



Department of Conservation and Development

County Planning Commission

Tuesday, August 9, 2016 – 7:00 .P.M.

STAFF REPORT

Agenda Item # _____

Project Title:	Appeal of Zoning Administrator Approval of New Single-Family Residence in Kensington
County File(s):	#DP15-3030
Appellants	George and Anita Luk (153 Lawson Road, Kensington); Edward Dean and Darlene Tong
Applicants/Owners:	Edward Dean and Darlene Tong
Zoning/General Plan:	Kensington Combining District (-K), Single-Family Residential District (R-6), and Tree Obstruction of Views Combining District (-TOV) / Single-Family Residential High-Density (SH)
Site Address/Location:	Vacant lot at the end of Lawson Road, Kensington; (APN: 572-034-018)
California Environmental Quality Act (CEQA) Status:	Exempt under CEQA Guidelines, Section 15303(a), regarding new construction or conversion of small structures.
Project Planner:	Dominique Vogelpohl, Planner I (925) 674-7814
Staff Recommendation:	Deny appeals, and uphold the Zoning Administrator's decision (See section II for full recommendation)

I. SUMMARY OF APPEAL

This is an appeal of the Zoning Administrator's Decision to approve a Development Plan and Kensington Design Review for the construction of a new single-family residence, and accessory building, totaling 4,224 in gross floor area (where the Kensington Combining District gross floor area threshold is 4,000 square-feet). The project includes variance requests to allow: 3 stories (where 2 ½ stories is the maximum), a 3-foot front yard setback (where 20-feet is required) for a retaining wall

with a maximum height of 7½-feet, a 0-foot side yard (where 5-feet is required) for a retaining wall with a maximum height of 4-feet, and a 0-foot rear yard (where 3-feet is required) for a fence with a maximum height of 6-feet, 9-inches. The project also includes a tree permit request to remove 11 code-protected trees, and work within the driplines of 2 code-protected trees.

The Zoning Administrator allowed the removal of all 11 requested trees. A landscaping plan is required to be reviewed prior to submitting for a building permit that will include 11 new trees that will specifically serve for screening for privacy areas along the northwest, south and southwest. The overall height of the residence was required to be reduced by 3-feet. As measured from the top of the parapet, the height of residence shall not exceed the 825-foot elevation. To ease concern of disturbance to existing easements, the Zoning Administrator included conditions of approval that the applicant consult with public agencies to ensure proper development in relation to potential, neighboring easements. The Zoning Administrator also conditioned the geotechnical report to address the concerns raised in the April 4, 2016 Websters' letter (to the extent feasible), and then be peer-reviewed by the County geologist.

Two letters appealing the Zoning Administrator's approval were received within the 10-day appeal period. The residents of 153 Lawson Road (Mr. and Mrs. George and Anita Luk) do not find that even with the height reduction to the residence, and other conditions added to this project by the Zoning Administrator, their concerns and reasons of opposition are still not successfully addressed. The applicant (property owners Mr. and Mrs. Edward Dean and Darlene Tong) do not find the residence as proposed to have a negative impact on neighboring residences, and wish to have the original design approved and have the height restriction condition revoked.

II. RECOMMENDATION

Staff recommends the County Planning Commission deny both appeals and UPHOLD the Zoning Administrator's decision for County File #DP15-3030 based on the attached findings, and subject to the attached conditions of approval as modified and approved by the Zoning Administrator on April 4, 2016.

III. GENERAL INFORMATION

- A. General Plan: The subject property is located within the Single-Family Residential, High-Density (SH) General Plan Land Use designation.
- B. Zoning: The subject property is located within the Kensington Combining District

(-K), Single-Family Residential District (R-6), and Tree Obstruction of Views Combining District (-TOV).

- C. Environmental Review: The proposed project is exempt under CEQA Guidelines, Section 15303(a), regarding "New Construction or Conversion of Small Structures," which exempts one single-family residence, or a second dwelling unit in a residential zone.
- D. Lot Creation: The subject property is Assessor's Parcel Number 572-034-018. This parcel was originally part of a 0.78-acre parcel that was a portion of Lot "K" of Subdivision of Lot 1, San Pablo Rancho, filed on January 16, 1907.
- E. Previous Applications:
 - 1) LL95-0028: This Lot Line Adjustment application was a request to transfer approximately 447 square-feet of property from APN: 572-034-013 (now APN: 572-043-018) to APN: 572-034-009 (now APN: 572-034-017). The Lot Line Adjustment application was approved on July 20, 1995.

IV. BACKGROUND

On September 16, 2015, the applicant submitted a development plan application requesting approval of a new single-family residence and accessory building, structures, and tree removal, on a vacant lot. The project included a Kensington Design Review, requests for variances to allow 3 stories, setback, side yard, and rear yard leniency for new retaining walls, and removal of 11 trees.

The project was first considered by the Kensington Municipal Advisory Council (KMAC) on October 27, 2015. Due to the project's multiple aspects, it was continued to the following KMAC meeting. The project was considered again on December 1, 2015. The KMAC recommended approval of the overall project, including the three-story variance and tree removal, provided that certain conditions were met. The "storage room" on the parking level be eliminated, and the bay window on the top level be adjusted so that the room above does not create three stories, per plans submitted to the KMAC September 16, 2015. These revisions are present in the attached plans.

The project was initially heard before the County Zoning Administrator on March 21, 2016. The hearing was open to the public and testimony was accepted from neighboring residents in opposition of the project, and the applicants in support of the project. The Luk residence at 153 Lawson Road, which abuts the subject property

to the north, and the Websters at 55 Highland Boulevard, spoke in opposition at the March 21st hearing. The residents of 145 Lawson Road (Storestunds) submitted a letter in opposition of the project. Five additional neighbors on Lawson Road, and one on Highland Blvd., signed a petition in opposition. After hearing from all of the speakers, and receiving new written testimony, the Zoning Administrator requested that the matter be continued as an open hearing to April 4, 2016. This was to provide the Zoning Administrator with enough time to consider all of the new testimony from the March 21, 2016 hearing, and conduct a site visit of the subject property and 153 Lawson Road.

Residents of 52 Kensington Court (Chanowitzs) submitted an email explaining concern that the proposed residence's mass was too big and may impact their view of the bay on March 22, 2016. Residents of 146 Lawson Road (Mixers) submitted an email in opposition to the project on March 31, 2016.

Further testimony in support and opposition of the project was presented at the Zoning Administrator hearing on April 4, 2016. After hearing all speakers and addressing all new testimony, the Zoning Administrator approved the project with modifications and additional conditions of approval. The Zoning Administrator allowed the removal of all 11 requested trees. A landscaping plan is required to be reviewed prior to submitting for a building permit that will include 11 new trees that will specifically serve for screening for privacy areas along the northwest, south and southwest. The overall height of the residence was required to be reduced by 3-feet. As measured from the top of the parapet, the height of residence shall not exceed the 825-foot elevation. To ease concern of disturbance to existing easements, the Zoning Administrator included conditions of approval that the applicant consult with public agencies to ensure proper development in relation to potential, neighboring easements. The Zoning Administrator also conditioned the geotechnical report to address the concerns raised in the April 4, 2016 Websters' letter (to the extent feasible), and then be peer-reviewed by the County geologist.

Two letters appealing the approval of the Zoning Administrator were received during the appeal period following the Zoning Administrator's approval. The Luks believe that, even with the height reduction, views, privacy, and solar access will still be impacted. They do not agree that the bulk, scale, size and design of the residence is consistent with the neighborhood, and wish to see further height reduction. They find that the proposed retaining walls are designed directly over existing easements, and that the applicant should be responsible for the easements' future maintenance because of this. Also, the Luks also do not agree that sufficient findings were made to allow the variance approval for a 3-story residence, or retaining walls within the

setback or side yard. They do not agree that sufficient findings were made to allow the removal of the two cedar trees based on the requirements of the County Tree Protection and Preservation Ordinance. The applicant (property owners Edward Dean and Darlene Tong) find the height reduction to make no positive impact on views, privacy, solar access, bulk or scale. They do not find the residence as proposed to have a negative impact on neighboring residences, and wish to have the original design approved and have the height restriction condition revoked.

V. SITE/AREA DESCRIPTION

The subject property is a 13,020 square-foot vacant lot with only retaining walls, a concrete pad, and multiple trees of various species throughout the site. The property is located at the end of a 15-foot wide private easement, at the end of Lawson Road. Like all of the residences along Lawson Road, the subject property is on a downslope. It is at a lower elevation than the adjacent residences to the north and east. There are existing, mature trees separating the subject property from the residences to the south. And because the west half of the property slopes dramatically, the immediate neighboring residence to the west is at a much lower elevation.

The subject property is laid out inconsistent with the surrounding neighborhood. It is linear in nature, creating a rectangular shape. The subject property is 13,020 square-feet in lot area, but is shallow in comparison to other surrounding properties with a lot depth of 65-feet. The point of access is from the end of the private easement at the center of the subject property. The topography slopes downward from east to west. In the center of the property, the downslope has an average slope of approximately 20%. This portion of the property is adjacent to the easement, and is the only accessible point in relation to parking. The west end of the subject property is extremely difficult to develop because of an existing 5-foot wide sewer easement and the average slope being approximately 57%.

There was a previously approved Lot Line Adjustment application (LL95-0028) to transfer approximately 447 square-feet of lot area from the subject property to the neighboring property. The Lot Line Adjustment application was approved on July 20, 1995. The Lot Line Adjustment has since been recorded, altering the northern portion of the subject property.

VI. PROJECT DESCRIPTION

The applicants request approval of a new single-family residence and accessory

building, totaling 4,224 in gross floor area (where the Kensington Combining District gross floor area threshold is 4,000 square-feet). The project includes variance requests to allow 3 stories (where 2 ½ stories is the maximum), a 3-foot front yard setback (where 20-feet is required) for a retaining wall with a maximum height of 7½-feet, a 0-foot side yard (where 5-feet is required) for a retaining wall with a maximum height of 4-feet, and a 0-foot rear yard (where 3-feet is required) for a fence with a maximum height of 6-feet, 9-inches.

The proposed residence consists of a lower parking level, a main level for the primary living spaces, and an upper level for additional living space and the master suite. The parking level is 955 square-feet. It is made up of a two-car carport, a utility room, and an entry room (with a mechanical closet) to gain access from the carport to the elevator. The only part of the parking level that creates three consecutive stories is the entry room with the elevator and closet. The carport is directly under a deck that is open to the sky. The utility room is beneath the main level, but above that is open space up to the upper level ceiling. 482 square-feet of the upper level is without a floor and open to below (the main level). This creates a portion of the main level that is only a second story with a 20-foot, 9-inch high ceiling. The parking level is the lowest level and tucked into the downslope of the subject property, hiding it from sight at street level. Its south and west elevations do not have walls, but again are not visible at street level due to the sloping nature of the property.

The primary entrance to the main level is accessed by walking from the end of the private easement, and down the hill onto the deck. The main level is 1,640 square-feet. The entry includes the elevator and front closet, then flows into the main living area. There is a kitchen, laundry room, one full bathroom, and a guest room. One can gain access to the upper level by either the elevator or staircase. The upper level is 1,230 square-feet. 40% of the upper level (482 square-feet) is open to below (the main level). From the elevator, one enters into a cantilevered room intended for taking in the view of the San Francisco Bay. There is an office space at the other end of the hall. The master suite consists of a bedroom, bathroom, and walk-in closet.

Due to the sloping topography, and the access point of the subject property, multiple retaining walls are required for the driveway to the carport, and walkways to and from various points throughout the site. There is also new fencing proposed along the perimeter of the site. Fences that measure over six-feet in height, or retaining walls that measure over three-feet in height, are structures per County Code. There are retaining walls, and a portion of the fence, that are structures. Structures are required to meet frontage setbacks, side yards, and rear yard dimensions, unless variances to those dimensions are permitted. Variances to allow these retaining walls and 15-foot

of fencing in the required yard dimensions is requested. All other retaining walls over 3-feet in height are outside of the required frontage setback, side yards, and rear yard dimensions, and do not require variance approval. All other fencing along the perimeter of the property does not go over 6-feet in height.

The hardscaping includes concrete walks and stairs, pervious tiling, and pervious turf blocks in the driveway and parking areas. Eleven trees are proposed to be removed, and to preserve two trees. New Japanese maple trees are proposed to be replanted along the north and south property boundaries for screening and privacy between neighboring residences. One additional outdoor feature is a 103 square-foot trellis at the entry way on the main level of the residence.

The design of the residence and accessory building is of modern architecture. The rooflines are completely flat. Originally, the maximum height of the residence, including the third story, was 34½-feet. Per the Zoning Administrator’s modification to condition of approval #4, as measured from the top of the parapet, the height of residence shall not exceed the 825-foot elevation, which is approximately 3-feet lower than the original height.

The accessory building has a maximum height of 14½-feet, and is 327 square-feet. It is an open studio with 4-feet of counter space and one sink.

The project also includes a request to remove 11 code-protected trees, and work within the drip lines of 2 code-protected trees.

Tree Removal and Preservation Table

Species	Trunk Diameter(s)	Status
3 Monterey Pines	42.5-inches; 29-inches; 6.5-inches	Remove all
2 Honey Locusts	10-inches; 20-inches	Remove all
2 Junipers	48-inches in total (multi-stemmed) 63-inches in total (multi-stemmed)	Remove all
California Live Oak	18-inches in total (multi-stemmed)	Preserve
Eugenia	48-inches in total (multi-stemmed)	Remove
Black Pine	10-inches	Remove
2 Cedars	16-inches and 24-inches	Remove all
Apple tree	10-inches	Preserve
Pear tree	6-inches	Remove – Not protected

According to the arborist report prepared by certified arborist, Peter K. Rudy (Exhibit

A), the majority of the trees proposed for removal are in extremely poor health or dead. The trees have been significantly topped over time, and then not properly cared for. Staff has prepared findings to approve for removal of all eleven requested trees. The conditions of approval include security bonding for a minimum of (11) trees to be replanted on site. A landscaping plan will be required to be reviewed before the submittal of a grading permit or building permit, or prior to removal of trees, whichever occurs first, to ensure that the proposed placement of the required trees compensate for the lack of privacy between residences created by the tree removal.

VII. APPEAL OF THE ZONING ADMINISTRATOR'S DECISION:

A. Appeal Letter from the Luk Residence:

Residents of 153 Lawson Road, Mr. and Mrs. George and Anita Luk, provided an appeal letter dated April 14, 2016. The following is a summary of their comments.

Comment 1: There is concern that the height of the residence, even with the Zoning Administrator's added condition to reduce its overall height, will still have a negative impact to views and solar access.

Staff Response to Comment 1: The placement of the residence on the subject property takes advantage of views of the San Francisco Bay toward the west, and of the south Bay and Oakland toward the southwest. The new residence will be to the Luk's south. The portion of the new residence that is three stories is southwest of the Luk residence, and will not encroach into existing views of the south Bay.

In addition, the requirements of the Kensington ordinance, including views and solar access, were reviewed and considered by the Kensington Municipal Advisory Council (KMAC). At their December 1, 2016 meeting, the KMAC recommended approval of the overall project, including the building site, height and the three-story variance.

In relation to solar access, the closest point of the proposed residence to the Luk residence is approximately 23-feet. In addition, the proposed residence is set back 6-feet from the property line shared with the Luks, rather than the minimum 5-feet required by the (R-6) Zoning District's development standards. Because of the proposed residence's location, solar impacts will be minimal. Lastly, the project enhances views and solar access with the removal of overgrown and dying trees. Removal of the Monterey Pines in particular will open up the views of the south Bay for the Luks. The applicants will still maintain privacy between residences with

newly planted Japanese maples as part of the required landscaping plan. The required vegetation will provide screening between residences, but will not grow to the height of the original trees, affirming that newly opened up views stay unblocked. The landscaping plan will be reviewed and approved by staff to ensure that the proposed placement of the required trees and vegetation compensate for the lack of privacy between residences created by the tree removal.

Comment 2: There is concern that the bulk and scale of the proposed development is too great when in comparison to the surrounding neighborhood.

Staff Response to Comment 2: Per the Kensington Ordinance, the property owner has the right to establish a new residence that is compatible with the neighborhood in terms of bulk and scale. The KMAC recommended approval of the overall project at their December 1, 2015 meeting. The building site, height, and footprint were all reviewed by the KMAC, and approved in the configuration present in the attached plans. Per the Zoning Administrator's modification to condition of approval #4, as measured from the top of the parapet, the height of residence shall not exceed the 825-foot elevation. This will lower the overall height by 3-feet, reducing the bulk of the residence. Therefore, the project is compatible with the neighborhood in terms of bulk and scale as determined by the both the KMAC and the Zoning Administrator.

There are story poles placed on site showing that the residence not visible from the public road. Even when viewing the building from the edge of the private easement, which is at the same grade as the Luk's residence, the residence has the bulk of a two-story home. The development of a new residence, even with a portion of it being three stories, is consistent with the neighborhood in terms of bulk. The surrounding area contains two-story, and some three-story residences. The new residence's third story is minimal in floor area, and is designed for access purposes only. Neither the parking or utility room on the lower level create three stories. The lower level is hidden within the downslope of the property, not visible from the northern properties. The width of the residence is approximately 32-feet. Its narrow building envelope also reduces the perception of bulk.

Comment 3: There is concern that the size of the residence is too great and not compatible with the neighborhood.

Staff Response to Comment 3: The total livable area for the subject property is consistent with the neighboring residences in regards to size. The subject property's overall livable area is 3,199 square-feet. The average livable area for the

surrounding properties is 3,000 square-feet.

There is debate from the opposition that because 482 square-feet of the second level has no floor and is open to the main level, this square footage should be included in the total gross floor area because it adds to the bulk and scale of the residence. Staff cannot add floor area where floor does not exist. Also, if this portion of the residence was removed, the missing piece of the home would be on the south side, opposite to the Luks. The perception of the building's size would not change for the Luks, or the other neighboring properties to the north, because the face of the residence adjacent to them is not the side where the "missing" portion would be located.

Comment 4: There is concern that the proposed design for the residence, particularly the parapet, is incompatible with the surrounding neighborhood and further impacts views.

Staff Response to Comment 4: The design of the new residence is of modern architecture. The surrounding neighborhood is primarily traditional architecture. The proposed buildings, and the immediate neighboring residences, will be separated by required vegetation to minimize aesthetic impacts. Also, the parapet is included in the overall height of the building, and therefore not further impacting views. The project is compatible with the neighborhood in terms of impacts to views as determined by the both the KMAC and the Zoning Administrator.

Comment 5: There is concern that there are active storm drain and sewer easements on the subject property, and that permanent structures will be developed over it. If the applicant is allowed to develop over these easements then the applicant should be responsible for the easements' future maintenance permanently.

Staff Response to Comment 5: The Contra Costa County Grading Division has reviewed the proposed project, and specified that a soils report, and grading and drainage plans will be reviewed for approval before a building permit is issued to allow construction. The applicant shows a 6-foot wide storm drain easement running through the center of the property. There is no proposed plan showing a permanent structure being erected over the easement. A driveway is not considered a structure, and can be removed without altering the residence. Grading and drainage plans will be reviewed during plan check, and will be enforced on site during scheduled inspections. The Stege Sanitary District has reviewed the plans as well, and did not indicate any discrepancies between the

proposed plans and location of sewer easements.

To alleviate concern about construction disrupting easements on the subject property, the Zoning Administrator included condition of approval #17, which requires the applicant to consult with public agencies to ensure proper development in relation to potential, neighboring easements.

Comment 6: There is a discrepancy between the applicant's survey prepared by Moran Survey, and a survey prepared for the Luk's by Luk, Milani and Associates. Because there is a discrepancy to where the property line is, the Luk's find that allowing a retaining wall, and variance approval for its height, on the property line should not be permitted.

Staff Response to Comment 6: The front yard setback, side yards, and rear yard areas shown on the plans are based on the survey prepared by Moran Survey. A survey letter from a licensed surveyor or civil engineer is required after building permit(s) are issued. As the project has not yet been constructed, the applicant's survey only accounts for the existing property lines in relation to the proposed buildings and structures. If after construction begins, and the proposed buildings and/or structures do not match the approved plans, the application may require the review and approval of staff and may require the filing of an application for modification to a Development Plan and a public hearing, if deemed necessary.

According to the submitted plans none of the buildings encroach into the minimum (R-6) front yard setback, side yards, or rear yard. In addition, the northern face of the residence is set back 6-feet from the property line shared with the Luk's, rather than the minimum 5-feet. This is to provide additional cushion between the two residences to accommodate for the discrepancy about the location of the shared property line. There is a retaining wall with a maximum height of 4-feet that requires variance approval to be on the property line. However, the retaining wall is to replace an existing, wood retaining wall that is failing in order to hold back the hillside.

Comment 7: There is concern that the two Cedar trees located on the south side of the subject property are being unlawfully removed.

Staff Response to Comment 7: Cedar trees are not on the indigenous list for the County. They are code-protected because any tree on a vacant lot measuring twenty inches or larger in circumference is protected under the County Tree Protection and Preservation Ordinance. The cedar trees are in good health per the arborist report, but new resident Mrs. Darlene Tong is highly allergic to cedar trees.

The Zoning Administrator approved the removal of the two cedar trees, and included in the attached Tree Permit Findings: According to Section 816.6.2004, the purpose of the Tree Protection and Preservation Ordinance is to preserve trees on private properties in the interest of the public health, safety and welfare. As indicated by the applicant's physician, the applicant has serious allergies to cedar trees and notwithstanding the fact that these trees are protected; the preservation of these two cedar trees will be compromising the property owner's individual health and safety as stated on Section 816.6.2004.

The Luks claim that they are allergic to trees on their property as well, and wish to remove them on this basis. There is no record of the Luks ever submitting for a tree permit to request tree removal. It is also plausible that the trees they are allergic too are not code-protected and can be removed without a tree permit. No information has been submitted to make any determination on whether or not the Luks are able to remove the trees in question.

Comment 8: The Luks argue that staff has provided insufficient evidence for the basis of approving the requested variances, and that the applicant has failed to prove hardship as required for the granting of variances.

Staff Response to Comments 8: Staff has prepared variance findings as required by County Ordinance Chapter 26-2.2006 for all requested variances to allow:

- 3 stories (where 2 ½ stories is the maximum);
- A 3-foot front yard setback (where 20-feet is required) for a retaining wall with a maximum height of 7½-feet;
- A 0-foot side yard (where 5-feet is required) for a retaining wall with a maximum height of 4-feet;
- And a 0-foot rear yard (where 3-feet is required) for 15-feet of fencing with a maximum height of 6-feet, 9-inches.

Please see the Findings attached to this Staff Report for details.

Comment 9: The Luks have suggested the following:

- Not allow the height of residence exceed the 820-foot elevation;
- Additional drainage and sewer easements be established on the subject property;
- The variance request for the retaining wall on the shared property line be denied;
- The variance request to allow a retaining wall, with a maximum height of 7½-feet, within the front yard setback be denied;
- And allowing the removal of the two cedar trees be denied.

Staff Response to Comment 9: Comments noted.

B. Appeal Letter from Mr. Ira James Harris:

Included in Mr. and Mrs. George and Anita Luk's appeal letter is a letter from their lawyer, Mr. Ira Harris, dated March 16, 2016. The following is a summary of his comments.

Comment 1: Mr. Harris argues that the subject property's development restraints do not justify allowing 3 stories where 2 ½ stories is permitted.

Staff Response to Comment 1: The subject property is topographically challenged, which limits the buildable area of the lot. The west end of the lot is extremely difficult to develop because of the existing 5-foot wide sewer easement, and the average slope being approximately 57%. The granting of a variance in this situation would allow for access and parking in a manner that would not involve extensive grading or relocation of drainage lines. Even if the lower parking level was eliminated, it would not change the overall height of the residence that is visible from the Luks' master bedroom and bathroom.

Comment 2: Mr. Harris argues that 4,224 square-feet is too great for the size of the subject property. It is 224 square-feet more than the Kensington Combining District (-K) permits.

Staff Response to Comment 2: Section 84-74.802 of the County Code determines the threshold standard for the Kensington Combining District (-K), which triggers a hearing requirement if the development exceeds the threshold standard. Based on the parcel size of 13,020 square-feet, the threshold for the gross floor area ratio for this parcel is 4,000 square-feet. The new residence and accessory building is 224 square-feet over the designated threshold size.

The intent of the threshold requirement is to ensure the development will promote the community's values of preservation of views, light and solar access, privacy, parking, residential noise levels and compatibility with the neighborhood with regard to bulk and scale. The threshold requirement is not a cap on square-footage, it is a threshold. If the threshold is exceeded, the seven criteria for approval of a Development Plan project must be addressed by staff. As detailed in the attached Kensington Combining District Findings and Conditions of Approval, as modified by the Zoning Administrator, staff finds that the project satisfies all seven criteria.

Comment 3: Mr. Harris argues that the residence with a maximum height of 34.5-foot obstructs protected views.

Staff Response to Comment 3: See *Staff Response to Comment 1 under Appeal Letter from the Luks* in Section A on pages 8-9.

Comment 4: Mr. Harris argues that, “There is no vested right to develop the property as proposed . . . even where a variance is not needed.”

Staff Response to Comment 4: The lot is a legal lot and the applicant has the right to request variances and the right to due process under Title 8 of the County Code, the (R-6) Zoning District, and the Kensington Combining District (-K).

Comment 5: Mr. Harris states that the Kensington Ordinance is in place to minimize impacts upon surrounding neighbors and not substantially impair the value and enjoyment of their neighbors’ property. He argues that the previously prepared Staff Report does not properly address the impacts made to the Luks’ views by the applicant’s proposed development.

Staff Response to Comment 5: See *Staff Response to Comments 1-4 under Appeal Letter from the Luks* in Section A on pages 8-10.

Comment 6: Mr. Harris argues that the previously prepared Staff Report does not provide sufficient evidence for all three findings required by County Ordinance Chapter 26-2.2006 to allow for the requested variances.

Staff Response to Comment 6: See *Staff Response to Comment 8 under Appeal Letter from the Luks* in Section A on pages 12-13.

C. **Appeal Letter from Applicants:**

The applicants and property owners, Mr. and Mrs. Edward Dean and Darlene Tong, provided an appeal letter dated April 14, 2016. The following is a summary of their comments.

Comment 1: The applicant claims that reducing the overall height of the proposed residence by 3-feet will have no effect on views, privacy, or solar access. They argue that the (R-6) zoning district allows for a maximum height of 35-feet, which their original proposal meets.

Staff Response to Comment 1: The (R-6) Zoning District in which the subject property is located does allow for a maximum height of 35-feet. However, for the residence to be consistent with the Kensington Combining District (-K), the Zoning Administrator modified condition of approval #4 to include, "In addition, the overall height of the residence shall be reduced by 3-feet. As measured from the top of the parapet, the height of residence shall not exceed the 825-foot elevation." This would reduce the overall bulk and mass of the residence.

Comment 2: There is concern that to meet the 825-foot elevation requirement construction costs would be too great because of the excavation necessary to lower the building into the ground to maintain the desired ceiling heights.

Staff Response to Comment 2: The intent of the condition added by the Zoning Administrator was to lower the overall height of the residence and reduce its bulk. The intent was to reduce the overall bulk and size of the residence, so construction costs accrued in order to achieve the goal of neighborhood compatibility is not a required finding.

Comment 3: There is concern that if the residence were to be reduced by lowering ceiling heights, then the interior space would be substandard to what the property owners are accustomed to living in.

Staff Response to Comment 3: Per Section R305.1 of the Residential Building Code, the minimum ceiling height for habitable space is 7-feet. The height reduction required by the Zoning Administrator does not create substandard spaces, or even require close to the minimum height for habitable space, and therefore will not negatively impact the quality of living for the property owners.

VIII. **STAFF ANALYSIS**

- A. **Appropriateness of Use:** The proposed residence is consistent with the permitted use of a detached, single-family dwelling within the Single-Family Residential (R-6) Zoning District in which it is located. Accessory uses normally auxiliary to the single-family residence are permitted uses, such as an accessory building, a trellis, retaining walls, and fencing. The residence and accessory building would be visible in the foreground from some adjoining residences, but it would not be otherwise visually obtrusive. The overall project does not impede on views of the San Francisco Bay, nor does it alter the residential character of its surroundings. The approved project, with the added conditions of approval by the Zoning

Administrator, complies with the seven criteria for approval as required by the Kensington Combining District (-K). Therefore, staff recommends the Planning Commission deny both appeals and uphold the Zoning Administrator's approval on April 4, 2016.

- B. General Plan Consistency: The subject property is located within the Single-Family Residential, High-Density (SH) General Plan Land Use designation. The (SH) designation allows for a residential density between 5.0 and 7.2 single family units per acre. The proposed single-family residence and auxiliary structures are residential uses consistent with this land use designation. Located in the Kensington area, it is also subject to the specific policies in the General Plan (2005 – 2020), Land Use Element 3-206 through 3-210, "Policies for the Kensington Area", and is reviewed under these policies in the attached Kensington Combining District Findings.
- C. Zoning Compliance: The subject property is located within the Kensington Combining District (-K), the Single-Family Residential (R-6) Zoning District, and the Tree Obstruction of Views Combining District (-TOV).

Section 84-74.802 of the County Code determines the threshold standard for the Kensington Combining District (-K), which triggers a hearing requirement if the development exceeds the threshold standard. Based on the parcel size of 13,020 square-feet, the threshold for the gross floor area ratio for this parcel is 4,000 square-feet. The new residence and accessory building is 224 square-feet over the designated threshold size.

The intent of the threshold requirement is to ensure the development will promote the community's values of preservation of views, light and solar access, privacy, parking, residential noise levels and compatibility with the neighborhood with regard to bulk and scale.

At the Kensington Municipal Advisory Council (KMAC) December 1, 2016 meeting, the KMAC recommended approval of the overall project, including the building site, the three-story variance, and tree removal, provided that certain conditions were met. The "storage room" on the parking level be eliminated, and the bay window on the top level be adjusted so that the room above does not create three stories per plans submitted to the KMAC September 16, 2015. These revisions are present in the attached plans. Therefore, the project is compatible with the neighborhood in terms of the requirements of the Kensington Combining District (-K) as determined by the KMAC.

The Kensington Combining District (-K) includes seven criteria for approval of the Development Plan project. As detailed in the attached Kensington Combining District Findings, the Zoning Administrator finds that the project satisfies all seven criteria.

The project meets the minimum (R-6) Zoning District development standards, apart from the previously approved variance requests. There is a variance to allow 3 stories (where 2 ½ stories is the maximum). The subject property is topographically challenged, which limits the buildable area of the lot. The west end of the lot is extremely difficult to develop because of the existing 5-foot wide sewer easement, and the average slope being approximately 57%. The granting of a variance in this situation would allow for access and parking in a manner that would not involve extensive grading or relocation of drainage lines. The new single-family residence is designed to follow the natural topography of the hillside, with the lowest level toward the bottom of the hill.

There are also variances to frontage setback, minimum side yard, and rear yard requirements for retaining walls, and a portion of the new fencing, which are considered structures. Due to the sloping topography of the subject property, and dramatic changes in grade, approval to variance requests for these particular structures would not be special privilege. All other retaining walls over 3-feet are outside of the required frontage setback, side yards, and rear yard. All other fencing along the perimeter of the property does not go over 6-feet in height.

The required vegetation will provide screening between residences, but will not grow to the height of the trees permitted to be removed, affirming that newly opened up views stay unblocked. The landscaping plan will be reviewed and approved by staff to ensure that the proposed placement of the required trees and vegetation compensate for the lack of privacy between residences created by the tree removal. Therefore, the proposed project meets the intent of the (-TOV) ordinance.

IX. CONCLUSION

- A. **Appeal Letter from the Luk's**: The Luk's appeal describes that, even with the height reduction, views, privacy, and solar access will still be impacted. They do not agree that the bulk, scale, size and design of the residence is consistent with the neighborhood, and wish to see further height reduction. They find that the proposed retaining walls are designed directly over existing easements, and that the applicant should be responsible for the easements' future maintenance

because of this. Also, the Luks also do not agree that sufficient findings were made to allow the variance approval for a 3-story residence, retaining walls within the setback or side yard, or removal of the two Cedar trees.

The proposed building site maintains the views of the San Francisco Bay for adjacent property owners, including the Luks. The third story is minimal and hidden within the downslope of the site, reducing the perception of bulk and scale. The overall project is visible from adjacent residences, but it is not readily visible from the public road. The required landscaping and tree replanting ensures privacy between residences.

The KMAC recommended approval of the overall project. The building site, height, and footprint were all reviewed by the KMAC, and approved in the configuration present in the attached plans. Per the Zoning Administrator's modification, as measured from the top of the parapet, the height of residence shall not exceed the 825-foot elevation. This will lower the overall height by 3-feet. Therefore, it has been determined that the project is compatible with the neighborhood in terms of views, privacy, solar access, bulk, and scale, by the both the KMAC and the Zoning Administrator.

To alieve concern about construction disrupting easements on the subject property, the Zoning Administrator included conditions of approval that the applicant consult with public agencies to ensure proper development in relation to potential, neighboring easements, and have the geotechnical report peer-reviewed by the County Geologist.

Lastly, the Zoning Administrator has approved variance and tree permit findings as required by County Code for all requested variances and tree removal.

- B. **Appeal Letter form the Applicant:** The applicant (property owners Edward Dean and Darlene Tong) find the height reduction to make no positive impact on views, privacy, solar access, bulk or scale. They do not find the residence as proposed to have a negative impact on neighboring residences, and wish to have the original design approved and have the height restriction condition revoked.

The (R-6) Zoning District in which the subject property is located does allow for a maximum height of 35-feet. However, for the residence to be consistent with the Kensington Combining District (-K), the Zoning Administrator modified condition of approval #4 to include, "In addition, the overall height of the residence shall be reduced by 3-feet. As measured from the top of the parapet, the height of

residence shall not exceed the 825-foot elevation.” This would reduce the overall bulk and mass of the residence.

- C. **Staff Conclusion:** Staff finds that the project as approved by the Zoning Administrator is consistent with the Single-Family Residential, High-Density (SH) General Plan Land Use designation and complies with the intent and purpose of the Kensington Combining District (-K), Single-Family Residential (R-6) Zoning District, and Tree Obstruction of Views Combining District (-TOV). Therefore, staff recommends the County Planning Commission uphold the approval of the Zoning Administrator and deny both appeals, subject to the attached Findings and Conditions of Approval.

Attachments:

- Findings and Conditions of Approval as modified by the Zoning Administrator
- Maps and Reduced Plans
- Appeal Letter from George and Anita Luk at 153 Lawson Road, Kensington
- Appeal Letter from applicants/property owners Edward Dean and Darlene Tong
- Exhibit A –Photographs provided by the Luk residence, 153 Lawson Road, Kensington
- Exhibit B – Arborist Report
- Exhibit C – Previous Zoning Administrator Staff Reports
- Exhibit D – Letters submitted to the Zoning Administrator in Opposition

FINDINGS AND CONDITIONS OF APPROVAL AS APPROVED BY THE ZONING ADMINISTRATOR ON APRIL 4, 2016 FOR COUNTY FILE #DP15-3030; EDWARD DEAN and DARLENE TONG (Appellant/Applicant/Owner); GEORGE and ANITA LUK (Appellant)

I. FINDINGS

A. KENSINGTON COMBINING DISTRICT FINDINGS

Kensington Combining District (-K) requires that the new single-family residence and auxiliary structures satisfy seven criteria before a project is approved:

- 1) *Recognizing the rights of property owners to improve the value and enjoyment of their property;*

Staff Finding: The project includes the construction of a new single-family residence and accessory building on a vacant lot. It is a 2,870 square-foot residence with a 955 square-foot parking level; which includes a carport, elevator, entryway, and utility room. The accessory building is 327 square-feet. As a result, the gross floor area is 4,224 square-feet. Since the subject property is vacant, the construction of a new, high quality residence will improve the overall value and enjoyment of the property.

- 2) *Recognizing the rights of property owners of vacant lots to establish a residence that is compatible with the neighborhood in terms of bulk, scale and design;*

Staff Finding: The property owner has the right to establish a new residence that is compatible with the neighborhood in terms of bulk, scale, and design. Originally, the maximum height of the residence, including the third story, was 34½-feet. Per the Zoning Administrator's modification to condition of approval #4, as measured from the top of the parapet, the height of residence shall not exceed the 825-foot elevation. This will lower the overall height by approximately 3-feet, reducing the bulk of the residence by 5,136 cubic feet.

The development of a new residence, even with a portion of it being three stories, is still consistent with the neighborhood in terms of bulk. The surrounding area contains two-story, and some three-story residences. The new residence's third story is minimal in floor area, and is designed for access purposes only. Neither the parking or utility room on the lower level create three stories. The lower level is hidden within the downslope of the property,

not visible from the northern properties. The residence has the bulk of a two story home because of the topography of the site.

The total livable area for the subject property is consistent with neighboring residences in regards to scale. The subject property's overall livable area is 3,197 square-feet. The average livable area for the surrounding properties is 3,000 square-feet.

Finally, the design of the new residence is of modern architecture. The surrounding neighborhood is primarily traditional architecture. However, with the new residence being at a lower elevation than the residences to the north, and separated by required vegetation, its visual impact is minimal. The subject property itself is not visible from the public road. Therefore, the project is compatible with the neighborhood in terms of bulk, scale and design.

In addition, at the Kensington Municipal Advisory Council (KMAC) December 1, 2016 meeting, the KMAC recommended approval of the overall project, including the three-story variance and tree removal, provided that certain conditions were met. The "storage room" on the parking level be eliminated, and the bay window on the top level be adjusted so that the room above does not create three stories per plans submitted to the KMAC September 16, 2015. These revisions are present in the attached plans. Therefore, the project is compatible with the neighborhood in terms of bulk, scale and design as determined by staff and the KMAC.

The project enhances views and solar access with the removal of overgrown and dying trees. The applicants will still maintain privacy between residences with newly planted Japanese maples as part of the required landscaping plan. The required vegetation will provide screening between residences, but will not grow to the height of the original trees, affirming that newly opened up views stay unblocked. The landscaping plan will be reviewed and approved by staff to ensure that the proposed placement of the required trees and vegetation compensate for the lack of privacy between residences created by the tree removal. Therefore, the proposed project meets the intent of the (-TOV) ordinance.

3) *Minimizing impacts upon surrounding neighbors;*

Staff Finding: The building sites, its design, and tree removal minimizes the impacts upon surrounding neighbors. Having the residence's footprint on the east side of the property maintains the views of the San Francisco Bay for

adjacent property owners. Also, the third story is tucked into the downslope of the property, hiding it from sight at street level.

None of the buildings encroach into the minimum (R-6) front yard setback, side yards, or rear yard. In addition, the northern face of the residence is set back 6-feet from the property line shared with 153 Lawson Road, rather than the minimum 5-feet. This is to provide additional cushion between the two residences.

The new residence will be visible in the foreground of the residence at 153 Lawson Road, located upslope from the subject property. Privacy will be maintained with the proposed Japanese maples, as required under Condition of Approval #7, and additional tree/vegetation as stated on Condition of Approval #10 in between neighboring properties. The removal of the existing trees allows for more sunlight to enter neighboring properties, and expand views of the bay. The required vegetation will provide screening between residences, but will not grow to the height of the original trees, affirming that newly opened up views stay unblocked. The required landscaping and tree replanting will preserve privacy between residences.

4) *Protecting the value and enjoyment of the neighbors' property;*

Staff Finding: As previously mentioned, the overall project will have minimal impacts on surrounding properties. The project is not visually obtrusive, and its impacts on views and solar access are minimal. In addition, the removal of overgrown and dying trees will allow for more sunlight to enter neighboring properties, and open up the views of the San Francisco Bay. The new residence is visible from adjacent residences to the north of the subject property, but it is not readily visible from the street. The required landscaping and tree replanting ensures privacy between residences.

The views of the neighborhood skyline and the San Francisco Bay is toward the west. The applicants' new residence will be to the Luk's south. The portion of the new residence that is three stories is southwest of the Luk residence, and does not impact these views.

Both the residence and accessory building do not obstruct the primary view of the bay, minimally decrease access to sunlight, and have minimal effect on privacy for surrounding properties, and therefore, the project will preserve the value and enjoyment of neighboring properties.

5) *Maintaining the community's property values;*

Staff Finding: The proposed project has minimal impacts on views, light and solar access, privacy, parking, and residential noise levels. There have been four other residences along Lawson Road that have received variance approval for three stories because of the topographic challenges due to the hillside. The third story for the subject property is minimal in bulk and scale, and has no impact on neighboring residences. The subject property is not readily visible from the public road, and is at a lower elevation than properties to the north. The portion of the residence that is surrounded by neighboring residences is two-stories, and has been conditioned to have a 3-foot reduction, and not to exceed the 825-foot elevation, as measured from the top of the parapet. It is visible in the foreground to neighboring residences, but is comparable to them in terms of bulk and scale. As a result, existing community's property values are preserved. Furthermore, the addition of habitable floor area on the subject property improves the overall value of the residence, and property values as a whole.

The development of the overall subject site, consisting of a 2,870 square-foot residence with a 955 square-foot parking level, 327 square-foot accessory building, and new hardscaping and landscaping throughout, will bring a new, high quality residence to the neighborhood, which will improve the property value of the subject property and thereby increase the overall property value of the whole community.

6) *Maximizing the use of existing interior space;*

Staff Finding: The lot is vacant, so there is no interior space currently. The project includes the construction of a new single-family residence consisting of 2,870 square-feet with a 955 square-foot parking level, and a 327 square-foot accessory building, for a gross floor area of 4,224 square-feet. The new residence will utilize all of the interior space for living space, as there will not be any unconditioned space within the residence other than the two car carport within the parking level. Therefore, the project serves to maximize the use of its interior space.

7) *Promoting the general welfare, public health, and safety.*

Staff Finding: The new residence, and overall scope of work, does not change the land use of the subject property and, as described earlier, has minimal impacts on surrounding properties. The subject site improves the value of the neighboring properties. Also, the project will not use or emit hazardous

substances beyond what is normal for a residential property. The project would be required to comply with applicable zoning standards and obtain building permits. Based on the foregoing reasons, the project promotes the general welfare, public health and safety of the Kensington community.

B. VARIANCE FINDINGS

County Code Section 26-2.2006 states that all of the following findings must be made to approve the Variance permit application.

- 1) *That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located;*

Staff Finding: The variance to allow 184 square-feet of floor area that creates three consecutive stories (where 2 ½ stories is the maximum) does not constitute a grant of special privilege. The third story does not expand the building envelope, and would not change the current conditions of the surrounding area. The subject property is topographically challenged, which limits the buildable area of the lot. The west end of the lot is extremely difficult to develop because of the existing 5-foot wide sewer easement, and the average slope being approximately 57%. The granting of a variance in this situation would allow for access and parking in a manner that would not involve extensive grading or relocation of drainage lines. The new single-family residence is designed to follow the natural topography of the hillside, with the lowest level toward the bottom of the hill.

Also, it is typical for a crawl space with adequate ceiling height be a result from the construction of a residence on a hillside with such a steep slope. The third story is an understandable situation made possible by the topographic circumstances of the subject property. In addition, there have been four other residences along Lawson Road that have received variance approval for three stories because of the topographic challenges due to the hillside. Therefore, the variance would not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective (R-6) land use district in which the subject property is located.

There are also variances to allow:

- A 3-foot front yard setback (where 20-feet is required) for a retaining wall with a maximum height of 7½-feet;
- A 0-foot side yard (where 5-feet is required) for a retaining wall with a

maximum height of 4-feet;

- And a 0-foot rear yard (where 3-feet is required) for 15 linear feet of fencing with a maximum height of 6-feet, 9-inches.

The retaining walls are also due to the topographic challenges of the subject property. The retaining wall off of the private road is for the driveway in order to gain access to the residence. The other retaining wall is to replace an existing, wood retaining wall that is failing. 15 linear feet of fencing along the rear boundary line will have a maximum height of 6-feet, 9-inches because of the topography as well. The ground dips down at that area of the site, and keeping the fence at 6-feet would cause a break in the fencing. This would lower the fence line, and create a negative impact to privacy between the subject property and adjacent property. Thus, these additional variances would not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity.

- 2) *That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of the rights enjoyed by other properties in the vicinity and within the identical land use district;*

Staff Finding: The variance is to allow three stories (where 2 ½ stories is the maximum). The third story is at the west end of the new residence, and the lowest level. The topography and surroundings of the subject property are special circumstances that deprive the subject property of rights enjoyed by other properties in the vicinity and within the Kensington Combining District (-K) and (R-6) Zoning District. The subject property is a hillside. The new residence is being constructed to follow the natural topography of the hillside, with the lowest level toward the bottom of the hill.

It is typical for a crawl space with adequate ceiling height be a result from the construction of a residence on a hillside with such a steep slope. The creation of the third story is an understandable situation made possible by the topographic circumstances of the subject property.

The property is accessed by a 15-foot wide private easement at the end of Lawson Road. The west half of the property is extremely difficult to develop with a steep average grade of 57%. If the applicants were to utilize this portion of the lot for parking and access into the home, the design would increase in footprint. This would create far too much massing and bulk, and potentially impede on views of the San Francisco Bay to the west. Furthermore, due to

these topographic challenges, grading and filling is considered infeasible. A third story is a sensible resolution.

The third story does not have the residence go over maximum height as conditioned by the Zoning Administrator. It does not further expand the envelope of the residence, or create additional bulk. It is also tucked into the downslope of the subject property, hiding it from sight at street level, and not impacting views. Using the existing footprint of the new residence is a reasonable request because of special circumstances applicable to the subject property. Thus, strict application of the (R-6) zoning regulations would deprive the subject property of the rights enjoyed by other properties in the immediate vicinity.

As previously stated, there are also variances to allow:

- A 3-foot front yard setback (where 20-feet is required) for a retaining wall with a maximum height of 7½-feet;
- A 0-foot side yard (where 5-feet is required) for a retaining wall with a maximum height of 4-feet;
- And a 0-foot rear yard (where 3-feet is required) for 15 linear feet of fencing with a maximum height of 6-feet, 9-inches.

Due to the topographic challenges of the subject property, these structures are required for the overall improvement to the subject site. The retaining wall off of the private road is for the driveway in order to gain access to the residence. The other retaining wall is to replace an existing, wood retaining wall that is failing. 15 linear feet of fencing along the rear boundary line will have a maximum height of 6-feet, 9-inches because of the topography as well. The ground dips down at that area of the site, and keeping the fence at 6-feet would cause a break in the fencing. This would lower the fence line, and create a negative impact to privacy between the subject property and adjacent property.

All other retaining walls that are considered structures meet frontage setback, side yard, and rear yard requirements for the (R-6) Zoning District. All other fencing along the perimeter of the property does not go over 6-feet in height. As a result, strict application of the (R-6) zoning regulations would deprive the subject property of the rights enjoyed by other properties in the immediate vicinity.

- 3) *That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the property is located.*

Staff Finding: The intent and purpose of the Single-Family Residential (R-6) land use district is to facilitate orderly development and maintenance of high-density, single-family residential neighborhoods. This includes a detached single-family dwelling and the accessory structures and uses normally auxiliary to it. The new residence, and accessory building and structures, fall under the permitted uses for the (R-6) Zoning District. The project requires the approval of variances to allow three (3) stories (where 2 ½ stories is the maximum), and structures not meeting the minimum frontage setback, side yard, and rear yard requirements. However, due to the topographic challenges to the subject site the granting of these variances is considered special circumstance, not a special privilege. Therefore, approval of the variances previously stated in order to construct the residence and auxiliary structures would meet the intent and purpose of the (R-6) land use district.

C. TREE PERMIT FINDINGS

Both the red and atlas cedar trees (trees #1-2 as labeled in the arborist report) are approved for removal. Staff has determined the eleven (11) trees requested for removal be allowed based on the Tree Findings below.

Required Factors for Granting Permit. The Zoning Administrator is satisfied that the following factors as provided by County Code Section 816-6.8010 for granting a Tree Permit have been satisfied as marked:

- 1) The arborist report indicates that most of the subject trees are in poor health and cannot be saved;
- 2) Reasonable development of the property would require removal and/or work within the drip line of code-protected trees, and this development could not be reasonably accommodated on another area of the lot.
- 3) According to Section 816.6.2004, the purpose of the Tree Protection and Preservation Ordinance is to preserve trees on private properties in the interest of the public health, safety and welfare. As indicated by the applicant's physician, the applicant has serious allergies to cedar trees and notwithstanding the fact that these trees are protected; the preservation of these two cedar trees will be compromising the property owner's individual health and safety as stated on Section 816.6.2004.

II. CONDITIONS OF APPROVAL FOR COUNTY FILE #DP15-3030

Project Approval

1. Development approval is based on the following documents submitted to the Department of Conservation and Development, Community Development Division (CDD):
 - The application materials submitted on September 16, 2015;
 - Additional materials submitted January 20, 2016;
 - Revised plans submitted January 22, 2016 and February 16, 2016;
 - Arborist report dated December 10, 2015, prepared by Peter K. Rudy, certified arborist;
 - And subject to the conditions listed below.

Tree Removal

2. This permit is to allow the removal of eleven (11) code-protected trees only.

General Provisions

3. Any development or expansion beyond the limits of this permit approved under this application may require the review and approval of CDD and may require the filing of an application for modification to a Development Plan and a public hearing, if deemed necessary. The following is approved with this permit:
 - A. The construction of:
 - A 2,870 single-family residence, with a 955 square-foot parking level, and a 327 square-foot accessory building, resulting in a total gross floor area of 4,224 square-feet (where the Kensington Combining District gross floor area threshold is 4,000 square-feet);
 - New retaining walls and fencing;
 - A 103 square-foot trellis;
 - And new landscaping and hardscaping throughout.
 - B. Variances to allow:
 - 3 stories (where 2 ½ stories is the maximum);
 - A 3-foot front yard setback (where 20-feet is required) for a retaining wall with a maximum height of 7½-feet;
 - A 0-foot side yard (where 5-feet is required) for a retaining wall with a maximum height of 4-feet;
 - And a 0-foot rear yard (where 3-feet is required) for 15-feet of fencing with a maximum height of 6-feet, 9-inches.

- C. A tree permit to remove 11 code-protected trees, and work within the drip lines of 2 code-protected trees.

Species	Trunk Diameter(s)	Status
3 Monterey Pines	42.5-inches; 29-inches; 6.5-inches	Remove all
2 Honey Locusts	10-inches; 20-inches	Remove all
2 Junipers	48-inches in total (multi-stemmed) 63-inches in total (multi-stemmed)	Remove all
California Live Oak	18-inches in total (multi-stemmed)	Preserve
Eugenia	48-inches in total (multi-stemmed)	Remove
Black Pine	10-inches	Remove
2 Cedars	16-inches and 24-inches	Remove all
Apple tree	10-inches	Preserve
Pear tree	6-inches	Remove – Not protected

Building Height Verification

4. **Prior to requesting a framing inspection**, but after completion of roof frame, the applicant shall submit evidence, for review and approval of CDD, from a licensed surveyor on the field elevations of the roof ridgeline points and the heights of the building as measured from existing grade indicated on building permit site plans for purposes of determining compliance with maximum height limits of the zoning district. In addition, the overall height of the residence shall be reduced by 3-feet. As measured from the top of the parapet, the height of residence shall not exceed the 825-foot elevation.

Fencing

5. No fencing shall be higher than 6-feet tall when measured from grade, except for the 15-feet of fencing (with a maximum height of 6-feet, 9-inches) allowed through this variance approval.

Model Water Landscape Ordinance

6. **Prior to the submittal of a building permit**, the applicants shall demonstrate that the landscaping plan provides compliance with the State Model Water Efficiency Landscape Ordinance or County Model Water Efficiency Landscape Ordinance, whichever ordinance applies.

Landscaping

7. **Prior to the submittal of a building permit**, a landscaping plan for all landscaped areas, including placement of Japanese maples, shown on the plan shall be submitted for review and approval of CDD. Such landscaping shall specifically serve for screening for privacy areas along the northwest, south and southwest.

Payment of Fees

8. This application is subject to an initial application deposit of \$1000.00, which was paid with the application submittal, plus time and material costs if the application review expenses exceed 100% of the initial deposit. Any additional costs due must be paid within 60 days of the permit effective date or prior to use of the permit, whichever occurs first. The applicants may obtain current costs by contacting the project planner. If the applicants owes additional fees, a bill will be sent to the applicants shortly after permit issuance.

Contingency Restitution for Work within the Dripline of Trees

9. Pursuant to the requirements of Section 816-6.1204 of the Tree Protection and Preservation Ordinance, to address the possibility that tree removal and construction activity nevertheless damages these trees, the applicants shall provide the County with a security (e.g., bond, cash deposit) to be submitted prior to filing a building permit, to allow for replacement of trees intended to be preserved that are significantly damaged by tree removal and/or construction activity. The security shall be based on:
 - A. **Extent of Possible Restitution Improvements:** The planting of up to four (4) drought-tolerant trees, minimum 15-gallons in size, in the vicinity of the affected trees, or equivalent planting contribution, subject to prior review and approval of CDD.
 - B. **Determination of Security Amount:** The security shall provide for a breakdown of all of the following costs:
 - Preparation of a landscape/irrigation plan by a licensed landscape architect or arborist.
 - A labor and materials estimate for planting the four (4) 15-gallon-size trees and related irrigation improvements that may be required, prepared by a licensed landscape architect or landscape contractor.
 - An additional 20% of the total of the above amounts to address inflation costs.
 - C. **Acceptance of Security:** The security shall be subject to review and approval of CDD. The County ordinance requires that the applicants pay fees for all staff time

and material costs associated with processing a tree protection security. The applicants shall pay an initial fee deposit of \$100 at time of submittal of a security.

- D. Duration of Security: The security shall be retained by the County for a minimum of 12 months and up to 24 months following completion of work within the trees' driplines. A prerequisite of releasing the bond between 12 and 24 months shall be to have the applicants arrange for the consulting arborist to inspect the trees and prepare a report on the trees' health. In the event that CDD determines that the trees intended to be preserved have been damaged by development activity, and CDD determines that the applicants have not been diligent in providing restitution of the damaged trees, then CDD may require that all or part of the security be used to provide for mitigation of the damaged tree(s).

Required Restitution for Approved Tree Removal

10. The following measures are intended to provide restitution for the eleven (11) trees that have been approved for removal:

- A. Tree Restitution Planting/Irrigation Plan: Prior to filing a grading permit or building permit, or prior to removal of trees, whichever occurs first, the applicants shall submit a tree planting and irrigation plan prepared by a licensed arborist or landscape architect for the review and approval of CDD. The plan shall provide for the planting of at least eleven (11) drought-tolerant trees, minimum 15-gallons in size. The plan shall be accompanied by an estimate prepared by a licensed landscape architect or arborist of the materials and labor costs to complete the improvements on the plan. This tree restitution plan may be considered along with the landscaping requirement stated under Condition of Approval #7.

The tree restitution planting plan shall be incorporated into the plans filed for a building permit and shall comply with the requirements of the State Model Water Efficient Landscape Ordinance or County Model Water Efficiency Landscape Ordinance, whichever ordinance applies. Information relating to this ordinance is available at the Application and Permit Center.

- B. Required Security to Assure the Completion of Plan Improvements: Prior to filing a grading permit or building permit, or prior to removal of trees, whichever occurs first, the applicants shall submit a security (e.g., bond, cash deposit) that is acceptable to CDD to ensure that the restitution plan is implemented.

Determination of Security Amount: The security shall provide for a breakdown of all of the following costs:

- A labor and materials estimate for planting the eleven (11) 15-gallon-size trees and related irrigation improvements that may be required, prepared by a licensed landscape architect or landscape contractor.
 - An additional 20% of the total of the above amounts to address inflation costs.
- C. Initial Fee Deposit for Processing a Security: The County ordinance requires that the applicants pay fees for all staff time and material costs associated with processing a landscape improvement security. At the time of submittal of the security, the applicants shall pay an initial deposit of \$100.
- D. Duration of Security: The security shall be retained by the County for a period of 24 months following the completion of construction activity to ensure that the restitution plan is successfully implemented. If CDD determines that the applicants has not been diligent in implementing the plan, then CDD may require that part or all of the security be used to implement the plan.

Arborist Expense

11. The expenses associated with all required arborist services shall be borne by the developer and/or property owner.

Compliance with Arborist Recommendations

12. The applicants shall implement all measures recommended by the consulting arborist that are intended to mitigate potential tree construction-related impacts.

Construction Period Restrictions and Requirements

13. Site Preparation - Prior to the start of construction or any clearing, stockpiling, trenching, grading, compaction, paving or change in ground elevation on site with trees to be preserved, the Applicants shall install protective fencing at or beyond the drip line of the trees to be preserved (one California live oak and one apple tree) and along the boundaries of all other protected trees within the vicinity of construction. The fencing shall remain in place for the duration of construction activities. Prior to grading or issuance of any permits, the fences may be inspected and the location thereof approved by the Building Inspection Division or Community Development Division staff. *Construction plans shall stipulate on their face where temporary fencing is to be placed. The required fencing shall be installed prior to the commencement of any construction activity.*

14. The applicants shall comply with the following restrictions and requirements:

- A. Construction activities shall be limited to the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, and are prohibited on state and federal holidays on the calendar dates that these holidays are observed by the state or federal government as listed below:

New Year's Day (state and federal)
Birthday of Martin Luther King, Jr. (state and federal)
Washington's Birthday (federal)
Lincoln's Birthday (state)
President's Day (state and federal)
Cesar Chavez Day (state)
Memorial Day (state and federal)
Independence Day (state and federal)
Labor Day (state and federal)
Columbus Day (state and federal)
Veterans Day (state and federal)
Thanksgiving Day (state and federal)
Day after Thanksgiving (state)
Christmas Day (state and federal)

For information on the calendar dates that these holidays occur, please visit the following websites:

Federal Holidays:

http://www.opm.gov/Operating_Status_Schedules/fedhol/2013.asp

California Holidays:

<http://www.sos.ca.gov/holidays.htm>

- B. Transportation of large trucks and heavy equipment is subject to the same restrictions that are imposed on construction activities, except that the hours are limited to 9:00 AM to 4:00 PM.
- C. A good faith effort shall be made to avoid interference with existing neighborhood traffic flows.
- D. All internal combustion engines shall be fitted with mufflers that are in good condition and stationary noise-generating equipment such as air compressors shall be located as far away from existing residences as possible.
- E. Construction equipment and materials shall be stored onsite.

- F. The construction site shall be maintained in an orderly fashion. Litter and debris shall be contained in appropriate receptacles and shall be disposed of as necessary.
 - G. Any debris found outside the site shall immediately be collected and deposited in appropriate receptacles.
 - H. The applicants shall immediately notify the CDD of any damage that occurs to any tree during the removal of the coast live oak tree. Any tree not approved for destruction or removal that dies or is significantly damaged as a result of this project shall be replaced with a tree or trees of equivalent size and of a species as approved by the CDD to be reasonably appropriate for the situation.
 - I. No parking or storage of vehicles, equipment, machinery, or construction materials and no dumping of paints, oils, contaminated water, or any chemicals shall be permitted within the drip line of any tree to be preserved.
 - J. No grading, compaction, stockpiling, trenching, paving, or change in ground elevation shall be permitted within the drip line of any tree intended for preservation unless such activities are indicated on the improvement plans approved by the County and addressed in the arborist report. If any of the activities listed above occur within the drip line of a tree to be preserved, an arborist may be required to be present. The arborist shall have the authority to require implementation of measures to protect the trees.
15. The geotechnical and/or soils report, prepared for or required for this project, will address the concerns raised in the April 4, 2016 Webster's letter (to the extent feasible). Once concerns are addressed, response(s) shall be prepared and peer-reviewed by the County geologist.
16. All of the proposed utilities of the residential project shall be placed underground.
17. Existing Utilities/Easements:
- a) The applicant shall obtain information from the appropriate County Department (Public Works, Flood Control, etc.) in order to identify property location of the storm drain easement within the property. To the extent feasible, the applicant shall seek and obtain information to determine the requirement and/or need of proper party/entity responsibility in addressing the realignment of such easement.
 - b) The applicant shall obtain information from the Stege Sanitary in order to clarify

potential location of a sewer line located along the north/northwest portion of the property. The applicant will be responsible to ensure this project will not impact such potential easement and accommodate the project in order to avoid impact to such sewer line/easement, as needed.

ADVISORY NOTES

ADVISORY NOTES ARE NOT CONDITIONS OF APPROVAL; THEY ARE PROVIDED TO ALERT THE APPLICANT TO ADDITIONAL ORDINANCES, STATUTES, AND LEGAL REQUIREMENTS OF THE COUNTY AND OTHER PUBLIC AGENCIES THAT MAY BE APPLICABLE TO THIS PROJECT.

- A. NOTICE OF OPPORTUNITY TO PROTEST FEES, ASSESSMENTS, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.

Pursuant to California Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservations or exactions required as part of this project approval. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and must be delivered to the Community Development Division within a 90-day period that begins on the date that this project is approved. If the 90th day falls on a day that the Community Development Division is closed, then the protest must be submitted by the end of the next business day.

- B. Prior to applying for a building permit, the applicant is strongly encouraged to contact the following agencies to determine if additional requirements and/or additional permits are required as part of the proposed project:

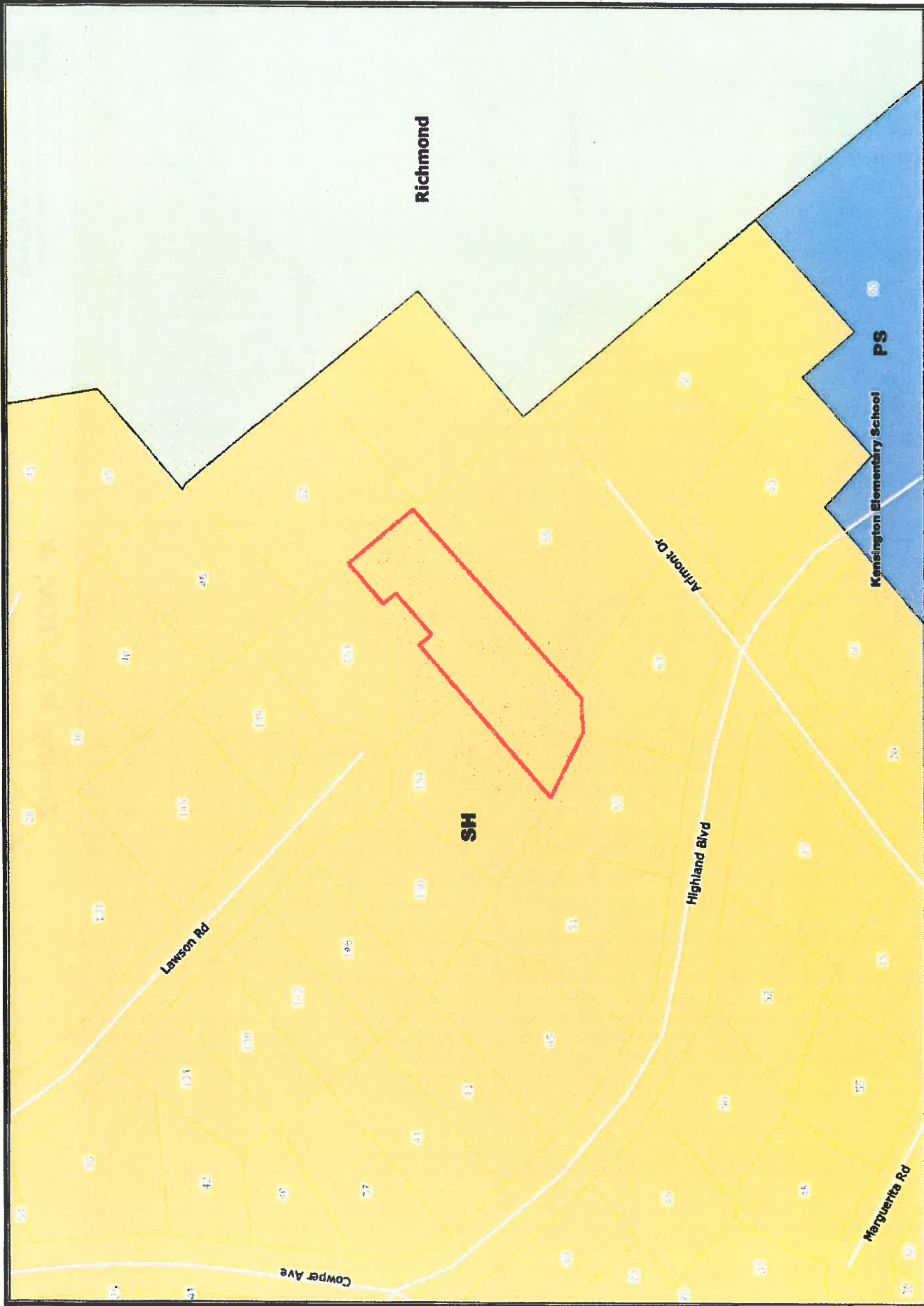
- Contra Costa County Building Inspection Division
- Contra Costa County Environmental Health Division
- East Bay Municipal Utility District
- Stege Sanitary District
- Kensington Fire Protection District
- El Cerrito Fire Department



Scale 1:1,084
Contra Costa Internet GIS Map
Printed: Jul 26, 2016 11:04:44 AM

Aerial View





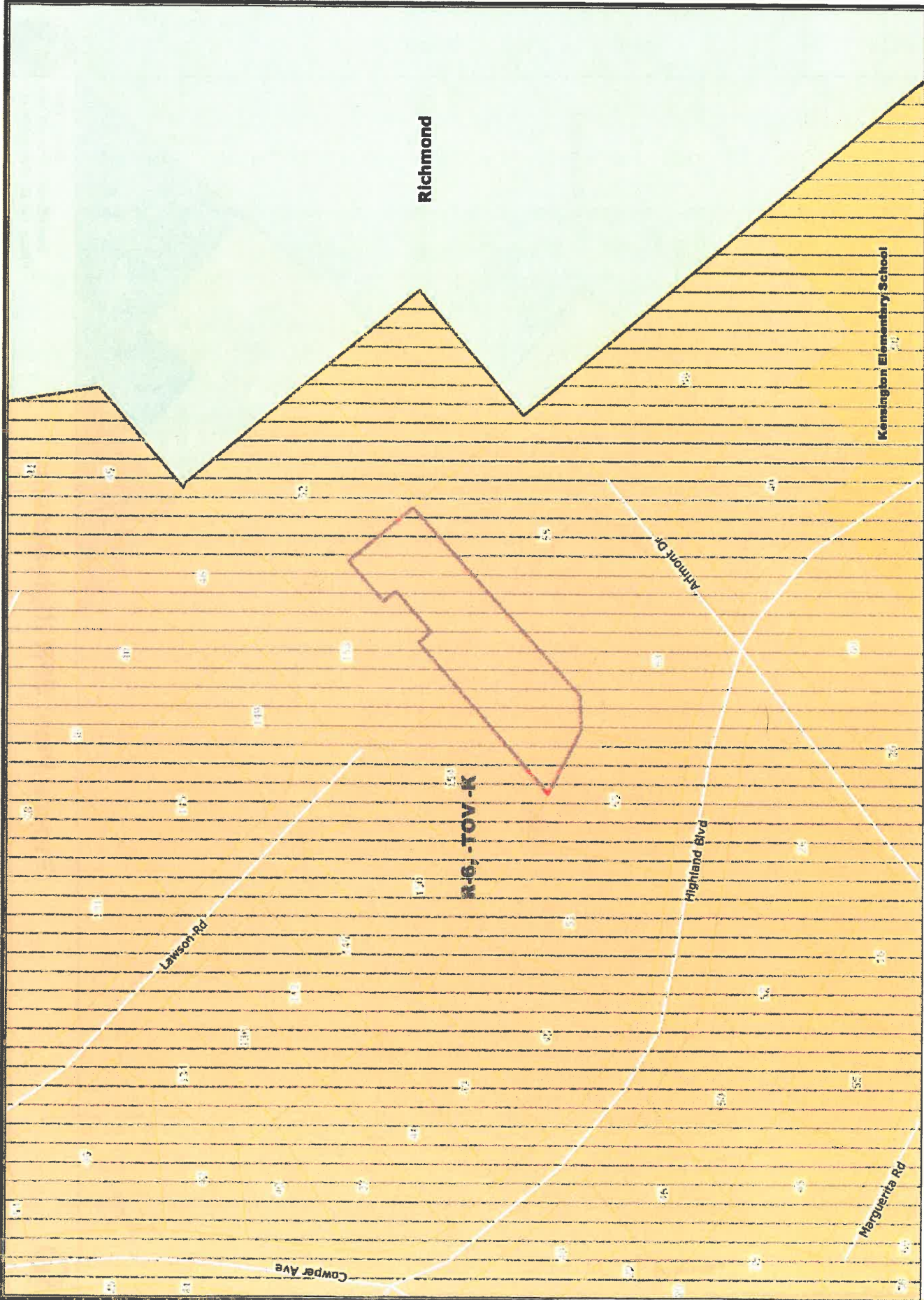
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Contra Costa Internet GIS Map
Printed: Feb 29, 2016 8:25:06 AM

General Plan: SFR High-Density





Scale 1:1,084
 Contra Costa Internet GIS Map
 Printed: Feb 29, 2016 8:26:26 AM



Richmond

Kensington Elementary School

R-6, -TOV -K

Lawson Rd

Highland Blvd

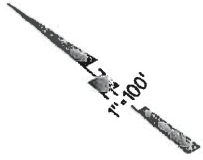
Almond Cr

Marguerita Rd

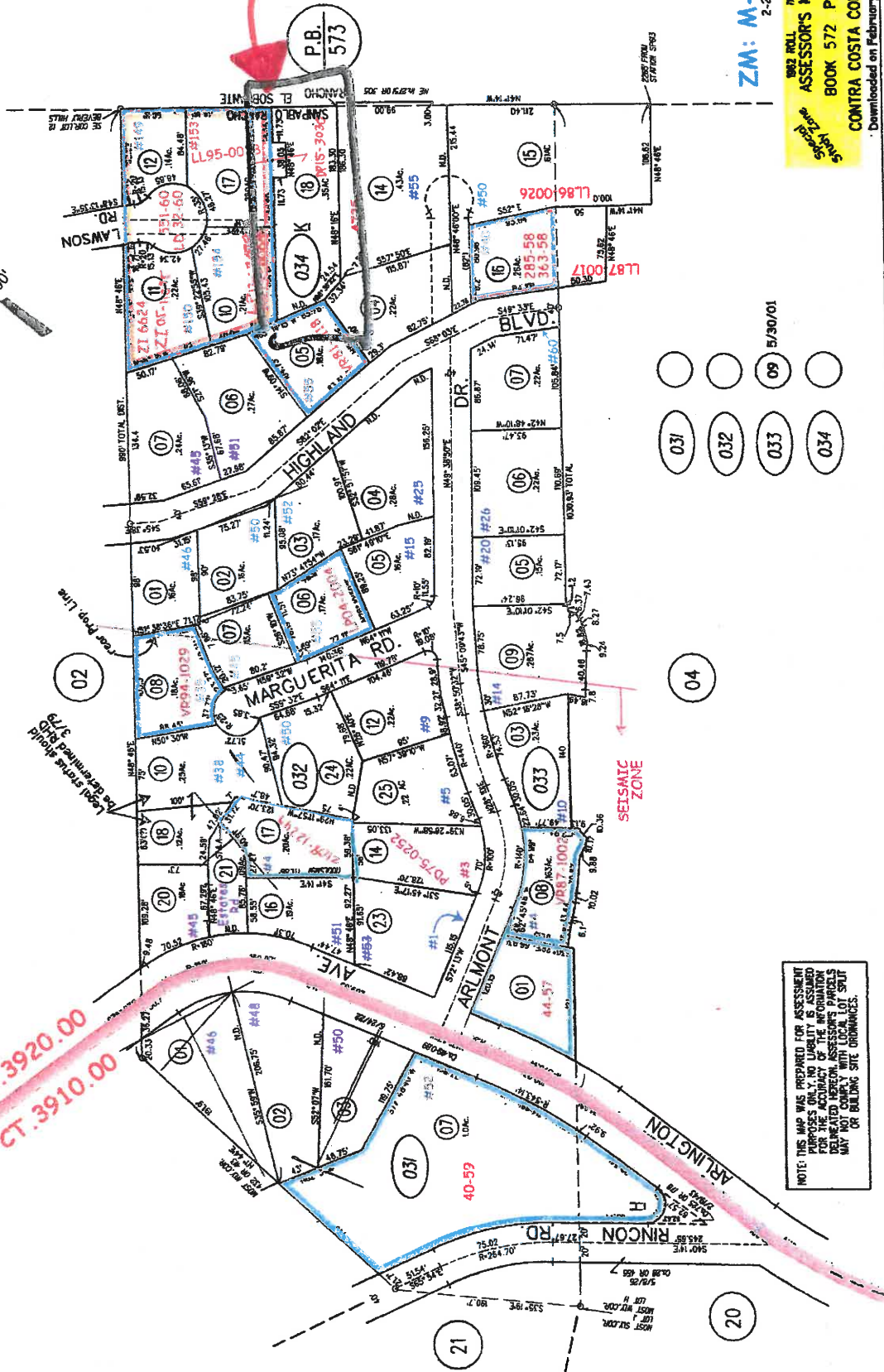
Cowper Ave

Zoning: R-6; -TOV; -K





CT. 3920.00
CT. 3910.00



Site

P.B. 573

ZM: M-7

2-26-96 A17

Special Zone
ASSASSOR'S MAP
BOOK 572 PAGE 03
CONTRA COSTA COUNTY, CALIF.
Downloaded on February 07, 2008

- 031
- 032
- 033
- 034

09 5/30/01

NOTE: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY AND SHOULD NOT BE USED FOR ANY OTHER PURPOSES. THE INFORMATION DELINEATED HEREON, ASSASSOR'S PARCELS MAY NOT COMPLY WITH LOCAL LOT SPLIT OR BUILDING SITE ORDINANCES.



Tong-Dean Residence
 158 Lawson Road
 Kensington, CA 94708

SEALS

DATE	BY	REVISION

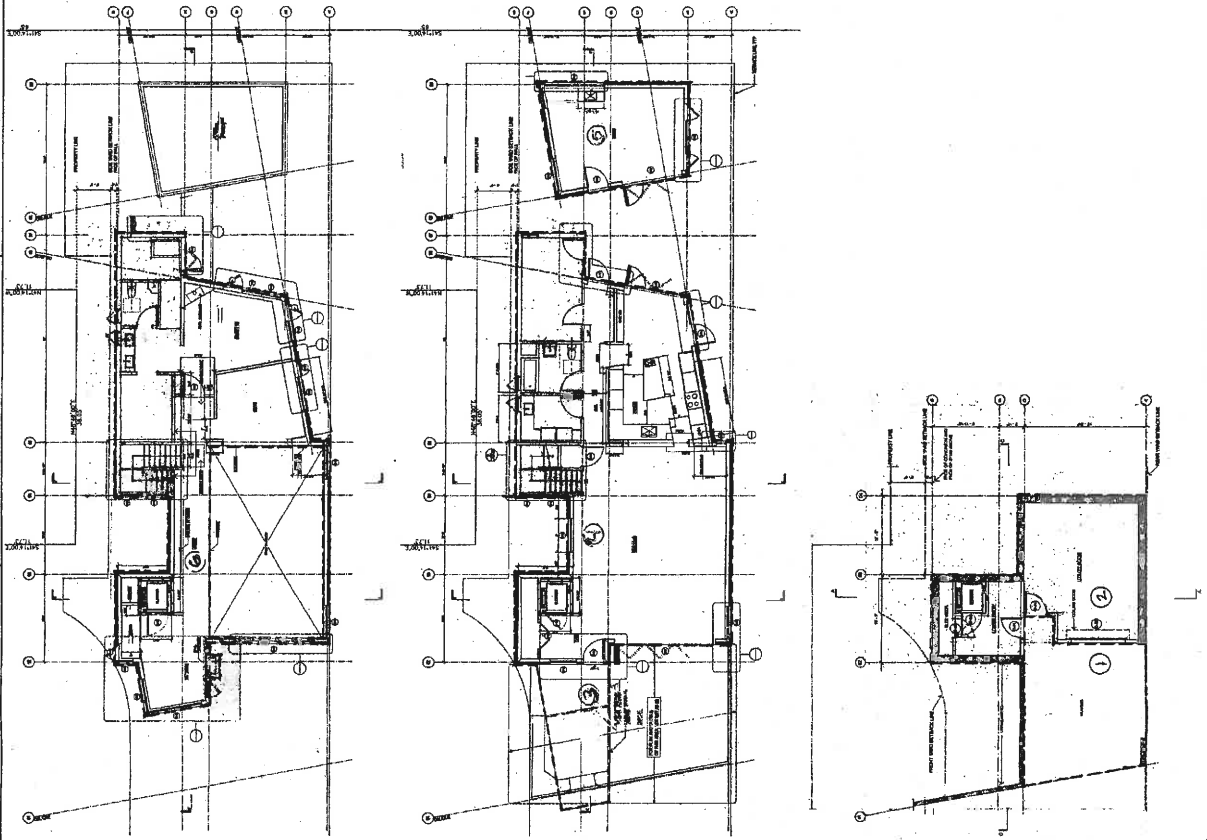
SHEET TITLE
GROSS FLOOR AREAS

AG-03

GROSS FLOOR AREAS

Notes	Gross Area
1 Area under Deck at First Floor Level	288
2 Existing gross floor area	570
3 Total Existing Land Area	858 sq. ft.
4 Area under "User Report" contribute	72
5 Studio gross floor area	1,040
6 Total First Floor Area	2,000 sq. ft.
7 Building gross floor area	1,220
8 Total Second Floor Area	1,220 sq. ft.
9 Total Gross Floor Area*	4,220 sq. ft.

*Per Kensington Combining District 64-74





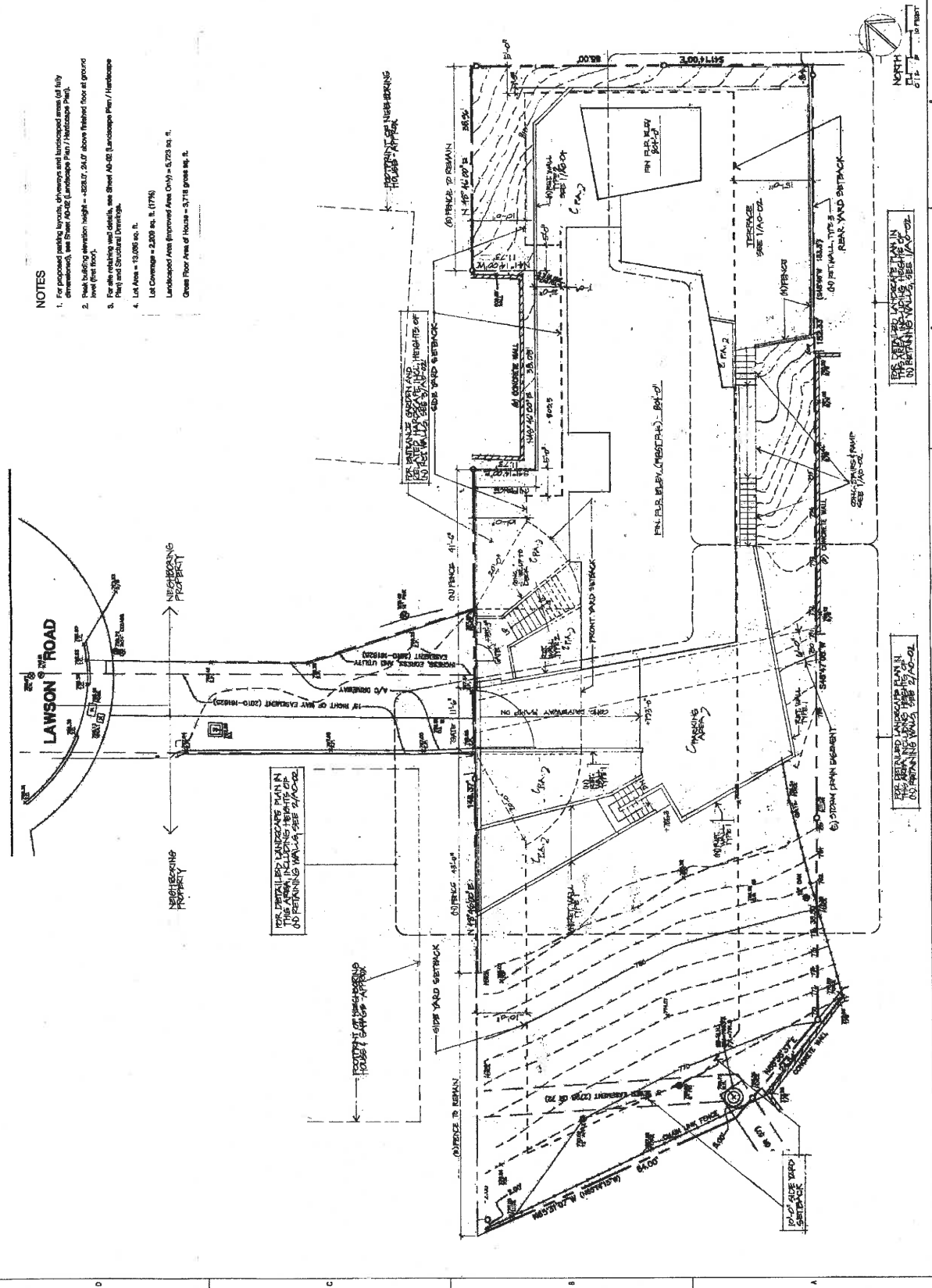
Tong-Dean Residences
 (88 Lawson Road
 Kensington, CA 94706)

SCALE: 1/8" = 1'-0"
 SHEET TITLE

PLOT PLAN

A0-01

- NOTES**
1. For proposed parking layout, driveway and landscaped areas (of city dimensions), see Sheet A0-02 (Landscape Plan / Hardscape Plan).
 2. Peak building elevation height = 428.17, 24.07' above finished floor at ground level (first floor).
 3. For site retaining wall details, see Sheet A0-02 (Landscape Plan / Hardscape Plan) and Structural Drawings.
 4. Lot Area = 13,095 sq. ft.
 Lot Coverage = 2,209 sq. ft. (17%)
 Landscaped Area (Proposed Area Only) = 5,723 sq. ft.
 Open Floor Area of House = 3,718 gross sq. ft.



THE EXISTING LANDSCAPE PLAN IN THIS AREA, INCLUDING HEIGHTS OF EXISTING WALLS, SEE 21A-02.

THE EXISTING LANDSCAPE PLAN IN THIS AREA, INCLUDING HEIGHTS OF EXISTING WALLS, SEE 21A-02.

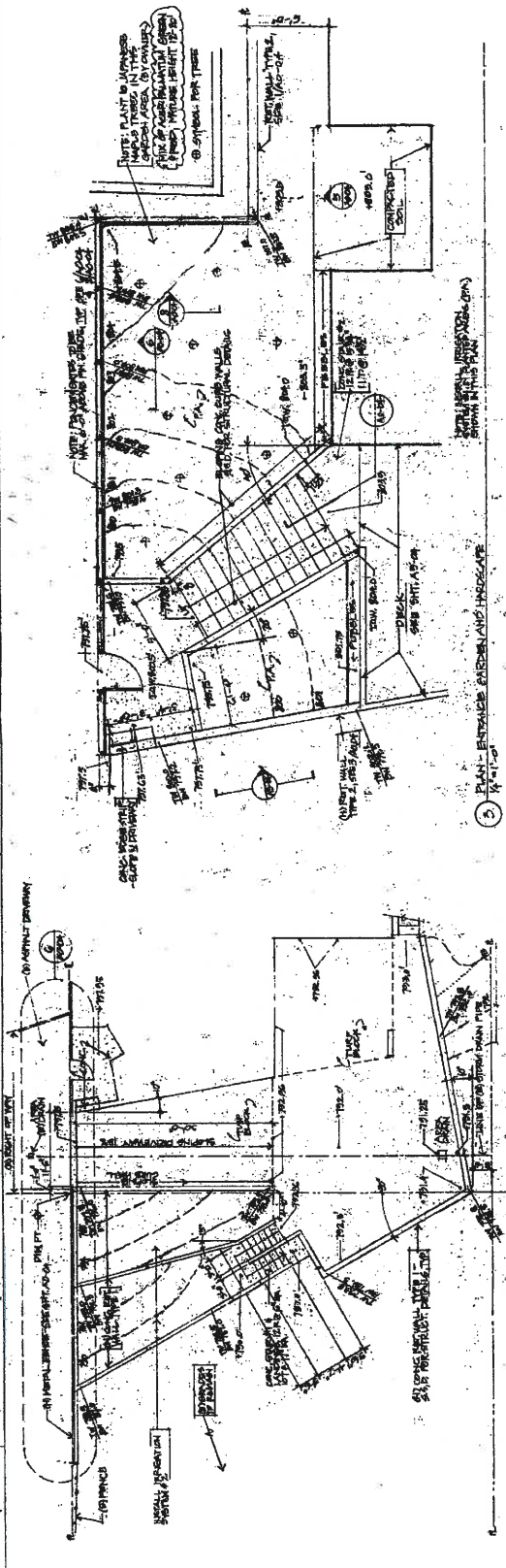
THE EXISTING LANDSCAPE PLAN IN THIS AREA, INCLUDING HEIGHTS OF EXISTING WALLS, SEE 21A-02.



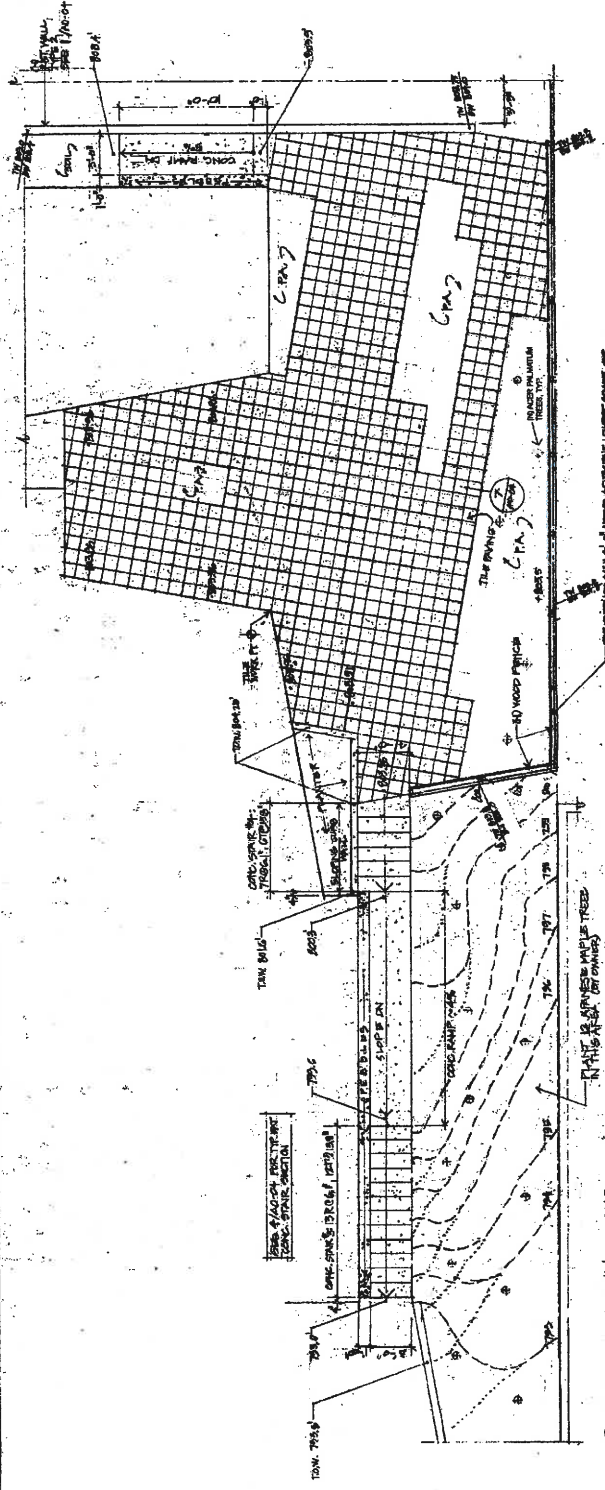
Tong-Dean Residence
Kearney, CA 94708

SHEET TITLE
LANDSCAPE PLAN
HARDSCAPE PLAN

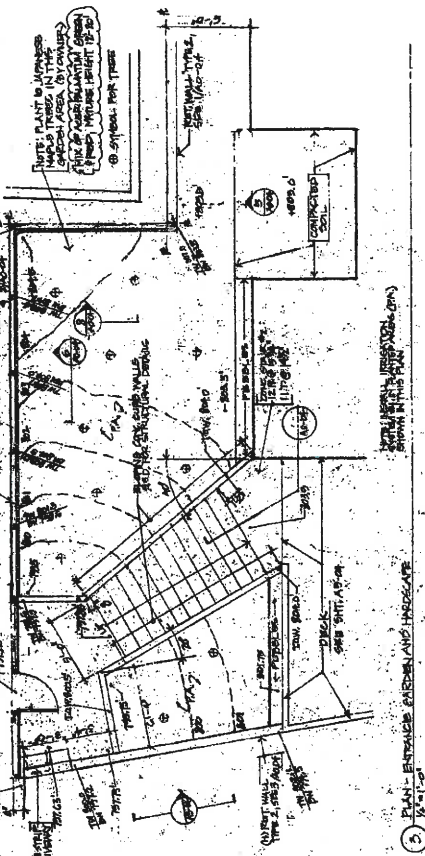
A0-02



2. PLAN - PARKING, DRIVEWAY LAYOUT
1/8" = 1'-0"



1. PLAN - FRONT GARDEN & HARDSCAPE
1/8" = 1'-0"



3. PLAN - ENTRANCE GARDEN & HARDSCAPE
1/8" = 1'-0"

NOTE: PLANT & FINISH MARKS THROU IN THIS PLAN ARE TO BE USED TO LOCATE PLANTING & FINISHES IN THE FIELD. SEE NOTES ON SHEET A0-01 FOR DETAILS.

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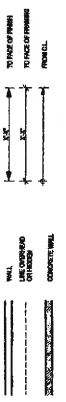
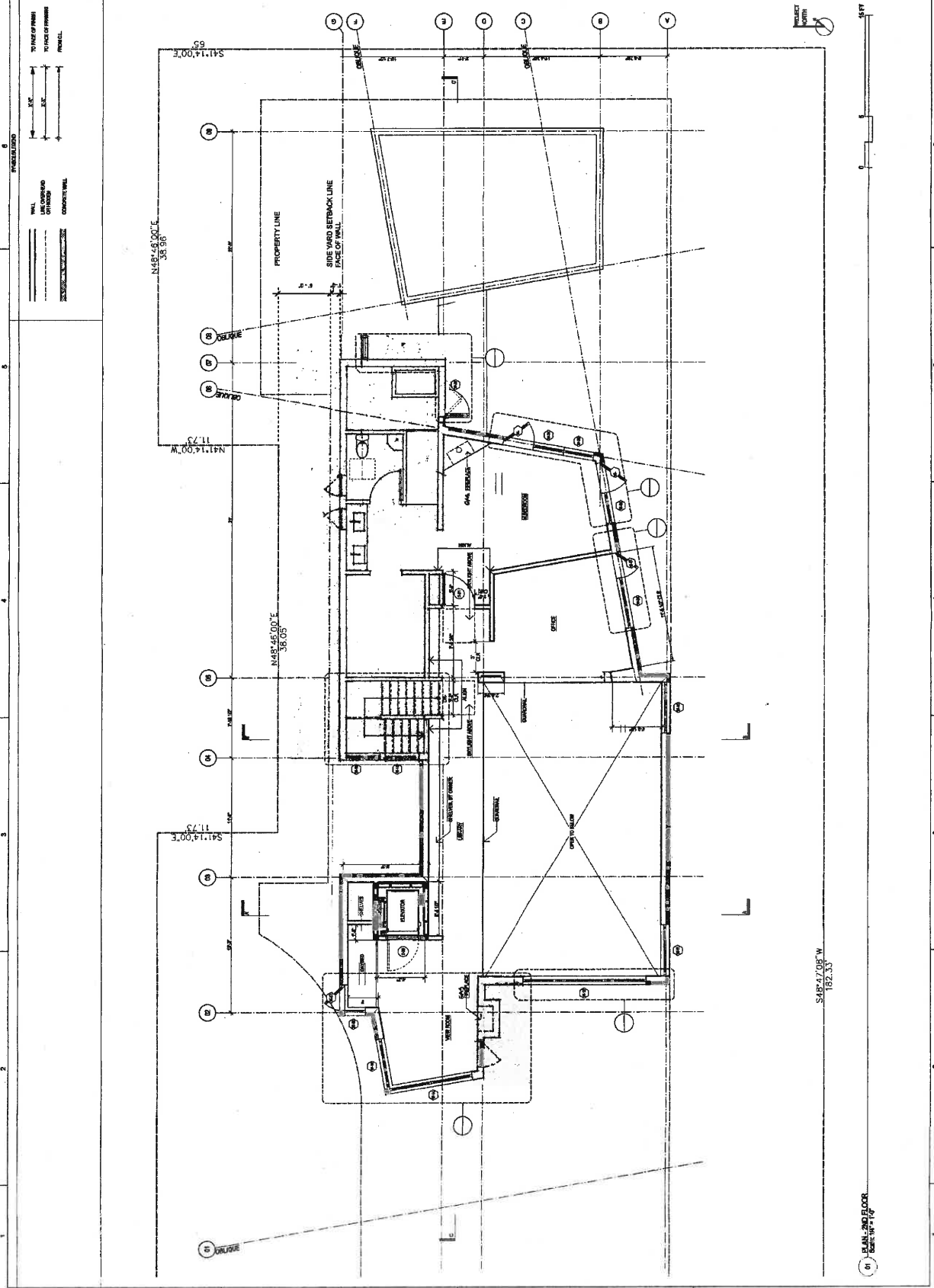
SCALE

SCALE

Tong-Poon
Residence
17111 11th Street
Kensington, CA
94708

SECOND
FLOOR
PLAN

A1-03



FINISH LINE

TO FACE OF FINISH

TO FACE OF FORM

CONCRETE WALL

FORM WALL

61 - PLAN - 2ND FLOOR
DATE: 07-17-07

S487.7'05" W
182.33'

SCALE

1/8" = 1'-0"

1/4" = 1'-0"

1/2" = 1'-0"

3/4" = 1'-0"

1" = 1'-0"

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7 3/4" = 1'-0"

8" = 1'-0"

8 1/4" = 1'-0"

8 1/2" = 1'-0"

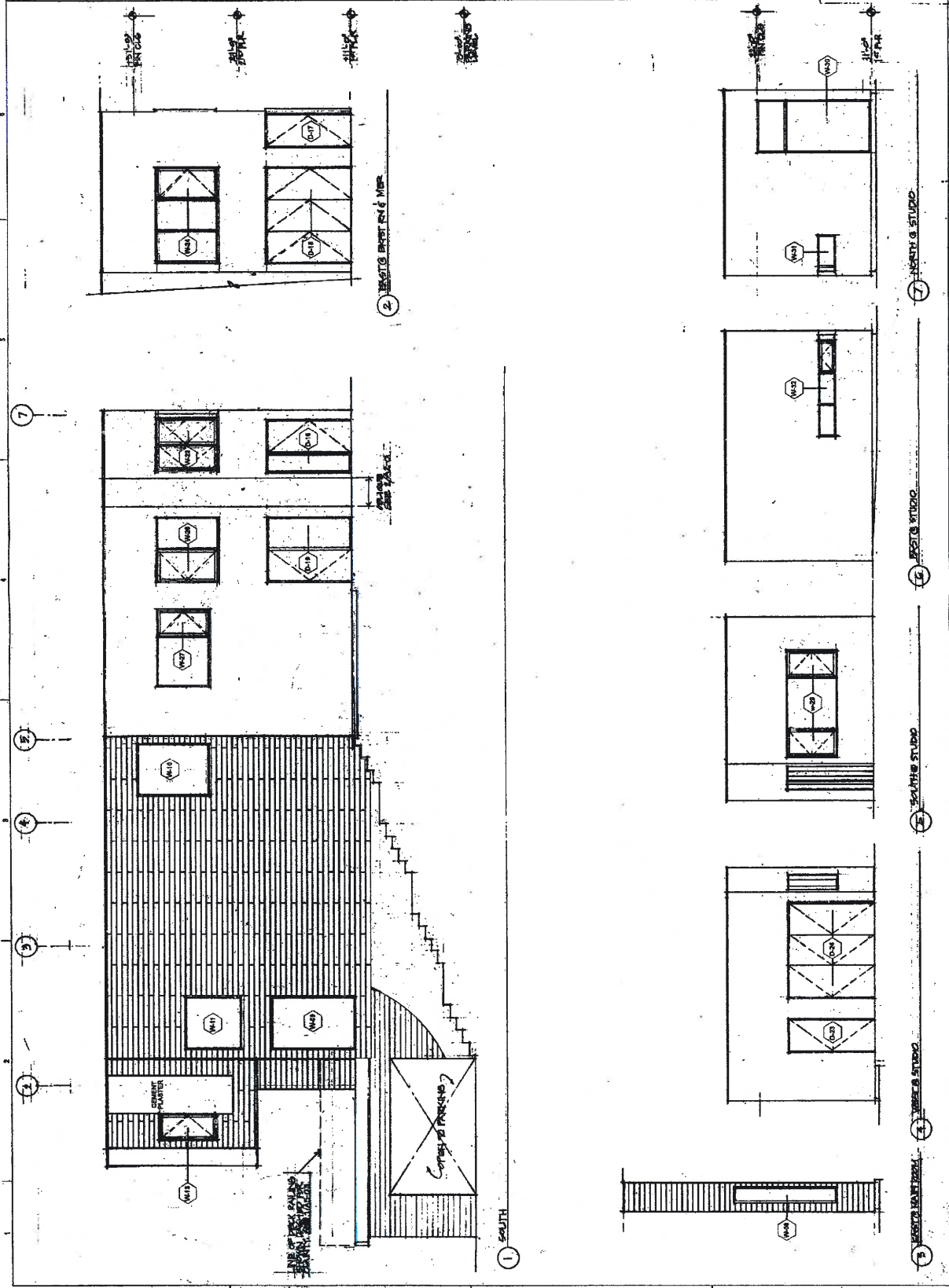
8 3/4" = 1'-0"

9" = 1'-0"



Tong & Dean Architects
 1000 S. Bascom Avenue
 Suite 200
 San Jose, CA 95128

SHEET TITLE
**EXTERIOR
 ELEVATIONS**
A2-01



2. HEIGHTS REFERENCE MARK

3. HEIGHTS REFERENCE MARK

4. HEIGHTS REFERENCE MARK

5. HEIGHTS REFERENCE MARK

6. HEIGHTS REFERENCE MARK

7. HEIGHTS REFERENCE MARK

1 SOUTH

7. HEIGHTS REFERENCE MARK

14. HEIGHTS REFERENCE MARK

5. HEIGHTS REFERENCE MARK

4. HEIGHTS REFERENCE MARK

2. HEIGHTS REFERENCE MARK

Luk Appeal Letter

Mr. and Mrs. George and Anita Luk

153 Lawson Road, Kensington

Dated: April 14, 2016

George & Anita Luk
153 Lawson Road
Kensington, CA 94707

CONTRA COSTA

2016 APR 14 PM 1:01
DP15-3030
APPLICATION & PERMIT CENTER

April 14, 2016

Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553

Reference: **Appeal of Zoning Administrator Decision**
Applicants: Edward Dean and Darlene Tong
Address: 158 Lawson Road, Kensington, CA
APN: 572-034-018
Application: DP 15-3030

To Whom it May Concern:

This letter is to appeal the zoning administrator's decision to approve application DP15-3030 on April 4th, 2016 and to request that the approval be overturned and the project be required to be redesigned. We respectfully request that the hearing be scheduled no sooner than the second planning commission hearing in July (July 26, 2016) due to our previously scheduled travel out of the Country.

Background: We purchased, planned and constructed a residence on 153 Lawson over 20 years ago. At that time we sought to take advantage of the views and light as the existing trees and vegetation provided relatively unobstructed and panoramic views of the upslope and downslope areas, the skyline, distant cities, hillside terrain, wooded canyons, ridges and bodies of water. Our approved plans included a number of large windows in the master bedroom and master bath to bring that light and views into our home. We also planned a deck off the southwestern side of the home for these same reasons. Like many in the community, we worked within the development limitations with an eye toward minimizing the impacts on our neighbors. We recognized the importance of these concerns well before the Kensington District Ordinance came into law. Our lot is next door directly to the North of the applicants' proposed project.

This letter summarizes the basis for our appeal and provides evidence for why the proposed project does not meet the intent of the Kensington Combining District Ordinance nor the criteria necessary to qualify for a variance. We strongly request the commission to consider the facts, and apply the intent of the ordinance properly to this case.

Criteria for Evaluating Project

The Applicant, Ed Dean and Darlene Tong, have proposed the construction of a substantially sized single-family home within a residential district in Kensington, which is governed by the Kensington Combining District, an ordinance established to protect views and neighborhood character in a hillside community.

Kensington's Combining District aims to balance the right for an owner to develop against community preservation of "views, light and solar access, privacy, parking, residential noise levels, and compatibility with neighborhood with regard to bulk and scale." It is through this lens, specifically with respect to building height, size, and bulk, that the proposed development violates the intent of the Combining District.

In addition, the proposal consists of a variance request, which are generally granted where there is a hardship and the strict application of the respective zoning code hinders the development due to the unique characteristic of the property. Pursuant to Section 26-2.2006 of the County ordinance, three findings must exist for approval of a variance application:

- A. That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.
- B. That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.
- C. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.

Based on the staff report issued by the County Planner, we believe the County staff did not sufficiently evaluate the facts of the case impartially, and reaffirmed the Applicant's arguments despite numerous calls by the community in protest of the project. The sheer number of conditions of approval underscores the Zoning Administrator's attempt to mitigate the impacts of the proposal, fully acknowledging their presence, but never willing to apply the true intent of the law, which would require the Applicant to redesign a building that is more consistent and compatible with the neighborhood.

We present the following:

- The development will obstruct views, decrease privacy, and block solar access to the property north of the proposed development at 153 Lawson Road, thereby denying their enjoyment of the property.
- The development's bulk and scale will be out of proportion to the surrounding homes and contribute to the obstruction of views and solar access.
- The 3.25' deep roof with parapet design is not standard for the neighborhood and adds to the height of the house, blocking views and solar access.
- The inefficient design of the house contributes to the overall height, blocking views and is incompatible to the neighborhood
- The proposal to construct a retaining wall over an existing sewer pipe and an existing storm drainage pipe introduces a public safety hazard and potential for financial impact to neighbors (an alternative grading scheme would lower the impact of the retaining wall to the storm pipe and the 2:1 slope). The Applicant should be responsible for dedicating two separate easements: one for sewer pipe and the other for storm drain. If the County permits the Applicant to construct a retaining wall above the existing storm drain pipe, the Applicant should accept full responsibility for repairing, replacing, and maintaining it permanently.
- The proposal removes two protected cedar trees that are protected by the County's Tree Preservation Ordinance.
- Applicant and staff fail to establish the hardship for variances and other issues related to the Ordinance No. 2004-46.

The following sections describe the above statements in greater detail. In addition, we have proposed design alternatives that could mitigate these concerns.

1. View And Solar Access Obstruction Leading To Loss Of Enjoyment Of Property

1.1. Obstructing Views

Article 84-74.2 of the Kensington Combining District Ordinance 2004-46, Section 204 A, B and R states that future development recognizes that property owners not substantially impair the value and enjoyment of their neighbors' property. In particular, sub-section B **promotes the community's values of preservation of views, light, solar access, and privacy.**

In Article 84-74.4 section 84-74.404 sub-section R define the "view" means a scene from a window in habitable space of a neighboring residence. The term "view" includes both up-slope and down-slope scene, but is distant or panoramic range in nature, as opposed to short range. Views include but are not limited to scenes of skylines, bridges, distant cities, distinctive geologic features, hillside

terrain, wooded canyons, ridges and bodies of water. (Ord.2004-46, 2.) **These values are very clearly not promoted in the current development plan.**

As evidence of this non-promotion, Exhibit A-1 of Section X-X as shown on Luk's comments within the staff report shows how the planned house height, being almost the same as that of neighboring 153 Lawson Road, will completely block the line of sight from 153 Lawson Road. The current line of sight includes views of the distant cities of Berkeley, Emeryville, Oakland and South San Francisco Bay as clearly shown in the attached photo submitted as Exhibit 1 South Views on Luk's comments within the staff report. This picture reflects the clear panoramic view in the background looking south. The staff report denied the existence of this view, and instead picked an image of a foggy day, where views cannot be seen of the distant cities of Berkeley, Emeryville, Oakland and South San Francisco Bay.

Andrew Mixer, the owner of 146 Lawson Road, Kensington, sent the attached email to Ms. Dominique Vogelpohl on March 31, 2016 after reviewing the plans with Edward Dean. Mr Mixer stated that "the proposed structure, in the owner's own words, would cut off the view towards the south, southwest of 153 Lawson Road. As well, it is easy to extrapolate, whilst on site, the significant diminution of solar access to 153 Lawson Road. It is my opinion that the proposed structure is out of relative scale with neighboring residences, unfairly would damage the view of the northerly neighbor and would cut off that neighbor's solar gain and light for a significant period during the day (particularly in the winter months). These negative impacts would reduce the value of the property at 153 Lawson Road and would also unnecessarily compromise the occupant's life style."

During the Zoning Administrator site visit on March 24, 2016 around 9:45am, my wife Anita explained that she sits in the downstairs living room every morning reading the newspaper and enjoys the warm sunlight coming from the east. The solid tall building would block the sunlight in the early morning and affect her enjoyment of our home. The shadow study that was presented at the Zoning Administrator hearing shows that no such shadows are cast on similar buildings on our street, and it is precisely the height and bulk of the building that create this sustained negative impact on our home.

In fact, at the April 4th public hearing, Mr. Edward Dean himself stated that his proposed house blocks the southern panoramic views toward Berkeley, Emeryville, Oakland, and south of San Francisco Bay. During his presentation, he provided two sections and misled the Zoning Administrator and the public by showing the section from a vantage point starting at the first floor living area of his home. However, the "true" elevation from his plans shows a 35' building, with the garage starting at an elevation of 793' with a total floor to floor height of 11'. The first floor of the house is 10.75' and the second floor is 10', with a 3'3" roof. In his presentation, Ed explicitly acknowledge that in the neighborhood, the homes usually have 8' floor to ceiling heights, and proceeded to show that there

would be a minimal impact if he lowered the second and third level to 8' floor to ceiling heights. However, he failed to acknowledge the cumulative impact of lowering the garage floor from 10' to 8', which would be compatible with the neighborhood without providing special privilege to the Applicant at the expense of the neighbors.

In our comments to Dominique Vogelpohl on November 4, 2015, we included the attached Exhibit A-3 of Section X-X, which demonstrates a solution that consists of 9' floor to ceiling heights, with the garage starting at the current proposed elevation of 793 feet. This proposal is compatible to the neighborhood housing and complies with Ordinance No. 2004-46 Kensington Combine district Chapter 84-74, Article 84-74.204 section A, B, C and 84-74.404 C, E, L, M, O, Q and R. If the top of the roof stopped at an elevation of 820 feet, this would protect our views and still permit the Applicant to achieve a three-story design. It is the cumulative impact of a three-story home with tall ceilings that causes problems.

The Applicant, by proposing a structure that extends beyond the "face" of our house, simultaneously argues that it is permissible to block our views because they are not sufficiently "protected" but through design, steals our current panoramic views for his own benefit.

In addition the extended portion of the structure can be seen at the end of the cul-de-sac or along Lawson Road, but the staff report stated that "the subject property itself is not visible from the public road" and that "the Project itself is not visually obtrusive, is not blocking views and is not impacting solar access." This is simply not true.

1.2. Blocking Solar Access

Along with obstruction of views, the proposed development will restrict solar access for 153 Lawson Road as shown in the massing study presented in the March 21, 2016 Impact Study. The shadows cast by the proposed development results in no solar presence until at least noon. The living room, master bedroom and two bathrooms windows of 153 Lawson Road currently receive direct light and warmth from the morning sun. The two existing trees on the northern boundary of 158 Lawson Road do not block any sunlight coming into 153 Lawson Road, contrary to the Applicant's contention. The staff report's statement that cutting down the existing trees will improve light and solar access is misleading. In fact, the report, while focused on the trees, complete misses the shadow impact of the oversized house.

1.3. Granting A Special Privilege For The Variance To Construct A Three-Story Property

The proposed building height results in a structure that is taller than the neighboring homes because of the variance allowing three consecutive stories as described in the April 4, 2016 Staff Report. As described in the March 15, 2016 analysis reviewing the variance request, constructing a three-story home is inconsistent with the built pattern of the other houses on the street. Previously, each house that has tuck-under parking that is similar to the proposed design is either stepped down in line with the topography or set back in order to preserve views for neighbors. This consideration is not met in the current proposal for 158 Lawson Road in relation to 153 Lawson Road. The applicant has insisted on keeping the proposed 11' to 20.75' floor-to-floor or floor to ceiling clearances that are higher than the neighborhood standard of 9'.

2. Excessive Bulk And Scale

The current design shows the house consists of

- 956 square feet at the garage level with floor to floor height of 11 feet,
- 1,640 square feet of first floor, (1,158 square feet of the first floor with 10.75 feet floor to floor height and the remaining 482 square feet with 20.75 feet floor to ceiling height),
- 1,230 square feet of second floor with 10 feet floor to ceiling height
- 3.25 feet thick flat roof with parapet.
- In addition there is 327 square feet of studio in the rear property with 11 feet floor to ceiling height and 3.25 feet thick flat roof with parapet.

The Applicant has masked the total square footage by creating a 20.75' clearance on the first floor through to the second floor. In fact, the "true" size of the house is effectively 4,706 square feet (4,224sf + 482 sf), including the accessory dwelling unit. We tried to demonstrate this using a volume calculation submitted to Dominique Vogelpohl on March 17, 2016.

The current proposed project shows an increase in volume of 47.53% compared to a typical 4,000 square foot single family house. This 4,000 square foot building already represents the maximum allowable area for the property per zoning requirements. Such a difference between the proposed and maximum allowable area violates compatibility with the neighborhood in regards to bulk and scale. When including the roofs of the two structures, the volume differential increases to 53.4% relative to the baseline house. In comparison to the standard two story house in the neighborhood with 8' floor to ceiling heights, the volume of this house is equivalent to 5,880 square feet house with 8 feet floor to ceiling height. **It is clear that the bulk/volume and relative scale of this house violates Ordinance No. 2004-46 of Kensington Combining District.** The staff report fails to recognize this. As Mr. Walt Gilfillan of the Kensington Municipal

Advisory Committee stated: “we should not allow a Claremont Hotel to be built in Kensington” during the public hearing for this project.

3. **Incompatible Roof Design –**

The proposed roof design is also incompatible with the standard design principles of construction used in the neighborhood. As shown in the March 21, 2016 Impact Assessment, the proposed 3 feet 3 inch flat roof with parapet is different from the physical characteristics of the roofs in the neighborhood. In particular, the proposed roof design creates a situation where the roof volume is 114.46% more than a pitched roof design for a 4,000 square foot home as shown in the March 17, 2016 building volume calculation. On March 21, 2016 public hearing, Jessica Hitchcock presented the “Kensington Design Principals” with pictures of the neighborhood housing setting, roof and how they try to avoid blocking the neighbor views. Therefore, with these differences relative to neighborhood standards, the promotion of neighborhood compatibility expressed in Ordinance 2004-46, Sub-section B of 84-74.204 and Sub-section E of 84-74-404 are not met.

In addition, the staff report stated that “The design of the new residence is of modern architecture”. The bulk of this roof contributes to the height of house blocking the view and is not comparable to the neighborhood flat roof. It does not comply with the Ordinance 2004-46 Kensington Combining District. The staff report fails to recognize this and stated that” The design is of modern architecture with flat rooflines. The overall perception of scale and bulk is reduced with the elimination of a typical pitched roof.”

4. **Public Safety Hazard And Financial Impact to Neighbors Of A New Retaining Wall**

4.1. **Financial Impacts to Neighbors**

The current proposed development requested a variance to install a retaining wall along the disputed Moran Engineering survey property line that is right on top of the existing sewer pipe. This existing sewer pipe serves three properties in the community for sanitation purposes and is absolutely necessary for these properties. **Since there is a dispute of the property line**, Mr. Edward Dean indicated that he would be willing to resolve this issue (as shown in an E-mail to Dominique Vogepohl and Lot Line Encroachment comments, Exhibit B, C, E and F as shown on the comments from Luk’s November 4, 2016 of the staff report) **and subsequently changed his mind**. The Property line dispute is currently unresolved.

The Applicant should grant a 5’ wide sewer easement along the northerly property lines for the existing sewer pipe. Currently, the sewer pipe is not legally described, but there is a prescriptive right¹ for its use because it has

¹ State law describes prescriptive rights to real property are as follows: the method of acquiring an agreement upon another’s real property by continued and regular use without permission of the property owner for a period of years

continuously served the sanitation needs of owners in uphill lots.

We strongly disagree with the approval by the Zoning Administrator to grant a variance to construct a retaining wall over the existing sewer pipe. The proposed retaining wall variance will limit the ability to repair, maintain, **and replace the sewer pipe, which is more than 60 years old.** It is clear that **substantial financial impact will incur** due to the above activities.

The applicant and staff report failed to establish a hardship to justify granting this variance. A simple grading plan could eliminate the need of this retaining wall variance and would also reduce the amount of earth fill and load over the aging storm drain pipe. We would like to ask

(1) deny the retaining wall variance and substitute with the natural grades,

(2) recommend that the condition to be modified as follows: "Applicant shall grant a 5' wide sewer easement along the northerly property lines adjacent to 153 and 154 Lawson Road property owners. Any new fence or gate construction shall be at least two feet from the edge of the existing sewer pipe. Any damage to the sewer pipe resulting from construction shall be immediately repaired or replaced. If the Applicant fails to complete this work, he shall pay for all the costs associated with the repair or replacement performed by affected parties."

4.2. **Public Safety Hazard and Storm Drain**

There is another aging, 6" storm drain pipe running from the existing inlet just outside the project property on the private driveway directly across the subject property that discharges to the Brown's property on the south. The applicant requested a variance to install a 7.5' retaining wall over the existing aging storm drain pipe which carries storm drain runoff for approximately 2 acres from upper Lawson Road and the properties above at a higher elevation through the end of cul-de-sac to the private driveway into this storm drain system. This was illustrated ten years ago, when during a heavy storm, the inlet at 158 Lawson Road was blocked with debris, which then flooded 154 Lawson Road, the property directly west of the subject property at a lower elevation, causing substantial damage, and subsequently flowed downhill, flooding the lot below 154 Lawson Road. Although the storm drain pipe is not described in the existing easement, it serves a similar purpose of discharging runoff from the above properties. In the event this pipe is damaged, it can cause significant drainage issues for the properties below. Because the Applicant is proposing 7.5' of fill and a 7.5' retaining wall, this will have a significant impact on the ability to maintain this storm drain pipe.

The applicant and staff failed to demonstrate a hardship for granting a variance for the retaining wall facing west. One simple solution is to change the driveway in front of the garage opening to a 10% slope, which could reduce the retaining wall height from 7.5 feet to 4.8 feet. This would simultaneously reduce the dead load over the existing storm drain pipe and the top of the 2:1 slope above Betty and William Webster's property at 55 Highland Blvd. Kensington. The Websters are concerned about seepage occurring and saturating the soil beneath existing aging storm drain pipe, stability of the existing slope and whether the proposed fill and the retaining wall will stand up during an earthquake or heavy storm. Please refer to the alternative grading plan for details.

Based on the above facts, we request to

(1) modify the retaining wall variance height to 4.8 feet maximum with a uniform height across the top of retaining wall facing west and provide 10% slope from the garage toward the top of retaining wall,

(2) modify the condition as follows: "Applicant shall grant a 10' wide storm drainage easement along the existing aging storm drain pipe. Any new retaining wall piers shall be at least two and half feet from the edge of the existing storm drain pipe. Any damage caused by construction shall be immediately repaired or replaced. If the Applicant fails to complete this work, he shall pay for all the costs associated with the repair or replace works performed by the affected parties."

5. Insufficient Analysis And Justification For Cedar Tree Removal –

On the April 4, 2016 Staff Report, a tree permit was granted to remove all 11 protected trees on the property, including two cedar trees that were originally marked for preservation in the March 21, 2016 Staff Report. As explained in earlier staff report, the staff could not find sufficient evidence to support the removal of these two cedar trees. In the most recent report, the two cedars were approved for removal because the Applicant claimed she was allergic to the trees. This rationale seems counterintuitive and incompatible with the County's Tree Preservation Ordinance, which was enacted to preserve heritage trees. Although the Applicant claims they will replace the trees with Japanese maples, maples will never grow to the same height as the existing trees, which provide a natural screen for neighbors.

- Removal of the two cedar trees alone may not actually alleviate allergy concerns as there are at least three cedar trees on the adjacent property, one just below the property, one on the south side, and one on the north side. There are junipers within 1 foot of the property covering most of our front yard. There is significant presence of these trees in the immediate area that could affect someone allergic to cedar trees beyond those that exist on the property.

- Currently, our house is covered with pollen along its western facing wall, on the deck, and at the driveway underneath the deck. All this pollen requires washing down to remove. Upward wind continuously carries pollen from lower lying areas to the top of the hill. Construction of the proposed house will cause the pollen to stop at the face of the house, leading to an even greater risk of allergy suffering.
- Furthermore, the letter from Dr. Russell Leong on December 14, 2015 that confirmed the allergy failed to provide any specifics that could be useful in understanding the scope of the allergy. For example, a skin test only shows that a person is allergic to a specific species but does not indicate the method of contact that triggers the allergy. The Zoning Administrator indicated to me that there is case that a person who comes into contact with the tree will be affected, but the staff fails to demonstrate that this is a sufficient reason to allow cutting down two healthy, protected cedar trees which has taken many years to grow. We are concerned about global warming, sustainability, green building methods, and saving the environment for later generations. Extinguishing these trees is convenient for development, but does not address the intent underpinning why the County's ordinance was established in the first place.
- In addition, in the April 3, 2016 meeting with Edward Dean, William and Betty Webster of 55 Highland Blvd, and myself, Mr. Dean indicated that he intended to save the two cedar trees when the question was raised by Websters and acknowledged that the two trees are healthy and do not interfere with the proposed house.

With this rationale, we believe that choosing to remove two heritage cedar trees on the property on the grounds of allergy is unjustifiable when there are so many additional potential causes of allergy in the area. As my wife suffers from the same allergy, if the County does allow a variance based on this reason, we would like to be afforded the same variance to remove trees that may affect her as well.

6. Variance Requests Are Not Justifiable And Do Not Meet The Variance Tests.

- 6.1 The applicant has not met the tests and the proposed development does not fully satisfy all three requirements for the variance requests of: (a) constructing a three-story building, (b) removing protected trees, or (c) reducing setback requirements.
- A. We do not believe that the project proposed by Edward Dean and Darlene Tong ("Applicant") conform to the Kensington Combining District's goals or the intent and purpose of the County zoning ordinance, and do not satisfy the requirements necessary for a variance. Please also see attached letter from Land Use Attorney Ira James Harris.

- B. Our review of the three criteria that must be met in order for a variance to be granted for the development at 158 Lawson Road (“Proposed Project”) are as follows. Generally, variances are granted where reasonable development of a property is determined to be consistent with that in the surrounding area, but strict application of the respective zoning code hinders the development due to the unique characteristic of the property. Pursuant to Section 26-2.2006 of the County ordinance, three findings must exist for approval of a variance application:
1. That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.
 2. That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.
 3. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.
- C. Yes, exceptions or variances can arise, but they are intended for minor variations to the existing zoning and/or building standards, where special circumstances exist for a different application on a particular basis to avoid undue hardship. *Government Code § 65906; Hamilton v. Board of Supervisors* (1969) 269 Cal.App.2d 64, 66; and *Orinda Ass’n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1162-1163. These very principles are echoed in the County Ordinance at Section 26-2.2006, which states unequivocally that three findings must exist for approval of a variance application: **The Applicant has failed to prove hardship.**

We respectfully request that the Commission grant our appeal as we believe that the proponent can work with staff to reduce his floor height to 9 feet between floors, reduce the mass presented by the rectangular structure with a 20 foot 9 inch living room height to 17 feet and articulate the design so that it minimizes the impact to our view and access to light while still getting him his maximum Floor Area Ratio.

We would like to see:

- An 18' tall, two story house over garage as proposed as the final building height, with a flat roof so that the proposed design will maintain the desired modern style
- 9' floor to floor on all floors, which is common to our neighborhood to preserve views
- A garage and first finish floor at 793'
- The first floor finish grade at 802'
- The Second floor at elevation 811'
- The top of the roof at 820'
- Easements established to protect the existing sewer and drainage pipes
- Denial of the variance for property line retaining walls over existing sewer pipe as the grading plan can be modified to alleviate the need for them
- Lower the retaining wall at the parking back out to lessen the impact of soil load on existing storm drain
- Preservation of protected mature and healthy Cedar Trees (2 total)

This would allow us to retain our views and privacy, and allow the proposed development to remain consistent with the building heights and bulk in the surrounding neighborhood. This would be a win-win solution.

Very truly yours,

George Luk, Registered Civil Engineer
and Anita Luk, his Wife

cc. Ira James Harris, Attorney
Carl Campos, LCA Architects Inc.

Attachments:

1. Letter from Ira James Harris to Dominique Vogelpohl, dated March 16, 2016, 4 pages
2. Exhibit A-1 , A-2 and A-3 of Section X-X, 2 pages
3. Exhibit 1 – south views, 1 page
4. Email from Andrew Mixer to Dominique Vogelpohl, dated March 31, 2016, 3 pages
5. Alternative Grading Plan, 1 page
6. Proposed Lot Line Adjustment, 1 page

Law Offices of
IRA JAMES HARRIS

March 16, 2016

Via E-Mail: Dominique.vogelpohl@dcd.cccounty.us

Dominique Vogelpohl, Planner
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553

Re: Applicants: Edward Dean and Darlene Tong
Address: 0 Lawson Road, Kensington, CA
APN: 572-034-018
Application: DP 15-3030
Our File No. 1025.4

Dear Ms. Vogelpohl:

As you know this office represents George and Anita Luk, the owners of 153 Lawson Road, Kensington, California the residence immediately uphill to the northeast of the proposed development.

RELEVANT BACKGROUND:

The Luks purchased, planned and constructed a residence on 153 Lawson over 20 years ago. At that time they sought to take advantage of the views and light as the existing trees and vegetation provided relatively unobstructed and panoramic views of the upslope and downslope areas, the skyline, distant cities, hillside terrain, wooded canyons, ridges and bodies of water. The Luks approved plans included a number of large windows in the master bedroom and master bath to bring that light and views into their home. They also planned a deck off the southwestern side of the home for these same reasons.

The Luks like many on the community worked within the development limitations with an eye toward minimizing the impacts on their neighbors. They recognized the importance of these concerns well before the Kensington District Ordinance came into law.

It is with that backdrop that I want to address the Kent Tong proposal as it not only pushes the limits on height and bulk, it also seeks various exceptions or variances which the facts and the law simply cannot justify.

One Camino Sobrante, Suite 208, Orinda, CA 94563
Mailing Address: P.O. Box 1478, Orinda, CA 94563
Telephone (925) 258-5100 • Facsimile (925) 281-4977

ANALYSIS:

The Staff Report seems to overlook many issues in stretching to find that the physical constraints caused by the steep average slope and sewer easement on the proposed lot somehow justifies any and all exceptions. That is simply not the case.

The average slope of this lot is not unlike those of many in the neighborhood. The constrained building envelope is in fact larger than those previously faced by many of the owners of the surrounding lots.

Thus, it difficult to imagine how this alleged constraint justifies the following:

1. A structure with 4,224 square feet some 224 square feet over the maximum floor area ratio on this 13,020 square foot lot.
2. A 3 story structure standing 34.5 feet above the concrete pad with solar panels within a 3.5 foot parapet, with 11 feet floor to floor spans and an oversized 20 foot 9 inch living room ceiling, when 2.5 stories is the maximum limit and 9 foot floor spans are common throughout the neighborhood.
3. A flat rectangular structure of a significant mass at 34.5 feet that greatly exceeds what a typical 35 foot pitched roof structure would present in the way of obstruction of views and bulk to the public.

There is no vested right to develop the property as proposed. *Gilliland v. County of Los Angeles* (1981) 126 Cal.App.3d 610, 617; and *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465. Therefore, even where a variance is not needed, the building limitations exist as maximums not entitlements as the planning body must still weigh the impacts on the community and neighboring properties from the proposed development.

Chapter 84-74 of the Kensington District Ordinance specifically states as one of its purposes that it is to MINIMIZE the impacts on the surrounding properties by preserving the views, light and privacy rights enjoyed by the existing residences through ensuring that the proposed development is compatible with the neighborhood in bulk and scale.

Yes, exceptions or variances can arise, but they are intended for minor variations to the existing zoning and/or building standards, where special circumstances exist for a different application on a particular basis to avoid undue hardship. *Government Code* § 65906; *Hamilton v. Board of Supervisors* (1969) 269 Cal.App.2d 64, 66; and *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1162-1163. These very principles are echoed in the County Ordinance at Section 26-2.2006, which states unequivocally that three findings must exist for approval of a variance application:

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- A. That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.
- B. That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.
- C. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.

Here, the Staff Report emphasizes that the proposed project is at a lower elevation than the Luk residence, and therefore improperly implies that the views and privacy concerns somehow lack merit.

While the Luk pad sits at an elevation of 809.6 and the proposed project pad is lower at an 803.3 elevation, the Staff Report fails to appreciate that the roof of the 3 story structure RISES to 825.75 while the Luk roof line sits at 826.5 - **JUST 9 INCHES LOWER!**

The large rectangular structure will clearly block light and views from the Luk residence. These views are not only from the rear deck. They include views from the Master Bedroom and bath that was a large part of their building plans some 20 years ago. Windows from the proposed structure also appear to provide views into the lower and upper bathrooms that face out the southwest side of the Luk residence. The proposed Japanese maple trees are not an adequate solution to this privacy issue.

The Staff Report down plays the Luk views claiming that they are not PROTECTED VIEWS when in fact the views are of down and upslope scenes, distant and panoramic in nature and include skylines, distant cities, hillside terrain, wooded canyons, ridges and bodies of water all as specifically defined and required to be protected within the KENSINGTON DISTRICT ORDINANCE.

Finally, the Staff Report points to a couple of cedar trees that already block the Luk's view as if that somehow justifies a further obstruction by the proposed structure. We ask that you keep in mind that these trees were not there or as large when the Luks purchased some 20 plus years ago. As a result, pursuant to Chapter 816-2 the Luks have the right to petition for trimming and/or removal of such trees to restore those views they enjoyed some 20 years ago but said same views may not be restored once the proposed structure is built.

There simply is no reason that the proponent cannot reduce his floor span to 9 feet between floors, reduce the mass presented by the rectangular structure with a 20 foot 9 inch living room height and articulate the design so that it minimizes the impact to the Luk's view and access to light while still getting his maximum Floor Area Ratio.

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Mailing Address: P.O. Box 1478, Orinda, CA 94563
Telephone (925) 258-5100 • Facsimile (925) 281-4977

Photographic and illustrative exhibits will be presented at the time of the hearing to support these positions.

If you have any questions please feel free to contact the undersigned.

Very truly yours,

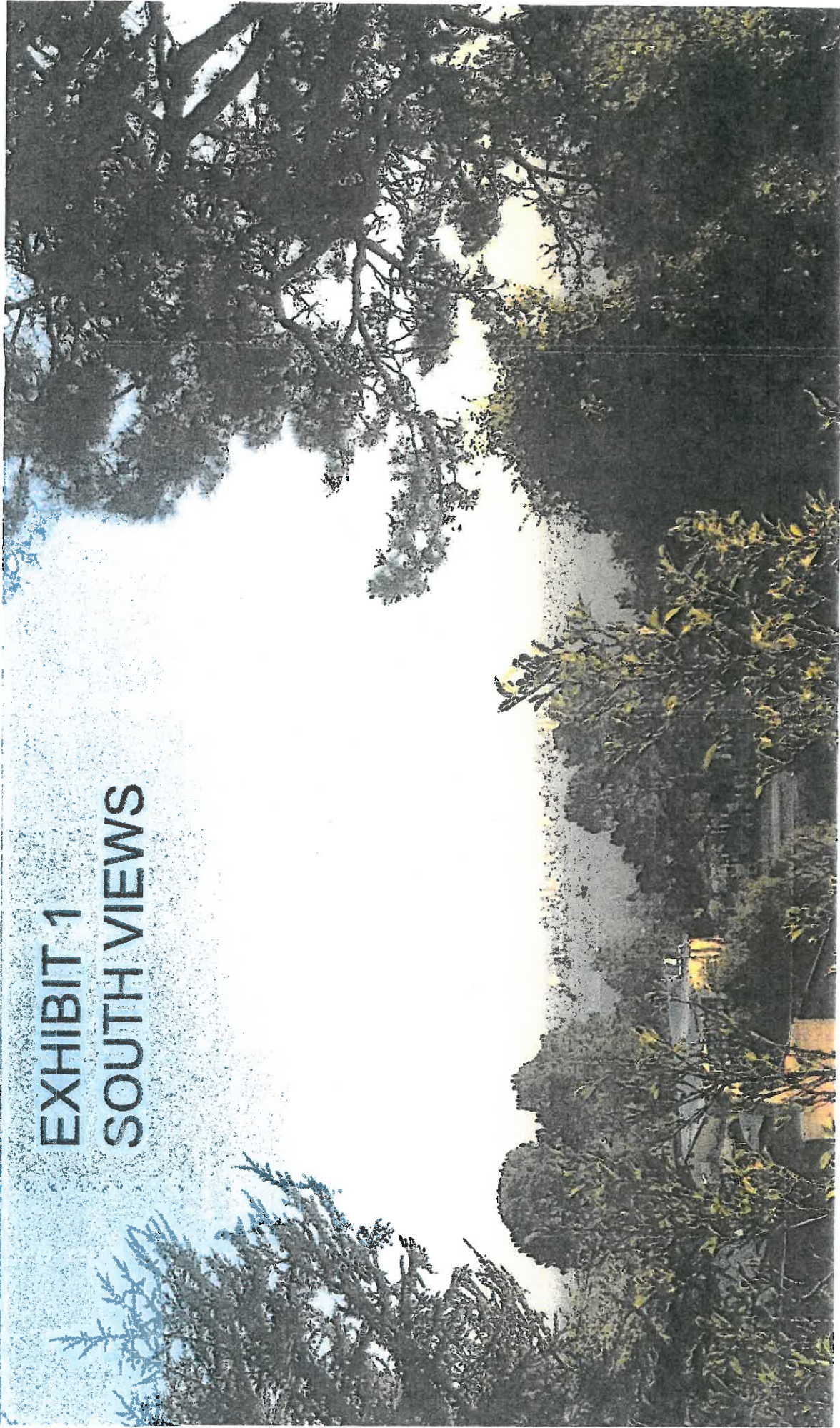
Law Offices of
IRA JAMES HARRIS

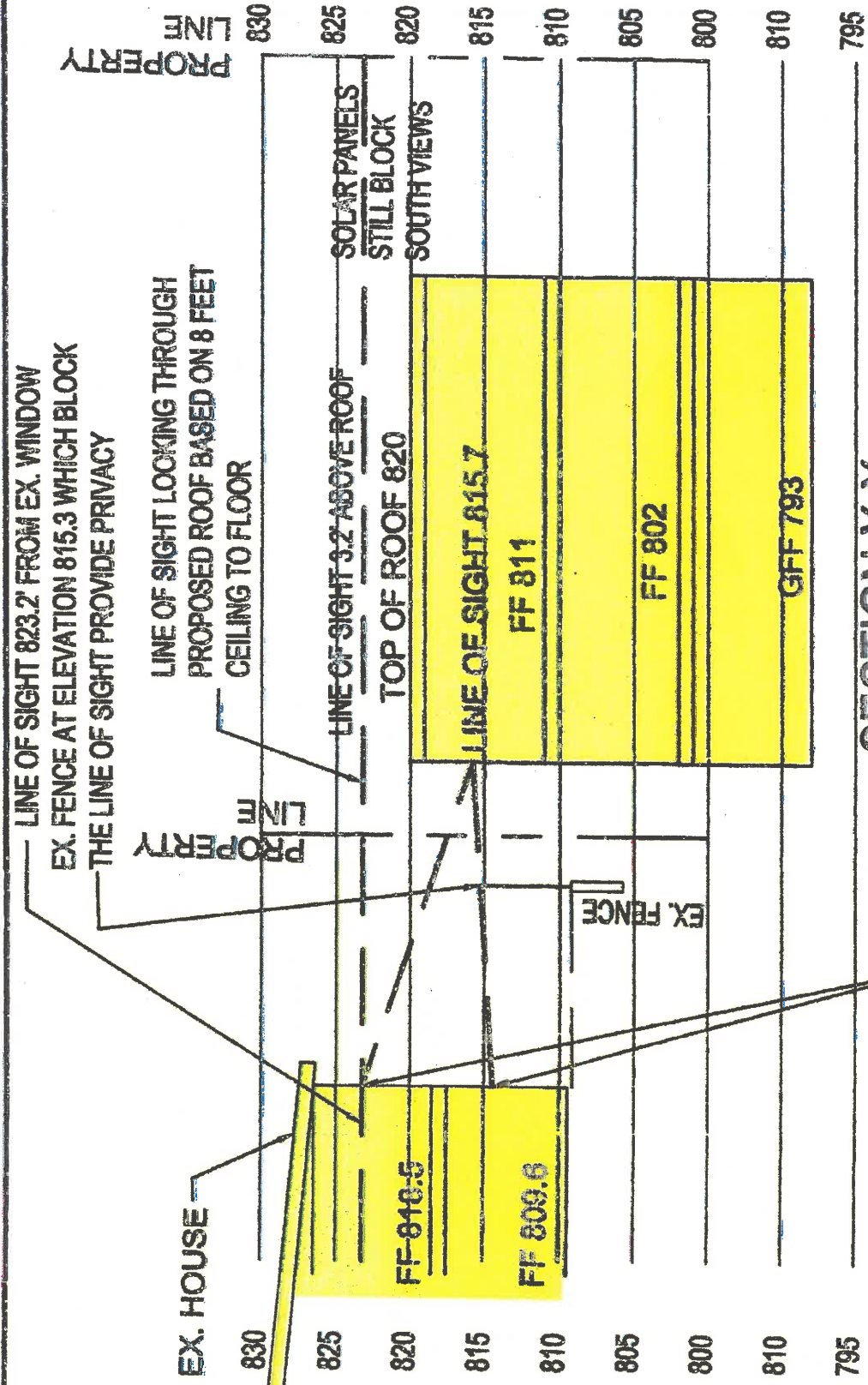
Ira James Harris

cc. Clients

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Mailing Address: P.O. Box 1478, Orinda, CA 94563
Telephone (925) 258-5100 • Facsimile (925) 281-4977

EXHIBIT 1
SOUTH VIEWS





LINE OF SIGHT 823.2' FROM EX. WINDOW
 EX. FENCE AT ELEVATION 815.3 WHICH BLOCK
 THE LINE OF SIGHT PROVIDE PRIVACY

LINE OF SIGHT LOOKING THROUGH
 PROPOSED ROOF BASED ON 8 FEET
 CEILING TO FLOOR

LINE OF SIGHT 3.2 ABOVE ROOF
 TOP OF ROOF 820

LINE OF SIGHT 815.7

SECTION X-X

BASED ON 8 FEET FLOOR TO CEILING AND
 TOTAL BUILDING HEIGHT IS 27 FEET FROM
 GARAGE

LOOKING INTO OUR
 BATHROOM SLIDING
 DOOR AND WINDOWS

EXHIBIT A-3

SCALE 1"=10'

OCTOBER 27, 2015

SNAPSHOT: COMB-SECTION

JOB NO. 50049-10/2015-10-14-bdry-topo/ROTATED-MORAN-COORD/ROTATED-BDRY-COMB-DWG



George Luk <lukassoc.george@gmail.com>

FW: County File #DP15-3030 - 158 Lawson Rd. Kensington, CA - APN: 572-034-018 - Objection to Approval

Andrew K Mixer <akmixer@gmail.com>

Thu, Mar 31, 2016 at 8:33 PM

To: Jessica Hitchcock <jessluk@gmail.com>, Anita Luk <168.luk@gmail.com>, George Luk <lukassoc.george@gmail.com>

Hello neighbors,

Please see below my communication to Ms. Vogelpohl regarding Ed Dean's proposed project.

I will return your information packet tomorrow evening, if that is ok with you.

Cheers,

Andrew

From: Andrew K Mixer [mailto:akmixer@gmail.com]

Sent: Thursday, March 31, 2016 8:25 PM

To: dominique.vogelpohl@dcd.cccounty.us

Subject: County File #DP15-3030 - 158 Lawson Rd. Kensington, CA - APN: 572-034-018 - Objection to Approval

Dear Ms. Vogelpohl,

I live in the immediate proximity of 158 Lawson Road in Kensington. The property owner of 158 Lawson Road is seeking approval for the construction of a single family residence on a currently vacant parcel of land.

The owner, Mr. Edward Dean, kindly walked me through the parcel which has story poles set up by his surveyor delineating the location and height of the proposed structure. He also showed me a model of the structure which he had constructed and which demonstrated the 3 stories (running through the elevator) of the structure and its overall mass. The combination of the story poles and model clearly showed the highly

negative impact the structure would have on the house on the neighboring property to the north at 153 Lawson Road. The proposed structure, in the owner's own words, would cut off the view towards the south, southwest of 153 Lawson Rd. As well, it is easy to extrapolate, whilst on site, the significant diminution of solar access and light caused by the tremendous height, mass and proximity of the proposed structure to the neighbor's house at 153 Lawson Road.

It is my opinion that the proposed structure is out of relative scale with neighboring residences, unfairly would damage the view of the northerly neighbor and would cut off that neighbor's solar gain and light for a significant period during the day (particularly in the winter months). These negative impacts would reduce the value of the property at 153 Lawson Road and would also unnecessarily compromise the occupant's life style.

It appears that the bulk, and height of the proposed structure necessitate positioning it where it was demonstrated to me with the outcome of causing damage to the neighbor.

Allowing such action may well set a precedent that would perpetuate and allow further loss of value and quality of life in the community of Kensington as others seek to develop property.

The owner of 158 Lawson Road has a clear and uncontested right to build a residence on his parcel. It is the mass, height and positioning of the structure which are a significant problem.

It is my understanding that there is to be further review on April 4, 2016 of the request for approval of the project. I object to approval of the project as it was demonstrated to me. I suggest that the owner reduce the magnitude of the structure.

Other neighbors and I welcome Mr. Dean to the neighborhood and would be most enthusiastic about his joining us on Lawson Road were he to consider the rights and interests of those who live close to his parcel.

Ms. Vogelwohl, please feel free to contact me should you have any questions about my concerns and objection to approval of the proposed project.

Sincerely,

Andrew

Andrew K. Mixer

146 Lawson Rd.

Kensington, CA 94707

510 544-1590

akmixer@gmail.com

Appeal Letter from the
Applicants/Property
Owners

Mr. and Mrs. Edward Dean & Darlene
Tong

158 Lawson Road, Kensington

Dated: April 14, 2016

14 April 2016

CONTRA COSTA
COUNTY

FROM: Edward Dean and Darlene Tong
2430 5th Street, Studio M
Berkeley, CA 94710
510-644-2814

2016 APR 14 A 9:41
DP15-3030
DEPARTMENT OF
CONSERVATION
AND DEVELOPMENT

TO: Department of Conservation and Development
Contra Costa County

RE: Development Plan for New House at 158 Lawson Road, Kensington
County File #DP15-3030

Appeal of One (1) Condition of Approval

To Whom It May Concern:

On April 4, 2016, our project at 158 Lawson Road in Kensington was approved at the Zoning Administrator's Meeting (presided over by Telma Moreira, Principal Planner), subject to the subsequently issued document, "Revised Findings and Conditions of Approval (COA) for County File #DP15-3030".

In our subsequent review of these COAs, we find that we must appeal one condition that was added as part of the revisions to the original staff recommendations, namely:

"As originally proposed with a maximum height of 25-feet, has been conditioned to a 3-foot reduction and not to exceed the 825-foot elevation as measured from the top of the parapet."

We are appealing this revision, which essentially requires a reduction in the building height of 3'-0", which will adversely affect the cost of construction or the quality of the interior space as originally designed, while not mitigating to any degree the effects related to non-primary view blockage or solar access for the house at 153 Lawson Road.

- The height limit at this site is 35 feet. The new condition and requirement of the limit of building height to 22 feet is an onerous and unjustified imposition of a much lower height limit. There is no technical justification for the imposition of this height limit, for the following reasons:
 - The 3'-0" reduction in height does not mitigate, eliminate or reduce the blockage of a non-primary view from the side of the house at 153 Lawson Road. This fact was demonstrated clearly with measured drawings shown at the hearing.
 - The 3'-0" reduction in height does not mitigate to any significant degree the amount of sunlight reaching windows or the terrace on the side of the house at 153 Lawson Road. This can be shown with additional diagrams and calculations showing solar access to those building features.
 - The distance between the two houses is required to be a minimum of 22 feet, rather than the normal 10' resulting from the two side-yard setback requirements, because of the existence of a 12'-wide lot line adjustment between the sides of both houses. (See site survey.) Thus, the sunlight access to the side of the house at 153 Lawson Road is already significantly greater than would normally be the case with a standard 10-foot separation of the two houses. This greater distance also contributes to the insignificant impact of lowering the height of the new house by 3'-0".

- Since the new house at 158 Lawson Road is designed to be wheelchair accessible with the ground floor at existing grade, the condition of lowering the height by 3'-0" will require one or more of the following design changes to the house:
 - Excavate the site below the existing grade to lower the overall ground elevation. While this maintains the original design of ceiling heights, the cost of excavation would increase significantly. In addition, there are undesirable side-effects of this lowering of the main ground elevation:
 - The driveway ramp to the below-grade (parking) level would increase significantly in steepness in order to allow clearance under the structure of the lowered first floor (ground) level at the edge of the deck. This increase in slope makes the driveway less safe and more difficult to navigate.
 - The site retaining walls at the north and east sides of the property would increase in height by 3'-0", significantly increasing project cost and creating a "canyon" effect at those parts of the site.
 - Reduce the parapet height by 1'-0". This reduction would create roof waterproofing problems for the flat roofing membrane as no counter-flashing could be installed.
 - Introduce steel floor and roof structure to reduce the depth of structure required at the second floor and roof. This would significantly increase the cost of the structure.
 - Reduce ceiling heights, resulting in reduction of interior spatial quality originally envisioned by the owner/architect and generally considered sub-standard in modern house design. The ceiling heights of the house as designed are the same as those of the two houses that the two owners have lived in previously for more than 20 years. This type of interior space is what they are used to and what they regard as quality interior space.

We were not afforded the opportunity to present these arguments at the Hearing since we were surprised by this particular Condition and preferred to have the overall approval for the project. Upon further consideration, we have decided that we wish to appeal this one Condition for the project.

Sincerely,


Darlene Tong


Edward Dean

- Exhibit A -
Photographs Provided by
Luk Residence

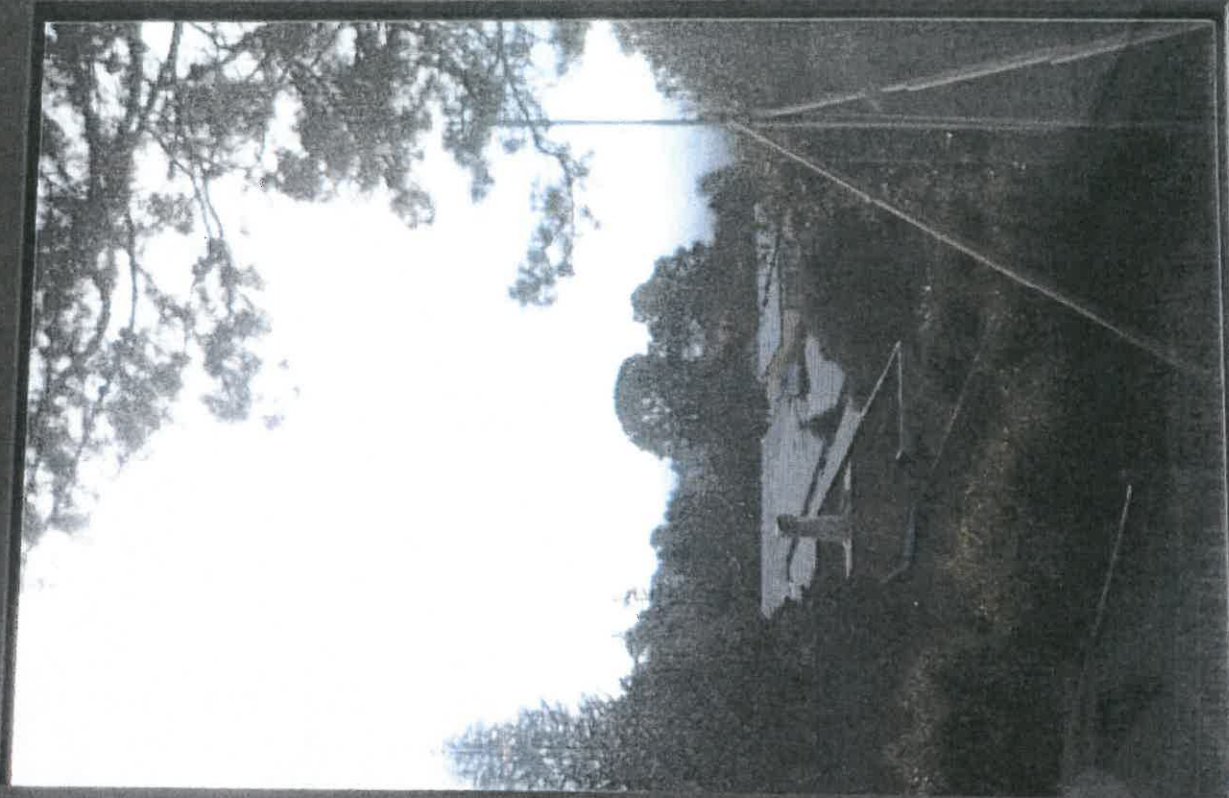
153 Lawson Road, Kensington



upstairs rear deck



Upstairs rear deck



UPstairs Master bath room



Woods behind the gymnasium



Opstairs master bedroom

- Exhibit B -
Arborist Report

Dated: December 10, 2015

ARBORIST REPORT

**158 LAWSON ROAD
KENSINGTON, CALIFORNIA**

**Prepared for:
Darlene Tong & Edward Dean**

**Written by:
Peter K. Rudy
Certified Arborist #WC3166**

December 10, 2015

Purpose and Scope of Project:

This report will evaluate and comment on all trees located at:
158 Lawson Road
Kensington, California

The '**Observation and Discussion**' section will go over the general health of the trees on the property, including the surrounding habitat, basic root conditions and overall tree conditions.

The '**Overall health and comments**' section is presented in graph form, briefly discussing and assessing each tree on the property.

Breakdown by species of trees on property that are contained in this report:

3 Monterey Pine (Pinus radiata) labeled on graph as: MP
2 California Live Oak (Quercus agrifolia) labeled on graph as CLO
2 Japanese Black Pine (Pinus thunbergii) labeled on graph as JBP
1 Red Cedar (Juniperus virginiana) labeled on graph as RC
1 Atlas Cedar (Cedrus atlantica) labeled on graph as AC
2 Honey Locust (Gleditsia triacanthos) labeled on graph as HL
1 Eugenia (Syzygium paniculatum) labeled as EG
2 Hollywood Juniper (Juniperus chinensis 'Torulosa')
3 Deciduous Fruit trees: Apple, Pear and Plum

There are a number of smaller trees on this property (under 4" dbh), they include:

Ginkgo
Locust
Bamboo
California Live Oak
Magnolia soulangeana

Observations and Discussion:

The trees on this property have apparently had very little to no care for at least the past ten years. All the detectable work in the last 10 years has had to do with maintaining neighboring views.

There is such thick Ivy on many of the trees that it was impossible to measure anything close to an exact *dbh* (diameter at breast height) or have a clear view and evaluation of the base. There are dead trees and many of the trees are structurally weak and are ready to fail. There are no original trees to this property apparently now remaining. At one time, the property was landscaped with many different plant and tree varieties and hardscape. Many of the trees were cut to the ground and have since regenerated and come back with multiple stems from the stump. Tree locations for the most part were not well considered and larger trees were planted which eventually shaded smaller trees. This is a likely reason why trees were cut down, besides the view concerns.

Since all the trees on this property (with the exception of the Red and Atlas Cedar) have been topped or windowed for view and then not maintained, they are all compromised structurally. It is important to understand the distinction between structural health and biological health in trees. Most of the trees on this property are vigorous, but they are compromised structurally. Many of the trees on this property are not appropriate to their planting location. 'Right tree, right location' was not considered.

General Conditions:

The property is located on a SW facing slope. The slope opens up a beautiful western view of the San Francisco Bay. The soil is classic Berkeley hills clay, although it appears to be fairly well-draining substrate. The site lends itself to landscaping success with the amount of full sun that it receives. Most any plant that is appropriate for this area could do well in this location.

Individual Trees:

The Red Cedar and Atlas Cedar are both structurally healthy and vigorous trees. These trees were not topped and they have not had other work done on them to impair their natural growth and natural form. Although they are not native to this area, both varieties have naturalized well to the bay area.

The Monterey Pine trees were previously topped and as a result have grown large lateral branches below the topping cut. Both trees have reached senescence and are no longer putting on so much new growth, but holding the older needles. There is a bit of Pine Pitch Canker evident, which will stress the tree more and more over time. They are slowing down biologically right now and are showing signs of stress.

The indicators of stress include the lack of new needle growth, the limited growth between the branch swirls and the pine pitch canker noticeable in the branch tips. Monterey Pines can typically live between 60 – 80 years if maintained and healthy. These trees are likely close to 60 years old. They are full of dead wood and the lateral branches that grew below the topping cuts are very end heavy. The stress at the branch connection point at the trunk is excessive and weak. The main attachment for the large scaffold branches is the topping cut on the trunk, which makes that location a likely one to fail. These trees should not be counted on surviving for any more than 5 years and the likelihood of a major failure before that time is great. The problem is that the tree needs all its needles to promote photosynthesis and good health, but in order to improve its structural condition they would need to be lightened significantly. These trees are not strong enough to build a new garden project around and expect them to get through a construction project.

The Honey Locust trees are not doing well right now. One is dead and the other is dying. They have suffered over time and are not getting to the point where the still alive tree has small and limited foliage. They have been topped and grew out of this with multiples shoots, but have not been able to sustain any kind of good health.

The Japanese Black Pines are both covered in Ivy and have limited foliage. The Ivy is thick and has shaded out all the lower branching on both trees. What is still alive on these trees is about 5 - 10% of a healthy Black Pine.

The California Live Oak trees are important primarily because of their species. They have been cut to the ground and have stump sprouted.

Protection Strategies for any trees to be saved during construction:

All considerations during the construction process are related primarily to the protections of trees closest to the construction activities.

The four main cornerstones for tree protection on this project are:

1. **Soil Compaction and root damage**
2. **Large Equipment**
3. **Soil Movement**
4. **Drainage Patterns**

Soil Compaction around any tree will compromise the roots ability to perform and operate optimally. Soil compaction can happen very fast and is not reversible. A truckload of rock for example, over a sensitive root zone will compact the soil immediately. Even if the rock is then immediately removed, the soil will still be compacted. So, it is imperative that the actively functioning roots are left alone throughout the construction.

Primary root functions are:

- a) Structural components (holding up the tree)
- b) Transporters of water and nutrients
- c) Providing storage capabilities

Compaction of roots in the active root zone will reduce all these functions. Therefore, anything under the drip line of a tree can be very damaging to the trees general health. This would include:

- a) A roadway from one area of the property to another right under the tree
- b) Dirt piles under a tree
- c) Tool Storage
- d) Any other disruption within the minimum clearance area of a drip line must be avoided.

The following page 5 contains the table listing the basic sizing and condition of each tree on the property. For ease of review, the trees are numbered also on the Tree Removal Plan submitted by the property Owner, attached to this arborist report.

TABLE KEY:

dbh = Diameter at breast height
OH= Overall health:

- 1 = Standing Hazard
- 2= Fair shape but struggling
- 3= Fine shape
- 4= Outstanding
- 5= Perfect specimen tree

#	SPECIES	DBH	OH	COMMENTS & RECOMMENDATIONS
1	Red Cedar	16"	3.5	Located along S/E property line. Good biological health. Some structural issues with the split trunk and included bark. Tree may need to be contained if it is kept from stretching too far into neighboring property
2	Atlas Cedar	24"	3.5	Also located along south / east border of property. This is a very nice tree that has not been topped or poorly treated.
3	Mont. Pine	42.5"	2.5	This tree has been topped and is a structural hazard. The wishbone shape is ripe for failure
4	Mont. Pine	29"	2.5	Same comments as #3. This tree has excessive weight and pressure on laterals to the south.
5	Mont. Pine	6.5"	3	This is a small Monterey Pine tree. It likely is in the way of a neighboring view, so, the planting area may be unfortunate should the tree be desirable to save.
6	Black Pine	10"	2-	This tree is covered in ivy and does not have much foliage left that can be seen
7	Honey Locust	20"	2-	This tree is in very weak condition
8	Eugenia	48" multi-stem	2+	This is a multi-stem Eugenia that was previously topped and then let go with over 30 suckers making up the crown
9	Oak	6" x 3 multi-stem	3	This is a California Live Oak tree that was previously cut down to the ground and let go with the 3 stems. This tree could be improved structurally and aesthetically
10	Juniper	8" x 6 multi-stem	3	Tree number 10 and 11 are both 'Hollywood' Junipers. Both trees have been topped, they have multiple stems and the tops have been cut of numerous times (view). They are still vigorous, but weakly connected at this point as a result of the past work. Located on lower slope.
11	Juniper	8"-10" x 7 multi-stem	3	Same comments as #10, also; Ivy in crown
12	Honey Locust (Small)	Multiple stems	2	This tree is covered in ivy. It has been topped. This tree could be dead. At this time, the tree does not have any foliage, but it is also the winter. On lower part of slope
13	Apple (small)	10+ stems	2	All vertical growth, stump sprouting.
14	Pear (small)	Diffuse crown	3	This is a nice fruit tree with a fine shape and good health. The tree's location was not considered when it was planted, and it does not have a strong future as a result.



Tony Dean Residence
 181 Larkwood Road
 Menlo Park, CA 94025

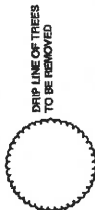
SHEET TITLE
**SITE CLEARANCE &
 DEMOLITION PLAN**

AD-01

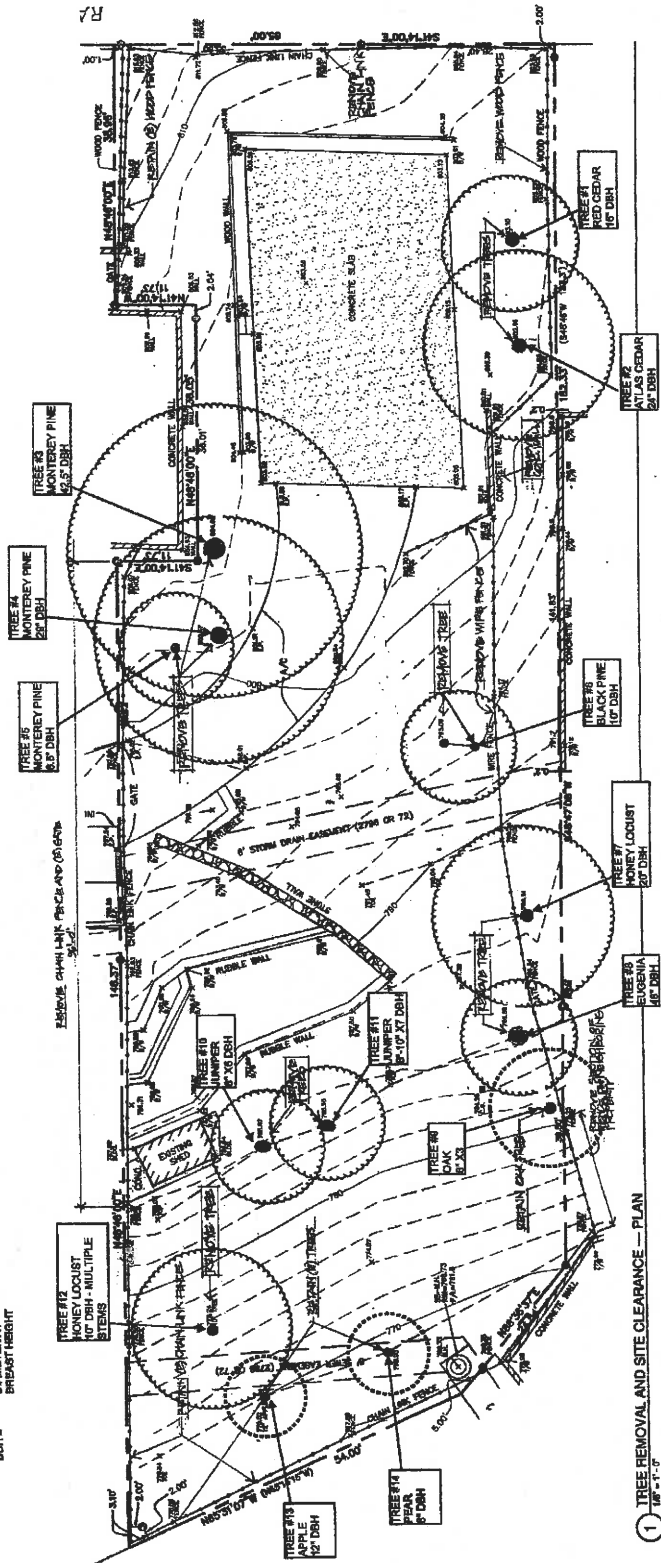
NOTES

1. Remove existing trees as noted in this drawing and disclose of all debris on-site. The 100 foot radius to be removed. See Section 02110 for removal of trees and Section 02120 for removal of debris.
2. Unless otherwise noted, demolition work becomes property of Contractor.
3. Remove all existing water pipes and electrical conduits to edge of property. New service to site to be installed. See Utility Plan AD-02.
4. Remove fence and concrete wall as indicated in this drawing.
5. Remove all above walls, rubble walls, concrete slabs and JAC driveway. Remove all existing materials and debris. See Section 02110 for removal of debris. Remove materials where feasibility otherwise, depends on an approved landfill.

KEY



DBH = DIAMETER AT BREAST HEIGHT



1 TREE REMOVAL AND SITE CLEARANCE — PLAN
 1/8" = 1'-0"

The following are photos of a number of the trees on the property along with examples and results of topping, stump sprouting and Ivy allowed to grow uncontained and it killing out foliage and trees.

The first shot is of the **Monterey Pine trees numbered 3, 4 and 5** (very small in lower left of photo). The topping cuts are clearly seen and the result of extended lateral branches growing from the decayed location of the topping cut. The attachment location of these branches is an area of potential failure.

Photo 2 and 3 are of the **Honey Locust trees (# 7 and #12)**. They are both being strangled by Ivy, it appears that #12 is dead and #7 is struggling.

Photo 4 is of the 2 **Hollywood Junipers** (Trees #10 and #11).

The 5 shot is of **California Live Oak**; Tree #9. The photo shows the 3 stems branching from the stump of the tree.

Photo 6 is the **Eugenia** (Tree #8) with vigorous stump sprouting.

Photo 7 is the **Black Pine** (Tree #6) being strangled by Ivy.

Photo 8 is the **Red Cedar** (Tree #1) with good structure and vigor.



Photo No. 1: Trees #3, #4, #5, Monterey Pines



Photo No. 2: Tree #7, Honey Locust Tree

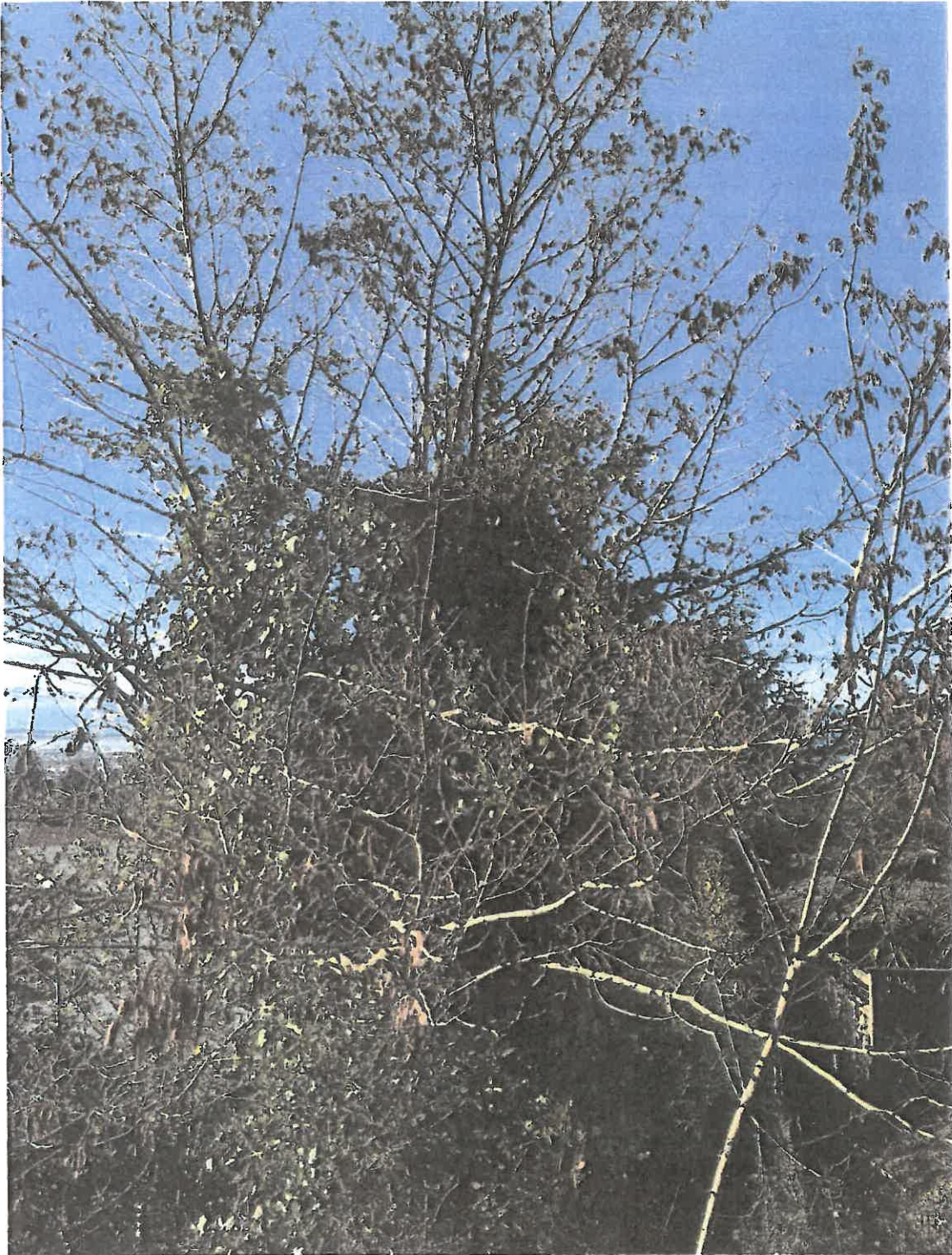


Photo No. 3: Tree #12, Honey Locust Tree



Photo No. 4: Trees #10 and #11: Hollywood Juniper Trees



Photo No. 5: Tree #9, California Live Oak



Photo No. 6: Tree #8, Eugenia



Photo No. 7: Tree #6, Black Pine



Photo No. 8: Tree #1, Red Cedar

- Exhibit C -

Previous Zoning
Administrator Reports

Zoning Administrator hearing: March 21, 2016

Zoning Administrator hearing: April 4, 2016



Department of Conservation and Development
County Zoning Administrator

Monday, March 21, 2016 – 1:30 .P.M.

STAFF REPORT

Agenda Item # _____

Project Title: Hearing for New Single-Family Residence within the Kensington Combining District

County File(s): #DP15-3030

Applicants/Owners: Edward Dean and Darlene Tong

Zoning/General Plan: Kensington Combining District (-K), Single-Family Residential District (R-6), and Tree Obstruction of Views Combining District (-TOV) / Single-Family Residential High-Density (SH)

Site Address/Location: 0 Lawson Road, Kensington; (APN: 572-034-018)

California Environmental Quality Act (CEQA) Status: Exempt under CEQA Guidelines, Section 15303(a), regarding new construction or conversion of small structures.

Project Planner: Dominique Vogelpohl, Planner I (925) 674-7814

Staff Recommendation: Approve (See section II for full recommendation)

I. PROJECT SUMMARY

A hearing for a proposed single-family residence, and detached accessory building, totaling 4,224 in gross floor area (where the Kensington Combining District gross floor area threshold is 4,000 square-feet). The project includes variance requests to allow: 3 stories (where 2 ½ stories is the maximum), a 3-foot front yard setback (where 20-feet is required) for a retaining wall with a maximum height of 7½-feet, a 0-foot side yard (where 5-feet is required) for a retaining wall with a maximum height of 4-feet, and a 0-foot rear yard (where 3-feet is required) for a fence with a maximum height of 6-feet, 9-inches. The project also includes a tree permit request to remove 11 code-protected trees, and work within the drip lines of 2 code-protected trees.

II. RECOMMENDATION

Staff recommends the Zoning Administrator APPROVE County File #DP15-3030, based on the attached findings and subject to the attached conditions of approval. The two (2) cedar trees (trees #1-2 as labeled in the arborist report) requested to be removed shall be preserved and protected, in addition to the coast live oak and apple tree.

III. GENERAL INFORMATION

- A. General Plan: The subject property is located within the Single-Family Residential, High-Density (SH) General Plan Land Use designation.
- B. Zoning: The subject property is located within the Kensington Combining District (-K), Single-Family Residential District (R-6), and Tree Obstruction of Views Combining District (-TOV).
- C. Environmental Review: The proposed project is exempt under CEQA Guidelines, Section 15303(a), regarding "New Construction or Conversion of Small Structures," which exempts one single-family residence, or a second dwelling unit in a residential zone.
- D. Lot Creation: The subject property is Assessor's Parcel Number 572-034-018. This parcel was originally part of a 0.78-acre parcel that was a portion of Lot "K" of Subdivision of Lot 1, San Pablo Rancho, filed on January 16, 1907.
- E. Previous Applications:
 - 1) LL95-0028: This Lot Line Adjustment application was a request to transfer approximately 447 square-feet of property from APN: 572-034-013 (now APN: 572-043-018) to APN: 572-034-009 (now APN: 572-034-017). The Lot Line Adjustment application was approved on July 20, 1995.

IV. SITE/AREA DESCRIPTION

The subject property is a 13,020 square-foot vacant lot with only retaining walls, a concrete pad, and multiple trees of various species throughout the site. The property is located at the end of a 15-foot wide private easement, at the end of Lawson Road. Like all of the residences along Lawson Road, the subject property is

on a downslope. It is at a lower elevation than the adjacent residences to the north and east. There are existing, mature trees separating the subject property from the residences to the south. And because the west half of the property slopes dramatically, the immediate neighboring residence to the west is at a much lower elevation.

The subject property is laid out inconsistent with the surrounding neighborhood. It is linear in nature, creating a rectangular shape. The subject property is 13,020 square-feet in lot area, but is shallow in comparison to other surrounding properties with a lot depth of 65-feet. The point of access is from the end of the private easement at the center of the subject property. The topography slopes downward from east to west. In the center of the property, the downslope has an average slope of approximately 20%. This portion of the property is adjacent to the easement, and is the only accessible point in relation to parking. The west end of the subject property is extremely difficult to develop because of an existing 5-foot wide sewer easement and the average slope being approximately 57%.

There was a previously approved Lot Line Adjustment application (LL95-0028) to transfer approximately 447 square-feet of lot area from the subject property to the neighboring property. The Lot Line Adjustment application was approved on July 20, 1995. The Lot Line Adjustment has since been recorded, altering the northern portion of the subject property.

V. PROJECT DESCRIPTION

The applicants are seeking approval of a proposed single-family residence, and detached accessory building, totaling 4,224 in gross floor area (where the Kensington Combining District gross floor area threshold is 4,000 square-feet). The project includes variance requests to allow 3 stories (where 2 ½ stories is the maximum), a 3-foot front yard setback (where 20-feet is required) for a retaining wall with a maximum height of 7½-feet, a 0-foot side yard (where 5-feet is required) for a retaining wall with a maximum height of 4-feet, and a 0-foot rear yard (where 3-feet is required) for a fence with a maximum height of 6-feet, 9-inches.

The proposed residence consists of a lower parking level, a main level for the primary living spaces, and an upper level for additional living space and the master suite. The parking level is 955 square-feet. It is made up of a two-car carport, a utility/storage room, and an entry room (with a mechanical closet) to gain access from the carport to the elevator. The only part of the parking level that creates three consecutive stories is the entry room with the elevator and closet. The carport is directly under a

deck that is open to the sky. The utility/storage room is beneath the main level, but above that is open space up to the upper level ceiling. 482 square-feet of the upper level is without a floor and open to below (the main level). This creates a portion of the main level that is only a second story with a 20-foot, 9-inch high ceiling. The parking level is the lowest level and tucked into the downslope of the subject property, hiding it from sight at street level. Its south and west elevations do not have walls, but again are not visible at street level due to the sloping nature of the property.

The primary entrance to the main level is accessed by walking from the end of the private easement, and down the hill onto the deck. The main level is 1,640 square-feet. The entry includes the elevator and front closet, then flows into the main living area. There is a kitchen, laundry room, one full bathroom, and a guest room. One can gain access to the upper level by either the elevator or staircase. The upper level is 1,230 square-feet. 40% of the upper level (482 square-feet) is open to below (the main level). From the elevator, one enters into a cantilevered room intended for taking in the view of the San Francisco Bay. There is an office space at the other end of the hall. The master suite consists of a bedroom, bathroom, and walk-in closet.

Due to the sloping topography, and the access point of the subject property, multiple retaining walls are required for the driveway to the carport, and walkways to and from various points throughout the site. There is also new fencing proposed along the perimeter of the site. Fences that measure over six-feet in height, or retaining walls that measure over three-feet in height, are structures per County Code. There are retaining walls, and a portion of the fence, that are structures. Structures are required to meet frontage setbacks, side yards, and rear yard dimensions, unless variances to those dimensions are permitted. Variances to allow these retaining walls and 15-feet of fencing in the required yard dimensions is requested. All other retaining walls over 3-feet in height are outside of the required frontage setback, side yards, and rear yard dimensions, and do not require variance approval. All other fencing along the perimeter of the property does not go over 6-feet in height.

The hardscaping includes concrete walks and stairs, pervious tiling, and pervious turf blocks in the driveway and parking areas. Eleven trees are proposed to be removed, but staff is recommending approval to remove nine trees, and preserve four trees, including the two cedar trees. New Japanese maple trees are proposed to be replanted along the north and south property boundaries for screening and privacy between neighboring residences. One additional outdoor feature is a 103 square-foot trellis at the entry way of the main level of the residence.

The design of the residence and accessory building is of modern architecture. The rooflines are completely flat. The buildings' envelope are of mostly square angles. There are instances of slanted angles for the residence's east elevation, and the accessory building's west elevation. The maximum height of the residence, including the third story, is 34½-feet. The maximum height visible from street view is 25-feet, including the parapet. The solar panels are flat and do not extend above the parapet. The accessory building has a maximum height of 14½-feet.

The project also includes a request to remove 11 code-protected trees, and work within the drip lines of 2 code-protected trees.

Tree Removal and Preservation Table

Species	Trunk Diameter(s)	Status
3 Monterey Pines	42.5-inches; 29-inches; 6.5-inches	Remove all
2 Honey Locusts	10-inches; 20-inches	Remove all
2 Junipers	48-inches in total (multi-stemmed) 63-inches in total (multi-stemmed)	Remove all
California Live Oak	18-inches in total (multi-stemmed)	Preserve
Eugenia	48-inches in total (multi-stemmed)	Remove
Black Pine	10-inches	Remove
2 Cedars	16-inches and 24-inches	Preserve all
Apple tree	10-inches	Preserve
Pear tree	6-inches	Remove – Not protected

According to the arborist report prepared by certified arborist, Peter K. Rudy (Exhibit A), the majority of the trees proposed for removal are in extremely poor health or dead. The trees have been significantly topped over time, and then not properly cared for. Staff has prepared findings to approve for removal of nine of the eleven requested trees. The conditions of approval include security bonding for a minimum of (9) trees to be replanted on site. A landscaping plan will be required to be reviewed before the submittal of a grading permit or building permit, or prior to removal of trees, whichever occurs first, to ensure that the proposed placement of the required trees compensate for the lack of privacy between residences created by the tree removal.

The red and atlas cedar trees are in good health, but Ms. Darlene Tong (new resident) is highly allergic to cedar trees. The applicants have requested to remove these two trees for that reasoning. However, the arborist report finds these two trees to be in

good health, and their removal would not be for reasonable development. Staff cannot find sufficient evidence to support the removal of these two cedar trees.

VI. AGENCY COMMENTS

- A. Kensington Municipal Advisory Council (KMAC): The project was first considered by the KMAC on October 27, 2015. Due to the project's multiple aspects, it was continued to the following KMAC meeting. The project was considered again on December 1, 2015. The KMAC recommended approval of the overall project, the three-story variance and tree removal, provided that certain conditions were met, including the "storage room" on the parking level be eliminated, and the bay window on the top level be adjusted so that the room above does not create three stories, per plans submitted to the KMAC September 16, 2015.

The original design consisted of an approximately 215 square-foot "storage room" adjacent to the parking spaces. The "storage room", with the deck above, and the cantilevered space for the "view room" on the upper level, created 3 consecutive stories. Per the KMAC's request, eliminating the "storage room" removed a portion of the 3 stories that would be considered special privilege. The revised design shows the elimination of the "storage room". The second concession consisted of eliminating a portion of the "view room" that also created 3 consecutive stories. The original design had approximately 22 square-feet of cantilevered space over the deck, and the carport at the parking level. The revised design eliminates this portion of the "view room". The fireplace is now attached from the outside, not enclosed within the space.

The applicants have made compromises to their original design of western portion of the residence to reduce the variance request to allow 3 stories (where 2 ½ stories is the maximum). What remains at variance is 184 square-feet of floor area that creates three consecutive stories. The only part of the parking level that creates three consecutive stories is the entry room with the elevator and closet. The subject property is topographically challenged, which limits the buildable area of the lot. It is typical for a crawl space with adequate ceiling height be a result from the construction of a residence on a hillside with such a steep slope. The third story is a situation made necessary by the topographic circumstances of the subject property. The granting of a variance in this situation would allow for access and parking in a manner that would not involve extensive development or additional drainage improvements.

- B. Building Inspection Division: The Division returned an Agency Comment Request form dated December 1, 2015, indicating that the building(s) shall be designed per current building codes, and a soils report will be required.
- C. Grading Inspection Division: The Division returned an Agency Comment Request form indicating that a soils report and grading permit may be required, and C-3 and drainage plans will be required.
- D. East Bay Municipal Utility District (EBMUD): In a letter dated September 21, 2015, the District advised that the standard procedures for requesting water service for a new residence be observed. Please see the attached correspondence for details.
- E. Stege Sanitary District: In a letter dated September 29, 2015, the District provided the general guidelines and a fee estimate for acquiring the District's approval of the project. Please see the attached correspondence for details.
- F. El Cerrito/Kensington Fire Department: In a letter dated October 6, 2015, the Department indicated what is required in order to approve the project based on current fire codes and regulations. Please see the attached correspondence for details.
- G. Contra Costa Environmental Health Division: In a letter dated October 5, 2015, the Department advised that standard procedures be observed regarding wells. Please see the attached correspondence for details.
- H. City of El Cerrito: No comments were received prior to the preparation of this report.
- I. City of Richmond: The City returned an Agency Comment Request form dated October 5, 2015, stating they find no grounds for approval of the variance, tree removal, and overall design. Staff finds the project to meet the intent and purpose of the Single-Family Residential (R-6; -TOV; -K) Zoning District and the Single-Family Residential, High Density (SH) General Plan Land Use designation, as shown in this Staff Report. Justification for approval of the variances and tree permit requests is presented in the attached Findings. Staff also finds the design consistent with the Kensington Ordinance as described in the Staff Report and attached Kensington Combining District Findings.

VII. STAFF RESPONSE TO PUBLIC COMMENTS

Residents of 153 Lawson Road, Kensington, Mr. and Mrs. George and Anita Luk, provided a letter dated November 4, 2015. The following is a summary of their comments.

Comment 1: There is a concern with the proposed height of the residence. With three stories and roof mounted solar panels, the maximum height will be 35-feet. The total height of the residence is excessive and will block their existing views. The Luks acknowledge that the portion of the residence adjacent to their own is two stories, 24-feet in height, but they feel that the ceiling heights should be 8-feet maximum. Their research finds all homes in the area to have 8-foot maximum ceiling heights, and the applicants' should be held to the same development. If the applicants lowered their ceiling heights the overall height of the residence could be reduced and their views will be preserved.

Staff Response to Comment 1: In accordance with the provisions of the Kensington Combining District, the project has been evaluated in terms of its impacts on views, light and solar access, privacy, parking, residential noise levels and compatibility with the neighborhood with regard to bulk and scale. Both properties are along Lawson Road which goes downhill. The subject property is at a lower elevation than the Luk's property. Because of this, and the proposed siting, the new residence is not obtrusive, and does not impede on protected views. In addition, at the Kensington Municipal Advisory Council (KMAC) December 1, 2016 meeting, the KMAC recommended approval of the overall project, the three-story variance and tree removal, provided that certain conditions were met, including the "storage room" on the parking level be eliminated, and the bay window on the top level be adjusted so that the room above does not create three stories per plans submitted to the KMAC September 16, 2015. These revisions are present in the attached plans.

Placement of the residence on the east side of the property maintains views of the San Francisco Bay for adjacent property owners, including the Luks. The design is of modern architecture with flat rooflines. The overall perception of scale and bulk is reduced with the elimination of a typical pitched roof. Also, the third story is tucked into the downslope of the property, hiding it from sight at street level.

None of the buildings encroach into the minimum (R-6) front yard setback, side yards, or rear yard. In addition, the northern face of the residence is set back 6-feet from the property line shared with the Luk residence, rather than the minimum 5-

feet. This is to provide additional cushion between the two residences.

The new residence will be visible in the foreground of the Luk residence, located upslope from the subject property. Privacy will be maintained with the planting of the Japanese maples in between both properties. The removal of the existing trees allows for more sunlight to enter neighboring properties, and expand existing views of the bay.

As the Luks previously stated, the portion of the residence that poses the most concern is a two story portion of the proposed residence. Its highest point is 25-feet, including the parapet. The solar panels are flat and do not extend above the parapet. The portion of the residence adjacent to the Luks does not exceed height requirements set forth by the (R-6) Zoning District.

Per the Kensington Combining District (-K), there are no "views" in relation to the Luk's viewpoints in question. The views pointed out by the Luks do not include skylines, bridges, distant cities, distinctive geologic features, hillside terrain, wooded canyons, ridges or bodies of water, as required to be considered in the Kensington Ordinance. Photos were provided by the Luks (Exhibit B). According to the Kensington Combining District (KCD), Chapter 84-74.404(r), a "view" is a scene from a window in habitable space of a neighboring residence. The KCD definition of "view" includes both up-slope and down-slope scenes, but is distant or panoramic range in nature, as opposed to short range. One viewpoint of concern is at the rear of the Luk residence, when standing on a second story deck. This is not habitable space, nor is it panoramic or long-ranged in nature. There are also currently two cedar trees blocking views in the distance from this viewpoint. The other viewpoint of concern is from their master bathroom and bedroom windows, which currently oversee the vacant subject property. The change in view will be from a vacant lot to a single-family residence. This change in view are not concerns that can be supported by the definition of "view" as stated in the Kensington Combining District (-K).

The views of the neighborhood skyline and the San Francisco Bay is toward the west. The applicants' new residence will be to the Luk's south. The portion of the new residence that is three stories is southwest of the Luk residence, and does not impact these views. The proposed house site is on the eastern side of the subject property, away from the views of distant cities, the bay, and the Golden Gate Bridge.

Comment 2: There is a concern that the proposed accessory building will be used for commercial purposes. If clients visit the subject property then additional on-street parking will be taken, which is already strained. The Luks expressed that they

wish to see additional off-street parking for the accessory building.

Staff Response to Comment 2: The new residence proposes a two car carport in its lowest level. Two off-street parking spaces are all that is required for a residence in a single-family residential zoning district. Having a business within a residential dwelling, or an accessory building, requires the approval of a home occupation permit. Home occupation permits do not allow clients to visit the site. Even with the approval of a land use permit for a home occupation, clients are still not permitted at the site.

Comment 3: There is a discrepancy between the applicants' survey from Moran Survey, and the Luk's survey from Luk, Milani and Associates, by one foot. There is also a question as to why the applicants show a 10-foot side yard at some points, and a 5-foot side yard at other points.

Staff Response to Comment 3: The building setback and yard areas shown on the plans are based on a survey prepared by Moran Survey to confirm the front yard setback, side yards, and rear yard measurements, as well as any other measurements, a survey or a survey letter from a licensed surveyor is required when submitting for building permits. As the proposed project has not yet been constructed, the applicants' survey only accounts for the existing property lines in relation to the proposed buildings and structures. If after construction begins, and the proposed buildings and/or structures do not match the approved plans, the application may require the review and approval of staff and may require the filing of an application for modification to a Development Plan and a public hearing, if deemed necessary.

According to the submitted plans none of the buildings encroach into the minimum (R-6) front yard setback, side yards, or rear yard. In addition, the northern face of the residence is set back 6-feet from the property line shared with the Luks, rather than the minimum 5-feet. This is to provide additional cushion between the two residences to accommodate for the discrepancy about the location of the shared property line.

Furthermore, the lot dimensions per the applicants' plans match the dimensions of the portion of transferred property previously approved under Lot Line Adjustment #LL95-0028 (Exhibit F). The applicants have measured the front yard setback, side yards, and rear yard based on the survey conducted by Moran Survey, which includes the dimensions of that portion of transferred land approved and recorded under this Lot Line Adjustment. There is a retaining wall with a maximum height of 4-feet that requires variance approval to be on the property line. However, the retaining wall is

to replace an existing, wood retaining wall that is failing in order to hold back the hillside.

Comment 4: There is a concern that there is an active storm drain easement on the subject property, and that permanent structures should not be permitted to be developed over it. There is concern that drainage is inadequate and will cause flooding for the residence further down the hillside at 154 Lawson Road. Also, utilities proposed for the development of the subject property should not be permitted along the storm drain easement to allow unfettered access to it for maintenance purposes.

Staff Response to Comment 4: The Contra Costa County Grading Division has reviewed the proposed project, and specified that a soils report, and grading and drainage plans will be reviewed for approval before a building permit is issued to allow construction. The applicants do show a 6-foot wide storm drain easement running through the center of the property. There is no proposed plan showing a permanent structure being erected over the easement. A driveway is not considered a permanent structure. Grading and drainage plans will be reviewed during plan check, and will be enforced on site during scheduled inspections. Water already runs downhill towards 154 Lawson Road, and plan check will be considerate of the direction of runoff to ensure proper drainage. There are no codes prohibiting underground utilities to run along the easement. The applicants are aware that if maintenance is required on the drainage easement, they will have to accommodate for public services and allow access to the easement.

Comment 5: There is a concern that some trees requested for removal on the subject property are included in the list of indigenous species under *Protected Trees* in Section 816-6.6004 of the County Code, and these certain species should be protected and preserved. These include cypress, junipers, cedars, and Monterey pine trees. Also, the removal of these trees takes away necessary screening between residences, and will diminish the aesthetic character of the surrounding neighborhood. The Luks feel the trees are in good health, and there is no reasonable development requiring their removal.

Staff Response to Comment 5: According to the arborist report prepared by certified arborist, Peter K. Rudy (Exhibit A), the majority of the trees proposed for removal are in extremely poor health or dead. The trees have been significantly topped over time, and then not properly cared for, and are structurally unsound. Their removal would be to the Luk's benefit. It will allow better solar access, and expand the views of the bay. They will be replaced with Japanese maples to compensate for the lack of

privacy between residences created by their removal.

The project includes a tree permit request to remove 11 code-protected trees, and work within the drip lines of 2 code-protected trees. The red and atlas cedar trees are in good health, but Ms. Darlene Tong (new resident) is highly allergic to cedar trees. The applicants have requested to remove these two trees for that reasoning. However, the arborist report finds these two trees to be in good health, and their removal would not be for reasonable development. Staff cannot find sufficient evidence to support the removal of these two cedar trees.

Comment 6: There is concern that the public road, and the private right easement, will be damaged during construction. The Luks would like to make sure that the roads are put back in good standing with the Public Works Department and the owners of the easement when construction is over.

Staff Response to Comment 6: An encroachment permit is required for work taking place in the public right-of-way. The Public Works Department would be responsible for reviewing and approving those plans. They would also verify that the work being done is compliant with code through onsite inspections, and that any damage to the public roadway caused by construction is repaired. Work within the private road is a civil matter that the applicants will be considerate of. The conditions of approval for this Staff Report include *Construction Period Restrictions and Requirements* that regulate construction hours, transportation of construction related vehicles, storage of construction materials, cleaning of construction related debris, and proper onsite conduct to protect trees to be preserved.

VIII. STAFF ANALYSIS

- A. Appropriateness of Use: The proposed residence is consistent with the permitted use of a detached, single-family dwelling within the Single-Family Residential (R-6) Zoning District in which it is located. Accessory uses normally auxiliary to the single-family residence are permitted uses, such as a detached, accessory building, a trellis, retaining walls, and fencing. The residence and accessory building would be visible in the foreground from some adjoining residences, but it would not be otherwise visually obtrusive. The overall project does not impede on views of the San Francisco Bay, nor does it alter the residential character of its surroundings. The subject property is at the end of a private easement and behind existing residences, not visible from Lawson Road.
- B. General Plan Consistency: The subject property is located within the Single-

Family Residential, High-Density (SH) General Plan Land Use designation. The (SH) designation allows for a residential density between 5.0 and 7.2 single family units per acre. The 13,020 square-foot site includes one single-family residence at a development density of 3.35 units per acre. The proposed single-family residence and auxiliary structures are residential uses consistent with this land use designation. A new residence will not change the development density of the site. Located in the Kensington area, it is also subject to the specific policies in the General Plan (2005 – 2020), Land Use Element 3-206 through 3-210, "Policies for the Kensington Area", and will be reviewed under these policies in the attached Kensington Combining District Findings.

- C. Zoning Compliance: The subject property is located within the Kensington Combining District (-K), the Single-Family Residential (R-6) Zoning District, and the Tree Obstruction of Views Combining District (-TOV).

Section 84-74.802 of the County Code determines the threshold standard for the Kensington Combining District (-K), which triggers a hearing requirement if the development exceeds the threshold standard. Based on the parcel size of 13,020 square-feet, the threshold for the gross floor area ratio for this parcel is 4,000 square-feet. The new residence and accessory building is 224 square-feet over the designated threshold size.

The intent of the threshold requirement is to ensure the development will promote the community's values of preservation of views, light and solar access, privacy, parking, residential noise levels and compatibility with the neighborhood with regard to bulk and scale.

The proposed residence is not obtrusive and would not impact any surrounding views as defined in Chapter 84-74 – Kensington Combining District (-K), Section 84-74.404(r). There are no scenes from a window in habitable space of a neighboring residence, distant or panoramic range in nature, of skylines, bridges, distant cities, or distinctive hillsides that would be blocked due to the development of the subject property. Having the residence's footprint on the east side of the property maintains the views of the San Francisco Bay.

The design is of modern architecture with flat rooflines. The overall perception of scale and bulk is reduced with the elimination of a typical pitched roof. Also, the third story is the lowest part of the residence and is tucked into the downslope of the property, hiding it from sight at street level.

The new residence is compatible with the neighborhood in terms of bulk, scale, and design. The development of a new residence, even with a portion of it being three stories, is still consistent with the neighborhood in terms of bulk. The surrounding area contains two-story, and some three-story residences. The new residence's third story is minimal in floor area in comparison with the other two stories. It is designed for parking and access only. The third story is also the lowest level, hidden within the downslope of the property, and not visible from the northern properties. The total livable area for the subject property is consistent with neighboring residences in regards to scale. The subject property's overall livable area is 3,197 square-feet. The average livable area for the surrounding properties is 3,000 square-feet. Finally, the design of the new residence is of modern architecture. The surrounding neighborhood is primarily traditional architecture. However, with the new residence being at a lower elevation than the residences to the north, and separated by vegetation from residences to the south, its visual impact is minimal. The subject property itself is not visible from the public road. Therefore, the project is compatible with the neighborhood in terms of bulk, scale and design. In addition, at the Kensington Municipal Advisory Council (KMAC) December 1, 2016 meeting, the KMAC recommended approval of the overall project, the three-story variance and tree removal, provided that certain conditions were met, including the "storage room" on the parking level be eliminated, and the bay window on the top level be adjusted so that the room above does not create three stories per plans submitted to the KMAC September 16, 2015. These revisions are present in the attached plans.

Privacy will be maintained with the newly planted Japanese maples in between neighboring properties. The removal of the existing trees allows for more sunlight to enter neighboring properties, and expand views of the bay. The project itself is not visually obtrusive, is not blocking views, and is not impacting solar access.

The overall project has minimal influence on the surrounding neighbors. The project enhances views and solar access with the removal of overgrown and dying trees. The applicants will still maintain privacy between residences with the newly planted Japanese maples, and new solid board fencing to replace the existing, chain-linked fencing.

The residence has a maximum height of 34½-feet, measuring from its lowest point, which is finished grade. The residence does not exceed the allowed 35-

feet maximum height restriction of the (R-6) Zoning District. There is a request for a variance to allow 3 stories (where 2 ½ stories is the maximum). The subject property is steep, and slopes downward from east to west with an average slope of approximately 20%. The new single-family residence is designed to follow the natural topography of the hillside, with the lowest level toward the bottom of the hill. The applicant shall submit evidence from a licensed surveyor on the field elevations of the roof ridgeline points and the heights of the building as measured from existing grade indicated on building permit site plans for purposes of determining compliance with maximum height limits of the zoning district, as conditioned is this Staff Report.

The subject property is topographically challenged, which limits the buildable area of the lot. The west end of the lot is extremely difficult to develop because of the existing 5-foot wide sewer easement, and the average slope being approximately 57%. The granting of a variance in this situation would allow for access and parking in a manner that would not involve extensive development or additional drainage necessary for construction along steep terrain.

There are also variance requests to frontage setback, minimum side yard, and rear yard requirements for retaining walls, and a portion of the new fencing, that are considered structures. Due to the sloping topography of the subject property, and dramatic changes in grade, approval to variance requests for these particular structures would not be special privilege. All other retaining walls over 3-feet are outside of the required frontage setback, side yards, and rear yard. All other fencing along the perimeter of the property does not go over 6-feet in height.

The project includes a tree permit request to remove 11 code-protected trees, and work within the drip lines of 2 code-protected trees. The red and atlas cedar trees are in good health, but Ms. Darlene Tong (new resident) is highly allergic to cedar trees. The applicants have requested to remove these two trees for that reasoning. However, the arborist report finds these two trees to be in good health, and their removal would not be for reasonable development. Staff cannot find sufficient evidence to support the removal of these two cedar trees.

The removal of the trees approved by staff would increase views and sunlight to adjacent property owners. Additional Japanese maple trees will be planted along the north and south boundaries of the property. This species grows to

a height that will provide sufficient privacy in between neighboring residences, while not impeding on views or solar access. Therefore, the proposed project meets the intent of the -TOV ordinance.

None of the buildings encroach into the minimum (R-6) front yard setback, side yards, or rear yard. In addition, the northern face of the residence is set back 6-feet from the property line shared with 153 Lawson Road, rather than the minimum 5-feet. This is to provide additional cushion between the two residences.

The overall project has minimal influence on the surrounding neighbors. The project enhances views and solar access with the removal of overgrown and dying trees. The applicants will still maintain privacy between residences with the newly planted Japanese maples, and new solid board fencing to replace the existing, chain-linked fencing.

The Kensington Combining District (-K) includes seven criteria for approval of the Development Plan project. As detailed in the attached Kensington Combining District Findings, staff finds that the project satisfies all seven criteria.

IX. CONCLUSION

Staff finds that the proposed development is consistent with the Single-Family Residential, High-Density (SH) General Plan Land Use designation and complies with the intent and purpose of the Kensington Combining District (-K), Single-Family Residential (R-6) Zoning District, and Tree Obstruction of Views Combining District (-TOV). Therefore, staff recommends the Zoning Administrator approve County File #DP15-3030, subject to the attached conditions of approval, with the exception that the two (2) cedar trees (trees #1-2 as labeled in the arborist report) requested to be removed shall be preserved and protected because staff cannot find sufficient evidence to support the removal of these two cedar trees.

Attachments:

- Findings and Conditions of Approval
- Application
- Maps – Parcel Map, General Plan, Zoning, MAC, and Aerial View
- Agency Comments
- Letter of comments from Luk residence, 153 Lawson Road, Kensington
- Reduced Plans



Department of Conservation and Development
County Zoning Administrator

Monday, April 4, 2016 – 1:30 .P.M.

STAFF REPORT

Agenda Item # _____

Project Title: Hearing for New Single-Family Residence within the Kensington Combining District

County File(s): #DP15-3030

Applicants/Owners: Edward Dean and Darlene Tong

Zoning/General Plan: Kensington Combining District (-K), Single-Family Residential District (R-6), and Tree Obstruction of Views Combining District (-TOV) / Single-Family Residential High-Density (SH)

Site Address/Location: A vacant lot at the end of a private easement off of Lawson Road behind 153 and 154 Lawson Rd. in unincorporated Kensington; (APN: 572-034-018)

California Environmental Quality Act (CEQA) Status: Exempt under CEQA Guidelines, Section 15303(a), regarding new construction or conversion of small structures.

Project Planner: Dominique Vogelpohl, Planner I (925) 674-7814

Staff Recommendation: Approve (See section II for full recommendation)

I. PROJECT SUMMARY

The applicant requests design review approval of a Development Plan for Kensington for a proposed single-family residence, and detached accessory building, totaling 4,224 in gross floor area (where the Kensington Combining District gross floor area threshold is 4,000 square-feet). The project includes variance requests to allow: 3 stories (where 2 ½ stories is the maximum), a 3-foot front yard setback (where 20-foot is required) for a retaining wall with a maximum height of 7½-feet, a 0-foot side yard (where 5-foot is required) for a retaining wall with a maximum height of 4-feet, and a 0-foot rear yard (where 3-foot is required) for a fence with a maximum height

of 6-feet, 9-inches. The project also includes a tree permit request to remove 11 code-protected trees, and work within the drip lines of 2 code-protected trees.

II. RECOMMENDATION

Staff recommends the Zoning Administrator APPROVE County File #DP15-3030, based on the attached findings and subject to the attached conditions of approval submitted with the staff report completed for the March 21, 2016 Zoning Administrator hearing. The two (2) cedar trees (trees #1-2 as labeled in the arborist report) requested to be removed shall be preserved and protected, in addition to the coast live oak and apple tree.

III. BACKGROUND

The proposed project was initially heard before the County Zoning Administrator on March 21, 2016. The hearing was open to the public and testimony was accepted from multiple neighbors in opposition of the project, and the applicants in support of the project. Also, letters in opposition were submitted to the Zoning Administrator from additional neighbors not present at the hearing. After hearing from all of the speakers, and receiving further written testimony, the Zoning Administrator requested that the matter be continued as an open hearing to April 4, 2016. This was to provide the Zoning Administrator with enough time to consider all of the new testimony from the March 21, 2016 hearing, and for the Zoning Administrator to conduct a site visit to subject property and 153 Lawson Road. In addition, staff verified that a list of neighbors (provided to the Zoning Administrator at the hearing) all received County notification of the scheduled March 21, 2016 hearing.

IV. NOTICING

Speakers in opposition claimed that a list of neighbors did not receive notices regarding the Kensington Municipal Advisory Council (KMAC) meetings. The Zoning Administrator clarified that the County is not responsible for KMAC's noticing, but that staff would verify that the list of neighbors did receive the County's notification of the scheduled March 21, 2016 Zoning Administrator hearing. The following neighbors were listed and confirmed to have been mailed County notices:

- 63 Highland Boulevard, Kensington – Robert and Beverly Prowse
- 154 Lawson Road, Kensington – Rune and Anna Storesund
- 138 Lawson Road, Kensington – Leonard Anderson
- 149 Lawson Road, Kensington – Kimberly Leo
- 146 Lawson Road, Kensington – Andrew Mixer

- 145 Lawson Road, Kensington – Milton Comas
- 55 Highland Boulevard, Kensington – William and Betty Webster

The neighbors of 134 Lawson Road, Kensington, Bruce Morrow and John Norcross, did not receive a notice because their property is outside of the 300-foot radius measured from the subject property.

V. CONCLUSION

Staff finds that the proposed development is consistent with the Single-Family Residential, High-Density (SH) General Plan Land Use designation and complies with the intent and purpose of the Kensington Combining District (-K), Single-Family Residential (R-6) Zoning District, and Tree Obstruction of Views Combining District (-TOV). Therefore, staff recommends that the Zoning Administrator approve DP15-3030 based on the attached findings and subject to the attached conditions of approval submitted with the staff report completed for the March 21, 2016 Zoning Administrator hearing, with the exception that the two (2) cedar trees (trees #1-2 as labeled in the arborist report) requested to be removed shall be preserved and protected because staff cannot find sufficient evidence to support the removal of these two cedar trees.

-Exhibit D-

Letters Submitted to the
Zoning Administrator in
Opposition

From other Neighboring Residences

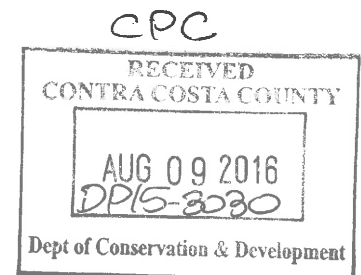
To: Planning Commission Board
From: Michael Chanowitz and Alice Supton
Re: Dean-Tong proposal, 158 Lawson, Kensington (DP15-3030)

We live at 52 Kensington Court, directly behind the proposed structures. The height and bulk of the main building will have a major impact on our property.

We currently enjoy "iconic views" of SF Bay, including the SF skyline, both bridges and all of the East Bay foreground. We are not at a much greater elevation than the proposed roof so that we will look over it at a very shallow angle. Because the lot is long and narrow the roof of the new structure extends about 70 feet along our line of sight toward the bay. While we will still see the bay (though just barely from the lower level), the new roof will become the dominant object in our field of view. Since our viewing angle is shallow the Zoning Administrator's decision to reduce the height by three feet significantly mitigates the impact, though our views from both levels will still be substantially affected.

The Zoning Administrator's decision also mitigates, but does not remove, concerns about the project bulk, which greatly exceeds what is typical for the neighborhood. The volume of the house is greater than a typical neighborhood house with the same 4200 square foot area for two reasons. First, if the second floor extended for the full length of the building (above the "great room" with its 20+ foot ceiling height), the area would be about 4700 square feet. Second, the 10 foot ceilings in all other rooms increase the volume by 25% relative to conventional 8 foot ceilings, so that the net interior bulk is comparable to that of a 5800 square foot structure with conventional 8 foot ceiling heights throughout. All together the bulk as originally proposed is almost 40% greater than that of a 4200 square foot house with 8 foot ceilings.

While we recognize the right of our prospective neighbors to develop their property we hope it can be done in a way that minimizes the impact on the existing neighborhood. The decision of the Zoning Administrator to reduce the height by three feet does not fully resolve our concerns but it does mitigate them.



PETITION TO OPPOSE 158 Lawson Road Development

To: CCC Zoning Administrator, County Board of Supervisor

Re: 158 Kensington Development

County File #DP15-3030

WE ARE OPPOSED TO THE DEVELOPMENT:

SIGNED BY: *RS Anna Storesund*

PRINT NAME: Rune Storesund, Anna Storesund

ADDRESS: 154 Lawson Road, Kensington, CA 94707

PHONE: 510-526-5849

** Staff Study **

*Form letter signed by 7
residents.*

March 21, 2016

Contra Costa County Department of Conservation
Community Development Division
30 Muir Road
Martinez, CA

Subject: County File #DP15-3030
Edward Dean & Darlene Tong (Owners)
0 Lawson Road, Kensington CA 94707

Dear Ms. Dominique Vogelpohl,

This letter is to inform you that Rune and Anna Storesund, residing at 154 Lawson, have a number of issues associated with the proposed development at 0 Lawson Road that have not been resolved. We have been in contact with the applicants on a number of occasions and the stated concerns have yet to be resolved. Attached is an email exchange just prior to the Kensington Municipal Advisory Council (KMAC) meeting on December 1, 2015.

There were three substantial issues that were not resolved to a level of mutual agreement (as outlined in our email exchange on December 1, 2015: a) resolution of the topographic survey discrepancy between Mr. Luk and Moran Surveying; (b) configuration associated with access to your property via the easement so that our ability to park in that space and your ability to traverse into and out of your property is maintained; and (c) screening (including removal of the existing mature tree) so that there is a visual barrier between our viewscape and your new three-story development and attached deck (so you are not peering directly into our bathroom and bedrooms). In our opinion, these significant issues should be resolved prior to finalization of drawings and initiation of construction. While some potential ideas have been offered by the Owners, no mutually agreeable arrangement has been identified.

As a result, we would like to reserve our right to pursue legal recourse (including challenging the project in court) to ensure that the identified issues are appropriately resolved prior to issuance of any permits and/or initiation of construction.

Sincerely,



Rune Storesund
510-225-5389
rune@storesundconsulting.com



Anna Storesund
415-254-1008
annastoresund11@gmail.com

Rune Storesund

From: Edward Dean
Sent: Tuesday, December 01, 2015 3:29 PM
To: Rune Storesund
Cc: Anna Storesund; Darlene Tong
Subject: Re: KMAC Hearing

Rune,

I'm don't know if you're going to be there this evening, but let me give you the answers to these questions right now so that you know that the issues are being addressed, hopefully satisfactorily for you. This is, of course, what we wanted to talk to you about when we came by the other day—to run through the plans with you and see what questions and concerns you may have.

1. Topographic survey. This is not an issue for KMAC, this evening's body. That's for the zoning board, which meets in about a month after KMAC makes its determination on the other issues that are in their purview. (I am just relaying the statement made by the Contra Costa planner that is in charge of this project's processing.) The survey by Moran was recorded with the County and is official. It is also correct—Moran specifically used the oldest survey markers in the area, which pre-date those used for your subdivision (and Luk's).

Just a note that the only reason that we were willing to do a lot line adjustment was to get Luk's agreement (and presumably yours) to move the storm drain easement that crosses our property to where the pipe is actually located. That would have given us more room to plan the house. As events transpired (you have not heard all the stories), Luk, frankly, started playing games about what he wanted—something different every time—then he basically lied to me about the surveyor he thought we should use. (It turned out to be the guy that works for him.) I finally gave up since he was not playing straight with us and I designed a house that fit on the lot with the current legal easement.

2. As worked out with George before we abandoned talking to him, we'll have a 10 feet width running along the edge of the right-of-way next to your garage, dedicated to continual access to our driveway. Lines will be painted in the remaining side for parking. There will be room for two cars there, presumably one for each of you. By the way, we intend to repave the right of way at our expense, so it will be like new at the start of our residency. After that, cost for maintaining the roadway has to be shared by the three of us, but I expect that this particular issue may come up in 10-15 years, if that. So, there is no expectation on our part that you or the Luks have to share in the cost this first time—that's on us.

3. We do not have a "3-story development". This is a planning code definition and results from the fact that we have to park below the house because of the downslope. The connection up to the two-story house makes it technically 3 stories. (Come to the meeting tonight if you want to hear the details about this.) Finally, I don't see how we would be interfering in any way with your viewscape: we are uphill from you, opposite the Luk's house. As for views *into* your house, I doubt that this is the case from where the house will be, but we can plant some kind of foliage barrier along the property line starting at the entrance to our property, where we are planning to have a terraced garden, if that turns out to be an issue.

We should meet when you're around to talk about any of this, maybe take a look together at this last question. If you go to the meeting tonight, perhaps we can set a time to drop by again. Otherwise, let me know what time some weekend you'd like to get together.

Ed

On 1 Dec 2015, at 2:05 PM, Rune Storesund <rune@storesundconsulting.com> wrote:

Hello Ed,

I just found out yesterday that there is a hearing today regarding your submitted variances for your development at 158 Lawson Road.


I know you have made several attempts recently to meet with us to discuss your plan set, but my travel schedule has been quite hectic this summer. Having gone through the permit review process a few years ago for my renovation, I appreciate the challenges associated with this process.

However, the outstanding items we've discussed over the past 18 months or so include: (a) resolution of the topographic survey discrepancy between Mr. Luk and Moran Surveying; (b) configuration associated with access to your property via the easement so that our ability to park in that space and your ability to traverse into and out of your property is maintained; and (c) screening (including removal of the existing mature tree) so that there is a visual barrier between our viewscape and your new three-story development and attached deck (so you are not peering directly into our bathroom and bedrooms). In our opinion, these significant issues should be resolved prior to finalization of drawings and initiation of construction.

Thank you,

Rune & Anna Storesund
154 Lawson Road

Rune Storesund, D. Eng., P.E., G.E.
Storesund Consulting
rune@storesundconsulting.com
www.storesundconsulting.com

 Please consider the environment before printing this email.

Dominique Vogelpohl

From: Dominique Vogelpohl
Sent: Tuesday, March 22, 2016 6:03 PM
To: 'Michael Chanowitz'
Subject: RE: Zoning administrator visit to Lawson Rd

Hello Michael,

I will forward your email to the Zoning Administrator. She will acknowledge your comments at the next hearing as well.

Sincerely,
Dominique

From: Michael Chanowitz [mailto:chanowitz@gmail.com]
Sent: Tuesday, March 22, 2016 1:57 PM
To: Dominique Vogelpohl <Dominique.Vogelpohl@dcd.cccounty.us>
Subject: Zoning administrator visit to Lawson Rd

Hello Dominique – I didn't attend the hearing but heard from the Luk's that the Zoning Administrator will visit the Lawson Rd site. We continue to have concerns about the bulk and scale of the project. Although we would still see the bay, the proposed project would become the most prominent object in our field of view, with a large, approximately 70 foot long roof extending into our sightline at an elevation not far below the level of our house. While the 4224 gross floor area already exceeds the district maximum by 224 square feet, the effective scale of the development is like that of a conventional 4700 square foot project, which is what the GFA would be if the 482 square foot main room were not double height. The bulk of the project is further increased by 20% by the 10 foot floor to ceiling heights relative to conventional 8 foot construction.

We would like to invite the Zoning Administrator to see the Lawson site from the perspective of our house when she makes her site visit. It might also be interesting to see our house and that of the neighbors with whom we share a driveway, as examples of the typical scale of the neighborhood. Like the Lawson property, we are also off an easement at the end of a cul de sac. We will be out of town for the rest of this week but will be back the week of March 28.

Could you please forward this email to the Zoning Administrator?

Thanks, Mike

Dominique Vogelpohl

From: Dominique Vogelpohl
Sent: Monday, April 04, 2016 11:54 AM
To: 'Andrew K Mixer'
Subject: RE: County File #DP15-3030 - 158 Lawson Rd. Kensington, CA - APN: 572-034-018 - Objection to Approval

Hello Mr. Mixer,

Thank you for your comments. Your new testimony has been provided to the Zoning Administrator for further consideration.

Sincerely,

Dominique Vogelpohl
Planner I
Contra Costa County
Department of Conservation and Development
E: dominique.vogelpohl@dcd.cccounty.us
Ph: (925) 674-7814
Fx: (925) 674-7258
30 Muir Road
Martinez, CA 94553



From: Andrew K Mixer [mailto:akmixer@gmail.com]
Sent: Thursday, March 31, 2016 8:25 PM
To: Dominique Vogelpohl <Dominique.Vogelpohl@dcd.cccounty.us>
Subject: County File #DP15-3030 - 158 Lawson Rd. Kensington, CA - APN: 572-034-018 - Objection to Approval

Dear Ms. Vogelpohl,

I live in the immediate proximity of 158 Lawson Road in Kensington. The property owner of 158 Lawson Road is seeking approval for the construction of a single family residence on a currently vacant parcel of land.

The owner, Mr. Edward Dean, kindly walked me through the parcel which has story poles set up by his surveyor delineating the location and height of the proposed structure. He also showed me a model of the structure which he had constructed and which demonstrated the 3 stories (running through the elevator) of the structure and its overall mass. The combination of the story poles and model clearly showed the highly negative impact the structure would have on the house on the neighboring property to the north at 153 Lawson Road. The proposed structure, in the owner's own words, would cut off the view towards the south, southwest of 153 Lawson Rd. As well, it is easy to extrapolate, whilst on site, the significant diminution of solar access and light caused by the tremendous height, mass and proximity of the proposed structure to the neighbor's house at 153 Lawson Road.

It is my opinion that the proposed structure is out of relative scale with neighboring residences, unfairly would damage the view of the northerly neighbor and would cut off that neighbor's solar gain and light for a significant period during the day (particularly in the winter months). These negative impacts would reduce the value of the property at 153 Lawson Road and would also unnecessarily compromise the occupant's life style.

It appears that the bulk, and height of the proposed structure necessitate positioning it where it was demonstrated to me with the outcome of causing damage to the neighbor.

Allowing such action may well set a precedent that would perpetuate and allow further loss of value and quality of life in the community of Kensington as others seek to develop property.

The owner of 158 Lawson Road has a clear and uncontested right to build a residence on his parcel. It is the mass, height and positioning of the structure which are a significant problem.

It is my understanding that there is to be further review on April 4, 2016 of the request for approval of the project. I object to approval of the project as it was demonstrated to me. I suggest that the owner reduce the magnitude of the structure.

Other neighbors and I welcome Mr. Dean to the neighborhood and would be most enthusiastic about his joining us on Lawson Road were he to consider the rights and interests of those who live close to his parcel.

Ms. Vogelpohl, please feel free to contact me should you have any questions about my concerns and objection to approval of the proposed project.

Sincerely,

Andrew

Andrew K. Mixer
146 Lawson Rd.
Kensington, CA 94707
510 544-1590
akmixer@gmail.com

**Comments on the Proposed New House
To be located at 158 Lawson Road, Kensington**

by

Betty B. and William C. Webster
(owners 55 Highland Blvd, Kensington)

April 4, 2016

RECEIVED

4/4/16

PLANNING ADMINISTRATOR HEARING

AGENDA ITEM #

2a

For hearings regarding construction of a house to be located at 158 Lawson Road. Hearings located at 30 Muir Road, Martinez at 1:30 pm on Monday, April 4, 2016.

My name is William Webster. My wife, Betty Webster, and I own the property located at 55 Highland Boulevard. We testified in the hearings conducted on March 21 in a letter read by my daughter Laura. Since that time we have had a conversation with Ed Dean regarding the impact of his project on our property.

Approximately one-half of our property line behind our house butts against the property line of the proposed project. Our concerns are:

- The possible consequences of modifications to the storm drain on the property, particularly if they will cause changes in the drainage of water from the hill on to our property.
- The potential for earth slides infringing our property caused by placement of excavated dirt behind higher than code retaining walls on a hill that slopes steeply toward our property. These slides could be caused either by heavy rains or earthquake activities.

Our statement of March 21 regarding our concerns should remain in the record of these hearings. We should note at the outset, that Mr. Dean's property has a considerable slope (approximately 2:1) on its South-Western side abutting our property. This slope has remained stable for the near 50 years of our occupancy, primarily due to the extensive planting of trees and other perennials on the slope. We are concerned that the substantial site modifications, including tree removals, excavations, etc. may destabilize the hillside and threaten our property.

Since the March 21 hearing we have had a meeting with Mr. Dean where we expressed our concerns. Pursuant to these concerns he has provided us with a copy of the geotechnical soils report on the property that he commissioned in 2012. Upon review of the geotechnical report, we have the following comments:

- The geotechnical report made no mention of any modifications to the storm drain and these previously-stated concerns of ours remain. We know from experience that the hillside under consideration contains several underground springs and rocks in addition to soil. Substantial excavation and drilling of pillars plus erection of a 4200 square foot house may well alter the soils. Our fears are seepage, slippage of the hillside caused by heavy rain and/or earthquake. We would like assurance of cost reimbursement of repairs for any damages incurred should this transpire.
- The geotechnical studies made several recommendations regarding the soil fill under the proposed driveway which will be held in place by the retaining wall on the South-Western side of the property. These include:
 1. The soil file behind the retaining wall should be “engineered soil” that is non-expansive (page 6, next to last paragraph). Since the soil report states that the local soil is expansive, the proposed use of excavation material from the site without treatment or correction raises questions. Further it should be properly compacted, although even with such compaction, the soil will most likely remain unconsolidated for a significant time and will remain a slide hazard to us should, for instance the retaining wall fail for whatever reason.
 2. The retaining walls should be supported by drilled, cast-in-place, straight-shaft piers designed to support the restrained pressures stated in the table on the top of page 9 for the existing 2:1 slope on the downside of the retaining wall. These pressures should be augmented for earthquakes as suggested in the report. It should be noted that Mr. Dean’s plans show several alternates for the design of the retaining wall, only one of which includes drilled, cast-in-place, straight-shaft piers and meets the soils engineer’s

recommendations. The calculations showing that this wall meets the recommended loads are not available.

We appreciate that our neighbors on Lawson Road have other questions regarding the project. We would very strongly recommend that these be resolved before permits are issued. We have joined together with them in a petition opposing the construction of such a substantial dwelling that requires variance of so many Kensington codes. It is our hope the Contra Costa Zoning Administration understand there are still many questions the neighbors want answered before approval be granted.

If approval for the proposed construction is granted, it is our understanding that the final construction plans will need to be reviewed and approved before a building permit is issued. We request that we be provided with the details and calculations of the retaining wall and the specifications for its construction, including the fill material for our review and comments before the building permit is issued and that we receive notice of continuing permit applications.

Finally, we would like to acknowledge the willingness of Mr. Dean to provide the information concerning the design and to work with us in a neighborly and cooperative fashion so that both our needs can be met.