



CITY OF NOVI CITY COUNCIL DECEMBER 16, 2024

SUBJECT: Consideration of an appeal by Barima Opong-Owusu of the financial guarantee requirements associated with a Woodland Use Permit.

SUBMITTING DEPARTMENT: Community Development

KEY HIGHLIGHTS:

- A Woodland Use Permit was authorized by the Planning Commission on April 5, 2023, for the development of a single-family home that has now been constructed at 21111 Meadowbrook Road; the permit allowed the removal of certain protected trees.
- During construction, additional impacts to 21 of the remaining protected trees were identified by the City's Landscape Architect.
- Under the City's Woodland Ordinance, if you impact protected trees, you must plant replacements or pay into the Tree Fund as though you removed them.
- The applicant opposes that obligation, but on October 16, 2024, returned to the Planning Commission for a Woodland Use Permit for the 21 trees (31 tree credits) impacted during construction.
- The applicant is now seeking an appeal by the City Council of the required payment of fees and financial guarantee of the City Code.
- Staff's determination is that the impacts to the remaining woodland trees were severe and that the standards of the City Code should be upheld.

BACKGROUND INFORMATION:

The applicant, Barima Opong-Owusu, sought and received a Woodland Use Permit from the Planning Commission for the removal of 36 trees for 62 replacement credits trees to construct a single-family home at 21111 Meadowbrook Road at the meeting held on April 5, 2023. The property is located west of Meadowbrook Road, and north of Eight Mile Road in Section 35 of the City. Remaining woodland trees on the lot were to be preserved, with tree protection fencing in place to help to maintain the health of the remaining trees and the critical root zones of those trees.

During construction of the home, the applicant or his contractors further impacted woodland trees beyond what was indicated in the approved Woodland Permit. Inspections made during construction by the City's Landscape Architect revealed encroachment on the critical-root-zone of 21 regulated woodland trees within an area

mapped as city-regulated woodland. Replacement calculations require 31 replacement credits. The City's Landscape Architect created a spreadsheet, which is attached, that provides a detailed count and explanation of the required replacements.

Based on the plans provided, a post-inspection review conducted by the City's Landscape, and an inspection by the City's Woodland Consultant requested by the resident (see the attached review letter dated July 22, 2024), the applicant is requesting relief from the standards of Section 37-9 (c) that requires replacement of trees with Critical Root Zone impacts that are considered by City personnel or designees to be serious enough that the trees won't survive the impacts.

Sec. 37-9. - Tree protection during construction.

The parks and forestry operations manager, community development director, or his or her designee shall make a determination as to those trees which can reasonably be expected to survive the permitted activity. Particular consideration shall be given to the impact of changes in grade, deposition of storm water, duration of storm water encroachment, oil leaks, species of the impacted trees, soil types, soil compaction, the distance of earth moving activities from individual trees, and other construction or developmental activities which impact the area around the trees, irrespective of whether the activity is in the immediate vicinity of the affected trees. Trees which cannot be reasonably expected to survive shall be removed. Those trees which are removed pursuant to this section shall be considered in the calculation of replacement trees under section 37-8.

New Woodland Permit

The Planning Commission considered a new Woodland Use Permit PWD24-0024 at the October 30, 2024 meeting to address the further impacts to the 21 regulated woodland trees remaining onsite that were impacted in the process of the construction of the new single-family home. The Planning Commission made a motion as follows:

Motion to approve a Woodland Use Permit, PWD24-0024, for 21 regulated woodland trees that were impacted in the process of building a single-family home located at 21111 Meadowbrook Road, subject to the payment of all associated fees and bonds as required by the City's ordinances.

The Planning Commission is not authorized to allow waivers or variances from the terms of the Woodland Protection Ordinance, hence the motion noted that the approval is subject to the payment of all associated fees and bonds as required by the City's ordinances.

City staff's correspondence with the applicant indicated that, according to the ordinance, the impact by construction (at least 50% impact on the critical root zone, through grading or stockpiling in those areas), of 21 trees was significant enough to require replacement of 31 credits. The City had required a financial guarantee with the original Woodland Permit. While it has returned some of that guarantee, it has retained \$12,400 of it (31 x \$400/credit) relating to these additionally-impacted trees. As noted above, Section 37-9 requires that replacements be provided for those credits, either with plantings on-site or through a contribution to the city's tree fund.

Applicant's Appeal of the terms of the Approved Woodland Permit

The applicant has made a timely request for an appeal to the City Council of the Planning Commission's motion regarding the terms of the ordinance that the payment of all associated fees and bonds will be required per the City's Ordinance. See attached request from the applicant and copied below.

Sec. 37-31. - Appeal from granting or denial.

A permit approved by the Planning Commission shall not be issued until ten (10) calendar days following the date of the approval. Any interested person who is aggrieved by the granting or denying of a use permit required by this article or other decision hereunder may request an appeal of the decision to the Council. A request for appeal must be filed within ten (10) calendar days following the grant or denial. If an appeal is requested during such ten-day period, the issuance of any permit shall be suspended pending the outcome of the appeal. The Council, upon review, may reverse, affirm or modify the determination and/or permit issued by the planning commission.

The applicant's appeal proposes two alternatives:

- A) *For the city to return the additional tree bond (financial guarantee) of \$12,400 given the health of these trees on visual inspection and as stated during the review by Merjent the city's own environmental consultant.*
- B) *To apply the same formula as with replacement credits where 75% of the bond (financial guarantee) would be returned now and in 2 years when the health of my replacement trees are assessed the encroached trees can be assessed and if they are still surviving and thriving then the remaining 25% will be released.*

As noted above the ordinance requires replacements be provided for those credits, either with plantings on-site or through a contribution to the city's tree fund.

Staff's Review

The City's Woodland consultant and Landscape Architect cannot completely predict the severity of the impact on trees immediately, but their best judgment indicates that the impacts to the remaining woodland trees were severe. Based on their experience, this type of encroachment to the root zone is likely to negatively impact the health of the trees, and it sometimes takes years for the trees to show signs of damage. As noted above, there is currently no section in the ordinance that would allow either of the applicant's proposed options and any permanent impacts on the trees may not be evident after two years.

Section 39.c of the Woodland Protection Ordinance allows these determinations to be made by the appropriate staff:

The parks and forestry operations manager, community development director, or his or her designee shall make a determination as to those trees which can reasonably be expected to survive the permitted activity

Staff's determination is that the impacts to the remaining woodland trees were severe, and that the standards of the City Code should be upheld.

Relevant Code Section

Sec. 26.5-37. - Woodlands and fence maintenance guarantees.

- a) *The performance guarantee required under sections 26.5-5 and 26.5-7 of this chapter shall include guarantee amounts to secure the planting of required woodland trees, at a rate of four hundred dollars (\$400.00) per tree, and a fence maintenance guarantee in an amount as determined by policy of the community development director or his or her designee. The rate of four hundred dollars (\$400.00) per tree shall not be subject to the one hundred twenty (120) percent and one hundred fifty (150) percent multipliers described above.*
- b) *Where tree relocation or replacement is not feasible within the woodland area, or on the property where the activity is to be conducted, or on other property within the city approved by the parks/forestry operations manager the permit grantee shall pay into the city tree fund monies for tree replacement in a per tree amount representing the current market value for the tree replacement that would otherwise be required to be determined by the parks/forestry operations manager. The city tree account shall be used for all forestry related items including but not limited to the planting of trees within the city.*
- c) *The applicant shall guarantee trees for two (2) growing seasons after the applicant's installation and the city's acceptance. A two-year maintenance bond in the amount of twenty-five (25) percent of the value of the trees, but in no case less than one thousand dollars (\$1,000.00), shall be required to ensure the continued health of the trees following acceptance.*

City Council's Evaluation of the Appeal

Per Chapter 1 of the City Code, a variance may be granted by the City Council from regulatory provisions of this Code when all the following conditions are satisfied:

- 1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
- 2) The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and

- 3) The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question.

RECOMMENDED ACTION: SELECT ONE OF THE TWO OPTIONS, BELOW:

Denial of an appeal by Barima Opong-Owusu of the release of the financial guarantee associated with a Woodland Use Permit PWD24-0024 *for the following reasons:*

- (1) A literal application of the substantive requirement **does not** result in exceptional, practical difficulty to the applicant, because the applicant did in fact impact the critical root zone of these trees, which the City expects to eventually adversely affect those trees. While the applicant does not believe that his actions harmed the trees, his proposed solution of the City holding minimal funds for a period of years in fact presents a practical difficulty to the City, as the City lacks a mechanism or process to do that for either the applicant or others similarly situated who could be expected to ask for similar relief.
- (2) The alternative proposed by the applicant **is not** adequate for the intended use and **does** substantially deviate from the performance that would be obtained by strict enforcement of the standards, again because the City lacks a mechanism or process to do that for either the applicant or others similarly situated who could be expected to ask for similar relief, which is why the ordinance requires replacements immediately, either by planting or deposit to the tree fund.
- (3) The granting of the variance **will be** contrary to the overall purpose and goals of the chapter or article containing the regulation in question, *as the proposed alternative does not meet the intent of Section 26.5 which is to establish the authority and procedures for requiring, accepting, and enforcing performance guarantees, in order to assure that development projects are completed and maintained in accordance with city standards, requirements, and approval conditions.*

OR

Approval of an appeal by Barima Opong-Owusu of the financial guarantee associated with a Woodland Use Permit PWD24-0024 to apply the same formula as with replacement credits where 75% of the bond (financial guarantee) would be returned now and in 2 years when the health of the replacement trees are assessed

the encroached trees can be assessed and if they are still surviving and thriving, in the sole opinion of the City staff and consultants then the remaining 25% will be released.

This motion for approval is made for the following reasons:

- 1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant, because _____;
- 2) The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards, because _____; and
- 3) The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question, because _____.

This motion is subject to the following: If at any time during the 2-year period the City staff and consultants determine that the trees (or any of them) are not thriving or are compromised then the City will take the funds it has retained and deposit them in the tree fund and will invoice the applicant for the remaining amount. The applicant shall pay the invoiced amount within 30 days.