

TOWN OF SAN ANSELMO

**NUISANCE ABATEMENT ORDER
RESOLUTION NO. 3588**

**NUISANCE ABATEMENT ORDER OF THE TOWN OF SAN ANSELMO
DECLARING THE PROPERTY LOCATED AT ASSESSOR'S PARCEL
NO. 007-083-03, 125 REDWOOD ROAD, SAN ANSELMO, CALIFORNIA 94960
TO BE A PUBLIC NUISANCE AND ORDERING THE STRUCTURE ILLEGALLY
MODIFIED TO SERVE AS A RESIDENTIAL SECOND UNIT
WITHOUT PERMITS BE RESTORED TO A STORAGE FACILITY**

WHEREAS, San Anselmo Municipal Code provides in § 1-2.01: "[A]ny condition caused or permitted to exist in violation of any of the provisions of this Code or any regulations adopted pursuant to this code shall be deemed a public nuisance and may be abated as provided for in this code."

Section 1-2.03 provides "A nuisance is hereby defined as being any act which is declared to be a nuisance by the provisions of Part 3 of the Division Fourth of the Civil Code of the State, or any other provision of the laws of the State, or by any ordinance or Code provision of the Town."

Section 10-6.401 provides: "As of July 8, 1976, a new residential second unit shall be permitted only if the use permit is first obtained."

Pat Johnstone, the owner of 125 Redwood Road, has modified a storage facility on her property to serve as residential second unit(s) without obtaining permits in violation of the San Anselmo Municipal Code.

Second Unit

The definition of a residential second unit is attached as Exhibit A. The definition defines "kitchen" as follows:

"A kitchen is defined as any portion of structure with any combination of the following: a sink (other than that appurtenant to a bathroom), food storage and preparation areas, refrigerator, or cooking appliances including stove, microwave, oven, convection oven, cooking burners, or similar appliances

which may be reasonably used for the preparation of food."

Pat Johnstone does not deny that she has a kitchen in the storage structure. The older definition of "cooking facilities" was amended in 1996 is no longer applicable. Even so, the evidence produced at the hearing demonstrated that cooking facilities under the older definition have been utilized by Pat Johnstone and her companion, Ralph Smith in the storage structure.

Permits Issued And Cancelled

San Anselmo Municipal Code § 9-1.101 adopts the California Building Code (UBC), 1998 Edition, by reference. Section 103 of the UBC provides: "It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code."

Six permits have been issued:

Permits 2696 and 4965, electrical and pool permits, were issued in 1966 and 1979.

Permit 11257 a building permit, noting that no electrical, plumbing or heating work is to be done, was issued 1984 and *cancelled* in 1998.

Permit 11898, a plumbing permit, was issued in 1985 and *cancelled* in 1986.

Permit 11921, a building and electrical permit was issued in 1988 and was *cancelled* in 1988.

In 1985, the project was red-tagged for "not being constructed according to plans". The red-tag was lifted but only to allow placement of parking deck concrete topping and a railing.

In 1985, the property owner was warned against installing dual meters without Town approval. The same year, neighbors complained that a washer/dryer and carpet were being installed and people were living in the building. The building inspector informed workers that the installed kitchen sink had to be removed. An application for a wood-burning fireplace was turned down.

Unpermitted Work at the Storage Structure

The Chief Building Inspector Keith Angerman testified at

the hearing to what he observed at the premises on December 11, 2001:

Two entrances to the building located on Savannah (numbered 25) one at deck level another going to a room down below. The structure is obviously inhabited. He saw a cord of wood stacked, lawn furniture and trash cans. There was a cable TV, telephone cable, motion detector lights, and house numbers. The sky lights are operable and there are a number of vent stacks on the roof, which appear to be water heater, furnace or fireplace. Mr. Angerman checked the plans for the structure, approved in May 1985. The plans do not show plumbing, interior partitions, water heating, a furnace, and electric service showed only 2 lights on the plans. Mr. Angerman noticed joints sticking out of the building which were not on the plans. No walkway was shown on the plans yet there existed one at the site. There was a terrace wall 5 to 10 ft from the pool, but no permit for the wall had been issued - which is required because the wall supports a load.

Evidence Showing Illegal Modification of The Storage Structure to Serve as a Second Unit Residence

- . *Four photographs* of the storage structure depicting vents and skylights at the top of the building, a pile of wood and a garbage can, other accessories to an inhabited structure such as garden hose, deck chairs, outdoor pots and separate entrances, both upper and lower at the structure.
- . *Testimony of Jacqueline Myers.* She was invited into the storage structure in 1991, there she saw full living quarters, full kitchen, bath and bedroom at the Savannah Street level. She slept there overnight. Her brother, Ralph Smith and Pat Johnstone were living in the storage structure. She was also at the premises a second time. Both her sons, David and Jonathan Abitioul, have been inside the storage structure. She remembers seeing cooking facilities and where they had breakfast. The cooking facilities consisted of burners or a stove in the kitchen.
- . *Testimony of Lu Dandeleit.* She testified she observed tubs and other household items being taken into the storage structure.
- . *Testimony of Jacqueline Ryan.* The storage structure consists of a 3-story structure with two living units. She has seen people go in and out of the structure - other than Ralph Smith and Pat Johnstone. Ray Johnstone, Pat Johnstone's mother, lived there, as does Pat Johnstone and Ralph Smith, at the present.

- . *Testimony of Alan Mooers.* Mr. Mooers testified this is a single-family zoning district and the second unit should not be allowed. He believes there are cooking facilities in the storage structure but has not been inside.

- . *Testimony of William Clark.* Mr. Clark testified he believed there is a violation of the zoning and building codes. The storage structure is supposed to be a storage facility, but it has always been a living unit. The storage structure should be abated because it was built illegally in the first place.

- . *Testimony of Allen Michaels.* On a Saturday he was visiting Smith and Johnstone. A friend was here from out of town and they all came to visit Ralph. They phoned that morning from the city and stayed about an hour and a half. They talked to Ralph during the visit, in the upper floor of the accessory structure. When he went inside, he saw a living room, and a sink area. The living room has a couch, chair, another couch, and a window. There's a coffee table. The room was about 12' x 12'. But first you see an area with a window with a linoleum or ceramic type floor and wood cabinets. It has plates and water; if you were going to have a kitchen it would be there. But there's no heating facilities. There are cabinets, solid wood, about six of them, 3 to 4 feet in length, all right next to each other. Below them there is a sort of counter area with some stools, sink, with a window over. There's some art work, but no chairs or tables. Below the counter are some drawers. He doesn't know about electrical outlets, but probably yes. There's a water faucet. To the left there is a bathroom with a toilet, sink, and shower. There's a light in the bathroom. There's also an adjoining room which is a bedroom, partitioned off. There's a bed, bureau, and a closet for clothing. There's a display case with pictures, a lot of which are antique type. He can't recall if there are any family photos. When shown exhibit 5, he said the photo looks familiar to him; he thinks it's the bathroom. He stayed in that particular area for the whole visit. He had orange juice when he was there; he thinks he brought it with him. There may be a refrigerator. He didn't go anywhere else that day. He was on the lower floor other years when he was helping out Pat and Ralph move furniture. He moved couches and a bed into the accessory structure. He was in the lower floor for the first time in approximately 1995. He saw a storage area; he was putting furniture in there for storage. It's not paved like some basements; it could serve as either function. He was only in the lower area about 5 times. The last time he was in there was September a year ago. It was the same as the earlier time. He didn't study it to see if it was a living area. He looked at Exhibit 2, a picture. He has

seen it before. He doesn't recall if there was a time that that a door wasn't there. He ate there probably 5 times. They ate deli sandwiches, cold liquids.

At the hearing on January 15, 2002, the Town Council declared the property be a public nuisance, directing that inspection of the illegal structure take place, with any code violations be reported to the Council at the Council meeting of February 26, 2002. The Council further directed that the declaration of a public nuisance shall be effective as of January 15, 2002, instructing the Town Attorney to present a resolution to the Council at the meeting of February 26, for adoption.

Since that time, Keith Angerman, the Chief Building Official, on January 18, 2002, wrote to the owner of property, Pat Johnstone, requesting the opportunity to inspect the premises per the Council's direction. That request has been refused and, accordingly, no inspection has been conducted.

THEREFORE, IT IS HEREBY ORDERED:

The property located at Accessor's Parcel No. 007-083-03, 125 Redwood Road, San Anselmo, California 94960, constitutes a public nuisance by reason of the conversion of a storage structure into residential second unit(s) without permits required by law.

The property owner is directed to restore the illegal structure to its originally permitted use as a storage facility. This restoration shall be commenced within fifteen days after a copy of this Resolution is mailed to Pat Johnstone, the property owner, at 125 Redwood Road. The restoration shall be completed thirty days thereafter. The property owner is ordered to permit inspection of the structure at that time and to allow periodic monitoring of the structure thereafter on reasonable notice. If the restoration is not commenced within the fifteen days referred to or completed within the thirty days thereafter referred to, administrative penalties in the amount of \$100 dollars per day for each day that the public nuisance occurs shall be imposed, not to exceed \$100,000.00, exclusive of administrative costs, attorneys' fees and interest. These penalties, costs and fees shall constitute both a personal obligation of the property owner Pat Johnstone and a lien against the property.

In determining the amount of the administrative penalties imposed above, the Council has taken into consideration the following factors:

1. The period of time during which the public nuisance occurred;
2. The nature, or frequency and recurrence of the public nuisance;
3. The ease with which public nuisance could have been abated;
4. The good faith efforts made to deter the public nuisance or ameliorate its effects;
5. The economic impact of a penalty upon a person responsible for payment;
6. The impact of a public nuisance on the community;
7. Additional factors set forth in the Council minutes.

IT IS FURTHER ORDERED:

In addition to the administrative penalties imposed, should the property owner not commence the restoration of the illegal structure as directed within the time required or complete the restoration within the time required, the Town Attorney is directed to commence and complete all appropriate legal proceedings to cause the restoration of the structure into a storage facility as originally contemplated, including the recovery of all expenses, attorneys' fees and courts costs incurred.

IT IS FURTHER ORDERED:

The Town Administrator is directed to cause a copy of this Nuisance Abatement Order to be conspicuously posted on the illegal structure at 125 Redwood and to mail a copy to Pat Johnstone and to her attorney.

Any person, including Pat Johnstone, wishing to contest the validity of these proceedings in a court of law must do so within thirty days after adoption of this Nuisance Abatement Order or all objections will be waived and all legal action thereafter barred.

I hereby certify that Resolution No. 3588 was duly passed and adopted at a regular meeting of the Town Council of the Town of San Anselmo, this 26th day of February, 2002, by the following vote:

RESOLUTION 3588, February 26, 2002

AYES: Breen, Chignell, Hodgens, Kilkus, Kroot
NOES: (None)
ABSENT: (None)
ABSTAIN: (None)



Judith Hodgens, Mayor

Attest:



Debra Stutsman, Town Clerk