



City of Durham

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Jordan Parente - City Administrator

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STAFF REPORT March 29th, 2024

APPLICATION FILE: #727-24

REQUEST: Approval to remove one Douglas fir tree from the applicant's back yard.

OWNER/APPLICANT: Christian Brown
8135 SW Ellman Lane
Durham, OR 97224

SITE LOCATION: 8135 SW Ellman Lane

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.

SUMMARY OF EVENTS

On January 13th, 2024, during the January Severe Winter storm, the applicant, Christian Brown, had a large Douglas fir from a neighboring property fall into his house, narrowly missing his daughter and her friend. On March 7th, 2024, he submitted three applications to remove three Douglas fir trees greater than 10" DBH located in his back yard. The applicant intends to submit an arborist report stating the northernmost Douglas fir tree greater than 10" DBH is diseased, which has been assigned tree removal permit #726-24. Should this happen, the City Administrator can administratively approve it as a Type A permit. The westernmost Douglas fir tree was previously leaning and has been topped and has been assigned tree removal permit #728-24. Again, the City Administrator can administratively approve this as a Type B permit, as it is potentially dangerous. In both instances, the City Administrator will require the applicant to mitigate the trees approved for removal and will allow time to select a variety. The remaining Douglas fir tree greater than 10" DBH located is located on the eastern side of the applicant's back yard. It appears healthy with no reported conditions necessitating removal. The applicant is requesting its removal due to neighbors' concerns with the number of Douglas fir trees that have fallen in close proximity and the family's experience during the January Severe Winter storm. It was assigned tree removal permit #727-24 and is before the Planning Commission as a Type E permit. On March 13, 2024 the City Administrator posted a public notice of land use action at City Hall and on the City's website. The same day, notices were delivered to all properties within at least 300' of the applicant's property. Along with the application was a letter of support from Martha Rainey of 8052 SW

Kingfisher Way. A letter of support has also been received from neighbor Nikki Hough and J.R. Tarabocchia of 17641 SW 80th Place. The tree removals are scheduled to be heard at the regular meeting of the City of Durham Planning Commission on April 2nd, 2024.

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.

FACTS:

- The applicant’s Douglas fir tree greater than 10” DBH is proposed to be removed under Type E tree removal application #727-24.
- The applicants would like to remove this tree in conjunction with two other Douglas fir trees (tree removal applications #726-24 & 728-24) and neighbor’s Douglas fir greater than 10” DBH (tree removal applications #731-24). No arborist report has been received, as of March 29th 2024.
- The applicant’s two Douglas fir trees greater than 10” DBH have already been approved for removal as Type A emergency permit #726-24, and as a Type B emergency permit #728-24, both requiring mitigation.
- The arborist report supports the has been received regarding this tree removal application.

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 April 2nd, 2024 meeting of the Planning Commission.
- The City has published, posted, and delivered the Public Notice to affected persons as of March 13th, 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 applicant states:

1) The tree is reported as healthy but is reported to be in close proximity to the applicant's home and neighboring properties. The applicant's home was struck by a similar tree on January 13th, 2024 and is located close to where a number of similar Douglas fir trees have failed. The applicant is worried that the falling and removal of neighboring Douglas fir trees increases the likelihood this tree will also fall.

STAFF COMMENT: The City is aware that of a number of Douglas fir trees have fallen or have been removed in close proximity to this tree. There have been indications of root rot, however, the extent of this is unknown.

Criteria B: The applicant states:

2) Not applicable.

Criteria C: The applicant state:

3) They do not believe removing this tree will impact soil erosion or have any further impacts then the development has already caused. The applicant is afraid this tree will be less stable due to the removal of other neighboring trees.

STAFF COMMENT: The applicant does not discuss balance of shade and open space.

Criteria D: The applicant states:

A number of Douglas fir trees have fallen in close proximity to the ones they intend to remove. The number of trees remaining, the effect of removal on neighborhood characteristics, beauty and property values are not clearly stated.

STAFF COMMENT: The removal of Douglas fir trees has greatly reduced the canopy in the neighborhood, altering its character. The City has heard from neighborhood residents that their property values have been impacted due to the high volume of home insurance claims.

Criteria E: The applicant states:

That they are amiable to mitigating more than what is required.

Criteria F:

Not applicable.

Criteria G:
Not applicable.

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 permit #727-24 be denied.

OR

2) I move that tree removal permit #727-24 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.