

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF OCTOBER 21, 1996**

The regular meeting of the San Anselmo Planning Commission was convened at 7:30 p.m. in the Council Chamber by Chair Israel. Staff present was Planning Director Ann Chaney, Associate Planner Lisa Wight, and Associate Planner Chip Griffin.

A. CALL TO ORDER

Commissioners' present: Harle, Wittenkeller, Duys, Mihaly, Sargent, Israel
Commissioners' absent: Cronk

B. OPEN TIME FOR PUBLIC DISCUSSION

No one spoke during this time.

C. CONSENT AGENDA

1. MINUTES: August 19, 1996
October 7, 1996

2. V-9637 - Paul McLaughlin and Elizabeth Share, 47 Sierra Avenue, A/P 5-194-17, renewal of a 7' north sideyard variance and a 17.5' rear yard variance to construct a new two car garage within 1' of the north side property line and within 2.5' of the rear property line, on property located within the R-1 Zoning District.

3. V-9422/DR-9411 - John Paletta, 29 Oakwood Court, A/P 5-062-83, a time extension for a design review and variance application to construct a new single family residence that will be 0' from the front property line (20' required) and have 2 off-street parking spaces (3 required), on property located within the R-1 Zoning District (Above 150' Mean Sea Level). Project was approved 8/15/94 and not built within the two-year permit period. No change to the approved plans are proposed.

Chair Israel said that Item 3 and the minutes of August 19, 1996, are continued.

Regarding Item 1, Wittenkeller said the minutes of October 7, 1996, page 7, paragraph 3, productive should read *counter productive*.

M/s, Harle/Duys, to approve items 1 and 2, as amended. Ayes: All.

D. CONTINUED ITEMS

1. Environmental Review/GPA-9601/Z-9601/u-9608 Russ Johnson, 12 Loma Robles and 750 Sir Francis Drake Boulevard, A/P 6-091-41, 770 and 760 Sir Francis Drake Boulevard, A/P 6-091-38, 754 Sir Francis Drake Boulevard, A/P 6-091-39, and 700 Sir Francis Drake Boulevard, A/P 6-091-40: environmental review; General Plan amendment to amend the land use designation from Limited Commercial to General Commercial; Zoning Ordinance amendment to amend the zoning from C-L (Limited Commercial) to C-3 (General Commercial) or to revise the list of allowed uses (Table 3A) in the C-L zone to permit a mini-mart food store. This request is being initiated by the Chevron Service Station owner in order to permit a mini-mart at that service station. CONTINUED TO 11/4/96

2. Town of San Anselmo - Ordinance Amendment - Approve ordinance language modifying the review process and standards regarding the current 8' side yard. Proposed language could allow additions to existing structures in residential zoning districts which do not meet current set back requirements through the Design Review process instead of the Variance process for new development within the 5' to 8' side yard set back area. CONTINUED TO 11/4/96.

3. V-9635/U-9609 - Tamsel Hug, 15 Durham Road, A/P 5-205-10, Variance to do the following: 1) allow carport within 5' of side property line (8' required); 2) allow a second unit structure 4'4" from the southerly side property line (8' required); 3) allow 2 required parking spaces within the rear setback (20' required); and 4) a Use Permit to allow a second unit, on property located within the R-1 Zoning District. CONTINUED TO 11/4/96

E. PUBLIC HEARINGS

1. 40 Tomahawk Drive, A/P 177-250-63, Request by Laurence Bartone to amend or interpret the Quarry Mountain subdivision CC&Rs and Map to permit a driveway access across the private open space easement on 40 Tomahawk Drive. This property is located within the R-1-H Zoning District. The purpose of the driveway would be to access a single family lot located in the County jurisdiction (A/P 177-171-05) directly from Tomahawk Drive.

Lisa Wight, Planner, presented her staff report. The primary question is the intent of the Quarry Mountain CC&R's regarding private driveway access over private open space. If not this was not the intent, the question is whether the CC&R's should be changed. Town Attorney Roth said the County has final say on this project but Planning Commission comments could be submitted to them. In discussing the issue with County Planner Johanna Patri, a detailed analysis was not performed regarding access from Tomahawk, but she feels it may be possible and may reduce tree removal. The County's minimum setback requirements are outlined in the staff report, but are minimums not entitlements. Regarding Fire Prevention requirements, some removal and thinning of trees will be required within a distance of the structure. The County and Fire Department will work together to minimize detrimental effects. Staff feels that the building could be placed within the approved building envelope without necessitating removal of the entire bay forest. Staff feels this could be precedent setting and the original intent of the agreement should be preserved. Before any action is taken, an amendment to the CC&R's is necessary. She recommends continuance to November 18 to give time to prepare.

Commissioner Wittenkeller wondered if a poll of the Commission is called for to see how people feel before too much time is wasted.

Commissioner Mihaly asked about the process for amending the CC&R's. Ms. Wight said the Council originally approved the CC&R's, but they could possibly be changed with the consent of the property owners.

Commissioner Mihaly asked about the applicant filing another tentative map, with building envelope and access shown. Ms. Wight said they'd be looking at the environmental review and this might have to be amended. There would be a precise development plan required as to the location of the driveway, landscaping, etc.

Commissioner Duys asked about the number of trees involved in removal. Ms. Wight said the number of trees to be removed is at present unknown.

Commissioner Mihaly asked if the Town would tag along on environmental review with the County. Ms. Wight said we might need to look into this further, according to Hadden Roth. Ms. Chaney said the two agencies would have to work together to get the appropriate studies done.

Commissioner Israel asked about the requirements from County Fire regarding tree removal. Looking at the two sites, he asked Ms. Wight which of the two sites would have the least impact on the tree removal situation and the surrounding environment. Ms. Wight said the County Planner and Fire person convinced her that the current envelope would work. There are too many unknown factors to be sure.

Commissioner Harle asked if there isn't some way to take a different access that might have less impact. Ms. Wight said we are relying on the applicant's information. Commissioner Israel said he understood this was possible but prohibitively expensive and long.

Conn Rusche, 40 Tomahawk, said they have looked carefully at the requirements of the Fire Department and the County, and they realize that not very many trees would be left with the building site as originally planned, because you would have to maintain the space between trees. He feels the community is better served by preserving the forest.

Chair Israel asked how many of the 186 trees would absolutely have to be removed. Mr. Rusche said they didn't calculate that.

Laurence Bartone, 58 Miwok, tried to clarify the tree removal situation. County Fire has a 100 foot requirement that is not negotiable. The question is really what is more environmentally sound. The neighborhood has looked at the plans carefully and has come up with a unanimous support for this proposal. At question is the intent of the open space agreement. This property is contiguous to open space and harbors a lot of wildlife. His engineers feel access off Tomahawk is a lot better. They are willing to deed the forest to open space in exchange for getting access of Tomahawk. The CC&R's can be amended by a simple majority of the homeowners. The deed restriction clearly allows a driveway for private access.

Commissioner Wittenkeller asked how Mr. Bartone went about getting the approval of his neighbors. Mr. Bartone said the petition indicates the wording they used. Wittenkeller asked about the other two neighbors who opposed the project. Mr. Bartone said he has walked around the neighborhood, and in some cases people came to him. He has unanimous approval of his neighbors now. They don't want the forest removed.

Chair Israel asked about the modifications that would be necessary to the CC&R's. Bartone said he knows he has a majority vote. He feels the Planning Commission has the power to interpret.

Chair Israel asked why they pursued the northern building envelope with the County. Bartone said he was told they could get the amendment easily. The lot split took a long time with the County and they were told to change it after they got access to one parcel.

Commissioner Sargent asked if there are any limits to the southern building envelope as it hasn't been approved. Bartone said they would be happy to have the Planning Commission's conditional approval.

Ms. Chaney said when she and Mr. Bartone spoke initially, she felt it was unlikely that such a change would be approved. Since then, there have been changes in the people involved which have changed the circumstances.

Susan Rusche, 40 Tomahawk, said she has spoken with the people who objected at the last meeting, Virgil Hoffman and Natalie. They were concerned over the look of the driveway, as well as the landscaping. Their concerns can certainly be addressed and they are supportive of the concept.

Jonathan Braun, 479 Scenic, asked the applicant about the balance between the easement space versus the trade of open space. Bartone said the open space would be 2/3 of an acre, and the driveway wouldn't be nearly that big.

Chair Israel said the overriding concern is setting a bad precedent. He would like to see more documentation on this.

Commissioner Wittenkeller asked if the County ever looked at access through this parcel for its own citizens.

Ms. Chaney said it is her understanding that this land does not abut publically held open space.

Jonathan Braun, 479 Scenic, said the northern part of Quarry Mountain property does abut public open space, but the Bartone's property does not. The precedent issue is important to him. At the end of Summit Road, abutting Fairfax, the property owner has a similar situation and this is of concern to

him. He would prefer a formal legal groundwork not be laid. He wondered if Mr. Bartone would agree to a more tightly configured building envelope to really regulate where a home would be placed.

Commissioner Sargent said he is interested in Mr. Braun's resistance to the amendment.

Commissioner Mihaly said it may be better to amend the CC&R's so that the interpretation of the CC&R's is clear on this issue.

Jonathan Braun, 479 Scenic, said his assumption was that it would be worded to allow situations the Town doesn't really want.

Susan Rusche, Tomahawk, said the loose wording of the CC&R's may be to allow public bodies latitude for interpretation.

The public hearing was closed.

Commissioner Mihaly said his feeling is that the northerly area makes better open space than the southern area. He is satisfied that, given the nature of the trees, most of them would have to be cut down. There are a lot of ecological benefits. The house may be more visible with the southerly building envelope. The driveway treatment is a very important issue. The precedent issue doesn't bother him at all. He feels this is within the discretion of the Planning Commission. His concern is that we don't want to open the door to offsite development. He would like to see an amendment prepared to the CC&R's, approve the amendment conditionally, pending approval by County authorities. At question is whether staff should design this or leave it to the Planning Commission.

Commissioner Wittenkeller said he walked the site for close to an hour. His only concern regarding this request arose from public objection. If neighbors are no longer against this, he would like to ask staff to pursue the legal mechanism to make this happen. He feels the CC&R's should be amended so that the trade off can be clearly defined. Design review abilities are lost as this is with the County, but staff can word it such that we have some say on important issues, like driveway landscaping and scotch broom removal.

Commissioner Harle said he agrees with Mihaly. Would the property owner have permanent maintenance duty on this landscaping? Who would maintain the landscaping?

Commissioner Duys said she is in agreement with Mihaly.

Commissioner Sargent said he is in agreement as well. He is, however, troubled by the word "permanent." This is a good trade for the neighborhood and the community. He would condition this on the land being placed in private open space "in perpetuity." Commissioner Wittenkeller agreed.

Chair Israel said he feels that any modification be conditioned on approval by the Town Council. He wants to ensure that actions taken tonight will hold when the property is sold. If an amendment is made to the CC&R's, it should be carefully crafted to specify language about the square footage tradeoff so that there is documentation later on.

Commissioner Mihaly said he thinks staff should come back with the recommendations and documents necessary to approve this request. He doesn't feel the Commission is prepared to make approval on this issue, but rather an intention of this approval.

M/s, Mihaly/Harle, that it is the consensus of the Planning Commission to grant access off Tomahawk, pending a mechanism by which this can be achieved.

Ms. Chaney said she believes there should be some formal action on the amendment issue. Staff should return with a list of actions regarding how this should be handled.

Commissioner Mihaly said an airtight arrangement can be crafted. Staff should set up an order of events to allow this to happen so this will not allow two lots to be made out of one. This can be possibly dependent on the approval of a County map recordation. The open space dedication has to be worked through so it is in perpetuity, specifies who is the holder of the easement, and what authority the Town has on County property. You can try to duplicate the Quarry Mountain agreement.

Laurence Bartone, applicant, said they would like to move this along expeditiously as it has gone on for some time.

2. Appeal of administrative approval to allow Walker Catering Service at San Francisco Theological Seminary, 2 Kensington Road, APNS 7-291-01 and 7-292-03. A business license was granted administratively to permit a catering service at Alexander Hall which serves the Seminary but also provides commercial catering. The appeal by J. Colteaux states that an amendment to the Seminary Specific Plan is necessary before a commercial use is permitted. The property is located within the S-P-D Zoning District.

Ms. Chaney presented her staff report. This is an appeal of an administrative decision to allow a catering company to located within the Seminary. A concerned neighbor felt this was not an appropriate use of Seminary property. The catering company was allowed to remain, with the condition that the majority of their work be for the Seminary and a sign be removed. The appellant felt that the decision should not have been made by the Planning Director, but rather should have required an amendment to the Seminary plan. Alexander Hall is traditionally used for the campus food service. Because the Seminary no longer required a full-time caterer, they allowed Ms Walker to service outside clients. In considering this request, staff looked to see if the use had changed and found that it had not, and thus was still in conformance with the Master Plan for the Seminary.

Commissioner Harle asked if community functions are counted as related to the Seminary. Ms. Chaney said she counted anything that happens on campus.

Commissioner Mihaly asked what a Use Proposal is specifically. Ms. Chaney said it is used when a change of use has occurred in a particular building.

Commissioner Sargent asked about a restaurant downtown doing catering. Would they have to get a use permit? Ms Chaney will check the code.

John Colteaux, Appellant, said the Seminary was a legal, non-conforming use in Town before this plan was accepted. Alexander Hall has never been used as a student cafeteria. A number of groups rent the building and have outside caterers come in. There has never been a commercial use of this kitchen. Now the caterer has unlimited range of services outside the Seminary. He feels a formal application for a Use Permit is the only way to ensure limits on this business. This is tax-exempt property. There was once a high school and a television center was set up without proper permits. He feels it is obvious that this is a change of use. He understands there is now a bakery involved as well. He noticed that semi-trucks make deliveries at 4:30 a.m. The recyclables are picked up once a day, and the garbage as well. All these trucks have to back up the hill. The activity is about ten times as much as it used to be. For him, it is surely a change in use. There is a community group charged with reviewing changes to the Seminary plan and this item was never referred to them.

Commissioner Wittenkeller asked if any other neighbors have raised this question. Mr. Colteaux said he has not contacted his neighbors, but he has been contacted by five or six neighbors in the general Seminary area.

Commissioner Harle asked if the company delivers food out. Mr. Colteaux said they use small pickups to do deliveries. Neighbors around him are all seminary students, so no one else has complained. Richmond Road neighbors are beginning to be concerned about this.

Commissioner Duys asked about the bakery. Mr. Colteaux said there is a baker using the facilities for commercial use.

Scott Schaeffer, representing the Seminary, said the purpose of the Master Plan was to facilitate the need to relocate classrooms and plan for future use. The Seminary originally had a full time staff of three for catering. In 1992 the Seminary eliminated that food service due to budget restraints. From 1992-95 all food service was imported. In 1995 the Seminary wanted to bring food service back. In the process of exploring possibilities, they came across Ann Walker who was looking for a home for her catering business. They did not come for approval because they do not believe it was a change from how business was done in the past.

Commissioner Sargent asked how many employees Ann Walker has. Schaeffer said there are 4.

Commissioner Wittenkeller asked if there is a separate bakery. Schaeffer said they have had bakery service provided by students, now taken over by Ann Walker.

Commissioner Wittenkeller asked about the delivery trucks. Schaeffer said no other neighbors have complained. They have twice a week garbage and recycling. No employees are available to receive deliveries at 4 a.m. The volume should be the same as it was in 1992; however, between 1992-95 activity did diminish at Alexander Hall, so there was less of a need for deliveries.

Commissioner Duys asked about the lunches served at the seminary. Is the kitchen the only seminary building Ann Walker uses? Schaeffer answered affirmatively.

Commissioner Mihaly asked about the activities in the early 90's and late 80's. Schaeffer said there were over 3,000 meals in the conference center, plus student lunches. There are close to 40 weddings a year at Montgomery Chapel.

Commissioner Duys asked if there are hours stipulated in the contract with the caterer.

Ms. Chaney said the Use Proposal says the hours of operation are from 7:30 - 6 p.m., but these hours do vary.

John Colteaux, Appellant, said the issue is that there is no real representation here about what they plan to do in this instance as there would be with a formal Use Permit procedure that can be reviewed and investigated properly.

Chair Israel asked what would happen if they decide a Use Permit is desirable, but not required; would changes to the Master Plan be required?

Commissioner Mihaly asked about the notice for a Use Permit requirement. Ms. Chaney said it is a 300 foot radius requirement.

Ms. Chaney said caterers are permitted by right in the commercial zones of the Town, to answer a previous question from Commissioner Sargent.

Commissioner Harle asked Ms. Chaney if she is aware of the citizen's committee that is charged with review. Ms. Chaney said she wasn't aware that the committee is still in effect.

Mr. Schaeffer said the Seminary has a number of commercial operations on campus, including the theater, counseling center, and child care center.

Commissioner Wittenkeller said he believes there was historic use, perhaps not at the same level as at present. There will be continued use of that kitchen. The business license is somewhat limited; and he is leaning toward going to the next level to get a better handle on controlling the hours of operation, etc.

Commissioner Harle said the history of the relationships involved in this make it a duty to have this as a more formal relationship. A use permit should be required, and the neighborhood review committee ought to be consulted. This is a non-conforming use in the Seminary, a residential district.

Commissioner Duys said that given the traffic issues that have been brought up, it would be appropriate to review these issues through the Use Permit process.

Commissioner Sargent said he supports staff and feels this is not a change in use.

Commissioner Mihaly said he feels a significant intensity in the use would be a significant change in use. There is evidence that there is increased activity. He feels the hours of operation should be checked formally. He doesn't feel a Use Permit is really required.

Chair Israel said a more in-depth analysis is needed to determine if this is a more intense use. It would be prudent, however, to both parties to explore this further through the Use Permit approval process, including public input. The important thing is to control the scale of operation.

M/s, Sargent/ to move the staff recommendation. There was no second.

M/s, Wittenkeller/ to move that the staff investigate resolving this issue, either through fine tuning or adjustment of the business license methodology, or, if necessary initiate the Use Permit process. There was no second.

M/s, Duys/Wittenkeller, to the staff recommendation and grant the appeal. Ayes: Harle, Wittenkeller, Duys, Mihaly, Israel. Noes: Sargent.

Colteaux said there shouldn't have been any fee for this appeal. Ms. Chaney will pursue this question.

3. V-9636 - June Lee, 41 Grove Lane, A/P 7-162-36, variance to construct a playhouse within 2' from the rear property line; the structure is 9'x9'x14' high, on property located within the R-1 Zoning District.

Mr. Griffin presented his staff report. The applicants have applied for an after-the-fact playhouse which is partially built. He described the lot and the location of the existing buildings. The application is the product of code enforcement. There was no neighborhood comment on this application until today when two letters came in opposing the project. Staff sees no special circumstances to the lot size and feels that the variance would grant special privilege.

Commissioner Duys asked if the building is on concrete footings. Mr. Griffin said it is.

Robert Justice, 41 Grove Lane, said he had no idea that this playhouse would cause so much trouble. Most of the people in the neighborhood are renters.

John Blackwell, 865A San Anselmo Avenue, said the playhouse looks right into his backyard and windows.

The public hearing was closed.

Commissioner Harle said he would oppose the variance and require the structure to be moved within the setbacks.

Commissioner Duys said that because there are several accessory structures and this is a big playhouse, it should be moved within the setbacks.

Commissioner Sargent said he would support relocating the playhouse, although it is unfortunate.

Commissioner Mihaly supports the staff recommendation to move the playhouse.

Commissioner Wittenkeller said he supports the staff recommendations.

Chair Israel suggests staff create a clear definition of situations such as this so this process doesn't have to be gone through with every playhouse.

M/s, Mihaly/Wittenkeller, to deny the variance as proposed and approve a variance to relocate the playhouse outside the setback to allow more than one accessory building. Ayes: All. The applicant was notified of the ten day appeal period.

4. DR-9619 - Rob Ham, Lot 3 - Past 443 The Alameda, A/P 5-320-03, Design Review to construct a single story, manufactured home with detached garage, on property located within the R-1-H Zoning District.

Ms. Chaney presented her staff report. The applicant proposes an 1800 square foot manufactured home and a 400 square foot garage. Staff recommends approval of the project, with the previously approved colors to be used. Staff recommends the applicants incorporate landscape buffering along the neighboring property.

Rob Ham, Applicant, said these manufactured homes are quite nice when completed. He can't change the white trimmed windows, however, as that's the way they come. This home is smaller than the previously approved home, and is only one story.

Chair Israel asked how the home will be placed on the slope of the lot. Mr. Ham said it will fit on the flat part of the lot, with a little bit of underpinning on the outside corners.

Commissioner Wittenkeller asked about views of the home. Ms. Chaney said it will be pretty visible from Sleepy Hollow.

Commissioner Duys said she is concerned about the level of detail that the Commission has been presented, and whether due to the late hour, this is getting the attention it deserved. The new house is at least just one story. Regarding the colors, she would prefer not to see the white windows, but there are minimal numbers of windows.

Commissioner Sargent said he feels an elevation map is needed. He would recommend that the applicant be asked to come back with elevations that match the floor plans so we can see the building. It could be on the consent agenda.

M/s, Mihaly/Wittenkeller, to continue this matter to the meeting of November 4. Ayes: All.

Chair Israel asked if there are CC&R's on this development. Ms. Chaney said there are CC&R's, but they related mostly to private open space. She will check and address this at the next meeting.

Chair Israel said it is important to him that the downslope side of the house be handled well. Depending on the elevations, he may want to require larger than 15 gallon trees.

- F. GENERAL DISCUSSION
- G. REPORT OF UPCOMING APPEALS TO TOWN COUNCIL
- H. ADJOURNMENT TO Joint Meeting with Town Council, Wednesday, October 29, 1996 at 8:00 p.m. and then to the next regular meeting Monday, November 4, 1996.

M/s, Harle/Duys, to adjourn at 11:40 p.m. to the joint meeting with the Town Council on Tuesday, October 29, 1996.

DEBBIE STUTSMAN