

RESOLUTION NO. 4222

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO
TO APPROVE A GARAGE CONVERSION, PARKING VARIANCE, FLOOR AREA RATIO
VARIANCE, AND ALLOW A NONCONFORMING 3-UNIT RESIDENTIAL USE
TO CONTINUE, BUT NOT BE EXPANDED, AT
23 HUMBOLDT AVENUE/1399 SAN ANSELMO AVENUE, APN 007-023-05**

WHEREAS, on January 13, 2017, Ziba Sohaei ("Applicant") applied for a floor area ratio variance, variance to allow a garage conversion and to provide replacement parking in a setback, and permission to retain three residential units at 23 Humboldt Avenue/1399 San Anselmo Avenue, APN 007-023-05 (Application No. PRO2017-0008, "the Project"); and

WHEREAS, on April 3, 2017, the Planning Commission of the Town of San Anselmo ("Planning Commission") held a noticed public hearing to consider the Project and all interested parties were given a full opportunity to be heard and present evidence, the application was fully studied, discussed and deliberated, and the Planning Commission voted 4-0 (Planning Commissioners Krebs, Pipkin and Swaim absent) to deny the application; and

WHEREAS, on April 4, 2017, Applicant filed an appeal to the Town Council to reconsider the Planning Commission decision; and

WHEREAS, on July 11, 2017, the San Anselmo Town Council held a noticed public hearing to consider the Project and continued the hearing to allow the Applicant to provide plans for how she intended to convert the structure at 23 Humboldt Avenue into a single family residence; and

WHEREAS, after the Town Council hearing, additional work without permit came to the attention of the Town and the Project expanded to include a fence height variance, additional bedrooms, additional bathrooms, and an additional kitchen; and

WHEREAS, on January 9, 2018, the Town Council held a duly noticed public hearing on the application and supported upholding the appeal in part and continued the matter to January 23, 2018, to allow staff to prepare a resolution memorializing the decision; and

WHEREAS, on January 23, 2018, the Town Council held a continued public hearing and adopted this Resolution.

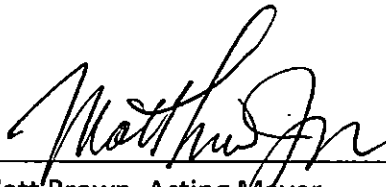
NOW , THEREFORE, BE IT RESOLVED that the Town Council has considered the project plans; Categorical Exemption from the California Environmental Quality Act; staff reports; correspondence; comments received at public hearings on the project; prior meeting videos and documents; and other information in the public record; and

BE IT FURTHER RESOLVED, that the Town Council approves the Application in part, subject to the Findings in Exhibit A and the Conditions of Approval in Exhibit B, to:


1. Allow the historic, nonconforming, three-unit residential use of the site to continue;
2. Deny the addition of three bedrooms and two bathrooms at 23 Humboldt Avenue as an expansion of the nonconforming use;
3. Approve a floor area ratio variance to allow the approximately 450 square foot converted garage space at the lower level of 1399 San Anselmo Avenue and approximately 100 square foot kitchen and bedroom addition at the upper level of 1399 San Anselmo Avenue to remain;
4. Approve a parking variance to allow the garage conversion without providing any additional parking;
6. Deny the addition of a bedroom and bathroom adjacent to the converted garage at 1399 San Anselmo Avenue; and
7. Deny the variance for fences that exceed the 8 foot height limit.

The foregoing Resolution was adopted at the regular meeting of the San Anselmo Town Council held on January 23, 2018, by the following vote:

AYES: Brown, Greene, Colbert, Coleman
NOES: None
ABSENT: Wright
ABSTAIN: None



Matt Brown, Acting Mayor

ATTEST:


Carla Kacmar, Town Clerk

EXHIBIT A FINDINGS

1. **CEQA.** The Project is Categorically Exempt from the requirement to prepare an environmental review document under the California Environmental Quality Act pursuant to Section 15301 Existing Facilities. No exception set forth in Section 15300.2 of the CEQA Guidelines applies to the project including, but not limited to, Subsection (a), which relates to impacts on environmental resources (no sensitive species, creek, heritage trees); (b), which relates to cumulative impacts (project completed); Subsection (c), which relates to unusual circumstances (no unusual circumstances); or Subsection (f), which relates to historical resources (structures not associated with important persons and not architecturally significant).

2. **Nonconforming Use.** Allow the historic, nonconforming, three-unit residential use of the site to continue. Find that there is evidence the site has been used for three residential units since at least 1958 and the Applicant has paid the San Anselmo Municipal Services Tax or General Purpose Tax of \$78 per living unit for three living units since purchasing the property.

3. **Deny expansion of Nonconforming Use for Addition to 23 Humboldt Avenue structure.** Deny variances to expand the nonconforming use for an addition of three bedrooms and two bathrooms at 23 Humboldt Avenue. San Anselmo Municipal Code Section 10-3.607(c) provides that, "Nonconforming uses shall not be expanded or intensified" and "Buildings or improvements dedicated to nonconforming uses shall not be enlarged." The addition of three bedrooms, two bathrooms, and one kitchen at 23 Humboldt Avenue expands and intensifies the nonconforming use. There are no special site circumstances to warrant an expansion of the nonconforming use. The site is larger than the minimum lot size for the zoning district. The site is already developed with more units and more floor area than is permitted under current regulations.

4. **Approve a floor area ratio variance to allow the approximately 450 square foot garage attached to 1399 San Anselmo Avenue to remain. Approve a floor area ratio variance to allow the approximately 100 square foot kitchen and bedroom addition to the rear of the upper level of 1399 San Anselmo Avenue to remain.** The applicant converted the garage to living space and expanded the upper level prior to the adoption of the floor area ratio limits. The upper level addition did not require planning approval or a floor area ratio variance when it was constructed. The 100 square foot addition expands an existing bedroom and kitchen and does not intensify the nonconforming use. The 450 square foot converted garage space does not expand or intensify the nonconforming use of the site since the area was existing.

5. **Approve a parking variance to allow the garage conversion without providing any additional parking.** The site has special circumstances that justify the parking variance. The site has a large lot size, nearly twice as large as the minimum lot size for the zoning district. Approval of the variance will not materially affect adversely 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 property or improvements in the

neighborhood. The site has more parking spaces than are required by the zoning code and no additional parking is necessary to support the three-unit use. Two parking spaces are required for a single-family residence and one accessory dwelling unit at the site. Five parking spaces are required for a three unit multifamily project. 23 Humboldt Avenue has a car deck for up to 3 vehicles and parking available in the right of way adjacent to the site. 1399 San Anselmo Avenue has two driveway parking spaces. Creation of additional code compliant parking spaces would require a driveway to cross a front lawn area, excavation, and elimination of side yard landscaping, which would have a negative aesthetic impact.

6. **Deny the addition of a bedroom and bathroom adjacent to the converted garage at 1399 San Anselmo Avenue.** The addition of a bedroom and bathroom at the lower level of 1399 San Anselmo Avenue violates San Anselmo Municipal Code Section 10-3.607(c) by expanding and intensifying the three-unit nonconforming residential use. There are no special site circumstances to warrant an expansion of the nonconforming use. The site is larger than the minimum lot size for the zoning district. The site is already developed with more floor area than is permitted under current regulations.

7. **Deny variance for fencing to exceed 8 foot height limit.** The applicant has constructed fencing on new retaining walls and the total height exceeds the 8 foot height limit. There are no special site circumstances that warrant approval of a fence height variance. The applicant created the hardship by raising the grade at the base of the fence. The applicant has alternatives to fencing, such as screening shrubs. The grade may also be lowered to restore privacy between the sites.

EXHIBIT B
CONDITIONS OF APPROVAL

That the Town Council approve the Project in part to allow the property owner to retain the approximately 450 square foot converted garage without providing replacement parking and allow the applicant to retain the nonconforming use of the site for 3 units, based on the findings in the staff report and subject to the following Conditions of Approval:

1. Property owner may maintain one residential unit in the structure known as 1399 San Anselmo Avenue and two units within the structure known as 23 Humboldt Avenue. The units approved for 23 Humboldt Avenue are identified in the staff report as 23 Humboldt Units A and B.
2. Within 120 days of approval, the property owner shall pay for all outstanding planning fees for time spent processing the application and all associated costs, such as town attorney time. No permits shall be accepted or issued for the site until planning fees and costs are paid in full.
3. Within 120 days of approval, the property owner shall apply for a building permit to demolish the following construction without a permit. All plumbing and electrical shall be removed to their original source and not simply capped behind the wall.
 - a. Property owner shall remove all finishes, non-structural walls, windows, electrical work, plumbing work, and floors for the rooms, bathroom and wet bar constructed at the lowest level of 23 Humboldt Avenue, identified by staff as 23 Humboldt "Unit C" in the staff report.
 - b. Property owner shall remove all finishes, windows, non-structural walls, electrical, plumbing and floors for bedroom and bathroom attached to former garage, on lower level of 1399 San Anselmo Avenue, and identified by staff as 1399 San Anselmo Avenue "Unit B". The kitchen shall be removed from this habitable space.
 - c. Property owner shall remove the bathroom created in the storage area at 23 Humboldt Avenue and the plans shall clearly indicate this room is for storage use only.
4. Property owner may retain the converted garage room at 1399 San Anselmo Avenue, approximately 20 feet by 20 feet, as living space, but it shall not be used as an additional living unit.
5. All fences shall be reduced in height to comply with Town fence height limits: up to 6 feet of solid material and 2 feet of lattice allowed.
6. Within 180 days of approval, the applicant shall obtain a building permit for all non-permitted construction at the site, including new windows, remodeled bathrooms and kitchens, retaining walls, fences and structural modifications. This period may be extended by the Planning Director by up to 3 months if reasonable delays are experienced during the building permit review process.
 - a. The roof/ deck with door leading to that area shall be designed by a design professional to support live loads of 40 pounds per square foot.
 - b. Deconstruction is required to inspect the framing, electric, mechanical, and plumbing to ensure proper installation.

- c. A site plan shall show the location and height of new retaining walls and fences and the location of the covered deck in relationship to the property boundaries.
7. All newly built retaining walls shall have appropriate drainage and shall not change the rate or pattern of runoff towards adjacent sites.
 8. Within 9 months of issuance of the building permit, the applicant shall perform any work required under the building permit and shall obtain final inspection on the permit. A design professional shall inspect the structures and issue a structural observation letter to the town prior to final. This is to ensure the existing framing and foundations are adequate and have not been compromised. This period may be extended by the Planning Director by up to 3 months if reasonable delays are experienced during construction.
 9. Within 9 months of approval, Town staff shall confirm that there is an 8-foot setback between the wire fence that neighbors agree represents the east side property line and the covered deck. If the setback is less than 8 feet, the property owner shall have a licensed land surveyor confirm the setback from the property line to the covered deck at 23 Humboldt. Within 9 months of approval, any deck area built within the required 8-foot setback shall be removed, after obtaining a permit.
 10. A violation of these Conditions of Approval shall be considered a public nuisance and abated as provided in the San Anselmo Municipal Code.
 11. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with the Town Council and Town boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding ("action") against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or alleging any other liability or damages based upon, caused by, or related to the approval of the project. The Town shall promptly notify the applicants and/or owners of any action. The Town, in its sole discretion, may tender the defense of the action to the applicants and/or owners or the Town may defend the action with attorneys of the Town's choice, with all attorneys fees and litigation costs incurred by the Town in either case paid for by the applicant and/or owners.