



**Contra
Costa
County**

To: Board of Supervisors
From: John Kopchik, Director, Conservation & Development Department
Date: October 25, 2016

Subject: Appeal of County Planning Commission Denial of a New Single-Family Residence on Lawson Road in the Kensington Area

RECOMMENDATION(S):

1. OPEN the public hearing and accept testimony on the appeal of the County Planning Commission decision to deny the Development Plan for the proposed single-family residence, variances for a 3-story residence and retaining walls, and the removal of 11 code-protected trees and work within the dripline of two code-protected trees, on a vacant lot at the end of Lawson Road in the unincorporated Kensington area (County File #DP15-3030).

2. CLOSE the public hearing.

3. DENY the appeal by Edward Dean and Darlene Tong and UPHOLD the County Planning Commission's decision to deny County File #DP15-3030.

FISCAL IMPACT:

The applicant is responsible for all costs associated with the processing of the application.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **10/25/2016** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes: See Addendum

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Mary N. Piepho, 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: October 25, 2016

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

Contact: Dominique Vogelpohl
925-674-7814

By: June McHuen, Deputy

cc:

BACKGROUND:

On September 16, 2015, a Development Plan application for the construction of a new 4,224 square foot single-family residence on a vacant lot located at the end of Lawson Road in the Kensington area was submitted to the Community Development Division (CDD). The project included a request to determine conformity with the Kensington Combining District for the new single-family residence, as well as requests for approval of a variances to allow 3-stories, where a maximum of 2 ½ - stories is allowed and to allow retaining walls over 3-feet in height within the required yard areas, as well as a request for a tree permit to allow the removal of 11 code-protected trees and work within the dripline of 2 code-protected trees.

The project was first considered by the Kensington Municipal Advisory Council (KMAC) on October 27, 2015. Due to the project's multiple aspects, and the fact that all interested parties could not be in attendance, 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 KMAC recommended conditions included that a storage room on the parking level be eliminated, and a portion of the "view room" on the upper level be reduced in order to minimize the 3-story portions of the residence. Per KMAC's recommendation, the applicant incorporated these revisions into the project plans and reduced the 3-story area in a manner that the KMAC considered to be acceptable.

County Zoning Administrator Public Hearing

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 from the applicants/property owners in support of the project. After hearing from all of the speakers, and receiving new written testimony, the Zoning Administrator continued the item as an open hearing to April 4, 2016. This was to provide the Zoning Administrator with time to consider new testimony and conduct a site visit of the subject property and a neighboring property, 153 Lawson Road.

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 11 trees, and required that the overall height of the residence be reduced by 3-feet, as measured from the top of the parapet. The height of residence would not be able to exceed the 825-foot elevation. The Zoning Administrator also included conditions that required the applicant consult with appropriate public agencies to ensure proper development in relation to potential easements, and that a geotechnical report be peer-reviewed by the County geologist.

County Planning Commission Public Hearing

Two letters appealing the Zoning Administrator's decision were received on April 14, 2016, during the appeal period; one by the applicants, and one by the neighboring property owners. George and Anita Luk (153 Lawson Road) maintain that, even with the height reduction, views, privacy, and solar access from their property would still be impacted. They did not agree that the bulk, scale, size and design of the residence is consistent with the neighborhood, or the Kensington Combining District, and wished to see further height reduction. They claimed that the proposed retaining walls are located directly over existing easements, and that the applicant should be responsible for the easements' future maintenance. The Luks also did not agree that appropriate findings were made to allow the variance approval for a 3-story residence, or retaining walls within the setback or side yard. They did not agree that appropriate findings were made to allow the removal of the two Cedar trees based on the requirements of the County Tree Protection and Preservation Ordinance.

In the appeal submitted by Edward Dean and Darlene Tong (applicants/property owners), they indicated that the height reduction made no positive impact on views, privacy, solar access, bulk or scale. They did not agree that the residence, as proposed, would have a negative impact on neighboring residences, and wished to have the original design approved and have the height restriction condition removed.

The appeals of the Zoning Administrator's decision were heard before the County Planning Commission on August 9, 2016. The hearing was open to the public and testimony was accepted from the Luks (appellants) located at 153 Lawson Road, Michael Chanowitz (52 Kensington Court), and Edward Dean and Darlene Tong (property owners). After hearing from all of the speakers, the Planning Commission found the proposed development of a new single-family residence, including the variance approvals for a three story residence and retaining walls, and tree removal, inconsistent with the purpose and intent of the Kensington Combining District (-K), and were unable to make the findings for granting of the variances and tree permit. The Planning Commission voted unanimously to overturn the Zoning Administrator's approval, and denied the project.

County Board of Supervisors Public Hearing

A letter appealing the denial from the Planning Commission was received on August 18, 2016 from Edward Dean and Darlene Tong (applicants/property owners), leading to the scheduling of a public hearing before the Board of Supervisors. Staffs recommendation is based on the Planning Commission's denial of the project.

Alternative Actions

Conversely, if the Board of Supervisors finds merit in the proposed project, or that changes could be made to the project that would make it consistent with the Kensington Combining District (-K), the Board may decide to approve the appeal of Edward Dean and Darlene Tong, and overturn the Planning Commission's decision to deny the project. If this were the case, the Board could take the following actions: 1) Determine that the

project is categorically exempt from the California Environmental Quality Act (CEQA); 2) Adopt the findings and conditions of approval as approved by the Zoning Administrator on April 4, 2016, contained in Exhibit #4, attached; 3) Direct the Department of Conservation and Development, Community Development Division to post a Notice of Exemption with the County Clerk.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board of Supervisors were to uphold the appeal and overturn the Planning Commission's denial of the project, the applicant could move forward with the construction of the new single-family residence.

CHILDREN'S IMPACT STATEMENT:

No impacts are associated with the proposal to construct a new single-family residence within a residential zoning district.

CLERK'S ADDENDUM

By unanimous vote the Board accepted into the record materials that became available after the posting of the agenda. Testimony was taken from applicant Darlene Tong (handout attached). Public comment was provided by: John Combs, resident of Kensington; Ira Harris, resident of Orinda; Michael Chanowitz, resident of Kensington Anita Luk, resident of Kensington; George Luk, resident of Kensington; Carl Campos, resident of Walnut Creek (handout attached). CLOSED the public hearing; GRANTED the appeal of applicants Edward Dean and Darlene Tong; APPROVED the Development Plan and variances and the removal of the 11 code protected trees (and work within the dripline), with the following modifications: 1. Move the siting of the house 5 feet to the east, parallel to the property line 2. Incorporate the Zoning Administrators recommendation lowering the height of the building by 3 feet; DETERMINED that the project is categorically exempt from the California Environmental Quality Act (CEQA); ADOPTED the findings and conditions of approval as approved by the Zoning Administrator on April 4, 2016, contained in Exhibit #4; and DIRECTED the Department of Conservation and Development, Community Development Division to post a Notice of Exemption with the County Clerk.

ATTACHMENTS

Exhibit #1 - CPC Resolution 14-2016
Exhibit #2 - Maps
Exhibit #3 - Project Plans
Exhibit #4 - Ed & Darlene Appeal letter
Exhibit #5 - CPC Staff Report
Exhibit #6 - Zoning Staff Reports
Exhibit #7 - Findings and COAs
Exhibit #8 - Views Luk residence west
Exhibit #9 - Views Luk residence south
Exhibit #10 - Photos from 52 Kensington
Exhibit #11- Dean Tong Letter

Exhibit #12- Luk Letter

Exhibit #13 - PPT Pres