

TOWN OF SAN ANSELMO

TREE PERMIT APPLICATION – T2018-0054

NOTICE OF DECISION

July 26, 2019

Applicant: William Harms
Project Address: 100 W. Hillside Avenue

A Tree Permit application to remove a 23.1 inch diameter Coast Live Oak tree was submitted on October 2, 2018, “To provide equal access in accordance with state and federal disability law. To allow room for emergency vehicle access and for disabled parking. To improve safety.”

The application included an arborist report from Urban Forestry Associates, Inc. dated July 31, 2014. The arborist report noted that the Coast Live Oak was of sufficient diameter to categorize it as a Heritage Tree. The report also noted that the health and structure were fair to good, and the canopy was full and healthy, with no signs of sudden oak death.

Following Town Municipal Code (attached) for processing of tree permits, the staff sent notification to residents within 300 foot radius of the property. Several neighbors submitted to the Town their objections to the tree removal.

The Town asked the applicant for additional information, and the applicant submitted an arborist report from Arborscience, LLC dated April 12, 2019, which recommended that the tree be removed due to a high risk of failure due to cracks in a large scaffold limb. The Town’s consulting arborist, Ed Gurka, reviewed the report and asked for additional information. The applicant submitted another arborist report from Arborscience, LLC dated June 3, 2019, which went into more detail regarding the health of the tree and the condition of the crack identified in the earlier report. Mr. Gurka had some questions regarding the resistograph results presented in the later report, which were reflected in his report of July 10, 2019. The arborist reports did not meet the requirements of Municipal Code 4-13.06 5b Emergency Conditions, (the tree was not an immediate hazard); therefore the application was required to follow the Municipal Code procedures for a tree permit application, which require a public hearing where there are objections to the permit.

The administrative hearing was scheduled on July 22, 2019, to receive testimony and evidence from both the applicant and the neighbors who object to the tree removal.

At the hearing, formal rules of evidence and discovery did not apply. Both parties were given the opportunity to present evidence in support of their position and to cross-examine witnesses.

Following presentations from both parties, as well as discussions with both the applicant's arborist, Dr. Kent Julin and the Town arborist, Ed Gurka, Town staff determined that there was enough information to make a determination regarding the permit application.

Discussion and Findings

The most recent arborist report from Arborscience LLC dated June 3, 2019, describes the findings from a Tree Check Sonic Wave Detector and a Resistograph tool. Dr. Julin concluded that a large scaffold limb contains a shear-plane crack that is a serious defect that can lead to "sudden, catastrophic limb failure". Dr. Julin's recommendation is that the tree be removed as soon as possible as "it presents a high failure risk to people and property".

Town staff asked Dr. Julin if the risk could be mitigated by removing the large branch containing the shear-plane crack. Dr. Julin's answer was consistent with his conclusion stated in the arborist report, that removing the branch would affect the tree's balance and long term stability, and that he still recommends removing the tree as soon as possible.

The Municipal Code Chapter 13 describes the five considerations to be taken into account in reviewing tree permit applications.

Considerations:

- 1) *The condition of the trees or heritage trees with respect to disease, danger of falling, proximity to existing structures, and interference with utility services.* The submitted Arborscience LLC arborist reports conclude that the tree has a danger of limb failure and is a risk to life and property. The Town's consulting Arborist, Ed Gurka's July 10, 2019, report raised questions about the Resistograph drill readings in Dr. Julin's report. However, Mr. Gurka recognized that there "may be other unknown reasons for the discrepancies in these two readings measuring interior wood cracks. ... The manual suggests that drill speed setting, angle of drill path, and a dull needle drill tip would alter a reading." (Ed Gurka report, July 10, 2019, p.2). Dr. Julin testified during the hearing that the drill reading was consistent with a shear-plane crack that is a serious defect that can lead to "sudden, catastrophic limb failure". No arborist reports were presented by the opponents to contradict Dr. Julin's report.

- 2) *The necessity of the contemplated work to allow the economic enjoyment of the property.* The work is not a necessity to allow economic enjoyment of the property, however, the contemplated work will reduce the economic risk caused by the tree's potential failure. Removing the tree will not increase access rights to the property, as it was acknowledged during the hearing that those rights will be determined by a court through an ongoing quiet title action.
- 3) *The topography of the land and the effect of the contemplated work on erosion, soil retention and the diversion of increased flows of surface water.* The removal of the tree will not necessarily cause an increase in erosion or soil retention if the stump is left in place, or the soil is restored following removal of the stump. Replacement trees will also prevent erosion.
- 4) *The general effect of the contemplated work on property values in the area.* Information was not presented on the impact of the tree on property values in the area. The removal of the tree may have an insignificant effect on the property values in the area, but replacement trees may offset this as the new trees grow.
- 5) *Good forestry practices. A permit shall be issued unless the Parks Department Arborist finds, after an inspection and the securing of such expert advice deemed necessary, and making the foregoing determinations, that the trees affected are of a size, type, condition and location and in such surroundings that the contemplated work would significantly frustrate the purposes of this chapter.* Based on the opinion of a qualified arborist, the condition of the tree creates a possible hazard, and removal of the tree is necessary to eliminate the risk of damage to people and property.

Decision

Staff hereby approves the Tree Permit request to remove the Coast Live Oak subject to the following conditions.

1. Five replacement trees (minimum size 24" box) must be planted within three months of the removal of the Coast Live Oak. Three trees shall be planted on developed parcel (APN 006-254-43), and two trees planted on the undeveloped parcel (APN 006-254-45), as close to the edge of the road as practicable. The Town recommends that the applicant work with neighbors and agree to planting locations to address neighbors' concerns regarding loss of shade following tree removal.
2. The Planning Director's Decision of June 21, 2019, which conditionally approved the applicants' request for a Minor Exception and reasonable accommodation for an expanded parking area, remains in effect.
3. No additional legal rights are conferred by approval of this Tree Permit. Specifically, the Town's approval does not convey any legal right to remove the tree, which is partially off the applicant's property, without the consent of the owners of the property underlying the other portion of the tree. If the applicant removes the tree without permission from the other owners with a property interest underlying the tree, the indemnity provision

included in these conditions of approval will be invoked by the Town. Approval of the Tree Permit does not confer a legal right to use the full frontage on West Hillside. The Town does not have the authority to establish or expand access rights to the property, as those rights must be determined by a court through a quiet title action.

4. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with the Town Council and Town boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding (“action”) against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the permit or alleging any other liability or damages based upon, caused by, or related to the approval of the permit. The Town shall promptly notify the applicants and/or owners of any action. The Town, in its sole discretion, may tender the defense of the action to the applicants and/or owners or the Town may defend the action with attorneys of the Town's choice, with all attorneys fees and litigation costs incurred by the Town in either case paid for by the applicant and/or owners.
5. This approval shall be final 10 calendar days following the date of the decision by the Assistant Director of Public Works.
6. The applicants shall reimburse the Town for any known unpaid costs associated with the Tree Permit application, including work done by consultants and the Town Attorney, prior to any tree removal.

Prepared By:

A handwritten signature in blue ink that reads "Scott Schneider". The signature is written in a cursive style and is positioned above a horizontal line.

Scott Schneider
Assistant Public Works Director

Attachments:

1. Municipal Code Section 4, Chapter 13

Chapter 13 - PRIVATE TREES*

Sections:

2. 4-13.01 - Purpose.

Many sections of the Town are covered by oak, madrone, and other trees which contribute greatly to the scenic beauty of the Town. A large proportion of residential property within the Town is on hillside and sloping terrain. The uncontrolled removal or destruction of trees destroys the scenic beauty, contributes to erosion, increases flood hazards, reduces property values, increases the costs of the construction and maintenance of drainage systems through the increased flow and diversion of surface waters, and adversely affects the local economy by reducing the attractiveness and desirability of the area as a place to live, work, and visit. In addition, the trees of the Town are an integral part of the Town's complex environmental system, the functioning of which does not depend on or conform to the arbitrary delineations of property.

Therefore, the Council finds it necessary, as a matter of public health, safety, and welfare, to enact the provisions of this chapter to control the removal or destruction of trees within the Town; to preserve trees that are a significant part of the Town's heritage; and at the same time to recognize the individual's right to use his land in a manner which will not be prejudicial to the public interest.

(§ 2, Ord. 709, eff. August 12, 1976, as amended by Ord. 1020, eff. May 10, 2001)

3. 4-13.02 - Definitions.

For the purposes of this chapter, certain words and phrases used in this chapter are defined as follows:

(a)

"Tree" shall mean any woody perennial plant characterized by having one or more trunks, any one of which has a diameter at breast height (four and one-half (4.5') feet of seven (7") inches. In any case, the Parks Department Arborist shall have the right to determine whether any specific woody plant shall be considered a tree for the purposes of this chapter.

(b)

"Heritage tree" shall mean a tree which has a trunk with a diameter at breast height (four and one-half (4.5') feet of twenty-two inches (22"), or a tree which has special significance and is of a species and size designated in a resolution adopted by the Council, but "heritage tree" shall not mean an acacia tree or any other tree designated as a "nuisance" tree by resolution of the Council.

(c)

"Undeveloped parcel" shall mean any lot or parcel, or portion of a lot or parcel, which can be further subdivided or further developed under the provisions of [Title 10](#) of this Code.

(§ 2, Ord. 709, eff. August 12, 1976, as amended by Ord. 1020, eff. May 10, 2001)

4. 4-13.03 - Undeveloped parcels.

On any undeveloped parcel of property, public or private, it shall be unlawful, unless a permit has been issued pursuant to the provisions of [Section 4-13.05](#) of this chapter, to remove or destroy any tree, or to cut or prune a tree or its roots in such a way as to endanger or shorten its life, or to raise the soil level around any tree.

(§ 2, Ord. 709, eff. August 12, 1976, as amended by Ord. 1020, eff. May 10, 2001)

5. 4-13.04 - Developed parcels.

On any developed parcel of property, public or private, it shall be unlawful, unless a permit has been issued pursuant to the provisions of [Section 4-13.05](#) of this chapter, to remove or destroy any heritage tree, or to cut or prune a heritage tree or its roots in such a way as to endanger or shorten its life, or to raise the soil level around any heritage tree.

(§ 2, Ord. 709, eff. August 12, 1976, as amended by Ord. 1020, eff. May 10, 2001)

6. 4-13.05 - Diseased trees.

The spread of Dutch Elm Disease, Sudden Oak Death and other tree diseases has caused the removal of a large number of trees within the Town limits. The spread of disease is a continuing problem, causing further depletion of Town resources, finances, and causing considerable loss of urban amenities. Accordingly, it is necessary for the preservation and enjoyment of the public health and safety to restrict activities around diseased trees to those procedures that will help preserve them for the future. Current guidelines for the care and pruning of certain diseased trees are available at the Public Works Department.

(Ord. 889, eff. November 12, 1987, as amended by Ord. 1020, eff. May 10, 2001)

7. 4-13.06 - Permits.

(a)

Application processing. An application for a permit shall be made in writing to the Department of Public Works and shall contain the number and locations of trees or heritage trees to be affected and a statement of the reasons for removal or reasons for other work desired, as well as such other pertinent information as the Public Works Department may require which may include a discussion of the need for the work by a qualified arborist. In the case of subdivisions, such information shall be part of the subdivision filing pursuant to subsection (c) of this section. No permit is required for the removal of nuisance trees.

Said application shall be accompanied by the appropriate fee, the amount of which shall be determined by resolution of the Town Council.

Once the Public Works Department has found the application to be complete, the department shall notify in writing each property owner within 300 feet, of the applicant property, that a tree permit is being considered for approval, indicating that an administrative

hearing shall be held if objections are received. The date for the administrative hearing shall be set a minimum of ten (10) days from the date of the hearing notice. At the administrative hearing, information and testimony regarding the permit application shall be reviewed and the disposition of the permit application will be made based on the following considerations:

(1)

The condition of the trees or heritage trees with respect to disease, danger of falling, proximity to existing structures, and interference with utility services;

(2)

The necessity of the contemplated work to allow the economic enjoyment of the property;

(3)

The topography of the land and the effect of the contemplated work on erosion, soil retentions, and the diversion of increased flows of surface water;

(4)

The general effect of the contemplated work on property values in the area; and

(5)

Good forestry practices. A permit shall be issued unless the Parks Department Arborist finds, after an inspection and the securing of such expert advice deemed necessary, and making the foregoing determinations, that the trees affected are of a size, type, condition, and location and in such surroundings that the contemplated work would significantly frustrate the purposes of this chapter.

(b)

Emergency conditions. In the event of any emergency in which a particular tree or heritage tree causes an immediate hazard or dangerous condition, such tree may be removed or cut back by permission of the Public Works Director, the Chief of Police, or Chief of the Fire Department or their respective department representatives without following the above described permit procedure.

(c)

Subdivisions. All subdivision maps filed shall designate clearly the location, size, and type of any trees and heritage trees scheduled for removal. In addition, heritage trees shall be located on the tentative map, that is, submitted to the Planning Commission for approval. The approval of the improvement plans, as required by the subdivision provisions, of this Code and State law shall constitute a permit to cut, remove, or change the soil level around any tree so particularly designated on such plans.

(d)

Utilities and town departments. A public utility subject to the jurisdiction of the Public Utility Commission of the State and the Department of Public Works and the Parks Department of the Town may apply for a general permit to prune trees as may be necessary to maintain the safe operation of the utility business or, in the case of a Town Department, necessary to maintain traffic safety or the safe public use of public property. Such general permit shall not apply to any heritage

tree or elm tree nor shall it allow the cutting, destruction, or removal of any tree, nor shall it allow changing the soil level around any tree. Such general permit shall require that pruning be performed under the supervision of a licensed tree surgeon or a landscape architect named therein. Such permit may be good for an indefinite period of time and may be revoked at any time for cause by the Public Works Director.

(e)

Posting of permit. Work requiring a permit shall not be commenced until the permit holder or his agent shall have posted in a conspicuous place in the front of the premises a copy of the permit. This permit copy shall be maintained in such position by the permit holder until all permit work is complete and approval has been granted by the building official.

(Ord. 889, eff. November 12, 1987, as amended by Ord. 1020, eff. May 10, 2001)

8. 4-13.07 - Appeals.

Any decision made by the Parks Department Arborist or the Public Works Department may be appealed to the Town Council. Such appeal shall be processed by using the appeals procedure established for Planning Commission appeals in [Title 10](#) of this Code.

(Ord. 889, eff. November 12, 1987, as amended by Ord. 1020, eff. May 10, 2001)

9. 4-13.08 - Penalty provisions.

Any person violating any of the provisions of this chapter shall be guilty either of an infraction or a misdemeanor shall be subject to the penalties prescribed by this Code.

(Ord. 889, eff. November 12, 1987, as amended by Ord. 1020, eff. May 10, 2001)