

DRAFT

Kensington Municipal Advisory Council Minutes Meeting of May 31, 2005

Council Members present:

Chair: Reyes Barraza

Vice Chair: Patrick Tahara

Secretary: Richard Karlsson

Council Member: Pam Brown

Council Member: Kay Reed

The meeting commenced at 7:05 p.m. All members were present.

1. The Council approved the minutes of the special meeting on April 21st and the regular meeting of April 26th by a vote of 5-0, with the following changes to the minutes of April 21st: Member Reed's comments on page 4 of the minutes were revised to state that it was additionally her view that any costs associated with enforcement of the ordinance should be borne by the applicant. Member Brown's comments, also regarding page 4, were revised to reflect her thanks to Supervisor Gioia for all the work he had put into the ordinance and her comments that she thought it a shame that such an ordinance was needed on how to be neighborly. She added her belief that one of the reasons why Kensington is an appealing community is that it is not over regulated and that we have to figure out ways to get along, just as we learn who has the right-of-way on narrow streets of Kensington. She believed that, unlike the Kensington Overlay Ordinance that protects a number of neighbors, that ordinance had been developed because of one neighbor. She finally expressed her belief that the ordinance was overly broad in scope and did not address the neighbors' concerns.
2. There were no citizen comments at 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. **Contra Costa Library (presentation on new Business Web page).** Amy Colin of the Kensington Library made a power-point presentation on the new Contra Costa County web page and the information available to residents about the library and books, magazines and articles available on-line. She noted that one may also order books for check-out and check their availability, and that there are also classes and training for small business owners.
4. **624 Beloit Ave. (DP 053028).** (Request to construct a two-story addition to the rear of the residence, subject to the Kensington overlay ordinance). The first

speaker was Hans Johansen, the owner of the residence at 624 Beloit. Mr. Johansen explained that the purpose of the addition was to expand the rear of the residence, which had suffered from settling of the property. He stated that, as the expansion was to the rear of a downward slopping lot, there would be no impact upon the views of neighbors and the height of the existing house would not be higher than the existing structure. It was noted by Member Reed that the house exceeded the floor-to-lot ratios recommended in the Overlay Ordinance. In response to Chair Barraza's questions, it was established that the house, as remodeled, would be within the required setbacks. The new structure would be 2800 sq. ft. in size, that while making it larger would not make it the largest in the immediate area. Member Reed was concerned that Kensington not have "McMansions" but thought that the result was not oversized for the neighborhood. She was also concerned about the height of the new construction and the lack of any criteria in the drawings to set forth the height of the roof. It was established that the new construction would not exceed the height of the carport, or 106.00", as illustrated on drawing A4.1 dated 4/7/05.

A motion was thereafter made and seconded to recommend approval of the plans submitted and date stamped by the County as of 4/7/05 for the property located at 624 Beloit Ave., subject to the following condition: that the height of the new construction would not exceed 106.00' based upon the datum used on drawing A4.1 (section 2). Additionally it was determined by KMAC that the bulk and size of the house did not exceed those within the neighborhood located upon similar sized lots. The motion was passed 5 – 0.

5. **51 Richardson Road (VR 051036).** (Request for design review under Kensington Combining District Ordinance and for a variance for an additional story at the rear of the house, constituting a third story when 2 ½ are allowed). Chair Barraza began this agenda item by listing the factors that allow for the granting of a variance. The applicant, James Vernon, began by stating the reasons for the need to expand, which included their expanding family and the inability to locate alternative suitable housing. He also listed other houses in Kensington that had square footage of the same approximate size in the neighborhood as well as a number of houses in Kensington that had three stories. They had worked extensively with the neighbors to find a design for the additional story that would have the least impact, and located the additional story to the rear of their home.

Jason Kaldis, their architect, then made a presentation that included: a.) a written statement as to why the variance was justified, b.) photographs of other three story houses in Kensington, c.) photographs from the neighbor's home to the north, showing the impact upon the view from their kitchen and breakfast room windows, d.) photographs of the subject home demonstrating the reasons that the only option to expand the home was to build upward due to the slope of the property, and e.) drawings and photographs of the proposed addition and workmen holding story poles indicating the impact of the proposed structure upon views.

Member Reed pointed out that the photographs of the other three story homes were not similar properties to the subject or in the same neighborhood. Mr. Kaldis responded by stating that the photographs were for the purpose of demonstrating that there were such homes and that the necessity of the property dictated the additional story if the home was to be expanded to add two bedrooms. Chair Barraza then pointed out that while he appreciated the fact that the additional family members would require expansion of this house, he was concerned that the existing home did not have adequate parking for two cars, let alone two additional spaces for the two additional bedrooms. Thereafter a long discussion followed regarding alternatives that might be made to the house necessary to add one standard size parking space in the driveway as would be required. After the architect was questioned regarding how such a parking space might be added, it was concluded that there was no room, given the present location of the structure to expand or add additional parking.

Mark Weissberg, 40 Stratford Rd., the neighbor most impacted by the improvement then spoke in favor of the addition. There was a request by him to consider a flat roof, and this was discussed, but as an alternative they agreed with the owners that the roof instead would be lowered 4". He did indicate that he noticed that the Kensington Combining Ordinance did not have provisions to protect views from adjoining yards, just homes. Chair Barraza indicated that this was correct, but the Ordinance was a product of compromise and it seemed unreasonable to limit the construction to views from yards. It was an improvement, however, from the original language, which only protected views from principal living areas. Fiona Gregg, of 85 Richardson Rd., spoke in favor of the proposed addition and did not see any negative impact upon the neighborhood.

Following discussion among KMAC members, in which it was pointed out that KMAC appreciated the considerable efforts of the homeowners to work with the neighbors, a motion was made to recommend approval of the plans to improve the subject property. Following a second of the motion, Secretary Karlsson indicated his objection to the motion on the basis of the inadequate parking that already existed and this improvement would add to the problem and was not addressed in the plans. Chair Barraza additionally expressed his concern regarding the lack of off-street parking at the subject property.

Thereafter, the motion to recommend approval of the plans, dated 4/22/05, with the condition that the roof height on the east elevation on sheet 3 not exceed 23' 8". Additionally, it was determined that the three conditions for a variance were met, given the topography of the lot. The motion was approved 3 – 2, Vice Chair Tahara, Member Brown and Member Reed in favor and Chair Barraza and Secretary Karlsson opposed.

6. **244 Lake Dr. (DP 051036)** (Request to construct a two story addition to the rear of the northeast corner.) Tracy Westphal and John Cain made the initial presentation as to the design and the need for the addition. KMAC members then questioned the owners regarding their proposed plans. Chair Barraza

mentioned that the improvement exceeded the recommended size structure, given the size of the lot. John Cain stated that the need for the bedrooms and location of same was dictated by his sister, who was confined to a wheelchair. Questions thereafter followed by KMAC members regarding the roofline, square footage, location of windows to the north and the impact upon the neighbors to the north, which were addressed by the owners.

Tom Beach and Barbara Peterson, of 250 Lake Dr. then spoke in opposition to the proposed addition to 244 Lake Dr. Their opposition was based upon a dispute between the parties regarding a strip of land between the two properties that is owned by EBMUD. EBMUD has offered the parcel to the Cain/Westphal and Beach/Peterson households at no cost, but subject to a mutually agreeable split. Currently there is a road on this parcel that provides access to the two properties and has a hedge, nearest to 250 Lake Drive, that the owners of 250 Lake are concerned will no longer exist if the dispute is not resolved in a manner suitable to Mr. Beach and Ms. Peterson. They allege that if the hedge were lost, their views would be impacted by the proposed improvement. Mr. Cain and Ms. Westphal countered that the dispute has been ongoing for some time and provided their version of the dispute stated that they were not willing to accede to what they considered were the unreasonable demands of the owners of 250 Lake Dr. Letters and a legal opinion were submitted by the parties in support of their respective positions, regarding the parcel. A petition in favor of the improvement was provided by the owners of 244 Lake Dr. and Rachelle Sherris-Wah, 243 Lake Dr., and Paul Plouffe, 229 Lake Dr. appeared in support of the applicants.

KMAC members urged the parties to resolve their dispute regarding the easement dispute, but made it clear that KMAC did not have jurisdiction to resolve it. Questions thereafter followed by KMAC members regarding the impact upon the proposed addition to the neighbor to the north, located at 240 Lake, Dr. Besty Worster. Her son, Dick Worster, apologized that he was getting involved in this issue late, due to the fact that he was out of town and thanked the owners of 244 Lake Dr. for their efforts to work with his mother regarding their proposed addition. His concern was the unknown impact of the addition upon his mother, who was elderly. His concern was echoed by KMAC member Reed and other members of KMAC who noted that the new two story addition may have negative impact upon Ms. Worster and inquired if some of the windows to the north were necessary. Ms. Westphal and Mr. Cain, in response to KMAC's concerns, indicated that they were willing to request a continuance to work with Dick and Betsy Worster, to the extent that they needed more time to consider their project and any impacts of same upon Ms. Worster's property.

A motion was thereafter made to approve Ms. Westphal's and Mr. Cain's request for a continuance. The motion was approved 5 – 0.

- 7. Residential 2nd Units.** Chair Barraza presented advertisements by realtors of non-permitted second units and single family residences which included the statement "In-Law Potential". KMAC supported his writing a letter to the

Community Development Department, with a copy to the Berkeley Association of Realtors, requesting C.D.D. to remind real estate brokers and salespeople of the legal requirements to add second units or to legalize existing “non-permitted” second units.

8. Procedural Matters.

- a. Set meeting for public comment on revised draft Temporary Events ordinance for June 22, 2005.
- b. 89 Kensington Rd. Chair Barraza provided an update on the status of the application regarding this property and that the new hearing would be limited to the new issues raised in the application, and not matters previously discussed or approved and/or withdrawn regarding this property.

9. Information Reports

- a. Enforcement Report: There were no enforcement actions to report.
- b. Progress on Bylaws: Chair Barraza reported that he was continuing to work upon the draft bylaws for KMAC.
- c. Toni Folger-Brown thanked KMAC for what she felt was a good and fair (as far as residential uses are concerned) response on Community Development’s Request for Comments on the April draft of the Temporary Events ordinance.
- d. Colusa Circle Development (C. Chisholm property). Chair Barraza was verbally advised by Carol Chisholm that she had finalized her development plan for her property and wished to present it to KMAC for approval. He had advised her that she needed to file the plan with Community Development before KMAC could make formal recommendations upon it.

10. Adjournment. The meeting was adjourned at 10:40 p.m.

Richard Karlsson
Secretary