

Appeal Application Supplement

Tree Removal Permit Denial – 935 Balboa Ave, Capitola

Owner: Joe Stokley

Appealed by Moe Hassan & Tony Sharifi –

1001 Balboa Ave, Capitola

Sept 19, 2022

The following expands on our reasons for appeal

- 1) The city's denial of the tree removal permit imposes unreasonable danger on the surrounding properties (residents of 935 and 1001 Balboa Ave). Tree's size and trunk has invaded and entered our property. The trunk and roots of the tree are causing damage to the neighboring fence and our back yard and porch at 1001 Balboa Ave.
- 2) In relation to the city's permit code (12.12.180) removal of Non Heritage tree, C 1b, and the tree which is approx. 140 ft. tall imposes unreasonable safety consideration for the residents of 1001 and 935 Balboa Ave and the surrounding neighbor. The tree's 10 story height with dead branches and is impacted by uncertain weather patterns can surely cause huge damage to our property.
- 3) Referring to the city's permit code (12.12.180) C 1c, (In situations where a tree has caused, or has the potential to cause, unreasonable property damage and/or interference with existing utility services). The tree has caused unreasonable property damage to the fence as mentioned above in #1. In addition, it's continuous growth and trunk expansion continues to damage and encroach on 1001 Balboa yard/property. The tree which is planted on 935 Balboa is imposing and invading 1001 property without permission or allowance. In addition it continues to damage the fence between the two properties.
- 4) The tree has split in two which increases the possibility of injury in the future. The arborist report recognizes the split and offers a solution. However, the solution is very costly and not permanent. It will not resolve the issue of encroachment, hazard and danger the size and volume of the tree imposes on both 935 and 1001 Balboa Ave properties.
- 5) The city of Capitola has conducted a variety of tree cleaning, trimming and cutting operations in the area in the past three years to prevent tree falling on Park Ave and surrounding area. Then why is the city eager to save this tree that imposes direct threat to Capitola residence and owners. Given the current state of climate change, our predictability of weather patterns and possible impact on huge trees is at best very uncertain. As property owner and tax payer, I have a duty to prevent liability and danger to my property residence. In denying the tree removal permit, the city is placing the residence and owners of 935 and 1001 Balboa Ave in grave danger of a possible catastrophe in the future caused by this colossal tree.
- 6) The arborist report does indicate that the tree imposes "moderate" risk which is enough to know there is enough risk to be better prevented sooner than later. The arborist report didn't address the tree encroachment not did it address the tree's roots growing on 1001 Balboa Ave and damage caused to the property and specifically the neighboring fence. It appears

the arborist was not only careless in this matter but ignored one of the main issues of this tree.

- 7) Referring to the city's code (12.12.180) C4, the removal of the tree is not contrary to the 17.64 chapter since not only the city itself has removed trees in the area but also the owner is willing to plant replacement trees as required by the code.
- 8) We have pursued this case since October 2020, first by speaking with the owner Mr. Joe Stokley which has understood the issue and danger of the tree. Mr. Stokley has recognized the tree's encroachment and danger. He agreed to pursue the legal process with the city. He started this process in March 2021 and now almost two years later we are still pursuing the city's permission to remove the tree and protect our properties.
- 9) We believe our rights under the 14th Amendment (Equal Protection of the Law) and the 5th amendment (right to due process and being deprived of private property) are being violated. A portion of our property and land at 1001 Balboa Ave which we pay property tax on is being infringed and encouraged on by a property (The Tree) belonging to someone else (neighbor, Joe Stokley). Joe Stokley has attempted to remedy this issue by agreeing to remove the tree and asking for the city permit which the city has denied. In effect, the city is violation of our property rights as owners of 1001 Balboa Ave. We believe the city's permit denial is aiding and abetting in depriving us of our full property rights but also in allowing the tree danger and damage to remain on our property and exposes us as owners to unreasonable future liability and risk.
- 10) We hope the planning commission understands our issue and view and help us in mitigating future risk and liability to itself, the residences of Balboa Ave neighborhood and specifically the owners of 935 and 1001 Balboa Ave by reversing the permit denial and allowing Mr. Stokley to hire a reputable firm to remove the tree.
- 11) Photos will be supplied showing tree impact and damage.

Appeal Application Supplement – Part 2

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Owner: Joe Stokley

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1001 Balboa Ave, Capitola

September 21, 2022

12) Referring to the Pictures document (Pages 2 – 6), the Eucalyptus tree's encroachment on 1001 Balboa Ave has forced the neighboring fence to move from the property line. This fence was created by the previous owners of both 935 and 1001 Balboa Ave. As owners of 1001 Balboa Ave, we are interested in protecting our property and upholding the property line according to the indication in Santa Cruz County plot map. Therefore, the intrusion/encroachment of the tree's trunk has caused the fence to move into our yard without our permission. The fence should be a straight line. Currently the approximate area of the encroachment (NOT easement) is 15 ft x 6 ft = 90 ft. We would like to reclaim this area and reestablish a straight line fence. Mr. Joe Stokley of 935 Balboa Ave has agreed to fix the fence to the appropriate property line, however, the tree trunk is in the way and therefore, the encroachment continues.

The tree trunk is causing an "Adverse Possession" on our property at 1001 Balboa Ave illegally. The "Adverse Possession" takes place by denying the rightful owners of the property the right to use the property. There is a 90 ft area that we can't currently use. See pictures and see how the fence has been built to accommodate the tree. *"Adverse possession" is a means of acquiring full title to property through "open and notorious" continued possession and use of a property for 5 consecutive years and the payment of all taxes thereon.* Though we understand that taxes must be paid and this will not happen by the 935 Balboa Ave owners. This situation can lead to a claim of "perspective easement." *A prescriptive easement, on the other hand, is merely a means to acquire the right use land, but not the right to own or exclusively possess the land of another. Unlike a claim of adverse possession, a claim of prescriptive easement does not require the party to prove s/he paid all of the real property taxes.* We are not interested or willing to provide any easement to our property. In referring to the court cases below, you will understand that our view on why the tree's encroachment is a violation of our property rights and why this is another reason why the tree should be removed.

In 1996 the California courts decided two cases in which the plaintiffs sought an "exclusive" prescriptive easement. In Silacci v. Adamson, 45 Cal.App.4th 558 (1996) and Mehdizadeh v. Mincer, 46 Cal.App.4th 1296 (1996) the courts held that an "exclusive" prescriptive easement really equates to full title and to acquire full title California law requires the plaintiff to prove adverse possession (all of the elements necessary to a prescriptive easement and that they paid all of the real property taxes on the property). These two cases effectively eliminated the ability to acquire an exclusive prescriptive easement over adjoining residential property as the courts reasoned that by enclosing an adjacent landowners property behind a fence and excluding the true owner from using the property, the neighbor was making more

than a limited right of use – he was exercising the equivalent of full ownership without paying all of the real estate taxes on the property as required by law to gain title to the property via adverse possession.

In the above underlined section, the court supports our claim which is we're being denied to use the space allocated to the tree because of the tree size and encroachment on our property. We cordially ask the planning commission to pay attention to this detail and to protect the rights of all property owners. Therefore, granting Mr. Stokley the permit to remove the tree will enable him to reconstruct the fence at the correct property line and will seize the usage of our property without authorization, easement, or allowance.

935 Balboa Ave Eucalyptus Tree Encroachment on 1001 Balboa Ave

Pictures for Appeal Application







Encroachment. Adverse Possession and Prescriptive Easements.







PORCH DAMAGE





Roots encroachment and yard invasion – Adverse Possession





Continuous Bark and Branches Falling





Cracking Heavy Branches Over Both Properties





Too Close To Anyone's comfort.

Approx 140 ft tall with dead & cracking branches

