



County of San Mateo

Inter-Departmental Correspondence

Department: PLANNING AND BUILDING

File #: 21-370

Board Meeting Date: 5/18/2021

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Steve Monowitz, Community Development Director

Subject: Public Hearing to consider an appeal of the Planning Commission's approval of a Tree Removal Permit (PLN2020-00443) and an After-the-Fact Significant Tree Removal Permit for the unpermitted removal of a 20.9-inch diameter at breast (dbh) Coast Live Oak tree while a permit was pending, pursuant to Section 12,000 of the San Mateo County Ordinance Code.

RECOMMENDATION:

Public Hearing to consider an appeal of the Planning Commission's approval of a Tree Removal Permit (PLN2020-00443) and an After-the-Fact Significant Tree Removal Permit for the unpermitted removal of a 20.9-inch diameter at breast height (dbh) Coast Live Oak tree while a permit was pending, pursuant to Section 12,000 of the San Mateo County Ordinance Code, on property located at 10 Cardinal Court in the unincorporated West Menlo Park area of San Mateo County:

- A) Open public hearing
- B) Close public hearing
- C) Deny the appeal on the basis that the criteria for tree removal established by the Significant Tree Ordinance have been met and approve the After the Fact Tree Removal Permit, County File Number PLN2020-00443, by making the findings for approval included in Attachment A of the staff report.

BACKGROUND:

In October 2017, the Board of Supervisors approved a subdivision of the property formerly known as 2050 Santa Cruz Avenue, which divided that property into three parcels. That subdivision map was officially recorded in May 2019, thus creating the subject parcel - 10 Cardinal Court. In December 2019, a building permit for the subdivision infrastructure improvements was issued. In April 2020, the applicant submitted building permit applications for houses on each of the three parcels.

On December 4, 2020, the applicant submitted an application to remove a 20.9-inch diameter at

breast height (dbh) Coast Live Oak tree on the 10 Cardinal Court parcel (Lot 2 of the subdivision) in order to allow for construction of a house. Given the size and species, removal of the subject tree required a tree removal permit pursuant to the Significant Tree Ordinance (Ordinance Code Section 12,000). On January 11, 2021, Staff issued an approval letter (Attachment C) permitting the removal of the subject tree, subject to a 10-working day appeal period ending on January 26, 2021 at 5 pm. As indicated in the January 11, 2021 approval letter, if, at any point during that appeal period an appeal was filed, then Staff's approval would be suspended until the appeal could be considered by the Planning Commission.

On January 25, 2021, Yvonne Schmidt, a neighboring property owner, filed an appeal via email to the project planner, and requested instructions regarding how to submit the required appeal fee. The project planner responded to Ms. Schmidt on January 26th, 2021, confirming receipt of the appeal and indicating that due to remote work schedules, payment would be processed on January 27th, 2021.

On January 26, 2021 at 5:14 pm, the property owner (Brandon Smith) emailed the project planner and Deputy Director, indicating that Mr. Smith understood an appeal was filed, but that payment was not received, and asking whether the appeal was invalid on that basis. The project planner responded to Mr. Smith on January 27, 2021 at 3:13 pm, confirming that a valid appeal had been filed with the County. Later that day, after the close of business hours, Staff received several emails from neighboring property owners stating that the subject tree had been cut down at approximately 6:00 pm. Upon investigation, Staff confirmed that the subject tree had been removed while the appeal was pending and before the Planning Commission had resolved the appeal and rendered a final decision on the tree removal permit.

Pursuant to Section 12,032.2 of the Significant Tree Ordinance, Staff took the following actions:

- Imposed fines and fees of \$4,384.80.
- Issued a stop work notice on the private road/utility improvement building permit (BLD 2018-01589) associated with the site improvements necessary for all three lots of the subdivision. Staff modified the stop work notice after the applicant submitted the required fines and fees to allow infrastructure and site improvement work related to Lots 1 and 3 of the subdivision to proceed, while continuing to prohibit improvements specific to Lot 2 until resolution of this appeal and after-the-fact permit.
- Issued a temporary moratorium on building permits for all three lots. Staff released the hold on building permits for Lots 1 and 3 upon receipt of the fines and fees from the applicant. The moratorium on building permits for Lot 2, the subject parcel, will remain in effect until resolution of this appeal and after-the-fact permit.

While the Significant Tree Ordinance provides direction on resolution of unpermitted tree removal, it does not address the submitted appeal on the original Staff decision. Therefore, the report presented to the Planning Commission at their March 10, 2021 hearing addressed both the outstanding appeal and compliance with Section 12,032.2. Both issues are discussed in this report to the Board.

At the March 10 hearing, the Planning Commission received public comment from several neighbors of the subject property, including the current appellant, as well as comments from the property

owner/applicant team. The Planning Commission voted to deny the appeal and uphold Staff's decision on a vote of 3-1.

Report Prepared By: Michael Schaller, Senior Planner

Appellant: Gregory Faris

Owner: Highland Solutions LLC

Applicant: Janel Fung (Toby Long Design)

Location: 10 Cardinal Court, West Menlo Park

APN(s): 074-091-680

Existing Zoning: R-1/S-72 (Single Family Residential/5,000 sq. ft. min. parcel size)

General Plan Designation: Medium Density Residential

Sphere-of-Influence: Menlo Park

Existing Land Use: Residential

Environmental Evaluation: The project is categorically exempt under Section 15304 of the California Environmental Quality Act Guidelines, which exempts minor public or private alterations in the condition of land, water, and/or vegetation.

Setting: The project site is an active construction site as the applicant/owner installs the drainage and other underground lines associated with the approved subdivision improvements. The house that previously occupied the site (2050 Santa Cruz Avenue) has been demolished per the issued building permit for that activity.

DISCUSSION

A. BASIS FOR APPEAL TO THE BOARD OF SUPERVISORS

On March 22, 2021, Mr. Faris submitted an appeal of the Planning Commission's decision of approval. The appellant's points of appeal are summarized below followed by staff's response.

I represent a group of neighbors living in the Triangle area, and we would like the decision by the Planning Commission reversed. The developer directed an illegal tree removal that recklessly endangered my property and my family and deprived the neighborhood's right to the original appeal. The tree was hastily cut in the dark during a rain storm with full knowledge of the appeal and could have struck my house or my son if it fell the other way. The developer and the tree cutting service showed brazen and willful disregard for San Mateo County regulations, disregard of best practices for tree removal, and have ignored common job site safety practices.

Staff's Response: Regarding the timing of the tree's removal, evidence submitted by the appellant and other neighbors confirms that the tree was removed in the early evening hours

after sunset. For reference, sunset on January 27th was at 5:26 pm. Staff also confirms that a winter storm was passing through the area that day, with wind gusts in the 15 - 18 mph range. Regarding the direction of tree fall, the tree fell towards Crocus Court. As was stated above in the background section, and by the property owner at the Planning Commission hearing, the property owner/applicant was aware that an appeal had been filed and that County staff was preparing a staff report to take the appeal to the Planning Commission for consideration.

The Stop Work Order should be restored for all lots on site and maintained until an investigation is taken into the practices of the developer and its tree cutting service and the County ensures that neighboring families and property are safe from the developer's dangerous practices.

Staff's Response: As discussed below, the Significant Tree Ordinance provides the County authority to engage in enforcement actions only on the subject property where the violation occurred. Upon recordation of the parcel map for the 2050 Santa Cruz subdivision, the subject property is now the 9,000 sq. ft. separate legal parcel that previously included the subject tree. Further, the duration of any stop work order or moratorium is limited under the terms of the Significant Tree Ordinance to the period of time necessary to implement a mitigation plan (which shall include tree protection measures and tree replacement requirements). The County Planning and Building Department is empowered to implement County ordinances and regulations related to the way land is developed and the manner in which structures are built. The Department understand the concern raised, but notes that it is unrelated to the criteria provided by the Significant Tree Ordinance to guide the determination of whether to uphold the appeal or approve the tree removal permit.

B. SIGNIFICANT TREE REMOVAL PERMIT (PLN2020-00443)

As stated previously, on January 11, 2021 the Community Development Director approved the permit to remove the subject tree which was located in the center of 10 Cardinal Court. The subject tree was located in the middle of the property, well within the development envelope for this parcel as defined by the property's zoning regulations.

The subject tree was identified as Tree No. 17 on the survey prepared and presented to the Board of Supervisors (Board) at the September 26, 2017 hearing on the subdivision at 2050 Santa Cruz Avenue. The approval of the subdivision identified specific trees for protection and preservation. Specifically, the Board included a condition requiring the access road for the subdivision to be shifted northward in order to protect a large oak tree that was on the property line with the adjoining Crocus Court properties. The Board's approval of the subdivision also identified other specific trees that were approved for removal for various reasons, generally due to the health of the tree. The subject tree was not included in the trees approved for removal during the Board's subdivision action, and therefore a separate tree removal permit was required for its removal. It should also be noted that when the Board approved the subdivision of 2050 Santa Cruz, no conditions of approval were imposed to limit the footprint or location of future homes on the lots resulting from the subdivision. Thus, the siting of all homes on the resulting parcels is regulated by the Zoning Regulations applicable to this area.

In order to protect significant trees along the perimeter of the property that are intended to screen adjacent homes from the new development on the subject parcel, condition of approval

No. 2 of the 2017 subdivision approval required the driveway that serves this subdivision to be shifted away from the southerly property line with Crocus Court in order to protect Tree No. 3 which lies along that property line. The shifting of the driveway easement approximately 30 feet to the north has resulted in a compressed parcel that is only 91 feet deep (please see attached site and floor plan for 10 Cardinal Court). The resulting parcel configuration shifted the allowable building footprint back 30 feet, into the canopy of the subject tree, to the point where the trunk of that tree would have sat within the walls of the proposed house. In all regards, the proposed house on the subject parcel complies with the S-72 zoning regulations, including with regards to setbacks and size. Based upon this information and analysis, the Department concluded that the criteria for tree removal established by the Significant Tree ordinance had been met, and issued the original approval for tree removal. That decision was appealed to the Planning Commission which upheld Staff's decision.

C. AFTER THE FACT TREE REMOVAL PERMIT

In 2016, the Board of Supervisors adopted amendments to the County's Significant Tree Ordinance intended to address situations where a tree was removed while a permit was pending. Specifically, Section 12,032.2 provides:

If a violation of this Ordinance occurs in the absence of development or while an application for a building permit or discretionary development approval is pending:

- a) The Community Development Director (or designee) may issue a temporary moratorium on development of the subject property, not to exceed eighteen (18) months from the date the violation occurred. The purpose of the moratorium is to provide the County an opportunity to study and determine appropriate mitigation measures for the tree removal, and to ensure that measures are incorporated into any future development approvals for the property.
- b) The owner of the affected property, or their representative, shall be required to obtain a permit in accordance with Chapter 3 of this Part.
- c) A Mitigation Plan as described above, shall be submitted by the property owner and reviewed by the Planning and Building Department. Upon approval, said plan shall be implemented prior to rescinding of the moratorium.
- d) At the time of permit application, the applicant shall pay all fees, including investigation fees of 10 times the normal permit fee, as well as the penalty fines cited below under Section 12,032.2, and satisfy all conditions in connection therewith, including replacement planting.

Upon learning of the subject tree's removal, the Community Development Director ordered a moratorium on all development work on the project site, except for those actions necessary to secure the overall property. The County subsequently released the hold on the building permits for 8 and 12 Cardinal Court (Lots 1 and 3), which are separate legal lots from 10 Cardinal Court (Lot 2), which is the location of the violation. The building permit for the house on 10 Cardinal Court will be on hold until resolution of this after-the-fact tree removal permit.

Proposed Mitigation Plan

In the staff-level tree removal permit, a condition of approval required the replacement planting of two 24-inch box Oak trees. The applicant has already planted two 24" box, Northern Red Oak (*Quercus Rubra*) trees in the rear yard area of 10 Cardinal Court as mitigation for removal of the subject tree. This replanting has been reviewed by the County Arborist who concurs with the size and species of the replacement trees. The required investigation and penalty fees, in the amount of \$4,384.80 were submitted on February 25, 2021. Staff believes that the replanting plan already completed by the applicant constitutes appropriate mitigation for the unpermitted removal of Tree No. 17 based on the site constraints and limited locations for replacement trees to thrive.

C. ENVIRONMENTAL REVIEW

The project is categorically exempt under Section 15304 (*Minor Alterations to Land*) of the California Environmental Quality Act Guidelines. Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation.

County Counsel has reviewed the report as to form.

FISCAL IMPACT:

No fiscal impact.

ATTACHMENTS

- A. Recommended Findings and Conditions of Approval
- B. General Location/Vicinity Map
- C. Staff Decision Letter, dated January 11, 2021 (includes site plan and floor plan)
- D. Planning Commission Staff Report - March 10, 2021
- E. Appeal letter from Gregory Faris