

**TOWN OF SAN ANSELMO
PLANNING COMMISSION MEETING FEBRUARY 4, 2013**

Commissioners Present: Chair Brasler, Co-Chair House, Krebs, Overberger, Sisich, Swaim, Zwick

Commissioners Absent: None

CALL TO ORDER

Chair Brasler called the meeting to order at 7:00 p.m.

Town Manager Debra Stutsman advised that Interim Planning Director Diane Henderson has unfortunately been called away due to an illness in her family. Henderson may join the meeting later.

OPEN TIME FOR PUBLIC EXPRESSION

John Boesel, Bolinas Avenue, represents the Bolinas Avenue Neighborhood Coalition (BANC), an organization dedicated to addressing storm water management and traffic calming in his area. With regard to traffic calming, Boesel distributed handouts showing his street in use as a loading ground for many projects and noted the number of buses and trucks present in the area idling and emitting a lot of pollution. Boesel noted that the San Francisco Theological Seminary's upcoming proposal to build more housing on their property will likely create even more traffic on Bolinas Avenue and that the review of their project provides an opportunity to engage the seminary in contributing to flood protection and street calming solutions.

John Martin, Bolinas Avenue, referred to the enormity of the 7-year effort BANC has put forth in order to produce a survey and position paper that indicates public safety is considered a serious issue. The organization has raised over half a million dollars to address public safety on Bolinas Avenue. He requests that the Commissioners hold the Seminary accountable for addressing drainage and traffic issues on the street, as well as for frontage improvements. Martin will provide an electronic copy of the survey and position paper to the Town.

Public Works Director Sean Condry advised that he has been working closely with the Town of Ross and the members of the BANC organization. A number of projects are slated for the Bolinas Avenue area, including Safe Paths to Schools, OneBayArea Grant Program (OBAG) funding, and the Seminary project. The Seminary has been advised that significant frontage improvements, including drainage and sidewalk work, will be required of them. Condry is at work on combining the projects in a comprehensive way so that safety, sidewalks, and drainage are addressed appropriately in each area of Bolinas Avenue.

Jill Baker, Bolinas Avenue, observed a man in a wheel chair in front of Montgomery Chapel who could not cross the street because of heavy traffic. Baker noted that crossings at Kensington and Bolinas and at Richmond and Bolinas are unsafe. She is

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hopeful that the Seminary will make many improvements during phase one of their project.

Brasler closed the open time for public expression.

In response to a question from Commissioner Zwick, Condry advised that the Seminary has been advised that frontage improvements specific to sidewalks and/or drainage will be required. Currently, the Seminary has a letter from Condry advising them that their bioretention plan as it stands may or may not impact localized flooding.

PLANNING DIRECTOR'S REPORT

There was no report.

PUBLIC HEARING ITEMS

CONSENT AGENDA

Minutes of Planning Commission Meeting January 7, 2013

M/s, Krebs/House to approve the minutes of January 7, 2013.

AYES: Brasler, House, Krebs, Overberger, Sisich, Swaim, Zwick
NOES: None
ABSTAIN: None
ABSENT: None

REGULAR AGENDA

DR-1302, Trenor Askew, 122 Sycamore Avenue, APN: 006-083-16: Design review to construct a new 3,246 square foot two story house with a 503 square foot attached garage and a 587 square foot rear deck at 122 Sycamore Avenue. The project site is located in the R-2 zoning district (Staff person: Boyle).

Commissioner Krebs recused himself as his residence is within 500 feet of the project.

Boyle presented the staff report.

Commissioner Sisich asked if flood vents are being required so that water can enter and exit.

Condry advised that venting is required by FEMA.

Sisich asked if there are any additional flood-related requirements for new homes being built in a flood zone.

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Condry added that it is a matter of meeting FEMA's requirements which have to do with the foundation and making sure that it is waterproofed and will not be washed away in a flood.

Brasler asked if it is known where the proposed structure lies in relation to a base flood elevation.

Condry explained that applicants may refer to the older flood maps, which do not have a base flood elevation, or they can design according to the preliminary, newer maps which do have a base flood elevation. The Public Works Department strongly recommends designing to the newer maps.

As there were no further questions of staff, Brasler invited the applicant to respond.

Architect Steve Murch representing Stewart Summers Architect and applicant Trenor Askew, shared a Powerpoint presentation indicating that the home was designed in the context of the other homes in the neighborhood and with consideration of neighboring views. The property is adjacent to the creek and the final floor elevation is 2' above base flood elevation. The lot is narrow, so the location of the structure on the site was pushed back to accommodate a driveway and to be in line with neighboring structures. Murch indicated that shadow studies showed minimal shadows cast offsite and the project requires no grading. Murch introduced landscape architect Rod Scaccalosi.

Scaccalosi noted that the plans are for a fully planted lot, using low-water and some drought-resistant varieties. Trees will be planted for privacy and there will be more native plants in the rear creek area.

Commissioner Swaim asked if the proposed trees, as they would look at maturity, were considered in the shadow studies.

Scaccalosi indicated that most of the trees along the property line are shorter. The large, tall oak tree is at the back of the property.

Commissioner Overberger asked that Murch consider the recent flood history of the neighborhood and the possibility of taking more precautions in terms of the structure's elevation or other flood mitigation measures.

Sisich asked if residents of neighboring properties had been contacted regarding the project.

Murch advised that the neighbors to the east had no concerns. The neighbor to the west was concerned about construction noise and light. The second story was stepped back in consideration of her concerns and he does not know of any outstanding concerns at this time.

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As there were no further questions from the Commissioners, Brasler opened the discussion to the public.

There were no comments from the public and the discussion returned to the Commissioners.

Sisich believes the structure is bulky and feels that hips or dormers should be considered to provide more articulation.

Zwick likes the project and noted that the front entry holds a high standard which could be extended with more subdivisions in the windows, more trim, dormers, kick plates, or belly bands. He agrees with Sisich that the two long sides of the structure would be improved by more articulation. If the structure were softened by details such as these, he could fully support the project.

Overberger is in agreement with Sisich and Zwick. If a little more interesting detail were added to the structure, she would definitely support the project.

Commissioner House does not have any objections to the project. It is a long, narrow house on a long, narrow lot and although more articulation would be well-received, she is satisfied with the project as designed.

Swaim likes the project, noting that some effort has been put into the existing details and that consideration has been given to neighbors in terms of preserving light and views. The project is certainly an improvement over what was on the lot previously. He supports the project.

Brasler generally supports the project, noting that the shape of the lot is a limiting factor with respect to design. The project does not require any variances and is in compliance with planning code.

M/s, House/Swaim, to move the staff report.

AYES: Brasler, House, Swaim
NOES: Overberger, Sisich, Zwick
ABSTAIN: None
ABSENT: Krebs

After the motion failed, discussion ensued regarding making a second motion. Brasler asked the project applicant to respond.

Murch indicated that the narrow lot is the largest factor in the project, adding that recessing each side of the second story by 3' increases the narrowing effect. Zwick's

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suggestions are appreciated and could be considered. Murch asked if the project could be placed on the consent agenda for a future meeting.

M/s, Sisich/House, to continue the project to the meeting of March 4, 2013.

AYES: Brasler, House, Overberger, Sisich, Swaim, Zwick
NOES: None
ABSTAIN: None
ABSENT: Krebs

Krebs returned to the dais.

Appeal of an Administrative Decision, Ford Greene, 711 Sir Francis Drake Boulevard, 006-083-08: Appeal of an administrative decision by the Interim Planning Director regarding the existence of a residential use in the lowest level of the building at 711 Sir Francis Drake Boulevard. This item is continued from the November 19, 2012, Planning Commission meeting (Staff person: Henderson).

Town Manager Debra Stutsman presented the staff report.

Zwick made note of a letter from the architect and asked if the architect has held discussions with staff regarding the building code and how it would apply in this particular situation.

Stutsman explained that when a planning application is submitted, it is reviewed by both the Building and Fire Departments in order to advise the applicant what may be required. Specific interpretations of the building code are shared once construction plans are submitted. When Mr. Greene has secured a conditional use permit, the building official will review all of the codes. Every effort will be made to determine the most economical way for Mr. Greene to proceed with his project.

Krebs noted some of the issues raised in the applicant's letter of January 10 with regard to the issues of continuous use, the designation "non-conforming," and change in occupancy, etc. He asked if staff or the Town Attorney can provide guidance to the Commissioners on these points.

Stutsman advised that Planning Director Diane Henderson examined each of the issues raised in the applicant's letter in great detail and made the determination that they did not change her opinion. The Town Attorney has reviewed her findings and agrees with her.

Krebs believes the points raised in the applicant's letter are fairly technical legal arguments and he is unsure as to how the Commission is to proceed in regard to the interpretation of continuous use and its applicability.

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Stutsman responded that according to the Interim Planning Director, the grandfathering rule is uniformly applied in all of the Marin County cities she has worked in, so she feels confident that this is the procedure used in most cities.

When the building code was first instituted, there were quite a few non-conforming units in San Anselmo and owners were given the opportunity to make those units legal by submitting proof that the units had been created as a residential use and had been continuously inhabited since that time. These were second units in the residential zone; however, the same rule applies in the commercial zone. In order to have a residential unit in the commercial zone, a conditional use permit is required.

In response to further questions from Krebs, Attorney Bonnie Freeman explained that the interpretation of the applicability of the distinction made in the applicant's letter was made by the Interim Planning Director to be a non-issue. The issue is that there is a changed use in that basement unit which has not historically been the case. Whether or not it is called a living unit or a basement, the fact remains that there were changes made without a permit. The applications that the Town would apply to any other such use unit when it comes to the Planning Director's attention have to be applied here. What is essential is what happened over that time period to change the use from a storage or basement to a living unit. In the interpretation of the Interim Planning Director as well as the fact that the applicant has not provided the Commission with any reason not to accept the Interim Planning Director's interpretation of how these ordinances apply to this unit is not an issue that should be vetted by either the legal or the non-legal minds of the Commission. It is the applicant's burden and whether or not the applicant has supported the applicant's burden has already been decided by the Interim Planning Director.

Krebs asked for clarification as to the decision the Commissioners are tasked with in this matter.

Freeman responded that the issue is whether or not the decision of the Interim Planning Director that the evidence submitted for proof that the unit is a legal non-conforming unit and has been used continuously since it was created as such allows it to be grandfathered in, making the conditional use permit application a non-issue. If the Commission accepts the Interim Planning Director's findings, the appeal of the administrative decision is denied and the conditional use permit application is reviewed as well as the recommendation of staff with regard to the conditional use permit.

Brasler asked if the issue is the continuity of the use of the lower level or the change in use of the lower level.

Freeman responded that it is if there was a continuous use of the basement level as a residence, which is what the applicant has proposed through the exhibits that were attached to the November 19th hearing application. The exhibits were intended to show a continuous use of this unit as a residential unit so that it could be grandfathered in and

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avoid the problem presented with issuing a conditional use permit and then having to bring the unit to code. The easiest response to the evidence submitted by the applicant is that it does not prove that the unit was used continuously as a residential unit. There is strong evidence that it was not used as a residential unit through two and now three declarations from persons with firsthand knowledge of how the unit was used. If the standard of proof to show continuous use of the unit cannot be met, the correct course of action is to move on to the next item on the agenda.

Applicant Ford Greene shared and narrated a Powerpoint presentation.

He displayed the only old-time photograph of his residence found in his 27 years of living and working at 711 Sir Francis Drake. It was taken in the early 1900's. The building is next to the San Rafael Olema Road, which runs east to west across the top of the photograph. From the picture, it does not appear that Sir Francis Drake Boulevard had yet been extended to the hub. The building was erected in 1905; Olema Road was a dirt road used by horses and buggies. In 1907, San Anselmo was incorporated. Greene's building, the same structure, with the same footprint, with the same big brick bread oven, had as many as four residential uses happening at the same time, from time to time. It has been a live/work building from the turn of the 20th century, through the Depression, World War II, to date.

In this appeal there are two territories Greene wants to address: one procedural, one substantive.

According to Greene, the proper order of how a conditional use permit is supposed to be processed didn't occur here. Instead of this Commission determining what land use regulations applied in the context of Greene's pending conditional use permit application, with no written administrative authorization, the Planning Department implemented a procedure whereby it would make the land use determination. Staff advised Greene that if he didn't like its determination, he could pay \$700 and appeal the decision. This is his appeal. He requests that the Commission fairly apply conditional use permit procedures to him.

A section of Article 13 that controls San Anselmo conditional use permit applications was displayed. Greene explained that this is the regulation that requires the Commission to hear all matters relating to one property and a conditional use permit application at once. Greene contends that this is the regulation that the Planning Department did not follow when it developed its own special unwritten conditional use permit procedure for him. Because the Planning Department's August 14, 2012 administrative action deprived Greene of his right to have the Commission hear all matters pertaining to his conditional use permit application at once, he asked that they do it presently. He requested that instead of ruling on the issues raised in the appeal separately as a separate agenda item in the prejudicial fashion staff has structured the meeting's proceedings he requested that the Commission defer doing that. He requested that the Commission decide the issues in the appeal together with the issues

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in the conditional use permit agenda item as part of one coordinated and comprehensive public discussion and hearing. He does not want his issues split apart and divided into two pieces. He does not want his position further weakened. It would be unfair and in violation of Article 13 of the code.

As for the substantive portion of his appeal, Greene made reference to the standard that the Planning Department applied to him on August 14, 2012. The Planning Department omitted any consideration of the land use that he has as a multi-family apartment building. It omitted any analysis of the land use as an apartment building. The Planning Department mistakenly classified the property as a second unit, classified the property as non-conforming, and then required continuous residential use. This is the standard that it assumed. While second units are not allowed in the C-L zone, it seems logical that the same type of evidence used to establish the legality of a second unit in the residential zone would also establish the legality of a residential unit in the commercial zone. Assuming this rationale, the Planning Department concluded that there is nothing in the materials Greene submitted that establishes the legality of the residential use of the lowest level of the building.

Greene suggests that there are three fundamental flaws in this approach. The first is to ignore that his property has always been an apartment building which should have been properly classified as multi-family. The second is that the code differentiates apartment from second unit. It does not apply second unit terminology to commercial districts. For staff to apply a second unit standard to Greene so as to find his legitimate multi-family use to be non-conforming is a strained interpretation. Finally, to bootstrap the requirement of continuous use to an illicit finding that his use is non-conforming when it is, in fact, conforming, is unfair and prejudicial.

As Greene sees it, according to the rules, Greene's use is legitimate. Staff says it is not and makes up procedures and rules to impose a predetermined conclusion. That is not fair. That is another reason he wants the Commission to defer decision on this appeal and consider its issues jointly with those pertinent to his conditional use permit application.

It is Greene's opinion that staff should not apply the wrong rules in order to come up with the mistaken conclusion that over 100 years of apartment building use is non-conforming. Staff should not use its erroneous classification of Greene's apartment as non-conforming to then be the launching pad from which it asserts the requirement that he must show continuous use of his apartment from 1911 to date. A second unit analysis has nothing to do with an authorized multi-family use in the commercial limited district. Greene pointed to the display of the standard and conclusion highlighted in red, saying he had to show continuous use, which is what Council talked about and what Stutsman talked about. Greene contends that it is a bogus standard and that it should not be applied to him.

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Greene suggested that the Commission proceed, doing what he believes the Planning Department should have done had it not become sidetracked by employing the second unit analysis that could only have been conducted in the context of a unit in a residential zone, an analysis that is not even on the commercial zone page. As to the occupancy of Greene's building and his apartment, there are two sources of proof. The first source of proof is the Town's own resale inspection report of October 2001. The other sources of proof are ancient historical records from which reasonable inferences may be drawn as well as the firsthand knowledge of a competing baker.

The resale report highlighted section filled out by the seller indicates three living units and two commercial units. The section completed by the Town's building inspector shows a checkmark indicating mixed residential commercial for two living units and two commercial units. Below that the question is posed: Is there a second unit on the property? Yes. That's a wrong characterization, according to Greene; it is a residential use that is on the property. Greene asked the Commissioners to take notice that the square underneath the first highlighted section talks about multi-family residential R-2, R-3 for living units, and contends that this is what should have been checked because that's what was authorized in 2001 in the C-L District.

Greene noted that Table 3-A says one can have a multi-family use, one can have single family attached, one can have single family detached; but what one can't have—and it doesn't exist—is a second unit. The proper classification for 3 residential occupancies is R-2. R-2 means 3 or more dwelling units. R-3 means 2 or fewer dwelling units. Second unit language does not pertain to occupancy classifications; thus, the Town's own document confirms that as of October 2001 there were 3 residential occupancies in the building and the apartment in which Greene lived was one of them.

Greene advised that the historic documents show that in 1911, there was a bakery in San Anselmo on Olema Road. Thereafter, the records show that from 1920 through 1943 a baker named Dominic Pagliaro operated the San Anselmo French Bakery out of the 711 address. Those records also show that Dominic, his wife Virginia, and their three daughters, Della, Louise, and Lettie, also resided at the 711 address. The upper and lower floors of 711 sustained a family of five in a live/work arrangement through the Depression and well into World War 2. The declaration of Richard Keintz fleshes the historic document out. He was one of the generations of bakers in San Anselmo and his family operated a competing bakery from 1912 to 1979. He had firsthand knowledge of the bakery at 711 Sir Francis Drake. On the lowest floor, he observed cooking facilities, meal preparation, bathrooms. The baker and his assistant would sleep there while waiting for the oven to heat and bread to rise. According to Greene, this is proof of residential occupancy. Rejecting Keintz's declaration out of hand, staff dismisses this in its August 14 administrative decision by stating:

"Statements that bakers slept in the bakery do not establish the lowest level as a residential use."

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Greene does not believe that such a blanket disregard for his evidence is fair, reasonable, or appropriate. The structure and footprint of the building has remained the same; there are five distinct units. On the third floor, there are the 713's, now A and B; they've always been residential. On the second floor, the street level, there are units 711 upper and 715; each in the past 108 years has intermittently been used both as a residence and for work. 711 was the Pagliaros' bakery and residence. It was George Olesen's antique store and residence shared with George Kritzky. It was Joe Cullen's residence and cabinet making shop. It is now Greene's law office and residence. 715 was where Joe Dondero and Albertina Westfall resided and it was the location of the Frontier Saddlery. Later from 1960 through the nineties Artist Troy Ruddick both lived there and conducted art classes where he taught many people in the Ross Valley. Greene concludes that what this shows is a consistent occupancy pattern of 3 or 4 residential occupancies for a period in excess of 100 years.

Greene turned to the history of regulatory development in San Anselmo, documentation of the representations of which was displayed on a large chart entitled "History of Occupancy and Development of Zoning."

Greene's small apartment building predated San Anselmo's incorporation by 2 years. He believes the building should have always been classified as an apartment building and where he lives as an apartment. San Anselmo's regulations have always defined an apartment building as a building in which there are facilities for 3 or more families to live independently. In 1991, San Anselmo placed Greene's building in a limited commercial zone. Multi-family residential is an authorized land use in the C-L zone. Multi-family residential includes dwelling units. Dwelling units provide independent living facilities for 1 or more persons. Because Greene's zone is a commercial zone, his unit cannot be a second unit. It is a dwelling unit, it is one of 3, and standards that apply to second units should not apply to Greene. Had the Planning Department properly classified his apartment, it would not have classified it as a second unit. It would have properly classified the apartment along with all the other units in the building as R-2 occupancies. Greene stated that because the Planning Department and the Interim Planning Director refuse to properly classify the apartment, he is at risk. Greene has spent close to \$100,000 in professional fees and scores of hours of his own time addressing these matters, many of which have been caused by the intransigent position of the Planning Department and staff.

Based on the evidence he has provided, based on applying the proper rules and regulations, and based on fair and proper classifications, Greene respectfully requested that the Commission grant his appeal and in so doing properly classify his apartment as R-2. That way the Commission can direct staff to provide Greene with the opportunity to complete what has been a very arduous process.

In response to a question from Zwick, Greene explained that he would like the Commission to say that the continuous use requirement is not properly applicable to Greene because his building has always been an authorized use in that particular zone.

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Apartment buildings have always been authorized so the use is conforming and since it is not non-conforming, the continuous use requirement does not apply.

Zwick noted that staff is recommending approval of the conditional use permit.

Greene explained that in the absence of granting his appeal, the approval of the conditional use permit would require him to address Fire and Building Code requirements. If the property is properly classified as R-2, those requirements would not be applicable.

Zwick referred to the letter provided by Greene's architect and asked Greene if he would continue to work with her should the conditional use permit be granted.

Greene replied that he would continue to work with Ms. Hansen and that there would be little work for them to complete.

Brasler asked if the language indicated in the Powerpoint presentation was part of a written document or a quotation from a conversation. Greene indicated that the language was in a written administrative action from the Planning Department and as such is included in the Commissioners' packet.

Brasler opened discussion to the public.

Larry Bragman, Hickory Road, Fairfax believes an important distinction is that the property in question is not a second unit in a single family unit zone, but rather an extra unit in a multi-family unit zone. He also believes that a civil standard of preponderance, of probability and not of proof beyond a reasonable doubt, should be the basis on which the Commission makes its decision. Bragman observed that the historical research presented on Greene's behalf is persuasive.

Myra Drotman, San Anselmo area, has expertise in multi-unit housing. It seems this is not a second unit or second use in a single family home, but a multi-unit or multi-use building. Drotman is in support of multi-use buildings with residential units close to town. She finds it ironic that the Commission is close to approving a 3500 square foot single family home that will not have a second unit but is trying to mitigate a small unit that has existed for a century. Drotman believes the issues should be handled at one time and not separately and that the unit in question is not a second unit and should not be subject to the procedure the Planning Department is trying to impose. She asked the Commission to support Greene in his request.

Mark Cooper, H L Commercial, works in commercial real estate in San Anselmo. He supports Greene's case. This is not a single family home in which someone has converted a garage and is trying to add a second unit. Cooper observed that Greene has inhabited the unit for 20 years and that it would be continuous use if the building were constructed 15 years ago. Cooper believes the continuous use criterion is a moot

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point and that Greene should be granted his case. Cooper further believes Greene should not be subject to the conditional use permit.

Kate Warner, Meadowcroft Avenue, appreciates Greene's building for its historical flavor. There seems to have been some weighting of evidence without examining it all together. Warner asks that the entirety of the record be considered and that Greene's building and use be approved. Mixed use in the hub area should be preserved and encouraged.

George Froom, 711-A San Anselmo Avenue, noted that the owner of his building was told Froom's unit was illegal despite the fact that it had existed since 1919. The Planning Department required proof of continuous occupancy from 1949 onward. After engaging an attorney, enough evidence was secured to allow the property owner to keep the second unit. Froom believes Greene should be granted the same privileges. Froom believes the Planning Department made back room deals for many years, and that the Planning Commission was complicit, until the early 2000's when a handful of characters was run out of town. To see that this is still happening is disheartening to Froom.

Peter Lacques, Cascade Drive, Fairfax, believes there has been a little bit of a strained reasoning to characterize Greene's space as a second unit, resulting in a pretty severe hardship for Greene. Lacques advocates looking at the character of the entire building, and that there is ample evidence that this is an apartment building first and foremost. Lacques encourages the Commission to consider the larger picture and what will result in consistent use in the entire building.

Peter B. Collins, Oak Avenue, believes the Planning Commission has not been consistent, observing that many variances have been granted for all kinds of structures throughout the Town. Collins feels that the extreme application of the rules in this instance is not warranted. If Greene's were a rental unit, Collins would understand the desire to enforce all meaningful aspects of code. Because it is owner occupied, Collins has difficulty understanding the extreme and stringent standards that are being recommended. Collins hopes that the Commission will find in favor of Greene and permit him to occupy the building he owns.

Jonathan Frieman, San Rafael, a client of Greene's, wants to make sure that Greene has a place in which to live and work on Frieman's case. The bamboozling of the Planning Commission by the city staff is simply outrageous. The way the city is treating one of its long time and most productive residents is despicable. The standard to which Greene is being held is absolutely outrageous. The time and the money spent over the year is a waste. All this stuff about continuous use or a second unit. Greene is correct; he's very much correct. When Frieman thinks about the fees that he is paying to Greene for his case on corporate personhood, which is of international import, he might as well pay the city staff for all he is paying Greene. And lastly, Frieman notices the questions the Commission has about the legality and the separation of issues, etc., and it is clear

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that there is a lack of understanding. If the Commission doesn't understand, it should not vote on this issue. Frieman urged the Commission members to not let the city staff bamboozle them. As Peter B. Collins said, Greene should be allowed to live and work in the place in which he has done so for so long without any encumbrances.

Len Rifkind believes the standard is the preponderance of the evidence. He reminded the Commission members that what is before them at the moment is whether or not they should uphold the appeal and that the appeal is about whether or not staff's administrative determination of the Interim Planning Director—whether or not there is a legal unit in the lower level of 711 Sir Francis Drake Boulevard. The analysis the Commission members have heard is a second unit analysis. Second unit analysis has nothing to do with the zone in which the property is located. Quite clearly, second units are only in residential zones. Rifkind would suggest that the analysis from staff has not been correct. What Greene has presented is that historically this has been an apartment house from the beginning, it has continued as an apartment house and, because of that, Chair Brasler has asked for discussion about continuous and change of use. To answer the question directly, the continuous requirement does not apply. It would only apply if there was a legal, non-conforming use. The zoning ordinance has never changed, has always authorized an apartment use in this location, and it has always been an apartment use in this location. Does it have to be continuous? No. The continuous use element only applies to a legal non-conforming use. If Fireperson Marcucci from the 1960's indicates that he remembers seeing storage at that time, maybe he can remember it, although it seems like a long time ago. It doesn't really matter if it was storage, living, whatnot, what matters is that this appeal should be granted because staff's analysis has gone off the track.

Virginia Stella, Camino de Herrera, San Anselmo, finds Greene's building one of the most interesting in San Anselmo. Stella has emailed Greene with regard to Town Council matters on occasion and always receives an answer. She believes Greene has given a lot of good work to the community. Stella suggests that in this small Town, it is possible to be generous with each other. Stella hopes that the Commissioners vote with Greene.

Greene restated his contention that the standard applied by the Planning Department is wrong. The correct standard is not a standard based on second unit analysis, it is not a standard based on a non-conforming use. The requirement of the standard that continuous use be established is completely bogus and does not apply to an apartment building the use of which as an apartment building has been authorized in this Town literally since 1911. Greene is asking that he be treated like anyone else which means that the appropriate rules be applied. Greene believes that when his property is recognized as a multi-family unit classification in the C-L district, there is only one result.

Brasler closed the public discussion.

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Krebs asked Greene if his contention is that because the building is an apartment building, Greene is not required to prove continuous use.

Greene responded that this is correct because if the classification is properly as an apartment building, then that classification means it is conforming and it always has been conforming.

Krebs asked Greene if his comments refer to the building or the specific unit in question.

Greene clarified that his comments refer to both the building and the unit in question.

Krebs asked if one accepts staff's position that the unit in question is a second unit, does Greene contend that the unit has been inhabited continuously.

Greene stated that he admitted at the last hearing that the use of the unit has not been continuous.

Brasler asked Stutsman for her thoughts on the fact that the Commissioners are being asked to make a judgment based upon the Town's interpretation and that a completely opposite interpretation of the question has been proposed.

Stutsman confirmed that with respect to the apartment building, she spoke with Interim Planning Director Diane Henderson before the meeting. Essentially, the building has 2 residential and 2 commercial units. Whatever it is called, the basement was used for storage for a long period of time. A residential use in a commercial property requires a conditional use permit and there is proof from the previous declarations that it was not built as an apartment but as a basement where there was a brick oven and where baking went on. Declarations were given that the space was not used as a residential use before 1990 when it was used strictly as storage.

Stutsman added that the resale report indicates 3 residences but also indicates that one of them is illegal.

Greene correctly noted that the resale report form has a checkmark for a 2nd unit and it is not a 2nd unit; however, this is strictly a difference in terminology. In a commercial building, it is called a residential unit; in a residential property, it is called a 2nd unit.

As evidenced by the tax rolls, Greene has been paying for 2 residential and 2 commercial units—further evidence that the basement has never been considered a residential use.

Stutsman assured all present that staff would rather not be involved in the evening's discussions. It is a difficult matter because discussion is specific to the residential unit of an individual who is staff's supervisor. Staff would much rather have been able to grant

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approval out right, as it would have been the easier course of action; however, it is not the right thing to do and staff cannot, therefore, recommend that course of action.

Stutsman confirmed that all of the evidence was reviewed by staff and evaluated as fairly as possible. Greene would like assurances that he is being treated the same as everyone else and that is staff's mantra: that everyone is treated equitably. It is not always an easy task, but staff strives to do that and strives to do that in this case as well.

Discussion ensued with regard to the designation of the property as mixed residential/commercial vs. multi-family residential on the resale report presented in Greene's Powerpoint presentation. In response to a question from House, Boyle noted that the Land Use Table lists various land uses allowed in various districts. Multifamily residential is conditionally permitted in the C-L zoning district, which is where this property is located. Professional offices are not allowed in either R-2 or R-3 properties.

House concluded that mixed use/commercial, as checked on the resale report, is the appropriate designation. She confirmed that the Commissioners are looking at a residential use in a commercial area and it appears that part of what she's heard from Greene is that the building should be looked at as a whole and that if there was ever an apartment anywhere in the building, then there could be apartments everywhere in the building. She's also hearing staff's contention that the Commissioners need to look at what's happening in specific areas of the building.

Freeman referred the Commission to the minutes of the November 19, 2012 meeting. On Page 3, the very same question was asked of Henderson and her response is noted there, as follows: No one is disputing the fact that this has been a live/work building. The question becomes whether or not this substandard unit that was a storage unit for all intents and purposes up to a point in time--that is not disputed apparently--with ceilings that are too low and space that does not meet fire safety codes, etc. What is needed to allow a residential use is to be formally recognized in that unit. (This discussion appears in the excerpts of those minutes.)

Zwick referred to the resale report and the designations R-1, R-2, and R-3, explaining that these are building code designations, making the matter a mixed bag. Mixed use projects are seen all over San Anselmo and there are many pieces to the puzzle. Parking, another building code designation, is often involved and may need to be changed into residential or commercial. There might be some building and other code issues that need to be addressed, even if zoning allows for all of that. Zwick believes that is the question before the Commission. Staff has said that from the standpoint of zoning, they are supporting a unit in that location.

Discussion ensued resulting in Boyle's affirmation that the code states professional offices are not permitted in either R-2 or R-3 zoning. Boyle further clarified that R-2 and

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R-3 are both planning and building code designations and that he is referring to the Land Use Table and planning code regulations.

Zwick believes the clear path to allowing Greene to continue to maintain his residence involves upholding staff's position on Item 1, to grant a conditional use permit as recommended in Item 2, and to allow Greene to go on to seek a building permit.

Sisich maintains his position as previously stated. The Town was looking for a way to approve this and staff would not be present if they could not make the case. Sisich believes that staff considered all that was presented and he stands behind them. The unit should be allowed under a conditional use permit. Sisich supports the staff report.

Krebs is leaning toward the conclusions reached by Zwick and Sisich and would like to hear from other Commissioners before rendering his opinion.

Swaim acknowledged that it is difficult for Greene to seek permission to use his residence as such after having lived there for 20 years and understands that the Commission is charged with trying to interpret many different aspects of the issues and being fair to all parties involved. The solution in theory would be to grant the conditional use permit, recognizing that there is a host of associated issues there. Although he would like to rewrite the code, this is not an option and Swaim is leaning toward the solution suggested by Zwick.

House is mostly in agreement with the comments made by her colleagues. She would like to see Greene continue to be able to live in his home and supports more residential units downtown. All that being said, there are rules that need to be applied to everyone in Town and they must be applied uniformly to everyone. As she understands the rules, and if she applies them uniformly, House would be upholding the staff report.

Overberger acknowledged that the discussion centers on Greene being able to continue to live in his building and that upholding the staff report will trigger upgrades and changes to meet building code standards. She reminded all that any time a change is made in a building, things need to be brought up to current code standards. There are also tenants in two apartment units in the building who need to be protected. Overberger would like to see the staff report upheld, the conditional use permit approved, and then determine a path to assist Greene with the upgrades he needs to make.

Brasler believes the pertinent issues relate to the building code and that although Greene perhaps hoped to mitigate the building code requirements by working through the Planning Department, it doesn't appear that is going to happen. He asked for a motion.

M/s, Zwick/Overberger, to move the staff report.

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AYES: Brasler, House, Krebs, Overberger, Sisich, Swaim, Zwick
NOES: None
ABSTAIN: None
ABSENT: None

Brasler reminded all present that the decision could be appealed to the Town Council.

UP-1301, DR-1301, Ford Greene, 711-715 Sir Francis Drake Boulevard, 006-083-08:

An after-the-fact conditional use permit for a residential use in the Limited Commercial (C-L) zoning district and design review for a shed/wall structure along the southern property line at 711-715 Sir Francis Drake Boulevard, San Anselmo, APN: 006-083-08 (Staff person: Boyle).

Boyle presented the staff report.

Stutsman reminded Boyle that the applicant did submit an alternative design for the shed/wall; unfortunately, noticing for the project and the writing of the staff report for the project as originally proposed had already taken place and there was no time to review the revised proposed design.

In response to questions from Zwick, Boyle affirmed that the use permit and the design review could be approved or denied separately and that the alternative design for the shed/wall could be brought back to the Planning Commission. Further, Boyle clarified the location of the proposed shed/wall and the correct placement of the property line.

Brasler asked for the opinion of Commissioners as to whether or not they would prefer to divide the two aspects of the application.

House and Overberger responded that they would like to consider the use permit and the design review separately.

Brasler asked the applicant to address the conditional use permit application only.

Architect Fani Hansen noted that as many as four live/work units have existed in the building since 1911. Residential second unit is a designation limited to R-1 districts and the second unit classification is not permitted in the C-L zone.

Further, Hansen stated that the occupancy classification for the 3 residential units is R-2 and that no continuous use requirement is applicable here. Conditional use permits are for the C-L zone. Greene's building is an apartment building, its use is live/work, and that has been authorized since 1911. Table 3-A classifies this as multi-family. Since 1905, the building has always been used as an apartment building with live/work, R-2 arrangements. Since 1911, Town regulations authorize apartments that include live/work arrangements in the R-2 zone.

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Hansen added that technically, there is no obligation to comply with current code as the building predates even the very first building code of 1927. Moreover, there has been no change in occupancy. A 2001 San Anselmo building inspection report recognized that the 3rd unit was there and identified corrective measures regarding heating, exit, and water heater issues. In August 2005, the Town requested that the owner begin making corrections and between 2005 and 2012, the Town authorized 7 building permits.

Hansen advised that the ceiling height of the third unit is legal at 7'8". The issues the conditional use permit needs to address are the height of the exit door, the landing, the structural calculations for one structural member, and a new address for the unit. The owner will address these four specific issues in a building permit application.

Hansen concluded by asking the Commissioners to support the Conditional Use Permit, to designate the property as R-2 in terms of its occupancy classification, and to include the four conditions she has noted.

Rifkind believes the occupancy group for the building needs to be established as R-2 rather than R-3 explaining that which occupancy group applies determines which building codes will apply to the existing use. If there is a change in occupancy, as has been suggested by staff, current code requirements must be met, the expense of which is not feasible for Mr. Greene.

Brasler returned the discussion to the Commissioners.

Interim Planning Director Diane Henderson explained that a change in occupancy type is a matter to be taken up with the Building Department and not the Planning Department or the Planning Commission. If there is a desire to change the occupancy, it should be pursued at the building permit stage.

Brasler asked the applicant to address planning issues only.

Rifkind responded that the reason it is within the Planning Commission's purview to make a decision with regard to R-2 or R-3 is because the Commission, as Mr. Greene as stated under the Zoning Code 10-13.04, where the Planning Commission decides all planning aspects of this project, the Planning Commission needs to give direction to staff regarding what has been the historic use.

Rifkind added that staff has already determined that there's been a change in occupancy. The applicant is not in agreement and a mountain of evidence has been presented indicating how many historic units have been in the building.

Rifkind addressed the definitions of R-2 and R-3, explaining that R-2 means that there are more than 2 dwelling units. There have always been more than 2 dwelling units there: 713 A and B, and 711. There has been a lot of debate about whether it is a lower or an upper unit. Evidence shows that folks over the course of the past century have

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lived in that unit, whether it has been the lower or the upper unit. Frankly, there's been a 4th unit at 715 Sir Francis Drake, inhabited by Troy Ruddick for over 30 years.

Rifkind contends that throughout history, there have always been 3, there have sometimes been 4, but there have never been 2 units and that means there is no change in occupancy.

Rifkind concluded that if it is up to the Building Official to determine the occupancy, he should make the decision based upon direction from the Commission as to how many units have been there historically.

Brasler opened discussion of planning issues to the public. As there were no comments, Brasler returned discussion to the Planning Commission.

Overberger respectfully declined to address the issue of occupancy group and supports the conditional use permit.

House agrees with Overberger.

Swaim supports the staff report in favor of granting the conditional use permit.

Krebs is in favor of granting the conditional use permit.

Zwick is in favor of granting the conditional use permit.

Brasler is in favor of granting the conditional use permit, recognizes that every unit in the building has probably been lived in over the past 100 years, and is uncertain of the Planning Commission's jurisdiction with regard to the occupancy group.

M/s, Overberger/Zwick, to grant the conditional use permit for the property subject to the conditions of the staff report.

AYES: Brasler, House, Krebs, Overberger, Sisich, Swaim, Zwick
NOES: None
ABSTAIN: None
ABSENT: None

Brasler invited the applicant to address the shed/wall design review application.

Boyle noted that there is a condition in place requiring the applicant to modify an existing fence by mid-February and that the condition needs to be addressed.

Stutsman reminded all that the Brown Act prohibits the Commission from taking action on a matter that is not on the agenda.

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M/s, Zwick/House, to grant a continuance on the design review application to March 18 in order to give the applicant time to submit the plans for design he wishes to pursue and for staff to not take action on the existing fence.

AYES: Brasler, House, Krebs, Overberger, Sisich, Swaim, Zwick
NOES: None
ABSTAIN: None
ABSENT: None

Brasler reminded all present that the approval of the conditional use permit can be appealed.

ITEMS FROM PLANNING COMMISSION

There were no items from the Planning Commission.

ADJOURN TO THE MEETING OF MARCH 4, 2013

Brasler adjourned the meeting.

Respectfully submitted,
Nancy Harris