



City of Durham

17160 SW Upper Boones Ferry Rd.
Durham, Oregon 97224

Website: www.durham-oregon.us
e-mail: cityofdurham@comcast.net
Phone: 503.639.6851 Fax 503.598.8595

Jordan Parente - City Administrator

Becky Morinishi - Administrative Assistant

STAFF REPORT July 31st, 2024

APPLICATION FILE #: 747-24

REQUEST: Approval to remove one maple tree greater than 10" Diameter Breast Height (DBH) located on the east side of the applicants' home.

OWNERS/APPLICANTS: Derek and Larysa McMurray
17398 SW Rivendell Drive
Durham, OR 97224

SITE LOCATION: 17398 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 July 1st, 2024, the applicants submitted four tree removal applications for trees, greater than 10" DBH. The trees were assigned tree removal permits #745-24, #746-24, #747-24 and #748-24. Some of the trees had been marked for removal on April 1st, 2024, when the City Administrator stopped unpermitted tree work from taking place on the property. The four tree removal applications included an arborist report, specific to the removal of two maple trees, located in the applicants' backyard, which were assigned tree removal permits #745-24 and #746-24. The arborist reported the trees' declining condition due to decay and recommended their removal and replacement. Tree removal permits #745-24 and #746-24 were administratively approved on July 11th, 2024. The arborist report was silent on trees assigned permits #747-24 and #748-24.

On July 17th, 2024, the applicants notified the City that they wanted to rescind tree removal permit #748-24. This tree is on a neighbor's property to the north and encroaches areal space in the north-west corner of the applicants' backyard. On July 18th, 2024, the City was notified that tree work was done on the applicants' property. This work appears to have included heavily pruning the tree assigned removal permit #747-24.

Tree removal permit #747-24, is located on the east side of the applicants' home and was applied for as a Type B permit. However, no necessary evidence was provided to support the claim that the condition of the tree is potentially dangerous to life or property. The application did not include information regarding the tree's size, type or distance from the applicants' structure. The City Administrator confirmed it is a maple tree, greater than 10" DBH, growing approximately 10' from the applicants' home. Tree removal #747-24 was administratively rejected as a Type B permit and was scheduled for appeal at the August 6th, 2024, Planning Commission meeting as a Type E permit. The City did not require additional fees. The applicants' Type 2 answers state the tree is 2' from their home's siding. It may have been prior to pruning but this is no longer the case.

On July 26th, 2024, the City Administrator posted a public notice of land use action at the applicants' property and on the City's website. Notices of a land use action were delivered to all properties within 300' of the applicants' property on the same day. While walking back to City Hall, the City Administrator spoke with the applicants' neighbors, Dave Potter and Lauren Marrone. They were upset by the information contained in the public notice, as they believe the tree is, at least in part, located on their property. They expressed concern that if tree removal permit #747-24 is approved it will impact the health of a maple tree on their property. Their maple tree is located approximately 2' and has intermingled roots. On August 1st, 2024, Mr. Potter and Ms. Marrone submitted written correspondence of their concerns to the City. Their letter states that, should the maple tree on their property be damaged due to the removal of tree permit #747-24, they will hold all parties accountable under Oregon law.

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' request removal of one maple tree greater than 10" Diameter Breast Height (DBH).
- The applicants did not provide evidence of the tree's potential danger or damage it has, or may cause, to their property.
- The application did not include information regarding the size or condition of this tree.
- No arborist report was submitted pertaining to tree removal permit #747-24.
- Tree removal permit #747-24 was applied for as a Type B permit, but the City Administrator determined that it did not fit the criteria. The permit is being forwarded on appeal to the Planning Commission as a Type E tree removal, a Type 2 process, at no additional cost to the applicants.
- The tree does not meet the criteria of any other permit type based upon the information provided by the applicants.

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 non-emergency tree removals.

FACTS & ANALYSIS

- The tree removal application is on the agenda for the August 6th, 2024, meeting of the Planning Commission.
- The City has published, posted, and delivered the Public Notice to affected persons as of July 26th, 2024.
- The City received written issues concerning the tree removal on August 1st, 2024, from neighbors Dave Potter and Lauren Marrone.

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: Arborist Report has not been obtained at this time. The tree is very proximal to the home and has the potential to cause extreme damage and concern since it is located within 2 ft from the siding of our house. The tree's life and health are unknown. It is known that these trees were not maintained and have not been trimmed or maintenance for over 25 years.

STAFF COMMENT: Staff are unable to comment on the tree's true condition as no arborist report pertaining to this tree was provided. The City Administrator believes the tree to be a big leaf maple that appears healthy. The main trunk of the tree is approximately 10' from the applicants' structure and it has recently been heavily pruned away from the applicants' structure. No evidence supporting the potentially hazardous nature of the tree to people or property was provided.

Criteria B: Not applicable

Criteria C: There is still extensive canopy coverage from other trees. The other elements asked will not be a concern as we will be maintenance our back yard, leveling and recorrecting the slope and grade as it was not maintained by the previous owner.

STAFF COMMENT: The lot is essentially flat and removing the tree is unlikely to impact erosion, soil retention, stability of earth, or flow of surface water. It is unknown what windbreak impacts removing this tree could have. The applicants' neighbors are concerned that removing the tree could potentially impact the health of their nearby maple tree with intermingled roots. Removing this tree would add to the imbalance between shade and open space caused by extensive tree work contracted by the applicants between April 1st, 2024, and July 18th, 2024.

Criteria D:

- a. The multitude of trees will still be near, on our residential lot and around the neighborhood to hold their beauty.
- b. Does the tree have a distinctive character? Is it the only tree remaining tree on the property? Is the tree an Oregon white oak (*Quercus garryana*)? No
- c. Would removing the tree change the neighborhood skyline, as viewed from all public streets and properties within 300 ft. of the property? No
- d. Does the tree serve as a visual screen between a residential zone and an abutting non-residential zone or major arterials? No
- e. Is the tree greater than 50% of a stand of trees? Unknown.

Criteria E: Unknown at this time as our landscaping and site improvements have not been rendered.

STAFF COMMENT: Type E permits do require mitigation. If the Planning Commission approves the removal, it can decide what would be sufficient mitigation for the replacement of the tree.

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 #747-24 be denied.

OR

2) I move that tree removal #747-24 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(s) 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(s) notify City Hall and that the failing tree be replaced.

D. Within 60 days of the second anniversary of planting property owner(s) must request a final inspection of the mitigation planting. The permit will not be finalized until all the conditions are complied with and the final inspection requested.