

Law Offices of
IRA JAMES HARRIS

October 18, 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
Board of Supervisors Hearing: October 25, 2016
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 and to the northeast of the proposed development. Please make this letter part of the record that is presented to the Board of Supervisors for the above-mentioned hearing.

RELEVANT BACKGROUND:

The Luks purchased and improved their residence at 153 Lawson over the last 20 years. They sought to take advantage of the views and light by adding windows in the master bedroom and bathroom facing the southwest. They also added a deck on that side of their residence. These areas currently afford panoramic views of the upslope and downslope areas, the skyline, distant cities and hillside terrain. The Luks improvements were specifically targeted to bring this light and views into their home.

The Luks like many others in the community, have long worked within the development limitations with an eye toward minimizing the impacts on their neighbors. Dean-Tong adamantly refuse to consider any reduction to the height or bulk of their project or to dig the foundation into the grade to minimize the light and view impacts to their neighbors.

It is with that backdrop that I want to address the Dean-Tong proposal as it not only pushes the limits on height and bulk; it also seeks various exceptions or variances which simply cannot be justified.

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ANALYSIS:

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. The Ordinance specifically defines protected views as inclusive of **down and upslope scenes, distant and panoramic in nature, skylines, distant cities, hillside terrain, wooded canyons, ridges and bodies of water.**

While exceptions or variances can arise, 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 (because of the property's size, shape, topography, location or surroundings). These circumstances must render the strict application of the governing rules and regulations unduly harsh: **meaning that enforcement of the rules WOULD DEPRIVE THE PROPERTY OF THE PRIVILEGES ENJOYED BY OTHERS IN THE VICINITY.** *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. Prior approvals or denials of variances have no precedential value as each situation is based on the individual characteristics of the given property. *Miller v. Board of Supervisors of Santa Barbara County* (1981) 122 Cal.App.3d 539.

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:

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.

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Please notice that VARIANCES cannot be based on personal tastes or desires, or to privileges that exceed or conflict with those in the neighborhood. *California Zoning Practice* by Hagman; and *Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145.

There is no basis for a variance if the project site cannot be properly distinguished from the surrounding properties by showing that it faces an UNDUE BURDEN. *Broadway, Laguna Etc. Ass'n v. Board of Permit Appeals* (1967) 66 Cal.2d 767 and *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. It is also important to understand that the APPLICANT bears the **burden of proof** in showing those special circumstances that exist in order to justify each variance. *PMI Mortgage Ins. Co. v. City of Pacific Grove* (1982) 128 Cal.App.3d 724.

When a VARIANCE is granted, it must be supported by detailed written findings identifying the specific conditions that exist on the SUBJECT PROPERTY that justify the variance, along with the supporting facts showing that the subject property differs from others in the vicinity. *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.

KENSINGTON CRITERIA CANNOT BE MET:

HERE, as the Luks will demonstrate, once again, that the APPLICANT cannot make an appropriate showing. The SEVEN CRITERIA cannot be met: There simply is no basis for any finding on Criteria 2, 3 or 4 nor 6 given the height, size and bulk of this house in comparison to the neighborhood.

1. Recognition of Owner's right to improve property's value and enjoyment: *this factor would appear to always be present in any application where improvements are being proposed to raw land.*

2. The Owner's right to establish a residence compatible with the neighborhood in terms of bulk, scale and design: *this three (3) story 34.5 foot high proposal on a 13,020 square foot lot with an average slope of under 20% vastly exceeds the height, bulk and square footage maximums and the design is incompatible with the neighborhood. While the Staff made a minimal attempt at addressing this issue by lowering the height some 3 feet (saving 5,136 cubic feet in bulk), the Planning Commission properly rejected the proposal as the resulting height and bulk presents 57% more mass than the average 4,000 square foot home while blocking the light and view of the Luks. The Planning Commissioners properly viewed the proposal as incompatible with the neighborhood, and could not justify the variances requested.*

3. **Minimizing Impact on Neighbors:** *The height and mass of this rectangular flat roofed structure clearly interferes with the morning and early afternoon light to the Luk's residence. It also interferes with their protected views to the south of the City of Oakland, hillsides and waterways, for which they paid dearly and have long enjoyed*

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from their southern windows in their master bedroom and bath as well as from the large deck constructed on that side of the house. While the proposed pad at 803.3 is admittedly over six (6) feet below the Luk's (which sits at 809.6) the roof of the proposed 3 story structure RISES to 824.75 - **JUST 21 INCHES LOWER than the Luk's upper story ceiling line which sits at 826.5!**

How the staff found any facts to satisfy this criterion escapes me, as the height and bulk of the proposed residence undeniably impacts the Luk's southern views and access to light. The Planning Commissioners properly concluded that there was simply no reason that the proponent could not reduce his floor span heights to the neighborhood standard of 9 feet between floors, excavate the building into the site slightly and/or 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 (and high ceilings).

4. **Protecting the value and enjoyment of neighbor's property:** same problem. The unnecessary third story and massive bulk clearly impacts the Luk's value and enjoyment.

5. **Maintaining Community property values:** Again, every proposal to put a larger more expensive home on a vacant lot would arguably meet this criterion.

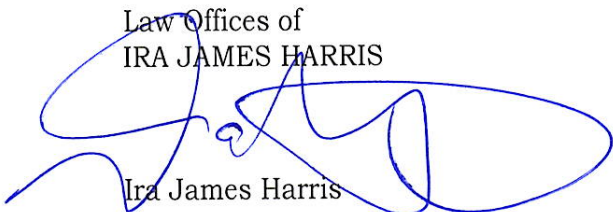
6. **Maximizing the use of interior space:** the proposed 11 foot high ceilings add unnecessary height and bulk without increasing the livable floor space, so the proposal does not meet this criterion.

7. **Promoting the General Welfare, Public Health and Safety:** the loss of 11 code protected trees, including Cedars on a vague one paragraph letter from a doctor (that fails to specifically identify the extent of the allergy) that Ms. Tong is somehow allergic (having bought the property with the trees on it and with other Cedars on adjacent properties) cannot be said to meet this objective.

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

Very truly yours,

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cc. Clients

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