



## Legislation Text

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**File #:** 22-042, **Version:** 1

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**FROM:**

Elise Semonian, Planning Director

**SUBJECT:**

9 Laurel Avenue, APN 007-112-11, appeal by Applicants Hassan Afrookteh and Brooke Peterson of Planning Commission decision to deny applications for design review for a second story addition, a variance to allow two parking spaces to be created in the north side setback (8-foot side setback required), with one of the two in the front setback (20-foot setback required), a variance to allow an area of pavers in the front setback to be used for an additional, undersized, parking space, a demolition permit to remove more than 50% of the exterior walls (54.3% demolition proposed, which included 25.3% related to the residence and the balance for demolition of an attached garage structure), and a variance to maintain the existing lower level of the structure 16 feet to 19 feet from the front property line (20-foot setback required for over 50% demolition).

**RECOMMENDATION**

That the Town Council conduct a public hearing, consider testimony from all parties, and deny the project and the appeal, and uphold the Planning Commission's denial of the project and adopt the findings in the attached draft resolution (Attachment 1).

The following alternative actions are available:

1. Approve the project, grant the appeal and overturn the Planning Commission decision with direction to staff to prepare a resolution with appropriate findings for consideration at a future Town Council meeting; or
2. Request additional information from any of the parties and/or staff and continue this matter to a future date for consideration of the requested information.

**BACKGROUND**

The Planning Commission considered plans for a second story addition at 9 Laurel Avenue on September 20, 2021, and denied the application. Applicants Hassan Afrookteh and Brooke Peterson have appealed the decision.

See project plans (Attachment 3), September 2021 staff report (Attachment 5), correspondence considered by Planning Commission (Attachment 6), and prior meeting minutes (Attachment 7) attached. All materials considered by the Planning Commission, which are made part of the public record, may be found with the prior meeting materials here:

April 19, 2021 (Item 6A first Planning Commission hearing on application, not approved)

[https://sananselmo-ca.granicus.com/MediaPlayer.php?view\\_id=1&clip\\_id=545](https://sananselmo-ca.granicus.com/MediaPlayer.php?view_id=1&clip_id=545)

September 20, 2021 (Item 5A second Planning Commission hearing on revised plans, application denied)

[https://sananselmo-ca.granicus.com/MediaPlayer.php?view\\_id=1&clip\\_id=629](https://sananselmo-ca.granicus.com/MediaPlayer.php?view_id=1&clip_id=629)

October 18, 2021 (Item 5 Planning Commission consideration of draft resolution to memorialize decision to deny application, adopted as part of consent calendar)

[https://sananselmo-ca.granicus.com/MediaPlayer.php?view\\_id=1&clip\\_id=654](https://sananselmo-ca.granicus.com/MediaPlayer.php?view_id=1&clip_id=654)

## **DISCUSSION**

The Town Council hearing is a de novo hearing in which the Council considers the project as a matter of first impression. The Council is the final decision-maker and analyzes the project to determine if it can, or cannot, make all of the required findings for approval contained in the Town Municipal Code.

As provided in the Municipal Code and consistent with State law, “the Town Council shall determine the appeal or the review based upon the testimony and documents produced before it and any site visits. The Town Council may sustain, modify, reject, or overrule any recommendations or rulings of the Planning Commission and may make such findings and determinations as are consistent with State law, this Code and other applicable rules and regulations.” (SAMC §10-1.06(h).)

As reflected in the record, the Planning Commission could not make the required findings to approve the project and therefore issued a denial. As set forth in the draft resolution (Attachment 1) staff also suggests that the required findings cannot be made for the project, and recommends denying the project and upholding the Planning Commission’s decision.

### **1. Design Review Findings Not Satisfied.**

Design Review approval is required for the second story addition. Staff suggests, and the Planning Commission found, that the Design Review findings for the project cannot be made.

The Planning Commission was concerned about the shadow the second story addition would cast on the adjacent sites. There was some dispute regarding the accuracy of the shadow study. The Applicants have submitted a revised shadow study (Attachment 8). The Town retained an architect to peer review the Applicant's study who found that the study accurately depicts how much shadow the second story addition will cast on the adjacent properties.

San Anselmo Municipal Code section 10.3.1506 contains the Design Review findings, and all findings must be satisfied for a project to be approved. The Municipal Code language and suggested findings of denial for the Council's consideration are set forth in the attached draft resolution. (Attachment 1).

The project consists of a two-story addition on the east side of the residence, where no second story currently exists. The proposed second story addition will cast significant shadow and shade on adjacent properties, as shown in the shadow study and the Town's peer review study.

Additionally, the second story design lacks articulation, is inappropriate in bulk and mass for the neighborhood, and out of scale with adjacent properties. The bulk and mass of the proposed addition are not aesthetically compatible with existing improvements in the neighborhood.

Finally, as shown in the story poles, project plans, and shadow study and the Town architect's review, the second story addition will unreasonably affect the privacy of neighboring properties including 1 Laurel, 1055 San Anselmo Avenue, and 15 Laurel. The addition will impact these properties by causing shadow, shade and unreasonable privacy impacts.

Staff suggests that the Design Review findings, as set forth in the draft resolution (Attachment 1), cannot be made.

## 2. Variance Findings Cannot Be Made.

Two setback variances are requested for the creation of two parking spaces. The first would be located in the north side setback (8-foot side setback required), and the second in the front setback (20-foot setback required). The variance to allow an area of pavers in the front setback to be used for an additional, undersized, parking space.

Pursuant to State law and the Town Municipal Code Section 10-3.1405, a variance can only be granted if:

(a) Due to special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the controlling zoning ordinance or regulation deprives the property of privileges enjoyed by other property in the vicinity and under an identical zoning classification, and the granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated; and

(b) The granting of the variance, under the circumstances of the particular case, will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in such neighborhood.

Here, staff suggests and the Planning Commission determined, that the findings for the requested side and front yard setback variances cannot be made.

There are no special circumstances applicable to the property. The parcel is comparable in size to lots within the area; the property is 3,983 sq. ft. in area and lots in the subdivision are between 3,000 and 5,000 sq. ft. The site is generally rectangular in size and located on a flat lot. The site has existing parking in the side and rear setback areas. Many sites in the vicinity also have parking in the setback areas. The need for the variances themselves is created by the design of the project, not special circumstances related to the property. No variance is required to maintain the parking in its current configuration. By way of context, the Planning Commission has denied other requests to locate and relocate parking spaces in setback areas.

Additionally, the granting of the variances would allow parking spaces to be located in a setback area where it would be unscreened and in public view, which is detrimental to the aesthetics and character of the neighborhood and public. In contrast, the current parking spaces located in the setbacks are more screened and aesthetically appropriate for the neighborhood.

### 3. Demolition Permit Finding 2 Cannot Be Made.

The Town Council adopted a new ordinance that went to effect in October 2020 that requires a demolition permit to demolish more than 50% of the exterior walls of a structure. At 50% demolition, a residence is essentially a new home and must have design review and be brought into conformance with all zoning regulations unless variances are approved. Since 9 Laurel is a small house, the combination of the garage demolition and the house demolition exceeds the new demolition permit threshold of 50% and a Demolition Permit is required. Only 25.3% (502 sq. ft. out of a total of 1,984 sq. ft.) of the demolition is for the residence,

the rest is demolition of garage walls.

Pursuant to Town Municipal Code Section 10-3.2104, a Demolition Permit may be approved subject to the following findings:

- (a) The demolition will not remove from the neighborhood or Town, nor adversely affect, a building of historical, architectural, cultural or aesthetic value.
- (b) The project is consistent with the San Anselmo General Plan.
- (c) The project will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood and will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood.
- (d) The granting or denying of a demolition permit for the demolition of structures may also be subject to the following findings based on substantial evidence as determined by the Planning Commission or Town Council.
  - (1) Failure to approve a demolition permit will cause immediate and substantial hardship because of the conditions peculiar to a particular structure, and such hardship has not been created by an act of the owner in anticipation of action under this chapter. Examples of hardship include health and safety hazards that cause the building to be unsafe. Personal, family, financing difficulties, loss of prospective profits and neighboring violations are not justifiable hardships.
  - (2) It is necessary to reveal previous architectural features covered up, such feature that would be functionally and aesthetically compatible with the existing improvements and the natural elements of the area.

As supported in the staff report, the Planning Commission project record, and summarized in the attached Resolution, Demolition Permit Finding (b) cannot be made because the project would not be consistent with Land Use Goal 1, which states, “The small-town character, scale, and pace of life in San Anselmo shall be preserved, as shall the Town’s close connection with the natural beauty of its setting;” Land Use Goal 3 “New developments shall be integrated harmoniously into San Anselmo’s existing neighborhoods and commercial areas;” and Land Use Policy 11.1 “New development, including rehabilitation and expansion projects, shall be of a scale, intensity, and design that integrates with the existing character of the surrounding neighborhood”.

## **FISCAL IMPACT**

The applicants’ appeal fee covers Town costs to processing the appeal. Granting the appeal and approval of the project would result in a building permit application that would generate additional revenue to the Town. Improvement of the site and residence would result in the Marin County Tax Assessor reassessing the

property, which would increase property tax revenue to the Town.

## **GENERAL PLAN CONSISTENCY**

See attached resolution (Attachment 1).

## **CEQA AND CLIMATE ACTION PLAN CONSISTENCY**

See attached resolution for CEQA finding. Denial of the project maintains the existing residence, which may not be energy efficient, and reduces greenhouse gas impacts associated with new construction. Approval of the project would result in a residence that complies with energy efficiency requirements of the building code.

## **CONCLUSION**

Adopt Attachment 1 resolution to deny the project and deny the appeal.

Attachment 1 - Resolution for Denial of Appeal

Attachment 2 - Appeal

Attachment 3 - 9 Laurel Drawings

Attachment 4 - Application Materials

Attachment 5 - Planning Commission Staff Report

Attachment 6 - Correspondence Considered by Planning Commission

Attachment 7 - Meeting Minutes

Attachment 8 - Shadow Studies

Attachment 9 - Public Comment

Attachment 10 - Correspondence from Attorney John Sharp

Attachment 11 - Numerical Shadow Impact

Attachment 12 - Appeal Presentation by Appellants