

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
PC 12/8/04

File Number
TR04-082

Application Type
Appeal of a Tree Removal Permit

Council District
1

Planning Area
West Valley

Assessor's Parcel Number(s)
299-42-124

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Rebekah L. Ross

Location: Southwest corner of Moorpark Avenue and Henry Avenue (3314 Moorpark Avenue)

Gross Acreage: .18

Net Acreage: N/A

Net Density: N/A

Existing Zoning: R-2 Residence

Existing Use: Duplex

Proposed Zoning: No change

Proposed Use: No change

GENERAL PLAN

Completed by: RLR

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8 DA/AC)

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: RLR

North: Residential

R-1-8 Residence

East: Residential

R-2 Residence

South: Residential

R-1-8 Residence

West: Residential

R-2 Residence

ENVIRONMENTAL STATUS

Completed by: RLR

Environmental Impact Report found complete
 Negative Declaration circulated on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: RLR

Annexation Title: Moreland No. 1

Date: 11/24/56

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: 12/08/04

Approved by: _____
 Action
 Recommendation

PROPERTY OWNER

PROPERTY OWNER/APPEALANT

Joseph Itovazivabord
3314 Moorpark Avenue
San Jose, CA 95117

Nanajan D. Ghahremani
3314 Moorpark Avenue
San Jose, CA 95117

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: RLR

Department of Public Works

None received

Other Departments and Agencies

None received.

GENERAL CORRESPONDENCE

See attached Notice of Permit Appeal filed by Nanajan D. Ghahremani on November 8th, 2004.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

This is an appeal of the Planning Director's decision to approve a Tree Removal Permit (File No. TR04-082) to allow the removal of a Redwood tree, approximately 145 inches in circumference that was removed without the benefit of a permit.

The tree was located in an 18-foot wide rear yard area approximately 6.5 feet away from an existing duplex structure. Existing uses surrounding the site are Highway 280 to the north and multi-family and single-family residential uses on all other sides.

The removal of the tree was brought to the City's attention when a complaint was made to the Code Enforcement Division. The owner of the property claimed they were unfamiliar with the City's requirements. The Code Enforcement Division indicated that the property owner should contact the Planning Division to obtain the necessary permits or face fines of up to \$2,500.00 a day of non-compliance. The property owner submitted the permit application on August 10, 2004. The Tree Removal Permit was heard at Director's Hearing on September 15, 2004 and was subsequently approved with conditions by the Director of Planning on October 27, 2004.

On November 8, 2004, Nanajan Ghahremani, one of the two owners of the property, filed an appeal of the Director's decision to approve the subject Tree Removal Permit (see attached application).

ENVIRONMENTAL REVIEW

This project has been determined to be exempt from environmental review under Section 15304 of the California Environmental Quality Act (CEQA). The exemption under "minor alterations to land" applies to this project because it involves a minor alteration of vegetation.

GENERAL PLAN CONFORMANCE

The City encourages the maintenance of mature trees on public and private property as an integral part of the urban forest. The intent of the Urban Forest Goal is to preserve, protect and increase plantings of urban trees within the City. Prior to allowing the removal of any mature tree, all reasonable measures,

which can effectively preserve the tree, should be pursued. The subject Redwood, which from evidence gathered, was a healthy tree and not a danger to property of the public, was removed in a manner that is not consistent or supported by the General Plan's Urban Forest Goals and Policies.

COMMUNITY OUTREACH

Public hearing notices for the proposed Tree Removal Permit and the subsequent appeal were mailed to all property owners and tenants within 300 feet of the subject site. The subject Tree Removal Permit was considered at a Director's Hearing, a public hearing, on September 15, 2004. Staff has been available to discuss the project with interested members of the public.

ANALYSIS

Issues Raised by the Appeal

Mr. Nanajan Ghahremani, the property owner of the subject site, filed the appeal. Although not clearly articulated in the letter with regard to the reason for the appeal, he verbally indicated that mitigation requirements seemed excessive. The Tree Removal Permit as approved, required that a 24" box specimen replacement tree be provided and a \$1,200 donation be made to "Our City Forest", a non-profit organization to fund the planting of additional trees. This amount would generally cover the cost of planting approximately four (4) trees in San Jose.

Tree Removal Findings

In order to grant a Tree Removal Permit, the Director (or the Commission on appeal) must make one or more of the following findings:

1. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010; or
2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
3. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.

Analysis of Required Findings for Tree Removal

The purpose of the Chapter 13.32 of the San Jose Municipal Code is to promote the health, safety, and welfare of the city by controlling the removal of large trees in the city. The ordinance cites numerous benefits that trees provide to the City, including that trees enhance the scenic beauty of the city, increase property values, contribute to energy efficiency and the reduction of urban temperatures, serve as windbreaks and produce oxygen and purify the air.

The subject Redwood tree was removed prior to the submittal of a Tree Removal Permit application and review by Planning staff. Staff based their analysis of the proposal on photographs supplied with the

application, reports and photographs from the Code Enforcement inspector, and aerial photographs that were taken prior the removal of the Redwood tree. Based on the review of the above information, Planning staff was unable to make the necessary findings to support the removal of the Redwood tree. All evidence suggested that the tree was in good health, was stable, and was not interfering with public utility lines or services, or existing structures. There was no evidence provided to suggest that the location of the tree with respect to the adjacent structure was causing damage to the building foundation or shell. The applicant submitted neither an arborist report nor other relative evidence to support the necessity of removing the Redwood tree.

Therefore, it was determined that if a Tree Removal Permit application was submitted prior to the removal of the Redwood tree, the Director, based on the lack of substantive evidence supporting the necessary findings, would have denied the request. However, given that the Redwood tree had been removed without the benefit of department review, staff had no other course of action other than approve the permit application and include requirements for mitigation.

The City has a standard policy regarding the replacement ratios designed to mitigate the impacts of the removal of ordinance size trees where the trees are unhealthy or are causing property damage. A replacement ratio of 4:1 has been deemed to be appropriate. However, trees that are removed which are healthy and/or are not causing property damage would be worthy of mitigation more significant than the standard 4:1 replacement ratio.

With regard to this proposal, Staff is recommending the following key mitigation requirements: 1) a twenty-four inch native tree with a large canopy and deep root system should be planted in approximately the same location as the removed Redwood tree, 2) a \$1,200 donation be made to “Our City Forest” non-profit organization. This organization has indicated that their costs associated with providing, planting and initial care of a tree is approximately \$300 per tree. Therefore, the \$1200 donation would facilitate the planting of four trees in the City of San Jose in addition to the tree that would be provided by the applicant on the subject property.

Conclusion

Based on the above analysis, staff concludes that removal of the tree could not have been supported in accordance with the necessary findings of Title 13 of the San Jose Municipal Code; hence, the tree was removed illegally. Normally, if a tree removal permit had been granted in accordance with the required findings, appropriate mitigation measures would be required to help offset the impact of the loss of the tree. The illegal removal of a healthy ordinance sized tree is subject to mitigation beyond what would typically be required to serve as a disincentive to remove trees without a permit. In staff’s opinion the mitigation that was identified in the original approval is both reasonable and warranted in this instance.

RECOMMENDATION

Planning staff recommends that the Planning Commission upholds the Director’s decision to approve the proposed Tree Removal Permit and include the following facts and findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project.

1. This site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site and surrounding properties are in the R-2 and R-1-8 Residence Zoning Districts.
3. The project site is developed with a two-family dwelling.
4. The subject tree was removed without benefit of permit.
5. The subject tree was located in the private rear yard of one of the attached units.
6. The tree was located about 25 feet from the street and approximately 6.5 feet from the closest structure.
7. The remaining stump of the removed tree measured 145 inches in circumference at 19 inches above grade.
8. The applicant/appellant has supplied a site plan that indicates that there are: two Oak, two Cherry, two Fig, one Ash, one Apricot, one Persimmon, one Mulberry, one Quince, one Peach, one Apple, one Lemon, one Kiwi and one Pomegranate tree(s) on the subject site.
9. The purpose of the Chapter 13.32 of the San Jose Municipal Code (Tree Removal) is to promote the health, safety, and welfare of the city by controlling the removal of larger trees in the city. The ordinance cites numerous benefits that trees provide to the City, including that trees enhance the scenic beauty of the city, increase property values, contribute to energy efficiency and the reduction of urban temperatures, serve as windbreaks and produce oxygen and purify the air.
10. The standard City policy for the replacement ratio of ordinance size trees is 4:1 for trees whereby appropriate findings for removal pursuant to Title 13 can be made.
11. No new development or improvements were proposed in the area of the removed tree.
12. Evidence suggests the removed Redwood tree was in good health. No evidence provided suggested that the tree was in danger of falling, or that it was interfering with utility services or existing structures. No arborist report or other evidence relative to the health or safety of the tree has been submitted.
13. The proposed project includes mitigation to replace the subject tree with a new tree on the premises.
14. Given that there are a number of other existing smaller trees on the subject site, additional on-site mitigation may not be practical. Therefore, the originally approved permit also included the payment of \$1200 to facilitate the planting of approximately four (4) trees by a non-profit tree planting organization off the site.
15. The project is exempt from environmental review under the California Environmental Quality Act, Section 15304, pertaining to minor alteration of vegetation.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The affected tree was of a size, type and condition, and in such a location in such surroundings, that its removal would have significantly frustrated the purposes of this chapter as set forth in Section 13.32.010.
2. The location of the tree did not unreasonably restrict the economic development of the parcel.
3. The condition of the tree with respect to disease, danger of falling, proximity to existing or proposed structures, and/or interference with utility services, was not such that public health or safety required its removal.
4. Given that the Redwood tree has been removed without the benefit of permits, there is no other course of action other than uphold the Director's decision to approve tree removal application TR04-082 and include the following requirements for mitigation:

CONDITIONS

1. **Replacement Tree.** Within 30 days of the day following this decision, the applicant shall replace the removed tree with one 24-inch box tree planted in approximately the same location as the tree that was removed. The replacement tree shall be a native tree with a large canopy and deep root system. Additionally, the applicant shall make a \$1,200.00 donation to the "Our City Forest" non-profit organization: (408) 408) 998-7337; www.ourcityforest.org or to "San Jose Beautiful" City of San Jose, Department of Parks, Recreation and Neighborhood Services: (408) 277-5208 www.sjbeautiful.org/home.
2. **Permit Adjustment.** Within 90 days following permit approval, the applicant shall submit a Permit Adjustment application with the revised landscape plan showing a replacement tree to the Planning Division.
3. **Compliance.** The applicant shall provide appropriate evidence such as, but not limited to, photographs and receipts to verify compliance with the mitigation requirements within thirty days of receiving this approval.

CC:

Attachments: Location map; Notice of Appeal; Site Plan; Photographs