

DRAFT, not yet adopted by KMAC

Kensington Municipal Advisory Council Minutes

Meeting of October 4, 2005

Council Members present:

Chair: Reyes Barraza

Vice Chair: Pat Tahara

Secretary: Richard Karlsson

Alternate Council Member: Chris Brydon

1. The meeting commenced at 7:04 p.m. Councilmembers Pam Brown and Kay Reed were absent.
2. The minutes of September 20, 2005 were approved as drafted, by a vote of 4 –0.
3. There were no citizens' comments regarding non-agenda items.
4. **89 Kensington Rd. (VR 021113).** *Request for variance for expansion of an existing 3rd story (2 ½ allowed).* (Fourth review). An earlier request for offstreet parking space had been removed from the pending application. Public comments and testimony were limited to the current application before KMAC and changes thereto from the prior application.

Chair Barraza began the hearing by stating the three required findings to grant a variance. Those findings were: that in granting any variance, the applicant is not allowed a special privilege, that special circumstances in regard to the applicant's property require the granting of a variance so as to not deny him or her the same benefits as other property owners, and that any variance that is granted be found consistent with the intent of the applicable zoning ordinances.

Chair Barraza observed that the present application was in regard to a third story where only 2.5 are allowed. He further noted that when KMAC last considered this application, on June 29, 2004, it approved a front deck and it requested additional information regarding what had been previously approved regarding the third story; the request for off-street parking was withdrawn by the applicant. The issue for the continued hearing was then what was authorized under the prior permit and, upon reviewing same, whether KMAC would recommend approval of anything further.

The owner of the subject property, Ms. Keegan, appeared and stated that she was requesting a proposed extension within the footprint of the existing structure. She further stated that the intended use was for a single family residence. She

then explained the intended construction and steps she had taken given concerns expressed at the last meeting.

Questions followed from KMAC members regarding the intent for what appeared to be a second kitchen on the third floor and the permanency of the removal of the fixtures. What was described as a wet bar by the owner, save a recently removed stove, otherwise appeared to be built as a complete kitchen, with tile flooring and counter tops, full sink and extensive kitchen cabinets.

The first speaker was Tom Ayres, 101 Kensington Ave., who stated that he had no problem with the third floor if it is to be kept as single family residence. However, he wanted to know what remedy was available if the house was converted to multiple use after the construction was completed. He was advised that he would have to contact Community Development and complain. In response, Ms. Keegan stated that she was willing to have a deed restriction, limiting the use of the house for single family residence.

Aimee Hendershott, 84 Kensington Rd., responded that a deed restriction would not be sufficient, as a single family residence may be rented out to as many as 5 unrelated adults, under current law. She went on to advocate against the granting of a variance as the house as planned was much larger than comparable residences. She also commented on the deck, previously approved, and stated that it was still not completed and was a danger. Also, under the new ordinance, the lot to house ratio would be exceeded. It was her view that the new ordinance was meant to control ever-expanding houses and this house was out of compliance with that ordinance. Her viewpoint was that, given the past history of the use of this house, it was likely it would be again be rented to multiple, unrelated people. In her view, if this variance were granted, it would reward the applicant for building an unauthorized structure.

Marge Hutchings, 88 Kensington Rd., then spoke in opposition to the variance. She stated that Ms. Keegan never lived in the house; she always rented it. She stated that the addition of the kitchen and utility meters indicated that she intended to rent it to multiple parties in an area that was zoned for single family residences.

Lucy Rodriguez, 101 Kensington Rd., stated that she was happy that Ms. Keegan had removed her request for additional parking. In her view, she should not be allowed additional parking spaces as other residences do not have such parking and it would encourage having multiple renters.

Kurt Hendershott, 84 Kensington Rd., stated that he did not believe that the removal of the request for additional parking spaces indicated that this was a good faith request for a variance.

Chair Barraza then noted that the meeting had been continued to obtain evidence of an existing permit in support of her request for a variance. The evidence presented, that an area 12' x 33' was previously approved, did not

support the area of improvement on the third floor. He therefore would not comment upon that which was presented by Ms. Keegan, other than to say that her request before KMAC was for improvement of an area larger than that previously approved. As to what exactly that area was was impossible to determine as the drawings provided were not to scale. He also indicated that in 2003 KMAC recommended against approval of a carport and any further expansion of the residence, beyond that approximate area of 12' x 33' previously granted. It also recommended that a deed restriction be placed upon the property for any further expansion of the second or third floor.

Secretary Karlsson thereafter made a motion that KMAC recommend: a) denial of the variance; b) removal of all improvements, including structural, to the residence on the third floor, with the only exception being that which was previously approved by the County permit, dated October 22, 2001, and the original rumpus room area of 12' x 33'; c) that the deed be restricted to prevent construction of a kitchen or cooking areas on the third or second floors; and d) that only single utility meters be allowed for gas and electricity . The motion was seconded by Chris Brydon and approved 4 – 0.

5. **31 Kenilworth Ave. (DP 053067).** *Development Plan to review the expansion of an existing residence by extending the existing first story to the rear and adding a second story.* Don Waters, the applicant and owner of the residence, made the presentation as to his intended improvements to the property. Mr. Waters indicated that he purchased the property to transform into wonderful single family residence of 2500 sq. ft. and two stories. The existing property is presently 1000 sq. ft., a single story bungalow. He stated that before coming to KMAC he had many meetings with his neighbors, that as result he had modified both decks, moved the second story back and screened it, removed windows and agreed to frost or tint other windows. He has also agreed to change colors and make the second floor narrower than he had originally intended.

He noted that his neighbors' objections are primarily as to the bulk and size of the structure, but he has been willing to do most anything as long as he is able to keep the size of 2500 sq. ft. and have a second floor, which he believes he is entitled under the applicable ordinance. Mr. Waters indicates that he has also placed story poles and brought photographs of the house in relationship to the neighbors' homes. To preserve views, he chose a southwest design that has a flat roof and has limited 8' ceilings. No bridge views are lost and only views impacted are to the north and south. If he is to build the house in a manner that it will have a view to the west, he needs to have a second story, but has used a flat roof design so as to not block the uphill neighbors' views. The second story is also within the setbacks and, if it is the desire of KMAC, he would make it narrower and longer, rather than shorter and wider.

In response to a neighbor's concerns that he would be able to see into a neighbor's house, he has agreed to frost windows (but noted that other houses in the neighborhood are worse and without frosted windows). He has also agreed

to construct a six to eight foot fence to screen his property from his neighbors as well as to delete a number of windows on the side of the residence. He has also changed the angles of the upper balcony to minimize impact upon views of his neighbor to the south. He has added a trellis to the roof and over the deck to 'soften' to look of the house, but if neighbors object, he would be willing to remove that. Insofar as stability of the hillside, as currently designed, only 2'3" extends into the hillside and with the drainage that he will be adding, it should have a positive impact upon drainage; he will employ a soils engineer. Currently, his house is not required to have a carport, but he said if it is desire of KMAC for him to have a carport in the side yard, he is willing to make that addition as well. Finally, in regard to the shading impact of his house, it is his view that the only time of the year that his house would have a negative impact upon the shading to the house to the north would be in December and January, and in his view, the pine and redwood trees to the south shade the residence to the north more than his proposed addition.

Chair Barraza began by asking questions to the applicant. The following answers were provided in response to his questions: The current house is one story, two bedrooms, and the proposed construction would result in 4 bedroom 3 bathroom house. There has not yet been a survey of the property, but the fences are within applicable setback limits. The 10'4" existing front setback would not change. The first floor would remain the same envelope, except as added to the rear of the house, extended under the second floor. He is willing to change doors, the concrete courtyard to driveway and whether the existing garage will continue as a garage. In response to Secretary Karlsson's questions regarding windows on the second floor, the applicant stated he was willing to frost all of the second floor windows.

Vice Chair Tahara then inquired about the process that Mr. Waters met with the neighbors. He stated that he: 1) bought the house and reviewed ordinances, 2) designed a house to minimally impact the views of the neighbors, 3) prepared preliminary sketches of the proposed house and met with Craig and DeAnna Collis, 19 Cowper, which he described as intense and as a result, 4) agreed to correspond in the future in writing. Vice Chair Tahara then asked why Mr. Waters decided on a southwest style, which is very different from neighborhood. Mr. Waters responded that because this style house has flat roof, it had minimal impact upon views and he additionally added the trellis to soften the impact of the design.

The first speaker was Bill Wright, 23 Cowper Ave. He objected to the house because: 1) the size was too large for the neighborhood at 2500 sq. ft. and, 2) that the design of the house into the back hill may cause slippage of the hill.

Kate Li, 30 Kenilworth Dr., lives directly across the street from the subject property and was concerned that people living on the second floor of the proposed residence could look into her yard and into the front of her residence. She was also concerned that a larger house would impact parking and, while she would support expansion of the existing residence, she wanted it to be limited to

single story. She was also concerned that existing water run-off from the hill was a problem in the winter, and that this expansion may add to the problem.

Ramses Erdtmann, 32 Kenilworth, also lives directly across the street from the subject property. He finds that the angle of the photograph presented by Mr. Waters is misleading in that the privacy of their home would be negatively impacted by the second story of the proposed development. He believes that he will be able to see the second story of the planned house from his yard, even with the addition of a new 6' fence. He also finds the proposed design very bulky and heavy. He believes that the additional parking is good idea to the side of the house but believes that the frosted glass does not help him, as it is on the side of the residence and his house faces the clear glass doors of the second story. He does like the southwest style of the house and stated that the size of his house is 3500 sq. ft.

Greg Collis, 19 Cowper Ave. was the next speaker. He presented a 36 page document entitled "Impacts of Decision: 31 Kenilworth" to KMAC. The document contained photographs, correspondence between him and his wife and Mr. Waters and stated negative impacts of the proposed development. Mr. Collis stated he and his wife were very opposed to Mr. Waters plan because: 1) their house is the adjacent home to the south and they will lose all views to the north, 2) they will now look out his windows and see deck at eyelevel and frosted windows and walls and that there are decks front and back will mean a loss of privacy, 3) they can see the top of the structure as they approach their front door, 4) that the average size house in the neighborhood is 1700 sq. ft. and this will be far in excess of the average, 5) that it is their view that Mr. Waters has not agreed to any substantial changes and 6) Mr. Waters is developer who bought house in January and lives in Alamo and is not a Kensington resident.

Thea Black, 11 Kenilworth Dr. was the next speaker and lives two doors down to the north. It is her view that the houses in the immediate area are small and presented photographs of homes in the area. She stated that if this developer were permitted to add a second story, everyone would be adding a second story, ruining the neighborhood. She also did not like that one could see into her yard from second story and said that Mr. Waters worked on the house on Labor Day and she is concerned with construction noise. She also stated that there are geological issues with the house, that she considered purchasing the house and was told the cost to cure the sliding was prohibitive. She also complained about the lack of current sufficient parking and she indicated that Mr. Waters made no effort to meet with her on timely basis.

Heidi Adler, 27 Kenilworth Dr., rents her residence to another couple. Her house is adjacent to the subject, to the north. She presented a picture indicating that her views in her backyard to the south are destroyed. She also was concerned about the loss of light in her back bedroom, which would be lost from the south exposure. She believed the design was inappropriate and very bulky and that the second story was too close to her property line. She also believed that as a result of the house being that close to her property line, she would lose privacy.

She also did not want the access area adjacent to her house to be used for parking. Finally, she stated that a Frank Lloyd Wright type design would have a flat roof and be in better keeping with the neighborhood.

Jeff Koehler and Mari Metcalf, 27 Kenilworth Dr. are the current occupants of 27 Kenilworth. Ms. Metcalf began by reading a statement from Rosemary and Steve Williams, owners of 23 Kenilworth Dr. who are opposed to the proposed development. Ms. Metcalf stated that her own concerns were: a) Mr. Waters never introduced himself to her, b) that he allowed his property to be covered with construction debris all over the front of the property, c) that Mr. Waters was not sensitive to the concerns of adjacent property owners, d) that his statement that the residence that she lived would only be subject to loss of light in December and January was not true -that currently, in October, they receive light into the house through the story poles beginning at 10:00am., e) that the bulk and character of the design is not in keeping with the three existing bungalows - if he wants to keep the property in character with the neighborhood, he should keep it as bungalow, f) definite loss of privacy, which she has already encountered due to the workers in the yard and g) she hoped KMAC members would visit the properties impacted by this project.

DeAnna Collis, 19 Cowper Ave, spoke in rebuttal to the presentation of Mr. Waters. She indicated that his pictures were not properly labeled, that though he had agreed to change the color of the house, he could repaint at any time, that his house and her house were not parallel to one another, and that his property lines were incorrect. She also stated that despite the proposed changes, the impact upon their residence would be a substantial loss of privacy and views and light to the north. She then presented photographs contained in her husband's earlier presentation.

After hearing the evidence and the conflicting positions of the applicant and the adjacent property owners, it was recommended to the applicant that he could make one of two choices. Either KMAC would make a recommendation on his proposed application this evening, or he could request a postponement of the hearing and allow KMAC members to visit the subject and adjacent properties to determine the respective impacts.

Mr. Waters stated that he had worked extensively with the uphill neighbors, who he believed would be the problem, not the adjacent neighbors. He did do work on Labor Day, cutting weeds, but stopped once objections were received from the neighbor. He was willing to make any changes suggested by KMAC, except that he was unwilling to compromise on two points: the size of the structure being 2500 sq. ft., and the second floor, the latter which was important to obtain the same views enjoyed by his neighbors. Thereafter Mr. Waters conferred with his attorney and wife and requested a continuance.

In response to Mr. Waters' request for a continuance, Secretary Karlsson made a motion to grant Mr. Waters' request to continue the hearing and to allow KMAC

members an opportunity to view the subject and adjacent properties. Vice Chair Tahara seconded the motion, which was approved, 4 – 0.

6. **Information Reports:** Chair Barraza reported that the Board of Supervisors did not consider the changes recommended by the County Planning Commission at its last meeting of 10/4/05. He also reported that requests for Home Occupancy Permits will be placed on the consent calendar in the future. Vice Chair Tahara indicated the Community Development Agency may want KMAC's input regarding planned subdivisions on Purdue and Norwood.

The meeting was adjourned at 9:52 p.m.

Minutes prepared by Secretary Karlsson