



**DATE:** APRIL 26, 2023

**TO:** PLANNING COMMISSION

**FROM:** RADHA HAYAGREEV, SENIOR PLANNER

**SUBJECT:** **Request for a Tree Protection Zone Exception** for three tree exceptions of 6.5x for a 39-inch oak tree to build a detached 1,132 sq. ft. ADU, 5.9x for a 53" oak tree and 1.7x exception for a 46-inch oak tree for a tennis court at **240 Oak Grove Avenue** (APN 061-290-050) Permit number PTPZ23-00002

**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.

**RECOMMENDATION:**

Staff recommends that the Planning Commission approve for three tree exceptions of 6.5x for a 39-inch oak tree to build a detached 1,132 sq. ft. ADU, 5.9x for a 53" oak tree and 1.7x for a 46-inch oak tree for a tennis court at **240 Oak Grove Avenue** (APN 061-290-050) in Atherton based on the following finding and for the reasons outlined in this report.

The requested TPZ exception would not be contrary to the purpose and intent of the Atherton General Plan.

**BACKGROUND:**

The subject site (shown in Cyan below) is approximately 1.14 acres (49,604 square foot) interior lot located in the R1-A Zoning District and is surrounded by other low-density, single-family homes on three sides and shares the rear boundary with PFS district. The owners are proposing to construct an Accessory Dwelling Unit (ADU) and a new tennis court on the rear side of the property.

**Figure 1: Location Map**



The proposed project result in three Tree exceptions of 6.5x for a 39-inch oak tree to build a detached 1,132 sq. ft. ADU, 5.9x for a 53" oak tree and 1.7x for a 46-inch oak tree for a tennis court

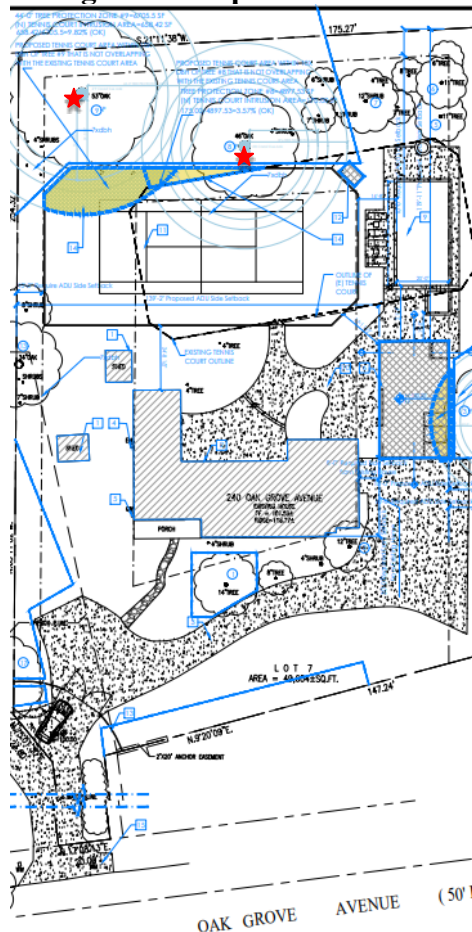
The scope of the requested TPZ exception (less than 8x the trunk diameter) requires consideration by the Planning Commission in accordance with the Town's adopted *Heritage Tree Guidelines and Standards* ("Heritage Tree Guidelines") document.

### **ANALYSIS:**

The Heritage Tree Ordinance Guidelines defines a Tree Protection Zone (TPZ) as, "...the designated protection area sufficiently large enough to protect a Heritage tree and its roots from Disturbance and/or Damage." The guidelines further specify the TPZ radius shall be 10 times (10x) the trunk diameter at breast height. An exception request for a reduced TPZ down to 8x the diameter would be processed at the staff level by the Town Arborist. An exception request for a further reduction of the TPZ is required to be considered by the Planning Commission.

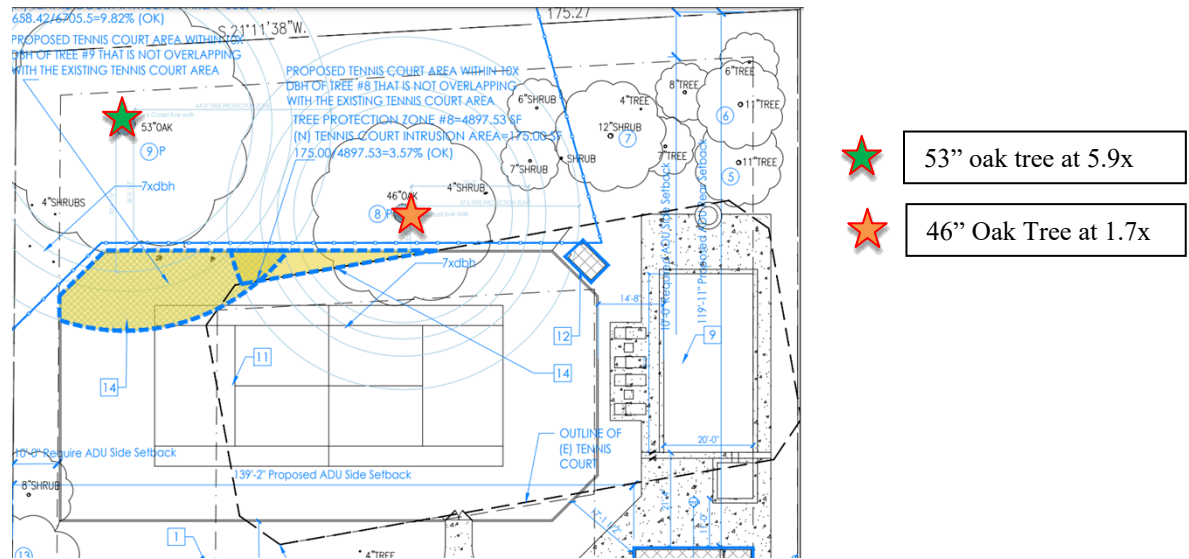
The TPZ exceptions are marked in yellow geometric shapes in the plan below. See site plan provided as Figure 2 below.

**Figure 2: Proposed Site Plan**



. The dashed line shows the location of the existing tennis court location. The new tennis court would be parallel to the main house. Figure 3 below shows details of the two trees that require a TPZ exception around the new tennis court.

**Figure 3: Proposed TPZ Encroachment for new tennis court**



The 53-inch oak tree is shown in a green star in Figure 3 above with the yellow geometric dashed circle showing the new TPZ impact on the proposed new court location. The TPZ exception for this is a new impact since there is no overlap of this TPZ with the existing tennis court area. The 53-inch oak tree TPZ exception is at 5.9x. The second tree is a 46" oak tree (shown in orange) whose impact on the new tennis court location is seen in the yellow-colored portion of the TPZ exception in Figure 3 above. The effective new TPZ impact for the 46-inch oak tree is requested to be at 1.7x.

**Figure 4: Proposed TPZ Encroachment for new 1,132 SF detached ADU.**

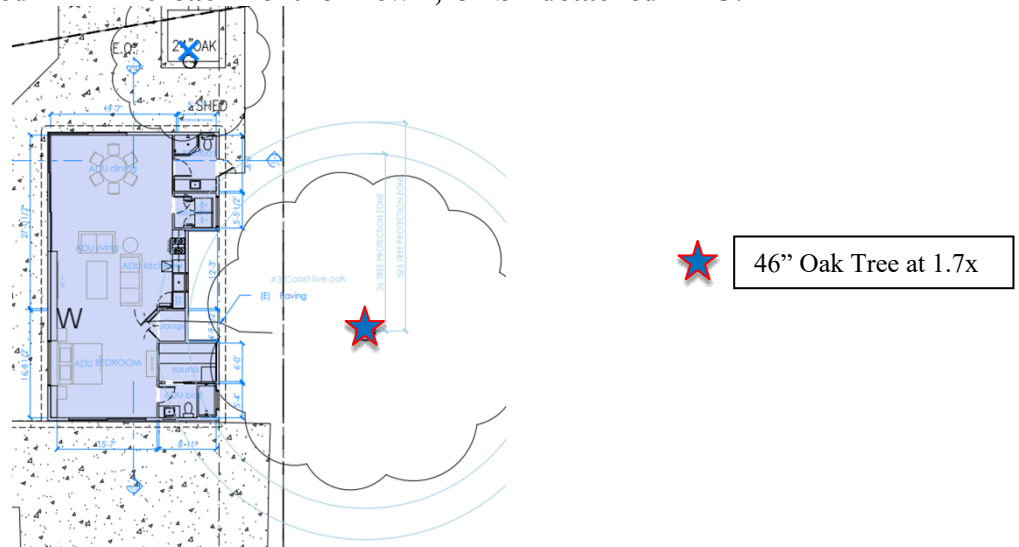
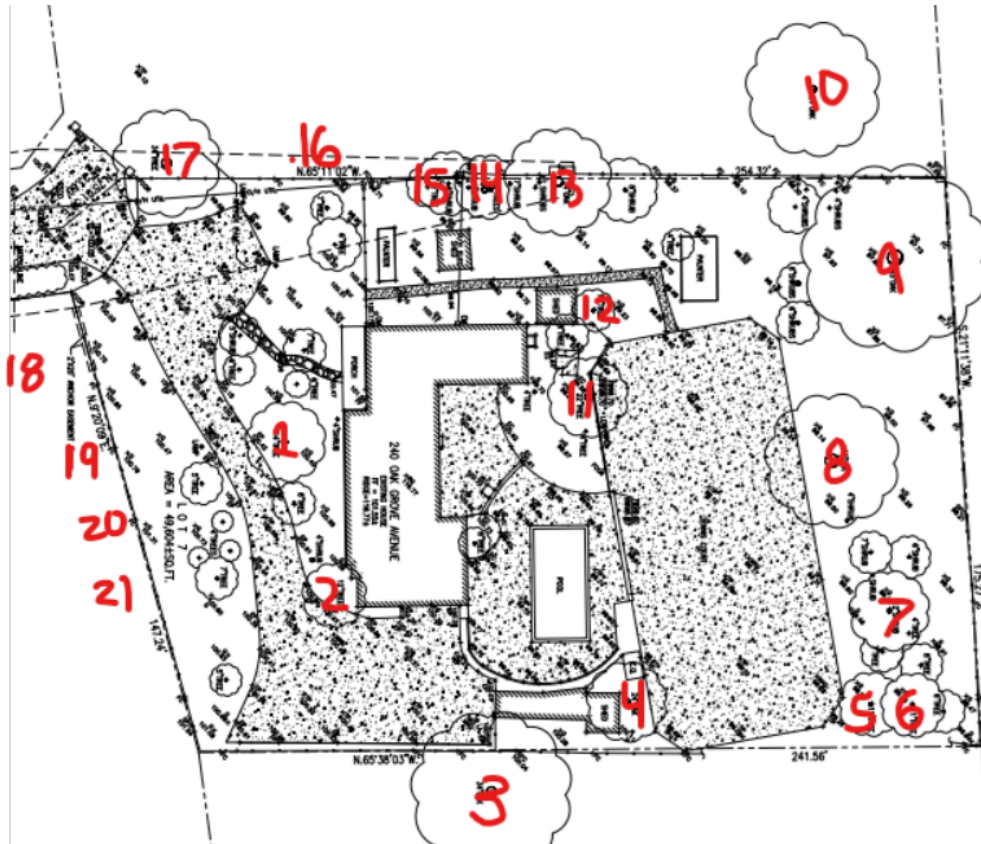


Figure 4 above shows the ADU footprint and the TPZ exception area of 6.5x to a 39-inch oak tree in the neighbor's property.

The Project Arborists, Kielty Arborist Services LLC, prepared an arborist report for the tree locations on the site for a tree inventory, see site plan showing 21 trees overall (also in Attachment 2.) Tree number 3, 8 and 9 are the Trees under consideration for the proposed project discussion.



Per the arborist's analysis, hand excavation under Project Arborist's supervision around the TPZ near Neighbor's 39" oak tree (tree #3) at 6.5x for the ADU is required. All roots encountered measuring 1: in diameter or larger need to be documented in the required monthly inspections. Encountered roots are recommended to be cleanly cut with cut root ends on the tree side covered in layers of wetted-down burlap.

For the tennis courts, there were exploratory trenches observing root systems in the existing tennis court and the proposed tennis court boundaries. The report confirms that the existing tennis court had acted as a root barrier and little or no roots are expected to be found underneath the existing tennis court. More details of each trench are available in Attachment 2.

The Town Arborist reviewed the Project Arborist's report, the site plan diagrams showing the requested TPZ exceptions and supporting application materials. The Town Arborist Memo is included as Attachment 1. The report clarifies the coordination with the applicant and arborist to ensure that the Tree Protection Zone was clarified based on the design of the ADU. Alternative location of the ADU possibility is minimal on this site owing to a large PUE on the parcel in

addition to a 34” oak and a 53” oak tree. The site conditions require that the ADU TPZ is the only way forward for the design proposed.

For the Tree #8 and #9 for the tennis court construction, Town arborist recommends all of Project arborist requirements of supervision when cutting and removing tree toots. Town Arborist recommends irrigating the soil when within 10x the trees diameter using 200 gallons of water in early spring of 2023 and again before start of fall. This will act as mitigation for minor impacts. A Licensed tree care provider is recommended to be used to inject water into the soil. This will also help aerate the soil and provide additional benefits for the tree.

The Town Arborist recommends approval of the plan as proposed.

### **NOTICE**

Legal advertisement of this hearing was published in *The Almanac* newspaper, 15 days prior to the hearing date. 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.

### **CONCLUSION:**

The Town’s Heritage Tree Preservation Standards and Specifications, implemented through the Municipal Code, allows the Planning Commission to consider requests for a Tree Protection Zone (TPZ) exception based on a series of specified criteria. The TPZ exception request for three tree exceptions of 6.5x for a 39-inch oak tree to build a detached 1,132 sq. ft. ADU, 5.9x for a 53” oak tree and 1.7x exception for a 46-inch oak tree for a tennis court is found to have a designated protection area sufficiently large enough to protect both the trees and their roots from Disturbance and/or Damage combined with related mitigation, as supported by the Town Arborist.

### **ALTERNATIVES:**

The Planning Commission could approve, deny, or modify the request to approve the requested TPZ exception.

### **ENVIRONMENTAL IMPACT:**

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) to CEQA Section 15303(a), New Construction of a second dwelling unit in a residential zone.

### **FORMAL MOTION FOR APPROVAL**

I move that the Planning Commission find that the project is categorically exempt from CEWA section 15303 (a) and find the Exception to the Tree Protection Zone (TPZ) of three tree exceptions of 6.5x for a 39-inch oak tree (Tree #3) to build a detached 1,132 sq. ft. ADU, 5.9x for a 53” oak tree (Tree #8) and 1.7x exception for a 46-inch oak tree (Tree #9) for a tennis court at 240 Oak Grove Avenue.

This project would not be contrary to the purpose and intent of the General Plan, for the reasons outlined in the Staff Report, and the Commission approves the TPZ exception subject to the conditions as listed in the draft TPZ Exception Certificate.

/s/ Radha Hayagreev

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Radha Hayagreev, Senior Planner

Attachments:

1. Town Arborist Memo
2. Project Arborist Report, prepared by Kielty Arborist Services, LLC., dated March 8, 2021, revised on March 31, 2023
3. Proposed Plans, prepared by Studio S Squared Architecture
4. Applicant's Project Description
5. Alternative ADU location discussion
6. Applicant's PC application,
7. Draft TPZ Exception Certificate