



City of Durham

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Jordan Parente - City Administrator

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STAFF REPORT February 29, 2024

APPLICATION FILES #: 717-24 & 718-24

REQUEST: Approval to remove two Douglas firs; one from the front yard and one from the back yard.

OWNERS/APPLICANTS: Nicole Hough & JR Tarabocchia
17641 SW 80th Place
Durham, OR 97224

SITE LOCATION: 17641 SW 80th Place

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 are proposing to remove two Douglas fir trees from their property. Tree removal application #717-24 is for a Douglas fir greater than 10" DBH located in the north-east corner of the front yard and #718-24 is for a Douglas fir greater than 10" DBH located in the south-west corner of the back yard. These applications were received as TYPE B permits and did not meet the guidelines for removal as emergency permits. The City Administrator recommends that the Planning Commission approve tree removal permit #717-24 and 718-24 as Type A permits at a regular meeting of the Planning Commission and require mitigation for the loss of their tree canopy. Findings are based on evidence that root rot is present at the site and has likely spread to these trees.

SUMMARY OF EVENTS

- These applications were received via email after business hours on January 24th, 2024, as TYPE B permits and did not meet the guidelines for removal as emergency permits
- On January 25th, 2024, the City Administrator spoke to applicant, Nicole Hough, by telephone. She described her family's January 13th, 2024, experience of the Severe Winter Storm, when a Douglas fir greater than 10" DBH fell from her property and into her neighbors' house where her daughter was playing with a friend. The girls were physically unharmed but the applicant's

daughter was suffering from trauma of the event. Nicole included a letter describing this experience along with her applications. The letter included that a neighbor's house was struck by a tree on January 8th, 2024 and reported statements by ISA Certified Arborist Lars A. Limburg of Arbor Pacific Tree Work, LLC. The applications also included Quote #547 from Mr. Limburg to remove "two large Douglas fir trees (*Pseudotsuga menziesii*) from front and back yards, due to potential laminated root rot and soil instability after strong wind storm event". This quote, was submitted with all three (3) tree removal applications and did not distinguish which of the two (2) Douglas firs in the back yard Mr. Limburg was referencing.

- On January 26th, 2024, the City Administrator determined that the tree identified as the applicant's main concern, one Douglas fir tree greater than 10" DBH located in the north-west corner of the back yard, met the exceptional circumstance of an emergency permit under City of Durham Ordinance #228-05. The tree was in close enough proximity to the fallen tree to suffer root disturbance. This disturbance and its slight leaning condition were noted on the Type B tree removal permit (#716-24), which was granted administrative approval. The City Administrator required mitigation, as permitted under section 5.11 of Durham Development Code 254-12. Mitigation is a reserved right of the decision maker and a practice used by the City of Durham, when feasible, to maintain the tree canopy the City's tree code and ordinance were enacted to preserve. The City Administrator also requested a photo of the tree, once removed, cut at the base of the stump to further investigate the spread of root rot.
- The applications did not include an arborist report. The two remaining Douglas fir trees greater than 10" DBH located in the north-east corner of the front yard and south-west corner of the back yard of the applicant's property do not appear to be dead, diseased, or imminently dangerous. The City Administrator determined that their removal did not qualify for an emergency permit and were assigned tree removal permits #717-24 and 718-24. These were both referred to the Planning Commission. This decision was made per Section 4.3 of the City's tree ordinance 228-05, which states that "Except in cases of emergency, the City Administrator shall refer all applications for removal of more than a single tree on a single lot to the Planning Commission." The permit was emailed to the applicants after business hours and the applicants responded an hour later saying that they would provide an arborist report for the two remaining trees and would select a mitigation tree in consultation with an arborist.
- On January 31st, 2024 the applicants emailed the City of Durham and attached a letter from OSU Extension Forester Program stating:

"In the case of your fallen tree, I can see evidence of root disease in your photo and this was clearly a factor in the tree failure. This root disease is a disease of the site, it spreads from tree to tree via root contact... (and) should be investigated for other trees in the neighborhood." The letter recommended the applicants to "get hazard tree assessments for trees of concern... (from) a certified arborist."

- On February 5th, 2024, the City Administrator mailed the applicants a follow up letter giving instructions on how to follow up on mitigating trees.
- On February 6th, 2024 Mr. Tarabocchia attended the City's Planning Commission meeting and provided the City with a written copy of his public testimony.
- On February 7th, 2024, Mr. Tarabocchia emailed at 2:17 pm to update tree removal applications #717-24 & 718-24 stating:
 - "In light of last night's meeting, I'd like to amend and add to the emergency tree applications that my wife, Nikki Hough, submitted on January 24th and ask that you please reevaluate and issue emergency permits so that these removals can be scheduled.

We cannot wait until the Commission approves these in March. This is not a hypothetical situation for us. Someone will be injured should there be another wind event between now and the removal of these trees.”

- These application updates stated both “Q-tip” trees are leaning since the storm, and likely inflicted with root rot. The City Administrator determined that there was no change to the condition of the trees and took no action.
- On February 7th, 2024, Ms. Hough came to City Hall to discuss her approved tree removal permit. Ms. Hough was upset that her permit indicated that the tree was to be mitigated, which is not required under a Type B permit. The City Administer explained that mitigation is always encouraged and when we spoke on January 25th, 2024 Ms. Hough was amiable to the idea of replacing trees that she was requesting to remove.
- On February 8th, 2024 at 2:50 pm Mr. Tarabocchia emailed quoting the section of the tree ordinance that allows for the authorization of the emergency removal of trees by the Mayor, the President of Council, the Planning Commission Chair, or Vice-Chair. He requested that I forward them his updated application and copy him. The City Administrator carried out the applicant’s request by end of day.
- On February 9th, 2024, Ms. Hough emailed the City following up on our February 7th, 2024 conversation regarding mitigating Type B permits and stated that they “do not require mitigation according to the terms of the Durham Tree Code and City Ordinances. The relevant sections of the City regulations are quite clear. Regardless of any plans my family may have to plant additional trees or shrubs to replace the removed tree, we will not be reporting any such actions to the City or doing any follow-up as we are not subject to any requirements. We understand the City's position that mitigation is encouraged (and we agree with that position).” Accompanying the letter was an attachment stating 5 of 17 Douglas firs have fallen from neighboring properties, striking 7 homes.
- The City Administrator spoke to Ms. Hough and said that section 5.11 of the City of Durham’s ordinance #254-12 allows for the reserved right of the decision maker to require mitigation and that the City has a practice of requiring and or requesting mitigation whenever feasible.
- Ms. Hough also provided additional information that approximately 30% of trees in a small area had fallen at neighboring properties over the past number of years.
- On February 9th, 2024, Ms. Hough emailed to request an appeal to the Planning Commission of the City Administrator’s mitigation requirement for emergency tree removal permit #716-24, that was issued on January 26th, 2024. Ms. Hough wrote “requiring us to appeal this matter to the Planning Commission feels punitive and retaliatory based on our family's recent engagement with the City.”
- Ms. Hough also requested a signed copy of Durham's Tree Ordinance.
- On February 9th, 2024, the City Administrator emailed the applicants at 5:52 pm that:
 - “I regret to inform you that Durham officials are unwilling to issue emergency tree removal permits, at this time, for the other two trees you are requesting to have removed. This does not constitute a denial of your tree removal permit applications; these are still set to be heard at the March 5th Planning Commission meeting. If you obtain an arborist report before that time, please forward it to me at your earliest convenience. An arborist report that indicates potentially dangerous conditions of a tree may be removed with administrative approval. Please document any changes to the condition of your trees. Durham's tree code allows for the immediate removal of any tree

posing an imminent threat to people or property. In emergency situations permits can be obtained retroactively.

I understand this decision is not what you were hoping for and I am sorry for the traumatic experiences your family suffered during the severe winter storm.”

- On February 12th, 2024, The City delivered public notice to neighbors within 300’ of the applicants’ home regarding 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.
- On February 13th, 2024 the City reconsidered the mitigation requirement of tree removal permit #716-24 as an act of good faith. The tree was reported to be scheduled for removal on February 28th, 2024.
- On February 14th, 2024 the applicants submitted a report from an ISA Certified Arborist Eddie Aguirre with Evergreen Tree Services. Mr. Aguirre wrote:

“The trees seem to be alive with no imminent Biotic or Abiotic disorders. I noticed the canopy has been excessively pruned and raised. The trees are about 130’ tall, making them prone to windthrow.”

Mr. Aguirre continued that:

“The uprooted tree shows root rot at the base of the stump. Due to the proximity of the remaining trees, it is possible that these trees are infected with root rot. My statement is based on a visual inspection and cannot determine the true health of the remaining trees without further investigation and soil sampling by a laboratory.”
- On February 15th 2024, the City Administrator emailed the applicants a signed copy of ordinance #254-12.
- On February 16th 2024, the applicants sent an update to Mr. Aguirre’s report that included:
 - "If any of the trees in question were to fall on a house again, it would cause substantial property damage and possible fatalities."
- On February 27th, 2024, Mr. Tarabocchia presented to City Council requesting the city amend its tree code and ordinance saying that the priority should be to protect people and not trees.

FACTS, ANALYSIS & FINDINGS

1.DDC Chapter 5 Tree Protection, section 5.4.2

Type “B” Permit. Trees that are dangerous or potentially destructive to public or private property may be approved by a Type 1 process. When it cannot be determined readily that a tree poses a potential for being dangerous or destructive, approval may be conditioned upon evaluation by a certified arborist or appealed to the Planning Commission upon a payment of the appeal fee. For an approved Type “B” permit no mitigation is required.

FACTS AND ANALYSIS:

- The applicants applied for three (3) Type B tree removal permits, only one of which the City Administrator could readily determine as being dangerous or potentially destructive to public or private property. This received approval as a Type B tree removal emergency permit through a Type 1 permit process. The City’s request for mitigation was appealed to the City and the decisions reverse. The applicants do not need to mitigate for tree permit # 716-24.
- Two Douglas fir trees greater than 10” DBH, are prominent trees and appear quite healthy. The arborist report provided reports the “trees seem to be alive with no imminent Biotic or Abiotic disorders.”

- The City Administrator is not comfortable approving the other two (tree removal permits #717-24 & 718-24) via a Type 1 process because the condition of the trees does not appear as hazardous. Furthermore, the removal of more than one tree, when no emergency is present, requires Planning Commission approval.
- The City Administrator's decision to not approve the other tree removals as emergency/hazardous trees was affirmed by other City officials authorized to approve tree removal permits and tree removal permits #717-24 and 718-24 were referred to the Planning Commission for a decision.
- The applicants state that five out of seventeen Douglas firs have fallen on properties that are contiguous to the applicant's property, damaging seven homes over 14 months.
- The applicant's tree that failed during the January severe winter storm showed evidence of root rot disease, which spreads between trees by root contact.
- It is highly probable that the two Douglas fir trees the applicants are requesting to remove have the disease of root rot, beyond recovery, which would make the trees potentially dangerous.
- It has been recommended to the applicants by multiple tree experts/arborists and the City to test their remaining trees and surrounding soil to confirm the presence of root rot in these trees.
- The applicants have not provided confirmation of this disease.
- The report noted that similar raised canopy trees had fallen in the neighborhood and were prone to windthrow.
- The removal of trees for windthrow alone decreases windbreaks, opening the potential for negative impacts to trees that have not grown in that type of environment.
- Rather than confirming the conditions of the trees as being potentially destructive the report stated that "*If any of the trees in question were to fall on a house again (sic), it would cause substantial property damage and possible fatalities.*"
- Although a Type B permit does not require mitigation, the Planning Commission can opt to require it if they feel that the removal of canopy from large, healthy trees is worthy of being replaced.

FINDINGS: The Planning Commission finds that (these tree removal permits are/are not a Type B permit type).

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

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 AND 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 Planning Commission finds that (this permit application has/has not been processed as 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: Arborist for the applicant states that the "trees seem to be alive with no imminent Biotic or Abiotic disorders." The arborist states the trees have "an excessively pruned and raised canopy" and "are about 130 feet tall, making them prone to windthrow". The trees are located on a lot contiguous to where five Douglas fir trees have fallen in 14 months. One tree was located on the applicant's lot and appears root rot was a factor in it failing. It is possible these trees are impacted. Further investigation and soil sampling may confirm this. The arborists states that if "any of the trees in questions were to fall on a house again (sic), it would cause substantial property damage and possible fatalities.

STAFF COMMENT: The fact that the arborist is saying the trees "seem to be alive with no imminent Biotic or Abiotic disorders" indicates the condition of the trees does not support their removal. However, the information the applicant provided supports that there may be root rot at the site that has spread to these trees but has appealed to the Planning Commission rather than provide proof of the disease. With respect to the arborist comment on damage, the City Administrator notes that most trees with a DBH greater than 10" would cause substantial property damage and possible fatalities if they were to fall and hit a home.

Criteria B: Not applicable

Criteria C: With respect to these impacts, the applicant states that the removal of the trees will have "Minimal, if any".

STAFF COMMENT: The arborist for the applicant does not comment on these conditions. There was no response to whether the removal of the trees would affect the protection of nearby trees or the balance between shade and open space.

Criteria D: The arborist for the applicant does not comment on these criteria. The applicant states, "The tree removal would minimally impact the total number of trees on the property. We

have about a dozen trees of varying kinds (Japanese maples, alders, spruce, and other fir trees), though nothing so large as the two Douglas fir trees at issue.”

The removal of the trees would increase public safety and help retain property values, as there would not be the risk of catastrophic damage were one to fall, nor the risk of cancellation of home insurance policies due to the number of tree-related claims in our area.

- The trees are not distinctive and are not Oregon white oaks.
- The skyline would be changed, but not much more so than when these trees have fallen in the last 14 months in the same area. As our application materials state, in the last 14 months five trees have fallen and four trees have been removed (out of a starting group of about 17). At this point, the skyline has changed already due to nature and necessity.
- No.
- The trees stand alone on our property. The tree in front is next to a maple tree belonging to our neighbor, who is also seeking a removal permit as her tree would be impacted by the removal of our tree (and for other reasons).

STAFF COMMENT: The Planning Commission should look at the location and determine if they are in agreement with this assessment.

Criteria E: The application indicates that they do not know at this time. “First, we would like to know if mitigation will be required per our Type B permit request and, if so, what compelling reason the City has for requiring it. Second, if mitigation is required, we intend to be planful and measured in determining which type of tree would be best suited to thrive.”

STAFF COMMENT: As mentioned before, a Type B permit does not *require* mitigation. However, the Planning Commission always *has the option* of requiring mitigation for the amount that they feel is warranted. The Planning Commission can decide what they feel are sufficient for the replacement of two large Douglas firs.

Criteria F: That applicant states “The requested trees may have laminated root rot. See application materials for additional information.”

STAFF COMMENT: There are indications that laminated root rot exists on the site, including in the tree that fell during the January Severe Winter storm, on January 13th 2024. The applicants have been advised to have the remaining trees on their property tested for this disease. The applicants have stated that the Douglas fir tree on their property that fell had been visually inspected by an arborist twice in the short time they have owned the property. They did not provide specifics of these visits.

Criteria G: Not applicable

FINDINGS: Based upon the category of a Type B 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 717-24 & 718-24 be denied.

OR

- 2) I move that tree removal 717-24 & 718-24 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.