

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF OCTOBER 4, 2010**

Present: Brown, Harris, Krebs, Schinner, Sisich, Zwick
Absent: Overberger

CALL TO ORDER

Commissioner Brown called the meeting to order at 7:00 p.m.

OPEN TIME FOR PUBLIC EXPRESSION

Ann Capron, Volunteer with the Yes on A Campaign, will place information with regard to the measure in the Commissioners' mailboxes located in the Police Department.

PLANNING AND BUILDING DIRECTOR'S REPORT

Interim Planning Director Diane Henderson advised the Commissioners to save the date for the Planning Commissioners Workshop to be held at Sonoma State University on December 4, 2010. Henderson added that the workshop is an annual offering of the university that is well-done and informative. The Planning Department will cover the cost of enrollment for those interested in attending.

Additionally, Henderson asked the Commissioners to weigh in on the issue of providing additional contact information on the Town's website.

Brown requested a review of the particulars of the Brown Act to be discussed before deciding on the issue so that Commissioners would not be at risk of violating the act in responding to emails.

Henderson prefers messages to come in through the Planning Department first so that staff is informed on such matters.

Commissioner Krebs is concerned about the potential for an increase in spam messages if specific email addresses are placed on the website.

Henderson noted that the Planning Department receives a large volume of messages at the generic address noted on the website.

PUBLIC HEARING ITEMS

CONSENT AGENDA

Minutes of Planning Commission Meeting of September 20, 2010

The minutes were continued to the next meeting.

REGULAR AGENDA

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF OCTOBER 4, 2010**

PDPA-1002/DR-1011, Neal Schon, 53 Tomahawk Drive, APN 177-220-66 Precise Development Plan Amendment and Design Review for a 742 square foot detached music studio with a 128 square foot deck and 82 square foot porch at 53 Tomahawk Drive. The request is for the Planning Commission to provide a recommendation to the Town Council pursuant to Resolution No. 3038 to construct the proposed project outside the approved building envelope and determine if the required Design Review Findings pursuant to the R-1-H Zoning District can be made. (Staff person: Boyle) **This item is continued from the July 12, 2010 meeting.**

Commissioner Schinner recused himself.

Senior Planner Phil Boyle presented the staff report. The project has been reduced in size so that the total proposed living area of the main residence, accessory shed in the front of the garage, and proposed music studio is now less than 5,000 square feet. As a result of the reduction in size, the applicant is no longer asking to exceed the maximum floor area as described in Table 4-E.

Boyle reminded the Commissioners that they had asked the applicant to explore the possibility of relocating the studio within the existing footprint of the home; the applicant has responded by submitting a floor plan of the existing home and his attorney will discuss it with the Commissioners. Further, the applicant had been asked to move the studio closer to the home to minimize its visual impact and this request has been addressed. Boyle added that the height of the building has been reduced from 20'4" to 19'9" and that the structure has been notched into the hillside.

In conclusion, Boyle advised that he cannot make the findings for either the Precise Development Plan Amendment (Resolution No. 3038) or for design review; additionally, despite modifications, the project is not in conformance with many of the General Plan policies as described in the staff report.

Commissioner Zwick asked if Resolution No. 3038 addresses enlarging the footprint.

Boyle responded that it does not.

Zwick asked how the building footprint has been addressed.

Boyle explained that the proposal has always been to locate the studio outside of the building envelope and that Resolution No. 3038 requires the Commission to review the project and make a recommendation to the Council as to whether it should be allowed or not.

Zwick asked if the applicant could ask for the envelope to be redefined so that the studio could be built within its limits.

Boyle replied that a request for redefining the envelope could be made, had been discussed at the July 12th meeting, and that it would require an amendment to the final map.

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF OCTOBER 4, 2010**

Zwick asked if the design review findings would be less stringent if the envelope were moved to accommodate the studio.

Boyle advised that if the building envelope were moved, Resolution No. 3038 would no longer apply, the design review findings would not necessarily become less stringent, and the potential lack of conformance with General Plan policies remains at issue.

Brown observed that the General Plan in effect when the Town approved the tentative map for the Quarry Mountain Subdivision established where and how building could be located on ridge lines and in ridge zones. The parameters were further defined and specific requirements were established for the location of parcels and building sites. Subsequently, because individuals wanted to build outside of the envelopes, the Town approved Resolution No. 3038, which provided specific guidelines for building outside the building envelope.

Boyle confirmed Brown's observation.

Hurd advised that the current General Plan is the authority, noting that policies and goals change and are updated over time.

Brown pointed to Attachment 8, Objective 9, regarding future development on hillsides and ridge parcels. He asked if this is the standard against which the Commission should be measuring the project.

Boyle affirmed.

Hurd noted that Resolution No. 3038 is consistent with the General Plan as it provides a way to build outside of the building envelope while protecting the ridge line by subjecting a project to the three specific findings.

Brown asked if the current General Plan, the Quarry Mountain Precise Development Plan, and Resolution No. 3038 are the authorities the Commission should be consulting.

Hurd responded that the current General Plan, Resolution No. 3038, and the design review criteria are the authorities.

Harris asked if Resolution No. 3038 was passed before there were any structures to guide development within the subdivision.

Boyle believes there were homes located in the subdivision prior to the passage of Resolution No. 3038 and that the Resolution came about with regard to development on Lot 7. An applicant wanted to build closer to the street than the building envelope would allow. The Town approved Resolution No. 3038, feeling that relocating the house on Lot 7 closer to the street made less of a visual impact than placing it in the original building envelope, 20' down the hill. Resolution No. 3038 allows Lot 7, as well other lots in the subdivision, to apply for the possibility of locating a structure or pool outside of the approved building envelope if the findings can be made. Resolution 3039, which is specific to Lot 7, was passed at the same time

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF OCTOBER 4, 2010**

Harris asked if Resolution 2060, passed in January 1986, was the approval for this 12-lot subdivision, and if this Resolution was followed by Resolution No. 3038 in November 1987.

Boyle affirmed.

Harris noted that at the applicant's last appearance before the Planning Commission, there was much discussion and an ensuing request for more detail with regard to an alternate location for the studio in the front yard of the house.

Boyle confirmed that there was no additional submittal with information regarding relocating the studio in the front of the house.

Brown asked for clarification of 9.1 of the General Plan policy regarding density

Boyle responded that density refers to the number of living units per lot; this is a music studio as opposed to living space and so it does not increase the density.

Attorney Neil Sorenson advised that the project has been redesigned based upon the Commissions input and the applicant's needs for the music studio. The studio has been reduced in size, a floor plan has been provided to show that it is not possible to locate the studio inside the house, and the structure has been moved uphill and notched into the hill. Sorenson added that staff discouraged the applicant from moving the building envelope; he further added that Council believes moving the building envelope is the best course of action, he and the applicant are willing to pursue this.

Sorenson explained that placing the music studio inside the house is problematic as it is difficult to isolate such a space from the other activities of the household. Further, because of its size, two bedrooms would need to be eliminated; this is not feasible as Mr. Schon has five children who visit. Finally, the acoustic requirements for the studio include a higher ceiling height than is available in the house with the exception of the living room. Sorenson believes this would be a terrible misuse of the living room.

With regard to the suggestion of placing the music studio in the front yard, Sorenson pointed out that the front yard is the most visible part of the parcel from the fire road. The studio would essentially be on the ridge line and visible from both sides of the ridge.

For the above stated reasons, Sorenson believes the alternatives presented by staff offer no solution.

With respect to the findings required by Resolution No. 3038, Sorenson maintains that the proposed location is the least visible on the lot and results in a better overall design and lower profile. He believes the placement of the structure is consistent with the R-1-H zoning.

Regarding the General Plan issue, Sorenson noted that Policy 7.2 seeks to place construction so that it is minimally visible off site and that he believes the front yard is the most visible location.

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF OCTOBER 4, 2010**

Policy 7.5 seeks to have the improvement not visible from a distance and he believes placing it down the hill achieves this. Policy 9.3 is met as this is a small building screened by landscaping and the applicant is willing to add more landscaping. Finally, Policy 9.8 is met as the structure is low in profile and matches the existing residence.

With respect to the design review Findings 1, 6, 8, Sorenson believes staff has taken an overly purist view with regard to Finding 1. Although he cannot dispute the fact that no one in the area has a detached music studio like this, it is also true that this is a uniquely large lot at 10.2 acres, most of which is encumbered with an Open Space easement. Regarding Finding 6, Sorenson believes the project meets the three requirements of Resolution No. 3038 for the reasons previously stated. Finding 8 is met by the simple, functional design of the structure which blends well into the natural landscape and does not invite undue attention.

Commissioner Krebs asked for confirmation that the structure was moved from its prior location and clarification as to how far it moved.

Sorenson believes it was moved at least a building depth up the hill, adding that the goal was to place it within the natural contours and notch it into the hillside.

Brown opened the discussion to the public.

Jonathan Braun, Scenic Avenue, believes that Senior Planner Phil Boyle has explicitly demonstrated the noncompliance of this project. Braun maintains that the project represents a direct challenge to the process that went into creating the subdivision. The approval of the tentative map, subdivision, design review criteria, CC&R's, and the Resolution were all directed at minimizing the impact of this development. He feels the findings are appropriate and urges the Commission not to approve the project, believing that approval would be extremely dangerous for the other properties in the subdivision. Further, more generally, the project violates the ridge line policies from the Open Space Element. Braun noted that this subdivision was the impetus for the subsequently formulated Open Space policies and it would be a terrible irony if those rules that were put into place because of this subdivision were violated for this project.

Gay Kagy, Redwood Road, observed that despite the reduction in size of the proposed structure, numerous conflicts with the General Plan remain. Kagy believes very poor precedent would be set if this imposing structure were constructed outside the approved building envelope. Kagy further observed that accessory buildings are not permitted to be used for home occupations and recalled that the applicant had stated his intention to use the studio for work on film scores and other larger projects. Consequently, it is questionable as to whether or not this building is entirely for personal use. Kagy agrees with planning staff that the three findings cannot be found for Resolution No. 3038. Kagy went on to say that the Town Council has the authority to approve some limited construction outside the building envelope. She stressed the term "limited," observing that the property already contains a swimming pool, deck, arbor, and carport—all of which are located outside the building envelope.

Zwrick asked what the height limit is in the subdivision.

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF OCTOBER 4, 2010**

Boyle responded that the height limit is 18 feet above the ridge line and that this particular structure is 7 feet above the ridge line.

Brown asked for clarification of the issues of use permits and occupational use.

Boyle explained that home occupations are monitored through business licenses. The applicant is neither proposing this structure to be used for a business, nor requesting a business license, so the home occupation rules do not apply. In the event he was to make an application to use the structure for a home occupation, it would be denied because a home occupation in an accessory structure is prohibited in San Anselmo.

Zwick asked if it would be acceptable for the applicant to have band members record music for a score in the structure.

Boyle explained that it would not necessarily be considered a business activity; however, if codes related to noise became an issue, the activity might become the subject of code enforcement in that way. This would occur if it were an on-going situation and there were multiple complaints.

Harris believes activities should be regulated and the fact that someone has or has not applied for a business license should not make a difference. If someone wants to do something and they know that getting a license is going to impede them, they will not apply for a license. Harris reminded all present that the applicant is a professional musician who does not appear to have retired.

Boyle responded that if a professional chef were to build a commercial grade kitchen, one would not necessarily conclude that the kitchen was for professional/business use.

Krebs asked for clarification as to what constitutes a home occupation. The applicant has expressed an interest in using the studio for recording scores, which is a business purpose. Krebs asked if that use is a home occupation. Krebs does not want to approve an accessory structure that will be used for something that is in violation of the code.

Hurd explained that San Anselmo has a complaint-based code enforcement system. The first question is whether or not someone is applying for a business license for activity in an accessory structure; if they are, it is an automatic denial of the application. The second and more difficult question is whether or not there is something to suggest that something is being created and sold or a serviced rendered and charged for in an accessory building. If so, the Town has the right to enforce the code and put a stop to the activity because it would be a nuisance. The applicant has stated on the record that he would like to record scores but did not go so far as to state that the scores would be sold. A condition could be put in place specifying that business cannot be conducted in the structure; however, it would be difficult to enforce.

Henderson stated that if the project is approved, it needs to be made very clear to the applicant that a home occupation is not permitted in the structure. If the findings cannot be made for approval, it becomes a moot point.

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF OCTOBER 4, 2010**

Krebs asked if, assuming the findings can be made for approval, it is possible to deny approval based on the fact that the stated, intended use of the structure is for a home occupation.

Henderson responded that the appropriate action in that situation is to condition approval by stating that the structure cannot be used for business purposes; the assumption is that people are going to do the right thing.

Sisich continues to support the staff report, noting that the structure is the size of a small house. He added that the applicant received approval for an accessory structure outside the building envelope a year ago. Further, he is concerned about the potential professional use of the building, as sound travels across the valley. Sisich feels this is a professional recording studio and not a music studio. Finally, even if it was a music studio, he would not support the project because of the visual and sound impact.

Brown asked Sisich if he would support the design review if the applicant moved the building envelope to accommodate the structure.

Sisich responded that he would not because, as observed by Braun, those envelopes were created painstakingly. He would support moving the structure to the front of the home, recognizing that this would compromise the aesthetics of the home.

Harris understands the applicant's desire to have a music studio and is concerned about the issue of home occupation, but feels it is a resolvable issue. He is also cognizant of the fact that the property under discussion is a 10-acre parcel. Harris believes that the context of Resolution No. 3038 and its impetus implies that it pertains to undeveloped lots and the initial development of those lots. He does not see how an accessory structure comes within the ambit of the Resolution and is confounded by the notion that findings could be made. He poses the question of how the building of an accessory structure outside the building envelope could be considered as providing a lower visual profile; it is, in fact, adding to the existing visual profile. Harris recommends denial of the project on that basis.

With regard to design review, Harris does not agree that placing the structure in the front yard is problematic. He is annoyed by the applicant's recalcitrance in refusing to create a design that would make the front yard location work and feels there may be very beautiful and creative ways in which to integrate a music studio in to the front yard. He encourages the applicant to come back with a proposal for something to be constructed within the building envelope. Harris added that he recently visited the home of a professional musician, noting that the home was equipped with a professional sound studio in the basement.

Brown asked Harris if he would support the relocation of the building envelope.

Harris responded that he would not reject it out of hand; however, he is hesitant to renegotiate something that was the subject of much controversy and good faith negotiations and effort years ago. He does not believe building envelopes should be redefined whimsically.

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF OCTOBER 4, 2010**

Hurd observed that the findings for adjusting the building envelope are nearly identical to the findings required for Resolution No. 3038.

Krebs appreciates Harris's interpretation of Resolution No. 3038 and the question of whether or not the Resolution is applicable to this project. Assuming Resolution No. 3038 does apply to this project for a moment, Krebs agrees with the staff report that none of the findings can be made. Further, Krebs has not heard any argument or evidence in support of just how Policy 9.2 of the General Plan is satisfied. Unfortunately for the applicant, he cannot support the project; although he appreciates the applicant's efforts, Krebs believes the project needs further consideration in terms of size and location. He is hopeful that the arguments are presented to the Town Council so that Councilmembers will understand the Planning Commission's concerns.

Zwick confirmed that building envelopes are typically negotiated before any development takes place and appreciates the logic of proposing that the addition of a structure can result in a lower visual impact. Zwick believes the front yard is a feasible location for the structure, noting that when a large house is approaching the street, the applicant is typically asked to step down, i.e., to build a smaller structure, stepping down toward the pedestrian way in the front. Adding on to an existing building presents a lower visual impact than building an entirely separate structure some distance from the main structure. In conclusion, Zwick feels he has no choice but to support the staff report.

Brown agrees that the findings for Resolution No. 3038 cannot be made. With regard to the General Plan, he does not see how the subdivision was approved initially, as the development is right on ridge line and the homes are visible from both sides of the ridge. Brown does believe the most recently proposed location of the studio is preferable to the front yard. If the applicant wishes to address changing the building footprint, he would need to present a revised plan to the public for vote.

With regard to design review, Brown agrees that lowering the building is a good idea, but realizes that cut and fill issues would surface in this scenario. The gabled roof is not the best design in terms of view corridors, but if it were changed to a shed roof, the roofline would be visible. Landscaping as a means of screening the structure may not be approved by the Fire Department. Brown concluded that he could not approve the project in its current state and suggested the applicant reconsider building within the building footprint.

M/s, Krebs/Sisich, to deny the design review based on the fact that findings cannot be made for 1, 6, and 8.

AYES: Brown, Harris, Krebs, Sisich

ABSENT: Overberger

RECUSED: Schinner

Brown advised the applicant of the 10 day appeal period.

M/s, Krebs/Sisich, to approve the staff report with respect to Resolution No. 3038 in that Findings A, B, and C cannot be made, and to recommend denial to the Town Council.

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF OCTOBER 4, 2010**

AYES: Brown, Harris, Krebs, Sisich
ABSENT: Overberger
RECUSED: Schinner

ITEMS FROM PLANNING COMMISSION

Harris advised that he had joined the Commission in April of 2001 and mistakenly believed that his term expired in August, 2010, when it actually expires in 2011. As a result of some miscommunication, the process of filling his position has already begun and others have been applying. Harris explained that he always intended to fulfill his term and that he will happily continue to serve as needed.

Harris shared his concerns regarding Architect Jeff Kroot representing clients in San Anselmo while sitting on the Town Council and believes this represents a clear conflict of interest. Further, he believes it is not helpful to the public when an applicant's architect is not present at Planning Commission meetings to explain issues. Harris stressed that his concerns are not personal to Kroot as he would express the same opinion of anyone in the same position.

Hurd advised that the question had been addressed when Kroot was elected to the Council and that this scenario is addressed by the FPPC and the government code.

Harris asked for clarification as to the extent of Kroot's recusal in these matters. Specifically, Harris asked if Kroot was allowed to discuss his projects with fellow Councilmembers or Commissioners.

Hurd responded that Kroot was not allowed to hold such discussions.

Krebs asked if Kroot was permitted to appear at hearings as an applicant's architect.

Hurd confirmed that he is not permitted to appear under such circumstances.

Krebs expressed some concern about the appearance of bias and the public's perception of whether it gives an applicant an advantage to have an architect on the Town Council, even though the architect is recusing himself.

Hurd observed that it is often viewed as a distinct disadvantage, as the applicant does not have a designer/advocate at the hearings.

Krebs responded that it is a judgment call, believing it to be a matter of determining the most effective way of advocating one's position vs. making sure it is a process that is fair to all and that offers equal treatment to everyone. Krebs has heard individuals complain; again, it is perhaps more a matter of perception than a bias or lack of independence. He feels it is something to take into consideration. One alternative is for Kroot to refrain from taking projects in San Anselmo. Krebs added that when someone runs for a public position, it is essential to try to

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF OCTOBER 4, 2010**

maintain that sense of independence and to make sure that all decisions are made with that independence.

Hurd believes it also has to do with the objectivity of the deciding body; it is ultimately the Commission's and the Council's responsibility to say "position or no position, that's not affecting my decision. I look through the lense of the code at what's being applied for and make that decision." Hurd further remarked that San Anselmo is not the only town or city with architects and that the same issue comes up in other jurisdictions.

Krebs agrees that it does depend on everyone's independence and believes everyone does their best to be independent. He fully agrees that Town Council members act in the same manner and are not necessarily swayed by that factor. Still, Krebs maintains, it is a matter of the public perception of the process that is the critical point.

ADJOURN TO THE MEETING DATE OF NOVEMBER 1, 2010.

Brown adjourned the meeting at 8:45 p.m.

Respectfully submitted,
Nancy Harris