

DRAFT, not yet adopted by KMAC

Kensington Municipal Advisory Council Minutes

Meeting of February 28, 2006

Council Members present:

Chair: Reyes Barraza

Vice Chair: Pat Tahara

Secretary: Richard Karlsson

Member: Kay Reed

Member: Pam Brown

Alternate Member: Chris Brydon

Alternate Member: Gordon Becker

1. The meeting commenced at 7:03 p.m.
2. The minutes of January 31st, were approved by a vote of 5 – 0.
3. Citizen's Comments: Ms. Reed additionally mentioned that she had brochures regarding earthquake preparedness if anyone had any questions related to this topic, she would be happy to address same. Mary Hammond, 131 Arlington Ave. spoke of their concern regarding the lack of tree trimming along Arlington Ave. There was recently an automobile accident on Arlington Ave. that they believed was attributable to the lower branches of the trees and automobiles having to travel further from the median. Ms. Hammond and her father submitted a letter regarding their concerns to KMAC. She will also contact Public Works Department directly.
4. Consent Items: There were no consent items.
5. Kensington Combining District Ordinance: Public comment upon the ordinance based upon the "one year review" of said ordinance. First speaker was Chi Sullivan, 545 Coventry Rd. and she expressed her frustration of having to make eight trips to the County regarding what she believed were small changes needed to conform to current codes. Specifically she wanted to replace a railing on an existing deck, but to conform to current code required raising it 1", and thus the application triggered discussion as to whether or not the ordinance applied. Key issue for them is that County staff was not clear as to what was required under the ordinance. Next speaker was Brian Stone, 554 Cowper Ave., Benica. Mr. Stone believed that the ordinance was a disadvantage to developers of lots as it infringed upon their rights to develop property and caused delay. Mr. Stone submitted a letter outlining his opposition to the ordinance and outlining his suggested improvements. The next speaker was Bill McNabb, 136 Windsor Ave. addressed the need for balance on both sides of the issue, for developers

and homeowners. Andrew Reed, 728 Coventry Ave., echoed what the previous speaker stated, that balance is needed in the interpretation and implementation of the ordinance. It was his belief that the ordinance was relatively clear but that the problems were caused because homeowners and developers were not receiving consistent advice from the County. Brad Marshland, 49 Avon, expressed support for the ordinance and stated that if it were not for the ordinance, he would not have protection for his views. Mary Hammond, 131 Arlington, stated that she was in favor of the ordinance, but did not believe it was strict enough. John Stein, 32 Beverly, stated that he was very supportive of the ordinance as was Norma Marchant, 46 Franciscan Wy. Italo Calpestri, 220 Columbia, stated that the one area of the ordinance that he did not understand was the gross floor area of the residence and the lot size which triggered the hearing. He was advised that the County had developed a "threshold list" that would allow a homeowner to understand when the gross floor area in comparison to lot size triggered a hearing.

Chair Barraza, after hearing from those members of the public interested in addressing the issue of the ordinance, then allowed an opportunity to members of KMAC to speak. He then stated that in regard to numbers of hearings, the County received 42 applications since 2/25/05. Of those, 17 required hearings for land use permit or for a variance (which were independent of the ordinance). All the remaining 25 were subject only to the combining district ordinance, and 7 were over the threshold for mandatory hearings, 2 had hearings at the request of the neighbors, and the remaining 16 had no hearings involved. Ray had discussed the issue of thresholds with Ryan Hernandez and he indicated that home developers and residents were becoming familiar with the thresholds set forth in the ordinance and designing homes so that the hearing process would not be triggered. Ray indicated that he had received a letter from a resident concerned about the process and general lack of knowledge about the process, and he reported that she was quite willing to participate in preparing a brochure to aid applicants in understanding the process.

Vice Chair Tahara then stated that he wanted to address a concern expressed earlier by Mr. Stone, and that was that while some of the mandatory hearing applicants seemed minor, that was because their residences already exceeded the threshold limitations. Accordingly, a small increase in a residence already exceeding the threshold required a hearing, which Vice Chair Tahara believed was reasonable. He also added that KMAC had recently implemented a consent calendar to allow minor improvements to speed through the KMAC recommendation process, unless there were concerns expressed by members of the community or KMAC.

Member Brown then stated that KMAC had taken reasonable steps, such as the consent calendar, to limit the amount of time necessary for minor improvements. That KMAC sought to balance the interests between individuals who want to improve their property and interests of the community. She believed that it was a good idea to publish brochures so that everyone understood what was required

but that it was an open process with notification to interested neighbors and that the ordinance did achieve a balance.

Secretary Karlsson expressed his view that the legislative process that created the ordinance did leave room for discretion of KMAC and the County to balance the respective interests of those who wished to develop their property and the neighbors who wished to preserve and protect their existing property interests. While there was some ambiguity in the ordinance, this was necessary and the result of a legislative process designed to allow a balancing of interests without hard rules, much in the same manner as the State laws relating to variances allowed for such considerations. It was his view that the ordinance was a success in that both those who sought to develop property and those who wished to preserve it were not entirely pleased. Legislation is compromise and it was his opinion that the Combining Ordinance allowed KMAC and the County a means to achieve a balancing of interests to the benefit of the residents of Kensington.

Member Reed stated that the new ordinance was much better at protecting privacy, views and light. She stated that most come before KMAC once or twice as a homeowner, but many times as a concerned neighbor. KMAC has as its goal resolution among homeowners. She was aware of a case that lasted 5 years and over \$50,000.00 was spent on the litigation because there was no ability to reach compromise. It was also her opinion that the thresholds stated in the ordinance were reasonable and one had to draw a line somewhere in terms of size of the home and lot size. In her view the ordinance was necessary, if for no other reason the parking issues in Kensington were considerable. In regard to the fees, she believed that the fees were relatively minor in comparison to other jurisdictions such as Carmel, California. As this is a wonderful neighborhood in which to live, we need to work hard to make certain that it stays this way, which requires planning compromises. She believed that we should continue to improve the process, such as by publishing brochures and continuing to work to improve the ordinance as experience dictates.

KMAC recommendation: KMAC, in conjunction with the County, develop a brochure explaining the ordinance within the next six months. The motion was adopted 5 – 0.

6. **70 Eureka Ave. (DP 053051).** Development Plan review and Variance request to expand an existing residence by one additional story, (2) variance request for a 14'5" front setback (20' required) for the new story and (3) variance request for 3rd story (2 ½ allowed) where the new story is directly above a small existing basement. This is a continued hearing.

The applicant, Joe Recht, 70 Eureka Ave., made the presentation. He began by stating that he and his wife Janie had made changes to their plans. To the north-south elevations, they lowered the gables and lowered a section of the 'bump-out' toward their neighbors to the east. They also supplied the neighbors with a copy of their revised plans. Some neighbors approved, some were opposed others had no response. The proposed revision was for a house of 3815 sq. ft.

The ceiling height upstairs was 8'4", lowered from 9'. The existing residence was 1137 sq. ft. of living space and the proposed is 2916 of living space. The adjoining neighbors were 2000 sq. ft., 2100 sq. ft. and 1500 sq. ft.

Michael McAllister, 66 Eureka stated that he thinks that the applicants have taken reasonable steps to improve the proposed expansion and believes that the revised plans are now acceptable.

Norma Marchant, 46 Franciscan Way, who lives at corner of Franciscan and Eureka stated that it is her view that the proposed revisions are incompatible with the neighborhood. The height of the proposed development will impact or eliminate her views of the city lights and the cemetery. Finally, it was her view that the new story poles were inadequate. In response, Chair Barraza inquired as to whether, based upon the photographs introduced, the house could be built in a manner that would mitigate the impacts upon her view and inquired whether, in light of the trees shown in the photographs, the impact of the proposed residence would be that substantial. Ms. Marchant responded that she does not find the house attractive and that she believes that she will lose her privacy because even though the house is 80' away, they could see that residence.

Jamie Carlen, 74 Eureka, a neighbor to the east, stated that the impact of the proposed residence was "huge." Since he originally learned of it, the revisions are much better than originally planned. Still a "massive" house, but he admits a nice home.

Lynn Wolter, 207 Willamette Ave., noted that there were number of neighbors opposed and wondered how many sq. ft. of living area were being proposed as an addition. The answer was 1779.

Marat Macumber, 67 Eureka, noted that the house was bigger than other houses in the immediate area, but that there were a number of larger houses in Kensington.

Member Reed responded that this was a 5 bedroom 4 bath house and, given the requirements for a variance, if it is okay for one, it is okay for all. She believed that this was a great design, but not for this neighborhood and that was the issue: this neighborhood, not anywhere within Kensington. She added that she appreciated the revisions, but they did not go far enough in her view.

Patrick Tahara expressed his view that the house had an inadequate setback and that the size of garage was such that they could probably fit one car but not two. He was therefore concerned that for a house of this size that the parking was inadequate. He also stated that the second story addition seemed large and that the front setback could be pushed back by making the master bedroom smaller.

Chair Barraza stated his view that the house was larger than he was willing to recommend approval, he recommended that the applicants consider a smaller second story.

Member Brown stated her view that the size of the expansion was too much for the neighborhood and the bulk of the house was too large.

Secretary Karlsson expressed his view that he could not recommend the present size of the house but was pleased with the efforts to reduce the size and believed that the applicants were “close” but not quite there in terms of their revisions. Chair Barraza then asked the applicant if he requested to proceed with his application as presented or if he would like to request a continuance for the purposes of further revisions. The applicants requested a continuance so that they could consider an alternative design.

A motion was made and seconded to approve the request to continue the hearing. The motion was approved, 5 – 0.

7. **40 Kingston Rd. (DP 053091)** Development plan review to expand the existing residence to extending the first story to the rear and adding a second story. This is a continued hearing.

Secretary Karlsson stated at the beginning of the hearing of this property that as he was not present at the first hearing on this application, he would sit as an alternative member and alternate member Chris Brydon would be the voting member on this application.

Chair Barraza began the inquiry by requesting what had changed between the original application and the present, as no new plans had been submitted.

Jerry Mastora, 2830 9th St. Berkeley, the architect, indicated that the second story was the addition he was requesting and it was 980 sq. ft. Mr. Mastora indicated that he had placed story poles up and had changed the hip roof site lines. He had a number of photographs showing the proposed addition from different areas of the neighborhood. He also stated that they had considered shifting the location of the addition to the back of the residence, but given the location of the stairs, that design did not work well for the house. The overall design was the same, it only has 7' ceilings, so that was the minimum, thus it could not go lower.

Mr. Dingwall, the applicant, then indicated his efforts to meet with the neighbors to discuss; some were unavailable and others, such as the resident at 32 Kingston said that they should not call or otherwise disturb her. From their vantage point, only one room of her house was impacted by their addition and would have unobstructed view from other windows. The resident at 34 Kingston did not cooperate with their request to meet and they could not determine if there was any impact upon their view. Other impacts were minimal and one neighbor's view was otherwise obstructed by a plant that had never been trimmed. The architect of the project testified that it was his belief that the impacts upon privacy would be minimal and that they had notified all neighbors within 300' of the

proposed improvement and 10 neighbors responded that they approved and only a few neighbors have objected.

Lindsay Downing, 34 Kingston Rd. indicated that the applicants had not contacted them in advance of their proposed plans. That their views were impacted by the proposed improvement. That the applicants were attempting to get all neighbors to meet with them to discuss impacts and meet with them and though the applicants did not believe that their views were impacted, they disagreed and opposed the development. She indicated that their views were impacted from the living room, dining room and from the kitchen their entire view would disappear. They believed that if they moved back the second story, it would be a better project, insofar as the impact upon them. She further stated that she had once before requested to improve her own property and was denied by the County as the house did not fit the scale of the neighborhood. She thus believes it would be unfair for KMAC to approve this project.

Sura Wood, 38 Kingston stated that she was concerned regarding the loss of "golden light" in the afternoon from her bedroom. Vice Chair Tahara asked why she did not allow the applicants into her home to observe the impacts. She responded that they would not have made changes in any event. Bailey Green, of 32 Kingston Rd. stated that in his observations, her windows would have been impacted. Chair Barraza asked why this was not a concern of the applicants to which the applicants replied that this issue was never brought to their attention and it was their opinion that his project would not impact the light to her back bedroom.

Bailey Green & Bonna Wescoat of 32 Kingston Rd, were the next speakers. The homeowners stated that they would desire to work this out with the applicant. However, they believe that there is significant impact and would invite KMAC members to look at the views impacted. He believed that if the second story addition was moved back, the impacts would be minimized and that there were other ideas he had that would considerably lessen the impacts.

Chair Barraza then inquired of KMAC members as to whether they believed a tour would be of benefit. Member Reed responded that she believed it would be beneficial, but she was only willing to do so if the applicant requested a continuance to do so. Chair Barraza indicated that he also believed important to view the sightlines himself to determine impacts. Member Brown indicated that she wanted to know the impact as she needs to know the impacts of the design before she can recommend new plans or whether to resolve based upon existing plans. Member Reed further recommended that the applicant consider taking additional time before placing this on the next agenda. That way he can understand the potential difficulties of the existing plans and consider alternatives. That he should try not to take it personal but to take time to meet with the neighbors.

Ms. Allie Norton Dingwall, 40 Kingston, stated that they have done what they can to try to satisfy the neighbors but they are willing to request a continuance to

meet with the neighbors further and to visit the properties so that they may make an assessment for themselves as to impacts and potential improvements. However, they need cooperation from neighbors, not just hearsay. She therefore is willing to continue if neighbors, including Lindsey Downing allow them to visit.

Ms. Downing responded that she would allow KMAC to visit her property but is unwilling to allow the applicants to visit her property.

Member Brydon stated that KMAC is would be viewing the properties objectively and would make its own decision, based upon its observations, therefore he believed that KMAC's observations should be sufficient for Ms. Dingwall's purposes. On that basis, Ms. Dingwall requested that their matter be continued.

A motion was made to approve the request to continue the hearing, with the agreement that KMAC would tour the respective properties following any proposed changes to the design, following a meeting of the neighbors, so that KMAC's tour would be to observe whatever "final" changes that may have been made in the project.

8. **Procedural Matters:** Training was offered by the County in Martinez regarding newly instituted fiscal controls for MACs. In light of the KMAC budget being only \$400 annually, it did not seem that the controls are warranted. None-the-less, we will be expected to conform to the requirements.
9. **Information Reports:**
 - a. **Enforcement Report:** A brief report regarding 285 Los Altos was provided by Chair Barraza. .
 - b. KMAC's webpage has updated and will soon include access to important documents, such as the frequently used sections of the planning ordinance.

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

Minutes prepared by Secretary Karlsson