

PLANNING COMMISSION MINUTES OF AUGUST 22, 2011

2. **FILE #:** 2011-7398
Location: 884 Rubis Drive (APN: 201-26-002)
Proposed Project: Appeal of a decision by the Director of Community Development denying **Tree Removal Permit** for one Podocarpus tree in the front yard.
Staff Contact: Ryan Kuchenig, 408-730-7431
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Notes:

Trudi Ryan, Planning Officer, presented the staff report.

Chair Hendricks opened the public hearing.

Nick and Stacey Bell, appellants, said they think this tree is a danger, and restricts the use of their property. Mr. Bell presented several photos showing cracks from tree roots leading towards the foundation of their home. He said their veranda is deteriorating from tree debris and the tree rubbing against the veranda. He said when it is windy the tree hits against the gutters. He said he sought consultation from two arborists and both said the inside of tree has been pruned out and if the tree were trimmed further the tree would result in a pole-like tree. He discussed the negative affect of cutting the roots and the shallowness of the roots. Mr. Bell discussed the potential hazard to people, with the dropping of debris and fruit on the property and on the path that is the main access into house. He said he does not want the liability exposure. He said the tree restricts the ability to use the property and they lose 56% of the front area not being able to use land around the tree. He said the tree limits the ability to make the house appealing in the neighborhood. He said he has submitted a desired plan for the space which includes a replacement tree for the area. He said they would like to remove the tree and replace it with a more suitable tree, make a safe environment for his family and others, and increase the economic value to their property and the neighborhood.

Ms. Ryan commented that **Steve Sukke** from City's Trees Division is present to answer questions.

Vice Chair Larsson disclosed that he spoke with the applicant on his site visit. Vice Chair Larsson discussed the pictures in the report and discussed the cracks near the foundation. Mr. Bell said they are concerned that the roots will crack the foundation. Vice Chair Larsson asked if they took any pictures when they were excavating the tree. Mr. Bell said no as they needed to fill the excavated area back in pretty quick.

Comm. Chang asked how many arborists Mr. Bell met with. Mr. Bell said they met with two arborists; however he did not have them write up reports as both arborists advised that it would be better to save the cost of the reports as they had not had much success in contesting the City's recommendations. He said they have already spent money on the tree removal permit and the appeal.

Comm. Sulser asked about the past pruning jobs on the tree. Mr. Bell said he is not sure why the tree was pruned this way, and provided his speculation. Mr. Sukke, City arborist, said his assumption is it was a cosmetic prune and discussed this type of pruning. He said he would have pruned it differently. Comm. Sulser asked about the fruit. Mr. Sukke discussed fruit control and the size of the fruit, but said he would not recommend it on an evergreen. Comm. Sulser discussed with the applicant the damage to the veranda.

Comm. Kolchak disclosed that he spoke with applicant on his site visit. He discussed with Mr. Bell some of the circumstances surrounding request for the tree removal. Comm. Kolchak discussed with Mr. Sukke how the tree root barriers work with Mr. Sukke discussing this particular tree species and the root barrier guideline.

Chair Hendricks asked Mr. Bell about curb appeal when they moved into the home, with Mr. Bell saying that they knew the tree would be a problem in future yet they wanted to live in this neighborhood.

Paul Wilhelmson, a neighbor, spoke in favor of granting the appeal of the tree removal permit. He said this type of tree produces a lot of debris and the fruits are toxic to dogs and cats. He said the fruit drops in his yard and is possibly the source of why his dogs have been sick in the past. Comm. Sulser asked Mr. Sukke if this tree is toxic. Mr. Sukke said he was not aware of it. Mr. Wilhelmson provided a print-out from the American Society for the Prevention of Cruelty to Animals (ASPCA) regarding the Buddhist Pine and said he believes he has correctly identified the tree. Comm. Sulser asked Mr. Sukke further about toxic tree species. Mr. Sukke said the only other species he knows of is oleander foliage, however, if this tree is toxic, how do you tell a dog or cat that.

Mr. Bell said he thinks they have supplied a sufficient alternative to the situation and that their alternative would provide extra value to neighborhood as well. He said allowing removal of the tree would allow them to provide a more suitable situation that would be better for the neighborhood.

Chair Travis closed the public hearing.

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

Comm. Sulser said originally he was going to deny the appeal, however the toxic danger to dogs or cats is an unreasonable thing for a property owner to take on.

Comm. Travis said he agrees with Comm. Sulser. He said he was not leaning toward granting the appeal, however, based on the information from the ASPCA and some of the other information from the appellant, he can support granting the appeal.

Ms. Ryan asked the maker and the seconder about the findings confirming that they were able to make the finding number 3 in Attachment A, that “the tree is in sound condition, but restricts the adjoining property’s use.” She said the use would be the neighbor’s pets, and other information, being the toxic aspects of the fruit. Comm. Sulser confirmed he did find the tree healthy and that he is able to make finding number 3.

Comm. Kolchak offered a Friendly Amendment that approval of the appeal be contingent on the confirmation of the City Arborist of the ASPCA information and that indeed it is the correct tree and that the fruit is toxic to dogs and cats. The maker said this is reasonable and both maker and seconder accepted the friendly amendment.

Chair Hendricks said he would be supporting the motion and that he can make finding number 3.

ACTION: Comm. Sulser made a motion on 2011-7398 to grant the appeal and approve the Tree Removal Permit with modified conditions: adding a condition that the tree removal permit is approved subject to the confirmation by the City Arborist that the fruit of the tree is considered toxic to dogs and cats. Comm. Travis seconded. Motion carried 6-0, with Comm. Dohadwala absent.

APPEAL OPTIONS: This action is final.