

# Capitola Planning Commission

## Agenda Report



**Meeting:** March 3, 2021

**From:** Community Development Department

**Address:** 501 El Salto Drive

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**Permit Number: #21-0548**

**APN: 036-144-11**

Tree Removal Permit to remove seven palm trees, a Design Permit to allow a fence that exceeds the maximum height standard, and a Major Encroachment Permit for a fence in the public right-of-way located within the R-1 (Single-Family Residential) zoning district.

This project is within the Coastal Zone but does not require a Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: Ducky Grabill

Representative: Michael Grabill, Filed: 11.23.21

### **Applicant Proposal**

The applicant is proposing a major landscape renovation to the property and the public right of way fronting El Salto Drive and Hollister Avenue within the R-1 (Single-Family Residential) zoning district. The applicant is requesting approval of a tree removal permit to remove seven palm trees, a design permit to allow a fence with exceeds the maximum fence height, and an encroachment permit to allow a fence and a wood bench to be located within the street right-of-way.

### **Background**

On June 15, 2021, the Community Development Department issued a tree removal permit for the removal of two cypress trees and three juniper trees at 501 El Salto Drive that would were found to be in poor condition.

On November 23, 2021, the Community Development Department received the current application for a tree removal permit, design permit, and a major encroachment permit.

### **Discussion**

The property is located on the corner of El Salto Drive and Hollister Avenue within the Depot Hill neighborhood surrounded by one- and two-story single-family residences. The site is lined with ten mature palm trees that are situated along El Salto Drive within both the subject property and immediately in front of the property within the public right-of-way. The home is accessed from El Salto Drive, which functions as a front yard. The frontage along Hollister Avenue functions as an enclosed side yard which currently has a five-foot-high bamboo fence screen surrounding a deck and patio area.

The applicant is proposing major landscape renovations to the site. The applicant is requesting a tree removal permit to allow the removal of seven healthy palm trees. Removing the trees will allow the owner to modify the site layout in terms of the walkways, new landscape areas, and new seating areas. The application includes five replacement trees, including two strawberry

trees and three California wax myrtles. Existing vegetation will be replaced with a variety of drought tolerant plants. The existing raised porch in the front yard will be replaced with a new porch that has a smaller footprint. Two new raised wooden benches are proposed, one in the front yard along El Salto and a second in the enclosed space along Hollister Avenue. A new fence is proposed in the area of the current bamboo screen to keep the frontage along Hollister Avenue private. New and replacement hardscape are proposed to create a front patio, walking path, and front driveway area.

#### Community Tree and Forest Management Ordinance

Section 12.12.190(C) outlines the process for the Community Development Director or Planning Commission to permit the removal of trees in conjunction with a new construction or major remodels. The standard requires that the project is conditioned to require planting or replacement of all or part of the trees necessary to meet the city goal of 15 percent canopy coverage per the discretion of the Planning Commission. The applicant is proposing extensive work including the replacement of existing hardscape, a new fence, a complete replacement of plants, and five new trees. The goal of the new landscape is to be more complimentary to the region. These types of major landscape renovations are typically reviewed by the Planning Commission in conjunction with a design permit application. This project is unique in that no modifications to the home are proposed with exception to the porch replacement.

The proposal satisfies numerous goals outlined within the Section 12.12.020(A) through (E) of the goals and policies of the Community Tree and Forest Management chapter of the Capitola Municipal Code:

1. It is the policy of the city to protect the locally significant, scenic and mature trees as listed in the heritage tree list to be adopted pursuant to this chapter, in order to protect the character of Capitola.  
Staff Analysis: The proposal would remove seven palm trees but would preserve four existing trees and plant five new trees. The palm trees are not considered locally significant or scenic.
2. The overall goals of this chapter are to protect and increase the level of tree cover on public and private lands within the city, maintain trees in a healthy and non-hazardous condition, and promote planting of additional trees to increase tree cover (hereby referred to as canopy coverage) throughout the city.  
Staff Analysis: The proposal would increase the level of tree cover on public and private lands within the City. The existing palm trees provide minimal tree cover. The proposed strawberry trees and California wax myrtle trees will provide increased canopy coverage.
3. It is the policy of the city to encourage new tree planting on public and private property and to cultivate a flourishing community forest.  
Staff Analysis: The proposal would remove seven trees, preserve four trees, and add five new trees, for a total of nine on the subject property and immediately adjacent public right-of-way.
4. It is the goal of the city to maintain and enhance the tree canopy coverage existing at the time of adoption of the ordinance codified in this chapter (as determined through aerial photography taken within twelve months from adoption of the ordinance codified in this chapter), and to increase flowering tree canopy to help identify and beautify city streets and neighborhoods.

Staff Analysis: The proposal would maintain the long-term tree canopy coverage and increase flowering tree canopy which helps identify and beautify city streets and neighborhoods.

5. On individual lots, it is the goal of the city to maintain fifteen percent coverage of tree canopy, consisting of flowering, deciduous, and evergreen trees, to be enforced on an on-going basis via the design review process.

Staff Analysis: The proposal would increase the canopy coverage within the public right-of-way and have a minimal impact to the existing coverage of the subject property. Two of the seven palm trees proposed for removal are located on private land. Staff has included Condition #2 which requires the applicant to locate at least two of the proposed replacement trees on the subject property to reflect that loss.

### Encroachment Permit Issuance

Pursuant to §12.56.060, the City may issue permits to allow certain improvements to be installed and maintained on public property by the adjacent private property owner. The Public Works director may approve minor improvements, such as fences under 42 inches in height, landscaping, and at-grade walkways, under a minor revocable encroachment permit. For improvements beyond those listed under the discretion of the Public Works Director, such as the proposed fence, a major revocable encroachment permit may be issued by the Planning Commission. The proposed fence is 58 inches tall within the public right-of-way, therefore a major revocable encroachment permit is required. The wood bench along the Hollister Avenue frontage is also partially within the public right-of-way.

The Planning Commission must evaluate the following considerations when deciding whether or not to issue a major revocable encroachment permit:

1. The expense and difficulty that will be entailed in removing the improvement in the event of street widening;  
Staff analysis: Within the revocable/hold harmless agreement, the owner must agree that the removal of the fence, when so ordered by the City, shall be at the owner's expense and not at the expense of the City. Staff included Condition of Approval #12 to requiring the applicant to sign a hold harmless agreement form.
2. Whether the proposed improvements are in conformity with the size, scale, and aesthetics of the surrounding neighborhood;  
Staff analysis: The proposed fence uses similar materials and style to adjacent properties and is of similar size and scale within the surrounding neighborhood.
3. Preservation of views;  
Staff analysis: The proposed fence is not expected to have a negative impact on the views to the public or neighboring properties.
4. Whether granting the permit would tend to result in the granting of a special privilege, in the sense that granting this permit would tend to preclude granting similar permits to neighboring property. If the benefit to the applicant and community is determined to exceed the detriment to the community, the permit shall be approved. The planning commission may, by providing reasonable notice to neighboring property owners, develop standards or criteria applicable to the entire block within which the property is located.

Staff analysis: Private improvements within the public right-of-way are commonplace within the Depot Hill neighborhood, including fences. However, there are a limited number of cases where encroaching fences exceed 42 inches in height. In 2017, a fence in the right-of-way in front of 407 El Salto, two properties away, was approved to a height of 48 inches and the gate up to 54 inches.

### Design Permit

Chapter 17.60 of the Capitola Municipal Code outlines regulations for fence permits. The maximum height along both street frontages of a corner lot is three-feet six-inches. The proposed fence is four-feet ten-inches tall. §17.60.010(B) requires a design permit by Planning Commission to exceed maximum fence height. The Planning Commission may approve the fence height provided the deviation will not result in a significant adverse impact for neighboring properties, public access, or views or the community at large. Also, one or more of the following must apply:

1. Unique circumstances exist on the site, such as a property line abutting a highly trafficked public street or path or historic use of screening for the property; and/or
2. The deviation is necessary for the reasonable use and enjoyment of the property.

The proposed fence will replace the existing bamboo screening that is currently used for privacy screening of the property. Also, the corner lot is unique in that there is limited outdoor space on the subject property other than along the street frontage. The applicant is limiting the four-foot ten-inch fence to the Hollister Avenue frontage and the corner. The El Salto frontage, which functions as a front yard, will not have a fence between the home and the street. Allowing the height deviation for the fence along Hollister Avenue will allow the property owner to have some private outdoor space to enjoy while maintaining an open front yard along El Salto Drive.

### **Recommendation**

Staff recommends the Planning Commission approve project application #21-0548 based on the Conditions and Findings for Approval.

### **Conditions of Approval**

1. The project approval consists of a tree removal permit for the removal of seven palm trees, a major revocable encroachment permit for a new fence, wooden bench, and landscaping, and a design permit to allow a height deviation for the fence up to 4-feet ten-inches. The proposed project is approved as indicated on the final plans reviewed and approved by the Planning Commission on March 3, 2022, except as modified through conditions imposed by the Planning Commission during the hearing.
2. The applicant shall demonstrate compliance with the tree removal permit authorized by this permit for 7 palm trees to be removed from the property and adjacent public right-of-way. The applicant shall plant five new trees. Required replacement trees shall be of the same size, species and planted on the site as shown on the approved plans, with the required modification to the plans that at least two replacement trees must be located on the subject property.
3. Prior to construction, all Planning fees associated with permit #21-0548 shall be paid in full.
4. Prior to issuance of a building permit or revocable encroachment permit, a drainage plan, grading, sediment and erosion control plan, shall be submitted to the City and approved by Public Works. The plans shall be in compliance with the requirements

specified in Capitola Municipal Code Chapter 13.16 Storm Water Pollution Prevention and Protection.

5. Prior to issuance of building permit or revocable encroachment permit, the applicant shall submit a stormwater management plan to the satisfaction of the Director of Public Works which implements all applicable Post Construction Requirements (PCRs) and Public Works Standard Details, including all standards relating to low impact development (LID).
6. Prior to any work in the City road right of way, an encroachment permit shall be acquired by the contractor performing the work. No material or equipment storage may be placed in the road right-of-way.
7. During construction, any construction activity shall be subject to a construction noise curfew, except when otherwise specified in the building permit issued by the City. Construction noise shall be prohibited between the hours of nine p.m. and seven-thirty a.m. on weekdays. Construction noise shall be prohibited on weekends with the exception of Saturday work between nine a.m. and four p.m. or emergency work approved by the building official. §9.12.010B
8. Prior to a project final, all cracked or broken driveway approaches, curb, gutter, or sidewalk shall be replaced per the Public Works Standard Details and to the satisfaction of the Public Works Department. All replaced driveway approaches, curb, gutter or sidewalk shall meet current Accessibility Standards.
9. Prior to project final, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Community Development Director. Upon evidence of non-compliance with conditions of approval or applicable municipal code provisions, the applicant shall remedy the non-compliance to the satisfaction of the Community Development Director or shall file an application for a permit amendment for Planning Commission consideration. Failure to remedy a non-compliance in a timely manner may result in permit revocation.
10. This permit shall expire 24 months from the date of issuance. The applicant shall have an approved building permit and construction underway before this date to prevent permit expiration. Applications for extension may be submitted by the applicant prior to expiration pursuant to Municipal Code section 17.81.160.
11. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.
12. Prior to construction or tree removals, the applicant shall obtain an approved revocable encroachment permit.

### **Encroachment Permit Findings**

- A. The project, subject to the conditions imposed, secures the purposes of the Chapter 12.56 for Private Improvements on Public Property.**  
Community Development Staff and the Planning Commission have reviewed the project. The proposed fence, landscaping and minor improvements are consistent with

considerations for major revocable encroachment permits.

**B. This project is categorically exempt under Section 15301(e) of the California Environmental Quality Act and is subject to Section 753.5 of Title 14 of the California Code of Regulations.**

Section 15301 of the CEQA Guidelines exempts minor alterations to existing public and private topographical features, provided the project involves negligible or no expansion of use. The proposed fence, landscaping, and minor improvements serve an existing residential use. No adverse environmental impacts were discovered during review of the proposed project.

**Tree Removal Findings**

**A. The application, subject to the conditions imposed, will secure the purposes of the Community Tree and Forest Management Ordinance including the city goal of 15 percent canopy coverage.**

Community Development Department Staff and the Planning Commission have both reviewed the major landscape renovation project. The project involves extensive topographical work. The major landscape renovation is considered to be a remodel in the discretionary review by the Planning Commission. The application, subject to the conditions imposed, will secure the purposes of the Community Tree and Forest management Ordinance to meet the city goal of 15 percent canopy coverage.

**B. The project secures the policy of the city to protect the locally significant, scenic and mature trees as listed in the heritage tree list to be adopted pursuant to this chapter, in order to protect the character of Capitola.**

The proposal would remove seven palm trees, but would not impact any locally significant, scenic, and mature trees.

**C. The project secures the overall goals of the Community Tree and Forest Management Ordinance to protect and increase the level of tree cover on public and private lands within the city, maintain trees in a healthy and non-hazardous condition, and promote planting of additional trees to increase tree cover (hereby referred to as canopy coverage) throughout the city.**

The proposal would result in a net increase of tree cover within the city.

**D. The project secures the policy of the city to encourage new tree planting on public and private property and to cultivate a flourishing community forest.**

The proposal would remove seven palm trees and add five new trees, for a total of nine trees within the project area.

**E. The project secures the goal of the city to maintain and enhance the tree canopy coverage existing at the time of adoption of the ordinance codified in this chapter (as determined through aerial photography taken within twelve months from adoption of the ordinance codified in this chapter), and to increase flowering tree canopy to help identify and beautify city streets and neighborhoods.**

The proposal would maintain the long-term tree canopy coverage and increase flowering tree canopy which helps identify and beautify city streets and neighborhoods.

- F. The project secures the goal of the city to maintain fifteen percent coverage of tree canopy on individual lots, consisting of flowering, deciduous, and evergreen trees, to be enforced on an on-going basis via the design review process.**

The proposal, subject to the conditions imposed, would secure the goal of maintaining canopy coverage on individual lots with trees that are more compatible with the goals of the Community Tree and Forest Management Ordinance.

#### **DESIGN PERMIT FINDINGS**

- A. The proposed project is consistent with the general plan, local coastal program, and any applicable specific plan, area plan, or other design policies and regulations adopted by the city council.**

The height deviation for the fence is consistent with the design regulations adopted by the City Council with Planning Commission approval of a design permit.

- B. The proposed project complies with all applicable provisions of the zoning code and municipal code.**

The height deviation for the fence complies with the zoning code with approval of a design permit by Planning Commission.

- C. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).**

Section 15301 of the CEQA Guidelines exempts minor alterations to existing public and private topographical features, provided the project involves negligible or no expansion of use. The proposed fence, landscaping, and minor improvements serve an existing residential use. No adverse environmental impacts were discovered during review of the proposed project.

- D. The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.**

The height deviation for the fence has been cited to ensure safety of vehicles at the corner of El Salto Drive and Hollister Avenue.

- E. The proposed project complies with all applicable design review criteria in Section 17.120.070 (Design review criteria).**

The proposed project complies with the specific criteria for review of a height deviation by Planning Commission including unique circumstances existing on the site and the deviation is necessary for the reasonable use and enjoyment of the property.

- F. For projects in residential neighborhoods, the proposed project maintains the character, scale, and development pattern of the neighborhood.**

The fence is a great improvement over the current bamboo screen which exists along the property frontage.