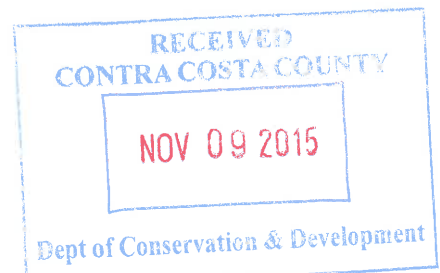


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DP15-3009

To: Contra Costa County Planning Commission November 9, 2015

Regarding: Proposed Construction at 285 Colusa Avenue, Kensington  
(County File DP15-3009)

I am appealing the decision, as presented at a closed hearing on November 2, 2015, of the Zoning Administrator, Lashun Cross, in the above referenced case.

My grounds for appealing are as follows:

**I. The proposed project adversely affects the value of the property at 283 Colusa owned by my wife, Sandra, and myself:**

The project includes an addition as well as other adverse construction. The addition would be 30 feet in length. For a short distance it would be approximately almost 15 feet in height. It would then jump up to approximately 17 feet in height and then increase gradually to a height of over 18 feet.

The addition would be 36 inches from our southern property line. It would extend along the length of our yard and would be directly opposite and a short distance from our deck.

Thereby, the addition would wall off our yard and deck, replacing a pleasant view with an unattractive one, and depriving our property of sunlight from the south.

The addition's adverse impacts on financial value are obvious. According to a letter from an experienced Contra Costa realtor the addition would reduce the value of our property between 3% and 5%, or by \$36,000 to \$60,000.

**II. The proposed project violates our property rights as defined in the Kensington Combining Ordinance (Chap. 84=74 of the County Code):**

The Ordinance, which takes precedence over other Codes in case of

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a conflict, and the purpose of which is to regulate development in Kensington, states that property owners have the right to improve their properties.

It also emphasizes that they must do so in a way that “minimizes” impairment of “enjoyment and value” of their neighbor’s property.

Minimize means “reduce to a minimum; decrease to the least possible amount.” (Websters). It does not imply merely making token adjustments.

The currently proposed addition fails to minimize impairment and thereby adversely affects our property rights as defined and protected by the Kensington Ordinance. While enabling the owners of 285 Colusa to enjoy their right to improve their property, it falls far short of minimizing impairment of enjoyment and value at our property.

Such minimization can be readily achieved. The owners of 285 Colusa have at least four alternatives for construction that would fulfill all of their expressed desires for additional space and functionality while at the same time minimizing impairment of our property’s value and enjoyment as the Kensington Ordinance requires. I have briefly described the alternatives in my declaration to Ms. Cross. I will present detailed drawings of the most promising alternative to the Planning Commission.

One of the alternatives, perhaps the most promising, requires only that the proposed addition be moved away from our property line toward the other side of the 285 property. That alternative provides all the functionality of the current proposal—a master bedroom suite and enlarged kitchen. At the same time it genuinely minimizes impairment of value and enjoyment at our property even as it allows the owners of 285 to enjoy their rights.

Thereby, it would protect the property rights of both the owners of 285 Colusa and of my wife and myself, whereas the current proposal disregards and violates our rights.

It is my intention, as part of my appeal, to provide the Planning Commission with a plan of the relocated backyard addition alternative. It will include far more detail than a conceptual sketch I provided to Ms. Cross.

Other alternatives would likewise minimize impairment of our property

while enabling the owners of 285 Colusa to realize their desires for improvement of their property. None of the alternatives would have significant adverse impact on other neighboring properties. Those alternatives are briefly described in the declaration I provided to Lashun Cross, ZA.

**III. The findings of the hearing body, ZA Lashun Cross, were not supported by the evidence available to her. In fact, the evidence available to her supports opposite findings:**

Ms. Cross found that the proposed construction would not impair the value of our property. The available evidence supports the reverse finding. That evidence includes the realtor's letter mentioned above, which was made available to Ms. Cross as an exhibit accompanying our declaration submitted at the November 2 hearing.

Other evidence not only fails to support but contradicts Ms. Cross' finding. That evidence is the view of the proposed addition as it would be experienced from our side of the property line. From that vantage point the impairment to our property, which would result from construction of the proposed addition is instantly apparent.

Ms Cross did not contact me about coming to our property so that she could consider the impact of the proposed addition from our side of the property line. Instead she visited only with the owners of 285 Colusa, enjoying their hospitality (for which she graciously thanked them at the November 2 hearing) and viewing the project from their perspective.

Ms. Cross offered no evidence whatsoever—none--for her finding that value and enjoyment at our property would not be impaired.

Ms. Cross found that the proposed addition at 285 Colusa would not constitute a bad precedent for future development in the neighborhood.

The evidence does not support Ms. Cross' finding. It supports the reverse of her finding.

That evidence includes an exhibit that I provided to her that demonstrates with descriptions and aerial photos that none—not a single one of the nearest

nineteen (19) properties along Colusa Avenue include a legal addition that walls off the southern boundary of a neighboring yard, creating an unattractive view and depriving its neighbor of sunlight.

The evidence made available to Ms. Cross also includes a petition signed by thirty-one (31) owners of homes near 285 Colusa that expresses their concern that the addition at 285 would set a bad precedent.

In ignoring that evidence and justifying her finding regarding precedent, Ms. Cross stated that she had carefully examined additions at four nearby properties. Those additions, to the extent they even exist, offer evidence that demonstrates the reverse of Ms. Cross' finding. The properties Ms. Cross claims to have examined are:

- 280 Colusa. There is, in fact, no property along Colusa with the address 280.
- 261 Colusa. There is, in fact, no property along Colusa with the address 261.
- 292 Coventry. The addition at 292 is evidence for a finding that is the reverse of Ms. Cross' finding. It is not a precedent for the currently proposed addition at 285 Colusa. It is instead a precedent for a relocated backyard addition such as I have suggested as an alternative to the currently proposed addition.

The 292 addition is located roughly twenty feet back from the southern boundary of its neighbor to the north. It does not deprive the neighbor of sunlight or wall off its yard. Rather than constituting a precedent for an addition such as the owners of 285 Colusa are currently proposing to build, it is a precedent for an addition that is thoughtfully sited so as to not impair the value and enjoyment of neighboring properties.

- 271 Colusa. The addition at 271 is set back, over most of its length, some 15 feet, not 36 inches (as is the proposed new addition for 285 Colusa) from its neighbor's southern boundary. As a result it does not deprive a neighbor of sunlight nor wall off its yard.

Like 292, rather than constituting a precedent for an addition such as the currently proposed addition at 292, it is a precedent for

an addition that is thoughtfully sited so as to minimize impairment of value and enjoyment at a neighbor's property while still allowing its owner to improve their property.

It, too, is evidence for a finding that is the reverse of Ms. Cross' finding.

Worth noting: The addition at 271 is a master bedroom and bath addition. As such, it is a model for a relocated backyard addition at 285 Colusa that would honor the both our rights and the rights of the owners of 285.

Ms. Cross' findings regarding the alternatives available to the owners of 285 Colusa are not supported by evidence.

Ms. Cross found that one alternative, a second story addition, would be "out of character" with the neighborhood. There are in fact a number of two story homes and additions in the neighborhood, including several close by 285 Colusa.

Ms. Cross findings describe another alternative for expansion of 285 Colusa as "too costly." She offered no evidence to support her finding. As a builder with 40 years experience in the design and construction of residential remodels and as the author of a best selling book on construction as well as another, currently nearing completion, on estimating and bidding, I believe the available evidence suggests that Ms. Cross finding regarding cost is at best premature.

Ms. Cross' finding that the proposed construction fulfills the requirement of the Kensington Ordinance is likewise not supported by the evidence.

In arriving at this finding Ms. Cross ignored the requirements of the Ordinance regarding minimization. She substituted a requirement of her own, namely "balance," which has a very different meaning than "minimize."

Ms. Cross stated that because the owners of 285 had "considered" windows, included a skylight, and designed a discontinuous roofline their proposed project was "balanced."



She did not explain how she had come to the conclusion that these small details would “balance” the impacts regarding view and deprivation of sunlight that would be created by the proposed construction-- much less achieve minimization. They do not, and again the evidence supports a finding the reverse of Ms. Cross’ finding.

Ms. Cross found it was not her responsibility to uphold the mutual rights of property owners guaranteed by the Kensington Ordinance.

In presenting her findings regarding alternatives to the proposed project Ms. Cross brushed aside the alternatives and declared to the owners’ of 285 Colusa “it is not for me to determine what is your best benefit.”

In fact, Ms. Cross is charged with upholding the Kensington Ordinance. It is, therefore, not her job to stand aside and allow owners to solely determine what is their “best benefit.” It is not her job to give free rein to owners in determining which alternative they wish to adopt. It is her job to assure that in choosing an alternative that owners feel will benefit themselves that they also make a choice that results in minimizing impairment of neighbors’ value and enjoyment.

Here again the evidence supports a finding that is the reverse of Ms. Cross’. In this case the evidence is the Kensington Ordinance itself. The Ordinance makes clear that it is Ms. Cross’ responsibility, regardless of what owners consider to be their best benefit, to consider alternatives that also benefit, i.e. minimize damage to, neighboring properties.

Other of Ms. Cross findings are also unsupported by evidence:

- Ms. Cross found that a vegetative screen would reduce impairment of value and enjoyment at 283 Colusa. She ignored evidence available to her in both exhibits and at the site that attempts to create a vegetative screen would, at the very least, be severely compromised by the very addition that any plantings were intended to screen.
- Ms. Cross found that a relocation of a hot tub proposed for 285 Colusa was not necessary to minimize impairment of 283 Colusa. That hot tub would sit eleven feet from and directly under the dining room

windows of 283 Colusa. Ms. Cross found that it was not necessary to relocate it because it would be somewhere in the yard of 283 and that relocating it would not make much difference. In fact, it would be easy to relocate the tub so it is forty feet or more from the windows of 283 Colusa. Such relocation would significantly minimize impairment. Again, the evidence supports a finding the reverse of Ms. Cross' finding.

- Ms. Cross stated that the addition falls short of obstructing the home at 283 Colusa. In fact, the addition is opposite the deck of the home and plainly visible from the west facing dining room windows.

Ms. Cross relied in her findings on information provided by the designers of the project. That information should not be regarded as evidence supportive of her findings. The designers have an unusual interest in seeing the project built as proposed. Their home borders 285 Colusa to the southern side of 285 Colusa. Their design moves the proposed addition as far from their property and as close to ours as possible. Regardless of what high minded principles the architects cite as justification for their currently proposed design, and regardless of whether their statements are consciously or unconsciously motivated by self-interest, information they provide should, be viewed as tainted by an objective, tangible, and visible conflict of interest. Information they provided is, therefore, not reliable evidence supportive of Ms. Cross' findings though it appears in her findings as expressed at the November 2 hearing that she often relied upon it.

#### **IV. Conclusion:**

We recognize the rights of our neighbors to improve their property. We would happily support them on a project--such as the relocated backyard addition described above--which respects our property rights along with their rights.


I apologize for the long length of this letter. However, given the repetitive divergence of Ms. Cross findings from the actual evidence as well as the

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issues covered in part I and II, the length seemed necessary.

Sincerely,

A handwritten signature in black ink that reads "David Gerstel". The signature is written in a cursive, flowing style.

David Gerstel.

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