



**DATE: MARCH 22, 2023**

**TO: PLANNING COMMISSION**

**FROM: RADHA HAYAGREEV, SENIOR PLANNER**

**SUBJECT: Request for removal of one (1) 16.9-inch Heritage Oak Tree and one (1) 3x TPZ exception to build a new tennis court at 20 Tuscaloosa Avenue (APN 070-103-370)**

**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 of Conversion of Small Structures.

**RECOMMENDATIONS:**

For the reasons as outlined in this staff report, Planning Staff recommends that the Planning Commission conduct the public hearing and **deny** the Heritage Tree Removal Permit for the removal of one (1) heritage oak tree (Tree #18) and 3x TPZ exception of a 25-inch oak tree (Tree #19) based on the finding outlined below.

A. The removal of the heritage trees would be contrary to the purpose and intent of the Atherton General Plan.

*Basis for Finding:* In the professional opinion of the Town Arborist, tree #18, a 16.9-inch heritage Coastal Live Oak tree is neither dead nor dangerous, and in in good health and condition per the findings of both the Town Arborist and the report prepared by Tree Management Experts dated 11.02.2022. Per the Town Arborist's memo, the 3x TPZ exception for the Tree #19 cannot be recommended due to arboricultural standards. The Town Arborist also could not make the necessary findings as provided by Chapter 8.10 "Removal of and Damage to Heritage Trees" for the heritage oak tree to support approval for its removal. As such, the project is found to be contrary to the purpose and intent of the General Plan.

**BACKGROUND:**

20 Tuscaloosa is a 35,175 square foot (0.8 acres) lot located within the R-1A zoning district and is surrounded by other low-density, single-family homes. In January 2023, staff received an initial application requested for removal of five heritage trees on the lot. After multiple rounds of review and discussions, staff is presenting the Commission with the current request of one heritage tree removal and one TPZ exception for the proposed tennis court.

As seen in the attached plans, the proposal also shows a location of a 616 sq. ft. new detached ADU in the rear yard to the north side of the proposed 6,160 sq. ft. tennis court. The red circle indicates the 18-inch heritage oak tree removal request, and the blue star indicates Tree #19 TPZ of up to 3x for the construction of the tennis court.

**Figure 1: Location of Trees Proposed for Removal & TPZ Exception**



The yellow circle without the star at the top right indicates a tree at 8x TPZ of the proposed ADU which is not in the scope of this permit discussion. ADUs that are 800 sq. ft. or less shall not have any locational restrictions except the 4 foot side and rear setbacks.

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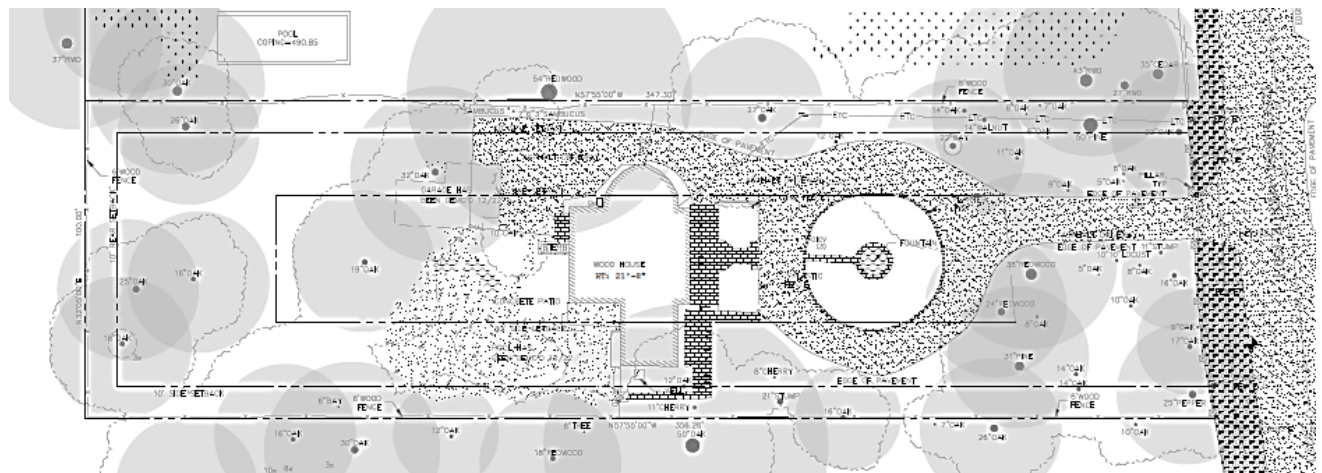
A report on the size and condition of the trees was prepared by Tree Management Experts on November 2<sup>nd</sup>, 2022. The request is for the removal of tree #18 which is a 16.9-inch heritage Coastal Live Oak Tree. The applicant's additional request is to build close to 3x away from the tree #19, a 25-inch coastal live oak tree. The complete findings of the arborist report are included in Attachment 4.

### ANALYSIS:

The removal of the Coast Live Oak tree and TPZ exception is to accommodate the construction of a tennis court. The applicant's narrative includes their request to increase the prospect of maximizing the usage of their home for family entertainment and maintain an active lifestyle.

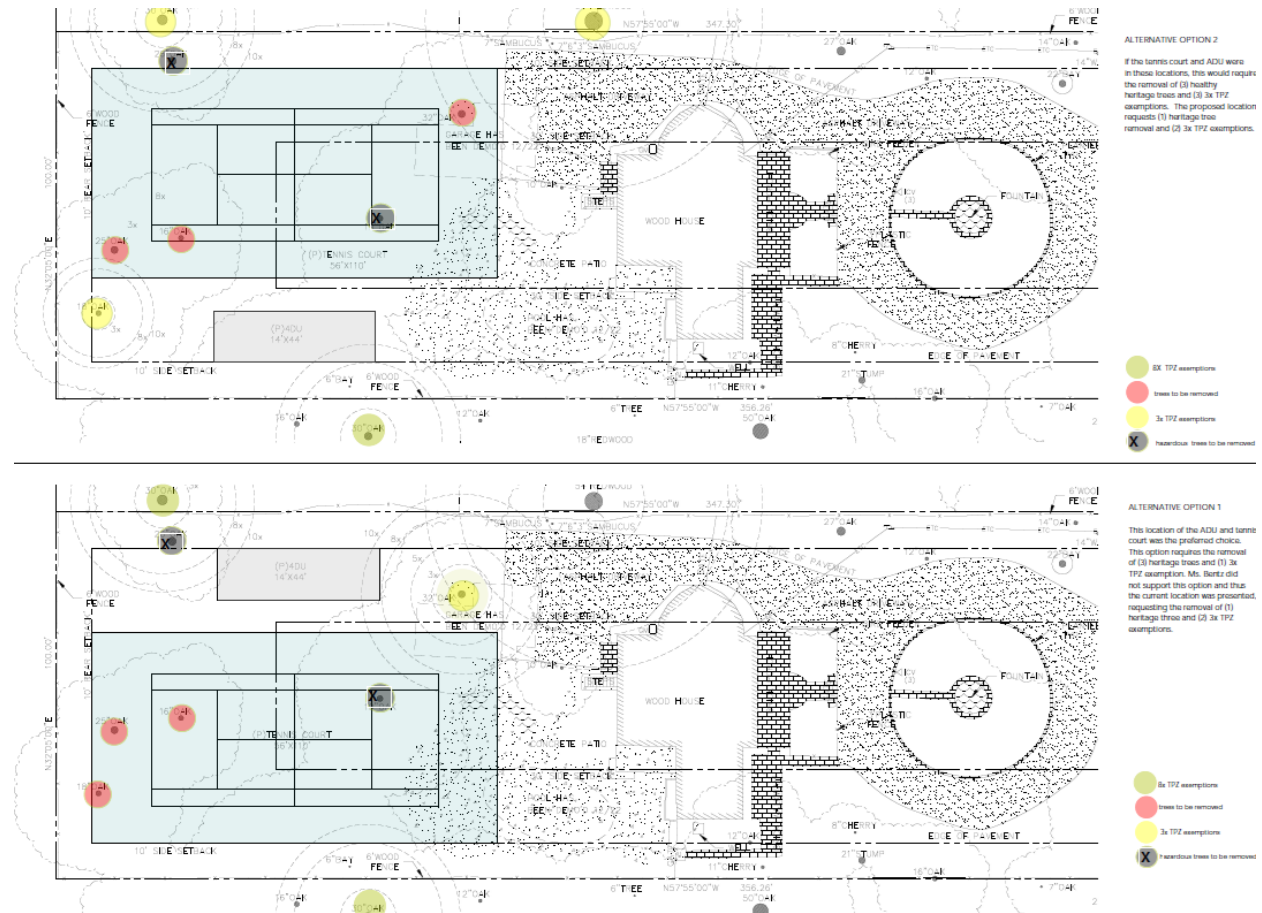
The parcel is surrounded by 29 trees on site, 15 of them being heritage trees. To illustrate the constraints on the property created by existing trees and structures, the applicant provided the following, noted here as Figure 2 and in Attachment 5.

**Figure 2: Existing Structures and Trees with TPZ**



The applicant also provided two potential options for the orientation of the Tennis Court and the ADU. Both alternatives have increased impact on more than one heritage trees as seen in the figure 3 below.

**Figure 3: Alternative options for Tennis Court location**

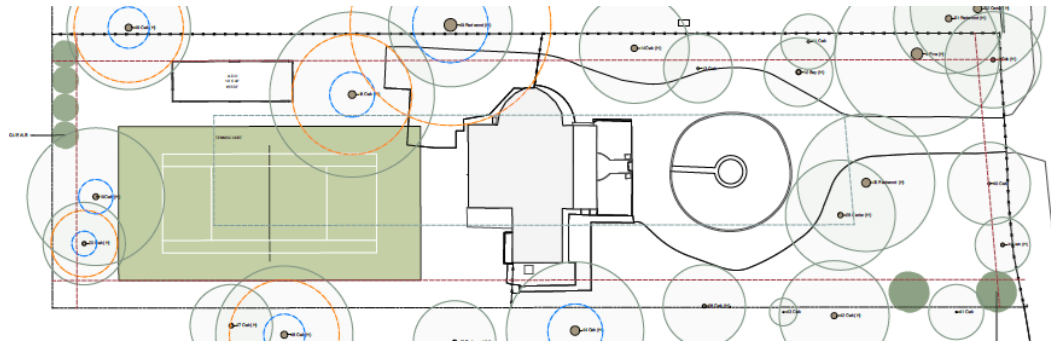


Both alternatives above show increased impact to more than one heritage tree in the rear yard causing increase in the number of heritage trees required to be removed for the construction of the tennis court. Staff notes that a tennis court is not required per development standards of R1-A zone and that it is a privilege for the property owners.

The current request is an improved version of the best possible location for the tennis court and the least impact to the trees, given the site conditions. The applicant proposes replacement for tree #17, #22 and #18 will be four (4) Quercus Alba X Robur ‘Skinny Genes’ (36” box). These are to be planted along the rear property line (see L3.0) and will provide additional privacy for the rear neighbors. In communication with the adjacent neighbors to the west, additional hedge screening will be planted between the tennis court and the common property line.

Figure 4 below shows the conceptual complete site plan with the replacement tree locations shown in green opaque circle along the rear property line as a screen.

**Figure 4: Conceptual site plan indicating removal of the heritage tree  
and replacement tree planting plan.**



The Town Arborist **could not make the necessary findings** to recommend the removal of the tree # 18, a heritage coastal live oak tree and the TPZ exception of up to 3x to tree number 19, a 25-inch oak tree as shown in Figure based on the following criteria for Heritage Tree Removals per Chapter 8.10 of the Atherton Municipal Code.

1. *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.*
2. *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.*

While it is understood that the trees present constraints on the use of the property, staff finds that the tennis court is not a requirement in R1-A zone. At the discretion of the Planning Commission, for each heritage tree permitted to be removed the permittee may be required to plant three trees of fifteen-gallon container size, or two trees of twenty-four-inch box container size, or one tree of fifteen-gallon container size and one tree of thirty-six-inch container size. Where heritage oak trees are allowed to be removed from within the buildable area, they shall each be replaced with one or more trees of forty-eight-inch container size of oak species at a location approved by the Planning Commission. The Planning Commission may also attach other reasonable conditions to ensure compliance with the intent and purpose of this chapter.

## **NOTICE**

Notice of this application was mailed to all property owners within 500 feet 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 staff received emails and those are included as Attachment 7.

## **CONCLUSION**

To grant a Heritage Tree Removal Permit, the Planning Commission must find that the removal of the trees would not be contrary to the purpose and intent of the Atherton General Plan.

General Plan Land Use Goal 1.210: To preserve the Town’s character as a scenic, rural, thickly wooded residential area with abundant open space.

General Plan Open Space and Conservation Element states: 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 the removal of and damage to heritage trees.”

## **ALTERNATIVES:**

The Planning Commission could approve or modify the request for the Heritage Tree Removal permit. Should the Planning Commission make the finding to approve the Heritage Tree Removal (HTR) permit, it is further recommended that the Commission do so subject to the draft conditions as listed in Attachment 1, “Draft Heritage Tree Removal Permit (HTR) Permit”.

## **SUGGESTED FORMAL MOTION (for Denial):**

I move that the Planning Commission find the request for a heritage tree removal for one coastal live oak tree (Trees #18) and the TPZ exception of up to 3x from a 25-inch coastal Live Oak tree #19 is contrary to the purpose and intent of the General Plan, for the reasons outlined in the Staff Report and the Planning Commission deny the Heritage Tree Removal Permit (HTR) and Tree Protection Zone exception TPZ permit at 20 Tuscaloosa Avenue.

*/s/ Radha Hayagreev*  
Radha Hayagreev, Senior Planner

### Attachments:

1. Draft Heritage Tree Removal (HTR) Permit
2. Town Arborist Memo
3. Applicant Provided Project Description
4. Arborist Report and Tree Protection report, prepared by Tree Management Experts, dated November 02, 2022
5. Project Drawings, dated February 15, 2023
6. Neighbor Letters of Support