



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

DATE: FEBRUARY 22, 2023

TO: PLANNING COMMISSION

FROM: RADHA HAYAGREEV, SENIOR PLANNER

SUBJECT: Request For Variance to allow the construction of a detached accessory structure (carport) to have no front setback from the front of the main residence (where a minimum of required setback would be 120 feet from front of the property or 30 ft from the front of the main residence, whichever is less), on a property located at 42 San Benito Avenue (APN 060-162-190)

CEQA: The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) to CEQA Section 15303, New Construction

RECOMMENDATION:

For the reasons as outlined in this staff report, Planning Staff recommends that the Planning Commission **deny** the Variance request. A summary of the information provided by the applicant for the Variance is outlined below.

1. There are special circumstances applicable to the property, including size and location of trees, where the strict application of the Zoning Title deprives such property of privileges enjoyed by other property owners in the vicinity and under identical land use zoning district classification.

Basis for finding: Staff opines that this finding **can be met** based on size and location. The size of the subject lot is smaller than majority of R1-A lots. The lot width and depth are also substandard. The lot has several heritage trees and location of the accessory structure is specifically placed to minimize impacts to heritage trees.

2. Granting the Variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

Basis for finding: Staff opines that this finding **may not be met**. As this is a new development, other options may be explored that would not require a variance.

3. Granting the Variance will not adversely affect the interest of the public or the interest of the residents and property owners in the vicinity of the premise in question.

Basis for finding: Staff opines this finding **can be met**. The location of the uninhabitable accessory structure (carport) does not create privacy impacts to the residents and property owners in the vicinity of the premise.

4. The granting of the Variance is consistent with the objectives of the General Plan and the Zoning Code.

Basis for finding: Staff opines that this finding **may not be met** as the General Plan does not require carports. The General Plan does; however, provide direction regarding the preservation of trees and the encouragement of the production of Accessory Dwelling Units

General Plan LU-1.1: To preserve the Town’s character as a scenic, semi-rural, thickly wooded residential area with abundant open space.

General Plan LU-1.5. 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.

General Plan 3.622: Actively promote the Second Dwelling Unit provision of the Atherton Zoning Ordinance by encouraging homeowners and developers to include attached or detached Second Dwelling Units in existing or new homes.

The Zoning Ordinance does allow for carports but does not require carports.

In order to approve the Variance, all four findings must be met.

BACKGROUND:

The subject site at 42 San Benito Avenue (APN: 060-162-190) is a 13,181 sq. ft. interior lot located within the R-1A zoning district. As shown below, the subject property is a substandard lot.

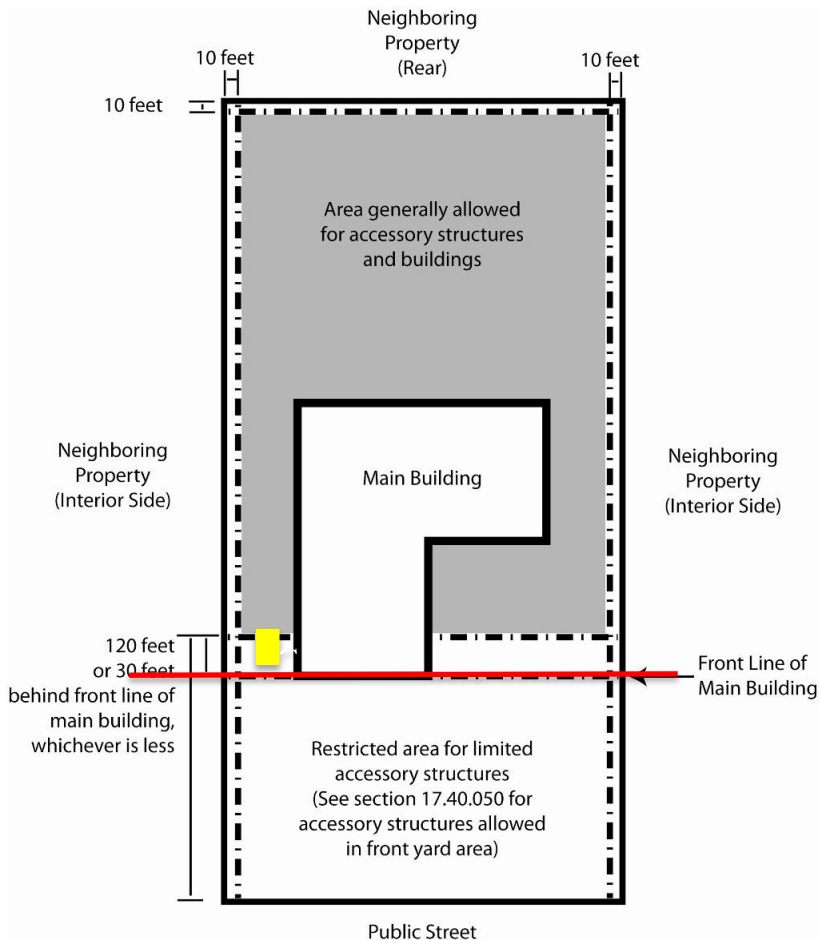
Table A: Subject lot vs. Conforming lot requirements in R1-A

	Conforming Lot Requirements	Subject Site
Size	43,560 sq. ft.	13,181 sq. ft.
Lot Width	175 ft	100 ft.
Lot Depth	200 ft	135, 128 ft.

The property is currently developed with an existing two-story main residence, two detached structures, and some unpermitted non-conforming accessory structures. The property also features overgrown trees throughout the property that have not been well maintained.

The applicant proposes to construct a new 2,851 sq. ft. residence with a JADU and a detached ADU. In addition, the proposed project includes a detached, covered carport along the northside property line. The accessory structure typically needs to be located 30 ft from the front line of the main residence. This variance request is to locate the carport to encroach 30 ft setback from the front of the main building and be flush (0') at the front line of the main residence. The accessory structure would maintain the necessary 10 ft setback from the side property line. Please see Figure 1 below.

Figure 1: General Setback Standards for Accessory Buildings and Structures for Interior Lots and proposed carport location.



Notice of this application was mailed to all property owners within 500 ft. of the subject property. To date, the Town has not received any public comment or inquiries on the application. The applicant conducted their own outreach to adjacent neighbors and provided letters of support from the adjacent neighbors.

ANALYSIS:

The applicant is requesting a Variance for the proposed location of the carport, which is considered an accessory structure under the Municipal Code. Per Atherton Municipal Code 17.40.040 - the required location of the accessory structure needs to be at 120 ft back from the front property line

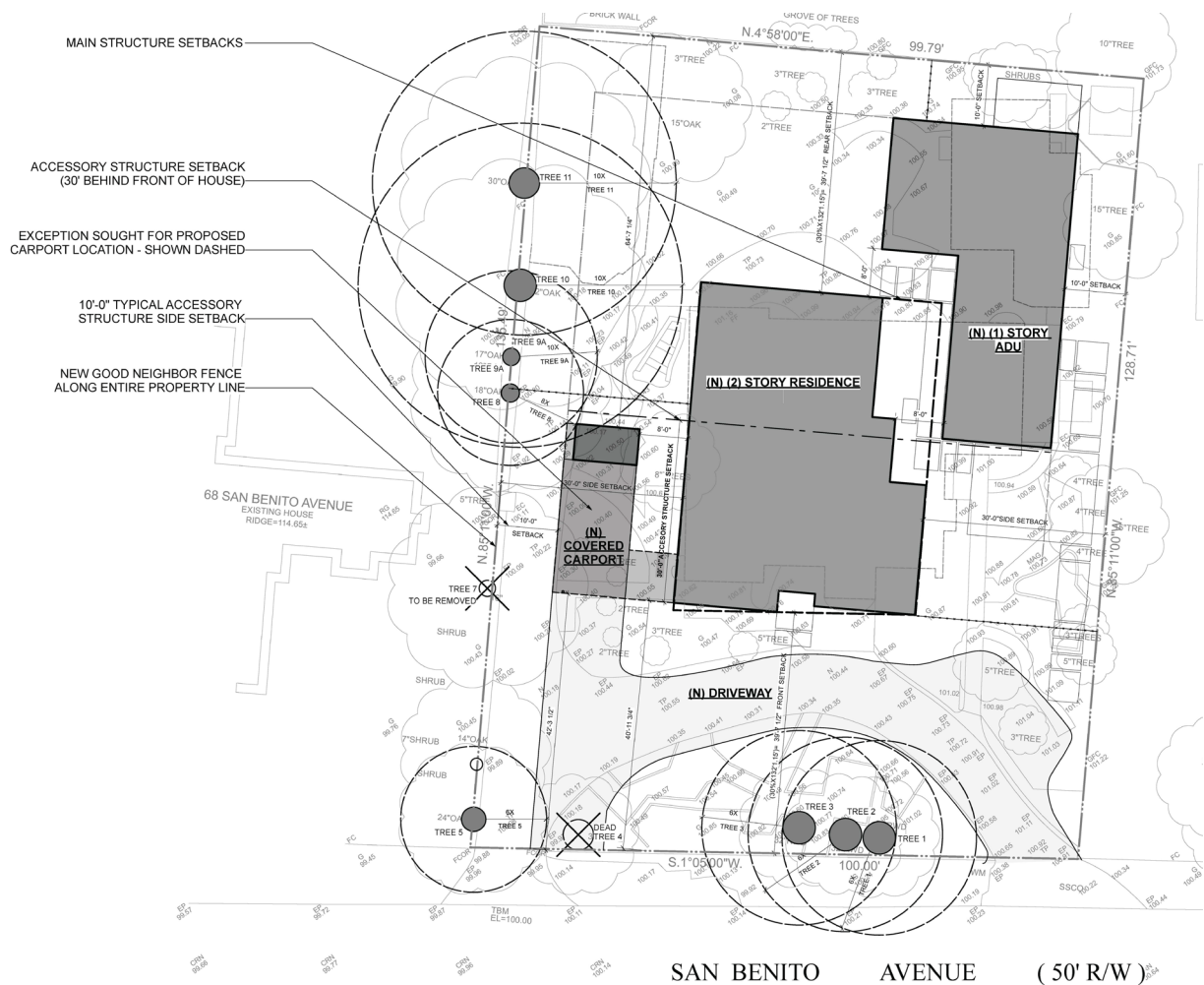
or 30 ft behind front line of main structure, whichever is less. The proposed structure is located at the front line of the main structure.

Table B: Required and Proposed Accessory Structure (Carport) Setbacks

Setbacks	Required	Current Proposed
Front	30' behind front line of main residence, or 120' from front property line	0' behind the front line of main residence / 49' from front property line
Rear	10'	64' 7"
Side	10'	10'

Figure 2 shows the overall site plan for the property with the proposed location of the carport.

Figure 2: Overall Site Plan for 42 San Benito



The applicant's letter of request speaks to the required findings for the Variance, noting the size

and location as special circumstances. The letter notes that the surrounding heritage trees present a special circumstance and challenges to accommodate a large detached ADU and a carport. The alternative locations for both ADU and carport location is also discussed in detail in the request letter. The site plan shown above is the preferred and possibly the ideal location for the ADU based on the challenges and preferred enjoyment of the property and the rear yard for the owners. Refer to attachment 3 for details.

Figure 4: Carport location

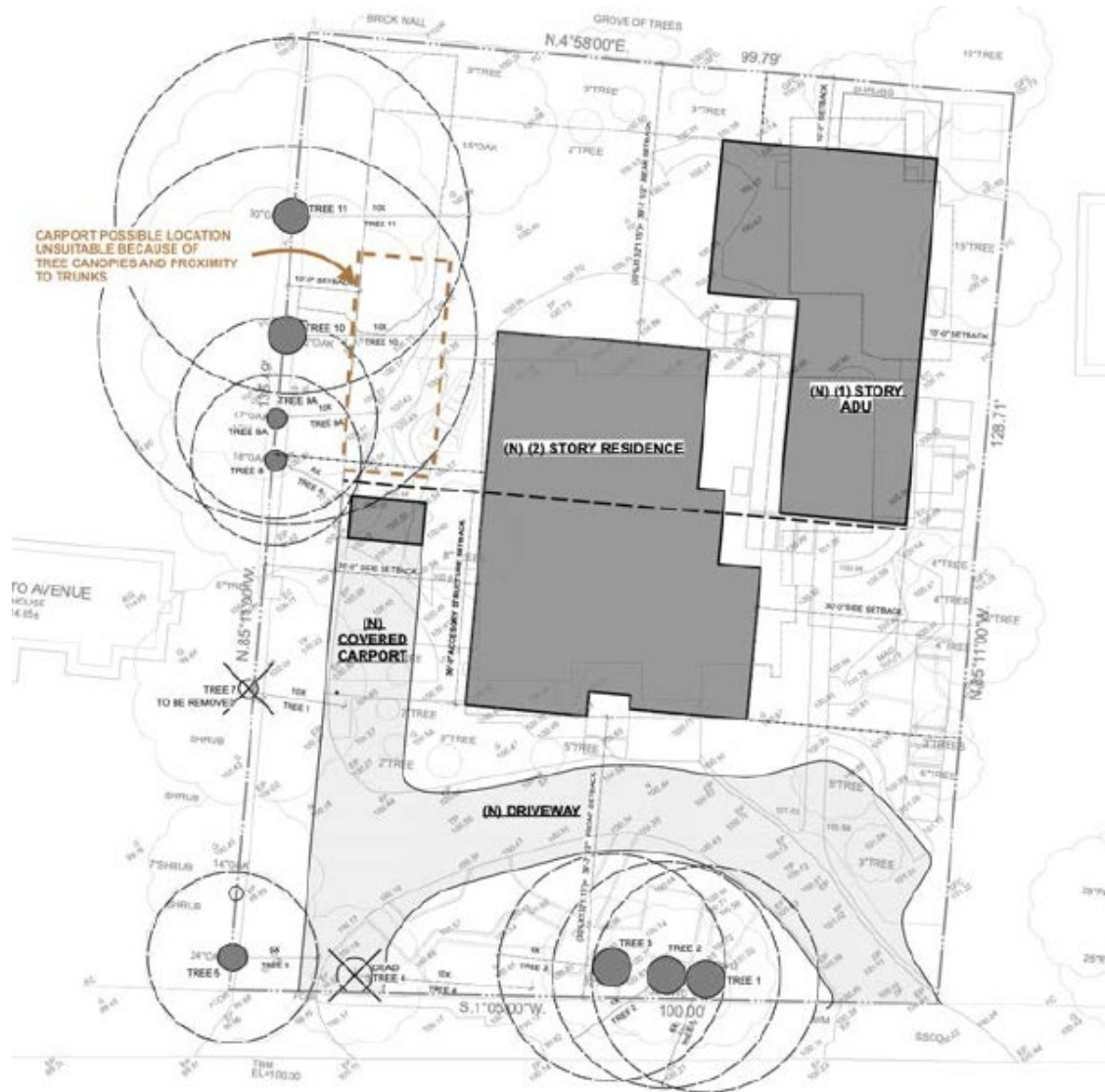


Figure 4 above shows the potential location of a conforming carport, seen in a yellow dashed line. If the carport was located outside the required setback, large trees would be impacted. The carport was moved forward to reduce the impact to those trees.

The Town Arborist has reviewed the project plans and provided a memo supporting the evaluation in the arborist report and recommending approval of the Variance application (See Attachment 7).

Staff recognizes that TPZ areas cover much of the developable area for accessory buildings, with limited area in the rear and South side of the property to accommodate the proposed additions, including the carport.

FINDINGS ANALYSIS

To grant a Variance, the Planning Commission must make the following four findings contained in Atherton Municipal Code Chapter 17.16 and governed by State Law:

- 1. There are special circumstances applicable to the property, including size, shape, topography, location or surroundings, where the strict application of the Zoning Title deprives such property of privileges enjoyed by other property owners in the vicinity and under identical land use zoning district classification.**

Staff review: Staff opines that this finding can be met.

Size

42 San Benito is zoned R-1A and is located on a modest and odd-shaped lot of 13,181 square feet, with East (rear) and West (front) side property lines extending approximately 100 ft., and the North and South side property lines (interiors) extending 135 ft. and 128 ft. respectively. Most of the properties in Town are zoned R-1A however, their sizes are consistent with the standard minimum lot size of the R-1A district of one acre or more (43,650 sf+). With a lot size 30% of the area of a standard R-1A size lot, and a building area 20% of the building area of a standard acre lot, the ability to locate a primary residence, JADU, ADU and covered parking on the subject parcel becomes challenging.

Location of trees

In order to preserve the existing heritage live oaks on the North side (side setback area) a detached carport must be located within the Northwest area of the property. This proposed location for the carport, while non-compliant with the front setback development standards, preserves the trees and requires tree protection zones.

Strict application of the accessory structure setback would result in damage to several Heritage trees in the side setback area and may additionally result in no room for the Accessory Dwelling Unit based on the alternatives proposed and detailed in Attachment 3.

- 2. Granting the Variance does not constitute a grant of special privileges inconsistent with the limitations upon properties in the vicinity and zone in which such property is situated.**

Staff review: Staff opines that this Variance finding may not be met.

The applicant states that the request for a garage or carport at the building setback line is a reasonable request in this neighborhood where lot sizes with non-conforming depths are often 15,000 sf. or less. It is observed that some homes in the vicinity have encroaching accessory

structures in the side setback area. The applicant cites some examples of neighboring parcels as seen in the Table B below.

Table B: Other properties

Address	Structure	Side Setback
68 San Benito	House and Garage	± 11 ft left side, and 10 ft. right side
74 San Benito	House	± 20 ft. right side, and ± 5 ft. accessory structure on the left side
98 San Benito	Garage	± 10 ft. left side setback

The lots identified are similar in size to the subject property and are all on the same side of the street.

The lot seems to have some development area where the location of the ADU and carport could be shifted to meet all the setback requirements. A revised design may reduce or eliminate the possibility of creating a back yard.

3. Granting the Variance will not adversely affect the interest of the public or the interest of the residents and property owners in the vicinity of the premise in question.

Staff review: Staff opines that this finding can be met.

The applicant asserts that granting the Variance will not adversely affect the interest of the public or residents, as the current use of the proposed carport location is off-street parking. As the carport is not considered living space and that significant foliage (screening) will be maintained on the north-side of the property, the applicant opines that the project will create limited impacts on the privacy of the adjacent neighbor. In addition, the applicant has provided letters of support for the project.

4. The granting of the Variance is consistent with the objectives of the General Plan and the Zoning Code.

Staff review: Staff opines that this finding may not be met. There are a few General Plan Policies regarding tree protection and ADU production. There does not seem to be any General Plan Policies specifically requiring carports.

General Plan LU-1.5. 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.

General Plan 3.622: Actively promote the Second Dwelling Unit provision of the Atherton Zoning Ordinance by encouraging homeowners and developers to include attached or detached Second Dwelling Units in existing or new homes.

With the granting of this variance, the proposed project would conform to the zoning ordinance.

CONCLUSION:

Staff requests that the Planning Commission consider all the Variance findings and determine if the information provided by the applicant is sufficient to grant the Variance.

1. There are special circumstances applicable to the property particularly the size of the lot and the location of heritage trees, where the strict application of the Zoning Title deprives such property of privileges enjoyed by other property owners in the vicinity and under identical land use zoning district classification.
2. Granting the Variance does not constitute a grant of special privileges inconsistent with the limitations upon properties in the vicinity and zone in which such property is situated as there are other properties with similar non-conformities.
3. Granting the Variance will not adversely affect the interest of the public or the interest of the residents and property owners in the vicinity of the premise in question as the carport is not living space and there is neighbor support for the project.
4. Granting of the Variance is consistent with the objectives of the General Plan and the Zoning Code, particularly General Plan Policies to protect trees and build ADUs.

As indicated in the ‘Recommendation’ and ‘Findings Analysis’ section of this staff report, Staff believes the conditions may not exist to make all four findings. There are site constraints resulting from the lot size and location of trees. Presence of heritage trees further restricts where development can occur.

ALTERNATIVES:

The Planning Commission could deny, approve, or modify the request.

FORMAL MOTION (DENIAL):

I move that the Planning Commission **deny** the Variance at 42 San Benito as there was insufficient information to make all four Variance findings.

FORMAL MOTION (APPROVAL):

I move that the Planning Commission **approve** the Variance at 42 San Benito based on the findings outlined by the Planning Commission, subject to the conditions listed in the draft Variance Certificate to allow the reduced front setback for an accessory structure (carport) from required minimum 30 ft to 0 ft (or at main built line).

/s/ Radha Hayagreev

Radha Hayagreev, Senior Planner

Attachments:

1. Draft Variance Certificates
2. Signed Variance Application
3. Variance request letter
4. Architectural Drawings
5. Neighbor support letter
6. 42 San Benito permit history
7. Town Arborist memo
8. Heritage tree exception and applicant arborist report