

**TOWN OF SAN ANSELMO  
RESOLUTION NO. 3342**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO  
APPROVING A USE PERMIT FOR A TWO-UNIT CONDOMINIUM CONVERSION,  
PARKING VARIANCE AND DESIGN REVIEW FOR PROPERTY LOCATED AT 865 SAN  
ANSELMO AVENUE IN THE R-3 ZONING DISTRICT**

WHEREAS, the Planning Commission of the Town of San Anselmo held a public hearing on September 11, 1995, at which time they denied the applicant's request for a condominium conversion, parking variance, and design review at 865 San Anselmo Avenue; and

WHEREAS, the applicants, John Blackwell and Keith Smith, appealed the Planning Commission's denial to the Town Council on September 19, 1995; and

WHEREAS, the Town Council held a duly noticed public hearing on this appeal on February 27, 1996. Delays in holding the hearing were due to the need to clarify the applicants' legal ability to convert the rental units to ownership.

THEREFORE, upon considering information from the staff, Planning Commission, and appellants, the Town Council upheld the appeal and overturned the Planning Commission's denial based on the following findings and conditions:

**FINDINGS**

**Use Permit to allow a Condominium Conversion**

According to Chapter 7 of the San Anselmo Municipal Code, relative to Condominium Conversions, it is found that:

- a) Twenty three percent (23%) of the Town's total housing market (exclusive of second units) is devoted to multi-family units. At least 3/4s of the occupants of this two-unit project approve of the condominium conversion in that one of the property owners lives in one unit and the occupant of the second unit acknowledged through a lease agreement her approval of the condominium conversion. Therefore, a conversion may take place because it satisfies Section 10-7.07(a) of SAMC in that at least 20% of the total housing stock consists of multi-family units.
  
- b) The public interest is better served by such conversion in that rental housing will not be adversely affected due to the fact that the property owner occupies the rear unit (owner occupied) and the front unit, which was a single family house, was never a rental unit according to the current owner.

c) The applicant will comply with the remaining conditions or alternative conditions contained in Chapter 7 of the SAMC regarding condominium conversions such as, but not limited to:

- provision of off-street parking (Variance granted)
- provision of outdoor private area
- separate shut-off valve for each unit
- written notice to tenants within fifteen (15) days after the approval
- written notice to tenants at least 120 days in advance regarding termination, etc.
- site or exterior changes shall receive design review
- Covenants by developer shall include all of the following:
  - right of first refusal to purchase unit.
  - right to continued tenancy
  - covenants required by the Code be incorporated into CC&R's

### **Variance**

Parking Variance to allow four tandem spaces where four clear spaces are required.

***1. Due to the special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the controlling zoning ordinance or regulations deprives such property of privileges enjoyed by other property in the vicinity and under an identical zoning classification, and the granting of a variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.***

The Town Council is able to find the special circumstance associated with granting a parking variance in that this same variance was previously approved by the Planning Commission for this same development, but as a rental project. No physical changes are proposed with the condominium conversion except for the change from rental to ownership status. The findings are also based on the fact that adequate parking could have been provided, however, such provision would require utilizing rear yard space currently used for private outdoor space, and recreating garage space.

***2. The granting of the variance, under the circumstances of the particular case, will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the property or the applicant and will not be detrimental to the public welfare or injurious to property or improvements in such neighborhood.***

The CC&R's assign two tandem spaces to each unit. If used properly, this tandem parking arrangement should not result in a greater use of on-street parking. Thus, assuming occupants of the site use on-site parking, the granting of this variance will not impact persons residing or working in the neighborhood and will not be detrimental to the public welfare.

### **Design Review**

Note: The structures have been expanded and rehabilitated through previous permits.

***1. Is functionally and aesthetically compatible with the existing improvements and the natural elements in the surrounding area.***

The structures are well designed and similar in character and scale with the majority of other homes in this area. Thus the new buildings are functionally and aesthetically compatible with existing improvements.

***2. Provides for protection against noise, odors, and other factors which may make the environment less desirable.***

The structures will not have any major long-term detrimental impacts on the environment. No further construction is proposed as part of this request.

***3. Will not tend to cause the surrounding area to depreciate materially in appearance or value or otherwise discourage occupancy.***

The design of the structures will not cause the depreciation of property values in the surrounding area. The design of these buildings is in fact an improvement over the existing structures.

***4. Will not create unnecessary traffic hazards due to congestion, distraction of motorists, or other factors and provides for satisfactory access by emergency vehicles and personnel.***

The use of this parcel will not be changed from the current multi-family residential use except for ownership. While more traffic is typically generated from ownership housing, the additional traffic is not anticipated to be significant.

***5. Will not adversely affect the health or safety of persons using the improvement or endanger property located in the surrounding area.***

The buildings conform with all established codes associated with the construction of a residential garage. No new development will result as part of this request.

***6. Conformance to the approved precise development plans.***

This property is zoned Multiple Family Residential and a precise development plan is not required.

***7. Adequacy of Screening.***

No new construction is proposed. A landscape plan has been submitted and reflects retention of existing mature trees and the inclusion of new landscaping. Therefore, existing trees on the site, supplemented by new landscaping, will provide adequate screening from this property.

***8. Selection of architectural features that enable the structure to blend with its environment.***

The design, colors, and architectural features of these structures are compatible with the surrounding neighborhood.

## CONDITIONS OF APPROVAL

1. That the applicant file a map, similar to that approved and date stamp received by the Town on June 10, 1995, and that such map be revised, if necessary, to ensure compliance with the Department of Real Estate and Subdivision Map Act requirements and the Town's Ordinance for Condominium Conversions.

2. That the Town Attorney review the CC&R's for compliance with state law and the Town's Ordinance for Condominium Conversions, the cost of which shall be borne by the applicant.

3. That the applicant agrees to meet all relevant conditions contained in Chapter 7 of the San Anselmo Municipal Code regarding Condominium Conversions (see Exhibit "A"). Specifically, Section 10-7.07 (a) states that a Use Permit may be approved if all the following conditions are met:

(1) In addition to the requirements of Section 10.7.04 of this chapter, the application includes covenants by the developer to all current tenants in accordance with subsection (3) of this subsection;

(2) Three-fourths (3/4) or more of the current tenants of the rental units by a written instrument approve and accept such covenants, with only one such written instrument per unit;

(3) The covenants by the developer shall include all of the following:

(i) To each tenant household a right of first refusal to purchase a unit at a price and under the terms and conditions set forth in the application, including for each unit or type and conditions set forth in the application, including for each unit or type of unit, the selling price, minimum down payment, closing or other incidental costs, if any, terms of financing the balance (including the rate of interest, maximum term of the mortgage, monthly cost of the principal and interest, and provision for prepayment and refinancing), estimated property taxes for the next succeeding full tax year, and monthly maintenance charges for the first year (subject to change thereafter only by majority vote of the owner's association); and

(ii) To each tenant household, which within a reasonable stated time does not exercise its preemptive right, a right to continued tenancy for a minimum period of five (5) years at a rental rate not to exceed that in effect for the unit twelve (12) months prior to the date of conversion increased by no more than the annual percentage change in the residential rent component of the San Francisco/Bay Area All Urban Consumer price Index; and

(b) An application process under this section shall be subject to the conditions set forth in subsections (1) through (12) of subsection (b) of Section 10-7.06 of this chapter.

(c) The covenants required by this section shall be incorporated in Conditions, Covenants, and Restriction (CC&R's), which CC&R's the Town has the right, but not the duty, to enforce, including the recovery of attorney's fees and court costs.

**PASSED AND ADOPTED** by the Town Council of the Town of San Anselmo on March 12, 1996, by the following vote:

AYES: Breen, Chignell, Hodgens, Kroot, Yarish

NOES: (None)

ABSENT: (None)

ABSTAIN: (None)



Peter Breen, Mayor

ATTEST:



Debbie Stutsman, Town Clerk

EXHIBIT "A"

§ 10-7.01

SAN ANSELMO MUNICIPAL CODE

§ 10-7.02

CHAPTER 7. CONDOMINIUM CONVERSIONS

**Sec. 10-7.01. Purpose.**

(a) The Council finds condominiums and the like to be different from apartments and like structures and intends to treat such projects differently by adopting conversion regulations for the protection of the community, displaced tenants, and purchasers.

(b) The provisions of this chapter are enacted to insure that proposed conversions are approved consistent with the policies and objectives of the Town, particularly the following:

(1) To make adequate provision for the housing needs of all economic segments of the community;

(2) To facilitate inhabitant ownership of residential units; and

(3) To provide a reasonable balance of rental and ownership housing.

(§ 1, Ord. 783, eff. May 8, 1980)

**Sec. 10-7.02. Definitions.**

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

(a) "Association" shall mean the organization of persons or entity which owns a unit or units in a condominium project or right of exclusive occupancy in a community apartment or stock cooperative, and every such owner shall be a member of the association.

(b) "Common area" shall mean an entire condominium project, excepting all units therein.

(c) "Community apartment project" shall mean a project in which an undivided interest in the land is coupled with the right of exclusive occupancy of any apartment located thereon.

(d) "Condominium" shall mean an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property, together with a separate interest in space in a building on such real property, such as a residence, apartment, or apartment house. A condominium may include, in addition, a separate interest in other portions of such real property and is more particularly defined in Section 783 of the Civil Code of the State.

(e) "Condominium conversion project" shall mean the ownership parcel of existing improved real property, including, but not limited to, a structure containing two (2) or more dwelling units, into a form of ownership for residential purposes involving the right of exclusive

occupancy or separate ownership of individual units, including, but not limited to, condominiums, community apartments, stock cooperatives, or planned unit developments, referred to in this chapter as a project.

(f) "Developer" shall mean the owner or subdivider with a controlling proprietary interest in the proposed condominium project.

(g) "Organizational documents" shall mean the Declaration of Covenants, Conditions, and Restrictions; Articles of Incorporation; Bylaws; and any contracts for the maintenance, management, or operation of all or any part of the project.

(h) "Project" shall mean and refer to a condominium conversion project.

(i) "Planned development" shall essentially consist of separate lots and common areas or reciprocal interests or restrictions upon separately owned lots and is more particularly defined in Section 11003 and Section 11003.1 of the Business and Professions Code of the State and subsequent amendments thereto.

(j) "Recreational open space" shall mean an undivided interest in common in open space on the project (exclusive of the required front setback area and any area fenced for the use of an individual unit) which open space shall be used exclusively for leisure and recreational purposes for the use and enjoyment of the occupants, and their visitors, of units on the project and to which such occupants and their visitors shall have the right of use and enjoyment. Accessory structures, such as swimming pools, recreational buildings, and landscaped areas, are examples of uses of recreational open space.

(k) "Stock cooperative" shall mean a corporation formed for the purpose of holding title to improved real property with shareholders receiving the right of exclusive occupancy in a portion of the real property and is more particularly defined in Section 11003.2 of the Business and Professions Code of the State.

(l) "Tenant" shall mean a person who rents, leases, or subleases, through either a written or oral agreement, real property from another.

(m) "Unit", before a condominium conversion, shall mean any one rental unit in the project. After a condominium conversion, "unit" shall mean the element of a condominium conversion project which is not owned in common with the other owners of the project, or an apartment in a community apartment project or stock cooperative to which an owner of an undivided interest in common in a community apartment project has a right of exclusive occupancy.

(§ 1, Ord. 783, eff. May 8, 1980)

**Sec. 10-7.03. Use permits required.**

No condominium conversion project shall be permitted in the Town unless and until a use permit has been applied for and issued pursuant to and in accordance with the provisions of Article 20 of Chapter 3 of this title.

(§ 1, Ord. 783, eff. May 8, 1980)

**Sec. 10-7.04. Use permits: Applications.**

In addition to such other application requirements as the Planning Commission may deem necessary, no application for a project shall be accepted for any purpose unless the application includes, but is not limited to, the following:

(a) Sufficient copies of plans illustrating the following details shown to scale:

(1) Site plans illustrating the locations of buildings, parking areas, circulation systems, recreational facilities, open space, patios, and the like;

(2) Floor plans for each unit type;

(3) Fully dimensional elevation plans of the structures, showing the architectural features and types and materials for construction;

(4) Landscaping and irrigation plans illustrating the existing system and any proposed modifications and a statement specifying the manner by which the landscaping areas shall be maintained;

(5) The location, height, and type of materials for exterior walls or fences;

(6) The location, structural sections, and type of surfacing for all driveways, pedestrian ways, vehicle parking areas, curb cuts, and storage areas;

(7) The location and description of all recreational facilities and a statement specifying the method of the maintenance thereof;

(8) The location, size, and number of parking spaces to be used in conjunction with each condominium unit for residents and guests;

(9) The location, type, and size of all drainage pipes and structures; and

(10) The location, type, and size of all on-site and adjacent overhead and underground utility lines;

(b) Sufficient copies of the proposed Conditions, Covenants, and Restrictions which will apply to the proposed development which shall include:

(1) Provisions, subject to the approval of the Planning Director, for the maintenance of the common areas and the exteriors of all structures and walls of any such project;

(2) A statement that the Town has the right, but not the duty, to enforce the Conditions, Covenants, and Restrictions (CC&R's) in the event of default in the maintenance of such areas by individual owners of the units, including a provision that attorneys' fees and costs incurred thereby shall be reimbursed to the Town;

(3) Provisions establishing each individual unit owner's exclusive right to the use of designated parking space for each unit;

(4) A statement that compliance with the Town's tree removal provisions set forth in Chapter 13 of Title 4 of this Code is required; and

(5) The covenants required of the developer as provided in Section 10-7.07 of this chapter;

(c) A list, prepared under penalty of perjury by the developer, including the names and addresses of all tenants residing in the project proposed to be converted to condominiums at the time the application is filed, including, but not limited to, the commencement and expiration dates of the leases of said tenants and the total number of project occupants;

(d) Sales information, including the anticipated range of sales prices of individual dwelling units based on information known at the time of the application; the anticipated terms of sales to existing tenants; and a statement as to whether sales will be permitted to families with minor children;

(e) A building elements report describing in detail the condition and useful life of all existing buildings and structures, including, but not limited to, the electrical, plumbing, and structural elements of all existing buildings and structures. Such report shall be prepared by a registered civil or structural engineer, licensed contractor, or a licensed architect for the applicable portion of the report;

(f) A descriptive report containing acoustical test data which indicates the noise attenuation characteristics of existing party walls, floors, and ceilings, including, but not limited to, a sampling of at least ten (10%) percent of the dwelling units involved, but in no case fewer than two (2) dwelling units. Such report shall be compiled by a qualified person experienced in the field of acoustical testing and engineering as determined by the Planning Director. The report shall provide a comparative analysis of the test data as it relates to State and local noise attenuation requirements; and

(g) Additional information as determined necessary by the Planning Director.  
(§ 1, Ord. 783, eff. May 8, 1980)

#### Sec. 10-7.05. Notification.

Written notices shall be posted by the Planning Department in a conspicuous location on the site of the proposed condominium conversion and shall be mailed by the Planning Department by first-class pre-paid postage to all tenants residing in the proposed condominium conversion project not less than ten (10) days prior to any hearing by the Planning Commission or the Council concerning the project. Such notices shall provide, at least, the following:

- (a) The date, time, place, and purpose of the hearing;
  - (b) That should the use permit for the conversion project be approved, the property owner may require the tenants to vacate the premises;
  - (c) That should the use permit for the conversion project be approved, the developer shall give all tenants the notification required by subsections (10) and (11) of subsection (b) of Section 10-7.06 of this chapter; and
  - (d) That all information and reports furnished to or by the Planning Department pursuant to this chapter shall be on file for public inspection during reasonable business hours in the Planning Department and the San Anselmo Public Library.
- (§ 1, Ord. 783, eff. May 8, 1980)

#### Sec. 10-7.06. Use permits: Approval: Conditions.

(a) The Planning Commission shall first consider information regarding the percentage of housing available for rental within the Town. A proportion of multi-family rental units (exclusive of second units) below twenty-five (25%) percent of the total number of housing units in the Town shall constitute a housing emergency and shall preclude any processing of applications for conversions of apartment buildings. The proportion of housing available for rental shall be calculated annually by the Planning Department which may be supplemented by a report by a qualified marketing survey research firm submitted by an applicant for review by the staff and the Planning Commission.

(b) The Planning Commission may approve use permits for condominium conversion projects subject to, but not limited to, the following conditions:

- (1) Off-street parking shall be provided in compliance with the parking requirements for the use prior to conversion.
- (2) An outdoor private area shall be provided contiguous with each residential ground level unit.
- (3) Recreational facilities or recreational open space shall be reviewed for its adequacy for the development.
- (4) All permanent mechanical equipment, excluding domestic appliances, which is determined by the Building Inspector to be a potential source of vibration or noise, shall be installed or modified as approved by the Building Inspector to lessen the transmission of vibration and noise.
- (5)
  - (i) A shut-off valve for each utility shall be provided for each unit if deemed practical by the Building Inspector.
  - (ii) The consumption of gas, electricity, and cable television within each dwelling unit shall be separately metered so that the unit owner can be separately billed for each utility, except that, upon a determination by the Building Inspector that such separate metering valve would not be practicable at the time of the use permit approval, the Building Inspector may approve an equivalent alternative metering system.
  - (iii) Sanitation facilities shall be converted subject to the requirements of the Uniform Building Code. The association (as defined in subsection (a) of Section 10-7.02 of this chapter) shall be responsible for the maintenance of the private sewer system from the junction with the public sewer system to and throughout all buildings and structures comprising the conversion project.
- (6) All systems of the structures, including, but not limited to, structural, electrical, plumbing, mechanical, fire, and life safety, shall comply with all applicable statutes, laws, rules, and regulations.
- (7) Each dwelling unit shall have a separate hot water heater, unless there is one central circulating water heating system serving all dwelling units on the property, which system shall provide sufficient capacity to serve all dwelling units. The Building Inspector shall determine that such heating system is adequate.
- (8) Each unit shall be separated from adjacent units by two (2) one-hour fire walls or an approved automatic fire sprinkler system approved by the Fire Department. Alternate methods which achieve a two-hour equivalency rating may be considered if approved by the Fire Department.
- (9) All dwelling units shall comply with the current statutes, laws, Codes, rules, and regulations for energy conservation, sound transmission control, and fire detection systems which apply to new residential

construction, except that the Building Inspector may approve an alternative material, method, or work offered is at least equivalent to that prescribed by the applicable statutes, laws, Codes, rules, and regulations in quality, strength, effectiveness, fire resistance, durability, and safety.

(10) The developer shall mail written notice to all tenants residing in the project within fifteen (15) days after the approval of any condominium conversion project. Such notice shall state all of the conditions of approval of the use permit for the condominium conversion project.

(11) In accordance with Section 66427.1 of the Government Code of the State and any subsequent amendments thereto, the developer shall give all tenants of the proposed condominium conversion project at least 120 days' advance written notice, including but not limited to, the following:

(i) Termination of their tenancy due to conversion;  
(ii) The exclusive right of first refusal to purchase a unit at the time such units are offered to the general public and upon at least as favorable terms and conditions as such units are first offered to the general public; and

(iii) Lease offerings as set forth in subsections (13) and (14) of this subsection.

(12) All projects involving site or exterior changes shall receive design review approval by the Planning Commission. Such review shall focus on, but not be limited to, the upgrading of the project, functional design of the site, adequacy of the landscaping, color scheme, materials, and other issues deemed appropriate.

(13) Each current tenant shall be offered an eighteen (18) month lease at the rental rate in effect for his unit twelve (12) months prior to the date of conversion, plus not to exceed the percentage increase over said twelve (12) months in the residential rent component of the San Francisco/Bay Area All Urban Consumer Price Index.

(14) Each current tenant who is sixty (60) years of age or older or who is handicapped shall be offered a five (5) year lease, for the first year at the rental rate in effect for his unit twelve (12) months prior to the date of conversion, plus not to exceed the percentage increase over said twelve (12) months in the residential rent component of the San Francisco/Bay Area All Urban Consumer Price Index. For the second through the fifth years, the rental rate may be increased by not more than the annual percentage increase in the residential rent component of the San Francisco/Bay Area All Urban Consumer Price Index.

(§ 1, Ord. 783, eff. May 8, 1980)

**Sec. 10-7.07. Use permits: Approval: Alternate conditions.**

(a) Notwithstanding the provisions of subsection (a) of Section 10-7.06 of this chapter, an application may be processed if the proportion of multi-family rental units (exclusive of second units) is above twenty (20%) percent of the total number of housing units in the Town and if all the following conditions are met:

(1) In addition to the requirements of Section 10-7.04 of this chapter, the application includes covenants by the developer to all current tenants in accordance with subsection (3) of this subsection;

(2) Three-fourths (3/4) or more of the current tenants of the rental units by a written instrument approve and accept such covenants, with only one such written instrument per unit;

(3) The covenants by the developer shall include all of the following:

(i) To each tenant household a right of first refusal to purchase a unit at a price and under the terms and conditions set forth in the application, including, for each unit or type of unit, the selling price, minimum down payment, closing or other incidental costs, if any, terms of financing the balance (including the rate of interest, maximum term of the mortgage, monthly cost of the principal and interest, and provisions for prepayment and refinancing), estimated property taxes for the next succeeding full tax year, and monthly maintenance charges for the first year (subject to change thereafter only by majority vote of the owner's association); and

(ii) To each tenant household, which within a reasonable stated time does not exercise its preemptive right, a right to continued tenancy for a minimum period of five (5) years at a rental rate not to exceed that in effect for the unit twelve (12) months prior to the date of conversion increased by no more than the annual percentage change in the residential rent component of the San Francisco/Bay Area All Urban Consumer Price Index; and

(4) The use permit is subject to the finding by the Planning Commission that the public interest is better served by such conversion.

(b) An application processed under this section shall be subject to the conditions set forth in subsections (1) through (12) of subsection (b) of Section 10-7.06 of this chapter.

(c) The covenants required by this section shall be incorporated in Conditions, Covenants, and Restrictions (CC&R's), which CC&R's the Town has the right, but not the duty, to enforce, including the recovery of attorneys' fees and court costs.

(§ 1, Ord. 783, eff. May 8, 1980)