



# City of Durham

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Jordan Parente - City Administrator

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

APPLICATION FILES #: 734-24 and 735-24

REQUEST: Approval to remove one sweetgum 13" Diameter Breast Height (DBH) and one flowering plumb 10" DBH from the applicants' front yard.

OWNERS/APPLICANTS: Dee and Janet Lockwood  
17096 SW Rivendell Drive  
Durham, OR 97224

SITE LOCATION: 17096 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 April 29<sup>th</sup>, 2024, the applicants submitted two applications to remove one sweetgum tree 13" DBH and one flowering plumb 10" DBH, which they planted in their front yard 45 or 46 years ago. They believe that these trees are no longer suited for the space and would like to replace them. The sweetgum was assigned tree removal permit number 734-24 and the flowering plumb tree was assigned 735-24. The applicants applied for Type E tree removal permits and their reasons given for requesting removal is that the sweetgum is lifting the driveway and the flowering plumb is close to the road and beneath a large Douglas fir tree. They report it in poor condition with broken limbs from being hit by passing vehicles. No arborist report has been submitted for this tree removal application.

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 5.4.1**

*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 applicants’ trees are one sweetgum tree 13” DBH and one flowering plumb 10” DBH. They are proposed to be removed under Type E tree removal permits #734-24 and 735-24, respectively, as a Type 2 process.
- The applicants provided photos supporting the sweet gum roots are growing to the driveway. They state that the flowering plumb was professionally pruned two years ago but that did little to help its’ health.
- No arborist report was submitted to determine the health of the trees.
- The trees do not meet the criteria of any other permit type based upon the information provided by the applicant.
- The applicants believe these trees were not suited to where they were planted and would like to mitigate with dogwood. They state that their lot is heavily treed, including 12 mature fir trees, 2 wild cherry trees, 1 yew 24+ vine maples, 1 pine, 1 Japanese maple and one dogwood.

### **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 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 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 condition of the sweetgum does not appear to endanger structures, utility or traffic. It is reported as lifting and may potentially crack the applicant's driveway. They state: "The tree is located near the NE corner of our property... does not present a physical hazard to persons or property. It was planted too close to the driveway and its roots are lifting the driveway."

Regarding the plumb tress they state that it "is located at the NW corner of our lot. The tree does not present a physical hazard to people or property. It does seek more sunlight by growing into the street where trucks hit it unless it is pruned back".

**STAFF COMMENT:** Staff are unable to comment on the condition of the trees given the information provided as no arborist report on the health of the applicants' trees has been provided. However, the applicants have provided evidence of the sweetgum roots potentially impacting the driveway and the flowering plumb potentially impacting traffic.

*Criteria B:* Not applicable

*Criteria C:* The applicants state the removal of these trees will have no material (negative) effect on nearby trees and will not impact water drainage, soil erosion, etc. Removal of the sweetgum will allow more sunlight to reach a struggling dogwood tree. Their lot is basically flat and they believe removing the trees should not impact erosion soil. They find the flowering plumb to only be attractive for about a week in the spring when it blooms.

*Criteria D:* The applicants state they "believe these trees were not suited to where they were planted and would like to mitigate with dogwood. They state that their lot is heavily treed, including 12 mature fir trees, 2 wild cherry trees, 1 yew 24+ vine maples, 1 pine, 1 Japanese maple and one dogwood.

*Criteria E:* The applicants' express interest in planting more dogwood as they would be better suited to the space they have available.

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

*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 734-24 & 735-24 be denied.

*OR*

2) I move that tree removal 734-24 & 735-24 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.