

**CITY OF MOUNTAIN VIEW  
HERITAGE TREE APPEAL STAFF REPORT**

DATE: June 13, 2018

TO: Urban Forestry Board

FROM: Jakob Trconic, Forestry and Roadway Manager

SUBJECT: **Heritage Tree Appeal – 575 Sierra Avenue**

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**RECOMMENDATION**

Adopt a Resolution Denying the Heritage Tree Removal Permit, to be read in title only, further reading waived (Attachment 1 to this Staff Report).

**FISCAL IMPACT** – None.

**BACKGROUND**

The City adopted Chapter 32, Article II, Protection of the Urban Forest, to preserve Heritage trees as defined in the City Code. The Heritage tree protections apply to trees located on private and public lands. The preservation program contributes to the welfare and aesthetics of the community and retains the great historical and environmental value of these trees. The City Code authorizes removal of a Heritage tree only when granted a removal permit by the City or subject to exemption.

Heritage Tree Removal Permits for construction projects which only require a building permit are processed as nondevelopment-related removals pursuant to City Code Section 32.30 and the applications are administered by the Forestry Division of the Community Services Department. The Forestry and Roadway Manager, as designated by the Community Services Director, reviews and approves nondevelopment-related removal applications. Notice of the decision is made to the applicant and persons who have requested such notice and is physically posted on the tree(s) or to the front yard of the property when it applies to a tree in a backyard. Pursuant to City Code Section 32.31, any person aggrieved or affected by the Forestry and Roadway Manager's decision on whether to grant or deny a Heritage Tree Removal Permit may appeal the decision by filing a timely written notice of appeal with the City Clerk stating the grounds for the appeal, and paying the requisite appeal fee.

The determination on an application for Heritage Tree Removal Permits is based on a minimum of one of the specific criteria set forth in the City Code and listed below. The same criteria apply whether the decision-maker is the Forestry and Roadway Manager or the Urban Forestry Board. The decision-maker shall consider additional criteria, if applicable, in weighing the decision to remove a Heritage tree, with the emphasis on the intent to preserve Heritage trees.

1. The condition of the tree with respect to age of the tree relative to the life span of that particular species, disease, infestation, general health, damage, public nuisance, danger of falling, proximity to existing or proposed structures, and interference with utility services.
2. The necessity of the 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.
3. The nature and qualities of the tree as a Heritage tree, including its maturity, its aesthetic qualities such as its canopy, its shape and structure, its majestic stature, and its visual impact on the neighborhood.
4. Good forestry practices such as, but not limited to, the number of healthy trees a given parcel of land will support and the planned removal of any tree nearing the end of its life cycle and the replacement of young trees to enhance the overall health of the urban forest.
5. Balancing Criteria: In addition to the criteria referenced above which may support removal, the decision-maker shall also balance the request for removal against the following which may support or mitigate against removal:
  - A. The topography of land and effect of the requested removal on erosion, soil retention, water retention, and diversion or increased flow of surface waters.
  - B. The effect of the requested removal on the remaining number, species, size, and location of existing trees on the site and in the area.
  - C. The effect of the requested removal with regard to shade, noise buffers, protection from wind damage, and air pollution and the effect upon the historic value and scenic beauty and the health, safety, prosperity, and general welfare of the area and the city as a whole.

If removal of a Heritage tree is granted, the decision-maker may require conditions of approval pursuant to City Code Section 32.35(b). A removal permit may include reasonable conditions, including, but not limited to:

1. Requiring the replacement or placement of an additional tree or trees on the subject property or off-site to offset the loss of a tree, limbs, or encroachment into the drip line. The number, species, size and location of said replacement tree(s) shall be determined by the Director upon recommendation of the City arborist.
2. Requiring construction fencing or barriers to protect adjacent Heritage trees or other landscaping.
3. Requiring protective grading requirements to avoid damaging the root structure of the tree or adjacent trees.
4. Requiring posting of a security bond to ensure that replacement trees are planted and become established (one year after planting) and to compensate for the lost trees due to illegal removal.
5. Requiring the relocating of a tree on-site or off-site, or the planting of a new tree on-site or off-site to offset the loss of a tree.
6. Requiring a maintenance and care program be initiated to ensure the continuing health and care of Heritage trees on the property.
7. Requiring payment of a fee or donation of a boxed tree(s) to the City or other public agency to be used elsewhere in the community should a suitable replacement location of the tree not be possible on-site. The fee for replacement of a tree or trees shall be, at a minimum, based on the cost of a 24" boxed tree of same species, delivered and installed.

#### Heritage Tree Removal Application

In 2017, Sage Capital Management (Developer) purchased two properties on Sierra Avenue: a home located on 591 Sierra Avenue and the undeveloped lot next to it at 575 Sierra Avenue. The previous resident owned both lots and used the 575 Sierra property as their backyard. Nine Heritage trees are located on 575 Sierra Avenue: one Heritage bay tree, a grove of seven Heritage redwoods, and one Heritage Douglas fir. The Developer began renovating the house at 591 Sierra Avenue and submitted development plans and a Heritage Tree Removal Application on November 15, 2017

(Attachment 2) to construct a home on the 575 Sierra Avenue lot, and requested to remove eight of the nine Heritage trees located on the property.

As the basis for removal of the trees, the Developer selected “the necessity of the 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.” (MVCC §32.35(a)(2).) In the comments on the application, the developer noted the presence of the trees prevent the development of an unutilized lot. An arborist report was also submitted with the application, which evaluated the trees based on their health/vigor, form, and condition. These factors are used as part of the decision-making process when evaluating trees for removal, even if they are not a part of the original reasoning listed on the application.

Staff reviewed the application and visited the property to conduct a preliminary evaluation of the trees and whether the application met the criteria for removal. The redwoods and Douglas fir trees all grow in a grove situated along the southeast portion of the parcel. The bay tree is situated along the Sierra Avenue frontage (Attachment 3). Staff agrees with the arborist report provided by the applicant regarding tree health/vigor and form, with the exception of the poor form designation of Tree 10H discussed below. When evaluating trees, staff would consider any tree with fair vigor (health) and fair form as a tree desirable for retention. The report found that six of the seven redwoods have good vigor and form. Tree 10H, as designated in the arborist report, is the smallest redwood tree and was rated with fair vigor and poor form. This tree would only be considered for removal if the form were determined to be a potential hazard that could not be mitigated with pruning or other process. Staff, however, does not agree with the poor form designation on this tree. It has a slight lean to the trunk and has been suppressed by the other redwoods due to competition for resources but is otherwise a perfectly viable redwood tree.

The Douglas fir tree was also rated as having good vigor and good form in the report. The Bay laurel tree, designated as Tree 2H in the arborist report, was rated as having poor vigor and poor form. Given the good health/vigor and form of all of the trees except the Bay laurel, efforts to preserve the trees should be given to the extent possible in light of the City’s emphasis to preserve Heritage trees.

On December 18, 2017, as part of the building permit plan review, staff provided comments to the applicant recommending revisions to the plans to develop a residence while still allowing for preservation of the Heritage redwood trees (Attachment 4). The applicant had not explored any development options that would preserve the Heritage trees. Consequently, it was unclear if the application met the criteria for removal. In an effort to assist the Developer with their intentions to build a new home on the vacant

lot and incorporate the redwood trees into the site design, Community Services and Community Development staff met with the Developer on three separate occasions, January 18, 2018, February 1, 2018, and February 15, 2018, to discuss multiple site plan options. The Developer submitted six alternative site plan options with home sizes ranging from 1,912 to 3,120 square feet (Attachment 5). Two of the layouts preserved all of the trees (and could include a basement or partial basement given the designs, which would further increase the square footage) while the remainder required removal of three to four redwood trees. One of the two layouts they provided preserve all the redwood trees, but would require a Variance for a reduced front yard setback. Staff informed the Developer the City could potentially support a Variance for a 15' front setback, where 20' is required, to help facilitate the preservation of the redwood tree grove with the new home moving closer to Sierra Avenue. The Developer indicated they were not interested in pursuing the Variance option as a 15' front yard setback was not desirable to them.

No decision was rendered on the original Heritage Tree Removal Application and an amended application was submitted on March 27, 2018 (Attachment 6). The amended application is the subject of the appeal before the Urban Forestry Board. The revised application reduced the tree removal request by two trees and sought removal of the Heritage bay tree and five Heritage redwood trees.

#### Forestry and Roadway Manager's Decision

Staff evaluated all information obtained during review of the application. The new footprint submitted in the revised application retained a large basement similar to the original application and although slightly reconfigured from the original application, the square footage of the home remained the same from the original application and sought removal of five redwood trees (Attachment 7).

On April 17, 2018, the Forestry and Roadway Manager issued a decision granting removal of the bay tree due to its centralized location in front of the proposed home, placing it within or in close proximity to any two-car driveway design, its poor condition, and high risk of limb failure based on its form, past pruning practices, and poorly formed branch unions. The request to remove the five redwood trees was denied because 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 (Attachment 8).

Notice of the decision was posted by staking the decision in front of the bay tree and the front yard of the home April 17, 2018.

## **APPEAL**

On April 25, 2018, the Developer timely appealed the City's denial of removal of the five (5) Heritage redwood trees (Attachment 9). The basis for the appeal by the Developer are as follows:

1. Removal of the trees is necessary to construct lawful improvements. The Developer contends that the revised proposal causes the least impact to the number of Heritage trees on the site while still otherwise complying with the building and sizing standards. Although unclear, the Developer appears to contend that the criterion is whether removal is necessary to construct improvements.
2. Even if the reasonable and conforming use standard applies, the proposed application constitutes a reasonable and conforming use of the property.
3. The application is consistent with other properties in the area and that the same rules that govern other homeowners should apply to the Developer. The proposed home is not unusual in size, and there is no need for a zoning variance.

## **ANALYSIS**

The project site is currently underdeveloped and was used as the backyard by the adjacent owner at 591 Sierra Avenue. There are a total of nine trees on the property, all of which are considered Heritage trees (see arborist report in Attachment 2 for diagram of tree location.) The property is approximately 5,000 feet, which is a typical size for this older neighborhood. The average size home in this area is approximately 1,500 square feet. Community Development staff produced a map to see the average square footage of homes in the neighborhood, which shows that homes on this block and in the surrounding vicinity on similar sized lots ranged from 1,200 to 2,300 square feet, with the average home being 1,500 square feet (Attachment 10). Staff evaluated the information to assess what would be a reasonable and conforming use of the property given the surrounding neighborhood.

The average home size of the 11 homes immediately surrounding the subject property along Sierra Avenue is 1,443 square feet. The building permit plans submitted by the Developer to the City in late 2017 proposed a 3,360 square foot home, including a 1,148 square foot basement and the removal of all the trees on-site (see Attachment 6).

On March 27, 2018, the Developer submitted a revised Heritage Tree Removal Application that slightly reconfigured the home but did not revise the proposed 3,360

square foot size of the proposed home, and still required removal of six of the Heritage trees on the property.

The bay tree (which is not subject to this appeal) is in poor condition, has a high potential for limb failure, and removal is required to allow for reasonable and conforming use of the property. For this reason, staff granted removal of the Heritage bay tree. However, the five Heritage redwood trees are in good health, vigor, and form and are relatively young. Alternative development options are available that allow the developer to build a home comparable in size to the homes in the area, while preserving the redwood trees. The health, vigor, and age of the trees strengthen the case for retention because they are an asset to the community and the neighborhood as can be seen in the photos (Attachment 3).

This application will be determined by whether the proposed improvements are a reasonable and conforming use of the property when compared to other similarly situated properties. The language of the code, “The necessity of the removal of the Heritage tree in order to construct improvements and/or allow reasonable and conforming use of the property...,” make clear that if constructing improvements, removal of a Heritage tree is permitted only if necessary to allow reasonable and conforming use of the property.

The Developer’s first contention that Heritage trees may be removed when necessary to construct improvements that comply with the building standards is incorrect—the analysis for removal of a Heritage tree for the construction of improvements is whether the removal is necessary in the context of a reasonable and conforming use of the property as compared to similarly situated properties. This reading of the criteria is apparent from the language of the Code (use of the word “and” is used to indicate tree removal for construction is only warranted when necessary *and* to allow a reasonable and conforming use of the property) in addition to the intent of the preservation ordinance to protect and preserve Heritage trees. In this case, given the average-sized home in the neighborhood of 1,500 square feet, the alternative home designs of 1,912 and 2,212 square feet that both preserve all the appealed Heritage trees renders the removal of the trees unnecessary.

The second basis of the Developer’s appeal that even if a reasonable and conforming use standard of the property is required, the proposal is reasonable and conforming, and even if other reasonable and conforming uses exist, that does not have bearing on the proposed use misunderstands the criteria. Removal of the trees must be *necessary* to allow for a reasonable and conforming use of the property. Here, because alternative layouts would allow the construction of a home of similarly square footage to surrounding properties, removal of the trees is unnecessary.

Finally, the Developer contends the proposed application is consistent with neighborhood standards, is not unusual in size, and meets the zoning requirements. While the proposed residence does meet the R1 zoning and development standards, the average size square footage of homes in the area is 1,500 square feet, and the proposed home is 3,300 square feet, which is more than double the average home size in the neighborhood. In addition, properties/development must also comply with the Protection of the Urban Forest Ordinance—and it only authorizes removal of Heritage trees when it meets the criteria as set forth in the Code.

The Protection of the Urban Forest Ordinance was established to preserve healthy trees that contribute to the welfare and aesthetics of the community. A property owner does not have an absolute right to remove existing Heritage trees to develop the property. The various home layout plans demonstrate a reasonable-sized structure can be built that will allow for reasonable and conforming use of the property when compared to other similarly situated properties. Two plans submitted by applicant showed the possibility of preserving Heritage trees while allowing homes of 1,912 and 2,212 square feet, not including a possible partial basement or utilizing a front setback exception. Staff's assessment is the property owner can build on the property a home that is a reasonable and conforming use of the property given the surrounding neighborhood and the removal does not meet the criteria.

While the Developer has focused on the necessity of removal to construct improvements to allow for a reasonable and conforming use of the property, staff reviewed the remaining criteria under the City Code and found none applied to allow the requested removal.

#### CONDITIONS OF APPROVAL

Although consideration of replacement trees is not part of the threshold question of whether to grant or deny Heritage tree removal, if the Board is inclined to approve removal of any or all of the Heritage trees subject to the appeal, the Board is authorized to establish conditions of approval which include replacement trees (MVCC § 32.35(b).) The Developer has proposed conditions of approval in their appeal (Attachment 9) that the Board may consider in setting such conditions of approval pursuant to City Code Section 32.25. The proposed mitigation includes the Developer planting five new trees at 575 Sierra Avenue in addition to the provision of 10 additional trees on the building lot or adjacent or nearby parcels. The Developer is also committed to milling any approved redwoods to create benches and/or fencing to be used in the neighborhood. Lastly, the Developer would provide five 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.

### **RECOMMENDATION**

The City's Protection of the Urban Forest Ordinance emphasizes the City's intent to preserve Heritage trees. Applying the criteria to the facts in this case, the Developer has the ability to construct improvements and allow a reasonable and conforming use of the property when compared to other similarly situated properties as demonstrated in two of the alternate home layouts provided by the Developer. Both of these alternatives preserve the healthy Heritage trees and permit construction of a residence of 1,912 and 2,212 square feet. Homes on similar-sized lots on the surrounding blocks in this neighborhood range from 1,200 to 2,300 square feet with the average home being 1,500 square feet. Because it is possible to build a home of this size while preserving the trees, it is not necessary to remove the trees to construct the residence. Furthermore, the five redwood trees are in good health and relatively young.

Staff recommends the appeal be denied and the Heritage redwoods be preserved.

JT/2/CSD

221-06-13-18M-E-1

- Attachments:
1. Resolution Denying the Heritage Tree Removal
  2. Original Heritage Tree Removal Application
  3. Tree Photos
  4. December 18, 2017 Forestry Comments on Building Plans
  5. Alternative Design Plans
  6. Revised Heritage Tree Removal Application
  7. Proposed Residence Footprint
  8. Forestry and Roadway Manager Decision
  9. Appeal Notice
  10. Surrounding Home Size Map
  11. Surrounding Home Photos

cc: F/c