



**Contra
Costa
County**

To: Board of Supervisors
From: John Kopchik, Director, Conservation & Development Department
Date: October 23, 2018

Subject: Appeal of the County Planning Commission's decision to approve a plan to remodel a single family residence at 7 Highgate Court, Kensington.

RECOMMENDATION(S):

1. OPEN the public hearing for County File #DP17-3046, RECEIVE testimony, and CLOSE the public hearing.
2. DETERMINE that County File #DP17-3046 is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15301(e)(1).
3. DIRECT the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.
4. APPROVE County File #DP17-3046, a development plan for a Kensington Design Review for the remodel of a single-family residence, which includes replacing the roof, adding skylights and solar panels, replacing two trellises, and removing 8 square feet of floor area from the kitchen.
5. APPROVE the attached findings and conditions of approval from County File #DP17-3046.
6. DENY the appeal of Allen Trigueiro.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **10/23/2018** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

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 23, 2018

Contact: Susan Johnson
(925) 674-7868

, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

cc:

FISCAL IMPACT:

The applicant has paid the initial deposit and is responsible for all of the time and material costs associated with processing the application.

BACKGROUND:

This is a hearing for an appeal of the County Planning Commission's decision to deny an appeal and uphold the decision of the County Zoning Administrator to approve a Kensington Design Review for an interior and exterior remodel of a single-family residence in Kensington, which includes replacing the roof and adding skylights. The appellant, Mr. Allen Trigueiro, is appealing the approval of this project based on the potential impacts new construction would have on the views from his residence.

Project Description

The applicant requests approval of a Development Plan for a Kensington Design Review for an interior and exterior remodel of the existing single-family residence, which includes replacing the roof and adding skylights. The new roof and insulation will increase the overall height of the residence by 6 inches and the skylights will measure 18 inches above the new roof ridge, increasing the overall height of the residence from 26 feet and 8 inches to 28 feet and 8 inches. The existing gas flue and fireplace chimney will be modified to extend 2 feet above the skylights located above the dining room. New solar panels and a new kitchen exhaust fan will also be added to the roof. In addition, this project includes removing 8 square feet of floor area from the kitchen (on the eastern side of the residence), the replacement of existing glazing and sliding doors, the addition of new windows, decking repair, and the replacement of two trellises. No expansion of the gross floor area is proposed.

Pursuant to County Code Section 718-12.004, solar panels may be located on rooftops as long as the system, when installed on a rooftop, does not exceed the building height limit of the zoning district in which it is located. Solar panels are also exempt from design review. Additionally, pursuant to County Code Section 82-2.008, the limits of heights of structures established in Division 84 for any district shall not apply to chimneys.

Summary of Appeal

Allen Trigueiro is objecting to the height of the skylights. According to Mr. Trigueiro the south-facing 23-foot long skylight would obstruct approximately 1/3 of Mr. Trigueiro's view of the San Francisco Bay. Mr. Trigueiro claims that normal skylights usually measure 6 inches (curb height) above the roof, not 30 inches above the roof surface as shown on the plans.

Staff Response

Efforts were made by the applicant to preserve the views from Mr. Trigueiro's residence, which included reducing the overall height of the skylights. The tallest skylight located above the dining area will measure 18 inches above the new roof ridge instead of 36 inches as originally proposed. The applicant and property owner also agreed to re-orient the skylights over the bedroom hall so they align and create a more harmonious roof pattern and to paint the skylight curbs and metal frames gray to match the new roof color. Additionally, the applicant and owner agreed to relocate the solar panels to the other side of the roof, over the subject property's master bedroom and away from Mr. Trigueiro's

home.

Pursuant to a statement from the applicant, the main interior spaces in the house are dark, due in part to the dark wood ceilings and floors. Adding skylights at the dark interior areas will help mitigate this issue. However, skylights bring direct sunlight into the space, which presents an issue for the property owner, who wants to display artwork. Direct sunlight can deteriorate art, even with UV glass, so avoiding direct sun penetration is important. Raising the new skylights on curbs will reduce the amount of direct light penetrating the space. Therefore, the applicant and owner are proposing to construct new skylight curbs over the living/dining room, main hall and kitchen. The top of the highest skylight (the 23-foot long skylight above the dining room) will extend 18 inches above the new roof ridge, which changes the overall height of the residence from 26 feet and 8 inches to 28 feet and 8 inches. The raised curbs will provide sun angle cut-off during most times of the year. Skylight shades were added when the applicant reduced the skylight curb height to provide direct sun cut off during the summer when the sun is higher in the sky.

The proposed construction conforms with all applicable development standards for the R-6 Zoning District and will not substantially affect the views of scenic natural features from Mr. Trigueiro's residence. Pursuant to Section 84-74.404(m) of the Kensington Combining District Ordinance, "Obstruction means any substantial blockage or diminution by the proposed development on surrounding neighbors' light, solar access, view, or preexisting solar energy systems." Impacts on neighboring property owners will be minimal since no expansion of the gross floor area is proposed and the overall height of the residence would increase by no more than 2 feet. Specifically, the 23-foot long skylight would not substantially block any view from Mr. Trigueiro's residence. There are multiple vantage points from both levels of Mr. Trigueiro's home, many of which will be unaffected or minimally affected by the proposed construction.

The raised roof and new skylights would potentially block a small portion of the view from the first level living area of Mr. Trigueiro's residence, 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 land. However, 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. Mr. Trigueiro would enjoy similar views of Brooks Island and the San Francisco Bay from the first floor deck, second story bedroom, and green roof. In addition, the elevated skylights would not affect the appellant's views of the Bay Bridge, city skyline, or Golden Gate Bridge.

Detailed Background

Site/Area Description

The subject property is located within Kensington in an established single-family, hillside residential neighborhood. Most homes within the immediate vicinity of the subject site were built between the early 1940s and early 1960s. Due to the location, homes within

this architecturally diverse area are generally two-stories and designed to maximize views of the San Francisco Bay.

The subject residence was built in 1960 and is mid-century modern in design with panoramic views of San Francisco, the Golden Gate Bridge, and the San Francisco Bay. The 5,576 square-foot two-story residence includes 4,063 square-feet of conditioned living area, a 433 square-foot carport, a 237 square-foot covered entry court, and 843 square feet of covered decks. Although Highgate Road runs along the southern property line of the project site, access to the residence is obtained through a driveway that fronts Highgate Court.

General Plan Consistency

The subject property is located within the Single-Family Residential, High-Density (SH) General Plan land use designation. This designation allows between 5.0 and 7.2 single-family units per net acre. Two tax assessor parcel numbers have been assigned to the subject site: the existing residence resides on the portion of the property assigned (APN: 572-181-017) and measures 11,100 square-feet in area, and the pool and 816 square-foot accessory building (a single story carport/garage with a bathroom and pool equipment storage room) is located on the portion of the property assigned (APN: 572-181-016) and measures 9,984 square feet in area. A condition of approval has been added to the attached Findings and Conditions of Approval that will require the owner of the subject site to merge the two tax assessor parcel numbers through a lot line adjustment. However, since a single-family residence is a permitted land use in this designation, and the proposed improvements are residential in nature and will not change the density of residential development for the site, this project is consistent with the SH General Plan land use designation.

Located in Kensington, the project is also subject to specific policies in the Contra Costa County General Plan (2005-2020). This allows for the review of new residential development that provides reasonable protection for existing residences in the Kensington community with regard to views of scenic natural features, design compatibility (including bulk, size, and height), adequate parking, privacy, and access to sunlight.

Zoning Compliance

The subject property is located within the Single-Family Residential District (R-6), the Kensington Combining District (-K), and the Tree Obstruction of Views Combining District (-TOV).

The existing residence meets all of the required building setbacks and the proposed construction will not increase the gross floor area of the residence. Instead, the applicant and owner propose to replace the existing roof and insulation and add new, raised skylights. The new roof and insulation will increase the overall height of the residence by 6 inches and the skylights will measure 18 inches taller than the new roof ridge, changing the overall height of the residence from 26 feet and 8 inches to 28 feet and 8 inches. The

residence will not exceed 2 ½ stories or the 35 feet maximum height restriction and will therefore meet all applicable development standards within the (R-6) Zoning District.

Section 84-74.802 of the County Code establishes gross floor area threshold standards for properties within the Kensington Combining District (-K). No addition to the gross floor area is proposed. The applicant is proposing to remove an 8 square foot bump-out on the eastern side of the home, which reduces the gross floor area from 5,576 square feet to 5,568 square feet.

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. The development enhances the livability of the residence, which improves the value and enjoyment of the residence for the subject property owner. Remodeling a home will usually increase its value, which in turns adds value to the neighborhood. Impacts on neighboring property owners will be minimal since no addition to the gross floor area is proposed and the skylights have been lowered. The 23-foot long skylight located above the dining room will extend 18 inches above the new roof ridge instead of 36 inches above the new roof ridge as originally proposed. Since no addition to the gross floor area of the residence is proposed as part of this project, the existing residence will remain substantially compatible with neighboring homes with regard to size. Additionally, the proposed development is not anticipated to affect residential noise levels or parking within the neighborhood. Therefore, as detailed in the attached Kensington Combining District Findings, staff finds that the community's values, including the preservation of views, light and solar access, privacy, parking, residential noise levels, and compatibility with the neighborhood with regard to bulk and scale, will be maintained.

County Zoning Administrator

The project was originally heard at the March 19, 2018 Zoning Administrator (ZA) hearing, testimony was provided from Joram Altman (applicant), Jeremy Patricia Stone (property owner), and William Berland (attorney representing Ms. Stone). Nine (9) letters of support for the project from neighboring property owners were also submitted to staff. Allen Trigueiro (65 Highgate Road) and Daniel Muller (attorney representing Mr. Trigueiro) attended to speak in opposition of the project.

The issues raised by Mr. Trigueiro and Mr. Muller included concerns that new construction would impact the view from Mr. Trigueiro's home, that the project should not be exempt from CEQA because the visual impacts of the proposed construction should be considered an unusual circumstance, and that the repair/replacement of an existing non-conforming deck should not be allowed unless it is modified to meet the required setbacks. The Zoning Administrator continued the project as a closed hearing until Monday, April 2, 2018 to consider the testimony received from both sides.

The Zoning Administrator made the determination that based upon the project plans and photos submitted with the Staff Report prepared for the March 19, 2018 hearing date, that

the proposed construction would not substantially block the light, solar access, or view of skylines, bridges, distant cities, geologic features, terrain, or bodies of water for any of the neighboring properties. In addition, no substantial evidence was provided to indicate that the CEQA exemption was improperly used. Under CEQA Section 15384, substantial evidence means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” The Zoning Administrator agreed with staff that the proposed project is exempt under CEQA Guidelines, Section 15301(e)(1), regarding “Existing Facilities” and approved the Development Plan at the continued public hearing held on April 2, 2018 with modified findings and conditions of approval (COA). Modifications to the conditions of approval included adding language to COA #1, which relate to work on the elevated deck. In addition, COA #3 was modified to state, “The skylight curbs and metal frames shall be painted to match the roof and be of low reflectivity. The applicant may consult with and provide the property owner of 65 Highgate Road with an opportunity to comment on the chosen color.”

On April 12, 2018, Allen Trigueiro (65 Highgate Road) submitted an appeal of the Zoning Administrator's decision to approve County File #DP17-3046.

County Planning Commission Public Hearing

At the June 27, 2018 County Planning Commission hearing, testimony was provided from Joram Altman (applicant and architect), Jeremy Patricia Stone (property owner), William Berland (attorney representing Ms. Stone), and Bob Treppa (9 Highgate Court) in support of the project.

Joram Altman and Jeremy Patricia Stone summarized the project and explained that the main objectives of the proposed remodel are to update the original house built in 1960, which includes a seismic retrofit, and to bring light into the residence. With regard to the roof replacement, the applicant discovered that existing roof membrane and insulation is thinner than originally anticipated. Therefore, in order to achieve an R30 insulation factor to meet Title 24 Energy Compliance, the new roof and insulation would increase the overall height of the house by a maximum of 6 inches (instead of 4 inches as originally proposed). Since the wood ceiling is part of the historic fabric of the existing residence, the applicant and owner do not wish to cover it up by installing the new insulation on the interior, but rather keep the original concept of roof top mounted insulation. Additionally, the interior of the house is dark and the proposed skylights would mitigate this problem. However, direct sunlight would cause fading and deterioration of her displayed artwork. Placing the skylights on raised curbs would reduce the amount of direct sunlight penetration and solve this problem. Mr. Altman also explained that efforts were made to address Mr. Trigueiro's concerns regarding the project, which included reducing the overall height of the skylights. The tallest skylight located above the dining area will measure 18 inches above the new roof ridge instead of 36 inches as originally proposed. The applicant and property owner also agreed to re-orient the skylights over the bedroom hall so they align and create a more harmonious roof pattern. Additionally, the applicant and owner agreed to relocate the solar panels to the other side of the roof, over the subject

property's master bedroom and away from Mr. Trigueiro's home.

Bob Treppa, who resides north of the subject property at 9 Highgate Court (and also has a view of the subject property's roof), expressed that although skeptical of the project at first, believes steps have been taken by the applicant and owner to try and address Mr. Trigueiro's concerns. Thus, he supports the project. William Berland also provided testimony in support of the project.

The appellant, Mr. Allen Trigueiro (65 Highgate Road), provided testimony in opposition of the project. His main concern was that the proposed south facing 23-foot long skylight, would obstruct his view of the San Francisco Bay and Brooks Island from his living room from the first level of his two-story home (which is almost parallel with the current roof ridge of Ms. Stone's residence). This view would be most impacted from a seated position in his living room.

After accepting testimony and closing the public hearing, the commissioners debated whether or not the project could and/or should be redesigned (e.g., lower the 23-foot long skylight and use glazed glass to reduce UV radiation). During their debate, staff reminded the commissioners of the Kensington Combining District findings, which need to be balanced in order to make a determination of whether or not to approve the development plan.

Ultimately, a motion was made to uphold the County Zoning Administrator's decision and deny the appeal. The motion was passed by the County Planning Commission with a 4-2 vote. This approval includes accepting the revised south elevation (submitted at the County Planning Commission), which shows that the new roof will be 6 inches taller than the existing roof.

On July 5, 2018, Allen Trigueiro (65 Highgate Road) appealed the County Planning Commission's decision to approve County File #DP17-3046.

Conclusion

The appeal is similar to the testimony offered to the Zoning Administrator and County Planning Commission and does not provide support for overturning the County Planning Commission's decision. The project is consistent with review criteria outlined in the Kensington Combining District Ordinance as well as the General Plan Policies for the Kensington area. Considering these facts, Staff recommends that the Board of Supervisors deny the appeal and sustain the County Planning Commission's approval of County File #DP17-3046, based on the attached findings and subject to the attached 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 Administrator's approval of the residential remodel will be overturned. The owner of 7 Highgate Court would be unable to move forward with the remodel as proposed.

CLERK'S ADDENDUM

Speakers: Phil Warman of Posard Broek + Associates, with Allen Trigueiro (Appellant); Ms. Jeremy Patricia Stone (Owner); Joram Altman, architect (applicant); William Berland, resident of Berkeley; Vahid Sattary, resident of Kensington; Jan Zaitlin.

CLOSED the public hearing; DETERMINED that County File #DP17-3046 is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15301(e)(1); DIRECTED the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk; APPROVED County File #DP17-3046, a development plan for a Kensington Design Review for the remodel of a single-family residence, which includes replacing the roof, adding skylights and solar panels, replacing two trellises, and removing 8 square feet of floor area from the kitchen; APPROVED the findings and conditions of approval from County File #DP17-3046; DENIED the appeal of Allen Trigueiro; and DIRECTED an additional condition of approval be added to complete a survey to verify the existing roof height and the finished height of the roof and skylight.

ATTACHMENTS

Maps

Project Plans

Revised South Elevation Submitted on July 27, 2018

Trigueiro CPC Appeal

Letter to the Board of Supervisors from William S. Berland dated August 27, 2018

CPC Approved Findings & COA's

CPC Staff Report

Trigueiro ZA Appeal

Letter to Planning Commission from William S. Berland dated June 1, 2018

Summary of the Zoning Administrator's Response to the Letter of Opposition dated March 19, 2018

Public Comments - 9 Letters of Support

ZA Staff Report

Public Comments - Letter of Opposition dated March 19, 2018

Site Photos

Power Point