

**PLANNING COMMISSION
REGULAR MEETING
DRAFT MINUTES**

**TOWN OF ATHERTON
DECEMBER 14, 2022**

6:00 pm

This meeting was held virtually and in-person.

1. ROLL CALL

PRESENT: Eric Lane
Nancy Lerner
Perry Narancic

ABSENT: Randy Lamb
Gabia Konce

Town Planner Sung Kwon, Senior Planner Radha Hayagreev, Town Arborist Sally Bentz-Dalton, Code Enforcement Officer Lisa-Marie Daley, and Chief Building Official Mike Greenlee were present.

2. PUBLIC COMMENTS

No public comment made.

3. APPROVAL OF MINUTES

MOTION to approve the minutes of the October 26, 2022, Planning Commission Meeting with changes.

**M/S Lane/Narancic Ayes: 3 Noes: 0 Absent: 2
Commissioners Lamb and Konce absent**

4. PUBLIC HEARING

A. CONTINUED from October 26, 2022. Request for an appeal to Building Permit (B17-00635/636) fees and penalties for the construction timeline at for a new 7,267 sf. residence with a 748 sf. garage at 78 Shearer Drive, Atherton, CA (Assessor's Parcel Number 059-302-220).

Senior Planner Radha Hayagreev presented the staff report with additions from the Chief Building Official, Mike Greenlee.

Chief Building Official, Mike Greenlee added that the original construction timeline of the project started in October 2017 and was scheduled to end in October 2020, but due to the COVID-19 pandemic, an additional 139 days were granted. After 452 days past the adjusted construction timeline, he pointed out that the structural steel and metal fabrication delay was out of the applicants control and that he recommended a refund of \$121,000.00 of the total \$250,000.00 that the applicant paid.

Chair Lane asked how Chief Building Official, Mike Greenlee calculated the \$121,000.00 refund amount.

Chief Building Official, Mike Greenlee answered that the \$121,000.00 refund amount was equivalent to \$1,000.00 a day for the 4-month (21 days) delay granted in the adjusted construction timeline.

Chair Lane asked if there are questions for staff.

Commissioners stated that they have no questions.

Chair Lane opened the public hearing

The applicant introduced themselves and discussed the inability to receive their shipment of steel after the bankruptcy of their steel manufacturer due to the COVID-19 pandemic as the reasoning for their initial timeline extension. The applicant explained that the pandemic disruptions made them unable to receive their orders of windows, appliances, stone, tile, and the staircase.

Chair Lane thanked the applicant for their comments and for all the pre-work that was done.

Chair Lane asked if there any other questions.

Commissioner Narancic asked what month of 2022 the stairs were completed.

The applicant responded that the stairs were completed between February and March of 2022, and that the collection of payments for the stairs were made to the manufacturer in March of 2022.

Commissioner Narancic asked when the final was given.

The applicant responded that the final was given a couple of months after the stairs were completed. The applicant also stated that the stairs were only one of the timeline disruptions they experienced.

Commissioner Narancic asked for clarification that the applicant would be the sole party responsible if a penalty was dealt.

The applicant responded that they are the sole party responsible.

Commissioner Narancic said he had no further questions.

Chair Lane asked if the applicant was the general contractor on the project.

The applicant responded that they are the general contractor on the project.

Chair Lane asked if there are any other questions.

Commissioner Lerner said she had no questions on the matter.

Chair Lane asked if anyone else would like to speak on this item.

No public speakers.

Chair Lane closed the public hearing.

Chair Lane brought the item back to the Commission for discussion and asked Chief Building Official, Mike Greenlee if the penalty was supposed to be levied against the homeowner of the contractor of a project.

Chief Building Official, Mike Greenlee responded that penalties are mostly levied against the contractor of a project but are sometimes levied against the homeowner. Chief Building Official, Mike Greenlee said that notices are sent out to both the homeowner and the contractor.

Chair Lane said that he believed that the reason for delays in the project timeline is not due to changes in design, but rather COVID-19 pandemic related supply chain disruptions. Chair Lane asked Chief Building Official, Mike Greenlee if it was possible to have the homeowner responsible for the penalty instead of the contractor.

Chief Building Official, Mike Greenlee responded that he has not, in the past, levied the penalty against only the homeowner, and says that he must review the town ordinance. Chief Building Official, Mike Greenlee said that he thought that he was not able to levy the penalty against only the homeowner, and that the Commission should discuss the matter with the City Attorney. He stated that he does not believe that the ordinance specifies that it is the homeowner's responsibility to follow the timeline.

Chair Lane stated that the homeowner is the one who dictates the specifics of the project, and that the homeowner and architect of the project did not change the specifics of the project to ensure that it would be completed within the timeline. Chair Lane stated the concern that any penalty issued against the homeowner would result in a lawsuit against the contractor by the homeowner, and questions the issuance of a penalty.

Commissioner Narancic reaffirmed that if the penalty was levied against the homeowner, the homeowner would sue the contractor. He said that he wants to allow the appeal and not impose any penalties due to the delays of the shipment of the staircase outside of the contractor's control.

Commissioner Narancic asked Chief Building Official, Mike Greenlee how much of a gap was present between the installation of the staircase, and the issuance of the finalization of permit for the project.

Chief Building Official, Mike Greenlee responded that the work on the stairs was completed in March of 2022, and that the permit was finalized in April of 2022.

Code Enforcement Officer, Lisa-Marie Daley noted that Municipal Code 15.40.190 Section A, specifies that the property owner is responsible for failure to complete construction within the established timeline, and that the contractor is not specified. She notes that penalties and violations are normally assessed to the contractor and that often the cost is forwarded to the property owner depending on their civil contract.

Chair Lane stated that the Municipal Code reading supports the negation of any penalty. He noted that allowing for the appeal of the penalty would clarify that the homeowner is responsible for penalties.

Chair Lane asked Commissioner Lerner if she had anything to add.

Commissioner Lerner noted that changes made by the homeowner were responsible for the delay, and that the contractor should have planned and charged the homeowner accordingly. She stated that she agrees with Commissioner Narancic's recommendation of allowing the appeal to the penalty.

Chair Lane asked Chief Building Official, Mike Greenlee if he is comfortable with the recommendation made by Commissioner Narancic to allow the appeal to the penalty.

Chief Building Official, Mike Greenlee responded in agreement.

Commissioner Narancic made the following motion:

MOTION to approve the request for an appeal with no penalty to be assessed to Building Permit (B17-00635/636) fees and penalties for the construction timeline at for a new 7,267 sf. residence with a 748sf. garage at 78 Shearer Drive, Atherton, CA (Assessor's Parcel Number 059-302-220) due to the delay of the stairs.

**M/S Narancic/Lane Ayes: 3 Noes: 0 Absent: 2
Commissioners Lamb and Konce absent**

- B. MPL22-00003: Private schools in Atherton have a Master Plan which is updated annually and reviewed by the Planning Commission at a noticed meeting. The 2022 Master Plan Update has been submitted by Menlo College at 1000 El Camino Real, Atherton, CA (Assessor's Parcel Number 070-360-100).**

Senior Planner Radha Hayagreev stated that the applicant had a schedule conflict and was not able to attend the Commission meeting. She stated that staff recommended that the item be continued to the January meeting.

Chair Lane made the following motion:

MOTION to continue MPL22-00003: Private schools in Atherton have a Master Plan which is updated annually and reviewed by the Planning Commission at a noticed meeting. The 2022 Master Plan Update has been submitted by Menlo College at 1000 El Camino Real, Atherton, CA (Assessor's Parcel Number 070-360-100) to the regular January 2023 Planning Commission meeting.

**M/S Lane/Narancic Ayes: 3 Noes: 0 Absent: 2
Commissioners Lamb and Konce absent**

- C. PTPZ22-00014: The project is located at 98 Sutherland Drive, Atherton, CA (Assessor's Parcel Number 073-202-770). The applicant is requesting a Tree Protection Zone (TPZ) Exception to allow for consideration of reduced TPZ distances for two heritage oak trees which are 51-inches and 40- inches in diameter, to accommodate the construction of a new detached accessory dwelling unit (ADU) and a request to remove two cedar trees (Tree #75 and Tree #77). The requested TPZ exceptions are for tree #73 for 5.8x away from the ADU and tree #74 requesting 7x away from the ADU.**

Senior Planner Radha Hayagreev presented the staff report.

Town Arborist Sally Bentz-Dalton who discusses the recommendation of 2 TPZ exception zones noted that the applicant found a 2 inch large root in the exploratory trenching and that as a result, the proposed ADU was redesigned with a smaller footprint.

Chair Lane asked if the design for the ADU was redesigned with a smaller footprint due to tree 77 or green trees?

Town Arborist Sally Bentz-Dalton responded that the ADU was redesigned with a smaller footprint due to tree 74. She continued that tree was approved for removal was due to it being top heavy, the area it was in being crowded, and due to its location being near the driveway on a slope.

Chair Lane asked about the retention of tree 77 due to its location next to the house and it being top heavy. He noted that it seemed to be a poorly placed tree.

Town Arborist Sally Bentz-Dalton responded that the applicant would have to prove damage to the house by the tree, but they did not have a strong argument in support of the removal of the tree.

Chair Lane noted that the tree is close to the house and considers fire codes, but questions if the tree will ever be healthy.

Town Arborist Sally Bentz-Dalton responded that tree 77 is more balanced than tree 74 which was approved and reaffirms that she would not typically approve its removal.

Chair Lane asks if Town Arborist Sally Bentz-Dalton had any other things she would like to discuss.

Town Arborist Sally Bentz-Dalton noted the existing platform on the property with fake grass.

Chair Lane asked if the fake grass is impervious.

Town Arborist Sally Bentz-Dalton responds that the fake grass is somewhat permeable but not completely.

Chair Lane asked if there were any other questions for staff.

Chair Lane opened public comment.

Chair Lane opened the floor up to the applicant.

The applicants introduced themselves and said that they did research on the site and the location of the ADU. They stated that they would prefer to remove the 2 cedar trees because the site has a lot of vegetation and trees and the removal of the 2 trees would not greatly impact the property. They stated that they would be willing to add additional landscaping beyond the driveway. They also stated that the reason for the request to remove the 2 cedar trees was to allow for more landscaping opportunities and to provide screening for the property and to reduce vegetation crowding and maintenance.

Chair Lane asked if there are any questions for the applicant.

The applicants noted no further questions.

Chair Lane thanked the owners for their comments.

Chair Lane asked if anyone else would like to speak on this item.

No public speakers.

Chair Lane closed the public hearing.

Chair Lane brought the item back to the Commission for discussion.

Commissioner Narancic said he had no further questions.

Commissioner Lerner said she had no questions.

Chair Lane noted that he believed that tree 77 is in the wrong location but stated that the applicant can apply in the future to request permission to remove it.

Commissioner Narancic made the following motion:

MOTION to approve the Tree Protection Zone (TPZ) Exception to allow for consideration of reduced TPZ distances for one 51-inch heritage oak Tree #73 for 5.8x, one 40 inch heritage oak Tree #74 requesting 7x which are and in diameter, to accommodate the construction of a new detached accessory dwelling unit (ADU) and removal one 60 inch deodar cedar Tree #75 is approved and removal of Deodar Cedar Tree #77 is denied based on the recommendation of the Town Arborist.

**M/S Narancic/Lerner Ayes: 3 Noes: 0 Absent: 2
Commissioners Lamb and Konce absent**

- D. SSR22-00011: Special Structures Permit request for an increased vertical side wall for a proposed new residence at 211 Stockbridge, Atherton, CA (Assessor's Parcel Number 070-022-300) Special Structures Permit request for an increased vertical side wall for a proposed new residence from allowable 22 ft to requested 27'-6" and 27'-1" in the rear elevation to accommodate gable end roof.**

Senior Planner Radha Hayagreev presented the staff report.

Chair Lane asked if there are any questions for staff.

Chair Lane opened the hearing for public comment.

No public comment.

Chair Lane opened the floor up to the applicant.

The applicant introduced himself and reiterated that the house will not be any taller and that they had to change the roof from a hip roof to a gable roof due to differences in interpretation between the architectural projection between staff and the applicant.

Chair Lane stated he did not have any questions and asked if anyone else has any questions.

Commissioner Narancic responded that he did not have any questions.

Chair Lane asked if anyone else would like to speak on this item.

No public speakers.

Chair Lane closed the Public Hearing.

Chair Lane brought the item to the Commission for discussion and stated he had no questions.

Commissioner Narancic said he had no questions and made the following motion:

MOTION to approve the Special Structures Permit request for an increased vertical side wall for a proposed new residence from allowable 22ft to requested 27'-6" and 27'-1" in the rear elevation to accommodate gable end roof based on the findings in the staff report, subject to the conditions of approval.

**M/S Narancic/Lane Ayes: 3 Noes: 0 Absent: 2
Commissioners Lamb and Konce absent**

- E. PTPZ22-00012: request for a Tree Protection Zone (TPZ) Exception (PTPZ 22-00020) at 75 Fairview Ave. (Assessor's Parcel Number 073-016-130) The applicant is requesting a Tree Protection Zone (TPZ) Exception to allow for consideration of reduced TPZ distances for two heritage oak trees which are 55-inches and 48-inches in diameter, to accommodate the construction of a main residence with basement and replacement of existing driveway with GeoGrid. The requested TPZ exception is for tree #2 and Tree #12 for 6x tree protection zone exception.**

Senior Planner Radha Hayagreev presented the staff report.

Town Arborist Sally Bentz-Dalton discussed how the two trees the applicant requested TPZ exceptions for were approximately 10 feet closer to the existing house than what the applicant requested. Applicant noted they would do shoring in the locations at 6 times. Town Arborist Sally Bentz-Dalton also noted that one root of 2 inches was found under lightwell #6, no other roots over 2 inches were found in other locations.

Chair Lane asked if there are any questions for staff.

Chair Lane opened the hearing for public comment.

Chair Lane opened the floor up to the applicant.

The applicant introduced themselves and says that the 2 redwood trees (#2 and #12) take up a significant portion of the front of the property, and that he used the distances between the existing home and the redwood tree TPZs as a model for the distances between the proposed new home and ADU, and the redwood trees. He noted that the design places the proposed home and ADU further away. The driveway was placed to minimize development near the tree roots and near the existing redwood trees.

Chair Lane stated he did not have any questions and asked if anyone else has any questions.

Commissioner Narancic did not have any questions.

Chair Lane asked if anyone else would like to speak on this item.

No public speakers.

Chair Lane closed the Public Hearing.

Chair Lane brought the item back to the Commission for discussion and stated he has no questions.

Commissioner Narancic said he has no further questions.

Chair Lane said he is ready to make a motion.

Commissioner Lerner said she has no questions.

Chair Lane made the following motion:

MOTION to approve the Tree Protection Zone (TPZ) Exception for one 55" redwood (Tree #2) to six times (6.0x) and another 48" redwood tree (Tree #12) to six times (6.0x) the trees diameter at 75 Fairview Ave to accommodate the construction of a main residence with basement and replacement of existing driveway with GeoGrid based on the findings in the staff report, subject to the conditions of approval.

**M/S Lane/Narancic Ayes: 3 Noes: 0 Absent: 2
Commissioners Lamb and Konce absent**

- F. PTPZ22-00010: Tree Exception request for a proposed 827 sq. ft. ADU at 82 Linda Vista, Atherton, CA (Assessor's Parcel Number 070-161-160) Heritage tree protection Zone Exception for a 7.48x TPZ for a 48" diameter redwood tree and a 6.22x TPZ exception for an 18: coast redwood tree.**

Senior Planner Radha Hayagreev stated that staff was not able to review the application documentation and that Town Arborist Sally Bentz-Dalton was not able to make a recommendation. Staff recommended that the item be continued to the January meeting.

Chair Lane makes a motion.

MOTION to continue Tree Exception request for a proposed 827 sq. ft. ADU at 82 Linda Vista, Atherton, CA (Assessor's Parcel Number 070-161-160) Heritage tree protection Zone Exception for a 7.48x TPZ for a 48" diameter redwood tree and a 6.22x TPZ exception for an 18" coast redwood tree to the January Planning Commission meeting.

**M/S Lane/Narancic Ayes: 3 Noes: 0 Absent: 2
Commissioners Lamb and Konce absent**

5. STAFF REPORTS

Town Planner Sung Kwon presented the schedule for the Planning Commission Meetings for 2023.

Chair Lane noted that the schedule was not provided in the printed packets to the Planning Commission members.

Senior Planner Radha Hayagreev presented the schedule digitally while Town Planner Sung Kwon provided Chair Lane with a copy of the schedule.

Chair Lane reviewed the schedule noting the meeting dates during each month and states that he has no issues with the schedule.

Chair Lane made a motion to adopt the schedule.

MOTION to accept the 2023 Planning Commission Meeting Schedule as presented.

**M/S Lane/Narancic Ayes: 3 Noes: 0 Absent: 2
Commissioners Lamb and Konce absent**

Town Planner Sung Kwon updated the Commission on the upcoming update to the town ADU ordinance that is expected to be presented before the Planning Commission in January and go to counsel in March.

Town Planner Sung Kwon noted that staff is updating the town housing element and will hold a study session on December 27th, 2022. He also reminded the Commission that they will need to be holding their meetings in person starting March of 2023 to be in compliance with AB 2449. He reminds the Commission of the memo sent out by the City Clerk informing the Commission of AB 2449 requirements.

Chair Lane asked for clarification of the timeframe to hold meetings in person to be in compliance with AB 2449.

Town Planner Sung Kwon reiterates that the Commission will have to meet in person starting March of 2023.

Chair Lane asked if there are any large upcoming projects for the first quarter of 2023.

Senior Planner Radha Hayagreev responded that staff is expecting the Menlo College Report from item 4b that was continued.

6. COMMISSIONERS' REPORTS

Chair Lane requested that members of the Commission send him their addresses so he can send them holiday gifts.

Commissioner Narancic thanked Senior Planner Radha Hayagreev for the meeting.

7. ADJOURN

M/S Narancic/Lane Ayes: 3 Noes: 0 Absent: 2
Commissioners Lamb and Konce absent

The meeting was adjourned 7:31 PM

Respectfully Submitted:

/s/ Sung H. Kwon

Sung H. Kwon, Town Planner