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Via Hand Delivery

Board of Supervisors  
c/o Community Development Division  
Application and Permit Center  
30 Muir Road  
Martinez, CA 94553



RE: Appeal of Approval of Development Plan for 7 Highgate Court,  
Kensington, CA  
County File DP17-3046

Dear Board of Supervisors:

I represent Respondent, Jeremy Stone, who has applied for a remodel of a single-family residence located at 7 Highgate Court, Kensington. This is a response to the appeal filed by Allen Trigueiro of the County Planning Commission's decision to deny his appeal of the County Zoning Administrator's approval for the Development Plan for her Kensington family-home. Mr. Trigueiro sets out a single ground as the basis of his appeal, which is that a proposed skylight will "obstruct about 1/3 of his Bay View." This appeal is without merit and should be denied.

Background

Mr. Trigueiro has expansive and panoramic views of the San Francisco Bay and Marin headlands. The proposed skylight will have a minimal impact on these views. It will not cut out 1/3 of his views, as he claims.

Mr. Trigueiro initially raised his objection as to the impact of the skylight on his views to Susan Johnson, the City Planner for this proposed project. In response, after visiting the site and personally observing the views, Ms. Johnson, in her Staff Report to the Zoning Administrator, pointed out that the new skylight would cut off only a "sliver" of the first story view, most of which is foreground view of the flatlands of El Cerrito. The second story view from the bedroom would not be affected. The view from the green roof, just outside of the second story bedroom, would be minimally affected.<sup>1</sup> Ms. Johnson also noted in her Report that prior to the hearing, Ms. Stone had already reduced

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<sup>1</sup> Staff Report to Zoning Administrator for hearing March 19, 2018, page 5.

the height of the proposed skylight from 32 inches to 18 inches, in an effort to alleviate Mr. Trigueiro's concern about his views.<sup>2</sup>

The Zoning Administrator who presided at the public hearing (that had been requested by Mr. Trigueiro), Thelma Moreira, agreed with the Staff Report concerning the alleged obstruction of the views.<sup>3</sup> Ms. Moreira cited the Kensington Combining District Ordinance, Section 84-74.40 (r) and Section 84.74.404 (m), and concluded that there must be a *substantial* blockage of the view, that the key word here is "substantial."<sup>4</sup> She even underlined that word in her written opinion.<sup>5</sup> She concluded that "there is no substantial blockage of view on skyline, bridges, distance, cities, geologic features, terrains, or bodies of water."<sup>6</sup>

Mr. Trigueiro, waiting until the last possible day, filed with the Planning Commission his appeal of the Zoning Administrator's decision. Staff again noted that the proposed height of the skylight would not substantially affect the views of scenic natural features from Mr. Trigueiro's residence.<sup>7</sup> The Report noted:

"There are multiple vantage points from both levels of the appellant's home, many of which will be unaffected or minimally affected by the proposed construction. The 6 inch raised roof and new skylights would cut off a sliver of the view from Mr. Trigueiro's residence (first level living area), which sits at a higher elevation, just above the current roof ridge of the subject residence, and most of which is foreground view of the East Bay flatland. Mr. Trigueiro's second story view from the bedroom would not be affected. The view from the green roof, just outside of the appellant's second story bedroom would be minimally affected. In addition, the elevated skylights would not affect the appellant's views of the Bay Bridge, city skyline, or Golden Gate Bridge."<sup>8</sup>

The Planning Commission agreed, and on June 27, 2018, it denied Mr. Trigueiro's appeal and upheld the decision of the Zoning Administrator to approve the Development Plan for the remodel at 7 Highgate Court.

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<sup>2</sup> *Id.* at page 3.

<sup>3</sup> Certified copy of Zoning Administrator's hearing April 2, 2018, a copy of which is attached.

<sup>4</sup> *Id.* at pages 4-5.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Staff Report for Planning Commission hearing June 27, 2018, page 5.

<sup>8</sup> *Id.* at pages 5-6.

Mr. Trigueiro, once again waiting until the last possible day, filed his appeal of the Planning Commission decision to the Board of Supervisors.

### Argument in Opposition to Appeal to Board of Supervisors

The sole issue on appeal is whether the skylight substantially obstructs Mr. Trigueiro's Bay View. Mr. Trigueiro claims that the skylight blocks 1/3 of his Bay View. Mr. Trigueiro is incorrect. The skylight has a *minimal* impact on his views.

Kensington has a view ordinance, Kensington Combining District Ordinance No. 84-74.202, *et seq.*, that defines when a building or structure obstructs or interferes with one's view.<sup>9</sup> The purpose and intent of this Ordinance is, among other things, to promote the community's values of preservation of views.<sup>10</sup> The Ordinance defines what is meant by a "view" and an "obstruction":

"View" means a scene from a window in habitable space of a neighboring residence. The term "view" includes both up-slope and down-slope scenes, 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.<sup>11</sup>

"Obstruction" means any *substantial* blockage or diminution by the proposed development on surrounding neighbor's light, solar access, view, or preexisting solar energy systems. (Italics added.)<sup>12</sup>

The term "substantial" is not defined in the Ordinance, but its common meaning in Webster's New World College Dictionary is that "substantial" means *considerable* or *large*. If you Google "substantial" it is defined as "of *considerable size*."

Application of the Kensington General Ordinance to this case demonstrates that Mr. Trigueiro's claim does not rise to the level of "substantial" blockage of Mr. Trigueiro's Bay View. The City Planner Susan Johnson, the Zoning Administrator Thelma Moreira, and the Planning Commission all concluded that there was no substantial blockage to Mr. Trigueiro's views. They all correctly observed that from the first level of Mr. Trigueiro's home a *sliver* of the view was affected, and that was only as

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<sup>9</sup> A copy of General Ordinance No. 84-74.202, *et seq.* is attached.

<sup>10</sup> Kensington Combining District Ordinance No. 84-74-204(b).

<sup>11</sup> Kensington Combining District Ordinance No. 84.74.404(r).

<sup>12</sup> Kensington Combining District Ordinance No. 84.74.404(m).

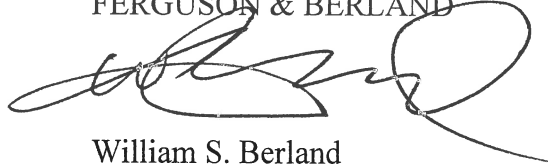
to the land in the foreground. The view from the second story bedroom was not affected at all. And the view from the green roof, just outside of the second story bedroom would be only *minimally* affected. Since none of these views would be *substantially* affected, all of the aforementioned correctly decided that Mr. Trigueiro's objection as to view was without merit.

**Conclusion**

For the reasons stated above, Mr. Trigueiro's "objection" is without merit. It should be noted that Mr. Trigueiro waited until the very last day to file each of his appeals. Given his meritless objection, and the timing of his filing his appeals, it is apparent that the only motivation for this appeal was the desire of Mr. Trigueiro to delay Ms. Stone's project for as long as possible, and to make her jump through as many administrative hoops and Contra Costa County hearing expenses as possible in order to raise the economic stakes for her to continue forward. His tactics should not be rewarded. His appeal should be denied.

Sincerely,

FERGUSON & BERLAND

A handwritten signature in black ink, appearing to read "W. S. Berland", written over the printed name below.

William S. Berland

WSB/tr  
Encl.

cc: Jeremy Stone