

**SAN ANSELMO PLANNING COMMISSION
MINUTES OF DECEMBER 1, 2003**

A. CALL TO ORDER

Commissioners Present: Chair Harris, Vice Chair Sisich, Fernandez, House, Zwick
Commissioners Absent: Jochum, Wittenkeller

B. OPEN TIME FOR PUBLIC EXPRESSION

C. CONTINUED PUBLIC HEARINGS

1. **Z-0302 – TOWN OF SAN ANSELMO**, Zoning Ordinance Amendments to the Temporary Signs Ordinance, Title 10, Chapter 9, Article 3. (Staff person: Wight) **CONTINUED TO DECEMBER 15, 2003**

D. PUBLIC HEARING ITEMS
CONSENT AGENDA

1. **MINUTES – November 17, 2003**

M/s House/Sisich and passed (3-2 abstentions: Fernandez/Zwick) to approve the minutes with minor amendments.

REGULAR AGENDA

2. **V-0347/UP-0318 – Tom and Kittie Raskowsky, 311 Laurel Avenue, APN 007-172-05**, Use Permit to allow exceptions to standards for a residential second unit and variance to establish a residential second unit (conversion of an existing accessory structure) within 4' of the rear property line (Code: 20') and 2' of the northerly side property line (Code: 8'), located within the R-1 zoning district. (Staff person: Bell).

Senior Planner Wight presented the staff report.

The Applicant, Tom Raskowsky, said that a foundation is necessary to help prevent flooding, which would necessitate raising the barn. He noted that other houses in the area were flooded last year.

Mr. Raskowsky used the plans to show Commissioner Zwick how rainwater flowed through his property and Myrtle Lane and explained that the drainage easement on his property did not work efficiently in heavy rain.

In response to Chair Harris, Mr Raskowsky said that it would not be possible to move the unit away from the rear property line and closer to Laurel Avenue because the unit would be on top of an underground drainpipe. Ms. Wight said it would be unlikely that the Director of Public Works would allow a structure to be placed over a storm drain. Ms. Wight identified the location of the storm drain on the plans.

Chair Harris noted the difficulty in granting a use permit for a legal, non-conforming unit, although he acknowledged that the unit was built nearly 100 years ago. Chair Harris wanted to know if it was at all possible to move the unit from its present location. Mr. Raskowsky said that the structure would be in the side yard set back were he to move it closer to Laurel Ave and that he did not believe that he should be required to move the barn. Furthermore, he had hoped to construct a garage at a later date on that location. In further response to Chair Harris, Mr. Raskowsky said that it would be difficult to move the barn to the west side of the property because excavation might damage his neighbor's trees. Heritage trees prevented him from moving it to the south of the property.

In response to Commissioner Zwick, Mr. Raskowsky confirmed that the roof pitch would be higher. He referred to the plans to clarify the new height of the barn.

Andy Ryan, 300 Laurel Ave, expressed support for the project and noted that Laurel Ave and Myrtle Ave have flooded in the passed. Don Witney, 28 Laurel Ave, also supported the project, which he believed would improve the neighborhood.

Joe Giacomini, Attorney for the owners of 7 & 9 Myrtle Lane, said that he disagreed with comments made by some of the Commissioners at the last meeting. He believed that approving the project as presented would have a great impact on his clients. He further believed that the neighbors who support the project would not be impacted to the same degree as his clients. Mr. Giacomini said that the barn is clearly over a culvert and he noted that there is plenty of room on the property for the barn to be moved without it being placed over a culvert or interfering with heritage trees or being placed within setbacks. He noted that the applicant has made no effort to comply with this request. His clients would at least like the barn to be moved forward 10' or 11'. Mr. Giacomini noted that the barn is uninhabited and that there is no proof that it ever was inhabited. However, if it were, then the applicants were in violation of Town Codes, which they are now trying to rectify. He noted that the structures at 7 & 9 Myrtle Lane are legal, non-conforming units.

Neil Whitbeck, 7 & 9 Myrtle Lane, reiterated Mr. Giacomini's comment that a culvert runs under the barn. He said that absentee ownership of his property has been implied, which is untrue. He said that his family have always maintained the property and have been present owners. They value their property as much as the applicants value theirs. Mr. Whitbeck reiterated his family's wish that the barn be moved

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forward to comply with setback requirements. They do not oppose second units but feel that they will be significantly impacted by the new development.

In response to Vice Chair Sisich, Mr. Whitbeck said that he raised the pitch of the roof 4' at 7 Myrtle Lane to match the existing roof some years ago.

In response to Chair Harris, using the plans, Mr. Whitbeck identified the location of various windows on his property. Mr. Whitbeck did not know why his structure at 7 Myrtle Lane was built so close to the property line. His family moved there many years ago after it was built. Mr. Giacomini said that the property, which has been there since 1914, has been taxed as two units since 1917.

In response to comments, Mr. Raskowsky said that he would move the barn should he find that it is over a culvert once he begins work to install a foundation, although he believes it is not there. Chair Harris said that the barn could remain in its present location. However, Mr. Raskowsky wished to renovate the building and create an entirely different use for it, to which he is not entitled and is thus seeking a variance.

Mr. Raskowsky failed to understand how his neighbors at 7 & 9 Myrtle Lane would be greatly impacted because a large privet hides his property. Mr. Raskowsky produced photographs for the Commission to support his comments. He believed that Mr. Whitbeck's primary concern was one of safety with regard to the installation of a kitchen in a building that was too close to their property. Mr. Raskowsky noted that he had offered to remove the kitchen, which will be 9' from his neighbor's property line.

Chair Harris identified a space south of a heritage tree which might be a suitable location for a second unit. Mr. Raskowsky said that the unit would still be within the setbacks and close to a neighboring structure, which he believed was a laundry room or storage area. Chair Harris asked why the proposed site of a garage should not be a suitable location for a second unit. Mr. Raskowski said he believed that the best solution would be to leave the structure in its present location.

In response to Commissioner Fernandez, Mr. Raskowsky said he would be using the converted barn as a place for his family to live whilst he remodels his house, after which his children might use it for sleepovers or it might be used for extra accommodation.

Commissioner Zwick said that he understood the positions taken by both the applicant and the neighbors at 7 & 9 Myrtle Lane. As an architect, Commissioner Zwick would enjoy having special permission to build wherever he thought was reasonable. However, there are zoning codes to consider, which do not always agree with people's preferences. In this instance, the applicant declines to accept that a second unit can only be built if it meets the setback requirements, at least according to today's Zoning Code. Thus, if this project were starting from scratch, it simply could not be built. An underlying policy of the non-conforming use provisions is that over a period of time, it is hoped that all non-conforming structures are removed and that, in the meantime, they are not enlarged or improved upon in any way. This project does both. Commissioner Zwick agreed that the location seems suitable for the project. However, the problem remains that the code dictates that the project cannot be approved unless variance findings can be made. Commissioner Zwick noted Commissioner Wittenkeller's comment at the last meeting that this project could set a precedent in that existing structures, which do not meet setback requirements, could become second units.

The applicant reasons that the building needs to be raised because it is in a flood zone, which Commissioner Zwick feels might be sufficient cause to grant a variance. He noted that Senior Planner Wight determined from records that the culvert does not run under the building. However, the posts for the new porch do run through the culvert. Commissioner Zwick felt that fairness should be considered. The owners of 7 & 9 Myrtle Lane raised their roof so it seems fair and reasonable that the applicant should be able to raise the roof on the barn. However, it does not fall neatly into the zoning code. Furthermore, the applicant has mentioned plans for further development should this variance be granted. Although a garage with a bedroom on top will affront another property, it might provide a reasonable alternative location for a second unit. Commissioner Zwick is thus in a quandary and repeated the problem that the project makes sense but that the Town Codes support the neighbors, not the project. Commissioner Zwick also noted that a structure within setbacks is being added to the project with the porch and dormers, which exacerbates the non-conforming problem. Commissioner Zwick will await the comments of the other Commissioners before making a decision.

Commissioner Fernandez said that he was originally in favor of the project at its first hearing but subsequent reports made him hesitant. Furthermore, this evening he has heard that the unit will be used for a variety of purposes. However, he believed that it will not have a significant impact on the neighbors at 7 & 9 Myrtle Lane and, overall, will support the project.

Commissioner House noted that if the sole reason for raising the foundation had been to prevent flooding, then the Commission might well have supported the project. Furthermore, if the applicant had said that his intention was to create a second unit from a barn, then he might also have found support from the Commission. However, part of the issue is that both items are being requested together; to raise the barn and change the use. Commissioner House did not believe that the owners of 7 & 9 Myrtle Lane will be greatly impacted. Furthermore, taking into account the setback requirements, the culvert and heritage trees, Commissioner House does not think there is a more suitable location for the barn on the property. Commissioner House noted that other building plans might never come to fruition, and the project under

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discussion is better than the present situation and will provide a second unit. Furthermore, other problems relating to second units, such as a lack of parking, are irrelevant. Commissioner House likes the project well enough to support the variance.

Vice Chair Sisich supports second units and noted that he supported the project at the last meeting. He said that the barn has never been classified for residential use and noted that the neighbors' property has had a residential use for many years. Vice Chair Sisich believed that it would not be too onerous for the applicant to move the barn forward, given that its condition almost merits a new building. Furthermore, Vice Chair Sisich said that if he lived next door, he would consider the project injurious to his welfare due to the noise that might be created with children sleeping over. Vice Chair Sisich will not support the project.

Chair Harris noted Commissioner Zwick's comment at the previous meeting that the Commission needs to be guided by zoning codes. What the applicant is proposing makes sense and is a vast improvement. The project is supported by all but one neighbor, who will be most affected. Chair Harris said that it is irrelevant that the owners do not live in the property. The owners still have a vested interest in the property and the Commission needs to decide what is best for the Town and conform to the applicable zoning codes. Chair Harris noted that the building is already in existence but the proposed use for the second unit, that children be allowed to play inside, is a very different use from that which is there now. He believes that this could have a significant impact on 7 & 9 Myrtle, albeit that the barn is further from the property line than the neighboring property. Chair Harris is not convinced that he is able to make findings for the project and agreed with Vice Chair Sisich that the barn could be moved given that it will require substantial renovation.

Chair Harris noted that if other buildings in the area do not meet setback requirements, then a finding for the project might be that the applicant should not be denied special privileges enjoyed by others.

However, Commissioner Zwick said that, along with heritage trees, the strongest arguments are the culvert and the flooding issues, which he believed are stronger than the setback issues. Furthermore, such reasoning might not present precedent problems. Commissioner Zwick is in favor of second units and this project is one of the early second unit proposals before them. He believed that Commissioner Wittenkeller's concerns regarding precedent were valid but he said he would approve the project, based on flooding and other aspects of the findings.

Chair Harris said that it might not be considered a suitable property for a second unit because of its location in the setback.

The applicant identified heritage trees on the plans.

In response to Commissioner Zwick, the owners of 7 & 9 Myrtle Ave confirmed that they would appeal the project if it is passed.

M/s Zwick/Fernandez and passed (3-2 Noes: Harris/Sisich) to approve the project based on the findings and conditions as set out in the staff report with additional findings of the culvert, flooding issues and heritage trees.

Chair Harris advised all parties of interest of the 10-day appeal period to the Town Council.

The Commission voted to change the order of proceedings.

Election of Chair and Vice Chair of Planning Commission

M/s Zwick/House and unanimously passed (5-0) to elect Vice Chair Sisich as Chair and Commissioner Fernandez as Vice Chair.

3. **V-0346/DR-0336 - Gary Marsh and Kim Pipkin, 57 Medway Road, APN 005-154-06**, 1) third story variance (Code: 2 stories maximum); 2) setback variance to add a lower and middle story addition within 2'-6" of the south side property line (Code: 8'); 3) setback variance to add an upper story within 5' of the south side property line (Code: 8'); 4) flatland design review of the second and third story addition totaling ±897 square feet; and 5) setback variance to add an exterior stairway and enclosed entry within 5' of the north side property line (Code: entry: 8'/stairs: 6'), located within the R-1 zoning district. (Staff person: Chambers)

Commissioner Zwick recused himself from the dais and Planner Chambers presented the staff report. She noted the changes that have been made to the project.

In response to Commissioner House, Ms. Chambers used the plans to demonstrate the aspects of the project with which she is in agreement. Ms. Chambers cannot make findings for the third story.

Chair Harris asked the applicant to concentrate as much as possible on what is new to the project and to explain how the Commission can satisfy the findings it needs to make under the Zoning Ordinances to approve the project.

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The applicant, Gary Marsh, said that in response to the request that the applicant provide other building options, a modification to those plans is being presented, tonight. Heritage trees and a mature garden in the center of the yard deem this area unsuitable for building. An arborist's report and photographs were presented as illustration. The applicant said that the second story on the south side of the property appeared to be of most concern during the last meeting and to which they have paid most attention. The upstairs portion has thus been set back an additional 2.5'. The other variances have not been addressed because only a small area constitutes a third floor. Mr. Marsh noted that the house would not be the tallest in the area and would meet code restrictions in this regard.

Keith Snyder, architect for the project, explained the changes and noted that the applicants want a reasonable sized living room. He further noted that this would extend right up against the neighbor's deck but which would not cause an invasion of privacy. Mr. Snyder said that the changes to the second floor should alleviate the vertical mass. He had made changes to the interior stairs and subsequently had to redesign the bathroom and bedroom, to the satisfaction, however, of the applicants. Mr. Snyder further explained his plans to step back the second floor on the south side, which would affect the massing. With regard to the third story, the architect explained why it was merely a technicality and not a third story, owing to the basement grading.

In response to Chair Harris, Mr. Snyder said that the ground floor space (that 'creates' the third story) will be used as a storage area where the hot water heater will be placed and that it will not be finished. Chair Harris noted that some jurisdictions would suggest that the space be filled in so as not to count towards space. Mr. Snyder explained that he had proposed to fill in the space shown but that the Planning Department had rejected it.

Mr. Snyder said that some excavation might be needed and that they would try to keep the dirt on site. It would be expensive to create a retaining wall or infill the space.

In response to Commissioner House, Ms. Chambers explained how she was unable to make findings for two of the variances. The exception was the variance to modify the second/third floors, which meet the 5' side yard setback and is similar to many houses in the neighborhood and throughout town.

Chair Harris asked the architect why variances for the ground floor and porch and stairs were being presented, once again, to the Commission and what other designs had they rejected. In response, Mr. Snyder said he was under the impression that the Commissioners did not consider these to be significant and had concentrated on what he considered to be the most significant variance, that being the vertical mass. Mr. Snyder said that the ground floor plans do not impact neighboring properties as much as the work to the second floor and thus he had concentrated on modifying this area.

Mr. Marsh explained that this is the only space outside the footprint of the building that is suitable for expansion, taking into account heritage trees. They had considered removing this section earlier, but rejected this idea because alternative designs did not look as good. He also considered removing the bathroom, which would mean a trip up a flight of stairs to use a bathroom. Mr. Marsh said that the room could be smaller but they wanted a reasonable size to use it as a guestroom, in addition to an office. Thus, they are requesting all three variances.

In response to Commissioner House, Mr. Marsh said they were adding 1300 sq ft.

In response to Chair Harris and his request that the applicant show how the Commission could make findings, Mr. Marsh said that he has revised the proposed plan, that the design is more attractive and that there were the landscaping, topography and heritage trees to consider. He believed that the latter items put limitations on the design of the house and that, furthermore, the fact that the design is not impacting the surroundings could be justification. Chair Harris observed that surroundings relate to the natural environment, such as topography.

Chair Harris asked why the applicant believed he was entitled to a variance for the porch, to which Mr. Snyder said that Commissioner Jochum had mentioned at the last meeting that he could make findings based on the distance between the applicant's property and his neighbor's property. Chair Harris did not support this finding, although he agreed that it had no impact on that neighbor.

Commissioner House asked Ms. Chambers if she could support the project if the lower and middle floors met with the 5' side yard setback on the south side. In response, Ms. Chambers said that it would be possible were it not for the need to make findings for the third story and she clarified certain aspects of the project. Commissioner House suggested that the narrowness of the lot could justify the variance for the stairway and she said that she could make findings for the third floor.

Ms. Chambers confirmed that the lower level will not have a negative impact on the next door neighbor but that she was unable to make the findings to allow a non-conforming structure.

Vice Chair Sisich could approve the project, including the third story variance, making his findings on topography. He understood how difficult it is for the applicants to change a design they like very much. However, overall, sufficient findings cannot be made and he believed that there were other options that have not been presented. Vice Chair Sisich will support the variance for which Ms. Chambers has made findings.

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Commissioner Fernandez will not support the project because he cannot make the findings.

Chair Harris said that he would support a continuance because, as he has stated previously, he wanted to see alternative designs for the middle and ground floors. However, he is willing to support Commissioner House's comments with regard to the 5' side yard setback, which would be a compromise. He could also support the porch, albeit at a stretch, and the third story.

Ms. Chambers said that a vote needs to be taken tonight, due to the Streamlining Act, or else the applicant must agree to a continuance of the project which must be acted upon within 90 days. The applicants chose the vote option.

M/s House/Sisich, to approve the project based on the plans date stamped November 20, 2003 and amended by pushing the porch bench back on the north side so that it is less intrusive, and by further reducing the lower and middle floor setbacks along the south side property line by 2'-6", to conform to the 5' side yard setback (shown on plans as ground and first floor). Special circumstances are the narrowness of the lot, the heritage trees and topography of the grade.

Ayes: Sisich/House
Noes: Harris/Fernandez
Motion died

M/s House/Sisich, to approve the project based on the plans date stamped November 20, 2003 and amended by further reducing the lower and middle floor setbacks along the south side property line by 2'-6", to conform to the 5' side yard setback (shown on plans as ground and first floor). Special circumstances are the narrowness of the lot, the heritage trees and topography of the grade.

Ayes: Harris/Sisich
Noes: Fernandez
Motion carried.

Chair Harris advised all parties of interest of the 10-day appeal period to the Town Council.

E. GENERAL DISCUSSION

In response to Vice Chair Sisich, Ms. Wight said that the number of appeals might, in part, be caused by there being a lack of a full quorum at many meetings.

F. REPORT OF UPCOMING APPEALS TO TOWN COUNCIL

G. ADJOURNMENT TO THE MEETING ON MONDAY DECEMBER 15, 2003

The meeting was adjourned at 9.50pm.


**JOANNE O'HEHIR
SR. ADMIN. SERVICES ASST.**