

TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF SEPTEMBER 10, 1990

The special meeting of the Planning Commission was convened at 8:00 p.m. on September 10, 1990 in the Council Chamber by Chairman Yarish. Staff present: Assistant Director of Planning, Dain Anderson; and Planner, Lisa Wight.

A. ROLL CALL

Commissioners present: Harle, Sias, Mihaly, Kroot, Julin, Yarish

Commissioners absent: Hayes

B. CONSENT AGENDA

1. Approval of minutes - August 6 and August 20, 1990
2. U-9010 - Sezer F. Ozkan, 98 Sir Francis Drake Boulevard, A/P 6-191-36, 1) use permit to operate a service station (fuel and supplies) and minor automotive repairs (engine-tune up, oil changes, and part replacements).
3. U-9011 - Hassan Ben-Ali, Caffe Nuvo, 556 San Anselmo Avenue, A/P 6-102-15, use permit for the on-sale of beer and wine upon change of ownership.

Staff suggested including item "D. 4" with the other consent items. The consensus of the Commission was to include item "D. 4" on the Consent Agenda.

D.4. V-9028 - Michael V. Wolski, 161 Butterfield Road, A/P 5-062-15, 1) a 7' north sideyard variance to construct a retaining wall within 1' of the north side property line.

Commissioner Sias asked that Item "B. 3" be removed from the Consent Agenda for discussion.

M/S Kroot, Sias, to approve the Consent agenda, including Item D. 4" and excluding "B. 3".

Motion unanimously passed.

C. PUBLIC HEARINGS CONTINUED TO FUTURE MEETINGS

1. V-9023/AR-9006 - Jean Brunswick, 22 Magnolia Avenue, A/P 7-212-34, 1) a 1'0" front yard variance, a third story variance, and a building height variance to construct a professional office building; 2) a variance to exceed the maximum allowable lot coverage of 60%, and 3) a parking variance to allow inadequate parking, and design review, on property located within the "P" Zoning District: CONTINUED TO OCTOBER 1, 1990.
2. V-9022 - Richard and Judith Storms, 25 Scenic Avenue, A/P 7-081-23, 1) a 9'0" front yard variance and a 5'0" east side yard variance to construct first story living and garage additions within 11'0" of the front property line and within 3'0" of the east side yard property line; 2) a variance to exceed the maximum allowable lot coverage of 40%; and 3) a parking variance to allow the creation of a substandard parking space, on property located within the R-1 Zoning District: CONTINUED TO OCTOBER 1, 1990.
3. V-9027/DR-9002 - Living Foods, 218 and 222 Greenfield Avenue, A/P 6-173-16, 1) parking variance to expand the story into an adjacent building; 2) environmental review; and 3) design review of exterior alterations - CONTINUED TO SEPTEMBER 17, 1990.

D. PUBLIC HEARINGS

3. U-9011 - Hassan Ben-Ali, Caffe Nuvo, 556 San Anselmo Avenue, A/P 6-102-15, use permit for the on-sale of beer and wine upon change of ownership.

Commissioner Sias asked for clarification from staff regarding the complaints received from the Police Department.

Planner Wight stated that this used to be a meeting place for teenagers prior to the sale of alcoholic beverages and that the complaints received by the Police Department have not been related to the sale of alcoholic beverages.

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M/S Julin, Kroot, to approve U-9011 - Hassan Ben-Ali, Caffe Nuvo, 556 San Anselmo Avenue, A/P 6-102-15, use permit for the on-sale of beer and wine upon change of ownership on the basis: 1) the granting of the use permit will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental to injurious to property and improvements in the neighborhood or general welfare of the Town for the reason that the Caffe is located in a commercial district where other restaurants enjoy the privilege of on-sale beer and wine. 2) the granting of the use permit is necessary for the preservation and enjoyment of substantial property rights of the petitioner so that they can serve beer and wine to their customers to enjoy with their meal.

Motion unanimously passed. Audience advised of the ten day appeal period.

1. **V-9024 - Mr. and Mrs. Barry Welliver, 155 Morningside Drive, A/P 5-144-11, a 1' sideyard variance to construct a second story addition within 7' of the side property line, with an 18" roof overhang.**

Commissioner Kroot asked to abstain from this variance because of his business relationship with Mr. Welliver.

The applicants were present.

Assistant Planning Director Anderson presented the staff report.

Mr. Welliver stated that he is a Structural Engineer by profession and his justification for the second story variance is the location of existing exterior walls capable of supporting the vertical loads. He also stated that he was not taking any additional lot coverage and was following the existing non-conforming first floor side yard setbacks. He presented photographs of a home located at 176 Morningside that is identical to what he is proposing. This house had previously been approved for a variance. The reason for expansion was to accommodate a growing family.

Commissioner Mihaly asked what would be involved by reducing the side yard by one foot to conform to the set back. Mr. Welliver explained that certain economic structural considerations exist between the ability to utilize the residence's existing structural system as opposed to the construction of another structural system to allow the proposed second story addition to comply with established setback standards in addition to waterproofing considerations. Also, there is a question as to his sideyard setbacks. He felt certain that the need for a variance is one foot at the most and more than likely, less. He has been in contact with a surveyor but would like to have the Commission proceed at this time with the one foot side yard variance.

Resident, 150 Morningside, was in support of the variance and felt it would enhance the neighborhood.

Sylvia Levine, 159 Morningside, was in support of the variance and did not want to loose good neighbors.

Mr. Welliver noted that the owners of 151 Morningside were also in support of the variance.

Commissioner Julin concurred with staff's proposal for denial on the grounds that she was unable to make the necessary findings.

Commissioner Harle, supported the proposal, stating that this is an addition, following the existing non-conforming setbacks of 5 feet and that this addition would be in conformance with other additions within the neighborhood. He did not think it would be a reasonable request to observe the set back requirements for this application.

Commissioner Mihaly stated that because the house will be a little less safe if the variance isn't granted and the fact that the variance is diminutus were his grounds for approval. He added however that staff is absolutely correct in its findings.

Commissioner Sias concurred with Mihaly and added that he did not think the Town would gain by moving the side yard in by one foot to comply with the set back for this particular application. He felt the addition fits in with the character

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with the neighborhood and was glad to see such support from the neighborhood.

Chairman Yarish was also in support of the application and had nothing further to add.

M/S Mihaly, Sias, to approve V-9024 - Mr. and Mrs. Barry Welliver, 155 Morningside Drive, A/P 5-144-11, a 1' sideyard variance to construct a second story addition within 7' of the side property line, with an 18" roof overhang on the basis: 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 such 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; b) The granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the petitioner; c) The granting of such 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. Special circumstances are: 1) the distinction between the minimum requirement of 8' and the actual setback of 7'4" or 7'8" or possibly 8' is sufficiently diminutive as to merit the granting of the variance in light of the following factors: There appear to be no other planning, parking, or other special considerations which notate against it; the granting of the variance to the neighbors on both sides, including the neighbor on the side closest to where the variance is proposed, support the variance and there is no loss of light; and 3. the structural design would apparently be safer. On that basis the required findings of the Code can be made. This approval is based on drawings dated April 24, 1990.

Ayes: Harle, Sias, Mihaly, Yarish

Noes: Julin

Abstain: Kroot

Motion carried. Audience advised of the ten day appeal period.

2. **V-9025 - Iain and Casey Mickle, 76 Oakland Avenue, A/P 5-211-50** - a third story variance to convert an existing enclosed unexcavated area to living area. - WITHDRAWN.
3. **V-9026 - Mary Ann Buxton and Thomas M. Barthold, 156 Broadmoor Court, A/P 5-112-28**, a third story variance to construct a living addition over the existing dwelling.

The applicants were present.

Assistant Planning Director Anderson presented the staff report, adding that this third story would be allowable within the proposed new zoning ordinance.

Mary Ann Buxton presented photographs to the Commission. She stated that they have lived in their home for 8 years and now want to expand their dining area and add an additional bathroom.

Thomas Barthold stated they have spent a considerable amount of time researching the best proposal for the addition. He did not feel they could expand to the rear because of the deck and it would not allow them the maximum amount of light. He felt he had support from four out of the five neighbors affected. He said the neighbor against their expansion was concerned about loss of sun light. He calculated that they would lose approximately 16 minutes of direct sun light per day. They have tried to make the addition as compact as possible but also had to consider plumbing, interior space and the location of the interior stairway and their main goal of increasing the dining area and adding a second bath.

Resident, 75 The Alameda, was concerned about her privacy being taken away.

Mr. Barthold stated that there are no windows proposed on that side of the house facing The Alameda therefore the privacy of the people on The Alameda will not be jeopardized.

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Warren Schafran, 79 The Alameda, was concerned about privacy but if there are no windows facing their house, he has no objection.

Glenn Axworthy, 4 Indian Rock Road, was very concerned about loss of sunlight and privacy. Their house is already dark during the winter and the proposed addition will increase the darkness. He is adamantly opposed to the addition going up but will not oppose the addition if it goes out. He also wondered if the unfinished lower floor could be used instead of adding another story.

Robert Epifanio, 83 The Alameda, stated that the house already sits on a knoll so any addition would further add to the visibility of the house. Also privacy is an issue. He would like to see the addition elsewhere on the property.

Celine Philpott, 4 Indian Rock Road, did not favor the addition because of the loss of light to their property.

Mary Ann Buxton said they would be happy to remove a bay tree to give them additional light.

Ruth Schafran, 79 The Alameda, felt the house was currently looming and was concerned about any addition on the property. She was also afraid that the existing bay trees on the property could become a hazard.

Commissioner Mihaly asked if other third story variances had been approved that were similar to this proposal. Commissioner Sias was familiar of a similar application that was approved. Assistant Planning Director Anderson said that many third story approvals are based on people getting unclaimed basement space on down hill lots.

Commissioner Julin asked if the zoning revisions in progress would allow for this third story to be processed without a variance. She also asked if the second finding was to be removed as part of the revision. Assistant Planning Director Anderson affirmed.

Commissioner Julin felt that this application was consistent with the direction in which the Town is going and therefore would be able to approve findings one and 3.

Commissioner Harle agreed with Commissioner Julin's observations but stated the only concern he had was the discontentment by the neighbors. It would be desirable to have the owners submit a plan that would not require a variance, but felt he would probably approve the variance.

Commissioner Mihaly supported staff's recommendation for denial, adding that he felt the rules currently in place must still be followed.

Commissioner Sias supported staff's recommendation for denial, noting that this addition represents a substantial change for the neighborhood. He would like to see additional dialogue between the applicants and the neighbors.

Commissioner Kroot stated the house would be relatively low for three stories and felt the applicants have done what they could to make the addition as inconspicuous as possible. However, he was concerned about the impact on the neighbors.

Chairman Yarish was unable to make the third finding because of the detriment to the neighborhood and also that the addition was possible within the setbacks therefore a variance would not be required. He wondered if the applicants had considered the possibility of clipping off the edge of the roof, thereby allowing light to flow through to the neighbors.

Ms. Buxton stated that the windows are necessary for bringing in additional light to their third story.

Thomas Barthold stated that they have spent a lot of time in the design stage and felt this was the best solution. They did consider the privacy issue for their neighbors but frankly did not consider the sun light issue. They tried to tuck the addition in as much as possible.

M/S Kroot, Julin, to approve V-9026 - Mary Ann Buxton and Thomas M. Barthold, 156 Broadmoor Court, A/P 5-112-28, a third story variance to construct a living addition over the existing dwelling on the basis: a) Due to special

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circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the controlling zoning ordinance or regulation deprives such 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; b) The granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the petitioner; c) The granting of such 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. Special circumstances are: 1) the irregular shape of the lot; and 2) the applicant has a very small 2nd story addition and this is the logical place for the third story; and the miniscule size of the staircase and the required access to the 2nd story; 3. the 2nd story addition is a very low profile and the area of the stairs for the 3rd story roof line is lower than the 2nd story.

Ayes: Harle, Julin Kroot
Noes: Sias, Mihaly, Yarish

Motion did not carry.

M/S Sias, Yarish, to deny V-9026 - Mary Ann Buxton and Thomas M. Barthold, 156 Broadmoor Court, A/P 5-112-28, a third story variance to construct a living addition over the existing dwelling on the basis: The granting of such variance, under the circumstances of the particular case, will be materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will be materially detrimental to the public welfare or injurious to property or improvements in such neighborhood, specifically the reduction of privacy and sun light to the neighbors.

Ayes: Sias, Mihaly, Yarish
Noes: Kroot, Harle, Julin

Motion did not carry.

M/S Mihaly, Sias to continue V-9026 - Mary Ann Buxton and Thomas M. Barthold, 156 Broadmoor Court, A/P 5-112-28, a third story variance to construct a living addition over the existing dwelling, to allow the applicants to consider the comments of the neighbors and the Commissioners and to try to remove the detriment from the neighbors. This is to be continued to the meeting of October 15, 1990.

Motion unanimously passed.

E. GENERAL DISCUSSION

1. Assistant Planning Director Anderson presented a schedule of Planning related classes to the Commission.
2. The joint meeting between the Planning Commission and Town Council is postponed until another date can be agreed upon.
3. Commissioner Mihaly requested a ruling from Counsel regarding the tie vote.
4. Commissioner Mihaly asked for a ruling from Counsel as to whether or not the previous Planning Commission and Town Council minutes could be included as part of the Helfrich presentation.
5. Commissioner Julin would like to have a committee comprised of a few Commissioners to put together a list of goals and objectives for presentation to Council. It was agreed by consensus that Commissioner's Sias and Julin would serve as members of the Planning Committee, and report back at the next meeting of the Planning Commission

F. REPORT OF UPCOMING APPEALS TO TOWN COUNCIL

G. ADJOURNMENT

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The special meeting of the Planning Commission was adjourned at 11:00 p.m. to the next regular scheduled meeting on September 17, 1990.

BARBARA CHAMBERS
ADMINISTRATIVE SECRETARY