



Redwood Trees
#3, #4, #5, #6, #7
CF

APPEAL - 575 SIERRA

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This is an appeal to the recent determination by the City denying the Owner's application to remove five (5) Heritage Trees on this site.

The basis for the Appeal is the Owner's disagreement with the determination by the City that the removal of five (5) of the Heritage Trees on the site is not necessary in order to construct improvements and / or allow reasonable conforming use when compared to other similarly situated properties.

The home to be built by the Owner conforms to zoning regulations, as well as size and type requirements consistent with new construction currently being conducted in the area. It is certainly not a large structure.

The original application was provided to the City of Mountain View (the "City") on November 15, 2017. It requested the removal of all Heritage Trees on the Site in order to construct the new residence.

By memorandum dated December 18, 2017 (attached), the City disapproved the plan submitted with the Application and requested that the applicant modify the application to preserve Heritage Trees. To that end, this revised application contains the following changes:

- (1) The City requested that Heritage Tree 10 be preserved. This revised application preserves Heritage Tree 10.
- (2) The City asked whether the basement could be resized or moved in order to preserve Heritage Trees 7, 8 and 9. The Owner has modified the basement design, and can preserve Heritage Trees 7 and 8. Heritage Tree 9 could be preserved with a zoning variance, but in meetings with the City it was indicated that they would not support such variance request.
- (3) The City asked whether a detached garage could be designed and located in the southwest corner of the site, allowing for additional Heritage Trees to be preserved. The applicant explored this possibility, but the required driveway could not be fit in the remaining space. Thus, this is not a possibility for this site.

Therefore, this revised application preserves all Heritage Trees that can be preserved given the constraints of the site. In addition, it answers the direct questions raised by the City in the application process.

As can be seen from the site plan included with this Revised Application, due to their location in the middle of the lot, the construction will still require the removal of six (6) Heritage Trees, one of which is not viable in any event. To address this necessity, the Owner is willing to adopt the City's optional mitigation requirements - and much more.

Specifically, as part of the revised application, the Owner will do the following - which may be included as conditions of approval of the application:

- The Owner will not only replace the five (5) viable trees with five (5) new trees on the Building Lot (or adjacent lots, also owned or controlled by principals of Owner), but will provide ten (10) additional new trees for a total commitment of fifteen (15) new trees on the Building Lot or adjacent or nearby parcels.
- The Owner will cause the Heritage Trees being removed to be milled, and the lumber will be used to create benches and/or fencing to be used in the neighborhood - or at other locations deemed suitable by the City.
- The Owner will provide five (5) boxed trees of the size described in the Heritage Tree Ordinance, and pay for their installation on property owned by the City or other public agency within Mountain View.

The twenty (20) new trees proposed by the Owner provide a net benefit to the urban forest of Mountain View of fifteen (15) viable trees. In very short order, the collective canopy of these additions will easily eclipse that which exists today - and doing so while allowing the City to obtain the human and environmental benefits of yet another unit of needed infill housing.

In spite of this revised application, the City denied the application to remove the five (5) viable trees outlined above. This determination is not supported by the Heritage Tree ordinance or the findings made by the City.

The City, in its letter denying the request, recited a specific finding that is set out in the Heritage Tree Ordinance, as follows:

Your removal request as defined by the City Ordinance, Article I, in accordance with the Mountain View City Code, Article II, Section 32.35, Paragraph (2), which states:

(2) The necessity of removal of the heritage tree in order to construct improvements and/or allow reasonable and conforming use of the property when compared to other similarly situated properties.

In applying this standard, the City went on to conclude:

Our conclusion is a sufficiently sized residence can be constructed that allows reasonable and conforming use of the property when compared to other similarly situated properties while preserving the existing healthy grove of redwoods.

The Owner respectfully believes that this conclusion is a misapplication of the ordinance when the applicable finding is actually applied to the facts at hand.

This is why the appeal has been filed.

**THE REMOVAL OF THE FIVE (5) TREES IS NECESSARY
IN ORDER TO CONSTRUCT LAWFUL IMPROVEMENTS**

First, it is important to note that there are currently no improvements on the site. This is the first instance of the construction of any improvements. The Owner, by revising its application and working through a variety of possible configurations, has come up with the proposal that would cause the least impact to the number of Heritage Trees on the site - while still otherwise complying with all other building and sizing standards. Therefore, the removal of the few remaining Heritage Trees as set out in the revised application is clearly *"necessary in order to construct"* lawful improvements. The use of the term *"and / or"* in the ordinance does not require or allow the City to include a separate finding relating to *"reasonable and conforming use of the property when compared to other similarly situated properties"*. That is actually a separate ground for a separate finding. The Owner believes that the use of both standards (employing the word *"and"* from the ordinance) instead of addressing this finding separately (using the word *"or"* in the ordinance) in a case where initial improvements are being constructed is incorrect.

THE PROPOSED HOME TO BE BUILT IS
A REASONABLE AND CONFORMING USE OF THE SITE

Second, even if such standard is used, it should be applied to the application before the City - and not a variety of other hypothetical uses. The application provided by the Owner is a "reasonable and conforming" use of the site. The City does not deny that. The City points out however that there are other "reasonable and conforming uses". The fact that there might be other "reasonable and conforming" uses of the site is not a reason for the City to decline the request. There are lots of other "reasonable and conforming uses", but they are not the subject of this application. The Owner is making the application - not the City. This, the City is charged with determining whether the Owner's application involves a "reasonable and conforming" use of the site - and if so the finding has been met. It certainly is. And, if this finding is made separately, or in conjunction with the first one, it has been met.

THE OWNER IS SIMPLY REQUESTING THAT
IT BE ALLOWED TO CONSTRUCT A HOME ON ITS LOT
UNDER THE SAME RULES THAT GOVERN OTHER HOMEOWNERS

Third, and most importantly, the proposed application is completely consistent with neighborhood standards and is not an unusual sized structure. The Owner has not applied for a zoning variance - and is simply requesting that it be allowed to build a structure under the same rules that applies to its neighbors. Other houses in the neighborhood may be larger or smaller, but the current rules and standards apply to all neighbors alike. The Owner is simply asking that it not be singled out.

The proposed application preserves as many Heritage Trees on the site as possible, and more. The application provides significant mitigation for the few trees required to be removed, providing an indisputable net benefit to the urban forest.