

Attachment 1

CDDP23-03024 Findings and Conditions of Approval

**FINDINGS AND CONDITIONS OF APPROVAL FOR COUNTY FILE CDDP23-03024;
CARI ROSNER JELEN (APPLICANT), ELENA SAXONHOUSE (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. The project is a 993 square-foot two-story addition to the northern side of an existing single-family residence in the R-6 Single-Family Residential District. The proposed addition is in conformance with minimum setback, minimum side and rear yards, maximum building height, and minimum off-street parking requirements applicable to development in the R-6 District. Construction of a residential addition conforming to these development standards is permitted following the application review procedures for the Kensington Combining District, absent substantial impacts to neighboring parcels in terms of views, privacy, or solar access. The property owners have indicated that the increased square-footage is necessary to accommodate the needs of their family, while also providing office areas to better accommodate working from home. Additionally, the proposed two-story configuration will allow for improved views of the San Francisco Bay and city skyline from within the existing residence, similar to those enjoyed by residents of numerous other properties in the immediate vicinity.

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 subject parcel is not a vacant lot. Therefore, this criterion does not apply.

3. *Minimizing impacts upon surrounding neighbors.*

Project Finding. The project involves a two-story residential addition that is in conformance with all applicable development standards for the R-6 District. Section

84-74.204(b) of the Kensington Combining District Ordinance specifies that the ordinance is intended to promote the community's values of preservation of views, light and solar access, privacy, parking, residential noise levels. The project is consistent with these values as discussed below:

- Views: The appellant refers to photographs showing that the proposed addition, represented by story poles previously installed by the applicant, would block views of the City of Emeryville skyline from a southern-facing dining room window within 36 Anson Way. The Staff Reports prepared for Zoning Administrator (ZA) and County Planning Commission (CPC) hearings included photographs of the story poles, and a discussion of the impact on views from this southern facing window. As noted in prior Staff Reports, existing views from this window predominantly consist of neighboring residences and neighborhood trees that do not constitute a "view" as defined by the Kensington Ordinance.

During the public hearing held February 5, 2024, the owner of 36 Anson Way stressed to the ZA that her southerly views of Emeryville are typically of higher quality, and that the weather conditions on the date of CDD staff's visit adversely affected visibility. During public hearings held on February 5 (ZA), and March 27, 2024 (CPC), the ZA and CPC separately acknowledged that the project would obstruct views of Emeryville when viewed from the appellant's dining room window and specified that this alone would not necessarily conflict with the Kensington Ordinance unless it was determined to be a *substantial* impact to the neighbor's views.

The appellant's residence at 36 Anson Way includes several western facing windows which offer unobstructed views across the San Francisco Bay through the Golden Gate. The entire expanse of the Golden Gate Bridge, Angel Island, and Alcatraz Island are prominently visible from multiple vantage points within the appellant's residence, including kitchen, living room, and bedroom areas located on the upper floor. Despite the relatively poor visibility on the date of staff's visit, the aforementioned scenic features were immediately apparent on the western horizon. Photographic evidence included in the record provides additional context as to the quality of the viewing corridor to the west, as photographed by CDD staff from the rear yard at the southwestern corner of the appellant's home on October 20, 2023.

The upper floor of the appellant's home includes four western facing windows and a sliding glass door, through which they presently enjoy westerly views. The proposed addition would have no impact whatsoever on the western facing view corridor depicted above, as viewed from any habitable area within the appellant's home. Additionally, when standing directly in front of the appellant's impacted southern facing window, westerly views towards the bay will remain unobstructed by the addition. The appellant's existing westerly views are both more numerous and of objectively higher quality than that of their southerly views - in terms of scenic landscape, their visibility in less than ideal atmospheric conditions, as well as the lack of existing view obstructions.

In approving the project at the public hearing of February 5, 2024, the ZA stated on multiple occasions that a project is not required to demonstrate "no impact" on neighboring properties to comply with the Kensington Ordinance, rather, he specified that some degree of impacts (view, privacy, solar access, or otherwise) are expected to arise from any new construction and that the Kensington Ordinance is designed to prevent *substantial* impacts, as determined by the County Zoning Administrator, and in the case of appeals, by the County Planning Commission and Board of Supervisors. Considering that the proposed addition to 40 Anson Way would only affect a relatively lower quality southerly view from an upstairs south-facing window, and that it does not impact the primary westerly views from several other habitable areas within the neighboring property owner's home, the ZA found that the project would have a marginal impact on views enjoyed from appellants property. On March 27, 2024, the CPC agreed with the ZA's finding that project view impacts on the northerly neighbors' views of Emeryville are less than substantial and upheld the ZA's approval of the project. Therefore, the project is consistent with view protections codified in the Kensington Ordinance because it does not substantially degrade the quality of existing views, as enjoyed from several vantage points within habitable areas of the appellant's home.

- Privacy: The project proposes a two-story addition to the northern side of the existing single-family residence on the subject parcel. The neighboring property nearest to the proposed addition is the adjacent property to the north at 36 Anson Way. All upper-level windows of the residence at 36 Anson Way are oriented either towards the street to the east, or towards the scenic San Francisco Bay to the west. Since the addition does not include any northern or

southern facing windows, the project will not substantially impair privacy for next door neighboring parcels, including the residence at 36 Anson Way. Therefore, the project minimizes privacy impacts upon surrounding neighbors.

- Light and Solar Access: The potential for residential construction to limit light and solar access on neighboring properties are predominantly influenced by siting (i.e. setbacks), size, and height. The project includes a two-story addition behind an existing garage on the northern side of the existing single-family residence on the subject parcel. The northern side of the existing residence is presently one-story and approximately 13 feet in height. The two-story addition will expand the residential footprint and increase the northerly height of the home to 24 feet.

The proposed addition will be located at least 42 feet 8 inches and 63 feet 2 inches from the western rear and southern side property lines respectively, and even further from homes located to the east across Anson Way. Therefore, the project will have negligible impacts to light or solar access on neighboring properties to the south, east, and west of the subject parcel.

The proposed addition will be located 8 feet 3 inches from the northern side property line (where 5 feet is the minimum required) and will be situated approximately 15 to 20 feet south of the existing adjacent residence to the north at 36 Anson Way. The 15 to 20 feet of separation between adjacent residences is typical for development in the R-6 District, where development standards allow for as little as 10 feet of separation. It is not uncommon for adjacent homes in the Kensington community to have less than 10 feet of separation due to lot dimensions and/or existing legal non-conforming residences constructed prior to the implementation of the County zoning code. Additionally, the 24-foot height of the proposed addition conforms to the 35-foot maximum permissible building height for residential development in the R-6 District.

In a letter dated September 18, 2023, the consultant to the owner of the neighboring adjacent property to the north at 36 Anson Way, expressed a concern, amongst others, that the project unreasonably impairs access to daylight by casting shadows on the 36 Anson Way property. The letter includes a diagram depicting shadows cast on the property at 9 AM, 12 noon, and 3 PM on the winter solstice, whereon the proposed addition is approximated to cast

a shadow over the western portion of the 36 Anson Way residence and rear yard at 9am, and over the southernmost portions of this residence at noon. Notably, the shadow analysis provided by the neighbor's consultant is limited to conditions expected at a specific time of year when the daylight hours are shortest (i.e. the sun rises later and sets earlier than any other date) and when the sun rises at its southernmost location in the sky. Using a web-based application (www.suncalc.org) that shows the movement of the sun for a certain date at a certain place, staff has prepared a Shadow Analysis to approximate the project's effect on solar access for the summer solstice, and at the equinox. The shadow analysis shows the sun rising further to the north and higher in the sky throughout the rest of the year, and the extent of shadows cast on the northerly parcel are typically much less throughout the year than depicted by the consultant. A subsequent 3D Shadow Analysis prepared by staff utilizing a second web-based application (<https://shademap.app>), confirmed staff's findings regarding the non-substantial shadow impacts throughout most of the year. The 3D shadow analysis also suggests that the project impacts on solar access on the date of the Winter Solstice would be less significant than previously assumed, and that the appellants upstairs dining room window would only be partially shaded by the project on this date (if at all). Therefore, the project is not expected to affect the neighboring residence's solar access to any significant degree.

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

Project Finding. As previously mentioned, the addition will not significantly block any views in the project neighborhood or decrease privacy or access to sunlight. Therefore, absent significant impacts on neighboring parcels, the addition will preserve the value and enjoyment of the neighbors' property.

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

Project Finding. The project involves an addition to an existing single-family residence in an established residential neighborhood. The proposal does not involve a noncompatible land use that conflicts with the surrounding residential community in a manner that may negatively affect property values. Additionally, the project does not substantially affect scenic views, privacy, or solar access for neighboring parcels to any significant degree. Therefore, the project maintains the community's property values.

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

Project Finding. The existing single-family residence consists of a main floor at street level having approximately 1,576 square feet of living area and a 372 square foot two-car garage. A lower level beneath the southern end of the existing residence provides an additional 373 square feet of conditioned living space. There is no existing interior space within the residence that is not presently being utilized as part of the residence. Thus, the 993 square-foot increase in living space sought by the property owners cannot feasibly be accomplished within the existing building envelope. Therefore, staff finds that the project maximizes the use of existing interior space.

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

Project Finding. The residential addition does not change the land use on the subject parcel and as described above, will have minimal impact on neighboring properties. The project's compliance with applicable zoning standards and the requirement to obtain building permits will ensure that the addition does not present a hazard to public health and safety for the occupants or community at large. Thus, the project promotes the general welfare, public health, and safety of the Kensington community.

D. Environmental Findings

The 993 square-foot two-story addition to the northern side of an existing single-family residence is categorically exempt under CEQA Guidelines Section 15301(e)(2), which provides a Class 1 exemption for additions to existing structures of no more than 10,000 square feet in an area that is not environmentally sensitive and where all public services and facilities are available for maximum development permissible in the General Plan.

CONDITIONS OF APPROVAL FOR COUNTY FILE CDDP23-03024

Project Approval

1. Development Plan CDDP23-03024 to allow a 993 square-foot two-story addition to the northern side of an existing single-family residence is **APPROVED**.

2. The Development Plan approval describe above is based on the application and project plans received by the Department of Conservation and Development, Community Development Division (CDD) on July 11, 2023.
3. 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 application.

Building Permits

5. No construction is approved with this permit. Any construction at the subject parcel 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 application was subject to an initial application deposit of \$3,000.00, which was paid with the application submittal, plus time and material costs if the application review expenses exceed 100% of the initial deposit. **Any additional fee due must be paid prior to an application for a grading or 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 from the date of approval, the application shall be charged interest at a rate of ten percent (10%). The applicant may obtain current costs by contacting the project planner. If you owe additional fees, a bill will be sent to you shortly after permit issuance.

Construction

All construction activity shall comply with the following restrictions, which shall be included in 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 90-DAY OPPORTUNITY TO PROTEST FEES, 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. The applicant shall submit building plans to the Building Inspection Division and comply with Division requirements. It is advisable to check with the Division prior to requesting a building permit or proceeding with the project.
- C. The applicant must submit building plans to the Kensington Fire Protection District

and comply with its requirements. The applicant is advised that plans submitted for a building permit must receive prior approval and be stamped by the Fire Protection District.

- D. The applicant is required to submit plans to the Stege Sanitary District for approval. Plans submitted for a building permit must receive prior approval and be stamped by the Sanitary District.
- E. The applicant is responsible for contacting the Health Services Department Environmental Health Division regarding its requirements and permits.
- F. The applicant is required to comply with the requirements of the East Bay Municipal Utility District.
- G. The applicant is responsible for contacting the Contra Costa Mosquito and Vector Control District regarding its requirements and permits.