SUBJECT: 2011-7398: Appeal of a decision by the Director of Community Development denying a Tree Removal Permit for one Podocarpus tree in the front yard. The property is located at 884 Rubis Drive in an R-0 (Low Density Residential Development) Zoning District (APNs: 201-26-002)

REPORT IN BRIEF:

Existing Site Conditions

Surrounding Land Uses

North  Single Family Home
South  Single Family Home
East  Single Family Home
West  Single Family Home

Issues  Tree Condition

Environmental Status  A Class 4 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation  Deny the appeal and uphold the decision of the Community Development Director to deny a Podocarpus tree in the front yard for removal.
PROJECT DATA TABLE

<table>
<thead>
<tr>
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<th>EXISTING</th>
<th>PROPOSED</th>
<th>REQUIRED/PERMITTED</th>
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</thead>
<tbody>
<tr>
<td>General Plan</td>
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</tr>
<tr>
<td></td>
<td>Residential</td>
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<tr>
<td>Zoning District</td>
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<td>R-0</td>
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<tr>
<td>Lot Size (s.f.)</td>
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<td>Same</td>
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BACKGROUND:

A Tree Removal Permit (2011-7398) application was filed by the property owner on June 8, 2011 to remove a Podocarpus tree located in the front yard of the property.

On June 15, 2011, the City Arborist inspected the tree and recommended preservation of the tree. (Attachment C – Site Map). Planning Division staff concurred with the City Arborist’s recommendation and notified the applicant of the decision on July 1, 2011 (Attachment D – Permit Letter). The applicant appealed the Tree Removal Permit (Attachment E – Appeal Letter) on July 18, 2011.

Previous Actions on the Site
There are no previous planning permit applications related to the project.

DISCUSSION:

Applicant’s Appeal
The applicant submitted a letter (Attachment D) stating reasons for the request to remove the tree. These reasons include damage to the home and potential hazard to people. The applicant also states that the tree has outgrown its landscape value and affects the economic potential of the property. The applicant has included a statement from a real estate agent noting that the tree has a detrimental impact on the value of the home. A landscaping detail has also been provided to show a replacement tree (Crepe Myrtle) to be planted in the front yard.

Staff Discussion
Planning Staff and the City Arborist have each visited the site. The City Arborist notes that the tree is not diseased or damaged, but rather healthy and well maintained. The tree has approximately 20-30 years remaining life expectancy. The surface rooting is considered common due to light frequent watering. It is staff’s opinion that the tree is located sufficiently away from the
home and could be considered to add value to the property and surrounding neighborhood. The information provided has not demonstrated whether the noted damage has threatened the structural integrity of the home. Certain root pruning measures and barriers can be constructed to further protect the home and its structural integrity. These measures can occur without endangering the health of the tree. Although staff understands that the falling fruits can become an annoyance to the property owner, staff does not find this issue warrants removal of the tree.

**Environmental Review**

A Class 4 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 4 Categorical Exemptions includes minor alterations of land.

**FISCAL IMPACT**

No fiscal impacts other than normal fees and taxes are expected.

**PUBLIC CONTACT**

<table>
<thead>
<tr>
<th>Notice of Public Hearing</th>
<th>Staff Report</th>
<th>Agenda</th>
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</thead>
<tbody>
<tr>
<td>• Published in the <em>Sun</em> newspaper</td>
<td>•Posted on the City of Sunnyvale's Web site</td>
<td>•Posted on the City's official notice bulletin board</td>
</tr>
<tr>
<td>• Posted on the site</td>
<td>•Provided at the Reference Section of the City of Sunnyvale's Public Library</td>
<td>•Posted on the City of Sunnyvale's Web site</td>
</tr>
<tr>
<td>• 11 notices mailed to property owners and residents adjacent to the project site</td>
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Staff has not received any written feedback regarding the proposal.

**CONCLUSION**

**Discussion:** Staff is recommending denial of the appeal because the Findings for tree removal (Attachment A) cannot be made.

**Findings and General Plan Goals:** Staff was not able to make the required Findings for the Tree Removal Permit. Recommended Findings and General Plan Goals are located in Attachment A.

**Conditions of Approval:** Recommended Conditions of Approval are located in Attachment B.
ALTERNATIVES

1. Deny the appeal and uphold the decision of the Director of Community Development to deny a portion of the Tree Removal Permit.

2. Grant the appeal and approve the Tree Removal Permit subject to the conditions in Attachment B.

3. Grant the appeal and approve the Tree Removal Permit with modified conditions.

RECOMMENDATION

Alternative 1. Deny the appeal and uphold the decision of the Director of Community Development.

Prepared By:

Ryan M. Kuchenig
Project Planner
Reviewed by: Steve Lynch, Senior Planner

Approved by:

Trudi Ryan
Planning Officer

Attachments:

A. Recommended Findings
B. Recommended Conditions of Approval
C. Letter Denying the Tree Removal Permit (7/1/11)
D. Letter of Appeal from the Applicant (incl. Photos)
F. Additional Photos
RECOMMENDED FINDINGS

Tree Removal Permit

In order to grant a Tree Removal Permit, one or more of the following findings must be met. Based on the additional information, staff was able to make one of the three required findings.

1. The tree is diseased or badly damaged. *(Finding Not Met)*
   
   *The subject tree is considered to be in healthy condition and has approximately 20-30 years remaining life expectancy.*

2. The tree represents a potential hazard to people, structures or other trees. *(Finding Not Met)*
   
   *Although the applicant states that the tree is a potential threat to the home, staff does not find that the hazard is immediate and further pruning can prevent damage to the home. Furthermore, falling fruit from this tree has not been determined to be a nuisance and not considered a justification for removal.*

3. The tree is in basically sound condition, but restricts the owner’s ability to enjoy the reasonable use or economic potential of the property, or unreasonably restricts an adjoining property’s use or economic potential of the adjoining property. In the event this is the sole basis for the application, the following criteria shall be used to evaluate the application under this subsection *(Finding Not Met):*
   
   a. The necessity of the requested removal to allow construction of improvements such as additions to existing buildings or incidental site amenities or to otherwise allow economic or reasonable enjoyment of property;
   b. The topography of the land and the effect of the requested action on water retention and diversion or increased flow of surface water;
   c. The approximate age of the tree relative to its average life span;
   d. The potential effect of removal on soil erosion and stability where the tree is located;
   e. Current and future visual screening potential
   f. A property has sufficient landscaping or is over landscaped
   g. Allow removal of overgrown, but healthy, trees.
   h. Any other information the Director of Community Development finds pertinent to the application.

*The subject tree is considered healthy and well maintained. Staff concurs that landscaping around the tree is difficult due to surface roots; however,*
the property contains a large front yard with additional opportunities for re-
landscaping. Staff finds that the tree provides an aesthetic benefit to the
property and neighborhood rather than unreasonably restricting the
economic value of the site or adjoining property.
RECOMMENDED
CONDITIONS OF APPROVAL AND
STANDARD DEVELOPMENT REQUIREMENTS
AUGUST 22, 2011

Planning Application 2011-7398, 884 Rubis Avenue
Tree Removal Permit to allow the removal for one Podocarpus tree located on the property.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. One replacement tree, a minimum of 15-gallon size, shall be planted anywhere on the property within 90 days of removal of the subject tree. If a replacement tree is not planted, an in-lieu fee of $247.00 ($259.00 after 8/28/11) shall be paid to the City within 90 days of removal of the subject tree to allow a tree to be planted on City property.
July 1, 2011

Sent Via E-mail to: nick@nickbell.com.au
Nick Bell
884 Rubis Drive
Sunnyvale, CA 94087

Subject: Tree Removal Permit – 884 Rubis Drive, Sunnyvale, CA
File No.: 2011-7398

Dear Mr. Bell:

The Department of Community Development has reviewed your application for a Tree Removal Permit for a Podocarpus tree in the front yard of the property at the above address and has denied your request. In order to grant a Tree Removal Permit, at least one of the following findings is necessary: (1) the tree is not healthy, (2) it represents a potential hazard, or (3) it unreasonably restricts the use of your property or your neighbor's use of their property. Based on an examination of the subject tree, none of these findings can be made.

The Sunnyvale Tree Preservation Ordinance was adopted to protect the diversity of trees in Sunnyvale. Trees are a valuable asset to the community in terms of aesthetics, protection of habitat, and enhancement of economic value of property and may be removed only under the circumstances noted above. The City Arborist indicates that the subject tree is not diseased, damaged, or posing a hazard and is in good health. The tree is well maintained and believed to have approximately 20-30 years remaining life expectancy. The tree is also not determined to restrict the owner or neighbor’s ability to enjoy the reasonable use or economic potential of the property. It is not considered to be located in close proximity to the home or to limit the usefulness of the front yard. Staff also finds that the tree is a visual benefit to the property and surrounding neighborhood. Please refer to the ISA Pruning Guidelines at http://www.treesaregood.com for information on safe pruning techniques to avoid damaging the tree. We strongly recommend consulting a Certified Arborist for pruning assistance.

You may appeal this decision to the Planning Commission by filing a written appeal within fifteen calendar days of the date of this notice. There is a $125.00 filing fee for the appeal.
If you have questions on tree maintenance, you may consult with the City Arborist, Steve Sukke, at (408) 730-7505. If you have any questions regarding this permit, please contact me at (408) 730-7431. Thank you for your cooperation.

Sincerely,

Ryan M. Kuchenig
Project Planner
Attn: City of Sunnyvale Planning Division
Planning Commission
456 W. Olive Avenue
Sunnyvale, CA 94086

Re: Tree Removal Permit - File # 2011-7398

Dear Planning Commission,

I am the property owner at 884 Rubis Drive, Sunnyvale, CA, 94087 and I am submitting a request for appeal to the decision made by the Department of Community Development to deny our request to remove a tree from our property.

We have the need to minimize damage to our property, regain the use of a substantial part of our property and provide a safe environment for our family, neighbors and friends.

I am appealing this decision for the following reasons:

1) The Tree Represents a Potential Hazard to Structures (Section 19.94.060 (b))

Due to the proximity of the tree to the house the roots have cracked the foundation of the house (See Photo 1). This damage will only continue to get worse as the tree continues to get larger in this space and continue to cause major structural damage, not to mention the significant costs involved in repairing.

We have sought consultation and recommendation from an arborist to cut the roots back from the house structure to prevent this damage from getting worse. Unfortunately due to the structure of the trees roots, cutting back the roots of the tree would compromise the stability of the tree and pose a further risk to the house and people.

The tree is also causing significant structural damage to wooden verandah (See Photo 2) on the 2nd floor of the house due the proximity of the tree to the house. When the wind blows the branches of the tree make contact with the verandah and house causing premature deterioration that pose a structural risk.

Consultation received on Maintaining and Pruning the Tree

For many of the issues I raise in this appeal, tree maintenance and pruning may appear to be the right solution to this issue. From consultation from two(2) separate certified arborists, unfortunately sometime during this tree’s life it was incorrectly maintained and the whole inside of the tree was cut out leaving just the outer layer. This now prevents the tree from being pruned (a) without turning it into a “tree pollard” (Make the tree look like a tall pole) and (b) without causing a risk of the tree becoming unstable. If the branches close to the house were pruned and the ‘front’ of the tree maintained for visual appeal, the tree’s balance and stability would be compromised significantly. Also to be noted that this stability issue would be exacerbated by the trees shallow
root system that are due to the tree seeking its water source from the same water that irrigates the surrounding 'grass' and compact soil.

2) The Tree Represents a Potential Hazard to People (Section 19.94.060 (b))

The tree is also posing a significant hazard and risk to my family and people visiting our property. The tree has extensive, large surface roots (See Photo 3) and also is a very large producer of fruit (about 1 Inch in diameter – See Photo 4) that poses a couple of hazards to people that could potentially cause us some significant liability issues. (a) The tree on average drops a piece of fruit every 1’45” to 2’00” and when these fruit hit a person it is a painful experience. My wife was hit by falling fruit just before I submitted the original Tree Removal Permit application leaving a hematoma on her skin (b) The trees proximity (overhead) to the front path (main property access) results in the fruit causing a major hazard to pedestrian traffic. Since we have moved into our house in April my daughter has constantly had abrasions on her knees (See Photo 5) and elbows cause by tripping on the fruit from the tree and falling.

This issue is out of control. We clear the path almost every day and it continues to pose a hazard to people. We have a liability claim waiting to happen. This is not something we could financially handle.

As a father of 2 young children, I have the responsibility of taking measures to protect my family and to take measures to prevent harm occurring to them.

3) Restricts the owner’s ability to enjoy the reasonable use or economic potential of the property; The tree has outgrown its useful landscape value due to its inappropriate species, size and location (Section 19.94.060 (c) (7))

The tree has outgrown its landscape value; it has got too big for the front yard. Due to its size and inappropriateness of species we actually lose 56% of our front yard to being unusable. Having young children, a usable landscape is so valuable. The landscape is unusable for the following reasons: (a) Hazard due to high quantity of falling fruit (See Photo 6) (b) Hazard caused by large surface roots (c) In ability to be able to grow grass or lay a suitable surface (d) Large quantities of fruit debris on the ground (Even after regular raking) (e) Unable to create a landscape that adds value to the property and neighborhood

Unfortunately, as advised by the City Arborist, there are no fruit control measures available for this species of tree. As per the advice received by consultation from a certified arborist, the surface roots cannot be removed without compromising the stability of the tree and causing a potential hazard.

The remaining 44% of our front yard is directly adjacent to Rubis Drive, which experiences high through traffic and very dangerous for small children to play. Our backyard is small, so gaining use of this unusable area would bring significant value to our family and the property.

In the future when we go to sell our property the size, location and species of tree will affect the economic potential of the property (See attached recommendation from Daryl Sid, Realtor and Sunnyvale resident) due to its size, proximity to the house and visible damage and deterioration to the house caused by the tree.
The tree also affects the ability to create a desirable landscape that would bring additional economic value to our property and our neighborhood. Currently you could describe our property as not being aesthetically appealing. Attached is a Landscape Design we have had prepared for the area once the tree has been removed. The design focuses on 4 key elements: (a) Making the spaces usable again (b) replacing the current tree with a new tree that is more suitable to the space (c) Safe environment for small children (d) bring economic value to the property and neighborhood. We propose replacing the current tree with a Crepe Myrtle (Lagerstroemia Natchez).

Thank you for your time in assessing this appeal and allowing me to present my case. Please do not hesitate to contact me should you have further questions.

Kind Regards

Nick Bell

nick@nickbell.com.au

Attachments:

1) Photographs - (6 pages)
2) Recommendation from Realtor, Daryl Sid (1 Page)
3) Proposed Landscape Plan (Including current situation) – (2 Pages)
Tree Removal Permit Appeal

884 Rubis Drive Sunnyvale

Podocarpus
Tree Removal Permit Appeal

The Tree Represents a Potential Hazard to Structures (Section 19.94.060 (b))

Photo 1:

Structural Damage to foundation being caused by tree roots

Photo 2:

Verandah Damage from Tree
Tree Removal Permit Appeal

The Tree Represents a Potential Hazard to People (Section 19.94.060 (b))

Photo 3:
Large Surface Roots causing a hazard and unusable space

Photo 4:
Large Quantities of falling fruit
Tree Removal Permit Appeal

The Tree Represents a Potential Hazard to People (Section 19.94.060 (b))

Photo 5: Abrasions to my child's knees cause by fruit hazard on the front path

Photo 6: Large Quantities of falling fruit
Tree Removal Permit Appeal

Proximity to House
Proximity of Tree to Neighboring Property
June 1, 2011

Nick and Stacey Bell
884 Rubis Ave
Sunnyvale, CA 94087

Dear Nick and Stacey:

After seeing your house, I would highly recommend removing the large tree in your front yard. The size of the tree with the proximity to the foundation could make a potential buyer nervous. The branches will cause premature deterioration of the roof and walls when the wind pushes the tree against the house. It is my opinion that the tree will have a detrimental effect on the value and desirability of your house.

Feel free to contact me if you have any questions.

Regards,

Daryl Sid
Realtor
Alain Pinel Realtors
DRE 01361419