

City of Takoma Park



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CITY OF TAKOMA PARK TREE COMMISSION

IN THE MATTER OF:

A Tree Protection Plan
Permit Regarding Construction
Activity at
914 Glaiewood Avenue
Takoma Park, Maryland

Lara and Ben Finder
Applicants

Case No. TC 2018-01

ORDER

I. BACKGROUND

On October 27, 2017, Lara and Ben Finder (“Applicants”) filed a proposed Tree Protection Agreement seeking a Tree Protection Plan Permit from the City of Takoma Park in connection with the construction of a shed on their property located at 914 Glaiewood Ave., Takoma Park, Maryland (“Property”). This case was docketed as Case Number 2018-01.

On October 30, 2017, the City of Takoma Park Urban Forest Manager, Jan Van Zutphen, preliminarily approved the Applicants’ proposed Tree Protection Agreement. The Applicants’ Neighbor, Catherine Tunis, timely filed a written appeal of the Urban Forest Manager’s preliminary decision to grant the permit in accordance with Section 12.12.110.A of the *Takoma Park Code*.

On January 11, 2018, the City of Takoma Park Tree Commission (“Commission”) conducted a fact-finding hearing on the appeal of the preliminary approval. The Urban Forest Manager, the Applicants, Ms. Tunis, and several neighbors testified at the hearing.

II. EVIDENTIARY SUMMARY

The Urban Forest Manager testified that, on October 20, 2017, Ms. Tunis reported that the Applicants were building a shed without first obtaining a Tree Protection Plan Permit, and that he issued a stop work order to the Applicants that day. The Applicants submitted a Tree Impact Assessment request on October 23, 2017. Exhibits 1, 1A, and 1B. The Urban Forest Manager testified that he determined that the proposed shed construction required a Tree Protection Plan Permit, and the Applicants submitted a proposed Tree Protection Plan Agreement on October 27, 2017, that prescribed measures to protect the urban forest trees in the vicinity of the planned shed, Exhibit 2, 2A, and 2B.

The tree protection requirements of the Agreement included prohibiting the use of heavy equipment, the maintenance of existing fencing as tree protection fencing, mulching to prevent root compaction, watering of trees during construction activity, and storage of construction materials only on an existing concrete patio. Exhibits 2, 2A, and 2B.

Ms. Tunis filed an appeal of the preliminary approval of the Tree Protection Plan Permit on November 14, 2017. Exhibit 3. The Urban Forest Manager testified that he attempted to resolve Ms. Tunis's concerns about the Applicants' project and avoid bringing the matter to a hearing before the Tree Commission by adding additional tree protection matters to the Tree Protection Agreement on November 28, 2017, Exhibit 2C, to which the Applicants consented, Exhibit 2 at p. 10. The additional tree protection requirements included installing tree protection fencing, mulching a larger area around the proposed shed, and treating a nearby white oak with cambistat (directing more tree resources to sustaining root structure and health than to height growth). Exhibit 2C. The Urban Forest Manager testified that Ms. Tunis remained unsatisfied with the Tree Protection Plan Agreement.

The Applicants are seeking to build an 8' x 10' shed in the back-right corner of their yard. There is an existing 6.5' x 12' concrete slab in the same corner of their yard that abuts the right-side

property lines. Exhibit 2B. The Applicants testified that they planned to build the shed on the existing slab and did not believe they needed a Tree Protection Plan Permit because there would be minimal impact on the trees because they were primarily building on the existing slab. They testified that they had to change their plans because they were unable to place the shed against the property lines because of setback requirements.

There is a retaining wall along the Applicants' rear property line, which is 5.5' from the proposed shed, and a row of small trees and bushes behind the retaining wall in the Applicants' rear neighbors' yard. Exhibit 4. There is a 28" DBH tulip poplar in the Applicants' right-rear neighbors' yard that is 13' from the right-rear corner of the newly excavated portion of the proposed shed, and the retaining wall and the existing concrete pad are located between the tulip poplar and the new excavation. There is a 36" DBH white oak in the Applicants' right-side neighbors' yard located 16' from the newly excavated foundation of the proposed shed, and the existing concrete pad is located between the white oak and the new excavation. Exhibit 4, Photograph 13.

The Urban Forest Manager testified that the proposed project would have minimal or no impact on the nearby trees. He testified that the new excavation adjacent to the existing concrete slab would not affect the nearby trees and that only the excavation beyond the existing slab might affect the trees. He testified that the retaining wall also likely prevented tree roots from extending to the area of new excavation.

Ms. Finder testified that she and Mr. Finder moved to 914 Glazewood Ave. in September 2017, and that they decided to build a shed over the existing concrete slab in the corner of their yard so as to maximize the permeable surface area in their yard, but that they had to change their plan to meet setback requirements. She testified that they are willing to satisfy all of the conditions of the Tree Protection Plan Agreement. She testified that they had arborist Chris Larking of Bartlett Tree Experts, Inc., assist with their Tree Protection Plan. She testified that three of her four adjoining

neighbors support her Tree Protection Plan Permit application and that the owner of the white oak near her proposed shed consents to the application of the cambistat treatment.

Neighbors Annelies Echols of 6918 New Hampshire Ave., Andrew Edelson of 909 Glaizewood Ave., and Jennifer Littlefield of 912 Glaizewood Ave., testified that they support the issuance of the Tree Protection Plan Permit to the Applicants.

Catherine Tunis testified that she has a master’s degree in forestry and has lived in the neighborhood for 26 years. She testified that she believes the Applicants should build their shed in the south west (front-left) corner of the Applicants’ yard because there are no trees near that location. She also testified that Montgomery County does not require that sheds have a foundation and that, instead, sheds can be screwed into the ground. She testified that the retaining wall at the Applicants’ rear property line is deteriorating, so she believes that tree roots have grown through the wall. She testified that she wants the new foundation that the Applicants installed before the stop work order and the existing concrete slab to be removed. She testified that she has removed concrete near a tree and that the tree’s condition improved as a result.

The Urban Forest Manager responded to Ms. Tunis, testifying that the existing concrete slab is very old and that the nearby trees are getting along fine with it in place.

III. DISCUSSION

The Tree Commission may approve “only such tree protection plans that prescribe all reasonable measures to protect any trees required to be preserved under [the Urban Forest chapter of the *Takoma Park Code*].” §12.12.080(C)(3). The Commission finds, based on the documentary record and the testimony of the Urban Forest Manager that the Applicants’ Tree Protection Plan prescribes all reasonable measures to protect any urban forest tree potentially impacted by the Applicants’ proposed project. The Tree Protection Plan includes a detailed site plan that prescribes the area of excavation, requires that tree protection fencing be installed between the construction area

and the nearby urban forest trees, limits construction activity to the area immediately surrounding the proposed house, and requires root compaction prevention and mitigation by requiring that 6” of mulch be laid around the construction area, and requires the closest urban forest tree receive a cambistat treatment to support the tree’s root system. The Commission notes that the Urban Forest Manager did not even consider that latter two measures to be necessary to protect the trees, but he added (and the Applicants accepted) the requirements in an effort to satisfy Ms. Tunis. The Commission finds the Urban Forest Manager’s testimony that the proposed construction would have little or no impact on the trees to be credible.

Accordingly, the Commission will affirm the Urban Forest Manager’s preliminary approval of the Applicants’ Tree Protection Plan.

III. ORDER

For the foregoing reasons, it is this 20th day of February 2018, by the City of Takoma Park Tree Commission:

ORDERED, that the Applicants’ Tree Protection Plan Permit is approved.

CITY OF TAKOMA PARK TREE COMMISSION

Tina Murray/KS

Tina Murray, Commission Chair

Carol Hotton/KS

Carol Hotton, Commissioner

Denny May/KS

Denny May, Commissioner

John Barnwell/KS

John Barnwell, Commissioner

Bruce Levine/KS

Bruce Levine, Commissioner