



# 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 #: 738-24, 739-24 and 740-24

REQUEST: Approval to remove one Star Magnolia with two leaders greater than 10" Diameter Breast Height (DBH), one weeping cherry, 12" DBH and one Honey Locust 10" DBH from the applicants' front yard.

OWNERS/APPLICANTS: Alan Peck and Elizabeth Rathbun  
7750 SW Ellman Lane  
Durham, OR 97224

SITE LOCATION: 7750 SW Ellman Lane

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 May 13<sup>th</sup>, 2024, the applicants submitted three applications to remove one Star Magnolia (assigned permit #738-24) with two leaders greater than 10" DBH, one weeping cherry (12" DBH and assigned permit #739-24) and one Honey Locust (10" DBH and assigned permit #740-24) from their front yard. They believe that these trees are not suited for the space and would like to replace them. The Star Magnolia and the Honey Locust were applied as Type B permits, however, there is no indication of these trees being potentially dangerous to life or property. These two tree removals were administratively rejected as Type B permits and all three are being forward to the Planning Commission for consideration as Type E permit appeals. The applicants report their reasons for requesting removal are that the Star Magnolia is 2' from the house but there is no evidence of damage. The weeping cherry is reported as stressed and putting out sucker and the Honey Locust is reported as not doing well in the region's wet climate. 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 Star Magnolia with two leaders greater than 10” Diameter Breast Height (DBH), one weeping cherry, 12” DBH and one Honey Locust 10” DBH. Two of the tree removal applications were under Type B permits #738-24 and 740-24, but were determined to not fit the criteria. They are being forwarded for consideration to the Planning Commission as Type E tree removals, along with the weeping cherry (739-24), which is a Type 2 process.
- The applicants provided photos supporting the Star Magnolia is growing close to the house but there is no evidence of damage.
- 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 have plans to mitigate the Star Magnolia and Honey Locust but do not have plans for replacing the weeping cherry.

### **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 trees is not reported to be in danger of falling, or hazards to life. The Star Magnolia is in close proximity (2') to the structure.

**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. The Star Magnolia is close to the structure but no evidence of damage was provided.

*Criteria B:* Not applicable

*Criteria C:* The applicants did not provide answers to this question.

**STAFF COMMENT:** The lot is essentially flat and the removing the trees should not impact erosion soil. The applicant did want to provide more room for neighboring trees to grow by removing the weeping cherry.

*Criteria D:* The applicants did not provide answers to this question

*Criteria E:* The applicants' listed 5 different variety of trees they may wish to plant, including Pinus parviflora, Nyssa sylvatica, Bald Cypress, Western Red Cedar (Hogan) and Carpinus betulus "Frans Fontaine".

**STAFF COMMENT:** Type E permits do require mitigation. Should they be approved, the Planning Commission can decide what they feel would be sufficient for the replacement of the three trees.

*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 738-24, 739-24 and 740-24 be denied.

*OR*

2) I move that tree removal 738-24, 739-24 and 740-24 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. Tree(s) 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.