

**CITY OF TAKOMA PARK TREE COMMISSION**

**IN THE MATTER OF:**

A Permit Application to Remove  
a Tree at 7412 Cedar Ave.  
Takoma Park, Maryland

Case No. TC 2017-07

Andrew Mendelson  
Applicant

**DECISION AND ORDER**

**I. INTRODUCTION.**

On August 10, 2017, Andrew Mendelson (“Applicant”) filed a Tree Removal Permit Application (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove one 26" diameter-at-breast-height (“DBH”) beech tree (hereinafter, “Tree”) from his yard at 7412 Cedar Ave., Takoma Park, Maryland (“Property”). (Exhibit 1.)

The City of Takoma Park Urban Forest Manager, on August 25, 2017, preliminarily denied the application. The Applicant timely appealed the preliminary decision.

On November 2, 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, the Applicant, Alexander Mendelson, and Jodi Bloom testified at the hearing.

**II. EVIDENTIARY SUMMARY.**

The Tree is located in the back yard of the Applicant’s Property, approximately four feet from the middle of the Applicant’s house and surrounded by a deck. Exhibit 1 and Photograph 4. The City Urban Forest Manager initially inspected the Tree on August 17, 2017, and rated the Tree as being in good condition, deeming it to have a solid and sound trunk, moderate growth rate, sound structure, normal pest presence, a full but unbalanced crown, and a life expectancy of five to thirty years. Exhibits 2-3.

The City Urban Forest Manager testified that he conducted a Level 2 Risk Assessment of the Tree, which included using a rubber mallet to detect hollowness in the trunk, a metal rod to probe for decay, and a visual inspection. He testified that the Tree does not have an insect infestation or any diseases. He testified that the Tree has a double trunk with a cavity in one trunk. He testified that the Tree is surrounded by other beech trees, Photographs 5 and 30, which allows their branches to intertwine and protect each other from wind and allows their roots to intertwine and support each other. He testified that the Tree has grown over the roof of the house as a result of phototropism—seeking sunlight and growing out from under other nearby trees. He described the Tree as very healthy with no signs of decay. He testified that the fallen branches, Photographs 21-28, that the Applicant asserts fell from the Tree are all dead. He testified that it is natural for trees to shed branches and that, if not pruned, the Tree will “self-prune.” Jodi Bloom testified that she has seen live branches fall from the Tree.

The Applicant testified that his arborist, Vincent Chillemi, advised him that the Tree is in distress. The City Urban Forest Manager testified that he spoke with Mr. Chillemi about the Tree and that Mr. Chillemi agreed that the Tree is in good condition. The record does not include a written report by Mr. Chillemi.

The City Urban Forest Manager testified that pruning the Tree would help maintain the health of the Tree and reduce the weight of the Tree over the Applicant’s house. Mr. Mendelson testified that he last had the Tree pruned approximately five years ago.

The City Urban Forest Manager testified that, if the Applicant were permitted to remove the Tree, he would have to plant or contribute to the Tree Replacement Fund the cost of planting six replacement trees. He testified that removing the Tree would be harmful because it would open up the area and render the surrounding trees more prone to failure. He testified that beech is a desirable species in the City’s urban forest.

The City Urban Forest Manager testified that, with periodic inspections and proper tree care, the Applicant can reduce the risk of branches falling by 80 to 90%. He testified that the Applicant should have the Tree pruned and, at the time of pruning, have a Level 3 Tree Risk Assessment to obtain a more thorough evaluation of the condition of the Tree. He explained that a Level 3 Risk

Assessment would reveal if the cavity is significant enough to compromise the structure of the Tree. He testified that the Tree should be pruned every two to three years.

The City Urban Forest Manager testified that it is his opinion that the Applicant can live safely in his home if the Tree remains.

The Applicant testified that he has lived in his house for 22 years. He is seeking to remove the Tree because he is afraid that a wind burst or lightning strike will cause a heavy branch to fall on his house. He testified that he lives in terror of the Tree when it rains. He testified that beech wood is very heavy. He testified that his house is very small and the Tree's branches extend over every room in the house. He testified that the Tree leans at a thirty-degree angle and will continue to lean over his house because the other trees in the back yard block the sun on the other side of the Tree. He testified that other houses on his street do not have tree limbs over them and that beech trees on Capitol Hill and in Sligo Creek Park grow straight up. He testified that a branch from the Tree fell on his car in June 2017. He said the branches that fall are so big and heavy that he cannot cut them with a saw and must leave them in the yard. He testified that the Tree is not the largest tree on his Property and that he is not concerned about it because of its size, but because of its location close to his house and the fact that it leans over his house. He testified that the other trees on his Property are eight to twelve feet from his house.

The Applicant testified that he loves trees and that he pulls ivy off of trees when he walks in Sligo Creek Park. He testified that there are six or seven large Trees on his Property.

Alexander Mendelson, the Applicant's son, who also lives at the Property, testified that the Tree interferes with the deck and reduces the value of the Property.

Ms. Bloom testified that the Tree is a threat and that she has seen living trees in Takoma-DC that have fallen over.

### **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 Applicant would be required to replace the Tree with six 1 ½” caliper nursery stock trees or contribute the cost of planting six 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 Applicant may continue to experience fear that the Tree will fall and damage his house or harm his family but that his fear may be mitigated by the information on the Tree’s 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 large size, 26” 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, which would be more prone to failure if the Tree were removed.

**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 large trees, but the remaining trees would be more likely to fail, which would cause additional loss of tree cover.

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

The Tree Commission finds, based on the inspections of 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 beech is a desirable 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 Applicant's property, but that the Tree could drop branches on the Applicant's house or strike the Applicant's 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 26" DBH beech. The Tree Commission finds that in the absence of any significant risk that the Tree will fall on the Applicant's house and the possibility of preventing limbs from falling on his house with regular pruning, his concern about the potential for the Tree 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 Applicant have the Tree pruned regularly and that he have a Level 3 Risk Assessment performed on

the Tree if he remains 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 Applicant should reapply for a Tree Removal Permit or Tree Permit Waiver, as appropriate.

**V. ORDER.**

UPON CONSIDERATION of the foregoing, it is this 14<sup>th</sup> day of December 2017, by the City of Takoma Park Tree Commission:

ORDERED, that the Tree Removal Permit Application filed by Andrew Mendelson for removal of a 26" DBH beech tree from 7412 Cedar 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.