

STAFF REPORT
CITY OF LAKE OSWEGO

PLANNING DIVISION

APPLICANTS/PROPERTY OWNERS

Tanner and Robin Halton

FILE NO.

AP 15-02 (TR 499-15-01257)

APPLICANTS' REPRESENTATIVE

Marnella Homes LLC

STAFF

Evan Fransted

TAX LOT REFERENCE

Tax Lot 3700 of Tax Map 2 1E 3DA

LOCATION

732 2nd Street

COMP. PLAN DESIGNATION

R-7.5

DATE OF REPORT

April 24, 2015

ZONING DESIGNATION

R-7.5

DATE OF HEARING

May 4, 2015

NEIGHBORHOOD ASSOCIATION

First Addition-Evergreen

I. APPLICANTS' REQUEST

The applicants are requesting approval to remove a 27-inch English walnut tree 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 April 2, 2015, staff denied the applicants' request to remove a walnut tree and approved the removal a 29-inch American chestnut as part of a Type II tree removal application (TR 499-15-01257). On April 9, 2015, the applicants filed an appeal to the denial to remove the walnut tree (Exhibit A-1). Pursuant to LOC 55.02.085(3), the Development Review Commission (Commission) shall hold a public hearing on this request.

III. APPLICABLE REGULATIONS

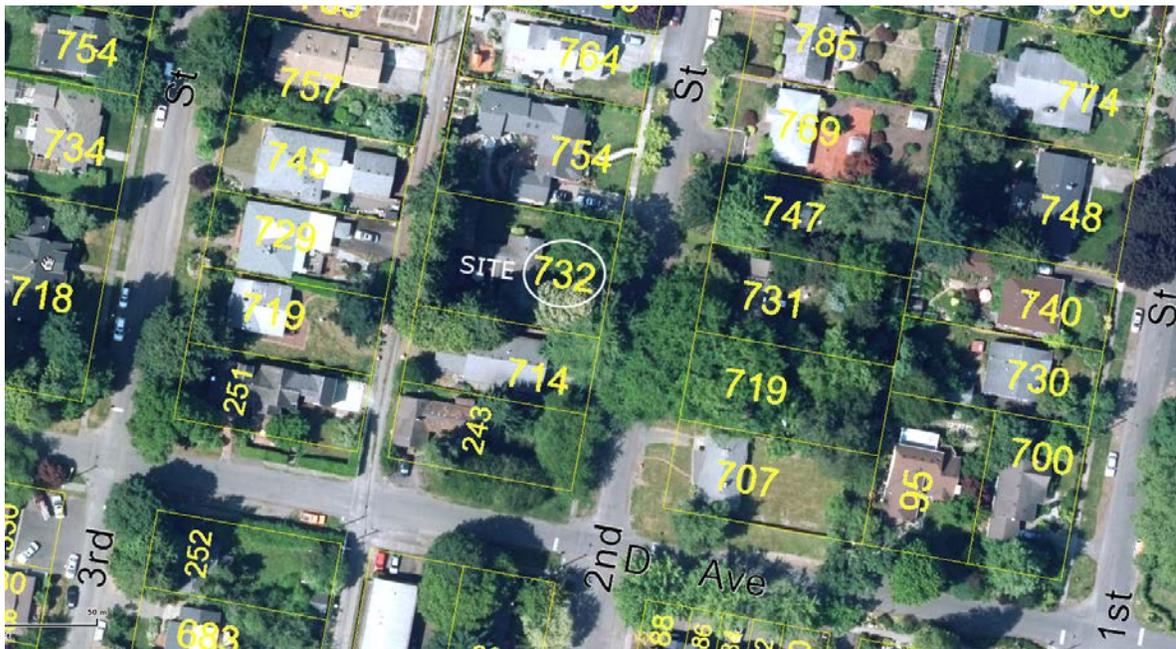
A. City of Lake Oswego Tree Code (LOC Chapter 55)

LOC 55.02.080	Criteria for Issuance of Type II Tree Cutting Permits
LOC 55.02.084	Mitigation Required
LOC 55.02.085	Request for Public Hearing on a Type II Tree Cutting Permit
LOC 55.02.094	Conditions of Approval for Tree Cutting Permits

IV. FINDINGS

A. Background/Existing Condition

1. The site is a 9,000 square-foot lot with frontage on the west side of 2nd Street. The site is approximately 75 feet wide and 120 feet long.



2. The site is zoned R-6. A single-family dwelling, detached garage, and sports court are located on the property (Exhibit E-2). The applicants have applied for a building permit to demolish the existing dwelling and construct a new single-family dwelling on site. The building permit plans do not include the removal of the existing garage or the construction of a new garage.
3. There are 21 trees on the site with a diameter at breast height of five inches in diameter or greater (Exhibit E-2). The majority of the trees are located along the west and south property lines in the rear of the property. The applicants received approval to remove a 6-inch Japanese maple under the Type I tree removal application (TR 499-15-01253) on March 20, 2015. On

April 24, 2015, applicants received final approval to remove a 29-inch American chestnut under the same Type II tree removal application (TR 499-15-01257) that included the English walnut tree discussed in this staff report.



4. The site slopes gradually up from 2nd Street with an elevation of 178 feet at the east property line and an elevation of 184 feet at the west property line (aerial photo, above).

B. Compliance with Criteria for Approval

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

1. *The trees are proposed for removal for landscaping purposes or in order to construct development approved or allowed pursuant to the Lake Oswego Code or other applicable development regulations.*

The tree removal is requested in order to construct a new single-family dwelling (Exhibit E-2). Single-family dwellings are permitted outright in the R-6 zone. The front yard setback along 2nd Street is 20 feet. Per LOC 50.04.001.2.e.ii.(2)(a), a projecting front porch may extend into the front yard by up to six feet. The side yard setback is 7.5 feet along the south and north property lines. The rear yard setback along the west property line is 15 feet for a dwelling. The allowed building envelope to construct a new single-family dwelling for this site is approximately 60 feet wide by 91 feet long including the front porch. The existing garage is located in the southern portion of the property approximately six feet from the west property line.



The building permit application for the proposed dwelling is still under review (BP 499-14-01259). Staff notes that the setbacks for the proposed dwelling comply with the R-7.5 zone regulations, but several other standards including lot coverage and floor area do not comply. The applicants have been notified that revisions to the building plans are required.

The tree in discussion is a 27-inch English walnut (pictured above). The applicants contend that the removal of the English walnut tree is necessary to allow adequate front and rear yards (Exhibits A-1, A-2). They also contend that removal of the tree will provide for safer conditions to allow their children to play in the backyard and allow for off-street parking in the rear of the lot. The applicants submitted a plan that shows a new garage, driveway, and pavers for parking along the west property line (Exhibit A-2). No building permit application has been submitted for the new garage. The

applicants request approval to replace the tree with another English walnut 16 feet in height near the same location.

Staff finds that the removal of the tree is not necessary to construct approved or allowed development. Criterion 3, below, provides further analysis. This criterion is not met.

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

There are no steep slopes or water courses on this site. Staff finds that the removal of the trees will not have significant negative impacts to erosion, soil stability, or flow of surface waters, or protection of adjacent trees. This criterion is met.

3. *Removal of the trees will not have a significant negative impact on the character, aesthetics, or property values of the neighborhood. The City may grant an exception to this criterion when 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 or alternative landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with other provisions of the Lake Oswego Code.*

This criterion requires that the proposed tree removal not have a significant negative impact on the character, aesthetics, or property values of the neighborhood. The site contains other large trees, mainly cedar trees along the back property line bordering the alley and a large 51-inch deodar cedar in the front yard that will be retained. There are other prominent trees in the surrounding neighborhood. The English walnut tree is listed as in fair condition according to the applicants' arborist report.

Two residents commented in support of the tree removal (Exhibits G-100 to G-101). The residents in support claim that other surrounding properties have removed similar trees and that retaining the English walnut tree would negatively impact the backyard. Three residents commented on the tree removal in opposition (Exhibits G-200 to G-202). The residents in opposition claim that the tree removal would negatively impact the view along the street and the species should be preserved. The comments were submitted for both the English walnut and the American chestnut tree. Resident's comments are addressed below.

The tree is visually prominent along the street line, especially from the north because the trees visible along the west side of 2nd Street to the north are

smaller trees (picture below). Also, the surrounding trees on the east of 2nd Street are large visible trees that align with the English walnut to create a view corridor. Removal of the English walnut would create an asymmetry in the tree canopy along this section of 2nd street. Staff finds that the tree removal would have a significant negative impact on the character and aesthetics or property values of the neighborhood.



If removal of a tree would have a significant negative impact on the neighborhood, the tree can still be removed if the applicant demonstrates that 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.” This approval criterion requires staff to analyze what a “reasonable alternative” is to “allow the property to be used as permitted in the zone.” The applicants contend that incorporating the English walnut tree into the design of the new house would not allow adequate room for a usable backyard.

The site survey map submitted with the building permit shows that the English walnut tree is located approximately 19 feet from 2nd Street (Exhibit E-2). The crown of the tree extends approximately 42 feet west from 2nd Street. The City’s consulting certified arborist visited the site and estimates that the approximate protection area for the tree, using six times diameter, is 13.5 feet (Exhibit F-2). Further reductions in the protection area may be possible with alternative construction mitigation methods. Staff estimates that in order to retain the English walnut tree, the building envelope would be reduced from 91 feet long to approximately 72.5 feet long. The proposed new dwelling has a length of 60.5 feet, including the 6-foot front porch.

By moving the new dwelling back 18.5 feet, the resulting front setback would be 32.5 feet. The rear yard setback from the west property line would be 27 feet. The east wall of the existing garage is approximately 28.5 feet from the west property line. The proposed building plan would have to be altered to change the configuration of the building footprint to accommodate for the location of the existing garage and the English walnut tree. The applicants conceptual site plan shows that the garage may be removed in the future (A-2). The site plan submitted with the building permit application for the new dwelling shows there is adequate area on the site to revise the construction plans to preserve the tree.

Staff's longstanding method of determining whether this criterion is met is to apply the maximum lot coverage, or building footprint, as the proxy for the development which is allowed "as permitted in the zone." This method allows property owners to maximize lot coverage if they choose; it does not require a property owner to accept a smaller building footprint because of the presence of a tree on the site than would be allowed on another lot with fewer trees but the same dimensions and zoning requirements. The building permit plans shows that the new dwelling will be 24 feet in height. On this lot, the maximum lot coverage with a dwelling 24 feet in height is 3,060 square feet, and the proposed building plans measure 3,242 square feet of lot coverage. A reduction of the proposed lot coverage to comply with the maximum permitted lot coverage will yield 182 square feet. The applicants have not demonstrated why the 182 square foot lot coverage reduction cannot occur in the area sufficient to retain the tree.

Staff finds this criterion is not met.

4. *Removal of the tree is not for the sole purpose of providing or enhancing views.*

Staff finds that the proposed tree removal plan would not open up desirable views for the new house proposed for 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.*

If the Commission approves the tree removal application, the applicants are required to plant one mitigation tree on the property. Pursuant to LOC 55.02.084(1), the mitigation trees must be at least two inches diameter if deciduous or at least six feet tall, excluding the leader, if evergreen. As illustrated on Exhibit A-2, the applicants propose to plant a new 16-foot English walnut tree as mitigation. This criterion can be met.

V. RECOMMENDATION

As staff finds that two of the approval criteria of LOC 55.02.080 are not met, staff recommends **denial** of the 27-inch English walnut tree as part of the Type II tree removal application.

EXHIBITS

A. NOTICE OF INTENT TO APPEAL

- A-1 Request for public hearing from Tanner and Robin Halton, received April 9, 2015
- A-2 Additional information from Tanner and Robin Halton, received April 15, 2015

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 Plan
- E-4 Building Permit Site Plan

F. WRITTEN MATERIALS

- F-1 Tree removal application TR 499-15-001257, submitted March 12, 2015
- F-2 City Contract Arborist Report, dated April 23, 2015

G. LETTERS

Neither for nor Against (G1-99)

None

Support (G100-199)

- G-100 Letter from Ian Lindsey, received April 16, 2015
- G-101 Letter from Carey Haladay, received April 20, 2015

Opposition (G200+)

- G-200 Letter from Shirin Doratotaj and James Neal, received March 25, 2015
- G-201 Letter from Suzanne Meckel, received March 25, 2015
- G-202 Letter from Sharon Gustafson, received March 26, 2015