

CITY OF SANTA ROSA
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
STAFF REPORT FOR PLANNING COMMISSION
SEPTEMBER 14, 2023 (CONT'D FROM AUGUST 24, 2023)

PROJECT TITLE

Bunya Bunya Tree Removal - Appeal

APPLICANT/APELLANT

Michelle Zyromski, on behalf of
Salvation Army Residence, Inc.
(dba: Silvercrest Senior Housing)

ADDRESS/LOCATION

1080 2nd Street

PROPERTY OWNER

Salvation Army Residences, Inc.

ASSESSOR'S PARCEL NUMBER

009-082-003

FILE NUMBERS

TR22-062 (Appeal)

APPLICATION APPEAL DATE

March 13, 2023

APPLICATION COMPLETION DATES

March 13, 2023

REQUESTED ENTITLEMENTS

Tree Permit

FURTHER ACTIONS REQUIRED

None

PROJECT SITE ZONING

PD (Planned Development 0067)

GENERAL PLAN DESIGNATION

Office

PROJECT PLANNER

Susie Murray

RECOMMENDATION

Deny Appeal; Deny Tree Permit

CITY OF SANTA ROSA
PLANNING COMMISSION

TO: CHAIR WEEKS AND MEMBERS OF THE PLANNING COMMISSION
FROM: SUSIE MURRAY, SENIOR PLANNER
PLANNING AND ECONOMIC DEVELOPMENT
SUBJECT: BUNYA BUNYA TREE REMOVAL - APPEAL

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Planning and Economic Development Department that the Planning Commission, by resolution, deny the Appeal and uphold the Planning and Economic Development Director's denial of a Tree Permit to remove an approximately 125-foot Araucaria bidwillii (Bunya Bunya tree) at 1080 2nd Street, Santa Rosa, Assessor's Parcel No. 009-082-003.

BACKGROUND

- Project Description

The Salvation Army Residences, Inc. (appellant) submitted a Tree Permit application requesting to remove an approximately 125-foot Bunya Bungy tree because of safety concerns. An arborist's evaluation, prepared by Chip Sandborn, Sandborn Tree Service, Inc., dated March 30, 2022, found the tree to be an "imminent hazard" identifying codominant stems at the top of tree, falling cones, heavy branches, and falling and fallen debris.

Vintage Tree Care, Inc., a firm under contract with the City, was contracted to conduct a second evaluation of the tree. An Arborist Report, prepared by Fred Frey, Vintage Tree Care, Inc., dated February 5, 2023, concluded that the tree's overall risk rating is low not an imminent threat and, with regular maintenance, could be reduced.

On March 3, 2023, the Tree Permit was denied. On March 13, 2023, the Salvation

Army appealed the Director's permit denial.

The project before the Planning Commission is an Appeal of the Director's decision to deny the Tree Permit to remove the Bunya Bunya tree, which is located at 1080 2nd Street, between the community garden and sidewalk along the 2nd Street frontage.

- Project/Application History

First Application:

- On March 11, 1999, Planning staff approved the removal of the then 80-foot Bunya Bunya tree (TR99-014), which approval was appealed by a member of the public.
- On April 29, 1999, the Planning Commission adopted Resolution No. 9507, attached, denying the appeal and approving the tree permit to remove the tree. This decision was also appealed to the City Council.
- On June 8, 1999, the Council adopted Resolution No. 23993, attached, granting the Appeal of the Planning Commission's decision and denying the Tree Permit to remove the tree.

Second Application:

- On October 31, 2006, a second Tree Permit application was submitted and was denied; no appeal was submitted.
- Letters addressed to various City staff, dated March 13 and March 19, 2008, disputing the denial because "the tree poses a grave health and safety risk because of the cones it sheds" were received. On May 29, 2008, the City Manager responded supporting staff's decision to deny the request to remove the tree (see Attachment 8).

Third Application:

- On May 24, 2019, a third Tree Permit application was submitted requesting removal of the Bunya Bunya tree, which was denied on November 19, 2019.
- An Appeal application was submitted on time, however, the appropriate fee was not included. The appeal deadline was extended until December 18, 2019, to allow additional time to pay the remaining balance, but it was never remitted.

Fourth Application:

- On September 1, 2022, the applicant submitted the fourth (subject) application requesting to remove the tree. On March 3, 2023, the application was denied (letter attached).
 - On March 13, 2023, the subject Appeal application was submitted.
 - On August 24, 2023, the Planning Commission continued the hearing due to late correspondence, specifically, a third arborist's evaluation, because there wasn't enough time to review the evaluation.
- Surrounding Land Uses; Zoning; and Current Uses

Northwest: Medium Density Residential (8-18 units per acre) and Medium High Density Residential (18-30 units per acre); currently constructed with Silvercrest Senior Housing, a senior housing facility.

Northeast: Office and Medium Density Residential; CO (Commercial Office) and R-3-18 (Multifamily Residential); currently constructed with residential uses.

Southwest: Office and Office/Medium Density Residential; CO and CG (General Commercial); currently constructed with a mix of commercial uses.

Southeast: Public Institutional and Office/Medium Density Residential; PD (Planned Development 0110); PI (Public Institutional) and CO; currently developed with Memorial Hospital and a mix of commercial uses.
 - Existing Land Use – Project Site

The subject site is currently developed with a parking lot, community garden, and the subject Bunya Bunya tree.

ANALYSIS

1. Tree Ordinance

The Tree Ordinance, [City Code Chapter 17-24](#), was enacted by the Council to protect trees that are an essential part of the City's heritage, while, at the same time, recognizing an individual property owner's right to utilize privately owned land in a way that is otherwise allowed by law. The Council found that trees contribute greatly to the health, safety and general welfare of all of the City's citizens and that the preservation and proper maintenance of trees is a matter of citywide concern. The

Council further found that it was necessary to enact regulations, the Tree Ordinance, that prohibited the unnecessary damage, removal, or destruction of trees. Pursuant to Section 17-24.040(B), the Director shall make a determination as to the acceptability of the requested tree removal based on the following considerations:

1. The overall condition of the tree, including any diseases and pests that may be attacking it, the tree's age with respect to its projected lifespan, the area the tree would hit if it, or any substantial part of it, were to fall, its symmetry and aesthetics, its proximity to existing structures, and any interference it has caused with underground or overhead utility lines.
2. The topography of land and the effect the tree alteration, removal, or relocation may have on possible erosion or soil retention problems or on increasing the flow or the diversion of surface waters.
3. The number, species, size, and location of other existing trees in the area and the effect the requested action will have on shade areas, air pollution, historic values, scenic beauty, and the general welfare of the City.
4. Whether the request is supported by good urban forestry practices and standards such as, but not limited to, the number of healthy trees that a given parcel of land will support.

The Bunya Bunya tree contributes to the area by providing aesthetic benefits, summer shade, and wildlife habitat. Trees of this significant size and maturity perform these functions for all persons living in their vicinity, not only on the property on which they are located. If the tree remains, there will be no impact on drainage, and the subject site is not over-populated with other trees.



The application materials included an arborist's evaluation of the tree, which was prepared by Sandborn Tree Services, Inc, dated March 30, 2022. Based on a ground survey, the report concluded that the "tree is an imminent hazard" for the following reasons:

- The codominant stems [at the top of the tree] are split risks, at risk of failure targeting transmission lines, the city sidewalk and Second Street.
- Its branches are heavily weighted with foliage at their distal ends making them prone to failure.
- The leaves fall constantly, they are long (approximately 18") spirals of sharp pointed leaflets capable of inflicting wounds on passers-by and are noted to have done so in the past.
- The tree produces large cones weighing up to 24 lbs. on its uppermost branches. When the tree sheds its cones, which are currently forming, no one and nothing is safe beneath the tree.

Given the history of the tree and the Appellant's continued attempts to remove it, a Notice of Application (NOA) was sent to residents of the Silvercrest Senior Housing facility and to owners and occupants of properties within 1,000 feet of the subject tree. As anticipated, staff received several comments, via both email and telephone, all but one of which voiced concern about and objection to the removal of the tree, with one phone-caller expressing concern about the falling cones.

Based on the public response to the NOA, Vintage Tree Care, a tree company under contract with the City, was asked to evaluate the tree. In an Arborist Report, prepared by Fred Frey, Vintage Tree Care, dated February 5, 2023, the following conclusions and recommendations were provided after Mr. Frey climbed the tree and conducting a more thorough investigation, making the following findings:

- The presence of a dominant stem, with subordinated limbs is a well-designed system for weight distribution and improved limb attachments at trunk. Multiple stems, especially those similar in diameter, which originate in one location, possess an increased likelihood for failure at the attachment point. These stems do not appear to possess a high weight load. These co-dominant stems are closely oriented to one another. In Mr. Frey's experience, this closeness minimizes exposure to load increasing elements, such as wind, rain, etc. and improves stem retention likelihood. While the load on these stems appears low, there persists a likelihood of failure at the point of attachment. In Mr. Frey's experience, a very effective method of managing the load on stems like these and minimizing their current risk for failure is a support cable system in the form of a triangle.
- Based on the current condition of the tree and processing it through the Tree Risk Assessment Qualifications (TRAQ) matrices, its overall risk rating is low, as it relates to likelihood for failure in addition to the likelihood for impact and consequences of failure to its target(s).

While a rating of "low" is the lowest achievable through this industry accepted risk evaluation system, there are still options available to manage the current risk, including:

- Additional risk management tools include cabling and thinning the crown in the portion(s) above the stems' point of attachment.
- Continually monitor this tree for any changes from its current state, as well as manage the tree's weight distribution as appropriate.

The application was denied for two reasons:

- **The overall condition of the tree.** The necessity to remove the tree because it is a hazard was not successfully demonstrated. Both arborists agree that cabling the three co-dominant leaders at the top of the tree, coupled with regular maintenance, will reduce the level of hazard.
- **The number, species, size, and location of other existing trees in the area and the effect the requested action will have on shade areas, air pollution, historic values, scenic, beauty, and the general welfare of the City.** Staff has received several public comments via telephone and email in opposition of removing the subject tree. The tree is loved by the community because of its historic value and its beauty.

Prior to the August 24, 2023, Planning Commission hearing, a Risk Assessment (Assessment), dated August 24, 2023, prepared by James MacNair, was provided. The Assessment, attached, drew the following conclusions:

- The likelihood of cones dropping from the tree is rated as probable.
- The likelihood of impact on people in the areas near the tree in the event of failure is medium to high, depending on the actual occupancy rate during the cone production season.
- The consequence of a tree part (cone) impacting a person is rated as severe due to the potential for serious injury or death.
- The risk rating of the tree is moderate to high.
- The risk of upper crown trunk failure and branch failure are not detailed in this report (Assessment) but are likely low.

In a subsequent memo dated September 1, 2023, copy attached, Mr. MacNair agreed that removal of the cones early in their development would reduce the risk factor.

2. General Plan

The property is located in an area designated as Office on the General Plan Land Use Diagram, which is intended for administrative, financial, business, professional, medical, and public offices. While there are no specific policies relating to the removal of trees when the removal is not associated with proposed development, there is a clear emphasis on protecting Santa Rosa's mature trees.

3. Zoning

The property is zoned PD (Planned Development). The Policy Statement, attached, does not make any reference to the tree or tree removals.

The Zoning Code is not applicable; tree removal is governed by City Code Chapter 17-24 and is discussed in the Tree Ordinance section of this report.

4. Grounds for Appeal

The following grounds for appeal were provided with the application:

1. The denial of the application to remove a hazardous tree constitutes a taking in violation of the state and federal Constitution and other laws.

Staff response: Adoption, implementation, and enforcement of a land use regulation such as the City's Tree Ordinance constitutes a permissible exercise of the police power granted to the City under Article XI, Section 7 of the California Constitution and does not violate the takings clause of the Fifth Amendment of the US Constitution or comparable provisions of the California Constitution. As a general matter, land use regulations are upheld as constitutional where the regulations are rationally related to legitimate state concerns and do not deprive the owner of all economically viable uses of their property. The City's Tree Ordinance was properly enacted to prohibit unnecessary damage, removal or destruction of trees which have been determined to be important to the health, safety and general welfare of all the City's citizens. (City Code, section 17-24.010.) There is no evidence that the Tree Ordinance has denied appellant of economically viable use of their property, and, in any event, land use regulations do not constitute a taking simply where they narrow a property owner's options or limit a property owner's rights.

2. Falling branches and cones from the tree pose a health and safety hazard to the residents, guests, invitees, and other third parties. A resident has been hit in the back by falling material:

- ❖ Falling tree branches and cones pose a significant risk of property damage. This is evidenced by a past incident where a cone from this tree fell onto a shed and obliterated the shed. The branches and cones could damage vehicles, the power lines on Second Street, and other property.

Staff response: Falling tree branches and cones is a maintenance issue. Like most large trees, regular maintenance is necessary for the health and safety of the tree and its surroundings. Over the years, several arborists have evaluated the tree, all of which have provided similar preventative maintenance measures (refer to attachments 4, 5, and 7). As identified in the Arborist Report, prepared by Fred Frey, Vintage Tree Care, dated February 5, 2023, if the tree is maintained properly, including the removal of cones, reduction of limb growth, removal of fallen debris, and cabling of the co-dominant leaders at the top of the tree, the tree does not present a serious safety issue.

- ❖ The tree's roots have damaged the sidewalk, resulting in significant cost to Appellant to repair (over \$13,000.00). Appellant previously requested that the tree be removed, the City refused, and Appellant has been burdened with the expense of paying for repairs caused by the tree. These costs could be avoided if Appellant's request to remove the tree is granted.

Staff response: Roots lifting sidewalks is a maintenance issue that occurs citywide when trees are located adjacent to sidewalks. It is the property owner's responsibility to maintain sidewalks when adjacent to private property.

- ❖ The cost to maintain the tree is significant (\$4,600.00 in 2022) and could be avoided if Appellant's request to remove the tree is granted.

Staff response: Property owners citywide are required to maintain trees on private property at their own expense. Trees on City-owned properties, including Bunya Bunya trees in Railroad Square and Courthouse Square, are maintained by the City.

5. Summary of Public Comments

As mentioned previously in this report, several comments have been received, most of which voicing opposition to removing the tree. One caller expressed concern for the falling pods.

FISCAL IMPACT

Action on this request will not have an effect on the General Fund.

ENVIRONMENTAL IMPACT

The project has been reviewed in compliance with the California Environmental Quality Act (CEQA). Pursuant to CEQA Guidelines Section 15061(b)(3), the project is exempt from CEQA because it can be seen with certainty that there is no possibility that the Planning Commission's action to deny the Tree Permit to remove the Bunya Bunya tree and preserve the status quo will have a significant effect on the environment.

PUBLIC NOTIFICATION

The item was noticed as a public hearing pursuant to the requirements of Chapter 20-66 of the City Code. Notification was provided by posting two onsite signs, publishing a notice in the Press Democrat, mailing a notice to surrounding property owners and occupants within 1,000 feet of the subject site, sending an electronic notice to parties that had expressed interest in projects taking place in this geographic area of Santa Rosa, and posting notices on bulletin boards at City Hall and on the City website.

Pursuant to Government Code Section 65091, where necessary, the City has incorporated noticing procedures to the blind, aged, and disabled communities. These procedures include audio amplifier/assistive listening device support at public meetings, closed captioning, and optical character recognition conversion of electronic notices.

ISSUES

There are no unresolved issues.

ATTACHMENTS

- Attachment 1: Disclosure Form
- Attachment 2: Appeal Application
- Attachment 3: 2023 Denial Letter & Tree Application
- Attachment 4: Arborist Report, prepared by Sandborn Tree Service, Inc., date stamped received August 31, 2022, and correspondence
- Attachment 5: Arborist Report, prepared by Vintage Tree Care, dated February 5, 2023, with photos
- Attachment 6: Tree Ordinance (City Code Chapter 17-24)
- Attachment 7: 2019 Denial Letter and related correspondence
- Attachment 8: 2008 Denial Letter
- Attachment 9: 1999 Council and Planning Commission minutes, resolutions and staff report
- Attachment 10: Policy Statement
- Attachment 11: Location & Neighborhood Context Map
- Attachment 12: Public Correspondence
- Attachment 13: Request for more information
- Attachment 14: Risk Assessment, dated August 24, 2023
- Attachment 15: Bunya Pine Risk Response September 1, 2023

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Resolution: Deny Appeal/Deny Tree Permit

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