

***DRAFT***

# Kensington Municipal Advisory Council Minutes Meeting of June 29, 2004

Council Members present:

Chair: Reyes Barraza

Secretary: Richard Karlsson

Council Member: Patrick Tahara

Council Member: Ed Detmer

The meeting commenced at 7:00 p.m. Members Kay Reed and James Carman were excused and second alternate member Ed Detmer was present.

1. The Council approved the minutes of May 25, 2004, without change.
2. There were no citizen comments before the beginning of the meeting; all those in attendance stated that they were present to address or observe the matters on the agenda before the Council.
3. **Kensington Overlay Zoning Ordinance:** There was a discussion regarding the Urgency Interim Ordinance that pertained to development of properties in Kensington during the period of consideration of adoption of the Kensington overlay ordinance. The prohibitions of development were for: (a) any residential structure proposed for any undeveloped parcel or undeveloped lot, or (b) any residential structure, addition to a residential structure, or new or modified residential accessory building proposed for a lot that has the minimum lot width or lot area required by Divisions 82 and 84 for the residential zoning district where the lot is situated. The Council was advised that the Contra Costa Board of Supervisors had adopted the urgency ordinance, that was authorized by law pursuant to Government Code section 65858, and that the ordinance was effective upon passage on June 29, 2004.
4. **3 Kenyon Ave. (VR041034).** Variance Request for 9'6" primary setback (20' required) for a residence addition. (Continued hearing) The hearing was continued, from the May 25, 2004 meeting, so that Mr. Yilmaz could address questions and comments of the Council, which concerned the design of the improvements and whether the design could not be modified so as to be less intrusive within the area(s) of the setbacks and to provide plans which were up-to-date with the testimony he provided at the last meeting. Mr. Yilmaz appeared at the hearing with drawings that were updated to clarify the new improvements. He testified as to the improvements on the west side of the house and why they were built in the manner indicated. The improvements no longer included the

deck, which had been within the area of the setback, and Mr. Yilmaz explained the necessity for moving the dining room and bedroom to the west side of the house. Members Tahara and Detmer indicated that the dimensions of those rooms were not excessive, but rather appeared to be scaled down so as to have minimal impact upon the setbacks. The revised drawings clarified that the windows in the east side of the first floor bedroom and bathroom would be above grade with the proposed yard grade sloping downward from Highland Blvd. To provide light. Chair Barraza noted that the current setback to the rear (east) side of the house was 2'2" and not the 8'0" as indicated. No members of the community were present to object to the proposed improvements.

*A motion was made and approved 4-0 to recommend approval of the planned improvements of Mr. Yilmaz, date stamped by the Contra Costa Community Development Dept. as of 04 Jun 22 subject to the needed corrections being made the Project Data on page A1.1 (correct APN and current rear setback) of the revised plans dated June 4, 04. .*

5. **215 Arlington Ave. (LP042049)** Land Use Permit request to establish an additional 74 sq. ft. of office space. Don Dommer, President of the Fire Protection Board, made the presentation regarding the improvements to the fire station. The renovations are to provide office space for the administrator who presently is working in the shared conference room downstairs. Due this position and the new paramedic position, two new offices will be provided upstairs extending into the area of outdoor decking, on the west side of the fire station, but the expansion will not extend beyond the current roof line. Two new windows will be added that will be of similar design as those currently in the area of the deck. After questioning by the Council, Mr. Bob Lindquist questioned the need for an office for someone who is employed on a part-time basis. Mr. Dommer responded that the district needed both the support of the administrative officer as well as the additional revenue that position brings as part of her duties. Mr. Bill McNab wanted to know if she is to meet visitors downstairs, per Mr. Dommer's presentation, why she is to have an office upstairs. Mr. Dommer indicated that while her office was upstairs, the present configuration the building would not allow visitors upstairs, and while her day-to-day work was upstairs, it was more convenient for her to engage visitors downstairs.

*The Council recommended by a vote of 4-0 that the plans received April 27, 2004, by the Contra Costa Community Development Department be approved.*

6. **89 Kensington Rd. (VR021113)** Request for variances for expansion of existing 3<sup>rd</sup> story (2-1/2 allowed) and for proposed additional off-street parking of 3' sideyard and approximately 13' front-yard (5' and 20' required). (Third review). The applicant, Meghan Keegan, presented updated drawings received by CDD on 4-9-04. These were made by modifying earlier submissions. The drawings did not incorporate all the recommendations made by KMAC on 4-29-03, and in addition added an off-street parking space on the south side of the house (front and sideyard setback variances needed) and a modification to the front deck which occupies the setback area between the street and the main floor of the

residence. Ms. Keegan handed each councilmember a hand sketch – not seen or reviewed by CDD – requesting that the proposed off-street parking space further encroach into the frontyard setback so that the “front” of this parking space would be even with the face of the existing garage. Chair Barraza stated that there were now three variance issues involved: (1) request to expand the 3<sup>rd</sup> floor beyond the originally permitted approx. 12’ x 33’ rumpus room, (2) request for an off-street parking space with front and sideyard setback variances, and (3) request to rebuild the front deck built within the frontyard setback. Ms. Keegan indicated that the 1<sup>st</sup> and 2<sup>nd</sup> floors of the structure were permitted and only 1/3<sup>rd</sup> of the 3<sup>rd</sup> story (which was the lowest of the three floors) was built without a permit. She further testified that the improvements desired for the third floor were to replace the so-called kitchen area with an improved bathroom, and the additional parking to the side of the house would improve off-street parking. Chair Barraza stated that KMAC had no evidence of any permit to expand the third floor beyond the original approx. 12’ x 33’, and if the Applicant did have such evidence, to please furnish it to KMAC. Until furnished with a satisfactory evidence of the referenced permit, KMAC would have to treat the original approx. 12’ x 33’ rumpus room area as the only permitted interior development of the 3<sup>rd</sup> floor. After questions by the Council, Mr. Paul Taybi, of 84 Kensington Ave. indicated that he objected to the requests, that the additional parking spaces would deprive the existing neighbors of on-street parking, and also that he had two letters from other neighbors objecting to the improvements. It was his belief that the property had been used as a rental for multiple unrelated individuals and the proposed improvements were to further that purpose. Mr. Clyde Henry objected to the proposed parking and indicated that the proposed parking area was within 3’ of Ms. McLain’s property and that the proposal was in violation of existing code requirements in that it did not allow for appropriate setbacks. He further stated that the neighbors were concerned with the “Winchester House” type of expansions of what was intended as a single family home. He finally stated that he and his neighbors had not been presented with drawings of the house and questioned how this would impact the neighbors. Mr. McAllister, a neighbor who was unable to attend, submitted a letter that indicated there was no compelling reason to grant the variance, since in his view the plans submitted were inaccurate. He further stated that the survey of the property was never completed, that the setbacks did not meet appropriate requirements, and that the requested variance for the parking area was elevated and presented a danger. He also indicated that the requested parking resulted in reduced parking for the neighborhood and allowed six parking spaces for the residence, which was more than necessary for a single family dwelling. He finally asserted that the result of the requested variances would provide a special privilege for the property in question, not available to others in the neighborhood, and therefore should be denied. He requested that an additional survey of the property and the structure be performed to make certain that the structure conformed to the permits granted. The applicant countered that her improvements were within the permits and offered to provide them to the Council. Mr. Detmer and Mr. Karlsson expressed concerns that the plans, as submitted, were not legible. Mr. Detmer was also concerned that she had submitted plans for improvements for the 3<sup>rd</sup> story of the residence without submitting evidence that 300 sq.ft. of the existing

structure had been permitted. Mr. Detmer was also concerned that the offstreet parking requested was not detailed with any sufficiency to allow the Council to make a reasonable decision as to the impact upon the adjacent property or the neighborhood. Mr. Tahara commented that the 3<sup>rd</sup> story request for remodeling was not sufficiently detailed to allow him to make a decision as to either the intended design or whether it was permitted. He also shared the same concern with Mr. Detmer regarding the lack of detail concerning the off-street parking.

*Based upon the concerns of the neighbors regarding lack of information and the concern of the Council regarding the lack of detail in her plans and evidence of a permit to the third story, Ms. Keegan was asked whether she would prefer to either request a continuance to provide the information that the Council believed was lacking, or for the Council to make a recommendation based upon the information before it. Ms. Keegan indicated that it would be her preference to continue the hearing, that she would provide copies of the permits for the existing structure and better drawings regarding the requested off-street parking and the improvements to the third floor. The Council, on a vote of 4-0, recommended approval of Ms. Keegan's request in regard to the deck off the first floor, as indicated in the drawings dated April 9, 2004, but agreed to continue the hearing, upon the applicant's request, as to the proposed improvements to the third floor and the off-street parking, based upon Ms. Keegan's representation that she would provide the council with copies of permits, and improved drawings for each of the requested improvements.*

Subsequent to hearing this item, Ms. Keegan appeared back before the Council and indicated that she had been verbally harassed by some of those neighbors present at the meeting and it was her present intent not to appear at the continued hearing. She was advised to report the matter to the police and that whether to appear later was her decision, but that the Council had agreed to continue the matter based upon her representations that she would submit additional evidence to the Council, upon which it had relied.

7. **200 Amherst Ave. (DP043059).** Request for a small lot review for expansion of an existing residence on a substandard lot with possible variances for height. The presentation on behalf of the applicants, Mr. and Mrs. Ngan, was made by their representative, Ms. Linda Alberti. Ms. Alberti began by stating that the existing structure did not meet requirements in that it exceed current height restrictions. She stated that the Ngan's had attempted to work with the Contra Costa Community Development Department within the existing structure, but they were not interested in accepting variances for adding space below, within the existing structure. The Ngan's need four bedrooms, to accommodate their parents, who do not drive an automobile. To allow any improvements without a variance, the community development department has advised the applicants that they would have to fill-in the existing basement so the structure would not be three stories. The additions that they now proposed were below the current height requirements of 35' and they had added a parking space to the rear of the property to replace the garage they propose to demolish. They informed the Council that the new structure occupies 38% of the lot, which is below the 40%

maximum, that the net gain in size of the structure, which is now 3000 sq. ft., would be 600 square feet, after the loss of some outbuildings, the garage and the basement. Chair Barraza, following the presentation, asked questions regarding the community development department's alleged denial of requests for a variance of development of the property within the existing structure. Ms. Alberti indicated that the desired structure would have a built out deck, added additional rooms in the roof with gables, and have a garage under the existing structure but were advised that this would then be a three story residence that would be denied. Chair Barraza further commented that it did not appear to him that an automobile would fit in the allocated space because it would be too difficult to maneuver an automobile in and out of the space proposed. Finally, as they now have a three story house, built before the current zoning limitations, it would seem preferable to rebuild within the existing envelope of the current house, rather than to expand with a large addition with a roof-deck, that has the same impact as a three story house. Mr. Detmer then commented that he congratulated the applicants on their presentation, which he believed was well documented as to the intended plans by well-defined architectural drawings. That said, he shared Mr. Barraza's concerns regarding the size and bulk of the new proposed structure and questioned whether the new proposed off-street parking space was adequate or practical. Mr. Tahara questioned the crawl space of the structure and raised the issue of privacy of the neighbors with the new proposed 3<sup>rd</sup> story deck. Mr. Karlsson questioned the bulk of the proposed structure and whether it was compatible with the neighborhood. Ms. Alberti responded to the questions and admitted that the third story deck did have privacy issues and provided pictures of houses in the area that she believed to be of approximately the same or similar square footage of the proposed home. Ms. Martinez-Rivero, owner of the adjacent property located at 206 Amherst Ave., was the first speaker in opposition to the proposed addition. She presented the Council with a 21 page objection prepared by her and her neighbors in opposition to the proposal. The objection contained the reasons for each of the neighbor's objections, a schematic showing impacts of the proposed addition to the neighborhood, a listing of the square footage of other properties in the neighborhood and lot size, and a petition signed by twenty-five residents of Kensington opposed to the addition. Ms. Martinez-Rivero stated that they were never accurately advised of the applicants' proposed plans until they were advised in writing by the required County notice. Her challenge was based upon both the size and design of the proposed addition. She relied upon the County ordinance requiring that the proposed dwelling be compatible with the surrounding neighborhood in terms of size, height and design. Her survey, which was attached to the presentation, indicated that the proposed addition would nearly double the existing footprint and thereby exceed the square footage of all existing homes in the immediate neighborhood, and that those houses in the neighborhood that were close to the size of the proposed addition, had nearly double the available lot size. Accordingly, the proposed addition was clearly significantly larger in size than any of the surrounding homes of similar lot size. Ms. Martinez-Rivero also indicated drawings showing the impact upon the neighbors of a larger structure, which would impede both views and privacy. She further testified that she spoke to Will Nelson of Contra Costa Community

Development Department regarding the assertion of the applicants that they were advised that they could not remodel the home within the existing shell, and that she was advised by Mr. Nelson that he had no recollection of reviewing any design for the subject property that was limited to remodeling within the existing shell.

David Bergen then made a short presentation on alternative designs and Council Member Detmer advised that the role of KMAC was to review and recommend approval/denial of plans as submitted by the owner, not to propose alternative plans. Ms. Laura Dubinett, a real estate agent, indicated that the size, height and design of the proposed home, combined with the fact that it would have a negative impact upon views, would have a negative impact upon the values of property in the immediate area. Mr. Lee, a resident of Kensington and a former student of Kensington Hilltop School opposed the proposed addition to the home based upon the size, bulk and reduced views of other properties in the area. While he welcomed the Ngan's to the neighborhood, he requested them to consider the negative impact upon the neighborhood of the proposed construction. Mr. Lee also presented a petition, signed by 25 residents of Kensington, opposed to the proposed addition to 200 Amherst Ave. Nancy Field, of 197 Amherst Ave. expressed her concern that if this addition were allowed, it would set a precedent for future development and the character of the neighborhood would be negatively impacted. Mark Field indicated that while it was stated that his residence at 197 Amherst appeared large from the street, in fact it was only at 2200 sq. ft. house on a 5000 sq. ft. lot, and was therefore a smaller home than that proposed on a much larger lot.

Mr. Ngan responded that it was their intent to try to compromise but their efforts had been unsuccessful, either the neighbors or the Community Development Department. Discussion then ensued among the KMAC members regarding the proposed development, the bulk and size of the design, and the impact upon the neighbors and what had been testified to by the Ngan's agents regarding Community Development's opposition to improving the property within the existing footprint of the residence.

*There were more questions from the Council regarding the proposed addition and design, and Mr. and Ms. Ngan were asked, in light of the record before the Council, if they would prefer KMAC to vote on the proposal now, or if they would prefer a continuance, so that they and the neighbors could have discussions with Community Development regarding the potential for improving the property within the existing envelope, or to allow them to consider the option of an improvement of a smaller scale. Mr. and Ms. Ngan indicated that they would prefer that the matter be continued and thus requested a continuance. On a vote of 4 to 0 the matter was continued to another date.*

8. Procedural Matters: Discussion concerned modification of the content of the existing hearing notices to advise residents of what sort of evidence would be persuasive and admissible in KMAC hearings. The Council agreed that revisions to the letter would be advisable.

9. Informational Reports were received regarding:
- a. Enforcement Reports
  - b. Response from CDD re: 89 Kensington Rd. and 163 Arlington Ave.
  - c. Updates on 120 Kenyon Rd., 113 Kenyon Rd. and 23 Highgate Ct.
  - d. Correspondence on Home Occupancy Permits.
  - e. Correspondence from Supervisor John Gioia on the Urban Lot Lines and
  - f. EBMUD use of San Pablo Filter Plant
10. The meeting was adjourned at 10:45 p.m.

Richard Karlsson  
Secretary