



# City of Durham

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Jordan Parente - City Administrator

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## STAFF REPORT March 29<sup>th</sup>, 2024

APPLICATION FILE: #731-24

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

OWNER/APPLICANT: Martha Rainey  
8052 SW Kingfisher Way  
Durham, OR 97224

SITE LOCATION: 8052 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.

### SUMMARY OF EVENTS

On March 10<sup>th</sup>, 2024, a tree removal permit application was received from Marth Rainey of 8052 SW Kingfisher Way. The request is to remove one Douglas fir tree greater than 10" DBH located in her back yard as a Type B permit and has been assigned tree removal permit #731-24. The tree appears healthy with no reported conditions necessitating removal, however, there has been a history of similar Douglas fir trees falling in close proximity to where this tree is located. The applicant's house had three such trees hit her house in the past. The first incident occurred in February 2000. On December 27, 2022 it was hit by two Douglas fir trees from a neighboring yard, reportedly causing over \$500,000 in damages for which it is still undergoing repairs for. After this event 3 trees in the applicant's yard were found to have laminated root rot and removed. In January 2024, two Douglas firs from the neighbor's yard to the east fell, causing extensive damage to one home and narrowly missing the applicant's home. Another property had one Douglas fir tree fall, causing extensive damage to the neighbor to the south, who is applying to have 3 Douglas fir trees removed.

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 80<sup>th</sup> Place. The tree removals are scheduled to be heard at the regular meeting of the City of Durham Planning Commission on April 2<sup>nd</sup>, 2024.

## 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:**

- The applicant’s Douglas fir tree greater than 10” DBH is proposed to be removed under Type B tree removal application #731-24.
- No arborist report has been received, as of March 29<sup>th</sup> 2024. No verification has been received that the condition of this tree makes it dangerous or potentially destructive to public or private property as a Type 1 process.
- The applicant is appealing to the Planning Commission and the City waived an appeal fee.
- The applicants would like to remove this tree in conjunction with three Douglas fir trees from the neighboring yard to the south (tree removal applications #726-24, 727-24, & 728-24) all greater than 10” DBH.
- While mitigation is not required for Type B permits City of Durham code does reserve the right for the decision maker(s) to require mitigation.

**FINDINGS:** The Planning Commission finds that (this tree removal permit is/is not a Type B permit type).

### **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 2<sup>nd</sup>, 2024 meeting of the Planning Commission.
- The City has published, posted, and delivered the Public Notice to affected persons as of March 13<sup>th</sup>, 2024.

**FINDINGS:** The City finds that Type B 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) Yes, once the tree in the Barbarich/Brown yard is removed, it would present a hazard of falling. The proximity to houses makes it a risk to life and property of 7 families.

**STAFF COMMENT:** The tree appears healthy but is in close proximity another Douglas fir tree that is reported to have laminated root rot, however, this has not yet been confirmed. The tree is in close proximity to a number of other trees that have been removed or failed due, reportedly due to laminated root rot. As a result, the applicant's home has suffered extensive, costly damage from Douglas fir trees failing in the past, as have several immediate neighbors.

*Criteria B:* The applicant states:

- 2) No.

*Criteria C:* The applicant state:

3) There is no effect on erosion, soil retention, stability of the earth, flow of surface water, etc, by removing this tree. It is in a level, flat backyard. Taking this tree down will affect the desirable balance between shade and open space, which is one reason why replanting smaller, more manageable trees, and safe trees is necessary.

**STAFF COMMENT:** The applicant does not discuss windbreaks.

*Criteria D:* The applicant states:

Since we had to take down 3 diseased and dying Douglas fir trees in Nov of 2023, this is the last tree in our back yard. Between several tree falls and removals, this tree would stand isolated without 10 trees that it was used to having as wind support and protection that were supporting the tree's integrity. Leaving it on its own would lead to its vulnerability and potentially cause property damage and risk of life to several houses and many neighbors depending on how it would fall.

- A. It is the only tree remaining in our backyard until we replant. No it is not an Oregon White Oak.
- B. No.
- C. No. The majority of the foliage is on the top ¼ of the tree.
- D. It is not in a stand of trees currently.

*Criteria E:* The applicant states:  
We plan to plant several smaller trees along the south and West side of our property.

*Criteria F:*

We are unable to determine if the tree is diseased by looking at it. The tree in the Barbarich/Brown yard that stands about 10' from our tree is diseased and it has been administratively approved to be removed for this reason. It would stand to reason that our tree is subject to laminated root rot with the number of trees in close proximity that had or have this root disease.

**STAFF COMMENT:** The trees that are administratively approved are still pending the receipt of the supporting arborist report.

*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 permit #731-24 be denied.

OR

2) I move that tree removal permit #731-24 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.