

**PLANNING COMMISSION
REGULAR MEETING
DRAFT MINUTES**

TOWN OF ATHERTON
March 23, 2022
6:00 pm
This meeting was held virtually.

1. ROLL CALL

PRESENT: Eric Lane
Nancy Lerner
Perry Narancic
Randy Lamb
Gabia Konce

Town Planner Lisa Costa Sanders, Principal Planner Stephanie Bertollo-Davis, Assistant Planner Ralph Robinson, Town Arborist Sally Bentz-Dalton, Senior Engineer David Huynh and Deputy City Attorney Andreas Booher were present.

2. PUBLIC COMMENTS

No public comment made.

3. APPROVAL OF MINUTES

MOTION to approve the minutes of the February 23, 2022 Planning Commission Meeting.

M/S Lamb/Narancic Ayes: 3 Noes: 0 Absent: 2

4. PUBLIC HEARING

a. Special Structures Permit (SSP) – 52 Fairview Avenue, Atherton (APN 070-162-010) – Request for a Special Structures Permit to allow for a detached accessory structure (shed) to have a reduced front yard setback. Atherton Municipal Code Chapters 17.15, 17.32, 17.40.

Assistant Planner Ralph Robinson presented the staff report.

Open Public Hearing.

Project applicants Steve and Jennifer Jeffries, property owners at 52 Fairview, commented there is an existing hedge to screen shed from the neighboring property.

Closed Public Hearing.

Chair Lane commented that he visited the site, and it was evident that the structure would have no visual impacts on the right-of-way.

MOTION to approve the Special Structures Permit to allow a detached accessory building (shed) to have the same front yard setback as the main residence at 52 Fairview Avenue based on the findings and for the reasons enumerated in the staff report, subject to the conditions listed in the Special Structures Permit certificate.

M/S Lamb/Lane Ayes: 3 Noes: 0 Absent: 2

b. Special Structures Permit (SSP) – 357 Walsh Road, Atherton (APN 074-130-220) – Request for a Special Structures Permit to allow for retaining walls greater than six (6) feet in height and less than twenty (20) feet from other retaining walls. Atherton Municipal Code Chapters 17.15, 17.32, 17.46.

Assistant Planner Ralph Robinson presented the staff report.

Chair Lane noted that the site cut has already been made into the hillside. He asked if the drainage plan was adequately covered and whether it was normal for cuts to be made prior to approval of the retaining walls.

Assistant Planner Robinson verified extent of work done to the site so far, that a grading and drainage plan was approved prior to the excavation work, and that the project team was available on the call to speak further to the grading and drainage details.

Commissioners Lerner and Konce joined the meeting at 6:24pm.

Open Public Hearing.

Project representative Eric Greenblott stated that a drainage plan was approved. Cuts were made for the pool house and ADU and access around the structures. The soil has not been moved from the site. If the retaining walls were not approved, the soil would be put back. At the time of preparing the grading and drainage permit, applicant was not yet aware that the SSP was required, otherwise they would have applied for it prior to beginning the excavation work.

Closed Public Hearing.

Chair Lane noted that his questions were sufficiently answered by the applicant.

MOTION to approve the Special Structures Permit to allow for retaining walls greater than six (6) feet in height and less than twenty (20) feet from other retaining walls at 357 Walsh Road based on the findings and for the reasons enumerated in the staff report, subject to the conditions listed in the Special Structures Permit certificate.

M/S Lane/Lamb Ayes: 5 Noes: 0 Absent: 0

c. Heritage Tree Removal (HTR) – 45 and 55 Melanie Lane, Atherton (APN 073-181-160 and 073-181-150) – Request for a Heritage Tree Removal (HTR) Permit for three (3) heritage redwood trees at 45 Melanie Lane and three (3) heritage trees at 55 Melanie Lane. Atherton Municipal Code Chapter 8.10.

Principal Planner Stephanie Bertollo-Davis presented the staff report.

Chair Lane shared photos he took of the redwood trees during his site visit.

Commissioner Narancic asked if there was a report prepared by the Town Arborist.

Chair Lane read off the conclusions provided in the memo by the Town Arborist.

Commissioner Narancic asked if the probability of failure was the only basis for removal.

Town Arborist Sally Bentz-Dalton added it was a combination of there being no room for the trees to grow and damage already done to the property by the trees. The replacement trees should grow to a mature height of 60 feet.

Open Public Hearing.

Project Representative Stefan Thuilot, landscape architect, was present to answer questions from the Commission.

Project Representative Michael Young, project arborist, discussed proximity of trees to the wall and that the trees were not planted in that area with much foresight.

Closed Public Hearing.

Chair Lane said that he does not like to cut down redwoods but is comfortable with the application because of the site conditions.

MOTION to find that the proposed removal of three heritage redwood trees (Tree #803, #805 and #807) at 45 Melanie Lane, Atherton, would not be contrary to the purpose and intent of the General Plan, for the reasons outlined in the Staff Report, and that the Commission approve the tree removals subject to the conditions listed in the draft Heritage Tree Removal Certificate.

M/S Narancic/Konce Ayes: 5 Noes: 0 Absent: 0

MOTION to find that the proposed removal of three heritage redwood trees (Trees #802, #804, #806) at 55 Melanie Lane would not be contrary to the purpose and intent of the General Plan, for the reasons outlined in the Staff Report, and that the Commission approve the tree removals subject to the conditions listed in the draft Heritage Tree Removal Certificate.

M/S Narancic/Lamb Ayes: 5 Noes: 0 Absent: 0

d. Tree Protection Zone (TPZ) Exception – 186 Atherton Avenue, Atherton (APN 070-070-130 – Request for Tree Protection Zone (TPZ) Exception for two (2) heritage oak trees. Atherton Municipal Code Chapter 8.10.

Assistant Planner Ralph Robinson presented the staff report.

Chair Lane asked what is the difference in square footage between the current pool house and proposed ADU.

Assistant Planner Robinson noted the new ADU will be roughly 300 square feet larger.

Open Public Hearing.

Project Representative Jackie Terrell stated that existing house is out of date. Homeowners have a desire to update and improve design of buildings. Existing pool house is not centered on the pool. Every location on the property would place the ADU in the TPZ zones for heritage trees. Plan was created with minimizing impacts on the most impacted tree in mind.

Commissioner Konce asked whether pool house is more than one story.

Ms. Terrell stated the pool house and ADU are both one story.

Chair Lane asked if the new extent of the foundation was away from the trees.

Ms. Terrell added that the new foundation area is located in front of the ADU away from the trees.

Closed Public Hearing.

MOTION to find the Exception to the Tree Protection Zone (TPZ) for two heritage trees, Tree #1 to 1.04 times (1.04x) the trees diameter and Tree #2 to 7.2 times (7.2x), associated with the construction of a proposed Accessory Dwelling Unit (ADU) at 186 Atherton Avenue would not be contrary to the purpose and intent of the General Plan for the reasons outlined in the Staff Report, and that the Commission approve the TPZ exception subject to the conditions as listed in the draft TPZ Exception Permit.

M/S Lane/Lamb Ayes: 5 Noes: 0 Absent: 0

e. Variance – 25 Isabella Avenue, Atherton (APN 070-250-250) – Request to allow for an eight (8) foot tall fence and construction of a retaining wall less than five (5) feet from a property line. Atherton Municipal Code Chapters 17.16, 17.32 and 17.46.

Principal Planner Stephanie Bertollo-Davis presented the Staff Report.

Commissioner Narancic asked if the applicant wants to either treat the fence as an 8-foot fence or as a retaining wall.

Chair Lane noted that the Commission would have to grant the Variance for both the wall height and the location of the wall closer to the property line.

Principal Planner Davis clarified the application has two elements, both the location of the wall closer than 5 feet from the property line and the resulting height of 8 feet.

Commissioner Konce asked what the reasoning for the grading work was given that the lot is flat.

Chair Lane noted that the property at 25 Isabella was raised two feet in height during construction. The Commission is looking to get more understanding as to why. He added that he visited the site and took photos. He observed what appeared to be water damage on the lower part of the wall visible to 15 Isabella due to a potential drainage issue because of landscaping on the 25 Isabella side. He asked if the neighbors had provided any comment on that.

Principal Planner Davis said that issue had not been brought up, but that the homeowner at 15 Isabella is on the call and may speak to that during the meeting.

Open Public Hearing.

Project Representative Steve Borlik said there is a path to approval that satisfies the requirements of the Variance ordinance. He was sorry to hear about the opposition from the homeowner at 15 Isabella. He made an effort to reach out but was unable to connect with them. The wall looks unfinished at this point because work had to be stopped on the project. He does not think there was any effort by the owner at 25 Isabella to subvert the process or misrepresent their project. The owners submitted a revised grading and drainage plan that was approved by the Town. He stated his belief that lowering the top of the fence in combination with lowering the grade of the property will not do anything to protect privacy for the neighbors. Properties that border the Atherton Channel are unique in their depth below the flood level. Changes to the grade were done to raise the property above the flood elevation, resulting in a two-foot difference between average natural grade and the resulting grade. The Atherton Municipal Code chapter on building heights (17.42.030 A 4) allows for building pads to be raised above the flood level, with the height of structures to be measured from the new grade level above the flood level. His belief is that an interpretation can be made that the fence height may be measured from the new grade height allowed by the building height ordinance.

Chair Lane asked why there was a discrepancy in the fence height shown within the plans and the resulting fence height.

Mr. Borlik stated his understanding is that when the Town discovered the discrepancy, a new survey was ordered to reflect the new conditions on the site.

Chair Lane asked why, even if the plans were updated to accurately reflect the new grade of the property, there is the remaining issue of locating a retaining wall within five feet of a property line.

Mr. Borlik noted he was not involved in preparing that survey. His understanding is that Staff proposed for the applicant to taper the grade down to its original height at the edge of the property and reduce the fence height.

Commissioner Konce asked if there is a basement, or anything being constructed below grade.

Mr. Borlik stated that no below grade construction is included in the project.

Chair Lane asked Senior Engineer David Huynh why the original submittal was incorrect.

Senior Engineer David Huynh stated that the two-foot elevation difference in the original plans sloped down to the original grade at the property line. At some time, there was a change made to show the two-foot elevation change at the property line as existing grade and the change in the plans was not marked as a revision.

James Heslin, neighbor at 15 Isabella, stated that he was shown an original plan for a retaining wall eight feet in height, but the applicants were then told by the Town it could not be that height. He was surprised by the resulting height of the wall and the grade change. He went to speak with the Building Department and was told the project was in conflict with the Municipal Code. Mr. Heslin was then shown by the applicant a new fence design with no grade change and a resulting fence height of six feet. He stated his belief that the applicant violated a promise that was made regarding the proposed fence height. Dirt was originally placed on the 15 Isabella side of the fence to raise the grade, which he requested be removed. When the dirt was removed, it exposed the incomplete footings of the fence.

Rose Hau, neighbor at 15 Isabella, noted that the fence footings are at grade on her property. There is no dirt in place at the foot of the fence that would allow for landscape screening. She said that an implication was made by the applicant in a letter to neighbors that 15 Isabella approved of the project and that the project was to the benefit of 15 Isabella. This letter was not shared with 15 Isabella and Ms. Hau stated that the implication that was made is inaccurate. She stated that project has not gone smoothly and lasted more than twice the time that was promised and damaged her property.

Weina Yu, owner of 25 Isabella, said that two drawings, an architectural and a structural set, were provided to the neighbor at 15 Isabella. She was not informed by the Building Department about a potential violation at the time of the neighbor's complaint. She withheld payment from the contractor until the damage to the neighbor's property was fixed. She was then sued by the contractor and the determination was made by two judges as part of those suits that no damage was done to the neighbor's property. The neighbor at 15 Isabella has asked her for compensation.

Closed Public Hearing.

Commissioner Narancic asked what provision of the code says that raising the grade above the flood level does not impact the potential height of other structures.

Town Planner Lisa Costa Sanders said intent of this code section (17.42.030 A 4) is to raise the building pad of a main building if in a flood zone. It does not allow for raising the grade of the entire site.

Deputy City Attorney Andreas Booher stated that this code section relates to main structures, not walls and fences.

Town Planner Sanders added that the 5-foot setback requirement for retaining walls is so that ownership of the walls can be clearly delineated. This separation also gives an opportunity to lower grade heights to the existing grade level at the property line.

Commissioner Lamb said he has never seen a situation like this between neighbors. He stated that the applicant should be aware that the referenced code section on raising grade levels does not apply to raising the grade of an entire site.

Chair Lane stated that the inaccuracy of the submitted plans, not including the five-foot setback for the retaining wall, and the lack of capability to relieve the look of the fence on the 15 Isabella side demonstrate that the project should not have happened as it did.

Commissioner Konce added that she does not understand why the project was done as it was.

MOTION to deny the Variance at 25 Isabella Avenue to allow for an eight (8) foot tall fence and construction of a retaining wall less than five (5) feet from a property line as all four of the required findings cannot be made as referenced previously during staff's presentation, and as further enumerated by the reasons incorporated in the staff report. The Planning Commission makes these findings based on the information contained in the staff report prepared for the March 23, 2022 Planning Commission meeting, the information presented by staff and the applicant presented during the March 23, 2022 meeting, and the public comments received by the Planning Commission at the March 23, 2022 meeting.

M/S Lamb/Lane Ayes: 5 Noes: 0 Absent: 0

Principal Planner Davis noted that the decision may be appealed to the City Council per section 17.060.100 of the Atherton Municipal Code.

Commissioner Konce asked what result would be if appeal is denied.

Principal Planner Davis stated that this would proceed based on the procedures for code enforcement cases.

5. STAFF REPORTS

Principal Planner Davis noted that City Council had a first reading of the Historic Preservation Ordinance and requested that the Historic Preservation Ordinance be separated from the existing Historic Artifact Ordinance. That item will be going back to City Council for review of those revisions. A second reading of the SB 9 Ordinance was conducted and approved by the City Council.

Assistant Planner Robinson noted that the City Council will be moving to hybrid meetings. The Planning Commission also expressed their desire to move to a hybrid format beginning with the April 27, 2022 Planning Commission meeting.

The next regular meeting of the Planning Commission will be April 27, 2022.

6. COMMISSIONERS' REPORTS

Nothing to report.

7. ADJOURN

The meeting was adjourned 8:01 PM

Respectfully Submitted:

/s/Ralph Robinson

Ralph Robinson, Assistant Planner