

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES OF NOVEMBER 17, 1997**

The regular meeting of the San Anselmo Planning Commission was convened at 7:30 p.m. by Chair Wittenkeller in the Council Chambers.

A. CALL TO ORDER

Commissioners present: Dowd, Harle, Zwick, and Wittenkeller
Commissioners absent: Israel, Cronk
Staff present: Planning Director Chaney and Town Attorney Roth

B. OPEN TIME FOR PUBLIC DISCUSSION

No one spoke during this time.

C. CONSENT AGENDA

1. Minutes: October 20, 1997 and November 3, 1997

M/s Zwick/Wittenkeller, and unanimously passed (5-0), to continue the minutes of October 20, 1997 and November 3, 1997.

D. CONTINUED ITEMS

1. **Environmental Review/LLR-9701 – Ted Strodder**, APN's 7-241-49, 7-241-51, and 7-241-501) Negative Declaration ND-9710; and 2) Lot-Line Adjustment LLA-9702 augmenting the lot sizes as follows:

	LOT 1 (Strodder) A/P 7-241-49	LOT 2 (Strodder) A/P 7-241-51	LOT 3 (Bott- Nelson) A/P 7-241-50
Lot Size	222,604 s.f.	46,119 s.f.	50,765 s.f.
EXISTING	5.1 ac.	1.06 ac.	1.16 ac.
Lot Size	114,781 s.f.	161,099 s.f.	43,607
PROPOSED	2.6 ac.	3.7 ac.	1.001 ac.

On property located in the R-1-H Zoning District. (Staff person: Griffin) **CONTINUED TO DECEMBER 1, 1997**

2. **DR-9713 – Mr. and Mrs. Edward Heavey, 405 Sequoia Drive**, A/P 6-117-08, Design Review of a new single family dwelling; setback variances: a) rear yard and north side yard variances to construct a parking deck for a third parking space within 6' of the rear property line and within 0' of the north side property line; b) rear yard, north side yard, and south side yard variances to construct a dwelling within 15' of the rear property line, within 6' of the north side property line, and within 11' of the south side property line (20' rear required; 12' street side required) on property located within the R-1 Zoning District (above 150' mean sea level) (Staff person: Wight) **CONTINUED TO 12/1/97**

3. **PDP-9402/DR-9407 Amendment – Karen Benke, 65 Summit Road**, A/P 7-031-28, amendments to the 1994 approved Precise Development Plan and Design Review for a new single family dwelling, on property located within the R-1H Zoning District (above 150' elevation) (Staff person: Wight) **CONTINUED TO 12/1/97**

4. **U-9304/V-9744 – Wyn Hoag, 22 Magnolia Avenue**, A/P 7-212-34, amendments to the 1993 approved use permit and parking variance: 1) to change the use from one 1,694 square foot residence and one 586 square foot professional office to the use of 2,280 square feet of professional offices; and 2) to retain the existing 4 tandem parking spaces in the front yard, but change the parking variance request: the previous use had required 7 on-site parking spaces, and the current use requires 8 on-site parking spaces on property located within the Professional (P) Zone. (Staff person: Wight) **CONTINUED TO 12/1/97**

5. **V9742 - Jocelyn Olivier, 34 Elm Avenue**, A/P 7-053-02, a Variance request to build an accessory structure (studio) within 1'6" of the rear property line (20' required) and within 3'8" of the southerly side property line (8' required), on property located within the R-1 Zoning District. (Staff person: Griffin) **CONTINUED TO 1/19/98**

6. **V-9732 - Hank Hallowell and Jane Cunningham, 15 Medway Road**, A/P 5-154-15, Variance to build a 180 square foot addition within 10' of the rear yard setback (20' required), on property located within the R-1 Zoning District. (Staff person: Griffin) **CONTINUED TO 12/1/97**

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E. PUBLIC HEARINGS

1. V-9713 – Seidelman (project engineer), Koblick and Johnston - Request to rescind a condition requiring a hold harmless agreement placed on a Planning Commission approval (granted October 6, 1997) to construct a retaining wall system at 6-42 Red Hill Avenue and 22 Island Drive.

Ms. Chaney presented the staff report.

Mr. Roth stated that it is clear that the applicants will not get coverage if they were asked to pursue the indemnity coverage. The attorneys representing the applicants do not agree to the hold harmless agreement and want it rescinded. He noted that the process would take weeks while the process was followed and it could cause greater harm because this is really an emergency.

Commissioner Dowd asked if the project could be continued while the agreement is being pursued. Mr. Roth responded that it would be a moot point once the project is completed. Because of the weather, it is important to proceed with the project.

Chair Wittenkeller was very concerned about the number of delays and the fact that the project has just started. He also questioned the wisdom of opening the hillside during the winter. He felt the Town is being placed in a very difficult and awkward situation to be pressed into making the decision because of the timing. In addition, the applicant has still not produced a landscape plan that will improve the appearance and help the erosion control of the hillside. Even if the Town enters into a bond for the landscape, we could expose ourselves to a greater liability. He wondered if there was a way to encourage the applicant to expedite a landscape plan.

Ms. Chaney explained that typically the Town would place a bond on a project and in this case, we have asked for a \$30,000 bond. If the applicant does not fulfill their obligation, the Town would have the work done.

David Yount, Attorney representing Jeffrey Johnston, the owner of 22 Island, stated that he has been instructed to supervise the reconstruction of the hillside. He does not know the status of the current landscape plan although Mr. Seidelman is working on it. His main concern was to get the bond. There was a change in the design to permit the landscaping to continue during the rainy season, rather than having to wait until next spring.

In response to Chair Wittenkeller, Ms. Chaney explained that the engineer is proposing a gravel pit at the base of the wall and a drainage system to be placed at the base of the wall. The Town's structural engineer also recommended a drainage system above and around the walls. That issue is being debated by the Town Engineer. The change is not radical and the wall system will be the same.

Mr. Roth was concerned about the delay over the hold harmless agreement, noting that once the agreement is signed anything that happens on the hill will be the owner's responsibility. He explained that it is not an uncommon provision in other jurisdictions and it is his recommendation that there is a standard indemnity agreement within the Town Ordinance.

Commissioner Zwick commented that if this is an emergency, the applicant and/or the insurance agencies are not treating it as such. He would like to see the engineers, insurance companies, and attorneys get together to make a decision. He would also like to see the hold harmless agreement stay in place.

Mr. Yount stated that the problem with getting insurance to cover the risk is that a standard insurance policy has exclusion for liabilities assumed by contracts (such as hold harmless). He contacted the insurance companies and asked if an endorsement could be added to the policies and he was told it could not be. The Town is asking for something the Town already has; the Town has insurance and the risk you are trying to cover is attorney fees. Therefore, the Town or its employees cannot be held liable. If the wall fails, the Town would not be liable.

Mr. Roth responded that one theory is that there would be inverse condemnation and then can take a lot of attorney fees to prove.

Mr. Yount stated that even without a hold harmless agreement, if the property owners were negligent, the Town would only be liable in a passive way. The Town could go to the owners and the contractors and say the Town would like to be held harmless. As a practical matter, there is little exposure to the Town. The changes being made are at the request of the Town Engineer. The drainpipes should come to the surface so they can be cleaned annually and so as not to put stress on the wall.

Ms. Chaney stated that what she heard from the Commission at previous meetings focused on aesthetics and the engineering should be left up to the Public Works Department.

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Commissioner Zwick stated that it would be wonderful to have a standard indemnity agreement and he is comfortable leaving this request in place. He does not feel comfortable negotiating the Town's financial liabilities. This would be the role of the Council.

Ms. Chaney asked the Commission if they would feel better about increasing the landscape bond. Mr. Yount stated that Mr. Seidelman indicated that landscaping would be in the range of \$20,000 but a \$30,000 account was set up for this bond. If the Commission wants to increase the bond to \$30,000, it might be possible. Regarding a bond to cover potential attorney fees, the insurance companies would not agree to allocate the money that has been set up in an account to be used for that.

Mr. Roth explained that there is a provision in State law regarding indemnity agreements, and Petaluma is pretty well modeled after the State law. The reason he did not resist the request from the Public Works Director to remove the hold harmless cause is because the risk is very minor, however it is prudent to have it. On balance, because of the need to get the project going, there is a small risk to the Town. It is a policy matter and could be a burden on the property owners.

Mr. Yount commented that if the Town imposes the condition, the property owners probably would not do any more on the wall.

Chair Wittenkeller stated that he felt this could be a precedent setting issue and would be interested if the applicant would appeal it.

Commissioner Zwick said that he continues to hear that this project is an emergency but the plans are still not ready to go.

Mr. Roth asked if the insurance companies would be willing to put up \$100,000 for a few years. Mr. Yount responded that he did think Mr. Johnston has that kind of money.

Mr. Roth stated that the Town could have an indemnity agreement for five years, and could assume $\frac{1}{2}$ for defense and each property owner would assume $\frac{1}{4}$. Mr. Yount asked if this condition has been placed on anyone else in Town.

Chair Wittenkeller stated he does not think the people of San Anselmo should assume the risk and this condition would give the applicant opportunity to go to the Council.

Commissioner Dowd suggested that each applicant should assume \$25,000 for five years.

Mr. Yount advised the Commission that this action would be appealed.

M/s Dowd/Zwick, and unanimously passed, (4-0), to uphold the previous decision that the property owners enter into an indemnity and hold harmless agreement with the Town of San Anselmo and to add the following: That the total amount would be incurred by the uphill and downhill property owners by virtue of the agreement and shall not exceed the lesser of $\frac{1}{4}^{\text{th}}$ of the total amount of liability imposed and cost incurred by the Town or \$25,000 per property owner. This agreement shall be effective for five years from the date of execution.

Chair Wittenkeller advised all parties of interest of the ten day appeal period.

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F. GENERAL DISCUSSION

There has been an appointment of the Seminary Advisory Committee.

G. REPORT OF UPCOMING APPEALS TO THE TOWN COUNCIL

- The Council upheld the appeal of the applicant of 115 San Francisco Boulevard.
- The applicants of 50 Park Way has been appealed to the Council and will be heard in December.
- Ted's Bar was appealed to the Council and will be heard in December.

H. ADJOURNMENT

The meeting was adjourned at 9:00 p.m. to the meeting of December 1, 1997.

BARBARA CHAMBERS