

CITY OF TAKOMA PARK TREE COMMISSION

IN THE MATTER OF:

A Permit Application to Remove
a Tree at 817 Colby Ave.
Takoma Park, Maryland

John L. Smith
Applicant

Case No. TC 2017-04

DECISION AND ORDER

I. INTRODUCTION.

On April 5, 2017, John Smith filed a Tree Removal Permit Application (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove one 29.5" diameter-at-breast-height (“DBH”) black oak tree and one 27” DBH black gum tree from his yard at 817 Colby Ave., Takoma Park, Maryland (“Property”). (Exhibit 1.)

The Acting City Arborist, on June 2, 2017, preliminarily approved the application to remove the black oak tree and denied the application to remove the black gum tree, and Mr. Smith appealed the decision regarding the black gum tree (hereinafter, “Tree”).

On July 27, 2017, the City of Takoma Park Tree Commission (“Commission”) conducted a fact-finding hearing on the appeal of the preliminary denial of the Application regarding the Tree. City Arborist Jan van Zutphen, Mr. Smith, Mr. Smith’s wife, Betty Smith, and the Smiths’ neighbor, Morgan Wright, testified at the hearing.

II. EVIDENTIARY SUMMARY.

The City Arborist testified that the Tree is located in the Smiths’ back yard approximately four feet from their house. He testified that the Tree has a slight lean that is parallel to the back of the house. The City Arborist testified that former Acting City Arborist Keith Pitchford inspected the Tree on June 2, and rated its condition. Mr. Pitchford rated the Tree as being in good condition,

deeming it to have a sound structure, a full and balanced crown, and a life expectancy of over thirty years. Exhibits 2-3.

The City Arborist also inspected the Tree. He testified that the Tree's root system is intact, with no heaving. He testified that he struck the trunk with a rubber mallet to check for hollowness and determined that the trunk is solid. He noted that no bark came off the trunk when he struck it, which indicates that the Tree is in good health. He also checked a crevice in the base of the trunk with a metal rod and found no decay. He testified that the lean is a phototropic lean, which developed because the Tree is under the black oak tree for which the Applicant received a removal permit. He testified that he was not concerned about the lean. He noted some splits and discoloration in the bark on the trunk, but stated that they were not a concern. He testified that he agreed with Mr. Pitchford's assessment that the Tree is in good condition. The City Arborist noted the presence of normal amounts of dead wood in the Tree, which he recommended be pruned.

Mr. Smith testified that he is a 31-year resident of Takoma Park and that his house was built in 1967. He submitted a photograph of the Tree's trunk taken through his bedroom window showing that the Tree impedes his view and a photograph showing the proximity of the Tree to his house. Exhibit 7. Mr. Smith testified that he recently rearranged his bedroom furniture and now sees the Tree whenever looks out of his bedroom window. He testified that the Tree does not have any limbs on the bottom 45 feet of the trunk because they have all fallen off and that he had to replace his roof in 2001 because of damage from trees. However, he testified that he is not concerned about the Tree's limbs damaging the roof because most of the branches have already fallen off. He testified that there are approximately 60 trees on his Property, which he cares for by removing vines and being careful not to disturb the ground underneath them.

Mr. Smith testified that his concern about the Tree is that it may fall and that the fall would cause the roots to crack the foundation of his house. He testified that he once saw a mouse run into the base of the tree and that he is concerned that it may be infested with Japanese beetles, which are present in other trees on his Property.

The City Arborist testified that the Tree is approximately the same age as the house, so the Tree's root system would have grown away from the house. He testified that it is normal for black

gum trees located in a forested setting such as the Smiths' back yard to shed their lower limbs. He testified that black gum is a desirable native species that can grow very tall. He testified that black gum trees tend not to develop cavities and therefore are not prone to failure. The Acting City Arborist gave the Tree a rating of 5 out of 5 for the presence of insects—indicating the lowest possible insect presence.

Mr. Smith's neighbor, Morgan Wright, testified that he would not want the Tree next to his own house.

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 ten 1 ½" caliper nursery stock trees or contribute \$1,750.00 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 Smiths may continue to experience concern that the Tree may fall and damage the foundation of their house but that it may be mitigated by the information on the tree's health provided by the City Arborist.

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 (27" 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 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 black gum 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 27" DBH black gum. The Tree Commission finds that the benefits of preserving the large, healthy, desirable, and structurally sound black gum outweighs Mr. Smith’s concern about the potential for the tree to damage the foundation of his house.

The Commission concurs with the City Arborist’s recommendations that Mr. Smith have the dead wood pruned from the Tree. The Commission also suggests that Mr. Smith continue to monitor the Tree for an increase in the angle of its lean or evidence that the Tree’s roots are heaving from the ground. If there is a material change in the condition of the Tree, then he should reapply for a Tree Removal Permit or Tree Permit Waiver, as appropriate.

V. ORDER.

UPON CONSIDERATION of the foregoing, it is this 8th day of September 2017, by the City of Takoma Park Tree Commission:

ORDERED, that the Tree Removal Permit Application filed by John L. Smith for removal of a 27" DBH black gum tree from 817 Colby Avenue, Takoma Park, Maryland, is DENIED.

For the Tree Commission:

Carol Hotton/KS

Carol Hotton, Commissioner

Colleen Cordes/KS

Colleen Cordes, Commissioner

Tina Murray/KS

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.