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January 3, 2022

Mayor Fineman and Members of the Town Council
Town of San Anselmo
525 San Anselmo Ave.
San Anselmo, CA 94960

RE: 75 Jones Street, Assessor's Parcel No. 007-283-12, Erin Heath and Jim Rivera
Project Owners ("Applicants")

Dear Mayor Fineman and Councilmembers:

I represent Kaliel Roberts and Michael Greer (referred to herein as "Appellants"), who live at 101 Ross Avenue in San Anselmo. My clients are appealing the November 15, 2021 decision by the Planning Commission regarding 75 Jones. That meeting was held as a result of a stop-work order at 75 Jones caused by a lack of disclosure to the Town by the owners of 75 Jones regarding the extent of demolition at the project site. Despite the pattern of lack of communication and disclosure displayed by the owners of 75 Jones, the Planning Commission decided to allow the owners of 75 Jones to "amend" the February 3, 2020 grant of a Conditional Use Permit and Design Review approval to "remodel" a two-story home on a non-conforming lot in an SPD district, despite the fact that the project in front of them was actually for "new construction" of a home with a too-large FAR, that violated setbacks, and entailed disposable architectural flourishes that disturbed the neighbors' privacy and are not compatible with the neighborhood. This was error and should be reversed.

Owners in SPD districts have few binding zoning rules when developing their property. However, an SPD is not a blank check for owners to do whatever they want with their properties. Development in SPD districts must go through meaningful de novo Design Review for each application, in order to make sure that the flexibility of the SPD is not abused. Unfortunately, this did not happen at the November 15, 2021 Planning Commission review of development of 75 Jones.

It is extremely clear that when the project at 75 Jones appeared before the Planning Commission on November 15, 2021, it was a "new construction" project, not the "remodel" approved on February 3, 2020. Moreover, at the November 15, 2021 meeting, there were new neighbors who bought their home *from the Applicants* without notice that the Applicants were planning two-story construction at 75 Jones. Yet instead of conducting a de novo review of a new construction project, taking into account that neighbors were upset regarding the intrusive design of a home that violates FAR restrictions and setbacks, the Planning Commission decided to continue to treat the project as a remodel that happened to entail complete demolition of the exterior walls, and approved the project based on findings it made when the project was presented as a remodel on February 3, 2020.

This reliance on the findings of the February 3, 2020 meeting, without regard for the privacy concerns raised by a new neighbor, or a true re-evaluation of the project as new construction, not a remodel, was wrong. It rewards the lack of disclosure and communication by Applicants and punishes the neighbors who were victims of this behavior. Kaliel Roberts and Michael Greer ask the City Council to reverse the decision of the Planning Commission.

SPD Districts Give Owners Flexibility but Neighbors Are Protected by De Novo Design Review

Zoning rules exist to restrain the use of private property for the protection of neighbors, the neighborhood, and the town as a whole. In San Anselmo, SPD districts have essentially no binding zoning rules. In the place of rules there are guidelines that the property should basically conform to the zoning standards of adjoining lots,¹ and also the requirement to undergo Design Review and obtain a Change in Use Permit anew every time an SPD is being redeveloped.² Therefore, in place of strict zoning guidelines, careful review by government officials with the input from neighbors becomes the safeguard of the neighborhood.

The owners of 75 Jones (“Applicants”) complained at the November 15, 2021 Planning Commission meeting that the requirement to undergo de novo design review was too onerous. The Planning Commission seemed to agree, and simply relied on its previous findings and allowed an amendment to the previous approved plan for a remodel, instead of requiring the Applicants to submit a new plan for a new construction project. (*See, e.g.*, November 15, 2021 Planning Commission at 1:42:00, Commissioner Gary Smith: “I see elements that would make the original design problematic, however, at this stage, that is a project that was approved.”) However, the Applicants have received a tremendous benefit from the flexibility of the SPD, including the ability to unevenly subdivide their lot into non-conforming sizes and sell the larger lot for \$3.5 million the Appellants. They must live with the downside of the SPD, and the Planning Commission should have performed a new design review for a new build project, not allowing the Applicants to re-submit their project as a remodel that had undergone extensive and foreseeable demolition.

The De Novo Design Review Hearing on November 15, 2021 Should Have Treated the Project as New Construction, Not as a Remodel

The Town of San Anselmo stopped construction on 75 Jones in August 2021 because the demolition on the project exceeded the amount approved under the submitted plan. (*See* November 15, 2021 Planning Commission meeting at 1:31:50). The structure at 75 Jones was a “non-conforming structure, and by exceeding the demolition, our town rules would require it to be brought into compliance with current standards.” (*Id.* at 1:35:45). Most importantly, this would mean that the structure should conform to the 20-foot rear setback (a requirement in any relevant zoning district), which it currently violates, allowing it to loom over 101 Ross’s back yard.

The owners of 75 Jones knew early on in the process that this was going to be new construction, not a remodel, and yet they carried on without amending their permit at their own risk. At the November 15, 2021 meeting, the Applicants’ General Contractor made clear that he understood the extent of the demolition to be near-total from the very beginning. (*See id.* at 57:00, noting that structural engineering plans called for removal of 107 linear feet of walls, out of 163 linear feet total). Moreover, in January 2021, eight months before construction was ultimately stopped for demolition, the architect reached out and

¹ Sausalito Municipal Code section 10-3.909.

² Sausalito Municipal Code section 10-3.908.

confirmed with the Town staff that if they did a more extensive demolition (as the contractor was urging) that they would have to go back to the Town and seek permission. (*Id.* at 1:01:00). The architect openly stated that their contractors were telling him the building should be demolished and the slab rebuilt, he needed to keep the existing structure as a remodel in order to preserve the “odd existing setbacks.” See exhibit A, emails between the realtors for the Applicants and the Appellants. Ultimately, the extremely foreseeable complete demolition of the exterior walls took place without Applicants disclosing such, resulting in the stop work order eight months later in August 2021.

The Applicants then filed an application to allow demolition of the structure to the slab foundation and requested permission to build the previously approved design. Despite the admission that their demolition was complete to the slab, and the building would be new construction, the Planning Commission did not review the project *de novo* as new construction. Instead, they took into account how much time and money Applicants had already spent while relying on the approval from the February 3, 2020 meeting, and essentially forgave the fiction that Applicants had been passing a project that was new construction as a remodel. (See November 15, 2021 Planning Commission at 1:38:00, Commissioner Jennifer Asselstine, considering “what’s been purchased, what the investment is, what the structural design is, what the architectural design is, it would be not at all be an insignificant request to . . . change the design”; Commissioner Krebs at 1:44:20: “after-the-fact type of situation is difficult where the homeowner has invested lots of time and money”.) This generous interpretation is not merited. It is apparent that the Applicants took a calculated risk characterizing their project as a “remodel” so that they could grandfather in the non-conforming characteristics of the existing building while preserving almost nothing of the original structure. This was not a good-faith error in characterizing the home as a remodel that was prevented by the discovery of dry rot. It was known by Applicants long before the discovery of dry rot that building a two-story house where a one-story house had stood, with all new window and door openings, was impossible without complete demolition, at least by the time they spoke to contractors in January 2021. Yet Applicants failed to disclose this and seek a new, accurate permit. This is not the type of behavior the Town should reward by sweeping it under the rug and pretending they are evaluating a remodel instead of new construction.

The November 15, 2021 Planning Commission Was the First Opportunity for the Appellants To Object; Their Concerns Were Not Given the Weight They Should Have Been Given Had the Project Been Considered De Novo

The final reason that the City Council should review the plan for 75 Jones *de novo* is that there is a new neighbor at 101 Ross who bought their home from the Applicants without notice of the new two-story home Applicants intended to build. This lack of notice is important because usually a new buyer who claims ignorance of a previous public decision is considered to have been on record notice of the decision and has no right to complain; however, in this case, the actions of the Applicants and their representative make that not the case, and the Town should treat the complaints of the new neighbors as seriously as they would have had these concerns been raised at the February 3, 2020 initial hearing on the design review application for a two story home at 75 Jones.

Kaliel Roberts and Michael Greer bought 101 Ross from the Applicants after the February 3, 2020 approval of the Applicants’ plan for subdividing 101 Ross and 75 Jones and building a new two-story home at 75 Jones. The Appellants thought that they were paying \$3.5 million for a beautiful home in a central but private location. They knew that the preschool next door would likely be converted to a single-family home, but when they asked the Applicants’ real estate agent about it, instead of being given the approved plans, which would have been easy enough, the real estate agent told the Appellants that the plans for 75

Jones were “conceptual.” See **Exhibit A**, emails between the realtors for the Applicants and the Appellants. By this, the Appellants understood that there were no approved plans in place, and they would have a chance to receive notice and comment on any plans submitted. The surprise and betrayal felt by the Appellants when they saw the framing go up for two-story windows overlooking their backyard and rear of their house could have been entirely avoided had these plans been disclosed by the Applicants prior to accepting \$3.5 million from Appellants.

At the November 15, 2021 Planning Commission meeting, their first opportunity to be heard, the Appellants voiced the position that they would prefer a home on 75 Jones located in the conforming location closer to the street; their concern regarding light and privacy to the side of their home being much less than that of the light and privacy of their primary living areas at the back of their home and back yard. Instead of taking the Appellants’ concerns regarding the design of the proposed home at 75 Jones seriously, some of the Planning Commissioners stated that the placement of the home next to 101 Ross’s backyard was actually a benefit to 101 Ross, patronizingly ignoring the Appellants’ stated position on the issue.

The Design of 75 Jones Should Not Pass Design Review

When the proposed two-story structure underwent de novo design review on February 3, 2020, the Applicants still owned 101 Ross, and therefore the interests of an independent owner of 101 Ross were not represented. It is clear that had the Planning Commission performed a true de novo design review of a new construction building on November 15, 2021, as they should have, the design would not have passed muster. (See November 15, 2021 meeting: Planning Director Semonian at 46:55: If the Planning Commission changed the designation from remodel to new build, it could require them to meet the 20 foot rear setback for R2 or R3; Semonian at 1:35:45: “It would be a non-conforming structure, and by exceeding the demolition, our town rules would require it to be brought into compliance with current standards”; Commissioner Gary Smith at 1:42:00: “I see elements that would make the original design problematic”; Commissioner Daniel Krebs at 1:46:00: “I did oppose the project previously . . . it was too close to the property line, it exceeded the FAR”.)

The design of the proposed structure at 75 Jones is not only placed in the wrong spot on the property, it is also designed in such a way that it is maximally visually intrusive to the main living areas at the back of the home at 101 Ross, and the outdoor dining and back yard. (See **Exhibit B**, photos of the project.) The reasons why the proposed plan should not pass design review are outlined in the attachment to the Appellants’ Appeal, submitted on November 24, 2021, but they are also summarized below:

A. The development of 75 Jones is not functionally and aesthetically compatible with existing improvements and the natural elements in the surrounding area (Finding 1)

The design of 75 Jones has created the effect of a large, second story indoor/outdoor observation deck peering into 101 Ross’s backyard, outdoor dining, family room, and kitchen (which is entirely visible through a wall of accordion glass doors installed by the owners of 75 Jones, who renovated and sold 101 Ross to the appellants). The neighborhood is dense yet charming because the homes, whether single family or multi-family, are appropriately scaled to the urban village setting, which allows neighboring properties to maintain privacy for themselves and each other wherever possible. A two-story wall of windows is wholly out of place in the middle of a dense village setting where the two-story wall of windows faces not an expansive view, but the neighbor’s property.

B. The development of 75 Jones will cause the surrounding area to depreciate materially in appearance and value (Finding 3)

The Appellants purchased the property from the owners of 75 Jones in September 2020, believing that they were paying a premium for a large, private lot in the heart of downtown San Anselmo. The owners of 75 Jones were able to sell 101 Ross to appellants for a premium price that reflected the privacy of the site as it appeared when 75 Jones only held a 1 story structure. Appellants would not have purchased 101 Ross for the price they paid had they known of the approved plans for the proposed home at 75 Jones.

The development of 75 Jones in the manner proposed will devalue 101 Ross significantly, as the property no longer feels private. The 20-foot windows and second floor deck proposed for 75 Ross create the feeling that the inhabitants of 101 Ross are being watched, destroying the magical, private feel of the home for which appellants paid the owners of 75 Jones \$3.5 million.

C. The development of 75 Jones will unreasonably impair access to light and air (Finding 7)

The second story at 75 Jones will not only block ambient light during the day, it will also create light pollution at night. The two-story windows line the double-height living area, which will be lit into the evenings without any type of screening. These windows will glow like a lantern at night right into 101 Ross's property.

D. The development of 75 Jones will unreasonably affect the privacy of neighboring properties, including by the placement of windows and decks (Finding 8)

75 Jones's proposed second story deck and 20-foot windows facing 101 Ross unreasonably affect the privacy of 101 Ross. The Planning Commission discounted the invasiveness of the 20-foot story windows because there is no second story living area directly adjoining the window. However, the second story "library" looks out through the large windows directly into the backyard, family room, kitchen, and outdoor dining space of 101 Ross. Whoever is sitting or standing in the library will be able to look out through movie screen-sized windows to see a young family playing in their backyard.

In addition, the Planning Commission ignored how invasive the second story deck facing 101 Ross is, given privacy concerns. This deck does nothing but provide the occupants of 75 Jones with a view into the home at 101 Ross and its backyard.

The Planning Commission implicitly acknowledged the privacy impacts, but suggested mitigating them through the use of vegetative screening. In an atmosphere of drought and hardening homes against fires, there is no guarantee that subsequent owners of 75 Jones will be willing or able to maintain vegetation large enough to effectively eliminate the privacy intrusion created by the 20-foot windows and second story deck. The only effective solution is to prevent this privacy intrusion in the first place by requiring a modification to the design of the house.

E. The development of 75 Jones will be of a bulk, mass and design that does not complement the existing character of the surrounding neighborhood (Finding 9)

The 46% FAR for the proposed home at 75 Jones is an indicator that the bulk of the home is excessive. The design of the home, when viewed from 101 Ross, is extremely bulky. The way the second-floor projects towards 101 Ross creates an aggressive architectural effect that does not complement the existing neighborhood, including the graceful lines of the existing Victorian at 101 Ross.

Elimination of the 2nd story bulk created by the two-story living room, which does not create usable living space for 75 Jones but does significantly affect the use and enjoyment of 101 Ross by appellants, would improve the design and reduce the bulk and mass of the proposed home. Eliminating this architectural flourish will bring 75 Jones back within the FAR that would be allowed for a single-family home on this size lot, and improve the relationship of the home with its neighbors, without significantly impacting the usability of the home at 75 Jones.

Conclusion

The proposed project at 75 Jones as it is – a new construction project, with a too-large FAR, in violation of setbacks, and designed with dispensable architectural flourishes that upset the neighbors, should not be approved. Reversal of the Planning Commission's decision will undeniably be a hardship to Applicants, but one caused entirely by their lack of communication and full disclosure, both to the Town and to the Appellants. Applicants' lack of communication and disclosure should not reward the Applicants and punish Appellants. The Town should fully and fairly apply the zoning rules to 75 Jones, and reverse the Planning Commission's approval of the project at 75 Jones.

We appreciate your consideration of these concerns.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Elizabeth Brekhus", with a long horizontal flourish extending to the right.

Elizabeth Brekhus

EXHIBIT A

EXHIBIT A



Michael Greer <michael.greer@gmail.com>

FW: Order #: T0060066-101 Ross Avenue, San Anselmo- Lot Split

2 messages

Alisa Wynd <a.wynd@ggsir.com>

Sun, Sep 27, 2020 at 11:25 AM

To: Kaliel Roberts <kalielroberts@gmail.com>, Mike Greer <michael.greer@gmail.com>

See email chain below re the former preschool lot...

Alisa Knobbe Wynd, JD

Broker Associate

Golden Gate Sotheby's International Realty

[500 Drakes Landing Road | Greenbrae CA 94904](#)

415.298.4037 | a.wynd@ggsir.com | alisawynd.com

Top Agent Network | Marin Platinum Group | Lic #01342726

[See My Market Report](#)

From: Kira Swaim <kira@tamrealty.com>

Date: Sunday, September 27, 2020 at 10:50 AM

To: Alisa Wynd <a.wynd@ggsir.com>

Cc: David Swaim <david@tamrealty.com>

Subject: Re: Order #: T0060066-101 Ross Avenue, San Anselmo- Lot Split

That's definitely their plan. They have already started conceptualizing it and such.

Chat soon.

Kira

Kira Swaim II Owner, Tam Realty II Leading San Anselmo Team II 415.209.4750 II kira@tamrealty.com II tamrealty.com

On Sep 27, 2020, at 10:18 AM, Alisa Wynd <a.wynd@ggsir.com> wrote:

I thought the seller's plan was to convert the preschool into a single-family home. Is that not correct?

Alisa

Alisa Knobbe Wynd, JD

Broker Associate

Golden Gate Sotheby's International Realty

[500 Drakes Landing Road | Greenbrae CA 94904](#)

415.298.4037 | a.wynd@ggsir.com | alisawynd.com

Top Agent Network | Marin Platinum Group | Lic #01342726

[See My Market Report](#)

From: Kira Swaim <kira@tamrealty.com>

Date: Sunday, September 27, 2020 at 10:15 AM

To: Alisa Wynd <a.wynd@ggsir.com>, David Swaim <david@tamrealty.com>

Subject: Fwd: Order #: T0060066-101 Ross Avenue, San Anselmo- Lot Split

Please see note below from Sarah and share with buyers.

Thanks much.

Kira

Kira Swaim II Owner, Tam Realty II Leading San Anselmo Team II 415.209.4750 II kira@tamrealty.com II tamrealty.com

Begin forwarded message:

From: Ana Sarah Miranda <SMiranda@FirstAmNapa.com>

Subject: FW: Order #: T0060066-101 Ross Avenue, San Anselmo- Lot Split

Date: September 27, 2020 at 9:54:07 AM PDT

To: David Swaim <david@tamrealty.com>, Kira Swaim <kira@tamrealty.com>

Good morning David & Kira,

Please see Alisa's e-mail below. Can you please let her know that yes, the adjacent Parcel will remain zoned commercial per the Assessor.

Please let me know if you have any questions.

All the best!

Sarah Miranda

Special Projects Administrator



First American Title Company of Napa

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Napa CA 94559

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From: Alisa Wynd [<mailto:a.wynd@ggsir.com>]

Sent: Saturday, September 26, 2020 9:38 AM

To: Ana Sarah Miranda

Cc: Larson, Courtney

Subject: Re: Order #: T0060066-101 Ross Avenue, San Anselmo- Lot Split

Hi Sarah,

The buyers are asking me if Parcel 2 (former day care center parcel that is being kept by the sellers as part of the lot split) is going to be classified as a “residential” lot. Do you know the answer to that question?

Alisa

Alisa Knobbe Wynd, JD

Broker Associate

Golden Gate Sotheby's International Realty

[500 Drakes Landing Road | Greenbrae CA 94904](#)

415.298.4037 | a.wynd@ggsir.com | alisawynd.com

Top Agent Network | Marin Platinum Group | Lic #01342726

[See My Market Report](#)

Kaliel Roberts <kalielroberts@gmail.com>
To: Mike Greer <michael.greer@gmail.com>

Mon, Jan 3, 2022 at 12:49 PM

Can you find this thread in your email and download it as a pdf? Elizabeth needs it.

[Quoted text hidden]

EXHIBIT B

EXHIBIT B

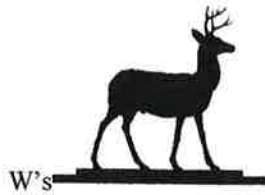




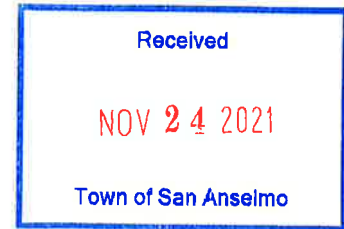








TOWN OF
SAN ANSELMO
EST. 1907



525 San Anselmo Avenue, San Anselmo, CA 94960-2682
www.townofsananselmo.org
(415) 258-4600 | Fax (415) 459-2477

Appeal Fee for Non-Applicant: \$837.00

Appeal Fee for Applicant: \$2,614.00

APPEAL OF ADMINISTRATIVE OR PLANNING COMMISSION ACTION

Appellant's Name and Address:

Daytime Phone and Email:

Kaliel Roberts and Michael Greer, 101 Ross Ave.

elizabethb@brekhus.com

San Anselmo, CA 94960, represented by Elizabeth Brekhus (415) 461-1001

Address of Subject Property (if applicable): 75 Jones

Date of Planning Commission action or date of written notice of administrative action:
11/15/2021

Action being appealed: Amendment to Specific Planned Development District, including design review findings made when approving the amendment

Reason(s) why the action should not be sustained. (San Anselmo Municipal Code Sec. 1-4.03)

See attached.

Elizabeth Brekhus
Signature of Appellant(s) *Attorney for Appellants* Date 11/23/21

A written appeal shall be filed with the Town Clerk within 10 calendar days after receipt of written notice of the administrative decision which is being appealed or within 10 calendar days after the Planning Commission decision. (San Anselmo Municipal Code Section 1-4.02)

Grounds for Appeal of the Planning Commission's Approval of an Amendment to the SPD for 75 Jones on November 15, 2021

1. The Planning Commission erred by treating the new home at 75 Jones as a remodel, despite overwhelming evidence that it is new construction, and should therefore comply with the 20 foot rear setback requirement

When the applicants came before the Planning Commission on 11/15/21, it was clear that their application to develop 75 Jones should be treated as a new build, not a remodel, and the Planning Commission erred in failing to do so.

At the 2/3/20 meeting, the Planning Commission treated the plans for 75 Jones as a remodel, based on the plans that stated "exterior walls to remain." However, by the 11/15/21 meeting, the evidence was overwhelming that the plans for 75 Jones actually called for a new build:

- The design of the house required new openings on most of the exterior walls, plus a need for taller exterior walls, which applicants knew or should have known would make the current exterior walls unusable.
- The structural engineer's drawing called for elimination of at least 107 of 163 linear feet of exterior walls, just for new openings and footings.
- Finally, by the time of the 11/15/21 Planning Commission meeting, the evidence showed that the house had, in fact, been effectively knocked to the ground.

City staff has stated that for a new build, the rules are radically different than a remodel. A new build no longer allows applicants to claim a larger FAR allowance, or eliminate the 20 foot rear yard setback. The Planning Commission erred in failing to require a 20 foot rear yard setback, and a reduction in FAR to the allowable 40 percent for a single family home on a 5,900 square foot lot, since at the time of the de novo hearing on 11/15/21, the task before them was to perform design review for a new construction home.

2. The planning commission failed to conduct a de novo review of the development of 75 Jones, as required by SAMC § 10-3.908.

Though the Planning Commission purported to make design review findings at the 11/15/21 meeting based on the findings made at the 2/3/20 meeting, this does not satisfy their burden to perform a de novo review of the plans submitted for the 11/15/21 meeting. This is particularly the case here, as there was a material change in the plans submitted. At the 2/3/20 meeting, the owners of 75 Jones submitted an application framing the development of 75 Jones as a remodel. However, at the 11/15/21 meeting, it was apparent that 75 Jones was not a remodel, but a tear down and new construction, and that different standards of development applied. Rather than focus on the fact that a tear-down had taken place and apply the relevant development standards, the Commissioners focused on whether, at the 2/3/20 meeting, the owners of 75 Jones could have foreseen that a tear-down would be required and the project would not qualify as a remodel. This was an inappropriate inquiry, as the SAMC required the Planning Commission to perform a de novo review of development within an SPD district as it stood at the 11/15/21 meeting, not cast its mind back on what was proposed at a previous meeting.

In addition, the Planning Commission focused on the hardship to the applicants if they had to modify their plans given that the applicants had likely spent money and invested in materials for the redevelopment of their second home. Such an inquiry was not appropriate and certainly did not rise to the level of a hardship that should have been given weight over the adverse impact to the appellants.

The owners of 75 Jones complained that it was unfair that they should have to undergo a de novo review because of a “small” change in the development of 75 Jones. While the conversion of the project from a remodel to new build is not a small change, the owners of 75 Jones must also acknowledge that the SPD zoning designation has tradeoffs. While undergoing de novo review for a change in plan is onerous to the owners, the owners have benefited greatly from the SPD designation. In San Anselmo, the SPD designation creates a zone with flexible development standards, which has seemingly allowed the owners of 75 Jones to subdivide its property into a non-conforming lot size, develop this small lot without regard to the FAR limitation for single family homes, and ignore a 20 foot rear setback.

The staff report makes it clear that, had the owners of 75 Jones proposed a new construction home that violated rear setbacks and exceeded FAR at the original review meeting on 2/3/20, and neighbors objected to such non-conforming plans, the plans would not have been approved as submitted. The 11/15/21 Planning Commission should have treated the new construction, non-conforming proposed home at 75 Jones with fresh eyes, and denied the change in plan, but they did not. Therefore, the Planning Commission failed to meet its obligation to perform a de novo review of the change of plan at the 11/15/21 meeting.

3. The Planning Commission erred in making Design Review Finding 1, that the development of 75 Jones is functionally and aesthetically compatible with existing improvements and the natural elements in the surrounding area.

The design of 75 Jones has created the effect of a large, second story peering into 101 Ross’s backyard, outdoor dining, family room, kitchen (which is entirely visible through a wall of accordion glass doors installed by the owners of 75 Jones, who renovated and sold 101 Ross to the appellants) upstairs bedroom and bathroom. The neighborhood is dense yet charming because the homes, whether single family or multi-family, are appropriately scaled to the urban village setting, which allows neighboring properties to maintain privacy for themselves and each other wherever possible. A two-story wall of windows is possibly appropriate for a hillside view home, where topography and lot sizes mean that privacy is not a major concern, but it is wholly out of place in the middle of a dense village setting where the two story wall of windows faces not an expansive view, but a shallow side yard, that is the neighbor’s property.

4. The Planning Commission erred in making Design Review Finding 3, that the development of 75 Jones will not tend to cause the surrounding area to depreciate materially in appearance or value or otherwise discourage occupancy, investment, or orderly development in such area.

The appellants, the owners of 101 Ross, purchased the property from the owners of 75 Jones in September 2020, believing that they were paying a premium for a large, private lot in the heart of downtown San Anselmo. The owners of 75 Jones, through their representative, actively misled the appellants by telling them that any conversion of the existing preschool to a single family home was “conceptual.” This had the effect of reassuring the appellants that no further due diligence was necessary, as no plans had yet been approved, and they would have notice and a chance to comment on any proposed home next door. Therefore, appellants bought 101 Ross without notice of the Planning Commission’s 2/3/20 approval of a

2 story home. The owners of 75 Jones were able to sell 101 Ross to appellants for a premium price that reflected the privacy of the site as it appeared when 75 Jones only held a 1 story structure. Appellants would not have purchased 101 Ross for the price they paid had they known of the approved plans for the proposed home at 75 Jones.

The development of 75 Jones in the manner proposed will devalue 101 Ross significantly, as the property no longer feels private. The 20 foot windows and second floor deck proposed for 75 Ross create the feeling that the inhabitants of 101 Ross are being watched, destroying the magical, private feel of the home for which appellants paid the owners of 75 Jones for \$3.5 million.

5. The Planning Commission erred in making Design Review Finding 7, that the development of 75 Jones will not unreasonably impair access to light and air of structures on neighboring property.

75 Jones's proposed adjacent second story wing with its 20 foot tall windows facing 101 Ross does unreasonably affect the access to light and air at 101 Ross. The Planning Commission did not consider the impact of the bulky design of the second story at 75 Jones projecting toward 101 Ross, or consider whether a modification of that design was appropriate given the adverse impact and that the second story wing is not useable living space for 75 Jones. Instead, the Planning Commission focused on the fact that that the applicants were far along in the planning process, relied on the already issued permits, and should be allowed to proceed irrespective of the impacts. In addition, the 20-foot tall windows will appear like a brightly lit lantern at night and shine light on the yard and into the home of 101 Ross. The light pollution from 75 Jones into the downstairs kitchen and family room and the upstairs bedroom and bathroom and the backyard of 101 Ross will dramatically change the nighttime environment.

6. The Planning Commission erred in making Design Review Finding 8, that the development of 75 Jones will not unreasonably affect the privacy of neighboring properties including not unreasonably affecting such privacy by the placement of windows, skylights, and decks.

75 Jones's proposed second story deck and 20 foot windows facing 101 Ross unreasonably affect the privacy of 101 Ross. The Planning Commission did not consider 101 Ross's privacy at the 2/3/20 meeting, as the owners of 75 Jones still owned 101 Ross at the time, therefore did not speak up to defend 101 Ross's privacy. However, any owner of 101 Ross not invested in 75 Jones would be appalled at the design of 75 Jones. The Planning Commission, at the 11/15/21 meeting, pretended that it was a benefit to 101 Ross that 75 Jones looms over their backyard, instead of being built closer to the street, in line with the home at 101 Ross. This ignores the fact that every zoning code lines up large rear setbacks next to each other, because yards, unlike homes, are difficult to privatize, and if a home looms right next to a yard, it disrupts a family's primary living and recreation area, the back of the home and the backyard.

The Planning Commission discounted the invasiveness of the 20 story windows because there is no second story living area directly adjoining the window. However, the second story wall of windows looks out through the large windows directly into the backyard, family room, kitchen, and outdoor dining space of 101 Ross. Whoever is sitting or standing in the second story of 75 Jones facing 101 Ross will be able to look out through movie screen-sized windows to see a young family playing in their backyard.

In addition, the Planning Commission ignored how invasive the second story deck facing 101 Ross is, given privacy concerns. This deck does nothing but provide the occupants of 75 Jones with a view into the home at 101 Ross and its backyard.

The Planning Commission implicitly acknowledged the privacy impacts, but suggested mitigating them through the use of vegetative screening. In an atmosphere of drought and hardening homes against fires, there is no guarantee that subsequent owners of 75 Jones will be willing or able to maintain vegetation large enough to effectively eliminate the privacy intrusion created by the 20 foot windows and second story deck. The only effective solution is to prevent this privacy intrusion in the first place by requiring a modification to the design of the house.

7. The Planning Commission erred in making design review finding 9, that the development of 75 Jones will be of a bulk, mass and design that complements the existing character of the surrounding neighborhood.

The 46% FAR for the proposed home at 75 Jones is an indicator that the bulk of the home is excessive. The design of the home, when viewed from 101 Ross, is extremely bulky. The way the second floor projects towards 101 Ross creates an aggressive architectural effect that does not complement the existing neighborhood, including the graceful lines of the existing Victorian at 101 Ross.

Elimination of the 2nd story bulk created by the two-story living room, which does not create usable living space for 75 Jones but does significantly affect the use and enjoyment of 101 Ross by appellants, would improve the design and reduce the bulk and mass of the proposed home. Eliminating this architectural flourish will bring 75 Jones back within the FAR that would be allowed for a single family home on this size lot, and improve the relationship of the home with its neighbors, without significantly impacting the usability of the home at 75 Jones.