



# City of Durham

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**Jordan Parente - City Administrator**

**Becky Morinishi - Administrative Assistant**

## STAFF REPORT May 24<sup>th</sup>, 2024

APPLICATION FILE: #713-24 & 742-24

REQUEST: Approval to remove two Deodora-cedar trees from the applicant's front yard.

OWNER/APPLICANT: David Burkley  
17065 SW Rivendell Drive  
Durham, OR 97224

SITE LOCATION: 17065 SW Rivendell Drive

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 December 4<sup>th</sup>, 2023, Mr. Burkley applied for permits to remove three trees, greater than 10" DBH (diameter breast height), from his property located at 17065 SW Rivendell Drive. Two of the trees are located in the front yard in a teardrop shaped cutout of his driveway and one is located in his west side yard. The City Administer explained the tree removal process and asked the applicant for an arborist report to facilitate the tree removal process and assigned tree removal permits 713-24, 714-24 and 715-24.

On April 23<sup>rd</sup>, 2024 the City Administrator received a report and new tree removal permit applications (in Jenny Burkley's name) from Teragan & Associates, Inc. Arboricultural Consultants explaining the type and condition of the three trees along with a fourth application, 742-24, to remove another tree from the teardrop shaped driveway feature.

The trees assigned tree removal permit numbers 713-24 and 742-24 are identified as Deodora-cedars, measuring 25" and 31" DBH, respectively. The trees are reported being in fair health and structural condition with one-sided foliage overhanging the home. The report states the trees have caused cracking and heaving of the applicants' driveway and potentially have damaged the home's garage foundation. The condition of the other two trees, a 23" DBH Douglas fir and a 19" DBH Scots-pine, were reported as dead or dying and have been administratively approved under permit number 714-24 and 715-24, respectively.

The applicants have applied for Type B emergency permits that the trees are potentially dangerous to private property. The City Administrator determined that their removal did not qualify for an emergency permit and both were referred to the Planning Commission and did not require additional permit fees. On May 23<sup>rd</sup>, 2024 the City Administrator posted a public notice of land use action at City Hall and on the City's website. On May 28<sup>th</sup>, 2024, notices were delivered to all properties within 300' of the applicant's property.

## **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.*

- The applicants applied for four tree removal permits 713-24, 714-24 715-24 and 742-24. Two trees (permit #714-24 and 715-24) were determined to be dead or dying by Teragan & Associates, Inc. Arboricultural Consultants and administratively approved by the City Administrator as a Type 1 process.
- Two Deodora-cedars trees greater than 10" DBH, are prominent trees and appear healthy. The arborist report states they are in fair health and structural condition with one-sided foliage overhanging the home.
- The arborist report states that the trees have caused cracking and heaving to the applicant's driveway and that one tree is within 12' of the garage foundation and is responsible for a crack in the foundation. The homeowners state "the two trees are less than 3 feet apart, so it is difficult to determine which tree is causing which specific problem. Not to mention the trees are less than 10 feet from our garage. The overall concern is that if I am allowed to remove one tree, the other become susceptible to uprooting. Especially in these high wind seasons we have been having and becoming a danger to the home."
- The City Administrator cannot administratively approve tree removal permits #713-24 and 742-24) via a Type 1 process because the conditions of the trees do not appear as hazardous. Furthermore, the removal of more than one tree, when no emergency is present, requires Planning Commission approval.
- 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 June 4<sup>th</sup>, 2024 meeting of the Planning Commission.
- The City has published, posted, and delivered the Public Notice to affected persons as of May 28<sup>th</sup>, 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 are in fair health and structural condition. The foliage is on one side overhanging a portion of the house and there is evidence of the driveway cracking and heaving from the trees’ root structure. The arborist also states that one of the trees has cracked the garage foundation and the other has the potential to cause damage. The homeowners state it is difficult to tell which tree is causing damage and to remove one would be detrimental to the other due to their proximity.

**STAFF COMMENT:** The report trees’ condition does not support their removal. They are causing property damage with cracking and heaving to the driveway, and possibly the foundation. The Planning Commission can decide if this meets the intent of a Type B permit regarding property damage necessitating removal.

*Criteria B:* The applicants state that the width of the trunks and root base have become so large that it is not possible to replace/repair the damage that has been caused to our current driveway without compromising the roots.

*Criteria C:* The applicants state “there would be no change to soil retention, erosion, etc. There so many other mature trees in the yard that the shade loss would be nominal. Although they are not in a wooded or streamlined corridor, so they are exposed to the high winds a great deal.”

*Criteria D:* The applicants state

Their side of Rivendell has a large footprint that contains a massive portion of mature Deodora-cedars. We believe that by having one of the more unique homes in the neighborhood, the removal of these trees would not detrimentally effect on the neighborhood characteristics or property values.

a) There are many distinctive trees on our property, however by comparison to our others, these are very run of the mill trees. They are not Oregon White Oak.

b) The removal of the trees will have a very slight change to the skyline view. However, with the large cluster of trees in the back of the property to will likely go unnoticed.

c) The trees do not serve as a visual screen. d) They are 2 of 3 trees in an isolated section of the driveway. The 3rd tree has already been approved to be removed. So, by removing the other 2, it would clear the whole stand.

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

*Criteria E:* The applicants listed replacement trees with the original permit request. They intend to plant larger trees in the back yard where they will have more space to flourish.

**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 applicants are willing to mitigate these trees. The Planning Commission can decide what they feel are sufficient for the replacement of two large Deodora-cedars.

*Criteria F:* Not applicable

*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 713-24 & 742-24 be denied.

*OR*

2) I move that tree removal 713-24 & 742-24 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.