PARKS AND RECREATION COMMISSION QUESTIONS
OCTOBER 29, 2025

5.1. Heritage Tree Removal Application Appeal-151 Calderon Avenue

1. Is there a drawing showing both the outlined/drawn location of each of the 6 proposed ADUs and the 8 trees proposed for removal?

   Drawings exist in the final building permit plan set, which cannot be duplicated under federal copyright law and California Health & Safety Code Section 19851. Staff will provide images in compliance with state and federal law during its presentation at the appeal hearing.

2. Is the city legally able to direct the developer to investigate alternate locations on the property for the ADU installations?

   Generally, no. Under State law, local agencies can only impose "objective standards", which are standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal of an accessory dwelling unit permit application.

3. If the "by-right" legal standards in State law result in the appellants having no likelihood of a successful appeal, would the appeal fees be refunded?

   No. The appeal fee is a cost-recovery fee established to reimburse the City for the actual costs incurred in processing the appeal and administering the hearing. These costs, such as staff time, public noticing, and preparation of materials, are incurred regardless of the outcome of the appeal. Accordingly, the fee is not refundable, even if the applicable State law leaves little or no likelihood of a successful appeal.

4. What, if any, is the mitigation plan? New plantings? In lieu fees?

   Staff will work with applicant to develop a mitigation plan, to the extent permitted by State law.

5. Has staff discussed alternative locations for the ADUs on the property?

   Staff requested information from the applicant regarding alternative locations; however, no response was received.

6. Has Valley Water been part of the conversation about the location of the ADUs and the removal of heritage trees on the site?

   No.

7. Has staff considered how the Stevens Creek bank and the trees on the bank and outside the fence might be affected by the removal of the heritage trees?

Staff did not consider these factors.

8. Who is responsible for the condition of the Stevens Creek bank and the vegetation growing on it?

   Valley Water.

9. Has staff considered whether tree #12 (the oak tree to be kept) might require major pruning to accommodate the ADUs?

   Staff has not considered this because tree #12 is a private tree, and its maintenance to accommodate the development falls outside of the Urban Forestry Division's purview.

10. Is the developer planning to pay a fee rather than planting replacement trees?

    Staff will work with applicant to develop a mitigation plan, to the extent permitted by State law.

11. Was the second appellant informed that an appeal had already been made?

    No.

12. Would we (as a Commission and as individuals) be in violation of State law and, therefore, subject to prosecution.

    Pursuant to Mountain View City Code Section 32.26, one of the primary responsibilities of the Urban Forestry Board is to serve as the decision-making body for heritage tree appeals. When performing this function, the Board acts in a quasi-judicial capacity, meaning its role is to apply existing law to the specific facts of each case and to ensure fairness and due process, rather than to make or alter policy.

    If the Board were to rule in favor of the appellants and deny removal of the trees, its individual members would not be in violation of State law or subject to prosecution, provided the Board's decision is made in good faith and within the scope of the Board's lawful authority.

    However, if the Board were to knowingly disregard applicable State law or mandatory legal standards, for example, by making a decision contrary to a clear legal requirement, the action could be subject to judicial challenge (such as a writ of mandate) and potentially invalidated by a court. While prosecution of individual members is highly unlikely, knowingly acting outside the law could expose the City or the Board to legal liability, reputational harm, or other consequences.

13. Could we be taken to court by the contractor?

Please see above response.