

DRAFT, not yet adopted by KMAC

Kensington Municipal Advisory Council Minutes

Meeting of November 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 7:00 p.m.
2. The minutes of October 31, 2006 were approved by a vote of 5 – 0. Ms. Reed additionally mentioned that she had brochures regarding earthquake preparedness and that if anyone had any questions related to this topic, she would be happy to address same. Statistics show that one should be prepared to survive for five days on their own for food, clothing and shelter following a major earthquake.
3. Citizen's Comments: Mr. Marc Woo, 231 Arlington Ave. stated that when his plans were submitted to KMAC three years ago he was asked to consider removing solar panels for a water heater for aesthetic reasons, which he believed was improper. The KMAC member requesting same was no longer present.

Chair Barraza then began the meeting by stating that he was not going to sit as a member of KMAC on item #7 and instead was going to participate as a member of the audience. Alternate member Brydon would be voting on item #7. Additionally, Chair Barraza was going to recuse himself on item #5, as he was a friend of the applicants, and alternate member Becker would vote on item #5.

Chair Barraza then stated the procedures: that KMAC reviewed applications, and the order of presentation by the applicant(s), and questions by the audience and KMAC. He thereafter explained the legal criteria under which KMAC reviewed applications under the Contra Costa County Combining Ordinance and State law for variances.

4. **501 Beloit Ave. (VR 061060)** Development Plan review to add an additional story on the northeast portion of an existing residence. Request a variance for a

third story (2.5 allowed) in the area where the existing basement mechanical room is beneath the addition. *Continued hearing.*

The applicant, Booker Bense, appeared and stated that his next door neighbor, Mr. Soyster, and he had resolved Mr. Soyster's objections. Chair Barraza stated that he had spoken to Mr. Soyster and confirmed that this was the case and that Mr. Soyster's primary concerns were regarding the construction process. He reminded the applicant that Community Development permits for such construction normally limited construction to the hours of 7am to 5 pm weekdays. Secretary Karlsson then inquired about the third story variance and was advised that the variance in an area exclusively over the basement and the structure would not be three stories in height from the ground level. Chair Barraza inquired about the garage and the functionality of same. He was advised that the plans included garage doors that would be more functional than the current doors.

Member Reed then made a motion to recommend approval of the plans dated August 1, 2006 conditioned upon compliance with the following three factors: 1) that the existing garage doors would be replaced with more functional garage doors and the garage be restored to full functionality, 2) that the third story not extend to any part of the residence beyond the existing subsurface basement and the variance recommended be for only that part of the residence and 3) that the height of the residence be limited to 20' 6" above the main floor. The motion was seconded and approved, 5 – 0.

5. **24 Sunset Dr. (DP 063060).** Development Plan review for a 9' x 19' southern expansion of the southeast corner of the existing residence. *Continued hearing.*

Russ Tremain, 30 Sunset Dr. spoke in continued opposition. He stated that the property owners had not made any changes since the last meeting. In the interim, KMAC members had toured his home to view the impact. He believed that there were substantial impacts to his views as a result of the extension of the property and, although the loss of view was primarily a view of the City of El Cerrito and the Richmond shoreline, tree growth over the years had resulted in a substantial diminution of their view and the expansion would block a part of what was left. He estimated the loss of view as .21 square miles and the bottom half of what was left of their view. He also believed that the ratio of the house to land was greater than others in the area. Mr. Tremain stated that they would consider the modification of the proposed roof to a hip roof as a reasonable compromise between their desire to retain their view and the applicant's desire for more space.

Ms. Linebaugh commented in response that the reason that their house was considered larger was only because the County ratios considered a concrete pad and that the structure itself would not otherwise exceed the ratio. Discussions then centered on whether a flat roof, as opposed to a peaked roof, would work. Ms. Linebaugh responded that a flat roof would not work as it would change the entire character of the room. She also believed that a flat roof would not improve the loss of view and that, as the photos in question were taken by a telephoto lens, the loss

was in effect overstated in the photographs. Vice Chair Tahara commented that he was not particularly impressed with the loss of the views in question and that it was rather *de minimus* in impact and did not result in the loss of Bay views, only views that were presently partially obscured by telephone lines. Member Reed also stated that she was unimpressed about the loss of the view, which was a “thin slice of El Cerrito”. Nonetheless, in an effort to resolve the matter, she asked whether the applicant would consider modifying the roof design to a hip roof, which would have less impact upon the loss of view. Ms. Linebaugh, after some discussion, said that she would agree to such a modification, and Mr. Tremain preferred that alternative to the present design.

Pat Tahara thereafter offered a motion to recommend approval of the application with a hip roof, which was shown on an amended drawing, page 4 of 9, dated August 11, 2006 and amended September 7, 2006, with a roof height of up to 17'9" with a hip roof. The motion was seconded and approved 5 – 0.

6. **20 Arlington Crt. (DP 063070).** Development Plan review for conversion of existing solarium into a new family room, and minor changes to the front and rear of the residence increasing the floor area by 32 sq.ft. Request a variance for reconstruction work with a side yard of 4' (10' required) on the south side of the residence.

Robert Wolf, the applicant's architect, made the presentation. He indicated that in adding a second story, it was necessary to rebuild the first and that changing the roofline for the solarium basically made the structure more conventional. The addition was only 37' foot and the variance was all within the existing roofline. The new roof was a standard gabled roof and as the building remains lower than the neighboring property, there would be no impact upon views. The applicants have had communication with all neighbors and none are opposed to the project. Chair Barraza asked if the requested variance was within the existing footprint of the building; that is, to confirm they were not expanding further into the required setback. He was told that was correct. The architect stated that even though the expansion was within the existing variance, they had to request to renew the variance anytime that there were changes.

A motion was made to recommend approval of the plans, dated September 21, 2006, including the variance, conditioned upon no variance being granted beyond the pre-existing variance. The motion was seconded and approved 5 – 0.

7. **257 Arlington Ave. (DP 063071).** Development Plan review for a new residence (existing to be demolished) including variances for 3 stories (2.5 permitted), 0' front yard setback (20' required) for garage and 0' side yard setback (5' required) for a retaining wall along south property line.

Chair Barraza recused himself from this item and Vice Chair Tahara chaired this portion of the meeting. Due to the number of people in the audience for this item

(39) and the number of speaker cards (18), Vice Chair Tahara requested that the applicant attempt to limit his presentation to ten minutes and that the speakers attempt to limit their presentation to three minutes.

The architect, Ed Kaplan, stated that the existing structure is one story and needs a lot of improvement. Unfortunately the structure is very small and it is not economically viable to rebuild it to the same size. The plan is for a 4 bedroom house, with two stories of living space and below it would be a garage. He stated that he was aware of the communities' concerns and that they have made a number of changes to the original proposal, including changing the setback of the property.

Ashley Berkowitz (owner) stated that they had considered and looked at views of the neighbors and impacts of the project. They visited neighbors and eliminated a proposed balcony and added privacy glass. They believe that the house is not that large when compared to neighboring properties and the story poles are higher due to first level garage. They also moved the front door to the side of the house.

Member Reed then asked about the size of the proposed structure compared to the lot size. She was told that there was 80% coverage or well over the recommended FAR. Member Reed then inquired about the ceiling height (ans: 9' main, 8'5" upper floor) and attic (not known but modest) and if the story poles had been changed to reflect the new design (ans: not known, but roof is a lot lower). Member Reed inquired about the area on the first floor, or guest level, and was told that this was an unfinished basement, or 'guest storage' and CoCoCounty planning advised that this would constitute an additional floor. Ms. Reed then asked if there was consideration to eliminating access to this area in light of the fact it was considered a third story and was told no, because it was also access to garage. She then asked if they were planning on any excavation and was told 2' was the estimated amount of excavation. Ms. Reed lastly inquired about the height of the fence and advised that they would need a variance for any fence higher than 6'

Member Brydon then commented that the house seemed awfully large for the neighborhood and that it seemed much higher than surrounding houses and would cut off the view of the property owner to the rear resulting in the loss of the view of the Golden Gate Bridge. He remarked that this was not a view looking down a canyon but rather a landmark view – the type you see on a postcard. The remaining questions from KMAC were deferred until after comments from audience.

Ray Barraza, 248 Amherst, who lives directly behind the proposed new residence stated that the view was extremely valuable to them, and they had spent many tens of thousands of dollars to maintain it. He also stated that the story poles were changed the afternoon previous to the KMAC meeting and that it appeared there were errors in placement of same. He then continued to state his concern that the preexisting story poles indicated an extremely detrimental

impact upon his views, that the poles seemed to move with the timing of the application, that the house was 64% over the County recommended floor area to lot ratio and that the bulk and mass of the house was well beyond that of any other homes in the neighborhood. R.Guisti, 112 Willow Lane, believed that the structure was not in keeping with the neighborhood and was destroying views. Mark Woo, 231 Arlington Ave., stated that the current owner purchased the property from the original owners. He is somewhat sympathetic to the applicants, having appeared before KMAC in the past to have his property approved, but he is concerned about the size and bulk of the house. The purpose of the FAR ratios (CoCoCounty recommendations of building-to-lot ratios) was to limit "McMansions" and he could not imagine that a 4000' house on the existing lot would be in keeping with the neighborhood. Ms. Juelann Gruelich, 255 Amherst, lives near Mr. Barraza and read a letter into the record that objected to the proposed application on the basis of bulk, size and lack of front or side setback. Betty Barraza, 248 Amherst spoke in opposition to the application in that they were not included as part of the process, and that if the owners want a two story house to replace a single story house they should do so in manner that would not impact views of neighbors and not build 4000 sq. ft. house. The Barraza's have lived in their home since 1970 and are threatened with the loss of their view so that the applicant may have a better view. Randall Starkey, 240 Arlington Ave., stated that his primary concern was lack of a front setback. There are currently no houses that large in the neighborhood with no front setback. Elise Lusk, 252 Amherst Ave., stated that the proposed residence did not meet the conditions under the ordinance and to grant a special privilege for this proposal would mean others would follow. She requested that the residence be modified. Edmund Bussey, 254 Amherst Ave., opposed a structure this tall, especially with so little setback and of such massive bulk. He presented a photo taken from 260 Amherst Ave, that was 500' to the South and showed impacts upon the view caused by the proposed residence and also that it was significantly higher than existing residences on either side. Lev Lal Too, the developer for 257 Arlington Ave., stated that he built houses for years and was used to the process in Kensington. He suggested that the owner and architect of the building meet with neighbors to discuss. Kevin Blattel, 244 Amherst Ave., requested the owner withdraw his application in light of the opposition. He stated he had been in real estate for 30 years and he believes it is dangerous to have no side yard setback due to potential of fire, such as the one that recently occurred on Arlington Ave.

Chris Schelling, 246 Amherst Ave., stated his view is impacted by the proposed development and that he paid \$1.3 million for his house in large part because of these views. The proposed development would result in an increase in the value of the developer's project, which would result in an offsetting loss in the value of Schelling home. Kevin and Angela Cadogan, 259 Arlington Ave., live next door to the applicant. They provided architectural elevations indicating that the proposed development is a lot taller than other houses in the area. They stated that the existing average size of homes on similar sized lots in the neighborhood is 1906 feet while the applicant requests 4100 feet. Additionally, they would be impacted by the loss of light from the size and bulk of the structure as well as

loss of privacy. Robert Lindquist, 225 Arlington Ave., was primarily concerned about the front setback and stated that several years prior KMAC had denied a 5' front setback due to safety concerns. Children often walk along Arlington Ave. and would not be able to safely navigate the sidewalk without an adequate setback. Paul Fontaine, 261 Arlington Ave., commented upon the loss of parking. Though the proposed development would have a garage, the driveway would take at least one parking space from the street parking. He believed that the proposed house should have at minimum the required setback and cited the current sidewalk as having issues for the disabled and those – such as the Kensington Police – who would want to make a u-turn in front of the proposed residence but would be unable to do so due to lack of a setback. Trish McDermott, 228 Arlington Ave., stated that Mark Woo, the adjacent neighbor, was denied a 0' setback and so too should this proposal. She also stated that the bulk and size of the house was too large.

Mary Rita Algazzali, 250 Amherst Ave., stated that in the past years she and the Barraza's had paid the former owners of the subject property to cut back trees so as to be able to maintain their views. Now they had a proposed development that would far exceed the height of the trees with a permanent obstruction, a house that would result in a loss of their views and property values. She therefore objected to the proposed development. Lorree Cole, 240 Amherst, stated that in her view the Combining Ordinance was being violated by the proposed development because the house far exceeded the FAR recommendations, the views of surrounding neighbors were impacted, and the lack of setbacks negatively impacted safety of the residents in the area. Joan Gallegos, stated that she was primarily concerned about the precedent. She believed that in the case of the subject application, granting of the requested variances and exceptions to the Combining Ordinance would establish a special privilege for this owner at the expense of others. The final member of the audience to speak was Bill Fujita, 227 Arlington, who stated that he would hope for a compromise and that he was proud of Kensington and he would hope that all who lived here would want to preserve what a special place it was to live.

Vice Chair Tahara then asked the applicant if, in light of the considerable amount of public opposition to the proposed development, they would like to either: a) seek a recommendation from KMAC, or b) request a continuation to discuss the process with the neighbors in light of the concerns expressed.

Mr. Berkowitz stated in response that ultimately he wanted a proposal that would work with the neighbors and Kensington and therefore requested a continuance. In response, Member Brown stated that he should be aware of the Kensington Combining Ordinance as well as the FAR recommendations, as well as working to eliminate or minimize the requested variances. Mr. Berkowitz stated in response that it was their desire to come up with a solution.

Member Reed instructed the applicant to not come back to KMAC without changing the drawings and to share the drawings with the neighbors and keep them informed. She also told the applicant he needs to be closer to the

suggested FAR's, to consider excavation and suggested putting the bedrooms below the living area. This would put them on the second level where the Storage Level is proposed. Many houses are "flip-flopped" in the area.

KMAC, in response to the applicant's request for a continuance, voted 5 – 0 in support.

8. Procedural Matters:

- a) **Next meeting:** As per the established practice for KMAC, the December meeting of KMAC was continued until the first Tuesday in January 2007, or January 2nd.

6. Information Reports:

- a. **Enforcement Report:** Chair Barraza reported that the major pending enforcement matter was 89 Kensington Rd.
- b. **Bylaws Update:** Concerns were expressed by the Contra Costa County Counsel's Office regarding the KMAC bylaws. Final adoption of same was extended to address their questions.

The meeting was adjourned at 9:10 p.m.

Minutes prepared by Secretary Karlsson