

**TOWN OF SAN ANSELMO
TOWN COUNCIL**

RESOLUTION NO. 3438

**A RESOLUTION OF THE TOWN COUNCIL
CONDITIONALLY APPROVING VARIANCE V-9823
ALLOWING CONSTRUCTION OF A GARAGE WITHIN 1'
FROM THE REAR AND INTERIOR SIDE PROPERTY
LINES AT 62 MADRONE AVENUE (APN 6-052-20)**

BE IT RESOLVED by the San Anselmo Town Council as follows:

WHEREAS, the applicant, Don Vita, submitted a variance application package to build an accessory structure within the interior side and rear setback areas for use as a garage at 62 Madrone Avenue on May 19, 1998;

WHEREAS, on June 15, 1998, the Planning Commission was able to make the necessary findings to grant a Variance for the proposed structure and subsequently approved the application;

WHEREAS, the Planning Commission determined that the proposed location of the structure was logical and generally the same as the original structure that was previously demolished;

WHEREAS, The Planning Commission found that the combination of the existing mature Magnolia tree and "historic" pillars associated with an older concrete perimeter wall were unique and considered special circumstances and would be detrimentally affected by development consistent with the development standards within the Town Zoning Ordinance;

WHEREAS, A neighbor, Adelio DeMartini, owner and occupant of 64 Madrone Avenue, properly submitted an Appeal Application package to overturn the variance approval arguing that there is no special circumstance on the property depriving the owner of privileges enjoyed by other property in the vicinity;

WHEREAS, the Town Council heard the appeal at a regularly scheduled meeting held July 28, 1998 and continued the appeal to August 11, 1998; and

WHEREAS, the Town Council agrees with the Planning Commission to approve the variance, however, the Council reinforced the necessary "special circumstance" finding as follows:

a) The variance as proposed will allow a total of four, onsite parking spaces. Two spaces will be within the garage and two spaces will be located in

the driveway. The uncovered spaces would not be possible if the garage was built according to the Town Development Standards and the pursuant driveway length would not be long enough to accommodate a car without an encroachment into the right of way.

b) The narrowness of the lot at 40' is less than most surrounding lots in the vicinity and because it is a corner lot, the narrowness becomes a further constraint, as the streetside setback (12') is wider than the interior side setback (8').

NOW, THEREFORE BE IT RESOLVED that the Town Council of San Anselmo approves Variance V-9823 subject to the following conditions:

1. That the request for a Variance be granted to construct the addition in accordance with the plans date stamped May 28 and June 5, 1998, received by the Town of San Anselmo Planning Department;
2. A survey of the interior and rear property lines shall be submitted with, or before the required Building Permit application showing the location of the existing (new) garage. The garage shall be at least 1' from the property lines as shown on the survey;
3. The applicants agree to defend, indemnify, release, and hold harmless the Town of San Anselmo (Town), its agents, officers, attorneys, employees, boards, and commissions from any claim, action, or proceeding brought against any of the foregoing individuals or entities ("indemnitees"), the purpose of which is to attack, set aside, void or annul the Town's adoption of the Resolution denying the appeal and granting the applicants' application for setback and lot coverage variances. This indemnification shall include, but not be limited to, damages, costs, expenses, attorneys fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and/or the indemnitees, arising out of, or in connection with the Town's adoption of the Resolution, whether or not there is concurrent, passive or active negligence on the part of the indemnitees.

In the event that a claim, action, or proceeding described above is brought, the Town shall promptly notify the applicant of any such claim, action, or proceeding, and the Town will cooperate fully in the defense of such claim, action, or proceeding. In the event the applicant is required to defend the Town in connection with any such claim, action, or proceeding, the Town shall retain the right to (1) approve the counsel to so defend the Town (2) approve all significant decisions concerning the matter in which the defense is conducted, and (3) approve any and all settlements, all of which approvals shall not be unreasonably withheld. Nothing herein shall prohibit the Town from participating in the defense of any claim, action or proceeding, provided that if the Town chooses to have counsel of its own to defend any claim,

action, or proceeding where applicant already has retained counsel to defend the Town in such matters, the fees and the expenses of the counsel selected by the Town, shall be paid by the Town.

4. Applicant shall apply for and pay all appropriate fees for building permits, plan checks and inspections.
5. This permit and each condition contained herein shall be binding upon applicant and any transferor, or successor in interest.
6. If construction is not commenced within one year from the date of final action, the permit becomes null and void. However, this discretionary action may be renewed by the Planning Director for a maximum period of one (1) year provided the applicant places such a request in writing to the Planning Director showing good cause prior to the expiration of the discretionary action.

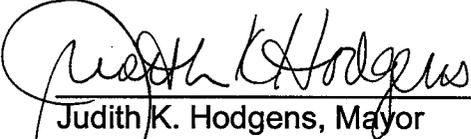
PASSED AND ADOPTED by the San Anselmo Town Council at a regularly scheduled meeting held on the 11th day of August, 1998, by the following vote:

AYES: Breen, Chignell, Hodgens, Kroot

NOES: None

ABSTAIN: Overberger

ABSENT:



Judith K. Hodgens, Mayor

ATTEST:



Debra Stutsman, Town Clerk