

TOWN OF SAN ANSELMO  
MINUTES OF DECEMBER 16, 1991 PLANNING COMMISSION

The regular meeting of the Planning Commission was convened by Chair Julin at 8:00 p.m. in the Council Chamber. Commissioner's present were: Kroot, Yarish, Mihaly, and Harle who arrived at 8:30. Staff present were: Lisa Wight, Planner, Ann Chaney, Planning Director.

**B. CONSENT AGENDA**

1. Minutes - November 18, 1991
2. Minutes - December 2, 1991
3. U-9128/V-9146 - Walt van Gelder, 128 1/2 Greenfield Avenue, A/P 6-171-05, 1) use permit to establish an art studio and residence in an existing commercial building; 2) variance to allow two tandem off-street parking spaces; and 3) variance to reduce the required number of on-site parking spaces from 7 to 3 existing on property located within the C-3 Zoning District.
4. DR-9123/V-9145 - William Harms, 60 Grove Hill Avenue, A/P 6-117-12, 1) design review to construct a new single family residence; and 2) a 20' front yard variance to construct the house within 0' of the front property line; and 3) a 15' rear yard variance to construct a 4' retaining wall, on property located within the R-1 Zoning District (above the 150 feet mean sea level).
5. DR-9005 - J. L. Hallberg, 22 Magnolia, A/P 7-212-34, Design Review Amendment to remove a tree previously intended to be preserved on property located within the P Zoning District.

Chair Julin requested that DR-9005 be removed from the Consent Agenda.

M/S Kroot/Yarish to adopt the staff report as written for the above applications with the exception of DR-9005. Conditions for DR-9123/V-9145 - William Harms, 60 Grove Hill Avenue are as follows: 1. The house shall be constructed according to the approved plans date stamped received November 25, 1991 by the Planning Department for the Town of San Anselmo. 2. The applicant shall record an Offer of Dedication to the Town of San Anselmo for that portion of the roadway that abuts the retaining wall along Grove Hill Avenue that currently encroaches on the applicant's property. This shall be recorded prior to the issuance of a building permit. 3. Three additional trees shall be planted in the rear yard of the house. 4. The Town Public Works Director shall review and approve the final building plans, checking for all pertinent engineering issues (including drainage) associated with the project. 5. The applicant shall establish a cast surety in an amount of \$2,500 for any necessary road maintenance that might result from the construction of this house.

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

**C. PUBLIC HEARINGS CONTINUED TO THE MEETING OF JANUARY 27, 1992**

1. GPA-9101/Z-9101/ER/LLR-9101/U-9104/V-9130/DR-9110 - Jim McDonald, 40 Belle, A/P 7-301-05, 7-301-16 and 7-301-17, 1) Environmental review of the General Plan amendment and rezoning; 2) General Plan amendment to revise the land use map for a portion of the property currently C-3 to have a designation of R-1 and a portion currently R-1 to have a designation of C-3 (fronting Mariposa Avenue); 3) Rezoning of a portion of the property currently zoned C-3 (fronting Mariposa Avenue); 4) Lot line relocation to create two parcels from three existing parcels; 5) A use permit, variance and design review to construct a new building and parking area within 6' of the west side property line (fronting Mariposa Avenue) to house current school activities; and 6) A use permit for the Rummage Rack location to be shifted from the C-3 zoned parcel to the adjacent R-1 parcel (located in the new building fronting Mariposa Avenue).

**D. PUBLIC HEARINGS**

1. DR-9005 - J. L. Hallberg, 22 Magnolia, A/P 7-212-34, Design Review Amendment to remove a tree previously intended to be preserved on property located within the P Zoning District.

The applicant was present.

Chair Julin stated that because the tree is on Town property and a heritage tree, she felt the Town should have jurisdiction over the type of tree to be replanted.

Ms. Chaney stated that she had a conversation with the Park Superintendent and Mr. Nieberg preferred a Chinese Pistachio over a popular tree. He also said it should be a 20-30 gallon tree and that the Town would be able to help the applicant get the tree at a reduced price.

Commissioner Yarish stated that it should be a 24" box tree.

Mr. Hallberg did not have any objection to planting a 24' box tree and will also submit the landscaping plan prior to approval of the building permit.

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M/S Mihaly/Kroot, to approve DR-9005 - J. L. Hallberg, 22 Magnolia, A/P 7-212-34, Design Review Amendment to remove a tree previously intended to be preserved on property located within the P Zoning District.

*1. Is functionally and aesthetically compatible with the existing improvements and natural elements in the surrounding area;* The introduction of replacement trees will result in an aesthetically compatible project to the existing neighborhood. *2. Provides for protection against noise, odor, and other factors which may make the environment less desirable.* The removal of this elm tree will not impact any of these environmental concerns. *3. Will not tend to cause the surrounding area to depreciate materially in appearance or value or otherwise discourage occupancy, investment, or orderly development in such area;* This approval will not have any impact on the assessed value or the development potential of neighboring properties. Replacement trees will help mitigate the appearance of this area. *4. Will not create unnecessary traffic hazards due to congestion, distraction of motorists, or other factors and provides for satisfactory access by emergency vehicles and personnel;* The traffic levels will not be affected by the approval of this request to remove this tree. *5. Will not adversely affect the health or safety of persons using the improvement or endanger property located in the surrounding area.* The removal of this tree and the planting of two (2) replacement trees will have no impacts on the health and safety of residents or neighbors. *6. Conformance to the approved precise development plans.* This property is zoned P and a precise development plan is not required. *7. Adequacy of screening.* The introduction of two replacement trees will increase the potential landscape screening of the property. *8. Selection of architectural features that enable the structure to blend with its environment.* The replacement landscaping will provide additional architectural embellishments for this site. **Conditions of approval are: 1. The applicant shall submit a revised landscape plan showing two (2) 24" replacement Chinese Pistachio trees . The final location of these replacement trees shall be approved by the Planning Director.**

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

2. U-9106 - Mario and Emilia Orihuela, 26 Sais, A/P 6-072-16, a use permit to legalize a proposed second living unit located on property within the R-1 zoning district.

Commissioner Kroot asked to abstain.

The applicant and his Attorney, Carl Shapiro, were present.

Ms. Wight presented the staff report.

Mr. Shapiro said the his client had tried to address all the concerns of his neighbors. He has removed the work vehicles and has signed a lease to rent space for those vehicles in San Rafael. He has reduced the size of the second unit so that he will not require any variances. He is also in the process of preparing a landscape plan. The Town Ordinance allows for second units in this neighborhood and his client wants to have a legal second unit.

Howard Bauman, 37 Sais, has lived in his house for 39 years and felt that any additional traffic would be unbearable on an already densely populated street. He felt that this was the wrong location for a second unit.

Ron Silveira, 21 Calumet, he understood that there was a second unit available in this neighborhood but he also felt that intensification should also be a consideration.

Melissa Weaver, 50 Sais, did not feel the illegal second units in the neighborhood should be noted. They exist even though they are illegal and do have an impact on intensity. She wanted to know what guarantee they had to ensure that the work vehicles would not be parked on the site.

Letha Marchetti, 29 Sais, felt that the neighborhood is already too densely populated. There are already seven illegal units that have been identified. She said that the Town has not done anything about the illegal units and felt they should be dealt with prior to this unit being allowed in the neighborhood. She noted that work vehicles are still on the premises. She felt this unit would have a negative impact on the neighborhood and therefore she was against it.

Susan Manny, 20 Sais, did not feel it was fair to allow this use in a single family neighborhood. She did not think the location was good and did not feel there should be two houses on one lot. She did not think this was the intent of the second unit ordinance. She also felt that the oak tree is a heritage tree and needs protection. She presented photographs that showed work vehicles on the property.

Jean Kline, property owner of 25 Calumet, said her mother built her house in 1935. Her main concern was the removal of the accessary structure and it has been removed. She would like to see the accessary structure foundation also removed. With the structure removed, there will be no boundary between her property and Mr. Orihuelas. She would be willing to work with her neighbor in a new fence and landscaping.

Jean Gordon, 20 Sais, moved to this area for more privacy and his house backs up to the second unit. He requests denial.

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Phil Murphy, 30 Sais, said that the applicant has improved his property and is trying to improve the quality of life. He had no objection to the applicant expanding his own home but would not like to see a second unit there.

Ann Murphy, 30 Sais, objected to the second unit. There is not parking on the south side of the property and trucks used for the business have created a hazard. She also said that a commercial business was being run out of his home and there is too much noise with tools being sharpened.

Rich Marchetti, 29 Sais, was happy that the applicant found another location for the work vehicles. He stated that there is a lot of traffic on their street because Madrone is one way. Cars travel very fast and there have been accidents. He would like to see all the illegal units removed but was unsure that it could be done. He felt the neighborhood was already too dense and therefore did not think this was the right location for another second unit.

Mr. Shapiro stated that his client has signed a lease on Kerner Blvd for storage of the trucks, tools and other equipment. He said there will be a new fence constructed between Mrs. Kline's property and his client. He noted that his client can not be responsible for the illegal units in the neighborhood. Mr. Orihuela is trying to comply with all the laws of the Town. He is also allowing for off-street parking for the unit.

Mr. Orihuela apologized to his neighbors for any trouble he has caused them. He wants the best for his family but does not want to be a bad neighbor. He said that his work vehicles was there over the weekend but he was using it to clean up his property. He wants to comply with all laws and is therefore asking the Planning Commission to approve the second unit.

Felix Capo, representative of Residential Homes, builder of the pre-fab house, explained that the house will be lifted and pivoted into place without jeopardizing the tree. He presented information about the house.

Ms. Wight stated that the applicant has reduced the scope of the project so that variances are not required. Also, this project does not require a design review. Commissioner Mihaly asked how the illegal second units could be abated. He also wondered if clustering could be taken into consideration when determining if a second unit was appropriate. Ms. Wight explained about the code compliance procedure on illegal units and said that she strongly recommended approval of this project because all of the findings could be met.

Commissioner Yarish said that this was a difficult decision because the neighbors are concerned about traffic, noise and over development and yet this site is ideal for a second unit. He would like to see an arborist report on how to protect the oak tree.

Mr. Orihuela said that he has spoken to Soner Tree Service and has been advised of measures to take to preserve the tree.

Commissioner Harle was able to make the first five findings but items number 6 and 7 are in question in his mind. He understands the concerns and although there is clumping, it is not against the Ordinance.

Commissioner Mihaly stated he was inclined to decline because it would be difficult to make the last two findings although all the concerns of the neighbors seem to have been resolved by the applicant. The trucks and noisy equipment have been removed from the property, the accessory structure has been removed, the applicant is willing to plant landscaping and has reduced the scope of the project. He also does not need a parking variance and has adequate off-street parking. His concern is the clustering. Although there are illegal units in the neighborhood, they still exist. There are at least 10 multi family units within the first five lots and he is more in favor of scattering them throughout the neighborhood. He therefore felt that this second unit is in the wrong location.

Chair Julin stated she was unable to make findings 6 and 7 because of the testimony from the neighborhood. The use would be disruptive to the neighborhood.

Commissioner Kroot stated that he originally abstained because he has discussed this project with the applicant and has been up to the site. He said he wanted to withdraw his abstention. He is in favor of this project because it conforms to the letter of the law. The applicant should not be made to suffer for the illegal second units in the neighborhood. The house and the second unit do not add up to over 2,000 square feet. His next door neighbors at number 30 Sais were granted a third story variance in the past.

Commissioner Harle stated that it was not the intent of the Ordinance to designate specific locations within the neighborhood to allow for second units. He considered Commissioner Kroot's comments and was inclined to approve the application.

Commissioner Yarish noted that the house is small, the lot is large, the work vehicles have been removed and is inclined to approve.

M/S Yarish/Harle, to approve U-9106 - Mario and Emilia Orihuela, 26 Sais, A/P 6-072-16, a use permit to legalize a proposed second living unit located on property within the R-1 zoning district.

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1. Falls within the maximum number of second residential units authorized by resolution of the Council for the single family residential use area in which the unit is located. With the approval of this second unit, one additional unit will be permitted in the Carrigan Tract 2. Is located within Assessor's parcel or parcels on which the owner of record maintains his principal residence. The applicant, who is the owner of record, maintains his principle residence at subject address. 3. Does not encroach upon required setbacks, or cover land in excess of the maximum lot coverage, or necessitate vehicular parking within required setbacks, unless a variance shall have been granted. The proposed location of the second unit will not encroach upon required setbacks, or cover land in excess of the maximum lot coverage, or necessitate vehicular parking within required setbacks. 4. Meets all applicable Codes in effect at the time of the establishment of the unit. The permits issued by the Building Department will require that all applicable Codes in effect at the time of the establishment of the unit are met. 5. Has been made the subject of a rent guarantee contract between the applicant and the Town. The applicant will enter into a rent guarantee contract with the Town, which will be recorded at the County. 6. Does not cause excessive noise, traffic, parking or overloading of public facilities. The unit should not cause excessive noise, traffic, parking, or overloading of public facilities for the following reasons: The unit is limited to two bedrooms, the unit will conform to the Code required setbacks, and on-site parking is adequate to accommodate occupants of the unit. 7. The granting of the use permit, under the circumstances of the particular case, 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 or injurious to property and improvements in the neighborhood or the general welfare of the Town. A letter of opposition dated November 12, 1991, was submitted by the owner of 25 Calumet Avenue. Her comments, which were based on the previous plan, include: 1) the partially framed accessory structure should be removed from the rearyard; 2) the second unit should be setback 25 feet from the rear property line; and 3) there should be landscaping between the second unit and the rear property line. Staff's response is as follows: The applicant intends to remove the accessory structure. A 27' rearyard setback is proposed. The applicant has advised staff that he intends to contact this neighbor to discuss sharing the expense of a new 6' fence between the properties. Staff does not find the necessity for landscaping between the two properties as a condition of approval.

A letter of opposition dated November 10, 1991, was submitted by the owner of a property on Nokomis Avenue. Her comments include: 1) the applicant stores 3 to 5 business trucks in his rearyard on a daily basis, and when these vehicles are started up in the morning, they are left running; and 2) there are several illegal units in the neighborhood. Staff's response is as follows: The applicant has advised he has permanently removed the commercial vehicles from the property (with the exception of the one he drives). With regard to the neighbor's allegations that there are several illegal units in the neighborhood, staff has not inspected these properties to determine the legitimacy of the complaint. Staff will add these units to our project schedule and inspections will be subsequently arranged. Regardless of whether there are several illegal second units existing, should the applicant's unit be legalized, there will only remain one opening for legalization of a second unit. Beyond that, all others must be terminated.

A letter of opposition dated October 31, 1991, was submitted by the owner of 50 Sais Avenue. Her comments are related to parking. This woman believes that the demand for on-street parking exceeds the supply, and motorist visibility is reduced. Staff's response to this concern is that on this particular property, the required 3 on-site parking spaces can be provided. In addition, there is a 1-car parking space in the carport driveway and additional parking spaces on the uphill driveway for guest parking.

Staff feels 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 or injurious to property and improvements in the neighborhood for the following reasons: 1) There are currently two openings for second units in this neighborhood; 2) Due to the close access to public transportation and shopping, it is possible there will be less vehicular use associated with this unit; 3) On-site parking exceeds the minimum requirement. There will be 3 legal parking spaces and in addition there is guest parking available on both driveways; 4) Although the southerly neighboring property at 30 Sais Avenue has a legal, nonconforming second unit along the common side property line and the northerly neighboring property at 20 Sais Avenue has a one story living unit within 0' of the common side property line in the rearyard, the applicant has designed the second unit so that it conforms to the required setbacks and is situated a few feet towards the east, away from these two neighboring living units. Additionally, shrubs and a tree are proposed to partially screen the unit from the dwelling at No. 20. **Conditions for approval include:** 1) Establishment of the second unit shall not take place until a water meter can be made available for this site by the Marin Municipal Water District. 2) The applicant enter into a Rent Guarantee Contract with the Town and have it recorded. 3) That Eugenia shrubs be placed along the north side property line, a distance measuring 20' from the rear property line. 4) That an evergreen screen tree, which is not dense, and will not exceed a height of 15', be placed between the north side property line and the proposed second unit, a distance of approximately 28' from the rear property line. The species of this tree shall be recommended by the applicant and subject to Planning staff approval. 5) That the existing framed accessory building and foundation along the rear and north side property lines be completely removed prior to Building permit issuance for the second unit. 6) That the entire length of the existing driveway, including the area of the two proposed parking spaces and turnaround, have an all-weather surface, as determined by the Public Works Director. 7) That the fence in the rear yard be 6' in height and that the design of the fence be agreed upon with the neighbor. 8) That an arborist report be obtained for protection of the oak tree. 9) That driveway access for the 2nd unit not be used for over night parking.

Ayes: Kroot, Yarish, Harle

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Noes: Julin, Mihaly

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

3. V-9148/DR-9121 - Paul Eveloff, 48 Alta Vista, A/P 6-231-19, 1) a variance to exceed the maximum dwelling size for properties located above the 150' mean sea level (3,350 square foot house allowed; 4,394 square foot house requested); 2) a 20' front yard variance and a 4' side yard variance to construct a carport within 0' of the front property line and 4' of the side property line; and 3) design review to add to an existing house, on property located within the R-1 Zoning District (above the 150' mean sea level).

The applicant and his Architect, David Hale, were present.

Ms. Chaney presented the staff report noting that the adjusted square footage is 4,673 square feet.

Mr. Eveloff stated that he has lived in his home since 1983 and he is finally hoping to expand. He stated that the original house built in 1950 had one bedroom and one bath. Subsequently the lower lot fronting Prospect was purchased. He was made aware of the maximum square footage just last November after most of his plans were completed. His objective is not to go against the Ordinance but he felt that in this case his addition will not be very visible and his neighbors are in support of his project. He stated that the MMWD Map shows the 150' mean sea level line at Alta Vista and he is not sure that the property should even be included in the design review. He is in the process of having a survey done but it has not yet been completed. With regard to the side yard variance, the adjacent neighbors are in support of the variance and there is adequate open space between the two houses. He also felt the variance was necessary for adequate circulation. He felt that there were many large houses in his neighborhood, larger than staffs figures indicate. He understood that limiting the size was to protect views but he stated the addition will not be obstructing any views. With regard to saving the oak tree he stated that he has looked into that and a perimeter foundation is not a good idea. The house will be on piers which will allow the ground to breathe. He said that he chose the colors because it reminded him of fall leaves.

David Hale stated that he wanted to continue the existing lines of the house. The house becomes three dimensional the way he stepped back the house as viewed from Prospect. He did not think that the carport should be included in the total square footage because a carport is only a tray for cars and is open on two sides. He said that the addition will only be 25% of lot coverage.

Gay Kagy, 280 Redwood stated that the size of his addition was against the zoning Ordinance and the intent of the General Plan and therefore should be denied. All other houses in his neighborhood with the exception of 171 Prospect fall within the required limits. She supported staff's decision for denial.

Kathy Sanders, 310 Redwood, stated that as a spokesperson for the Open Space Committee this addition is against the intent of the General Plan and Zoning Ordinance. The Ordinance was enacted to preserve the hillsides and although this house may have adequate screening, a house is permanent and vegetation is not necessarily permanent.

Ted Posthuma, 379 Oak Avenue, stated that the applicant should verify whether or not he is within the 150' mean sea level. If he isn't then the design review would be moot.

Commissioner Harle said he could understand why the applicant wanted the side yard variance but was not able to make the necessary findings for approval. With regard to size variance, he would like to allow the variance because it would not be a significant detriment to anyone but he was not able to make the required findings.

Commissioner Kroot stated that the Town Council has made it very clear based on a passed application, that the size should fall within the required limits, therefore he would not be able to support the variance for lot coverage. He did not object to the side yard variance because the adjacent neighbors are far enough away not to be impacted. He did not concur with the 500 feet garage limitation because it should not be a detriment to have a three car garage. He thought the design of the addition was very attractive but the color was too strong and bright and should be toned down. He wanted to see an arborist report on what will be necessary for protection of the oak tree and he also felt it would be a good idea to get a survey to determine whether or not the property is at or above 150 feet mean sea level.

Commissioner Mihaly supported staff's recommendation of denial. He felt it would be in violation of the General Plan and Zoning Ordinance to approve. He thought the exterior color was a bit bright and agreed that the applicant should have a survey done.

Commissioner Yarish wanted to see a more earthy yellow than that proposed and denied the variance for lot coverage. He also concurred with the recommendation that a survey be done and that there be an arborist report on the oak tree. He did not think the side yard variance was necessary and that the carport could be shifted without ruining the integrity of the design. He had no objection to the front yard variance.

Chair Julin supported staff's recommendation of denial.

Mr. Everloff asked for a continuance to evaluate the information presented tonight.

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M/S Mihaly/Yarish, to deny a portion of V-9148 - Paul Eveloff, 48 Alta Vista, A/P 6-231-19, 1) a variance to exceed the maximum dwelling size for properties located above the 150' mean sea level.

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

M/S Mihaly/Yarish to continue a portion of V-9148/DR-9121 - Paul Eveloff, 48 Alta Vista, A/P 6-231-19, 1) a 20' front yard variance and a 4' side yard variance to construct a carport within 0' of the front property line and 4' of the side property line; and 3) design review to add to an existing house, on property located within the R-1 Zoning District (above the 150' mean sea level). This is continued to the meeting of January 6, 1992.

Motion unanimously passed.

**E. ELECTION OF 1992 PLANNING COMMISSION CHAIRMAN**

M/S Harle/Yarish, to recommend Commissioner Kroot as the Chair for 1992 and Commissioner Mihaly as Vice Chair.

Motion unanimously passed.

**F. ADJOURNMENT TO THE REGULAR MEETING OF JANUARY 6, 1992**

The regular meeting was adjourned at 11:45 p.m. to the next regular meeting of January 6, 1992.