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Via Hand Delivery

Contra Costa County Board of Supervisors
Candace Andersen, Chair
Board Chambers Room 107
Administration Building
651 Pine Street
Martinez, CA 94553-1229

Re: Appeal of David and Sandra Gerstel
285 Colusa Avenue, Kensington

Dear Sir/Madam:

Our firm represents David and Sandra Gerstel, property owners of 283 Colusa Avenue in Kensington ("Clients"). We hereby submit this letter appealing the decision of the Contra Costa County Planning Commission on February 9, 2016 to approve construction proposed by Phoebe Kwan and Ralph Leighton at 285 Colusa ("Project").

The basis for the appeal is as follows: the decision of the Planning Commission adversely affects the property rights of David and Sandra Gerstel in that the decision is not based on substantial evidence in the record nor is it based upon the findings required by the Kensington Combining Ordinance (County Ordinance Code Chapter 84-74) (hereafter "Ordinance").

The Purpose and Intent of the Ordinance Have Not Been Met

Specifically, the Ordinance "recognizes the rights of property owners to improve the value and enjoyment of their property **while minimizing impacts upon surrounding**

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neighbors and not substantially impairing the value and enjoyment of their neighbors' property." Ordinance Section 84-74.204 (a). (*Emphasis added*).

The Ordinance also states that its purpose is to "**promote community values**" including "compatibility with regard to **bulk and scale**" The Ordinance declares that "features of development that could influence these values include but are not limited to **siting, size, bulk, height**, setbacks, relative scale" **and other factors including "location of mechanical devices such as motors."** Ordinance Sections 84-74.204 (b) and (c). (*Emphasis added*)

The evidence presented before the Zoning Administrator and the Planning Commission does not support the findings of the Planning Commission that the proposed construction complies with the Kensington Combining Ordinance.

The Record Does Not Support the Findings Required by the Ordinance

Section 84-74.1206 of the Ordinance sets forth the "Standards of Consideration at the Hearing" which provides the basis for the decision of the Zoning Administrator, Planning Commission and, now, the Board of Supervisors as the final hearing body.

Paraphrased, Subsection (a) states, in relevant part, as follows:

To ensure the development will promote the values articulated in section 84-74.204 and promote the general welfare, public health and safety of the community, factors such as siting, size, bulk, building envelope, height, setbacks, relative scale, window placement and location of mechanical devices, such as motor, fans and vents, are to be evaluated by the County.

We assert that neither the Zoning Administrator, nor the Planning Commission, fully articulated the basis for their approval of the Project given the findings or standards set forth in the Ordinance.

Relative to minimizing impact of the Project's construction on neighboring properties, we would contend the Project is quite significant in that it would extend for thirty feet along the open yard and deck of the Property. For most of its length, it would be seventeen to eighteen feet in height—close to the height of many two-story homes. This will effectively block sunlight to the Property for portions of the day.

Relative to impact on property values, the Project as proposed will be 36" from the southern boundary of the Property. It would present its high, blank, un-fenestrated, un-articulated backside to the Property. As a result, its unsightly bulk--an expressed factor in the Ordinance--will effectively wall off the Property's outdoor living area including its

yard and deck. We feel there are other configurations for the Project which will address the applicant's interest in increasing the square footage and efficiency of their home which will be less impactful from a siting and scale standpoint. While these alternatives have been presented to the Zoning Administrator and Planning Commission, this evidence has been all but ignored.

With respect to the relative scale of the Project to the neighboring property and others in the neighborhood, an attentive property-by-property examination of the nineteen nearest properties along Colusa indicates that none of the properties have legal additions that negatively impair their neighbors' enjoyment and value in the way that the Project would impair the Property. Most of the properties have additions so small they would appear to have negligible impact on neighbors. At the few properties that do have additions similar in size to the proposed Project, the additions are sited much further back from neighbors so as to genuinely minimize impairment of neighbors' enjoyment and value—as required by the Ordinance. Rather than being consistent with prior development, the Project would represent a significant departure from it.

Project's Failure to Address the Purpose of the Ordinance

As stated previously, the intent and purpose of the Ordinance is to recognize the right of property owners to improve the value and enjoyment of their property while minimizing impacts on surrounding neighbors and not substantially impairing the value and enjoyment of their neighbors' property. The Ordinance also references the promotion of the community's property values (Ordinance Section 84-74.204).

Relative to the promotion of community values, thirty-eight community members, residents of the six blocks nearest to the Project, signed a petition in opposition to the Project because it would set a bad precedent thereby violating the values they want to see upheld in their community. This weight of this petition's import was largely disregarded by the Planning Commission during its deliberations.

With respect to the Project's minimization of impact to property values, the Planning Commissioner received a letter from an experienced and respected Contra Costa County realtor (Steve Kendall) stating that the Project would impair the value of 283 Colusa by \$36,000 to \$60,000. There was no testimony at either of the hearings to contradict this evidence other than a Commissioner citing a landfill in Bay Point as a comp.

Relative to the enjoyment of the Property, a hot tub is proposed to be installed approximately eleven feet from the dining room windows of the Property as a part of the Project. The staff report claimed that the tub would be screened from the dining room by

a fence. This is inaccurate as the top of the fence is below the level of the windows. The Ordinance explicitly mentions the "location of mechanical devices" as a standard of consideration. The hot tub pump is a mechanical device and, therefore, noise made by the tub pump (as well as by users of the hot tub) will be audible through the dining room windows, thereby impairing enjoyment of meals. We would suggest that the hot tub be relocated to another part of the backyard so as to minimize its impact on the Property.

Conclusion

In conclusion, we feel the proposed Project does not meet the intent, purpose nor expressed conditions and requirements of the Ordinance. While a resolution containing the Planning Commission's findings has not been made available to us, the discussion and deliberation at the Planning Commission suggests that the findings required by the Ordinance cannot be met.

We believe modifications to the Project can be made which, while not entirely minimizing the impact on our Client's Property, would certainly go a long way to improving the Project. We intend to produce alternative configurations of the Project (again) which will provide the desired increase in square footage and improvement of the Kwan/Leighton property while minimizing the impact of a 30 foot long, 18 foot high barricade located some 36 inches from the Property.

Thank you very much for your attention and consideration of our appeal.

Very truly yours,



Amara L. Morrison
Partner

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