



County of San Mateo

Inter-Departmental Correspondence

Department: PLANNING AND BUILDING

File #: 18-421

Board Meeting Date: 6/5/2018

Special Notice / Hearing: None
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 deny a Significant Tree Removal Permit, to remove a 38-inch diameter at breast height (d.b.h.) Valley oak tree to allow construction of a new residence, on property located at 626 Berkeley Avenue in the unincorporated Menlo Oaks area of San Mateo County.

RECOMMENDATION:

Recommendation to uphold the appeal and the Community Development Director's decision to approve the Significant Tree Removal Permit (PLN 2017-00272), pursuant to Section 12,000 of the Significant Tree ordinance.

BACKGROUND:

The owners of the property have appealed the Planning Commission's action to deny a permit to authorize the removal of one 38-inch d.b.h. Valley oak tree located in the center of an improved 20,894 sq. ft. parcel. The owners have submitted a building permit application (BLD 2017-02635) to construct a new 4,672 sq. ft. two-story single-family residence with an attached 516 sq. ft. garage and a pool. The oak tree is located in the middle of the property, east of the existing 2,266 sq. ft. one-story residence, and within the building footprint for the proposed residence. The appellant contends that the new residence cannot be constructed in a manner that complies with all applicable Zoning Regulations without removal of the tree.

PLANNING COMMISSION ACTION:

At its public hearing on February 28, 2018, the Planning Commission considered the appeal and based on information provided by staff, landowner, appellant, and the public, the Planning Commission upheld the appeal and denied the Significant Tree Removal Permit, a vote of 3 to 2, on the basis that the proposed residence could be constructed around the Valley oak.

On December 19, 2017, the Community Development Director approved an application for a Significant Tree Removal Permit. On January 16, 2018, an appeal of the Community Development Director's decision was filed. On February 28, 2018, the Planning commission upheld the appeal and denied the Significant Tree Removal permit to which the applicant has filed the current appeal.

Report Prepared By: Olivia Boo, Project Planner, 650/363-1818

Appellant/Applicant/Owner: Michael Mitgang and Barbara Gottesman

Location: 626 Berkeley Avenue, Menlo Oaks

APN: 062-183-210

Size: 20,894 sq. ft.

Existing Zoning: R-1/S-100 (Single-Family Residential/Minimum 20,000 Parcel Size)

General Plan Designation: Low Density Residential Urban

Sphere-of-Influence: Menlo Park

Existing Land Use: Existing Single-Family Residence

Water Supply: California Water Service Company

Sewage Disposal: West Bay Sanitary District

Flood Zone: Zone X (Area of Minimal Flooding). Panel No. 06081C0308E, Effective October 16, 2012.

Environmental Evaluation: This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 (*New Construction or Conversion of Small Structures*), which exempts construction of a new single-family residence in a residential zone, and Section 15304 (*Minor Alterations to Land*), which exempts minor public and private alterations in the condition of land, water, and/or vegetation, which does not involve removal of healthy, mature, scenic trees.

Setting: The subject parcel is a flat lot at the end of a cul-de-sac with mature trees along the property lines. The parcel takes access from Berkeley Avenue using a 200-ft. long, 25-ft. wide access easement that terminates at the parcel and includes an ingress/egress easement located within the property. The parcel is developed with an existing single-family residence, detached carport, and two sheds.

Chronology:

<u>Date</u>	- <u>Action</u>	
December 29, 2017	- Community Development Director approves the application for Significant Tree Removal Permit.	
January 16, 2018	- Appeal of the Community Development Director's decision	filed.
February 28, 2018	- Planning Commission public hearing.	
March 12, 2018	- Appeal of the Planning Commission's decision filed.	

DISCUSSION:**A. PREVIOUS ACTIONS**

On December 29, 2017, the Community Development Director approved the requested Significant Tree Removal Permit for the 38" d.b.h. Valley oak due to the location of the tree within the proposed development footprint for the new two-story single-family residence. The landowners (appellants) have submitted the required building permit (BLD2017-02635) for development which is compliant with the development standards of the R-1/S-100 Zoning District. An arborist report was not requested by staff since the reason for removal is development and not due to the health of the tree. Thus, staff found that the tree removal permit met the criteria in the Significant Tree Ordinance, specifically, that the tree had damaged the existing foundation, to allow for the reasonable economic or other enjoyment of the property, and that the tree will be replaced by approved plantings. On January 16, 2018, an appeal by a community member was received by the Planning Department.

Key issues raised by the appeal included the removal of the oak being a loss to the tree canopy in the Menlo Oaks neighborhood and that no building plans have been approved by the County such that it is premature to approve a tree removal permit.

At its public hearing on February 28, 2018, the Planning Commission considered the appeal. Staff responded to the key issues raised by the appeal, noting that alternative design options were explored and found to not be desirable, that the property is constrained by an access easement limiting the location of a new residence, that two 24-inch box Valley oak replacement trees would ensure that the tree canopy would not be diminished over time, and that the Planning and Building Department cannot approve a permit for construction without an approved tree removal permit.

The Planning Commission upheld the appeal and denied the Significant Tree Removal Permit based on the Commission's finding that the proposed residence could be constructed around the Valley oak tree. On March 12, 2018, the landowners appealed the decision of the Planning Commission.

B. BASIS FOR APPEAL TO THE BOARD OF SUPERVISORS

The landowners' key points of appeal are summarized below followed by staff's response. The complete appeal can be found in Attachment H.

a. *We have been denied due process.*

Staff's Response: The processes outlined in the Significant Tree Ordinance for application, notification, and decision were followed. The required public hearing for the initial appeal was held by the Planning Commission on February 28, 2018. The Planning Commission was provided with the relevant application materials and heard public comment from the landowners, the appellant, and community members at the hearing prior to its action to deny the permit by a vote of 3 to 2. The landowners' current appeal will similarly be heard before this Board with the opportunity for further comments.

b. *The Commissioners ignored all the evidence presented that supported the criteria in the Significant Tree Ordinance for granting a permit to remove the tree.*

Staff's Response: The Planning Commission considered all evidence presented, which included staff's report and recommendation, public comment, and testimony from the landowners and appellant. Three members of the Planning Commission determined that the property limitations did not meet the criteria to grant the Significant Tree Removal permit.

Staff confirms that the property has unique parcel constraints, namely, a 25-foot emergency access (bulb turnaround) easement located along Berkeley Avenue, a mature 35-inch d.b.h. oak tree located within the emergency access easement, and the subject tree being located in the center of the building envelope within five feet of the existing residence.

During staff's review of the initial tree removal permit, multiple design options were explored in an attempt to preserve the tree. Design alternatives included: (1) Option A - an approximate 35-ft. long connecting hallway built around the oak to continue the floorplan on the opposite side of the tree; (2) Option B - expanding the residence southward between the oak tree and the access easement; and (3) Option C - demolishing the residence and constructing a new building east of the oak in the rear yard area of the property.

Options A and B were not pursued nor desired by the landowners due to the design creating an impractical floor plan which included an extensively long hallway that reached around the Valley oak connecting the living areas of the home. Option C, opposed by the neighbors immediately to the north of the property for privacy reasons, is also impractical because it locates the residence in the rear half of the parcel.

During the Planning Commission's public hearing, multiple members of the Menlo Oaks District Association, Menlo Oaks Tree Advocacy, and interested parties spoke in opposition of the tree removal and commented that the health of the tree is unknown since no arborist report was submitted; descriptions of successful past residential construction around trees in other areas of Menlo Oaks; the cumulative removal of 28 trees in the Menlo Oaks neighborhood as identified in the Department's online permit center; and the request to have the County's tree regulations revised to require a greater number of replacement trees to replace lost tree canopy.

Following the Planning Commission's hearing, Department staff and the County arborist met with the landowners, architect, and arborist at the project site to further evaluate the potential to construct the new residence around the tree.

The perimeter tree canopy is located within the building envelope, thus, limiting the area where a residence could be constructed without impacting the tree and root systems of adjacent trees. If the tree were to remain, a minimum of an 18-ft. radius set back, as determined by the arborists during the site visit, would be required further restricting the building envelope given the access easement along Berkeley Avenue.

Other options explored during the site visit included differing foundation types (pier and grade beam) and shifting the new residence into the front yard setback (requiring a variance). Pier and grade beam foundations typically require an 18-inch minimum clearance between the soil and joist which may result in an awkward split-level floor plan

or a raised residence. It has not been determined whether the tree would be negatively impacted by this type of foundation. The landowners have proposed the second story of the residence to be set back from the tree canopy (inclusive of the subject oak and mature perimeter trees). If a pier and grade beam foundation were proposed, the overall height of the residence would increase, due to the required minimum foundation clearance, and shift the residence upwards which may impact the surrounding tree canopy.

If the proposed residence were shifted to encroach into the front yard setback (subject to a variance being granted), the new residence would still be 8 feet too close to the oak tree given the recommended 18-ft. setback.

Staff's recommendation to approve the tree removal permit is based on the consideration given to the alternative designs, observations, and options discussed during the site visit, and the constraints of the property.

c. *The Commissioners only used anecdotal criteria for making its decision by finding that a "200-year-old healthy tree" should not be taken down, and therefore overturned the approved permit, rather than using the criteria set out within the Significant Tree Ordinance in its assessment of this application.*

Staff's Response: The Planning Commission evaluated the appeal based on materials submitted by staff, the applicant, and the public, as well as public comment during the meeting. Based on this information, the Commission determined, on a 3-2 vote, that the criteria for granting the permit were not satisfied.

d. *The Commissioners failed to understand the unique nature of the property that creates the situation which meets several of the criteria set out in the Significant Tree Ordinance as clearly noted in the Staff Report, and therefore failed to focus their assessment of the tree removal application on its merits.*

The Commissioners ignored that any other design of the owners'/appellants' home, while keeping the tree, would interfere with "the reasonable economic or other enjoyment of the property."

Staff's Response: As outlined in the Criteria for Permit Approval (Section 12,023 of the Significant Tree Ordinance), "The Community Development Director or any other person or body charged with determining whether to grant, conditionally grant, or deny a Tree Cutting or Trimming Permit may approve the permit only if one or more findings are made." The criteria requirement for the granting of a tree removal permit is not that all findings must be met, but rather, that the decision making body must make at least one finding.

The emergency access easement located along the southern portion of the parcel presents a constraint not found on other properties along Berkeley Avenue. Access easements must remain free and clear of development, and setbacks of the zoning district must be taken from the edge of said easements, thus, the standard zoning setback along this property line effectively shifts inward of the property line 25 feet where, absent the easement, 10 feet would be the standard setback. The property boundaries are also lined with a variety of mature tree species including 12 oak trees. Therefore,

moving the proposed residence closer to the property boundaries could have an impact to the surrounding trees. As stated previously, retaining the tree and constructing a new residence in the area of the existing residence would require a new residence to maintain a 20-foot front yard setback, interior side yard setback of 10 feet, street side setback varying from 10 to 35 (easement) feet in addition to a 18-ft. setback from the tree, thus, constraining the available building footprint given the zoning district development standards. Upon consideration of the property constraints, alternatives explored, and the landowners' development rights, staff recommends the removal of the tree as conditioned (removal contingent on the issuance of the associated building permit and replanting required prior to the final inspection).

C. PROJECT COMPLIANCE WITH COUNTY REGULATIONS

General Plan

General Plan Policy 1.25 (*Protect Vegetative Resources*) seeks to ensure that development will: (1) minimize the removal of vegetative resources and/or; (2) protect vegetation which enhances microclimate, stabilizes slopes, or reduces surface water runoff, erosion, or sedimentation; and/or (3) protect historic and scenic trees.

The new residence is located in generally the same footprint as the existing residence and will retain all trees within the property with exception to the subject tree. The proposed second story is located near the center of the first floor in order to minimize the impact on the existing tree canopy. As conditioned, the landowners are required to replant two 24-inch box Valley oak trees prior to the building permit final inspection. Given that the tree removal will be replaced with two oak trees and that no other trees will be removed for the construction of the residence, staff finds that the project minimizes tree removal in conformance with this policy. Further, the oak tree is not located in a mapped scenic resource area and the tree cannot be seen beyond the immediate vicinity of the adjacent neighbors.

D. CONFORMANCE WITH THE SIGNIFICANT TREE ORDINANCE

Section 12,023 (*Criteria for Permit Approval*) of the Significant Tree Ordinance states that the Community Development Director or any other person or body charged with determining whether to grant, conditionally grant, or deny a Significant Tree Cutting Permit may approve a permit only if one or more of the following findings are made:

1. The tree is diseased;
2. The tree could adversely affect the general health and safety;
3. The tree could cause substantial damage;
4. The tree is a public nuisance;
5. The tree is in danger of falling;
6. The tree substantially detracts from the value of the property;
7. The tree acts as a host for a plant which is parasitic to another species of tree

which is in danger of being infested or exterminated by the parasite;

8. The tree is a substantial fire hazard;
9. The tree will be replaced by plantings approved by the Community Development Director; or
10. The required action is necessary: (a) to utilize the property in a manner which is of greater public value than any environmental degradation caused by the action; (b) to allow reasonable economic or other enjoyment of the property.

As previously discussed, staff considered the alternative design options, property constraints, foundation damage, replanting requirements, long-term canopy replenishment, and the community and the landowners concerns. Thus, staff recommends that the tree removal permit be approved based on Findings 9 and 10 in that the tree could be removed because the removal is of a greater public value than the environmental degradation caused by the action, and to allow reasonable economic enjoyment of the property. Granting the tree removal permit will provide the opportunity for the landowners to construct a residence, compliant with the adopted zoning district, and to replace the 45-year old residence with an updated and more energy efficient home.

E. ENVIRONMENTAL REVIEW

This project is exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines, Section 15303 (*New Construction or Conversion of Small Structures*), which exempts construction of a new single-family residence in a residential zone, and Section 15304 (*Minor Alterations to Land*), Class 4, exempting minor public and private alterations in the condition of land, water, and/or vegetation, which do not include removal of a healthy, mature tree in a scenic area. The Valley oak tree is not located in a mapped scenic resource area and the tree cannot be seen beyond the immediate vicinity and adjacent neighbors.

County Counsel has reviewed the report as to form.

Approval of this project contributes to the Shared Vision 2025 of a Livable Community by allowing the property owners to build a new house compliant with the adopted land use regulations for their property and replant for the loss of the Valley oak tree while continuing to live at their property.

FISCAL IMPACT:

No fiscal impact.

ATTACHMENTS

- A. Recommended Findings and Conditions of Approval
- B. General Location/Vicinity Map
- C. Significant Tree Permit Application with Original Proposed House Plans
- D. Alternative Design Options
- E. Tree Canopy
- F. Decision Letter, dated December 29, 2017
- G. Appeal to the Planning Commission
- H. Appeal to the Board of Supervisors
- I. Site Photos

- J. Statement from the Applicant, dated December 11, 2017
- K. Revised Proposed Plans (BLD 2017-02635)