

CITY OF TAKOMA PARK TREE COMMISSION

IN THE MATTER OF:

A Permit Application to Remove
a Tree at 1103 Lancaster Ave.
Takoma Park, Maryland

Laureen Laglagaron
Applicant

Case No. TC 2018-03

DECISION AND ORDER

I. INTRODUCTION.

On December 26, 2017, Laureen Laglagaron (“Applicant”) filed a Tree Removal Permit Application (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove one 24" diameter-at-breast-height (“DBH”) American beech tree (“Tree”) from her back yard at 1103 Lancaster Ave., Takoma Park, Maryland (“Property”). (Exhibit 1.)

The City of Takoma Park Urban Forest Manager, on January 4, 2018, preliminarily denied the Application (Exhibit 5), and Ms. Laglagaron appealed the preliminary denial (Exhibit 6).

On March 7, 2018, the City of Takoma Park Tree Commission (“Commission”) conducted a fact-finding hearing on the appeal of the preliminary denial of the Application. Urban Forest Manager Jan van Zutphen, Ms. Laglagaron, and Ms. Laglagaron’s husband, Michael Mule, testified at the hearing.

II. EVIDENTIARY SUMMARY.

The Tree is located on the left side of Ms. Laglagaron’s back yard, approximately twenty feet from her house. (Exhibit 1 and Photographs 1-4.) The Urban Forest Manager inspected the Tree on January 3, 2018. He conducted a Level 2 Tree Risk Assessment, which included inspecting the root system, checking for hollowness with a rubber mallet, probing for decay with a metal rod, and inspecting the Tree’s canopy with binoculars. He testified that he did not detect any hollowness or

decay in the trunk and that the Tree's root system appears healthy. He observed a partial ring of missing bark around the trunk. (Exhibits 7-11.) He testified that the Tree could have been girdled by a clothesline but that the Tree appears to have grown around the girdling and is no longer affected by the damage. He observed some dead and broken limbs in the Tree's canopy as well as new buds. He testified that the canopy is in overall good health.

The Urban Forest Manager rated the Tree as having a full and balanced crown, some missing bark on the trunk, a moderate growth rate, significant dead wood in the canopy, a severe affliction of disease or infestation of pests, and a life expectancy of 5-30 years (Exhibit 2) and rated its overall condition as "fair" (Exhibit 3).

The Urban Forest Manager addressed the statutory criteria for tree permit decisions in his testimony. He noted that the Tree does not interfere with the Applicant's proposed construction project. He estimated that the Applicant would be required to plant or pay the cost of planting five or six replacement trees if the Commission were to grant the tree permit. He described American beech as a desirable native species. He testified that the Tree is desirable because of its large size, that its removal would have an adverse impact on nearby trees, and that it is in fair condition. He testified that the Tree is not a threat to people or property if it is properly pruned.

Ms. Laglagaron testified that she and Mr. Mule are planning to build an addition to their house and that they hired arborist Keith Pitchford to help them figure out how to design the addition to avoid significant harm to the Tree's roots, but that Mr. Pitchford determined that the Tree was in chronic decline and recommended that they remove it. She testified that large branches have fallen out of the Tree and that she is concerned about the safety of her family. She submitted a pair of photographs showing that two major branches recently broke off and fell out of the Tree. (Exhibits 9 and 10.)

Mr. Pitchford discussed his observations regarding the Tree in a letter dated January 24, 2018. Mr. Pitchford described the Tree's health as "fair, but trending toward poor condition." (Exhibit 7.) He observed several large dead limbs in the Tree, which he said is typically caused by a lack of water and nutrient uptake. He attributed the poor water and nutrient uptake to a girdling injury to the Tree where the partial ring around the trunk is located, which he described as a wound. He stated that the

girdling is causing the Tree to decline and that the Tree will never return to health. He believes that the girdling injury makes the Tree susceptible to snapping at the point of injury. He concluded,

I do not see this tree as a viable candidate for preservation during your construction project and feel that the pattern of wounding around the trunk, and the dieback of large diameter limbs in the canopy suggests that the vascular system has been greatly compromised. This tree is declining quickly and may in fact be a hazard to your property and person in the not too distant future.

The Urban Forest Manager testified in response to Mr. Pitchford's letter. He testified that he believed that the Tree successfully overcame the possible girdling incident because it already would have died if it did not. He testified that he is unable to determine whether the Tree is in chronic decline and that the only way to determine the Tree's current condition would be to use radar.

Mr. Mule testified that the Tree is shedding branches at a much greater rate than other nearby trees, including other beech trees. He also addressed the statutory criteria for tree permit decisions. He noted that removal of the Tree is not necessary for the construction of the planned addition. He testified that he is willing to satisfy the tree replacement requirement by planting replacement trees. He testified that the Tree's tendency to drop large branches in his back yard where his daughter plays causes a hardship. He testified that it is not desirable to preserve the Tree because of its declining health. He testified that the environmental harm caused by removing the Tree would be mitigated by planting healthy replacement trees. He testified that removing the Tree would have minimal impact on the tree cover on his neighbors' property because the area is heavily wooded. He conceded that American beech is a desirable species when healthy. He testified that the Tree is close enough to his house to drop branches on the 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 Applicant would be required to replace the Tree with approximately six 1 ½” caliper nursery stock trees or contribute \$1,050.00 to the City’s Tree Fund.

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 may fall or drop large branches and damage her home or injure her family.

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 (24" DBH) but that it does not have any outstanding qualities.

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, but that the significant tree cover in the area will minimize the adverse effects of removal

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 observations of the Urban Forest Manager and Keith Pitchford, the photographs of the Tree, and the testimony of Ms. Laglagaron and Mr. Mule, that the Tree has significant dieback in its canopy and is in fair to poor condition and declining health.

8. The desirability of the tree species as a permanent part of the City's urban forest.

The Tree Commission finds that American beech 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, except that it is close enough to the Applicant's house that branches from the Tree could fall on the Applicant's house and that falling branches could injure people in the yard.

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 24" DBH American beech. The Tree Commission finds that the poor condition and declining health of the Tree justifies its removal and replacement with healthy trees.

V. ORDER.

UPON CONSIDERATION of the foregoing, it is this 6th day of April 2018, by the City of Takoma Park Tree Commission:

ORDERED that the Tree Removal Permit Application filed by Laureen Laglagaron for removal of a 24" DBH American beech tree from 1103 Lancaster Ave., Takoma Park, Maryland, is GRANTED; and

ORDERED that the Tree Permit is conditioned upon the Applicant's execution of a tree replacement agreement; and

ORDERED that the Urban Forest Manager calculate the tree replacement requirement in accordance with section 12.12.100(D) of the *Takoma Park Code* and provide the Applicant with a Tree Replacement Agreement within ten days of the date of this order

For the Tree Commission:

Tina Murray/KS

Tina Murray, Commission Chair

Bruce Levine/KS

Bruce Levine, Commissioner

John Barnwell/KS

John Barnwell, Commissioner

Carol Hotton/KS

Carol Hotton, Commissioner

Denny May/KS

Denny May, 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.