

City of Durham
PLANNING COMMISSION MINUTES
March 2, 2021

1. **CALL TO ORDER.** Chair Goddard called the meeting to order at 7:34 p.m. via Zoom.
2. **ROLL CALL.** *Commissioners Present:* Chairman Brian Goddard, Vice Chair Krista Bailey, Commissioners Pat Saab, Gary Paul, Matt Winkler, Joshua Drake and Susan Deeming
Staff: City Administrator Linda Tate and Administrative Assistant Emily Baker
Public provided with Zoom link: Matt Holt, Mark Tabor, Don Nordin, Chris Stahl, and Leonard Reed
3. **PLANNING COMMISSION MINUTES.** Commissioner Saab moved to approve the minutes from the February 2nd, 2021 meeting. Commissioner Bailey seconded the motion. The vote was unanimous (7-0). **MO 030221-1**
4. **PUBLIC FORUM.** None.
5. **TREE REMOVAL PERMIT APPLICATIONS 575-21 thru 579-21.** Tate gave the Commissioners an overview of the application and her staff report. Chair Goddard asked Mark Tabor his perspective and process of the tree removal. Tabor said they are revamping their landscape. The building was built in 1996/97 and the trees that were originally planted are starting to impede the building's foundation and irrigation system. He said they are planning to replace the trees with new trees. He added that they will not be changing the street view and will make it look more appealing with the new trees. After the recent ice storm, he is concerned about future risks with the trees and wants to take into consideration the longevity of the trees he chooses. Matt Holt added that the existing trees are doing structural damage to the building and they are nuisance trees in many municipalities. He added that, left unattended, the trees could cause damage to the sidewalk. Tate pointed out the arborist report, photographs, as well as landscape and mitigation plans in the planning commissioners' meeting packets. Commissioner Deeming asked for clarification on differences between the applicants' applications and their mitigation plans. Holt verified for the Planning Commission which trees will be planted as mitigation trees.

The Planning Commissioners began discussing their findings:

1. The Planning Commission found that 5 trees are being considered for removal as required by the Durham Development Code.
2. The Planning Commission found that a mitigation plan with required information has been submitted.
3. The Planning Commission found that the permit falls into a Type F, subject to review under a Type 2 process and mitigation should be required for at least 744 square feet.
4. The Planning Commission found that this application has been processed as a Type 2.
5. The Planning Commission discussed the criteria for issuance of tree cutting permits.
 - a. For Criteria A, the Planning Commission found that Criteria A is applicable because the report shows that the roots are intertwined with the irrigation system and is causing damage with the building.
 - b. For Criteria B, the Planning Commission found that Criteria B is applicable because they are upgrading the landscape to improve the quality of the landscaping and repair the irrigation system.
 - c. For Criteria C, the Planning Commission found that Criteria C is applicable because within the plan it states the topography of the land will not change and the erosion

- will not be affected due to the compacted soil, which will shed water. Better drainage and soil retention will be a result of the applicants' landscaping plan and the species of trees will also make the property better and improve the sun-shade balance.
- d. For Criteria D, the Planning Commission found that Criteria D is applicable because the removal of five trees will be replaced with five new trees and the visual look of the neighborhood will be improved.
 - e. For Criteria E, the Planning Commission found that Criteria E is applicable because the trees planted as mitigation will have a large canopy than the trees being removed.
 - f. For Criteria F, the Planning Commission found that Criteria F is not applicable because there were no trees that were diseased.
 - g. For Criteria G, the Planning Commission found that Criteria G is not applicable because there were no dead trees presented by the applicants.

Commissioner Winkler moved to approve tree removal permits 575-21 thru 579-21 based on the above findings and with the following conditions:

1. Five trees, as outlined in the mitigation plan as submitted to the planning commission, will be planted.
2. The mitigation trees shall be located as required in Chapter 5, Section 5.8.4
3. Replacement should be complete within 6 months of approval. City Hall can grant an extension of 60 days, but anything longer than that is subject to Planning Commission approval.
4. Any mitigation tree that fails within two years of the date of planting requires that they notify City Hall and that the failing tree be replaced.
5. Within 60 days of the second anniversary of the planting, they are to request a final inspection of the mitigation planting. The permit will not be finalized until all of the conditions are complied with and the final inspection requested.

Commissioner Bailey seconded the motion. The vote was unanimous (7-0). **MO 030221-2**

6. **TREE REMOVAL PERMIT APPLICATION 582-21.** Chris Stahl gave background on his application and the tree in question. He said at one point there was damage done to the tree which resulted in a split trunk and when he had someone out to do some trimming on the tree they noticed some decay in the tree. Stahl had an arborist come out to look at the tree and the arborist found that the tree is not in good condition, but did not say the tree needs to come down. Stahl told the Commissioners what solutions the arborist suggested, and added that these would cause more problems down the line. He said the tree is only going to get worse and the suggested remedies are an attempt to try and pump life into a tree with no more life. He added that the recommendations that were given were with the assumption of normal weather, and the northwest is susceptible to bad storms. Stahl said he is not comfortable living under the tree in its current condition. The tree is within 10 ft of Stahl's house and close to Leonard Reed's house.

Chair Goddard noted that the arborist went to the edge but did not come out and say the tree needs to be removed. Commissioner Saab asked how the tree managed during the recent ice storm. Stahl said he did not see anything fall from the tree in question, but had branches fall from surrounding trees. He said he does not think the tree will fall down tomorrow, but he said he believes it will fall eventually.

Stahl said the tree is one in a group of multiple trees and the foliage is not able to be seen from further down on Rivendell and the trunk is back from the street, so the removal will not

impact the look of the neighborhood. Chair Goddard asked about the overall health of the surrounding trees and if there was any increased risks that could come from removing this tree. Stahl said the other trees in the yard look healthy and he has not had any issues with them. In Reed's yard there are not a lot of trees that would take any extra wind impact with the removal of this tree.

Stahl added that the arborist said taking the tree down will not cause any serious problems. He added that he does not want to remove a tree that doesn't need to come down, but he feels unsafe with this one. Chair Goddard asked if neighbors had any objections to the tree coming out. Stahl said he has had people express interest, but no one has objected. Reed discussed that there are hazards with living in a forest and that he appreciates and understands that, and that he wholeheartedly supports Stahl's removal of this tree. He added that there is a fair amount of congestion in that part of the yard and that there probably would not be a lot of issue with the other trees if this one was removed. Reed said the arborist assessed the tree with regard to regular weather and not severe weather events.

Commissioner Paul asked where Stahl would plant the mitigation tree. Stahl said he was wanting to submit the permit as a Type B, which doesn't require mitigation, but it got rejected, due to the arborist not saying the tree needs to be removed. He added that he would be willing to plant another tree if the Planning Commission required it. He said he would plant a different species where the current tree is located and that he would pick a tree that makes sense for the property, with all the trees on it.

Commissioner Deeming asked why it is not a Type B. Tate said the arborist report did not say it needed to come out, so it could not be processed as a type B. Tate added that there is an in-lieu fee if the applicant is unable to plant a mitigation tree. Chair Goddard asked how much removing the tree will cost. Stahl said he has a bid for \$5,000 – 6,000, but wanted to wait to hear what the Planning Commission requires before getting more quotes.

The Planning Commissioners discussed the condition of the tree. Chair Goddard said that if the tree was less than 50% decay, then he would be more hesitant to approve the removal, but since the tree is getting close to the 70% threshold, then he is more inclined to approve the removal. Stahl added that the tools the arborist was using has a margin of error, so the 62% decay figure could be higher. Reed added that there is a place on the tree where you can see through the tree. Commissioner Bailey said that, from what the applicant has said and the arborist report, it is clear that the tree may have some life left in it, it is no longer adding to the canopy or neighborhood. Commissioner Deeming said that Stahl had told them that the arborist said he was basing his finding on "normal" weather, not extreme weather, and they need to consider the risk the tree poses for the property owner.

Chair Goddard said he was leaning toward approving the tree removal because the arborists was on the line of saying the tree needed to come out and didn't actually say it.

The Planning Commissioners began discussing their findings:

1. The Planning Commission found that one tree is being considered for removal as required by the Durham Development Code.
2. Chair Goddard said he doesn't feel like mitigation should be required and asked Tate if they could override the mitigation requirement. Tate said Type E permits require mitigation and that the Planning Commission cannot override that. Tate said, the applicant would have had to pay a \$250 appeal fee if he wanted to have the tree

removed as a Type B, because Tate was not able to approve the application and it would then go to the Planning Commission. Tate said she had the applicant submit the application as a Type E to the Planning Commission with the understanding that mitigation or the in-lieu fee would be required. Commissioner Deeming asked about the in-lieu fee and Chair Goddard explained the requirements. The Planning Commission found that the permit falls into a type E permit subject to review under a Type 2 and mitigation should be required.

3. The Planning Commission found that the permit has been processed as a Type 2.
4. The Planning Commission discussed the criteria for issuance of tree cutting permits.
 - a. For Criteria A, the Planning Commission found that Criteria A is applicable because based on the condition of the tree and the report from the arborists the tree poses a moderate risk, is near the acceptable threshold of decay, and given the proximity of the tree to the home of the property owner, the tree poses a higher risk than normal.
 - b. For Criteria B, the Planning Commission found that Criteria B is not applicable because the removal is for safety reasons, not economic reasons.
 - c. Commissioner Paul said, based on the findings, the removal of this tree would improve erosion and soil water retention, but may cause stress on the other trees around it. Improve water retention and decrease erosion. Chair Goddard said they cannot determine the wind break issue, but can consider it. He added that based on the narrative provided by the applicant, removal of the tree will create more stability in the earth and be better for the surface water. Commissioner Drake asked if C is even applicable, because the benefits of the tree removal to erosion and water retention cannot be determined. He added that in the applicant's narrative there is a lot of statements which are based on what he thinks and not on the arborist report. Commissioner Deeming said criteria C is applicable, because of the point of desirable shade and open space, which will not be impacted by the removal of the tree. She added that there is no professional statement on erosion or soil retention, but the arborist did caution the potential for wind funneling, but the Planning Commission is guessing on the meaning of that. For Criteria C, the Planning Commission found that Criteria C is applicable because the erosion, soil retention, and flow of surface water has not been determined and that based on the existing trees on his property the balance between shade and open space will not be affected.
 - d. For Criteria D, the Planning Commission found that Criteria D is applicable because the removal of the tree will not negatively impact the character of the neighborhood based on the multiple existing larger trees on the subject and adjacent properties.
 - e. For Criteria E, the Planning Commission found that Criteria E is applicable because the applicant has agreed to plant mitigation trees per the requirements of the Durham Development Code.
 - f. Commissioner Deeming and Paul questioned whether the tree was diseased because it was found to have decay. Chair Godard said the arborist report doesn't say the tree is diseased. Commissioner Saab said she sees disease and decay as two different things to the arborist. Tate agreed and said usually when a tree is diseased there is a specific issue, such as a fungal disease or a birch borer beetle attacking it. For Criteria F, the Planning Commission found that Criteria F is not applicable because based on the arborist report supplied to the Commission the tree is not diseased.
 - g. For Criteria G, the Planning Commission found that Criteria G is not applicable because the tree is not dead.

Chair Goddard moved to approve tree removal permit 582-21 based on the above findings with the following conditions:

1. One tree will be planted as mitigation or payment made to the City for the in-lieu fee of \$250. The minimum size for a tree planted as mitigation shall be 2" diameter when measured from the top of the root ball for deciduous trees. Evergreen trees shall be a minimum of 6' tall measured from the top of the root ball, excluding the leader.
2. The specific species of a tree planted for mitigation shall be at the owner's discretion, but must be such that it contributes significantly to the future maintenance of the canopy in Durham. The permit decision-making authority shall have the right to reject as mitigation any proposed tree that does not meet the general intent of Chapter 5 of the Development Code.
3. Mitigation trees shall be planted within 6 months of the date of permit approval. The City Administrator may approve a one-time extension of 60 days.
4. A mitigation tree shall be planted so as to insure that the tree grows to maturity.
5. The recipient of a tree removal permit shall request an inspection of the completed mitigation planting upon completion, but no later than 6 months following permit issuance or a subsequent 60-day extension thereof.
6. Any mitigation planting failing within 2 years of the time of the first inspection by the City shall be replaced at the owner's expense and the City shall be notified of such replacement at the time of planting.
7. A final inspection shall be requested within 60 days of the second anniversary of the date of the last planting and the permit shall not be considered finalized until such time as a final inspection is conducted and found to be in conformity with the mitigation standards.
8. The City shall make every reasonable effort to notify the property owner when the final inspection is due, but it shall be the responsibility of the property owner to contact the City.

Commissioner Deeming seconded the motion. The vote was unanimous (7-0). **MO 030221-3**

7. COMMISSIONER COMMENTS / REPORTS / STAFF UPDATES. None.

8. ADJOURN. Chair Goddard adjourned the meeting at 9:14 PM.

Approved: _____
Brian Goddard, Chair

Attest: _____
Linda Tate, City Administrator