

STAFF REPORT
CITY OF LAKE OSWEGO

PLANNING DIVISION

APPLICANT/OWNER:

Renaissance Custom Homes LLC

FILE NO:

AP 18-02 (TR 499-17-04630)

TAX LOT REFERENCE:

21E04BB04300

STAFF:

Ellen Davis

LOCATION:

13132 Thoma Rd

DATE OF REPORT:

February 9, 2018

COMP. PLAN DESCRIPTION:

R-7.5

Date of Hearing:

February 20, 2018

ZONING DESIGNATION:

R-7.5

NEIGHBORHOOD ASSOCIATION:

Forest Highlands

I. APPLICANT'S REQUEST

The applicant is requesting approval to remove 11 trees under a Type II tree removal permit in order to construct a new single-family dwelling.

II. TENTATIVE STAFF DECISION / REQUEST FOR HEARING AND APPEAL

On January 23, 2018, staff approved the applicant's request to remove 11 trees as part of a Type II tree removal application (TR 499-17-04630), subject to the following conditions of approval:

1. Prior to the final building inspection for the new dwelling, the applicant/owner shall plant 11 mitigation trees on site, nine of which shall be native species selected from the City's Master Plant List.

On January 29, 2018, Kristen Benkstein and Leah Puhlman filed a request for public hearing on the application (Exhibit A-1). Pursuant to LOC 55.02.085, the Development Review Commission (Commission) shall hold a public hearing on this request.

III. APPLICABLE REGULATIONS

A. City of Lake Oswego Tree Code [LOC Chapter 55]:

LOC 55.02.080

Criteria for Issuance of Type II Tree Cutting Permits

LOC 55.02.084
LOC 55.02.085
LOC 55.02.094

Mitigation Required
Request for Public Hearing on a Type II Tree Cutting Permit
Conditions of Approval for Tree Cutting Permits

IV. FINDINGS

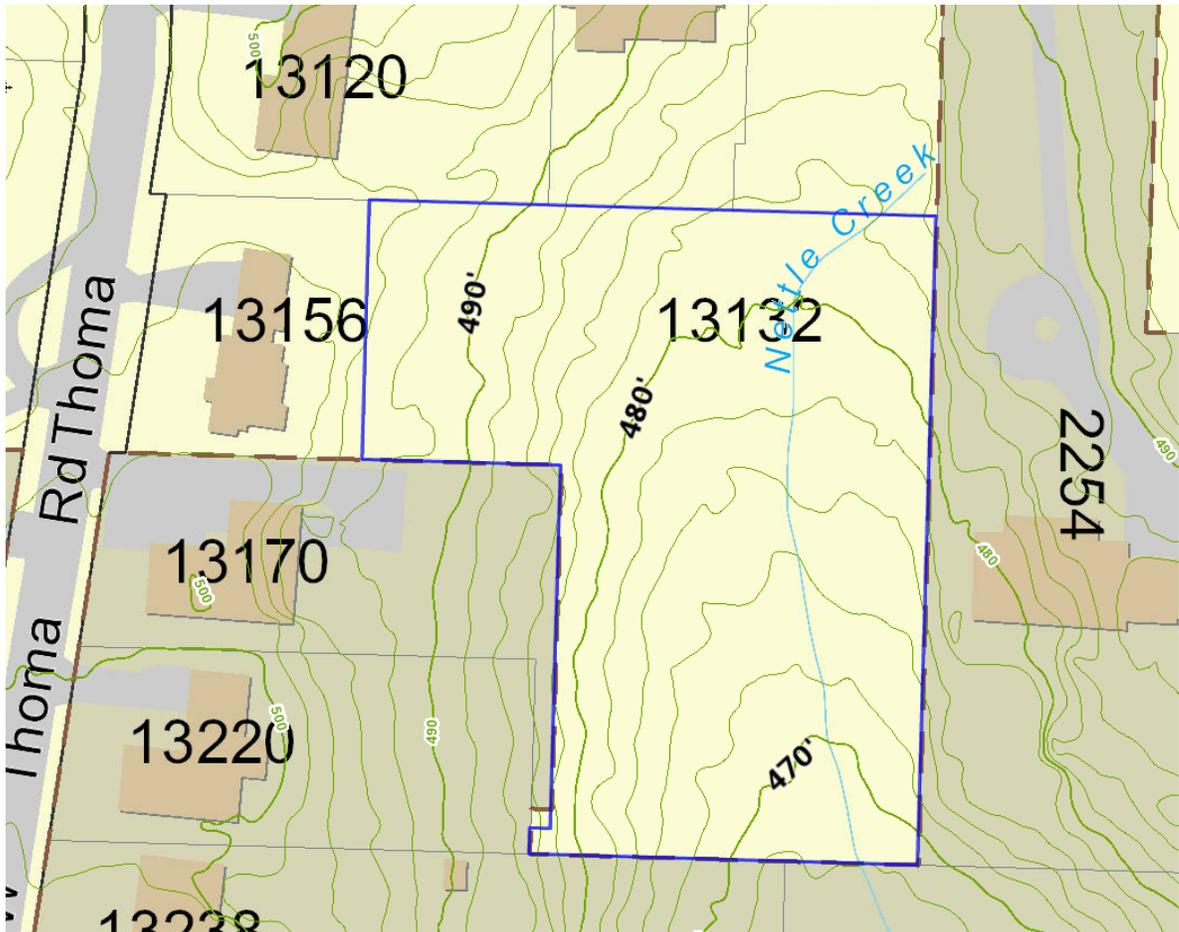
A. Background/Existing Conditions:

1. The site is approximately 62,290 square feet in size. The site is a flag lot created by the minor partition in 2014 (LU 14-0024).



2. The site is zoned R-7.5 and is currently vacant. A building permit for a proposed single-family dwelling on this site is currently under review (BP 499-17-04632).
3. The tree removal application shows that there are 16 trees located on the site and three trees on the north property line that are six inches in diameter or greater (Exhibit E-3). Eleven trees are proposed for removal under the Type II application 499-17-04630; five trees located on or near the site are not proposed to be removed and are addressed by Tree Protection Plan 499-17-04627 (Arborist Report, Exhibit E-3).

- The site slopes down from the northwest to the southeast, with an elevation of approximately 494 feet at the northwest corner and an elevation of approximately 468 feet at the southeast corner (see contours, below).



C. Compliance with Criteria for Approval

Type II tree removal applications must comply with the following approval criteria in LOC 55.02.080:

- The tree is proposed for removal because it has outgrown its landscape area or the removal is part of a landscape plan, or in order to construct development approved or allowed pursuant to the Lake Oswego Code or other applicable development regulations.*

Staff finds that this criterion is met when:

- (a) Tree has outgrown landscape area.

Not applicable.

- (b) The tree is removed as part of a landscape plan; or

Not applicable.

- (c) Proposed Development: The trees proposed for removal are within the proposed development area by the applicant or additionally as conditioned for development approval; whether an alternative development analysis is required is addressed in Criterion #3. [See Kash Investments, LU 17-0005; Mission Homes NW, LU 17-0016; Blue Palouse Properties LLC, TR 499-17-02043, AP 17-05].

The tree removal is requested for development purposes, to construct one new single-family dwelling on the site. Eight trees proposed for removal are located within or near the footprint of the proposed development. Three trees (#14 - 38" DBH Bigleaf maple, #15 - Apple, #24 - 11" Bigleaf maple) are in poor condition (Exhibit E-3). Single-family dwellings are permitted outright in the R-7.5 zone.

Staff finds that this criterion is met.

2. *Removal of the trees, considering proposed mitigation measures, will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks;*

Erosion:

A Tree Removal Permit for development purposes is only issued with the associated building permit. Therefore, any erosion resulting from removal of the tree is necessarily addressed as part of the construction of the dwelling in the area where the tree is currently located. Erosion control measures are required for construction of the proposed single family residence. City staff must review and approve the proposed erosion control measures prior to issuance of the building permit and tree removal permit. With the erosion control requirements of construction, staff finds that removal of the 11 trees will not have a significant negative impact on erosion.

Flow of Surface Waters:

Nettle Creek is located on this site. The property slopes down from northwest to southeast. A Tree Removal Permit for development purposes is only issued with the associated building permit. Therefore, any impacts from removal of the trees on the flow of surface waters is necessarily addressed as part of the construction of the dwelling in the area where the tree is currently located. Stormwater management is required for construction of the proposed single family residence, as a "large" project. The stormwater management plans are still under review, however, City staff must review and approve the proposed stormwater plans prior to issuance of the building permit and tree removal permit. With the stormwater requirements of construction, staff finds that removal of the 11 trees will not have a significant negative impact on flow of surface waters.

Protection of Adjacent Trees or Existing Windbreaks:

Removal of the 11 trees will not negatively impact protection of the adjacent trees because they are all located to the north and east of the nearest trees on the neighboring property and do not provide a windbreak from winds from the southwest. Because the trees proposed for removal are not located in close proximity to any trees proposed to remain (Exhibit E-3), nor are they located to provide a windbreak against storm winds from the southwest for any trees proposed to remain, removal of the 11 trees will not have a significant negative impact on adjacent trees or existing windbreaks.

For these reasons, staff finds that removal of the two trees will not have significant negative impacts to erosion, soil stability, flow of surface waters, or protection of adjacent trees. This criterion is met.

3. *The removal will not have a significant negative impact on the character or aesthetics of the neighborhood. This standard is met when removal of the trees does not involve:*

The applicant has the burden of showing the proposed removal does not involve any of the five classifications of trees listed in Criterion #3. If the applicant does not meet that burden, then the applicant has not met Criterion #3 and the applicant would have to show that one of the two exceptions to meeting Criterion #3 applies.

- *A significant tree (defined as a healthy, noninvasive tree over 15" DBH that is considered significant to the neighborhood due to size, species, or distinctive character, or the only remaining tree on the property);*

Element #1 – Healthy:

The applicant has submitted an arborist report, which includes the condition of each tree proposed for removal (Exhibit E-3). According to the arborist report, trees #6-11 and #25 are in fair condition, trees #14-16 and #24 are in poor condition. "Poor condition" is not considered to be "healthy."

Element #2 – Noninvasive:

The species of trees proposed for removal are Apple, Bigleaf maple, Douglas fir, Pear, and Western red cedar. These species are not listed on the Invasive Tree Species List.¹

Element #3 – Over 15" DBH:

Trees #6-11, #14, and #25 exceed 25" DBH; Trees #15, #16 and #24 are less than 15" DBH (Exhibit E-3).

Seven trees (#6-11 and #25) would potentially qualify as a "significant tree" for purposes of analysis of Element #4. Trees #14 (not healthy), and #15, #16 and #24 (≤ 15 " DBH) would not qualify as a "significant tree" for purposes of analysis of Element #4.

Element #4: Significant to neighborhood due to:

a. Size:

The question for this part of Element #4 is whether any specific tree that also meets Elements # 1- 3 is significant to the neighborhood because of its size. This element requires examination of the neighborhood in which the specific tree is located, to determine whether its removal would be significant because of the tree's size. The Commission has interpreted this part of Element #4 as requiring an examination of the relative size of the tree in relation to other trees in the neighborhood. For example, a 45" tree would not itself be significant to a neighborhood where there are many other similar large diameter trees in the neighborhood, and where its removal would not diminish the perception of such large trees in the neighborhood. For a tree's size to be "significant" to the neighborhood, its absolute size must be considered in context with the size of trees in the neighborhood.

1

http://www.ci.oswego.or.us/sites/default/files/fileattachments/trees/webpage/24966/invasive_tree_species_list_rev07-11-14.pdf?t=1501282103997

The applicant has not submitted evidence addressing the significance of trees #6-11 and #25 (30" DBH, 27" DBH, 31" DBH, 28" DBH, 17" DBH, 37" DBH and 30" DBH) to the neighborhood due to size. Because no evidence on these elements was presented, the applicant did not meet the burden of showing that the tree proposed for removal is not a "significant tree" due to size and staff therefore considered removal of a potentially "significant tree" as significant to the neighborhood due to size.

The applicant and other interested parties may submit additional evidence at the hearing on this issue for the Commission's determination.

b. Species

The question for this part of Element #4 is whether any specific tree is significant to the neighborhood because of its species. Similar to the Commission's interpretation regarding (a) above, the Commission has interpreted this element to require examination of the neighborhood in which the specific tree is located to determine whether the species of the tree proposed for removal is "significant." The Commission has found that a tree is not significant to the neighborhood based on the species alone if that type of tree is generally found within the species of trees in the neighborhood or, within the neighborhood canopy, the species does not contribute to defining the neighborhood character and aesthetics. For example, a Douglas fir proposed for removal in a neighborhood of Douglas firs is not unusual or "significant" to the neighborhood solely because of its species.

The applicant has similarly not submitted evidence addressing the significance of trees #6-11 and #25 (species: Douglas fir, Bigleaf maple, and Western red cedar) to the neighborhood due to species. The applicant did not meet the burden of showing that the tree proposed for removal is not a "significant tree" due to species and staff therefore considered removal of a potentially "significant tree" as significant to the neighborhood due to species.

The applicant and other interested parties may submit additional evidence at the hearing on this issue for the Commission's determination.

c. Distinctive Character:

The question for this portion of Element #4 is whether any specific tree is significant to the neighborhood because of its distinctive character. The Commission has interpreted this element to require, as distinct from size or species, that the tree provide distinctive character to the neighborhood, i.e., by being in a prominent location or uniquely visible at a prominent neighborhood location, such as a prominent street corner.

The applicant has similarly not submitted evidence addressing the significance of trees #6-11 and #25 to the neighborhood due to distinctive character. The applicant did not meet the burden of showing that the tree proposed for removal is not a "significant tree" due to distinctive character and staff therefore considered removal of a potentially "significant tree" as significant to the neighborhood due to species.

The applicant and other interested parties may submit additional evidence at the hearing on this issue for the Commission's determination.

Element #5: Only Tree Remaining on the Property.

Two trees located on site are not proposed for removal and are proposed to be protected under Tree Protection Plan 499-17-04627. None of the trees proposed for removal will be the only remaining tree on the property, as after removal there will be two remaining trees located entirely on the site (Exhibit E-3). Staff finds that this Element #5 is met.

Subconclusion – First subcriterion: It is the applicant’s burden to show that neither tree proposed for removal is a “significant tree.” From the application materials submitted by the applicant and the cited Exhibits above, staff finds:

- Healthy - Tree #14 is in poor condition and is considered not healthy
- Over 15” DBH - Seven trees #6-11 and #25 are greater than 15” DBH; (Trees 15, #16 and #24 are less than 15” DBH);
- Not an invasive species - None of the trees proposed for removal are an invasive species; and
- Not the only remaining tree on the property – There are two trees on the site that are not proposed for removal.

However, the applicant has not demonstrated that trees #6-11 and #25 are not significant to the neighborhood due to size, species, or distinctive character. Staff finds, based upon the submitted materials, that the applicant has not met the burden of showing that seven of the trees proposed for removal are not significant to the neighborhood due to size, species or distinctive character. Staff therefore cannot find that trees #6-11 and #25 are not “significant trees.” However, additional evidence may be presented to the Commission at the hearing on these issues for the Commission’s determination.

- *Alterations to the distinctive features or continuity of the neighborhood skyline, as viewed from all public streets and properties within 300 feet of the site;*

The applicant has not submitted evidence addressing the significance of trees #6-11 and #25 to the neighborhood as to distinctive features or continuity of the neighborhood skyline as viewed from all public streets and properties within 300 feet of the site. Staff therefore found that the applicant had not demonstrated that removal of a potentially “significant tree” was not significant to the neighborhood due to impact on the neighborhood skyline.

- *A tree that serves as a visual screen between a residential zone and an abutting non-residential zone, or between a low density residential zone and a medium or high density residential zone, or between a medium and high density zone;*

The subject site and all surrounding sites are zoned either in the City or in the County as having residential zoning. None of the trees proposed for removal serve as a visual screen between the site and an adjacent property with a different City zoning designation or adjacent property with County zoning that would be classified as medium or high density zoning². This subcriterion is met.

² The County zoning is R-20, and is designated in the City’s Comprehensive Plan as R-7.5. Upon annexation, the zoning would automatically be R-7.5 [LOC 50.01.004.5], which is classified as low density zoning [LOC 50.02.001.1.a].

- A street tree; or

None of the trees proposed for removal are street trees; they are not located within the public right-of-way or a pedestrian easement abutting a right-of-way, nor were they used to meet the street tree requirements for a prior development. This subcriterion is met.

- Greater than 50% of a stand of trees (a “stand” is defined as a group of trees of the same species or a mixture that forms a visual and biological unit at least 15 feet in height with a contiguous crown width of at least 120 feet).

Based on 2016 Aerial Imagery, it appears that less than 50% of a “stand of trees” (defined as a group of trees that forms a visual and biological unit at least 15 ft. in height with a contiguous crown width of at least 120 ft. LOC 55.02.020) extending over the subject property and neighboring properties to the south is proposed for removal (image below). This subcriterion is met.



Conclusion – Criteria #3: Because the applicant has not submitted evidence addressing the significance of the proposed removal of trees #6-11 and #25 to the neighborhood due to size, species, distinctive character and alteration to skyline, staff must assume that the proposed tree removals will have a “significant negative impact on the character and aesthetics of the neighborhood,” and therefore staff has not found Criterion #3 met.

Again, additional evidence may be presented to the Commission at the hearing on these issues for the Commission's determination.

Exceptions: This subsection (3) is not applicable when:

Because staff did not find that the applicant met the burden of showing that no "significant tree" is proposed for removal, staff next reviewed to determine if the applicant has shown that either exception to Criteria #3 is met. If, following the hearing and review of any new evidence, the Commission similarly finds that the applicant has not shown that Criteria #3 is met, then the Commission must similarly determine if either exception to Criteria #3 is met.

a. A tree is likely to or will continue to cause damage to a permanent, viable existing structure, or to infrastructure, such as utilities or paved landscape features, that cannot be remedied through reasonable tree maintenance or pruning; or

The applicant has sought removal based on proposed development, not existing development. This alternative criterion is not applicable.

b. Alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone. In making this determination, the City may consider alternative site plans or placement of structures (development purpose) or alternate landscaping designs (outgrown landscape area; landscape plan) that would lessen the impact on trees, so long as the alternatives continue to comply with other provisions of the Lake Oswego Code.

For the subject lot, the front yard building setback is 20 feet from the front property line (west) to the garage and 10 feet to the rest of the structure; the structure is proposed to be located 25 feet from the front property line. The north side yard setback is 20 feet; the structure is proposed to be located at the 20 foot setback line. The south side yard setback is 15 feet; the structure is proposed to be located 17 feet from the south property line. The rear yard setback from the east property line is 155 feet and is defined by the boundaries and construction setbacks of the protected wetland (RP District) on the site. The area outside of these setbacks on the lot is referred to as the available building envelope, within which a building footprint must be located. See Exhibit E-5 for setbacks and the location of the proposed structure within the available building envelope. The height of the proposed dwelling is 31.5 feet, which would allow a maximum lot coverage of 25%; the proposed lot coverage is 7.8%.

The building permit for the proposed dwelling has been signed off by Planning (BP 499-17-04632). Staff notes that the setbacks and lot coverage for the proposed dwelling comply with the requirements of the R-7.5 zone regulations.

If one or more of the proposed tree removals would have a significant negative impact on the character and aesthetics of the neighborhood, based upon the building permit and site plan submitted, staff finds that the house cannot be shifted within the building envelope to retain additional trees. The structure is already located at the north and east setback lines and cannot be shifted farther from the trees located in the south and west of the building envelope (Exhibit E-5). Because the structure is located as close to the north side and east wetland construction setback as allowed by the Community Development Code (LOC 50), the structure cannot be shifted away from the trees that are impacted on the west and south sides of the house (Exhibit E-5).

Staff finds that there are no reasonable alternatives available, and that the exception to meeting Criterion #3 is met.

4. *The removal is not for the sole purpose of providing or enhancing views.*

The trees proposed for removal are not being removed for the sole purpose of view enhancement because, as found in the first criterion, their removal is proposed for development purposes. Staff also finds that the proposed tree removal plan would not open up desirable views for the dwelling on this property. This criterion is met.

5. *The City shall require the applicant to mitigate for the removal of each tree pursuant to 55.02.084. Such mitigation requirements shall be a condition of approval of the permit.*

Any tree approved for removal under the Type II analysis shall be mitigated at a minimum 1:1 ratio. Mitigation trees shall be a minimum 1.5-inch caliper for deciduous trees and a minimum 6-foot height for evergreen trees. Native trees that are removed are required to be mitigated with a native tree. If the Commission approves the tree removal application, the applicant is required to plant eleven mitigation trees on the subject property, including nine native species mitigation trees. This criterion can be met.

V. STAFF RECOMMENDATION FOLLOWING CLOSE OF PUBLIC HEARING

Following the public hearing, upon the Commission’s request, staff will advise the Commission of its analysis based upon all evidence submitted whether or not the applicant has met its burden of showing that the five criteria of LOC 55.02.080 are met, or, as to Criterion #3, whether staff finds that an exception exists to compliance with that criterion.

EXHIBITS

A. NOTICE OF INTENT TO APPEAL

A-1 Request for public hearing from Kristen Benkstein and Leah Puhlman, received January 29, 2018

B - C. [No current exhibits; reserved for hearing use]

E. GRAPHICS/PLANS

- E-1 Tax Map
- E-2 Existing Features Map
- E-3 Tree Removal Application
- E-4 Site Plan
- E-5 Site Visit Photos, September 14, 2017
- E-6 Pictometry, July 14, 2016

F. WRITTEN MATERIALS

None

G. LETTERS

Neither for nor Against (G1-99)

None

Support (G100-199)

None

Opposition (G200+)

- G-200. Letter from Kristen Benkstein, received August 31, 2017
- G-201. Letter from Marty Gardner, received September 18, 2017
- G-202. Letter from Grace Wadell, received September 19, 2017
- G-203. Letter from Marty and Karol Gardner, received September 20, 2017
- G-204. Letter from Tanveer Bokhari, received September 4, 2017
- G-205. Letter from Susan Jerger, received September 2, 2017
- G-206. Letter from Leah Puhlman, received September 13, 2017

