



**Town of Atherton
Planning Department
80 Fair Oaks Lane
Atherton, California 94027
Phone: (650) 752-0544**

DATE: DECEMBER 11, 2024

TO: PLANNING COMMISSION

FROM: BRITTANY BENDIX, CONSULTING TOWN PLANNER

SUBJECT: Request for Tree Protection Zone Exception (PTPZ24-00009) for a pool at 88 Linda Vista Avenue (APN 070-161-150).

CEQA: This proposal has been determined to be categorically exempt from further environmental review pursuant to AMC Section 15.32.100 and CEQA Section 15304 (Minor Alterations to Land) and 15311 (Accessory Structures).

RECOMMENDATION:

Staff recommends that the Planning Commission **approve** the Tree Protection Zone Exception (PTPZ) requests to be at: 6 times the trunk's diameter at breast height, noted as 6x from (1) one 29-inch Coast Redwood (Tree #51), (1) one 23.4-inch Coast Redwood (Tree #53), and (1) one 25.3-inch Coast Redwood (Tree #54), to accommodate the construction of a new pool in the rear yard.

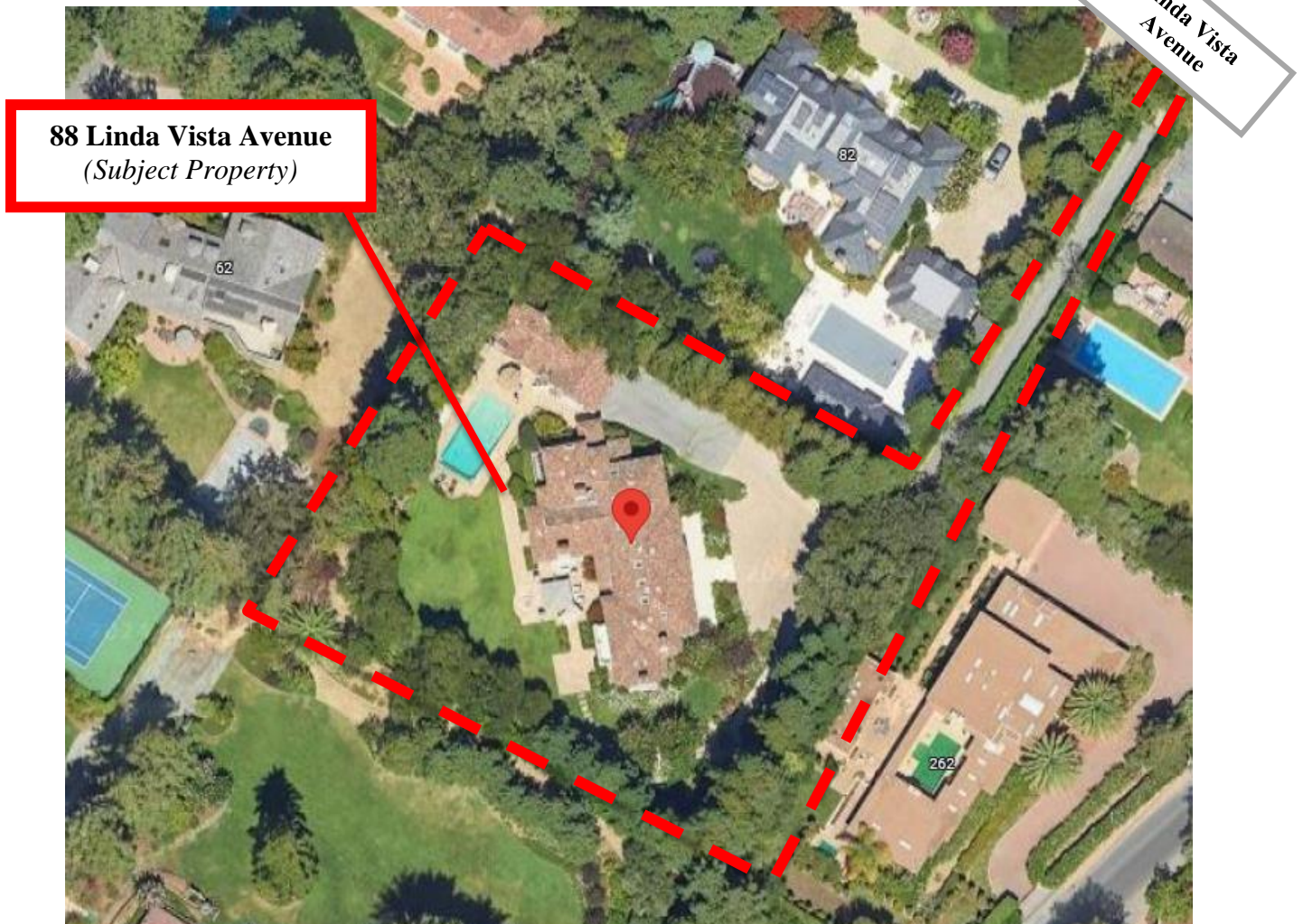
BACKGROUND:

Location and Context

The subject site is located at 88 Linda Vista Avenue and is associated with an approximately 44,393 (1.02-acre) flag lot site within the R-1A zoning district. Neighboring properties vary in size from 0.71 acres to 1.99 acres and are of varying shapes. The existing lot conforms to the R-1A zoning requirements; additionally, the lot is relatively flat without significant slope or topographic challenges. Figure 1 shows the general configuration of the subject property.

The project involves Building Permit application no. BP24-00027, first applied for on January 12, 2024, and currently on hold with the Town. The permit would allow for the demolition of the existing pool and the construction of a new pool and spa at the rear of the subject property. During review of the subject building permit, the Planning Department indicated the scope of work generally complies with the requirements of the Planning Code but requires review and approval by the Town Arborist. Additionally, the ultimate issuance of a permit to commence work is provided by the Building Department.

Figure 1: Lot Configuration and Layout (Source: Google Maps)



During the course of 2024, the Town Arborist has denied the building permit application five times asserting that the proposal is too close to heritage trees and requires a distance of 10x, unless the applicant chooses to submit a staff-level exception at 8x. A distance less than 8x requires Planning Commission consideration.

On October 4, 2024, the Town received an application for a Tree Protection Zone Exception (PTPZ) application to the Planning Commission. The proposed pool is within the TPZ of three heritage trees: one 29-inch Coast Redwood (Tree #51), one 23.4-inch Coast Redwood (Tree #53), and one 25.3-inch Coast Redwood (Tree #54) and requires an exception by the Planning Commission.

Subsequent to the submittal of the PTPZ application, staff learned from the applicant team that the pool installation had already occurred; without benefit of a permit. As a result, a code enforcement case was opened on October 23, 2024 for work started prior to issuance of a pool permit.

This report provides a description of the project application (Attachment 1) and required (TPZ) analysis. Additionally the report provides an analysis of any penalties related to the work that has occurred prior to Planning Commission consideration.

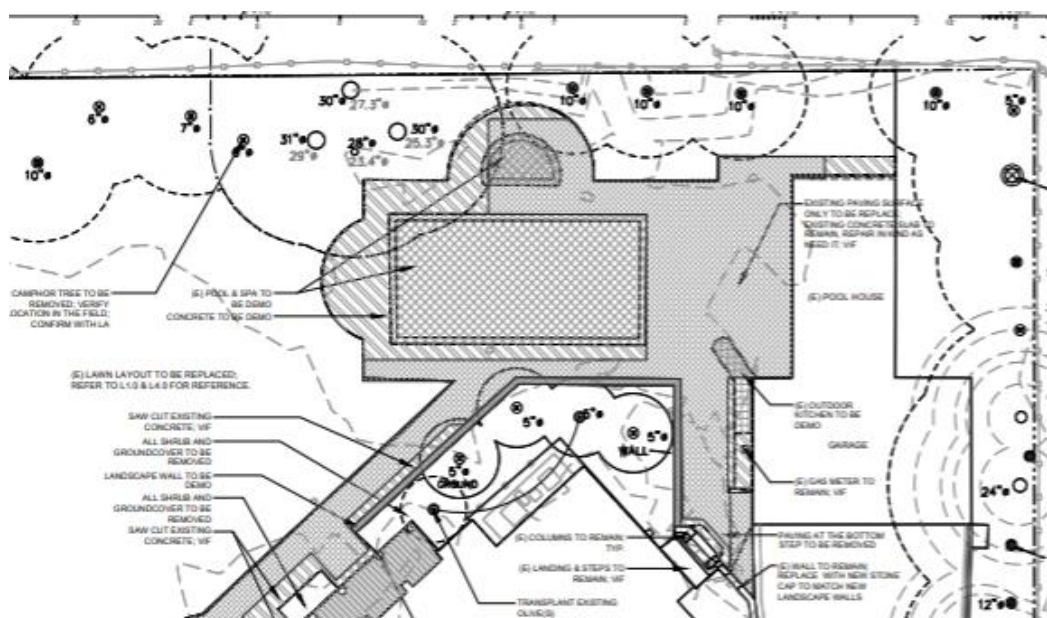
PROJECT DESCRIPTION:

The proposed project involves legalization of the demolition of an existing pool and the installation of a new pool at the rear of the property behind the main building. Figure 2 below provides the site plan of the previously existing pool provided included in Attachment 2. Figure 3 provides the site plan for the new pool, as constructed without benefit of a permit; also included in Attachment 3. According to the Applicant narrative provided at Attachment 3, the new swimming pool location placed along the axis of the centerline of the existing pool house provides a more overall cohesive design, complementing the location pool house.

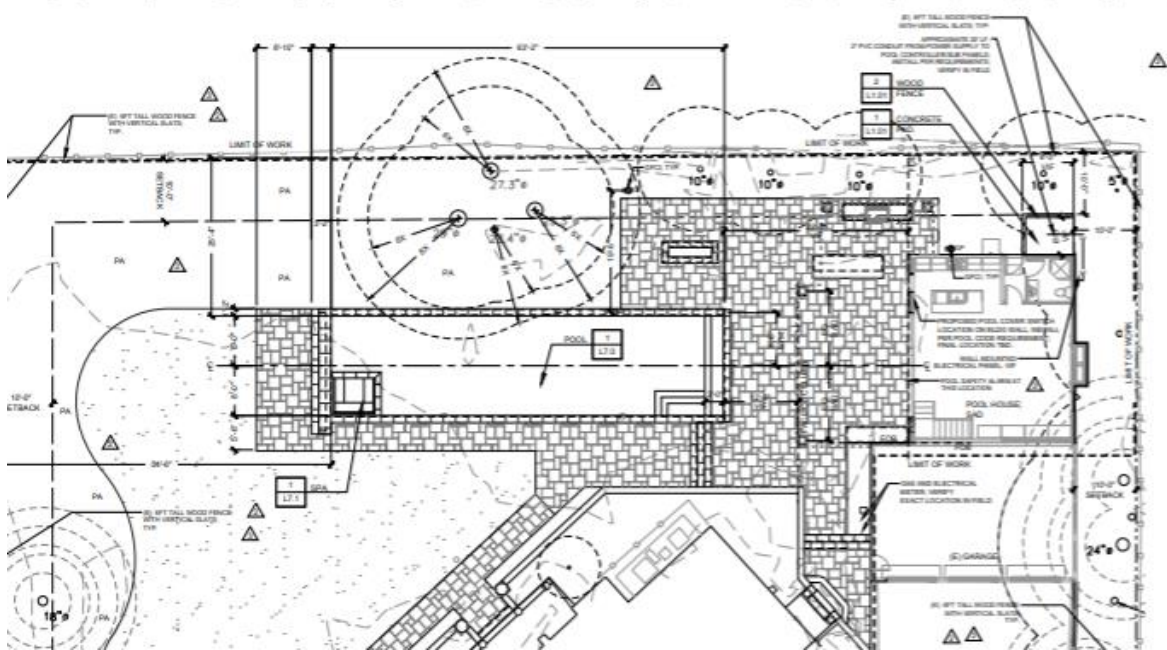
An alternative design was provided by the Applicant and is included in Figure 4 and Attachment 4. This design places the pool at a 45-degree angle away from the center axis of the pool house, and outside of the requested PTPZ area requiring Planning Commission approval. The Applicant explains however, that this design would block the main drainage basin for the property in the rear lawn, disrupt the visual symmetry and balance of the overall landscape, and complicates the layout and functional aspects of the rear yard space. For these reasons, the alternative design was not pursued.

Should the Planning Commission deny the PTPZ and encourage the design alternative, the area of the new pool that was constructed without a permit would require further disruption of the TPZ area as it would require fill and likely, soil compaction of the area.

**Figure 2: Previous Existing Pool Location
(Attachment 3)**



**Figure 3: Constructed Pool Location
(Attachment 3, Sheet L-1.0)**



**Figure 4: Alternative Pool Location
(Attachment 5)**

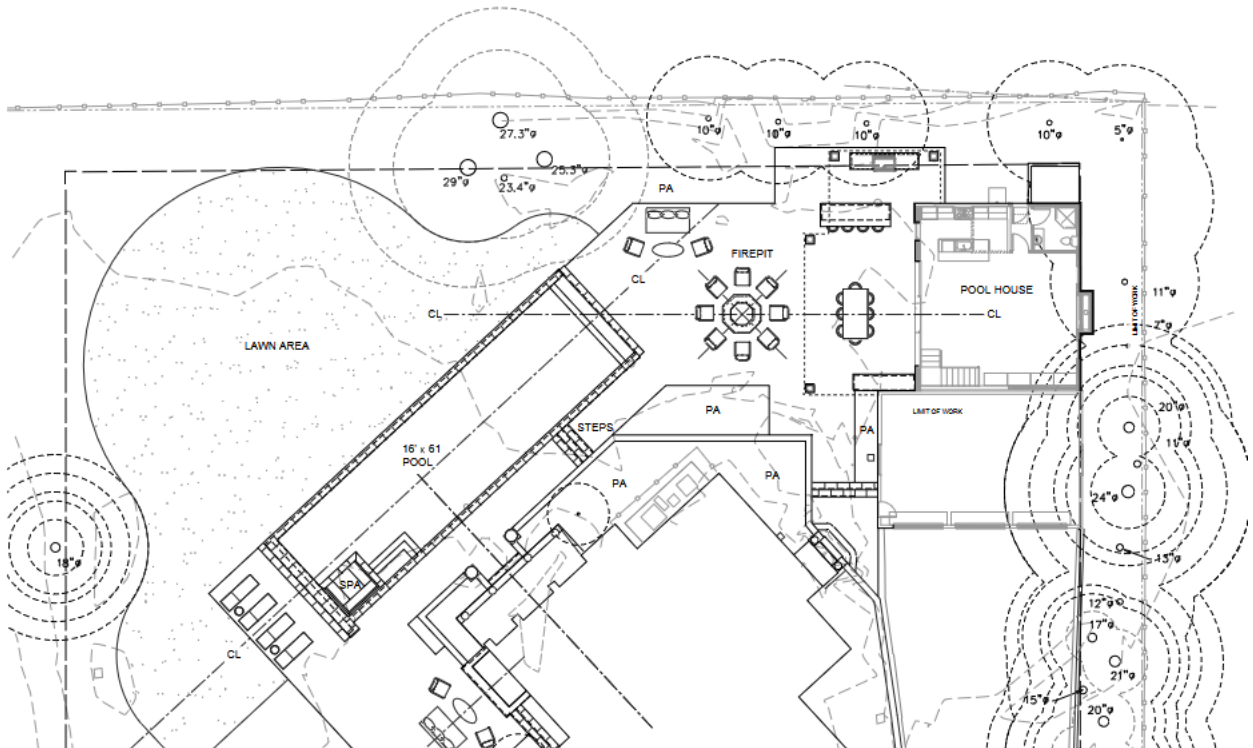


Table A provides a summary of the subject trees requested to have the 6x tree protection zone (PTPZ) exception, as detailed in the Applicant's Arborist and Construction Report prepared by Chris Stewart of Urban Tree Management (Attachment 5). Figure 5 provides a collection of current photos of the project and subject area, constructed without a building permit.

Table A: Summary of Subject Heritage Tree Proposed for Heritage Tree Removal

| Tree # | Tree Species | Location | DBH | PTPZ Request |
|--------|---------------|--------------------------------------|-------------|------------------------------------|
| 51 | Coast Redwood | 88 Linda Vista (Subject Property) | 29-inches | 6x-diameter breast height (dbh) |
| 53 | Coast Redwood | 88 Linda Vista (Subject Property) | 23.4-inches | 6x-diameter breast height (dbh) |
| 54 | Coast Redwood | 88 Linda Vista (Subject Property) | 25.3-inches | 6x-diameter breast height (dbh) |

Figure 5: Current Status, Executed Pool Construction (from Town Arborist Memo)



Table B provides a summary of the general development standards for accessory structures that are applicable to the subject lot, as well as the project proposal and its compliance status. The proposed pool located at the rear of the property would comply with all standards related to front, rear, and side setbacks, and distance between structures.

Table B: Required and Proposed General Development Standards

| Standard | Required | Proposed, as Executed | Status |
|---------------|--|--------------------------|-----------|
| Front Setback | 90- feet min. or 30-ft behind the main house, whichever is less | More than 90-feet | Compliant |
| Rear Setback | 10-feet | 28- feet, 4-inches | Compliant |
| Side Setback | 10-feet | 34-feet, 6-inches | Compliant |

ANALYSIS:

Pursuant to the *Atherton Heritage Tree Preservation Standards and Specifications*, an applicant may apply to the Planning Commission for a TPZ exception, when a project is otherwise unable to be approved at the staff level by the Town Arborist. The Planning Commission may approve or reject such applications based on the following criteria:

1. The relation of the project to criteria listed in Section 2.2.B.2 of the Standards:
 - a. The utility location is required by a utility company and it cannot be moved. A confirmation in writing from the utility is required.
 - b. If the species is tolerant of construction based on species, health, size, and age from the Matheny and Clark tolerance chart.
 - c. There are no roots over 2-inches diameter that need to be cut.
 - d. Other criteria as may be required by the Town Arborist.
2. The probability of failure which is a function of heritage tree and site conditions such as, but not limited to, structural defects, presence of disease, species history, age or remaining life span, and varying weather conditions.
3. The probability of a public safety hazard, personal injury or significant property damage as a function of proximity to existing structures and objects of value and interference with utility services.
4. The number, species, size and location of existing trees in the area and the effect of the requested exception upon shade, noise buffers, protection from wind damage, air pollution, historic value, scenic beauty, health, safety and general welfare of the area and town as a whole

5. The necessity to allow reasonable use or other enjoyment of the property when there is no demonstrated feasible alternative to the exception while meeting other adopted goals and policies of the general plan to the greatest extent possible.

A memo by the Town Arborist analyzing the proposed project is provided in Attachment 6. In this memo, the Town Arborist chronicles multiple instances during the building permit review period that the Town Arborist denied the submission and outreached to the Applicant to inform them of issues related to the proposed pool's location. Additionally, the Town Arborist asserts that the Applicant moved the pool closer to the subject trees than was presented, executed work without a building permit, and neglected to install the required tree protection fencing for the project. The Town Arborist explains that a recommendation to approve this tree protection zone exception under these circumstances would set a precedent for projects to start work without a permit before receiving an approved action from the Planning Commission. **For these reasons, the Town Arborist cannot recommend approval of the proposed project.**

Although the Town Arborist cannot recommend approval of the proposed project, the Planning Department is recommending approval to limit further disruption to the protected trees in the TPZ resulting from the infill of the constructed pool. Because work on the pool has commenced without benefit of a permit, corrective permits filed with the Building Department will receive a penalty of two times the amount of the initial permit. This results in an estimated penalty of \$7,467.56 and results in a total of \$11,201.34 in Building Department fees for the project.

Additionally, in the event the Planning Commission decides to grant the PTPZ for the proposed project, the Town Arborist has provided recommended conditions of approval related to tree appraisals and values for fines. Condition number 2 would monitor the health of the trees in the impacted area and states:

Upon final inspection and completion of the related building permit, the applicant shall submit quarterly arborist reports documenting the health of the three trees subject to this approval for a period of five years. If at any point the health of the subject trees decline within those 5 years and require removal, the owner will be fined an amount equal to twice the value of the tree(s), as appraised by the Town Arborist.

With the penalties applied by the Building Department and ongoing monitoring of the trees by the Town Arborist, the Planning Department recommends approving the PTPZ request.

PUBLIC NOTIFICATION

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Legal advertisement of this hearing was published in The Almanac newspaper and mailed to owners and occupants within the Town, 10 days prior to the hearing date. To date, the Town has no received comments from the public.

CONCLUSION

As indicated above, the Planning Department recommends that the Commission approve the Tree Protection Zone Exception permit as proposed, subject to the conditions listed in the Draft Tree Protection Zone Exception Permit Certificate, provided in Attachment 7.

The General Plan goal that can be found to be consistent with the recommendation to approve the Tree Protection Zone Exception permit is below:

Town of Atherton General Plan, Land Use Policy 1.8:

Maximize preservation of heritage trees and existing trees within a development site to the greatest degree feasible, consistent with the Heritage Tree Ordinance and Tree Preservation standards and specifications. Require new development to comply with the Town's requirements for tree protection, removal, and replacement.

ALTERNATIVES:

The Planning Commission could deny or modify the request for a Tree Protection Zone Exception. Should the Planning Commission decide to modify the request, the Commission would make the application subject to the draft conditions as listed in the Draft Tree Protection Zone Exception Permit Certificate as provided in Attachment 7.

RECOMMENDED FORMAL MOTION:

I move that the Planning Commission **approve** the Tree Protection Zone Exception Permit (PTPZ24-00009) 88 Linda Vista Avenue, for the reasons described in the draft Tree Protection Zone Exception Permit certificate and categorically exempt the project from the provisions of the California Environmental Quality Act (CEQA) under AMC Section 15.32.100 and CEQA Section 15304 (Minor Alterations to Land).

ALTERNATIVE FORMAL MOTION:

I move that the Planning Commission **deny** the Tree Protection Zone Exception Permit PTPZ24-00009) 88 Linda Vista Avenue for the protection zone exception of three (3) Coast Redwoods.

/s/ Brittany Bendix

Brittany Bendix, Consulting Town Planner

Attachments:

1. Applicant's Planning Commission Application
2. Proposed Project Site Plan
3. Applicant Narrative
4. Alternative Site Plan
5. Project Arborist Memo

6. Town Arborist Memo
7. Draft Certificate with Conditions of Approval