

CITY OF TAKOMA PARK TREE COMMISSION

IN THE MATTER OF:

A Permit Application to Remove
a Tree at 7320 Willow Ave.
Takoma Park, Maryland

Suzi and Ned Young
Applicants

Case No. TC 2017-02

DECISION AND ORDER

I. INTRODUCTION.

On March 10, 2017, Suzi and Ned Young filed a Tree Removal Permit Application (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove one 38.3" diameter-at-breast-height (“DBH”) tulip poplar (“Tree”) from their back yard at 7320 Willow Ave., Takoma Park, Maryland (“Property”). (Exhibit 1.)

The City Arborist, on April 28, 2017, preliminarily denied the Application, and the Youngs appealed the preliminary denial.

On May 25, 2017, the City of Takoma Park Tree Commission (“Commission”) conducted a fact-finding hearing on the appeal of the preliminary denial of the Application. Former Acting City Arborist Keith Pitchford, City Arborist Jan van Zutphen, and Mr. and Mrs. Young testified at the hearing.

II. EVIDENTIARY SUMMARY.

In late February and early March 2017, WSSC excavated and replaced a sewer pipe in the Young's back yard. The sewer work involved the digging of a trench between 6.5' (Exhibit 3) and 8.5' (Exhibit 5) from the Tree. In an email dated March 6, 2017, Doug Sievers, an Arborist employed by WSSC, recommended that the Tree be removed, citing "elevated risk of tree failure due to root loss" as the primary justification. (Exhibit 3 at p. 2.) Mr. Sievers completed a Tree Removal Application for the Youngs seeking permission to remove the Tree, which they signed and filed with the City of Takoma Park. (Exhibit 1.) Mr. Sievers discussed several characteristics of tulip poplar as a species, including that they have a weak tap root that will break under wind loading, that their limbs tend to break, that they are prone to lightning strikes, that they are intolerant of root pruning. Mr. Sievers stated that 85% of tree roots "typically" are within 18" of the soil surface, so it would be unlikely that the Tree would have significant support roots below the depth of the trench.

The Youngs also spoke to former Takoma Park City Arborist Todd Bolton, whom the Youngs testified observed the location of the trench while he happened to be in the neighborhood and advised that the Tree should be removed. Mr. Bolton, however, did not conduct a formal inspection of the Tree, observe the roots, or prepare a report. The Youngs, who are preparing to sell their house, sought to remove the Tree because they were concerned that the Tree may be hazardous and that preserving the Tree could complicate the sale of their house and pose a liability risk.

Mr. Pitchford conducted an inspection of the Tree on April 11, 2016, in response to the Young's Application. He estimated the Tree to be between 80 and 100 years old. He determined the location of the trench with the aid of the WSSC project manager and had the area air spaded so that he could inspect the impact of the trenching upon the Tree's root system. He explained that air spading has been used for many years to safely remove the dirt around a tree's roots so they can be inspected. His inspection revealed that no supporting roots had been severed from the Tree. (Exhibit 4.) He testified that he was surprised to see that no supporting roots were cut given the proximity of the trench to the Tree. He testified that the cut roots he observed in the air spaded trench were ½" to 1" feeder roots. He testified that the Tree's roots may have been cut when a concrete box culvert was

installed in the trenched area, which the Young's testified occurred around the time their house was built, nearly 100 years ago. He testified that the Tree's supporting roots also may have rerouted themselves by dropping down or going to the side to avoid the culvert. He testified that the fact that the Tree is located near several other trees, which protect it from wind, may be another reason the Tree does not have long lateral supporting roots, or that it has long "sinker" roots, instead of lateral supporting roots. Mr. Pitchford testified that when he inspected the Tree in April 2017, it appeared to be budding out and was not showing signs of distress.

Current City of Takoma Park Arborist, Jan van Zutphen, testified that the box culvert was probably installed before the Young's house was constructed in 1932 and that the culvert probably blocked the Tree's roots and caused them to grow in other directions.

The Young's testified that they found many pieces of roots, which Ms. Young indicated were approximately an inch thick and which Mr. Young described as being the width of his thumb.

Mr. Pitchford reviewed Mr. Sievers's written report and concluded that the substance of the report did not support the report's conclusion that the Tree should be removed. First, Mr. Pitchford noted that Mr. Sievers also observed that no supporting roots appeared to have been cut. He criticized Mr. Sievers's reliance on guidance from Bartlett Tree Experts, which Mr. Sievers's described as "commonly used in the industry." Mr. Pitchford explained that Bartlett does not provide industry guidance, as Bartlett's standards are proprietary. Mr. Pitchford also testified that Mr. Sievers did not conduct a proper Level 2 Risk Assessment of the Tree and instead conducted a "seat of the pants" assessment. Regarding tulip poplars' intolerance for root pruning, he testified that pathogens tend to infect the supporting scaffold roots, and that no such roots were cut on the Tree.

He also testified that he repruned the roots exposed during the air spade excavation to reduce the risk of infection. Regarding Mr. Sievers's speculation that the Tree did not have supporting roots below the depth of the trench because of the typical location of tree roots, Mr. Pitchford stated that tree roots grow differently depending on the trees' circumstances. Regarding Mr. Sievers's assertion that tulip poplars have tap roots, Mr. Pitchford testified that that is not true of tulip poplars in this area

because of the hard soil we have a few feet below the soil surface, which causes tap roots to turn sideways and become scaffold roots.

Mr. van Zutphen rated the Tree as being in good condition, with a solid trunk, a high growth rate, a full and balanced crown, and a life expectancy of approximately thirty years. (Exhibit 1 at pp. 2-3.) He testified that, under the Takoma Park Code, the applicant would have to plant or contribute to the Tree Replacement Fund the cost of planting approximately 18 replacement trees if they were to remove the Tree.

The Youngs testified that they did not want to remove the Tree, but that they were concerned about selling their house. They testified that they had not listed their house because WSSC still had to restore their back yard and wanted to cut the Tree down before doing the other work. They testified that they have already purchased a new house and cannot afford to continue to maintain two homes.

III. FINDINGS OF FACT.

Section 12.12.120(B) requires the Tree Commission to consider nine factors in approving the Application, disapproving the Application, or approving the Application with modifications or conditions. The Tree Commission has considered these criteria and makes the following findings.

1. The extent to which tree clearing is necessary to achieve the proposed development or land use, and, when appropriate, the potential ameliorating effects of any tree protection plan that has been submitted or approved.

Not applicable.

2. The number and type of replacement trees and, if appropriate, any reforestation plan proposed as mitigation for the tree or trees to be removed.

The Tree Commission finds that the Applicants would be required to replace the Tree with approximately eighteen 1 ½" caliper nursery stock trees or contribute \$3,150.00 to the City's Tree Fund and that it would take many years before the replacement trees would provide the level of shade and other environmental benefits of the Tree.

3. Any hardship the Applicant will suffer from a modification or rejection of the permit application.

The Tree Commission finds that the Applicants will have to disclose Mr. Sievers's recommendation that the Tree be removed when they list their home for sale, which may complicate the sale of their house.

4. The desirability of preserving any tree by reason of its age, size, or outstanding quality.

The Tree Commission finds, that it is desirable to preserve the Tree because of its old age (approximately 80-100 years), large size (38" DBH), and good condition.

5. The extent to which the area would be subject to environmental degradation due to removal of the tree or trees.

The Tree Commission finds that there would be moderate environmental degradation if the Tree were removed because of its large size.

6. The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood, and the property on which the tree or trees are located.

See the discussion of criteria number 5, above.

7. The general health and condition of the tree or trees.

The Tree Commission finds, based on the City Arborist's rating and Mr. Pitchford's air spade inspection, that the Tree is currently in good health and sound condition.

8. The desirability of the tree species as a permanent part of the City's urban forest.

The Tree Commission finds that tulip poplar is a desirable native species.

9. The placement of the tree or trees in relation to utilities, structures, and the use of the property.

The Tree Commission finds that the Tree does not interfere with utilities, structures, or the use of the Applicants' property.

IV. CONCLUSION AND DECISION.

The Tree Commission, after considering the documentary record and the hearing evidence, makes the foregoing findings of fact under on the statutory criteria for permit decisions set forth in Section 12.12.120(B) and concludes that the facts of this case support the preservation of the 38" DBH tulip poplar. The Tree Commission finds that the desirability of preserving the large, healthy, desirable, and structurally sound tulip poplar outweighs the complications that preserving the Tree may have on the Young's sale of their house.

The Commission notes that there is no evidence that any significant roots on the Tree were damaged by the trenching or any other evidence that supports the WSSC Arborist's recommendation that the Tree be removed. Rather, the evidence indicates that the Tree is in good condition, that no supporting roots were cut, and that there is no evidence to support the removal of the Tree other than the WSSC Arborist's unsupported recommendation. The Commission believes that the presence of the Tree and the conflicting reports regarding whether it should be removed should not have a significant impact on the sale of their home, as Mr. Pitchford's air spade inspection of the trenched area demonstrated the absence of damage to the Tree's supporting roots and that his well-reasoned report, which concluded that the Tree should be preserved, should make it clear that the WSSC Arborist's recommendation to remove the Tree was unsound.

V. ORDER.

UPON CONSIDERATION of the foregoing, it is this 1st day of June 2017, by the City of Takoma Park Tree Commission:

ORDERED, that the Tree Removal Permit Application filed by Ned and Suzi Young for removal of a 38" DBH tulip poplar tree from 7320 Willow Avenue, Takoma Park, Maryland, is DENIED.

For the Tree Commission:

Carol Hotton /¹⁰
Carol Hotton, Commissioner

Colleen Cordes /¹⁰
Colleen Cordes, Commissioner

Gresham Lowe /¹⁰
Gresham Lowe, Commissioner

Tina Murray /¹⁰
Tina Murray, Commissioner

Notice of Appeal Rights

Section 12.12.110(L) of the *Takoma Park Code* provides that any party to the proceedings before the Tree Commission and who is aggrieved by this decision may seek judicial review of the decision by filing a petition for judicial review in accordance with Title 7, Chapter 200, Judicial Review of Administrative Agency Decisions, of the Maryland Rules of Procedure.

CITY OF TAKOMA PARK TREE COMMISSION

CERTIFICATE OF MAILING

IN THE MATTER OF: **A Permit Application to Remove a Tree at
7320 Willow Avenue, Takoma Park, Maryland**

CASE NUMBER: **TC 2017-02**

I certify under penalty of perjury that on this 1st day of June, 2017, I sent by first-class mail,
a copy of the City of Takoma Park Tree Commission Decision and Order in Case No. 2017-02 to:

Suzi & Ned Young
7320 Willow Avenue
Takoma Park, MD 20912.

City of Takoma Park Tree Commission:

By:  _____
Capricia Robinson-Green