



**Contra
Costa
County**

To: Board of Supervisors
From: John Kopchik, Director, Conservation & Development Department
Date: March 15, 2016

Subject: Appeal of the County Planning Commission's approval of County File #DP15-3011, for a residential addition at 148 Highland Boulevard in Kensington.

RECOMMENDATION(S):

- 1.) OPEN the hearing, ACCEPT public testimony, and CLOSE the hearing.
- 2.) FIND that the proposed project is categorically exempt from the California Environmental Quality Act - Class 1 (CEQA Guidelines § 15301 (e)(1)).
- 3.) DENY the appeal of Catherine de Neergaard.
- 4.) SUSTAIN the decision of the County Planning Commission.
- 5.) APPROVE County File No. DP15-3011, a development plan to add conditioned living space to the basement level of an existing single-family residence.
- 6.) ADOPT the attached findings and conditions of approval for County File No. DP15-3011.
- 7.) DIRECT the Department of Conservation and Development to post a Notice of Exemption with the County Clerk.

FISCAL IMPACT:

The applicant has paid the initial deposit, and is obligated to pay supplemental fees to cover any and all additional staff time and materials costs associated with the application

☒ APPROVE ☐ OTHER
☒ RECOMMENDATION OF CNTY ADMINISTRATOR ☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **03/15/2016** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes: See Addendum

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Mary N. Piepho, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: March 15, 2016

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Adrian Veliz, (925)
674-7798

cc:

processing.

BACKGROUND:

This is an appeal of the County Planning Commission's (CPC) decision to approve County File #DP15-3011. The proposal includes a master bedroom addition at the lower level of the residence which consists of 154 square feet of new space at the rear of the residence and the conversion of 599 square feet of basement to conditioned living area. Below is a timeline of the processing of this application:

- May 26, 2015 -Application submittal
- June 26, 2015 - Application deemed incomplete
- July 28, 2015 - Kensington Municipal Advisory Council (KMAC) recommends approval, 4 to 0
- August 11, 2015 - Revised plans submitted/ application deemed complete
- September 21, 2015 - Zoning Administrator hearing #1
- September 29, 2015 - KMAC recommends approval of the project, 4 to 0
- October 5, 2015 - Zoning Administrator hearing #2
- October 19, 2015 - Zoning Administrator approves application
- October 29, 2015 - Appeal filed by Catherine de Neergaard
- January 12, 2016 - County Planning Commission denies appeal and approves project
- January 29, 2016 - Appeal filed by Catherine de Neergaard

A detailed description of each hearing is listed below.

General Discussion:

1. Project Description: The project is a request to add a total of 753 square feet of conditioned living space to the basement level of an existing single-family residence. 599 square feet will consist of a basement conversion and the remaining 154 square feet will consist of an addition to the rear of the residence. The combined space will include a master bedroom, mud room and laundry room. The entire project will be beneath the existing footprint of the floor above (proposed plans attached). The applicant is Wade Skeels. The property owners are Dean Williams and Daryle Morgan.

2. Area and Site: The project is located at 148 Highland Blvd. within the Berkeley Highlands Terrace subdivision of Kensington. The maps for this subdivision were recorded in the very early 1900s. The neighborhood consists primarily of custom built homes on rectangular lots 40- to 50-feet in width. Numerous mature trees and landscaping are located in the area. Most homes in the vicinity are two-stories tall to maximize views. The topography of the neighborhood generally slopes downward in a western direction. The subject site is rectangular in shape and is 4,160 square feet in area (approximately 40 feet wide and 105 feet in depth). One single-family residence was constructed on the property in 1953. The residence consists of 1,325 square feet of living space. A 370 square-foot carport provides vehicular

parking for the site. The appellant lives at 152 Highland Blvd.

3. General Plan and Zoning: The property is designated Single-Family Residential High-Density (SH) in the Contra Costa County 2005-2020 General Plan. The designation allows for the construction of single-family homes and the ancillary structures/uses normally associated with single-family developments.

The County's 2005-2020 General Plan also includes specific policies for the Kensington area which are applicable to the review of this project. The Board of Supervisors adopted these policies to support adoption of the Kensington Combining District Ordinance (K-Ordinance; attached). The overarching purpose of these policies and K-Ordinance is to minimize impacts on neighboring properties through preservation of views, light and solar access, privacy, parking, and residential noise levels. The policies which are applicable to the project are enumerated as 3-205 through 3-207, which state:

3-205 – Allow for the review of new residential development that provides reasonable protection for existing residences in the Kensington Community with regards to: views, design compatibility (including building bulk, size, and height), adequate parking, privacy, and access to sunlight.

3-206 – Preservation of views of scenic natural features (e.g. bay, mountains) and the developed environment (e.g. bridges, city skyline) should be incorporated into the review of development applications.

3-207 – Review proposed residential development for design compatibility with nearby development (e.g. building mass, height, mechanical devices) and provisions for adequate parking.

The project is consistent with these policies as the lower level addition/conversion preserves views, maximizes the existing space within the residence, and has negligible effects on the solar access to surrounding properties, in part because the entire project will be beneath the existing footprint of the floor above. In addition, the proposed square-footage for the residence will remain comparable to other homes in the immediate vicinity (residential square-footage comparison attached).

Kensington Combining District Ordinance: As mentioned above, the purpose of the K-Ordinance is to provide specific regulation to fairly and efficiently implement the Contra Costa County General Plan policies for Kensington. As the project does not qualify for any exemptions outlined in Code Section 84-74.604 (churches, one story accessory buildings with an area of less than 120 square feet, repair of damaged property, etc.), submittal of this Development Plan application and a public hearing are required for the project.

PROCESSING OF DEVELOPMENT PLAN APPLICATION

1. Kensington Municipal Advisory Council (KMAC) Meeting and Recommendation (Minutes Attached): This project was initially heard by KMAC at their July 28, 2015, meeting where according to the KMAC minutes, the property owner indicated that the project will convert an existing basement to a master bedroom and will add structural stability to an area of the residence currently being supported by stilts. The owner of 144 Highland Boulevard (adjacent property to the north) also appeared and offered support for the project indicating that the project will have no impact on his property. KMAC members unanimously voted (4 to 0) to recommend approval of the project as proposed. Notwithstanding that fact, the project was re-routed to the KMAC and heard once again at their September 29, 2015, KMAC meeting to ensure that all community feedback was received regarding the project.

At the September 29, 2015, KMAC meeting, the applicant spoke once again offering that the project meets current zoning standards and will add to the structural stability of the home. Knute Fischer/Robin Burns, property owners of 144 Highland Boulevard appeared a second time indicating that they believe the project will improve the neighborhood and increase property values. Ms. Burns also added that she received all public notifications regarding the project. Catherine de Neergaard (appellant) appeared and strongly objected to the project based on the overall size and potential for a second unit at the lower level of the residence. David Bergen (670 Oberlin), spoke in opposition to the project based on the project's bulk and water runoff. Wade Skeels, the project architect spoke briefly and indicated that the project will increase the usability of the property and safety of the property/neighborhood (seismically). After taking public comments, KMAC voted unanimously (4 to 0) to recommend approval of the project as proposed.

2. County Zoning Administrator (ZA) Hearings and Decision: This project was initially heard by the ZA on September 21, 2015. At that hearing, the ZA took testimony from the project sponsor who reiterated that KMAC unanimously recommended approval of the project and offered general support for the project. Ms. De Neergaard appeared and indicated that she was concerned with the project description language and permitting history of the site. At the conclusion of public testimony, the ZA continued the matter to October 5, 2015, in order to consider the testimony and visit the property of Ms. De Neergaard. Due to scheduling conflicts, the ZA continued the matter a second time from October 5, 2015, to October 19, 2015.

At the continued October 19, 2015, public hearing, the ZA took additional testimony from the property owner and the appellant. The property owner indicated that since the purchase of the residence in 2005, upgrades to the windows, kitchen, furnace, insulation and roof have been made to increase the

efficiency of the home. Additionally, the property owner informed the ZA that the replacement of a deteriorating deck and seismic upgrades (related to this project) are a few of the remaining improvements to the residence.

The appellant, Ms. De Neergaard expressed concerns regarding the subject property in terms of: property values, unpermitted improvements, and geological stability within the footprint of the residence. Ms. De Neergaard also requested that the ZA require a soil study for the project, require the property owners to redesign the previously approved roof, gutter, and furnace/exhaust and remove the existing carport. Additionally, Ms. De Neergaard requested that the project proponents be required to install a 6-foot tall fence between the two properties. In response, the property owner indicated that he has offered to install a hood on the furnace exhaust at Ms. De Neergaard's expense with no meaningful response.

After considering all testimony and visiting the site, the ZA indicated that time was allowed for two KMAC meetings where they unanimously approved the project on each occasion and confirmed that each public hearing was lawfully noticed (noticing attached). Additionally, the ZA indicated that the project meets the required findings, does not include a second unit, is not increasing the footprint and does not require a grading permit. At the conclusion of the public hearing, the ZA approved the project and determined the addition will have a negligible impact on Ms. De Neergaard's property (ZA staff reports attached). An appeal of the Zoning Administrator's decision was received on October 29, 2015 (attached).

3. County Planning Commission (CPC) Hearing and Decision: On January 12, 2016, the CPC held a public hearing on the appeal of the ZA's decision to approve this Development Plan application. The hearing included staff's presentation, as well as testimony from the applicant and appellant (CPC staff report attached). Staff's presentation included a brief description of the project, a summary of the appeal and staff's response. At the conclusion of staff's presentation, the CPC requested clarification regarding the K-Ordinance's floor area threshold and Development Plan application requirement. Staff informed the Commission that the K-Ordinance's floor area threshold is not a maximum, but rather a trigger point which requires a development plan application to be submitted. The development plan application then allows staff to review a project's compatibility with the County's General Plan Policies and K-Ordinance's objectives which are intended to preserve neighborhood views, privacy and solar access, etc.

The applicant provided a brief permitting history of the site and informed the Commission that the project is in part, an attempt to improve the structural stability of the residence as recommended by a structural engineer. The appellant contended that the incremental expansion of the home has resulted in

a massive wall along the southern elevation which negatively impacts her property values, quiet enjoyment, views and solar access. At the conclusion of testimony and a brief discussion, the Commission voted unanimously to deny the appeal and uphold the ZA's decision to approve the project.

APPEAL OF COUNTY PLANNING COMMISSION'S DECISION

On January 22, 2016, the County received an appeal of the CPC's decision to approve the proposed residential development. The appeal cited multiple points of opposition. Staff has summarized and provided a response to each appeal point below.

Review of Points Raised in Appellant's Appeal Letter:

1. Summary of Appeal Point: *The Contra Costa County Department of Conservation and Development, Current Planning Division did not provide adequate public noticing for the project. The staff report contained material misrepresentations of the approved project.*

Staff Response: The attached affidavits confirm that public notification for the September 21, 2015, County Zoning Administrator hearing was timely mailed to the appellant and 64 other recipients on September 4, 2015. Furthermore, on September 22, 2015, the County circulated an additional public notification for the continued public hearing to be held on October 19, 2015 (though the County was not legally obligated to do so). Each staff report has been made publically available and has contained the development plans for review and comment. By signing each application form, an applicant is attesting to the correctness of each plan submittal. No evidence has been provided to staff indicating that the plans submitted with this application are a misrepresentation of the proposed size, location or use of the area to be expanded.

2. Summary of Appeal Point: *The plans ignore the spirit and the letter of the Kensington Combining District. The findings for the Kensington Combining Ordinance were underemphasized and glossed over.*

Staff Response: The intent of the Kensington Combining District is to recognize the rights of property owners to improve the value and enjoyment of their property while minimizing the impacts upon surrounding neighbors and not substantially impairing the value and enjoyment of their neighbors' properties. The K-Ordinance is meant to promote the preservation of views, light and solar access, privacy, parking, residential noise levels and compatibility with the neighborhood. The KMAC, ZA and CPC have all reviewed the project and determined it is meeting each of these goals as described below:

- Minimizing Impact: The approved project minimizes its impact on neighboring properties by maximizing the use of interior space. 80% of the new square-footage is obtained by converting an existing unconditioned basement to livable area. The remaining 20% will be located beneath an existing cantilevered section of the residence, which does not expand the footprint of the residence. Furthermore, the entire addition is below the existing footprint of the floor above, resulting in negligible impact to surrounding neighbors.
- Views: Section 84-74.404(r) of the K-Ordinance defines a “view” as skylines, bridges, distant cities and bodies of water, etc. No views as defined by the K-Ordinance are available from the ground level of the appellant’s residence. All views as seen from the appellant’s residence are from the second story of that home. As proposed, the subject addition will be located at the lower level of the subject residence. Therefore, no portion of the proposed addition will conflict with the direct line-of-sight of any views currently had by the appellant.
- Parking: One off-street parking space is required for the subject property. An existing two-stall carport provides adequate vehicular parking for the site at the Highland Boulevard frontage.
- Solar Access: The solar access of 152 Highland Boulevard will also be negligibly affected by the approved addition. The appellants property is south of the subject property, the path of the sun at this location generally remains in the southern sky. Due to this fact, the subject property has virtually no potential to affect light and solar access for the appellants’ property.
- Health and Public Safety: The project promotes the general welfare, public health and safety by providing increased structural stability to the western end of the existing residence. Improving the existing cantilever supports with sheer wall, as recommended by a consulting structural engineer, will result in a seismically strengthened residence and will provide added security for residents surrounding the subject property in the event of an earthquake.
- Privacy: Privacy is not expected to be an issue with this development as there are no new windows facing any adjacent residences except for a glossed opaque bathroom window on the southern face of the subject residence.
- Residential Noise Levels: It is anticipated that residential noise levels may increase temporarily as a result of construction activities. The project has been conditioned to limit the time and days that this construction activity may occur. Following the completion of construction, this addition is not expected to substantially increase residential noise levels. No new uses are proposed with this application that will change the residential nature of the home located on this property.

- Neighborhood Compatibility: The attached comparison of home sizes in the area demonstrates that the subject residence is not uncharacteristically large for the area. The design of the addition will be consistent with the current architecture of the residence in terms of type of siding and materials.

3. Summary of Appeal Point: *The residence at 148 Highland has undergone multiple additions, which have negatively affected my property value and the quiet enjoyment of my home. It is unfair and unequal under the law to “give” so much to one property owner at the expense of neighboring properties.*

Staff response: There is no County ordinance limiting how many additions can be performed on a residence. The KMAC, ZA and CPC have all determined that the subject project complies with the applicable K-Ordinance development standards. The specific criteria used to make that assessment has been outlined in staff’s response to Appeal Point #2 above. There has been no evidence provided to the KMAC, County Zoning Administrator or County Planning Commission that substantiates claims that any aspect of County File #DP15-3011 will negatively affect the value or quiet enjoyment of properties in the immediate vicinity.

4. Summary of Appeal Point: *The proposed addition may be converted into a residential second unit in the future.*

Staff Response: This appeal point has been discussed at length throughout the ZA and CPC hearing processes. To reiterate, according to code section 82-24.012 (Residential Second Units Ordinance), the subject lot does not meet the minimum 6,000 square-foot area requirement to apply for a residential second unit. Nothing in the plans indicates that the intent of County File #DP15-3011 is to establish a second unit (e.g., no refrigerator, stove or counter top). No evidence has been provided by the appellant that substantiates claims that the subject addition will be converted into a second unit in the future.

Conclusion:

The appeal points are similar to testimony offered to the KMAC, ZA and CPC and do not provide support for overturning the CPC’s decision. The project is consistent with review criteria outlined in the Kensington Combining Ordinance as well as General Plan Policies for the Kensington area. Considering these facts, staff recommends that the Board of Supervisors deny the appeal and sustain the County Planning Commission’s approval of County File #DP15-3011, subject to the attached findings and conditions of approval for County File No. DP15-3011.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board of Supervisors grants the appeal, the County Planning Commission's decision to uphold the County Zoning Administrators approval of a residential addition at 148 Highland Boulevard will be overturned. The owners of 148 Highland Boulevard will be unable to construct their proposed addition.

CLERK'S ADDENDUM

Speakers: Catherine de Neergaard, Appellant (handout attached); Daryle Morgan, Property Owner. CLOSED the hearing; FOUND that the proposed project is categorically exempt from the California Environmental Quality Act; DENIED the appeal of Catherine de Neergaard; SUSTAINED the decision of the County Planning Commission; APPROVED County File No. DP15-3011, a development plan to add conditioned living space to the basement level of an existing single-family residence; ADOPTED the findings and conditions of approval for County File No. DP15-3011; ADDED a Condition of Approval " Prior to the issuance of a building permit, Applicant shall submit photographic evidence confirming the installation of a muffler or equivalent noise reduction device on the exhaust vent located on the southern side of the subject residence"; and DIRECTED the Department of Conservation and Development to post a Notice of Exemption with the County Clerk.

ATTACHMENTS

Maps

CPC Resolution #5-2016

CPC approved Findings & COA's

De Neergaard CPC Appeal

De Neergaard ZA Appeal

CPC Staff Report

ZA Staff Reports

KMAC Meeting Minutes

Agency Comments

BOS Notification List

County Noticing for ZA and CPC Public Hearings

Reduced Plans

Neighborhood Comparison

Site Photographs with Index

Additional Public Comments

BOS Powerpoint Presentation

GP Policies for Kensington

Kensington Ordinance