

RESOLUTION NO. RES-2021-126

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA UPHOLDING AN APPEAL OF THE DECISION OF THE PLANNING COMMISSION AND PLANNING DIRECTOR DETERMINATIONS MADE DURING PLANNING REVIEW OF BUILDING PERMIT APPLICATION B20-6871 CONCERNING COMPLIANCE WITH CITY'S TREE ORDINANCE TREE REMOVAL REQUIREMENTS LOCATED AT 1900 BRUSH CREEK RD., ASSESSOR'S PARCEL NUMBER 182-140-056, FILE NUMBER ST20-003

WHEREAS, on February 19, 2020, Code Enforcement Case (CE20-0139) was opened in response to a complaint received about trash, debris, and unpermitted construction at 1900 Brush Creek Road (subject parcel); and

WHEREAS, on August 4, 2020, Code Enforcement received a complaint regarding an unpermitted addition extending through property line setbacks on subject parcel; and

WHEREAS, on August 10, 2020, Code Enforcement received a complaint regarding possible safety issues with water, fire, and extensive excavation work throughout the subject parcel from the complainant; and

WHEREAS, on October 21, 2020, Code Enforcement received a complaint requesting that the City investigate certain contractors, including the property owner of the subject parcel; and

WHEREAS, on November 2, 2020, Code Enforcement received a complaint regarding an illegally built addition to the home on the subject parcel, removal of Redwood tree to make room for the addition on the subject parcel, concerns about re-planting of Redwood trees on the subject parcel, light bleed onto complainant's property, including light bleed going in through windows, and possible damage to root system of a heritage oak tree on the subject parcel; and

WHEREAS, Code Enforcement Division has made a thorough investigation of all complaints received, issued violations, and informed the Property Owner of the subject parcel that resolution of all outstanding Code Enforcement violations may be accomplished through the Building Permit process; and

WHEREAS, on December 11, 2020, Building Permit application B20-6871 to legalize unpermitted construction, including tree removal, at 1900 Brush Creek Road, was accepted by Building Division; and

WHEREAS, during Planning review of the Building Permit application, the Planning Director determined that modifications to the property described in the Building Permit application comply with all applicable City Codes, including the City's Tree Ordinance and Zoning Code, and with Parcel Map No. 609, which is the Final Map for the subject parcel; and

WHEREAS, on December 14, 2020, Planning Division received an Appeal Application submitted by Kathy Parnell (Appellant); and

WHEREAS, on December 17, 2020, Planning Division received an amended Appeal Application submitted by Appellant; and

WHEREAS, the Appeal and amended Appeal Applications asserted that Planning Director determinations made as part of the Planning Department's review of Building Permit B20-6871 are not consistent with the subject parcel's Final Map, nor in compliance with the City's Tree Ordinance; and

WHEREAS, on February 25, 2021, at a scheduled meeting of the Planning Commission during which Planning staff recommended that review of the appeal be continued to a date certain due to the appellant's inability to participate in the scheduled public hearing, the Planning Commission approved, by a vote of 7-0-0, continuance of the item to a date certain of March 25, 2021; and

WHEREAS, on March 25, 2021, the Planning Commission held a duly noticed hearing on the application at which all those wishing to be heard were allowed to speak or present written comments and other materials; and

WHEREAS, on March 25, 2021, the Planning Commission considered the appeal application, the staff reports, oral and written, the General Plan and zoning on the subject property, the testimony, written comments, and other materials presented at the public hearing; and

WHEREAS, following the public hearing held on March 25, 2021, Planning Commission approved Resolution No. 12049 denying the appeal and upholding Planning and Economic Development Director determinations made during Planning review of Building Permit application B20-6871 for modifications to the property located at 1900 Brush Creek Road; and

WHEREAS, an appeal of the Planning Commission's action was filed by Kathy Parnell, seeking review by the City Council pursuant to City Code Chapter 20-62; and

WHEREAS, on July 13, 2021, City Council held a duly noticed public hearing on the appeal, at which all those wishing to be heard were allowed to speak or present written comments and other materials; and

WHEREAS, during the public hearing, City Council considered the appeal application, the staff reports, oral and written, the General Plan and zoning on the subject property, the testimony, written comments and other materials presented at the public hearing; and

WHEREAS, during the public hearing, City Council found that Planning Director and Planning Commission actions regarding tree removal were consistent with the City's current Tree Ordinance regulations and Planning and Building Division review policies, but determined that appropriate required mitigation for removal of the Coast Redwood tree approximately 74 inches in diameter at breast height located on the subject parcel is established by Section 17-24.050(C)(2) of the Tree Ordinance; and

WHEREAS, the City Council determined that required mitigation pursuant to Code Section 17-24.0500(C)(2) is the re-planting of 52 Coast Redwood trees; however, because the subject parcel cannot accommodate replanting, in-lieu payment of \$5,200 by the property owner to the City Tree Mitigation Fund as directed by Section 17-24.050(C)(3) is appropriate.

NOW, THEREFORE, BE IT RESOLVED that after consideration of the appeal and the reports, documents, testimony, and other materials presented, and pursuant to the requirements of Chapter 17-24 and Chapter 20 of the City Code, Zoning Code Sections 20-22.050, 20-058.050, and 20-62.030 (Processing of Appeals), the Council of the City of Santa Rosa upholds the appeal as to the limited issue of determining the appropriate mitigation fee for removal of the redwood tree at 1900 Brush Creek Road, denies all other stated grounds for appeal, and makes the following findings and determinations:

- A. That the Planning Director determinations made during Planning review of Building Permit B20-6871 comply with all applicable City Codes, including the City’s Tree Ordinance and Zoning Code, and with Parcel Map No. 609, which is the Final Map for the subject parcel, in that (1) the proposed building addition to the existing primary dwelling unit complies with all required setbacks and other development standards, and (2) the tree removal included in the Building Permit scope of work is consistent with Section 17-24.050 Permit category II – Tree alteration, removal or relocation on property proposed for development-Requirements, and is subject to mitigation. Required mitigation shall be consistent with the requirements of Section 17-24.0500(C)(2) - mitigation for trees not approved for removal. In lieu of on-site tree replanting, the Property Owner is directed to make a \$5,200 payment to the Tree Mitigation Fund.
- B. This action is not subject to the California Environmental Quality Act (CEQA) in that when a project proposes tree removal in conjunction with new development and no other discretionary review is required, Planning and Building Division direct the applicant to request tree removal approval as part of the building permit application. Tree removals approved in this manner and for which mitigation consistent with the Tree Ordinance is required are ministerial in nature. Additionally, the City’s issuance of a Building Permit involves only the use of fixed standards or objective measurements. Therefore, review of this building permit is 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.”

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

IN COUNCIL DULY PASSED this 13th day of July, 2021.

AYES: (4) Mayor C. Rogers, Council Members Alvarez, Fleming, Tibbetts

NOES: (3) Vice Mayor N. Rogers, Council Members Sawyer, Schwedhelm

ABSENT: (0)

ABSTAIN: (0)

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM: _____
City Attorney