Dear Mayor and Council Members:

I apologize for not attending this evening. When I submitted my appeal back on December 4th, 2019 I assumed the hearing date would have been sooner than this evening. Unfortunately, Staff scheduled the hearing date and sent out public notices without informing me of the date. I was scheduled to be out of state on business for this hearing date and the City Manager would not move the date.

Below is an explanation regarding the Discussion portion of the Agenda Report:

1. TOP OF SLOPE - The main problems is what is “Top of Slope”? Determining where the Top of Slope is takes on added importance since it determines the rear Se: Back for the buildable Pad. Instead of re-establishing the original historic Top of Slope, The City proposes to let a land surveyor establish a new “Existing” Top of Slope based on observing the current site. My objection is current observable Top of Slope differs by at least two feet due to: (a) previous improvements to the site - the grade was changed and sand/artificial turf were on the lot for almost 2 decades, and (b) run-off and erosion have obliterated any remaining original top of slope topography.

I have two surveys, one a historical survey from the original owner (page 51), and a second I had commissioned (page 52), that both place the Right side Top of Slope on my adjacent property at 92 feet from the front of the lot.

The Tract Map No. 11152 (page 59) illustrates the subject property’s (#16) Top of Slope should closely align with the adjacent properties at #17 and #16. Allowing for 0.2 ft (2.4 inches) difference between the pad heights as shown on the Tract Map, the Top of Slope for lot 16 should be no farther then 5 inches in front of lot 17 AND 5 inches behind the TOS for lot 15.

The civil engineer has “staked” the top of slope numerous times, and consistently been incorrect. The original staking showed Top of Slope clearly 6 - 8 feet down the existing slope. The stakes were moved back to 94 feet from the front of the lot - about 2 feet beyond the exiting slope break and 4 feet beyond the historic top of slope. This 94 feet is what was submitted to Lantern Bay HOA. (Additionally, the civil engineer was never able to properly locate my existing structure on my lot - page 48 vs page 49 and page 113)

The submittal to the City of Dana Point pulled the lot back again to 92 feet. This matches the current “slope break” where the lot has migrated to after 30 + years of wind and erosion. As stated above, it is my contention that the historic Top of Slope should be used as a fixed rear yard set back, and not some random point that has been developed out of happenstance. Using the surveys on file with the City of Dana Point for lots 15 & 17 it possible to come much closer to the historical location of the Top of Slope for Lot 16. Not doing so would allow the structure to project out at least 2 feet farther then it should.

2. PUBLIC HEARING - By granting approvals before the lot setback have been established the chance for public input on establishing the Top of Slope has been removed and placed in the hands of the Staff. I think it is unfortunate that the true scope of the building will not be subject to public review and comment.

3. 7 FOOT REAR SET BACK - the City contends at the end of their comments "the rear yard setback is consistent with essentially all other structures in Lantern Bay Estates". Not all homes in Lantern Bay extend to the top of slope. Many chose to allocate some or all of their top of slope to a back yard. Those homes that do extend to the top of slope rarely, if ever, cover the entire top of slope from side to side as Lot 16 proposes.
My house at Lot 17 has a 5 foot Structural Setback (page 88). Lot 15 originally had a 5 foot rear set back. It was only later that the deck and stair structure was added. In fact the stairs appear to extend past the top of slope and require a small retaining wall, which would be a violation of the City Code (compare attached Photo of Lot 15 from about 1990 to page 58 w/ deck and stair).

4. DECK AT FRONT OF HOUSE - the recommendations of Staff seem more in line with the community standards. Thank you for your review and recommendations.

Finally, as a general concern, on more than one occasion both Staff and Planning Commissioners referred to existing structures that seemed similar to what was being requested. There are numerous intrusions beyond the top of slope in Lantern Bay. If the new City standard is “match existing” then it is going to become increasingly difficult to enforce city standard every time someone “boots” a project and does not get caught.

In closing it is my hope that these issues will be considered not just in the context of this one project, but for the procedural precedent they would establish for the City of Dana Point.

Regards,

Kevin O’Connor
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