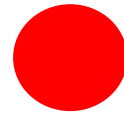


## Adriana Jaramishian

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**From:** Bob Gans <bobgans@me.com>  
**Sent:** Friday, February 21, 2020 9:18 AM  
**To:** Planning Mail Box  
**Subject:** Red Dot for February 26 DRB Meeting: Item 1, ADR 19-090, Fonseca Vehicular Gate  
**Attachments:** Fonseca DRB Letter3.pdf

Dear Members of the Design Review Board:

We are writing to supplement our previous red dot, dated January 18, 2020, opposing Ms. Fonseca's proposal to add vehicular access to her guest house from Hoska Lane, and in particular to address the argument offered by her attorneys that denying her application would somehow rise to a constitutional violation. Back in 2015, when this application was initially considered and rejected, Ms. Fonseca submitted a nearly identical letter from her attorneys making the same argument, and citing the same 56-year old case in support. We have attached a letter that we previously submitted to the DRB addressing this contention, and which we urge you to review. The bottom line is that their "constitutional taking" argument has no legal merit, and the single case they cite in support of their position has no application to the present circumstances. As we said in our previous red dot, "it's deja vu all over again."

The attorneys' further argument that the result of granting the application will only result in "one additional vehicle on Hoska Lane" is equally absurd. The point is not how many vehicles will be permanently parked at Ms. Fonseca's guest house; instead, it is how much traffic will be generated on the lane as a result of that vehicle making multiple trips throughout the day, as well as traffic arising from other vehicles carrying relatives, friends, guests, deliveries, service personnel, etc., to this new access point. (These concerns would be magnified exponentially if the guest house were ever to be used as a short-term rental property, or even if it were loaned out to friends and relatives). As detailed in our prior submission and those of our neighbors, it is clear that the likelihood of increased traffic and congestion stemming from the proposal would violate DRO §§ 23.08.074 (A-C). We urge you to adopt Staff's recommendation and deny the application.

Thank you once again for your consideration of this matter and your service to Del Mar.

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March 23, 2015

BY EMAIL

Joseph Smith, AICP  
Associate Planner  
City of Del Mar  
1050 Camino Del Mar  
Del Mar, CA 92014

Re: *DRB14-049: Fonseca Proposed Guest House, 700 Crest Road*

Dear Mr. Smith:

I write in reply to the letters submitted by applicant's attorneys, Scudi & Ayers, LLP, both of which are dated March 18, 2015, and which primarily consist of unsupported assertions that the proposed guest house does not violate the Design Review Ordinance. Applicant does not offer a single piece of evidence to rebut the extensive testimony previously submitted to the DRB, (both in writing and at the December hearing), detailing the negative impact this project will have on Hoska Lane, nor does she even address the continued inclusion of kitchen facilities in the proposed project, which alone constitutes a clear violation of the municipal code.<sup>1</sup> Instead, applicant now argues that, despite these infirmities, she has a constitutionally protected right to construct her guest house and provide vehicular access from Hoska Lane, and that failure to approve the project as proposed "would implicate an unconstitutional taking without just compensation." Applicant's attempt to transform a routine petition for a building permit into a constitutional civil rights claim reflects an inappropriate and meritless effort to disrupt the

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<sup>1</sup> As detailed in the prior submissions to the DRB, the proposed guest house violates the DRO and municipal code for at least the following reasons: (i) adverse impact on pedestrian and vehicular traffic and safety on Hoska Lane (Sec. 23.08.074(A)); (ii) adverse impact on Hoska Drive by increasing overflow parking demands (Sec. 23.08.074(B)); (iii) creation of additional traffic hazards on Hoska Lane due to congestion (Sec. 23.08.074 (C)); (iv) decreasing safety by exacerbating existing obstacles to emergency vehicles accessing Hoska Lane (Sec. 23.08.074(E)); (v) general incompatibility with the low-density design of the R1-10 Zone (Secs. 23.08.077(D)(3), (F); 30.12.010); and (vi) failure to comply with the definition of accessory living quarters through, among other things, the inclusion of kitchen facilities, rendering it suitable for use as a permanent residence (Secs. 30.12.040 (C); 30.04.010 (D); and 30.04.110 (B)).

orderly design review process that has been so successful in preserving the character of this community for so many years.

First, the issue of vehicular access to Hoska Lane is irrelevant to whether the proposed guest house falls outside the definition of accessory living quarters or otherwise violates the DRO. Every resident of Hoska Lane has objected to this project based on its improper size and scope, suitability to be used as a long-term rental facility, failure to conform to the definition of accessory living quarters, and negative impact on congestion, traffic and safety. In each instance, these violations will exist regardless of whether applicant constructs a driveway and parking strip from Hoska Lane: The proposed driveway and parking strip merely exacerbate the harms created by these violations.

Second, there can be no issue of an unconstitutional taking of property without just compensation where, as here, *nothing is being taken*. Applicant has enjoyed uninterrupted access to Hoska Lane throughout her residency, and no one has remotely suggested that she should be denied future access. Instead, the DRB is being asked to consider whether providing vehicular access to the structure from Hoska Lane will give rise to traffic and safety issues that violate the DRO. This is no different from the role that the DRB plays when considering whether any other project conforms to the municipal code: Applicant's addition of a driveway does not confer upon her a constitutional right to build an otherwise prohibited structure.

Third, research has revealed no cases in which a plaintiff has even attempted to maintain, much less prevailed, on a claim for compensation based on facts remotely similar to the present application. Nevertheless, assuming that failure to allow vehicular access from Hoska Lane could hypothetically be construed to be a taking of her property, applicant still would not be entitled to any compensation. Even the single case she cites recognizes that “[n]ot every interference with the property owner’s access to the street upon which his property abuts . . . constitutes a taking which entitles him to compensation. *Such compensation must rest upon the property owner’s showing of substantial impairment of his right of access to the general system of public streets.*” *Breidert v. S. Pac. Co.*, 61 Cal.2d 659, 663-64 (1964) (emphasis added). Substantial impairment requires a showing of actual damages stemming from the impairment, which is impossible to show in the present context. Indeed, courts have routinely rejected claims for compensation based on substantial impairment even where the plaintiffs’ claims resulted from a loss of access to a two-way street due to the creation of a cul-de-sac, where plaintiffs “failed to specify the use to which . . . [they] have put their property; the added distance, if any, which they must travel in order to reach the general system of public streets or public highways; the lack of availability of reasonable alternative routes to such general system . . . or, indeed, whether the closing has substantially impaired plaintiff’s right of access . . .” *Valenta v. County of Los Angeles*, 61 Cal.2d 669, 672 (1964). Further, courts have routinely rejected substantial impairment claims where there are alternate means of access to the public streets from the affected property. *See, e.g., Border Bus. Park, Inc. v. City of San Diego*, 142 Cal. App.4<sup>th</sup> 1538 (2006) (denying claim relating to commercial property suffering from decreased revenues as result of impairment where alternate means of ingress and egress exist); *Brumer v. Los Angeles Country Met. Trans. Auth.*, 36 Cal. App.4<sup>th</sup> 1738 (1995) (substantial impairment claim rejected where alternate vehicular access and pedestrian access to commercial property maintained).

Here, applicant cannot demonstrate that rejection of her project would constitute any governmental taking, much less a taking entitling her to compensation. Regardless of whether

Joseph Smith, AICP

March 23, 2015

Page 3 of 3

she is permitted to construct a driveway, she will maintain the same pedestrian access she has always enjoyed to Hoska Lane directly from her property, and will also continue to enjoy vehicular access from her driveway on Crest Road. Nor can she demonstrate any damages stemming from a denial of her application. To the contrary, it is beyond dispute that applicant has enjoyed the same substantial appreciation in the value of her property that other residents of Del Mar have enjoyed over the years, much of which has been due to the vigilance with which the DRB has protected the integrity of the DRO.<sup>22</sup>

It is unfortunate that applicant has been unwilling to engage in a constructive dialogue with the residents of Hoska Lane to address the various DRO violations raised at the December hearing. Nevertheless, the result is a project that remains fatally flawed.

I respectfully request that you forward this letter to the Design Review Board, and that the staff give its contents appropriate consideration in making any recommendations to the Board.

Respectfully,

/s/

Robert S. Gans

RSG/md

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<sup>22</sup> Even applicant does not appear to take her constitutional argument seriously, having submitted a separate letter objecting to the designation of Hoska Lane as a public street, rather than an alley that provides only a “secondary means of access.” *See* DRO Section 30.04.010 (L). Applicant’s objection is inconsistent with her constitutional taking argument, which depends entirely upon Hoska Lane being classified as a street, calling into question why she seeks to preserve a challenge to this designation. Applicant certainly should not be allowed to secure any advantage from Hoska Lane being classified as a street for purposes of the current proceedings, and then seek to reverse this determination to secure additional advantages in constructing the proposed guest house.