



# City of Durham

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Jordan Parente - City Administrator

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## STAFF REPORT March 4<sup>th</sup>, 2024

APPLICATION FILE #: 725-24

REQUEST: Approval to remove one maple from the applicant's front.

OWNER/APPLICANT: Rufie Miles  
8026 SW Kingfisher Way  
Durham, OR 97224

SITE LOCATION: 8026 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

On behalf of the applicant, neighbor Nicole Hough submitted two applications to remove two maple trees greater than 10" DBH located in the south east corner of the applicant's front yard and the south west corner of the applicant's back yard. The maple tree greater than 10" DBH located in the south west corner of the back yard had been struck and was severely damaged when a Douglas fir greater than 10" DBH fell more than a year prior. The City Administrator spoke to an arborist who assessed the tree and said that the tree has a potential of failing where large limbs had been sheared off during the event. This tree was administratively approved as a Type B emergency permit under tree removal permit #724-24. The City Administrator required the applicant mitigate the tree but gave time to select a variety. The maple tree greater than 10" DBH located in the south east corner of the applicant's front yard appears to be otherwise healthy and has been applied for removal as a Type E permit and assigned tree removal permit #725-24. The applicant submitted a letter requesting the removal of the tree based on its proximity to a large Douglas fir the neighbor has requested to remove and that it drops branches sporadically.

### SUMMARY OF EVENTS

On January 9<sup>th</sup>, 2024 a Douglas fir tree greater than 10" DBH located in the north-east corner of the applicant's property fell and severely damaged a neighbor's home located at 7980 SW Kingfisher Way. Fortunately, no one was injured. The applicant came to City Hall on Friday January 12<sup>th</sup>, 2024 to obtain

a tree removal permit for a Douglas fir tree greater than 10" DBH that was near the one that fell. The applicant showed the City Administrator photos with grid lines sent by an arborist showing a severe lean. Tree removal permit # 712-24 was issued the same day, however, the tree fell the following day, January 13<sup>th</sup>, 2024 during the January Severe Winter storm. No one was injured and the tree hit one fence panel and fell across a neighbor's driveway.

On or about February 12<sup>th</sup>, 2024, the City of Durham received applications from neighbor Nicole Hough to remove two maple trees greater than 10" DBH located in the south east corner of the applicant's front yard and the south west corner of the applicant's back yard. The maple tree greater than 10" DBH located in the south west corner of the back yard had been struck and was severely damaged when a Douglas fir greater than 10" DBH fell more than a year prior. The City Administrator spoke to an arborist who assessed the tree and said that the tree has a potential of failing where large limbs had been sheared off during the event. This tree was administratively approved as a Type B emergency permit under tree removal permit #724-24. The City Administrator required mitigation but gave the applicant time to select a type of replacement tree.

The maple tree greater than 10" DBH located in the south east corner of the applicant's front yard appears to be otherwise healthy and has been applied for removal as a Type E permit and assigned tree removal permit #725-24. The applicant submitted a letter requesting the removal of the tree based on its proximity to a large Douglas fir the neighbor has requested to remove and that it drops branches sporadically.

It is possible that if the neighboring Douglas fir tree greater than 10" DBH is removed under tree removal permit #717-24, doing so may have adverse implications to this maple tree greater than 10" DBH, requested for removal under tree removal application #725-24.

No arborist report has been submitted for this tree removal application.

On February 12<sup>th</sup>, 2024, The City delivered public notice to neighbors within 300' of the applicant's property of the Type 2 tree removal process. Notice was also posted in front of the applicant's 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 applicant’s maple greater than 10” DBH is proposed to be removed under Type E tree removal permits #725-24.
- The applicants would like to remove this tree in conjunction with their neighbor’s Douglas fir greater than 10” DBH (tree permit removal #717-24).
- The applicants have recently lost two Douglas firs greater than 10” DBH from their property.
- The applicant’s maple greater than 10” DBH has already been approved for removal as a Type B emergency permit #724-24, requiring mitigation.
- No arborist report 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 March 5<sup>th</sup>, 2024 meeting of the Planning Commission.
- The City has published, posted, and delivered the Public Notice to affected persons as of February 12<sup>th</sup>, 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:

1) The maple tree is quite large and drops large branches from time to time. These branches are large enough to damage property and/or vehicles or to injure people if they were in the path of the branches. The tree is situated between two driveways and has come close to causing vehicle damage on more than one occasion.

In addition, the tree sways severely in the wind and has caused concern with neighbors that it may fall and impact the house..... The homeowner has also been informed that her homeowner's insurance will cancel her coverage if there are any additional tree-related claims at her property given the history in the neighborhood over the last year. Her house was impacted by the fall of a neighbor's tree in December 2022 and is still undergoing repairs. Two fir trees at her property fell in January 2023 - one causing substantial damage at the Schrimp/Braun property.

In addition, the tree is located in the median next to a douglas fir tree that her neighbors are trying to permit for removal. The removal of one tree will likely affect the other's stability and may impede safe access to the other.

**STAFF COMMENT:** The Planning Commission may consider what threat this tree poses.

*Criteria B:* The applicant states:

2) No proposed improvements.

*Criteria C:* The applicants state:

3) Minimal, if any. The tree impacts the shade received in two driveways. The tree does not provide any wind protection for other trees. The tree is not in an upland wooded corridor or streamside vegetated corridor.

*Criteria D:* The applicants state:

Minimal. The property has over a dozen other trees on it. The trees vary in size and type. The removal of the tree would not affect the characteristics of the neighborhood, beauty, or property values. Removing the tree would be beneficial to property values as it would prevent damage from the tree and help increase the likelihood that the home owner will be able to retain their insurance coverage.

- a) No. It is not an Oregon white oak.
- b) No. The tree is as tall as the house, but does not impact the "skyline."
- c) No.
- d) The tree stands alone on the property. It is near a douglas fir tree on the neighboring property - that is separately requesting a permit for removal.

**STAFF COMMENT:** This property had two Douglas fir trees greater than 10" DBH fall early

January 2024. The City also authorized the removal of another large maple tree from the property as a Type B permit, requiring mitigation. Removing this tree would significantly the remaining canopy cover at this location.

*Criteria E:* The applicants state:

Unknown at this time. The owner and the neighbors intend to create a plan for the median area together that is planful.

**STAFF COMMENT:** A Type E permit does require mitigation. The Planning Commission can decide what they feel would be sufficient for the replacement of one large maple.

*Criteria F:* That applicant states

No.

*Criteria G:*

No.

**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 725-24 be denied.

*OR*

2) I move that tree removal 725-24 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.