

**TOWN OF SAN ANSELMO
TOWN COUNCIL RESOLUTION NO. 3678**

A RESOLUTION OF THE SAN ANSELMO TOWN COUNCIL UPHOLDING A PLANNING COMMISSION DECISION BY APPROVING A VARIANCE TO ALLOW A RETAINING WALL IN EXCESS OF 4' WITHIN THE FRONT YARD SETBACK, AND A USE PERMIT TO ALLOW EXCEPTIONS TO STANDARDS FOR A RESIDENTIAL 2ND UNIT AT 100 FORBES AVENUE, AP 6-261-06

WHEREAS, an application was initially filed with the Town of San Anselmo on August 4, 2003, requesting approval for a Variance and Use Permit to construct a residential second unit at 100 Forbes Avenue, and

WHEREAS, on October 20, 2003, the Planning Commission received comments from staff, the applicant, and others, and conditionally approved the Variance and Use Permit based on the plans date stamped received by the Town on September 24, 2003; and

WHEREAS, on October 28, 2003, an appeal of the Planning Commission's approval was received by the Town; and

WHEREAS, on March 9, 2004, the Town Council received comments from staff, the applicant, the appellant, and others.

NOW, THEREFORE, the Town Council of the Town of San Anselmo does hereby resolve as follows:

I. Findings required for the approval of **Variance** pursuant to Section 10-3.1405 of the San Anselmo Municipal Code are as follows:

Required Finding 1. Due to special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the controlling zoning ordinance or regulation 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.

Special circumstances exist for the retaining wall variance due to the steep topography, and location of the proposed dwelling in relation to usable parking spaces.

Required Finding 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 materially detrimental to the public welfare or injurious to property or improvements in such neighborhood.

The granting of the retaining wall variance will not materially affect adversely the health or safety of persons in the neighborhood and will not be detrimental to the public welfare or injurious to the property or improvements in the neighborhood because it will be built in accordance with the Town Building and Safety standards and will represent an improvement over existing parking conditions.

- II. Findings required for the approval of **Use Permit** pursuant to Section 10-3.1305 of the San Anselmo Municipal Code are as follows:

Required Finding. The establishment, maintenance, or operation of the use will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the proposed use or be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the Town.

The proposed use of a residential second unit will not be detrimental to the health, safety, peace morals, comfort and general welfare of persons residing or working in the neighborhood of the proposed use or be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the Town because the proposed use is a residential dwelling in a single-family neighborhood, the proposed dwelling will integrate into the character of the neighborhood, and the proposed design is consistent with residential design review standards for primary residential dwellings with regard to color, materials, privacy, height, and screening.

- III. The appeal of the Planning Commission's approval of the Use Permit (UP-0332) and Variance (V-0344) to construct a residential second unit and retaining wall located at 100 Forbes Avenue (AP6-261-06) is hereby denied and the subject project approved subject to the following conditions:

1. That the request for a use permit be granted to allow a 744+/- square foot residential 2nd unit in accordance with the plans date stamped September 24, 2003, received by the Town of San Anselmo Planning Department.
2. Applicant shall apply for and pay all appropriate fees for building permits, plan checks and inspections.
3. Additional landscaping consisting of 4 15-gallon coast redwood or equivalent shall be installed along the base of the proposed deck to screen structure from southwest views. Plans shall include automatic irrigation and subject to staff approval prior to the issuance of a building permit. Installation shall be complete prior to any final inspection or occupancy.
4. Prior to the issuance of a building permit, a deed restriction in a form approved by staff shall be provided restricting the colors and materials of the 2nd unit, and assuring compliance with Sections 10-6.209(residence

requirements) and 10-6.401(rent limits) of the San Anselmo Municipal Code regarding 2nd units.

5. If construction is not commenced within one year from the date of final Planning Commission 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 request in writing to the Planning Director showing good cause prior to the expiration of the discretionary action.
6. A landscape plan shall be submitted to and approved by the Planning Commission prior to the issuance of any building permit.
7. Applicant shall at all times comply with all applicable laws, ordinances, rules and regulations of municipal, state and federal authorities relating to the installation maintenance, height, location, use, and operation of improvements authorized herein, and shall fully defend, hold free and harmless and indemnify the Town of San Anselmo, its Council, commissions, agents, officers, employees, and consultants against any and all claims, costs, expenses, suits, and liabilities of any kind whatsoever, or actions seeking to set aside, declare void or annul the approval(s) of this project, and including without limitation, reasonable attorney' and expert witnesses ' fees and costs, arising out of or in any way related to applicant's installation, or operation of the improvements and equipment authorized by this approval and any claim by any person or entity relating to alleged health or environmental effects of the project. The Town and applicant shall promptly notify each other of any such attack, claim, action, or proceeding. The Town will tender defense to the applicant. The Town may assist in defense; and nothing shall prohibit the Town from participating in the defense in any such attack, claim, action or proceeding so long as the Town agrees to bear its own attorneys fees and costs and participates with applicant in the defense cooperatively.

The foregoing resolution was adopted at a regular meeting of the Town Council of the Town of San Anselmo held on the 9th day of March, 2004, by the following vote:

AYES: **Breen, Thornton, Kilkus**

NOES:

ABSTAIN: **Chignell**

ABSENT: **Kroot**



Paul Chignell, Mayor

ATTEST:



Barbara Chambers, Town Clerk