

**TOWN OF SAN ANSELMO PLANNING COMMISSION
MINUTES OF JUNE 21, 2010**

Present: Brown, Harris, Schinner, Sisich

Absent: Krebs, Overberger, Zwick

CALL TO ORDER

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

OPEN TIME FOR PUBLIC EXPRESSION

No one spoke.

PLANNING AND BUILDING DIRECTOR'S REPORT

Senior Planner Phil Boyle reported that the Town Manager strongly urges all members of the Commission to speak into their microphones as the meetings are recorded and made available on the Town's website. Boyle further advised that the Green Building Ordinance would be heard by the Town Council on June 22. Finally, Boyle reminded all present that the sole Planning Commission meeting for the month of July will be held on July 12.

PUBLIC HEARING ITEMS

CONSENT AGENDA

Minutes of Planning Commission Meeting June 7, 2010

M/s Harris/Schinner, to approve the minutes of June 7, 2010.

Ayes: Brown, Harris, Schinner, Sisich

Absent: Krebs, Overberger, Zwick

REGULAR AGENDA

1. **SR-1001/DR-1009—Chris Merrell, 401 San Anselmo Avenue (Bank of America), APN 007-251-22**, Sign Review for two wall mounted signs, one on the south facing wall and one on the east facing wall, totaling 81.6 square feet in area. The sign facing San Anselmo Avenue will be internally illuminated. The project also includes repainting the existing exterior awnings which face San Anselmo Avenue a light tan or champagne color. The project site is located in the Downtown Commercial (C-2) Zoning District. (Staff person: Boyle)

The reading of the staff report was waived.

Commissioner Harris asked how the current proposal differs from the one approved by the Commission a few years ago.

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Boyle responded that the two proposals are nearly identical; the only change in the current application is the proposal to paint the existing awnings. He provided a color chart, adding that the color will remain the same.

Brown asked if the previous permit had expired.

Boyle affirmed.

Commissioner Schinner noted that he had reviewed the Planning Commission meeting minutes of October 6, 2008, and recalled that a condition of approval required the sign on the south-facing wall (Pine Street) to be non-illuminated.

Boyle confirmed that the only sign to be illuminated is the one facing San Anselmo Avenue (east-facing), reminding the Commissioners that all illuminated sign applications must be brought to the Commission.

OPEN TIME FOR PUBLIC EXPRESSION

No one spoke.

Brown returned the discussion to the Planning Commission and asked Boyle if the current proposal meets the 2008 approved conditions.

Boyle responded that the proposal has changed somewhat but not significantly, and reviewed the proposed conditions: that the illuminated sign be mounted close to the wall to avoid spill-over lighting; that an automated timer be installed so that the illumination is turned off at 10:00 p.m.; that a dimmer be installed and the appropriate brightness be determined by staff prior to final inspection by the Planning Department; and that the south and east-facing walls be properly repaired so there is no evidence of where the previous signs were located.

M/s Sisich/Schinner, to approve the staff report.

Ayes: Brown, Harris, Schinner, Sisich

Absent: Krebs, Overberger, Zwick

Brown reminded all present of the ten-day appeal period.

2. **DR-1010/PDPA-1001-Kyra and Stephen Kuhn, 43 Tomahawk Drive, APN 177-250-60,** Design Review and an amendment to the building envelope of the Quarry Mountain Precise Development Plan for an after the fact deck; a portion (±14 square feet) of which encroaches outside of the established building envelope, located within the R-1-H Zoning District. (Staff: Boyle).

Schinner recused himself because his residence is within 500' of the applicants' residence.

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Town Attorney Riley Hurd reminded the Commissioners that a quorum is established before recusals.

Commissioner Sisich asked for clarification of the rule with regard to a quorum.

Hurd advised that some commissions have created administrative policies stating that they do not want to have a minority of the membership making decisions; he further reminded the Commissioners that the action currently before them is only a recommendation to the Town Council.

Senior Planner Phil Boyle clarified that, with Hurd's input, the language has been changed so that this will not be an amendment to the existing Precise Development Plan (PDP); there is not a proposal for the building envelope to be moved. This application is, instead, requesting to abide by the required conditions pursuant to Resolution No. 3038.

The resolution came about in the late 1980's after the owners of Lot No. 7 in the Old Quarry Mountain subdivision requested to build a home outside the specified building envelope. In the process of approving that request, the Town Council went further, stating that they wished to allow more flexibility with future projects. Resolution No. 3038 was passed, establishing three findings that must be met in order for property owners in Old Quarry Mountain PDP to build outside of the defined building envelopes.

Currently, the applicants are requesting approval under Resolution No. 3038, requesting that the three findings be made on their behalf.

Harris asked if this change in the staff report affects the notice that was written for the current meeting.

Boyle responded that he and Hurd believed the notice remained valid because the project has not changed.

Hurd offered that according to the Brown Act, the intent of the notice is to give some idea of what is to take place. He noted that feedback has been received from those receiving the notice and hoped that those respondents were present.

Boyle added that another respondent had just been in touch by email in the morning; he then presented the staff report, clarifying that the entire deck is the subject of the current design review while the 14 square feet existing outside the building envelope falls under Resolution No. 3038.

Brown asked for clarification as to how the Commissioners could vote on the design review if they are to make a recommendation to Council as to whether or not that section of the deck outside of the building envelope should remain.

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Hurd explained that there were two elements to the decision and, therefore, two motions to be made: one is to make a decision with regard to the findings under Resolution No. 3038 the other is to make a decision with regard to design review findings for Zoning R-1-H.

Boyle advised that with regard to the design review aspect of the project, he could make all of the findings with the exception of No. 6 – “The project is consistent with the Precise Development Plan”. With regard to the 14 square feet of decking outside of the building envelope falling under Resolution No. 3038, he was able to make the last two findings (B and C), but not A. Finding No. 6 of the design review asks if the project conforms to the Precise Development Plan; Finding A of Resolution 3038 asks if placing the structure outside the approved building envelope results in a lower visual profile than placing it inside the building envelope.

Boyle observed that a comment received from a neighbor after the preparation of the staff report had been attached to the report.

Sisich asked for clarification that this application is for after-the-fact approval and observed that in 2008 the applicant was granted after-the-fact approval for an accessory structure and retaining wall. He further asked for clarification that with or without the 14 square feet of the project that is built outside of the approved building envelope, the deck should have come before the Commission for approval.

Boyle confirmed that this was the case. All construction within the R1-H Zoning District requires design review.

Harris asked if the current owners owned the property in 2008.

Boyle affirmed.

Harris asked if it was true that the deck was not completed and that despite a stop work order being issued by the Building Department, work continued on the project.

Boyle requested that the question be directed to the applicant, as the Building Department may have asked the applicant to build a railing, specifically adding the vertical elements to the railing, for safety reasons.

Harris asked if Boyle believed that the verticals were the extent of the work after the Stop Work Order was issued.

Boyle affirmed that this was his understanding.

OPEN TIME FOR PUBLIC EXPRESSION

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Stephen Kuhn of Tomahawk Drive advised that construction of the shed in 2008 did commence without a permit because staff had misinformed him with regard to permit requirements. (He had been told a shed under 120 square feet did not require a building permit; however, this is not the case in an R-1-H zone.) A neighbor reported the construction activity and a permit was acquired.

Kuhn added that the deck currently under construction was begun as a rot repair and replacement and agreed that a permit should have been secured.

Kuhn clarified that the vast majority of the deck is within the building envelope and the current application is a request for permission to expand the deck outside the building envelope by approximately 14 square feet. Kuhn noted that the Building Department described the 14 square feet as "not significant," and that Senior Planner Phil Boyle described the small portion of the deck as "a sliver."

With regard to the design review, Kuhn reviewed the details of Section 3, required findings, and discussed the conclusions.

With regard to Quarry Mountain's PDP and Resolution No. 3038, Kuhn reviewed the details of B, C, and A, and discussed the conclusions. He believes the lack of a finding for A is not consistent with staff's other findings. Further, Kuhn contends that requirement of A to build in such a way as to result in a lower visual profile is impossible. He pointed to projects at his residence (the shed built in 2008) and at 53 Tomahawk (a new structure and garage) as examples of construction outside of the building footprint.

Kuhn concluded his statement by observing that two of his neighbors were present to support his project, that he had three letters of approval from neighbors, and that he was respectfully requesting that the Commissioners find in favor of his project.

Brown asked why the applicant did not build within the plan.

Kuhn explained that the rest of the house is rectilinear and that the corner section in question improves the project aesthetically. He further believes the value of the home might be degraded in its absence.

Brown suggested that keeping the deck rectilinear in shape while shortening the length of the deck would be a solution that keeps the deck within the building footprint while remaining aesthetically pleasing.

Kuhn observed that he believes an egress issue would result in such a design.

OPEN TIME FOR PUBLIC EXPRESSION

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Pav Wilkinson of San Francisco, the contractor on the project, confirmed that after the stop work order was issued, a small portion of work was completed with the approval of the building inspector. He further clarified that the project began as a rot repair and that 60% of the deck joists are original.

Guy Sene of Indian Rock Road noted that his property is just below the Kuhns' and that he was present to support the project as it has no impact on his property.

Wayne Freedman of Tomahawk Drive supports the project, observing that the deck does not impact his property in any way.

Jonathan Braun of Scenic Drive reminded all present that the requirements for the Quarry Mountain subdivision were the result of at least five years of meetings and that because the subdivision is on a ridge, it is important to keep construction within the prescribed building envelopes. Braun has seen some exceptions made over the years and finds this concerning, as such exceptions represent a chipping away of decisions made by previous Commissions and Councils. He further believes that an architecturally pleasing remedy should be sought for the project.

Freedman responded that the residents in the subdivision are good stewards of the environment and he does not believe the Kuhns' project impacts neighbors in any way.

Kuhn observed that additional photographs taken from adjoining properties reveal that it is virtually impossible to see anything of the deck from those properties.

Brown closed the public session and brought the discussion back to the Planning Commission.

Sisich observed that not including the 14 square feet outside of the building envelope, the five foot section that was added in the current project was consistent with the PDP.

Boyle agreed, saying that if the entire deck was within the building envelope, the current application would come under design review only and that he would be able to make all the findings in favor of the project.

Harris asked if this was the case, is it true that Resolution No. 3038 would not apply to the project.

Boyle affirmed.

Sisich observed that the Commission would most likely have supported the five foot extension if it had come to them in the proper way, but that he is not pleased with the after-the fact status of the project and the 14 square feet outside of the building envelope. He added that if

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the application were changed to remove the 14 feet, he would be able to make the findings for the design review.

Harris noted that the applicant did not take out the required permit to repair the deck, did not seek design review to expand the deck, and further violated the subdivision's covenants, codes and restrictions by expanding the deck beyond the building envelope. Despite the fact that the Town Council may disagree with him, Harris cannot make the required findings.

Harris reminded all present that the staff report's recommendations are just that, and that it is the Commission that must ultimately make the findings. He clarified that he would support the staff report with the exception that he does not believe that from the downhill vantage point, the property's appearance is improved by the deck.

Brown supports the staff report and noted that as a building contractor, he is aware that the contractor was violating the terms of his license by pursuing the project without the proper permits. He further observed that if the 14 square feet was insignificant to add, it should be insignificant to remove it as well, suggesting that there are creative ways to expand the deck that still comply with the PDP.

Brown advised the applicant that there are many instances in which it is possible to construct outside the building envelope while lowering the visual profile of the feature.

Hurd suggested that the Commissioners first make a motion with regard to building outside the envelope, followed by a motion on the design review.

Discussion ensued with regard to a plan of procedure and the applicant's input was sought.

M/s Harris/Sisich, to continue the design review application to a date uncertain and direct staff to not forward at this time the Planning Commission's recommendation of denial under Resolution No. 3038.

Ayes: Brown, Harris, Sisich
Recused: Schinner
Absent: Krebs, Overberger, Zwick

ITEMS FROM PLANNING COMMISSION

Harris asked about the status of the pending project at the Red Hill Shopping Center.

Boyle replied that there is no date for their return as of yet.

Sisich asked for an update on the project at 790 Sir Francis Drake Boulevard.

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Boyle responded that Public Works Director Steve Myrter would be able to advise of the most recent developments on the project.

ADJOURN TO THE SPECIAL MEETING DATE OF July 12, 2010

Brown adjourned the meeting at 8:25 p.m.

Respectfully submitted,

Nancy Harris