

MARCH 1, 2018 – REGULAR AGENDA – ITEM #76

Item #76 – File Nos. E2016-15 and E2017-8 CH 27

Legal Dept / City Staff to review the ordinance submitted by Gina Grimes; further, that the Legal Dept / City Staff to appear with a report of the City’s opinion, whether favorable or unfavorable of said ordinance. (Original motion initiated by Reddick-Maniscalco on Feb 22, 2018.)

OVERVIEW

City Staff has strong concerns with the proposed language, as written, in context with the current code. We do believe, however, that there is some common ground between the City Proposal and TBBA Proposal. The City Staff and Legal analysis of TBBA’s Proposal, comparison with the City’s Proposal, and additional notes for City Council’s reference and consideration, have been condensed and inserted into the tables below.

GENERAL AREAS OF AGREEMENT (COMMON GROUND)

1. Natural Resources staff, as professional, Certified Arborists, should be granted some level of authority under the Code, to approve the removal of certain “non-hazardous” grand trees, subject to specific, objective, and reasonable criteria.
2. On small, single-family detached zoning lots (“infill” lots), where the entire principal structure building envelope (i.e. that portion of a lot remaining after required principal structure yards have been provided) is occupied by a tree’s canopy and root zone, the tree removal should be granted by administrative permit and tree should be replaced/mitigated.
3. Protected and Grand trees that are approved for removal should be replaced/mitigated.

PRIMARY ISSUE / DIFFERENCE – TBBA’S PROPOSAL VS CITY’S PROPOSAL

The primary difference between TBBA’s Proposal (as written) and the City’s Proposal *is related to the timing of when a ‘non-hazardous’ tree can be permitted for removal.*

1. **TBBA’s Proposal**, as written, would require the City grant a tree removal permit for **any** protected or grand tree, based solely on its particular location on a lot, within certain residential single-family zoning districts, regardless of tree health or whether there is any proposed construction on the parcel, (i.e. **a “stand-alone tree removal permit,” to remove a ‘non-hazardous tree,’ with no proposed construction or site work activity**)
2. **City’s Proposal**, related specifically to single-family residential development, would require the City grant a tree removal permit for **any** protected or grand tree, in conjunction with a building permit to construct or for an addition to the principal structure (single-family detached unit), on certain “smaller/infill” lots based on actual lot dimensions, regardless of zoning district, where the proposed construction activity would impact the tree, rendering it “irreversibly and irreparably damaged.” (i.e. **a “residential, new construction/addition(s), with tree removal permit”**)

Proposed Definition from Aug 2017 City Draft:

Irreparable or irreversible damage or abuse: ‘Damage or abuse’ inflicted upon a tree’s root system, trunk, and/or crown, by any means, to such a degree that the tree condition is rendered ‘hazardous’ or ‘dangerous’. Such damage or abuse has or will cause the tree incapable of correction, repair or return to structurally stable condition.

ADDITIONAL ISSUES / DIFFERENCES – TBBA’S PROPOSAL VS CITY’S PROPOSAL

TBBA’s Proposal

Sec. 13-45(g)(2)a. *General Standards*

Sec. 13-45(g)(3)a.1. *Protected trees, generally.*

Sec. 13-45(g)(6)a. *Grand tree removal, generally.*

Requires Natural Resources Coordinator to grant administrative tree removal permit(s) for any *protected or grand trees*, as follows:

- If any portion of trunk is within “buildable area” of lot zoned RS-50, RS-60, RS-75, YC-2, SH-RS
- “Buildable area” means “that portion of a zoning lot which excludes the minimum required yards (i.e. setbacks)”

Staff Comments

Sec. 13-45(g)(2) *General Standards* (Current Code)

1. Current code allows removal of “*non-hazardous*” grand trees by administrative permit only if tree is *causing structural damage to an existing building*, subject to specific conditions
2. Current code requires all other “*non-hazardous*” grand trees to go to Variance Review Board for removal, subject to *reasonable use* criteria; public hearing with notice; appeal [“review”] processes to City Council

Specific Comments on TBBA’s Proposal:

1. TBBA’s Proposal, as written, allows removal of “*non-hazardous*” trees by administrative permit, ***as ‘stand-alone’ tree removal permits – no related construction activity required.***
 - City Staff does not agree with this portion of TBBA’s Proposal. *Sec. 13-45(g)(1) Intent*, clearly states that the “*regulations have been adopted to preserve and protect existing grand and protected trees in the city.*”
 - Current Code has allowances for administrative approval of removal for “*hazardous*” and “*dangerous*” trees, which can be done regardless of any related construction activity.
 - Removal of “*non-hazardous*” (i.e. healthy) grand trees should only be administratively permitted, in conjunction with a building permit to construct a principal structure and/or additions thereto, subject to specific, objective criteria
 - Removal of “*non-hazardous*” (i.e. healthy) grand trees in relation to accessory structures should be subject to a more detailed administrative review process, including clearly described options for alternative design (i.e. shifting proposed building location, altering setbacks to accommodate structure and tree preservation, etc.)
2. The Proposal ties to Zoning Districts but not specifically to single-family development; therefore, additional language is needed to adequately address those other uses that are special uses in the named zoning districts (i.e. parking lots, daycare, religious assembly, etc.).
3. Setting removal criteria by Zoning Districts and their respective “minimum yards” does not accurately capture the actual configuration of an individual lot.
 - Zoning Districts set **minimum** lot dimensions and yards (setbacks) for lots
 - Residential “lots of record” (i.e. ‘buildable’ lots) vary in width, depth, and area throughout the City, regardless of zoning district

Specific Comments on TBBA's Proposal (continued):

- As written, TBBA's Proposal does not distinguish between principal and accessory structures. When all minimum yards are provided for both classes of structure, the "buildable area" as they define it, is very small, which was not likely TBBA's intent.
- City Staff **strongly recommends** the threshold be based on the existing, physical dimensions of a lot (i.e. smaller range of lot width and in combination with small or constrained lot area) and **not** solely by Zoning District minimum yards.
- City Staff **strongly disagrees** that RS-75 represents "smaller residential lots." In relation to the typical Future Land Use category assigned to lands zoned RS-75, which is "R-6", Tampa's Comprehensive Plan sets forth *Key Characteristics* for R-6 that state, in part, the category is typically developed with "*larger homes on larger lots.*" Sec. 27-156(a)(1)c. states, "*RS-75 residential single-family. This district provides areas for primarily low density single-family detached dwellings similar to those provided for in the RS-150 and RS-100 residential single-family districts...*"

General Note #1: (Related to City's code draft presented during 2 Public Information Meetings in Aug 2017)

The Aug 2017 Draft was focused on a broader set of rules & criteria that addressed "construction activity impacts" on trees, allowing removal administratively, subject to certain criteria, for any development type, not solely single-family residential development.

General Note #2: (Related specifically to single-family residential development only)

City Staff **strongly recommends** that, if City Council chooses to transmit TBBA's Proposal to the Planning Commission for recommendation, that Council considers modifying the language, as follows:

- A "**non-hazardous**" grand tree shall only be permitted for removal by the Natural Resources Coordinator or designee, where the following criteria are met:
 - Tree removal request shall only be accepted for review, in conjunction with a building permit(s) to construct a single-family detached residential dwelling unit (principal structure), or additions thereto;
 - Such requests shall only be accepted for review, that are related to a zoning lot with less than 75' in width, and less than or equal to the minimum lot area of the underlying zoning district;
 - Only permit removal, if:
 - o The tree is located within the proposed principal building footprint, shown on the building permit construction plans; and,
 - o That the proposed principal building footprint encompasses at least 90% of the area of the principal buildable area (i.e. zoning lot area less principal building yards/setbacks); or,
 - o That the tree would be rendered irreversibly and irreparably damaged, even if the proposed principal building footprint is shifted to the maximum allowable alternative setback change of 25% in any yard, and/or, even with the use of an approved alternative construction method (i.e. elevated foundation with air spade).