

**City of Durham**  
**PLANNING COMMISSION MINUTES**  
**September 5<sup>th</sup>, 2023**

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1. **CALL TO ORDER.** Chair Susan Deeming called the meeting to order at 7:32 p.m.
2. **ROLL CALL.** *Commissioners Present:* Chair Susan Deeming, Commissioners Gary Paul, Patricia Saab, Krista Bailey, and Matt Winkler (on Zoom)  
*Commissioners Absent:* Vice Chair Brian Goddard, and Commissioner Cheri Frazell  
*Staff:* City Administrator Linda Tate (on Zoom), Administrative Assistant Becky Morinishi  
*Public:* Theresa Eisenberg of 7637 SW Afton Lane, Durham, OR; Manny Chamseddine of MC Landscaping, LLC; Mahendra Tadikonda of Durham Dental; Issam Abushakrah of A to Z Signs
3. **PLANNING COMMISSION MINUTES.** Commissioner Patricia Saab moved to approve the minutes from the July 11, 2023 meeting. Commissioner Gary Paul seconded the motion. The vote passed unanimously (5-0).

**MO 090523-1**

4. **PUBLIC FORUM.** None.

5. **ILLEGAL TREE REMOVAL. 7637 SW Afton Lane.**

Homeowner, Theresa Eisenberg, and landscaper, Manny Chamseddine, were present to discuss the cutting of a tree on Eisenberg's property without a permit. Eisenberg said Chamseddine asked to cut the tree, but Eisenberg said no. Eisenberg also told Chamseddine that a permit would be required to cut the tree. Chamseddine proceeded to cut the tree without a permit and without Eisenberg's permission. Chamseddine said he wanted to cut the tree because it was ugly and the berries made a mess all over the sidewalk. He admitted that he knew he needed a permit to cut the tree. Commissioner Paul asked if a new tree had been planted in that spot. Chamseddine said he and the homeowner had decided to wait until the weather is cooler. Chair Deeming asked if an arborist looked at the tree before Chamseddine cut it down or if Chamseddine thought it was diseased. Chamseddine replied that it was not diseased, just out of shape and did not look good in front of the house.

Commissioner Saab shared that she spoke with the homeowner after the tree was cut and the homeowner was shocked that the tree had been cut. Chamseddine said he was planning to take the tree out and replace it with a better tree as a surprise. Eisenberg responded that she does not like those surprises. Chair Deeming explained that there is a Tree Protection Ordinance in Durham that you cannot cut a tree without a permit and usually it is because there is something wrong with the tree. Deeming said that there are a number of criteria that the Commission looks at when making a decision, for example, the tree is dying or causing an issue with a structure. There is not a criteria that allows a tree to be cut just because you would like something different there. If the tree is struggling after a pruning, it needs to be looked at by an arborist and the Commission needs to see something from the arborist telling saying the tree is in trouble and needs to come down. Without a letter from an arborist saying there is an issue with a tree, the Commission is unlikely to approve a tree cutting permit.

Deeming noted that the fine for cutting a tree illegally is up to \$720 and a mitigation tree must be planted. She explained that the Commission has discretion over what the fine should be given the circumstances. Deeming asked if there are any circumstances that the Commission should be aware of when making this decision. Chamseddine expressed concern about the size of the replacement tree needing to be 2.5" in diameter. He said it would need a crane to be planted and would be very expensive. Eisenberg asked if she has a choice of what kind of tree to plant. Deeming said she does, but it must be from Durham's approved tree list. Commissioners Paul and Bailey noted that the size requirement for a deciduous tree is 2" in diameter at the top of the root ball.

The Commissioners discussed the findings and agreed that Section 5.1 of the Durham Development Code is applicable. It states that every tree within the City with a diameter of 5 inches or greater shall be preserved and protected. The tree removed from 7637 Afton Lane had a diameter greater than 5 inches.

Additionally, the Commissioners agreed that Section 5.3 of the Durham Development Code is applicable. It states that no person shall cut a tree without first submitting an application, paying the applicable fees and obtaining a City permit. The tree was cut without submitting an application, paying the fees and getting a permit.

Based on the findings, the Planning Commission agreed that the tree was cut in violation of Tree Preservation Ordinance 228-05 and was punishable by a fine not exceeding \$720 for each violation in addition to any other penalties provided for in that ordinance. The tree preservation ordinance (228-05) requires mitigation for the removal of a healthy tree. The Commissioners discussed what fine would be appropriate. Commissioner Saab suggested \$200 plus the mitigation tree planting. Commissioner Bailey asked Tate if she could remind the Commission what was charged the last time the Commission fined for an illegal cut. Tate responded that previous ones were \$720 and there were some that were \$250 per tree. Commissioner Winkler suggested \$360 plus the mitigation. Commissioner Paul suggested a fine in the \$500 range because it was a sizeable tree. Chair Deeming agreed. Tate noted that the homeowner did not want the tree cut and that the landscaper did not listen to the homeowner. She noted that he also takes care of other properties in Durham.

Commissioner Winkler moved to approve the tree removal subject to a \$500 fine and the applicant planting one approved mitigation tree. The Commissioners continued to discuss the fine. Commissioner Paul said he was leaning toward the maximum fine of \$720, as that is what the ordinance says and cutting the tree was clearly a violation of the ordinance. Chair Deeming noted that there is a precedent to charge the maximum fee. Commissioner Bailey said she feels the \$720 fine was applied in a situation that was more irresponsible and that this situation is more of a failure to communicate. She said \$500 is still a steep penalty, and there is also a tree to buy. Commissioner Saab noted that she still feels \$250 is an appropriate fine. Bailey seconded the motion to fine \$500 plus the application fee, one tree to be planted as mitigation, and the other conditions mentioned in the staff report. The vote passed (3-2).

**MO 090523-2**

**6. SIGN PERMIT APPLICATION.**

Issam Abushakrah of A to Z Signs and Mahendra Tadikonda of Durham Dental were present to discuss an application to build a new monument sign at Durham Dental, 16780 SW Upper Boones Ferry Road in Durham. Abushakrah passed around sample materials while the Commission looked at renderings of the sign. Chair Deeming asked if the sign will be 2-faced so it is visible from both sides. Abushakrah said that it is two pieces, but one sign. They know the exact place they will put the sign, but do not know the exact angle at which the two pieces will need to be set for the best visibility. Deeming asked for clarification on the placement. Abushakrah said that it will be close to the driveway, but far enough back so it does not obstruct the view. Commissioner Bailey asked about the materials. Abushakrah answered that everything that is white will be 3D letters and they will be on an aluminum sign. Commissioner Paul asked how big the letters will be. Abushakrah said that "Durham" will be 8", "Dental" will be 12", "Cosmetic" and other such words will be 2" and "Family Dentistry" will be 3". The address will be 3" black acrylic numbers and letters.

Commissioner Winkler asked if there will be any lighting on the sign. Abushakrah indicated that there would be a spotlight on either side of the sign and they would be solar-powered if possible. Commissioner Paul expressed concern about the brightness of the color of the sign compared to other monument signs in the City. Commissioner Bailey asked if there were any rules about sign colors in the City Code. Administrator Tate replied that there is not a rule about sign colors but that the Commission serves as a Design Review Board and can make that type of determination. The

Commissioners reviewed pictures of other monument signs in the City and concluded that most of the signs have a more natural feel, but that there is another blue sign. Commissioner Bailey recommended adding a natural-looking base to ground the sign and make it similar to existing monument signs. Chair Deeming asked if this is something that Durham Dental would consider. Tadikonda said he would check with Dr. Katta, but that he thinks the suggestion would be a good addition. Abushakrah said that A to Z Signs has previously done something similar in a metal that looks like stucco. Commissioner Bailey asked how it held up over time. Abushakrah said it has held up really well.

Commissioner Deeming read through prohibited sign features. The Commissioners agreed that the sign plan complies with Sections 6.2.1, 6.2.3, 6.2.4, 6.2.5, 6.2.7, and 6.2.8. The Commissioners discussed Section 6.2.2, and asked for verification that the spotlights that are planned to shine on the sign will not cause a glare to motorists. The applicant said the lights will be pointed toward the sign and there will be a satin/matte finish that will prevent the sign from causing a glare. The Commissioners discussed Section 6.2.6 and asked for verification that the sign would be placed 10 ft away from the driveway and 5 ft away from the sidewalk as per the guidelines. The applicant stated that the sign will be placed according to the guidelines.

Commissioner Bailey moved to approve the sign permit with the following conditions:

1. The placement of the sign will be 10ft or more from the existing driveway and 5 ft or more from the property line.
2. The temporary sign and the old monument sign will be removed.
3. The base of the new sign will be constructed or clad of a concrete- or stucco-like material to closely match the building color and look.
4. The external spotlight illumination will not generate a glare that disrupts the vision of motorists and does not exceed one foot candle.

Commissioner Saab seconded the motion. The vote passed unanimously (5-0).

**MO 090523-3**

7. **COMMISSIONER COMMENTS/REPORTS/STAFF UPDATES.**

Commissioner Paul mentioned the very large blue ODOT sign that was put up recently and asked if there is any way to get them to remove it or make it smaller. Tate discussed the sign and they agreed that all Commissioners make requests about Upper Boones Ferry Road directly to ODOT. Chair Deeming asked if anyone from the City is checking on the tree removals in the new developments to make sure only approved trees are being cut. Tate responded it does appear that many trees are being cut, but they were the ones that were approved in November, 2021. However, an arborist will verify each tree at a later date.

8. **ADJOURN.** Commissioner Paul moved to adjourn and Commissioner Bailey seconded the motion. The vote passed unanimously (5-0) and the meeting adjourned at 8:54 pm.

**MO 090523-4**

Approved: \_\_\_\_\_  
**Susan Deeming, Chair**

Attest: \_\_\_\_\_  
**Linda Tate, City Administrator**