

STAFF REPORT
CITY OF LAKE OSWEGO

PLANNING DIVISION

APPLICANT/OWNER:

McNary Highlands Condominium
Association

FILE NO:

AP 17-07 (TR 499-17-05065)

TAX LOT REFERENCE:

1S1E32DC70000

STAFF:

Ellen Davis

LOCATION:

3433 McNary Pkwy

DATE OF REPORT:

November 27, 2017

COMP. PLAN DESCRIPTION:

R-7.5

Date of Hearing:

December 4, 2017

ZONING DESIGNATION:

R-7.5

NEIGHBORHOOD ASSOCIATION:

Mountain Park

I. APPLICANT'S REQUEST ON APPEAL

The applicants are requesting approval to remove three Douglas fir trees [Trees #3 - 5] under a Type II tree removal permit as part of a landscape plan.¹ [The application sought removal of five trees. Staff approved the applicant's request to remove Tree #2 and denied the request to remove Tree #1; no appeal on these two trees was timely filed.]

¹ Additional Issues Raised in Appeal Letter

Tree Risk – The appellant refers to the three trees below Building 4 as “at-risk” and states that “Nine trees have already fallen. We anticipate more...the three proposed at-risk trees are all close enough to cause damage to buildings and injury to residents (Exhibit A-1, page 4).” The applicant submitted a Type II tree removal application for landscaping purposes under LOC 55.02.080, not a hazardous tree removal application under LOC 55.02.042(4). No hazardous tree removal application has been submitted for the subject trees nor has a hazard evaluation report prepared by a qualified arborist been submitted. If the trees proposed for removal are hazard trees, the correct tree removal application would be for a hazardous tree removal permit.

II. RECOMMENDATION

Based upon the evidence in the record at the time of this report, staff recommends **denial** of the request to remove trees #3-5 in Tree Removal Application 499-17-05065 (Exhibit F-1). After the conclusion of the public hearing, and if requested by the Commission, staff will make a recommendation as to whether the criteria is met or not for tree removal based on LOC 55.02.080.

III. BACKGROUND

The applicant initially applied to remove five trees (Exhibit F-1).

On October 24, 2017, staff approved the applicant’s request to remove one Douglas fir (#2) and denied the applicant’s request to remove four Douglas firs (#1, 3-5) under a Type II tree removal application (TR 499-17-05065).

On November 6, 2017, the McNary Highlands Homeowners Association filed an appeal of the denial to remove the three trees below Building 4, referred to as trees #3-5; the appellant is not appealing the staff decision to deny the removal of tree #1 (Exhibit A-1). Accordingly, the decision to grant a tree removal permit for Tree #2 and to deny the request for removal of Tree #1 is final.

Pursuant to LOC 55.02.085, the Development Review Commission (Commission) shall hold a public hearing on the request for removal of Trees #3-5.

IV. APPLICABLE REGULATIONS

A. City of Lake Oswego Tree Code [LOC Chapter 50]:

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

B. Prior Approvals:

PUD 1-67
DR 20-84 (MOD 9-92)

V. FINDINGS

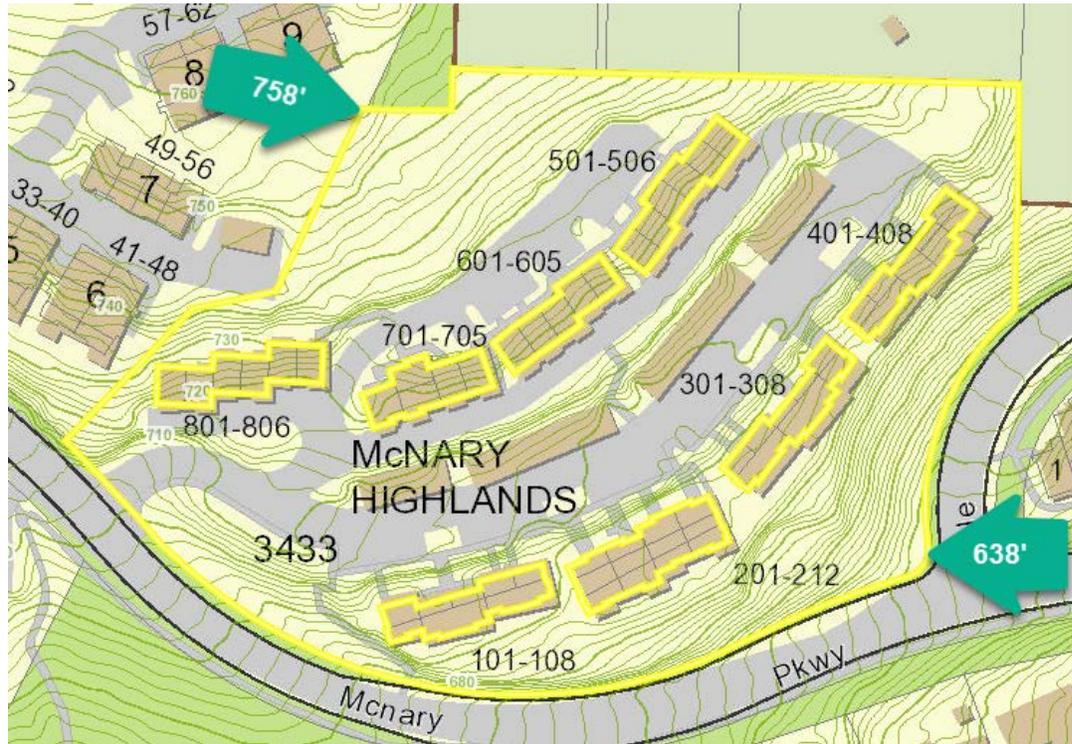
A. Background/Existing Conditions:

1. The site is an approximately 201,268 square-foot lot with frontages on McNary Parkway and Eagle Crest Drive (Exhibit E-1).

2. The site is zoned R-7.5 and is developed with a 58-unit multi-family complex with associated structures and parking facilities pursuant to DR 20-84. The site is located within Phase 5-C of the Mountain Park Planned Unit Development (PUD 1-67).
3. As illustrated in the aerial photograph, below, the center of the site is developed with parking facilities and condominiums. There are trees predominantly located around the periphery of the site. A tree inventory for the site was not provided as part of the application.



4. The site slopes up from the southeast to the northwest with an elevation of 638 feet at the southeast corner and an elevation of 758 feet in the northwest corner of the site (see contours, below).



5. The site is identified as a slide area as described and mapped in the Engineering Geology chapter of the Lake Oswego Physical Resources Inventory, March 1976.

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 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 (bolded text below is the subcriterion sought by the applicant):

(a) Outgrown Landscape Area: A tree has grown such that damage to a structure or facility cannot be avoided by pruning or other maintenance, a tree that has grown too large within a constrained space such as a deck or other built feature that was constructed around the tree, or thinning to improve the health of other trees);

(b) Landscape Plan: The applicant has submitted a landscape plan for the site and the tree is not part of the landscape plan (“the plan must include more than removing the tree for which the Type II permit is requested and planting required mitigation trees”); or

(c) Proposed Development: The tree proposed for removal is 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 as part of a landscape plan as indicated on the Type II checklist for the application (Exhibit F-1). A landscape plan, prepared by DeSantis Landscapes, was submitted with the application (Exhibit F-1).

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 and Soil Stability:

The area of the proposed tree removal slopes steeply down from the condominium buildings to Eagle Crest Drive at approximately 50% slope. The appellant states that the soil type for the site is 8D Cascade Urban Land Complex and that

“for the purposed of this discussion the significant elements of the soil type is that it has 10 to 30 inches a softer soils over a water and root resistant fragipan. In layman’s term, there is a layer of decent dirt over hardpan where water concentrates....

It should also be noted that this is a naturally occurring condition that existed prior to the construction of McNary Highlands.” (Exhibit A-1, page 3).

As stated in the Geotechnical Report prepared by L.R. Squier Associates Inc. dated September 19, 1984 (Exhibit F4), field explorations of the site prior to construction of McNary Highlands found the subsurface materials consisted primarily of brown silt overlying red-brown clayey silt and silty clay of the severely weathered Boring lava formation in this area (pg. 4). The Geotechnical Report prepared by L.R. Squier Associates Inc. dated September 19, 1984 found a topsoil/root zone extending to about 0.5 foot depth, stiff brown silt with trace clay and fine sand at depths of 0.5 to 9.5 feet, and medium stiff to stiff red-brown clayey silt and silty clay with trace sand and scattered rock fragments at depths of 9.5 to 23 feet below the ground surface. (pg. 4-5 and Figure 10: Boring B-9).

There is no mention in the 1984 geotechnical report of site conditions preventing the establishment of Douglas fir trees on the site. If clay lenses are present on the site, the City Stormwater Quality Coordinator has stated that “Fragipans (clay lenses) are not always over a large enough area, especially a slope, that the Doug Fir roots could not find a way to plate around them (Exhibit F-5, pg. 3).” Further, the City Stormwater Quality Coordinator notes that Douglas fir is recommended by the USDA for erosion control on slopes (Exhibit F-5, pg. 1). For maximum soil and slope stability the existing Douglas fir should remain and the surrounding English ivy should be replaced with native vegetation that is tolerant of sloped conditions (Exhibit F-5, pg. 2). The

proposed landscape plan can be implemented around the existing trees (Exhibit F-3, pg. 2).

Staff finds that the removal of the trees will not have a significant negative impact to erosion and soil stability based on the proposed landscape plan (Exhibit F-3, pg. 1). This criterion is met.

Flow of Surface Waters:

The appellant states that “the ground in the area is visibly saturated” (Exhibit A-1, page 2), and that “the site is known to have significant issues with subsurface water and saturation” (Exhibit A-1, page 3). The Geotechnical Report prepared by L.R. Squier Associates Inc. dated September 19, 1984 (Exhibit F-4), prior to construction of the McNary Highlands development, indicates that the boring location closest to the proposed tree removal (B-9) found moist to wet soil conditions to a depth of 23 feet (Figure 10: Boring B-9).

The City Stormwater Quality Coordinator has found that it is highly probable that the irrigation system at the site “is either malfunctioning or the amount of water being applied is excessive” and notes that “the NRCS [Natural Resources Conservation Service] recommends very limited or no irrigation for this soil type because of the slope and the soil permeability” (Exhibit F-5). She lists recommendations in Exhibit F-5, pg. 2. The City Stormwater Quality Coordinator explains in her comments that:

“... Douglas Fir have a USDA wetland designation of FACU [Facultative Upland] which is defined as tolerating wetland conditions but more commonly found in upland areas so even if ponding is occurring, the tree can tolerate some wet conditions. In fact, the root system of a Douglas fir becomes plated (decreased tap root and more lateral roots) in soils with high moisture in order to tolerate the wetter conditions. Given the rootball description in the application, root plating is most likely occurring in the area of concern” (Exhibit F-5, pg. 1).

In a location where excessive surface water is flowing on to the site, potentially from irrigation systems, removing the Douglas fir trees that help to capture surface water would have a significant negative impact on the flow of surface waters on the site.

Staff finds that the removal of the trees will have a significant negative impact to flow of surface waters. This criterion is not met.

Protection of Adjacent Trees or Existing Windbreaks:

The three trees proposed for removal do not protect or act as a windbreak to any adjacent trees. The City’s contract arborist found during her evaluation that removal of the three trees will not have a significant negative impact on the protection of adjacent trees or existing windbreaks (Exhibit F-3, pg. 1). This criterion is met.

- 3. The removal will not have a significant negative impact on the character or aesthetics of the neighborhood.*

The applicant has the burden of showing the proposed removal does not involve any of the five types 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. If the applicant fails to demonstrate that the removal does not involve any of the five types of trees listed in Criterion #3 and does not demonstrate that an exception to compliance with Criterion #3 applies, then the application must be denied because the application will not have demonstrated that all four criteria of LOC 55.02.080 are met (or an applicable exception exists).

This standard is met when removal of the trees does not involve:

- *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);*

Over 15" DBH: The trees proposed for removal range in size from 13" DBH to 17" DBH (#3 is 17" DBH, #4 is 13" DBH and #5 is 16" DBH). Therefore, only Trees #3 and 5 are potentially eligible to be a "significant tree"; Tree #4 is not a "significant tree" due to its DBH measurement, and will not be considered further to determine if it is not a "significant tree."

Healthy: The application does not provide an arborist discussing the health of the tree. The City's contract arborist reports that Trees # 3 and 5 appear to be healthy.

Noninvasive: Trees #3 and 5 are Douglas fir trees. Douglas fir trees are not listed as an invasive species. See Invasive Tree Species List².

Significant to neighborhood due to:

a. Size:

The question for this element is whether any specific tree that also meets the first three elements is significant to the neighborhood because of its size. The Commission has interpreted³ this element to require examination of the neighborhood in which the specific tree is located: a 45-inch tree is significant to a neighborhood where the general range of sizes of other trees is substantially smaller, such that the 45-inch tree would be substantially taller or bigger than most other trees in the neighborhood. However, a 45-inch tree would not itself be significant to a neighborhood where it is within the general range of sizes of other trees and is not substantially taller or bigger than most other trees in the neighborhood. For a tree's size to be "significant" to the neighborhood, its absolute size is irrelevant.

² https://www.ci.oswego.or.us/sites/default/files/fileattachments/trees/webpage/24966/invasive_tree_species_list_rev07-11-14.pdf?t=1510945236465

³ AP 17-05 [TR 499-17-02043]

In this case the applicant has not submitted evidence addressing the significance of either of the two Douglas firs (16" and 17" DBH) to the neighborhood due to size. Although staff suspects that the 16" and 17" DBH Douglas firs may not be significant to the neighborhood due to size, the applicant has not shown to staff that this subcriterion has been met: that a tree proposed for removal is not significant to the neighborhood due to size. Because no evidence on this element was presented, the applicant did not meet the burden of showing that the tree proposed for removal is not a "significant tree"; staff therefore found that the applicant had not demonstrated that removal of a potentially "significant tree" was not significant to the neighborhood due to size.

b. Species:

The question for this element 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," which the Commission interprets as not generally found within the species of trees in the neighborhood and the rare tree species, within the neighborhood canopy, contributes to defining the neighborhood character and aesthetics. A Douglas fir proposed for removal in a neighborhood of Douglas firs is not unusual or "significant" to the neighborhood because of its species.

The applicant has not submitted evidence addressing the significance of the two Douglas firs due to species. Although staff suspects that the Douglas fir species may not be significant to the neighborhood due to species, the applicant has not shown to staff that this subcriterion has been met: that a tree proposed for removal is not significant to the neighborhood due to species. Because no evidence on this element was presented, the applicant did not meet the burden of showing that the tree proposed for removal is not a "significant tree"; staff therefore found that the applicant had not demonstrated that removal of a potentially "significant tree" was not significant to the neighborhood due to species.

c. Distinctive Character:

The question for this element 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 provides 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 trees proposed for removal are not significant to the neighborhood due to distinctive character because they are not in a prominent location or uniquely visible. The 16" and 17" Douglas fir trees are not located at a prominent corner but are located on the hillside along Eagle Crest Drive (Exhibit F-1, pg. 19). Pictures from

staff's visit to the site on November 14, 2017 show that the trees are set back from Eagle Crest Drive and are not in a prominent neighborhood location (Exhibit E-3). Staff finds that this criterion is met.

Only Tree Remaining on the Property: Neither tree will be the only remaining tree on the property, as there are other trees on the property, including Tree #1.

Accordingly, Tree #4 is not a "significant tree." The applicant did not present evidence showing that Trees #3 and #5 are not "significant trees" so this subcriterion of Criterion #3 was not met for these two trees.

- *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 proposed removal would alter the continuity of the neighborhood skyline, as viewed from a public street as indicated in the below pictures taken from Eagle Crest Dr. Removal of Trees #3-#5 will alter the continuous skyline as viewed from the public street by creating a gap in the Douglas fir canopies viewed from Eagle Crest Drive. The proposed landscape plan consists of shorter stature plantings that will not mitigate the resulting gap. This criterion is not met.

- *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 is zoned R-7.5 low density residential. The trees proposed for removal are located in the open space for McNary Highlands (DR 20-84). The abutting property across Eagle Crest Drive at 3101 McNary Parkway is zoned R-3 high density residential. As shown in the photos below, the three trees proposed for removal are visible from Eagle Crest Drive and create a visual screen between two zones. Their removal would create a gap in the canopy. Though there is one other Douglas fir tree located closer to Eagle Crest Drive than the trees proposed for removal, the group of three trees serve as a visual screen between the low density residential and high density residential zones. This criterion is not met.

Below are current views of the trees from Eagle Crest Drive.



- *A street tree; or*

None of the trees proposed for removal are street trees because they are neither located within the public right-of-way or pedestrian easement abutting a right-of-way nor used to meet the street tree requirements for a prior development. This criterion 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).*

Removal of the three trees will not result in more than 50% removal of a stand of trees because the trees are not located in a stand of trees: the contiguous crown width of the group of trees that the three trees are located in is less than 120 feet. This criterion is met.

Staff did not find that this criterion #3 was met because the applicant did not demonstrate that removal does not involve:

- “Significant trees,” as to Trees # 3 and 5, because their removal was not shown to have no “significant negative impact on the character and aesthetics of the neighborhood due to size or species;”

- Removal of trees that would not alter the distinctive features or continuity of the neighborhood skyline, as to Trees # 3-5;
- Trees that are a visual screen between a high density residential zone and a low density residential zone, as to Trees # 3-5.

However, the applicant need not meet criterion 3 if the applicant shows that one of the two exceptions below are met.

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

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

This exception criterion is not applicable to the proposed tree removal because the applicant has not asserted that the subject trees are causing damage to existing structures or infrastructure.

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.

The applicant did not show that landscaping alternatives to tree removal have been considered. Further, staff finds that the proposed landscape plantings do not require removal of the requested trees: the plantings can be placed around the existing trees without requiring any tree removal (Exhibit F-3, pg. 2). Maintaining the existing Douglas fir trees and planting the proposed landscaping around the remaining trees is feasible. (Staff also notes that adding planting around the trees would better stabilize the steep slope than removing the group of three trees.)

The applicant did not show that either this criterion was met or that an exception was met.

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

Staff finds that the proposed tree removal plan would open up desirable views for the dwellings on this property. However, the stated purpose for the proposed tree removal application is a landscape plan so enhancing views is not the *sole* purpose of the proposed tree removal application. 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.

Staff finds that this standard is only applicable if the subject trees are removed, and staff finds that the subject trees should not be removed. Accordingly, no mitigation plan is required. (However, if the Commission finds that the criteria for tree removal is met for any of the requested trees, then a condition of approval should be included to require the applicant to plant a native species mitigation tree for every tree removed.)

EXHIBITS

A. NOTICE OF INTENT TO APPEAL

A-1 Request for public hearing from McNary Highlands HOA, received November 6, 2017

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

E. GRAPHICS/PLANS

E-1 Tax Map
E-2 Existing Features Map
E-3 Pictures, November 14, 2017

F. WRITTEN MATERIALS

F-1 Tree Removal Application TR 499-17-05065, Submitted September 21, 2017
F-2 Notice of Staff Decision, Issued October 24, 2017
F-3 City Contract Arborist Memo November 26, 2017
F-4 Geotechnical Report from file DR 20-84
F-5 Comments from City of Lake Oswego Stormwater Quality Coordinator Sonja Johnson

G. LETTERS

Neither for nor Against (G1-99)

None

Support (G100-199)

None

Opposition (G200+)

G-200. Letter from Lois Isbell, received September 23, 2017

G-201. Letter from Linda Hartling, received September 30, 2017