

DRAFT MINUTES
TOWN OF SAN ANSELMO PLANNING COMMISSION
Monday, November 15, 2021

This meeting was conducted via Zoom.

COMMISSIONERS PRESENT: Chair David Swaim, Vice Chair Thomas Tunny, Tim Heiman, Leyla Hilmi, Daniel Krebs, Gary Smith, Jennifer Asselstine.

COMMISSIONERS ABSENT: Commissioners Swaim, Hilmi and Heiman left after item 5B.

1. CALL TO ORDER

Chair Swaim called the meeting to order at 7:00 p.m. and announced how the public may participate in the meeting.

2. OPEN TIME FOR PUBLIC EXPRESSION

No one wished to speak during open time.

3. PLANNING DIRECTORS REPORT

Planning Director Elise Semonian had nothing to report.

4. APPROVAL OF MINUTES

The Planning Commission unanimously approved the July 19, 2021, minutes with a correction to the spelling of Commissioner Heiman's name.

5. PUBLIC HEARINGS

- A. ORDINANCE TO IMPLEMENT SB 478 AND AB 970** - Consider "An Ordinance of the Town Council of the Town of San Anselmo Amending Title 10 of the Town of San Anselmo Municipal Code to Comply with 2021 Senate Bill 478 and AB 970" and make a recommendation to the Town Council. The ordinance increases floor area in the commercial zoning districts for housing development projects and allows required parking to be reduced for an electric vehicle charging station and any associated equipment.

Elise Semonian presented the staff report and recommended that the Planning Commission recommend the Town Council adopt the draft ordinance. In response to a question, she confirmed there is currently no floor area limit in the multifamily zoning districts.

Chair Swaim opened the public hearing. No one from the public wished to comment.

The Consensus of the Commission was that the changes are appropriate to comply with the State law and recommended the Town Council adopt the ordinances.

It was moved/seconded Krebs/Asselstine to approve the staff report recommendation to recommend that the Town Council adopt the ordinance. The motion carried unanimously.

- B. ORDINANCE TO IMPLEMENT AB 345** - Consider “An Ordinance of the Town Council of the Town of San Anselmo Amending Title 10 of the Town of San Anselmo Municipal Code (Planning and Zoning), Chapter 6 (Accessory Dwelling Units), adding new Section 10-6.209 Sale of Accessory Dwelling Units for Low and Moderate Income Housing” to comply with AB-345, which requires local agencies to allow certain nonprofit corporations to sell an accessory dwelling unit to families of low or moderate income if certain conditions are met.

Elise Semonian presented the staff report and recommended that the Planning Commission recommend the Town Council adopt the draft ordinance. She answered commissioner questions.

Swaim questioned if the ownership would be like a condominium where the owner does not own the land and just the structure. Staff and the town attorney indicated that the sale may be set up like a condominium, but ownership could take other forms. Semonian noted that since SB 9 passed it is unlikely that anyone will use this provision, since SB 9 it is more lenient. However, it may be useful in a multifamily or commercial zone where SB 9 does not apply.

Staff clarified that the buyer must be lower income.

Chair Swaim opened the public hearing. No one wished to comment.

Commissioner Hilmi asked what the concerns were regarding the ordinance the first time it was heard by the Commission. She had no objections to the ordinance.

Swaim indicated he had been concerned with ownership and if there would be any requirements for maintenance. Krebs believed there may have been concern regarding the general impact on the Town with more lots and neighbors and the inability to impose conditions, but they would like to promote affordable housing. Staff believed the Planning Commissioners had been concerned that anyone could form a nonprofit and had questions about enforcement.

The Commission asked how value would be calculated and who would calculate value and price. Staff indicated the State defines affordable income levels and the Town will be adopting the State definitions with adoption of the SB 9 ordinance. Marin Housing is typically retained to value units for the Town based on the income level and size of the household that is purchasing the unit. The unit is restricted at resale and could not be resold for market rate, but some appreciation is allowed. For sale units are typically for moderate income households, as lower income households may not qualify for a loan. But there could be a special loan program. Purchasers must obtain their own financing. Regarding enforcement, currently San Anselmo contracts with Marin Housing to do enforcement. A nonprofit like Habitat for Humanity may do their own enforcement. Staff would need to ensure there is some provisions for enforcement of the conditions in the agreement.

Commissioner Krebs could not see anything in the ordinance about controlling the pricing on the sale of the unit. Town Attorney Acevedo indicated details would have to be worked out and the Town would need to review the agreements and ensure there are provisions in the transaction agreement. She did not have any other recommendations for giving the town greater control or enforcement, or incentives. A conditional use permit would be required from the Planning Director and conditions may be imposed.

Chair Swaim suggested the town could allow owners to partner with nonprofits to build the unit itself, and then sell it to someone, to encourage more ADUs to be built.

Commissioner Hilmi questioned how often it would be used for affordable housing by nonprofits, given the cost of construction in Marin. Semonian responded that Habitat for Humanity has been doing these projects in other places and the addition of the ADU is what helps the project financially, where a single unit is not feasible.

Commissioner Asselstine suggested the Town consider having an ordinance in line with SB 9, as that may be used more frequently, to make investment by nonprofits more palatable and more attractive.

It was moved/seconded Heiman/Krebs to approve the staff report recommendation and recommend the Town Council adopt the ordinance. The motion carried unanimously.

C. 75 Jones – Demolition Permit/Amendment to Specific Planned Development.

Consider an amendment to a Specific Planned Development at 75 Jones that allowed conversion of a preschool into single family residence and a second story addition. The amendment is requested for a demolition permit to exceed 50% wall demolition and to construct the approved structure.

Commissioner Hilmi recused as she lives within five hundred feet of the site. Commissioner Heiman recused as he owns property within five hundred feet of the site. Chair Swaim recused, as he did with the initial application, as the applicants were clients and his wife represented the sale of 101 Ross. The three Commissioners left the meeting.

Elise Semonian presented the staff report and a history of the project. She indicated that she stopped work at the site in August since the project exceeded the demolition that was approved by the Planning Commission. She noted that the demolition that was approved did show that there would be new openings on every wall on the lower level, that all interior walls would be demolished, and that the slab foundation would remain. Wall area was removed for new footings. The Town Director of Building and Public Works and the Building Official supported the proposed demolition as necessary based on the site conditions and they recommended not preserving the remaining small areas of wall. The site is in an SPD zoning district, which gives the Planning Commission much discretion as to what to approve, subject to design review and a conditional use permit. The Planning Commission can make the finding that what has taken place is consistent with the approved plan and allow the project to continue as

designed and approved before. The other extreme is to find the project is no longer a remodel but a full demolition and require the project to meet the 20-foot rear setback required for the adjacent zoning districts and require parking to meet the 20-foot front and 8-foot side setbacks. Or, the Planning Commission has discretion to apply different standards to the site, including more restrictive standards such as those for single family residences. She noted that a lot of time and funds have been invested into the project and there is some value in the foundation that is retained. The Planning Commission may also find that this is a new residence but allow the proposed setbacks based on the unusual situation at the site and how existing buildings are situated. Or, the Planning Commission may approve the project with modifications, such as reduction in window area or massing. Staff did not make a recommendation since there are so many options for the Planning Commission to consider. Staff recommended that the Planning Commission hold a public hearing, give staff direction, and continue the item to December 6, assuming there is a quorum for the hearing, so staff may return with written findings in support of the Planning Commission direction.

Building Official Erica Freeman and Town Attorney Megan Acevedo were present.

In response to a question by Commissioner Smith staff indicated that the wall placement and design matches the approved project and there has been no material changes beyond removal of walls.

Commissioner Smith questioned why the contractor removed the walls. Building Official Freeman indicated that she looked at the foundation plans and structural drawings and she believed they tried their best to keep what was there and existing and that nothing has changed other than removing framing. She believed the contractor removed the framing because it was rotten.

Commissioner Smith asked if she would have called in the structural engineer to validate that the building materials that were in existence could not be retained because they no longer had ductility. He asked if her opinion that they could not support the structure was just an on-site evaluation based upon apparent rot and other deterioration. Freeman indicated there were only a few walls remaining. Director Condry looked at the framing and agreed that it needed to be removed. It is not ductility and wood but, it would be a concern to keep moist material, pests, and dry rot in a new wall that could erode over time. The inspector did ask an engineer to come out when they changed some of the strong wall placements. So, the strong walls were added in addition to the existing foundation, and there were variations from what they were building compared to the approved plans.

Ronan O Dea, project general contractor for 75 Jones, indicated that by June 30 the majority of the demolition had been completed. He indicated that on July 15 Town inspector DeWayne Starnes conducted a foundation inspection, reviewed the plans with him and identified no issues with the demolition or construction. On July 26 they had another foundation inspection and Starnes requested some additional information on the foundations, but again did not raise issues with the demolition. On August 20, Inspector Lisa Sarto called the job site and informed him that she had been instructed to red tag the job and cease construction immediately. She

indicated that they were in conformance with the approved plans and the discovered site conditions. The discovered site conditions included severe areas of dry rot and substandard framing that had been removed. Pictures of these conditions were submitted to the Town on September 2. Freeman and Condry reviewed the as built conditions, and both agreed that the building was in conformance with the approved plans and that any demolition that was performed was necessary. Mr. Condry advised them to amend the demolition permit to include the removal of all the remaining exterior walls. The project has approximately 163 linear feet of exterior wall. The approved structural drawings call for new framing and sheathing for approximately 107 linear feet of the walls, or more than 50%, prior to discovering additional dry rot. As the general contractor for the project, he is responsible to construct a building that is in conformance with state and local jurisdiction codes, approved structural plans and calculations, and approved architectural drawings. He believed the demolition facilitated this and was not illegal demolition.

Luke Clark Tyler, project architect, believed the issue under consideration was the extent of the demolition and not real estate disclosures or design review, and the design was approved in February 2020. In February he demonstrated that creating a single-family home would be a benefit to all surrounding properties as opposed to a commercial or multifamily unit. It would reduce the amount of traffic on the street from when it was a preschool and be the best development type for surrounding property values. The additional square footage would best be accommodated as a second story above the existing building footprint, since the current location provided the most light and air for all the surrounding properties. The structure is located at the corners of all the surrounding structures, which means that everyone has the opportunity for lighting on all sides of their home. The change of use also provided more privacy, which was augmented by new trees along the north edge that borders 101 Ross. Adding the second story above the existing footprint was intended to be a quicker build and a shorter period of disruption for the neighborhood. The style of the home was attempting to transform the oddly shaped conical structure into a more residential structure that can bridge the numerous two-story box duplexes in the surrounding neighborhood with the single-family vibe that also exists in that area. The project is in a unique SPD zone which meant it had no specific zoning code. Because they took the single-family route, they kept closely in line with the standard residential requirements just to ensure that it would fit in. The structural plans submitted to the building department showed new footings and strong walls required for the new openings, which meant an increase in demolition. The demolition plan he submitted for the building permit application was the same as the Design Review demolition plan with the addition of some notes, the first of which said, "see the structural plans for more info and demo." That note was added because the structural plans show the information about the required footings and strong walls. When they talked with contractors they suggested they replace the entire structure for the sake of cost. He reached out to the planning department in January and found out they would have to return for Design Review if they rebuilt and replaced the slab. They decided on extra construction costs to retain the design of the project, all the engineering that had been done. It would generate less waste and save on concrete, which has a significant carbon footprint. They encountered additional issues with raw and insufficient sheathing, which did require replacement for health and safety of the final product. There are always unknowns in construction, and extensive remodels are especially prone to this as things

are uncovered. He noted that he had prior Planning Commission approved projects with similar conditions that were not returned to the Planning Commission. As the general contractor noted, there were two building inspections on site after demolition that did not raise any flags. The general contractor reviewed the rotten sheathing issues with the building department. The project was put on hold once the building was almost entirely framed. The Building Official and Director of Public Works recommended replacing the remaining portions of wall. The design is the same, the old slab is the same, the footprint is the same, the finished product and landscaping will be the same. The owner has offered to add more trees to address the complaints of 101 Ross. He requested approval of the project at this meeting so construction can resume, or at least provide direction to resolve the issues administratively.

Erin Heath, with Jim Rivera, owners of 75 Jones, indicated they felt extremely vulnerable going through the process at a distance from London. She indicated it was stressful and financially destabilizing to have the project stopped several months into building just after their family made a difficult and hurried move. They were confused that they had to return to the Planning Commission due to their contractor demolishing a wall and a quarter to address health and safety issues that the building department deemed necessary. They paid significant fines, fees for new architectural plans and are worried their project is in jeopardy. They had support from their neighbors for the original project, who welcomed the aesthetic improvement and decrease in traffic and noise. They were determined to salvage and reuse what they could and work with existing conditions to minimize the environmental impact, as well as the impact of construction on the neighbors. Using the existing structure meant that there would be more light, air and privacy for 101 Ross and 75 Jones. They are building the approved design within the existing footprint on the original slab. The structure has already been framed, and the windows and doors have already been purchased. Nothing about the project has materially changed. If a missed procedural technicality were to result in the demolition of the structure, the financial impact would be devastating and the environmental impact would be significant. It would also mean a longer overall project time frame creating further disruption for their neighbors and it would set a potentially perilous precedent for development in the Town going forward. They asked the Planning Commission to approve the demolition plan at the meeting so as not to further delay the project or compromise the integrity of the work that has been completed to date.

Vice Chair Tunny opened the public hearing.

Elizabeth Brekhus, attorney for Kaliel Roberts and Michael Greer, submitted a letter to the Planning Commission. The Commission confirmed receipt of the letter. Her clients asked the seller's realtor about the plan for the property before the close of escrow and were told the project was conceptual. They bought the property with no knowledge the design was approved. She reviewed a PowerPoint presentation that illustrated the views from 101 Ross Avenue towards the project under construction. They were concerned with a 20-foot-tall window opening for a wing that extends very close to their backyard, outside deck, upper deck, kitchen, a bedroom and family room and dominates the view from the backyard. She pointed out second story windows and decks at 75 Jones. She requested the upper floor area that is not living area to be removed and elimination of the 20-foot-tall windows to reduce the huge mass

and scale of the home. This would not eliminate any usable floor area for the applicants and just eliminates a grand living room with two story ceilings. They requested this because it is so close to her client's residence and was approved with no objection since the applicants owned 101 Ross Avenue at the time. She acknowledged that an after-the-fact approval is difficult, and it is hard to know what to believe about whether it could be foreseen or not. Here, the applicants did foresee that it was going to be a lot easier and that there could be problems. The circumstances are now different. Now neighbors are objecting and it is new construction. The site received a square footage bonus because it was a remodel. She contended the construction is for a single family and should meet single family regulations. She believed the Commission would not have approved 20-foot-tall windows overlooking the backyard of a neighbor if the applicants did not own 101 Ross. She believed they would have scaled it back and approached a compromise position to eliminate the second story wing that extends close to 101 Ross, scaled back the windows, and required trees. She did not believe they could make findings seven, eight and nine as stated in their letter.

Annelise Bauer, resident, struggled to understand how a project that was approved by the Planning Commission over a year ago can be subject to a de novo review when the only change of plans was immaterial and was necessitated by rot and the need for health and safety and was met with the building departments approval. People may not invest in the town if latent defects after plan approval can subjected homeowners to the possibility of completely uprooting their plans and investment. The applicants relied to their detriment on the planning commission approval based on the approved findings, none of which is impacted by the minor change and demolition. She believed findings seven, eight and nine clearly indicate that impact on the neighborhood was considered and decided. In addition to stifling development, it will enable neighbor discord and discredit a process intended to support a homeowner right to develop their own property in accordance with the planning commission approval. She urged the Planning Commission to uphold the past approval of the project.

Chris Nelson spoke in support of the application. He believed it would add beauty to the street and is in keeping with the surrounding development and reduces noise, traffic and parking issues and makes the area safer for children walking or biking to and from school. He indicated at least three children have been hit on bikes over the last few years by cars hurrying to and from school, and one of them was his own son. The applicants are conservation minded and have restored other projects in the town. She recalled her similar experience with a Planning Commission approval where they were forced to hire a lawyer because the neighbors wanted to stop their project. She did not believe the project is about a small section of rotted wall demolished but over a disgruntled neighbor disputing a project that was approved after thorough review and approval by the Planning Commission. Rather than supporting the homeowners who have a long track record of careful thoughtful development, the Planning Department has reopened consideration of the already approved project after the homeowners have spent incredible sums of money. She recommended approval of the project.

Applicant Erin Heath indicated they are trying to resolve the concerns with the neighbors. The trees planted on the fence line will grow up to 30-feet tall and will help obscure the window. The window does not overlook anything and is a design element. There is no privacy concern.

She offered to do whatever they can to address any issues of impact that might happen because of the window. They responded to the neighbor through their lawyer and had never heard back. They offered to plant additional evergreen trees to address privacy and view concerns. She felt that this was an issue between homeowners and a private real estate issue. The landscaping plan has not been implemented due to construction. There will still be several trees installed.

Vice Chair Tunny closed the public hearing.

Commissioner Tunny asked about the town's obligation and rights with respect to changes in circumstances where it leads to additional demolition, and the level of assessment.

Semonian indicated that everything in the SPD district requires design review and a use permit, unlike most single-family districts. The town did not have a specific demolition permit process at the time this project was approved. The issue here was that they just strayed from the plan that the Planning Commission approved and exceeded the demolition. The project's status as a remodel was important to the Planning Commission when they considered the project. But the Planning Commission can make the determination that the demolition is in conformance with the approved plan.

He questioned if they have to reconsider the design review approval since the design is the same, other than having additional footings and shear walls and other things to strengthen the project.

Town Attorney Acevedo indicated that the Planning Commission may rely on the original findings if they believe that all the findings that were made with the original approval still stand. The SPD approval would just be amended to reflect the change in the demolition. The original conditions limited demolition to what was in the approved drawings. They can consider if it has been exceeded to an extent that they should revisit the project as a new project. The SPD zoning allows much discretion.

Commissioner Krebs indicated that the Planning Commission sometimes requires a project to comply with setbacks when a house is demolished. He voted against the project initially, but he was the only one. He wondered what kind of review was required at this stage.

Semonian indicated this project was unique in that the existing residence would not be considered nonconforming due to the SPD zoning district status. It is unlike a typical single-family residence in a setback, which would be required to be brought into conformance with current standards if demolished. Here the Planning Commission is not required to do that and can just amend the development plan.

Commissioner Asselstine indicated she was not on the Commission for the initial review. She read the minutes, looked at the plans and visited the site. She indicated the house is an anomaly because of the previous position of the preschool. The applicant described their commitment to keeping as much as they could. She noted the architect described that the

location had a benefit to 75 Jones and 101 Ross by bringing light into both structures. She imagined if the rear setback had been required the two houses would have been much closer together and there would have been exterior walls facing exterior walls. The Victorian house has a lot of glass on the side and a lot of light comes in from the south side. So, she believed the current placement of the structure was a benefit to 101 Ross. She said it would not be insignificant to request a change to the approved design at this point as there has been an investment, materials have been purchased, and there is a structural and architectural design. The actual design has not changed. The living space on the second floor is about 17 or 18 feet back from the 20-foot glass wall. No one will be standing at the window like if there was a floor adjacent to the window. She believed there are still some issues that could be ameliorated by additional trees that keep their leaves throughout the year. She did not believe it mattered if she liked the design, but she believed it is in keeping with the height of the multi-unit structures on either side of it and is shorter than 101 Ross. Both sites will benefit from additional screening as they have balconies facing each other. They could put coatings on the windows to create translucency until the vegetation grows taller.

Commissioner Smith agreed with Commissioner Asselstine's assessment of the current site conditions. He would not review the previous decision that was made by the Planning Commission. He believed elements of the original design were problematic. However, at this stage, this is a project that was approved. He believed many of the circumstances that had occurred during demolition were unforeseen and often happen with older structures. Since they have not deviated from the design that was approved, he would not request any significant changes to the structure. He noted the timeline is complex and it may not be an issue for the Planning Commission. The approval was on February 3, 2020, they do not know the actual dates for the closing and sale of 101 Ross or when construction started at 75 Jones. He questioned the window of time between the approval and the actual work and when the new occupants took possession of 101 Ross.

Commissioner Krebs acknowledged that projects are difficult when they come in after the fact. He felt they should take into consideration that the homeowners have invested a lot of time and money into building and the approval by the Planning Commission. He considers unforeseen circumstances versus something that was under the control of the applicant. He believes these were unforeseen circumstances, acknowledging that in hindsight one could say an old house will have dry rot they should investigate. He would give them the benefit of the doubt and believed that they acted in good faith and it was not done with the intention of trying to avoid greater scrutiny at the initial project approval process. He would not comment on the disclosures related to the purchase of 101 Ross. Commissioner Krebs was concerned with health and safety and the quality of construction. Nothing has changed that would have a material impact to the neighbors. He opposed the project previously because it was too close to the property line, and he did not believe findings could be made for a special exception to exceed the floor area ratio. But he believes there is no significant impact on privacy since, even though there is a 20-foot window, there is not a floor that would allow views out. So, he does not see the window as a material impact. The structure is close to the property line, but the setback has not changed. He leaned towards approving the project.

Acting Chair Tunny agreed that the real estate transaction is irrelevant. He believed 101 Ross benefits from the design of the project, which minimizes impacts on privacy, light and air. There would be different issues raised with moving the house forward. He is inclined to approve the project. He questioned what screening is in the landscape plan.

Semonian reviewed the approve landscaping. The Commission could require major trees if they do not believe the plan is adequate. She noted that Marin Water will not allow trees to be planted during the drought and Ross Valley Fire must review the plan and will not allow planting within five feet of the house. They may allow additional landscaping at the border if it is not pyrophytic. She noted all the existing landscaping is likely on the 75 Jones site, because it appears the fence is not located on the property line. A new tree is proposed.

The Commissioners supported additional trees to increase year-round screening at the site, subject to fire department approval.

Town Attorney Acevedo clarified that they are making an amendment to the original plan. They are acknowledging that there has been additional demolition beyond what was originally approved. The original findings can still be made, despite the changes.

Commissioner Krebs moved to approve the amendments for additional demolition based on the findings that were articulated originally for both the Conditional Use Permit and the Design Review and based on the prior conditions of approval since the Commission has determined that there has been no material changes to the project and the same findings and conditions of approval can be made today as made for the first approval with an additional condition of approval that the applicant develop a landscape plan that would be approved by the Planning Director that would provide for year-round screening by trees or other plants approved by the Planning Director and with input by both the applicant and any neighbors. Commissioner Asselstine seconded the motion and it carried 4-0-3 (Commissioners Swaim, Heiman and Hilmi abstaining due to conflict of interests and not present at the meeting).

Elise Semonian announced that the approval is subject to appeal if the appeal is filed within ten calendar days and filed with the town clerk with the appeal fee.

6. ITEMS FROM PLANNING COMMISSION

None.

7. ADJOURN

Vice Chair Tunny adjourned the meeting at 9:04 p.m.