

Carla Kacmar

From: allison waugh <allisonrwaugh@gmail.com>
Sent: Friday, January 7, 2022 8:58 AM
To: Town Council
Subject: 75 Jones

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: External Sender

Dear Council Members,

I am writing in support of the home construction project at 75 Jones. I have been in my home on Sunnyside Ave for almost 10 years and have witnessed Erin and Jim carefully and respectfully develop the property they purchased from the Seminary a decade ago. Their work has always been done beautifully and with integrity, preserving and upgrading the property. I have no doubt that the current plan for 75 Jones will be a vast improvement, adding another wonderful single family home to our neighborhood. I am disheartened to read the allegations by my new neighbors that Erin and Jim are anything but good, honest people, and I hope this situation will be remedied quickly so that construction can continue without further delay.

Sincerely,
Allison Waugh
107 Sunnyside Ave

Carla Kacmar

From: Paula Connelly <paulafconnelly@gmail.com>
Sent: Friday, January 7, 2022 8:20 AM
To: Town Council
Subject: Fwd: 75 Jones Project

Follow Up Flag: Flag for follow up
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San Anselmo Town Council Members,

I understand there has been an appeal filed on the 75 Jones project that will be reviewed at your Tuesday, Jan 11 meeting. Please see my email below which I shared with the planning commission prior to their unanimous approval of this project. I continue to support this project. As discussed during the planning commission meeting, there is minimal impact to the privacy of the neighbors as the living space is set far back from the new windows. And, there has been no material change to this project since its original permit approval. The small changes were made to address a wood rot issue that was uncovered, but do not impact the neighbors at all. Erin and Jim Rivera are long-time San Anselmo residents who have raised their daughter in our town. They are people of the utmost integrity who have given generously to our community, both financially and in volunteer support. They have invested significant resources to this project, and reversing previous approvals would be devastating to them.

Please back up the decision made by the planning commission.

Thank you,
Paula Connelly

----- Forwarded message -----

From: Paula Connelly <paulafconnelly@gmail.com>
Date: Fri, Nov 12, 2021 at 4:31 PM
Subject: 75 Jones Project
To: <planning@townofsananselmo.org>

Dear Planning Department,

I am writing to support the proposed amendment to the project at 75 Jones in San Anselmo. As a neighbor, I believe this project will enhance the neighborhood. This new home will be much more visually pleasing than the previous pre-school which was in poor condition, and an odd shape that did not fit with the neighborhood. In addition, a home vs. a pre-school will significantly decrease traffic and noise in the neighborhood. Erin Heath and Jim Rivera purchased this unconventional property from the Seminary several years ago, and have been slowly investing in each piece to improve it. They have a track record of slow, thoughtful, and careful improvements, all of which have enhanced the entire neighborhood.

We are currently living directly next to an extremely large construction project happening at 208 Crescent Road. The design is quite modern, and does not fit with the aesthetic of the neighborhood. And, the construction has had a huge impact on our lives (excessive noise & dust, parking, privacy, etc.). However, my husband and I respect the Brewsters

right to improve their property and create a home that best meets their needs. Erin and Jim deserve this same opportunity.

I believe the project at 75 Jones should be approved to move forward.

Sincerely,
Paula Connelly
200 Crescent Road
415-269-3453

Carla Kacmar

From: Caroline Dowd <carolinedowd@me.com>
Sent: Friday, January 7, 2022 6:46 AM
To: Town Council
Subject: 75 Jones

Follow Up Flag: Flag for follow up
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Dear council members,
We are writing today to express our continued support for the project at 75 Jones and for Erin Heath and Jim Rivera as long-time residents of San Anselmo.

We have witnessed the time, care and consideration Erin and Jim have shown with each project they have undertaken. We appreciate how they sympathetically renovated their first home on Tunstead Avenue and then went to great pains to preserve and update their former Victorian home at 101 Ross. The love and respect they felt for that home is apparent to anyone who sees it. In fact, their ongoing work over the years to beautify and improve their property has been a benefit not just to them, but to their neighbors in the downtown area. This is a family who cares deeply about and values our community. These are not developers.

This focus on care and taking the time necessary to get the details right is emblematic of who Erin and Jim are as individuals. Our paths first crossed at Wade Thomas Elementary school when my son and their daughter became fast friends in Kindergarten. Over the course of the next several years we came to know Erin as an advocate for and supporter of our sweet elementary school and the teachers who taught there. She was a regular volunteer in the classroom, a member, with her daughter, of the Children For Change Club, and she helped bring to Wade Thomas, and then coach, the first Odyssey of the Mind program. Erin and Jim regularly opened their home for Halloween gatherings, kid's book clubs and holiday cookie decorating parties. Their home, whether the house at 101 Ross, or the apartment at 100 Mariposa -which is where they lived for much of the time we've know them- has always been a place of warm welcome to the benefit of many families over the years.

We are sharing this with you in the hope that you understand this is a family of the highest integrity, thoughtful community members who operate with consideration for others and a broader perspective, versus selfish intent. In contrast, we hope you will see that it is exactly selfish intent driving the appeal of the renovation of 75 Jones and we ask you to reject it and allow Erin and Jim to finish their project.

With regards,
Caroline Dowd
(415) 755-7428
Sent from my iPhone

Carla Kacmar

From: Erin Heath <heath.erin@yahoo.com>
Sent: Friday, January 7, 2022 4:24 AM
To: Town Council
Cc: jimrivera1@gmail.com
Subject: Regarding upcoming item on 75 Jones

Follow Up Flag: Flag for follow up
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CAUTION: External Sender

Dear Council Members,

We are reaching out about an item related to our building project at 75 Jones which will be reviewed in your upcoming Town Council meeting on January 11th. This is one of several projects we've undertaken over the last 10+ years as we've attempted to update what was a somewhat neglected and strange property we purchased from the Seminary many years ago. In each instance we've worked closely with the town to carefully update and preserve the different structures and to rectify complex mechanical/utility issues. We consulted the planning, building and fire departments as well as public works before we undertook a subdivision of 101 Ross and began architectural plans to convert the structure at 75 Jones from a preschool to a single family home, which we hope to live in ourselves. It's been a slow process as we are not developers and have lived at the property throughout the different projects. You will see detail about our project at 75 Jones in the staff report from Elise and our attorney will be submitting a letter in response to an appeal filed by our neighbors, but we wanted to reach out ourselves, in case you have any questions about the project. We'd also be happy to connect you to our architect if you have specific questions about the design, or if you'd like to walk the site our contractor can meet you there. Alternatively, you are welcome to take a self-guided tour. We'd offer to meet you there, but recently moved to London for family reasons.

Our architect is Luke Clark Tyler:

luke@fieldissuedesign.com

(646) 599-3218

Our contractor is Ronan O'Dea:

(415) 385-4097

Erin's number is +447882643605, Jim's number is +447306129638

We hope you are happy, healthy and well and 2022 is off to a good start!
Erin Heath & Jim Rivera



1111 Broadway, 24th Floor
Oakland, CA 94607-4036

T: 510.834.6600
F: 510.834.1928

www.wendel.com
tawilliams@wendel.com

January 7, 2022

VIA E-MAIL

Mayor Fineman and Town Councilmembers E-Mail: towncouncil@townofsananselmo.org
Town of San Anselmo
525 San Anselmo Avenue
San Anselmo, CA 94960

**Re: January 11, 2022 Town Council Meeting
 Response to Appeal Regarding 75 Jones Street Conversion Project**

Dear Mayor Fineman and Town Councilmembers:

We submit this letter on behalf of the owners of 75 Jones Street, Erin Heath and James Rivera (“Applicants”) in advance of the January 11, 2022 Town Council meeting. Erin and Jim have been deeply involved in the San Anselmo community for more than a decade. They lived in San Anselmo, raised their daughter Georgia there, own property in the Town and have worked closely with Town staff on multiple successful projects on the former Seminary property that includes 75 Jones.

On the subject project, as well as all previous projects, Erin and Jim have worked in an open, collaborative and productive way with the Town and neighbors to execute successful improvements that benefit the community. Their commitment, reputation and integrity is well-known.

This letter is in response to the appeal filed by their neighbors Kaliel Roberts and Michael Greer (“Appellants”) – who bought a neighboring property (101 Ross) from the Applicants in October 2020. Appellants challenge the Town Planning Commission’s action approving an amendment to the Specific Planned Development Use Permit pertaining to the conversion of the former preschool building at 75 Jones Street to a single family residence.

I. Background

The genesis of this action is that on February 2, 2020, the Planning Commission (“Commission”) approved the Applicants’ design review, use permit and subdivision to divide a lot and to approve a Specific Planned Development to redevelop the preschool into a single-family residence with a second story.¹ This approval was not appealed or challenged.

¹ The February 2020 meeting materials were accessible via the City’s website to any member of the public, including Appellants (who purchased 101 Ross in October 2020).

Construction of the residence at 75 Jones commenced in May 2021. Unanticipated dry rot was discovered during demolition – a commonplace occurrence – and required additional wall material to be removed. The Town’s building department conducted inspections of the site in July 2021 and did not flag any issues. Framing work commenced and was largely completed by August 2021. On August 23, a city inspector (Lisa Sarto) inspected the plans, spoke with the contractor and concluded the work was in conformance with the approved plans and discovered site conditions which included areas of dry rot and substandard framing of the preschool building and left the site. She returned the same day with a stop work order and the Town indicated that an updated demolition plan was required.

The Applicants’ contractor immediately met with Town building and public works officials to review the conditions and – as the staff report acknowledges – the Town’s Director of Public Works and Building and the Building Official agreed that the demolition work done was “unavoidable,” and that the structure “is constructed over the original building slab foundation and the location of the structure had not changed.” (11/15/21 PC Staff report at p. 4.) At that point, Town planning staff required the Applicant to return to the Planning Commission with a revised demo plan to continue and complete the work of the same project approved in February 2020. No changes in the approved project or design were proposed.

At its November 15, 2021 meeting, the Commission unanimously approved the amendment to the Specific Planned Development Use Permit and to allow demolition of the structure to the slab foundation. That approval by the Commission was based on its prior unchallenged approval and design review findings from its February 3, 2020 meeting and the flexibility provided by the Specific Planned Development (SPD) zoning designation of the property.

II. Appeal

Appellants challenge the Commission’s November 15th decision, essentially arguing that the Commission should have conducted a de novo review of the entire project because of the additional unanticipated demolition required during the conversion of the preschool building, and that the Commission erred in making several design review findings.

However, because this property is zoned “SPD,” and for the further reasons set forth below, de novo review is not required, and the design review findings made at the February 3, 2020 Commission meeting remain valid for what is the exact same project proposed and approved by the Commission nearly two years ago. Additionally, these are the identical design review findings that would have been required had the project been considered as new construction, as opposed to a remodel of an existing structure.

In other words, there is no purpose to be served by the appeal or de novo review: the project is unchanged and the design review findings (and support for them) remain the same as in February 2020. The only things that changed are that (1) more material required demolition than anticipated (not an uncommon occurrence), and (2) a new neighbor moved in who wants to belatedly object to a project approved nearly two years ago and well under construction.

For the Council's information, Appellants have filed a separate civil suit against the Applicants. This appeal is a thinly-veiled attempt to gain leverage in that private civil proceeding. The Council need not be drawn in. Furthermore, the Appellants have made multiple inaccurate and inflammatory statements in a January 3, 2022 comment letter attacking the Applicants' character. The facts tell a different story and do not support Appellants' baseless allegations.

Therefore, the Council should follow the Commission's unanimous decision to approve the project and the amendment to the Use Permit, and dismiss the appeal in its entirety. To address the Appellants' specific contentions, we provide the following.

A. The removal of rotted exterior walls, as reviewed and supported by the Town's Building Department, does not alter this project.

Regardless of the terminology used and the linear feet of exterior walls remaining from the former preschool, the project has not changed in any material way since it was proposed by the Applicants and approved by the Commission in February 2020. As acknowledged by the Commission at its November 2021 meeting, the project remains identical to, and in full conformance with, the plans submitted and approved in February 2020, with the exception of the additional wall demolition. The footprint of the proposed and partially-constructed single family home remains the same as that of the former preschool, with the addition of a small porch on the front of the home facing Jones Street.

The structure, layout, and design of the home remains identical to that which was proposed and approved by the Town in February 2020. The only change was the extent of existing exterior walls that required removal when dry rot was discovered within those walls. Removal of those rotted walls exceeded the extent of the originally-proposed demolition, so the project was brought back to the Commission for review of that solitary issue. The final residence will not look identical to what was considered and approved by the Commission in February 2020. Thus, at its November 15th meeting, the Commission properly approved the amendment to the Use Permit and correctly acknowledged the ongoing applicability of its earlier – unchallenged – design review findings and conditions of approval.

B. San Anselmo Municipal Code section 10-3.908 does not require a de novo review of this previously-approved project application.

SAMC section 10-3.908 states in its entirety: "*Use permits within a PDP or SPD District. All development within a Planned Development District shall be preceded by the approval of a use permit and design review, as set forth in Articles 13 and 15 of this chapter of the San Anselmo Municipal Code.*"

At its February 3, 2020 meeting, the Commission properly approved a use permit and made the necessary design review findings to allow for the conversion of the former preschool to a single family residence. That is all that is required by SAMC section 10-3.908. No appeal was filed with regard to the February 2020 project approval. There was no opposition to the design of

the proposed project lodged or voiced by any member of the public for more than 18 months following the Commission's approval of the project.

As detailed below, the Applicants relied on the approval in good faith and obtained a building permit and commenced construction establishing vested rights to complete the project in accordance with those approvals.

At the Commission's November 15, 2021 meeting, the sole issue before the Commission was whether an amendment to the approved development and Use Permit should be approved to allow for the additional demolition of the remaining exterior walls of the former preschool after they were found to be structurally deficient and contained dry rot. This was not a proposed new development, but simply a request for a minor amendment to the previously-approved Use Permit due to unforeseen circumstances occurring during the construction of the approved project. At the meeting, when asked if a de novo design review was required, the Town Attorney confirmed that the Commission had the flexibility under the SPD zoning to determine that the findings from their February 2020 meeting still apply and could rely on those original findings in approving the requested amendment and additional demolition.

After finding that there were "no material changes" to the project that had been approved in February 2020, the Commission unanimously approved the amendment to allow the additional requested demolition and reiterated the applicability of the conditions of approval and design review findings from its February 2020 approval, while adding a single additional condition regarding a landscape plan to increase privacy screening. As discussed by both the Commissioners and the Town Attorney, the Town's municipal code does not require a de novo review to approve such an amendment to a previously-approved and, in this case, under construction, project.

C. The Planning Commission properly adopted and approved the necessary design review findings at its February 2020 meeting.

This appeal should be limited to the scope of the action taken by the Commission on November 15, 2021, specifically the approval of an amendment to the Use Permit to allow for additional demolition. The design review findings made by the Commission in February 2020 were not challenged or appealed. In reaching that decision, the Commission properly adopted those findings based on the flexibility allowed by the SPD zoning district. Moreover, in November 2021, the Commission acknowledged and recognized that those design review findings remain valid when approving the amendment. The Commission properly approved the requested amendment without revisiting those specific design review findings because the Commission correctly found that no material change to the project was proposed as part of the requested amendment to the Use Permit.

With regard to some of the specific contentions in the Appellants' appeal, the Applicants wish to clarify that the living area on the second floor of the addition is set at least 17 feet back from the windows that will be facing the Appellants' property and approximately 30 feet from the property line. Any contention that someone looking from the living area of the second floor

will be able to “peer” into the home at 101 Ross Avenue is absurd. (Several planning commissioners noted this as a nonissue.) Further, the Applicants specifically planted trees that will grow to be at least 30 feet in height along the border of the two properties and have been required by the Commission to develop a landscaping plan, with Appellants’ participation and input, to further screen the windows and any vantage points looking toward 101 Ross Avenue from the home at 75 Jones Street, providing even more privacy to Appellants. With regard to the deck on that same side of the Applicants’ residence, the direction in which the deck faces corresponds with a deck on Appellants’ property that is actually *above* the height of the proposed deck at 75 Jones.

The Appellants’ remaining contentions with regard to the design review of this project were again discussed by the Commission at its November 15th meeting. The SPD zoning designation and related Town municipal code sections allow for significant flexibility in approving projects, and do not require any specific design standards to be strictly followed in the SPD district. The Commission found that the proposed amendment made no material change to the previously-approved project and, as such, it was reasonable and appropriate to rely on the findings from its February 2020 meeting to approve the requested Use Permit amendment.

Moreover, at the November 15th meeting, several commissioners acknowledged that the placement and design of the project, utilizing the existing location of the former preschool, will be a benefit to Appellants’ property. Commissioner Tunny stated, “I think the neighbor at 101 Ross really benefits from the way this project was done. It minimizes impacts ... and [the impacts] don’t rise to the level we see from other projects.... This configuration maximizes the light and air to both properties.” (11/15/21 PC meeting at 1:48:40.) Commissioner Asselstine explained that it will allow more sunlight onto 101 Ross Avenue, and the two homes will not be in as close proximity as they would have been had the rear setback been imposed and the proposed home at 75 Jones Street was moved to the front of the property. (See 11/15/21 PC meeting at 1:36:50 [“There is a benefit to 101 Ross from the current placement of the new structure... it makes sense not just for one property but for both actually.” (1:37:35)])

In summary, with guidance from the Town Attorney (11/15/21 PC meeting at 2:00:00-2:00:36 [outlining the structure of the motion re additional demolition, and reaffirming the conditions and findings]), the Commission took a pragmatic, common-sense and legally-supported approach in reaching its unanimous decision to approve the use permit amendment at its November 15th meeting. (11/15/21 PC meeting at 2:01:00-2:03:15.)²

III. Conclusion

To date, the Applicants have spent years of time and hundreds of thousands of dollars beginning the construction of their home at 75 Jones Street in reliance on the Town’s approval of their project application in February 2020, as well as the Town’s inspections in July 2021, to

² We encourage the Council to review the Planning Commissions’ comments from the November 15, 2022 meeting (11/15/22 PC meeting starting at 1:30:00.)

proceed in good faith with construction.³ The Applicants have complied with all inspections by the Town and strictly followed all instructions by the Town's Building and Planning Departments in moving forward with the project, pausing construction, and seeking the amendment to the Use Permit requested by the Town given the necessary additional demolition based on unforeseen dry rot conditions discovered during construction.

The statements by Appellants implying otherwise are unwarranted, disingenuous and disparaging personal attacks on the Applicants. The design of the home was approved nearly two years ago. Framing is nearly complete and the project construction is considerably far along, as acknowledged by one Commissioner at the November 15th meeting. It would be fundamentally unfair to the Applicants to be forced to make any major, costly changes to the project at this stage, after vested rights have been established, and given their responsive and collaborative work with the Town staff. Nor would any purpose be served to require repetitive design review after the Commission properly considered and adopted necessary design review findings at its February 2020 meeting and acknowledged the ongoing applicability of those unchallenged findings on November 15, 2021.

Therefore, for the reasons set forth herein, and in consideration of the Planning Commission's reasoned review and approval of this project application and Use Permit, we respectfully request that the Council follow the Commission's unanimous decision to approve the amendment to the Use Permit, and dismiss the appeal in its entirety so that Ms. Heath and Mr. Rivera may finally complete the construction of their home.

Sincerely,

WENDEL ROSEN LLP



Todd A. Williams

cc: Elise Semonian, Planning Director
James Rivera
Erin Heath

³ As the California Supreme Court established over 45 years ago, a party acquires a vested right in a building permit if the party "has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government." (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791; *see also* *Congregation Etz Chaim v. City of Los Angeles* (9th Cir. 2004) 371, F3d 1122, 1125 [city estopped from revoking building permits after reviewed and approved the plans and after applicant performed substantial work and incurred liabilities in reliance].)

Carla Kacmar

From: sirr less <sirrless@gmail.com>
Sent: Tuesday, January 11, 2022 8:58 AM
To: Town Council; Alexis Fineman; Steve Burdo; Eileen Burke; Ford Greene; Brian Colbert; Elise Semonian
Subject: NOT in support of 75 Ross Ave New Build

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: External Sender

Dear esteemed members of the Town Council,

I am writing a note opposing the current development of 75 Ross Avenue and in support of Kalie Roberts and Michael Greer, two people I have known for decades and with whom I sympathize. We both moved to San Anselmo for similar reasons, those being a long-won love of the people of this community, and the uniquely beautiful balance it presents between progressive thinking and commitment to community integrity in its evolution. I believe that is the key to wellbeing for my family and for Kalie and Mike's, and yours too. So I am saddened by their experience.

Please, note, I am not opposed to change. I know the benefits of breaking with convention, even in startling ways, when it can help with new paradigms. However, we have seen the loss of so much balance between people of different cultures, industry and the natural environment, and even between contrasting aesthetic values, all through the blind, immediate, imposition of an individual will - at the expense of good neighbors (both literally and figuratively). I moved to this community so my family could experience the coherence of a people choosing to live harmoniously, over the discordance of self-centered, isolationism that was the predominant mode of decision in the cities I lived in before.

For these reasons, I believe you can't forgive an instance of reckless development, aimed at maximizing profit for a group not residing here, in a place primarily valued for its considerate community and connection to the surroundings and each other. To endorse that kind of change harms the community at large.

Forgive the lengthy context, but I want you to understand the perspective I'm defending, as I attempt to defend the Greer and Roberts family and their home, because I know you share it. These are four people you want buying homes in San Anselmo. They draw community around them, they are generous with friends and strangers, they attempt to do right by all they can, and they participate. My wife and I watched these friends search for a home here, find it, through great effort and expense, acquire it, and bring their lives to it at last. In that home we saw the balance of an old and revered structure, come to terms with modern living in a beautiful and respectful integration. It was a very elegant meeting, that helped us understand the outrageous cost.

It wasn't just the house itself or its connection to local history, but its place in the center of the community, flanked by the seminary, the mountain, the trees of Ross Ave, and the other homes and buildings around it. So it was a total shock when we came over one day and saw they had totally demolished the building next door. But still, my wife and I encouraged our friends to stay positive. "They'll build something extraordinary, as they have previously, and beautiful, in harmony with your neighborhood", we said, "after all, that's where the money is to be made." But we were mistaken.

Seemingly overnight, the jarring structure that has eclipsed so much of their light, privacy, view, and, most importantly, sense of belonging in balance with the community (not just aesthetically, but spiritually) rose to own every glimpse of their outside world. To be strictly materialistic, the structure is an eyesore, the massive window over their yard has removed the magical intimacy and connection to neighbors that was, and the experience of their house has gone from

one where your eye was perpetually drawn to the play between the inside and out, to one where you can't stop being distracted by the looming presence of the building that now dominates theirs. It seems to look through that window in at you, leaving nowhere to escape the glance.

I suspect this has cost the Greer and Roberts family materially, of course, but the tragedy is the cost to their infectious happiness. They were so proud and happy to be here, and I have seen their heartbreak. I believe that that costs me and everyone else in the community as well. How sad, that we even need the proceedings of this meeting, given the circumstance of how this building was thrown up on the site, with so little regard to that. We shouldn't compound the mistake.

In closing, these are good people who make San Anselmo a better place, that were, at a minimum, ill-considered, if not cruelly deceived. Please be thoughtful about what this moment means to precedent, as you contemplate your actions, and try to return the balance to their lives. Nobody has to lose here. The developers will still make plenty, and if we apply a little creative thought as to how, they may even sell to more good neighbors, not to anyone so tonedeaf and self-interested they'd buy the building now, despite the current contention around it. You have the ability to make everyone come out ahead, please do!

Thank you for your consideration.

Sirr Less

--

Sirr Less

E: sirrless@gmail.com

P: 512.497.8083

Carla Kacmar

From: Alexis Fineman
Sent: Monday, January 10, 2022 2:09 PM
To: Carla Kacmar
Subject: Fw: Regarding 75 Jones

Follow Up Flag: Follow up
Flag Status: Flagged

FYI! thank you!

From: Erin Heath <erin@erinheathinteriors.com>
Sent: Friday, January 7, 2022 3:29 AM
To: Alexis Fineman <afineman@townofsananselmo.org>
Subject: Regarding 75 Jones

CAUTION: External Sender

Hi Alexis,

Our paths last crossed during early discussions about establishing a racial equity and diversity committee in San Anselmo - thank you for championing that and for your ongoing service to our town!

I wanted to reach out to you about an item related to our building project at 75 Jones, which will be reviewed in your upcoming Town Council meeting on January 11th. We've been working collaboratively with the town on this project for over 2 years now and consulted the planning, building and fire departments as well as public works, before we undertook the subdivision of 101 Ross and began the architectural plans to convert the structure at 75 Jones from a preschool to a single family home. You will see much more information about this in the staff report from Elise and our attorney will be submitting a letter on our behalf, but I wanted to reach out myself, in case you have any questions about the project after you've been through all of that information. I'd also be happy to connect you to our architect if you have specific questions about the design, or if you'd like to walk the site, our contractor can meet you there, OR if you are feeling adventurous, you can tour it yourself. I'd offer to meet you there, but we recently moved to London for family reasons - tricky timing with Covid, but it was unavoidable!

Our architect is Luke Clark Tyler:
luke@fieldissuedesign.com
(646) 599-3218

Our contractor is Ronan O'Dea:
(415) 385-4097

My number is +447882643605

Hope you are well and 2022 is off to a good start!
Erin

Carla Kacmar

From: Alexis Fineman
Sent: Tuesday, January 11, 2022 11:51 AM
To: Carla Kacmar
Subject: Fw: Site Visit

Follow Up Flag: Follow up
Flag Status: Flagged

FYI! Thank you!

From: Alexis Fineman <afineman@townofsananselmo.org>
Sent: Tuesday, January 11, 2022 11:49 AM
To: Kaliel Roberts <kalielroberts@gmail.com>
Subject: Re: Site Visit

Hi Kaliel,

Thanks - I can zoom in the 4-4:30 window and will plan to stop by a little bit before (or possibly later, also subject to work schedule. As a heads up I'm forwarding this thread to the Town Clerk as anything substantively related to the appeal does need to be available as part of the public record.

Do you want to send a link or should I?

Best,
Alexis

From: Kaliel Roberts <kalielroberts@gmail.com>
Sent: Monday, January 10, 2022 4:52 PM
To: Alexis Fineman <afineman@townofsananselmo.org>
Subject: Re: Site Visit

CAUTION: External Sender

If you are available tomorrow morning before 9am, we can zoom. I have a work break at 4pm if you want to zoom then, otherwise feel free to just enter our backyard whenever you want -- there is a gate entry where the cars are parked on the ross side of the street. Thank you and fingers crossed you are remaining healthy!

<https://photos.app.goo.gl/Sk6SbKsFhf3ARbGv8>

On Mon, Jan 10, 2022 at 1:29 PM Kaliel Roberts <kalielroberts@gmail.com> wrote:
Hi Alexis!

We could do outside masked, but the real impact is inside where it's the only view now (and at night a lantern from the massive window, plus the deck that will be built on the second floor which will peer into our main living areas, bedrooms, and bathroom. Or I can do zoom or facetime. I'm around now and don't have a work meeting for 30 minutes

if you are flexible. Or you could come via the backyard entrance on your own and stand on the deck. Inside, the only view we have is of the new construction, including the second floor bedroom and bathroom facing the house.

Can you access this album? The first pics are when we moved in before the building was there and the following show the privacy impact, which is still better experienced in person, but I understand mitigating risk. There are also pics of the construction to show that it is a new build. Maybe this will help with the inside privacy issues?

<https://photos.app.goo.gl/Sk6SbKsFhf3ARbGv8>

We are also all vaxxed and boosted (except for our kids who aren't eligible yet for the booster but are vaxxed).

Thank You!
Kaliel

On Mon, Jan 10, 2022 at 12:50 PM Alexis Fineman <afineman@townofsananselmo.org> wrote:
Hi Kaliel,

I wanted to touch base about a site visit prior to tomorrow night's council meeting. In full disclosure my partner, whom I live with, had a short, but confirmed exposure to Covid on Thursday. (Both parties were masked, and it was 1-2 minutes of conversation in a somewhat close, indoors work environment. This does not meet the CDC guidelines for a "close contact," but obviously omicron is highly contagious. My partner and I are both fully vaxxed + boosted.)

In light of this, I am wondering what your comfort level is with various options for a site visit. If you are comfortable, I could walk around the outside (masked, distanced) and we could schedule a "zoom tour" of the inside. Feel free to suggest alternatives based on your comfort level and availability.

Best,
Alexis

ELIZABETH BREKHUS
elizabethb@brekhus.com
www.brekhus.com

Brekhus
Law
Partners

ATTORNEYS AT LAW

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(415) 461-1001

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>
To: Kallel Roberts <kallelroberts@gmail.com>, Mike Greer <michael.greer@gmail.com>

Sun, Sep 27, 2020 at 11:25 AM

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.

1/3/22, 3:02 PM

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

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.

1/3/22, 3:02 PM

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

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



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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

1/3/22, 3:02 PM

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

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

Top Agent Network | Marin Platinum Group | Lic #01342726

See My Market Report

Kalief Roberts <kaliefroberts@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









