

TOWN OF SAN ANSELMO

RESOLUTION NO. 3106

A RESOLUTION OF THE TOWN OF SAN ANSELMO, MODIFYING RESOLUTION NO. 3091, WHICH DECLARES CERTAIN PORTION OF THE BUILDING AT 94 BERKELEY AVE TO BE A PUBLIC NUISANCE AND ORDERS THE DEMOLITION THEREOF.

WHEREAS, the Town Council of the Town of San Anselmo on Tuesday June 13, 1989, pursuant to law, conducted a public hearing on various portions of that certain building on the real property commonly known as 94 Berkeley Avenue in the Town of San Anselmo.

WHEREAS, at the conclusion of said hearing, the Town Council declared certain portions of said building to be a public nuisance and directed the owner of said building to demolish those portions of the building which constituted the public nuisance.

WHEREAS, subsequent to said declaration to demolish, the owner of said building has provided one or both of the following, on each of the items that were made part of the nuisance abatement declaration:

1. New information, calculations and agreements which resolve the concerns which generated the nuisance abatement.
2. Applications to the Town's Planning Department to make legal, those improvements that were made part of the nuisance abatement, due to the owners failure to secure proper planning and/or building permit approval from the Town prior to construction.

WHEREAS, these new information, calculations agreements and applications represent a significant change in circumstance from that, that existed at the time the declaration to abate was issued;

NOW THEREFORE BE IT HEREBY RESOLVED that Resolution No. 3091 is, for the reasons described herein, modified as follows:

1. That the owner of said property has provided evidence that the planter boxes on the rear yard deck, do not extend further into the set back than was approved by the Planning Commission and that as said planter boxes are considered incidental architectural features added to a deck that was approved by the Planning Commission, they do not constitute a violation of the Town's zoning ordinance and therefore they are no longer considered a nuisance and the order to abate said planter boxes is hereby rescinded, and

2. That the owner has provided evidence that only one of the planter boxes located on the cardeck guardrail extends beyond the approved setback, that said planter box is less of a set back encroachment than the approved rear yard deck, that said planter boxes are considered incidental architectural features, not unlike features found on other properties located throughout the Town and therefor as incidental features, said car deck planter boxes are not a violation of the Town's zoning ordinance and therefore they are no longer considered a nuisance and the order to abatement said cardeck planter boxes is hereby rescinded, and

3. That as the owner has provided the following structural calculations, agreements and arguments as follows, showing that the front yard, car deck shear wall which is located above the middle platform and below the underside of the car deck does not constitute a nuisance:

A. That even with this wall in place, the cardeck support structure still technically defined as an open structure, i.e. a structure having 2 or more open sides

B. That the shear walled structure is structurally superior to a structure having posts and x-bracing for resisting wind and earthquake forces

C. That given that 3 sides of the structure are open, there is adequate control over the unauthorized conversion of the lower area of the carport.

D. That the location of the wall is such that it is not readily viewable by the neighbors.

E. That the property owner has agreed to mitigate any possible negative visual effect of the shear wall by painting it a dark earthtone color to blend into the hillside.

That these structural calculations, agreements and arguments when combined render the structure acceptable, to the Town, not in conflict with the San Anselmo municiple code and that the shear wall is no longer considered a nuisance and the order to abate said shear wall is hereby recinded, and;

4. That as the owner has agreed to either remove the cantilevered projections extending from the cardeck, that were not constructed per approved plans and variance, within 90 calendar days of the adoption of this resolution or to allow Town forces to enter on the premises and remove said projections should the owner fail to remove said projections within said 90 calendar day period, that as the owner further agrees to post \$250 in cash or in the form of a

certified check, payable to the Town of San Anselmo to cover the cost of removing said projections should the owner fail to remove said projection within 90 calendar days; or within 5 calendar days after the painting is completed, whichever comes first; said cantilevered projections are no longer considered a nuisance and the abatement order is hereby rescinded;

5. That as the owner has agreed to either remove the cantilevered projections extending from the intermediate platform, within 90 calendar days or to allow Town forces to enter on the premises and remove the projections should the owner fail to remove said projections within said 90 calendar days; that, as the owner further agrees to post \$250 in cash or in the form of a certified check payable to the Town of San Anselmo to cover the cost of removing said projections should the owner fail to remove said projection within 90 calendar days; or within 5 calendar days after the painting is completed, whichever comes first; said cantilevered projections are no longer considered a nuisance and the abatement order is hereby rescinded;

6. That as the owner has filed a complete variance application with the Town's Planning Department to make the deck located between the south side of the house and the south side yard fence legally conform to the Town's zoning and building codes; that as failure to comply with the Town's zoning code processing regulations constituted the basis of the nuisance abatement action with regard to this item, and that as this application represents a significant step toward resolution of the cause of the nuisance abatement, there is now cause to stay the order to abate this nuisance for a period of 120 calendar days a sufficient time to determine whether or not this item will be approved through the normal variance process. Should said deck not receive planning approval, the original order to abate shall no longer be stayed and shall be reactivated; the 2x section of said deck in controversy shall be demolished within 30 calendar days of said reactivation.

7. That as the owner has filed a complete variance application with the Town's Planning Department to make the deck located under the car deck, near ground level, legally conform to the Town's zoning and building codes, that as failure to comply with the Town's zoning code constituted the basis of the nuisance abatement action with regard to this item, and as this application represents a significant step toward resolution of the cause of the nuisance abatement, there is now cause to stay the order to abate this nuisance for a period of 120 calendar days, a sufficient time to determine whether or not this item will be approved through the normal variance process. Should said deck not receive planning approval, the original order to abate shall no longer be stayed and shall be reactivated;

the 2x section of said deck in controversy shall be demolished within 30 calendar days of said reactivation.

8. The Building Inspector is directed to conspicuously post a copy of this Resolution on the subject property and to mail a copy of the Resolution to the owner;

9. The owner or other interested person wishing to contest the validity of these proceedings in a court of law must serve the complaint or the petition on the Town Clerk within thirty (30) days after passage of this Resolution or all objections shall be deemed waived and all legal actions thereafter barred.

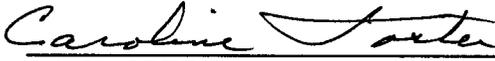
I hereby certify that Resolution NO. 3106 was duly passed and adopted at a regular meeting of the Town Council held on October 24, 1989 by the following vote:

AYES: Zaharoff, Sharp, Walsh

NOES: Chignell

Abstain: Colteaux


ANN WALSH, MAYOR


TOWN CLERK