

**CITY OF TAKOMA PARK TREE COMMISSION**

**IN THE MATTER OF:**

A Permit Application to Remove  
a Tree at 7102 14th Ave.  
Takoma Park, Maryland

Adriana Kuehnel  
Applicant

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Case No. TC 2017-03

**DECISION AND ORDER**

**I. INTRODUCTION.**

On April 25, 2017, Adriana Kuehnel filed a Tree Removal Permit Application (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove one 24" diameter-at-breast-height (“DBH”) white oak tree (“Tree”) from her back yard at 7102 14th Ave., Takoma Park, Maryland (“Property”). (Exhibit 1.)

The City Arborist, on June 6, 2017, preliminarily denied the Application, and Ms. Kuehnel appealed the preliminary denial.

On June 29, 2017, the City of Takoma Park Tree Commission (“Commission”) conducted a fact-finding hearing on the appeal of the preliminary denial of the Application. City Arborist Jan van Zutphen, Ms. Kuehnel, her husband, Karma Lama, and her former husband, Randy Kuehnel, testified at the hearing.

**II. EVIDENTIARY SUMMARY.**

The Tree is located behind Ms. Kuehnel’s house and leans over her house at a noticeable angle. (Exhibits 1-4.) The Tree is approximately 50-60 years old.

The City Arborist testified that he and former Acting City Arborist Keith Pitchford inspected the Tree and determined that it was structurally sound and healthy. He testified that he started by inspecting the root system. He explained that because the Tree is leaning, he looked for signs that the

Tree's root plate was heaving and that, if the Tree's roots on the opposite side of the lean were lifting, that would be a sign that the Tree was unstable. He testified that the Tree's roots were not heaving and that his inspection revealed that the Tree's lean was a phototropic lean—the Tree grew at an angle to gain exposure to sunlight that was blocked by taller trees. He testified that trees develop a phototropic lean over a long period of time and adapt to support themselves over time. He testified that the Tree has some dead branches, which he recommended be pruned, but that dead branches are common on large trees and were not a sign of health problems with the Tree.

Ms. Kuehnel testified that the Tree is a danger to her house and family. She testified that the Tree is shedding branches and bark more than would a healthy tree. She noted the large dead branches on the Tree. (Exhibit 14.)

She testified that she is a scientist and that the laws of physics dictate that the Tree is unstable because of its lean. She testified that she would not remove the dead branches because they are opposite the lean and removing them would increase the risk of the Tree falling. She testified that she does not believe the Tree's lean is a phototropic lean because it leans in a northeasterly direction, and, because we are in the northern hemisphere, a phototropic lean would cause the Tree to lean toward the south.

She testified that the Tree hangs over her daughter's bedroom and that, although she moved into her home three years ago, she did not seek to remove the Tree earlier because it would be too expensive. She testified that several trees fell in her neighborhood during a storm on April 21, 2017, including a neighbor's tree that fell on her shed causing \$14,000.00 in damage, including damage to her husband's tools that was not entirely covered by insurance. She testified that the contractor that removed her neighbor's fallen tree following the storm suggested that she have the Tree removed immediately. The trees falling during the storm and the recommendation of the contractor inspired her to apply for permission to have the Tree removed. She testified that the trunk of the tree that fell on her shed snapped and that the roots of the tree did not pull out of the ground. She testified that that she is worried that her Tree could also snap.

She testified that there is a shed and concrete near the Tree on the opposite side of the lean and that they could interfere with the Tree's roots. She also testified that she is concerned because the Tree is located on a slope.

She testified that she is a lifelong environmentalist and does not take the issue of removing the Tree lightly. She described her efforts to recycle when she lived in Brazil, and her practices of picking up litter, using public transportation, and planting trees in her yard.

Karma Lama testified that he is worried that the Tree will fall on their house leaving them with no place to live. He testified that he does not believe that the Tree's roots will support it if a strong wind comes.

The City Arborist responded to several of Ms. Kuehnel's points. He testified that he was not concerned that the shed and concrete near the Tree interferes with its roots because the shed and concrete appears to have been in place for many years and the Tree's roots have already adapted to their presence. Regarding the dead branches, he reiterated that the presence of dead branches is normal and not a sign that the Tree is in poor health. He testified that he inspected the Tree for tip dieback, a sign of health problems for trees, and did not see any. He testified that the Tree has a good canopy.

In response to Ms. Kuehnel's testimony that she would not prune the dead wood from the Tree, he testified that, because of the large overall canopy of the Tree, removing the dead wood would not impact the balance of the Tree. He testified that removal of the dead wood would be helpful because (1) it would reduce the risk of branches falling down, (2) the presence of the dead wood could introduce rot and insects to the trunk of the Tree, and (3) there is no foliage on the dead branches to support the health of the Tree.

Regarding Ms. Kuehnel's concern that the Tree's lean is not a phototropic lean because it leans in a northeasterly direction, the City Arborist testified that trees lean to get out from under taller trees and reach the light in the sky—not to reach toward the sun.

The City Arborist, in addition to recommending that Ms. Kuehnel have the dead wood pruned from the Tree, suggested that she have an arborist inspect the Tree periodically so that any problems with the health or structure of the Tree that develop will be discovered before the Tree becomes

hazardous. He also testified that he and Acting City Arborist Pitchford conducted only a Level 1/Level 2 Tree Risk Assessment of the Tree and that the Applicant could hire an arborist to conduct a more in-depth Level 3 Tree Risk Assessment of the Tree to determine if there are any problems with the Tree that were not revealed by their previous assessments, although he testified that the lesser assessments did not indicate the need for a Level 3 Tree Risk Assessment.

**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 six 1 ½” caliper nursery stock trees or contribute \$1,050.00 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 Ms. Kuehnel may continue to experience fear that the Tree may fall on her house and harm her family.

**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 significant age (approximately 50-60 years), large size (24" 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. In addition, it is important as one of a relatively small cohort of maturing white oaks that will eventually replace the largest and oldest specimens, which are undergoing slow decline.

**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 inspections of Acting City Arborist Pitchford and City Arborist van Zutphen and the photographs of the Tree 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 white oak is a desirable native species, and is one of the most important native trees for pollinators and many other forms of wildlife.

**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 24" DBH white oak. The Tree Commission finds that the desirability of preserving the large, healthy, desirable, and structurally sound white oak outweighs Ms. Kuehnel's concern about the stability of the Tree because it is leaning.

The Commission notes that the Ms. Kuehnel's belief that the laws of physics dictate that the Tree is unstable as a result of its lean is unfounded because trees are living organisms that make structural adaptations to remain stable despite growing at an angle to receive sunlight. The Commission also notes that the fact that other trees fell down near her home during the April 21, 2017, storm does not indicate that her Tree is likely to fall over. Rather, the fact that the Tree did not fall during the severe storm indicates that it is healthy and stable.

The Commission concurs with the City Arborist's recommendations that Ms. Kuehnel have an arborist inspect the Tree periodically and also remove the dead branches before they fall. The Commission also suggests that, for her peace of mind, Ms. Kuehnel have an Arborist conduct a Level 3 Tree Risk Assessment of the Tree. If a Level 3 assessment reveals new evidence about the risk the Tree poses, or if a periodic reinspection of the Tree by an arborist reveals a material change in the condition of the Tree, then she should reapply for a Tree Removal Permit or Tree Permit Waiver, as appropriate.

**V. ORDER.**

UPON CONSIDERATION of the foregoing, it is this 16th day of August 2017, by the City of Takoma Park Tree Commission:

ORDERED, that the Tree Removal Permit Application filed by Adrianna Kuehnel for removal of a 24" DBH white oak tree from 7102 14th Avenue, Takoma Park, Maryland, is DENIED.

For the Tree Commission:

*Carol Hotton/KS*

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Carol Hotton, Commissioner

*Colleen Cordes/KS*

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Colleen Cordes, Commissioner

*Gresham Lowe/KS*

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Gresham Lowe, Commissioner

*Tina Murray/KS*

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Tina Murray, Commissioner

*Denny May/KS*

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Denny May, 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.