

**PLANNING COMMISSION  
REGULAR MEETING  
DRAFT MINUTES**

**TOWN OF ATHERTON  
COUNCIL CHAMBERS  
80 FAIR OAKS LANE  
ATHERTON, CALIFORNIA  
SEPTEMBER 25, 2024  
6:00 P.M.**

*This meeting was held in person with the option for staff and the public to join online.*

**1. ROLL CALL**

**PRESENT:   Eric Lane, Chair  
              Bob Polito, Vice-Chair  
              Thom Bryant, Commissioner  
              Sandy Levison, Commissioner  
              Paul Tonelli, Commissioner**

Town Planner Brittany Bendix, Associate Planner Sean Manalo, and Town Arborist Sally Bentz-Dalton were present.

Chair Lane clarified that Commissioner Bryant was in attendance online. Commissioner Bryant would participate in discussions but abstain from voting as his online attendance was not posted on the agenda before distribution to the public.

**2. PUBLIC COMMENTS**

Chair Lane opened the public comments period.

A resident requested that the Planning Commission encourage City Council to accept the Planning Commission's recommendation regarding the Bay Road properties. He discussed concerns regarding traffic congestion on Bay Road and potential pedestrian injury, given the number of children walking in the area. He noted dangerous conditions were being created by the zoning changes and additional cars, and residents wanted a continuation of R1 zoning standards.

Chair Lane recommended that the resident present his same comments at the upcoming special meeting of the City Council.

Ken Frederick, a resident of Lindenwood, noted the Town still did not have a good solution to the housing issue despite the current options and a long-term solution should be explored. He suggested holding a resident information session to obtain resident feedback on where to establish new housing to meet the state and town needs.

Chair Lane noted the only way for the Town to have affordable housing was through the ADU methodology as the land was already paid for.

There being no further public comments, Chair Lane closed the public comments period.

### 3. APPROVAL OF MINUTES

**MOTION to approve the minutes of the Planning Commission meeting held on August 28, 2024, as presented.**

**M/S Levison/Tonelli      Ayes: 4    Noes: 0    Abstain: 1    Absent: 0**

### 4. PUBLIC HEARING

#### a. **Consideration for a Tree Protection Zone Exception (PTPZ24-00005) for an athletic court (pickleball court) at 60 Middlefield Road (APN 060-210-010).**

Associate Planner Sean Manalo presented the staff report for the request for a Tree Protection Zone Exception for an athletic court at 60 Middlefield Road.

The recommendation from staff was to approve the request for a Tree Protection Zone Exception to be at 5.8 times the diameter of the trunk at breast height, noted as 5.8 times from one 17-inch coast live oak for the construction of a new athletic court (pickleball court).

Town Arborist Sally Bentz-Dalton noted the tree was young and healthy, and less than 15% of the tree roots were affected. She further noted that construction of the court was on grade, and it was required for the edged slab to be hand dug and for the project arborist to be on site when this occurs. She reported that other locations were considered but could not be accommodated due to setbacks or other heritage trees on site.

Chair Lane queried whether the proposed athletic court was similar to other athletic courts that had come before the Planning Commission. Town Arborist Sally Bentz-Dalton confirmed the proposed athletic court was the same type of construction as previous athletic courts that had come before the Planning Commission in 2024 and 2023.

Chair Lane opened the public comments section.

Applicants Rick Sklarin and Debbie Sklarin confirmed the Applicants explored other locations but the proposed location was the only area that could accommodate the zone. The Applicants had a tree protection zone plan in place that followed all tree protection requirements for the Town. The Applicants noted construction was only a flat slab of concrete on grade, and there would be no trenching, power digging, electrical, or soil disturbance or compaction.

Commissioner Polito queried whether the concrete went all the way to the chain link fence. The Applicants confirmed it did.

Chair Lane closed the public comments section.

**MOTION that the Planning Commission approve a Tree Protection Zone Exception (PTPZ24-00005) for an athletic court (pickleball court) at 60 Middlefield Road (APN 060-210-010), based on the findings enumerated in the staff report.**

**M/S Lane/Polito      Ayes: 4    Noes: 0    Abstain: 1    Absent: 0**

**b. Consideration for a Tree Protection Zone Exception (PTPZ24-00004) for an addition to an existing single-family dwelling at 168 Heather Drive (APN 061-163-080).**

Associate Planner Sean Manalo presented the staff report for the request for a Tree Protection Zone Exception for an addition to an existing single-family dwelling at 168 Heather Drive.

The recommendation from staff was to approve the request for a Tree Protection Zone Exception to be at 4.5 times the diameter of the trunk at breast height, noted as 4.5 times from one 92-inch coastal redwood (Tree #51) for the construction of a new addition to an existing single-family dwelling.

Town Arborist Sally Bentz-Dalton noted the proposed addition to the single-family dwelling would be less detrimental to the tree than demolishing and rebuilding a new single-family dwelling. She recommended to proceed as most of the new structure would be where there was an existing patio, which had already compacted the soil. She noted improvements to the pathway that should help the tree, and it was required that the tree be irrigated during the entire process. She recommended approving the request as there were constraints to other areas due to the number of heritage trees, and the tree was very healthy and could withstand the construction impact.

Chair Lane opened the public comments section.

Architect Janet provided clarification on the location of the existing dwelling and the proposed bedroom extensions on the map.

Chair Lane closed the public comments section.

Commissioner Polito requested that No. 6 and No. 7 be removed from the draft tree protection zone exception certificate as they were not relevant to the request.

**MOTION that the Planning Commission approve a Tree Protection Zone Exception (PTPZ24-00004) for an addition to an existing single-family dwelling at 168 Heather Drive (APN 061-163-080), based on the findings enumerated in the staff report.**

**M/S Polito/Levison    Ayes: 4    Noes: 0    Abstain: 1    Absent: 0**

**c. Consideration for a Side Setback Variance (VAR24-0002) for an athletic court within the required side setback area at 71 Selby Lane (APN 059-302-050).**

Associate Planner Sean Manalo presented the staff report for the request for a Side Setback Variance for an athletic court within the required side setback area at 71 Selby Lane.

The recommendation from staff was to approve the request for a Side Setback Variance for the construction of an athletic court that was setback four feet five inches from the western side property line. The variance request was for an athletic court already constructed without the appropriate building permit and located four to five feet from the property line to maintain encroaching 5.5 feet into the side setback for accessory structures. Associate Planner Sean Manalo reviewed the permit history and noted the Planning Department granted approval and the Building Department followed with a permit for a single-family residence. A grading and drainage permit along with a site improvement plan were approved by the Building Department but never reviewed by the Planning Department. The Applicant's grading and drainage permit was reviewed by the town arborist, who recommended moving the athletic court to a new location from the proposed location to avoid encroaching on a tree protection zone exception, and the Applicant followed that direction. The site improvement plan had

details of the new proposed location for the athletic court, and the plan was approved by the Building Department. The Applicant was issued a temporary occupancy permit from the Chief Building Official and a request to submit for a formal building permit. Staff noted the only non-compliance item was the less than 10 feet side setback required for accessory structures and recommended that the Planning Commission could meet the four findings.

Commissioner Polito queried whether part of the Town's permitting process was to let applicants know what did and did not require a permit. Commissioner Polito expressed concern that the Applicant proceeded for two years without knowing that the athletic court required a permit and needed to be at least 10 feet side setback. Associate Planner Sean Manalo noted the athletic court appeared smaller and within the side setback requirements in the building permit approved on August 17, 2022. Associate Planner Sean Manalo further noted the Planning Department does not regularly review grading and drainage permits or landscaping screening plans, as review of these items were designated to the Building Department and Public Works.

Town Planner Brittany Bendix noted miscommunication between departments was not abnormal. Public Works employees were not trained to identify a specific turf for an athletic court on a grading and drainage plan as something that would require review by the Planning Department; however, staff were working to train the Public Works office to identify this now and in perpetuity. Town Planner Brittany Bendix further noted a provision for an athletic court was not typical in planning code and was unique to Atherton. Chair Lane suggested holding a monthly cross group meeting to discuss ongoing projects. Town Planner Brittany Bendix noted builders roundtables were held to share information about protocols with the building community and to get initial feedback before launching new protocols or making changes to existing systems.

Chair Lane opened the public comments section.

Applicant Carrie O'Rourke stated she was shocked to receive a stop work order in May 2024. The Applicant noted the color-coded plan had elements that were more like a rendering, and the Applicant had spent years working with a landscape designer on the hardscape and protection of trees and mature landscape. On December 13, 2022, the Applicant submitted a site improvement plan that updated everything on-site outside of the specific building of the new residence, gym and garage. The Applicant noted the stamped permit from December 2022 did not indicate that a separate permit for the athletic court was required. The pervious concrete was poured for the athletic court in December 2023. Inspectors and engineers were on-site throughout the project and were under the impression that the Applicant was in full compliance, and the only reason the side setback was allowed was due to the use of pervious material for the athletic court. The Applicant offered to assist in providing any feedback for changes to the permitting process to avoid other residents experiencing the same challenges. The Applicant noted significant additional expenses incurred as a result of the oversight and requested reimbursement from the Town in light of the recent increase in the variance request fee. Chair Lane apologized for the oversight and emphasized the importance of a change in the Town's permitting process. Chair Lane noted the Planning Commission would further discuss the request for reimbursement.

Chair Lane closed the public comments section.

Commissioner Polito queried whether every variance request required a \$10,000 fee from residents and what the variance fee was prior to the price increase. Town Planner Brittany Bendix confirmed the \$10,000 fee requirement and that the previous fee would have to be verified. Town Planner Brittany Bendix further noted fees were raised as they had not been raised in 10 years and did not reflect the staff time required. Assistant Planner Sean Manalo stated the cost of the Applicant's variance request

was \$11,075 since the fee schedule change in July 2024. The fee for another property was \$3,000 for a variance request in March prior to the fee schedule change.

Commissioner Polito expressed concern with the lack of oversight from staff over the past two years to recognize the 10 feet side setback requirement. Commissioner Polito emphasized the Town's responsibility and recommended that the Applicant be refunded the variance request fee. Town Planner Brittany Bendix confirmed that the request for reimbursement would be discussed with the City Manager's office.

Chair Lane queried whether the athletic court could have been moved 10 feet without requiring a variance, which would preclude a variance request and preclude the \$3,000 variance fee. He agreed that the Applicant should at the least be reimbursed \$3,000.

Commissioner Bryant agreed it was the Town's error, and the Town should be held responsible and reimburse the Applicant for the variance fee.

Chair Lane suggested staff development for process improvement and emphasized the importance of establishing a methodology for reviewing total plan views on a property moving forward. He requested that Town Planner Brittany Bendix keep the Planning Commission apprised of the discussion with the City Manager's office regarding reimbursement to the Applicant.

**MOTION that the Planning Commission approve the variance at 71 Selby Lane to allow the homeowner to maintain the preconstructed accessory structure athletic court within the required side yard setbacks based on the findings enumerated in the staff report and further recommend to waive the variance fee due to errors made by the Town during the project.**

**M/S Polito/Lane      Ayes: 4   Noes: 0   Abstain: 1   Absent: 0**

## **5. STAFF REPORTS**

- a. **Town Planner Report:** Town Planner Brittany Bendix noted the Housing Element package was introduced to City Council at their meeting on September 18, 2024. City Council had challenges getting through the package at the meeting and also received public requests for continuation. The meeting would thus continue on October 2, 2024, to still be on track for approval of the Housing Element by October 16, 2024, which would also be the date of the hearing and adoption. Following adoption, the Housing Element and Zoning Code package would be sent to the Department of Housing and Community Development (HCD) for formal consideration. Feedback from HCD was received on a rolling basis as they review documents submitted by the Planning Department.

Chair Lane queried the feedback received from HCD to date. Town Planner Brittany Bendix reported generally positive feedback. There was one item brought to the City Council that was not brought to the Planning Commission, which would require a mid-cycle performance review of the RM10 program. The City Council was exploring how to quantify success in the program and at what point the City Council should review progress in the program. Town Planner Brittnay Bendix would be meeting with HCD to further discuss their concerns regarding an FAR standard period.

Commissioner Bryant attended the City Council meeting and noted sentiment to reduce the FAR from 50% to 30%. However, the state prefers to increase the density of all properties. He expressed concern that the state would establish design standards that cannot be economically developed.

Town Planner Brittany Bendix noted she did not support the Planning Commission's recommendation for the Housing Element in its entirety. The Planning Commission recommended removing Bay Road and Ringwood from the Housing Element, but she recommended against it as she believed the additional sites were needed to satisfy HCD requirements. She reported interest was received to develop the sites for three out of the four properties. She was thus reluctant to support the Planning Commission's recommendation to remove those sites. She also recommended that City Council adopt the side and rear setbacks despite the Planning Commission not supporting it, as she felt the flexibility was important for future developments.

Commissioner Polito noted the Planning Commission reduced the 80 feet rear setback to a 60 feet minimum at the last Planning Commission meeting, as the Planning Commission did not believe an 80 feet multi-family setback should be more generous than a regular R1A other than in the front. However, the Town Planner went back to the City Council with a proposed 50 feet rear setback. Town Planner Brittany Bendix acknowledged the rear setback was reduced to 50 feet but the table that reduces the lot as width changes was maintained. Commissioner Polito noted he would write a letter to City Council to emphasize that reducing the rear setback to 50 feet was unacceptable.

Chair Lane noted his concern with the assumption that the exit for the four properties would be on Bay Road. He believed the traffic pattern in that area could still handle the density without the danger that would be created by exiting on Bay Road. He suggested that developments be pointed towards pre-existing neighborhoods and not Bay Road to allow traffic to flow through the neighborhoods as they currently do. He acknowledged potential pushback from residents in the neighborhoods due to increased vehicle traffic, but the traffic would be safer and more manageable.

Town Planner Brittany Bendix clarified that the front of all four properties was on Bay Road and they already had pre-existing access on Bay Road, with the exception of 999 Ringwood. The front of the property at 999 Ringwood as currently developed was on Bay Road, but would change to Ringwood for the new development per planning code. Commissioner Polito sought clarification that a rear setback in this case would be the side setback. Town Planner Brittany Bendix confirmed this was correct unless the provision in planning code that allows the use of Bay Road as frontage was utilized.

Commissioner Polito noted he learned from speaking with the City Manager that staff at the Planning Department had an arrangement with HCD that CEQA submissions would be approved by HCD. He noted he still would have made the same recommendation but asked why the Planning Commission was not informed of this arrangement. He reported a lapse in receiving information.

Chair Lane noted the Planning Commission should have been informed of the Town Planner's recommendation to City Council at the last Planning Commission meeting. He expressed concern that the Town Planner brought forth a recommendation that differed from the Planning Commission without informing the Planning Commission. Town Planner Brittany Bendix reiterated that staff made a recommendation which the Planning Commission did not support and opted for a different approach; however, staff presented an alternative recommendation to City Council for their consideration. Chair Lane noted this would change his approach to any recommendation he makes on items that may be more controversial.

Commissioner Bryant noted the design standards for the school sites that were presented at the last Planning Commission meeting were inappropriate and should have been omitted. However, he did not believe this was reflected and articulated in the Town Planner's presentation to City Council. He believed it would be helpful to help City Council understand that schools have their own architectural styles and design standards for schools should not be considered.

**6. COMMISSIONERS' REPORTS**

Commissioner Bryant requested a report from staff on the average number of variance requests received, approved, and denied on an annual basis to help identify the workload on staff and the types of issues being presented.

Commissioner Polito noted the data would have to be separated based on tree exceptions, accessory structures, main structures, etc.

The Planning Commission agreed for staff to present the requested data year-to-date at the December meeting.

**7. ADJOURN**

**M/S Tonelli/Polito      Ayes: 4    Noes: 0    Abstain: 1    Absent: 0**

The meeting was adjourned at 7:14 p.m.