



# City of Durham

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Jordan Parente - City Administrator

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## STAFF REPORT - AUGUST 28<sup>th</sup>, 2024 Prepared for September 2024 Planning Commission Meeting

APPLICATION FILES #: 756-24

REQUEST: To obtain approval to remove 15 trees, 5" Diameter Breast Height (DBH) or greater, to allow for a 3-lot minor partition.

OWNERS/APPLICANTS: Clint Welsh/Spartan Redevelopment, LLC  
21370 SW Langer Farms Pkwy, Suite 142, #272  
Sherwood, OR 97140

SITE LOCATION: 7870 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

The applicant is proposing removing 15 trees to allow construction of a minor partition, which includes the subdivision of a parcel, approximately 1 acre in size, into 3 lots. The construction and grading associated with the construction will impact the trees in this application. No trees are planned to be planted as mitigation because the tree canopy retained per the arborist report.

### 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 lot that is proposed to be divided into 3 lots with new homes constructed later.

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

#### 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 tree removal permit application *should/should not* be by a Type 2 process).

**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 a non-emergency tree removal.*

**FACTS AND ANALYSIS:**

- The tree removal application is on the agenda for the September 3rd, 2024, meeting of the Planning Commission.
- The city has published and delivered the Public Notice to affected persons as of August 8<sup>th</sup>, 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:**

- This permit is the first tree removal permit for this minor partition and is for the initial vehicle access and utility improvements.
- The project Arborist has reviewed the proposed plans and recommendations tree protection measures and standards within the report for protected trees. He recommends permeable geotextile fabric, 4” of wood chips or mulch and ¾” plywood to protect roots from compaction.
- The City Arborist (SavATree) has reviewed the protection plans from the project Arborist and did not request additional protective measures.

**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:**

- The City Arborist report agrees with the removal of the bigleaf maples and Leyland cypress trees numbered 1-5.
- The City Arborist questioned if the western red cedars trees numbered 6-8 could remain with the vehicle access and utilities designed around these trees. They are in good condition; however, are temperamental to root disturbance.
- The City Arborist agrees with the removal of the 29" bigleaf maple numbered tree 36 as a potential hazard tree due to cracks in the trunk and an uneven canopy.
- The City Arborist does not agree that the 34" Douglas fir numbered tree 35 needs to be removed due to proximity of power lines. It has been pruned away from the power lines and is far enough away to follow safety requirements in utility forestry.

**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:**

- The lot is 1 acre or 43,560 square feet. Thirty-five percent canopy coverage is 15,246 square feet.
- The square feet of existing canopy, as well as the square feet of removal was not provided in the arborist report.
- 38 trees over 5-inch DBH were listed and 15 were requested for removal.
- City staff could not determine if mitigation should be required.

**STAFF COMMENT:** City staff requested the canopy calculations be provided but did not receive it.

**FINDINGS:** The Planning Commission finds that (mitigation/no mitigation should 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.*

- 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: Tree #35 is proposed to be removed due to proximity of high-voltage lines; however, the City Arborist does not concur.*

**STAFF COMMENT:** The City Arborist agrees with the project arborist except with respect to tree #35.

*Criteria B: The applicant's tree report request removal of three western red cedars in good condition, trees numbered 6-8. The Arborists questions if the proposed construction and grading for the installation of driveways and utilities could leave enough space to not disturb the critical root zones of these trees.*

**STAFF COMMENT:** The City Arborist agrees with the findings of the project Arborist and asks if enough space could be left to design around trees #6-8.

*Criteria C: The application does not speak to the topography of the property, nor, adverse effects of soil retention, stability of earth, flow of surface water, protection of nearby trees, windbreak and a desirable balance between shade and open space.*

*Criteria D: The applicant does not reference the neighborhood trees, nor the effect of tree removal on neighborhood characteristics, beauty or property values.*

*Criteria E:* The does not comment on mitigation or canopy coverage calculations in the submitted Arborists Report.

*Criteria F:* Tree #14 is a 22” DBH Douglas Fir reported to have Red Ring Rot (*Porodaedalea pini*);  
Tree #21.1 is a 15” DBH sweet cherry reported in poor health;  
Tree #29 is a 13” DBH Douglas fir reported with a thin crown in poor health;  
Tree #36 is a 29” DBH bigleaf maple the City Arborist has deemed a hazard tree due to decay and lateral splitting of the trunk;

*Criteria G:* None of the trees are reported as 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:

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**POTENTIAL MOTION:**

I move that tree removal permit #756-24 (*be approved/not approved*) with the condition(s) that \_\_\_\_\_ (suggestion would be to include the City Arborist recommendation in Criteria A).