

**FINDINGS AND CONDITIONS OF APPROVAL FOR COUNTY FILE CDDP24-03035,
LEILA GHAZ (APPLICANT), MARJAN RUSTA (OWNER)**

FINDINGS

A. Kensington Combining District Findings

County Code Section 84-74.1206(b) requires a project within the Kensington Combining District to satisfy seven criteria to be approved.

1. *Recognizing the rights of property owners to improve the value and enjoyment of their property.*

Project Finding: Construction of a new 200 square-foot deck on the upper floor at the rear of the existing 2,992 square-foot residential building will enhance the livability of the building and will allow upper floor access to the outdoors. Approval of the project will allow the property owner to improve the property by adding upper floor access to the outdoors. Therefore, the project will allow the property owner to improve the value and enjoyment of the subject property.

2. *Recognizing the rights of property owners of vacant lots to establish a residence that is compatible with the neighborhood in terms of bulk, scale and design.*

Project Finding: The site is not a vacant lot, and this criterion does not apply.

3. *Minimizing impacts upon surrounding neighbors.*

Project Finding: The pattern of residential placement along the western side of Amherst Avenue follows the topography of the lots as they slope downward to the west towards Arlington Avenue. The resultant placement of the residential buildings on the lots has resulted in some homes being closer to the front and other homes being closer to the rear of the lot, and thereby, providing separation between homes that could otherwise impact each other's views. This siting pattern results in minimizing impacts on surrounding neighbors. The existing residence currently has a deck on the lower floor of the residential building on the southwest side of the residence. The new deck is an extension of the living space on the upper floor that will be accessed through sliding doors. The deck will be above the existing deck at the lower floor, minimizing its impact on the surrounding areas. Additionally, the new deck will be uncovered, therefore not obstructing any views.

The new deck is approximately 200 square feet in size. Therefore, the project is expected to have a minimal impact on the surrounding neighbors.

4. *Protecting the value and enjoyment of the neighbors' property.*

Project Finding: The project does not obstruct any views, including views of San Francisco Bay, from surrounding vantage points. Additionally, it does not substantially decrease access to sunlight for any surrounding properties, due to its siting and being an uncovered deck. Therefore, the project is expected to preserve the value and enjoyment of neighboring properties.

5. *Maintaining the community's property values.*

Project Finding: As discussed above, the new deck will have less than significant effects on views, light and solar access, and privacy of nearby residences. Once completed, the new deck will make the residential building more visually attractive. Development of this type is expected to slightly increase the value of the subject property and, in turn, will also increase property values in the area.

6. *Maximizing the use of existing interior space.*

Project Finding: The new deck will provide an extension of the upper floor living area to the outdoors, and allow the property owner to more fully utilize the interior space of the upper floor. The deck will complement the interior space by providing an outdoor extension of the space, and thereby improve the overall use and functionality of space.

7. *Promoting the general welfare, public health, and safety.*

Project Finding: The improvement to the residential building will not alter the land use of the subject property, with minimal impact on surrounding properties. The project does not entail use of hazardous substances beyond what is normal for a residential property. The project is required to comply with all applicable building and fire codes. Based on the foregoing reasons, the project will maintain the general welfare, public health, and safety of the Kensington community.

B. Variance Findings

County Code Section 26-2.2006 states that all of the following findings must be made

to approve the Variance permit application.

1. *That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.*

Project Finding: The project includes construction of a new 200 square-foot deck on the upper floor at the rear of the existing 2,992 square-foot residential building. This deck is over the existing deck on the lower floor and will extend into the rear yard setback by 6 feet, necessitating a variance request to allow a 9-foot rear yard setback (where 15 feet is the minimum required). In this portion of Kensington, a number of variances have been issued for construction of residences, decks, and accessory structures within required setbacks. On May 9, 2014, the Zoning Administrator approved a variance to allow a rear yard setback of 6-feet 6-inches for the existing deck at the lower level on the subject property. Thus allowing a deck over the existing deck that does not extend as far into the rear yard setback as does the lower deck, does not constitute a grant of special privilege.

2. *That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.*

Project Finding: Similar to many lots in the vicinity, the subject property is a lot which is substandard in size and slopes downward from the front of the property along Amherst Avenue 20 feet to the rear property line. Such sloping terrain is common to most lots in this area, and residences typically have decks in order to maximize enjoyment and utility of the yard spaces. The new deck would allow for sufficient usable space on the upper floor for the residents; therefore, denying the requested variance would deprive the subject property of rights enjoyed by other properties in the vicinity and within the R-6 District.

3. *That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.*

Project Finding: The intent and purpose of the R-6 Single-Family Residential District is to promote the orderly development and maintenance of high-density, single-family residential neighborhoods. This includes allowing residential dwelling improvements and additions compatible with surrounding neighborhood. The

proposed deck will maintain the architectural integrity, utility and value of the residence. Thus, the proposed variance meets the intent and purpose of the R-6 zoning district within which the subject property is located.

C. California Environmental Quality Act (CEQA) Findings

Construction of the new 200 square-foot deck on the upper floor at the rear of the existing residential building is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301(e)(1), Existing Facilities, which provides a Class 1 exemption for an addition to an existing structure., where the addition will not be more than 50 percent of the existing floor area or 2,500 square feet, whichever is less. There is no substantial evidence that the project involves unusual circumstances, including future activities, resulting in, or which might reasonably result in, significant impacts which threaten the environment. None of the exceptions in CEQA guidelines section 15300.2 apply.

CONDITIONS OF APPROVAL FOR COUNTY FILE CDDP24-03035

Project Approval

1. Kensington Design Review Development Plan CDDP24-03035 to construct of a new 200 square-foot deck on the upper floor at the rear of the existing 2,992 square-foot residential building is APPROVED.
2. A Variance Permit to allow a 9-foot rear yard setback (where 15 feet is the minimum required) for the new 200 square-foot deck is APPROVED.
3. The project approvals described above are granted based on, or as generally shown on the following documents:
 - Application and materials accepted by the Department of Conservation and Development, Community Development Division (CDD) on August 7, 2024.
 - Revised project plans received on September 23, 2024.
4. Any deviation from the approved plans shall require review and approval by the CDD and may require the filing of a new Kensington Design Review Development Plan application or a Variance or both, if deemed necessary.

Building Permits

5. No construction is approved with this permit. Any construction at the subject property will require issuance of building permits from the Department of Conservation and Development, Building Inspection Division, prior to commencement of work.

Application Costs

6. This Development Plan Permit application is subject to an initial application deposit of \$3,000.00, which was paid with the application submittal, plus time and materials costs if the application review expenses exceed the initial deposit. Any additional fee due must be paid prior to issuance of a building permit, or 60 days of the effective date of this permit, whichever occurs first. The fees include costs through permit issuance and final file preparation. Pursuant to Contra Costa County Board of Supervisors Resolution Number 2019/553, where a fee payment is over 60 days past due, the Department of Conservation and Development may seek a court judgement against the applicant and will charge interest at a rate of ten percent (10%) from the date of judgement. The applicant may obtain current costs by contacting the project planner. A bill will be mailed to the applicant shortly after permit issuance.

Construction Restrictions

All construction activity shall comply with the following restrictions, which shall be included on the construction drawings.

7. The applicant shall make a good faith effort to minimize project-related disruptions to adjacent properties, and to uses on the site. This shall be communicated to all project-related contractors.
8. The applicant shall require their contractors and subcontractors to fit all internal combustion engines with mufflers which are in good condition and shall locate stationary noise-generating equipment such as air compressors as far away from existing residences as possible.
9. The site shall be maintained in an orderly fashion. Following the cessation of construction activity, all construction debris shall be removed from the site.
10. A publicly visible sign shall be posted on the property with the telephone number and

person to contact regarding construction-related complaints. This person shall respond and take corrective action within 24 hours. The CDD phone number shall also be visible to ensure compliance with applicable regulations.

11. Unless specifically approved otherwise via prior authorization from the Zoning Administrator, all construction activities shall be limited to the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, and are prohibited on State and Federal holidays on the calendar dates that these holidays are observed by the State or Federal government as listed below:

New Year's Day (State and Federal)
Birthday of Martin Luther King, Jr. (State and Federal)
Washington's Birthday (Federal)
Lincoln's Birthday (State)
President's Day (State)
Cesar Chavez Day (State)
Memorial Day (State and Federal)
Juneteenth National Independence Holiday (Federal)
Independence Day (State and Federal)
Labor Day (State and Federal)
Columbus Day (Federal)
Veterans Day (State and Federal)
Thanksgiving Day (State and Federal)
Day after Thanksgiving (State)
Christmas Day (State and Federal)

For specific details on the actual date the State and Federal holidays occur, please visit the following websites:

Federal Holidays: [Federal Holidays \(opm.gov\)](https://www.opm.gov)

California Holidays: [State Holidays \(sos.ca.gov\)](https://sos.ca.gov)

12. Large trucks and heavy equipment are subject to the same restrictions that are imposed on construction activities, except that the hours are limited to 9:00 AM to 4:00 PM.

ADVISORY NOTES

PLEASE NOTE ADVISORY NOTES ARE ATTACHED TO THE CONDITIONS OF APPROVAL BUT ARE NOT A PART OF THE CONDITIONS OF APPROVAL. ADVISORY NOTES ARE PROVIDED FOR THE PURPOSE OF INFORMING THE APPLICANT OF ADDITIONAL ORDINANCE AND OTHER LEGAL REQUIREMENTS THAT MUST BE MET IN ORDER TO PROCEED WITH DEVELOPMENT.

A. NOTICE OF OPPORTUNITY TO PROTEST FEES, ASSESSMENTS, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.

This notice is intended to advise the applicant that pursuant to Government Code Section 66000, et. seq, the applicant has the opportunity to protest fees, dedications, reservations, and/or exactions required as part of this project approval. The opportunity to protest is limited to a ninety-day (90) period after the project is approved.

The 90-day period in which you may protest the amount of any fee or imposition of any dedication, reservation, or other exaction required by this approved permit, begins on the date this permit was approved. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and delivered to the CDD within 90 days of the approval date of this permit.

B. Prior to applying for a building permit, the applicant may wish to contact the following agencies to determine if additional requirements and/or additional permits are required as part of the proposed project:

- Department of Conservation and Development, Building Inspection Division
- Public Works Department
- Health Services Department, Environmental Health Division
- Kensington Fire Protection District
- Stege Sanitary District
- East Bay Municipal Utility District
- Contra Costa Mosquito and Vector Control District