

FINDINGS OF FACT and FINAL ORDER TYPE I REVIEW

DATE: October 20, 2023

FILE NO.: 23-040 TREE

PROJECT NAME: 37344 American Street Tree Removal
(Parcel 2 of Partition Plat No. 2019-060)

APPLICANT/OWNER: Christopher Foster

ADDRESS: 37344 American Street

ZONING: Single Family Residential (SFR)

PROPOSAL: Remove 2 Doug firs in compliance with requirements of Section 17.102, Urban Forestry.

BACKGROUND

In 2018, the Planning Commission approved a 9-lot subdivision named Jewelberry Ridge. The property consisted of 2.33 acres of land and a Tree Inventory was completed and submitted with their application. The arborist's inventory consisted of close to 300 trees and staff recommended that sixteen (16) trees be considered for retention. The retention of these 16 trees became a condition of approval. In 2019, after the site was cleared, a third-party arborist came to assess the condition of these trees and determined that they were viable candidates for retention. However, they went on to say they are susceptible to windthrow and/or branch failure now that the surrounding trees are removed. They recommended proactive pruning prior to construction and have a root protection zone. In addition, they should have annual monitoring post construction for at least 5 years.

EXHIBITS

Applicant's Submittals

- A. Land Use Application
- B. Tree Health Report from Tyler Hughes, Certified Arborist, #PN-9647A
- C. Pictures

Additional Documents Submitted by Staff

- D. Arborist Report by Portland Tree Consulting (2018)
- E. Oregon Tree Care (2019)
- F. Jewelberry Ridge - Tree Inventory by Teragan and Associates (2022)

FINDINGS OF FACT

1. Section 17.102, Urban Forestry, applies to properties within the Sandy Urban Growth Boundary that are greater than one acre in area (including contiguous parcels under the same ownership). The site is less than one acre; however, the proposal is part of Jewelberry Ridge Subdivision's tree retention plan so it shall be processed under Section 17.102, Urban Forestry to determine continued compliance.
2. Section 17.102.20(A) states: "No person shall cut, harvest or remove trees 11 inches DBH or greater without first obtaining a permit and demonstrating compliance with this chapter." Section 17.102.80 specifies that violations of this section are subject to enforcement procedures contained in Chapter 17.06, specifically Section 17.06.80. Tree removal or native vegetation removal without permit authorization may result in a fine as specified in Section 17.06.80. The applicant is seeking to remove two (2) hazardous Douglas firs from Parcel 2 of Partition Plat No. 2019-060. The applicant hired certified arborist Tyler Hughes to evaluate the two Douglas firs (Exhibit B). Mr. Hughes states that the trees are 28 inches DBH and 10 inches DBH and that the root systems were damaged from past construction and are suffering from root compaction. He also stated that the decaying roots are on the north side of the trees and is causing the tree to uproot and lean heavily towards the house. The recommendation from Mr. Hughes is to remove both trees as they are prone to fail and are a hazard to the house and potentially to people nearby.
3. Section 17.102.30(A) details the procedures and application requirements for Type I tree removal permits. The proposal is considered a Type I permit because fewer than 50 trees will be removed. The applicant was previously granted permission to remove hundreds of trees and retain sixteen trees subject to the conditions in land use file 18-014 SUB VAR/TREE Jewelberry Ridge Subdivision.
4. The two trees proposed for removal are part of sixteen (16) trees that were required to be retained and protected. They are included in the Restrictive Covenant for the subdivision under recorded document #2022-036386. **The applicant shall record a covenant that modifies the covenant that is already recorded, detailing the removal of the two retention trees and the location and species of the four mitigation trees. The City has a template the applicant can use and staff shall review the covenant prior to recording. This shall occur within one (1) year of the removal of the hazardous trees.**
5. Section 17.102.60 specifies that all areas with exposed soils resulting from tree removal be replanted. **The land use application did not indicate if the stumps will be removed or left in place. Per Section 17.102.60(A), all areas of exposed soils resulting from tree removal shall be replanted with a groundcover of native species within 30 days of harvest during the active growing season, or by the 1st of June of the following year.**

Per Section 17.102.60(C), removal of hazard trees as defined shall be replanted with two native trees of quality nursery stock for every tree removed. **The applicant shall submit information on the proposed species, size, and location of the four (4) mitigation trees for staff review and approval. The mitigation trees shall be planted within one (1) year of the removal of the hazardous trees, between the months of October and March. The**

mitigation trees shall be a minimum of 5 feet in height at time of planting or at least 1.5 inches caliper measured at six inches above the ground and planted per the City of Sandy standard planting detail. If the mitigation trees are staked, the applicant shall use loosely tied twine to tie the trees to the stake and the twine shall be removed after one year from being planted. The applicant shall aerate soils prior to planting the mitigation trees.

6. If the trees are removed during prime nesting season (February 1- July 31), **the applicant shall check for nests prior to tree removal. If nests are discovered, the applicant shall delay tree removal until after the nesting season or shall hire a professional to relocate the nests to an appropriate nearby location, provided the species using the nest is not invasive.**

DECISION

The proposal to remove two (2) Douglas Firs was determined to comply with the standards of Section 17.102, Urban Forestry and is hereby **approved with conditions.**

CONDITIONS OF APPROVAL

A. The applicant shall plant four (4) mitigation trees with the following conditions:

1. The trees removed shall be limited to the two (2) trees as indicated on the application.
2. Submit information on the proposed species, size, and location of the four (4) mitigation trees for staff review and approval.
3. The mitigation trees shall be planted within one (1) year of the removal of the hazardous trees, between the months of October and March.
4. The mitigation trees shall be a minimum of 5 feet in height at time of planting or at least 1.5 inches caliper measured at six inches above the ground and planted per the City of Sandy standard planting detail. If the mitigation trees are staked, the applicant shall use loosely tied twine to tie the trees to the stake and the twine shall be removed after one year from being planted. The applicant shall aerate soils prior to planting the mitigation trees.
5. Per Section 17.102.60(A), all areas of exposed soils resulting from tree removal shall be replanted with a groundcover of native species within 30 days of harvest during the active growing season, or by the 1st of June of the following year.
6. The applicant shall check for nests prior to tree removal. If nests are discovered, the applicant shall delay tree removal until after the nesting season or shall hire a professional to relocate the nests to an appropriate nearby location, provided the species using the nest is not invasive.

7. The applicant shall record a covenant that modifies the covenant that is already recorded, detailing the removal of the two retention trees and the location and species of the four mitigation trees. The City has a template the applicant can use and staff shall review the covenant prior to recording. This shall occur within one (1) year of the removal of the hazardous trees.
8. Successors-in-interest of the applicant shall comply with requirements of this final order. In the event the applicant should sell or lease the property upon which the condition contained in this document apply, the sale or lease will be subject to the restrictions and conditions described herein. The conditions shall run with the land and are binding on applicant's heirs, personal representatives, successors and assigns.
9. Activity within the right-of-way (e.g., staging, etc.) requires a separate right-of-way permit through the Public Works Department.
10. Future tree removal from the subject property shall require additional permit approvals.



Patrick Depa
Senior Planner

RIGHT OF APPEAL

A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal with the Director within twelve (12) days of notice of the decision. The notice of appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain at least the following:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 17.28.50;
5. Payment of required filing fees. Payment of required filing fees is jurisdictional and must accompany an appeal at the time it is filed;
6. The name and mailing address of the person or entity appealing the decision; and
7. List and two sets of mailing labels for property owners within 300 feet of the subject property (for appeal of a Type I decision), 500 feet of the subject property for appeal of a Type II, III, or IV decision, or 1,000 feet for appeal of an annexation request. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal.