



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

DATE: MARCH 22, 2023

TO: PLANNING COMMISSION

FROM: RADHA HAYAGREEV, SENIOR PLANNER

SUBJECT: Request for a Tentative Map and Conditional Exception to allow the subdivision of a 2.5 acres lot into two lots with non-conforming lot widths (less than required 175 ft.) at 43 Santiago Avenue. (APN 070-343-310). The Planning Commission is to review the proposed project and make a recommendation to the City Council.

CEQA: The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) to CEQA Section 15332 In-fill Development Project and under Section 15061(b)(3).

RECOMMENDATION:

For the reasons as outlined in this staff report, Planning Staff recommends that the Planning Commission consider recommending **denial** of the Conditional Exception request to the City Council. An analysis of the information provided by the applicant for the Conditional Exception is outlined in the Analysis section of this report.

Section 16.36.020 of the Atherton Municipal Code requires that exceptions only be granted if the following four findings can be made.

1. *There are special circumstances of conditions affecting the property.*

Staff Recommendation: Staff opines that Finding 1 **cannot be made** with respect to the subject property for the reasons detailed in this report.

2. The exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.

Staff Recommendation: Staff opines that Finding 2 **can be made**.

3. The granting of the exception will not be detrimental to the public welfare or injurious to other property in the territory in which the property is located.

Staff Recommendation: Staff opines Finding 3 **can be made**.

4. The granting of the exception will not violate the requirements, goals, policies, or spirit of the law.

Staff Recommendation: Staff opines that Finding 4 **can be made**.

Staff recommends that the Planning Commission only recommend approval of the Tentative Map if the all findings for the Conditional Exception can be made.

BACKGROUND:

The subject site at 43 Santiago (APN: 070-343-310) is a 2.502 acre (108,991 sq. ft. lot with a street frontage of 314.97 ft. and average lot depth of approximately 341 feet along Santiago Avenue, located within the R-1A zoning district. The average site cross slope is 2% and the lot shape is slightly trapezoidal in nature with no right angles.

The applicant is proposing a subdivision of the above lot into two sub-standard lots with non-conforming lot widths. The proposed substandard lots conform to the minimum lot area of 1 acre and minimum lot depth of 200 ft required in the R1-A Zoning District.

The proposed lots will have lot depths that are deeper than standard requirement due to the configuration of the existing 2.5-acre lot. The proposed deeper lot depth seems to be consistent with lots along the north side of Santiago on this block, specifically at 69, 71, 83, and 97 Santiago as seen in the neighborhood context map below.

Figure 1: Context Map



The applicant is requesting a conditional exception to a subdivision, as approvable by City Council, pursuant to the provisions of AMC 16.36. The alternative option that would allow a substandard lots as proposed would be under the provisions of SB9. The applicant has chosen not to pursue a SB9 lot split owing to the minimum three-year owner occupancy restriction requirement for SB9 lot splits.

NOTICE:

Notice of this application was mailed to all property owners within 500 ft. of the subject property. At the time of the publication of this report, the Town has not received any public comment or inquiries on the application.

ANALYSIS:

Pursuant to the Atherton Municipal Code (AMC) The applicant is proposing a subdivision of the above lot into two sub-standard lots with non-conforming lot widths as shown in Table A below.

Table A: Proposed lots vs. Conforming lot requirements in R1-A

	Conforming Requirements *	Lot	Proposed Lot-1	Proposed Lot-2
Size	43,560 sq. ft. (1 acre)		56, 451 sq. ft. (1.3 acres)	52,540 sq. ft. (1.2 acres)
Lot Width	175 ft		172.72 ft.	144.93 ft.
Lot Depth	200 ft		341.98 ft.	337.80 ft.

* Per AMC 16.24.050 Lot Size Requirement for lots with average cross slope 0-19.9%

The applicant seeks a conditional exception to allow the substandard lot widths of 172.72 ft and 144.93 ft. Pursuant to AMC chapter 16.36.020 Justifications – Exceptions shall be granted only upon a finding that the approval will secure substantially the objective of the regulations or requirements to which the exceptions are requested, shall protect the public health, safety, convenience, and the general welfare and shall be consistent with and implement the policies and objectives of the general plan.

CONDITIONAL EXCEPTION FINDINGS ANALYSIS

In order to recommend approval of the Subdivision Exception, the Planning Commission must determine that all four of the findings contained in Atherton Municipal Code Chapter 16.36.020 can be made. Below is the staff analysis of each of these findings.

1. There are special circumstances of conditions affecting the property.

Staff review: Staff opines that finding 1 **cannot be met**. The subject site 43 Santiago is generally flat and surrounded by low density residential development and, trapezoidal in shape. The lot has angles that are not at 90 degrees. There are clearly distinguishable front lot line and side lot lines for this property. Compared to several other amoeboid shaped lots, this trapezoidal shaped property

seems to appear as a regular condition for many properties in the Town. The existing lot does not seem to have a special circumstance.

2. The exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.

Staff review: Staff opines that this finding **can be met**. The applicant has requested to subdivide a 2.5 acre lot to create two new lots that meet the density of lots that the General Plan allows, at 1-acre minimum for each newly created lot for R1-A zone. The lot is just not big enough to subdivide in compliance with the code provisions of lot width of standard 175ft lot widths due to the shape of the existing 2.5 acre. The lot width exception is necessary for this particular site geometry in order to meet the required 1-acre density of the subdivided lots.

3. The granting of the exception will not be detrimental to the public welfare or injurious to other property in the territory in which the property is located

Staff review: Staff opines that this finding **can be met**. Since this exception is for the substandard lot widths for two new lots which are created at a density that conforms to the general plan, granting of the substandard lot width for proposed subdivision will not be detrimental to the public welfare or injurious to other property in the territory of 43 Santiago Avenue. The granting of the substandard lot width does not create any new concerns such as traffic ingress/egress, the development will be in compliance with required setback and other requirements for screening to protect privacy of the property. It will not result in injuries to other property in the territory.

4. The granting of the exception will not violate the requirements, goals, policies, or spirit of the law.

Staff review: Staff opines that this finding **can be met**. The granting of a substandard lot width will not violate zoning law for R1-A, general plan goals for maintain the general character of the neighborhood and maintain the spirit of the subdivision law to seek lawful exception under the provisions of the Atherton Municipal Code.

The State of California encourages the development of additional housing. This conditional exception would allow for additional housing to be built and is consistent with the adopted Housing Element.

Housing Goal 3.710: Facilitate the private development of housing to meet a portion of the above moderate income housing need identified for Atherton.

Housing Policy 3.712 A: Within the limitations of the private housing market the Town shall work with private developers to encourage new housing development.

SUBDIVISION FINDINGS ANALYSIS

1. Whether the proposed subdivision is in conformity with law and this chapter.

Staff review: Staff opines that the subdivision finding 1 **cannot be made unless the findings for the Conditional Exception can be made**. The proposed subdivision would be in conformity with law and Chapter 16 of the Atherton Municipal Code if the conditional exception is granted.

2. Whether the size and shape of the proposed lots are in general conformance to town requirements and the general pattern of the neighborhood and will not cause traffic, health or safety hazards.

Staff review: Staff opines that the subdivision finding 2 **can be made**. The size of the proposed lots are in conformance with that of the minimum requirement of 1 acre in R1-A zone. The shape of the proposed lots are approximate trapezoids in shape, much similar to the original parcel shape. The subdivision would be in general conformance with the town requirements and the general pattern of the neighborhood and would not cause significant traffic, health or safety hazards.

3. Whether the proposed lots will have proper and sufficient access to a public street.

Staff review: Staff opines that the subdivision finding 3 **can be made**. Both the newly subdivided lots have its frontage along the public street Santiago Avenue for the entire length of proposed front lot line. The lots have proper and sufficient access to a public street.

4. Whether the proposed map and the design or improvement of the proposed subdivision are consistent with applicable general and specific plans.

Staff review: Staff opines that the subdivision finding 4 **can be made**. The new lot sizes are consistent with the General Plan and Zoning. The proposed map and the design of the proposed subdivision create two substandard lots requiring a conditional exception for the lot widths. If the conditional exception is approved, the proposed project would be consistent with the general plan and zoning. As noted above the following General Plan Goal and Policy apply.

Housing Goal 3.710: Facilitate the private development of housing to meet a portion of the above moderate income housing need identified for Atherton.

Housing Policy 3.712 A: Within the limitations of the private housing market the Town shall work with private developers to encourage new housing development.

5. Whether the site is physically suitable for the type of development.

Staff review: Staff opines that the subdivision finding 5 **cannot be made unless the findings for the Conditional Exception can be made**. The site is physically suitable and large enough to be subdivided into two lots. The site is just not large enough to create new standard size lot width as required by the code. Although the areas of each newly created lot meet the density of the subdivision requirements and lot depth exceeds required lot standards, the lot widths would be substandard owing to the physical site dimensions.

6. Whether the site is physically suitable for the proposed density of development.

Staff review: Staff opines that the subdivision finding 6 **can be met**. The site is physically suitable and large enough to be subdivided into two lots at the required density of 1 acre per lot. As noted

above, the new lots would be over an acre in size and the main residence development area would allow for a normal residence.

7. Whether the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

Staff review: Staff opines that the subdivision finding 7 **can be met**. The subject site at 43 Santiago is not located adjacent to a creek and would have no impact on fish, wildlife, or their habitat.

8. Whether the design of the subdivision or the type of improvements is not likely to cause serious public health problems.

Staff review: Staff opines that the subdivision finding 8 **can be met**. This subdivision will not cause serious public health problems because the design follows all required parameters of subdivision except that of the lot widths. The widths are shown to be at 172 and 144ft where the required lot width is 175ft.

9. Whether the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision, or that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to those previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction.

Staff review: Staff opines that the subdivision finding 9 **can be met**. There are no conflicts with easements that exist currently on the lot not any proposed easements outside of that required for utilities along the very margins of the front lot line. There would be no access or use restrictions on the proposed parcels. .

10. Whether discharge of waste from the proposed subdivision will not result in violation of existing water quality requirements prescribed by the regional water quality control board.

Staff review: Staff opines that the subdivision finding 10 **can be met**. The site is flat and drainage can be handled on site. The project would be conditioned to meet all regional water quality requirements at the time of development.

CEQA

Though staff recommends a denial for this project, staff has determined that if the tentative map and conditional exemption are approved, such approval would be exempt from the provisions of the California Environmental Quality Act (CEQA) under both the Class 32 (infill) exemption as well as the common-sense exemption.

The project would be exempt under the Class 32 exemption because:

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. The project is compatible with the following General Plan Goal and Policy:

Housing Goal 3.710: Facilitate the private development of housing to meet a portion of

the above moderate income housing need identified for Atherton.

Housing Policy 3.712 A: Within the limitations of the private housing market the Town shall work with private developers to encourage new housing development.

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. The proposed project is within city limits. The size of the project is 2.502 acres.

(c) The project site has no value as habitat for endangered, rare or threatened species. The project site is not located near a creek and is vacant residential lot surrounded by single family homes.

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. The project is a 2-lot subdivision with both lots having a lot size of over one acre (standard size lot). No significant impacts related to traffic, noise, air quality or water quality will result as the minimum lot size for the area would be maintained.

(e) The site can be adequately served by all required utilities and public services.

Will serve letters for all utilities have been obtained by the applicant.

Furthermore, this Project would be exempt from environmental review under CEQA under Section 15061(b)(3), Title 4 of the California Code of Regulations. Under Section 15061(b)(3), “A Project is exempt from CEQA if: (3) The activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” Staff finds that this project does not have a potential for causing a significant effect on the environment since the applicant does propose any improvement, modification, or development on the property at this time.

CONCLUSION:

Staff requests that the Planning Commission consider all the Exception findings and determine if the information provided by the applicant is sufficient to recommend approval of the Conditional Exception to the City Council

1. There are no special circumstances of conditions that are currently affecting the property.
2. Granting the Conditional Exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.
3. The granting of the exception will not be detrimental to the public welfare or injurious to other property in the territory in which the property is located.
4. The granting of the exception will not violate the requirements, goals, policies, or spirit of the law.

As discussed in this report, approval of a Conditional Exception requires all four findings outlined in Section 16.36.020 of the Atherton Municipal Code to be made. For the reasons described in the Analysis section above, staff does not believe Finding 1 and Finding 2 can be made in this case

and is therefore does not support a Planning Commission recommendation of approval to the City Council for Tentative Map and Conditional Exception sought by the applicant.

ALTERNATIVES:

The Planning Commission recommend authorization, authorization with modifications, or denial of the proposed project.

SUGGESTED MOTION FOR DENIAL:

I move that the Planning Commission recommend that the City Council **deny** the Conditional Exception at 43 Santiago Avenue as there was insufficient information to make all four Variance findings.

SUGGESTED MOTION FOR APPROVAL:

I move that the Planning Commission recommend that the City Council **approve** the Tentative Map and Conditional Exception at 43 Santiago based on the findings outlined by the Planning Commission, subject to the conditions listed in the draft Conditional Exception Certificate to allow the reduced lot widths for the proposed substandard lots and direct staff to file a Notice of Exemption for the project.

/s/ Radha Hayagreev

Radha Hayagreev, Senior Planner

Attachments: Revised 3.21.22

1. Draft Conditional Exception Certificate
2. Conditional Exception Tentative Parcel Map dated 03.08.23
3. Applicant narrative and findings
4. Conditional Exception drawings
5. Town of Atherton Substandard lot address
6. PC application form
 - 6a. Late correspondence 43 Santiago Conditional Exception exhibits