



**Contra
Costa
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: November 3, 2020

Subject: Appeal of Planning Commission's decision to uphold Zoning Administrator's approval of 326-sq. ft. addition to residence in Kensington (District 1)

RECOMMENDATION(S):

1. OPEN the public hearing on an appeal of the County Planning Commission's approval of a development plan for 120 St. Albans Road in Kensington, RECEIVE testimony, and CLOSE the public hearing.
2. DENY the appeal of Nicole Ashar and Joseph Petroziello.
3. DETERMINE that the proposed project is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301(e) (existing structures).
4. APPROVE the development plan for a two-story addition, interior remodel, and new deck at an existing single-family residence at 120 St. Albans Road in the Kensington. (County File #DP19-3019).
5. APPROVE the attached findings and conditions of approval.
6. DIRECT the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.

☐ APPROVE

☒ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **11/03/2020** ☐ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

Contact: Margaret
Mitchell, 925-674-7804

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: November 3, 2020

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

By: , Deputy

cc:

FISCAL IMPACT:

The applicants are responsible for all of the time and material costs associated with processing the application.

BACKGROUND:

Project Description

This is a hearing of an appeal of the County Planning Commission's decision to approve a Kensington design review development plan for an approximately 326-square-foot two-story addition, an interior remodel of the upper level and a new deck at the rear of the existing single-family residence at 120 St. Albans in Kensington. The addition to the main level will extend the living room and dining room by five feet, two and one-half inches to the west, with a second access to the deck from the dining room. The existing deck will be removed and replaced by a new deck that extends 10 feet, 8 inches west from the addition to the main level. The addition to the upper level will extend the master bedroom and bathroom seven feet, two and one-half inches to the west, creating an approximately two-foot overhang over the new deck. The remodel of the existing interior space, plus the small addition, will allow for a master bedroom with an ensuite master bathroom and walk-in closet, three smaller bedrooms, and an additional bathroom. The addition to the basement level of the residence will add five square feet of space to the existing storage room, above which will only be the main level but no upper level. The remaining area under the main level is an unfinished and uninhabitable crawlspace.

Project Background

The subject property is located within a residential neighborhood in the area of Kensington. The subject property is surrounded by residential lots ranging in size from 3,696 square feet to 8,400 square feet in area, all of which have been developed with residential dwellings and related accessory structures. Interstate 80 is located approximately 1.8 miles west of the property, the El Cerrito city limit is approximately 0.6 miles west and 0.6 miles north of the property, and the Richmond city limit is approximately 0.3 miles east of the property. The existing 2,006-square-foot single-family residence is located towards the front (east side) of the property. The property slopes gently near the front and slopes steeper towards the rear of the property. The existing residence is a two bedroom, one and a half bathroom home built in 1938.

In a previous application (County File #VR18-1032) the applicant requested approval of a variance for a three-story addition (where two and a half stories is allowed) on the northern side of the rear of the residence where the existing residence is three stories due to a small basement/storage space. Staff informed the applicant that variance findings to allow the three story addition could not be made, and in response, the applicant withdrew the variance application and submitted a revised project. In the revised project, the proposed addition was moved to the southern side of the rear of the property and was designed to not require a variance for three stories. Subsequently, a Kensington design

review application (County File #KR19-0011) was submitted on July 26, 2019 by the applicant. Two hearing requests were received during the required 34-day public comment period for the Kensington design review. In response, the applicant submitted the current development plan application (County File #DP19-3019) for the two-story addition on September 18, 2019.

The project was scheduled at the December 16, 2019 Zoning Administrator hearing. The Zoning Administrator opened the public hearing for this item, public comments were heard, and the item was continued to an open public hearing on January 6, 2020. At the January 6, 2020 meeting, additional public comments were heard. The Zoning Administrator closed and continued the item to the January 22, 2020 meeting. At the January 22, 2020 meeting, the Zoning Administrator re-opened the public hearing for this item, and more testimony was heard. The Zoning Administrator approved the item with changes to finding #3 (that the elimination of the northwestern facing master bathroom window minimizes impacts to the neighboring residence on the north side) and finding #7 (that the new development improves the value of the subject property), and changes to Condition of Approval (COA) #3 (the northwestern facing master bathroom window must be eliminated) and the addition of COA #4 (requiring the deck railing to be cable or glass) and COA #5 (requiring the deck and addition on the southern side to be setback 3' 2" in order to comply with the 8' 0" aggregate setback). Staff received one letter on February 3, 2020, appealing the Zoning Administrator's decision to the County Planning Commission.

At the August 12, 2020 County Planning Commission Meeting, the Commission opened the hearing and received public comments on the project. Among the comments heard were concerns related to impacts to long range views of the San Francisco Bay, impacts to privacy, impacts to property values, violations of the Kensington Combining District Ordinance, and variances should be required for three stories and for setbacks to the addition. After receiving testimony, the County Planning Commission closed the public hearing and voted on a motion to deny the appeal and uphold the Zoning Administrator's decision. The motion to deny the appeal was passed by the Commission with a 5-2 vote. Within the 10-day appeal period, one appeal was filed on the matter by Jillian Blanchard, representing Nicole Ashar and Joseph Petroziello (appellants).

Appeal of the County Planning Commission's Decision

On August 24, 2020, Jillian Blanchard, representing Nicole Ashar and Joseph Petroziello, filed an appeal with the Department of Conservation and Development, Community Development Division, over the decision of the County Planning Commission to deny the appeal and uphold the decision of the County Zoning Administrator to approve County File #DP19-3019. The appeal points have been summarized and addressed below:

Summary of Appeal Point #1: A variance is required for the setbacks and a three-story

addition.

Staff Response: A portion of the existing residence at the rear northwest corner is three stories. Aside from the northwest corner of the residence, the remainder of the existing residence is two stories above crawlspace. The proposed addition will be located along the southern side of the residence and will consist of two stories above crawl space, and does not require a variance for the number of stories since it is only two stories. No part of the addition to the second floor will be over the basement. The basement will be expanded by five square feet and the first floor will be expanded over this area but the second floor will not. The proposed addition will not extend or expand any part of the existing three story portion of the residence and therefore does not require a variance for three stories. Many of the residences in the surrounding area were constructed prior to adoption of the zoning code standards and many contain three stories. County staff routinely processes development plans for additions or improvements to existing three-story residences, including to the appellant's residence, without requiring a variance if the addition or improvement itself does not itself exceed two-and-a-half stories.

Since the lot was created prior to the adoption of zoning for the area, and the width of the front of the property is 35 feet, the sliding scale for side yard setbacks found in Section 82-14.004 of the County Ordinance Code applies. The minimum required sideyard setback for the lot is 3-feet with an aggregate of 8 feet. The existing residence has a 1.5-foot side yard setback with a 3.5-foot aggregate side yard setback. The proposed plans indicate the addition meets the minimum required 3-foot side yard, and when combined with the existing 5-foot sideyard to the existing nook at the rear of the residence meet the minimum required 8-foot aggregate sideyard. The applicant later submitted a site plan at the Zoning Administrator hearing clarifying that the actual existing side yard setback to the existing nook at the rear of the residence is 4-feet 10-inches; therefore, the aggregate side yard setback is 7-feet 10-inches. The Zoning Administrator added condition of approval (COA) #5, which states that the deck and addition on the south side of the house must be set back by 3-feet 2-inches in order to comply with the 8-foot aggregate setback. Construction plans are reviewed by the Community Development Division (CDD) prior to issuance of a building permit, and CDD will confirm that the required setback is met. The Building Inspection Division conducts inspections during construction to ensure that projects are built to the approved specifications.

Summary of Appeal Point #2: The project does not comply with the Kensington Combining District with regard to views, privacy, property values, and use and enjoyment of the home.

Staff Response: The appellant's residence is located adjacent to the subject property to the north. The views of the San Francisco Bay from the subject property and the appellants' property are primarily to the west (including southwest and northwest). Although the upper floor of the addition will extend approximately seven feet from the existing residence, the addition will only extend approximately 2.5-feet beyond the

existing nook of the subject property which is located on the opposite end of the rear of the residence, which is what will be visible to the appellants. The new deck extends approximately an additional eight feet, eight inches beyond the new upper floor.

As can be seen in the attached aerial imagery, the appellants' residence extends approximately 20 feet further to the west than the subject residence, providing many views of the bay that will remain beyond the addition. As also seen can be seen in the aerial imagery, many of the residences in the surrounding neighborhood have rear decks of a similar size or larger, including the appellants' residence, which has two rear decks of a similar size, one of which was extended under County File #DP08-3016. To address the concerns regarding the new deck, the Zoning Administrator added COA #4, which states that the deck railing shall be cable or glass material to minimize the impacts to the neighboring property.

Staff contacted the appellants several times to set up a site visit prior to the Zoning Administrator hearing, but the appellants were repeatedly unavailable and asked if photos were sufficient. Therefore, Staff's analysis of the views presented to the Zoning Administrator and the Planning Commission were based on the analysis of the plans, and photos provided by the appellants, the applicant, and the Kensington Municipal Advisory Council (KMAC). Subsequent to the Planning Commission hearings, the appellants invited staff to enter their home, observe the view through relevant windows and take pictures. These pictures are in the slides attached to this report. Despite the differences, all of the photos show that a small portion of the views to the southwest will be impacted by the addition, but none of the western facing bay views will be impacted by this project. Therefore, the impact to the views will not be substantial.

The plans submitted by the applicant identify a window in the master bathroom portion of the addition that faces northwest, which may have impacted the privacy of the appellants' residence. In order to reduce privacy impacts, the Zoning Administrator revised COA #3, stating that the applicant shall remove this window from the addition.

The intent of the proposed deck is to be used and enjoyed by the owners of the subject property. Residences are allowed to have decks, and many other residences in the neighborhood, including the appellants' residence, do. The deck does not substantially increase impacts to privacy relative to what is existing. The proposed deck is on the lower level of the residence and the appellants' master bathroom is on the top level of the residence, so the privacy of the master bathroom is not substantially compromised. As stated previously, the Zoning Administrator added COA #4 requiring cable or glass railings to reduce impacts to the neighboring views.

The primary view is to the west and the addition will not block the existing western views. Typically, additions add value to the subject property and the neighborhood. Given the scale of this modest addition of 326 square feet and extension of the existing deck, the project is consistent with the other neighbors that have added to their residences. The Kensington Combining district standards recognize the rights of property owners to

improve the value and enjoyment of their property. In general, adding square footage to a residence, creating a better floor plan that is consistent with the existing residence, and increasing views adds enjoyment and value to a property.

The purpose of the Kensington Combining District is to ensure that “future development recognizes the rights of property owners to improve the value and enjoyment of their property while minimizing impacts upon surrounding neighbors and not substantially impairing the value and enjoyment of their neighbors' property [and to] promote the community's values of preservation of views, light and solar access, privacy, parking, residential noise levels and compatibility with the neighborhood with regard to bulk and scale (Section 84-74.204).” As previously stated, COA #3 has been modified to reduce the privacy impacts caused by the northern facing window in the master bathroom portion of the addition, and COA #4 has been added to ensure the railing of the deck is constructed in such a way as to minimize the impact to the appellants’ views to the southwest. As shown in photos, the views to the southwest will be minimally impacted by the modest addition, and none of the views to the west will be impacted. As seen in aerial photographs, the appellants’ residence extends much farther to the west than the subject residence, and therefore has full views to the west that will not be impacted by this project. Therefore, the project has been designed and modifications have been made to ensure that the project meets the Kensington Combining District requirements.

Summary of Appeal Point #3: The decision is not based on substantial evidence in the record and the previous staff reports include misstatements.

Staff Response: The existing views of the bay are to the west. The addition extends five feet, two and one-half inches (first floor) and seven feet, two and on-half inches (second floor) to the west beyond the existing residence, and the new deck extends ten feet, eight inches to the west beyond the addition to the first floor. The additions are minimal and therefore, will not substantially impact views to the west or southwest. The small addition would not impact light or solar access to the adjacent properties (from the appellants property, the addition is largely obscured by the existing, protruding nook). Although the new deck extends further west than the existing deck, the neighbors’ privacy will be minimally impacted, since there is an existing deck in generally the same location. There are new windows in the addition that face northwest and southwest, but they are angled such that the subject property owners will be able to enjoy the bay views without looking directly into the neighbors’ homes. The addition is on the southern portion of the west side of the residence where there are two stories above crawl space that is less than seven feet in height to the floor above. The addition is also two stories above an unfinished and uninhabitable crawl space. There is a five square foot addition to the basement, but only the first floor addition overlies the extended basement. The existing residence has a 1.5-foot side yard setback with a 3.5-foot aggregate side yard setback. Based on the year the lot was established, reduced side yard setbacks are allowed for new construction. The addition and deck meet the minimum three-foot side yard setback required, and with the addition of COA #5, the deck and addition will also meet the required aggregate side yard

setback of 8 feet.

Summary of Appeal Point #4: There were procedural and substantive due process violations, including failure to provide adequate notice, violations of the Brown Act, failure to require story poles, “impartial” decision-makers testifying on the behalf of the applicant, and relying on biased testimony when rendering a decision.

Staff Response: County staff returned concerned phone calls and emails from the appellants, and has met with the appellants in person on multiple occasions. The project file has been available to the appellants, and County staff is unaware of the appellants being denied access to the file. County staff followed proper procedures for reviewing the project and informed the appellants of the process.

The County properly noticed neighbors within 300-feet of the subject property, which includes the appellants (property owners of 118 St. Albans Road), for County File #KR19-0011. In accordance with the County Code, public notifications were sent for the project including the original notification for the Kensington design review, and the notices for the Zoning Administrator, County Planning Commission, and Board of Supervisors hearings. The County Department of Conservation and Development followed all Brown Act requirements.

When County staff was asked about a site visit to the appellants’ property, it was regarding a site visit conducted by KMAC as part of their review process. As previously stated, when County staff requested a site visit prior to the Zoning Administrator hearing, the appellants were repeatedly unavailable and offered photos instead. County staff met with the appellants when they arrived at the County office without an appointment multiple times when staff was available. Although story poles are not typically required by DCD, story poles were installed at the subject property after the Planning Commission meeting and prior to the Board of Supervisor hearing.

General Plan Consistency

The subject property is located in an area of the County with a Single-Family Residential-High Density (SH) Land Use designation. The primary uses permitted in this land use designation include detached single-family homes and accessory structures. The proposed project involves the construction of an approximately 326-square-foot two-story addition to the rear of the existing single-family residence, an interior remodel of the upper level, and replacement of an existing deck at the rear of the residence. The proposed addition and modifications to the existing single-family residence will not change the existing residential use, which is consistent with the primary uses permitted in this land use designation.

The County General Plan has adopted policies for specific geographic areas of the County in addition to the countywide policies. Pursuant to the General Plan’s Map of

Unincorporated Communities with Adopted Area Policies, the subject property is located within the Kensington specific geographical area. The policies for the Kensington area provide reasonable protection for existing residences, preservation of views of scenic natural features and the developed environment, design compatibility with nearby development, and provisions for adequate parking. The proposed development on the subject property will not increase the total height of the residence and is located at the rear of the residence which is downhill from the tallest portion of the existing residence. The views of the bay enjoyed by the neighboring properties are mainly to the west, so although the addition will be visible when looking north or south from the neighboring properties, the primary bay views will not be impacted. The addition is located at the rear of the property and will not be visible from the street. The proposed project does not substantially alter the existing residence that has been located on the subject property since 1938 and will maintain the existing design of the residence, which includes painted wood siding that matches the existing residence. The addition will not increase the need for more parking or eliminate any of the existing parking. The addition is small enough that it will minimally impact light or solar access to the adjacent properties, especially the property to the north which extends approximately 20 feet further to the west than the subject property. Therefore, this project will not substantially impact existing residences with regard to views, design compatibility, parking, privacy and access to sunlight and thus will not conflict with the adopted policies of the Kensington specific geographic area.

Zoning Compliance

The existing single-family residence is located within the R-6 Zoning District, and the proposed addition does not alter or change the existing residential use of the property. The proposed addition conforms with all of the development standards (sideyards, height, number of stories) of the R-6 zoning in which it is located. Although a portion of the residence, which was constructed in 1938, which was prior to the adoption of the County Zoning Ordinance, does contain three stories (where only two and one-half are allowed) the proposed addition does not extend or expand the three story portion of the residence. The existing residence has a maximum height of 31 feet 5 inches. The addition is 26 feet in height, is located downhill from the tallest portion of the existing residence and has a flat roof. The existing residence has a minimum existing 1.5-foot side yard setback with a 3.5-foot aggregate side yard setback. Based on the year the lot was established, reduced side yard setbacks (sliding scale) are allowed for new construction. The proposed addition meets the minimum three-foot side yard setback required, and with the addition of COA #5, the deck and addition will also meet the required aggregate side yard setback of 8 feet.

The Kensington Combining District (-K) includes seven criteria for approval of residential projects. As detailed in the attached Kensington Combining District Findings, staff finds that the project satisfies all seven criteria. The primary existing views of the bay are to the west. The addition extends five feet, two and one-half inches to the west beyond the existing residence, and the new deck extends approximately ten feet, eight

inches to the west beyond the addition. The additions are minimal and therefore, will not substantially impact views to the west or southwest. The small addition would not impact light or solar access to the adjacent properties (from the appellants property, the addition is largely obscured by existing, protruding nook). Although the new deck extends further west than the existing deck, the neighbors' privacy will be minimally impacted, since there is an existing deck in generally the same location. There are new windows in the addition that face northwest and southwest, but they are angled such that the subject property owners will be able to enjoy the bay views without looking directly into the neighbors' homes.

The proposed project does not substantially alter the existing residence that has been located on the subject property since 1938 and will maintain the existing design of the residence, which includes painted wood siding that matches the existing residence. The proposed interior remodeling will not change the footprint or exterior design of the residence. As such, no part of this project will significantly affect the architectural appearance of the residence, or the neighborhood in general as seen from the public roadway. Based on the parcel size of 4,641 square feet, the maximum gross floor area allowed is 2,400 square feet. Although the proposed project would increase the gross floor area of the residence from 2,006 square feet to 2,332 square feet, it is still below the allowed threshold. Therefore, the project is compatible with the community's values of preservation of views, light and solar access, privacy, parking, residential noise levels and compatibility with the neighborhood with regard to bulk and scale.

The Tree Obstruction of Views Combining District (-TOV) regulations do not apply to the proposed project, because no new trees, nor removal, nor alteration of existing trees are proposed which would alter views in the neighborhood.

Conclusion

Staff finds that the proposed development is consistent with the Single-Family Residential High-Density (SH) General Plan land use designation and complies with the intent and purpose of the Single-Family Residential District (R 6), Kensington Combining District (-K), and Tree Obstruction of Views Combining District (-TOV). Two conditions of approval have been added to the attached Findings and Conditions of Approval; one that requires the deck and addition to be setback 3-feet 2-inches in order to comply with the 8-foot aggregate side yard setback, and one that requires the deck railing to be cable or glass. The Zoning Administrator also modified COA #3 to address concerns brought up by the appellant regarding privacy and removes a north-facing window on the second floor. No compelling evidence has been provided by the appellant to overturn the decision of the County Planning Commission to approve the project. Therefore, staff recommends that the Board of Supervisors deny the appeal and sustain the County Planning Commission's approval of County File #DP19-3019, based on the attached findings and subject to the attached conditions of approval.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board of Supervisors grants the appeal, the County Planning Commission's decision to uphold the County Zoning Administrator's approval of the Development Plan for a Kensington Design Review for an approximately 326-square-foot two-story addition and new deck at the rear of the existing single-family residence, will be overturned. The applicant, Howard McNenny, and the owner, Mary Hanley, would be unable to move forward with the project as proposed.

CLERK'S ADDENDUM

Speakers: Nicole Ashar, Appellant; Howard

CLOSED the public hearing; DENIED the appeal of Nicole Ashar and Joseph Petroziello; DETERMINED that the proposed project is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301(e) (existing structures); APPROVED the development plan for a two-story addition, interior remodel, and new deck at an existing single-family residence at 120 St. Albans Road in the Kensington. (County File #DP19-3019), as modified today to make modifications to the design of the deck consistent with the drawing presented by staff; APPROVED the findings and conditions of approval; and DIRECTED the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.

ATTACHMENTS

Findings and Conditions of Approval

Appeal Letter

Maps

Project Plans

CPC Staff Report

ZA Staff Reports

PowerPoint Presentation