

DRAFT

**Kensington Municipal Advisory Council
Minutes
Meeting of January 27, 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 7:00 p.m. All members were present.
2. The Council approved the minutes of January 6, 2004; R. Karlsson abstained, noting that he was not present at the meeting. The minutes were approved 4-0.
3. There were no citizen comments at the beginning of the meeting.
4. **300 Coventry Rd. (VR021072).** Request for small lot review for a second story addition to an existing dwelling upon a substandard lot with two additional requests for variances: existing front yard setback variance of 15' 8.5" (20' required) and an existing secondary front setback variance of 2' (15' required).

The applicant, Rob Darakhshan, and his neighbor, Daniel Cucuel, appeared at the hearing. The applicant noted that he had taken the suggestion of KMAC at the prior meeting and added the features recommended, such as dormers, which lowered the overall height of the addition by 5'. He further stated, in response to concerns of some of the neighbors, that the addition was solely for his family and it was intended that the house would remain as a single family dwelling. He further testified that the setbacks requested were not increased as a result of the addition, but were those applicable to the existing single story structure. Mr. Cucuel testified that he and his neighbors liked the looks of the revised plan and had no objections to it.

KMAC members were unanimous in stating that they appreciated the efforts of the applicant to modify the plans recommended by the council at the prior meeting. The council members then adopted the following motion, based upon the testimony and plans presented:

- 1.) That the request for a variance for a substandard lot with a front yard setback of 15' 8.5" (20' required) and a secondary front yard setback of 2' (corner lot, both setback variances pre-existing on existing structure) be approved based upon the existing variances, 2.) That the requested variance be granted based*

upon the revised plans, dated January 14, 2004 by the Contra Costa Community Development Agency, and 3.) That the height of the addition be approved to 29' 2" as indicated on the plans and that under no circumstances be higher than 30'.

The motion was approved 5-0.

5. 155 Arlington Ave. (VRO31108). Request for construction of a new dwelling upon an existing vacant lot requiring: a) small lot review; b) removal of three trees from the subject property and one tree from adjacent property at 147 Arlington Ave.; c) variance from a 0' front setback (20' required) and d) height limitation for a utility vault.

The applicant, Jason Smith, and his architect, Dan Phipps, appeared at the hearing. They began by stating that they had already lowered the utility room to 5'11" and therefore no longer needed a variance for it. Additionally, they stated that they had set back the structure 2' instead of the 0' setback originally requested. In addition, they had lowered the height of the overall building by 2' in response to concern of the northern property owner, Dorothy Benson, 147 Arlington Ave. Mr. Smith additionally provided photographs of the property with height poles and indicated that while there would be some loss of view from an upper south facing window of 147 Arlington, it was his belief that it would not preclude solar light from entering the affected room. Mr. Smith then made a video presentation to address the safety issues and other concerns he believed of relevance regarding the setback. The video indicated that a number of houses near the location of his property were not set back from the street in accordance with the 20' requirement and that fact, combined with the curvature of the street and the vegetation growing in front of the residences, meant that, in his opinion, requiring to have his house set back further from the street would not appreciably alleviate the concern of his neighbor or add to safety of the area.

Ms. Michele Benson then presented a letter, dated January 16, 2004, that she had sent to the Contra Costa Community Development Agency. In addition to the letter, she testified that she and her neighbor, The Reverend Warren Debenham, had concerns in three areas: 1) the lack of an adequate setback 2) concern over the height of the structure and the loss of view from her mother's bedroom, and 3) the size of the structure in relationship to the lot. In regard to the first point, the lack of a setback, there was much discussion regarding safety and the fact that the property to the south had a 0' setback and those to the north had variances from the 20' requirement. The Benson's were concerned about their ability to see oncoming traffic from the south coming on the street from the direction of the proposed residence as they backed out of their garage.

In addition, KMAC members R. Karlsson and K. Reed expressed concern over both the safety issue and the reason for the necessity of the 2' setback and if there were not alternatives that would allow the structure to be moved back further. KMAC member Tahara commented on the setback as well as the design of the upper portion of the garage and deck. Mr. Smith, in response, stated that moving the structure further back would be an additional expense and may impact an oak tree in the rear of the proposed structure. Mr. Smith did not present any evidence regarding a soil study, when asked about it by vice-chair Carman, or what the additional expense might be to move the

house further back from the street. Mr. Smith and his architect, Mr. Phipps, were willing to have a more open and articulated design, in response to concern expressed by member Tahara, regarding the design of the top of the garage and deck railing. In regard to item 2), loss of view out of her Mother's bedroom window, Ms. Benson did testify that she was uncertain that they had any legal right to retain their view from a bedroom and the evidence presented was that the proposed structure was well under the 35' limitation. Mr. Jason Smith stated he had taken action to address his neighbor's concerns, such as lowering the height of the structure and continuing to work on the issue of the lighting in Ms. Benson's bedroom window. As to the third item, the size of the structure, the testimony presented was that the square footage of the proposed structure was approximately that of both the northern and southern neighbor and, with the exception of the front setback, otherwise seemed suited to the lot.

Based upon the written documents (which, in addition to the letter of Ms. Benson referenced above, included the revised plans for 155 Arlington, date stamped January 27, 2004, by the Contra Costa Community Development Department, and an agreement as to common property lines, dated January 25, 2004), video presentation and testimony of Jason Smith, Dan Phipps, Dorothy Benson, Michele Benson and Rev. Warren Debenham, KMAC Vice Chair J. Carman made a motion to:

Approve the requested variances upon the following conditions: 1. That an arborist verify the condition of the oak tree in the rear yard; 2. That the sidewalks be installed to county standards; 3. That the garage have a roll-up door; 4. That the articulation suggested by member Tahara be implemented; 5. That the variances be otherwise approved based upon the plans dated January 27, 2004.

Chair Barraza abstained from the vote, noting that he has known and respected the applicant, Mr. Jason Smith, and his family for many years. Member Tahara seconded the motion. The vote on the motion was 2 to 2, members Karlsson and Reed objecting to the motion on the basis of lack of evidence concerning the necessity for setback variance. Applicant Smith objected and responded that his request was not unique, based upon the fact that other properties in the area had setbacks in approximation of his request. In response, KMAC member Karlsson requested a showing of additional cost or other evidence that would show the need for a requirement for a setback variance for this property. Applicant Smith again stated that his request was consistent with other properties in the area. Following further discussion, member Tahara then suggested that perhaps the issue could be resolved with a requirement of a further setback, of an additional four feet, which would be deep enough to alleviate some of Ms. Benson's concerns to be able to see oncoming traffic and deep enough for an automobile to be temporarily parked between the street and the garage. Vice-chair Carman recommended that his motion then be revised to include member Tahara's suggestion of *the additional requirement; that a variance be approved with a 6' setback variance instead of the requested 2' variance.*

The revised motion was then approved, 3-1, Chair Barraza abstaining; Vice-Chair Carman voting no.

5. **Colusa Circle (DP 033047).** Request for a substantial amendment to approved PUD Plan 3056-82 to allow modification of Phases III and IV in the triangular block bounded by Colusa Ave., Santa Fe Ave. and Oak View Ave. Robert Nishimori of Trachtenberg Architects presented the revised plans, which were dated 18 Dec. 2003. Mr. Nishimori noted that the revised plans only concerned "Phase III" of the overall plan, Phase I having been completed and Phase II having been abandoned.

Mr. Nishimori noted that the primary issue in the past had been parking for the additional buildings and the revised plan addressed that issue by having additional parking spaces on both Oak View and Santa Fe Avenues. Additionally, a handicapped parking space was moved to the parking area and improvements were made to the planned internal parking area between Oak View and Santa Fe Avenues. Mr. Nishimori admitted that the plan did not call for all the parking spaces required by this type of development, but noted that if the parking spaces were counted by considering different types of uses during different times of the day, it was his belief that the parking would be adequate.

Members' concerns were as to parking, the design of the new triangle building, "building B," that seemed out of character with the design of the surrounding structures, and the necessity that "building A" required a third story. In response, Mr. Nishimori noted that the owner of this property had requested an open glass design for building B and that the third story on building A was required to make the construction project financially viable. He said that they could work with the design of building B, to build it a manner more in keeping with the surrounding buildings, but that building A would have to remain at three stories for the project to be financially viable.

Neighborhood residents Paul Rodrey and Janet Hittle appeared and testified that while they liked the upgrade of the project for the area, they were very much concerned about the existing parking availability in the area, let alone the impact upon parking of this new project. They believed that the parking would be inadequate as planned and that while the projections for this new development may have been considered, their concerns were that one would have to take into account the inadequacy of the overall parking in the neighborhood that existed now, before considering just the additional problems that would result from the proposed project. They also expressed concerns that the former "Phase II" not proceed along as part of this plan.

Ms. Reed, noting the concerns that have been expressed for this project have consistently centered on parking, recommended the following motion:

- 1. That the currently proposed parking seemed inadequate and that therefore the County perform a traffic/parking study for the Colusa Circle neighborhood. This study should address not only the Phase III development, but also address all of the existing businesses in the area.*
- 2. That, as necessary and based upon the parking/traffic study, consideration is given to eliminating the third story of building A within Phase III.*
- 3. That the design of building B within Phase III be redesigned to be more compatible with the surrounding structures.*
- 4. That the County consider locating the handicapped parking space in an area best suited for those with limited mobility to gain access to Phase III businesses.*
- 5. That*

rear access and egress to the current building located at the corner of Oak View and Colusa Avenues be assured. 6. That the house at 411 Colusa Ave. be removed from the PUD and the lot in question be returned to R6 zoning. 7. That a plan for Phase II be submitted at this time and the parking/traffic study for that part of the project also be included. 8. Those neighbors in the immediate 300' area of Colusa Circle should be notified of any and all hearings before the Contra Costa Community Development ZI and Planning Commission concerning this PUD revision.

The motion was approved and adopted by a 5-0 vote.

7. Procedural Matters.

Vice Chair Carman reported that Supervisor Gioia has asked KMAC and KCSD to draft the primary provisions of a noise ordinance that would cover Kensington only and would be enforced by the Kensington Police Department. Chief Garfield has undertaken to write the provisions of such an ordinance that the Kensington Police Department would be comfortable in enforcing. A joint public meeting of KMAC and KCSD will be held in early March to receive public comment and vote on the major provisions of this draft noise ordinance. It is likely that this draft can also be discussed at the February KMAC meeting. No other public meeting is now planned.

8. Informational reports were noted and received, including:

- a. Update on enforcement and past cases
- b. Board of Supervisors action re-establishing KMAC

9. The meeting was adjourned at 10:50 p.m.