

Attachment 3

CDDP23-03024 Applicant's Appeal Response

Adrian Veliz, Senior Planner
Department of Conservation and Development
Contra Costa county
30 Muir Road,
Martinez, CA 94553

Via email (adrian.veliz@dcd.cccounty.us)

March 22, 2024

Re: 40 Anson Way Appeal Hearing (CDDP23-03024)

Dear Mr. Veliz,

We appreciate the thorough staff report prepared in response to the appeal submitted by the law firm of Harper & Armstrong, LLP on behalf of Kris McClain. We write to correct for the record several false statements in the appeal letter, and to provide additional information for the Planning Commission's context in considering the appeal.

I. Neighbor Consultation Process

Although we understand the consultation process with neighbors is at the discretion of a project applicant, and is not part of the County's consideration on appeal, we are uncomfortable letting false accusations about the process stand unrebutted on the public record. Namely, Ms.

Armstrong opens her appeal arguments by alleging: "The owners at 40 Anson Way have never, however, sought input from or discussion about the impacts on Kris McClain. When they first approached Ms. McClain, they requested her before-the-fact approval of a project for which they had no drawings. They denied her permission to come into their home to discuss the options and impacts." (p. 3) Ms. Armstrong gets each one of these accusations entirely wrong, perhaps because she was not present at any of the discussions that took place.

As shown in the attached contemporaneous email from our architect following a meeting to discuss our plans to meet with Ms. McClain, we proposed and attended the meeting at 36 Anson in entirely good faith. *See* Attachment 1. The goal was to understand what the sight lines were from 36 Anson so that we could consider how to modify the design to lessen the impact. We never requested "before-the-fact approval;" we clearly stated we were there to have a discussion. Our architect did bring plans, and laid them out on Ms. McClain's dining room table. Ms. McClain complained she could not interpret those plans, so the architect pulled up additional plans on her laptop to look at. These were of the same quality as the final drawings submitted to the County, rather than being mere sketches as the appellant group has claimed. Finally, we certainly never "denied her permission to come into [our] home" and cannot imagine where this impression is coming from. When I learned that this was Ms. McClain's belief through her statements before the Zoning Administrator, I immediately approached her after the meeting to

explain that she was absolutely welcome to come to our home to better understand why we had planned an addition on the north side of our house.

In any event, we came away from the January 12, 2023 meeting with the understanding that Ms. McClain was opposed to any construction on the north side of our house, even if it were only one story. Nevertheless, we ultimately submitted plans that did not just “change the position of a balcony” as erroneously stated in the appeal (p. 3). Rather, the plans submitted omit a potential home office from the second story to allow for a smaller second story that allows for more southern and southwestern visibility from Ms. McClain’s south-facing windows and from her deck, and less of a shadow impact on her yard. This is a far more significant change than “the position of a balcony”: if we were to include the office in the design, we would be able to convert the basement space that we currently use for two home offices into an ADU and gain rental income. With the revised design, we will still need office space in the basement and forego what could have been a significant source of income to help fund the addition. To suggest that this does not represent a compromise is unfair and inaccurate.

Finally, the appellant group has never approached us directly with any request or proposal to change the design of the project. Although the County sent out a copy of the submitted plans on June 1, 2023, we have never received any direct communication from our neighbor or her representatives. We received a September 18, 2023 letter from Shelterwerk Architects proposing alternative designs only because it was forwarded to us by the County. Of note, that letter did not propose a one-story design on the north side of the house, as is now proposed for the first time in Ms. Armstrong’s appeal. (We explained in a letter to the Kensington Municipal Advisory Council why the suggested approaches in Shelterwerk letter were unrealistic, and would not come close to meeting the goals of the project. *See Attachment 2.*)

II. Goals of the Project

As noted in the Staff Report, the Kensington Ordinance implementing the County’s General Plan policies “recognizes the rights of property owners to improve the value and enjoyment of their property” in addition to protecting the rights of neighbors. Section 84-74.204(a). The planned addition will vastly improve the value and enjoyment of our property if it proceeds as designed. It is something we have been considering since we bought the house more than a decade ago.

We are grateful to have a lovely home in a beautiful neighborhood, but the current size and layout of our home presents several challenges for our family of four, with two boys ages 4 and 9. The main part of our house is 3BR 1BA and has just under 1,200 ft² of living space on the main level.¹ The separate area on the lower level is accessed only by going outside across the deck and down a set of stairs, and currently serves as two home offices.² Tulley works fully remotely and is required to have a home office for his job.

¹ Although the staff report states a larger square footage, Mr. Veliz confirmed over email dated March 19, 2024 that this was in error and includes the unfinished garage (392 ft²) as living space.

² The lower level was added to the house during a 2004 remodel, prior to our purchase of the home in 2013. The appellant’s statement that the owner of 36 Anson bought her house in reliance that an additional story would not be built on our home makes no sense because, even if she were correct that an

Our biggest challenge is that all of our indoor common spaces – living room, kitchen, dining area, and play area – are in one room that is not large enough for the many functions it serves. We are unable to have even one other family over for dinner comfortably, and do not have any separate areas for children and adults to spend time with friends. In addition, the four of us share one small bathroom. The bathroom on the basement level is not quickly or easily accessed, especially by our four-year-old or in rainy weather since it requires going outside. We also lack any guest space other than a narrow daybed squeezed into one of the offices. Finally, our interior living space (per county language which disqualifies the deck) does not fully take advantage of the spectacular west-facing views from our property.

After the proposed addition, our house would have two separate living spaces, including a new dining area where we could fit a table for eight or more people, another half bath on the main level, and a new primary bedroom suite. One of the existing bedrooms would become too small to use as a bedroom, but could be used as an office so that we could use one of the current offices as guest space. Both the new family/dining room and primary bedroom would have large west-facing windows with views of the Golden Gate Bridge. In other words, the addition will have an enormous positive impact on our family's quality of life and the value of our home.

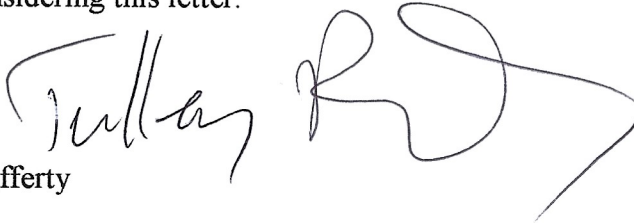
Although we did consider trying to fit the needed space into one story, that approach had many problems, including leaving us with a view primarily into our back neighbors' backyard and house, creating potential privacy issues, eliminating the part of our backyard that we use to play catch or frisbee with the kids and host birthday parties, and other problems.

We regret that there is any impact at all on Ms. McClain's enjoyment of her property, but believe that those issues have been well addressed by the staff report. We include one additional photo, taken from our roof to approximate the height of her house to demonstrate the beautiful views that her property will continue to enjoy without any impact from the proposed project. See Attachment 3. Thank you for considering this letter.

Sincerely,



Elena Saxonhouse and Tulley Rafferty



Owners, 40 Anson Way

additional story would constitute three stories (as rebutted by the staff report), the lower level did not exist in 1993.



Elena Saxonhouse <elenasax@gmail.com>

Meeting summary

Cari R Jelen, Architect <crj@cari-designs.com>

Fri, Jan 6, 2023 at 12:32 PM

To: Tulley Rafferty <hobostew@gmail.com>, Elena Saxonhouse <elenasax@gmail.com>

Hi Folx,

Just a quick summary- we discussed next steps of addressing your northern neighbor's concerns regarding her view to the south. The game plan is to go over with print outs of our possible designs and have a discussion to address her concerns. Some ways to minimize the height issues would be to do a split level or only partial 2-story addition, siting the second story in the least impactful space. Once we have an idea of her view/goals, we can do more schematic design and circle back with her.

Our goal is to get her on board before having to go to a hearing.

One thing that would be helpful is to have an approximate height difference between her living area story and yours, seeing as she is uphill. I would love to add that information to the drawings after the next round of design to allay her concerns.

Let me know your/her availability, and we can go from there.

Kind regards,
Cari

Cari Rosner Jelen, Architect
she/they
Check us out on [Yelp!](#)
cari-designs.com
510-467-0768

September 22, 2023

Re: 40 Anson Way, CDDP23-03024 (on September KMAC Meeting Agenda)

Dear KMAC members,

We write to respond to the letter from Shelterwerk Architects to Kris McClain, 36 Anson Way, forwarded to you by the County of Contra Costa Department of Conservation and Development. While we plan to make an oral presentation at the KMAC meeting next week, we thought it would be most efficient to respond to some of the assertions in the letter in advance.

Permissible Stories

- As our architect will explain at the upcoming meeting, the issue of the number of stories of our home with the addition did not “slip through the cracks.” (Shelterwerk letter, p. 2.) Rather, our architect directly addressed this issue with the assigned planner. The planner found that the home with planned addition is still properly characterized as a two-story home. The planner determined that the project does not require a variance for number of stories, or for any other reason.

Impairment of Views

- The Shelterwerk letter addresses the south-facing window at 36 Anson, but neglects to mention the unobstructed views of the San Francisco Bay and Golden Gate Bridge from 36 Anson, which would not be impacted by the proposed addition. The west-facing view pictured below is taken from the roof of 40 Anson Way, which approximates the height of the west-facing windows of 36 Anson Way. When taken in this context, the impact to the south-facing window will not “substantially impair” the value and enjoyment of 36 Anson. CCC Code 84-74.204(a).



- Even if the south-facing view were significant in the context of the unimpacted west-facing view, blocking it would not impair Ms. McClain's enjoyment of her property for the simple reason that the shade of the south-facing window remains almost permanently down. We investigated this issue by placing a time-lapse camera in our backyard. Reviewing the footage, we were only able to identify one instance in which the shade was raised between the first day we began recording, July 12, 2023, and today's date. It appears that the shade was raised for 10 minutes or fewer that day (September 2, 2023). This is consistent with our experience over the past nearly 10 years— we rarely have seen the shade of the impacted window raised in the entire time we have lived next door. We would be happy to present the time-lapse evidence to KMAC if you find it to be relevant.

Characterization of 40 Anson and Proposed Addition

- Shelterwerk's characterization of our current home is misleading. The basement area, accessed by a separate entrance below the deck, is approximately 370 square feet, with two rooms and a bathroom. Though it has a wetbar and microwave, it is misleading to describe the outer room's amenities as including a "full kitchen."
- Shelterwerk's characterization of the home's amenities post-addition is incorrect. The bedroom that is currently at the northwest corner of the house would become an office nook as it would be too small to be properly characterized as a bedroom and will lack a closet. Accordingly, there would be 4 bedrooms, not 5. It is also misleading to describe the basement's amenities as including a "kitchen" and "living space," bringing those totals to 2 and 3, respectively.
- Post-addition, apart from the separately-accessed basement, our home will be similarly sized to Ms. McClain's home (2,183 square feet for 40 Anson, compared with 1,952 square feet for 36 Anson, per Zillow).

Proposed Alternative Designs

- Building another story on top of the southern part of the house would appear to require a variance for 3 stories.
- Building another story on top of the southern part of the house would block the Western facing view of our neighbors to the East.
- It is unclear where staircases could be placed to the proposed alternative upper or lower levels, other than in the middle of our current kitchen, living room, or hallway to the bedrooms.
- Building either staircase would substantially reduce the square-footage of our main level.
- The proposal to solely build out the basement and current crawlspace for our addition would deprive us of the ability to capitalize on the western facing views of the Bay for which Kensington is known.

- Both proposed alternatives would require us to move out of our home for the entire renovation, causing major disruptions and additional cost to our family of four with two young children. The proposed addition would allow us complete most of the construction without having to move out of our home.

We look forward to sharing more next week about the proposed project and the changes we made prior to submitting the plans to reduce the impact on our neighbor at 36 Anson.

Sincerely,

Elena Saxonhouse
Tulley Rafferty
40 Anson Way
Kensington, CA 94707

cc: Adrian Veliz, Senior Planner

ATTACHMENT 3 - West-facing view from 40 Anson roof (similar to unimpacted west-facing view from 36 Anson)

