

CITY OF TAKOMA PARK TREE COMMISSION

IN THE MATTER OF:

A Permit Application to Remove
a Tree at 7110 Woodland Ave.
Takoma Park, Maryland

Case No. TC 2018-06

Kari and Denis McDonough
Applicants

DECISION AND ORDER

I. INTRODUCTION.

On September 1, 2018, Kari and Denis McDonough (“Applicants”) filed a Tree Removal Permit Application (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove one 32" diameter-at-breast-height (“DBH”) white oak tree (“Tree”) from their back yard at 7110 Woodland Ave., Takoma Park, Maryland (“Property”). (Exhibit 1.)

The City of Takoma Park Urban Forest Manager preliminarily denied the Application on September 20, 2018 (Exhibit 3), and the Applicants timely appealed the preliminary denial on October 3, 2018 (Exhibit 4).

On November 20, 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 the Applicants testified at the hearing.

II. EVIDENTIARY SUMMARY.

The Tree is located in the Applicants’ right rear yard and approximately ten feet from their house. (Exhibit 1.) The Urban Forest Manager inspected the Tree on September 13, 2018. He conducted a Level 2 Tree Risk Assessment, which included inspecting the root system, checking for hollowness with a rubber mallet, probing the trunk and root flare for decay with a metal rod, and inspecting the Tree’s canopy with binoculars. He testified that the majority of the trunk was solid but

that he detected some decay. He observed mushrooms growing on the trunk (Exhibit 9), which he testified could be a sign of decay, and borers present on the Tree. He observed some missing bark on the trunk, which he testified could have been caused by pulling English ivy from the Tree to observe the trunk (Exhibit 21). He observed some dead wood in the Tree's canopy and extensive good foliage. He estimated that the Tree has a life expectancy of five to ten years.

The Urban Forest Manager rated the Tree as having a moderate growth rate, a moderate affliction of disease or infestation of pests, and a full but unbalanced crown. (Exhibit 2.) He rated its overall condition as "poor/fair" (Exhibit 1).

The Urban Forest Manager testified that the Applicants should prune the dead wood and a long branch that grows toward the Applicants' house from the Tree.

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 five Category 4 deciduous replacement trees if the Commission were to grant the tree permit. Regarding hardship to the Applicants if the permit is denied, he testified that he does not believe that the Tree poses a current danger to persons or property but suggested that the Applicants have a Level 3 Tree Risk Assessment performed on the Tree. He testified that the Tree is large and approximately 80 years old but did not identify any outstanding qualities. He testified that there would be some adverse impacts to the environment if the Tree were removed because of the loss of canopy. He described white oak as a native large-canopy tree and a valuable part of the urban forest.

The Applicants' arborist, Chris Larkin, stated that borers had damaged approximately 45% of the circumference of the Tree's trunk, which he said caused the north side of the canopy to decline. He opined that the Tree is likely to become a hazard within 3-5 years. He does not believe that pruning the Tree would reduce the risks posed by the Tree and that the pruning would be detrimental to the health of the Tree. (Exhibit 17.)

Ms. McDonough testified that the Tree has been dying since they moved into the Property. She testified that she is concerned because most of the weight of the Tree is on the side of the Tree facing their house, so, if it falls, it is likely to fall on the house. She testified that the kitchen, living

room, master bedroom, and her home office are located on the back of the house, so it is almost always occupied. She testified that the Tree causes her great fear during storms.

Mr. McDonough testified that the Tree is leaning and that there have not been any taller trees shading the Tree for the last ten years. McDonough testified that they had the Tree pruned and treated for borers eight years ago. He testified that he is concerned about the Tree falling because of the excessive rainfall experienced recently.

Mr. McDonough testified that they have already spent considerable money on the Tree, and Ms. McDonough testified that a Level 3 Tree Risk Assessment would cost approximately \$600.00. Mr. McDonough testified that they have planted six trees on their Property during the ten years they have lived there.

Ms. McDonough testified that they would be willing to plant as many replacement trees as possible on their Property if the Commission were to grant a permit to remove the Tree.

The Urban Forest Manager testified that there are no cut limbs on the side of the Tree facing away from the Applicants' house, which means that the Tree grew with an unbalanced crown and, therefore, the Tree is stable if the root system is healthy. He testified that he disagrees with Mr. Larkin that light pruning would be detrimental to the health of the Tree. He testified that he did not see as many borers as Mr. Larkin and that there are options for treating the borer infestation, including soil injections and fertilization.

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 five 1 ½" caliper Category 4 deciduous nursery stock trees or contribute \$875.00 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 Applicants may continue to experience fear that the Tree may fall on their house and may incur the cost of pruning the Tree or having a Level 3 Tree Risk Assessment performed on the Tree.

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 (32" DBH) and old age (~80 years) 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 and significant canopy.

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 Arborist Chris Larkin and the photographs of the Tree, that the Tree is infested with borers and has a likely life span of no more than ten years and may become hazardous in as few as three years.

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 desirable large-canopy 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 Applicants' house that, if it falls, it could hit their house.

IV. CONCLUSION AND DECISION.

The Tree Commission, after considering the documentary record and 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 32" DBH white oak. The Tree Commission finds that the poor condition and short predicted lifespan of the Tree and the possibility that it will become hazardous within three years does not warrant the Applicants incurring the expense of pruning the Tree, treating it for borers, and having a Level 3 Tree Risk Assessment performed and justifies its removal and replacement with healthy trees.

V. ORDER.

UPON CONSIDERATION of the foregoing, it is this 2nd day of January 2019, by the City of Takoma Park Tree Commission:

ORDERED that the Tree Removal Permit Application filed by Kari and Denis McDonough for removal of a 32" DBH white oak tree from 7110 Woodland Ave., Takoma Park, Maryland, is GRANTED; and

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

ORDERED that the Urban Forest Manager provide the Applicants 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, 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.