

CITY OF TAKOMA PARK TREE COMMISSION

IN THE MATTER OF:

A Permit Application to Remove
a Tree at 202 Philadelphia Ave.
Takoma Park, Maryland

Case No. TC 2018-05

Daniel and Amy Beaupré
Applicants

DECISION AND ORDER

I. INTRODUCTION.

On August 31, 2018, Daniel and Amy Beaupré (“Applicants”) filed a Tree Removal Permit Application (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove one 23" diameter-at-breast-height (“DBH”) black walnut tree (“Tree”) from their yard at 202 Philadelphia Ave., Takoma Park, Maryland (“Property”). Exhibits 1-2.

The City of Takoma Park Urban Forest Manager, on September 10, 2018, preliminarily denied the application. The Applicants timely appealed the preliminary decision. Exhibit 5.

On October 11, 2018, 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 and the Applicants testified at the hearing.

II. EVIDENTIARY SUMMARY.

The Tree is located in the right rear of the Applicants’ Property, adjacent to a deck attached to the Applicants’ house. Exhibits 1 and 8. The City Urban Forest Manager initially inspected the Tree on September 4, 2018, and rated the Tree as being in good condition, deeming it to have a solid and sound trunk, strong growth rate, sound structure, normal pest presence, a full and balanced crown, and a life expectancy of over 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 binoculars to conduct a visual inspection. He did not detect any decay or hollowness. He

testified that the Tree has a normal pest presence that is not impacting the health of the Tree. He pulled back ivy growing on the base of the Tree to observe the Tree's root flare, a common point of entry for insects and diseases, and did not see any infestation. *See* Exhibits 13-15. He testified that the Tree has a slight lean. He observed minimal dead wood in the Tree. *See* Exhibits 8-13. He testified that the root system appears to be in good condition, with no evidence that the lean was causing the root system to heave. He testified that the Tree has many years to grow.

The City Urban Forest Manager testified that, if the Applicants were permitted to remove the Tree, they would have to plant or contribute to the Tree Replacement Fund the cost of planting eight Category 4 replacement trees.

The City Urban Forest Manager testified that the Tree is approximately 50 years old. He testified that it is the only tree in the immediate area and that black walnut is a desirable native species that is relatively uncommon in the City, so the Tree provides valuable diversity to the City's urban forest canopy. He testified that black walnut trees provide habitat for songbirds and small mammals. He testified that black walnut trees drop walnuts, which can hit people on the head.

Mrs. Beaupré testified that she and Mr. Beaupré have lived at the Property for four and a half years. She testified that Mr. Beaupré has been hit on the head by a falling walnut and that there also have been some near misses. She testified that they have two teenage sons and a dog and that the canopy of the Tree extends over their neighbors' yard, where their neighbor's young children play. She testified that, because of the falling walnuts, they cannot use their yard for two months out of the year. Mr. Beaupré testified that the Tree's canopy extends over their deck and house. Mrs. Beaupré testified that falling nuts, which hit their deck and roof, are loud and scary. She testified that black acid from the walnuts stain their deck, walkway, siding, and patio furniture, *see* Exhibits 20-23, and that the staining is impossible to clean. Mr. Beaupré testified that he has to repaint their patio table every year. Mrs. Beaupré testified that they are having difficulty growing grass and other plants in the vicinity of the Tree because, according to the University of Maryland, black walnut trees are toxic to some plant species. She testified that she believes the Tree will have an adverse effect on the value of their Property. She testified that the crown of the Tree is not very big, so removing it will not have a significant adverse effect on the tree canopy. She testified that some of the branches closest to their

house have been pruned, but the pruning resulted in increased walnut production. She described the Tree as a nuisance.

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 Applicants would be required to replace the Tree with eight 1 ½” caliper Category 4 nursery stock trees or contribute the cost of planting eight 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 Applicants and their family will continue to experience the danger and noise of falling walnuts, the staining of their personal property, and limitations on their ability to plant grass and other plants near the Tree. The Commission finds the Applicants’ claim that the Tree diminishes their property value to be unsubstantiated.

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, 23” DBH, and old age, approximately 50 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 fact that it is the only tree in the immediate area.

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 discussion of criteria 5.

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

The Tree Commission finds, based on the inspections of City Urban Forest Manager 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 black walnut is a very desirable species because it is native, relatively uncommon, and provides wildlife habitat.

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’s canopy extends over the Applicants’ house and deck and drops walnuts on them.

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 23" DBH black walnut tree. The Tree Commission finds that desirability of preserving the large, healthy, structurally sound 50-year-old tree and the environmental benefits the Tree provides outweigh the

periodic risk that falling walnuts pose to the Applicants and their family, the minor property damages caused by the Tree, and the adverse impact on the Applicants' ability to grow grass and plant other plants in the vicinity of the Tree.

V. ORDER.

UPON CONSIDERATION of the foregoing, it is this 13th day of November 2018, by the City of Takoma Park Tree Commission:

ORDERED, that the Tree Removal Permit Application filed by Daniel and Amy Beaupré for removal of a 23" DBH black walnut tree from 202 Philadelphia Avenue, Takoma Park, Maryland, is DENIED.

For the Tree Commission:

Tina Murray/KS
Tina Murray, Commission Chair

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.