



City of Durham

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Jordan Parente - City Administrator

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STAFF REPORT - AUGUST 28th, 2024 Prepared for September 2024 Planning Commission Meeting

APPLICATION FILES #: 757-24

REQUEST: To obtain approval to remove 9 trees to allow for subdivision improvements.

OWNERS/APPLICANTS: Christine Johnson, ASCA Registered Consulting Arborist
Todd Prager & Associates, LLC
601 Atwater Road, Lake Oswego, OR 97034

Mohsen Alvani / Emerald Homes NW
16605 SW Upper Boones Ferry Road
Durham, OR 97224

SITE LOCATION: 16605 SW Upper Boones Ferry Road

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 July 12th, 2024, the applicants applied to remove eleven (11) trees and 46 English laurel, a shrub exempt from tree preservation standards, from the Durham Estates Development located at 16605 SW Upper Boones Ferry Road. This is the third Type "G" permit (for tree removals on previously undeveloped land) for this property. This application was amended by Mr. Ken Allen on August 27th, 2024, reducing the number of tree removal requests from 11 trees to 10 trees.

The original canopy coverage of the development was calculated based on trees onsite over 5-inch DBH and in good condition to be retained. The development site is 2.68 acres, requiring a minimum of 42,689 square feet of canopy. The combined canopy size is calculated to be 35,822 square feet, which receives credit for 71,644 square feet of canopy under Durham Development Code, as it allows two hundred percent canopy credit for tree preservation.

The property's first Type G tree removal permit, #656-22, was for 36 trees and 37,934 square feet of canopy to make improvements to SW Cambridge and SW Taylor. The second, tree removal permit #667-22, requested the removal of 17 trees and 12,268 square feet of canopy to allow construction of subdivision improvements.

Tree removal permit #757-24 requests the removal of 10 trees totaling 13,881 square feet of canopy. The arborist report describes the improvements as building “roads leading to developable lots” as well as for the installation of electrical, storm/sanitary and water lines “to address any future middle housing development.”

On August 15th, 2024, city staff posted notice of the land use action at City Hall and at the property and mailed out notices to property owners within 300’ of the applicant’s property.

On August 21st, 2024, the City Administrator, Arborist Sibyl Weise from SavATree and Planning Commission Chair Susan Deeming walked the property along with the applicant, Habib Matin, and developer Ken Allen. The city found the tree protection to be in place, except for tree 8874, a true fir with a 49” DBH that was previously approved for removal. The city also found that an arborvitae, tree 8913, requested for removal on permit #757-24, had already been illegally removed, along with a preserved grand fir, tree 8503. Mr. Allen said that tree 8913 had been hit by equipment while preparing the new driveway improvements. Mr. Matin explained tree 8503 was in the way of electrical installation and that PGE made him remove it. The City administrator is working with the developer to resolve the issue of the two illegal removals.

The tree protection plan supplied by the applicant’s arborist, Todd Prager and Associates, LLC, prohibits traffic in the tree protection zones during construction and protects trees from cutting, skinning or breaking branches, trunks, or woody roots. If the applicant wishes to deviate from the protection plan, they should first seek approval from the project arborist and obtain approval from the City of Durham. The City Arborist recommended that the applicant delete the trees that were previously approved for removal, along with any tree under 6” and shrubbery from the tree map to provide a clearer image. The City Arborist also requested that the trees all be clearly tagged in the field to facilitate visual inspection. The applicant does not propose to plant mitigation trees because the tree canopy that is retained per the arborist report exceeds the canopy requirement of 35% coverage.

FACTS, ANALYSIS & FINDINGS

1. DDC Chapter 5 Tree Protection, section 5.7

Type “G” Permit is for previously undeveloped property.

FACTS AND ANALYSIS:

- *The trees are on a 2.68-acre lot that is proposed to be divided into nine lots with new homes constructed later.*

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

2. DDC Chapter 5 Tree Protection, section 5.10

Permit types “A” through “D” shall be reviewed by a Type 1 process. All other permits for the removal of a tree or trees shall be by a Type 2 process.

FINDINGS: The Planning Commission finds that this (this permit application should/should not be processed as a Type G permit type).

3. 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 non-emergency tree removal(s).

FACTS AND ANALYSIS:

- *The tree removal application is on the agenda for the September 3rd, 2024, meeting of the Planning Commission.*
- *The City of Durham has published and delivered the Public Notice to affected persons as of August 15th, 2024.*

FINDINGS: The Planning Commission finds that (this permit application has/has not been processed as a Type 2 Process).

4. DDC Chapter 5 Tree Protection, section 5.7.1 Tree Preservation Plan

Separate Type “G” permit applications shall be submitted for a land division and installation of required infrastructure as well as for installation of utilities and structural building permits on each lot at the time the lot applies for a building permit.

The applicant shall submit with the initial application a tree preservation plan prepared by a certified arborist with a narrative as to how the plan will affect tree preservation.

FACTS AND ANALYSIS:

- *The applicant’s arborist report states that the tree removals are to facilitate the installation of private driveways and electrical, storm/sanitary and water utilities to accommodate a future middle housing development.*
- *The project Arborist has reviewed the proposed plans and provided recommendations for tree protection measures and standards within the report for trees that are being protected (pages 3-4) and additional measures on pages 6-7 and 14-15 of 16 in the “Tree Protection Recommendations” section.*
- *The City Arborist (SavATree) has reviewed the tree plans from the project Arborist and states that they are sufficient if they are adhered to as laid out. The City Arborist recommends the applicant update the tree inventory map to exclude trees under 6” DBH, trees already approved for removal that have been removed, and shrubs that do not count towards the tree inventory.*

FINDINGS: The Planning Commission finds that (the applicant has/has not provided a tree preservation plan).

5. DDC Chapter 5 Tree Protection, section 5.7.2

An applicant shall attempt to preserve existing trees on a site by varying the site design, as provided for elsewhere in this Code, and by the following means, whichever are applicable:

5.7.2.1 Specific measures for tree preservation and protection during all phases of construction, including excavation, grading and filling, repair and removal of trees, pruning and structural support, fertilization and aeration;

5.7.2.2 Use of tree protection zone or construction zone tape with tree fencing;

5.7.2.3 All tree related decisions and activity to be approved by the City’s arborist;

5.7.2.4 All preserved tree health determinations, other than construction damage, to require core samples or other non-harmful procedures;

- 5.7.2.5 Authorize the City to stop work for any violation of the approved plan;
- 5.7.2.6 Require the contractor to acknowledge the approved tree protection plan in writing prior to any on-site tree removal, with a copy of same provided to the City.
- 5.7.2.7 Repair any damage to a preserved tree in a timely manner.
- 5.7.2.8 Employ an Arborist to prevent harm from construction activity to a tree to be preserved on the site;
- 5.7.2.9 Coordinate the project grading with the City's Arborist to identify possible preservation of additional trees not shown on the application;

FACTS AND ANALYSIS:

- This arborist report discusses how all the criteria are or will be met. This includes arborist oversight of construction work when disturbing the root systems of preserved trees.
- Two trees (8503 and 8913) were found by the city to have been illegally removed during construction. These missing trees were not noted as having been removed in the applicant's arborist report.

STAFF COMMENT: The City Administrator has sufficiently dealt with the issue of the two illegal removals. While these removals change the canopy calculations provided it should not have bearing on the outcome of this tree removal application. The Planning Commission may want to consider the Arborist's recommendation for requiring added oversight during work in proximity to preserved trees.

FINDINGS: The Planning Commission finds that (the applicant has/has not addressed the requirements for preserving existing trees).

6. DDC Chapter 5 Tree Protection, section 5.8 Mitigation Required

Removed trees shall be replaced with mitigation trees to the extent that at maturity they equal the canopy being removed or mature canopy coverage equivalent to 35% of the square footage of the lot, whichever is less. Mature canopy coverage shall be as set forth on the City's tree list based on the tree species, or as otherwise determined by the City Administrator.

Preservation of existing trees in good condition, suitable for preservation and of appropriate species, shall receive a 200% credit based on their existing canopy area. Planting of native species shall receive a credit of 125% of mature canopy.

(Example: A 10,000 s.f. lot would require 3,500 s.f. of canopy. An existing Black Hawthorne has 314 s.f. of existing canopy. This property would receive a credit of 628 s.f., leaving 2,872 s.f. that will need to be mitigated for with new plantings.)

FACTS AND ANALYSIS:

- This lot is 2.68 acres or 116,741 square feet. Thirty-five percent canopy coverage is 40,859 square feet.
- The canopy approved for removal in tree removal permit #656-22 was 37,934 square feet and the canopy approved for removal in tree removal permit #667-22 was 12,268 for a total of 50,202 approved for removal.
- Tree removal permit #757-24 requests the removal of an additional 13,881 square feet of canopy for a total of 63,882 square feet of canopy applied for removal.
- Tree 8503 was a Grand fir with 314 sq ft of canopy and was illegally removed for a total removal of 64,398 square feet.

- 32 retained trees over 5-inch DBH and in good condition will be retained. Their combined canopy size is 35,508 square feet. Two hundred percent canopy credit for their preservation is 71,016 square feet. Therefore, after construction the site will still contain 71,016 square feet of canopy coverage.
- No mitigation should be required since 40,859 is less than 71,016.

STAFF COMMENT: The applicants have provided an updated tree map that is easier to read. The City Arborist also recommends that the applicants clearly number the preserved trees on site.

FINDINGS: The Planning Commission finds that (mitigation should/should not be required).

7. 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.

- 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.*
- The necessity to remove trees to construct proposed improvements or to otherwise utilize the applicant's property in an economically beneficial manner.*
- 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.*
- 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.*
- 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.*
- The tree is diseased.*
- The tree is dead.*

FACTS AND ANALYSIS:

Criteria A: not applicable

Criteria B: The reason for the removal of these trees is proposed construction and grading for the installation of streets, utilities, driveways and homes. To properly grade the site to accommodate the improvements, the trees within areas affected by grading will be removed.

Criteria C: The applicant's arborist report states that the topography of the property is such that to cut the trees will not adversely affect soil retention, stability of earth, flow of surface water, protection of nearby trees, windbreak and a desirable balance between shade and open space. The arborist report (pages 2-3 of 16) provides a detailed explanation for this statement.

Criteria D: The tree removal permit is to facilitate the construction of a 9-lot subdivision. The application does not speak to the neighborhood, the character and property uses in the neighborhood, and the effect of tree removal on neighborhood characteristics, beauty and property values.

STAFF COMMENT: The application includes the planting of an arborvitae hedge along the south property line to provide some privacy.

Criteria E: The applicant states that no mitigation is required based on the canopy coverage calculations in the submitted Arborists Report for a Type “G” permit “For Previously Undeveloped Property” and listed above in number 6.

STAFF COMMENT: The Planning Commission will have already discussed this mitigation and determined a finding in number 6 which can determine whether this criterion has been met or if there needs to be a condition made.

Criteria F: not applicable

Criteria G: One of the trees is dead.

FINDINGS: Based upon the category of a Type G 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

I move that tree removal 757-24 (be approved/not be approved) with the condition(s) that _____ (suggestion would be to include the City Arborist recommendation in item 6).