

# ATTACHMENT 3

**From:** Brad Bauer  
**To:** Elizabeth Jonckheer  
**Cc:** Tom McInerney; johndwright1125@yahoo.com; fordgreene@comcast.net; colemanpk@comcast.net; dougkelly57@gmail.com; Debbie Stutsman; jenni@onefoursix.com; <thomarobinson@gmail.com>; roblrob@yahoo.com; Annelise Bauer; Brad Bauer  
**Subject:** Re: 19 Knoll Road  
**Date:** Tuesday, October 28, 2014 4:01:08 PM  
**Attachments:** San Anselmo\_19 Knoll Road.pdf

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Elizabeth:

Thanks again for your time today.

An additional point as respects the newly proposed 2nd unit at 19 Knoll Road is that the request should be evaluated in light of the code in-place at the time the original permit was granted.

To allow a property owner who went through the permit process in 2006 and stood idle at a cost to the Town and those in the neighborhood to benefit from a recently enacted ordinance encouraging second units (and providing a parking exemption for such units under certain circumstances) would unjustly enrich the property owner at a cost to property owners in the neighborhood. Needless to say, the neighbors would have had a very different view of the original permit application in 2006 had it included a second unit at the time of the original submission.

The Town has done everything possible to make this project viable and profitable for the property owner. At some point we neighbors would appreciate some consideration as well. A letter written to the Town and Council in September 2013 is attached for some historical background.

Unfortunately, I will not be able to attend the meeting on Monday as I will be in New Mexico. Please do not take my or other neighbors inability to adjust their schedules on short notice to address this seemingly never-ending problem as apathy.

Thank you for your consideration.

Best,

Brad Bauer  
24 Knoll Road  
San Anselmo, CA 94960

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**From:** Brad Bauer <[brad@bluleafventures.com](mailto:brad@bluleafventures.com)>  
**Date:** Tuesday, October 28, 2014 10:53 AM  
**To:** "Ejonckheer@townofsananselmo.org" <[Ejonckheer@townofsananselmo.org](mailto:Ejonckheer@townofsananselmo.org)>  
**Cc:** Tom McInerney <[tmm@ogletreedeakins.com](mailto:tmm@ogletreedeakins.com)>  
**Subject:** 19 Knoll Road

Elizabeth:

I would like the opportunity to speak with you about the public hearing scheduled for November 3, 2014 with respect to the addition of space and a Residential Second Unity above the garage at 19 Knoll Road.

Please let me know a convenient time to discuss.

Best,

Brad Bauer  
24 Knoll Road  
300-6119

Town of San Anselmo  
525 San Anselmo Avenue  
San Anselmo, CA 94960

Ms. Kay Coleman, Mayor  
Mr. Jeff Kroot, Vice Mayor  
Mr. Ford Greene, Councilman  
Mr. Tom McInerney, Councilman  
Ms. Liz Dahlgren, Councilman

Re: 19 Knoll Road: Notice of Appeal of Administrative Decision

Dear Councilmembers:

My wife Annelise and I and our three young children live across from 19 Knoll Road. I am writing this letter as I am unable to attend the September 10<sup>th</sup> meeting and believe that, with compromise, a resolution that meets the disparate needs of the parties can be achieved.

On February 21, 2006 the San Anselmo Planning Commission conditionally approved the Hillside Design Review allowing a 2,335 square foot home to be constructed at 19 Knoll Road. Since that time, the property owner ("Mayer"), a resident of Fairfax, has made no discernible progress toward constructing a home on the property and the permit has expired. Mayer has now requested an appeal of the Staff's decision to not renew the 2006 permit.

Since obtaining the permit Mayer has made no material progress toward construction of a new home. Despite this lack of progress Mayer has been able to keep the permit open from 2006 until summer of 2013. During this time, instead of building on the property, Mayer has used the property as a personal dumping ground of sorts: it has served as a parking lot for abandoned trucks (his); an available, "for rent", staging area (for third parties); a dumping ground for miscellaneous building supplies (the only movement of which is an reshuffling presumably necessary to placate the Staff); a drop-off spot for random plantings (long since dead); and a landing place for a storage unit (constructed and abandoned by Redwood High students years ago). Continued complaints to Mayer about the condition of the property have been completely ignored. Complaints to Staff have been largely ineffective as the site was deemed "under construction". The site is no longer "under construction" as the permit has expired. Mayer now appeals Staff's refusal to extend the permit.

#### **Original Conditions of Approval**

The original approval Mayer now seeks to extend was based on various Conditions of Approval (<http://www.townofsananselmo.org/ArchiveCenter/ViewFile/Item/742>). One such Condition of Approval provides:

"Should construction not begin within one year from the date of this approval, the approval shall be considered null and void. A one-time-only, one-year extension can be requested in writing to the Planning Director prior to the expiration date."

Such condition was imposed on Mayer in 2006. As of this writing (September 3, 2013) the only on-site building activity has been the hasty construction of a retaining wall – completed during spring/summer of 2013 in an apparent last ditch effort to secure an extension of the permit. An argument that Staff has been anything other

than cooperative with Mayer on this project is simply without merit. In fact, the more convincing argument would be that the Staff has bent over backwards to placate and accommodate Mayer and, indeed, has apparently ignored the Conditions of Approval and spirit of the Town ordinances in repeatedly extending the original permit notwithstanding the fact that Mayer has failed to start construction in earnest.

### **Financial Hardship**

Mayer has repeatedly cited economic conditions as a reason for his inactivity and offered that requiring him to build, clear the property or not extend his permit indefinitely would create a "financial hardship" and therefore said actions should not be taken. While a plea for compassion may have some allure, it must be viewed in light of actual events and parties involved:

- First, Mayer had the approvals necessary to build the home prior to the economic events of September 2008. During the period between receiving said approvals and September 2008, no construction activity occurred and Mayer used the property as a personal junkyard. As such, an argument that his inaction is directly linked to the economic downturn is simply false.
- Second, Mayer has unsuccessfully attempted to sell the property at a significant profit following the economic events of 2008. Mayer may argue that losing the permits will have an adverse impact on the property's value, decreasing Mayer's ability to generate the desired profit. While this may be true, imposition of a financial hardship is quite different from a failure to realize a hoped for or expected profit. Said another way, the Town is in no way required to extend permit until such time as the holder is able to best monetize the subject property.
- Third, the inability or unwillingness to finance construction on an open permit should not be an excuse to abuse the permit and treat the property as a personal dump to the detriment of the community, nor is such inability to finance construction a hardship created by the Town. The existence of the permit and condition of the property are two different things. Mayer could have had an open permit from 2006 until summer of 2013 and kept the site clean. He chose to treat the site otherwise.
- Fourth, the "financial hardship" claim must be looked at somewhat skeptically as Mayer has a history of claiming "financial hardship" when a governing body imposes rules on him that he does not find convenient. The attached minutes from Fairfax Town Council meetings *from 2007* provide one such narrative.
  - ✓ [http://town-of-fairfax.org/pdfs/council/council\\_minutes/2007/9-19-07%20TC%20minutes.pdf](http://town-of-fairfax.org/pdfs/council/council_minutes/2007/9-19-07%20TC%20minutes.pdf);[http://town-of-fairfax.org/pdfs/council/council\\_minutes/2007/9-5-07%20%20minutes.pdf](http://town-of-fairfax.org/pdfs/council/council_minutes/2007/9-5-07%20%20minutes.pdf);
  - ✓ [http://town-of-fairfax.org/pdfs/council/council\\_minutes/2007/5-2-07%20TC%20Minutes.pdf](http://town-of-fairfax.org/pdfs/council/council_minutes/2007/5-2-07%20TC%20Minutes.pdf);
  - ✓ [http://www.town-of-fairfax.org/pdfs/planning\\_comm/minutes/2007/PC%206\\_21\\_2007%20Minutes.pdf](http://www.town-of-fairfax.org/pdfs/planning_comm/minutes/2007/PC%206_21_2007%20Minutes.pdf)
- Fifth, Mayer's actions with respect to the property during the 2006-2013 time period should provide little comfort that by granting another extension that the property will be cleared or that a home will be built. Repeated requested by neighbors and Staff alike to clean-up the site have been either ignored or met with hostility by Mayer – neither of which has been productive.
- Finally, the economic hardship that is relevant is the decrease in home values caused by Mayer's use of an area in a nice San Anselmo neighborhood as a dumping ground. The appearance of the property significantly impacts the value of the homes around said property.

### **Town as Guarantor of Investments**

The Council ought to be commended for its ability to forestall enforcement of permits and ordinances given extenuating circumstances. However, even then, there must be a limit. While the economic events of September 2008 may force the Council look at inaction more sympathetically than it might otherwise, it cannot go so far as to

become the guarantor its residents' investments. Said another way, showing patience with a property owner is quite different from permanently ignoring rules/ordinances/conditions of approval until the property owner can achieve his/her desired economic result.

In this instance Mayer purchased a piece of property with the intent to build a home and sell it for a profit. From 2006-2013 Mayer was either unable (could not get construction financing) or unwilling (did not believe market conditions would allow him to earn the desired profit upon completion) to build a home on the 19 Knoll Road property. After multiple extensions, the permit expired and Mayer now appeals.

Granting Mayer's appeal of Staff's decision to not grant another extension based on a "financial hardship" argument requires the logical leap of faith that the Town is in some way responsible for guaranteeing Mayer's investment. Mayer made a speculative investment in raw land; he obtained permits to construct a home; and has been unable to sell it at a profit. The granting of the permit in 2006 did not entitle Mayer to a profit at a later date or require the Town to extend such permits until such time as the expected profit could be recognized. While unfortunate, the theoretical "financial hardship" created by allowing the permits to expire is simply the reality of investing – you make some good investments and some bad investments. Perhaps Mayer's investment in 19 Knoll Road has not turned out the way hoped, due in part at least to his own actions (or inaction). That said, it is not the Town's responsibility to ensure a positive financial result, particularly when it is at the expense of the neighborhood.

The financial hardship argument also smacks of entitlement as it puts the priorities of one property owner (Mayer desire to make a profit) above those of the larger community (not having a junkyard in the neighborhood). Said another way, the Council cannot be myopic with respect to infringing on Mayer's rights (imposing a financial hardship) that it fails to recognize that by continuing to take no action that it is infringing on the rights of a larger class of citizens—those who are forced to live near Mayer's property.

#### **Site Conditions**

The site is and has been an eyesore for years. Repeated requests of Mayer to clear the site until such time that he is ready to begin construction have been violently rebuked with a constant refrain – "I have a permit; I am entitled to do whatever I want." The site's condition has directly resulted in at least one car accident. Further, as the parent of three of the small children who live in the neighborhood, I can tell you that the existence of unsecured heavy equipment, lumber with rusted nails protruding and open trenches does little for the quiet enjoyment of the neighborhood. The fact that these conditions have existed since we moved to San Anselmo in 2007, despite attempts to work with Mayer and numerous discussions with Staff, gives one little confidence in what the Town can accomplish.

Had Mayer kept the site clear during the 2006-2013 timeframe it is hard to imagine anyone caring whether the permit is extended or not. That said, Mayer has used the existence of the permit as a justification for his ability to use the property as a personal storage yard when he apparently has no present intent or ability to construct a home.

#### **Best Interests of the Town Argument**

Mayer could argue that extending his permit is in the Town's best interest. True, it would be in the Town's best interest if a home were built on the site. That said, why should the Town have any faith that Mayer will build a home on the site or that, given his history, his future actions will be in any way governed by what is in anyone's best interests other than his own? What makes 2014 different from 2006-2013? Why should the Town have any

faith that he is going to build now? Should the Council be satisfied that things are going to be different in 2014 it should make posting of enforcement and completion bonds conditions precedent to issuance of the permit extension – to protect itself should Mayer be somewhat less than forthright in his promises to build.

#### **Potential Solution**

Mayer is asking the Council to require Staff to grant an extension of the building permit so he is not faced with “financial ruin”. The neighbors with whom I have spoken would like to see the site cleared (not simply cleaned-up periodically).

It seems the Council is presented with a couple options:

1. Abandon Staff’s decision and extend the existing permit; or
2. Deny the appeal and require Mayer to obtain a new permit.

While Mayer’s actions and open hostility toward neighbors exhibits an unwillingness to work with the neighbors to keep the site clean, I do not believe any of us want to see the site sit vacant (certainly not in the current condition). As such, I think there would be support for either an extension of the existing permit or issuance of a new permit so long as either is conditioned upon:

1. Mayer being able to show proof of construction financing;
2. Mayer agreeing to clear the site until the start of construction;
3. Mayer providing a construction schedule that will show completion by the end of 2014;
4. Mayer agreeing that if the construction schedule is not met that the permit will be revoked and not reissued; and
5. Mayer agreeing to forfeit any rights with respect to appeal as it relates to revocation of the permit for failure to meet the construction schedule.

Under such a scenario each of the neighbors, Staff and Town can feel good that we have and will continue to work with Mayer to allow him to derive financial profit from his investment. It requires Mayer to actually commit to taking certain actions, but that seems a small price to pay for largely economically disinterested parties banding together to help him derive economic gain.

Thank you for your service to the Town.

Best regards,



Brad Bauer  
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San Anselmo, CA 94960