

DRAFT

**Kensington Municipal Advisory Council
Minutes**

Meeting of September 28, 2004

Council Members present:

Chair: Reyes Barraza

Vice Chair: Jim Carman

Secretary: Richard Karlsson

Council Member: Kay Reed

Council Member: Patrick Tahara

1. The meeting commenced at 7:01 p.m. All members were present.

Section 4d was corrected to read: "... " and make one garage space. The Council approved the minutes of August 31, 2004, with the following changes, 5-0. In section 3, final sentence, there were two typographical errors; the word "intended" was misspelled and the phrase "to see" was not separated by usable per code. This widening was a condition for approval for the original permit." Finally, in section 7, the final sentence was amended to read: "The antenna would be subject to code requirements only if it were a commercial operation. If not a commercial operation, a retractable antenna would be the best option for all concerned."

2. The citizen comments at the beginning of the meeting were addressed regarding 24 Edwin Dr. Rudy Schmidt of 16 Edwin Drive stated that the house was lowered and foundational work on the house has extended the deck beyond that approved in the plans. The deck was to be flush with the house, but instead three piers have been placed in the ground and it is now considerably further out than indicated in the plans. Mr. Schmidt wanted to know to what extent would KMAC become involved in this issue. Chair Barraza indicated that KMAC's responsibility was to urge the County to make certain that the plans were adhered to as approved. Vice Chair Carman asked how far the deck extended beyond the approved plans, and Mr. Schmidt responded that it appeared that the deck would extend 6 to 7 feet beyond the approved plan.

Tracy Ogden of 1 Kerr Avenue wanted to know, since this was not a small lot, if KMAC had any jurisdiction. Mr. Barraza responded that if the lot was a conforming lot and no variance was requested, then it was beyond KMAC's review, as was the case here. Under the proposed new ordinance, KMAC would have jurisdiction to review and make recommendations over all improvements to property within Kensington. Ms. Ogden stated her view that KMAC should have such jurisdiction presently, and Mr. Barraza stated that a moratorium is in effect

until such time as the new ordinance is considered for adoption by the Board of Supervisors. KMAC member Kay Reed indicated that KMAC's role in regard to such properties presently is to advise the community of its concerns.

Ms. Ogden then noted that there was an error in the *Kensington Outlook* regarding KMAC's meeting dates. The *Outlook* indicated that the meetings were on Thursday rather than Tuesday evenings. Chair Barraza could not comment on the date printed in the *Outlook*, but indicated that in addition to the posted agenda notices of KMAC meetings, the minutes were also posted on the internet.

Mr. Schmidt then wanted to make one final comment and that was that there was a full-size door on the back of the residence, which was shown in the plans as a crawl space. The concern was that an additional floor may be beyond what was approved in the plans for the house. Mr. Barraza indicated that was one of the issues that KMAC routinely checked. Ms. Ogden indicated that, in her view, the County was only concerned with whether the structure exceeded the 35 foot height limitation.

Lawrence Ellani of Kerr Avenue then addressed a separate issue, his concern a 'spite fence' was built by a neighbor and that the fence exceeded the 6' height limitation. He noted that the owner removed monuments that had been in place for more than 50 years and also the trees in the front of the property. Mr. Ellani no longer has access to his backyard as two high intensity lights were installed, and kids no longer have access and egress through that property. He also indicated that this property is sliding and thus the boundaries of the properties in the area are changing. Jim Carman indicated that there was nothing KMAC could do in regard to the slipping of the property and that this was an issue to be litigated privately by the adjoining property owners. He further indicated that KMAC's present jurisdiction was small lot review and that this issue was an enforcement issue and there was nothing that KMAC could do presently. Under the new ordinance, KMAC's jurisdiction would be expanded.

3. **466 Beloit Ave. (VR 041100):** Small Lot Review and Variance request for a 3rd story (2.5 allowed) to allow a 120 sq. ft. addition as part of enclosing an existing deck at the S.W. corner of the residence and modifying the roof as needed for the addition and enlargement of an upstairs closet. The owner, Mr. Block, presented the case for approval of the variance. The request was as set forth above, as well as modifying the roof (raising it by 10' which would still be under the height limitation of 35'), and bringing the existing closet to a full 8' height. Insofar as the addition, the desire was to bring the bedroom wall to the edge of the existing deck to the West. Ms. Berit Block indicated that the neighbors are agreeable to the changes, as long as the addition did not extend beyond the existing deck. The original plan was to extend the addition to the furthest edge of the existing deck, but the neighbors were concerned about a loss of view, so the owners modified the plan to meet the desires of the neighbors. Member Tahara asked whether any privacy issues arose because of the addition, and Carolyn and Ray Poggi of 442 Beloit indicated that there were very few

neighbors who could even see the portion of the house with the addition, except the neighbors whose view was impacted if the addition were extended to the South deck (and whose concerns were addressed by the extension only extending to the West deck, not the South deck). Mr. and Mr. Block further indicated that the variance was necessary because the basement level, created by the slope of the lot, was such that the addition in that area of the house would create a third story, despite the fact that same story already existed, as the house was built in the 1940's prior to the current 2.5 story limitation. Accordingly, even though this was a third story, it was merely an extension of the existing profile of the house, to conform with the slope of the lot, with no impact upon the neighbors or views. Moreover, the size of the house, with the expansion, did not exceed other houses in the immediate neighborhood. In the owners' view, therefore, no special privileges would be granted to the owners as a result of this variance, and the variance was necessary due to the special condition already existing: that the property had an existing third story which was the result of the slope of the land under the split-level house. The expansion, therefore, was within the existing footprint of the sloping foundation of the house and was merely an extension of pre-existing partial third story. More importantly, the owners concluded, there was no negative impact upon the neighbors in that the roofline of the house would not be impacted in a manner detrimental to the neighbors.

Mr. Tahara then asked what was the point of the remaining balcony to the South. Berit Block indicated that in the past there had been problems with leakage into the kitchen below and the main purpose was to assure access and, due to the request of the neighbors, they were not going to expand the addition into that area. Ms. Shirley Smith, of 450 Beloit Avenue, indicated that the existing third story had existed for 40 years along with the deck. Chair Barraza indicated that he had spoken to the neighbors in the immediate area and observed the design and the house and that he believed there were no negative impacts upon views based upon the existing configuration of the house and the planned addition. Mr. Carman then inquired for the necessity to raise the roof in the area of the closet. He was advised by Ms. Block that due to a stairwell below it was only possible to go upward to expand the closet. Mr. Carman then wanted to know if the existing closet did not meet code and was advised by Ms. Block that she was not aware of whether it met code, but that it was oddly shaped and the desire was to expand it to make it practical. She also presented pictures showing that the existing closet had a triangular shape going upward, with very limited space.

Ms. Reed then wanted to know if the neighbors in the immediate area were of an age and of good enough health so that they would be capable to respond to the proposed improvement. She was advised that all neighbors appeared to be of good health and reasonable age to respond. Ms. Reed then inquired as to the total square footage of the home, including the addition, and was advised that it was approximately 2400 sq. ft. This was the approximate size of homes in the immediate area.

Mr. Carman expressed concern about any variance and the fact that the roof height was being raised 12" due to the closet remodeling. Member Tahara noted that the existing closet was only 5'6" and the proposed height would be 8'. Ms. Smith, of 450 Beloit which is adjacent to the property, indicated that the owners had placed story poles to indicate the new height of the roofline and that while the roof was higher, it did not block or otherwise impact her view. Mr. Carman indicated that he did not believe that the closet expansion was necessary and he would not vote for approval of a higher roof.

Secretary Karlsson stated that he believed that the Blocks had done a good job working with the neighbors, had compromised their plans so that no negative impact affected the immediate neighbors and that, due to the existing structure of the house, the slope of the property, the size of the house and the size of the proposed addition, no special privilege was being granted to the owners in approving the proposed addition. Member Reed stated that she believed that the closet expansion met the criteria for small lot review in that there was no negative impact upon the neighbors and that the addition met the criteria for a variance in that there was no special privilege in extending the existing story within the confines of the sloping foundation.

Member Tahara then made the following motion: that KMAC recommend that the plans for a roofline extension of 12" be approved on the grounds that they met the criteria for small lot review of size, location, design and height; and that the addition be granted in that the plans met the three criteria for granting a variance for the third story and that there were no issues of incompatibility with the neighbors. The vote was 4 to 1 for approval, Vice Chair Carman voting against.

Information Reports:

- a. **Eagle Hill Pathway:** Kristen and David Myles appeared on this issue and stated that they tried to advise people crossing their property as long ago as 1996 that this was not a right of way. They conducted a title search and were informed that there was an abandonment of the right of way. Mr. Carman stated that he was glad that the property owners were present and stated that in his view, this was an issue for the property owners and the users of the alleged right of way, and not KMAC. The stairway to a residence on a cut-out lot on Edgecroft was located on the property for a considerable number of years, each owner owning to the middle of the stairs. The issue, Mr. Carman believed, was due to parking shortages on Eagle Hill Rd., which meant people would use the stairs after parking in a remote location and using same to traverse back to Eagle Hill. However, the parking issue on Eagle Hill may be unrelated to this path issue.
- b. **Amateur Radio Transmission Tower:** Chair Barraza has discussed this issue with Ivan Sternman. They determined, along with the Chair of the Kensington Amateur Radio Operators (KARO), Mariam Gade, that FCC rule 97.1 governed the conditions for amateur radios. Among other requirements, this regulation provides that local zoning ordinances must

be written to accommodate local ham radio towers. The County Code requirements do nothing to preclude radio towers as long as they meet FCC requirements. The local code does not limit the height of such towers. The question therefore was what could KMAC do about the situation and there was nothing, other than attempt to work with the owner about a telescoping antenna.

- c. **Enforcement Report:** Chair Barraza indicated that the application for 601 Wellesley Ave. was terminated due to nonresponse from the applicants. There was also a report that there was an illegal apartment at 1625 Ocean View, which had been reported to the Contra Costa County enforcement officer.
 - d. **Updates on: 163 Arlington:** Construction has been completed and the applicant has fulfilled the conditions of the building permit obtained in 2000. **300 Coventry:** A further continuance was granted before the zoning administrator hearing because story poles had not yet been placed and the neighbors had requested same in advance of the hearing.
5. The meeting was adjourned at 8:58 p.m
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Minutes prepared by Secretary Karlsson