



**Contra  
Costa  
County**

To: Board of Supervisors  
From: John Kopchik, Director, Conservation & Development Department  
Date: July 11, 2017

Subject: Appeal of the County Planning Commission's Approval of File #DP15-3009, for a Residential Addition at 285 Colusa Avenue in Kensington

### **RECOMMENDATION(S):**

- 1.) OPEN the hearing, ACCEPT public testimony, and CLOSE the hearing.
- 2.) FIND that the proposed project is categorically exempt from the California Environmental Quality Act - Class 1 (CEQA Guidelines § 15301 (e)(1)).
- 3.) DENY the appeal of Amara L. Morrison (Attorney for David and Sandra Gerstel - Appellants).
- 4.) ACCEPT the decision of the County Planning Commission.
- 5.) APPROVE the revised project for a Kensington Design Review Development Plan for a single-family residential addition and an attached uncovered deck, County File #DP15-3009.
- 6.) ADOPT the attached findings and conditions of approval for County File #DP15-3009.
- 7.) DIRECT the Department of Conservation and Development Director, or his designee to file a Notice of Exemption with the County Clerk.

### **FISCAL IMPACT:**

The applicant has paid the initial deposit, and is obligated to pay supplemental fees to cover all additional staff time and material costs associated with the processing of the application.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

Action of Board On: **07/11/2017** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

### **VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: July 11, 2017

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Jennifer Cruz, (925)  
674-7790

cc:

## **BACKGROUND:**

### **Project Summary**

This is an appeal of the County Planning Commission's (CPC) decision to approve a Kensington Design Review Development Plan (County File #DP15-3009) to allow a single-family residential addition. The addition involves a bedroom, a bathroom, an expansion of the existing kitchen, and an uncovered attached deck with a hot tub. The new gross floor area will be approximately 2,276 square feet, where the threshold to trigger a mandatory public hearing is a gross floor area of 2,600 square feet.

The subject property is approximately 5,160 square feet and rectangular in shape. The existing residence is approximately 1,906 square feet and is two stories. The property has a slight slope upwards from west to east and therefore, the garage is on the lower floor and the living area and bedrooms are on the upper floor with an existing deck located at the rear of the property. A large 23-inch pine tree is located on the eastern portion (rear) of the property, a 23-inch maple tree is located on the southern portion of the property, and two liquid amber trees (9 inches and 6 inches) are located on the northern portion of the property. The subject property is surrounded by residentially zoned properties that range in size from 4,000 square feet to 5,200 square feet. Many of the residences on Colusa Avenue are two stories, with the garage located on the lower floor and the living area on the second floor. The City of El Cerrito lies immediately west of the subject property, while the City of Berkeley is approximately 0.25 miles south of the subject property.

### **Timeline of Application Process**

#### **Application Submittal**

An application for a variance to allow a 6-inch side yard setback for an addition was previously submitted on November 6, 2014. A 30-day notification was mailed to properties on February 3, 2015, and a request for a public hearing was received by the Department of Conservation and Development. On May 13, 2015, the applicants withdrew their Variance application and submitted an application for a Kensington Design Review. As redesigned, the project met all of the required setbacks and zoning requirements, it was below the gross floor area threshold and did not trigger an automatic public hearing. However, the applicants opted to have the project go to a public hearing. KMAC recommended approval of the project, 3-0 at their June 30, 2015, meeting.

#### **Zoning Administrator (ZA) Hearing and Decision**

The application was heard by the Zoning Administrator on October 19, 2015. The Zoning Administrator received testimony from the architect Mr. Wright Sherman on behalf of the property owners, Ralph Leighton and Phoebe Kwan. Testimony was also received from Mr. David Gerstel, the property owner of 283 Colusa Avenue. The Zoning

Administrator closed the hearing and continued the item to November 2, 2015, to visit the property and consider the testimony received. On November 2, 2015, the Zoning Administrator approved the project with an added condition requiring landscaping along the northern property line (Condition of Approval #5). An appeal on the decision was filed on November 9, 2015, within the 10-day appeal period by David Gerstel.

#### Board of Appeals (County Planning Commission) Hearing and Decision

On February 9, 2016, the County Planning Commission (CPC) held a public hearing on the appeal of the Zoning Administrator's decision to approve the Development Plan application. The CPC took testimony from the applicants/owners, Phoebe Kwan and Ralph Leighton, and their architect, Mr. Wright Sherman. Testimony was also received from the appellant, David Gerstel, and another neighbor in opposition, Richard Olsen. After receiving testimony from the public, the Planning Commission closed the hearing, and voted unanimously to deny the appeal and uphold the Zoning Administrator's decision to approve the project.

#### Appeal of County Planning Commission's Decision

On February 19, 2016, the Department of Conservation and Development received an appeal of the CPC's decision, from Amara L. Morrison, representing David and Sandra Gerstel, property owners of 283 Colusa Avenue. The appeal primarily focused on compliance with the Kensington Ordinance.

#### **Revised Plans As Agreed Upon By the Gerstels and Kwan-Leighton**

After a year of mediation, both parties, the Gerstels and Kwan-Leighton, have agreed to a final revised design. On April 11, 2017, the applicants submitted to the Department of Conservation and Development (DCD) revised plans, which have been signed by both parties. The changes made to the revised project address all of the Gerstels' concerns. Below is a table summarizing the details of the project approved by the CPC and the revisions agreed between the two parties.

	Project Approved by the County Planning Commission on February 9, 2016	Revised Project Agreed to by the Gerstels and Kwan-Leighton submitted on April 11, 2017
Side of Addition	335 square feet	370 square feet
Side Yard Setback on Northern Property Line	3 feet one inch* (minimum 3 feet)	5 feet 3 inches* (minimum 3 feet)

Side Yard Setback on Southern Property Line	9 feet 6 inches	6 feet 8 inches
Rear Yard Setback (From deck)	34 feet	34 feet
Stories Height	1 story 18 feet (northern portion) 18 feet 6 inches (southern portion)	1 story 18 feet (northern portion) 18 feet 6 inches (southern portion)
* The lot was created in 1913, before the effective date of the County Ordinance, which allows properties that are 41 feet or less (in width) but more than 31 feet, to have a reduced side yard of 3 feet and an aggregate side yard of 8 feet (Section 82-14.004)		

The revised additions remain in the same location as previously proposed. The biggest change is that the addition shifted away from the northern property line, providing more of a setback to the property owned by the Gerstels. Due to this change, the setback for the southern property line was reduced; however the addition on the south side would still meet the minimum required setbacks.

### **Consistency with Zoning**

The subject property is located within the Single-Family Residential-High Density, R-6/Tree Obstruction of Views, -TOV/ Kensington Combining District, -K. Under this zoning district, a residence is a permitted use. The project involves an addition of approximately 370 square feet and an addition of a rear yard deck. The existing deck will be demolished and the addition will be constructed in its location. Thus, a new deck will be constructed with a hot tub located on the northern portion of the deck. The project meets the required setbacks in accordance with the R-6 Zoning District requirements, where the closest portion of the addition is located 5 feet 3 inches from the northern property line and the aggregate side yard of the addition is 11 feet 11 inches. Thus, the addition also complies with the allowed reduced side yard setbacks.

The existing residence currently measures 24 feet tall on the western portion of the property. Although the height of the addition varies at different locations of the property, the addition will be one story. At the tallest point, the addition will measure 18 feet 6 inches on the southern side and 18 feet on the northern side. The height of the addition decreases towards the east due to the topography of the property. The proposed addition will remain consistent with the design of the existing residence and the surrounding area.

The addition will not be visible from Colusa Avenue. In fact, the property located east of the subject property will have minimal visibility of the addition because of the 23-inch pine tree and vegetation located at rear of the subject property. The neighboring property that would have visibility of the addition would be the property to the north; however, visibility of the addition would be minimal because of the proposed vegetation along the northern property line and its low profile of a one-story addition.

### **Consistency with General Plan**

The property has a General Plan land use designation of Single-Family Residential-High Density, SH. Under this land use designation, detached single-family homes and accessory buildings or structures are permitted uses. The County's General Plan also includes specific policies for the Kensington area, which are applicable to the review of this project. In addition to the project's consistency with the land use designation of SH, the proposed project is consistent with the following Policies for the Kensington area:

- Policy 3-220: Preservation of views of scenic natural features (e.g. bay, mountains) and the developed environment (e.g. bridges, city skyline) should be incorporated into the review of development applications.
- Policy 3-221: Review proposed residential development for design compatibility with nearby development (e.g. building mass, height, mechanical devices) and provisions for adequate parking.

The project is designed to preserve the views of scenic natural features. Views of the Bay Bridge and San Francisco Bay are to the west of the property. The addition will be located towards the east (rear) of the property, where a large 23-inch pine tree is located near the rear property line. In addition, the project is a one-story addition, which would not impact views of scenic natural features for adjacent properties, especially the property located at the rear.

### **Conclusion**

The project is consistent with review criteria outlined in the Kensington Combining Ordinance as well as General Plan Policies for the Kensington area. Considering these facts, as well as the agreement by the applicants and the appellants on the revised project design, staff recommends that the Board of Supervisors deny the appeal by Amara L. Morrison and approve the Kensington Design Review Development Plan for the single-family residential addition (County File #DP15-3009), subject to the attached findings and conditions of approval

### **CONSEQUENCE OF NEGATIVE ACTION:**

If the Board of Supervisors grants the appeal, the County Planning Commission's decision to uphold the County Zoning Administrators approval of a residential addition at 285 Colusa Avenue will be overturned. The owners of 285 Colusa Avenue will be unable to construct their proposed addition.

#### CLERK'S ADDENDUM

*Staff reports that the parties have agreed to a revised plan submitted on April 11, 2017, as noted in the board order. Both parties stated their agreement for the record. Mr. Gerstel further stated for the record that future concerns may exist regarding: 1. The latest planners statement reiterates errors and dubious claims contained in previous reports; and 2. A new claim he believes is a factual error, is that the proposed shrubbery to screen the new construction from view on from his property does so.*

***CLOSED the hearing; FOUND that the proposed project is categorically exempt from the California Environmental Quality Act - Class 1 (CEQA Guidelines § 15301 (e)(1)); DENIED the appeal of Amara L. Morrison (Attorney for David and Sandra Gerstel - Appellants); ACCEPTED the decision of the County Planning Commission; APPROVED the revised project for a Kensington Design Review Development Plan for a single-family residential addition and an attached uncovered deck, County File #DP15-3009; ADOPTED the findings and conditions of approval for County File #DP15-3009; DIRECTED the Department of Conservation and Development Director, or his designee to file a Notice of Exemption with the County Clerk.***

#### ATTACHMENTS

CPC Letter of Appeal by Amara L. Morrison  
CPC Resolution  
Findings and Conditions of Approval  
Maps  
CPC Staff Report  
ZA Letter of Appeal by David Gerstel  
ZA Staff Reports & Findings and Conditions of Approval  
Shadow Study Provided to the CPC  
Shadow Study Provided to the ZA  
Photographs of the Subject Property  
Photographs from Neighboring Property  
Revised Plans Submitted on April 11, 2017  
Plans as Approved by CPC  
Agency Comments  
Notification List  
Notification List 2  
Presentation