



City of Durham

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Jordan Parente - City Administrator

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STAFF REPORT: JANUARY 27, 2025

APPLICATION FILE: #779-24, 780-24, 781-24 & 782-24

REQUEST: Approval to remove four Douglas-fir trees 40", 22", 26" and 16" diameter breast height (DBH) from the applicant's yard.

OWNER/APPLICANT: Robert Kroessin
7875 SW Ellman Lane
Durham, OR 97224

SITE LOCATION: 7875 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

On December 19, 2024, four tree removal permit applications were received from the applicant, Robert Kroessin, for the property located at 7875 SW Ellman Lane. The property is located adjacent to the Heron Grove neighborhood, is slightly larger than 1 acre and is home to more than 4 dozen large trees. On November 25, 2024, Mr. Kroessin applied to remove a potentially dangerous Douglas-fir tree that had been hit by lightning (774-24), which was administratively approved. Mr. Kroessin also applied to remove a dead big leaf maple (775-24). The arborist that removed the two trees walked Mr. Kroessin's property and noted four Douglas-fir trees 40", 22", 26" and 16" diameter breast height (DBH) with fungal spores (*porodaedalea pini*). The arborist recommended Mr. Kroessin prioritize removing these four trees. This was confirmed by other arborists Mr. Kroessin had bid on the removal. Mr. Kroessin submitted four Type "A" tree removal applications for "diseased or dying trees". The City Administrator walked the property and observed the noted fungal spores on the four Douglas-fir trees, the largest of which has a split trunk that is cabled together. The applicant did not submit arborist reports.

On January 21, 2025, the City 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 properties within at least 300' of the applicant's property. The tree removal applications are scheduled to be heard at the regular meeting of the City of Durham Planning Commission on February 4, 2025.

FACTS, ANALYSIS & FINDINGS

1. DDC Chapter 5 Tree Protection, Section 5.4.1

Type “A” Permit. Trees that are dead or diseased shall be reviewed and approved under a Type 1 process. In instances it cannot be determined readily that a tree is diseased beyond recovery, or that measures cannot be taken to restore the tree’s health, approval may be conditioned on an evaluation by a certified arborist or appealed to the Planning Commission upon a payment of the appeal fee. For an approved Type “A” permit no mitigation is required.

FINDINGS

- The applicants’ Douglas-fir trees 40”, 22”, 26” and 16” DBH are proposed to be removed under Type “A” tree removal permits #779-24, 780-24, 781-24 and 782-24.
- Durham’s tree ordinance prescribes multiple tree removals to be appealed to the Planning Commission for consideration. No additional fee was required.
- Type “A” 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 applicant did not provide arborist reports.

FINDINGS: The Planning Commission finds that (these tree removal permits are/are not a Type A 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 tree removal applications are on the agenda for the February 4, 2025, meeting of the Planning Commission.
- The City has published, posted, and delivered Public Notices to affected people as of January 21, 2025.

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 trees all have visible fungal conks (*porodaedalea pini*) on the trunks. Neighboring homes are in the potential target zone of three of the four trees.

STAFF COMMENT: The largest tree (779-24) has a 40" DBH trunk that has split into two leads that are cabled together. Neighboring homes are located within the target zone of this tree.

Criteria B:

Not applicable.

Criteria C: The application did not address this section.

STAFF COMMENT: The removal of four large Douglas-firs would increase the amount of light, which is beneficial to neighboring trees that are densely located. The removal of these trees, as a windbreak, may negatively affect nearby trees, however, this is unlikely given the number of trees on the applicant's property.

Criteria D: The application did not address this section.

STAFF COMMENT: The applicant states he does not wish to remove trees from his heavily canopied property but is doing so to prevent his trees from striking neighboring properties.

Criteria E:

The applicant does not mention mitigation in his tree removal application. Type "A" permits do not require it, but the Planning Commission, as the decision maker, may ask for mitigation.

STAFF COMMENT: The Planning Commission may wish to waive mitigation given the density of existing canopy on the applicant's property.

Criteria F:

The applicant states he has been told by multiple arborists that trees are diseased and fungal spores (*porodaedalea pini*) of various sizes are visible on all four trees. No arborist report has been provided.

Criteria G: None of the four Douglas-fir trees are dead.

FINDINGS

Based upon the category of a Type “A” 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 779-24, 780-24, 781-24 and 782-24 be denied.

OR

2) I move that tree removals 779-24, 780-24, 781-24 and 782-24 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.