

**PLANNING COMMISSION
REGULAR MEETING
DRAFT MINUTES**

**TOWN OF ATHERTON
COUNCIL CHAMBERS
80 FAIR OAKS LANE
ATHERTON, CALIFORNIA
APRIL 26, 2023
6:00 P.M.**

This meeting was held in-person with the option for staff and the public to join online.

1. ROLL CALL

PRESENT: Eric Lane, Chair
 Nancy Lerner
 Bob Polito

ABESENT: Randy Lamb, Vice Chair
 Perry Narancic

Town Planner Sung H. Kwon, Senior Planner Radha Hayagreev, Town Arborist Sally Bentz-Dalton, Chief Building Official Michael Greenlee, and Office Specialist Francesca Reyes were present.

2. PUBLIC COMMENTS

Carol Flaherty expressed concern regarding construction projects having to certify, monthly, that properties were built in conformance with the arborist tree protection plan. She originally raised her concern with the Town but was directed to bring it to the Planning Commission as it was the Planning Commission that implemented the requirement.

Carol Flaherty reported that her arborist had 25 construction projects in town, and it would not be feasible to deliver letters to all 25 properties. The letters were also expensive as arborists were charging \$300 to \$500 per letter.

Carol Flaherty shared that a neighbor spent \$21,000 on arborist letters to state that the tree protection fences have not moved on their parcel. She noted that there is an appraisal on every tree, and there is an implicit penalty for damaging trees. She requested consideration of a quarterly report instead of a monthly report, which would serve to benefit arborists and residents.

Chair Lane responded that the monthly report was implemented after several trees were badly damaged during construction and was a result of heightened sensitivity regarding the importance of following the tree protection plan.

The Planning Commission agreed to defer further discussion to June 2023 pending the Town Arborist Sally Bentz-Dalton's availability.

3. APPROVAL OF MINUTES

MOTION to approve the minutes of the March 22, 2023, Planning Commission Meeting.

**M/S Polito /Lerner Ayes: 3 Noes: 0 Abstain: 0 Absent: 2
Commissioners Lamb and Narancic were absent**

4. PUBLIC HEARING

**a. Request for a Conditional Use Permit to allow for the renovation of the existing locker room facilities, and 364 square-foot building addition for locker room accessibility upgrades, spa, and related amenities at Menlo Circus Club at 190 Park Lane.
Permit number CUP23-00002 (APN 070-214-080)**

Senior Planner Radha Hayagreev presented the staff report.

Chair Lane opened the public comment period and invited the Applicant to address the Commission.

Architect Greg Hagey, of KSH Architects, reported that the request was a modest addition to the building while maintaining the materials and style of the existing structure. The modest expansion would address ADA upgrades within the club itself and would likely not be visible.

There being no additional comments, Chair Lane closed the public comment period.

Chair Lane reported that he was given a tour of the club and confirmed the request was a minor adjustment, which will make the structure more ADA-compliant and was not noticeable unless familiar with the existing structure.

Chair Lane made the following motion:

MOTION to determine that the project is exempt from CEQA and approve the request for a conditional use permit to allow for the renovation of the existing locker room facilities, and 364 square-foot building addition for locker room accessibility upgrades, spa, and related amenities at Menlo Circus Club at 190 Park Lane based on the findings outlined in the discussion of the Planning Commission, and subject to the conditions listed in the certificate.

**M/S Chair Lane/Polito Ayes: 3 Noes: 0 Abstain: 0 Absent: 2
Commissioners Lamb and Narancic were absent**

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

Senior Planner Radha Hayagreev presented the staff report.

Town Arborist Sally Bentz-Dalton provided comments on the project.

Chair Lane opened the public comment period and invited the Applicant to address the Commission.

Property Owners Shivani and Nirmal Govind provided a presentation and noted a timeline of communication with neighbors to obtain feedback on the project. A revised plan was presented to the Applicant's neighbor on March 5, 2023, along with an arborist report; however, the Property Owners have not received a response as of April 26, 2023.

Architect Eugene Sakai, of Studio S Squared Architecture, reported that the existing tennis court is old, non-compliant with regard to setbacks, and is outside the buildable area for a tennis court on the right-hand side. The new tennis court would be rebuilt to modern day standards and would also bring the tennis court into compliance with the zoning ordinance.

Architect Eugene Sakai, of Studio S Squared Architecture, reported that the three areas requiring a TPZ exception were found with no roots in the encroachment areas. He noted the TPZ intrusion. He also explained the rationale for the location of the ADU. He noted there were no roots in the encroachment area as confirmed by his arborist, David Beckham, as well as the Town Arborist. Eugene noted that the building was also modified, as recommended by Senior Planner Radha Hayagreev and Town Arborist Sally Bentz-Dalton to remain outside the 8xDBH root zone.

Arborist David Beckham, of DB Arborist Services, reported some roots during the exploratory trenching along the tennis court; however, the roots were smaller than two inches in diameter. There were also signs of previous trenching and irrigation lines. He felt confident of the project's design and its minimal impact on the trees. He reported a low percentage of root zone impacted and that all three trees are live oaks, which have tolerance to construction.

There being no additional comments, Chair Lane closed the public comment period.

Chair Lane and Commissioner Lerner noted that they were ok with the project.

Commissioner Lerner made the following motion:

MOTION to approve the project being categorically exempt from CEQA Section 15303A and find the exception to the Tree Protection Zone (TPZ) exception for three tree exceptions of 6.5x for a 39-inch tree (tree No. 3) to build a detached 1,132 square-foot ADU, and 5.9x for a 53-inch oak tree (tree No. 8), and 1.7x exception for a 46-inch oak tree (tree No. 9) for a tennis court at 240 Oak Grove Avenue.

**M/S Lerner/Polito Ayes: 3 Noes:0 Abstain: 0 Absent: 2
Commissioners Lamb and Narancic were absent**

c. Request for a Construction Timeline Permit Penalty Appeal regarding the delays in the construction of a new 15,500 square-foot three-story custom home at 76 Ridge View Drive Permit number APL23-00001 (APN 073-181-450)

Senior Planner Radha Hayagreev presented the staff report.

Chief Building Official Michael Greenlee clarified that the appeal of the penalty deposit is actually for \$180,000 of the \$250,000, since the Applicant completed the project before exhausting the complete \$250,000 and received an automatic refund of \$70,000. He noted that staff were granted 62 days on top of the 139 days approved by the town in March 2020 or April 2020 for all projects due to the pandemic.

Chief Building Official Michael Greenlee elaborated on some the details related to the construction delay.

Commissioner Polito queried the reasoning for the additional 139 days granted for the pandemic.

Chief Building Official Michael Greenlee responded that, at the time that projects were shut down for 49 days, the City Manager, City Attorney, and the Chief Building Official suggested an additional 139 days as appropriate prior to realizing the effects and challenges of COVID-19. This was approved by the City Manager and the City Attorney.

Commissioner Polito did not think that 139 days was enough to address supply issues.

Chief Building Official Michael Greenlee noted that he felt obligated to give people extra time to complete the project.

Chair Lane asked if the project was complete.

Commissioner Lerner queried whether other contractors struggled with the same circumstances and challenges.

Senior Planner Radha Hayagreev confirmed one other applicant with similar circumstances. She noted that a database of projects that were completed on time was also provided to the Planning Commission at a previous hearing.

Chief Building Official Michael Greenlee reported five projects that exceeded the construction time limit, have paid \$250,000, and were still under construction longer than the Applicant.

Chair Lane reiterated that 20% to 30% of the town was under construction at any point in time. He noted the impetus for the penalty is to encourage respect for neighbors and to minimize the impact of ongoing construction on the town and its residents.

Chair Lane opened the public comment period and invited the Applicant to address the Commission.

Architect Tim Shipo reported that, in his 27 years of practice, he has never presented before the Planning Commission for exceeding the construction time limit. He noted the project is a unique parcel on top of a hill, and that the project has turned out to be the most challenging project he has worked on.

Architect Tim Shipo noted that the house became a commercial structure due to the owners' request for glass, which required a complicated structure of concrete piers, in addition to the integration of the pool into the foundation. He reported that Behrens Curry Homes created a schedule for the project, which included a good buffer period in case of complications; however, the COVID-19 pandemic impacted the project due to the town shutting down construction. He noted that in addition to COVID-19 there were shutdowns due to exposure from subcontractors, and the ripple effect on the rest of the construction. He reiterated that the contractors did not show complacency throughout the construction and responded and pivoted accordingly.

Builder Spencer Curry, of Behrens Curry Homes, agreed with the CBO regarding the challenges of determining the time lost. He reported taking all measures possible to mitigate further delays in the project and took personal risks to complete tasks out of sequence. He noted he is on a fixed fee and was

incentivized to complete the project as soon as possible. He noted his projects have never been delayed by more than one or two months. He elaborated on the supply chain issues.

Carol Flaherty emphasized that, even after construction was permitted to resume, there was a lack of laborers because they had sought work in other locations that had not shut down. She noted that contractors would poach employees from job sites and that materials were left in containers at ports for several months. She reported a one-year wait to receive permanent power and emphasized the time required to secure steel to build new homes.

Carol Flaherty reiterated that it was not possible to complete projects on time and was supportive of the owners not having to pay the penalty. She stated that the challenges have been experienced throughout the community and still continue to date.

Sam Lerner stated that every builder encountered challenges during the pandemic with supply shortages, sick workers, and being shut down. He noted that the Applicant's house took four years to build, and in that time, several other homes were built. He agreed with the CBO that it is part of the expense of doing business. He reiterated that the penalty rules are intended to protect the best interest of residents.

There being no additional comments, Chair Lane closed the public comment period.

Commissioner Polito reported that he worked in the electrical supply industry and still sits on some boards. He has never seen this level of service disruption with lead times of 12 to 14 months for power. He noted that the pandemic was unique and challenging, and while some consideration has been given, he did not feel that 139 days was sufficient time to accommodate the challenges encountered. He stated that the project presented several unique challenges and that providing more accommodation is appropriate.

Chair Lane noted the issue was with the original specifications on the home. He reported the home was built on top of a hill with known land structure issues and was bound to present challenges. He did not believe that the project would have been completed on time regardless of the COVID-19-related delays.

Chair Lane reported driving by the project and expressed concern regarding limited space to maneuver vehicles. He noted the importance of enforcing the penalty rules to limit disruptions to residents. He queried the maximum extension that the CBO has provided for a project.

Chief Building Official Michael Greenlee confirmed that all projects have received the maximum 139 days and no additional days have been granted for any project.

Chair Lane reiterated that the specifications of the project were designed for difficulty. He was inclined to proceed with a reduced penalty to reinforce the importance of completing projects on time and to recognize that an additional one-third of a year was allotted to complete the project.

Commissioner Lerner agreed with what was said.

Chair Lane opened the public comment period again.

Samantha Brown, of Behrens Curry Homes, noted the contractor appreciated the additional 139 days; however, she noted it was 99 workdays and that the contractor could not work on the weekends or on holidays.

Chief Building Official Michael Greenlee confirmed that 139 calendar days is consistent with all projects.

Samantha Brown queried whether the Planning Commission would consider a request for 139 working days.

Chair Lane responded the request would be inconsistent with the timeline allotted to other projects but would discuss it with the CBO.

Sam Lerner noted that the project timeline was three years. From the first inspection to completion was four years and was too long for a project.

Chair Lane closed the public comment period.

Commissioner Lerner made the following motion:

MOTION to approve the staff recommendation of the appeal to waive the building permit Construction Timeline Penalty and authorize a partial refund of \$97,000 to the owner's representative for building permit B18-00731 Construction Timeline for a New Residence at 76 Ridge View Drive for the reasons outlined in the staff report.

**M/S Lerner/Chair Lane Ayes: 3 Noes: 0 Abstain: 0 Absent: 2
Commissioners Lamb and Narancic were absent**

5. STAFF REPORTS

a. Housing Element Update from Town Planner Sung Kwon: The housing element update e-mail was provided to the Planning Commission.

b. Planning Commission Amended Calendar for Public Notice Deadlines: Senior Planner Radha Hayagreev reported that the approved Planning Commission meeting schedule dates are correct; however, the public notice deadlines from May 2023 through to November 2023, required updates to advanced dates to prepare for newspaper noticing and radius noticing.

MOTION to approve the amended Planning Commission Meeting Schedule with the changes to the public notice deadline.

**M/S Polito/Lerner Ayes: 3 Noes: 0 Abstain: 0 Absent: 2
Commissioners Lamb and Narancic were absent**

6. COMMISSIONERS' REPORTS

Chair Lane noted that the Commission received property owner's correspondence for item 4c that note they would not be able to attend and that their representatives would attend the hearing for them.

7. **ADJOURN**

**M/S Chair Lane/Polito Ayes: 3 Noes: 0 Abstain: 0 Absent: 2
Commissioners Lamb and Narancic were absent**

The meeting was adjourned 7:10 p.m.

Respectfully Submitted:

/s/Sung H. Kwon
Sung H. Kwon, Town Planner