

November 3, 2021

County of Santa Clara
Zoning Administrator Hearing

RE: Continued Item #2
FILE: PLN20-124
Owner: Jeffrey and Melissa Waters
Address: 0 Peacock Court, Cupertino
APN:351-42-004

Dear Zoning Administrator:

As the Planning Staff Report notes, this project was deemed complete on May 27, 2021 by the Planning Commission. However, what the staff report fails to note is that I have made multiple requests to submit additional documentation which staff has refused to allow without placing inappropriate caveats on that submission:

1. Planning staff required that a new application be made prior to allowing any documentation to be submitted. Such a requirement would void the status of "complete".
2. After our refusal of number 1, planning staff required that we submit under the condition that the submittal was a modification to the existing application. Once again this had the potential of voiding the existing determination of "complete". And to be very clear, the documentation we wished to submit was not a modification of the existing application. We therefor refused to submit under that requirement.
3. I also noted that we should be allowed to submit consistent with Government Code 65944 where it states (partial):

"The agency may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application."

Though I contend that it is axiomatic that an applicant be allowed at any point to submit information consistent with Government Code 65944, staff's response was we (staff) "did not make the request". I.e. The staff report summary is saying "no new information has been submitted" without saying the reason that staff would not allow it and **they (staff) did not request it.**

I believe that is not a productive approach to processing an application.

On July 1, 2021, the Zoning Administrator granted an extension consistent with Government Code 65957 with states (partial) that an extension may be granted:

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"...for a period not to exceed 90 days from the date of the extension."

As the extension was granted on July, 2021 staff has exceeded the 90 day extension by over 30 days. Per Government Code 65956 due to the required Permit Streamlining Act (PSA) time frames not being met this project is subject to being automatically deemed approved once I complete two actions:

- a) Provide seven-day notice to staff of my intent to provide the required public notice.
- b) Provide the appropriate public notice.

Once actions a & b are taken, within 60 days the project would be automatically approved under Government Code. On Oct. 11th, 2021 I provided notice to staff consistent with 65956 (please see attached) thus completing action "a". However, I intentionally did not provide the *public* notice (action "b"), in order to allow for a 60 day extension of the PSA time limits so a continuance could be granted without violating the PSA.

I hereby request that the hearing being continued to a date certain so that you and staff may have ample time to review the additional information submitted (consistent with Government 65944) so that you may rule, as appropriate on the actual current information associated with this application in front of you.

In addition, and with the assumption a continuance will be granted, I request that staff agree to a meeting to discuss the design of the project. Despite multiple requests that has not occurred to date.

At this point I do not think it particularly constructive to provide a lengthy discussion on the current staff report as it was prepared with out the current application documents. However below (in bold) is a portion of an email I sent on October 14th, 2021 expressing my concerns regarding the previous staff report (it does appear that the current staff report is largely consistent with the prior report) various design matters.

Please note Policy R-GD 35 states:

"In applying and implementing Design Review requirements, the County shall also take into account such factors as distance from the valley floor, existing vegetation, intervening slopes and hillsides, and other factors that tend to mitigate visual impact of hillside."

As the photorealistic of the house (from the valley floor) indicates, the home is not discernible from the valley floor due to all the factors as noted under Policy R-GD 35 indicates. Thus the design review comments, and the requirement for story poles, are invalid. I cannot say the house is not visible....but it is, as said, *indiscernible* and the various comments contained in the staff report regarding the design would have no discernable impact.

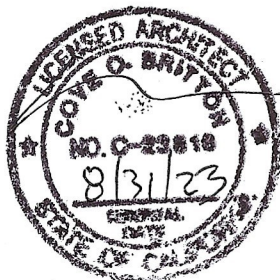
I had hoped, and requested, to have a discussion regarding these matters but with no success. Briefly I will note some of my concerns with the staff report presented to the ZA regardless.

1. The size of the visible portion (not counting decks and basements) of the home is less than 7000 square feet including garages. However, the staff report indicates that a nearby home that is far more visible and is approximately 7000 square feet (and I believe that is without the garage), has less view impact. As the photo realistic indicates, the directly adjacent homes to the proposed home have significantly more view impact.
2. The staff report notes moving the home to another location on the site. However, where the house is located is the flattest area on the site and there are no other locations that are less visible and viable.
3. The state staff report expresses concerns over retaining walls that are not visible to the valley floor. In addition: the retaining wall that appears to be of primary concern the height is misstated (a portion of that is railing), and that portion of retaining wall is supporting a pathway that allows an infirmed person to circumnavigate the upper portion of the property and to access a trail to the lower portion of the property.
4. Virtually all the retaining walls could be eliminated by using raised platforms on posts. However, looking at the underside of a deck is typically considered unattractive. But as said, the retaining walls facing the valley floor are not visible.
5. The staff report makes statements regarding the roof of the project that appear to encourage the house to become more visible. I.e. The uphill portion of the home could be 5 feet taller than it is, that would certainly emphasize that the downhill portion of the house facing the valley floor is stepping down the slope, but the result would be that the upper portion of the home would be more visible.
6. The home as designed is well below the height limit except for one gable end that does not face the valley floor.
7. The roof of the proposed home has been designed to provide optimum conditions for the use of solar panels (our client is an officer of a photovoltaic manufacturer). Planning staff's design suggestions are not conducive to such optimum conditions.

My comments above are just some of the subjective issues I would have liked to discuss prior to the ZA hearing. In addition, the current set has all technical objective issues resolved. Again, something that would have been good for staff to review and discuss prior hearing so that the ZA had an opportunity to review what was actually being presented with a staff report consistent with the actual project before him/her.

Thank you for your consideration.

Sincerely:
Cove Britton
Architect





Cove Britton <cove@matsonbritton.com>

RE: [EXTERNAL] Re: PLN20-124_0 Peacock Court Resubmittal

Cove Britton <cove@matsonbritton.com>

Mon, Oct 11, 2021 at 6:16 PM

To: "Onciano, Jacqueline" <jacqueline.onciano@pln.sccgov.org>

Cc: Frank Kruzic <frank@matsonbritton.com>, "mfwaters3@gmail.com" <mfwaters3@gmail.com>, "Mikhail, Leza" <leza.mikhail@pln.sccgov.org>, "Loquist, Kristina" <Kristina.Loquist@bos.sccgov.org>, Thomas Jamison <tomlaw@tjamison.com>, "Richard J. Irish" <richard@riengineering.com>, "Ling, Xue" <xue.ling@pln.sccgov.org>, "Pianca, Elizabeth" <Elizabeth.Pianca@cco.sccgov.org>, "Cheleden, Christopher" <Christopher.Cheleden@cco.sccgov.org>

Dear Ms. Onciano:

My wife (and fellow Architect and partner) have been away on our 33rd anniversary so my apologies for a late reply.

Respectfully: There was no written mutual agreement of a 90 day extension of the hearing date requirement (note it is extension of the hearing date) until the Zoning Administrator hearing (your staff refused to do so until the hearing). The idea that the 90 day is an extension of all Permit Streamlining Act time frames is disturbing on many levels and is not consistent with the PSA in concept or fact.

If you doubt that I am correct, I am more than happy to work with the Governor's Office of Planning Research and you to clarify. It would benefit all applicants of the County of Santa Clara (and the Governing Body) to understand the full extent of their rights under the Permit Streamlining Act. We are in a housing crisis and what appears to me to be your deliberate (?) obfuscation is telling. But I am more than willing to admit I am wrong if the Governor's Office of Planning and Research will support your position.

That said:

Per Government Code 65956 please consider this the seven days notice required.

Also (but not limited too) please provide the information required by Government Code 65941.5. To date that information has not been provided.

I also again request to submit information (that you specifically acknowledge does not trigger new PSA timelines as allowed under the PSA) and to meet with qualified County staff for a respectful conversation.

The positive thing I am seeing about this project is the possibility that all applicants may be aware of their rights....and I mean ALL. I have purposely left blank what the code references say above...as ALL applicants should be aware of them as PART of their submittals and County responses.

Regards-

[Quoted text hidden]