

MINUTES
TOWN OF SAN ANSELMO PLANNING COMMISSION
Monday, November 21, 2022
This meeting was conducted via Zoom

Commissioners Present: Chair Thomas Tunny
Jennifer Asselstine
Tim Heiman
Kim Pipkin
Danny Krebs
Gary Smith
Peter Strauss

Staff Present: Planning Director Heidi Scoble
Public Works Director Sean Condry
Building Official Erica Freeman
Senior Planner Lindsay Kline

1. Call to Order

Chair Tunny opened the meeting at 7:00 p.m.

2. Open Time for Public Expression

There were no comments.

3. Planning Directors Report

- Staff continues to work on the Housing Element and other housing initiatives.
- The Town Council held a Public Hearing and voted to adopt the first reading of an ordinance regarding regulations for accessory dwelling units (ADU). The regulations will go into effect next year.

4. Approval of Minutes

- A. Approve minutes from the June 23, 2022, October 17, 2022, and November 7, 2022 meeting

M/s, Krebs/Asselstine, motion to approve the June 23, 2022 minutes as submitted.

Ayes: Asselstine, Heiman, Krebs, Chair Tunny

Abstain: Pipkin, Smith, Strauss

M/s, Pipkin/Heiman, motion to approve the October 17, 2022 minutes as submitted.

Ayes: Asselstine, Heiman, Krebs, Pipkin, Smith, Strauss, Chair Tunny

M/s, Krebs/Asselstine, motion to approve the November 7, 2022 minutes as submitted.

Ayes: Asselstine, Krebs, Pipkin, Smith, Chair Tunny

Abstain: Heiman, Strauss

6. Public Hearings

- A. Accessory Dwelling Unit, 32 Fern Ln., Project # PRO 2022-0063
Conditional Use Permit to allow for the after-the-fact approval of a two-story

accessory dwelling unit (ADU) and associated structures. The project is not subject to categorical exemption pursuant to CEQA and required further environmental review and analysis.

Senior Planner Kline presented the staff report. Staff answered questions from the Commission regarding the transportation hub criteria; the sixteen foot vs. eighteen foot height limitation; major transportation centers other than the hub; whether the deck and the ADU cottage both encroach into the fifteen foot setback from the creek bank; if people who live on the creek on a small lot would face similar challenges; how the fifteen foot setback is measured; if the deck and storage shed were pre-existing; the September 27, 2021 Stop Work Order; the purpose of the Compliance Order; the evidence that work continued after the Stop Work Order was issued; if a ministerial ADU would require a Conditional Use Permit (CUP); if the encroachment into the 15-foot setback requires a CUP; watercourse permits and ADUs; the three Findings including the one related to Health and Safety; how the Town will communicate the new legislation; discretionary vs. ministerial review and approval.

Public Works Director Condry clarified that the deck was over the creek and the ADU structure is on the edge of the bank and well within the fifteen foot setback.

Chair Tunny opened the Public Hearing.

Mr. Kevin Mayer, applicant, made the following comments:

- He is not sure that the information coming from the Planning Department and the neighbors illustrates the project and where they are as a family.
- He has a different point of view.
- He created a series of documents including communication with the Planning Department, the Compliance Letter, the Stop Work Order, the Conditional Use Permit, the recommendation, and Zoning Ordinance Compliance.
- There is an issue about whether this is a remodel of an ADU. It started as a remodel, and should have been limited to a second story, but it rolled into an ADU.
- The laws are changing.
- There are people who support this.
- He should not have done this the way he did it. He is trying to fix things.
- The structure was a one-story for a long time. He added a second story and matched the roof.
- There are no privacy issues with respect to the second story windows.
- The neighbor's complaints are unjustified.
- There has not been any work done after he got the September 27th Stop Work notice.
- He would be happy to answer some questions.

Gwen made the following comments:

- The letters from the neighbors were overwhelming.
- Other neighbors have unpermitted ADUs.
- There was information missing in the staff report including letters of support.
- The structure is not in the creek and they do not experience flooding.

Commissioner Smith asked if they met with the Building or Planning Department prior to starting any work on the site. Mr. Meyer stated "no". There was a foundation in the back yard and they built in the same exact footprint as the previous garage. This was a mistake and he now would like it to be one of the Town's RHNA units.

Commissioner Heiman asked if there was an existing foundation. Mr. Meyer stated “yes”. They built the one story and then modified it to a two-story structure. He has a photograph of the existing foundation.

Commissioner Pipkin asked if it has been made clear to the applicant what needs to be done to bring the project into compliance. Building Official Freeman stated the applicant received a checklist from the Permit Technician. Work in the creek would require a Watercourse Permit. Public Works Director Condry stated Mr. Meyer, as a contractor, is familiar with the process.

Mr. Latine, Fern Lane, made the following comments:

- There has been a history of flooding and undermining of non-engineer structures in that part of the creek.
- The previous owner said in an affidavit that there was no other structure on the property.
- He has asked the applicant to revise the structure so it is not an obstruction in terms of its height to the neighbors. He said “no”.
- He does not have a problem with an ADU on the property.

Ms. Leslie Murphy, Fern Lane, made the following comments:

- She obtained the affidavit from the prior owner.
- There was never a foundation or deck.
- The applicant built a shed next to her property line without consent.

A resident of Fern Lane made the following comments:

- The applicant is difficult to deal with.

Planning Director Scoble asked everyone to speak on the merits of the project.

Ms. Ruth Clempton, Alder Avenue, made the following comments:

- She lives across the creek from the subject property.
- She had to build a retaining wall in the creek years ago and it was a major ordeal in terms of conforming to the regulations.
- The work the applicant has done without permits is unfortunate.

Mr. Peter Brasco, Fern Lane, made the following comments:

- Building has been going on up and down the creek for decades.
- He is concerned about the view of the structure from his windows.
- This project is another transgression on the creek.

Mr. Mayer made the following comment:

- The documents he submitted includes pictures of the creek.

Chair Tunny closed the Public Hearing.

Commissioner Pipken provided the following comments:

- She is familiar with Fern Avenue since she lived nearby.
- Some of the neighbor’s comments were not relevant and a part of her thinks this is not a fair hearing- it is biased.

Commissioner Krebs provided the following comments:

- The hearing should be focused on the basis for granting the CUP.

- One of the goals of the Commission is for the applicant to meet with the neighbors and/or give notice about his or her plans and to find compromises.
- The Commission is capable of giving a fair and unbiased decision.

Commissioner Asselstine provided the following comment:

- She agreed with Commissioner Krebs.

Commissioner Strauss provided the following comments:

- The issues are as follows: the history of construction (Stop Work Orders, etc.), the existing structure and when it was built, the merits of the ADU as currently proposed and constructed.
- Something was done illegally and was stopped and perhaps stopped again. This is not relevant to the current merits of what is on the property.
- The presence of a foundation does not give a property owner the right to build a structure on the existing foundation.
- The Watercourse issue, the 15-foot setback from the top of the creek, the side yard setback (5 feet instead of 8 feet), and the height (23 feet vs. the allowable 16 feet) should be discussed.
- He asked the applicant why an excess of seven-feet, three- inches in height is appropriate. Mr. Mayer stated the question is whether they are looking at this in terms of a November or January date when everything changes. It is difficult to do two-stories at sixteen feet.

Commissioner Heiman provided the following comments:

- The issue regarding the Stop Work Order and whether or not work continued is not relevant.
- The project was built without plans submitted to or review by the Town.
- The existence of a foundation does not give a property owner the right to build on it.
- They need to look at the merits of the project as currently constructed.
- He could not make the Findings for the Conditional Use Permit as outlined in the staff report.
- Perhaps the project could be modified to meet the ministerial requirements (one story for an ADU).
- SB 9 could provide an avenue for the applicant.

Commissioner Smith provided the following comments:

- He agreed with Commissioner Strauss and Heiman.
- He would find it difficult to approve a CUP since the project does not comply with current code or the anticipated 2023 code.
- He asked if the applicant would be able to modify the project after resubmitting compliant plans (either current or 2023 code). Planning Director Scoble stated staff offered this as a ministerial option in September. It would be allowed by right and require a Building Permit.

Commissioner Pipkin provided the following comments:

- The Town has a mandate to encourage ADUs and increase the housing stock.
- She wants to see the project become compliant.

Chair Tunny provided the following comments:

- The issue before the Commission is the CUP.
- It is up to the applicant to figure out what could work.

Commissioner Asselstine provided the following comments:

- She cannot support the CUP since the Findings cannot be made.
- The structure is located in critical area- 15-feet from the top of the bank of the creek. She is concerned about the stability of the creek.
- She cannot make the Findings for a second story at this location.
- Not approving this project does not mean they are not following the mandate for more housing.

Commissioner Krebs provided the following comments:

- There is no basis for granting the CUP.
- The structure is too close to the creek bank and it affects the health and safety of the Town.
- The height of the building far exceeds what is permitted under current as well as future law.
- One of the goals of the Commission is to promote housing, within the rules, as mandated by the State.
- This project does not follow the rules.
- He supported the staff report and would vote to deny the CUP.

Chair Tunny provided the following comments:

- He could not make the Findings to grant the CUP.
- He would vote to deny the application.

M/s, Krebs/Heiman, motion to approve the staff report and deny the Conditional Use Permit submitted for 32 Fern Ln., Project # PRO 2022-0063, based on the inability to make the Findings.

Ayes: Asselstine, Heiman, Krebs, Smith, Strauss, Chair Tunny

Abstain: Pipkin

Chair Tunny stated there is a 10-day appeal period.

The Commission took a 5-minute break at 9:00 p.m.

B. Project Extension, 15 Yolanda Dr. Project No. PRO-2022-0082

A one-year extension to previously approved Project PRO2019-0010 subject to findings and conditions in the July 1, 2019 staff report. The project is CEQA Categorically Exempt under a Class 1 exemption for "Existing Facilities" and under Class 3 for "Conversion of small structures" pursuant to 14 CCR Sections 15301(I) and 15303(a)

Commissioner Krebs recused himself from this item.

Senior Planner Kline presented the staff report. She answered questions from the Commission regarding how the application was affected by the pandemic; how this application differs from another applications that missed its deadline; examples of "good cause"; what has to happen in the one year time period; if there were previous concerns about the project; if aspects of the project have changed.

Chair Tunny opened the Public Hearing.

Planning Director Scoble stated the applicant was not in the audience.

There were no comments from the public.

Chair Tunny closed the Public Hearing.

Commissioner Heiman provided the following comment:

- He supports the staff report and the request for a one-year extension.

Commissioner Strauss provided the following comment:

- He supports the extension- it makes sense.

Commissioner Smith provided the following comments:

- He discussed the conditions during COVID.
- Approving the extension is warranted.

Commissioner Pipkin provided the following comments:

- She asked about the rules when the applicant is not at the meeting. Planning Director Scoble stated the Commission can move forward and take action or continue the item.
- She is concerned that she has no context.
- She is fine with the staff report.

M/s, Heiman/Pipkin, motion to approve the staff report and the request for an extension based on the findings and conditions set forth in the staff report.

Ayes: Asselstine, Heiman, Pipkin, Smith, Strauss, Chair Tunny

Recused: Krebs

Chair Tunny stated there is a 10-day appeal period.

Commissioner Krebs returned to the meeting.

- C. Conditional Use Permit, 570 San Anselmo Ave., Project No. PRO-2022-0067
Conditional Use Permit to allow for instructional on-site alcohol tasting as an ancillary use to the existing off-sale beer and wine use, an increase from two to four total employees at any one time on the site, and the extension of hours from 8:00 p.m. to 9:00 p.m. on Friday and Saturday evenings. The project is categorically exempt under CEQA Class 1 exemption for "Existing Facilities" pursuant to 14 CCR Section 15301(a).

Senior Planner Kline presented the staff report. She answered questions from the Commission regarding instruction and educational tastings; location of bathrooms; how the shared bathroom would work; hours for tasting.

Chair Tunny opened the Public Hearing.

Margaret and David, applicants, made the following comments:

- This is a small tweak to what they are already doing.
- This minor addition to the existing license would allow them more options including additional programming.
- This is a retail shop with to-go sales of wine, beer, and gifts.
- The tasting aspect is minimal and very controlled- like a sample at Costco.

There were no comments from the public.

Chair Tunny closed the Public Hearing.

Commissioner Strauss provided the following comments:

- The business has been great for the downtown.
- He supports the request.

Commissioner Krebs provided the following comments:

- This is a minor change in the current use.
- The request will not result in crowds lining up looking for wine tastings.
- He supports the application.

Commissioner Pipkin provided the following comments:

- This is unique and it would bring new people into Town.
- She supports the application.

M/s, Krebs/Strauss, motion to approve the project based on the findings and conditions set forth in the staff report.

Ayes: Asselstine, Heiman, Krebs, Pipkin, Smith, Strauss, Chair Tunny

Chair Tunny stated there is a 10-day appeal period.

- D. Conditional Use Permit and Design Review, 1 Saunders Ave., Project No. PRO-2022-0079 Conditional Use Permit Amendment to allow a single-family dwelling on a commercially zoned property and Design Review for exterior modifications to windows and doors. The project is categorically exempt under CEQA Class 1 exemption for "Existing Facilities" pursuant to 14 CCR Section 15301(a).

Senior Planner Kline presented the staff report. She answered questions from the Commission regarding the elevations and the directions they face; if most of the work will be interior; the Construction Management Plan; proposed fenestration; the scope of the Commission's review; if "live/work" units count towards the RHNA numbers.

Chair Tunny opened the Public Hearing.

Will, applicant made the following comments:

- They recently bought the building.
- They were incorrectly using the "live/work" designation.
- They are changing the window on the Center side by replacing the glazing unit in the same opening. It will be replaced in kind.
- They moved the bathtub from the being in the window. The window movement will align with the bathtub.
- The small square bathroom window in the back parking lot yard area will shift slightly.
- They are not creating a sliding door but rather adding a side window in the place of a rotted out French door.
- Design Review is required for any exterior changes in the C-1 Zoning District.
- They want to submit for a Building Permit as soon as possible so they can call this place home.

Commissioner Asselstine asked for examples how the process would change going from "live/work" to strictly residential. The applicant responded there is not a lot of precedence for the "live/work" designation in Marin County. There are additional costs for commercial

renovations and there seems to be a different language among the various departments (Planning, Building, Fire, etc.).

Commissioner Asselstine referred to the parking and asked if clients would be coming to the property. Will stated that is not the plan.

Commissioner Heiman asked about the location of the parking. Will stated a Variance was required because they are parking in the side setback. The residential parking requirement is for two spots.

Commissioner Smith asked about access to the second story storage area. Will stated there will be an access door from a walk-in closet.

There were no comments from the public.

Chair Tunny closed the Public Hearing.

Commissioner Pipkin provided the following comments:

- She is excited about the project- she loves that building.
- There are opportunities for the Town to look at adaptive reuse or conversion of commercial space into residential.
- People are working from home.
- Please keep the beautiful stained glass window.
- She supports the project.

Commissioner Asselstine provided the following comments:

- She was disappointed in losing a “live/work” category in this community since it would have set a precedent but she acknowledged the burden it would put on the applicants.
- She supports the request.

Commissioner Strauss provided the following comments:

- This is a prominent building on Center Boulevard.
- This is a great reuse of the building.
- He supports the project.

Commissioner Heiman provided the following comments:

- This is essentially the same project that was reviewed by the Commission in March.
- The exterior modifications are acceptable.
- Two parking spaces are sufficient for residential use.
- He supports the project.

Commissioner Krebs provided the following comments:

- This is a great project that will fit in with the neighborhood.
- He supports the project.

Commissioner Smith provided the following comment:

- This is a great neighborhood.

Chair Tunny provided the following comment:

- He supports the project.

M/s, Strauss/Pipkin, motion to approve the project based on the findings and conditions set forth in the staff report.

Ayes: Asselstine, Heiman, Krebs, Pipkin, Smith, Strauss, Chair Tunny

Chair Tunny stated there is a 10-day appeal period.

6. Future Agenda Items and/or Commissioner Reports

Commissioner Asselstine asked staff to include a site plan during presentations. Senior Planner Kline stated staff is reviewing recent legislation that has to do with publishing copy written architectural plans.

Commissioner Heiman thanked Senior Planner Kline for her thorough presentations.

Planning Director Scoble noted staff is caught up with current planning projects. She asked the Commission if it would like to cancel the December 5th meeting and have a presentation and review of the Draft Housing Element at the December 19th meeting.

It was the consensus of the Commission to cancel the December 5th meeting and review the Draft Housing Element on December 19th. The meeting on December 19th will be a Zoom meeting and not in-person.

Commissioner Strauss asked about the status of the Objective Development and Design Standards (ODDS) process and when the ad hoc committee would be meeting. Planning Director Scoble stated staff is waiting to hear back from the consultants regarding the kick-off meeting. Meetings will not occur until the beginning of next year.

7. Adjournment- Chair Tunny adjourned the meeting at 10:30 p.m.

Respectfully submitted,

Toni DeFrancis
Recording Secretary