



Department of Conservation and Development  
County Zoning Administrator

Monday, March 21, 2016 – 1:30 .P.M.

**STAFF REPORT**

Agenda Item # \_\_\_\_\_

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**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)

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**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 # \_\_\_\_\_

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**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)

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**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.