

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES
JUNE 1, 2009**

Commissioners Present: Brown, Harris, Krebs, Overberger, Schinner, Zwick,
Commissioners Absent: Sisich

OPEN TIME FOR PUBLIC EXPRESSION

No one spoke during this time.

CONTINUED ITEMS

None

PUBLIC HEARING ITEMS

CONSENT AGENDA

1. Minutes – May 18, 2009
2. **DR-0903 – Cory and Kimberly Carrol, 91 Valley Road, APN 005-081-23,** Hillside Design Review for a ±578 square foot lower floor addition, a ±749 square foot main floor addition, increasing the dwelling from 1,275 square feet to 2,602 square feet (Code maximum: 3,012 sq ft); and ±141 square foot uncovered deck, on property located within the R-1 Zoning District above 150 foot msl elevation. (No construction proposed in view easement. This project was previously approved in 2006 and expired due to inactivity.) (Staff person: Boyle)

Krebs noted a minor correction on page 2 in reference to the owner's son-in law.

M/s Schinner/Brown, to approve Consent Agenda with minutes as amended. The audience was advised of the ten day appeal period to the Town Council.

REGULAR AGENDA

3. **DR-0904/V-0903 – Alice Tompkins, 24 Cypress Road, APN 006-113-14,** Hillside Design Review and Setback Variance to construct a one car, ±239 square foot garage within 2'-6" of the north side property line and 6" of the rear property line (Code: 8' and 20' respectively); and for the two uncovered parking spaces to be substandard in length between 16'-4" and 18'-3" (Code: 19'), located within the R-1 zoning district above 150' msl elevation. (staff: Chambers)

Planning and Building Director Wight presented the staff report.

She noted that staff received a telephone call this afternoon from the attorney's office that represents the neighbor, asking for a continuance due to an illness by the attorney who is unable to attend the meeting tonight.

Town Attorney Hurd stated it is not uncommon to have a property line dispute, however the Commission is limited. The plans submitted are certified for the property lines. If it turns out to be inaccurate, it could be considered non conforming and could be abated. There is a trial date set for this dispute and the Commission could ask the applicant if they wanted to give an extension of the Public Streamlining Act for 90 days. Due to court delays this date may still not work. If the Commission makes a decision tonight, an indemnity agreement should be included.

Additionally, as shown on the plans, the garage is still on the disputed property line and it may be a zero property line, rather than a 2'-6" line, depending on the results of the court

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES
JUNE 1, 2009**

case. Another condition of approval is the disputed line is closer than what is being proposed, the approval would be null and void.

Harris suggested the indemnity agreement also be included in the application as well, rather than just the conditions of approval. Hurd agreed.

Zwick asked if there would be a requirement to move the garage a particular distance away from the property line for maintenance purposes. Wight said it is not a requirement.

Fred Divine, Architect representing the applicant, concurs with the staff report and the comments by the Town Attorney. He noted that a garage was in this general location for many years. As part of the previous application, the garage was proposed to be relocated farther back to allow two additional vehicles on site. He noted that there have been property line disputes and it was his understanding it was settled. He noted that the proposal before the Commission is located at the property line that was surveyed by the neighbor. There are letters of support from two additional surrounding neighbors. They designed the location such that they changed the approved garage and moved it so that it would not be on the neighbor's property. He noted that the roof of the garage is considerably lower than the previously approved garage roof. His client has been hoping to have this settled and she also removed a window once the application had been submitted. They are fine with the indemnification.

In response to Schinner, Divine said they want to continue to proceed with construction of the garage and came up with the worst case scenario. So far, they would prefer to move forward with a decision. Divine said there would be no danger to the site if the project was prolonged but they want to continue.

In response to Harris, Divine said they would prefer to have a squared off garage, but they already have a previous approval and came up with this solution to move the project forward.

Harris asked if this is the only trial date. Divine said he did not know. In response to Krebs, Laura Kehlein of Fred Divine's office, said the current garage height is proposed to be a few feet taller but because the site has been regraded, it may have the same elevation as the previously approved garage.

Overberger said no matter what the garage height, due to the slope of the lot, the garage is much lower than the deck of the neighbor.

Ms. Fairchild, Attorney representing the neighbors at 30 Cypress, explained that the applicant's survey was purposely skewed in order to provide an adequate driveway length to be able to accommodate three on site parking spaces. She said that their surveyor, Mr. Stephens, has identified the property line is in the area of the fence. The court date is scheduled for August 12th. She said if the Commission goes ahead with the proposal and her client wins, the garage will have a zero lot line and it would be very difficult to maintain. They would like to have the application continued until after the court settlement.

Harris asked if there is any authority to continue the application. Fairchild said the applicant would not want to have a zero lot line. She noted that there is a letter that was submitted by the neighbor's attorney John Sharp, which may have addressed that question.

Krebs asked Fairchild if the neighbor prevails at trial, what did she propose the applicant do for redesign. Fairchild said she would rather have a setback for maintenance purposes. Also the Town would have to look at the parking that would not be adequate or perhaps extend the parking pad. She said the way parking is currently laid out, and they win at trial, parking would be lapping over the rear neighbor also.

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES
JUNE 1, 2009**

June Lee, Cypress, said that she has spent approximately \$50,000 on this boundary dispute and since this is still in litigation she would like this to be continued.

Randall Lee, Cypress, said they were unable to attend the original design review and variance application because of the illness of his father. They hired Larry Stephens, surveyor, to determine the true property line which conforms to the existing fence line that has been there for decades. He noted that the applicant's survey was done to obtain adequate on site parking. He would like the Commission to wait until there is a legal judgment. If the Commission makes a decision tonight, the decision is being made on the applicant's survey, which has not been decided on in court yet. It is important for municipal bodies to show to potential builders, just because there is a survey, having disregard to the neighbors, one can build whatever they want.

Krebs asked if the garage is moved to where it was before, do you object to any other part of the project. Lee said the structure is very imposing addition. He noted that they missed the meeting but did send a letter to the Commission with their reasons for opposition.

Larry Stephens, land surveyor representing the neighbors, said there is approximately a 3'-9" difference, not 2'-6" difference. He presented a new survey that indicated the difference. The biggest issue is the privacy issue and how the garage and the property takes away their enjoyment of their property. He has the best available evidence, from the 1912, 1940 and 1950 surveys that have been done. Stephens said that Surveyor Halberg changed the boundary by about 7'. He noted that Halberg only found two monuments to determine the boundary. He said it is typical when there is an alternate boundary, to put it on the alternate boundary.

Zwick asked if any of the previous surveys have been recorded. Stephens said none of the previous, nor his survey, have been recorded.

Schinner asked how the 2'-6" was determined. Divine said it was designed to fit Larry Stephen's pin in the corner.

In response to Harris, Stephens said that if his survey is approved, the garage would be over the property line. Mr. Stephens said the error occurred on the Roger street side.

Zwick said that Stephens is showing a depth of 40; Halberg is showing 39.5 feet, and there would still be room for parking. Overberber said there is also a dispute of right-of-way.

Divine stated that the comment made by the neighbor's attorney that the survey was done to make the parking fit is incorrect. The corner was done from the survey but there is no dispute from the other neighbor on the other side. He noted that the neighbor is concerned about property values but it should be noted that the neighbors rebuilt their deck, which is almost on the property line. This neighborhood is difficult to determine property lines. Although they don't want to, they will continue the application even though they feel confident that their property lines are accurate. If the Commission is willing to continue the project, his client will agree to it. Hurd said they would need a one time, 90-day continuance of the Permit Streamlining Act. Divine affirmed they would agree to the 90-day extension.

Brown said if the property line is sliding towards Roger, could you fit the garage and the parking spaces on the property line. Divine said the parking would be pushed further towards Roger.

Schinner said there were findings to approve the application in the past and would support the continuance of the current application. If the neighbor is correct there may be a zero setback or less, but there is enough of a dispute that it should be continued.

Brown said there are some concerns about the previous approval and the potential if the neighbor prevails, for the completion of another survey, and what that means to the Town

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MINUTES
JUNE 1, 2009**

to resolve it. Hurd said if the new survey takes into play new information, it requires a judgment call by the Town, and is taken on a case-by-case basis for enforcement.

Harris said this is a civil matter and the Commission has no authority to resolve the boundary dispute. He is in favor of the continuance for the 90 day extension so it can be heard after the August 12th trial. He urged the applicant and the neighbor to resolve this and would hope this could be worked out for a difference of one foot.

Zwick would be willing to take the Town Attorney's advice to take the applicant's survey but is willing to go for the continuance.

Overberger said we can only work with the data we have to make decisions and that we work in good faith with the information. She will go with the continuance but would prefer to go with the applicant's belief in their information.

Krebs said he appreciates the willingness to continue this but also reiterated the two parties to try to work together to resolve the matter. He would also like to note that by listening to the objections and granting a continuance does not mean there should be any inference drawn that somehow the Commission agrees with the survey of Mr. Stephens or supports the neighbor's position. The other Commissioners concurred.

Wight suggested a continuance to the meeting of September 7th.

Harris suggested the applicant and the neighbor meet to try to resolve the dispute.

M/s Krebs/Zwick, and unanimously passed, to continue the application to September 7th with the applicant agreeing to a 90 day time extension in accordance with the Permit Streamling Act and with the suggestion that the applicant and the neighbor work together to try to come up with a compromise.

Overberger said she would hope to hear from the parties before the 7th of September.

DISCUSSION ITEM

None

ITEMS FROM PLANNING COMMISSION

Brown asked the status of Jack in the Box. Wight said the property is in escrow but there is no formal application submitted to planning.

Overberger asked about the status of design review for 754 Sir Francis Drake, to which Wight stated that the applicant's have not resubmitted.


Overberger asked about the status on 790 Sir Francis Drake. Wight said the two residential lots are for sale and the owner is looking for funding on the commercial.

Overberger asked about the Seminary property that is for sale. Wight said there is no information.

ITEMS FROM STAFF

None

The meeting was adjourned at 8:15 p.m. to the next regular meeting of June 15, 2009.


Barbara Chambers
Assistant Planner