

**RESOLUTION NO. 4177**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO  
GRANTING AN APPEAL AND OVERTURNING THE PLANNING COMMISSION APPROVAL OF A  
SETBACK VARIANCE TO LOCATE A 137 SQUARE FOOT ADDITION AT  
196 TUNSTEAD AVENUE, APN 007-213-50**

**WHEREAS**, an application was filed by Alan and Kati Zweig, property owners, with the Town of San Anselmo on August 3, 2016, requesting approval for a Setback Variance for a 172 square foot addition within the east side yard setback (Application No. PRO2016-0037) (“the Project”);

**WHEREAS**, on August 29, 2016, the Planning Commission of the Town of San Anselmo (“Planning Commission”) held a noticed public hearing to consider the Project and all interested parties were given a full opportunity to be heard and present evidence, the application was fully studied, discussed and deliberated, and the Planning Commission voted 4-0 (Planning Commissioners Swaim and Pipkin absent) to approve the Project; and

**WHEREAS**, On September 6, 2016, Harry Hunt, Hunt Tunstead LLC, (“Appellants”) owner of 194 Tunstead Avenue, filed an appeal of the Planning Commission decision; and

**WHEREAS**, on October 11, 2016, the Town Council held a duly noticed public hearing on the appeal and all interested parties were given a full opportunity to be heard and present evidence, and upheld the appeal, overturning the Planning Commission decision, by a 3-0 vote (Mayor Greene and Council Member McInerney absent).

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES HEREBY RESOLVE AS FOLLOWS** that the Town Council has considered the Project plans; the Supplemental Questionnaires and associated reports; staff reports; correspondence; public testimony received at the public hearings, Town Zoning Code and General Plan regulations; prior meeting video and documents; and other information in the public record; and finds:

1. On September 6, 2016, the Appellant filed an appeal of the Planning Commission’s August 29, 2016 decision and the Town Council considered the appeal at a hearing on October 11, 2016.

2. The primary arguments raised by Appellants were that the addition is too close to their property, presents a fire hazard, constitutes an invasion of privacy, negatively effects the appearance and value of their property, and is a special privilege granted to the applicant.

3. The Town Council cannot make the required findings under California Government Code Section 65906 and San Anselmo Municipal Code Section 10-3.1405 to approve the setback variance:

*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. While the narrow lot width of 42.4 feet, corner lot location, and required setbacks limit developable area of the site, granting the variance to allow construction within a foot of the east property line would constitute a special privilege inconsistent with the setback requirements imposed upon other property in the Town. There are alternative locations on the site for the addition of a bedroom that would not have a negative impact on the neighbor to the east. Alternative locations could comply with the required east side yard setback. The increased financial cost of alternative locations does not constitute a special circumstance justifying a setback variance.

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.* The addition is proposed above a structure that is located within a foot of the east property line. That structure may have complied with applicable setback regulations when it was constructed. However, the proposed addition would exacerbate the nonconforming setback condition by creating a two-story structure within a foot of the east property line. The applicant would be unable to maintain the east facing elevation of the addition due to its proximity to the shared property line. Due to fire codes, the proposed addition will have a large, blank, wall facing the neighbor near the shared property line, since the east elevation cannot be articulated with openings or windows. The proposed addition will impact views, light, and air to certain units in the adjacent residential development. Since the addition would be within a foot of the property line, the applicant cannot screen the addition with landscaping.

4. The project is categorically exempt from review under the California Environmental Quality Act (CEQA) since CEQA does not apply to projects that are not approved. The decision to deny the project will not cause an environmental impact.

**THEREFORE BE IT FURTHER RESOLVED** that the Town Council upholds the appeal and overturns the Planning Commission’s decision and findings of August 29, 2016.

The foregoing Resolution was adopted at the regular meeting of the San Anselmo Town Council held on October 25, 2016, by the following vote:

AYES: Coleman, Brown, Wright  
NOES: None  
ABSENT: None  
ABSTAIN: None



Ford Greene, Mayor

ATTEST:



Carla Kacmar, Town Clerk