

**TOWN OF SAN ANSELMO PLANNING COMMISSION MEETING  
JUNE 16, 2014**

**COMMISSIONERS PRESENT:** Chair Brasler, Co-Chair House, Commissioners Cronk, Sisich

**COMMISSIONERS ABSENT:** Commissioners Krebs, Pipkin, Swaim

**CALL TO ORDER**

Commissioner Brasler called the meeting to order at 7:15 p.m.

**OPEN TIME FOR PUBLIC EXPRESSION**

No one spoke.

**PLANNING DIRECTOR'S REPORT**

Interim Planning Director Diane Henderson thanked all for being present.

**PUBLIC HEARING ITEMS**

**CONSENT AGENDA**

**Minutes of Planning Commission Meeting June 2, 2014**

**DR-1404, David Kotzebue, 21 Florence Avenue, 007-014-21:** Flatland design review to relocate the existing two-story home from the east (left) side of the lot to the west (right) side of the lot and add a 596 square foot second-story addition above a proposed 676 square foot two-car garage at 21 Florence Avenue. The project site is located in the R-1 Zoning District (Staff person: Boyle).

M/s, Sisich/House, to approve the minutes of June 2 and the Design Review for 21 Florence Avenue

AYES: Brasler, Cronk, House, and Sisich  
NOES: None  
ABSENT: Krebs, Pipkin, Swaim  
ABSTAIN: None

**REGULAR AGENDA**

**ER-1401, GPA-1401, RZ-1401, PS-1401, DR-1403, GP-1401, Greg Phillips, 456 Laurel Avenue, APN 007-121-74:** Mitigated Negative Declaration; General Plan Amendment to change the land use designation of proposed Parcel 2 from Single Family Conservation (1 unit or less per acre) to Single Family (1 to 6 units per acre); rezoning of proposed Parcel 2 from Single Family Conservation (R-1-C) to Single Family (R-1); parcel split to divide a 59,634.17 square foot parcel into a 44,427.57 square foot parcel (Parcel 1) and a 15,206.60 square foot parcel (Parcel 2); design review for a proposed 2,844 square foot, two-story, single-family residence with a 536 square foot attached garage; grading permit to cut ±700 cubic yards of material from proposed Parcel 2, of which ±280 cubic yards would be distributed onto Parcel 1 and ±120 cubic yards would be distributed onto Parcel 2 and ±300 cubic yards would be off-hauled (Staff person: Boyle).

Senior Planner Phil Boyle presented the staff report.

Henderson noted that in dividing the parcel, the resulting smaller parcel will be surrounded by similar, smaller lots that already have the zoning and general plan designation proposed for the smaller parcel. The larger lot will continue to have the current zoning and land use designation and is adjacent to similar, larger lots.

Commissioner House asked if the proposed rezoning and general plan amendment would make it possible for more homes to be built on the larger of the two resulting lots.

Boyle responded that the proposed rezoning and general plan amendment would not result in more homes being built on either of the lots.

Commissioner Sisich asked if the CEQA review and negative declaration are triggered by the request for rezoning and general plan amendment.

Boyle confirmed that this is the case. He also noted that two additional letters of support for the project have been received and distributed to the Commissioners. Staff was able to make the findings on each of the six elements of the application. Staff recommends the Planning Commission forwarding a recommendation to the Town Council that Council approve the Resolution of (1) Mitigated Negative Declaration; (2) General Plan amendment; (3) parcel split and the ordinance to rezone. Staff further recommends that the Planning Commission conditionally approve (5) the design review and (6) the grading permit.

Sisich noted that 280 cubic yards of soil are proposed to be moved to the upper lot and asked Public Works Director Sean Condry if the project would be reviewed in terms of potential overburden of the site and possible land sliding.

Condry confirmed that the project would be reviewed for overburdening, drainage, surcharge, and other potential issues during the building permit application stage, noting that applicants are encouraged to reduce the off-hauling of soil and to reuse the soil on site.

In response to an inquiry from Cronk, Boyle confirmed that Condition No. 4 states that all mitigation measures contained in Attachment 6 are incorporated into the project and that the applicant has agreed to implement them.

Brasler invited the project representative to speak.

Greg Phillips, Laurel Avenue, observed that his team has been working with Town staff on the current project for about ten months and believes the result is a project that is good for the community and supported by neighbors. He requested that the Commissioners concur with staff's recommendations so that the project can be built simultaneously with the approved project at 437 Laurel Avenue to minimize disruption to the neighborhood during construction.

Phillips also requested that the Commissioners approve a 7/12 roof as opposed to the 5/12 roof on the current plans. At 5/12, the height of the structure is approximately 25 feet; at 7/12, the height on one section is 27 feet and 25 feet on the remainder of the structure. Phillips reminded the Commissioners that the maximum allowable height is 30 feet.

Henderson explained that Phillips originally submitted plans for a 7/12 roof. In light of the action the Commissioners recently took on 437 Laurel Avenue, staff recommended that he resubmit plans with a 5/12 roof.

House asked if the path to the left of the property would continue to be made available to the public.

Phillips confirmed that the path has always been available to neighbors and that there is some openness to keeping it available.

House asked if staff can include a condition that the path remain open to the public should the property be sold in the future.

Henderson advised that staff does not have the legal authority to require the path to remain open to the public.

Brasler opened the discussion to the public.

Douglas Luna, Laurel Avenue, observed that Phillips has been a generous neighbor and an asset to the community. He has always consulted neighbors with regard to his projects and Luna supports the current project.

As there was no further comment from the public, Brasler returned discussion to the Commissioners.

Brasler appreciates the effort that went into the project and that there are no requests for variances. He observed that the neighbors are supportive and it looks like a good project.

House supports the project. There is the question of the roofline. Although she generally prefers lower rooflines, she agrees that illustration of the 7/12 pitch looks more elegant.

Sisich supports the project and the 7/12 roofline.

Commissioner Cronk supports the project and the 7/12 roofline.

With respect to the appropriateness of the 7/12 roofline in this instance, Brasler noted that the homes on the opposite side of Laurel Avenue are closer together. The Phillips house will not be affected by the additional 2 feet. The houses are also far enough off the street that the steeper pitch should not be noticeable.

Cronk added that the Bald Hill Plan stipulates varied roof heights and the 7/12 pitch is well within the parameters.

M/s, Sisich/House to recommend to the Town Council (1) that Council adopt the Mitigated Negative Declaration; (2) that Council approve the General Plan amendment changing the land use designation;(3) that Council approve the rezoning from R-1C to R1; (4) that Council approve the lot split to create the new parcel. Further, the Planning Commission approves (5) the design review for the new house and (6) the grading permit with the understanding that the new house can have a maximum roof pitch of 7/12 and that neither the design review nor the grading permit go into full force and effect unless and until the Town Council approves the first four actions.

AYES: Brasler, Cronk, House, Sisich

NOES: None

ABSENT: Krebs, Pipkin, Swaim

ABSTAIN: None

**DR-1404, VAR-1401, GP-1402, Dave Jochum, 130 Crescent Road, APN 007-221-32:** Design review for a 638 square foot addition to the existing attic; a rear setback variance to encroach 9 feet 11 inches into the rear setback (Code:20 feet) and an after-the-fact grading permit to excavate 250 cubic yards and fill 190 cubic yards of soil at 130 Crescent Road. The project site is located in the R-1 Zoning District (Staff person: Boyle).

Boyle indicated that Page 5, the fourth paragraph of his staff report which indicates that “± 530 square feet of second level living space could still be added,” should read “± 475 square feet of second level living space could still be added.”

Boyle further indicated that staff is recommending that the Planning Commission hold this public hearing and continue this matter to allow the applicant to revise the project so it will be consistent with the setbacks as staff is not able to make all of the required findings for the variance.

Boyle presented the staff report and introduced Deputy Town Attorney Megan Acevedo.

Acevedo clarified that variances are different from other approvals because the findings for variances are State-mandated and very clear in State law. That State law is reflected in San Anselmo’s Municipal Code. Specifically, Government Code Section 65906 specifies that variances from the terms of the zoning ordinances shall be granted only when because of special circumstances applicable to the property including size, shape, topography, location, or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. There is not a tremendous amount of discretion at the local level because it is mandated by the State.

With respect to the lower level of the existing structure, even in cases such as this one in which there is an existing structure that would have required a variance had there been that process when it was built, every variance must stand on its own. At this point, to build the upper level, a variance is required, the findings for the variance must be made, and staff has thus far been unable to make those findings.

Acevedo concluded that while expressions of public and/or neighborhood support are helpful, the Planning Commission must keep in mind that the obligation to make the legal findings for a variance remains. Boyle introduced Public Works Director Sean Condry to address the grading permit process and soils issues brought up by the applicant.

During construction at 130 Crescent Road, Condry observed that approximately 250 cubic yards of soil was to be off-hauled. Condry explained that plans for excavating more than 100 cubic yards are required to undergo Planning Commission review and that this project had not been reviewed because of an oversight. He further added that notwithstanding the fact that review by Planning Commission did not occur, the approved plans indicated that a grading permit was required. Condry noted that it is not a significant amount of soil; given that it is directly below the building, it is fairly innocuous.

With regard to soils issues raised by the applicant, Condry noted that a letter from Attorney Neil Sorensen states that the pre-existing or historic swale (long ago abandoned, Condry observed) restricts the building envelope and forces the home toward the rear of the lot. Sorensen's letter also states that the swale, which has been filled, now acts as a bio-swale and should not have structures, built on it.

Condry stated that the swale could have been relocated and building could take place at the site of the abandoned swale with engineered fill. From an engineering standpoint, he does not see any reason why construction could not have been undertaken in front of the structure as opposed to being undertaken within the rear setback.

Brasler asked for clarification that the applicants could have reasonably chosen to expand their project elsewhere on the site.

Condry confirmed that from an engineering standpoint, he is of the opinion they could have done so.

Boyle distributed an additional letter of support for the project, noting that the packet previously distributed to the Commissioners contains several letters of support.

Boyle discussed the property lines of the project, explaining that this is considered a corner lot even though it faces Crescent Road on both the southern and western edges of the property. For corner lots, the Town's Municipal Code indicates that the shortest property line parallel to the street is designated as the front property line. At the applicant's request the southern property line, in connection with part of the adjoining line were designated as the front property line. The applicant observed that those two lines together constitute the shortest line parallel to the street. Staff agreed in consideration of the southern orientation of the house.

Boyle explained that this redesignation of the front property line allowed the applicant to locate the proposed garage 8 feet from what was now a side property line. Without the redesignation, the garage would have required a 20 foot setback.

In response to questions from House, Boyle clarified the section of the existing structure that encroaches into the rear setback and the proposed additional space.

Sisich asked if the basement would have been approved had it been part of the original approved building permit.

Boyle responded that the basement meets Floor Area Ratio (FAR) requirements and would not have required design review.

Henderson clarified that staff does not have an issue with the basement and that it is unknown whether or not it would have been approved; the Planning Commission is the authority to approve the grading permit that would have allowed the basement. The project was mistakenly signed off as a building permit without undergoing Planning Department approval.

Discussion ensued with regard to the original project, its review, and the effects of that review process on future approvals related to the project.

Brasler invited the project representative to speak.

Architect Dave Jochum clarified that there are three issues to be decided: the after-the-fact grading permit, variance, and design review for 2<sup>nd</sup> story modifications.

Jochum corrected the record, clarifying that 250 cubic yards of grading took place, but only 60 cubic yards were off-hauled. Most of the grading had taken place when the applicant was advised that a grading permit was required. The permit requirement was stated in the civil drawings but was originally overlooked. After the grading permit was issued, the applicant was advised that Planning Commission review was required. The grading took place (1) to rebuild the existing foundation; (2) to add square footage without changing the character and appearance of the existing home; and (3) to fill the 8 foot depression in the front yard where the abandoned swale was located and filled with scrub and decaying matter.

The bio-swale far exceeds Town requirements and will take care of any water coming on to the site. It was, however, designed to have no structures above it.

With regard to the property line, Jochum now believes that the designation of the south property line is incorrect; the front property line should be the 50 foot southwest section, making the rear corner the rear property line. This redesignation results in the entire property conforming to required setbacks.

With respect to required findings in support of the variance, Jochum believes there are two special circumstances: (1) this is a corner lot with street frontage around three property lines; as a result, it has significantly less buildable area than similar lots; (2) the bio-swale in the front yard would require substantial changes if square footage were to be constructed above it.

Jochum acknowledged that behind the kitchen, on the northeast side, square footage could be added; however it is close to the neighbor and privacy is an issue with both the neighbor and the applicants. It was logical to fill in the rear south elevation, which corrects a design flaw that has resulted in substantial leakage.

Jochum added that research confirms that within one thousand feet of the property, over the last 35 years, there have been more than 90 setback variances granted.

With regard to the design review, Jochum believes the project meets all zoning requirements in consideration of the improper front property line classification.

Jochum concluded by indicating the location of the proposed new construction in a non-conforming area.

Sisich clarified that Jochum's most recent reinterpretation that the 50 foot southwest section is the front property line would mean that no variance is required.

Boyle confirmed.

Brasler asked to hear staff's interpretation of Jochum's position.

Henderson noted that when the issue of how to apply the setbacks was first discussed, Jochum wanted to orient the lot with the front on the south side and the back on the north side. He suggested this solution so that the proposed garage could meet the 8' setback required of a side setback and submitted a five-page document supporting his argument. Staff concurred with his assessment.

With respect to Jochum's reassessment that the 50' southwest section should constitute the front property line and the opposing corner the rear, Henderson explained that the Municipal Code seeks to define a rectangle or square around the narrower length of the front property line. This is challenging because many lots have frontage composed of several small dimensions. Henderson displayed lots similar to the applicant's, with multiple segments defining the front property line, explaining the implausibility of defining only one dimension on such lots as the front property line.

House clarified that the proposed construction will result in the home remaining in its existing footprint.

Jochum noted that with the exception of changes to the entry, this is correct.

House asked where the bio-swale is located in relation to the original swale.

Jochum replied that the entire front yard has been engineered to be part of the bio-swale.

House clarified that the bio-swale is engineered to keep all water on the lot.

Jochum confirmed.

Brasler invited members of the public to speak.

Jochum read from a letter of support for the project written by Robin and Bill Watson of Crescent Road.

Annie Rupers, Crescent Road, believes the project is a huge improvement to the property. She will be the neighbor most affected by the changes and welcomes them.

Lisa Della Valle, Crescent Road, feels good about the project and supports it.

Applicant Greg Harper noted that he and his wife consulted with their neighbors because they knew the project would be disruptive. They are trying to keep the original design and character of the house.

Brasler returned the discussion to the Planning Commissioners.

Sisich asked why the applicant did not choose to meet the setbacks and place the second upstairs bedroom over the front wing of the home.

Jochum indicated that the living room below has a vaulted ceiling. The wing on the east side will be vaulted as well. Further, the east wing is closer to the neighbor and is elevated and this would be an issue. It was logical that the conforming area on the upper floor is 85% of the square footage that is needed. Also, the design flaw in the roof needs to be addressed.

Sisich clarified that there is no place in the roof volume other than where the square footage has been proposed that a second story could be built without removing a vaulted ceiling.

Jochum confirmed.

Brasler asked what the applicant would have to give up if they simply used the 475 square foot area that conforms as opposed to the requested 638 square feet.

Jochum replied that either a bedroom or the second floor playroom would need to be deleted.

Brasler asked what the differences were between the two proposed playrooms.

The applicant responded that the basement room would replace storage area lost when the attic is converted.

Cronk asked why the lot coverage is decreasing from 2,610 to 2,562 square feet with the proposed project.

Jochum responded that changes in the back yard and front yard decking contribute to the change.

Discussion ensued with regard to garage heights and the codes requirements.

Further discussion ensued with regard to the validity of defining the front property line as the 50 foot southwest section, the language in the Municipal Code that acknowledges odd shaped lots, and the danger of setting of precedence.

Attorney Neil Sorensen noted that the Commissioners' struggle with Jochum's suggestion that the front property line should be defined by the 50 foot southwest section confirms that the lot has special circumstances. The struggle has to do with the fact that the lot is not rectangular in shape. Sorensen maintains that it is not a corner lot because it is not located at the intersection of two streets. Rather, it is one

street making a wide curve. That, and the swale, creates special circumstances. Sorensen noted that if special circumstances can be found, staff says the other findings can be made for the variance, the design review, and the grading permit. Sorensen asked the Commissioners to take a leap of faith.

Brasler reminded Sorensen that Jochum described the special circumstances as the corner lot and the bio-swale, which contradicts the attorney's assertion that special circumstances result because it is not a corner lot and has a non-conforming shape.

Brasler likes the project and would like to see it built. He has no issue with either the grading permit or the design review. He is uncertain as to whether or not he has jurisdiction within the State required findings for a variance to say there are special circumstances.

House reminded all of former Planning Commissioner Oliver Harle who employed the concept of de minimus in the characterization of many variance requests during his long tenure. The Planning Commission was subsequently told in no uncertain terms that relying on the concept of de minimus as justification for granting variances was not acceptable. If de minimus were still an acceptable factor, House would be supportive of the project.

She appreciates many aspects of the project and observed that the fact that the applicant is only asking to fill in space on the second floor that is already defined. She also appreciates the articulation added to the west side.

House believes the Commissioners can make the findings for special circumstances given the non-routine shape of the lot.

She added that she does not believe the fact that over ninety variances have been granted in the area is useful. As it turns out, a lot of those variances were granted illegally through the use of the term de minimus.

House believes a case can be made for defining the front property line as the 50' southwest section of the lot.

Henderson clarified that if the 50' southwest section is determined to be the front property line, no variance is necessary. She believes this would be a terrible precedent. She would rather see the Commission make the findings for a variance.

Brasler will not support designating the 50' southwest corner as the front property line.

Cronk would like to support the project. It seems innocuous to add dormers and straighten the roof line. She appreciates the support of the neighbors. She would not support designating the 50' southwest corner as the front property line.

Cronk is wondering if a special circumstance can be found in that the project preserves the original footprint and the character of the house.

Acevedo clarified that variances are granted with respect to conditions on the property rather than to structures on the property.

Sisich likes the project but acknowledged that de minimus cannot be used. He cannot support the variance. The options for creating a project that conforms have not been exhausted. Because there are alternatives, Sisich is not prepared to seek the findings for a variance.

M/s, House/Sisich, to approve the after-the-fact grading permit to excavate 250 cubic yards of soil and to fill 190 cubic yards.

AYES: Brasler, Cronk, House, Sisich  
NOES: None  
ABSENT: Krebs, Pipkin, Swaim  
ABSTAIN: None

House made a motion to approve the setback variance based upon the oddly shaped lot and requested staff to return with the conditions of approval so that the design review can be granted.

The motion denied for lack of a second.

M/s, Sisich/House, to deny the applicant's request for a variance and design review, which allows the applicant to appeal to the Town Council.

AYES: Brasler, Cronk, House, Sisich  
NOES: None  
ABSENT: Krebs, Pipkin, Swaim  
ABSTAIN: None

Brasler reminded all of the ten day appeal period which allows anyone to appeal the Planning Commission's decision.

#### **ITEMS FROM PLANNING COMMISSION**

Sisich asked for an update on Capital Monitoring Committee with respect to opportunities for community involvement.

Condry stated that individuals can apply for membership on the Capital Programs Monitoring Committee (CPMC).

As far as being involved in a more general sense, staff will be appearing before the Planning Commission, the CPMC, and the Town Council with a seven year plan.

The last five year plan was for roads; the seven year plan addresses roads, buildings, and parks. Condry explained that they will be taking the remaining 2 years of the five year plan and incorporated the subsequent five years. The plans are based on funding from Measure D and several grants. There will be community meetings for many aspects of the upcoming proposed projects.

Sisich asked if residents will be able to identify what was accomplished with the Measure D funds.

Condry affirmed.

Sisich noted that the Red Hill Shopping Center exit on to Sir Francis Drake, coming from the 76 Station, is unsafe because of line of sight problems related to overgrown bushes.

Condry replied that the property owner has been served with a notice of abatement and that he will follow up with the staff members who monitor the abatement program.

#### **ADJOURN TO THE MEETING OF JULY 7, 2014**

Brasler adjourned the meeting at 9:45 p.m.

Respectfully submitted,  
Nancy Harris