

PLANNING COMMISSION MINUTES OF MAY 10, 2010

2010-7074: Appeal of a decision by the Director of the Community Development Department denying a tree removal permit to remove one Western Cedar tree in the rear yard of a site located at **305 N. Bayview Avenue**. (APN: 204-41-019)
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Gerri Caruso, Principal Planner, presented the staff report. She said staff recommends to deny the appeal and uphold the denial of the Tree Removal Permit. Ms. Caruso said **Steve Sukke**, City Arborist, is present this evening to answer questions.

Comm. Rowe discussed with Mr. Sukke the root system of the tree and a root that goes under an addition made on the house several years ago. Comm. Rowe said tree roots have heaved up some of the bricks around the tree and the appellant is concerned about the tree lean and if it fell. Mr. Sukke said it is difficult to say what the size and location of the roots are without further examination. Comm. Rowe asked Mr. Sukke about pruning and crown reduction. Mr. Sukke said this is a large tree for this yard and the tree would probably need to be trimmed every 5 to 7 years.

Comm. Sulser discussed with Mr. Sukke the applicant's letter including that the tree pollen is causing severe allergies, with Mr. Sukke saying that only allergy testing could confirm that. **Trudi Ryan**, Planning Officer, said tree removals have been allowed in the past when verified by a doctor that either an applicant or neighbor was allergic to a certain type of tree. The appellant could not verify at this time whether the subject tree was the cause of the allergies.

Chair Chang opened the public hearing.

Tom and Brenda Corral, appellants, provided pictures and an arborist report as additional information for the Commission. Mr. Corral talked about his allergies and that the tree is huge and has a lot of pollen. He said over the years the tree has been a significant plus to their home providing shade, however the tree has started leaning toward the neighbor's house. He said the increasing lean of the tree is starting to look dangerous, the bricks being raised have become a tripping hazard, and to cut the roots to the tree might weaken the tree. Mrs. Corral discussed the private arborist report including that the tree has a 35% lean, and that the topping of the tree has made the top heavier.

Comm. Sulser asked the appellants about the financial hardship of maintaining the tree trimming and that they have had to replace the bricks twice in the past 5 1/2 years.

Comm. Rowe discussed with the appellant the size of the root going toward the foundation of the house with Mr. Corral saying it is hard to know what is underground without excavating.

Fred Kameda, a neighbor of the appellant, said the tree is huge and the Corrals had it prudently topped except now the tree has grown back and is actually denser than before. Mr. Kameda said the tree is leaning a fearful amount and said if it were to fall it would probably catch part of the Corral's house and then hit his house. He said the pollen from the tree excessive.

Mr. Corral said he wants to be a responsible homeowner and he feels the tree is dangerous if it were to fall. He said he has pruned and topped the tree and will do it again if he needs to. He asked if he would be liable for damages if the tree fell, as he has requested permission to remove it, or would the City have any responsibility for damages. He said he just wants to make sure that people and property are safe. **Kathryn Berry**, Senior Assistant City Attorney, said she represents the City and cannot provide legal advice for the appellant. She said the appellant has taken reasonable measures to do what he can, however the City has certain immunities for granting and denying permits. Ms. Corral said that Mr. Kameda's wife has expressed strong concerns to her about the tree falling on their house. Ms. Berry noted that the evidence that should be considered is the testimony of the parties and the arborists' opinions.

Chair Chang closed the public hearing.

Comm. Hungerford discussed the condition of the tree with Mr. Sukke who said that he does not know the conditions of the roots, but the top growth looked healthy. Comm. Hungerford asked Mr. Sukke if he thought this tree was a potential hazard with Mr. Sukke saying he did not think so, however he is empathetic about the allergy issues.

Chair Chang asked Mr. Sukke asked about the Corral's private arborist's report that indicates that the tree has had an 10% increase in lean over the past six years. Mr. Sukke said an increasing lean would be an indication that the tree could be dangerous and a lean of 35% could be considered hazardous given the location. Mr. Sukke said the other arborist report is new information.

Comm. Rowe provided pictures taken of the tree on her site visit as additional information that showed that the tree is very close to the house.

Chair Chang confirmed with Mr. Sukke that he saw the tree in February 2010, and the Corral's arborist looked at the tree in May 2010. Mr. Sukke said the other arborist indicates a 35% lean which indicates an increase in the past three

months. Mr. Sukke said that he thinks a 35% lean is hazardous for this tree at this location.

Comm. Rowe moved for Alternative 2 to grant the appeal and approve the Tree Removal Permit subject to the conditions in Attachment B. Vice Chair Travis seconded the motion.

Comm. Rowe said this was a hard decision. Comm. Rowe said the tree root pushes up the brick and three sections of patio are raised by the root. She said her concern is if the root could damage the foundation of the house. She said it appears the root cannot be cut down to make the patio flat and a professional arborist would need to trim the tree again soon, which can be expensive. Comm. Rowe discussed the findings and said that she thinks the appellants would miss the tree if it is removed. Comm. Rowe said she is most concerned about the 35% lean, she thinks the tree deprives the homeowners full use of the back yard, that it is a danger to the neighbors, and a danger to the foundation. She said this is one time that she thinks the homeowner should be allowed the choice of removing the tree.

Vice Chair Travis said he would be supporting motion, and that the degree of lean of the tree and the increasing lean of the tree concerns him.

Comm. Sulser said he would not be supporting the motion as he cannot make the findings. He said the degree of lean is not reason enough for him, that the tree upkeep is part of having a large mature tree in a yard and part of what the City is trying to protect with the tree ordinance.

Comm. Hungerford said that he would be supporting motion as with the new information regarding the degree of lean from the Corral's arborist indicating an increase in lean during a short period of time is enough to cause him to support the motion.

ACTION: Comm. Rowe made a motion on 2010-7074 to grant the appeal and approve the Tree Removal Permit subject to the conditions in Attachment B. Vice Chair Travis seconded. Motion carried 5-1, with Comm. Sulser dissenting and Comm. Klein absent.

APPEAL OPTIONS: This action is final.