

**TOWN OF SAN ANSELMO
TOWN COUNCIL STAFF REPORT**

May 20, 2008

For the meeting of May 27, 2008

TO: Town Council

FROM: Diane Henderson, Contract Planner

SUBJECT: Flatland Design Review of a revised project design of an approximately 1,195 square foot second story with 126 square-foot second story deck and 180 square foot roof deck over the first floor, in conjunction with a new approximately 3,841 square foot single family dwelling at **10 Foss Avenue, APN 007-232-50.**

APPLICANTS: Larry and Debbie Stadtner, Post Office Box 246, San Anselmo

I. BACKGROUND

January 22, 2008: The Town Council held a public hearing and granted the appeal of the Planning Commission's approval of the Flatland Design Review 3:2 (Ayes: Breen, Freeman, Greene; Noes: House, Thornton) on the grounds that they could not make the finding that the excavation required in order for the project to go forward will not adversely affect the health and safety of persons in the neighborhood or be materially detrimental to property in the neighborhood; and could not make the finding that the project will not unreasonably affect the privacy of the downhill neighbor at 129 Sunnyside Avenue and that these findings be without prejudice.

February 12, 2008: At the applicant's request, the Town Council held a public hearing to reconsider the grant of appeal and to reopen the public hearing for the Flatland Design Review. The Town Council took no action as the motion to deny the applicant's request failed 2:3 (Ayes: Breen, Greene; Noes: Freeman, House, Thornton).

March 18, 2008: Applicants filed a lawsuit against the Town (Stadtner v. Town of San Anselmo, Marin Superior Court Action No CV 081310) alleging that the Town acted improperly in denying their application for Flatland Design Review for a new residence at subject property.

April 28, 2008: The Town Council entered into an agreement with the applicants with the following stipulations: Within two days of the date of the agreement, the applicants would submit plans for a revised design and that those plans must be submitted by April 30, 2008 in order to prepare a notice for the May 13, 2008 Town Council meeting. Provided the Town Council approves the application with conditions acceptable to the applicants, the applicants agree to dismiss the lawsuit within 10 days of the Town Council's action on May

13th. Should the project not be approved with conditions acceptable to the applicant on May 13th, the lawsuit shall proceed.

May 13, 2008: The Town Council held a public hearing to consider Flatland Design Review for a revised project design of an approximately 1,328 square foot second story with 126 square-foot second story deck and 180 square foot roof deck over the first floor, in conjunction with a new approximately 3,974 square foot single family dwelling. At the close of the public hearing, the Council continued the matter until May 27, 2008 to allow staff and the public to review the revised drawings proposed by the applicant which remove the exercise room from the upper floor, reducing the upper floor by 133 square feet and to allow the applicant to work with the neighbors and the Fire Department to develop a landscape plan for the easterly property line.

II. PROJECT DISCUSSION

Please refer to the Town Council Staff Report prepared for the meeting of May 13, 2008 for a thorough discussion of the project (attached).

Since the hearing on May 13, 2008, staff has reviewed the revised plans which eliminate the exercise room previously proposed on the upper level. The effect that this has on the proposed residence is that it reduces the square footage of the upper floor as well as the overall square footage of the residence by 133 square feet. The exercise room was previously located between bedrooms 1 and 2 on the north (rear) elevation of the upper level. Bedroom 1, the room that created the greatest privacy concerns for the neighbors to the east, has now been relocated approximately 11.5 feet to the west, into the area previously occupied by the exercise room, and further away from the residence to the east. The redesign not only moves the upper level away from the property to the east, but also results in an extended roofline which slopes down from the peak above the upper level, eliminating the window previously located on the east elevation of bedroom 1. The elimination of the window on the east elevation addresses concerns expressed regarding privacy impacts from that room to the property to the east.

On May 19, 2008, staff met with the applicants and their architect, the neighbors to the east, the Fire Chief and Councilmember Breen to discuss landscape screening along the easterly property line. At the conclusion of that meeting, all parties agreed that the existing bamboo should be removed and replaced with a privet screen. The applicants have submitted a revised landscape plan which proposes to remove the existing bamboo along the easterly property line and replace it with a privet hedge. The hedge will consist of 7 gallon plants located 30 inches on center. A condition of approval has been included that the Public Works Director shall review a plan to remove the bamboo and retain the soil along the easterly property line, prior to issuance of a building permit.

The project before the Town Council is Flatland Design Review of the 1,195± square foot second story with 126 square-foot second story deck and 180 square foot roof deck over the first floor, in conjunction with a new approximately 3,841 square foot single family dwelling.

III. REQUIRED FINDINGS FOR APPROVAL

Flatland Design Review:

- 1. Will not unreasonably impair access to light and air of structures on neighboring properties.*
- 2. Will not unreasonably affect the privacy of neighboring properties.*
- 3. Will not adversely affect the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not be materially detrimental to the public welfare or injurious to the property or improvements in such neighborhood.*

IV. RECOMMENDATION

Should the project be approved, a draft resolution for the Council's consideration is attached. The following are recommended conditions of approval:

1. Construction plans shall be in substantial conformance with the design review plans date stamped received on May 19, 2008, sheets 1 through 5 and Topographic Survey and the landscape plan date stamped received on May 21, 2008, sheet L1.0.
2. Prior to issuance of a building permit, the applicant shall submit a detailed plan for removing the bamboo and retaining the soil along the easterly property line, to be reviewed and approved by the Public Works Director.
3. Prior to the issuance of an occupancy permit, shrubs and trees shall be planted and irrigation installed to the satisfaction of the Planning and Building Director.
4. A drainage plan shall be prepared by a licensed civil engineer and approved by the Public Works Director.
5. All utilities to the new residence shall be placed underground.
6. Property lines must be surveyed and staked in place throughout construction.
7. Prior to issuance of an occupancy permit, any requirements by the Ross Valley Fire Service shall be installed.
8. The address shall be posted with illuminated numerals at least 4" in height in a location clearly visible from the street and in a contrasting color to its background.
9. All conditions of approval shall be printed at the top of Sheet 1 of the building permit drawings.
10. Should construction not begin within one year from the date of this approval, the design review and use permit approvals shall be considered null and void. A one-time-only, one-year extension of the planning permits can be requested in writing to the Planning and Building Director prior to the expiration date.

- Attachments:
1. Town Council Staff Report dated May 13, 2008 without attachments
 2. Town Council Draft Minutes dated May 13, 2008
 3. Revised plans date-stamped Received, May 19, 2008, sheets 1 through 5 and Topographic Survey and the landscape plan date stamped received on May 21, 2008, sheet L1.0
 4. Draft resolution

cc: Larry and Debbie Stadtner, property owners
Jeff Kroot, architect
Neil Sorensen, attorney

**TOWN OF SAN ANSELMO
TOWN COUNCIL STAFF REPORT**

May 9, 2008

For the meeting of May 13, 2008

TO: Town Council
FROM: Lisa Wight, Planning and Building Director

SUBJECT: Flatland Design Review of a revised project design of an approximately 1,328 square foot second story with 126 square-foot second story deck and 180 square foot roof deck over the first floor, in conjunction with a new approximately 3,974 square foot single family dwelling at **10 Foss Avenue, APN 007-232-50.**

APPLICANTS: Larry and Debbie Stadtner, Post Office Box 246, San Anselmo

I. BACKGROUND

January 22, 2008: The Town Council held a public hearing and granted the appeal of the Planning Commission's approval of the Flatland Design Review 3:2 (Ayes: Breen, Freeman, Greene; Noes: House, Thornton) on the grounds that they could not make the finding that the excavation required in order for the project to go forward will not adversely affect the health and safety of persons in the neighborhood or be materially detrimental to property in the neighborhood; and could not make the finding that the project will not unreasonably affect the privacy of the downhill neighbor at 129 Sunnyside Avenue and that these findings be without prejudice.

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April 28, 2008: The Town Council entered into an agreement with the applicants with the following stipulations: Within two days of the date of the agreement, the applicants would submit plans for a revised design and that those plans must be submitted by April 30, 2008 in order to prepare a notice for the May 13, 2008 Town Council meeting. Provided the Town Council approves the application with conditions acceptable to the applicants, the applicants agree to dismiss the lawsuit within 10 days of the Town Council's action on May 13th. Should the project not be approved with conditions acceptable to the applicant on May 13th, the lawsuit shall proceed.

2. Prior to the issuance of an occupancy permit, shrubs and trees shall be planted and irrigation installed to the satisfaction of the Planning and Building Director.
3. A drainage plan shall be prepared by a licensed civil engineer and approved by the Public Works Director.
4. All utilities to the new residence shall be placed underground.
5. Property lines must be surveyed and staked in place throughout construction.
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8. All conditions of approval shall be printed at the top of Sheet 1 of the building permit drawings.
9. Should construction not begin within one year from the date of this approval, the design review and use permit approvals shall be considered null and void. A one-time-only, one-year extension of the planning permits can be requested in writing to the Planning and Building Director prior to the expiration date.

- Attachments:
1. Slope Stability and Ground Water Conditions Report dated April 22, 2008
 2. Slope Stability and Ground Water Conditions Report dated February 7, 2008
 3. Geotechnical Investigated Report dated August 8, 2007
 4. Agreement
 5. Town Council minutes and staff reports dated January 22, 2008 and February 12, 2008
 6. APN Map
 7. Photograph
 8. Shading Study dated January 10, 2008
 9. Privacy Study and Shading Study dated November 8, 2007
- Plans

c: Larry and Debbie Stadtner, property owners
Jeff Kroot, architect
Neil Sorensen, attorney

5. CONSIDER REVISED APPLICATION FOR FLATLAND DESIGN REVIEW TO CONSTRUCT AN APPROXIMATELY 1,328 SQUARE FOOT SECOND STORY WITH 126 SQUARE FOOT SECOND STORY DECK AND 180 SQUARE FOOT ROOF DECK OVER THE FIRST FLOOR, IN CONJUNCTION WITH A NEW APPROXIMATELY 3,974 SQUARE FOOT SINGLE FAMILY DWELLING; LOCATION OF PROJECT: 10 FOSS AVENUE, APN 007-232-50. APPLICANTS: LARRY AND DEBBIE STADTNER.

Consultant Diane Henderson presented the staff report noting that the issue before the Council is a flatland design review of the second level, deck and rooftop deck with no variance requirements.

Applicant Larry Stadtner addressed the Council and stated that prior to purchasing the lot, he spoke to the Planning Department about the procedure and stated that he followed all the rules, met the requirements and went through extraordinary measures to mitigate any issues.

Kelly Willrich, Sunnyside Avenue, thanked the Stadtners for revising the plans and stated that there are issues with sunlight and that the landscaping is on the shared property line. Willrich expressed frustration that the landscaping plan has not been made a condition of approval.

Barbara Stewart, stated that she was concerned about health and safety, and about dump trucks and dirt and rock being excavated. Stewart also said that she was concerned that the method of excavation would shake her house. Finally, Stewart noted that she felt the application should be before the Planning Commission instead of the Town Council.

14 Foss Avenue Resident, stated that they were not sure about the excavation

R.K. Stewart, 14 Foss Avenue, stated that he does not trust the elevation drawings and that he has not had the opportunity to review the plans for accuracy.

Land Use Attorney said that he was concerned about the new plans that were just submitted.

Town Resident, stated that he doesn't like the Town being sued and that he doesn't like for the Town Council to make decisions under a lawsuit situation. Resident said he likes the changes, but would like to see the Stadtners remove the lawsuit.

Steven Willrich, Sunnyside Avenue, stated that he thinks other neighbors have concerns and noted that he would like to see a landscape plan.

Citizen, friend of Stadtner's, commented that this is a good project and he doesn't understand the concerns.

Casey Logwood, Bella Vista, said the Town Council should stand behind its earlier decision.

Kathryn Gant Bradley, Durham Road, said this is a health and safety issue and it needs more review.

Elihu Welber, Avenue del Norte, said the Stadtner's would be a great addition to our community.

The public hearing was closed.

Neil Sorenson, Attorney for Stadtner's, said the Council should stick to the facts and leave the emotion out. The findings are light/air, privacy and health/safety. All the studies have been submitted and the findings can be substantiated.

Jeff Kroot, Architect, noted that additional materials are submitted all the time on planning applications. They have met with the neighbors, moved the house for the uphill neighbor's views, hired a reputable soils engineer and had his work peer reviewed. This project will be well done.

In response to Council questions, Town Attorney Epstein said that if the legal action goes forward, there is no agreement whether this evening's presentation would be included in the administrative record. The application can be considered based on the plans under review tonight. If the application is granted or denied this evening, staff should be directed to return with a resolution memorializing the action.

Public Works Director Elias said that the detailed excavation plans are submitted during the building permit process and if he isn't satisfied with them, he won't issue the permit. The method of excavation will be addressed at that time.

Breen noted that this application was denied because of privacy and health/safety concerns. He believes that a whole new definition of privacy was used in this case, as the space around you or breathing room. He made his decision based on that and it was not correct. All the requirements of the project have been met and it should go forward. He suggested that the project be continued to have the new plans vetted by staff.

House said we should treat this application like all others. The soils question has been handled, and the landscaping will address the privacy questions. She feels the Fire Chief should review the bamboo screen with respect to the Wildland Urban Interface code.

Thornton said she is basing her decision on staff's report, not the lawsuit. She believes the issues of privacy have been addressed. The final design for the drainage and retaining walls will be handled subsequent to the planning approval. We should move forward with the flatland design review.

Greene noted that there have been eight meetings on this project. There was confusion initially over the variance requirement for retaining walls. The stipulation required that the plans be submitted by April 30. Tonight there has finally been a concession. There is a lot of excavation on this project. He feels common sense should override the experts.

Breen noted that the outcome tonight was not a foregone conclusion and it isn't fair to say it was.

Freeman noted that the revisions to the project weren't much until they reduced the size. He is pleased to see the reduction. He'd like to see a landscaping plan.

M/s, House/Breen, to continue this item to the meeting of May 27, 2008 for applicant to develop a landscaping plan to be submitted by Monday, May 19, 2008 and share it with the neighbors on Sunnyside, leaving the final decision to the Planning Department if there is a conflict. The meeting will be monitored by a neutral party. The project will come back to the Town Council for a final determination with the new plans. Ayes: Breen, Freeman, House, Thornton. Noes: Greene.

Draft

TOWN OF SAN ANSELMO

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO
APPROVING FLATLAND DESIGN REVIEW OF AN APPROXIMATELY 1,195
SQUARE FOOT SECOND STORY WITH 126 SQUARE FOOT SECOND STORY DECK
AND 180 SQUARE FOOT ROOF DECK OVER THE FIRST FLOOR, IN
CONJUNCTION WITH A NEW, APPROXIMATELY 3,841 SQUARE FOOT SINGLE
FAMILY DWELLING AT 10 FOSS AVENUE, APN 007-232-50**

WHEREAS, a proper application has been submitted for Flatland Design Review pursuant to Title 10 of the San Anselmo Municipal Code to permit an approximately 1,328 square foot second story with 126 square-foot second story deck and 180 square foot roof deck over the first floor, in conjunction with a new approximately 3,974 square foot single family dwelling at 10 Foss Avenue, APN 007-232-50; and

WHEREAS, The Planning Commission held a noticed public meeting on the requested Flatland Design Review on November 19, 2007; and

WHEREAS, at the November 19, 2007 Planning Commission meeting, upon hearing and considering all oral and written testimony and arguments of all persons desiring to be heard, the Commission considered all the facts relating to the Flatland Design Review described herein and approved the Flatland Design Review subject to conditions of approval; and

WHEREAS, within ten calendar days of the Planning Commission action approving the requested Flatland Design Review, the adjacent neighbor to the east at 129 Sunnyside Avenue filed an appeal of the action of the Planning Commission; and

WHEREAS, on January 22, 2008, the Town Council held a noticed public meeting to consider the appeal of the Planning Commission's approval of the Flatland Design Review application; and

WHEREAS, at the January 22, 2008 Town Council meeting, upon hearing and considering all oral and written testimony and arguments of all persons desiring to be heard, the Council considered all the facts relating to the appeal of the Planning Commission's approval of the Flatland Design Review described herein and granted the appeal, overturning the action of the Planning Commission and denying the request for Flatland Design Review.

WHEREAS, on February 12, 2008, at the applicants' request, the Town Council considered taking action to reconsider the grant of appeal and to reopen the public hearing for the Flatland Design Review and took no action; and

WHEREAS, on March 18, 2008, the applicants filed a lawsuit against the Town (Stadtner v. Town of San Anselmo, Marin Superior Court Action No CV 081310) alleging that the Town

acted improperly in denying their application for Flatland Design Review for a new residence at the subject property; and

WHEREAS, on April 28, 2008 the Town Council entered into a stipulation with the applicants to stay the action to provide the Town Council the opportunity to consider plans for a revised design; and

WHEREAS, the Town Council held noticed public meetings to consider the revised Flatland Design Review application for an approximately 1,195 square foot second story with 126 square-foot second story deck and 180 square foot roof deck over the first floor, in conjunction with a new approximately 3,841 square foot single family dwelling on May 13, 2008 and May 27, 2008, which included a public hearing that occurred on May 13, 2008; and

WHEREAS, the Town Council has found the project to be exempt (Section 15303(a)) from the provisions of the California Environmental Quality Act; and

WHEREAS, the Town Council makes the following findings based on analysis contained in the staff report and public testimony:

1. The project will not unreasonably impair access to light and air of structures on neighboring properties.
2. The project will not unreasonably affect the privacy of neighboring properties.
3. The project will not adversely affect the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not be materially detrimental to the public welfare or injurious to the property or improvements in such neighborhood.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of San Anselmo does hereby approve Flatland Design Review of an approximately 1,195 square foot second story with 126 square-foot second story deck and 180 square foot roof deck over the first floor, in conjunction with a new approximately 3,841 square foot single family dwelling at 10 Foss Avenue, APN 007-232-50, with the following conditions:

1. Construction plans shall be in substantial conformance with the design review plans date stamped received on May 19, 2008, sheets 1 through 5 and Topographic Survey and the landscape plan date stamped received on May 21, 2008, sheet L1.0.
2. Prior to issuance of a building permit, the applicant shall submit a detailed plan for removing the bamboo and retaining the soil along the easterly property line, to be reviewed and approved by the Public Works Director.
3. Prior to the issuance of an occupancy permit, shrubs and trees shall be planted and irrigation installed to the satisfaction of the Planning and Building Director.

4. A drainage plan shall be prepared by a licensed civil engineer and approved by the Public Works Director.
5. All utilities to the new residence shall be placed underground.
6. Property lines must be surveyed and staked in place throughout construction.
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9. All conditions of approval shall be printed at the top of Sheet 1 of the building permit drawings.
10. Should construction not begin within one year from the date of this approval, the design review and use permit approvals shall be considered null and void. A one-time-only, one-year extension of the planning permits can be requested in writing to the Planning and Building Director prior to the expiration date.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of San Anselmo on the ___ day of _____ 200 __, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Ted Freeman, Mayor

ATTEST:

Barbara Chambers, Town Clerk