

**SAN ANSELMO PLANNING COMMISSION
MINUTES OF MARCH 5, 2007**

A. CALL TO ORDER

Commissioners Present: Chair Krebs, Commissioners Harris, Overberger, Sisich, Schinner
Zwick
Commissioners Absent: Commissioner Purl

B. OPEN TIME FOR PUBLIC EXPRESSION

None

C. CONTINUED PUBLIC HEARING ITEM

1. **Z-0701/ER-0701 - TOWN OF SAN ANSELMO**, Environmental Review (Negative Declaration) and Revisions to the Zoning Ordinance of the Town of San Anselmo (including development standards for structures: setbacks, height, lot coverage, and floor area; fences and vegetative screening; parking and driveways; demolition of structures; definitions and uses; required findings; design review; nonconforming structures), and additional recommendations from the Zoning Ordinance Sub-Committee for future consideration. **CONTINUED TO MARCH 19, 2007**

**D. PUBLIC HEARING ITEMS
CONSENT AGENDA**

1. **Minutes – February 26, 2007**
2. **U-0703 – Janette Jones, 804 San Anselmo Avenue, APN 006-103-04**, Use Permit to operate a Pilate Exercise Studio within a space of approximately 630 square feet, located within the C-2 zoning district. (staff person: Chambers)
3. **U-0702 - Leslie and Roland Tognazzini, 115 Tamalpais Avenue, APN 007-172-09**, Use Permit to permit a second living unit in an existing 387 square foot studio above a detached garage, located within the R-1 zoning district. (staff: Chambers)
4. **U-0704 – Tim Bowen, 210-216 Greenfield Avenue, APN 006-173-04**, Use Permit to operate Play-Well TEKnologies School, and to occupy a space greater than 1,200 square feet, located within the C-3 zoning district. (staff: Chambers)
5. **V-0706 - Eric and Susan Schroeder, 48 Hawthorne, APN 005-124-04**, Setback Variance for a 44 square foot entry porch within 9' of the front property line (Code: 20'), located within the R-1 zoning district. (staff: Chambers)

Chair Krebs recused himself from voting on Item 3 of Consent because he lives within 500 feet of the property.

M/s Zwick/Sisich, and unanimously passed (4-0) to approve Item 3.

M/s Zwick/Sisich, and unanimously passed (5-0) to approve Items 1, 2, 4 and 5 on Consent, and Chair Krebs reminded the audience of the 10-day appeal period to the Town Council of all Consent items.

Commissioner Schinner joined the meeting at 7.10pm.

REGULAR AGENDA

6. **DR-0703/U-0701 – Steven Shaw, 62 Tamalpais Avenue, APN 007-211-03**, Use Permit to demolish a single family dwelling and detached non-conforming 2nd unit; and Flatland Design Review to construct a ±1,973.5 square foot second story addition which includes a ±622 square foot second unit in conjunction with a new ±3,218 square foot single family dwelling, located within the R-1 zoning district. (staff person: Consultant Henderson)

Chair Krebs recused himself because he lives within 500 feet of the property, and Vice Chair Schinner resumed the Chair.

Consultant Planner Henderson introduced the staff report, when she provided background information on the project. She said that flatland design review approval is necessary because the second floor is larger than 400 sq. ft., and she noted that the project architect has met with the neighbors to address their issues, the main one being privacy. As a result, changes have been made to the windows on the second floor; Cypress trees will be removed at the request of a neighbor, and a fence will be erected but which must be approved by the Director of Public Works.

Ms. Henderson discussed other aspects of the design which minimize the impact of the second story, and she noted that the height is below the maximum allowable. Furthermore, the second unit conforms to the Town's Code and will be processed separately from tonight's discussions.

In response to Commissioner Zwick, Ms. Henderson said that the Fire Department's standard conditions will need to be met.

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In response to Commissioner Harris, Ms. Henderson said that the second unit meets the criteria under State Legislation and is therefore not subject to design review, but will be dealt with under administrative review. They discussed the second unit, further.

Michael Sands, project architect, said that following their meeting with the owners of 66 Tamalpais, they raised the window sill heights in the master bedroom and reduced the size of the windows. They have also offered to install plants along the fence, which will be replaced, and he discussed the second unit.

In response to Commissioner Harris, Ms. Henderson said that the mass and design of the second unit can be discussed, only, and that it is not subject to the usual findings of light, air and privacy, etc.

Larry Haines, Tamalpais, said that light and privacy are a concern because second story windows face their master bathroom and daughter's bathroom and for which reason they would like the glass to be translucent. Mr. Haines also expressed concern that a future owner of the house might not adhere to the rules set this evening. Furthermore, they would wish the construction week to be limited to 5 work days; that termite and vermin elimination are undertaken during the demolition stage and that they be indemnified against dirt and debris damaging their property.

In response, Commissioner Harris said that any agreement becomes part of a resolution that would be binding for future owners.

Susan Alexander, Tamalpais, applauded the architect for ameliorating the neighbors concerns, and said that they would like the upstairs windows to be of translucent glass.

Roger Domer, San Rafael, said he is also concerned by the master bedroom windows, which have a view into his backyard and pool.

In response to comments, Mr. Sands said that the house will be situated 35 feet from the rear property line, and that an oak tree will provide shade and privacy for much of the year. He suggested that a solution might be to plant tall-growing foliage on the back property line.

In response to Commissioner Sisich, Mr. Sands said that he had concentrated the design and massing of the dwelling on the sides where there are neighbors, rather than on the east side where there are no neighbors.

In response to Commissioner Zwick, Mr. Sands used the plans on the wall to indicate which windows are intended to be fitted with translucent glass, and he suggested further compromises that might appease the neighbors.

Ms. Henderson said that the hours of construction and the rodent problem are outside the Commissioners' purview, but that the neighbor might wish to contact the Marin County Health Department regarding the latter. Furthermore, the question on indemnification needs to be addressed by the property owners.

Ms. Henderson continued by addressing the privacy impacts, noting that some privacy impacts will exist because the neighbors, too, have second story windows and the applicant would also like to enjoy the same privileges. Furthermore, more than twice the space exists between the applicant's house and the house at 66 Tamalpais than the Code requires and solutions to the privacy problems exist, such as window covers. Ms. Henderson also noted that the dwelling does not encroach upon setbacks.

In response to Commissioner Sisich, Ms. Wight said that the hours of construction would be difficult to limit because standard hours, to which all other projects in town are required to adhere, are set by Ordinance.

In response to Commissioner Harris, Ms. Wight said that a permit from the Bay Area Air Quality Management District must be obtained prior to demolition.

Commissioner Sisich said that the house is well designed although it is big, and he is concerned about the massing. Furthermore, he does not support window covers because they might not necessarily be used.

Commissioner Overberger said that she likes the design and that, given the size and depth of the property, there will be no significant impact on the neighboring properties. Whereas the current dwelling consists of just one story, two stories will now exist. This will impact the neighbors' privacy because they, too, have second story homes. Furthermore, Commissioner Overberger does not like translucent windows and homeowners have the option to use window coverings or sashes, for example. She supports the project.

Commissioner Schinner supports the project, and noted that the back yard has generous setbacks which should be taken into consideration in terms of the size and mass of the new dwelling. The dwelling is articulated, and the neighbor on the east side has not objected to the design. Furthermore, there appears to be no unreasonable invasion of privacy; the windows and sill heights have been raised, and Commissioner Schinner said he would support the use of translucent windows in the bathrooms, but not in the living room.

Commissioner Zwick said that he likes the project, and applauds the architect for making a comeback working with the neighbors. He commented on the design, which he admires, and said that he, also, would support the use of translucent glass in the bathroom but not the living room. He supports the project.

Commissioner Harris said that he likes the design of the project but he remains concerned with massing issues relating to the roof and the sheer wall effect on the eastern side of the property. He noted that

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variances are not being requested, but that this is a flat lot and he feels that the house is a little too large for the lot size and location, which he believes has an effect on the light, air and privacy of neighboring properties. Commissioner Harris would like the size scaled back.

Commissioner Zwick made a motion to move the staff report with the condition that the applicant work with the neighbors to reach a solution to the upstairs windows, and Commissioner Schinner suggested the window problem be solved this evening.

The neighbors discussed the matter with the architect, who suggested changes to the windows that were found to be acceptable.

M/s Zwick/Overberger and passed (3:2 Noes: Sisich/Harris) to amend the motion made by Commissioner Zwick to move the staff report and approve the project with the added conditions that Window 3 on the east elevation shall have translucent glass for the lower two panes, and windows 4 and 5 on the east elevation shall be 2'4" x 4'6" in size, with the bottom four panes (out of six panes total) translucent glass; and with the approval of the fence to be subject to the Public Works Director.

Vice Chair Schinner reminded the hearing of the 10-day appeal period.

7. **V-0702/DR-0701 – Abraham Kalichman, 157 Meadowcroft Drive, APN 005-142-02**, Setback Variance to construct a first story addition within 5' of the west side property line (Code: 8'); Setback Variance to raise the existing roof a maximum of 4'-4" within 8' of the west side property line (Code: 2' maximum); Lot Coverage Variance to increase the lot coverage up to 38.7% (Code: 35% maximum); and Flatland Design Review to add a 454± square foot second story addition and 108 square foot deck, located within the R-1 zoning district. (staff person: Chambers).

Chair Krebs returned to the podium, and Planning and Building Director Wight presented the staff report. Ms. Wight described the project in detail, noting that the property has a narrow side yard for which reason staff can support that variance. However, staff does not support the lot coverage variance because part of a trellis could be removed, in addition to part of the garage that was extended without the benefit of permits, to enable lot coverage to be met.

Ms. Wight explained that staff does not believe issues exist with light and air privacy, given the location of the dwelling on the property, and can therefore make findings for flatland design review. However, Ms. Wight noted that the neighbors at 151 Meadowcroft believe that their light will be affected by the addition. She further noted that a wall has been constructed by the applicant that surpasses the 6' height limit, and the applicant has said he would reduce the height to conform to code.

In summation, Ms. Wight said that staff is unable to support the lot coverage variance because the total number of structures on the property is significant, but that flatland design review findings can be made because sufficient space exists between this property and the easterly neighbor. Staff recommends a condition of approval that a demolition permit be obtained for the illegal portion of the garage and to reduce the wall height to 6', following which the applicant can apply for the building permit for this project if it is approved by the Commissioners.

Jim McDonald, project architect, said that a survey has been undertaken, which confirms that the lot coverage will be reduced to 35% once the illegal portion of the garage is removed. The owner proposes to erect a fence between his property and 151 Meadowcroft to provide privacy once part of the garage is removed. Discussion on the survey followed between Commissioners and Mr. McDonald. Mr. McDonald confirmed that a shadow will not be created by the second story on the neighboring property.

James Pierce, Meadowcroft, said they are concerned that their privacy and light will be affected by the second story, which he explained in further detail.

David Clay, Meadowcroft, said that the deck will cause privacy issues because it overlooks many of the backyards of the surrounding houses which are below. Chair Krebs noted that any second floor window would cause this kind of privacy issue, but Mr. Clay objects to the openness of a deck.

Ed Wilkinson, Morningside, addressed setbacks and his concern about a wall that is 2' from his property line. He is also concerned about the roof rise and he would like the wall on the west side of the property to be lowered. Mr. Wilkinson asked that the bathroom window be of translucent glass.

Harlen Mallis, Meadowcroft, said that they have endured a couple of years of slow work and dumpsters that block the road. Mr. Mallis requested that dumpsters are kept off the street, and he expressed further concern about the project taking years to complete.

Nancy Riess, Morningside, said that work has been ongoing all week long with loud music and dogs. They feel their backyard privacy has been impinged upon.

Christine Stevenson, Morningside, said that the construction has been constant; that she has been unable to enjoy her back yard due to construction noise and music, and that the dust caused is intrusive. Furthermore, the second story will block morning sunlight to their property.

Virginia Pierce, Meadowcroft, also objects to the on-going construction, and is concerned about the demolition of the garage

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In response to public comment, Ms. Wight noted that the Town does not have an ordinance that restricts the length of time a project can be in progress. However, a construction management plan can be required that would deal with hours of construction and dumpsters, and there is an ordinance for music noise.

Chair Krebs and Ms. Wight discussed a construction management plan.

James Pierce noted that fences and arbors appear to be under construction, in addition to work in the garage. There is further noise from cement mixing, constant loud music and jackhammering.

Jim McDonald said that he has been hired since the fire, and he discussed the reasons the project has been held up. However, they have a survey to hand in and are in agreement with staff which part of the garage will be torn down.

In response to Commissioner Overberger, Mr. McDonald said that they have been cleaning up the back yard and removing stucco on the rear wall that was not damaged by fire.

In response to Chair Krebs, Mr. McDonald said that the driveway was being replaced, in addition to the front retaining wall and steps. Furthermore, the debris box needs to be kept in the road because it would crush the driveway.

In response to Commissioner Sisich, Ms. Wight said that staff did not consider a shadow study to be necessary. Also, a further reduction in lot coverage could be made as a condition of approval. Ms. Wight noted that the deck is included in the maximum allowable 400 sq ft space before second story flatland design review becomes necessary.

Commissioner Harris said that the project is beautiful, but that he would vote for a continuance so that the applicants and neighbors have the opportunity to hold a meeting. However, he believes that the loss of light to the neighboring properties will not be unreasonable, although Commissioner Harris said that he will not support a lot coverage variance if the only reason is that the applicant wishes to build more than the Code allows. He sympathizes with the neighbors but the Planning Commission is not the proper body to deal with noise issues.

Commissioner Zwick said that he echoes Commissioner Harris' comments.

Commissioner Sisich would also support a continuance, and said he would like to visit the neighbors' yards to understand their privacy concerns more fully. However, he will probably vote for a second story because the issues surrounding this project do not appear to be unreasonable.

Commissioner Overberger said that a compromise needs to be made, and she suggested that the applicant and neighbors resolve to put aside their anger and discuss the project. She noted that the houses are close to one another, and that there are ways to resolve these issues to the benefit of the applicant and neighbors.

Vice Chair Schinner noted that the problems appear to arise from the conditions the neighbors have endured for the past two years. However, the Commission must determine whether the neighbors will experience an unreasonable invasion of privacy and loss of light due to the second floor addition, including the deck. However, rear yard privacy is less important than protecting privacy inside a home, and he does not see that the deck will be a major intrusion by offering a view of neighboring back yards. The second story might provide some intrusion of privacy but not the deck. Vice Chair Schinner suggested that the Commission cannot impose a condition that the neighbors meet before they vote on a matter, but Council could change the Code to ensure that a meeting is held between the applicant and neighbors, and he is inclined to support the staff report, with the condition that the lot coverage needs to be reduced and approved by staff.

Chair Krebs said that a second floor will be built, and that the deck is the primary issue. He would support a continuance to discuss other ideas, and noted that the increase in size is relatively modest at 35% lot coverage. He said that it is difficult to ascertain from a non-expert point-of-view whether an unreasonable impairment of light to the neighboring properties exists, and he suggested that more evidence is provided to show that the loss of light is not unreasonable. Furthermore, he is open to visiting neighboring back yards to understand further the impact that might be caused. Chair Krebs said that it would be helpful if staff could investigate the work that has been undertaken on the property, although he recognizes that the Commission's authority is limited to a Construction Management Plan. However, he would not wish to legitimize or condone violations, even if the increase is modest, and he recognizes that the condition of the garage is not the fault of the current owner.

General discussion followed between staff, the architect and the applicant, which resulted in the applicant agreeing to a 90-day continuance of the project.

M/s Harris/Sisich and unanimously approved (6-0) to continue the project to the meeting of March 19, 2007, with the request that the applicant and neighbors make a good faith, reasonably diligent effort to meet with each other to discuss their concerns, paying particular attention to privacy issues from the proposed second story deck, and to obtain a clear lot coverage calculation.

8. DR-0706 - Greg Phillips, 456 Laurel Avenue, APN 007-121-74, Amendment to previously approved Hillside Design Review of a new single family dwelling: 1) increase the deck area from

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395 square feet to 480 square feet; increase the covered porch from 250 square feet to 500 square feet; 3) increase in building height from 26.83' to 33.1' above average grade and from 29.33' to 35.6' above grade; and 4) other design

Commissioner Zwick recused himself because he was previously associated with the project.

Planning and Building Director Wight presented the staff report, when she provided background information on the project. Ms. Wight explained that the final inspection revealed matters that needed to be brought to the attention of the Planning Commission, including an increase in the height of the building which was not shown on the plans at either the Planning or Building stages as drawn by the original architect and, therefore, were not approved. Furthermore, she discussed changes to the design of the porch that affected the square footage of the main floor, and the reasons that a significant portion of the decks were not originally included in the square footage, but which must be included at this point.

However, Ms. Wight said that the increase in height is not considered significant because the neighbors are not impacted and the mass is broken up with the design. The increase has provided views from the upstairs bedroom. She noted that vines have not been planted on the retaining walls, which she suggested should be made a condition of approval, and she discussed the resolution that has been drawn up.

In response to Commissioner Sisich, Ms. Wight said that because staff can make the findings for the increase in height at this point, it is likely that they could have been made in the original application. They discussed penalties, with Ms. Wight noting that significant penalties do not exist as a deterrent but that, in this instance, the road bond is being withheld pending approval at the final inspection.

Commissioner Harris and Ms. Wight discussed the height of the tower.

In response to Chair Krebs, Ms. Wight said that if findings cannot be made then the project should not be approved.

In response to Commissioner Schinner, Ms. Wight said that comments had not been received from the neighbors.

The applicant, Greg Phillips, said that his neighbors offered to attend the meeting to support his project. He said that they had met with their neighbors at the start of the project, and that they have worked quickly to build their home. Mr. Phillips said they were not aware that the markers were set incorrectly or moved, and that they want their project approved at the final inspection so that the road bond is refunded and they can landscape the concrete walls.

Chair Krebs said that errors occur during construction but that an increase of 100 sq ft to a porch does not occur by accident. Mr. Phillips said that the design looks better; that the builder needed sufficient head room in the tower and they thought it could be increased by 2 feet.

Commissioner Sisich said that poor judgment has been displayed, and he is concerned that there might be an occasion when a homeowner is made to rip out many thousands of dollars worth of work. However, he does not have a problem with this particular project.

Mr. Phillips commented on the inspection process and said they believed they had approval for the changes. In response, Ms. Wight said that the fault does not lie with the inspector and that the applicant was aware that a revision to the permit was necessary. Mr. Phillips commented on the helpfulness of staff.

M/s Harris/Sisich and unanimously approved (5-0) to approve the staff report. Chair Krebs reminded the audience of the 10-day appeal period.

9. DR-0705 - Kris Petersen and Andrew Mackles, 21 Timothy Avenue, APN 005-252-02, hillside design review of a 521 square foot first story addition, 487 square foot second story addition, 689 square foot uncovered decks and a 48 square foot porch on property located in the R-1 zoning district above 150 msl elevation. (staff person: Wight)

Planning and Building Director Wight explained why this item could have been placed on consent and the reasons it is on the regular agenda.

Brad Hubbell, project architect, said that he had spoken with the neighbor and that he would respond to questions.

Peter David, 12 Timothy, is concerned that the design, although innocuous, is not aesthetically pleasing for a property in a prominent location. Furthermore, the design is not enhanced by the solar panels.

In response, Mr. Hubbell said that his clients favor a photovoltaic system, but that they are open to dialogue.

In response to Commissioner Harris, Ms. Wight said that State Law forbids design review of solar panels unless there is a significant impact on health and safety. A Use Permit would then be required but in this instance, there are no impacts to neighbors to warrant such action.

M/s Sisich/Overberger and unanimously passed (5-0) to approve the staff report. Chair Krebs reminded the hearing of the 10-day appeal period to the Town Council.

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E. ITEMS FROM PLANNING COMMISSION


Commissioner Krebs and Ms. Wight discussed the issue of homeowners who exceed the limitations of their design whilst construction is in progress. Ms. Wight said that, in future, elevation surveys will be required for construction projects, particularly in the hillside.

F. ITEMS FROM STAFF

Planning and Building Director Wight said that further discussions on the Zoning Ordinance will take place at the next meeting.

G. ADJOURNMENT TO REGULAR MEETING OF MONDAY, MARCH 19, 2007

The meeting was adjourned at 10.15pm.


Joanne O'Hehir
Sr. Admin. Services Asst.