

**CITY OF TAKOMA PARK TREE COMMISSION**

**IN THE MATTER OF:**

A Permit Application to Remove  
a Tree at 715 Devonshire Ave.  
Takoma Park, Maryland

Case No. TC 2018-04

Janet Pegues  
Applicant

**DECISION AND ORDER**

**I. INTRODUCTION.**

On March 29, 2018, Janet Pegues (“Applicant”) filed a Tree Removal Permit Application (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove a 36” diameter-at-breast-height (“DBH”) oak tree and a 22" DBH oak tree from her back yard at 715 Devonshire Ave., Takoma Park, Maryland (“Property”). (Exhibit 1.)

The City of Takoma Park Urban Forest Manager, on April 23, 2018, preliminarily denied the Application as to both trees (Exhibit 3), and Ms. Pegues appealed the preliminary denial of the 36” DBH oak tree (“Tree”) (Exhibit 4).

On June 14, 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 and Ms. Pegues testified at the hearing.

**II. EVIDENTIARY SUMMARY.**

The Tree is located in the center of the Applicant’s back yard. (Exhibits 7-9.) The Urban Forest Manager inspected the Tree on April 23, 2018. He testified that he conducted a Level 2 Tree Risk Assessment. He testified that he used binoculars to inspect the Tree’s trunk and canopy. He testified that he did not observe any cracks in the trunk. He testified that he observed a small wound at the base of the Tree, which he said was likely caused by a lawnmower. He noted a burl in the trunk (Exhibit 14), which he testified is the result of a

previous infection or infestation or a genetic anomaly with the Tree, but that it does not affect the health of the tree. He testified that he did not see any signs of root rot. He testified that the tree is far enough from the house that it would have minimal impact on the foundation of the Applicant's house.

The Urban Forest Manager rated the Tree as having a sound and solid trunk, a full and balanced crown, a good growth rate, no significant dead wood in the canopy, no significant disease or infestation of pests, and a life expectancy of over 30 years (Exhibit 2) and rated its overall condition as "good" with a score of 28 out of a possible 30. (Exhibits 1 and 3.)

The Urban Forest Manager addressed the statutory criteria for tree permit decisions in his testimony. He testified that the Applicant would be required to plant or pay the cost of planting eighteen Category 4 deciduous replacement trees if the Commission were to grant the tree permit. He testified that the Applicant would not suffer a hardship if her Application were denied because the Tree was in good health, with minimal dead wood and no branches that were cracked or likely to fall. He testified that the Tree was very desirable because of its large size and old age--approximately 65-75 years. He testified that there are other trees around the Tree and that the trees support each other and that removing the Tree would expose the other trees to more wind and sun, which would be detrimental to them. He testified that oak is a very desirable species because oaks have a long lifespan and few inherent problems. He testified that the Tree is a good distance from the Applicant's house and that there are not utility lines near the Tree.

The Applicant testified that she has lived in her home for 18 years and wants to remain there. She testified that contractors told her that the Tree would have to be removed if she builds an addition on her house. She testified that she had the retaining wall for her basement steps replaced seven years ago and that the contractor told her that the Tree's roots were impinging on the wall. She testified that substantial branches fall from the Tree, that one branch fell on her roof and scared her, and that the Tree loses branches during storms. She testified that she has the Tree pruned every three or four years and last had it pruned in 2016. She testified that the Tree leans over her house, citing Exhibit 16. She testified that she has seven other trees that she

maintains on her property, including two other mature oak trees in her back yard, and that she planted a redbud tree.

**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. If the Applicant decides to build an addition, she may apply for tree removal and tree protection plans in conjunction with the development of design and construction plans.

**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 eighteen 1 ½” caliper Category 4 deciduous nursery stock trees or contribute \$3,150.00 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 drop large branches and damage her home.

**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 (36" DBH) and old age (65-75 years).

**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 adverse impact that the removal would have on nearby 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.**

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 the photographs of the Tree that the Tree is 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 oak 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 currently interfere with utilities, structures, or the use of the Applicants' property.

**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 36" DBH oak tree. The Tree Commission finds that the good condition, large size, and old age of the desirable oak Tree, as well as the environmental benefits it provides, outweigh the Applicant's concerns about the Tree's dropping branches, which the Applicant can ameliorate by having the Tree pruned more frequently.

**V. ORDER.**

UPON CONSIDERATION of the foregoing, it is this 8th day of August 2018, by the City of Takoma Park Tree Commission:

ORDERED that the Tree Removal Permit Application filed by for removal of a 36" DBH oak tree from 715 Devonshire Ave., Takoma Park, Maryland, is DENIED.

For the Tree Commission:

Tina Murray/KS  
Tina Murray, Commission Chair

Bruce Levine/KS  
Bruce Levine, 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.