



**COUNTY OF SAN MATEO**  
Inter-Departmental Correspondence  
Planning and Building



**Date:** September 14, 2016  
**Board Meeting Date:** September 20, 2016  
**Special Notice / Hearing:** 10 Days  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Steve Monowitz, Community Development Director

**Subject:** Consideration of an appeal of the Planning Commission's decision to uphold an appeal and deny a Heritage Tree Removal Permit for removal of a 49-inch d.b.h. (diameter at breast height) Valley Oak tree located in the rear yard of 671 Menlo Oaks Drive, in the unincorporated Menlo Oaks area of San Mateo County.

County File Number: PLN 2015-00131 (Lindsley)

**RECOMMENDATION:**

Recommending that the Board of Supervisors uphold the current appeal by the property owner and make the findings based on criteria in the County Ordinance for removal of the heritage tree as found in Attachment A of this staff report. However, if the Board of Supervisors is not able to make these findings, an alternate finding for denial of the appeal and permit has been included in Attachment B of this staff report.

**BACKGROUND:**

In April 2015, during the construction of a new residence (BLD 2014-02267) on the subject parcel, the applicant submitted an application to remove a 49-inch d.b.h. Valley Oak tree, which is classified as a heritage tree per Section 11,052 of the San Mateo County Ordinance, "Regulation of the Removal and Trimming of Heritage Trees on Public and Private Property." The application stated that the tree is a hazard and in poor health. The application was accompanied with an arborist report from Kielty Arborist Services, LLC, that stated that the tree had good vigor, but had form flaws which made it an immediate hazard.

**Permit Approval by the Community Development Director**

On June 3, 2015, the Community Development Director of the Planning and Building Department approved a permit for removal of the subject tree. The permit was granted based on the applicant's statement that the tree is a hazard and in poor health, two

reports from the arborist (original and updated), and a site visit by staff. The decision was supported by findings made that criteria for removal were met. Specifically, that the general health of the tree was poor (Section 11,052(a)), and that the removal of the tree was required to allow economic enjoyment of the property (Section 11,052(e)).

An appeal was filed by Judy Horst, on behalf of concerned Menlo Oaks neighbors. The appellant questioned the arborist's evaluation of the health of the tree, the County's review process, and the tree replanting requirement which had been imposed as a condition of approval. In response to the appeal, the property owner submitted an additional arborist report from McClenahan Consulting, LLC, evaluating the health and structure of the tree. McClenahan concluded that the tree, although outwardly healthy looking, had structural deficiencies that made it a hazard. McClenahan recommended the tree be removed.

#### Planning Commission Action

On January 13, 2016 the Planning Commission (Commission) heard the appeal of the Community Development Director's decision. The Commission in a 3-2 vote, upheld the appeal, and denied the removal of a 49-inch d.b.h. Valley Oak tree. In the decision, the Commission stated there is not a substantial hazard and that retaining the tree did not infringe on economic enjoyment of the property.

#### Appeal to the Board of Supervisors

The owner of the property, Victoria Lindsley, has appealed the Planning Commission's decision and seeks removal of the subject tree located in the rear yard of the subject property. Ms. Lindsley obtained a new arborist report from Arbor Resources to support the appeal application. The new report states that the tree presents a hazard to the residential development on the property. The appellant states that with three arborist's reports, which indicate the tree is unsafe and a hazard, that applicable criteria for removal of heritage tree have been met; that the tree's health is failing, and the tree prevents reasonable enjoyment of the property.

#### Staff Recommendation

Staff is recommending that the Board of Supervisors uphold the appeal and make the findings based on criteria in the County Ordinance for removal of the heritage tree as found in Attachment A of this staff report. However, if the Board of Supervisors is not able to make these findings, an alternate finding for denial of the appeal and permit has been included in Attachment B of this staff report.

A consultant arborist, Michael P. Young of Urban Tree Management, Inc., was retained by the County to conduct a site visit and independent assessment of the health and structure of the 49-inch d.b.h. Valley Oak tree, and to peer review the three previously submitted arborist reports. A report summarizing Mr. Young's findings was submitted to the Planning and Building Department on September 6, 2016. The report concurs with the findings of the three arborists and Mr. Young concurs that the tree "should be

removed in this location due to the high hazard level that it represents and that the tree's health is failing." An in depth discussion of the tree's health is in Section A.1 of this report.

Report Prepared By: Erica Adams

Appellant: Victoria Lindsley, property owner of 671 Menlo Oaks

Applicant: Jeff Chase of Pacific Excel 2, LLC

Owner: Victoria Lindsley (as of July 15, 2016)

Location: 671 Menlo Oaks, unincorporated Menlo Park

APN: 062-140-390

Size: 23,454 sq. ft.

Existing Zoning: R-1/S-100

General Plan Designation: Low Density Residential Urban

Sphere-of-Influence: Menlo Park

Existing Land Use: Single-Family Residential (Finalized July 12, 2016)

Water Supply: California Water Service Company

Sewage Disposal: West Bay Sanitary

Flood Zone: Zone "X" (Area of Minimal Flooding); Panel No. 06081C0308E, effective date October 16, 2012.

Environmental Evaluation: This project is exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines, Section 15304 (Minor Alterations to Land). This class exempts minor public and private alterations in the condition of land, water and/or vegetation, such as removal of a tree.

Setting: The subject parcel is located in the residential community of Menlo Oaks. The parcel was created by a minor subdivision, recorded on November 19, 2014. The parcels created by the subdivision are developed with single-family residences and second unit guest houses.

Chronology

<u>Date</u>	<u>Action</u>
July 2, 2014	- Minor subdivision (PLN 2014-00107) is approved by the Zoning Hearing Officer for creation of two parcels, Parcel A (subject parcel) and Parcel B (699 Menlo Oaks).
August 14, 2014	- Tree removal permit for 59-inch d.b.h. Valley Oak tree is approved on Parcel B (PLN 2014-00494).
April 2, 2015	- Application submitted to remove the subject 49-inch d.b.h. Valley Oak tree along with arborist report prepared by Kielty Arborist Services, LLC.
April 16, 2015	- Staff makes site visit for subject application.
April 24, 2015	- Staff requests additional information and clarifications of the Kielty arborist report by to respond to concerns expressed by members of the public.
May 12, 2015	- Applicant submits revised arborist report.
June 3, 2015	- Community Development Director approves the subject permit, starting a 10-day appeal period.
June 17, 2015	- Appeal filed by Judy Horst.
August 16, 2015	- In response to appeal, applicant submitted arborist report prepared by McClenahan Consulting, LLC, evaluating the health of the tree.
November 12, 2015	- Staff inspects the site existing trees for both Parcel A and Parcel B in response to appeal letter. Staff verifies that no significant or heritage trees were removed without a permit.
January 13, 2016	- Planning Commission hearing and appeal was upheld and the tree removal was denied.
January 28, 2016	- Appeal filed to allow tree removal with arborist report from David Babby of Arborist Resources.
September 6, 2016	- Department of Planning and Building consulting arborist, Michael Young of Urban Tree Management submits report, dated September 6, 2016.
September 20, 2016	- Board of Supervisors hearing.

## **DISCUSSION:**

### **A. KEY ISSUES**

Permits for the removal of heritage trees are subject to the criteria found in Section 11,052 of the San Mateo County Ordinance, listed as follows: (a) the general health of the tree; (b) the anticipated longevity of the tree; (c) whether the tree is a public nuisance; (d) proximity to existing or proposed structures and interference with utility services; (e) the necessity of the required action to construct improvements or otherwise allow economic or other enjoyment of the property; (f) the number, species, size and location of existing trees in the area; (g) the effect of the requested action in terms of historic values; and (h) the topography of the land and effect of the requested action on erosion, soil retention, water retention, and diversion or increased flow of surface waters.

In a letter dated June 3, 2015, the Community Development Director determined that the criteria for removal of the subject tree was met. The criteria which serve as the basis of the tree removal application, and are the subject of the two appeals are (1) the health of the tree (Section 11,052.a), and (2) whether the retention of the tree and potential danger from tree limb failure impacts the home owner's ability to enjoy the property (Section 11,052.e).

The appeal letter, dated July 17, 2015, from Judy Horst on behalf of Menlo Oaks neighbors, states that "the tree could probably be saved with proper care," and that the required tree replacement with two 15-gallon trees was inadequate. No arborist report was submitted with the appeal.

The Planning Commission determined the heritage tree removal criteria were not met. The decision was primarily based on public testimony, and a determination that the tree's health was unclear, since "good vigor" appeared in the Kielty arborist report and the time frame for the major limb failure was not known. The Commission also determined that removal was not required to allow economic enjoyment of the property.

A discussion of the two applied criteria and other topics surrounding the application are discussed below.

#### **1. The Health of the Tree (Section 11,052.a):**

The subject tree was evaluated by Kielty Arborist Services, LLC, reports dated July 28, 2014, April 2, 2015, and revised May 12, 2015; and by McClenahan Consulting, LLC, report dated August 16, 2015.

The McClenahan arborist report, dated August 16, 2015, states, "One large badly decayed leader in the middle of the crown and numerous cavities were observed. Currently, there is a high probability of numerous limb failures. The target is the house under construction." The Kielty arborist report, dated April 2, 2015, states that the tree has good vigor, however, has very poor form, and continues, "Trimming the tree is not advised as the

large cuts will accelerate the decaying process and will lead to failure. There is no effective treatment for the decay or the crown rot on the root zone.”

At the January 13, 2016 hearing, the Planning Commission heard testimony from numerous members of the public regarding the health of the tree, including their belief that the tree could be saved. Considerations which were factors in the Commission’s determination were: (1) it was unclear when the large branch failure had occurred, which was cited by the applicant and the arborist as a sign of the tree’s decline, had occurred, and (2) the appellant and supporters stated that, “an arborist had stated that the tree could probably be saved.”

The Planning Commission discussed the timing of the large limb failure as described by the arborists, the applicant, and in the staff report at the hearing. The applicant, nor an arborist was available to provide clarification of the limb loss. In addition, a neighbor testified that they were not aware of a limb loss in recent history. Staff notes, that while the timeline of the loss of the large tree limb is unclear, the missing limb has led to a conclusion reached by both arborists (Kielty, McClenahan), and that the tree is out of balance and a hazard.

The appellant and supporting members of the public initially requested that the Planning Commission grant a continuance to allow them to obtain an arborist report from an arborist of their choosing. After additional testimony and discussion among Commission members, Planning Commissioners voted 3-2 in favor of permit denial based on the neighbors’ testimony and that the limb failure was not as recent as previously indicated.

Ms. Lindsley, owner and resident of the house at 671 Menlo Oaks, hired arborist David Babby of Arbor Resources to evaluate the subject tree on January 25, 2016. The arborist report from Arbor Resources states that “the tree canopy is highly asymmetrical, which is attributed to a massive northwest-growing limb torn from the lower canopy many years ago, and several additional large branches above that are broken.” The report concludes the following:

- a. “The tree’s lack of foliage and large amount of dead limbs and branches reveals a significant and irreversible decline in health.
- b. Structurally, there is a highly probable risk that additional large limbs and branches will degrade and/or fail, due to the many historical failures (which increases occurrences of further failure), the lack and unfavorable distribution of foliage, unhealthy condition, and extensive decay throughout the remaining canopy.

- c. The tree has grown well-beyond its useful and safe lifespan in an occupied setting, and its remaining function presents an irreversible and significant liability and hazard.
- d. There are no reasonable measures, pruning or otherwise, to appropriately address the progressive and continuing hazardous threat the tree presents to targets below, and the only prudent course of action is removal.”

The owner, and resident of the property Victoria Lindsley, supports the tree’s removal, as evidenced by the appeal of the Planning Commission’s decision. Ms. Lindsley notes that the arborist report evaluation by David Babby concurs with both previous reports and “deemed the tree unsafe to retain and hazardous.” In her appeal she states, that with a third arborist report, “There is overwhelming evidence that the health of the tree is a danger to the home and is in significant risk of failure.”

The report from Michael Young of Urban Tree Management, Inc., clarifies the dichotomy that was not evident during the Planning Commission meeting. The tree has been rated separately for its health and its structure. A visual assessment of the tree foliage may indicate some vigor in growth. However, Mr. Young concludes that the borings conducted by Kielty of a decay pocket were “thorough and professional” and indicate that the tree is not structurally sound. The six borings that Kielty performed revealed that in half of the drill sites, there was less than 5 inches of healthy wood before areas of decay were detected. In no case did drilling occur deeper than 11 inches before decay was encountered. Mr. Young concludes that “The trunk decay is the largest hazard. A tree this size with this many structural faults, and this close to a heavily used “target” must be removed.”

The most recent arborist report cites that while past limb failures may not have been recent, the tree’s condition poses a significant liability and hazard to the homeowner. The consulting arborist hired by the County, Mr. Young, states, “The other tree reports do an excellent job outlining all the varied issues with this tree. I concur that this tree should be removed in this location due to the high hazard level that it represents and the high likelihood of large limb or whole tree failure. Mitigation would be unsuccessful.” Since the Planning Commission meeting on January 3, 2016 up to the writing of this report, no arborist report has been submitted and no contrary evidence has been presented to dispute the finding of prior arborist reports.

In light of Ms. Lindsley’s appeal and supporting information from her arborist and collaborating statements from an independent consulting arborist, hired by the County, Planning staff believes that the concerns which framed the basis of the Planning Commission’s discussion to deny the permit have been addressed, with strong evidence in favor of permit approval.

2. Reasonable Enjoyment of the Property (Section 11,052.e):

In the appeal letter, the owner, Ms. Lindsley, states that, "...we would not want to take down any tree without substantial evidence that it poses danger to our family." It concludes, "We urge the Board of Supervisors to consider the danger and concern this tree poses to both our family and our home and uphold the original permit."

It was established in the Arbor Resources arborist report that the large limb break was not recent and it is a significant contributor to the imbalance of the tree, and its unhealthy condition and extensive decay prevent trimming of the tree from being a viable option.

Mr. Young states in his arborist report dated September 6, 2016, that "All three of the arborist reports agreed that the tree has major structural faults and a history of previous failures. There are holes in the trunk, large limb failures, decayed scaffold limbs, main trunk decay, and the tree is weighted to one side over the house." He concludes, "The risk to humans and property is too great to risk retaining this hazardous of a tree."

3. Summary of Previous Appeal Issues

This section summarizes other concerns expressed by interested members of the public.

a. Unauthorized Tree Removal

The appeal letter dated June 17, 2015, from Judy Horst, claimed that unauthorized tree removal activities associated with the subdivision and construction of the new residences had occurred. All reports of additional tree removal were researched by Planning staff. A tree removal permit was applied for and approved on Parcel B of the subdivision. Staff verified that while other trees and vegetation were removed, these were less than 12 inches in diameter at breast height, and do not require tree removal permits.

b. Tree Replacement Condition of Approval

Concerns regarding the required tree replacement were raised by Judy Horst at the Planning Commission hearing.

Requirement for tree replacement is at the discretion of the Community Development Director. The original condition of approval for this application required planting of two 15-gallon oak replacement trees. Mr. Young's report recommends the planting of one 48-60 inch box Valley oak. The condition for tree replacement requirement has been modified to be two, 48-inch box oak, which is size consistent



County practices. One replacement tree will be planted at the location of the tree to be removed, and the other at the right rear of the property, consistent with Mr. Young's recommendation.

Ms. Horst stated that the proposed replacement was not adequate to replace such a large tree. Ms. Horst recommended that the applicant be required to plant four (4) 48-inch box oak trees.

Ms. Horst stated that the proposed replacement was not adequate to replace such a large tree. Ms. Horst recommended that the applicant be required to plant four (4) 48-inch box oak trees.

In conclusion, Planning staff supports the appellant's request for removal and finds that the request for removal meets the criteria found in Sections 11,052.a. and 11,052.e of the County Ordinance. Substantial and credible evidence has been presented that the health of the tree is in decline and poses a safety hazard. In addition, no arborist who has examined the tree has been able to provide a trimming plan which would avoid exacerbating the uneven weight distribution of the branches and increase the likelihood that the tree would fail.

B. ALTERNATIVES

The Board of Supervisors may find that the criteria for removal are not met based on the application, supporting documentation and testimony. An alternative finding for denial is provided in Attachment B of this staff report.

C. ENVIRONMENTAL REVIEW

Environmental Evaluation: This project is exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines, Section 15304 (Minor Alterations to Land). This class exempts minor public and private alterations in the condition of land, water and/or vegetation, such as a removal of a tree.

County Counsel has reviewed the report as to form.

**FISCAL IMPACT:**

No fiscal impact.

**ATTACHMENTS:**

- A. Recommended Findings and Conditions of Approval
- B. Recommended Alternate Finding of Denial
- C. Location/Vicinity Map
- D. Heritage Tree Removal Permit Application
- E. Survey of the Original Parcel with Trees Marked
- F. Site Plan for Development of Parcel B
- G. Arborist Resources Report, dated January 27, 2016
- H. Kielty Arborist Services, LLC Report, dated April 2, 2015, revised May 12, 2015
- I. McClenahan Consulting, LLC Report, dated August 16, 2015
- J. Statement from Applicant, dated January 6, 2016
- K. Decision Letter from Community Development Director, dated June 3, 2015
- L. Appeal to the Planning Commission Application and Supporting Documents
- M. Decision Letter from the Planning Commission, dated January 21, 2016
- N. Appeal to the Board of Supervisors Application and Supporting Documents
- O. Urban tree Management Inc., Report, dated September 6, 2016
- P. Site Photos
- Q. Additional Correspondence