



City of Durham

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Jordan Parente - City Administrator

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STAFF REPORT: NOVEMBER 27th, 2024; UPDATED DECEMBER 30th, 2024

APPLICATION FILE: #771-24 & 772-24

REQUEST: Approval to remove two Douglas-fir trees 25” and 45” diameter breast height (DBH) from the applicant’s front yard.

OWNER/APPLICANT: Mark Mavromatis
17485 SW Rivendell Drive
Durham, OR 97224

SITE LOCATION: 17485 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 December 3rd, 2024, the six Planning Commissioners in attendance unanimously approved tree removal permits 769-24 and 770-24, however the decision to deny tree removal permits 771-24 and 772-24 was tied 3-3, and did not pass. The Planning Commission elected to bring the issue forward to the following meeting in January.

On November 6th, 2024, two tree removal applications 771-24 and 772-24 were received from the applicant, Mark Mavromatis, for the property located at 17485 SW Rivendell Drive. The applications were accompanied by three other tree removal applications (768-24-770-24), which have now been approved. The request to remove one 19” DBH cherry tree from the applicant’s back yard was expedited as an administrative approval under tree removal permit 768-24 because it was obviously dead. The applications to remove two Douglas-fir trees 34” and 38” diameter breast height (DBH) were approved by the Planning Commission on December 3rd, 2024.

Tree removal permits 771-24 and 772-24 are submitted as Type “B” applications for a 25” and 45” DBH Douglas-fir trees in the applicant’s front yard. The applicant submitted arborist reports stating that the trees are lifting the driveway and that cutting the roots to repair the driveway would impact the health of the tree, if they choose to replace the driveway. For this reason, he is recommending the removal of these two trees. The reports state that the crowns and trunks of the trees look strong and healthy. The applicant does not provide alternate solutions to repair the damage from the tree roots lifting the driveway that would preserve the trees.

On November 20th, 2024, the City Administrator posted a public notice of land use action at City Hall and on the City’s website. The same day, notices were delivered to all property within at least 300’ of the applicant’s property. On December 6th, 2024, the City Administrator delivered

and posted notice regarding the Planning Commission’s decision to approve tree removals 769-24 and 770-24 and to revisit the decision for tree removal applications 771-24 and 772-24. The tree removal applications are scheduled to be heard at the regular meeting of the City of Durham Planning Commission on January 7th, 2025.

FACTS, ANALYSIS & FINDINGS

1. DDC Chapter 5 Tree Protection, Section 5.4.2

Type “B” Permit. Trees that are dangerous or potentially destructive to public or private property may be approved by a Type 1 process. When it cannot be determined readily that a tree poses a potential for being dangerous or destructive, approval may be conditioned upon evaluation by a certified arborist or appealed to the Planning Commission upon a payment of the appeal fee. For an approved Type “B” permit no mitigation is required.

FINDINGS

- The applicants’ Douglas-fir trees 25” and 45” DBH are proposed to be removed under Type “B” tree removal permits #771-24 and 772-24.
- The applicant provided arborist reports recommending the removal of the trees.
- Type “B” permits do not require mitigation, but the Planning Commission, as the decision maker, can require mitigation when the replacement of the canopy of large, healthy trees is worthy of being replaced. The arborist reports recommend tree varieties for mitigation.

FINDINGS: The Planning Commission finds that (these tree removal permits are/are not a Type B permit type).

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 removal.

FACTS & ANALYSIS

- The City Administrator administratively approved 768-24, a dead cherry tree, as a Type 1 process, but did not find the four remaining applications to be deemed as an emergency.
- The decision to deny the tree removal applications on December 3rd, 2024, meeting of the Planning Commission was tied 3-3 and did not pass and were to be revisited in January.
- The tree removal applications are on the agenda for the January 7th, 2025, meeting of the Planning Commission.
- The City has published, posted, and delivered Public Notices to affected people as of November 20th, 2024.

FINDINGS

FINDINGS: The Planning Commission finds that (this (these) permit application(s) has/has not been processed as 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 arborist reports that the two trees have strong trunks and crowns with no signs of dead or dying branches or excessive thinning.

STAFF COMMENT: The arborist states the roots of trees assigned removal 771-24 and 772-24 are seriously damaging the concrete in the driveway... causing a tripping hazard. The Planning Commission may decide if they find this warrants the removal of healthy Douglas-fir trees, 25" DBH and 45" DBH, or if other actions to mitigate the damage can be taken that would preserve these trees.

Criteria B:

The arborist reports states: "if the customer decides to re concrete the driveway (then) they would need to dig at a depth of no less than 1 foot".

STAFF COMMENT: The applicants verbally told City staff they recently purchased the home and would like to make improvements, however, have not applied for any building or construction permits that necessitate tree removal.

Criteria C: The application did not address this section.

STAFF COMMENT: The removal of four large Douglas-firs would increase the amount of light to the area. The removal of these trees, as a windbreak, could negatively affect nearby trees, such as those on the City's treed lot.

Criteria D: The application did not address this section.

STAFF COMMENT: The tree assigned removal permit 772-24 is 45" DBH, which may be considered significant to the characteristics of the neighborhood.

Criteria E:

The arborist reports recommend replacing the trees that the applicant would like removed with: Western Red Cedar and a Fastigiata White Pine.

STAFF COMMENT: These trees are on the approved mitigation list. The arborist proposes planting 3’ trees, however, 6’ mitigation trees are required.

Criteria F:

The arborist does not report the trees are diseased.

Criteria G: Neither of the two Douglas-fir trees are dead.

FINDINGS

Based upon the category of a Type “B” 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 removals 771-24 and 772-24 be denied.

OR

2) I move that tree removals 771-24 and 772-24 be approved with the condition(s) that: _____ (please add the following conditions if you vote to approve and require mitigation):

A. _____ tree(s) will be planted as mitigation. This (these) 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 permit approval. An additional 60-day extension may be requested. Property owner(s) must inform City Hall when the tree(s) is (are) planted.

C. Any mitigation planting(s) that fail within two years of the date of planting(s) requires that property owner(s) notify City Hall and that the failing tree(s) be replaced.

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