

Capitola Planning Commission

Agenda Report



Meeting: November 3, 2022

From: Community Development Department

Topic: 935 Balboa Avenue

Permit Number: #22-0397

APN: 036-232-13

Appeal of an administrative denial of a tree removal permit to remove one mature eucalyptus tree, located within the RM-L (Multi-Family Residential, Low Density) zoning district. This project is in the Coastal Zone but does not require a Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: Joe Stokley

Appellant: Moe Hassan and Tony Sharifi, Filed: 09.19.22

Proposal:

The appeal is of an administrative denial of a Tree Removal Permit for a eucalyptus tree located at 935 Balboa Avenue in the RM-L (Multi-Family Residential, Low Density) zoning district. The eucalyptus tree is situated on a property line between the properties of 935 Balboa Avenue and 1001 Balboa Avenue. Joe Stokley, hereafter also 'owner', owns the property at 935 Balboa Avenue. Moe Hassan and Tony Sharifi, hereafter also 'appellant', own the property at 1001 Balboa Avenue.

Background:

In September 2020, the City inspected the eucalyptus tree due to an inquiry of the tree being a possible public nuisance. Findings could not be made to declare the tree a public nuisance and hazard.

Between May and June of 2021, the City received an application from Mr. Stokley to remove the eucalyptus. The application included an arborist report prepared without City involvement. The report was dated December 2019 and was paid for by the listing agent, prior to Mr. Stokley purchasing the property. The report recommended tree retention and a follow-up review after 2 years. Staff again inspected the tree and could not find substantial change in condition and could not make necessary findings for the removal of the tree.

On June 29, 2021, staff notified the owners of 935 Balboa Avenue and 1001 Balboa Avenue that findings could not be made by staff. The determination included the option for a follow-up review by a city-contracted arborist to look at the tree, as 18 months had passed since the previous review.

On March 2, 2022, the property owner submitted payment for a review by a city-contracted arborist.

On May 19, 2022, the arborist submitted a written report (Attachment #3), recommending that the eucalyptus be preserved with mitigations. The owner requested the application be placed on hold

so a contractor could inspect the site for possible root-related damage not detected by staff or the arborists. Subsequently, no additional information was provided and the applicant requested staff issue a determination letter.

On September 2, 2022, staff sent letters to the applicant and adjacent property owner (appellant), administratively denying the tree removal for the eucalyptus because the required findings to approve a removal could not be made. The letter included the suggestion to implement the mitigation measures prescribed in the latest arborist report.

On September 9, 2022, the owner of 1001 Balboa Avenue submitted an appeal of the denial (Attachment #1), pursuant to CMC 12.12.180(F).

Discussion:

The appellant is requesting to remove one mature eucalyptus tree located in the rear yards of both 935 Balboa Avenue and 1001 Balboa Avenue. The tree is approximately 135 feet tall and five feet in diameter at 54-inches above grade. The tree has a significant canopy presence, some of which extends over the duplexes at 935 and 1001 Balboa Avenue. The tree is not located in an environmentally sensitive habitat area. The appellant outlined the reasons for the removal request relating to safety considerations, tree encroachment, and property damage.

Community Tree and Forest Ordinance

Under the City's Community Tree and Forest Management Ordinance, Municipal Code Section 12.12.180(C) allows Public Works staff to approve the removal of a non-heritage tree if it can make all the findings in subsections (C)(1) through (C)(4). If, after conducting the complimentary inspection, public works staff cannot make the required findings, the application is reviewed by planning staff and the city may require the applicant to pay for an arborist, under contract to the city, to prepare an arborist report. The Community Development Director reviews the report and determines whether or not the tree removal should be approved based on the report and if all the required findings can be made. The applicant, or interested party, may appeal staff's determination to the Planning Commission.

Staff Review

The Planning Commission may approve the permit based on the findings of Section 12.12.180(C)(1) through (C)(4), as listed below.

1. The tree removal is in the public interest based on one of the following:
 - (a). Because of the health or condition of the tree, with respect to disease infestation, or danger of falling.

Staff Analysis: The tree is in a good state of health and growth. The tree has a fair structural condition because it has codominant stems but with attachment twelve feet above ground. There is no evidence of fungal or disease-related decay. There is a low likelihood of total tree failure.
 - (b). The tree poses a safety concern without mitigating action.

Staff Analysis: There is some deadwood within the canopy. Deadwood larger than 1-inch in diameter could pose a safety concern if they are not removed. The arborist suggests mitigation through removal of deadwood and selective weight reduction on larger limbs and consideration of a support cable between the codominant stems.
 - (c). In situations where a tree has caused, or has the potential to cause, unreasonable property damage and/or interference with existing utility services.

Staff Analysis: Deadwood has the potential to cause some level of property damage without removal. Currently, the likelihood of live branches causing property damage appears low. Concrete flatwork in the backyard of both properties show some evidence of cracking which does not appear to be due to root uplift.

2. All possible and feasible alternatives to tree removal have been evaluated, including, but not limited to undergrounding of utilities, selective root cutting, trimming and relocation.

Staff Analysis: There are feasible hazard reduction alternatives to removal. The arborist recommends removal of deadwood and selective weight reduction on larger limbs and consideration of a support cable between the codominant stems. Removal is the only way to entirely eliminate risk, but that risk can be effectively mitigated with tree management and periodic inspection.

3. The type, size and schedule for planting replacement trees is specified and shall be concurrent with the tree removal or prior to it, in accordance with Section 12.12.190(F) and (G).

Staff Analysis: The property has a deep lot which extends into the grove of eucalyptus trees along Park Avenue. Staff evaluated the site and expects a post-removal tree canopy coverage of approximately thirty percent will be secured with existing trees.

4. The removal of the tree would not be contrary to the purposes of this chapter and Chapter 17.95.

Staff Analysis: The property is not located within an environmentally sensitive habitat area but is contrary to the purposes of the Community Tree and Forest Management ordinance as there are feasible alternative mitigations are recommended by the arborist over removal.

Appeal

The appellant is requesting the Planning Commission reverse the denial for the removal of one eucalyptus tree. In the appeal, they outlined their concerns, including:

1. Safety with respect to the possibility falling branches or of total tree failure.
2. Existing property damage from roots.
3. Future property damage from failing branches or of total tree failure.
4. Concerns as to the nature of property rights and encroachments. The appeal makes references to court cases involving fences.

Planning Commission Review

During the appeal hearing, the Planning Commission may take action on any aspect of the appealed project as the review is de novo. In reviewing the standards for tree removal established in Section 12.12.180(C) of the Capitola Municipal Code, the Planning Commission may deny the appeal and uphold staff denial for removal, as outlined in the findings and conditions. If the Planning Commission can make the findings for tree removal, they may uphold the appeal and reverse the administrative denial and provide staff with findings to support the decision.

CEQA:

Section 15304 of CEQA Guidelines exempts minor alterations to land. The project involves the removal of one eucalyptus tree within the RM-L (Multi-Family Residential) zoning district. The subject tree is healthy and mature but is not scenic. No adverse environmental impacts were discovered during review of the appeal.

Recommendation:

Staff recommends the Planning Commission deny the appeal and uphold the Community Development Director's decision to deny the tree removal and implement the arborist's recommended mitigation measures.

Attachments:

1. 1001 Balboa Avenue – Appellant Letters and Photos
2. 935 Balboa Avenue – Arborist Report #1 – 12.17.2019
3. 935 Balboa Avenue – Arborist Report #2 – 05.19.2022

Conditions:

1. The tree removal is denied. Tree maintenance measures including pruning, removal of dead wood, and cabling as prescribed within the arborist reports by Kurt Fouts or Nigel Belton, are approved.
2. Tree work beyond or outside the scope of the aforementioned arborist reports is subject to Community Development Director determination and may require additional arborist services at applicant cost.

Findings:

A. The removal of the tree is in the public interest with respect to the condition of the tree.

The tree is in a good state of health and growth. The tree has a fair structural condition because it has codominant stems but with attachment twelve feet above ground. There is no evidence of fungal or disease-related decay. There is a low likelihood of total tree failure.

B. The tree poses a safety concern without mitigation.

There is some deadwood within the canopy. Deadwood larger than 1-inch in diameter could pose a safety concern if they are not removed. Removal of the deadwood is recommended as a mitigation measure.

C. The removal of the tree is in the public interest with respect to unreasonable existing and potential property damage.

Deadwood has the potential to cause some level of property damage without removal. Currently, the likelihood of live branches causing property damage appears low. Concrete flatwork in the backyard of both properties show some evidence of cracking which does not appear to be due to root uplift.

D. There are no feasible alternatives to tree removal that secure the purposes of the Community Tree and Forest Management Ordinance.

The arborist identified feasible alternatives to removal. The arborist recommended removal of deadwood and selective weight reduction on larger limbs and consideration of a support cable between the codominant stems.

E. The removal of the tree would not be contrary to the purposes of this chapter and Chapter 17.95.

The property is not located within an environmentally sensitive habitat area but is contrary to the purposes of the Community Tree and Forest Management ordinance as there are feasible alternative mitigations are recommended by the arborist over removal.