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April 5, 2021

Elise Semonian via email: esemonian@townofsananselmo.org
Planning Director
TOWN OF SAN ANSELMO
525 San Anselmo Avenue
San Anselmo, CA 94960

Re: ***9 Laurel Avenue: Design Review/ADU Application***

Dear Ms. Semonian:

As you know, I represent Hassan Afrookteh, and Brooke Peterson, (“Owners”) the owners of the property at 9 Laurel Avenue, San Anselmo, CA (“the Property”). On or about February 4, 2021, Mr. Afrookteh submitted an application and plans for certain entitlements at the Property. Please include this letter in the administrative record, and please provide the undersigned with any and all notices, staff reports and other materials prepared in conjunction with the proceedings of April 19, 2021, or any other proceedings in conjunction with the Property.

As you may know, California Government Code Section 65852.2 was further updated, effective January 1, 2021, with specific regard to ADUs. Among other things, the 2021 amendments provide for **administrative** approval of certain of the components of Owners’ project. Section 65852.2(a)(1)(B)(i) prohibits local agencies from including ADUs in development standards, with particular reference to lot size.

Section 65852.2(a)(8)(2)(C) states that a local agency shall not establish by ordinance any limits on lot coverage, floor area ratio, open space and minimum lot size for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height. Similarly, San Anselmo Municipal Code section 10-6.205 states that “...the Town shall not apply limits on lot coverage or floor area ratio for either attached or detached dwellings that does not permit at least an eight hundred (800) square foot accessory dwelling unit that is at least sixteen (16) feet in height...”

Section 65852.2(a)(1)(D)(vii) states that “No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit.” Similarly, San Anselmo Municipal Code section 10-6.204(b)(2) states that “No setback or height limit shall be required an accessory structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit”.

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Government Code § 65852.2 (a)(2)(C)(d)(1) as well as San Anselmo Municipal Code 10-6.203(b)(1) further clarify that parking requirements are not to be imposed when an ADU is located within one-half mile walking distance from public transit and that an “accessory structure” means a structure that is “accessory or incidental” to a dwelling on the same lot.

Reference is made to the notice for a hearing on April 19, 2021, (posted on or about April 2, 2021). Among other things, said notice erroneously states the proposed lot coverage as the sum of the lot coverages for the main residence and the ADU (1,530 square feet or 38.4%) asserting that a lot coverage variance is necessary for the addition which exceeds the maximum 35% lot coverage by 136 square feet. Furthermore, the notice erroneously states the proposed FAR as the sum of FARs of the main residence and the ADU (2,066 square feet or 51.9%) asserting that design review for an additional 325 square feet is required.

Pursuant to the provisions of Government Code § 65852.2, the Town is without jurisdiction to require the referenced lot coverage variance and design review for FAR exceeding the maximum, and would be subject to mandamus relief pursuant to Code of Civil Procedure Sec. 1094.5, et seq., if it refuses to acknowledge the exemptions afforded the ADU by § 65852.2 related to lot coverage and FAR or to approve the ADU portion of the project ministerially, or if it persists on subjecting the main residence to additional unlawful discretionary reviews, by conflating the main residence lot coverage and FAR with those of the ADU . (See below).

As stated in § 65852.2(a)(1)(D)(3):

“A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered approved ministerially without discretionary review or a hearing...the permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is a single-family or multi-family dwelling on the lot.”

The same subsection goes on to say:

“If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.”

The application submitted by Mr. Afrookteh and Ms. Peterson fits squarely within the mandates of § 65852.2 and, as such, the application for the ADU is deemed approved.

We note that the California Department of Housing and Community Development (“CDHCD”) has published an Accessory Dwelling Unit Handbook (“Handbook”), updated in December 2020, in order to capture the January 2021 code amendments. Notably, at page 5 of that Handbook, the CDHCD states:

“This recent legislation, among other changes, addresses the following:
 States that an application for the creation of an ADU or JADU shall be deemed *approved* (emphasis in the original) (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days.”

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The CDHCD goes on to state that current legislation:

“Prohibits local agencies from including and development standards for ADU’s requirements on minimum lot size (Govt. Code § 65852.2(a)(1)(b)(1)...”

Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of off-street parking spaces cannot be required by the local agency.

Defines “accessory structures” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Govt. Code § 65852.2(j)(2).

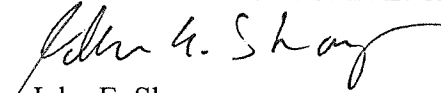
While we recognize that the portion of the project that requires design review for the upper story addition, setback variance and design review to allow parking spaces to be created in the front and side setbacks are accurately stated in the notice, the numeric data contained in the notice that purport to require a floor area exception, and lot coverage variance are inaccurate, and require correction.

With respect to design review findings, and the evidence to support them, these have been submitted and we reserve the right to address these matters in separate correspondence, for your staff report regarding the hearing on April 19, 2021.

If you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,

LAW OFFICES OF JOHN E. SHARP



John E. Sharp

JES/ss

cc: Client

Megan Acevedo, Town Attorney

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September 28, 2021

HAND DELIVERED

Mayor Brian Colbert
and Members of the San Anselmo Town Council
525 San Anselmo Avenue
San Anselmo, CA 94960

Re: *Appeal of Hassan Afrookteh: Planning Commission Action of 9/20/21*

Dear Mayor Colbert and Members of the Council:

This office represents Appellant, Hassan Afrookteh (“Appellant”), with reference to the action of the Planning Commission (“Commission”), taken on September 20, 2021, denying Design Review, Parking Variance, and Demolition Permit for 9 Laurel Avenue, San Anselmo (“the Project”). Please include this correspondence in the Administrative Record of proceedings. Please provide this office with any and all notices, agendas, and staff reports and/or other communications pertaining to the Project and appeal.

The basis of the appeal is that, in denying the Project, the Commission abused its discretion inasmuch as the Commission’s decision was unsupported by substantial evidence. The Commission abused its discretion insofar as its decision was not supported by proper findings, nor were any purported findings supported by substantial evidence. (Code of Civil Procedure 1094.5(b)). To the contrary, the evidence supported approval of the Project and the Commission acted arbitrarily and in excess of its jurisdiction.

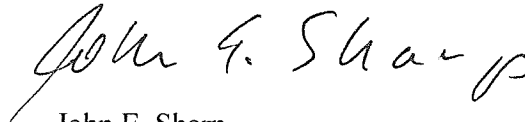
Substantial evidence is defined in, without limitation, *Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506. Among other things, the *Topanga* decision requires that the Commission determine whether substantial evidence exists to support the findings set forth in the Town Code. Moreover, the findings must bridge the analytic gap between the raw evidence and the denial of the entitlements considered by the Commission on September 20. In this instance, the failure to follow Section 1094.5, Town Code, and related authority occurred inasmuch as the Commission appears to have pre-determined that Appellant would not receive approval of anything involving a second story, then worked backward from this conclusion.

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Members of the San Anselmo Town Council
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Appellant reserves the right to supplement his appeal, including submitting further correspondence, up to and including at the time of the hearing.

Thank you for your attention to these matters.

Very truly yours,
LAW OFFICES OF JOHN E. SHARP



John E. Sharp

JES/aea

cc: Client

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October 18, 2021

Via E-Mail

Elise Semonian (esemonian@townofsananselmo.org)
Planning Director
TOWN OF SAN ANSELMO
525 San Anselmo Avenue
San Anselmo, CA 94960

Re: *9 Laurel Avenue, San Anselmo, CA*

Dear Elise:

As you know, I represent Hassan Afrookteh with reference to his appeal of the Planning Commission's action of September 20, 2021, regarding 9 Laurel Avenue. The comments set forth below are in regard to tonight's consent agenda item, Resolution Number 2021-01. Please include this letter in the administrative record of proceedings.

On behalf of Mr. Afrookteh, we suggest that the matter is not appropriate for the consent agenda, should be removed therefrom and discussion of the content of the resolution itself should occur.

We believe the resolution not to fully and accurately reflect the proceedings of September 20th as follows:

The first recital ("whereas") does not identify that, of these 54.3 percent demolition, 25.3 percent was related to the main residence, and the balance for demolition of an accessory garage structure.

The fifth recital regarding "voluntary" removal of the proposed rise resulted from applicant having been given a limited choice of second floor additionally review, and was effectively forced to remove an ADU.

Paragraph A1 (all references are to paragraph numbers as set forth in the Resolution), fails to reflect that the Commission did not consider the unusual shape of the lot, or the multitude of front and side setbacks for parking at properties in the immediate vicinity.

Paragraph A2 is inaccurate, insofar as it attempts to state a finding based on moving a parking space having a relationship to shading an adjacent structure.

Paragraph B1 ignores the fact that a two-story structure exists directly across the street from the subject property as well as others in the immediate neighborhood. Moreover, the resolution does not reflect that the Vice-Chair made good on his standing threat to find a way to deny any second floor at all, by any means.

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Paragraph B3 makes no mention of the mitigation proposed in the plans created by applicant, which would screen potential privacy and shade impacts.

In paragraph B6, the referenced Land Use section, regarding small town character and neighborhood harmony ignores a mix of architectural styles in the neighborhood and ignores recent legislation prohibiting “neighborhood character” as a basis for denying approvals.

Regarding paragraph B7, as you know, applicant seeks to refine the scope of said statement; however, applicant observes that there is no shade impact upon 15 Laurel Avenue, inasmuch as that property is located south of the proposed project.

B8 again, Plantings will screen the project from any views into 1055 San Anselmo Avenue.

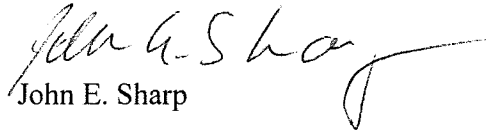
B9 again, the surrounding area contain multiple 2-story structures.

Of course, Applicant reserves the right to make such further comments as maybe appropriate in conjunction with the appeal to the Town Council; however, we believe it is important that the record and, in particular, the Resolution, accurately reflect the materials and comments came before the Planning Commission in April and in September.

Thank you for your attention to these matters.

Very truly yours,

LAW OFFICES OF JOHN E. SHARP


John E. Sharp

JES/lis
cc: Hassan Afrookteh
Brooke Peterson