



City of Durham

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STAFF REPORT February 29th, 2024

APPLICATION FILES #: 722-24 & 723-24

REQUEST: Approval to remove two Douglas fir trees from the applicants' east side yard.

OWNERS/APPLICANTS: Mark Schrimp & Teresa Braun
7980 SW Kingfisher Way
Durham, OR 97224

SITE LOCATION: 7980 SW Kingfisher Way

AUTHORIZATION: The review and approval criteria for the proposal are provided in the Durham Development Code (DDC) under Chapter 5 Tree Protection; Chapter 9 Procedures, Section 9.6 Type 2 Process & Criteria; Tree Protection Ordinance 228-05 as amended by Ordinance 246-08; and the Durham Comprehensive Land Use Plan as revised 6.23.95.

EXECUTIVE SUMMARY

The applicants submitted two applications to remove two Douglas fir trees greater than 10" DBH located in their east side yard, one estimated to be 36" diameter. The applications were received on February 7th, 2024, after a Douglas fir tree greater than 10" DBH fell through the applicant's home causing severe damage to their home and vehicle. Fortunately, no one was injured. The applicants are concerned that their trees will cause significant damage to neighboring homes, should they fall, and possibly fatalities. They have planted 6 arborvitae in the past 2-3 years and would like this considered in lieu of mitigation.

SUMMARY OF EVENTS

On January 9th, 2024 a Douglas fir tree greater than 10" DBH located at 8026 SW Kingfisher Way fell and severely damaged the applicants' home and vehicle. Fortunately, no one was injured. The applicant came to City Hall on Friday January 12th, 2024 to obtain a tree removal permit for two Douglas fir trees greater than 10" DBH located in their east side yard.

The applicants' main reason for wanting to remove the trees is for safety as well as property and environmental damage should they fail. They state that, should the trees fall there are children living in

the target zone. They have submitted information about laminated root rot as well as letters of support for removing the trees from two neighboring households.

No arborist report has been submitted for this tree removal application. The applicants are dissatisfied with the reliance on arborists report and state that the tree that hit their home had been inspected by an arborist one year prior.

On February 12th, 2024, The City delivered public notice to neighbors within 300' of the Type 2 tree removal process. Notice was also posted in front of the applicants' home, on the City's website and front window of City Hall.

FACTS, ANALYSIS & FINDINGS

1.DDC Chapter 5 Tree Protection, Section 5.4.1

Type "E" Permit. Trees measuring 10" DBH or greater and are not eligible for any other permit type, including Type "D," shall be subject to permitting with Planning Commission approval under a Type 2 process.

For an approved Type "E" Permit mitigation shall be provided as set forth in Section 5.5. Under certain circumstances, the Planning Commission may require mitigation exceeding that required in Section 5.5, but not less.

FINDINGS:

- The applicants' two Douglas fir trees are greater than 10" DBH and are proposed to be removed under Type E tree removal permits #722-24 and 723-24, as Type 2 process.
- It is possible that *if* the trees fail they *could* cause significant damage to neighboring property.
- The applicants have provided support for removing these trees from two neighboring households.
- Laminated root rot is a disease of the tree that can cause it to fail and has been found to be present in the applicant's neighborhood.
- No evidence was submitted to determine the health of the trees.
- The trees do not meet the criteria of any other permit type based upon the information provided by the applicant.
- The applicants have planted 6 arborvitae in the past 2-3 years and would like this considered in lieu of mitigation.

2.DDC Chapter 9 Procedures, Section 9.6 Type 2 Process & Criteria

Type 2 is a process for review and decision by the Planning Commission with prior notice to affected persons but without a public hearing.

Section 9.6.1: A Type 2 process applies to a non-emergency tree removal.

FACTS & ANALYSIS

- The tree removal application is on the agenda for the March 5th, 2024 meeting of the Planning Commission.
- The City has published, posted, and delivered the Public Notice to affected persons as of February 12th, 2024.

FINDINGS: The City finds that Type E application appeals are a Type 2 process.

3. Tree Protection Ordinance 228-05, Section 4 Criteria for Issuance of Tree Cutting Permits

The burden is on the applicant to show that granting a permit will be consistent with the stated purpose of this ordinance. The ordinance provides seven criteria for consideration.

- a) The condition of the trees with respect to danger of falling, proximity to existing or proposed structures, interference with utility services or traffic safety, and hazards to life or property.
- b) The necessity to remove trees to construct proposed improvements or to otherwise utilize the applicant's property in an economically beneficial manner.
- c) The topography of the land and the effect of tree removal on erosion, soil retention, stability of earth, flow of surface water, protection of nearby trees, windbreaks and a desirable balance between shade and open space.
- d) The number of trees existing in the neighborhood, the character and property uses in the neighborhood, and the effect of tree removal on neighborhood characteristics, beauty and property values.
- e) The adequacy of the applicant's proposals to plant new trees as a substitute for the trees to be Cut in accord with Section 7 and Section 8 of this ordinance.
- f) The tree is diseased.
- g) The tree is dead.

FACTS AND ANALYSIS:

Criteria A: The applicants state:

"We believe (the trees) present a potential hazard of falling and striking bedrooms in one of 6 homes, 2 of which are children's bedrooms in the Target Zone. See attached Target Zone Drawing. The applicants also state:

"There is no arborists report. There is too great of an emphasis placed on an arborist inspection and report in the permit application approval process for removal of douglas fir trees. This was made evident when the tree that fell and struck our home on January 9th 2024... had been inspected and determined healthy about 1 year earlier."

STAFF COMMENT: Staff are unable to comment on the condition of the tree given the information provided. Should the tree fail, it is possible to strike a nearby home. No arborist report on the health of the applicants' trees to be removed or the tree that struck the applicants' home have been provided.

Criteria B: Not applicable

Criteria C: The applicants state:

"The lot is basically flat so, we believe removing the trees should not impact erosion soil retention, stability of the earth, surface water flow.

We do not know, so we assume they provide no windbreak for trees on adjacent lots. We are not experts or even knowledgeable on windbreaks, so are hesitant to make any comment at all. This is just our thought and should not be used or considered anything more than that.

Removing the trees on our lot may not impact shade on our lot because the foliage starts about 80' up. Removing the trees may impact shade on adjacent lots. The trees are not adjacent to upland wooded corridor or streamside vegetated corridor."

Criteria D: The applicants state:

“There are currently 15 trees on the property, so the two trees represent 13%. The remaining 13 were planted since we moved in. The largest two are 50-60’ tall Douglas firs, one is a 40-50’ tall pine of unknown species, one is a 30-35’ tall Atlas Blue Cedar, 3 are 30-35’ Arborvitea, and the remaining are smaller 5-8’ Arborvitea. We have no knowledge of the impact removal of the trees will have on neighborhood characteristics, beauty and property values. We do believe that the tree strike and the damage it caused will negatively impact the value of our home for the next 6-8 months or until repairs are completed.

- a. They are 120-160’ tall lollipop douglas fir trees.
- b. Removing the trees may change the skyline from some public streets and properties within 300’.
- c. We do not believe the trees serve as a visual screen.
- d. We believe the trees are a stand of 2, so their removal would be 100 % of the stand.

Criteria E: The applicants state:

“We have planted 13 trees and would like the Planning Commission to consider those to serve as mitigation. If not, we will plant two trees from the City’s list of approved trees.”

STAFF COMMENT: Type E permit does require mitigation. The Planning Commission can decide what they feel would be sufficient for the replacement of two large Douglas firs.

Criteria F: That applicant states

“This is not known. See Item 2 on the Tree Removal Applications 722-24 and 723-24 Supporting Statement.”

Criteria G: That applicant states

“We do not believe so. There are photos with the applications.”

FINDINGS: Based upon the category of a Type E removal permit the City finds that the following criteria are applicable: _____.

The Planning Commission finds that the following applicable criteria have been met:

POTENTIAL MOTIONS

- 1) I move that tree removal 722-24 & 723-24 be denied.

OR

- 2) I move that tree removal 722-24 & 723-24 be approved with the condition(s) that _____ (please at least add the following conditions if you vote to approve and require mitigation):

A. _____ tree(s) will be planted as mitigation. This tree will be _____, (or from the list of approved mitigation trees) and be of a size that complies with the requirements set forth in Chapter 5, Section 5.5.1, i.e. 2” in diameter when measured from the top of the root ball for deciduous trees or 6’ tall when measured from the top of the root ball, excluding the leader, for evergreens.

B. Mitigation tree(s) must be planted within six months of the date of approval or a request submitted for an additional 60-day extension. Property owner must inform City Hall when the tree has been planted.

C. Any mitigation planting that fails within two years of the date of planting requires that property owner notify City Hall and that the failing tree be replaced.

D. Within 60 days of the second anniversary of planting property owner must 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.