

# KENSINGTON MUNICIPAL ADVISORY COUNCIL

## REGULAR MEETING NOTES - DRAFT

CONFERENCE ROOM, COMMUNITY CENTER

59 ARLINGTON AVE., KENSINGTON, CALIFORNIA

**Tuesday, January 9, 2018 – 7PM**

1. Roll Call – Chris Brydon, Patrick Tahara, Julie McCarter, Melissa Holmes Snyder, Lloyd Cowell

2. Citizens Comments:

Kate Rauch of Supervisor Jon Gioia's office and outgoing board member Jessica Marantz. Kate thanked Jessica and presented her with a certificate recognizing her service. Patrick Tahara reported on his attendance at the meeting of the "K Groups" regarding Emergency Preparedness, which will be a topic of focus in 2018, which is relevant to KMAC's role because the projects that are considered impact street parking. Street parking is an ongoing issue in Kensington because many streets are narrow and have very limited parking. Building projects that expand existing properties impact parking by increasing demand and must be considered in light of the need for access by Fire and Emergency crews and vehicles.

3. Approval of meeting notes from December 5, 2017. Approved: Julie McCarter, Lloyd Cowell, Patrick Tahara, Chris Brydon. Abstaining: Melissa Holmes Snyder.

4. **52 Anson Way (VR17-1041)** This is a request for a Variance Permit to allow 0' side yards (where 3' is required), to construct a pergola on top of a retaining wall. The variance includes an allowance for a 12' 4" tall pergola on an existing 8' retaining wall, with a maximum height of 20' 4" (where the maximum height allowed is 15'). This request also includes a Kensington Design Review for the replacement of existing windows with a 3-pane sliding door, a deck, and stairs, to determine compatibility with the surrounding neighborhood in terms of size, location, height, and design.

The property owner/applicant, Katie Young (a real-estate attorney) presented photographs of the project to the KMAC and raised several points in her statement in support of her project:

- A tree previously blocking a view of the Bay for many years fell in June 2017, so any view that is blocked is new.
- Young approached her neighbor about the shade, with the intent to match the roofline of existing but came out higher.
- The neighbor complaining is located upslope from the Young property.
- 2011 photos presented with the old tree in place and the old wall.
- The tree split and was removed because it represented a hazard.
- Tree trimming at the next-door property.

- The view when the property was purchased was worse than the current state of the property with the new view.
- Other properties in the area have the benefit of a 0' setback, including those at 7 Jessen, 5 Franciscan Way, 47 Franciscan Way, and 19 Anson Way, with a deck on the property line.
- The window to sliding door conversion and construction of the deck are already completed.
- The view downslope from the deck compared with the view downslope from the previously existing window does not represent an increased infringement of privacy to the downslope neighbor.
- Several nearby properties have small rear decks overlooking their downslope neighbor's property, including 58 Highgate and 16 Edwin

#### KMAC questions and comments to applicant:

- Projects not approved in advance are reviewed as if the construction had not yet taken place; i.e. no special consideration is given to a project simply because the property owner has expended the time and resources to complete the project without a permit.
- The applicant stated that everything represented in the drawings has already been constructed.

#### Public Comments

- Keith Mosher, 43 Franciscan Way, spoke in favor of the project. He said that his only concern was that the deck did not appear at this time to be anchored to the house. He also stated that this is his first KMAC meeting.
- Randy Young, 52 Anson Way, spouse of applicant Katie Young, spoke in support of the project but did not add anything specific other than the statements of the applicant.
- Andrei Voinar, 51 Anson Way, spoke in opposition to the project. He read into the record the email previously sent by him to Allison Reimer on January 4, 2018 setting forth his opposition and the reasons for it. However, at this time he did not add anything further.
- Barbara Voinar, 51 Anson Way, spoke in opposition to the project and the fact that the applicants appeared to be parking an Airstream trailer in their side yard, with electrical and water hookups, to be used as an illegal auxiliary dwelling unit.

#### Applicant's Response to Public Comments

- The downhill neighbor called Kate Rauch, livid that he had not received notice of any meeting regarding an application, because everything had been built. However, he is not present at this meeting.
- Allison Reimer visited no construction had yet taken place, but she was advised that it was happening.
- Applicants spent more than \$3500 on lumber, and the door-deck portion of the project represented a hazard if left half-built because applicants have a young child

- There was no access from the back of the house to the yard prior to the door-deck portion of the deck; it was necessary for applicants to go out the front of the house and around the side to the back yard.

#### KMAC Closed Discussion

- 1-2 projects on average per year are presented to the board that have already been built, without permits or KMAC approval. The procedure is to treat such projects as unbuilt, and review the application as such.
- Patrick noted that the door-deck aspect of the application is similar to other projects in the area.
- About 8 years ago, a pergola on Amherst that exceeded the maximum height allowance and that was over the setback line resulted in the property owner being required to make modifications to bring the project into compliance.
- Another project, a carport that was presented to the board as an already-constructed project, was required to lower the height of the roof.
- Patrick noted that Kate Rauch had told him that the planner was “surprised” that the construction on the 52 Anson Way project had already been completed.
- The fact of applicant’s impending birth as a factor in motivating non-approved construction is understandable, but is not by itself a sufficient cause to ignore the process or waive the requirements for approval.
- There really is no concern with the deck. The downhill neighbor’s objections were apparently to the procedure because he felt he had not been notified of an opportunity to be heard about the project, and not to the substance of the project.
- The pergola is, however, more problematic. It is
  1. On the property line
  2. The height is a problem
  3. The neighbors have requested that the applicants reduce the height.
  4. Why was the setback not observed?
- The request for a variance fails the second findings “special circumstances” test.
- Prior projects have been approved when there was no permit. It is necessary to balance the expressed concerns of safety with the rule of law.
- Julie McCarter stated that she agreed with the prior comments, but the height of the pergola was her greatest concern and she could not support the variance request.
- Chris Brydon stated that there were other ways to ensure safety. He stated that he does not object to the door/deck aspect of the application. He also stated that relocating the spa off the property line and within the setback could have been done within the applicant’s property.
- Lloyd Cowell stated that the pergola was located on the lowest point of the applicant’s property and relocating it would have likely caused additional objections to the height of the pergola. The height is 5’ over the maximum allowable, but what if the fence were to be moved back from the retaining wall and away from the setback line?
- Patrick advised the applicant that she had options:

1. Request a vote and send the application on to the county with a voted-on motion
  2. Applicant may request a continuance of the KMAC consideration instead of requesting a vote. If a vote is requested, and approval is not recommended, the applicant may face the prospect of paying more fees once the matter is considered at the county level.
- Applicant requested that KMAC proceed with its vote.

Chris Brydon made the motion to recommend approval of the door/deck and stairs portion of the application, but denial of the request for a variance for the as-built pergola because it fails the second finding “special circumstances” requirement. Application No. VR17-1041, date-stamped November 13, 2017. The motion was seconded by board member Melissa Holmes Snyder.

The board voted unanimously to recommend approval the already-built door/deck/stairs aspect of the application. Ayes: Patrick, Chris, Julie, Melissa, Lloyd. Nays: None

Unanimously to recommend denial of the request for a variance for the already-built pergola. Ayes: Patrick, Chris, Julie, Melissa, Lloyd. Nays: None

5. Adjournment – 8:34 pm. Chris Brydon moved to adjourn the meeting. Lloyd Cowell seconded. Ayes: Patrick, Chris, Julie, Melissa, Lloyd. Nays: None

**Lloyd Cowell**

KMAC Member