

# Tree Variance

SRC 808.045(d)(1)

Revised-February 3, 2025

**Tree means:** any living, woody plant, that grows to 15 feet or more in height, typically with one main stem called a trunk, which is ten inches or more dbh, and possesses an upright arrangement of branches and leaves.

**Significant tree means:**

- (a) A rare, threatened, or endangered tree of any size, as defined or designated under state or federal law and included in the tree and vegetation technical manual;
- (b) An Oregon white oak (*Quercus garryana*) with a dbh of 20 inches or greater; and
- (c) Any other tree with a dbh of 30 inches or greater, but excluding:
  - (1) Tree of heaven (*Ailanthus altissima*);
  - (2) Empress tree (*Paulownia tomentosa*);
  - (3) Black cottonwood (*Populus trichocarpa*); and
  - (4) Black locust (*Robinia pseudoacacia*).

**Proposal:**

The subject property is 10 acres in size, zoned RM-II, and located at 1700 Baxter Road SE (083W14BD/Tax Lots 100 and 200).

The applicant is proposing a development consisting of 138-apartment units as shown on the site plans.

There are 36 trees located within the boundary of development. Due to redevelopment of the site, all 36 trees are proposed for removal. The development of Parcel 1 will require the removal of the trees.

A majority of the trees to be removed are all located on Parcel 1:

35" Fir (Significant)	27" Fir	15" Walnut
25" Fir	29" Fir	14" Fir
31" Fir (Significant)	22" Pine	15" Cedar
35" Walnut (Significant)	13" Cherry	49" Walnut (Significant)
16" Walnut	38" Walnut (Significant)	
13" Maple	13" Apple	
13" Apple	15" Maple	
10" Cherry	13" Maple	
25" Fir	27" Fir	

38" Fir (Significant)	12" Maple
14" Cherry	15" Cherry
18" Cherry	27" Maple
24" Maple	22" Maple
10" Maple	15" Maple
18" Walnut	25" Maple
21" Oak (Significant Oak)	17' Fir

When Parcel 1 is further developed, trees and vegetation will be provided throughout the development (see submitted Site Plans and Landscape Plans). As required by code, when developed there will be landscaping and replanting throughout Parcel 1. Landscaping Plans will be provided prior to the development of Parcel 1 with the Site Plan Review applications. These plans will show landscaping and replanting that will be done on the site to mitigate the removal of trees. Therefore, new trees will be provided through the site as required by code.

Applicants' proposed findings of fact are further supported by the following exhibits:

- 1) Tree Plan Showing Critical Root Zone for Trees Being Removed: SDR11
- 2) Grading Plan: Sheet SDR6
- 3) Tree Canopy Plan Showing Replanting/Mitigation: Sheet L1.4
- 4) Landscape Plans Showing Replanting and Landscaping: Sheets L0.0, L1.1-L1.3
- 5) Proposed (Parcel 1) Development Site Plan (138 units): Parcel 2 and 3 Shadow Plan: Sheet SDR 4

## **Criteria**

### **Sec. 808.045. – Tree variances.**

***(a) Applicability. Tree variances may be granted to allow deviation from the requirements of this chapter where the deviation is reasonably necessary to permit the otherwise lawful development of a property.***

#### **Tree Variance 808.045(d)(1):**

##### ***(1) Hardship-***

***(A) There are special conditions that apply to the property which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance; and***

**Findings:** The subject property is 10 acres in size. Being developed is Parcel 1 of the proposed Partition and is 5.86 acres in size and zoned RM-II. The site is surrounded on three sides by right-of-way (Snowball Avenue (cul-de-sac)/Snowline Street (local street)/Baxter Road

(collector street)/Abbie Avenue (cul-de-sac) which limits the area for development due to development standards. Hardships on the site have been created that make saving all significant trees difficult while trying to efficiently develop the site within Code compliance.

Development in an RM-II zone shall meet a minimum of 15 dwelling units and shall not exceed 31 dwelling units. Therefore, Parcel 1 shall be developed with a minimum of 88 and allowed to have a maximum of 182 units. As shown on the site plan, there are 138 units proposed on the property. The applicant is not proposing maximum density on the site.

The location and number of trees on the site (Parcel 1 of the Partition) create a hardship in maximizing the density on the site and providing needed housing within this area of Salem. Without the removal of the tree the site cannot be developed within Code requirements.

All Oregon White Oaks 20" or greater and Significant Trees 30" or greater in size designated for removal are within the parking/maneuvering areas, the building envelopes or within an area close to the building envelope, which have the potential of being damaged during grading and construction (See Sheets P3-Tree, SDR6-Tree, Parcel 1 Site Plan). The site has been designed to accommodate a safe and efficient circulation system, adequate parking, and meet the standards all while taking into consideration topography, stormwater detention, and street connections on the site.

There are 36 trees located within the boundary of development. Due to redevelopment of the site, all 36 trees are proposed for removal. The development of Parcel 1 will require the removal of 31 trees.

There are six (6) Non-Oak Significant trees proposed for removal and one (1) Significant Oregon White Oak proposed for removal.

**Trees to be Removed: (See Sheet P3-Tree and P5-Tree Removal Plan)**

Tree:	Size:	Location:
Fir	35" (significant)	Accessway onto Snowball Ave
Fir	27"	Accessway Grading Area
Fir	25"	Ped. Path Area
Fir	29"	Ped. Path Grading Area
Fir	31" (significant)	Sidewalk Grading Area
Pine	22"	Accessway onto Snowline St
Walnut	35" (significant)	Building J Grading Area
Cherry	13"	Sidewalk on Snowline St
Walnut	16"	Building F Ped. Path
Walnut	38" (significant)	Parking Area
Maple	13"	Sidewalk on Snowball Ave

Apple	13"	Building Envelope (Building E)
Apple	13"	Building E Grading Area
Maple	15"	Building Envelope (Building G)
Cherry	10"	Sidewalk on Snowline St
Maple	13"	Parking Area
Fir	25"	Building Envelope (Pavilion)
Fir	27"	Pavilion Grading Area
Fir	38" (significant)	Pavilion Grading Area
Maple	12"	Building D Grading Area
Cherry	14"	Building D Grading Area
Cherry	15"	Building D Grading Area
Cherry	18"	Building Envelope (Building C)
Maple	27"	Building C Grading Area
Maple	24"	Building B Grading Area
Maple	22"	Building A Grading Area
Maple	10"	Parking and Maneuvering Area
Maple	15"	Parking and Maneuvering Area
Walnut	18"	Parking Area
Maple	25"	Parking Area
Oak	21" (significant)	Parking and Maneuvering Area
Fir	17"	Located in future R-O-W
Walnut	15"	R-O-W Grading Area
Fir	14"	Grading Area
Cedar	15"	Grading Area
Walnut	49" (significant)	Located in Water Quality Area

In order to develop the site, building location and density on the site had to be taken into consideration. The applicant is also applying for Design Review and Site Plan Review approval for the construction of a 138-unit apartment complex.

Vehicular circulation near all buildings, regardless of parking, is also necessary for emergency vehicles. When the building eaves are more than 30 feet above the ground, at least one side of the building must meet the requirements for aerial access. This means that a fire truck must be no further than 30 feet from the building. In addition, the paved area must be at least 30 feet wide to have adequate room for the fire apparatus outriggers.

Parking areas are required to provide safe and efficient parking areas for all residents. Meaning parking areas must provide ADA accessible parking areas. In order to provide resident parking needs and ADA parking, the layout of the site had to be taken into consideration. The location of the buildings and topography on the site were taken into consideration when locating parking and maneuvering areas to provide safe accessibility. State Laws and Federal Laws

require ADA access parking and sidewalk areas in order to comply with the Fair Housing Act. Therefore, grading and the removal of trees was necessary in order to meet ADA requirements.

The trees proposed for removal are located within the proposed accessways, parking areas, building envelopes, or located in areas which have the potential of being damaged during grading and construction. The removal of these trees are necessary in order to develop the site to its fullest potential while providing needed housing and meeting Code requirements for on-site parking, along with safe and efficient circulation.

Therefore, in order to construct buildings and required improvements, these trees must be removed, or the development cannot be accomplished in a safe and efficient manner.

***(B) The proposed variance is the minimum necessary to allow the otherwise lawful proposed development or activity; or***

Findings: The proposed variance is the minimum necessary to allow the lawful development of the site. As stated above, in order to maximum the allowed density of 138-units, removal of the tree is necessary. ORS 197.307 requires the City to allow development that is free of unreasonable standards, criteria, or conditions of approval that either individually or cumulatively discourage this housing proposal through unreasonable cost or delay. The proposal satisfies this criterion, and denial of the variance proposal would violate ORS 197.307.

There are thirty-six (36) trees located on the site. There are six (6) Non-Oak Significant Trees 30" in diameter or greater located throughout the site proposed for removal.

There is one (1) Oregon White Oak 20" in diameter or greater located on the site proposed for removal.

Trees designated for removal are within the building envelope or within an area close to the building envelope, which have the potential of being damaged during grading and construction. Therefore, the removal of these 36 trees is necessary for development of the site.

In order to mitigate for the removal of significant trees, more than adequate landscaping has been provided throughout the site. The landscaping plans meet all requirements. Replanting will be provided as required by Code. Replanting will be a Condition of Approval. The applicant will also provide EV parking spaces when Parcel 1 is developed.

Therefore, the replanting requirements will be met, which will help mitigate the removal of trees. See attached landscape plans.

**Tree Variance 808.045(d)(2):**

***(2)Economical use-***

***(A)Without the variance, the applicant would suffer a reduction in the fair market value of the applicant's property, or otherwise suffer an unconstitutional taking of the applicant's property;***

***(B)The proposed variance is the minimum necessary to prevent a reduction in the fair market value of the applicant's property or otherwise avoid a taking of property; and***

***(C)The proposed variance is consistent with all other applicable local, state, and federal laws.***

Findings: Denial of a variance request would violate ORS 197.307 as discouraging needed housing through unreasonable cost or delay and the application of ambiguous criteria and standards. Moreover, denial of a variance request would violate the Takings Clause of the Fifth Amendment to the United States Constitution under *St. Johns River v. Koontz*. A local government bears the burden of proof that its local laws and application thereof are constitutional. ORS 197.796(4).