

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MEETING OF JUNE 6, 1994**

The regular meeting of the San Anselmo Planning Commission meeting was called to order at 8:00 p.m. in the Council Chamber by Vice Chair Israel. Staff present was Environmental Planner John Roberto, Planning Director Ann Chaney and Associate Planner Lisa Wight.

A. ROLL CALL

Present: Harle, Israel, Julin, Ollinger
Absent: Hayes, Mihaly, Sergeant

B. CONSENT

1. Minutes - May 23, 1994 - Continued

C. PUBLIC HEARINGS-WITHDRAWN

1. **V-9411 - Nick Kaeonil, 727 Sir Francis Drake Boulevard, A/P 6-083-07, a design review and parking variance (6 required, 5 provided) to establish a new restaurant on property located within the C-L Zoning District.**

D. PUBLIC HEARINGS-CONTINUED

1. **V-9406 - Michelle Chouinnard, 208 Sequoia, A/P 6-114-01, a variance request to: 1) allow the applicant to relocate a spa off the neighbors property to within 1' of the side property line (8' is required); 2) to relocate a trellis and arbor off the neighboring property and be within 0' of the side property line (3' is required); and 3) to allow portions of a fence and trellis to be 9' in height (6' is permitted); 4) to relocate an existing 150 square foot arbor that encroaches 4" on the neighbors property and will be within 0' of the side property line (8' is required) on property located within the R-1 Zoning District. (After-the-Fact) **Note: The spa and portions of the fence trellis and arbor currently encroach into the adjoining property. CONTINUED TO THE MEETING OF JUNE 20, 1994.****

E. OPEN TIME FOR PUBLIC DISCUSSION

F. PUBLIC HEARINGS

1. **V-9414 - John and Maureen Geoghegan, 61 Sais Avenue, A/P 6-074-30, a variance request to 1) increase the height of an existing residence from 19' to 25' that is 12' from the front property line (20' is required); and 2) construct a new carport above the existing driveway that will be 3'6" from the side property line (8' required), on property located within the R-1 Zoning District.**

The applicant and his architect Edmund Heine, Jr. were present.

Ms. Chaney presented the staff report, noting that staff does not support the side yard variance for the carport on the grounds that it is not a necessary element of the house and has the potential to adversely impact adjoining properties.

Mr. Heine noted the existing foundation is cracked and there is termite infestation in the house. Since major repair work is necessary, the applicant feels it will be economically practical to raise the house at the same time. Since the kitchen will ultimately be placed downstairs, the applicants have proposed a sheltered cover to the dwelling, which serves as a carport. The applicant brought an alternative proposal to the meeting, which reduces the width of the carport expansion and elimination of the posts. The front stair encroachment will be removed and stairs will be constructed in the side yard.

In response to Commissioner Israel, the applicant advised the current 1,500 square foot dwelling will be expanded to appropriately 3,000 square feet.

(Commissioner Hayes arrived at the meeting).

Ms. Chaney acknowledged that the alternative proposal will have a lesser impact on the neighboring property, although it is still difficult to make the special circumstance finding.

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Commissioner Julin voiced her support of the front variance.

Commissioner Harle also supports the front variance, and is supportive of the awning-type carport, but would prefer the carport with posts.

Commissioner Ollinger said the front elevation will be improved and supports the front variance request, as well as the carport variance request. Commissioner Ollinger said his support of the carport is on the grounds there are no alternative locations and that other properties in the area enjoy covered parking.

Commissioner Ollinger questioned the necessity of adding the deed restriction condition, to which Ms. Chaney said it is to assure that a third unit is not created on this new floor in the future. Commissioner Ollinger also noted the drainage pipe under the driveway may be inadequate and should be reviewed at the building permit stage.

Commissioner Hayes agreed with Commissioner Ollinger and supports the carport with posts.

Commissioner Israel discussed the fact that because the entire first floor can be living area, which doubles the dwelling size, this property has opportunities that others do not, i.e., a portion of this lower floor is not a garage. If the carport is approved, there may be the potential for the second unit occupant to park on the street because they don't have access to the rear garage.

M/S Julin, Harle, to approve V-9414 - John and Maureen Geoghegan, 61 Sais Avenue, A/P 6-074-30, a variance request to 1) increase the height of an existing residence from 19' to 25' that is 12' from the front property line (20' is required); and 2) construct a new carport above the existing driveway that will be 3'6" from the side property line (8' required), on property located within the R-1 Zoning District. Approval is based on the following:

- 1. 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 a 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. The front property line is not parallel with the rear property line and the front and rear walls of the house are in alignment with the rear property line. Because of this a corner of the house extends into the front setback. This is an unusual characteristic of this property since most parcels are rectangular with opposite sides being parallel. Therefore, the property has a unique shape which supports the need for a variance.*
- 2. 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 or the applicant and will not be detrimental to the public welfare or injurious to property or improvements in such neighborhood. This variance would not cause any detriment to the neighboring residences. The impacts resulting from an increase in building height will be minimal, and the redesign will improve the character of the residence. The front facade which faces Sais Avenue will be upgraded, and the degree of non-conformity will not be increased because of the removal of the front stairway. Also, the carport is diminuous. Conditions of approval are: 1. The plan be approved in accordance with the plan date stamped received June 2, 1994. 2. The applicant shall obtain a deed restriction limiting the number of residences on the property to the main house and the existing second unit. 3. The Public Works Director shall evaluate the curb and pipe in front of the house. If it is determined by the Public Works Director to be inadequate, it shall be replaced or repaired at the expense of the applicant.*

Motion carried: AYES: Harle, Hayes, Julin, Ollinger
 NOES: Israel

SPECIAL NOTICE

Commissioner Israel welcomed Commissioner Ollinger back to the Planning Commission.

2. **Oak Avenue Master Plan and Development Agreement - David Hansen APN's 7-154-02, 7-154-05; Michael and Linda Gill APN's 7-154-08 and 09, 7-154-11, William Broderick APN's 7-154-10, 7-201-02, 7-201-12;** The project site is located on the

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northeastern slope of Bald Mountain. It is bordered by Oak Avenue and scattered residential housing to the north and east, and by open space to the south and west. The subject property is comprised of 8 parcels of land totaling an estimated 16.2+ acres. The proposed project, which includes a master plan and development agreement, focuses on buildout of some, but not all, of the properties at the end of Oak Avenue. The proposed master plan and development agreement seek entitlement to construct four (4) new homes', appurtenant structures, and infrastructure improvements. The documents do not include the design level information required by the Town to approve specific homes or any of the other entitlements needed before construction can begin.

Ms. Chaney noted the new information presented to the Commission in their packets included the Mitigation Monitoring and Report Program. Secondly, the ordinance has been revised, which adopts the Development Agreement. Some outstanding issues, which may still not be resolved, are the building envelope location and size, heights of buildings, trees, water impact on neighboring sites, location of walls and gates, enforcement, and a time frame for the Development Agreement. An addendum to the staff report was prepared this evening to address some new items. Staff recommends approval of the draft Negative Declaration and the Mitigation Monitoring and Report Program, and that the Town Council approve the draft ordinance approving the Development Agreement and master plan.

The ordinance adopts the Master Plan and Development agreement. The conditions of approval are a new exhibit attached to the Development Agreement. Ms. Chaney explained the ordinance revisions and changes to the Conditions of Approval (Exhibit I).

Changes suggested by the Bald Hill Committee on June 6, 1994:

1. Item 1: ". . . fences, and gates, including gates across the Oak Avenue easement."
2. Item 32 page 13, add ". . . or painted with dark earth tones to blend with the natural setting and be screened with natural vegetation."
3. Item 32 page 14, add "A photo montage with the story poles and the construction tape, . . ." be added. as outlined in the June 6, 1994 staff report.
4. The applicant's representative asked to put a gate near South Oak Avenue, which would allow pedestrian access, but only vehicular access to residents and their guests. The Committee noted the potential of a "gated community", but then this is a dead end road and this gate, in effect, lets people know this is a dead end road.
5. Enforcement problems with regard to trees. What happens when a mature tree is removed? Perhaps there should be a value assigned to a tree by an arborist and some language that places a punitive penalty on someone that removes a tree.

Regarding the gate, Mr. Roth stated that there are 3 portions of Oak Avenue: an offered accepted part, an offered, but not accepted, part; and then a portion that is not offered. On the portion that is offered, but not accepted, a gate is questionable.

Commissioner Hayes requested that Ms. Chaney go through Items A through J in the Development Agreement. It was agreed that Item J will be deleted, as it will follow. Town Attorney Hadden Roth explained the provisions.

Commissioner Julin, referred to Exhibit I, page 7: What was the basis for determining the \$940 per home fair share contribution? Ms. Chaney noted there are 15 parcels that would benefit from the long-term roadway improvements proposed for Oak Avenue below south Oak Avenue. The \$940 was derived by adding the estimated costs, applying a 50% contingency factor and dividing by 15 potential homes. The \$940 would be paid prior to issuance of the building permit. Ms. Chaney acknowledged it could be some time depending on when the applicants build

. Commissioner Julin suggested this figure be given an increase in the future if cost of living goes up. To Mr. Roth, she asked if there is a program he has worked with that has dealt with increases in these figures. Mr. Roth said you can be creative. Mr. Roberto said there is a construction index which lists the increases in construction, so there could be a condition that the figure can be increased with inflation in the construction industry. Ms. Julin asked about notifying the properties that will be

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assessed the \$940 fair share. Ms. Chaney noted there will be public hearings.

Neil Sorensen, attorney for the applicants, referred to the Interlocutory Judgement, which put a hold on the lawsuit, lets the applicant prepare the documents, the staff to review it, the Town to give temporary access to the open space, and if all is agreed, it will be a permanent access. Mr. Sorensen quoted an excerpt from the Government Code regarding the purpose of development agreements. He said they want a 10 year agreement which will allow the property owners some certainty in the development of their property, and provide for recessionary years. Enforcement is another issue. State law requires that the development agreement be reviewed annually to ensure conformance. In addition, staff has put together a list of conditions. Another issue are gates: Gates can be put up at this property at both ends to control vehicular traffic. They would like the gate at South Oak if possible. The gate will assure that motor vehicles do not continue up the road. The proposed changes to the exemptions: page 1, 4.4, they have some problems with the added language. The Development Agreement was not intended to impact the Gill property. They don't want it to be a contractual obligation to the Gills. If something went wrong with the tank, they wouldn't want to be obligated. Regarding the Gills connecting to the sewer, they have created a very expensive septic system and do not have the desire to hook up to the sewer. Therefore, they object to any of these items being in the exemption language.

In response, Mr. Roberto said a homeowner's association will take care of tank and lines. Mr. Gill has agreed to provide an easement and that is acceptable. He wants assurance however that the tank he built and the lines are available. In terms of the sanitary sewer, Ms. Chaney noted that if a property is within 400' of a sewer, the owners must connect. Mr. Sorensen said that Mr. Gill does not want to agree to that. Mr. Roth suggested that the ordinance be mentioned in the agreement. Mr. Roth asked Mr. Sorensen if they conceptually agree that Mr. Gill will follow the law? Mr. Sorensen responded that he doesn't know how he can get around the law.

Mr. Sorensen said that it doesn't make sense to make Mr. Gill part of the exemptions. He would agree to leave him in and exempt him from the conditions.

Mr. Sorensen questioned the new items in ordinance as follows: He takes exception to No. 2: He does not see any reason to show MMWD that they have a well. Item 4: He understands what staff is trying to do, but doesn't think a Development Agreement allows for the Planning Director to make a decision. It is up to the Planning Commission and Town Council, and ultimately, the court. He suggested wording that states the first dispute goes to Planning Director, but then to the Town Council - they are the political body. Regarding the Negative Declaration: He doesn't look at it from legal issue of who has the right to the water; but rather he looks at whether there is a significant impact from a well; and he believes there is no significant increase.

Mr. Roberto, in response to Mr. Sorensen said that the points raised on the ordinance, Item 2: MMWD - the ordinance does not require that, so he concurs; Item 4: to be reworded by staff; in terms of the well issue, staff will wait for additional testimony.

Scott Hochstrasser, Consultant representing applicant, commented on the building location on lot 2. He said they selected the dwelling site because the lot has site constraints, including drainage, trees, and topography. Most of the trees can be saved on this lot. A visual impact analysis did not recommend moving this pad. With regard to Conditions 5 and 6, they are the same, and 6 can be omitted, to which staff agreed. Condition 20 prohibits the removal of shrubs and plants. He felt it was premature at this point to place a deed restriction since design review has not happened and they have not done a fire protection plan yet. He would like to provide latitude in removing trees outside the building envelope and therefore reverse condition 20.

Ms. Chaney said it is important that before someone buys a lot they need to know what they can do to the property. The intent is to keep the area outside the building envelope as natural as possible. Commissioner Israel suggested to use the words building footprint, rather than building envelope.

Mr. Hochstrasser went on to discuss Condition 23. He thought it was redundant. Staff concurred. Regarding Condition 24b: Item 4, page 8, omit MMWD. Staff concurred. Condition 24C: Item 4, road width, he did not follow this. He suggested that this be in the long term road improvements. Move this condition to long term improvements on page 14. He felt that it is inappropriate under sewer improvements. Condition 24D, Item 5E, deals with timing for construction. He

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would like the Public Works Director to allow heavy equipment to come at other hours occasionally. Staff concurs. Condition 31 is inconsistent between this and No. 1. All of 31 is redundant. Condition 32A, No. 6, page 13, he would like to omit this condition. They have provided a lot of studies to show that these lots are buildable. Proposed building envelopes are a very small portion on these lots.

There was a discussion on the number of people in the audience that still wished to speak but because of the late hour the Commission would probably have to continue this discussion to the next meeting.

Mr. Roberto said that there are 2 issues: One is a letter from the attorney representing the Seminary on the effect on their spring which provides water to the Seminary. Mr. Kresse has looked at the potential effect of wells on Oak properties and how they might effect Seminary water. Evidence he has in writing is that there is no effect, but the Seminary thinks there might be. Mr. Roberto stated that he cannot determine the mitigation if he doesn't know what the impact will be.

Oak Dowling, Attorney representing the Seminary, was unclear on what the Planning Commission wants to do. He recognized it is late and the Commission is tired but the Seminary would like to be heard. Commissioner Israel asked if they have a study by a geologist that specifies there will be an impact. Mr. Downing stated they want an opportunity to testify and explain the problems and then they will move as quickly as possible. They will need 3 to 4 weeks. Mr. Roth said that legally, the Town does not have the time. Mr. Downing said he fully understands that. This is a 104 year old water source for the Seminary and it is shocking to hear it referred to as cosmetic.

Frank Kresse, Geologist, said they need to establish flow, how it changes, and set up a monitoring program. If there are any damages, they need to be taken care of.

Commissioner Israel ask if there can be a mechanism set up to take care of any problems.

Mr. Dowling asked, what if after the damage, there is no way to replenish the stream? There may not be a mitigation. To which Mr. Kresse responded that the mountain is full of water.

Mr. Roth wanted to make certain that the Seminary had an opportunity to make a presentation.

Mr. Sorensen felt the Seminary has had time to come forward. He does not see why a decision has to be put off - The Commission can issue a negative declaration. If additional information is submitted after the negative declaration, CEQA provides for that to be addressed.

Ms. Chaney encouraged the public to call her and she will add their comments.

Michael Cone, 406 Oak, had concerns about the widening of Oak Avenue.

Commissioner Ollinger suggested the Planning Commission's comments get to Ms. Chaney before the next meeting. Commissioner Hayes stressed that it is important to him that time is set aside for the Commission to make substantive comments.

M/S Hayes, Julin, to continue to June 13, June 27, and July 11 and that we adjourn this meeting to June 13, the meeting to begin at 7:30 p.m. and to adjourn: midnight.

G. GENERAL DISCUSSION

Discussion of alternative Planning Commission meeting in lieu of July 4, 1994.

The decision was made to Convene on July 11, 1994 in lieu of July 4, 1994.

H. REPORT OF UPCOMING APPEALS TO TOWN COUNCIL

There was none.

I. ADJOURNMENT

The regular meeting was adjourned at 12:00 to the next meeting of June 13, 1994.