

CRD Parks Committee Members,

It has just come to my attention that the Madros c/o Zebra Design are going to be making a presentation at tomorrow's Parks Committee meeting. At the same time, I believe they have submitted two documents that are very important to refute and which my presentation time of four minutes will not allow:

1. A Corvidae Biophysical Site Assessment justifying the proposed siting of the house (with variances requests approved), which among other adverse ecological impacts, will still result in at least 46% of a stand of Garry oak being removed.
2. A Zebra Design letter of December 8, 2017, justifying the request for 5 variances [although we understand the number is now 2 variance requests, and, characteristically as of now, neither have we been notified (as the most impacted immediate neighbour) nor has Janya/Freer (who abut the Madro lot, and, as a result, are entitled to notice of any changes in variance requests)]. Lack of transparency throughout the BOV process has been the adage.

These two Zebra Design/Madro documents should not be allowed to stand uncontested.

Please review the attached Board of Variance Letter my wife and I submitted to the City of Victoria in January 2018. This letter:

1. refuted Zebra's contention that "they have consulted extensively with all of the impacted neighbours". We provided 23 material mis-statements of fact related to this contention and other assertions in the Zebra Design Letter.
2. provided a detailed rationale for our position opposing each of the variance requests, including a nuanced response and position regarding the two side yard variances. Our nuanced position on these two variances was contingent on the Madros making 6 concessions to make the house mass and vertical profile less intrusive.

Please note that the Corvidae report is dated January 16, 2018 and did not, among other serious flaws:

1. do any actual site survey of flora and fauna.
2. enable a meaningful survey or inventory of plant species (rare and endangered or of any species in this degraded ecosystem), since Winter is not the time of year to conduct such studies!
3. did not address the impact of removing at least 46% of an existing stand of Garry oak and this adverse impact on the remaining stand.
4. did not address the impact of this proposed lot on an already-degraded Garry oak ecosystem within Gonzales Hill RP, within the Madro lot itself, and within those integral parts of the ecosystem which overlap the properties of immediate neighbours (i.e., There was no integrated Ecosystem-Based Approach to assessing the impact of the proposed lot development on a rare, intact, highly ecologically-sensitive Garry oak ecosystem).
4. did not address the impact of this proposed house development on climate change mitigation and adaptation.

I apologize for this last-minute document, which, nevertheless, needs to be considered in your important deliberation on Councillor Ben Isitt's motion and other related decisions for this project.

Best regards,
Brad Atchison

BRAD ATCHISON & CHERYL SHOJI

January 23, 2018

Ms. Nina Jokinen, Administrator
Board of Variance
City Hall, City of Victoria
1 Centennial Square
Victoria, B.C.
V8W 1P6

**Re: Concerns with Madro Land Use Variance Application for 1980 Fairfield Place,
Victoria, B.C.**

Board of Variance Members:

Parts of this letter overlaps with our Fall 2017 letter^a objecting to the withdrawn four variances but it has been revised in light of the new variances. Effectively, the house design considerations of this new submission are virtually identical to the older submission other than the house has been shifted westward toward our property and southward toward the CRD Gonzales Hill Regional Park property line and a parking protrusion has been removed.

We are about 10 feet away from being viewed technically as an "adjacent neighbour" and, although **we are the property owner most impacted** by the Madro proposed house development, ironically we do not qualify for being officially notified by the Board of Variance of any BOV Hearing. The Madro application and basis for this hearing hinges on the following five land use variances:^b

- 1. An increase in the house elevation of 0.82 feet (or 0.25 meters) for an overall height of an apparent 25.75 feet (or 7.85 meters) spread only over the middle and top floors, with no vertical set-backs within the building envelope (if the five extensive outside decks are included) to minimize overall mass and elevation impact on the immediate neighbours. The height of the full-height ground level and the visual impact of the retaining wall on our property are ignored in this height variance.*

^a Parts of this letter overlap with our BOV Letter of November 12, 2017 submitted to Nina Jokinen, Administrator, Development Services Department, Sustainable Planning and Community Development Department, City of Victoria.

^b The previous house plans called for four variances and the application was ultimately withdrawn. It should also be emphasized that this original BOV Hearing, scheduled for early November 2017, was sprung on the neighbourhood-at-large including us, only 10 days from the date of the hearing. There was almost no meaningful neighbourhood consultation, with no designs, survey plan, or specific blueprints provided for review or variances requested, prior to the withdrawn BOV hearing.

2. A decrease in the south side yard of the lot by 5.02 feet (or 1.53 m.); that is, from 12.89 feet (or 3.93 m.) to 7.87 feet (or 2.40 m.).
3. An overall increase of an additional 769.19 square feet (or 71.6 sq. m.) of house space, over the permissible amount of 3,229.17 square feet (or 300 sq. m.) square feet for a total of 3,998.36 square feet (or 371.46 sq. m.)
4. An increase in the number of storeys from 1.5 to 2.
5. A decrease in the rear yard set-back on the north side of the lot by 20.45 feet (or 6.33 m.); that is, from 46.03 feet (or 14.03 m.) to 26.48 feet (or 8.07 m.)

Apart from requesting five variances which further shift the proposed Madro house toward us and increase the overall site mass of an already-intrusive house, the net result of this application is to *build an even more intrusive house, significantly increasing the adverse impact on our property, on that of an adjacent neighbor, on our visual sight lines and direct sunlight for our food garden, removing an ancient landform, further degrading a Garry oak ecosystem, and adversely impacting park users.*

We are surprised that the design process proceeded to the point of the original proposed hearing, with no legitimate or meaningful neighbourhood consultation, and it was only fortuitous and belatedly that we had a chance to review the blueprints. Fundamentally, the overall design, presented as a fait accompli, is unsuitable for a high promontory within a rare Garry Oak ecosystem and Gonzales Hill Regional Park.

1.0 Concerns About Variance Requests

We have very serious concerns, listed in order of impact on our property, for each of the variances and here is our detailed rationale:

Variance #1: Building Height

- In the initial instance, this requested 25.60 foot building height is deceiving: the *net visual impact on our property is staring up at a monolithic building which is 41.18 feet high, or five-plus storeys* (i.e., 25.60' for the 2nd and 3rd floors plus 8.58' for the garage level plus another 7' of elevation for the retaining wall)...a gigantic impact! The calculation methodology used to determine average grade at various points along the perimeter of the house is intended for level or nearly level lots and does not work adequately for a lot with abrupt changes in elevation, a promontory, and a very steep slope on one side of this property. As a result, the *overall height request significantly understates the visual and actual height impact of this project.* In other words, the conventional methodology for calculating height for a house project does not fit in this instance. This height calculation methodology does meet this criterion when applied to a high vantage point overlooking close neighbours. Blindly applying such a methodology to all situations, without the common sense to modify it, as appropriate, for those very few circumstances in which it does not accurately convey height impact on neighbouring property owners, is an irresponsible application of land use bylaws or planning variance requests. Presumably, the prime purpose of having a height restriction by-law is to minimize adverse height impacts on adjacent and surrounding neighbours.

The permissible residential building height under the elevation by-law, which only deals with the height of the living space over the second and third floors of this house, was never intended to allow for a visual height footprint of over five storeys.

Variance #2: Rear Yard Setback

- Compared to the previous variances which have been withdrawn, *this variance incrementally moves the house about 22 feet closer to our property, a maximization of the intrusiveness and impact of this project.* The original rear yard setback variance last Fall, which we objected to, had a rear yard setback request of 64.47 feet (or 19.65 m) and the rear yard setback variance request is presently is 26.48 feet (or 8.07 m)...*a 38-foot shift westward toward our property! This is a classic Catch-22 situation when disagreeing with this excessive variance hugely and adversely impacts the enjoyment of our property.*

Again, Zebra Design misrepresented this variance by indicating the house was moving a nominal 5 feet closer to us, then they said the amount was ten feet...in both cases, not true.

This is another example, among many, of Zebra being repeatedly and purposely vague when asked specific concerns regarding measurements, survey stake locations, etc. (Refer to Section 4.0: *Our Response to the Distortions of Fact Conveyed in Rus Collins' BOV Application Letter of December 6, 2017* and Section 5.0: *Lack of Neighbourhood Consultation*).

- What is surprising is that Zebra and the Madros decided to move the house closer to toward our property and, yet, not snug the south side of the house right up to the CRD property line, *again, maximizing the adverse impacts of the two westward house footprint shifts onto our property* (Refer to Variance #5: *Side Yard Setback*). Keep in mind the CRD is a "vacant", or absent, property owner in this instance.
- Because this variance and Variance #5 have the most significant adverse impact on our property by moving the already impactful visual footprint of 5 storeys looming over our property, we would support this rear yard setback variance if the Madros committed to:
 - *substantially decreasing the projection or protrusion toward our property of the paved front.*
 - *moving the house back to its original 64.47 feet (or 19.65 m) rear yard setback variance request, which was withdrawn last Fall.*
 - *moving the house even closer to the CRD lot line (Refer to Variance #5: *Rear Yard Setback*).*
 - *eliminating two of the balconies; that is, the ones which overlooks the privacy of our front.*
 - *reducing the square footage of the house to minimize its footprint and overall mass, even within existing bylaws.*
 - *ensuring the driveway ramp is built above grade on structural concrete piles, minimizing the impact of the driveway on the stand of Garry oaks. This commitment would also involve lining the ramp surface with permeable material to slow down and channel run-off water from our street turnaround.*

Variance #3: Total House Floor Area

- Apart from the *overall proposed increase in house square footage*, under this Variance Application, the *first floor footprint variance* is also larger than legally permitted. *These two related variances also add unnecessarily to the total mass of the house and the site in a manner that is excessive for the site and its impact on the immediate neighbours.*
- Moreover, the *Madro building site directly overlooks and is substantially higher than the elevation of our lot.* Walt and Karen Madro indicated that they were downsizing from their present waterfront property on Salt Spring Island and led us to believe:
 - the proposed house on this Victoria lot would be a two-bedroom house of about 2,500 square feet (This did not convey the direction the design was moving.).
 - we would be unlikely to see their house from our lot (In fact, the house would obstruct the direct sunlight we get on the east side of our home including the only feasible food garden area on our property, apart from a large, intrusive deck looking down onto our home from this side. We would also be staring into the Madro west vertical, 5-storey elevation, or visual footprint).

We feel we have been misled, with the *turns of phrase* in communications to-date with the Madros, *conveying a false impression by downplaying the total size of the house, its intrusiveness, and, thus, the impact of the five variances requested on our property and the neighbourhood.*

Rus Collins of Zebra Design has indicated that he doesn't feel that the proposed house is "large". We disagree.

- The *overall proposed increase in interior house space is 769.19 square feet (i.e., 3,998.36 sq. ft. less 3,229.17 sq. ft.), or 24% over the legally-allowed amount of space.*
In addition, the square footage of "living space" on the proposed ground floor is substantial. Yet, the ground floor does not factor into the apparent, not actual, height of this proposed house design, ignoring the overall mass and footprint for this house.
- The *total additional interior house square footage increase* is being proposed to allow for the following *tertiary functions*: a large, demised tool shed (284 sq. ft.); a three-car garage (for a two-person family; 628 sq. ft.), a wine cellar (65 sq. ft.); a games room (359 sq. ft.); a media/den room (195 sq. ft.); and a fitness room (142 sq. ft.).
Eliminating any combination of these functions would allow the Madros to conform to the square footage by-law without the need for variances.
- The additional substantial increase in exterior living space (including a large BBQ deck area) with five proposed and very intrusive decks on the two sides of the property which look down onto our property and the Freer/Chapman lot...the two closest neighbours to the Madro property.

The two proposed northeast-facing decks would fall within the lot variance requested on the north side. Time-and-again, although being told by the Madros that they are trying to minimize impact of any proposed building on this site, this is another example of doing exactly the opposite.

The west-facing, second floor deck facing our property looks directly down on the only sunny and private portion of our property.

Variance #4: Total Number of Storeys

- This variance request of an additional 0.5 storey is unnecessary and, again, hardly qualifies as "undue hardship" to the Madros. It is also linked back to our rationale against Variance #2.*
- Eliminating the 8.5 foot ground level, allocated to two additional and discretionary parking stalls and other "living space", would reduce the blasting and reduce the front parking lot apron (including the decreased need for truck removal of rock debris as well as a reduction in the surface area of the front parking lot and its intrusion toward our property) in addition to discretionary/tertiary functions within the house. This so-called "basement" level (which is mostly above grade) is, in fact, "living space". Originally, we were informed by Zebra Design that the calculation of the official total house floor area only captures the square footage of the middle and top floors, which apparently is not the case.*

Variance #5: Side Yard Setback

- As we are the property owner most affected and coincident with Variance #2: Rear Yard Setback, if we support this Madro variance we "win" because their house remains further from our property. If we don't support it, the house moves closer to us...a classic Catch-22 situation.*
- We offered to support this variance if the Madros provided a written commitment in to execute the concessions listed at the end of Variance #2 on page 3 and on pp. 15 and 16 of this letter. To-date, they have chosen not to engage with us on any concessions for Variances #2 and #5.*

2.0 Other Considerations Regarding Lot Development Context

- For those of us who have watched the ebb-and-flow of the flora and fauna within the ecosystem within the immediate area of Gonzales Hill Regional Park for decades (We have been owners of our property since 1989), the subtle but important ecosystem processes and their interplay which are part of this Gonzales Hill ecosystem escape folks who don't bother to pay attention, have no knowledge of, or who don't have a "Nature Stewardship Ethic".*

To give just one example, the reclusive, ground-based quail living in our immediate part of the Gonzales Hill ecosystem will be directly affected, particularly their nesting and movement habits, by this Madro development.

- The *BOV process and the planning function within the City of Victoria (and its sustainability commitment, as expressed even in the name of the department which administers the BOV process) cannot ignore its own Official Community Plan and the Gonzales Hill Area Guidelines^{c,d} in dealing with variances and arriving at its variance decisions*; for example:
 - *"The protection of neighbourhood ecosystems" (p. 7);*
 - *"The Gonzales Hill Area: - encouraging types of housing and siting that limit disturbance to green space" (p. 8);*
 - *"Protect neighbourhood ecosystems" (pp. 11 and 42);*
 - *"Encourage new owners on property on Gonzales Hill to preserve Garry Oak meadows and other natural features" (p. 36); and*
 - *"While diverse housing options are encouraged for most of the neighbourhood, this should be tempered in the Queen Anne Heights, Foul Bay Road and Gonzales Hill areas. These areas are characterized by large lost and significant Garry Oak Meadow and other trees...Future housing in these areas should intensify the existing buildings or footprint rather than expanding into open space" (pp. 39: last paragraph; 41: Sections 5.1.5 and 5.1.6; and 44).*
 - Regarding the land north of the observatory, the Victoria Heritage Foundation (<https://victoriaheritagefoundation.ca/HReg/Gonzales/Denison302.html>) has provided a historical pathway of various municipal councils (Victoria and Oak Bay) and the CRD to take steps to preserve Gonzales Hill:
"After a land use study of Gonzales in 1987 the federal Public Works Department announced a plan to sell off most of the land to the north of the Observatory for housing development, and to sell the building itself and the land immediately surrounding it to the City of Victoria for \$1. Both the Victoria and Oak Bay councils joined the Gonzales Hill Preservation Society in opposing this plan; a very important aspect of the protest was that the area provides habitat for quail and other birds, as well as some rare plant species. Eventually the entire property was sold to the Capital Regional District for \$35,000, and Gonzales Hill became a regional park."

^c *Official Community Plan: City of Victoria* (July 2012; Amended September 2016).
http://www.victoria.ca/assets/Departments/Planning~Development/Community~Planning/OCP/Replaced/OCP_Book_2012_amended_Sept_2016.pdf

^d *Gonzales Neighbourhood Plan* (Proposed Plan October 2017).
http://www.victoria.ca/assets/Departments/Planning~Development/Community~Planning/Local~Area~Planning/Fairfield~Gonzales/Gonzales/Gonzales_ProposedNP_Final_Oct6_lowres.pdf

- In light of the adverse and substantial impacts of climate change, and the carbon sink effect of trees in an established ecosystem, *one should not ignore the unnecessary and frivolous cutting down of trees and the disruption of these ecosystems, particularly in an urban context. Although this ecological consideration is not a formal part of the BOV process, the Board members would be remiss and neglectful to not understand and apply this context in making their decisions, especially for these unique ecosystem settings and for "special sites" such as the Madro lot.* We're not talking about a paved parking lot or patch of grass here!
- The Board of Variance (BOV) resides operationally and administratively within the Land Development Services, *Sustainable Planning* and Community Department. The author has been repeatedly told by the Variance Board staff that it is not a City of Victoria function and, yet, 100% of the staff complement to administer this function is provided by this department. The Board of Variance is also referred to formally as the "City of Victoria Board of Variance". The BOV Administrator, Ms. Nina Jokinen, is also answerable to the Zoning Head within this City department, Mr. Tom Pedernat. This is a convoluted and confusing (to neighbourhoods and immediate property owners in any case) organizational structure, to say the least, and smacks of classic buck passing when required. *This BOV request by the Madros is as close as one will get to a hearing process which involves truly "sustainable development" considerations and the City staff and Board of Variance members need to take this responsibility seriously.*
One could only hope that such Board of Variance members had an Ecology 101 course in their toolkit or availed themselves of ecological experts to make meaningful, holistic, and, thus, responsible decisions when considering variances involving an intact ecosystem. The *development of this lot as proposed in the only regional park within the City of Victoria and with the proposed blasting of a promontory, an ancient geomorphological landform (simply viewed as a scenic vantage point, or promontory, to be removed or blasted away, by the Madros) is highly irresponsible and insensitive.*
- In fact, *requesting variances which are this significant in nature hardly qualify as legitimate "undue hardship" to the Madros or as "minor relaxations to the Zoning Regulation Bylaw" on us or the neighbourhood, as Mr. Collins of Zebra Design claims in his BOV Application Letter. In fact, the Board of Variance is mandated to ensure variances are presumably few in number and insignificant in neighbourhood impact.* This is hardly the case with the proposed Madro development. The fact that *"undue hardship" isn't even defined makes the nature of many variance requests frivolous, especially in their "undue hardship" to immediate property owners.*
- Although the *Madros, a two-person household, have been cooperative in supplying information only when requested and only then belatedly, at no time to-date, and in light of a large proposed financial benefit to them if the variances were allowed, have they offered any concessions to the immediate property owners, the neighbourhood, or the City of Victoria in lieu of the variances requested in this application* (other than the elimination of a front parking lot protuberance projecting intrusively and

unnecessarily toward our front entrance in the first set of variance requests, which was withdrawn in Fall 2017.)

Thus, *variance requests convey a potential significant financial benefit to the developer and, thus, should not be generally granted; that is, variances, especially of a substantial nature, should be the exception, rather than the rule.*

- Combined with a large, visible, and intrusive retaining wall on the west site of the leveled and built-up substantial front yard, the house height (or elevation) variance *already adds to an abnormally-large building mass for the site or legally-allowable.* The Madro proposed variances would substantially intrude over and dominate our lot and another adjacent lot.

A Shadow Study done by Zebra Designs confirmed that the house would cast a substantial shadow on our property, including the only food-growing area.

- The *construction plan proposes to bulldoze five, of 11, Garry Oak trees (or 46% of this particular stand)* to provide a driveway to the paved front yard and house building site. This is a *substantial environmental impact on an already-delicate natural and rare ecosystem.*

Back to adverse environmental impact again, this excessive proposed rock blasting has also been demonstrated to have a detrimental impact on tree root systems over the medium-term, ultimately killing the tree stand. Apparently, "water trenching" is a possible process to mitigate this additional damage to the trees. Simply replacing bulldozed or killed Garry oaks, which the Madros have indicated they will do, ignores the very definition of established species within a mature Garry oak ecosystem.

- *Construction Impacts*

Although not within the mandate of the Board of Variance, there are several adverse construction impacts, which neither the Madros nor Zebra Design have acknowledged as legitimate neighbourhood concerns, which further reinforce the stonewalling and lack of meaningful consultation with the neighbourhood, which has been the adage throughout this project to-date.

In fact, increasingly, our neighbourhood has come to the conclusion that this Board of Variance process is premature and flawed and that the City of Victoria, Oak Bay, and the CRD have abrogated their legal responsibilities and obligations to conduct a credible scientific study on the impacts of this proposed development on the park itself (i.e., on its park users in the "enjoyment of the park" and on the species within this rare Garry oak ecosystem) and that these three parties should have inserted themselves into the "design control" function very early in the development process. Each party failing to do so captures various potential legal liabilities by not acting in the public interest to preserve this valuable regional park asset.

- *The highly-sloped and paved driveway/retaining wall complex would collect and funnel a large volume of water to our sloping lot and inclined driveway as well as large turnaround area at the top of our street. As an immediate downstream property owner on a steep hill, we require a water-permeable front driveway apron and driveway coupled with a sizeable drain at the driveway entrance.*

- The trenching for Madro site utilities would *eliminate access to our driveway* and would involve a *water cut-off* during part of the construction period.
- The heavy equipment and trucks egressing to/from the construction site over a substantial period of time will *chew up the asphalt in the turnaround at the top of our street. We would expect that this area will be re-paved to a high standard at the end of the project and paid for by the Madros.*
- *No draft Blasting Plan* has been presented to us, other than a vague description that there are a handful of contractors which do this work in Victoria and that they would inventory the baseline condition of each house in the neighbourhood for possible blast damage. Regardless, in the event of any sort of construction damage whatsoever, we would *expect that a specified hourly charge-back be reimbursed by the Madros to any homeowner who spends time having to interact and coordinate with any parties to any prospective construction damage.*

Our roof is metal and would likely sustain some scratch or dent damage from flying pieces of rock or stone. In addition, our fireplace has sustained previous blasting damage from two adjacent properties and would likely do so again. Regardless, abrasive rock dust would accumulate on our roof.

As a result, we would also expect that a careful and professional washing of our building, including windows, metal roof, and sides be paid for by the Madros.

Similarly, we would expect the Madros promptly pay for any inspectors and/or lawyers we may choose to hire to represent our interests in the event of any damages to our properties.

- There is virtually *no parking* (due to regular use by delivery trucks, a DATS vehicle, and medical emergency vehicle access) at the turnaround at the top of our narrow street for subcontractor vehicles. In other words, the top of our street is a turnaround and is very unsuitable and unsafe for the parking of any construction vehicles for this project.

From the City of Victoria, we need specified and designated street parking signage for us and the property behind us, with no construction vehicles being allowed to park in the turnaround at the top of Fairfield Place throughout the construction phase.

It is an unfitting irony that the original owner of our piece of property donated the land at the front of the lot (i.e., south end) as a turnaround for Fairfield Place since it would have been very difficult and unsafe for vehicles to back down one of the steepest, narrowest streets in Victoria. As a consequence, the original egress to/from the Madro lot was intended to be through the driveway of the Freer/Chapman lot on Dennison Road, since the Madro lot was subdivided off the larger Freer/Chapman lot. Thus, the *entrance to the Madro lot was never intended to be off Fairfield Place.*

- Based on past experiences, we would estimate that the proposed substantial blasting (not all required, in our view) would take at least two-plus months. This is a very high-impact effect on a very quiet street at present and on us directly as retirees. *We need written statement of intent of any legitimate and reasonable concessions and accommodations which the Madros intend to make to lower the impact of this project on the neighbourhood.*

- Based on past experiences, we would estimate that the proposed substantial blasting (not all required, in our view) would take at least two-plus months. This is a very high-impact effect on a very quiet street at present and on us directly as retirees. *We need written statement of intent of any legitimate and reasonable concessions and accommodations which the Madros intend to make to lower the impact of this project on the neighbourhood.*
- Above all, we are retirees and one of the authors barely survived a near-death heart attack on May 5, 2016 and requires quiet and a low stress environment. Even if this very large house construction project conformed to the variance by-law it would still:
 - be intrusive in a number of material respects (e.g., the unnecessary and discretionary extensive paved front driveway apron; the protrusion of decks overlooking two of the immediate neighbours, one of which requires a setback variance on the north side, as discussed).
 - have a substantial overall house mass as well as a significant elevation of greater than five storeys blocking the sun on the east side of our property.
 - involve a large, protracted amount of rock blasting.
 - a project stretching over at least 18 months (based on previous similarly-sized houses in the area. A detailed Project Plan with strict adherence to a *fast-tracked schedule would alleviate this concern.*
 - impact our narrow, constricted cul de sac street for the transportation of heavy equipment, subcontractor parking, and egress to/from the construction site, delivery trucks, and medical vehicle emergency access.

3.0 Conflict of Interest Between Zebra Design and the Variance Board

- Even though Mr. Rus Collins, the owner of Zebra Design and a member of the City of Victoria Board of Variance with consequential and on-going professional relationships, intends to recuse himself during the BOV hearing and have another company staffperson appear to plead the Madro BOV Application, we still feel that *an actual conflict of interest exists in this case.*

It is inappropriate for a design or architectural firm with any staffperson (let alone an owner) being a Board of Variance member to then present a BOV Application to that same Board of Variance. In the strong view of our neighbourhood, Zebra Design should have ended their contractual design relationship with the Madros when it became clear that the design would likely involve an application for construction variances.

Worse yet, the fact that Rus Collins has written the letter pleading the Madro case to the Board of Variance does not imply that he takes his recusal very seriously.

4.0 Our Response to the Distortions of Fact Conveyed in the Rus Collins' BOV Application Letter of December 6, 2018

- Even though the letter was composed on December 8, 2017 and the Board of Variance, City of Victoria received it on December 13, we did not receive a copy until we were provide a copy by a neighbour on January 11, 2018. *Again, this is surprising and unacceptable considering, as previously stated, we are the property most impacted by this proposed development. This is another example of less-than-effective communication throughout the project with immediate neighbours* (Please refer to the Section 5.0: *Lack of Neighbourhood Consultation*, which follows).
- "...approached the surrounding properties to review the proposal with them and invite feedback with them". *Not true.* It is correct that we and Freer/Chapman were contacted but no plans or other details on this project were offered or presented for feedback.
- "We did not receive any responses from these neighbours for a period of time and so submitted our application to the BOV". As mentioned, there were no meaningful details provided to us or the neighbourhood up to this point, so we had nothing to offer in terms of feedback. In light of several other and related considerations, we believe that this tactic was purposeful by Zebra Design and the Madros. In fact, *Rus Collins indicated that the Madros had said that there were no neighbourhood concerns or opposition to the project in any way.* *Not true.*
- "...clarification of a couple of details were requested by the City and we were advised of an additional variance that we had not identified. We withdrew the drawings to address them." It is clear that *the driving force by Zebra Design and the Madros was to try to force-feed this project through ("under the radar") from the very start of this project...with no serious effort to design an innocuous/less intrusive/less impactful house without requesting variances. Neighbours' concerns were never the foremost consideration. In Rus Collins' own words: "It became obvious to us right away that we would require variances for siting of the house."*
- "...consult with their future neighbours about their comments, and the Madros remained responsive to all email correspondence from their neighbours." *should not be construed as Zebra Design or the Madros being "active listeners" to concerns or that there was an attempt to conduct a genuine or meaningful neighbourhood consultation or provide any specific replies to neighbours' concerns.*
- "Some correspondence in the initial BOV application implied that the Madros and Zebra were heedless of environmental concerns which is not the case; we were trying to explore the least impactful way of approaching the property and surrounding areas, and did not intend any harm to the park." *Not true.* *There has been virtually no serious consideration given to address legitimate environmental (i.e., ecological) concerns expressed by the neighbourhood. In spite of idle utterances, prime determinants for the design process by the Madros were never environmental concerns but rather blasting costs, access cost to the lot, and the maximization of panoramic views.*

- "...we have consulted extensively with all the impacted neighbours...". *Not true.* There was *almost no "active listening"^e or acting upon our concerns and those of Freer/Chapman or the neighbourhood-at-large. In fact, the latter were virtually ignored by Zebra and the Madros in the supposed, but ineffective, consultation process. Rus Collins expressed the view in a meeting with the author that letters and comments by the neighbourhood-at-large were an intrusion and annoyance and "that the project was really none of their business".*
- "reviewed siting and environmental considerations with neighbours at the property, and had meetings at their homes, coffee shops, and our office." *Partially true.*
 - *No environmental (as in "ecological") considerations were presented by Zebra Design at any site visit or at any point throughout this project to-date.*
 - *The two site visits with Zebra Design were initiated by the author.*
 - *We and Freer/Chapman were present at the first site visit and only the author at the second site visit, again initiated by the author.*
 - *At the first site meeting, the author pointed out his concerns about the house siting and the expansiveness/intrusiveness of the surface area of the front driveway apron, and also asked questions which couldn't be answered by Zebra, who then indicated they would get the surveyor to stake out the house perimeter.*
 - *The author arranged a second site visit with Zebra, operating off the old house siting, and pointed out that there were specific siting and blasting details, and lot access to/from the site which did not appear to match the blueprint details. These concerns were dismissed out of hand.*
 - *Regarding meeting venues, one coffee shop, not coffee shops plural...a small example of the supposed efforts made by Zebra Design to convey an impression of extensive and effective consultation with neighbours. Not true. If this was a typical Zebra consultation effort, then the bar was set very low.*
 - *Only one office meeting with one neighbour was held.*
- "...concern expressed by neighbours that that version of the proposed house design was too close to the 330 Dennison Road property." *Unfortunately, in the process, the house shifted closer to our house...shortsightedly trying to solve one siting impact problem by worsening another one.*
- "...we have done everything we can to accommodate the requests for change..." *Not true.* Again, *active listening and then acting on the range of concerns were absent.* The only meaningful exception was the removal of the intrusive and unnecessary turnaround in the paved front driveway apron in the previous design version.

^e "Active listening" is a communication process whereby the receiver of the information conveys in various subtle and overt behaviours that he/she has listened to the concerns of the neighbour, in this instance, has acknowledged these concerns, and acted upon them when legitimate. Over more than a year, we have only one instance where active listening has occurred.

- "We have offered to all correspondents that we are aware of, to meet in person and show the revised plans." *Partially true. What has been ignored by Zebra is the absence, again, of "active listening". Zebra Design and the Madros have mistakenly perceived the apparent and at-first-glance lack of contact by neighbours or an unwillingness to meet one-on-one as overall support for the project and its variances. In light of this mistaken notion, I suggested twice to Zebra Design that it arrange a group neighbourhood meeting and it chose not to act on this advice.*
- "The height variance (a) is *relatively minor* at 0.24 m (9.5 inches)..." *What is "minor" is in the eye of the beholder, or the adversely-impacted neighbour, by this variance. We have several examples of Rus Collins using words such as "minor", "not a large house", "not a big deal" to blow off legitimate concerns expressed by us throughout this process to-date.*
- "As you can see there is an extreme hardship to meet the irregular Lot rear yard setback because it takes up so much space (c)." *Not true. The Madros knew about the development constraints that this polygonal lot shape imposed and its setback requirements. The fact the lot is large in area but does not allow them to conform to existing bylaws without a different design and a smaller house should have been part of their due diligence prior to purchasing the lot. There is only an impact on the constraints imposed by this irregular lot shape if the Madros continue to insist on incorporating tertiary functions into the house design and if Zebra continues to obsessively fixate on an intractable commitment to its original overall design.*
- "As well, additional rock would need to be blasted to allow light to enter the main and second floor, impacting the site further." *Not true. Choosing to justify additional blasting and cutting down more trees simply because the Madros want more light is convoluted logic at best and environmentally-irresponsible at worst.* The Madros have resented our contention that the direction they have chosen to go design-wise, including the request for these five variances, with this project is all about their "wants". In the process, they *have demonstrated time-and-again that neighbourhood concerns are a minor consideration. We stand by this contention.*
 - *"...only five trees are affected at the driveway." Not true, since the blasting, as proposed, will likely damage the root systems and kill the remaining Garry oaks. The choice of the word "only", again, is intended to convey the false notion that environmental concerns are topmost design considerations, when, in fact, this number represents 46% of the trees initially destroyed. Prior to purchasing the property, the Madros also knew that the egress to/from this lot would be through this stand of rare Garry oak.*
- "...although we are seeking variances for floor area (d), our proposal is only at a 0.24 Floor Area Ratio (allowable 0.50). In explanation, the zoning allows us to discount only 200SF for parking which is a minimal garage for such a large site; our client likes to collect and work on bicycles and cars for a hobby and a substantial portion of this basement size is for parking and a workshop." *Frankly, this request for an*

additional 712 square feet for two additional parking stalls plus a tool room is outrageous since the activity is a tertiary function and hardly qualifies as "undue hardship" for the Madros when the broader issue is their request for an additional 769 square feet of living space on the middle and top floor and the neighbourhood's concern for the house mass and footprint, as well as amount of rock blasting for the house.

This Madro request highlights as well as any of the variances requested their insensitivity to merely satisfy a hobby. This house design is rife with "hobby activities" which are being used as a partial rationale for the variance request to increase the living space square footage.

Most importantly, the request for an additional 769 square feet of living space, should not be an argument for increasing the developed, full-height space of the ground floor. This is a convenient sleight-of-hand and a convoluted argument.

- "Please note that the massing of the building would have no change if this area (the ground level) was only a crawl space; from the outside, no one would be able to discern whether this is a basement or crawl space." *Not true. The volume of the house, or its massing, would change if there was a full-height ground level (i.e., "Mass" is "volume" in this context; they are synonyms). As well, this proposed so-called "basement", with its 12.3 foot height, is really substantial additional living space within the house. Finally, this Zebra/Madro contention ignores the significant amount of extra blasting which will be required to dig a deeper hole. The reference to the 0.50 Floor Area Ratio allowance and the lot being "quite large" were known at the time the lot was purchased.*
- "requesting variance to the number of storeys (e) which is attributable partly to the fact that the zoning bylaw is somewhat created with pitched roof designs in mind." This argument here ignores the point the author has previously made about height calculation methodology, maximizing the visual impact of the house height, even within the allowable bylaw because this height bylaw was not developed to deal with the steep slope and promontory of the Madro lot. Ignoring a logical criticism of one calculation methodology to arrive at average grade and then "allowable height" on one aspect of this lot development and then making the point that Zebra feels it can relax, or modify, another bylaw methodology is inconsistent.
In addition, reducing the square footage of the top two floors would move the design toward falling within the allowable square footage allowance on these two floors of 3,229 square feet.

5.0 Lack of Neighbourhood Consultation

- The BOV process entails the obligation of the developer to consult with the surrounding neighbours, although the nature of this consultation is vague. Officially, the only formal obligation of the developer is to contact "adjacent owners", who may not even be those most impacted by a construction project, which is the case for my wife and me.

Because of these considerations, the project could have slid through and variances approved back in November 2017 since notification was only provided to one owner, a mere 10 calendar days before the non-appealable, final decision-making process of the Board of Variance...hardly a transparent process. Since then, annoyance has been exhibited (expressed in various subtle ways) and a high degree of stonewalling has occurred by the Zebra Design, particularly, and the Madros.

- Additionally, as mentioned in the previous section of this letter (Section 4.0: *Our Response to the Rus Collins BOV Application Letter of December 6, 2018*), we can strongly and categorically state that almost no meaningful "active listening" has occurred on the part of Zebra Design or the Madros to-date, particularly for the first year of this project, with no specifics provided regarding the direction the project was heading. We have heard many statements about "wanting to be good neighbours", "being good people", "caring for ecosystems", "wanting to minimize impacts on the Garry oaks", and "being stewards of the environment"...mostly idle words in our view because the words don't match the resulting design or behaviours of the Madros or Zebra Design. In words, actions always speak louder than words; ideally, the two are coincident.

Frankly, this project has been designed primarily to provide the maximum number of functions within the Madro house (increasing the mass and square footage of the house in the process) and to maximize views (stated explicitly to us and Freer/Chapman, the adjacent property owner) in addition to outside living area...all at the expense of the two immediate neighbours.

Furthermore, this flawed Board of Variance process has allowed the Madros to do an end-around the possible constraints of adequate "design control" being exercised by the planning function within the City of Victoria as well as the CRD (In point of fact, these are actual obligations since the City abuts this regional park and since this lot has a substantial impact on the ecology and the "enjoyment of the park" by its users).

6.0 Conclusion

In summary, for the aforementioned reasons:

- We cannot support any of the Variances #1, #3, and #4 in the Madro BOV Application. With qualification, we are prepared to support Variances #2 and #5, only if the Madros commit in writing to the following design modifications:
 - Substantially decrease the projection or protrusion of the paved front parking area apron toward our property at the front, or west side, of the lot.
 - Move the house back to its original 64.47 feet (or 19.65 m) rear yard setback variance request, which was withdrawn last Fall.
 - Move the house even closer to the CRD lot line (Refer to Variance #5: Rear Yard Setback).
 - Eliminate two of the balconies; that is, the ones which overlook the privacy of our front yard.

- Reduce the square footage of the house to minimize its footprint and overall mass, even within existing bylaws.
 - Ensure the driveway ramp is built above grade on structural concrete piles, minimizing the impact of the driveway on the stand of Garry oaks. This commitment would also involve lining the ramp surface with permeable material to slow down and channel run-off water from our street turnaround.
- In the event that the Madros do not make these changes, we withdraw our support for these two variances.
- We strongly recommend that the Board not approve at least Variations #1, #3, and #4 and not support Variances #2 and #5 if the Madros don't commit to the six modifications we have just outlined. We believe the use of the phrase "undue hardship" in Zebra's Application Letter is a loose and frivolous use of this term. The reasons given in that letter hardly qualify as "undue hardship" to the Madros, especially in light of the Madros not being willing to reduce the square footage for discretionary, tertiary functions within the house (such as a games room, for example, etc.). In fact, the "undue hardship, with or without these variances, is projected to be born, in actual fact, by us, Freer/Chapman, the neighbourhood-at-large, park users, people who believe in the ability of municipalities to adhere to their own Official Community Plans, and people who believe in preserving, to the greatest extent, intact Garry oak ecosystems and significant geological landforms and panoramic viewpoints within an existing park.
 - Prudent due diligence by the Madros, prior to purchasing the lot would have confirmed the challenges of developing this property without land use variances. Buying the property, with an expectation of being granted variances, should not have been relied on; yet, this effort seems to have been the entire preoccupation of Zebra Design and the Madros for the past year (e.g., We or others have never seen any draft plans for a house design which did not rely on any variances, other than a goal-line stand in a veiled threat and a bullying effort by the Madros to inform us if the impact of the variances if we didn't support them). Consequently, we and others in the neighbourhood should not be the ones to bear the adverse impacts of any of the requested variances.
 - We also strongly encourage the Madros and Zebra Design to come up with a smaller house of significantly smaller mass, a lower net elevation (including the visual impact of any prospective retaining wall and the reduction of highly-intrusive, adversely-impactful balconies, which also increase the "living space", on the west and rear of the house) to minimize visual impact and the intrusiveness looking down onto our property as well as the Freer/Chapman property. Our support for the original rear yard setback on the east end of the lot from last Fall 2017 and for the present south side yard variances are contingent on us and Freer/Chapman being satisfied that our concerns have been satisfactorily incorporated into any proposed house design.

Respectfully,

Brad Atchison, MBA, M.Sc., B.Sc., CMC, P.Mgr. and Cheryl Shoji, BA
(Homeowners and Immediate Neighbours)