

CITY OF TAKOMA PARK TREE COMMISSION

IN THE MATTER OF:

A Permit Application to Remove
two Trees at 102 Geneva Ave.
Takoma Park, Maryland

Robert Nichols
Applicant

Case No. TC 2017-08

DECISION AND ORDER

I. INTRODUCTION.

On September 21, 2017, Robert Nichols (“Applicant”) filed a Tree Removal Permit Application (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove one 43” diameter-at-breast-height (“DBH”) white oak tree and one 17” DBH Osage orange tree from his property at 102 Geneva Ave., Takoma Park, Maryland (“Property”). Exhibit 1.

The City of Takoma Park Urban Forest Manager, on September 28, 2017, preliminarily granted the Application as to both trees. Exhibit 3. Susan Wood, Richard Payne, Kirsten Stade, and Kerstin Zurbrigg timely filed appeals of the preliminary decision as to both trees.

On November 9, 2017, the City of Takoma Park Tree Commission (“Commission”) conducted a fact-finding hearing on the appeal of the preliminary approvals. City Urban Forest Manager Jan van Zutphen, the Applicant, Susan Wood, Richard Payne, Kerstin Zurbrigg, Kristen Stade, and Jesse Swanson testified at the hearing.

II. EVIDENTIARY SUMMARY.

The Applicant applied to remove the white oak and Osage orange trees for the purpose of constructing a new house on the Property, which currently is a vacant lot. The white oak is located in the center of the Applicant’s Property and the Osage orange is located on the right side of the

Property. Exhibit 1. The City Urban Forest Manager initially inspected the trees on September 22, 2017.

White Oak

The City Urban Forest Manager rated the white oak as being in “fair/poor” condition. Exhibit 1. He rated the white oak’s growth rate as moderate and its trunk as hollow with extensive bark loss. He observed a moderate presence of dead wood in the white oak, moderate insect and disease infestation, and a full but unbalanced crown. He estimates the white oak to have a life expectancy of less than five years. Exhibit 1.

The City Urban Forest Manager testified that the white oak is a majestic tree that appears healthy from the street, Exhibits 12-13, but that has extensive dieback in its crown, Exhibits 14-16, which he said is being caused by a borer infestation. He estimated that one third of the crown of white oak is dead or dying.

He testified that there is a large crack in the white oak’s trunk that extends all the way through the trunk, which was caused by wind torqueing the structure of the tree. He noted that Exhibits 19 and 20 show the crack visible on opposite sides of the white oak. He testified that the crack in the trunk is reasonably likely to fail, which will cause a large, heavy portion of the white oak to fall, and that there is a fair chance that it will strike Ms. Stade’s house, which is next door to the Property. *See* Exhibit 14. He testified that the white oak could fail immediately or could last another ten years, but that he believes that it is more likely to fail in the near future.

The City Urban Forest Manager testified that the owner could install cables and rods to brace the large branches of the white oak, which would reduce the risk of failure. He testified that he would have preliminarily denied the permit to remove the white oak if he believed that it would help the tree in the long term, but he testified that treatment of the borer infestation, which would require applications three times per year, is unlikely to be successful. He testified that, because of the significance of the white oak, he consulted with another arborist, Kevin Clair, who concurred that it did not make sense to preserve the tree.

The City Urban Forest Manager testified that the Applicant would have to plant or contribute to the City's Tree Replacement Fund the cost of planting nine replacement trees if he is permitted to remove the white oak.

Susan Wood testified that the Property was subdivided from a neighboring lot in 2007 and that the prior owner developed the subdivision plan to facilitate the preservation of the white oak when the lot was developed.

Richard Payne testified that the white oak was one of few large trees in the neighborhood. He described the white oak as large and majestic. He noted that it is located in the front of the property, not the rear as indicated in the letter notifying the Applicant of the City Urban Forest Manager's preliminary decision.

Kerstin Zurbrigg testified that she is a ten-year resident of Geneva Ave. She testified that she is concerned that the removal of the white oak will lead to erosion. She noted that changes such as the removal of a tree affects the ecosystem and removing the tree will increase runoff of stormwater and toxins into Sligo Creek, which is behind the Property.

Kristen Stade, who lives next door to the Property, testified that the white oak's canopy appears to be full in Exhibit 29 and that the white oak provides shade to her bedroom. She testified that white oaks can live up to 600 years and that their average lifespan is 300 years. She testified that white oaks provide acorns for wildlife to eat and provide habitat. She noted a white oak in New Jersey that lived for 100 years after it was discovered to be hollow. *See* Exhibit 30. She also provided comments from arborists with whom she shared photographs of the Applicant's white oak on line suggesting ways to save it. Exhibit 31. She testified that older trees store more carbon than younger trees, *see* Exhibit 32, and that people often remove old trees in urban environments far too early, *see* Exhibit 33.

The City Urban Forest Manager noted that the people that responded to Ms. Stade's internet inquiry had not inspected the white oak and that their credentials were not verified.

Jesse Swanson testified that he lives in the neighborhood and moved to Takoma Park because he loves trees. He testified that the neighborhood has lost three other large trees recently. He believes that the white oak will live for another 20 to 30 years and that the Applicant should wait for

the white oak to die instead of removing it. He testified that removing the white oak would open a large hole in the tree canopy.

The Applicant testified that the Property was subdivided in 2007 and that the condition of the white oak has changed since then. He testified that the split in the white oak is four feet long and that other trees have fallen and damaged the white oak. He testified that he could build the house he has planned for the Property without removing the white oak but he is concerned that the white oak will fall and cause damage to the new house or a neighboring house.

Osage Orange

The City Urban Forest Manager rated the Osage orange as being in “fair/poor” condition. Exhibit 1. He rated the Osage orange’s growth rate as moderate and its trunk as having sections of bark loss. He observed a significant presence of dead wood in the Osage orange, moderate insect and disease infestation, and an unbalanced and sparse crown. He estimates the Osage orange to have a life expectancy of between five and thirty years. Exhibit 1.

The City Urban Forest Manager testified that the Osage orange tree is located next to a row of evergreen trees and that it is leaning through the evergreens because of phototropism. He testified that the Osage orange’s crown is very unbalanced, that it has grown in an unhealthy manner, and that it is likely to fail. He also testified that the evergreens will grow better if the Osage orange is removed. He also observed infested wounds on the Osage orange tree. The City Urban Forest Manager testified that the Applicant would be required to plant or contribute to the Tree Replacement Fund the cost of planting two replacement trees if he is permitted to remove the Osage orange tree.

Ms. Zurbrigg expressed support for the removal of the Osage orange, stating that the entire crown extends over her yard and that the tree’s weight rests on a cedar tree in her yard.

Replacement Trees

The Applicant agreed to plant replacement trees on the Property if permitted to remove the white oak and Osage orange trees. Exhibit 4.

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 white oak tree with nine 1 ½” caliper nursery stock trees or contribute the cost of planting nine trees to the City’s Tree Replacement Fund and would be required to plant or pay the cost of planting two 1 ½” caliper nursery stock trees to replace the Osage orange. The Commission finds that it will take many years before the replacement trees provide the level of shade and other environmental benefits of the trees, particularly the white oak. However, because of the short life expectancy of the white oak and Osage orange trees, the replacement trees will provide greater long-term benefits. The Applicant’s commitment to plant replacement trees on the Property will mitigate the loss of the white oak and Osage orange.

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

The Tree Commission finds that the home to be constructed by the Applicant may be damaged if the white oak fails or that the Applicant may be liable to Ms. Stade if the white oak fails and falls on her house.

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

The Tree Commission finds that it is highly desirable to preserve the white oak tree because of its large size, 43” DBH, and old age.

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 significant environmental degradation if the white oak tree were removed because of its large size and the food and habitat that white oaks provide to wildlife. The Commission finds that there would be minimal environmental degradation if the Osage orange were to be removed because of its smaller size and poor location amongst the row of evergreens.

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 resulting from the removal of the white oak because of its large canopy and the lack of other large trees in the area would be significant. The loss of tree cover resulting from the removal of the Osage orange would be minimal because it is intertwined with the row of evergreens.

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

The Tree Commission finds, based on the inspections of the City Urban Forest Manager and the photographs of the trees, that the white oak and Osage orange are currently in poor health and have unsound structures.

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 very desirable species and Osage orange is a moderately desirable species in the City’s urban forest.

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

Not applicable.

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 removal of the 43" DBH white oak tree and the 17" DBH Osage orange tree.

Regarding the white oak, although it is a very large, old specimen of a highly desirable species, the Tree Commission finds that the significant risk that the tree will fail and strike the neighbor's house and the tree's poor condition and short anticipated lifespan outweigh the benefits of preserving it.

Regarding the Osage orange, the Tree Commission finds that significant risk that the tree will fall and its adverse effect on the evergreens through which it leans outweigh the benefits of preserving the tree, which does not have any outstanding characteristics.

The Tree Commission appreciates the appellants' interest in preserving the trees at issue and their efforts in support of the trees. However, the Commission does believe the preservation of the trees is warranted in this case.

V. ORDER.

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

ORDERED, that the Tree Removal Permit Application filed by Robert Nichols for removal of a 43" DBH white oak tree and a 17" DBH Osage orange tree from 102 Geneva Avenue, Takoma Park, Maryland, is GRANTED.

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.