

City of Takoma Park



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CITY OF TAKOMA PARK TREE COMMISSION

IN THE MATTER OF:

A Tree Permit and Tree Protection Plan
Permits Regarding Landscaping
Activity at
6501 Kansas Avenue
Takoma Park, Maryland

Daniel Barthmaier
Applicant

Case No. TC 2017-01

ORDER

I. BACKGROUND

On February 15, 2017, Daniel Barthmaier (“Applicant”) filed a Tree Protection Plan Permit Application with the City of Takoma Park seeking a permit to construct two retaining walls on his property located at 6501 Kansas Lane, Takoma Park, Maryland (“Property”). This case was docketed as Case Number 2017-01.

On March 2, 2017, Todd Bolton, City Arborist (“City Arborist”), preliminarily granted a permit to install one retaining wall and preliminarily denied a permit to install the second retaining wall. The Applicant timely filed a written appeal of the City Arborist’s preliminary decision to deny the permit for the second retaining wall in accordance with Section 12.12.110.A of the *Takoma Park Code*.

On April 11, 2017, the City of Takoma Park Tree Commission ("Commission") conducted a fact-finding hearing on the appeal of the preliminary denial. The City Arborist, the Applicant, and the Applicant's landscape contractor testified at the hearing.

II. EVIDENTIARY SUMMARY

The Applicant submitted a proposed Tree Protection Plan Agreement that prescribed measures to protect four urban forest trees intended to remain on the Property following the construction of the proposed retaining walls.

The City Arborist testified that the Applicant purchased the Property in November 2016 and is seeking to level the sloping back yard to enable his children to play. He testified that many of the trees near the Applicant's property are at risk because of demolition and construction activity in the area. He testified that the construction of the second retaining wall, the proposed wall located closest to the Applicant's house, would impact the two 34" DBH oak trees located in the side yard of the Property. He testified that the Applicant's tree protection plan included "best practices" as proposed but that he decided to deny the permit because so many trees in the area were at risk.

The Applicant testified that he hired a contractor whom his real estate agent recommended. That contractor told the Applicant that he would obtain all required permits to install the retaining walls but he did not do so. As a result, Ian Chamberlain, the City Construction Manager, issued a stop-work order upon discovering that the contractor had begun constructing the first retaining wall. The Applicant then hired landscaping contractor Rob Page, an ISA certified arborist, to mitigate the damage caused by the first contractor, prepare a Tree Protection Plan, and install the retaining walls.

Mr. Page testified that he designed the second wall to preserve the nearby trees. He testified that it would be only 30" high and therefore would not require a footer. Rather, he testified, only the bottom 6"x 6" timber would be underground, so no root cutting would be required. The wall

would require a maximum of 2' of fill on the side of the wall closest to the oak trees. He would use root aeration matting in the fill area.

The Applicant testified that his yard currently has piles of dirt and heavily compacted soil, so the installation of the wall and the associated regrading would help mitigate those existing adverse conditions. He testified that he wants to preserve the trees and is willing to be flexible regarding the location of the wall.

The second proposed wall and the fill to be placed behind the wall will come within approximately 10' of the two 34" DBH oaks and will significantly encroach upon their critical root zones.

III. DISCUSSION

The Tree Commission may approve "only such tree protection plans that prescribe all reasonable measures to protect any trees required to be preserved under [the Urban Forest chapter of the *Takoma Park Code*]." §12.12.080(C)(3). Except as detailed below, the Commission finds, based on the documentary record and the testimony of the City Arborist, the Applicant, and Mr. Page, that the Applicant's Tree Protection Plan prescribes all reasonable measures to protect the two 34" DBH oaks. The Tree Protection Plan includes a detailed site plan that prescribes the limits of disturbance, limits construction activity to the area immediately surrounding the proposed house, and requires root compaction prevention and mitigation.

Based on the City Arborist's testimony and the Commission's review of the site plan and photographs of the Property, the Commission further finds that the proposed second wall must be shortened so that end closest to Allegany Avenue terminates in line with the side of the back porch of the Applicant's house closest to Allegany Avenue. Specifically, the Commission's finding is based on the significant encroachment into the critical root zones of the two 34" DBH oaks, including a large area of regrading to depths up to 24", and the Applicant's interest in preserving the

trees and willingness to relocate the wall to do so. This shortening of the wall by approximately 8' will reduce the intrusion of the wall and fill area into the critical root zones of both 34" oaks by approximately 50% and move the area of disturbance 8' further from the trees.

The Commission also finds that the Tree Protection Plan submitted by the Applicant does not clearly indicate that the excavation for the bottom of the second wall is not to exceed 6", as indicated by Mr. Page during his testimony. Limiting the depth of the excavation to 6" is necessary to minimize the cutting of roots in connection with the construction of the wall. Accordingly, the Commission holds that the Tree Protection Plan must be modified to indicate that the excavation shall not exceed a depth of 6".

Accordingly, the Commission will affirm the City Arborist's preliminary approval of the Applicant's Tree Protection Plan with the foregoing modifications.

IV. ORDER

For the foregoing reasons, it is this 8th day of May 2017, by the City of Takoma Park Tree Commission:

ORDERED, that the Applicant's Tree Protection Plan Permit is approved, subject to the modifications that (1) the second wall must be shortened so that the end aligns with the end of Applicant's back porch and (2) the excavation for the second wall must not exceed a depth of 6"; and

ORDERED, that the Applicant shall not commence construction of the second wall until he has submitted to the City of Takoma Park Urban Forest Manager a revised Concept Section drawing that clearly indicates that the depth of the second wall is not to exceed 6" and a revised site plan in which the end of the second wall terminates in line with the Applicant's back porch, and the Urban Forest Manager has determined that such revised documents comply with this Order; and

ORDERED, that this Order shall be incorporated in the Applicant's Tree Protection Plan.

CITY OF TAKOMA PARK TREE COMMISSION

Gresham Lowe / KJ

Gresham Lowe, Commission Chair

Carol Hotton / KJ

Carol Hotton, Commissioner

Denny May / KJ

Denny May, Commissioner

Colleen Cordes / KJ

Colleen Cordes, Commissioner

Tina Murray / KJ

Tina Murray, Commissioner