, the building will block or reduce important public scenic views, is very visible to the public or is proposed on or to project above a topographic ridgeline...”

At the time this requirement was imposed by the SFDB, the proposed Residence concept had 0.23 “*floor:lot ratio*” which is 43% less than the 0.40 trigger identified in the Story Pole Requirements. The height of the proposed Residence was 25’-2” which is a typical two-story SFD height, and similar to the heights of existing two-story SFD’s, condominiums and apartments immediately surrounding the Subject Property. The structure had no potential whatsoever to “*block or reduce important public scenic views*” and was not “*very visible to the public.*” The proposed Residence is not visible from any public viewing location, and is not located on or near a “*topographic ridgeline.*”

The Story Pole Requirements also identify five criteria for exceptions even in cases where story poles might otherwise be required. Any one exception may be used to exempt a project. The Residence concept reviewed at the March 24th SFDB hearing clearly qualifies for three of the listed exceptions:

“2. The proposed structure is the same height as or smaller than other existing buildings in the neighborhood.”

;and,

“3. The proposed structure(s) will not involve blockage or substantial reduction of an important public scenic view.”

:and,

“4. The proposed structures will not be on or project above a topographic ridgeline.”

The Story Pole Guidelines identify a defined set of circumstances under which Story Poles may be required, and then establish who has authority to require them. The Story Pole Guidelines do not simply provide for staff, a design review board, or the Planning Commission to require Story Pole installations on a whim. It is evident upon review of the Story Pole Guidelines that the City’s intent is for Story Poles to be erected when there is potential that a proposal might significantly impact critical views, and in particular *public* views. In light of the requirements and exceptions set forth in the Story Pole Guidelines, the SFDB’s requirement for the Appellant to install Story Poles was unwarranted and completely arbitrary. The proposed Residence: 1) meets *none of the criteria* for installation; and 2) qualifies for *three out of five exceptions*.

Appellant complied with the SFDB’s arbitrary requirement to erect story poles, at a significant expense. The poles were erected by Coastal Builders dba California Story Poles, a contractor who specializes in such installations. The installation was completed as specified in the Story Pole Guidelines. **ATTACHMENT K** includes photographs of the story poles representing the Residence as seen from Adair Drive, the only public viewing location from which the Residence might potentially be visible. These photos clearly demonstrate that visibility of the structure is limited to an insignificant portion of the roof.

2.2.3 June 2, 2014 SFDB Hearing

At the outset of this hearing, VPLLC was forced to address Mr. Sweeney’s unusual and inappropriate comments and behavior during the agenda item that immediately preceded the Residence (i.e. Lot 1 in the same subdivision). Mr. Sweeney:

- Introduced into the record, negative statements made by *individuals* on the Historic Landmarks Commission (the “HLC”) during the HLC’s consideration of a Historic Sites and Structures Report (the “HSSR”) for a different proposal (i.e. not the Residence). Mr. Sweeney mischaracterized these individual opinions as the collective opinion of the HLC. Specifically, Mr. Sweeney stated that he had watched the HLC hearing on “*this project*” and that the HLC “*is not happy about this project. ...how these houses scale to the Edwards & Plunkett house*” and then claimed that those comments “*were kind of the side set of comments*” and that even though this was the HLC’s opinion, they couldn’t put it in the record. If this had been the HLC’s opinion, the HLC could have rejected the HSSR that was before them for consideration. Instead, the HLC’s motion was to approve and accept the HSSR: a report that determined the sizes and locations of the new homes in the approved subdivision, including the Residence, were compatible with, and would not adversely impact the historic structure in question. This is precisely the *opposite* of what Mr. Sweeney presented as the HLC’s conclusion.
- Stated that “*the story poles were unacceptable*” but failed to indicate what was lacking other than to provide the vague comment that the installation was “*half done*”. The story pole plan was prepared by a specialized qualified contractor, and reviewed and approved by City staff prior to erection of the story poles. A licensed surveyor then staked the locations for all poles and later, when poles were in place, identified the accurate the heights to be demonstrated.
- Frequently raised his voice and acted angrily and aggressively toward Appellant and Appellant’s project team, including making an impromptu speech about how Appellant’s installation of a residential wooden perimeter fence, which was previously reviewed and approved by the SFDB, and which no public speakers from the neighborhood had mentioned, was “*not cool*” and “*didn’t win any friends on my side.*”

The adopted minutes correctly reflect that VPLLC requested “*comments be put on record regarding the inappropriate and unusual manner of one board member’s view on how another board may have*

observed a project, the unnecessary anger asserted over a land-use project, and the misguided comments about the inaccuracy of the story pole set-ups.”

VPLLC presented the Residence using PowerPoint and discussed the following facts:

- The revised design incorporated specific architectural direction from previous SFDB hearings.
- Net structure area was reduced by 188 s.f.
- FAR was reduced from 78% of the maximum allowed to 74% of the maximum allowed.
- The Residence is not visible from any public streets or areas.

The SFDB indicated that changes in the exterior architecture were appreciated and then discussed square footage of the Residence again. As before the SFDB asked for a blanket reduction in square footage without specifying why this was necessary to achieve neighborhood compatibility, or any identified goals to be accomplished other than changing the statistic itself. Appellant was also asked to reduce plate heights and study locations for guest parking.

2.2.4 July 14, 2014 SFDB Hearing

Appellant hired Henry Lenny (Mr. Lenny), a highly respected and nationally renowned Santa Barbara based architect, to assist with refining the design for the Residence following the June 2, 2014 SFDB hearing. The exterior elevations, plate heights, and roof forms of the Residence were substantially modified to address the specific aesthetic comments provided by the SFDB at previous hearings.

The revised residence was presented to the SFDB by Mr. Lenny at the July 14, 2014 hearing. Mr. Lenny stated that he disagreed with previous statements by an SFDB member (Mr. Sweeney) that the floor plans were *“inefficient”* and *“designed from the inside out.”* Mr. Lenny also indicated that in his opinion, having lived in an Edward and Plunkett house, the proposed Residence incorporated several hallmarks of Edwards and Plunkett design, contrary to assertions made by SFDB members at previous hearings. His presentation proceeded to highlight significant changes in plate heights, roof massing, and window and door placement that had occurred since the last SFDB hearing.

The SFDB was highly appreciative of the revised architecture and acknowledged that much of their previous direction was now incorporated. The SFDB and Mr. Lenny engaged in an extended dialogue during the portion of the hearing normally reserved for SFDB comments. During this dialogue, Mr. Sweeney indicated that his primary concern about the Residence, was how it would be viewed from the immediately adjacent neighbor (at 216 Adair Drive): a private party's view (Peter Edwards hereinafter referred to as “Mr. Edwards”). Another Board member (Denise Woolery) made the statement that in terms of neighborhood compatibility, the Appellant is *“never going to build what's in the surrounding neighborhood again...that was an era and it's gone...they are not going to build the tract homes on Capri...(the project) is a separate entity.”* Mr. Sweeney subsequently discussed, in great detail, the wide variety of development sizes and types in the surrounding neighborhood.

Appellant was asked to *“continue on the same vein”* and to again study reducing the square footage and plate heights.

2.2.5 September 22, 2014 SFDB Hearing

At this hearing, Mr. Lenny and VPLLC presented the current version of the Residence, which incorporates additional refinements requested by the SFDB. Plate heights and roof forms were brought down even further and some building masses were eliminated entirely. Windows and doors were also

fine-tuned and simplified. The Residence considered at the September 22nd hearing comprises 2,652 s.f. of living area and a 479 s.f. attached garage.

Mr. Lenny presented the architectural details and issues. He identified that people live differently in homes in the modern era than they did in the early 1960's and that there are many examples of applicants seeking to enlarge homes that were built long ago for this very reason. Mr. Lenny also discussed the fact that he studied reductions in square footage and determined that these had no appreciable effect upon the exterior appearance of the Residence. VPLLC re-capped the applicable land-use issues including the following:

- FAR is the City's standard yardstick to evaluate neighborhood compatibility.
- FAR addresses the relationship between the size of a home and the size of its lot.
- The Residence is in the middle of the range of FARs for the twenty closest homes based on the City's standard methodology.
- The City's specified target FAR is 85% of the maximum allowable FAR.
- The City's formulas include the entire lot area.
- The entire lot is visible to and perceived by anyone that can potentially see the Residence.
- The Residence as proposed has a 0.22 FAR or 74% of the maximum allowed FAR for its lot size using adopted City formulas.
- The SFDB had previously discussed application of a unique project-specific FAR standard for the San Remo development which excludes large portions of the lots that are within the creek area.
- Using the SFDB's unique project-specific standard, the Residence has a 0.29 FAR or 81% of the maximum allowed, still well under the City's 85% target.
- The Residence does not include excessive plate heights (i.e. 10 feet or more), consistent with the Design Guidelines.
- The building height is 22'-4", substantially less than the "25' in most neighborhoods" height identified in the Design Guidelines as acceptable.
- Exterior decks are designed consistent with the "Good Neighbor" guidelines component of the Design Guidelines.
- Project is consistent with all applicable City guidelines and ordinance requirements and no modifications are required.

VPLLC also asked the SFDB to deny the Residence if the Board still insisted that it could not grant approval at the hearing.

Four neighborhood opponents spoke against the Residence, stating that it was incompatible with the neighborhood because the square footage statistic is larger than the size of early 1960's tract homes nearby. Three of the neighborhood opponents (John and Molly Steen, and Bob Westwick) are co-owners of 3609 Capri Drive, located immediately North of Lot 1 of the approved subdivision. The fourth (Mr. Edwards) is the owner of 216 Adair Drive, located West of the proposed Residence. Three of the neighbors claimed the square footage needed to be substantially reduced. Mr. Steen presented an "FAR Analysis" that: uses formulas and methodologies he developed himself (not the adopted City methodologies....he "calculated the FAR different than you folks do"); is based on incomplete data about sizes of homes in the study (excludes garage s.f.); and, compares the project exclusively to the 1960's tract homes located on Adair Drive and Capri Drive. Neighbors also said that even with added guest parking, they were still concerned about parking.

The SFDB discussed the Residence. Board member Bernstein indicated that the current design felt much more compatible with the neighborhood than previous designs and that modern designs are bigger and different than fifty year old designs. Board member Miller conceded that "in terms of square footage, (Mr. Lenny) has a point about lifestyle and demographics..." (i.e. that modern homes are larger

than tract homes built in the 1960's) and proceeded to discuss several highly specific aesthetic issues, not including the square footage statistic. Miller also praised the architecture overall. Board member James indicated that she appreciated the architecture and Appellant's efforts to reduce the size, and that her primary concern was parking.

Mr. Sweeney then provided his comments. These were almost exclusively related to the square footage statistic for the Residence. He indicated that he believes "*neighborhood compatibility is not just the FAR and there are many other things*" the SFDB must look at, although he did not specify what those are. Mr. Sweeney proceeded to state that that the "*scale and massing are now where it needs to be.*" Then, as with previous hearings, his comments drifted back to a discussion of the square footage statistic, and that the Appellant simply needed to further reduce it. He also provided information about how he thought the square footage should be reduced. The changes Mr. Sweeney identified would reduce the second story width of the Residence (which is 50' feet wide) by one foot, and would eliminate a 7' x 17' 1-story projection on the ground floor that is not visible even to the closest adjacent neighbor. He did not indicate why these specific reductions would allow him to determine the Residence compatible with the neighborhood, or how one foot of width and a small ground floor pop out made the Residence incompatible with the neighborhood. Mr. Sweeney continued to say that he believed the Residence was compatible with the neighborhood in terms of "*the scale and the bulk*" but that the size was too large. He did not indicate why he believed the size, in isolation from "*the scale and the bulk*" makes the Residence incompatible even after stating that *size alone* is a "*legitimate compatibility measurement that we can apply to this project.*"

The SFDB initially attempted to continue the project with direction for another blanket reduction in square footage. Appellant indicated to City staff that it was unwilling to further reduce the square footage as the Residence already complied with all applicable guidelines and standards. Mr. Sweeney then asked the audience if they understood that "*this Applicant is not being cooperative.*" He also asked if the SFDB could choose *not* to deny the project. Staff explained that the only purpose that would accomplish would be to "*delay the process.*"

Board Member Bernstein made a motion to deny the Residence, but did not specify any basis for the denial. Mr. Sweeney stated "*I think it would be important that if you deny the project, you need to explain the reason for your denial.*" (emphasis added). Bernstein's motion did not go forward. Miller then made a motion to deny the project based on the Appellant's "*unwillingness to reduce the square footage of the project.*" Mr. Sweeney requested that Miller include language in the motion that the SFDB "*was approvable of the massing and the scale that was presented today.*" The language was included.

Before the SFDB voted on their motion, Mr. Sweeney addressed project opponents in the audience. He briefly explained how the appeals process works, and encouraged them to appear before the City Council.

The SFDB subsequently voted to deny the Residence. Mr. Sweeney opposed the motion, and all other members present approved it. No discussion occurred regarding: 1) how the single identified basis for the SFDB's denial related to the Required Findings; or 2) how the square footage statistic makes the Residence incompatible with the neighborhood when the SFDB concurrently determined its "*massing and scale*" are compatible. The Required Findings were not even mentioned during the course of the hearing.

2.3 Square Footage in Isolation Has No Bearing on Neighborhood Compatibility

Throughout the SFDB's review of this project, Appellant has asserted that square footage, as an isolated statistic, does not have any direct relevance to any proposal's compatibility with its surrounding neighborhood. Square footage only affects neighborhood compatibility insofar as it contributes to two other critical characteristics: bulk and scale.

Square footage, on its own, is not perceptible by the public, or by neighbors living adjacent to any given structure. A 2,500 s.f. two-story home looks identical to a 3,500 s.f. two story home that has the same configuration above ground, and *also* includes a 1,000 s.f. finished basement below ground. A person walking their dog on the adjacent street can't tell the difference between the two, even though the 3,500 s.f. home has a square footage statistic that is 45% *larger* than the 2,500 s.f. home. The square footage of each structure is not advertised on a yard sign or painted on the front curb. Therefore, no-one observing a given structure knows what the "size" of the structure is, other than experiencing how its square footage is distributed in terms of the structure's "bulk" and "scale".

The language presented in the Required Findings confirms that "size" is intended to be considered in conjunction with "bulk" and "scale", not independently. SBMC Sec. 22.69.050.A.s states: "Compatibility. The proposed development is compatible with the neighborhood, and its size, bulk, and scale are appropriate to the site and neighborhood." The language of this finding, which is the critical finding in the case of the proposed Residence, exhibits a conjunctive construction: "size, bulk and scale" are linked together as a combined concept rather than three separate concepts to be evaluated in isolation.

"Size, bulk, and scale" is a single concept as enumerated in the Required Findings, and only "bulk and scale" are perceptible to the public. The SFDB's motion to deny the Residence, as shown in the draft minutes for the September 22nd hearing states: "The Board is supportive of the massing and scale of the house but finds the size too large." The SFDB failed to articulate how the "size" (i.e. the square footage statistic) for the proposed residence, in isolation, affects "neighborhood compatibility" in any way whatsoever. This includes, and is not limited to, the SFDB's failure to address, or even acknowledge the fact that the Residence cannot be seen from any location in the surrounding neighborhood. As set forth above "size" considered separately from "bulk and scale", has no potential to affect neighborhood compatibility, which is particularly relevant in this case because the proposed Residence will not be visible to the public.

2.4 "Size" vs. "Neighborhood Compatibility" was a Non-Issue when the SFDB approved a 2013 Proposal with Characteristics Nearly Identical to This Case

VPLLC obtained approval for an SFD proposal at 1716 Anacapa Street (the "Anacapa Project") in February of 2013. The Anacapa Project shares several common characteristics with the proposed Residence:

- Both are new larger 2-story homes proposed in established older neighborhoods with many smaller one-story homes.
- Both are located on sites that are in proximity to multi-family structures.
- Both have habitable areas exceeding 2,600 s.f. and attached garages.
- Both exceed 3,000 s.f. in total structural area.
- Both exceed the average size of homes in their respective 20-Closest-Homes studies by approximately 30%.
- Both are located on new lots created by recently approved subdivisions.
- Both are located on interior lots that are not readily visible to the public.

The following table presents a side-by-side comparison of the Anacapa Project and the proposed Residence:

Statistic	Anacapa Project	Proposed Residence
Number of Stories	2	2
Habitable Area (s.f.)	3,060	2,652
Attached Garage Area (s.f.)	762	479
Total Structure Area (s.f.)	3,822	3,131
Lot Size (s.f.)	7,500	14,094
FAR	.51	.22
% of Maximum FAR	125%	74%
FAR Percentile Compared To 20-Closest Homes	100 th	43 rd
Average Size 20-Closest Homes Including Proposal	2,972	2,406
Proposed / Neighborhood Size Ratio Comparison	3,822 / 2,972 = 1.28	3,131 / 2,406 = 1.30

Copies of the 20-Closest-Homes analysis for both projects are included in **ATTACHMENT L**. The February 25, 2013 SFDB minutes, which document Project Design Approval granted to the Anacapa Project are included as **ATTACHMENT M**.

The SFDB members who reviewed and approved the Anacapa Project in February 2013 are the same members that have reviewed the proposed Residence. Denise Woolery served as Chair when the Anacapa Project was reviewed. The size of the Anacapa Project, and the fact the proposal was 125% of the guideline FAR were primary topics of discussion during the SFDB’s review. Ultimately, the SFDB approved the Anacapa Project at its first and only hearing.

Mr. Sweeney, during his comments, indicated that he supported the Anacapa Project due to: 1) its location (on an interior lot); and, 2) the fact that a large portion of the square footage was in the attached garage. He went on to state that he was “*not particularly concerned about the 125% FAR*” because the home was located adjacent to multi-family development and some larger houses. No other SFDB members had comments prior to unanimously adopting the motion to approve the Anacapa Project. Additionally, the SFDB made reference to the language of the Required Findings in its motion for approval.

The proposed Residence is also located on an interior lot, has an attached garage comprising 15% of its square footage, and is on a site that is surrounded by dense multi-family development (to the South across San Remo Drive), large SFD’s (to the East along Ontare Road), and smaller SFD’s to the North and West (on Adair Drive and Capri Drive). The Residence is 691 s.f. *smaller* than the approved Anacapa Project, and is located on a lot that is roughly *twice the size* of the Anacapa Project’s lot. Even though both proposals are located on interior lots, there are limited public views of the Anacapa Project, whereas there will be no public views of the proposed Residence.

The SFDB’s unanimous approval of the Anacapa Project confirms that a new SFD which exceeds the average size of SFD’s in the surrounding neighborhood by 30% is not “*significantly larger than the immediate neighborhood*” as discussed in the Introduction to the City’s adopted Design Guidelines. The sizes of the proposed Residence and the approved Anacapa Project are nearly *identical* relative to the average size of existing SFD’s in the surrounding neighborhood.

The SFDB determined the Anacapa Project was compatible with its neighborhood in terms of “*size, bulk and scale.*” The same SFDB members now claim that the proposed Residence is compatible with the surrounding neighborhood in terms of “*bulk and scale*” but incompatible in terms of “*size.*” A review board that implements the City’s Design Guidelines consistently and fairly should not reach completely

opposite conclusions regarding “Neighborhood Compatibility” based on “size” for two proposals that are the same size relative to their surrounding neighborhoods.

3.0 MR. SWEENEY’S DECISION TO PARTICIPATE IN THE REVIEW OF THE RESIDENCE IS INCONSISTENT WITH THE CODE OF CONDUCT

3.1 *Prior Relationship with Peter Edwards (Project Opponent)*

Mr. Edwards, owner of 216 Adair Drive, attended the March 24th SFDB hearing to speak in opposition to the subdivision. Upon conclusion of Mr. Edwards’ remarks, Mr. Sweeney stated “*Just so we are at full disclosure here, I’ve known you for 40 years now?*” at which point Mr. Sweeney and Mr. Edwards joked about Mr. Sweeney’s age. Mr. Sweeney proceeded “*Mr. Edwards and I go back, we are both colleagues, he is part of the heritage of the Edwards Howell & Plunkett and I’m the Howell, Arendt, Mosher & Grant piece of that.*” Mr. Edwards stated “*It’s good seeing you again*” and Mr. Sweeney replied “*It’s good to see you too Peter.*” Based on his “*full disclosure*” statement at the March 24th hearing, it appears evident, at least to Mr. Sweeney, that his relationship with Mr. Edwards is unique and different than a typical relationship between an SFDB member and a project opponent.

3.2 *Prior Relationship with Kate Svensson (Project Designer)*

Kate Svensson (hereinafter “Ms. Svensson”), the designer of the Residence, came to the United States from Sweden in October of 2005 to work for PMSM Architects (hereinafter “PMSM”). Ms. Svensson and her husband entered the United States with an H1B non-immigrant visa. This type of visa allows domestic employers to employ foreign workers in specialty occupations on a temporary basis. Additionally, if a foreign worker resigns their position, or is fired by their sponsoring employer, they must either find a new job, receive approval of another type of non-immigrant status, or leave the country.

During Ms. Svensson’s tenure at PMSM, she experienced workplace conditions that resulted in her eventual decision to consult with both an immigration attorney and an employment attorney. Ms. Svensson states that a managing Principal at PMSM (not Mr. Sweeney) regularly brought up Ms. Svensson’s H1B visa and the firm’s ability to cause that visa to be revoked. The same individual also indicated that PMSM had the purported ability to jeopardize her application for permanent resident status (i.e. a Green Card). These issues were used as “motivation” for Ms. Svensson to work extra hours without asking for overtime compensation.

Ms. Svensson states she felt threatened enough that she recorded several of the frequent informal “performance review” meetings she was required to attend. At these meetings, she was reminded that PMSM controlled both her, and her husband’s ability to remain in this country. According to Ms. Svensson, Mr. Sweeney, her direct supervisor at PMSM, attended many of these meetings although he did not to her knowledge initiate the meetings. Once Ms. Svensson informed PMSM that she had recordings of the meetings, and that she had spoken with legal counsel, the meetings stopped.

Ms. Svensson subsequently resigned her position at PMSM in September of 2007 as soon as she secured her Green Card. Although she provided the customary two weeks’ notice, she was asked to leave immediately.

3.3 *Formal Notice of Perceived Conflict Ignored*

Two separate written notices were provided to the City informing Jaime Limon, the City’s Design Review Supervisor, that Mr. Sweeney’s 40 year collegial and personal relationship with Mr. Edwards, and his

former employment of Ms. Svensson each create the appearance of a conflict of interest as set forth in the Code of Conduct. Correspondence on this matter is included in **ATTACHMENT N**.

The City's response to the initial notice, dated March 31, 2014, was that Mr. Sweeney did not have a conflict of interest because he does not have a "material financial interest" in the outcome of Appellant's proposal. "Material financial interest" is the standard identified in the State Political Reform Act. The City's response ignores the fact that its adopted Code of Conduct sets a much higher standard for avoiding potential conflicts of interest, and is intended to go well beyond the requirements of the Political Reform Act. The City's Code of Conduct specifically identifies the following as conflicts that are not regulated by the Political Reform Act, but that are covered by the Code of Conduct:

**A "personal relationship"; and,
A "prior business relationship."**

The Code of Conduct states that either relationship above *"can be perceived as the appearance of an improper conflict of interest or as a potential for the public official to be biased (i.e. either for or against) a particular applicant."*

Mr. Sweeney, who refers to himself as being a "colleague" of Mr. Edwards for 40 years, and announced this to achieve "full disclosure" during a hearing, clearly has an established long-term relationship with Mr. Edwards. Their interaction at the March 24, 2014 SFDB hearing, and subsequent hearings indicates that they think of each other as friends, and that Mr. Sweeney has a great deal of respect for Mr. Edwards. Mr. Edwards, whose home is adjacent to Appellant's property, has opposed Appellant's proposals at almost every public hearing associated with the San Remo subdivision and the Residence. The fact that Mr. Sweeney has a decades-long relationship with Mr. Edwards creates the appearance of a conflict that could bias Mr. Sweeney against Appellant's proposal.

Mr. Sweeney's firm, PMSM, is the former employer of Ms. Svensson: a "prior business relationship." He was also Ms. Svensson's direct supervisor at PMSM. It is reasonable to say that Ms. Svensson's employment with PMSM ended on bad terms. It is also reasonable to assume that this could potentially cause Mr. Sweeney to be biased against the Appellant's proposal, which was primarily designed by Ms. Svensson.

The Code of Conduct sets forth the City's goal with respect to potential conflicts of interest as follows:

"The City believes that it is a good ethical practice to avoid even the appearance of a conflict or impropriety in these situations...by stepping down and abstaining..." (emphasis added)

City staff claims that they discussed the Code of Conduct and the apparent conflicts above with Mr. Sweeney. However, Mr. Sweeney refused to step down from consideration of the Appellant's proposal.

4.0 CONCLUSION AND REQUEST

As set forth above, Appellant's proposed Residence did not receive an objective review by the SFDB. The SFDB applied different standards to the Residence than it applied to another recent project with nearly identical characteristics.

Evidence in the administrative record indicates the SFDB's demands for Appellant to make blanket reductions to the square footage of the Residence are completely arbitrary. These demands are unrelated to the City's ordinances, adopted Design Guidelines, or any physical aspect of the proposed Residence that could affect its compatibility with the surrounding neighborhood.

The SFDB is tasked with ensuring that the “*size, bulk and scale*” of new residential structures is compatible with the surrounding neighborhood. During its review of the Residence, and in direct contrast to its review of the similar Anacapa Project, the SFDB ignored large two-story multi-family developments that are major visual features of the neighborhood that surrounds Appellant’s property in its assessment of neighborhood compatibility. The Board has also consistently dismissed the fact that the proposed Residence will not be visible from any location outside Appellant’s property.

Section 2.3 above discusses how square footage, in isolation, cannot be perceived by a person viewing the exterior of a given structure. “*Size,*” in terms of square footage, can only be perceived based on how it contributes to the “*bulk and scale*” of a structure. The SFDB did not make any findings to support its decision to deny the Residence on September 22nd, and did not attempt to explain how the board could determine that the “*bulk and scale*” of the proposed Residence is compatible with the neighborhood, but the “*size*” is not compatible. SFDB members discussed the fact that modern homes are frequently larger than homes built decades ago, and that new residential projects are no longer going to be the same as the old neighborhoods within which they are located. The SFDB’s action to approve the Anacapa Project, discussed in Section 2.4, confirms that a new home 30% larger than the average size of homes in the existing neighborhood remains compatible with the neighborhood and is fully consistent with the City’s adopted Design Guidelines. Appellant agrees with Mr. Sweeney’s statement on September 22nd that “*...if you deny the project, you need to explain the reason for your denial.*” Appellant asserts that this is even more critical when the SFDB’s singular purported basis for denial is an imperceptible square footage statistic for a structure that cannot be seen from any adjacent street.

The only explanation provided by the SFDB for its decision to deny the Residence is the Appellant’s unwillingness to comply with the board’s arbitrary requests to “*reduce square footage.*” Appellant initially reduced the size of the structure, but subsequently determined that further reductions are unwarranted. The Residence is well within the limitations of all applicable City development standards, and consistent with the Design Guidelines.

Continued arbitrary size reductions have no potential to affect neighborhood compatibility in this case. However, such reductions have a very real potential to render Appellant’s project infeasible from an economic standpoint. Appellant has reason to believe, based on first-hand interaction with an opponent of Appellant’s development, that this is the specific strategy being pursued by adjacent neighbors who would prefer Appellant’s property to remain as private open space for their continued enjoyment. Mr. Sweeney, who has “led the charge” regarding arbitrary size reduction, has a prior business and personal relationship with one of these opponents.

Appellant asserts there is an obvious appearance of a conflict due to Mr. Sweeney’s previous relationships with both Mr. Edwards, an opponent, and Ms. Svensson, the primary designer of the Residence. The City’s adopted Code of Conduct is very clear on such matters, and states that it is “*good ethical practice to avoid even the appearance of a conflict or impropriety in these situations...*” Appellant did not perceive or assert *any* potential conflict of interest with respect to five of the seven current SFDB members. These five SFDB members are all qualified to evaluate the Residence, and could have done so without generating any potential for or appearance of a conflict of interest.

We respectfully request that the City Council uphold the Appeal, and approve the Residence based on evidence in the administrative record and the ability to make the Required Findings.

October 2, 2014

Page 14 of 14

If you have any questions regarding this Appeal, you can reach me via E-mail at jarrett.gorin@vanguardplanning.com or via phone at (805) 966-3966. Thank you for taking the time to review this.

Sincerely,

VANGUARD PLANNING LLC

Jarrett Gorin, AICP
Principal

ATTACHMENTS

- A. Neighborhood Preservation Findings
- B. Code of Conduct section of the City's adopted Guidelines for the City of Santa Barbara Advisory Groups
- C. Photographs of Site (Aerial) and Adjacent Structures
- D. Floor to Area Ratio Calculation for Proposed Residence
- E. Excerpts from Single Family Residential Design Guidelines
- F. Single Family Residence Design Guidelines Worksheet
- G. E-3 Zone District
- H. Single Family Design Board Minutes for Residence
- I. FAR Calculations for Previous Version of Residence
- J. Visual Aid Requirements for Development Applications
- K. Photographs of Story Poles for Residence
- L. 20-Closest Homes Analysis for Anacapa Project and Proposed Residence
- M. February 25, 2013 SFDB Minutes (Anacapa Project approval)
- N. Correspondence Regarding Conflict of Interest