

DEPARTMENT OF PLANNING AND BUILDING
REVISED STAFF REPORT
TO CITY OF LAKE FOREST PARK HEARING EXAMINER

The following review by the City of Lake Forest Park Planning Department is based on information contained in the application and supplemental correspondence, information in the file, comments and letters received, on-site investigation, applicable scientific reports, applicable codes, development standards, adopted plans, and other information on file with the City.

SUMMARY INFORMATION

City File Numbers: 2018-RUE-0001

Hearing Date: Thursday October 4th, 2018, 6:00 pm
Continuance: Wednesday October 17, 2018, 4:00pm

Requested Action: Reasonable economic use exception

Applicant: Steve Crane

Site Location: 4611 NE 178th ST
Lake Forest Park, WA 98155
Parcel # 4019301515

Comprehensive Plan Designation: Conservation Residential, Moderate

Zoning Classification: RS – 15,000

Recommendation: Approve an RUE with Conditions

APPLICABLE CODES AND REGULATIONS FOR THE REASONABLE ECONOMIC USE EXCEPTION REQUEST (This list may not be exhaustive.)

Lake Forest Park Municipal Code Sections Directly Applicable to the Proposal:

1. LFPMC 16.14.070- Tree permit approval criteria and conditions.
2. LFPMC 16.14.100 – Establishes the application procedures for a reasonable use exception to allow for reasonable economic use.
3. LFPMC 16.26.110(D) – Establishes the decision of the Hearing Examiner on a Type I application as the final decision of the city.
4. LFPMC 16.26.040(D), .050, .090, and .110(C) – Establishes the public notification requirements associated with Type I applications.
5. LFPMC 18.18- Establishes permitted uses and bulk requirements for properties within the RS-15, Single Family Residential, Moderate zoning designation.

BACKGROUND INFORMATION:

Description of the proposal: On January 24, 2018, the applicant, Steve Crane, filed an application to remove certain trees and vegetation on-site for future development of the lot (Exhibit 5). On May 14, 2018, the applicant filed an application for a reasonable economic use exception to allow development of the property located at 4611 NE 178 ST (Exhibit 2). The site includes two exceptional trees, as defined by LFPMC 16.14.030. Tree #6's (as identified in the tree inventory- Exhibit 5.3) Interior Critical Root Zone (ICRZ) spans across all but 6.5 feet of the front lot line of the property and tree #10's (as identified in the tree inventory - Exhibit 5.3) ICRZ occupies a significant portion of the northern portion of the lot. Chapter 16.14.070 of the LFPMC prohibits construction and disturbance within a tree's ICRZ. On August 29, 2018, in light of new information about tree #10, the applicant revised his application (Exhibit 2.15) and requested the ability to remove both exceptional trees, for the purpose of building one single family residence, with associated infrastructure.

After open record testimony and other information was presented at the October 4, 2018 hearing, the applicant has since cut down a non-significant (less than 6" DBH) tree within the right of way, and completed further investigation for trees #6 (52"), and #10 (42"). The applicant subsequently submitted updated site plans, including two options for construction and an updated tree inventory map that, clearly identifies which trees are within the right of way and which trees are on the property. These updated site plans are presented as Exhibit #65, which was submitted to the Hearing Examiner by e-mail on October 10, 2018.

Site Characteristics: Currently the site is vacant and contains native and invasive vegetation. The property accesses directly off of NE 178 ST, and is served by two existing sewer stubs. There are also two existing utility cabinets adjacent to the property, within the right of way (Exhibit 2.8).

As stated above, there are two exceptional trees on-site; specifically a 52" Diameter at Breast Height (DBH), Douglas Fir (tree #6), and a 42" DBH, Douglas Fir (tree #10). City staff and the applicant have both confirmed the diameter of tree #10 to be over 42". Tree #10 (42"), therefore, meets the definition of an exceptional tree by LFP tree standards. The applicant has not submitted any additional arborist analysis indicating that tree #10 (42") has any issues that would disqualify it as an exceptional tree at the time this revised staff report was developed.

There are a total of five significant trees on-site of varying size and species (see Exhibit 5.3- Tree inventory/existing tree canopy), and seven significant trees within the right of way adjacent to the northern property line of the site. The lot is relatively flat, ascending approximately 10 feet from west to east, according to King County mapping records.

Adjacent Land Use Characteristics: The property is located in the RS-15 zone (Exhibit 4), with a comprehensive land use designation of Single Family Residential, Moderate (Exhibit 3). It is surrounded by similar land uses, with all adjacent properties zoned within the same comprehensive and zoning designation. The City's Town Center is within the vicinity, to the south.

Project Review Timeline:

Steve Crane filed an application, including an arborist report, on January 24, 2018 to remove trees and vegetation associated with future construction (Exhibit 5). A building permit application was also filed at this time, for the construction of one single family home. A Notice of Application for the tree removal permit was issued on February 1, 2018, with a public comment period ending February 15, 2018. As was standard practice at the time with tree permits related to major development, the City requested that Urban Forestry Services, the City's consulting arborist, review the application and issue a report. Urban Forestry Services issued their report to the City on March 26, 2018. The report indicated that a reasonable use application would be required due to the presence of the exceptional 52" Douglas Fir and proposed work adjacent to those tree's interior critical root zone. The City's consulting arborist report and the resulting necessity for a reasonable use request were discussed during a meeting with the applicant on March 27, 2018.

An application for reasonable use exception was filed by the applicant on May 14, 2018 (Exhibit 2). The reasonable use application was deemed complete on June 12, 2018 (Exhibit 10) and noticed on June 18, 2018 (Exhibit 11.1) with the required 14-day comment period. The project was determined exempt from the SEPA process (see Exhibit 12) on July 10, 2018. The City reviewed the application, scheduled and noticed a public hearing for September 6, 2018 (Exhibit 13). On August 29, 2018 and after a meeting with City staff regarding current options, the applicant revised his application for reasonable use to propose removing both tree #6 (52") and tree #10 (42") via email (Exhibit 2.15). As a result of the new scope of the project, the City canceled the September 6th, 2018 hearing, emailed the notice of cancelation, and combined revised NOA to all parties of record, and posted notice on-site, at City Hall, Third Place Books, and the LFP King County Library. The City also mailed the cancelation notice/revised NOA to property owners within 300 feet of the site, and posted it on the City website. All of this occurred on Thursday, August 30th. Due to the Labor Day holiday weekend, the cancelation notice and revised NOA did not appear in the Seattle Times until September 5, 2018 (Exhibit 15). Notice was posted and published for the rescheduled public hearing on September 20, 2018 (Exhibit 16).

A public hearing for this proposal was held on October 4, 2018, and due to extended testimony, the Hearing Examiner ordered a continuance of the hearing. The continued hearing is scheduled to occur on October 17, 2018.

Overall, the Reasonable Use application has been in review for a total of 144 days as of the date of the Hearing, October 4, 2018.

CRITERIA ANALYSIS

The following criteria are found in 16.14.070 & 100 of the Lake Forest Park Municipal Code. The Permittee has the burden of meeting all the criteria for an approval. Staff's analysis with supporting findings and conclusions of the relevant criteria are listed below:

Lake Forest Park Municipal Code 16.14.100 Reasonable Use Exception

C. The hearing examiner shall grant a reasonable use exception only if:

1. Application of the requirements of this chapter will deny all reasonable economic use of the property; and

Findings: Strict application of LFPMC 16.14.060(B) would require retention of both tree #6 (52") and tree #10 (42") since these trees meet the definition of exceptional tree; and LFPMC 16.14.070.D. 8 would prohibit standard trenching and construction of structures and utilities within each tree's ICRZ, since these trees meet the definitions of exceptional trees. While the Applicant's Option #2 (as presented in Exhibit 65.2) demonstrates that a moderately-sized building footprint can be attained entirely outside of the Interior Critical Root Zone (ICRZ), a portion of the driveway remains in the ICRZ of tree #6 (52") and a portion of the parking pad remains in the ICRZ of #10 (42"). Connecting utilities to the residence will also require construction within the ICRZs of one or both exceptional trees. Given that LFPMC 16.14.070.D.8 does not allow construction within the ICRZ, an RUE is still necessary for construction under Option 2 of Exhibit 65.2.

Conclusions: This criterion is met.

2. There is no other reasonable economic use with less impact; and

Findings: Construction of one single family home within detached, single family zoning districts, such as the RS -15 zone, is the generally agreed upon reasonable economic use. Other uses not involving the construction of a single family house may have less of an impact on a single family lot, but those uses generally do not rise to the level that the lot owner would consider a 'reasonable' use like that of surrounding property owners in the same district. The lot has an area of approximately 6,875 square feet and is a legal, non-conforming lot as established by LFPMC 18.66.110.

Conclusions: This criterion is met.

3. The proposed development does not pose an unreasonable threat to the public health, safety, or welfare, on or off the proposed site, and is consistent with the general purposes of this chapter; and

Findings: This type of development is consistent with the permitted type of uses within the zoning designation, and is consistent with the surrounding land uses. This type of development does not pose an unreasonable threat to the public health, safety, or welfare, on or off the proposed site and is consistent with the general purposes of this chapter since all of the surrounding properties have been approved for development in a similar manner. The conditions recommended in this staff report are intended to further protect retained trees and reduce impacts to public health, safety, and welfare. A financial security component to ensure the long term survivability of the trees during and after construction is addressed in recommended conditions 6 and 7.

Conclusions: This criterion is satisfied subject to compliance with the recommended conditions.

4. The alteration proposed is the minimum necessary to allow for reasonable economic use of the property.

Findings: The Applicant's 'Option 2' (Exhibit # 65.2) demonstrates that a moderately-sized building footprint can be attained entirely outside of the Interior Critical Root Zones (ICRZ) of trees #6 and #10. The City's consulting arborist testified at the hearing on October 4 that low impact development techniques such as a no dig driveway can be safely used within the ICRZ.

The Applicant has not provided any explanation as to why the 'garage slab' in Option 2 is required or why reasonable use could not be achieved with a carport that is constructed with low impact development techniques such as those that are recommended for the driveway.

Conclusions: Carports are commonly used for vehicle storage in single family residence and provide a reasonable amount of protection to vehicles from the elements. The City is recommending that a garage not be allowed due to the greater impact it would have on tree #10's ICRZ. This criterion is satisfied if construction in ICRZs complies with recommended conditions 2, 3, and 4.

D. To the extent feasible, all tree replacement shall be at a ratio of three times the canopy coverage proposed for removal. If on-site canopy coverage replacement is not feasible, off-site replanting shall be used to the extent on-site replacement is not feasible.

Findings: With the recommended conditions, all exceptional trees on-site will be retained and, therefore, an on-site replacement planting plan equal to three times the canopy coverage of what is removed is not required. The applicant will, however, be responsible for maintaining the appropriate canopy coverage specified for major development, which is 28% (LFPMC 16.14.070.A)

Conclusions: This criterion is not applicable with the staff recommended conditions.

E. Conditions of approval shall be subject to the approval criteria in LFPMC [16.14.070](#) (D), to the extent feasible.

Findings: The recommended conditions within this report specify that the applicant must obtain a tree permit (and/or right of way permit, depending on location) to perform all tree removal and re-plantings associated with the project, in addition to all other tree related conditions.

Conclusions: The conditions imposed for obtaining tree permits will be structured by the content in LFPMC [16.14.070](#) (D), and staff's review of any plantings will

ensure compliance with the applicable portions of that ordinance. As conditioned, this criterion has been satisfied.

Lake Forest Park Municipal Code 16.14.070 Tree permit approval criteria and conditions

LFPMC 16.14.070 D.

1. *When the proposed tree removal is not associated with major development activity, trees may be removed if a tree replacement plan is approved that, at a minimum, does the lesser of the following:*

- a. *Maintains the canopy coverage at or above the applicable canopy coverage goal;*
or

Findings: This proposal involves Major Development Activity.

Conclusions: This criterion does not apply.

- b. *Maintains canopy coverage at or above the percentage existing prior to tree removal.*

Findings: This proposal involves Major Development Activity.

Conclusions: This criterion does not apply.

2. *When the proposed tree removal is associated with major development activity, the trees may be removed if a tree replacement plan is approved that, at a minimum, brings canopy coverage to the applicable canopy coverage goal.*

Findings: This proposal meets the definition of LFPMC 16.14.030 (Major Development Activity) and replacement requirements are addressed in recommended condition 10. The recommended conditions would require achievement of 28% canopy coverage for the site.

Conclusions: This criterion is addressed in recommended condition 10.

3. *Development proposals associated with a tree permit shall:*

- a. *Incorporate trees as a site amenity and to reflect a strong emphasis on tree protection.*

Findings: Existing exceptional trees on-site, specifically tree #6 (52”), and tree #10 (42”), are recommended by Staff for retention. Tree protection measures are included in recommended condition 5.

Conclusions: This criterion has been satisfied to the extent feasible.

- b. *Demonstrate the following prioritized factors for retention:*

- i. *Existing viable trees in groups or stands;*

Findings: Existing trees that are being retained both within the right of way and on-site, are roughly grouped (in the north and south ends of the property). Tree protection measures are included in recommended condition 5.

Conclusions: This criterion has been satisfied.

ii. Exceptional trees or other high quality open-grown, windfirm trees;

Findings: Tree #6 (52”) and tree #10 (42”) are being retained. Tree protection measures are included in recommended condition 5, which address the industry standard for protection of both exceptional trees.

Conclusions: This criterion has been satisfied to the extent feasible.

iii. Landmark trees

Findings: There are no landmark trees proposed for retention.

Conclusions: This criterion is not applicable.

iv. Trees in critical area buffers, or adjacent to critical area buffers;

Findings: There are no critical areas on-site

Conclusions: This criterion is not applicable.

v. Trees that are interdependent with and therefore critical to the integrity of stands of other protected trees;

Findings: There are no known interdependency issues with the trees on-site.

Conclusions: This criterion is not applicable.

vi. Other individual trees that will be windfirm, high quality trees if retained;

Findings: All trees on the subject parcel are recommended for retention by the City.

Conclusions: This criterion has been satisfied.

vii. Other trees that provide wildlife or riparian habitat, screening, buffering or other amenities;

Findings: No trees are known to currently provide for wildlife habitat on this project site. It was once thought that tree #10 (42") was the home of an osprey, but WDFW has confirmed that this is currently not the case.

Conclusions: This criterion has been satisfied.

viii. *Trees that help to protect neighbors' trees from wind throw, or other trees within required yard setbacks or on the perimeter; and*

Findings: Tree #10 (42") is located within the eastern side yard setback, directly adjacent to the neighboring lot. This tree is now recommended for retention and is located between neighboring trees and the direction of the prevailing southerly winds.

Conclusions: This criterion has been satisfied.

ix. *Trees next to parks or other open space areas.*

Findings: There are no parks or open spaces near this site.

Conclusions: This criterion is not applicable.

c. *Retain a forested look, value, and function after development or modification. Trees should be protected within vegetated islands and stands rather than as individual, isolated trees scattered throughout the site.*

Findings: All trees on-site are recommended for retention. The current canopy coverage on the parcel is 40%. The canopy coverage goal for the parcel is 28%.

Conclusions: No replacement is required as recommended by the City so this criterion is satisfied to the extent feasible.

d. *Consider tree protection opportunities in the design and location of building footprints, parking areas, roadways, utility corridors and other structures.*

Findings: This is addressed by recommended condition 5.

Conclusions: This criterion has been satisfied.

e. *Provide grading plans that accommodate existing trees and avoid alteration to grades around existing significant trees.*

Findings: Tree protection measures in condition 5 will be exercised for the existing trees, and minimal excavation is suggested as a condition during construction (see conditions #1 through #3).

Conclusions: Installation of infrastructure for the project will occur with special consideration to exceptional tree root zones, and protection of these areas will be ensured through a number of construction level, and financial security measures. This criterion has been satisfied.

4. *Conditions necessary to safeguard trees identified for protection.*

Findings: This is addressed in all recommended conditions.

Conclusions: This criterion has been satisfied.

5. *A notice on title, in the form required by LFPMC [16.16.190](#), shall be recorded by the applicant disclosing the permit and associated tree retention conditions as required by this chapter. A notice on title is required for all major permits associated with major development activity, and for major permits which would cause the property's canopy coverage to fall below the canopy coverage goal.*

Findings: The proposed project qualifies as Major Development.

Conclusions: Staff recommends that this be included as a condition of the Hearing Examiner's decision. If conditioned to require notice on title, this criterion will be satisfied.

6. *Conditions required by the city's qualified arborist to safeguard at-risk trees throughout the development process.*

Findings: Recommended condition 5, which specifies that a qualified arborist be on-site to monitor construction activity while work is occurring near the ICRZ, addresses this issue.

Conclusions: This criterion has been satisfied.

7. *Conditions that require sidewalks, structures, utilities, and roadways to be set back at least five feet from the CRZ, except where such structure is cantilevered or otherwise raised above the ground's surface so as not to disrupt the tree's roots, and the proposed construction is not likely to result in conflicts between the tree and the sidewalk, driveway, structure, or utility that would necessitate the tree's removal during its normal lifespan.*

Findings: This criteria cannot be satisfied completely, but LFPMC 16.14.100.E, the RUE criteria, requires it to be satisfied to the extent feasible. For tree #10, it is anticipated that the City's consulting arborist's will recommend only allowing work within the CRZ of tree #10 (42") for the purpose of constructing a car port in a manner that complies with condition 2 and a roof that is supported in a manner that avoids damage to the roots of tree #10.

For tree #6, the impact to the CRZ would come from construction of a driveway and installation of utilities. If condition 2 is followed, the driveway will be constructed with low impact techniques and avoid damage to tree #6 roots; and if condition 4 is followed, utilities can be installed without significantly damaging the roots tree #6.

If condition 3 is followed, it would allow the retention of both tree #6 (52”), and tree #10 (42”).

Conclusions: As conditioned, the proposal would have the least impact to trees on-site to the extent feasible.

8. *Conditions to allow trenching, construction, or an alteration of grades between the five-foot setback from the critical root zone (CRZ) and the interior critical root zone (ICRZ) of a protected tree; provided, that the tree protection plan approved by the city’s qualified arborist demonstrates that the proposed activity will not adversely affect the long-term viability of the tree.*

Findings: This criterion only opens up the possibility of development activities between the five-foot setback of the CRZ and the ICRZ and, therefore, cannot be satisfied completely. However, LFPMC 16.14.100.E, the RUE criteria, requires it to be satisfied to the extent feasible. Since this criterion is very similar to Criterion 7, the findings above apply to this criterion as well.

Conclusions: As conditioned (Conditions 1 - 4), the proposal would have the least impact to trees on-site to the extent feasible.

PUBLIC COMMENT

During the comment period for the tree removal permit’s Notice of Application, the City received 23 comments from concerned citizens or groups (Exhibits 19-41). During the comment period for the Reasonable Economic Use’s Notice of Application, the City received comments from concerned citizens or groups (Exhibits 42-45). Two additional public comments (Exhibits 46 and 47) were received between when the application was re-noticed on September 5, 2018 and the date of the public hearing on October 4, 2018. The names and contact information for the parties of record are contained in Exhibit 18. Staff has considered these comments in the drafting of the recommended conditions of approval.

The notice of hearing for this project was published and posted September 20, 2018. At the hearing on October 4, 2018, the public submitted additional comments, which are attached as Exhibits 48-64.

CONCLUSIONS AND RECOMMENDATION

Staff and the City’s consulting arborist recommend retention of both exceptional tree #6 (52”), and exceptional tree #10 (42”), and compliance with mitigating conditions (such as the appropriate tree protection techniques, low impact construction techniques, arborist supervision

during construction, temporary irrigation during post-construction periods, performance bonding to ensure survivability, and monitoring over time with the appropriate financial securities). The City's consulting arborist has estimated a value for tree #6 (52"), and tree #10 (42"), which is included in Exhibit 14. Requiring bonds in the amount of those values will be critical to the long term survivability of both trees. Also, staff and the City's consulting arborist recommends a condition where supporting infrastructure (such as driveways) and utilities are routed so as to minimize the impact to critical root zones. In combination, these measures should allow the Permittee reasonable economic use of this property (construction of a single family home) while retaining the two exceptional trees that were originally proposed for removal.

The City of Lake Forest Park Planning Department recommends approval of the proposal, as described in Exhibit 65.2, subject to the conditions listed below:

1. The applicant shall retain exceptional tree #6 (52") and exceptional tree #10 (42"). The applicant shall install all utilities and infrastructure in a manner that avoids damage to roots in the critical root zones (CRZ) of retained exceptional tree #6 (52") and tree #10 (42").
2. Driveway construction shall incorporate low impact development techniques, specifically, a no-dig driveway where it lies within the CRZ of all protected trees. The City shall have final approval of the construction method for the driveway.
3. Building footprint shall be limited to shaded area in Exhibit 65.2 that is labeled as 'FOOTPRINT 100% OUTSIDE ICRZ', provided that the area label 'GARAGE SLAB' may be utilized as a carport that includes a parking pad constructed in a manner that complies with condition 2 above and with a roof that is supported in a manner that avoids damage to roots in the Critical Root Zone (CRZ) of retained exceptional tree #6 and tree #10.
4. Trenchless, or low impact excavation techniques i.e. dry-vacuum or hydro-vacuum in combination with pneumatic excavation tools, or hand-digging, shall be used to install underground utilities. Pit excavations for starting and receiving trenchless machinery should be, wherever practicable, located outside the Interior Critical Root Zone (ICRZ) of tree #6 and #10. Trenchless alignment should place the utilities the furthest distance possible from tree #6 and #10.
5. Appropriate tree protection measures shall be approved by the City and implemented prior to any staging of equipment and materials. Approved protection measures shall be maintained throughout construction. Any changes to the tree protection measures shall require City Arborist approval. A qualified arborist shall be onsite during all construction activity within the ICRZ of all protected trees and shall submit weekly reports to the City regarding the health and long term sustainability of all protected trees.
6. The applicant shall provide a performance security (bond) prior to permit issuance for the purpose of securing both the exceptional tree #6 (52"), and exceptional tree #10 (42") health during the construction phase of the project. The value of the bond shall be based on the City Arborist's Landscape Tree Appraisal value, which is included in Exhibit 14, \$39,215.00 for exceptional tree #6 (52"), and \$23,808 for exceptional tree #10 (42").

7. Prior to release of the performance bond, the applicant shall post a five (5) year maintenance bond, ensuring the long-term and sustainable health of the Exceptional Tree based on the Landscape Tree Appraisal value. The cost of the bond shall be determined by the City's arborist. During the maintenance period, the applicant shall provide annual reports prepared by a qualified arborist on the trees' condition.
8. Provide temporary irrigation to the Exceptional Trees during construction and during the five (5) year maintenance bond period, if determined by monitoring arborist.
9. Provide post-construction maintenance treatments as required during the five (5) year maintenance bond period, if determined by monitoring arborist.
10. If the Hearing Examiner authorizes exceptional tree removal, the applicant shall implement a planting plan that achieves the minimum requirement of 28% canopy coverage plus three times the exceptional tree canopy coverage that is removed. Off-site planting may be allowed subject to approval of the replanting plan by City staff prior to permit issuance.
11. A notice on title, in the form required by LFPMC [16.16.190](#), shall be recorded by the applicant disclosing the permit and associated tree retention conditions.

Submitted: _____



Nick Holland
Senior Planner

Date: October 17, 2018 (revised)

For information about this proposal or questions about this staff report, please contact the Lake Forest Park Planning Department at Lake Forest Park City Hall, 17425 Ballinger Way NE, (206) 368-5440 or e-mail aplanner@cityoflfp.com.