

CITY OF TAKOMA PARK TREE COMMISSION

IN THE MATTER OF:

A Permit Application to Remove
a Tree at 334 Lincoln Ave.
Takoma Park, Maryland

Laura and Richard Barclay
Applicants

Case No. TC 2017-06

DECISION AND ORDER

I. INTRODUCTION.

On July 6, 2017, Laura and Richard Barclay filed a Tree Removal Permit Application (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove one 39" diameter-at-breast-height (“DBH”) tulip poplar tree and one 32” DBH willow oak tree from their yard at 334 Lincoln Ave., Takoma Park, Maryland (“Property”). (Exhibit 1.)

The City of Takoma Park Urban Forest Manager, on July 12, 2017, preliminarily denied the application as to both trees. The Applicants appealed the decision regarding the tulip poplar tree (hereinafter, “Tree”).

On October 26, 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 Urban Forest Manager Jan van Zutphen and Mr. and Mrs. Barclay testified at the hearing.

II. EVIDENTIARY SUMMARY.

The Tree is located in the back-left corner of the Applicants’ Property. The City Urban Forest Manager testified that former Acting City Urban Forest Manager Keith Pitchford inspected the Tree and rated its condition. Mr. Pitchford rated the Tree as being in good condition, deeming it to have a solid and sound trunk, excellent growth rate, a full but unbalanced crown, and a life expectancy of

over thirty years. Exhibits 2-3. Mr. Pitchford noted the presence of two or more dead limbs. Exhibit 2.

The City Urban Forest Manager testified that he also inspected the Tree and agreed with Mr. Pitchford's rating and conclusion. He testified that the Tree's root system is strong. He explained that the Tree is on a slope and that Exhibits 9 and 10 show a large root on the uphill side of the Tree that anchors the Tree on the slope. He testified that the fact that the Tree is on a slope reduces the likelihood that the ground around the Tree will become saturated, which could increase the risk of the Tree falling. He testified that he struck the trunk of the Tree with a rubber mallet and heard no indication of hollowness and probed the trunk with a metal rod and found no indication of decay. He testified that Exhibit 12 shows that the Tree's canopy is full but unbalanced, with no particular defects. He testified that the Tree has some dead wood, which he described as normal. He testified that there were no signs of mushrooms around the Tree or tip-dieback in its crown and that tip-dieback and mushrooms are signs of root system failure in a tree. He testified that the Tree is approximately eighty years old, is not nearing the end of its lifespan, and should continue to grow.

The City Urban Forest Manager testified that, if the Applicants were permitted to remove the Tree, they would have to plant or contribute to the Tree Replacement Fund the cost of planting 15 to 18 replacement trees. He testified that removing the Tree would render the surrounding trees more exposed to wind and less supported by their roots, which are intertwined with the Tree's roots. He testified that the presence of the surrounding trees would reduce the environmental impact of the removal of the Tree because they would continue to provide shade to the area. He testified that tulip poplar trees are an important part of the City's forest ecology.

The Applicants testified that they want to remove the Tree because they are concerned that it will fall on their house or their neighbors' house. They testified that the Tree is located approximately 30 feet from their house and 15 feet from their neighbors' house.

The City Urban Forest Manager testified that, if the Tree fell toward the Applicants' house or their neighbors' house, it would hit them and the results could be catastrophic. He testified that the Tree is not likely to fall. He testified that trees rarely fall over without a reason, and that he does not see any issues with the Tree that make it likely to fall. He testified that he recommends that the

Applicants have the Tree pruned regularly and that they have a level three risk assessment performed on the Tree if they are concerned and wish to determine whether there are any non-apparent problems with the Tree.

Mrs. Barclay describe her yard as heavily wooded. She testified that she is concerned that the Tree is the tallest tree in the immediate area and that it therefore will blow over in wet and windy conditions. She testified that her family and their neighbors sleep in different rooms during inclement weather because they are scared the Tree will fall on their houses. She testified that the Tree often sheds large branches. She testified that she and Mr. Barclay decided to remove the Tree after six trees in their neighborhood fell down during a storm.

Mr. Barclay testified that, because the Tree is very tall, there is significant leverage at the base of the Tree, and that it would fall with great force. He testified that he is concerned about the Tree falling because the area has been experiencing more storms and more severe weather in recent years.

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 15 to 18 1 ½” caliper nursery stock trees or contribute the cost of planting 15 to 18

trees to the City's Tree Replacement 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 may continue to experience fear that the Tree will fall and damage their house or their neighbors' house and harm their families but that their fear may be mitigated by the information on the Tree's health and structural condition provided by the City Urban Forest Manager.

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 80 years) and large size (39" DBH).

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 and the shelter and support it provides to the surrounding trees.

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.

The loss of tree cover would be moderate because of the presence of other trees, but the remaining trees would be more susceptible to failure.

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 Urban Forest Manager 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 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, but that the Tree could strike the Applicants' or their neighbors' house if it falls.

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 39" DBH tulip poplar. The Tree Commission finds that in the absence of any significant risk that the tree will fall on Mr. and Mrs. Barclay's or their neighbors' houses, their concern about the potential for the tulip poplar to fall does not outweigh the benefits of preserving a large, healthy, desirable and structurally sound tree.

The Commission concurs with the City Urban Forest Manager's recommendations that the Applicants have the Tree pruned regularly and that they have a level 3 risk assessment performed on the Tree if they are concerned about the soundness of the Tree. If a level 3 risk assessment reveals new material evidence about the condition of the Tree, then the Applicants should reapply for a Tree Removal Permit or Tree Permit Waiver, as appropriate.

V. ORDER.

UPON CONSIDERATION of the foregoing, it is this 13th day of November 2017, by the City of Takoma Park Tree Commission:

ORDERED, that the Tree Removal Permit Application filed by Laura and Richard Barclay for removal of a 39" DBH tulip poplar tree from 334 Lincoln Avenue, Takoma Park, Maryland, is DENIED.

For the Tree Commission:

Tina Murray/KS
Tina Murray, Commission Chair

Denny May/KS
Denny May, Commissioner

Carol Hotton/KS
Carol Hotton, Commissioner

John Barnwell/KS
John Barnwell, Commissioner

Bruce Levine/KS
Bruce Levine, 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.