

CITY OF SANTA ROSA  
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT  
STAFF REPORT FOR PLANNING COMMISSION

**MARCH 25, 2021**

**(Continued from FEBRUARY 25, 2021)**

**PROJECT TITLE**

1900 Brush Creek Appeal

**APPELLANT**

Kathy Parnell

**ADDRESS/LOCATION**

1900 Brush Creek Drive

**PROPERTY OWNER**

Daniel and Amber Lichau

**ASSESSOR'S PARCEL NUMBER**

182-140-056

**FILE NUMBER**

ST20-003

**APPEAL DATE**

December 16, 2020

**APPLICATION COMPLETION DATE**

Not Applicable.

**REQUESTED ENTITLEMENTS**

Appeal Determination

**FURTHER ACTIONS REQUIRED**

None

**PROJECT SITE ZONING**

R-1-15-SR

**GENERAL PLAN DESIGNATION**

Low Density Residential

**PROJECT PLANNER**

Andrew Trippel

**RECOMMENDATION**

Deny Appeal

Agenda Item #9.1  
For Planning Commission Meeting of: March 25, 2021

CITY OF SANTA ROSA  
PLANNING COMMISSION

TO: CHAIR WEEKS AND MEMBERS OF THE COMMISSION

FROM: ANDREW TRIPPEL, ACTING SUPERVISING PLANNER

SUBJECT: 1900 BRUSH CREEK APPEAL OF PLANNING DIRECTOR DETERMINATIONS

AGENDA ACTION: Resolution

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RECOMMENDATION

It is recommended by the Planning and Economic Development Department that the Planning Commission, by resolution, deny appeal of Planning Director determinations made during Planning review of Building Permit B20-6871, thus affirming the Planning Director determinations and allowing processing of the building permit application to resume.

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EXECUTIVE SUMMARY

On December 11, 2020, the property owner at 1900 Brush Creek Drive submitted a building permit application (B20-6871) to resolve a Code Enforcement case resulting from the unpermitted removal of a tree and construction of an addition to a single-family residence (CE20-0139) (see also Staff Report Section 4 – Code Enforcement Violation and Requirements). The appellant, an adjoining property owner, has appealed Planning Director determinations concerning:

- 1) the proposed project's compliance with the subject parcel's Final Map and required building setbacks, and
- 2) compliance with the City's Tree Ordinance tree removal requirements

that were made during Planning Review of the building permit application. The appeal to Planning Commission is filed in accordance with Zoning Code [Section 20-50.020, Table 5-1 – Review Authority](#) and with [Section 20-62.020\(A\)](#) – Director Decisions. The appeal has been processed in accordance with [Section 20-62.030](#) – Filing and processing of appeals. The issue before Planning Commission is an appeal of Director determinations made during Planning review of Building Permit application B20-6871.

## BACKGROUND

### 1. Description of Issue

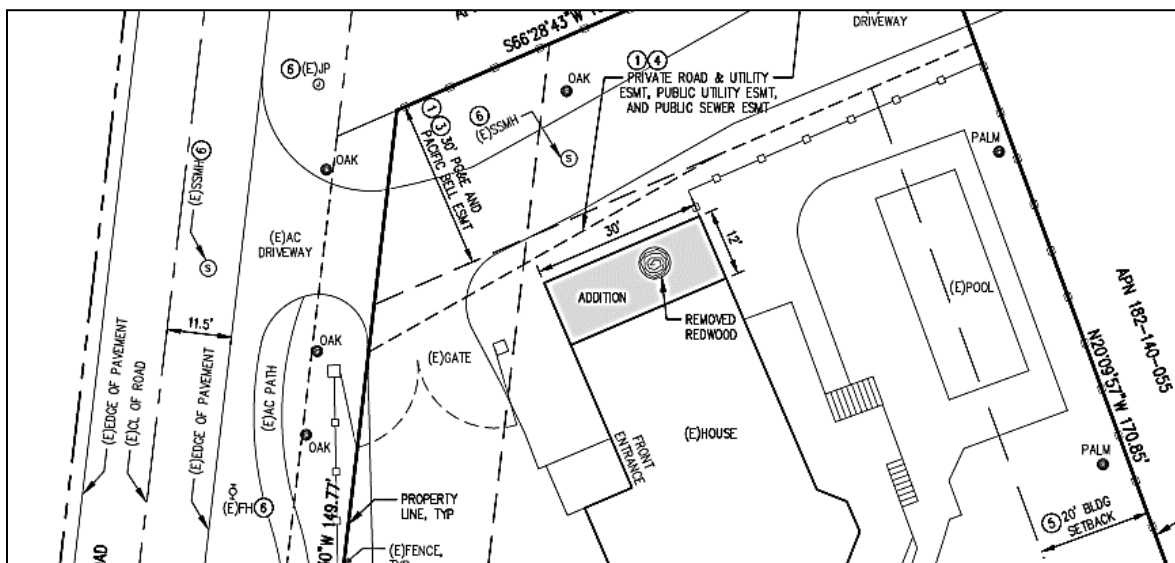
In 2020, without City-issued permits, property owners of 1900 Brush Creek Road modified the property by (1) removing a Redwood tree, and (2) constructing a 12 x 30-foot addition on the north side of the existing residence as illustrated in Image 2 below and in **Attachment 3**. Responding to a citizen complaint, Code Enforcement Division opened a case for unpermitted tree removal and unpermitted construction. To resolve the Code violations, Code Enforcement required that the property owner comply with City regulations by obtaining approval for the tree removal and a building permit for the modifications in accordance with authority granted to the Chief Building Official in California Building Code Section 104 Duties and Powers of Building Official, [A] 104.1 General.

**Image 1: Aerial view of subject parcel**



Source: City GIS aerial data, 2020 (**Attachment 1**)

**Image 2: Site Plan reflecting location of removed tree and constructed addition**



Source: Building Permit Application B20-6871 dated received December 9, 2020 (**Attachment 3**)

## 2. Timeline of Relevant Activities

Below is a timeline of key events or actions taken by the Property Owner, Appellant, and City Building, Code Enforcement, and Planning Divisions. For communications and documentation exchanged, see **Attachments 8 thru 11**.

Feb 19, 2020	Code Enforcement Case (CE20-0139) is opened in response to a complaint received about trash, debris, and unpermitted construction. (This case was opened one month prior to the City beginning COVID Shelter-in-Place protocols; therefore, Code Enforcement's response to the initial complaint was delayed.)
Aug-Sep 2020	A complaint about unpermitted construction and tree removal is submitted.
Aug 6, 2020	Code Enforcement initiates response to complaints. (See Section 4 for additional information about Code Enforcement response.)
Aug-Sep 2020	Code Enforcement issues requirement that a building permit be obtained for unpermitted construction. Property Owner responds to Code Enforcement requirements and submits initial Building Permit application. The application is rejected as incomplete by Building Division.
Sep 17, 2020	Code Enforcement issues a Notice of Violation for tree removal. A Notice of Violation for unpermitted construction is not issued; however, Code Enforcement has previously required that unpermitted construction be resolved.
Dec 7, 2020	Planning responds to Chief Building Official (CBO) request for preliminary review of unpermitted tree removal and construction.
Dec 7, 2020	Complainant is informed of Planning Division's response to CBO.
Dec 11, 2020	Building Permit application B20-6871 to legalize unpermitted construction, including tree removal, is opened. Planning review determines that the project proposed in the building permit application complies with all applicable Zoning Code and other municipal code regulations.
Dec 14, 2020	Planning Division receives Appeal Application submitted by Kathy Parnell.
Dec 17, 2020	Planning Division receives amended Appeal Application submitted by Kathy Parnell.

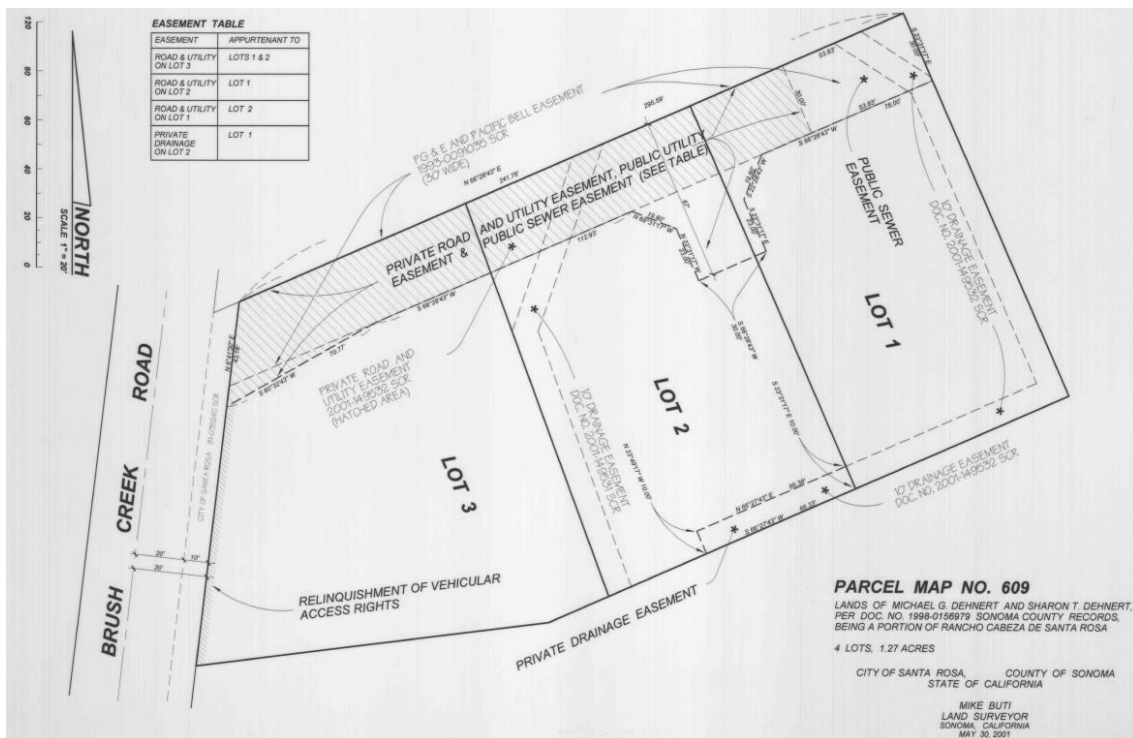
Planning staff has included relevant correspondence and document exchanged between the property owner, the appellant, and City Planning, Building, Engineering, and Code Enforcement staff in **Attachments 8 thru 11**.

### 3. Site Characteristics

1900 Brush Creek Drive (APN 182-140-056) is a 0.48-acre parcel resulting from the three-parcel subdivision of a 1.27-acre parcel in 2001. The parcel's General Plan land use designation is Low Density Residential and the zoning is R-1-15-SR [Single-Family Residential (R-1-15) with Scenic Road combining district (-SR)]. Development and use of the subject parcel are consistent with its General Plan land use designation and R-1-15 zoning district, which is an implementing zoning district of the Low Density Residential land use designation.

Labeled as Lot 3 on Parcel Map No. 609 (Attachment 2), the parcel was developed for residential use in 1929 according to County GIS data. At the time subdivision occurred in 2001, the parcel was developed with a primary dwelling unit and several accessory structures. Following subdivision, modifications to the property include addition of an in-ground pool and landscape features. Also following subdivision, residential development of Lots 1 and 2 was completed. Fronting Brush Creek Road, the parcel is surrounded by low-density residential development or vacant land (Attachments 1 and 2).

Image 3: Subject parcel is Lot 3 on parcel map



Source: Parcel Map No. 609 dated May 30, 2001 (Attachment 2)

### 4. Code Enforcement Violation and Requirements

Code Enforcement staff has provided the following information about Code Enforcement case CE20-0139 for the property located at 1900 Brush Creek Drive. All complaints described below were received from the property owner at 1888 Brush Creek Drive who is also the appellant.

- **February 19, 2020** - Code Enforcement received a complaint regarding trash and debris, and unpermitted construction.\*
- **August 4, 2020** - Code Enforcement received a complaint regarding unpermitted addition extending through property line setbacks.
- **August 10, 2020** - Code Enforcement received a complaint regarding possible safety issues with Water, fire, and extensive excavation work throughout the property.
- **October 21, 2020** - Code Enforcement received a complaint that was initially delivered to the City Attorney's Office. In the complainant's letter dated October 13, 2020; complainant requested that the City "investigate contractor and his contracting company. The owner at 1900 is part owner of the contracting company Lidoli Construction."
- **November 2, 2020** - Code Enforcement received a complaint routed through the City Manager's Office regarding "the illegally built addition to the home, removal of Redwood tree to make room for the Addition re-planting of Redwood trees on his property, light bleed onto complainant's property. This light bleed going in through windows, possible damage from owner to root system of a heritage oak tree at 1900 Brush Creek."

\* CE20-0139 was opened one month prior to the City beginning COVID Shelter-in-Place protocols; therefore, Code Enforcement's response to the initial complaint was delayed. Code Enforcement confirms that all complaints received to-date will be resolved through the required building permit to legalize unpermitted activity.

## 5. Applicable Regulations

- City Code – the parcel is subject to the [Santa Rosa City Code](#), including the City's Tree Ordinance contained in [Chapter 17-24](#).
- Zoning Code – the parcel is subject development standards for the R-1-15 zoning district ([§ 20-22.050](#)), the Scenic Road combining district ([§ 20-28.050](#)), and all other applicable development regulations contained in the Zoning Code.
- [Parcel Map No. 609](#) –the parcel is subject to Final Map dated May 30, 2001 (**Attachment 2**)

Planning staff reviewed the tree removal and construction proposed in the building permit application and made the following Planning Director determinations:

1. Removal of an existing Redwood Tree is necessary for development of the proposed addition. Mitigation for the tree removal in accordance with [City Code § 17-24.050](#) Permit category II – Tree alteration, removal, or relocation on property proposed for development – Requirements is required.

The Planning Director has approved the tree removal and informed the applicant of the required mitigation, which is either (1) planting of 26 Coast Redwood trees, each a minimum of 15-gallon container size, or (2) a payment to the City's Tree

Mitigation Fund in the amount of \$100 per tree specified in mitigation (1) for a total contribution of up to \$2,600.

The Tree Ordinance addresses situations where a tree is removed in conjunction with approved development but is not approved for removal. Per [§17-24.050\(C\)\(2\)](#), mitigation for this scenario would require that “four trees of the same genus and species as the removed tree (or another species, if approved by the Director), each of a minimum 15-gallon container size, shall be planted on the project site.” Planning established that tree removal would have been approved had a building permit for the addition been sought as required. Therefore, Planning did not implement this mitigation requirement.

Where unpermitted tree removal occurs, the Tree Ordinance regards this as a violation of the Ordinance and provides a pathway for enforcement action against the party in violation of the Tree Ordinance ([Article VII. Enforcement](#)). Planning Division, in partnership with the City Attorney’s Office, Building Division, and Code Enforcement, reviewed this section and again determined that tree removal would have been approved had a building permit for the addition been sought as required. Therefore, Planning did not implement this mitigation requirement.

2. The proposed addition complies with development standards for the R-1-15 zoning district and all applicable Zoning Code and Parcel Map regulations.

## 5. Appeal Description

### Appeal Application dated December 14, 2020 (Attachment 6)

On December 14, 2020, Planning Division received from the City Manager’s Office an Appeal to the Planning Commission filed by Kathy Parnell on December 9, 2020 (**Attachment 6**). Ms. Parnell provided the following required information.

The grounds upon which this appeal is filed are:

1. *Per CBO (J. Oswald), the unpermitted home addition on the frontage Scenic Brush Creek Rd is now able to be permitted because “building setback lines placed on the Final Map Supplemental sheet are not enforceable.” I disagree. This is a zoning code violation, whereby a property set-back (building envelope) is being voided to enable an illegal build.*
2. *A redwood heritage tree was removed on frontage Brush Creek in a scenic set-back and outside a building envelope to enable illegal build. Per CBO, this would have been approved for removal in accordance with the Tree Ordinance.” I disagree. (Attachments to follow)*

The specific action which the undersigned wants the City Planning Commission to take is:

*Enforce the building set-backs shown on deed maps for 1900 Brush Creek Rd. Enforce zoning code and tree violations. Require illegal build to be re-built within set-back lines with trees planted and fence returned along shared driveway.*

**Amended Appeal Application dated December 17, 2020 (Attachment 6)**

Kathy Parnell submitted an amended Appeal Application (**Attachment 6**). In the amended Appeal Application, Ms. Parnell provided the following required information.

The grounds upon which this appeal is filed are:

1. *Zoning code violation – Home addition of 12’x30’ with 9’x30’ through a building envelope. Per CBO (J. Oswald), the building envelope was removed by the City enable the legalization of the unpermitted build and removal of a heritage tree Attachments to follow.*

The specific action which the undersigned wants the City Planning Commission to take is:

*Enforce the building set-backs shown on deed maps for 1900 Brush Creek Rd. Enforce zoning code and tree violations. Require illegal build to be re-built within set-back lines with trees planted and fence returned along shared driveway.*

PRIOR CITY COUNCIL REVIEW

Not Applicable

ANALYSIS

Planning review of Building Permit application B20-6871 is complete, and the Planning Director has determined that:

1. The proposed building addition to the existing primary dwelling unit complies with all applicable Zoning Code regulations and Final Map requirements.
2. Tree removal included in the Building Permit scope of work is approved and is subject to mitigation. The Property Owner has requested that alternative mitigation in the form of a \$2,600 payment to the City’s Tree Mitigation Fund be accepted. Planning has reviewed and approves this request. Therefore, required tree removal mitigation consists of a \$2,600 payment to the Tree Mitigation Fund.

The Appellant has submitted an Appeal Application and an amended Appeal Application. Planning has considered the grounds upon which the appeals are filed contained in both applications and will analyze the following grounds for appeal:

**Grounds for Appeal #1 (verbatim)**

*Per CBO (J. Oswald), the unpermitted home addition on the frontage Scenic Brush Creek Rd is now able to be permitted because “building setback lines placed on the Final Map Supplemental sheet are not enforceable.” I disagree. This is a zoning code violation, whereby a property set-back (building envelope) is being voided to enable an illegal build.*

*Zoning code violation – Home addition of 12’x30’ with 9’x30’ through a building envelope. Per CBO (J. Oswald), the building envelope was removed by the City*



*enable the legalization of the unpermitted build and removal of a heritage tree Attachments to follow.*

**Grounds for Appeal #2 (verbatim)**

*A redwood heritage tree was removed on frontage Brush Creek in a scenic setback and outside a building envelope to enable illegal build. Per CBO, this would have been approved for removal in accordance with the Tree Ordinance.” I disagree. (Attachments to follow)*

**1. Planning Response to Grounds for Appeal #1**

**Zoning Code compliance**

The required setbacks for this parcel are Front = 20 feet, Side Corner = 15 feet, Side Interior = 10 feet, Rear = 20 feet, and Brush Creek Road setback = 50 feet measured from edge of pavement to a one-story structure with a maximum height not exceeding 25 feet. All required setbacks are shown on the proposed Site Plan (**Attachment 3**), and the residential addition is located outside of all required setbacks. The project plan set shows a maximum building height of 15-foot, 6-inches. Planning Review concludes that parcel development complies with all applicable regulations and does not encroach on required R-1-15 and -SR setbacks or any existing easements.

**Final Map compliance**

The applicable Final Map is a four-page document comprised of Certificates and Acknowledgements (p. 1), Parcel Maps (pp. 2-3), and the Supplemental Information Sheet (p. 4). Parcel Map pages 2-3 illustrate parcel lines and a ± 40-foot Road, Sewer, and Public Utility Easement within the northern property boundary line of Lot 3; no other setback requirements, easements, or restrictions are identified. Development would not be allowed within the identified easement or setbacks.

The Supplemental Information Sheet describes Building Setbacks for all subdivision parcels and identifies Scenic Building Setback Lines for single-story and two-story buildings. Included applicable notes are:

1. “This sheet [Supplemental Information Sheet] is for information purposes only, describing conditions as of filing and is not intended to affect recording interest.”
  2. “Scenic Building Setback Note: Front setbacks for one story structure shall be 50 feet from edge of Brush Creek Road pavement and 100 feet for two story portion of the structure.”
1. During Planning Review, the stamped and signed site plan was reviewed against the Final Map. Per State code, the Information Sheet cannot affect record title; it’s only intended to represent requirements in place at the time of map filing. A ministerial permit application, such as a building permit, must be reviewed against published codes in effect at the time of

the application submittal. The current Zoning Code sets forth the requirements associated with building setbacks, and does not provide the authority to apply more stringent setback requirements that may be published on the Information Sheet of the associated map. Under a building permit review, the Zoning Code would need to grant staff the authority to use the Information Sheet and it clearly does not grant that authority. No other setbacks are required by the Final Subdivision Committee Report.

2. Planning review of Final Map entitlement records and subsequent entitlement history of the parcel did not identify any modifications to the easement, setbacks, or the Final Map. Scenic Road setback regulations have not been amended.

Based on items 1-3 above, Planning has determined that any information listed on the supplement sheet cannot affect record title interest and is not intended to create enforceable development standards. The City will not enforce any information provided on the Supplement Sheet, unless the information is consistent with other municipal code requirements in effect at the time of building permit submittal. Review of Planning entitlement records that would affect the subject parcel (items 4-5) did not result any additional setback beyond those required by the Zoning Code.

Planning has determined that the residential addition complies with all current applicable code requirements pertaining to building setbacks and that the Final Map does not contain any other enforceable setback requirements. Additionally, Planning concludes that Final Subdivision Committee Report Condition #3 is enforced through application of the -SR combining district Brush Creek Road required setback for a one-story structure with a maximum height not exceeding 25 feet.

## **2. Planning Response to Grounds for Appeal #2**

### **Tree Ordinance compliance**

The removed tree was a split trunk Coastal Redwood tree with a co-dominant stem. Total tree height was approximately 55-feet, and total diameter at breast height was 74 inches (**Attachment 4**). The tree classifies as a Heritage Tree ([§ 17-24.020](#)) and is subject to the City's Tree Ordinance. Removal of a Heritage Tree is allowed with approval by the Planning Director and mitigation as described in the Tree Ordinance.

Building and Planning Division practice is to process tree removal proposed as part of construction concurrently. In these cases, Planning approval of the building permit application effectively permits tree removal in accordance with the Tree Ordinance. Required mitigation is determined and provided to the applicant through the issued building permit. In this case, Code Enforcement directed the

property owner to legalize the improvements by obtaining a building permit; therefore, the tree removal was reviewed during Planning Review of the building permit. The Planning Director's determination was that:

1. The Tree Removal is approved subject to mitigation requirements.
2. Mitigation requirements – In accordance with [§ 17-24.050\(C\)\(1\)](#), for each six inches or fraction thereof of the diameter of a tree which was approved for removal, two trees of the same genus and species as the removed tree (or another species, if approved by the Director), each of a minimum 15-gallon container size, shall be planted on the project site, provided however, that an increased number of smaller size trees of the same genus and species may be planted if approved by the Director, or a fewer number of such trees of a larger size if approved by the Director. The total diameter of the removed tree is 74 inches (48+26).
  - In accordance with the mitigation formula provided above, the mitigation requirement is planting of 26 Coast Redwood trees, each a minimum of 15-gallon container size ( $74 / 6 = 12.33$  6-inch increments, which rounds up to 13 sections).
  - In accordance with Subsection 17-24.050(C)(3), If the development site is inadequate in size to accommodate the replacement trees, the trees shall be planted on public property with the approval of the Director of the City's Recreation and Parks Department. Upon the request of the developer and the approval of the Director, the City may accept an in-lieu payment of \$100.00 per 15-gallon replacement tree on condition that all such payments shall be used for tree-related educational projects and/or planting programs of the City. The total payment in-lieu fee would be \$2,600.

On January 4, 2021, the property owner requested that the Planning Director accept and approve mitigation in the form of payment to the City's Tree Fund in the amount of \$2,600 (**Attachment 5**). The Planning Director has approved this mitigation.

## ENVIRONMENTAL IMPACT

The City's issuance of a Building Permit involves only the use of fixed standards or objective measurements and is therefore a ministerial action that is not subject to the California Environmental Quality Act (CEQA).

Ministerial projects are statutorily exempt from the requirements of CEQA (CEQA Guidelines, § 15268). "A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out." (CEQA Guidelines, § 15369). The California Supreme Court has explained further that "[a] 'ministerial' decision is one that involves little or no judgment or discretion by the approving official about the wisdom or manner of carrying out the project..." (Stockton

Citizens for Sensible Planning v. City of Stockton (2010) 48 Cal.4th 481, 512, citing CEQA Guidelines §§ 15357, 15369; see also Sierra Club v. Napa County Bd. of Supervisors (2012) 205 Cal.App.4th 162, 179 [“CEQA does not apply to an agency decision simply because the agency may exercise some discretion in approving the project or undertaking. Instead to trigger CEQA compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to ‘mitigate...environmental damage’ to some degree”]].

The City’s issuance of the Building Permit for this project is a ministerial decision and is therefore exempt from CEQA.

### NOTIFICATION

Not applicable.

### ISSUES

There are no additional issues to consider.

### ATTACHMENTS

- Attachment 1 Neighborhood Context and Location Map
- Attachment 2 Parcel Map No. 609 (Final Map)
- Attachment 3 Proposed Site Plan prepared by Robertson Engineering, Inc. and dated received by the City on December 9, 2020
- Attachment 4 Tree Removal Documentation prepared by Robertson Engineering, Inc. dated October 30, 2020
- Attachment 5 Tree Mitigation Request prepared by Property Owner and dated received by the City on January 4, 2020
- Attachment 1 Appeal and Amended Appeal Applications dated received by Planning Division on December 14, 2020, and December 17, 2020, respectively
- Attachment 7 Building Permit Application B20-6871 dated received by the City on December 9, 2020
- Attachment 8 Property Owner Correspondence
- Attachment 9 Appellant Correspondence
- Attachment 10 Code Enforcement Correspondence
- Attachment 11 Planning Division Correspondence

### CONTACT

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