

**MARIN COUNTY PLANNING COMMISSION MINUTES**  
**January 12, 2004**  
**Marin County Civic Center, Room #328 - San Rafael, California**

*Commissioners Present:* Ross Herbertson  
Allan Berland  
Hank Barner  
Don Dickenson  
Jo Julin  
Steve Thompson

*Commissioners Absent:* Ray Buddie (Not present)

*Staff Present:* Alex Hinds, Agency Director  
Brian C. Crawford, Deputy Director of Planning Services  
Tom Lai, Principal Planner  
Ben Berto, Principal Planner  
Jessica Woods, Recording Secretary

*Minutes Approved on:* **January 26, 2004**

Convened at 1:07 p.m.  
Adjourned at 5:10 p.m.

1. ROUTINE TRANSACTIONS:

- a. M/s, Julin/Berland, and passed unanimously of those present, to incorporate the staff reports into the Minutes. Motion passed 6/0 (Commissioner Buddie not present).
- b. Continuances- None

2. ELECTION OF OFFICERS

M/s, Herbertson/Julin, and passed unanimously of those present, to nominate Commissioner Berland as Chairman. Motion passed 6/0 (Commissioner Buddie not present).

M/s, Julin/Dickenson, and passed unanimously of those present, to nominate Commissioner Steve Thompson as Vice Chair. Motion passed 6/0 (Commissioner Buddie not present).

3. COMMUNICATIONS

Chair Berland noted for the record that the Commission received several pieces of correspondence for their review.

Staff informed the Commissioner that Commissioner Buddie was not present due to a potential conflict of interest with regard to the Ghazi Variance/Design Review project.

4. DIRECTOR'S ORAL REPORT

- a. Status report on Countywide Plan Update

Alex Hinds, Agency Director, provided the Commission with a brief update, as well as a copy of the status report presented to the Board of Supervisors on December 16, 2003, regarding the Countywide Plan Update. Staff also thanked those Commissioners that commented on the administrative draft of the Introductory Chapter to the Countywide Plan and invited additional comments on the Introductory Chapter.

Mr. Hinds briefly discussed the schedule for the EIR hearings and suggested removing May from the schedule, and in case additional hearings are needed, staff would provide additional dates in April as well as September for the Commission's consideration. Staff also indicated that Berman & Associates would be recommended to the Board of Supervisors to be contracted for the EIR on January 27<sup>th</sup>, 2004 for approval.

Commissioner Dickenson asked staff when a draft plan would be available for public review. Staff responded that a draft plan should be available late January or early February. Staff explained that they submitted an administrative draft to other departments and staff expects to have comments back by Friday, and the desire is to have an administrative draft available later this month, but if not, a public review draft would be available by early February.

5. TIME FOR PUBLIC EXPRESSION ON ITEMS NOT ON TODAY'S AGENDA - None

6. RATIFICATION OF RESOLUTION: PAPPAS DESIGN REVIEW AMENDMENT

Ratification of resolution denying the Pappas Design Review Amendment proposal to modify the design of a new single-family residence and accessory improvements originally approved in 2000 as follows: (1) increasing the width and length of the house by 12 and 32 feet respectively, thereby increasing the overall size from 4,811 square feet to 6,399 square feet; (2) increasing the height of the residence from 26 feet to 26.85 feet; (3) lowering the residence on the hillside property and shifting it closer to Fawn Drive, resulting in a reduced setback from the Fawn Drive easement from 82 feet to 58 feet; (4) increasing the size of a detached garage from 1,152 square feet to 1,320 square feet; and (5) increasing the size of an inground swimming pool from 36 feet by 18 feet to 40 feet by 20 feet. The project also includes proposed changes to the site grading including creation of an 80-foot by 40-foot play area above the detached garage and retention of some of the excavated earth material on-site by backfilling the slope in front of, and below the residence. The subject property is located at **465 Fawn Drive, San Anselmo** and is further identified as **Assessor's Parcel 177-071-07**.

Tom Lai, Principal Planner, summarized the staff memorandum and revised resolution recommending that the Commission deny the Pappas Design Review Amendment based on the inability to make the required findings pursuant to Marin County Code Section 22.42.060 and the project's inconsistency with Countywide Plan Policies EQ-3.16, EQ-3.18, EQ-3.19, and EQ-3.25.

Commissioner Dickenson noted a few corrections to the proposed resolution on page 2 under paragraph "A" to insert the words "*plans for*" the single-family residence. He also modified the middle of the paragraph under "2" to read, "*The 6,399-square-foot residence, 1,320-square-foot garage, 388-square-foot weight room, 20-foot by 40-foot in ground swimming pool, and extensive retaining walls would have an opposing appearance on a visually prominent hillside.*" He further suggested a change to paragraph "B" in order to be consistent, he suggested the following to the second sentence: "*the proposal would result in an overall development . . .*"

Commissioner Julin believed the illegal construction and the possibility of abating that construction as well as the damage that had been done to Fawn Drive by the construction vehicles should be separate from the resolution. Staff agreed to provide the Commission with a verbal report of what was found as a result of the enforcement investigation.

Chair Berland believed it is appropriate to add language in the resolution regarding abatement. Staff responded that abatement procedures are outside the Commission's purview since that is a separate code enforcement hearing process.

Commissioner Dickenson noted for the record that he received a phone call from Mr. Pappas the night following the last meeting in which he repeatedly advised him that it would be more appropriate to contact staff in regard to his questions.

The hearing was open to the public.

Lorna Freihofer, 800 Fawn Dr., San Anselmo, desired to know the determination of the Enforcement Division after their site visit, specifically as it relates to the garage, retaining walls, grading and the amount of soil removed beyond what was allowed.

Glen Keys, 416 Fawn Dr., San Anselmo, expressed concern for code compliance and believed necessary preparation for the rainy season must be addressed.

The hearing was closed to the public.

M/s, Dickenson/Julin, and passed unanimously of those present, to approve the resolution denying the Pappas Design Review Amendment based on the findings set forth therein. Motion passed 6/0 (Commissioner Buddie not present).

Mr. Lai provided the Commission with a status report on the result of the code enforcement investigation and noted the following: The garage as presently built, is larger than what was approved by 160 square feet and approximately 4.8 feet longer than approved. However, the garage setbacks to the property line have not changed to the extent the additional floor area was added toward the residence side of the garage. The overall garage height would meet the approved height of 13 feet upon completion of the paving. As an interim measure, inspections for the foundation's formwork would be on hold in order for Mr. Pappas to demonstrate to staff by a surveyor's certification that the elevation for the ultimate finished floor would be in compliance with what was approved. The retaining wall heights as approved were slightly higher than what was approved at design review, but in compliance with the approved engineering drawings on file as part of the building permit plans. Staff further added that enforcement staff would establish timelines for compliance for Mr. Pappas to make the necessary corrections to any violations, but at this point there is a hold on any further inspections due to the ongoing nature of the investigation as well as information regarding on-going erosion control problems.

Berenice Davidson, Public Works Department, explained that after the last Planning Commission meeting, Public Works staff inspected the site and noticed that erosion control measures were not adequate. Staff explained that Mr. Pappas did not comply with staff's recommendations and until proper erosion control measures are in place, further inspections would be put on hold.

Staff added that they would consider incorporating the erosion violations into the County's code enforcement action, which would be pursued with vigor upon completion of the Commission's decision on this matter and expiration of the appeal period. Additionally, staff would report back to the Commission and provide periodic updates of what had been accomplished through the code enforcement process.

Commissioner Dickenson pointed out that the issues are very separate and, regardless of whether Mr. Pappas built according to the plans or not, appropriate erosion control measures must be in place in order to protect the downhill community.

M/s, Dickenson/Julin, and passed unanimously of those present, to recommend to County Counsel staff and Public Works staff to investigate whether the circumstances that currently exist today would constitute a public nuisance that should be appropriately pursued with the Board of Supervisors. Motion passed 6/0 (Commissioner Buddie not present).

Chair Berland informed all parties of interest that this matter could be appealed to the Board of Supervisors within 10 calendar days.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC04-001

A RESOLUTION DENYING THE PAPPAS DESIGN REVIEW AMENDMENT (DM 04-20)  
465 FAWN DRIVE, SAN ANSELMO  
ASSESSOR'S PARCEL 177-071-07

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**SECTION I: FINDINGS**

- I. WHEREAS Peter and Sophie Pappas have submitted an application to modify the design and location of a new single-family residence and accessory improvements that were originally approved in 2000 on a vacant parcel in Sleepy Hollow. The proposed modifications include: (1) increasing the width and length of the house by 12 and 32 feet respectively, resulting in an increase to the overall residence size from 4,811 square feet to 6,399 square feet; (2) increasing the height of the residence from 26 feet to 26.85 feet; (3) lowering the residence on the hillside property and shifting it closer to Fawn Drive, resulting in a reduced setback to the Fawn Drive easement from 82 feet to 58 feet; (4) increasing the size of a detached garage from 1,152 square feet to 1,320 square feet; and (5) increasing the size of an inground swimming pool from 36 feet by 18 feet to 40 feet by 20 feet. The project also includes proposed changes to the site grading to create an 80-foot by 40-foot play area above the detached garage and retention of some of the excavated earth material on-site by backfilling the slope in front of, and below the residence. The modified residence would maintain the following setbacks: (1) 58 to 70 feet from the Fawn Drive easement to the west; (2) 10 feet from the northerly side property line; (3) 96 feet from the easterly rear property line; and (4) 81 feet from the southerly side property line. The property is located at 465 Fawn Drive, San Anselmo, and is further identified as Assessor's Parcel 177-071-07.
  
- II. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on December 8, 2003 to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project. The Planning Commission continued the public hearing to January 12, 2004 and directed staff to draft a resolution that would deny the proposed project based on the inability to make the required Design Review findings.
  
- III. WHEREAS the Marin County Planning Commission finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15303, Class 3(a) because the construction of a single-family residence would not result in significant adverse environmental effects.
  
- IV. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the Marin Countywide Plan (CWP) for the following reasons.
  - A. The project would result in a single-family residential development that is inconsistent with the character and scale of the surrounding Sleepy Hollow community. (Policy EQ-3.8)
  
  - B. The proposed extent of site grading does not conform to CWP policies to minimize excavation, grading, and filling. (Policy EQ-3.16)
  
  - C. The proposed project conflicts with the Ridge and Upland Greenbelt policies because it would result in a large-scale residential development on a visually-prominent hillside that would adversely affect hillside visual resources and surrounding areas. (Policies EQ-3.18 and EQ-3.19)
  
  - D. The proposed single-family residential development is out-of-scale with the environmental constraints relating to steep slopes and the character of the sleepy Hollow community. (Policy EQ-3.25)

V. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the mandatory findings to approve a Design Review pursuant to Marin County Code Section 22.42.060, as specified below.

- A. The proposed development will properly and adequately perform or satisfy its functional requirements without being unsightly or creating incompatibility/disharmony with its locale and surrounding neighborhood.

This finding cannot be made in the affirmative. The proposed modifications to the plans for the single-family residence would result in a structure that is unsightly and that conflicts with the character of the surrounding Sleepy Hollow community because: (1) the residence would incorporate characteristics of scale and architectural design that are incompatible with the surrounding area and hillside environment; (2) the 6,399 square foot residence, 1,320 square foot garage, 388 square foot weight room, 20 foot by 40 foot inground swimming pool, and extensive retaining walls would have an imposing appearance on a visually-prominent hillside; (3) the proposed grading would visually change the character of the hillside and surrounding areas; and (4) the extent of the proposed residential improvements is excessive on the subject property as it relates to characteristics of mass, bulk, and overall scale of development.

- B. The proposed development will not impair, or substantially interfere with the development, use, or enjoyment of other property in the vicinity, including, but not limited to, light, air, privacy and views, or the orderly development of the neighborhood as a whole, including public lands and rights-of-way.

This finding cannot be made in the affirmative. The proposal would result in an overall development that is incompatible with the residential character of the surrounding community. The project would result in view impacts to surrounding residences, right-of-ways, and public open spaces with respect to the following factors: (1) the modified residence would maintain an inappropriate setback of 63 feet from the Fawn Drive easement to the west; (2) the bulk and mass associated with lengthening the residence and shifting its siting lower on the property and closer to Fawn Drive would substantially change the exterior bulk and mass of the development as viewed from Fawn Drive and nearby off-site vantage points; and (3) the modified residence would incorporate characteristics of building height, bulk, and mass that conflict with the enjoyment of surrounding properties and are not appropriate on the subject property given its visually-prominent location, size, configuration, and topography.

- C. The proposed development will not directly, or cumulatively, impair, inhibit, or limit further investment or improvements in the vicinity, on the same or other properties, including public lands and rights-of-way.

This finding cannot be made in the affirmative based on the discussion contained in Findings V(A) and V(B) above.

- D. The proposed development will be properly and adequately landscaped with maximum retention of trees and other natural features and will conserve non-renewable energy and natural resources.**

This finding cannot be made in the affirmative. The proposed landscaping would not adequately screen the residence and accessory improvements given the large mass and bulk of the residence, the steep topography, and the visually-prominent nature of the site.

- E. The proposed development will be in compliance with the design and location characteristics listed in Chapter 22.16 (Planned District Development Standards).

This finding cannot be made in the affirmative. The project is inconsistent with the Planned District Development Standards because: (1) the site design requires an excessive amount of grading and site disturbance to accommodate an overly-large development pad; (2) the amount of grading and retaining walls associated with the modifications to the garage are excessive; and (3) the retention of excavated spoils on-site and below the residence is undesirable given the unstable nature of the area and would further heighten the visual appearance and prominence of the residence.

- F. The proposed development will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design, or placement. Adverse effects include those produced by the design and location characteristics of the following: (1) the area, heights, mass, materials, and scale of structures; (2) drainage systems and appurtenant structures; (3) cut and fill or the reforming of the natural terrain, and appurtenant structures (e.g., retaining walls and bulkheads); (4) areas, paths, and rights-of-way for the containment, movement or general circulation of animals, conveyances, persons, vehicles, and watercraft; and; (5) will not result in the elimination of significant sun and light exposure, views, vistas, and privacy to adjacent properties.

This finding cannot be made in the affirmative. The residence would not function and harmonize with the site and other properties within the vicinity in regards to scale, height, setbacks, architectural design, exterior color, and building materials and would result in significant impacts to the views and vistas from surrounding properties, rights-of-way, and public open spaces.

- G. *The project design includes features which foster energy and natural resource conservation while maintaining the character of the community.*

This finding can be made. The project utilizes a north-south building orientation to maximum opportunities for solar access.

- H. The design, location, size, and operating characteristics of the proposed use are consistent with the Countywide Plan and applicable zoning district regulations, are compatible with the existing and future land uses in the vicinity, and will not be detrimental to the public interest, health, safety, convenience, or welfare of the County.

This finding cannot be made in the affirmative based on the discussion contained in Findings IV and V(A) through V(F), and V(H).

## **SECTION II: ACTION**

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Pappas Design Review Amendment application based on the inability to make affirmative findings of project consistency with the Marin Countywide Plan and the requirements for Design Review.

## **SECTION III: APPEAL RIGHTS**

NOW, THEREFORE BE IT RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and a \$675.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m. on January 22, 2004.**

**SECTION V: VOTE**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 12th day of January, 2004, by the following vote to wit:

AYES: Barner, Berland, Dickenson, Julin, Herbertson, Thompson

NOES:

ABSENT: Buddie

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ALLAN BERLAND, DESIGNATED CHAIRMAN  
MARIN COUNTY PLANNING COMMISSION

Attest:

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Jessica Woods  
Planning Commission Secretary



## 7. VARIANCE/DESIGN REVIEW: GHAZI

Application proposing to approve a 130 square foot (65 square feet per story), as-built portion of the house that is located 22.8 feet from the north front property line and encroaches 7.2 feet into the 30 foot front yard setback. This represents a change from the 31.5 foot front yard setback approved through prior design review. In addition, the applicant is requesting design review approval of the change in the east side setback from the approved 36.3 feet to 39.2 feet, and in the west side setback from the approved 104 feet to 94 feet. The applicants are also requesting approval of a change in the building and retaining wall colors from the approved medium tans to lighter shades of tan. Revisions to the approved landscape plan and a six-foot wood fence on the north property line are also proposed with this application. The house, containing 6,542 square feet, with a maximum height of 29 feet and including 540 square feet of attached garage space, received Design Review approval on December 28, 2001. A pool and landscaping were also included in the original design review approved plans. The subject property is located at **49 Bret Harte Road, San Rafael**, and is further identified as **Assessor's Parcel 018-123-08**.

Ben Berto, Principal Planner, summarized the staff report and recommended that the Commission approve in part and deny in part the Ghazi Variance and Minor Design Review. Staff also provided the Commission with a PowerPoint Presentation that outlined the following for the Commission's consideration:

- Background
- Approved, constructed house location
- Approved, applied colors
- Proposed landscaping and fence
- Geotechnical issues

Recommendation: Deny Variance.

- No special circumstance
- Remove 7.2 feet off northeastern corner of house; and
- Eliminate one garage space, portion of laundry room

Other Recommendations:

- Augment landscaping
- Approve original color scheme, dark brown be required for window trim
- Accept/enforce original approval in general; and
- Mitigate/buffer adverse impacts.

Mr. Berto clarified that the language in Condition 5 should read, "*A minimum of 12 additional downslope trees shall be included in the revised plans.*"

Commissioner Dickenson expressed concern for the increase of 1,600 square feet. He also asked staff if the plans were current as-built drawings or if the drawings were from the 2001 approval. Staff responded that with the exception of the amendments to the site plan, the house that was constructed and the house currently being proposed is identical to the house from the 2001 design review approval.

Commissioner Dickenson asked staff if the applicant maintained the same finish floor elevation. Staff responded in the affirmative. Staff then circulated photographs for the Commission to better understand how far along construction was during December 2001.

Commissioner Dickenson discussed the Countywide Plan consistency and noted that none of the findings reference the fact that this site is located in the Ridgeland Upland Greenbelt Designation. Staff responded that they did not explore that possibility.

Commissioner Barner expressed concern for resolving one problem and creating another situation. He desired to know the County's responsibility of enforcing the approved plans and believed recourse should be in place when contractors' deviate from approved plans. Staff explained that they are working on revised procedures for when a project is built close to the allowable side setbacks or the height allowance to be surveyed to confirm that projects are being constructed in compliance with the approved plans. Staff further stated that at times local jurisdictions report actions to the Contractors State Licensing Board.

Commissioner Julin clarified with staff that the County granted approval of this project and in the interest of fairness would only remove the corner of the structure. Staff responded that because the design of the house had been approved through design review process, staff considered it appropriate to continue to process the approved design, but that the location of the house is a separate issue since the as-built location does not comply with the approved location. Staff explained that if the County desired to strictly adhere to the original design review approval, it could state that the original design review location is approved and require that entire house to be shifted downhill 10 feet. Staff felt it was sufficient in terms of the impacts of that house to provide for the mitigations that are included in the staff report and to eliminate that portion of the house that deviated from the County's standards for setbacks. Staff further provided the Commission with the original approved design review plans as well as the site plan that views the corner for their consideration.

Commissioner Dickenson assumed that the entire design review approval is before the Commission, so it is not only the issue of the triangle that encroaches within the zoning setback, but it is the design review approval and whatever conditions that the Commission might believe are appropriate. Staff responded in the affirmative in the sense that the 10-foot shift affects the house in its entirety with respect to the location; the design had not deviated with respect to architecture. Staff added that design review proposal seeks authorization for the new, as built location of the home. Staff also explained that the variance request pertains to that portion of the structure that is located within the front yard setback. In staff's analysis, affirmative findings were unable to be made for the encroaching portion of the home and that is the basis for the recommendations for denial on the variance.

Commissioner Thompson pointed out that the new approval is a relatively healthy increase in size regardless of the two-story space.

Staff added that the Chief Building Official and staff are in the process of establishing procedures that would verify whether or not projects are being built according to approved plans.

The hearing was open to the public.

Ola Balogun, Crescent Engineering in behalf of the applicant, provided some background to the Commission as to how they arrived at this stage along with photographs. He provided the Commission with a site plan and Marin County Code – Title 22, Development Code for the Commission's review and consideration, which discussed measurement of setbacks, front yard setbacks and flag lots.

Jay Nelson, applicant's soils engineer, pointed out that the site conditions did not change, but there is a statute that was passed by the legislature that had gradually upgraded geotechnical standards and references a maps, which have not been done for Marin County as of yet, but Marin County is in the process of upgrading how they review hillsides. He noted that this project was approved by the soils engineer and the County before the map was issued. In general, this is not a great area, but it is the intent of the State statute to mitigate impacts and because the house was moved upslope it made the house more stable and in conformance with the State statute.

Commissioner Thompson discussed the map where foundation zones are identified in relation to Nos. 1- 4 with one being best and four being the worst, and he did not note any areas worse than two.

Fakoor Popal, applicant, provided the Commission with photographs, letters and maps for their consideration. He also apologized for the location due to all the controversy. He pointed out that the County recommended cutting the corner, which in his opinion would not benefit the surrounding neighbors. He asked the Commission if there is a

manner in which to resolve this problem without cutting the corner, and if so, it would be greatly appreciated. He further added there was no documentation saying what was approved, but he would accept whatever color is recommended.

John Sharp, attorney representing adjacent property owners Fanny Rifkin and Steve Pollack, noted that he submitted a letter to the staff on Friday, January 9, 2004, which he would not discuss, but hoped the Commission reviewed. He explained that several neighbors were not notified of the design review proceeding in 2001, and he was not notified of today's hearing, and he has concerns. He discussed vested rights and explained never since January of 2001 when the original permit was issued on this property was this property compliant. Therefore there are no vested rights in this property. He submitted to the Commission that the law is clear that if what is constructed was not approved, there are no vested rights. He added that Marin County's jurisdiction is much broader than the staff report and would go back pre design review. He stated that there are numerous impacts of privacy and view obstructions. He also pointed out that there was no engineering field work that occurred contemporaneously with the movement of this structure from where it was approved to be located that supported the move of the structure. He discussed the fact that drainage from this property has clogged several drains in the neighborhood due to runoff. He also stated that there had been no geotechnical attention in the recent reports to issues regarding the exposed hillside. He realized that the Commission would not take abatement action, but encouraged the Commission to deny the project and send a strong message to the Board of Supervisors that abatement should occur and this project should return to the manner it was approved in 2001.

Fanny Rifken, concerned resident, stated that her community had been profoundly impacted from the Ghazi property in relation to the impacts to the ridgelines, views altered or obstructed, and privacy. She noted that the community was assured that this project was in compliance with the County codes, which was not the case and at the early stage the setback violations were present, but construction was allowed. She explained that immediate neighboring properties never received notice about this project and once again the County missed the violations. She believed the design review approval should be declared void because it was based on fraudulent information provided to the County by Mr. Ghazi. She further encouraged the Commission to deny this project.

Steve Pollack, concerned resident, noted for the record that he and his wife signed a petition to move forward with the project, but they never endorsed the project, but acted responsibly in order to keep the neighborhood safe and that is the reason for signing the petition. He further expressed concern for his privacy and view impacts from the Ghazi residence.

Dennis Drake, concerned resident, opposed the project and expressed concern for the impacts to the hillside and his view. He requested a third party bond to cover any future failure to the hill or loss of view due to this construction be established if this project is agreed upon to move forward. He further believed that cutting off the corner of the home would not benefit the neighbors.

Steve Tulsy, concerned resident, desired to know what rules apply in Marin County because he looks forward to improving his property and perhaps expanding the size of his home. He pointed out that the opinions of his neighbors matter and they must all abide by a process that is intended to protect all parties. He explained that in this case, a landowner desired to build an unreasonably large structure, which he knew his neighbors would object, so he submitted plans for a 3,900-square-foot home and took advantage of the 4,000-foot exception. He believed individuals should not have to submit funds to ensure that the County did its job. He cannot understand how this project was approved and felt it is a blight on the hillside. He further asked the Commission for guidance as to how procedures work in Marin County.

Richard Rost, concerned resident, believed the project had an extremely positive effect on the stability of the hillside due to 270 piers, retaining walls and the drainage system installed on the property. He further noted his strong support.

The hearing was closed to the public.

Commissioner Barner felt there are a number of unanswered questions and a lack of information available for the Commission to make a proper determination. He further believed additional review is needed before the Commission could move forward.

Commissioner Dickenson indicated that the home is spectacular, but very inappropriate for this location. He explained that he could not make the findings necessary for approval regardless of the details. He further noted that he could not support a motion to approve the design review for this house.

Commissioner Julin concurred with Commissioner Dickenson's comments. She added that what is present on the site is illegal. She further believed community values are important and should be upheld, in this case to the extent of abatement of the structure.

Commissioner Herbertson indicated that he cannot make the necessary design review findings and would not support any motion that would approve the design review of this house.

Commissioner Thompson stated he felt that the height limits were exceeded and the idea of removing the corner of the building is horrible. He stated that reducing the size of the house might be an option, but pointed out that it would not change the character of the house. He further added that the process was manipulated and concurred with the previous comments made by the Commission.

Chair Berland concurred with the Commission's comments. He then asked staff for guidance on how the Commission should proceed.

Staff noted that today is the last day of action, given the timelines under the zoning ordinance, he suggested two sets of findings that the Commission could make as a definitive action, subject to the ratification of a resolution that would come back before the Commission at the next meeting as follows:

1. A finding that the original project (December 2001 approval) was not properly vested in accordance with the vesting provisions and the entitlement because the existing home was not built in conformance with the approved building permit location or the location that was prescribed in the December 2001 design review approval, and that the applicant knew or should have known that relocation of the residence was not in compliance with the 2001 design review approval; and
2. Finding 7 could not be made based upon conflicts with the criteria for approval of design review insofar as the project involved excessive grading on a hillside lot, that the size and scale of the existing home is inconsistent with the predominate pattern of development in size and scale of homes in the surrounding neighborhood, and that architectural style of the residence in conjunction with its size conflicts with the prominent style of existing development in the surrounding neighborhood and community character.

Staff further added that there is a third set of findings that are relevant and required, which are the variance findings that had been set out in the resolution that do not support the encroachment into the setback.

Commissioner Herbertson recommended including in the first set of findings that the January 2001 building permit approval was never vested in that the construction subsequent to that did not conform to the approval. Staff agreed.

Commissioner Dickenson believed the house as proposed is not consistent with the Countywide Plan Ridgeland Upland Greenbelt Designation and requested that it be included in the findings as well. Staff agreed.

M/s, Dickenson/Julin, and passed unanimously of those present, to deny the Ghazi Variance and Design Review and direct staff to come back with a revised resolution reflecting the Commission's intended action at the next meeting. Motion passed 6/0 (Commissioner Buddie not present).

8. APPROVAL OF MINUTES – DECEMBER 8, 2003

The Commission noted a few corrections to the December 8, 2003 Minutes, which were provided to staff in order to be revised.

M/s, Barner/Julin, and passed unanimously of those present, to approve the Minutes of December 8, 2003 as modified. Motion passed 6/0 (Commissioner Buddie not present).

9. UPDATE ON BOARD OF SUPERVISORS ACTIONS

January 13, 2003:– Marin City Church of God Subdivision and Rezoning (Marin City)

January 27, 2004: EIR Contract for the Countywide Plan Update; Sorokko Subdivision/Master Plan and Environmental Assessment (Tiburon)

February 3, 2004: Bicardo/Fitzgerald Design Review Appeal (San Rafael)

10. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

January 26, 2004: Ghazi Design Review/Variance (San Rafael)

February 9, 2004: St. Vincent's Grading Violation (San Rafael)

February 23, 2004: Design Review (Kent Woodlands)  
Strawberry View Control Ordinance (Strawberry)