



December 22, 2022 (amended 2-10-23)

To:  
Town of Atherton  
Planning Commission

From:  
Chris Kummerer, Principal  
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Re:  
Variance Request Description

Subject:  
42 San Benito Ave, Atherton, CA 94027

### OVERVIEW

The property (APN 060-162-190) is a 13,181 square foot lot on San Benito Avenue, just off Middlefield Road in Atherton. It is zoned R-1A. The project includes a new two-story residence with a detached, covered carport and a new one-story ADU. The parcel is overgrown with trees that have not been well maintained. The property also features an existing two-story residence and two detached structures that have fallen into disrepair from many years of neglect.

### REQUEST

Request for a variance to locate an attached carport within the required 30' side setback.

Due to special circumstances on this parcel, we are requesting a variance to one of these standards for a non-conforming placement of the carport flush with the front house setback and 10' from the side property line.

CHRIS KUMMERER & ASSOCIATES

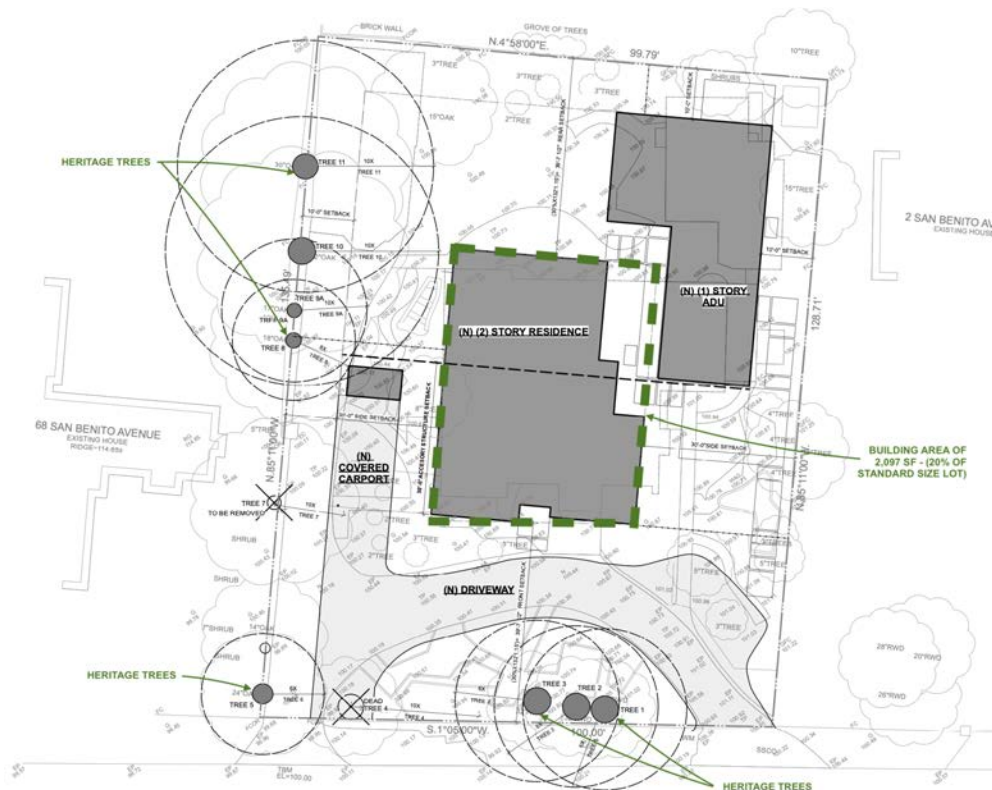
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## FINDINGS

***A. There are special circumstances applicable to the property, including size, shape, topography, location, or surroundings, such that the strict application of this title deprives such property of privileges enjoyed by other property owners in the vicinity and under identical land use zoning district classifications.***

On this modest and slightly odd-shaped lot, the dual challenges of the small size combined with surrounding heritage trees create special circumstances that deprive this property privileges enjoyed by the vast majority of the properties in the same zoning district.

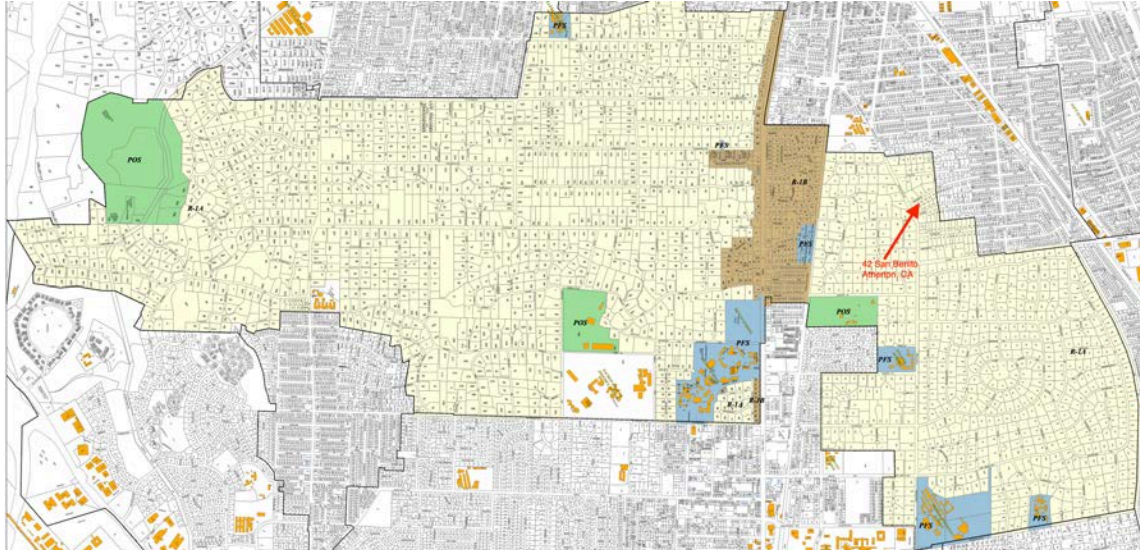
42 San Benito is zoned R1-A and is 13,181 square feet. The vast majority of the properties in the Town are zoned R1-A and are one acre or more (43,560 sf+). The lot at 42 San Benito is 30% the area of a standard R1-A size acre lot. The building area for 42 San Benito is 20% of the building area for a standard acre lot. (2,097 sf vs ± 10,450 sf). Because of this extremely small size, the ability to locate a house, adu and covered parking becomes very challenging (see attached diagrams).



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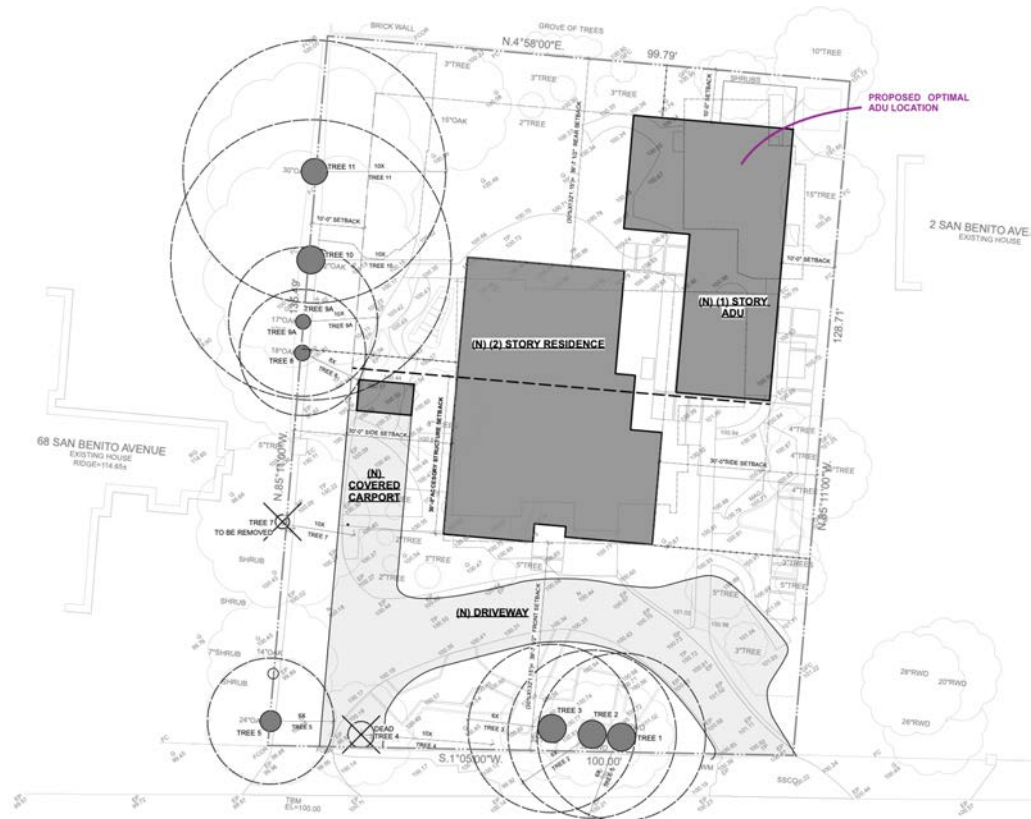
There are many similar sized 'smaller' lots in Atherton, but the majority of these lots are zoned R1-B and entitled to front and side setback relief – with front setbacks little as 20' (based upon lot depth).



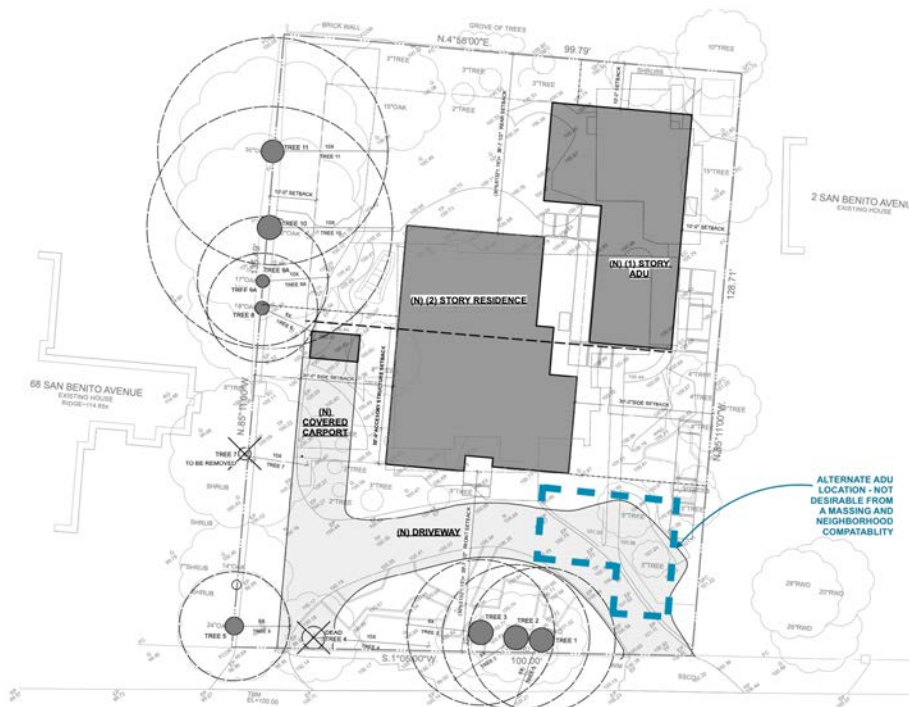
As shown on the site plan, there are 10 trees of heritage size on this relatively modest 13,181 square foot lot. (.31 acres). Seven (7) of these trees are live oaks along the property line where a driveway and covered parking is best suited.

#### ADU LOCATION

A new two-story residence is proposed within the modest 'building area' of the property ( $\pm 39' \times 50'$  buildable area). A detached ADU is proposed on the South East side of the residence (back right as seen from the street). The ADU is planned as a residence for the Owner's daughter. This ADU location is compliant with the zoning ordinance and State ADU laws, located over the foundation of an existing structure and away from the dripline of heritage trees. (See diagram below)



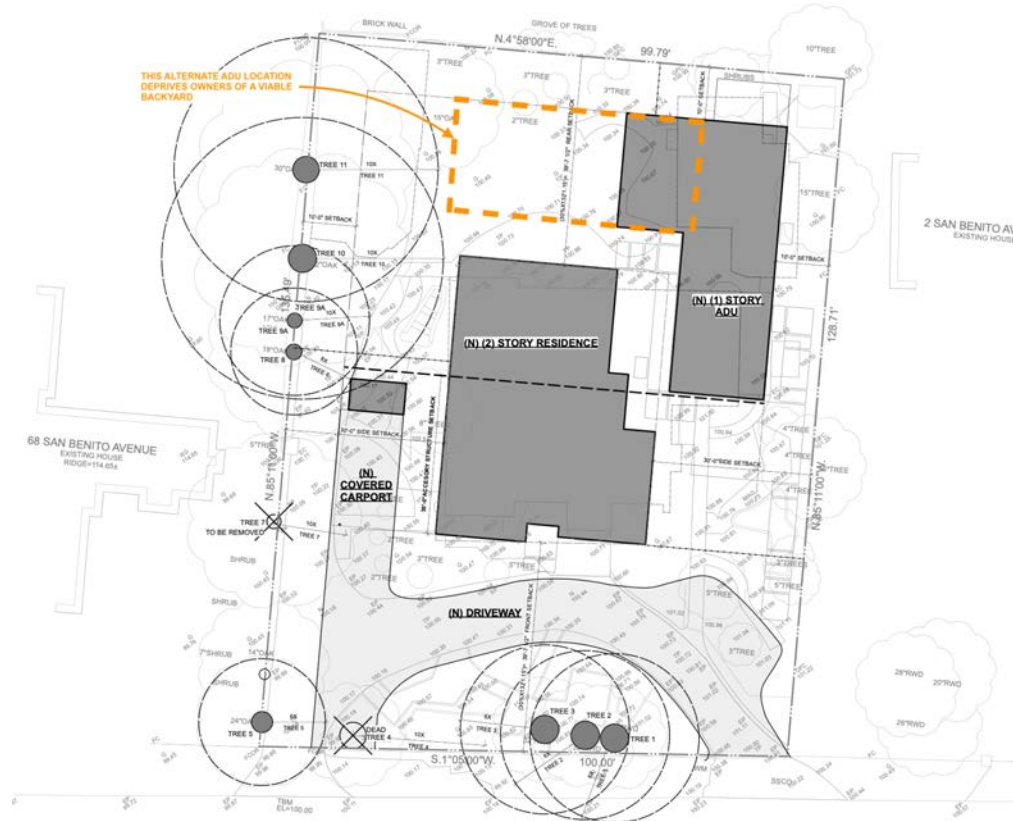
An alternative location for the ADU is at the front right of the lot, but that was deemed undesirable from a massing and neighborhood compatibility standpoint.



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Another possible ADU location is in the middle of the backyard. This potential location deprives the property of a usable backyard and was deemed undesirable. The property owners would like to enjoy a private backyard similar to other property owners within the same zoning district.

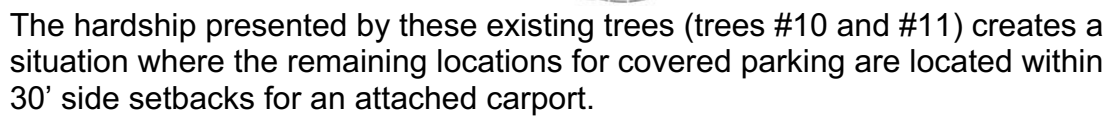


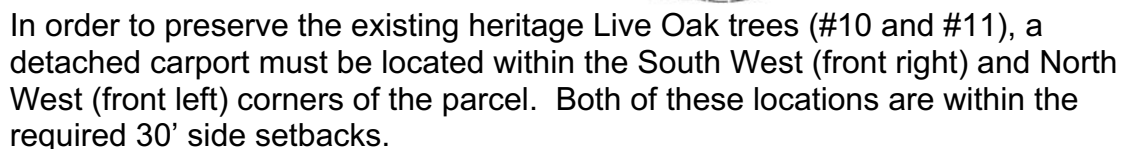
After careful consideration by the applicant and review by Planning Staff at the counter, it was determined that the proposed location at the back right (South East) was the optimal location for the ADU. Other alternate locations on the North side of the property would place the ADU within the Tree Protection Zone (TPZ) of heritage trees at Northwest and Northeast corners (front or back left as seen from street).

#### COVERED PARKING LOCATION

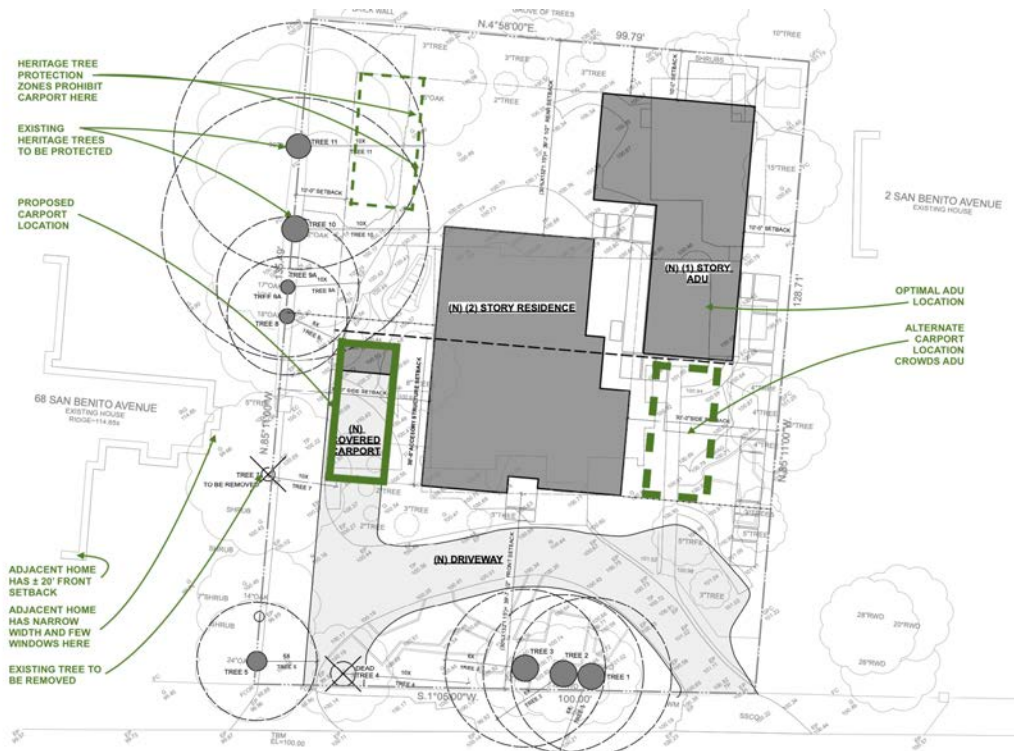
A covered parking space is desired by the Owners of the property. The optimal placement of the ADU at the South East side of the property (as discussed above) makes a difficult choice for siting a carport or garage on the remainder of the parcel.

The North East (back left corner as seen from street). offers a location that is compliant with the accessory structure setback, but this area unfortunately lies within the TPZ of 30"Ø and 32"Ø live oak trees rendering it unbuildable (or requires a variance for close proximity to heritage trees).





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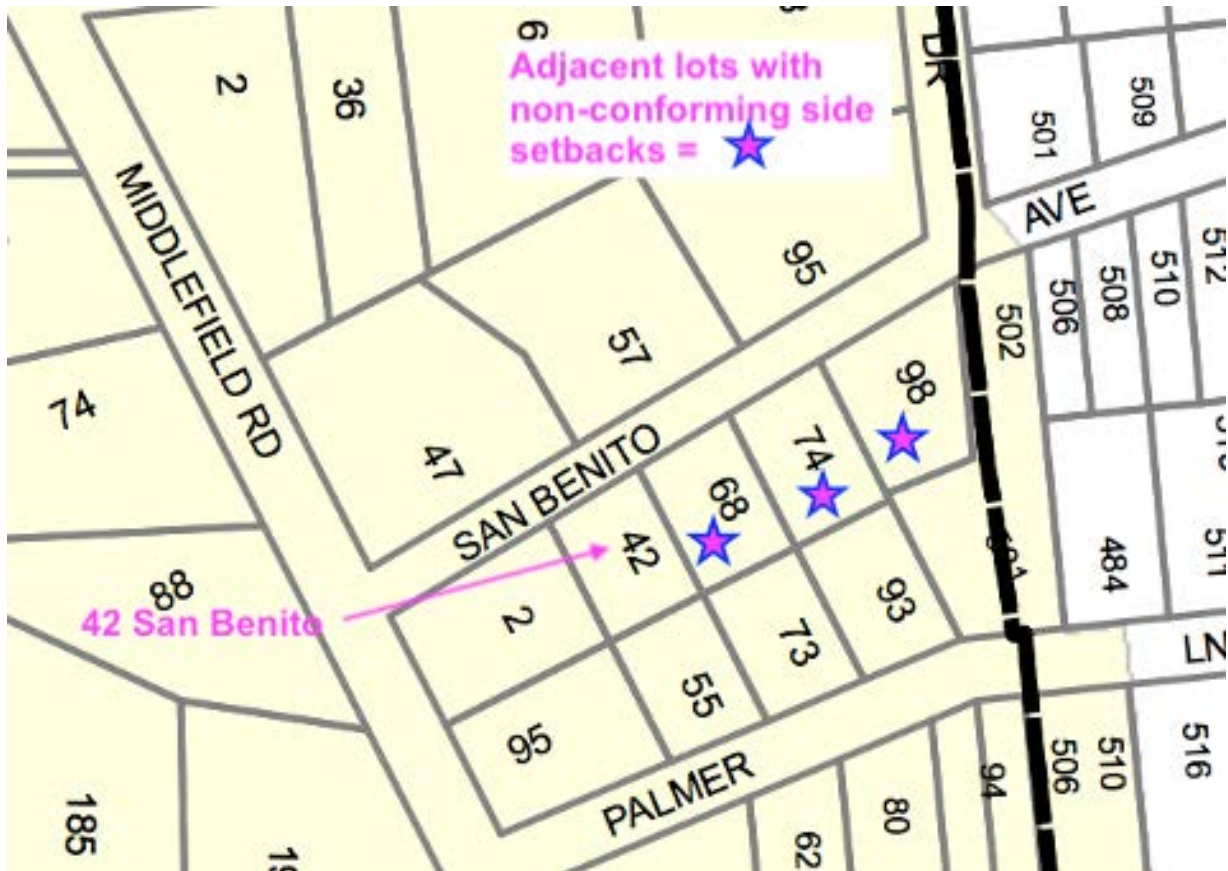
The challenges of the small lot size and the large quantity of heritage oak trees combine to create a special circumstance that deprives this property of rights enjoyed by other property owners within the R1-A district.

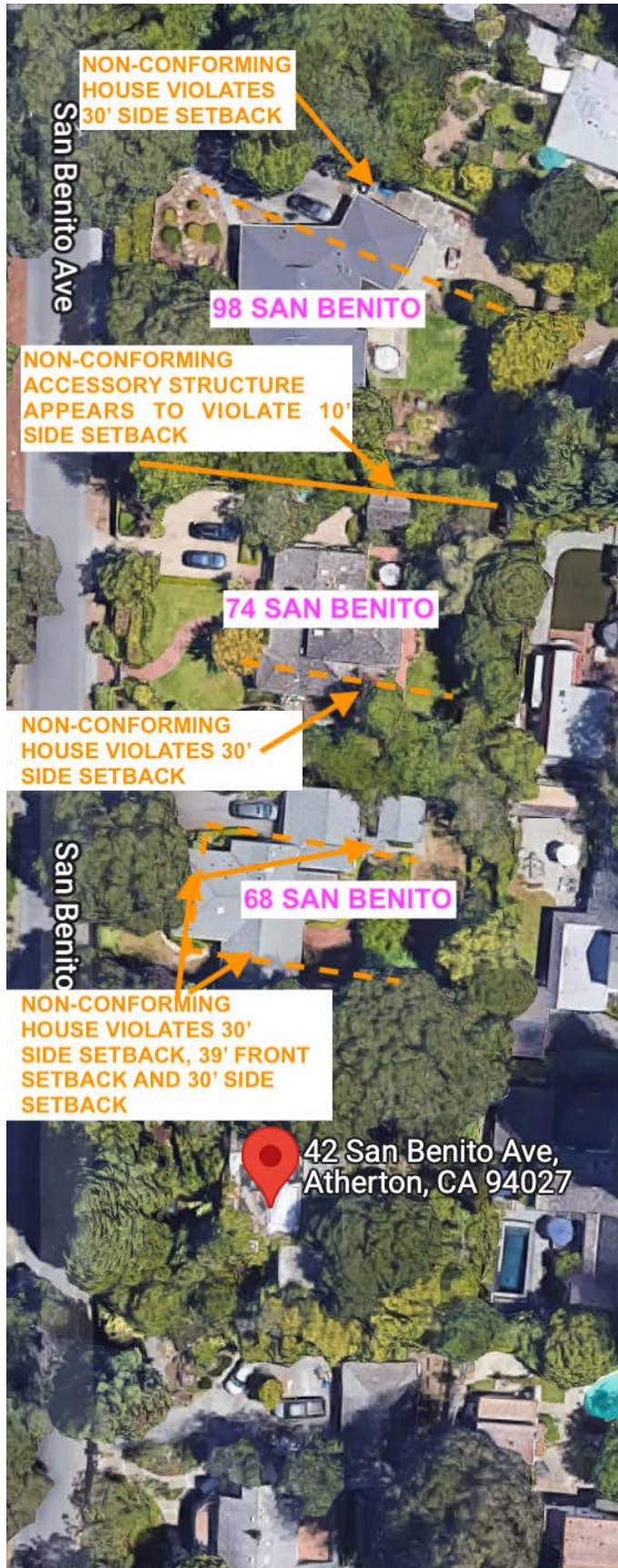
The proposed placement of the carport provides the most fitting location to preserve and protect the greatest number of heritage trees while granting the Owner a functional solution for covered parking.

***B. Granting the variance does not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and land use zoning district in which such property is located.***

The request for garage or carport within 30' side setback is a reasonable request in this particular neighborhood. Within this neighborhood, it is common that the homes and garages violate the setback regulations. This is likely because of the limited lot sizes, as many of the lots are 15,000 sf or less.

The three adjacent neighbors to the East at 98, 74 and 68 San Benito all have homes that intrude within the required side yard setbacks. These lots are similar in size to the the subject property and are all on the same side of the street.





CIATES

The chart below indicates the estimated setbacks of adjacent neighboring homes that have a side setback of less than 30':

ADDRESS	STRUCTURE	SIDE SETBACK
68 San Benito	House and Garage	±11' left side 10' right side
74 San Benito	House	±20' right side, ± 5' accessory structure on left side
98 San Benito	Garage	±10' left side setback

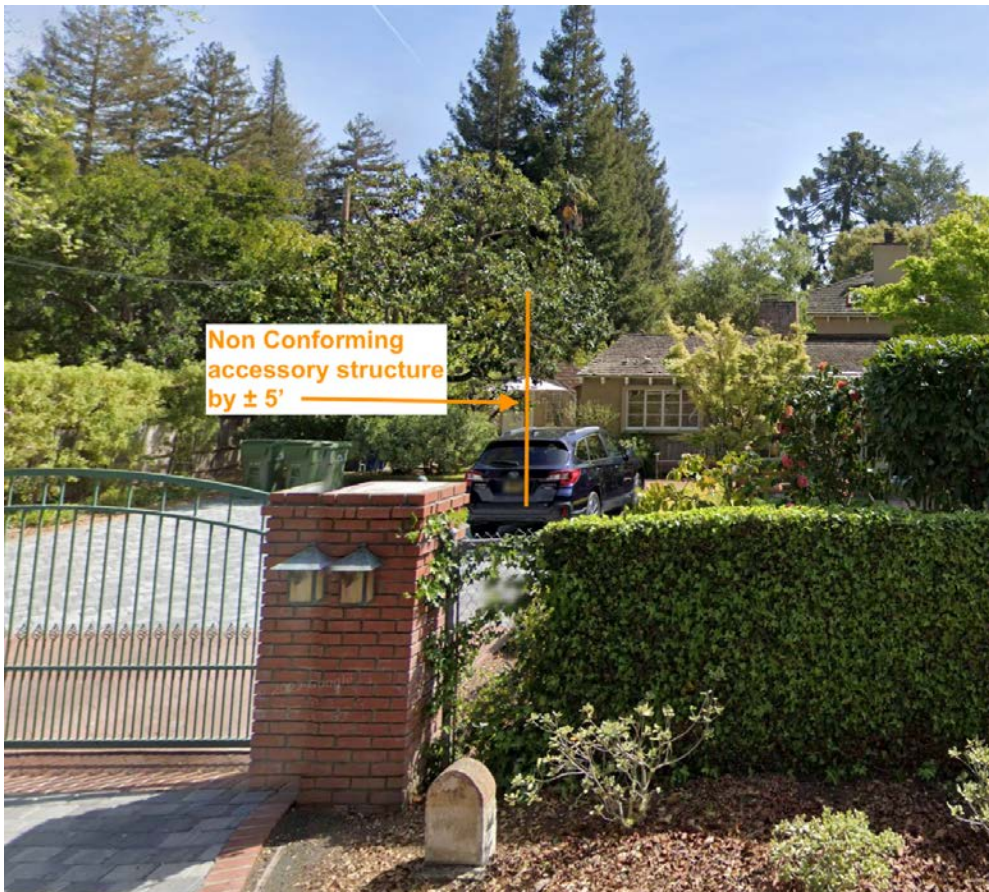
The adjacent home at 68 San Benito violates setbacks on both sides and the front. The right side of the existing home is at 11' instead of the required 30'. The front of the existing home is at 29' instead of the required ± 39' and the left side has an attached garage that is at approximately 10' instead of the required 30'.



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74 San Benito has a  $\pm 5$ -10' intrusion on the South side placing the house at 20'-25' instead of the required 30' and a non-conforming accessory structure on the North at  $\pm 5$ ' instead of the required 10'.



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98 San Benito has a non-conforming garage with a 10' side setback on the North side instead of the required 30' setback.



Given that all three adjacent lots of similar size have non-conforming side setbacks of similar dimension ( $\pm 10'$  from side property line for 2 out of 3 lots), the granting of this variance does not constitute a special privilege, but instead allows the owners at 42 San Benito to enjoy similar property rights to other adjacent neighbors.

***C. Granting the variance will not adversely affect the interest of the public or the interest of residents and property owners in the vicinity of the premises in question.***

The granting of the variance will not adversely affect the interest of the public or residents. Significant foliage exist between neighbors (screening) already and at the street frontage. The neighboring home at 68 San Benito (the left as seen from street) has a void adjacent to the carport location, so their living space is not directly adjacent to proposed carport. Because the carport is not a living space, there will be limited privacy impacts to the neighbor. A new solid fence will be built between 42 and 68 San Benito to replace an existing chain link fence. This new fence will create more privacy for the occupants at 68 San Benito.

The privacy for occupants at 2 San Benito will not be adversely affected by the proposed carport. Their home is very far away and separated by their own 3-car garage and wide driveway from 42 San Benito.

Letters of support for this variance request from the adjacent Owners at 74 San Benito, 2 San Benito and 68 San Benito are included at the end of this package.

***D. The granting of the variance is consistent with the objectives of the general plan and this title.***

Granting of the variance is consistent with the objectives of the general plan by allowing for the protection of two heritage trees while providing for equal property rights (space for a carport) for the Owner. Additionally, the granting of the variance allows sufficient space for an ADU and JADU which are encouraged by the state and the local ordinances as a way to meet the Town's unmet housing obligations.

3.420

Atherton intends to continue its second dwelling unit program and encourages construction of new, full-time occupied second units as a means of providing affordable housing in the community. (Added housing)

1.335 H

Second residential units are permitted when consistent with adopted standards. (Added housing)

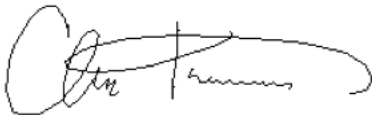
1.335 D

Trees shall be preserved to the maximum extent feasible while allowing for construction within established parameters for setbacks and lot coverage in accordance with the Municipal Code chapter regulating removal of and damage to heritage trees. (tree protection)

1.210 Goal

To preserve the Town's character as a scenic, rural, thickly wooded residential area with abundant open space. (tree protection)

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Kummerer', with a long horizontal flourish extending to the right.

Chris Kummerer  
Principal, CKA Architects

Neighbor letter and proof of lot incorporation in 1922 shown below.

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