



City of Durham

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Jordan Parente - City Administrator

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STAFF REPORT: DECEMBER 30th, 2024

APPLICATION FILE: #776-24, 777-24 & 778-24

REQUEST: Approval to remove three Douglas-fir trees 27", 37" and 46" diameter breast height (DBH) from the applicant's lots.

OWNER/APPLICANT: David Weekly Homes
1905 NW 169th Place – Suite 102
Beaverton, OR 97006

SITE LOCATION: 17425 & 17437 SW Cambridge 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 November 5th, 2024, the City was contacted by the Land Development Manager for David Weekly Homes (DWH), Dave Cady, regarding the removal of three Douglas-fir trees 27", 37" and 46" diameter breast height (DBH) on lots 9 and 10 at Durham Heights (17425 and 17437 SW Cambridge Lane).

Mr. Cady told the City Administrator that the three trees were originally permitted to be removed during development under the development's Type "G" permit 678-23 but were then preserved. DWH has since applied to build two homes at 17425 and 17437 SW Cambridge Lane. It is the opinion of their arborist, Todd Prager, that the three trees are too close to the building envelopes and their roots would be disturbed through the building process, causing the eventual decline and failure of the trees.

The Durham Heights Development was permitted to remove 498 trees under tree removal permit 678-23 and 170 were "preserved". No mitigation was required under this permit. The City Administrator informed Mr. Cady that the permit to remove these trees was issued to another party and only valid for 6 months but that he may apply for Type "C" permits.

On November 18th, 2024, three tree removal applications (776-24, 777-24 and 778-24) were received from Mr. Cady, along with an arborist report from Todd Prager and Associates. At the December 3rd, 2024, meeting of the Planning Commission, the City Administrator reported DWH's intent to remove three Douglas-fir trees to build two homes. However, the City Administrator subsequently received a legal opinion from the City Attorney that the applications should be Type "G" permits. The City Administrator notified Mr. Cady that the applications would be decided by the Planning Commission at the January meeting. Type "G" permits require mitigation, which the applicant is amiable to providing.

On December 30th, 2024, the City Administrator posted a public notice of land use action at City Hall and on the City’s website. 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 5.7

Type “G” Permit. For Previously Undeveloped Property.

FACTS AND ANALYSIS:

- *17425 and 17437 SW Cambridge Lane are newly created lots 9 and 10 of Durham Heights development.*
- *Three Douglas-fir trees 27”, 37” and 46” diameter breast height (DBH) were permitted to be removed under tree removal permit #678-23 but were preserved.*
- *DWH applied to build homes at 17425 and 17437 SW Cambridge Lane and were informed by their arborist Todd Prager that the three fir trees would be compromised through the course of construction.*
- *The City Attorney informed the City Administrator the permit should be a Type “G”.*

FINDINGS: The Planning Commission finds that (these tree removal permits are/are 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 (these permit applications should/should not be processed as a Type 2 process.)

3. 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 people 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 applications are on the agenda for the January 7th, 2025, meeting of the Planning Commission.
- No notices were delivered since all homes within 300’ are owned by the applicant.
- The City has published and posted Public Notices as of December 30th, 2024.

FINDINGS

FINDINGS: The Planning Commission finds that (this (these) permit application(s) 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:

- *Tree removal permit 678-23 was issued to the developer of Durham Heights, Durham Land Holdings.*
- *The three Douglas-fir trees, 776-24, 777-24 and 778-24, were approved for removal under permit 678-23 but these trees were not removed.*
- *Permit 678-23 had a tree preservation plan from arborist Todd Prager and Associates. The tree removal permit is only valid for 6 months.*
- *The applicants did not provide a full tree preservation plan but drawings showing fencing around neighboring trees.*
- *At this phase of the Durham Heights development, the removal of these trees is like that of a developed property, which does not require tree preservation plans.*

STAFF COMMENT: The lots are vacant, and with basic precautions, the Planning Commission may find that a full tree preservation plan is not necessary to safely remove these three trees.

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

5. DDC Chapter 9 Procedures, Section 9.6 Type 2 Process & Criteria

5.7.2 An applicant shall attempt to preserve existing trees on a site by varying the site design, as provided 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 the same provided to the City;

5.7.2.8 Repair any damage to a preserved tree in a timely manner;

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:

- *Arborist Todd Prager now recommends the removal of the three Douglas-fir trees, 776-24, 777-24 and 778-24 because their root zone will be impacted by the construction of the two homes located at 17425 and 17437 SW Cambridge Lane.*
- *The two lots are 5,029 square feet and the three trees encroach into the allowable building envelopes.*
- *The proposed building footprints are 2,240 square feet and 2,069 square feet, respectively.*

STAFF COMMENT: The Planning Commission may decide if the applicant shall continue to preserve plan should not be necessary to remove these three trees.

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

6. DDC Chapter 9 Procedures, Section 9.6 Type 2 Process & Criteria

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 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:

- *498 trees were permitted for removal under permit 678-23, including these three trees and 170 were "preserved"; the City did not require mitigation.*
- *Preserved trees in good condition are granted 200% canopy credit.*
- *As Type "G" tree removal applications, these trees require mitigation.*
- *The applicant would like to mitigate these three trees by replacing them with trees of a similar sized canopy.*

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.

- 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: Not applicable

Criteria B: The reason for the removal of these trees is to improve the vacant property with a new structure.

Criteria C: The application did not address this section.

STAFF COMMENT: The removal of three large Douglas-firs would have little impact on soil retention. The removal of these trees, as a windbreak, may negatively affect nearby trees and removing three mature trees will result in less water overland water being absorbed.

Criteria D: The application did not address this section.

STAFF COMMENT: The development was mostly clear cut within the parameters of the City's tree ordinance.

Criteria E: The applicants have expressed that they are willing to mitigate for the removed trees.

Criteria F: The arborist does not report the trees are diseased.

Criteria G: None of the three Douglas-fir trees are 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

- 1) I move that tree removals 776-24, 777-24 and 778-24 be denied.

OR

- 2) I move that tree removals 776-24, 777-24 and 778-24 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.