

CITY OF TAKOMA PARK TREE COMMISSION

IN THE MATTER OF:

A Permit Application to Remove
Trees at 7316 Flower Ave.
Takoma Park, Maryland

Case No. TC 2018-07

Andrew Sfekas and Ellen Marcus
Applicants

DECISION AND ORDER

I. INTRODUCTION.

On September 27, 2018, Andrew Sfekas and Ellen Marcus (“Applicants”) filed a Tree Removal Permit Application (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove one 22" diameter-at-breast-height (“DBH”) beech tree (“Beech”) from the right side yard and one 26” DBH oak tree (“Oak”) from the back yard of their house at 7316 Flower Ave., Takoma Park, Maryland (“Property”). Exhibit 1.

The City of Takoma Park Urban Forest Manager preliminarily inspected the trees on October 11, 2018, and denied the Application on October 19, 2018, Exhibit 3, and the Applicants timely appealed the preliminary denial on October 3, 2018, Exhibits 1 and 4-5.

On November 29, 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 Applicants purchased the Property at a foreclosure sale. They had to repair a hole in the roof and replace the HVAC system, and the house is infested with termites. The house has structural problems that required the installation of metal jacks under the back of the house, which must be replaced with permanent pillars. The house also has problems with surface water incursion.

A. Beech Tree

The Beech is located in the right-side yard of the Property, approximately two feet from a retaining wall that creates a three-foot wide window well that runs along the back half of the side of the house. Exhibit 18.

The Urban Forest Manager rated the Beech as being in fair condition. Exhibit 1. He determined that it has sections of bark missing from the trunk, a high annual growth rate, moderate dieback of limbs, moderate infestation of insects or disease presence, a full but unbalanced crown, and a life expectancy of 5-30 years, although he testified that he estimates the life expectancy to be 20-30 years. Exhibit 2. He testified that the crown is unbalanced because of its proximity to other trees. He observed small cavities in the trunk. He testified that the tree has lots of foliage, citing Exhibits 28-31, and cited Exhibit 42 as showing the Beech's healthy canopy.

The Urban Forest Manager testified regarding the application of the Tree Permit criteria to the Beech. He testified that, because the Applicants did not submit a construction plan, he is unable to determine whether the removal of the Beech would adversely affect the planned construction or cause hardship to the Applicants. He testified that the Applicant would be required to plant or pay the cost of planting five replacement trees if the Commission were to grant the permit to remove the Beech. He testified that the Beech is approximately 40-50 years old and approximately 40-45 feet tall. He did not identify any outstanding qualities of the Beech. He testified that the removal of the Beech would have an adverse impact on the property because it is a slow growing native tree and that the impact on the loss of tree cover in the area would be moderate because it has a small-medium canopy. He testified that Beech is a desirable species because it is native and relatively rare in Takoma Park. He noted the proximity of the Beech to the Applicants' house and the fact that it leans over the roof.

Mr. Sfekas stated, "The beech tree poses a problem for surface water runoff. The right side of the house needs waterproofing and improved drainage, which will require removal of the beech tree." Exhibit 5. However, he did not explain what drainage problems the Beech causes or why it must be removed to waterproof the house or improve drainage.

The Applicants submitted a Memorandum of Field Visit from their engineer that noted the longstanding water infiltration issues with the house and noted that trees near the house made it difficult to keep the gutters, downspouts, and outfall system functioning. Exhibit 9.

The Applicants submitted letter from Arborist Ilie Pintilie regarding the Beech stating that he observed “dead wood and branches, large cavities, excessive leaning, major and exposed root damage currently lifting homeowner retaining wall and house foundation, tree galls on trunk flare.” Exhibit 7. He further stated that “[b]ecause a major exaction [sic] will take place near the tree removing 90% root system [sic],” he recommended immediate removal of the Beech. Exhibit 7.

The Urban Forest Manager responded to the issues raised by Mr. Pintilie and the Applicants’ engineer. He testified that he did not observe any large cavities in the Beech and that he observed very little dead wood in the canopy. He refuted Mr. Pintilie’s assertion that the Beech had an excessive lean, describing it as “fairly straight.” He also testified that he did not see any damage to the retaining wall. Regarding the water issues, he testified that any problems caused by the Beech could be prevented by installing leaf guards in the gutters and covering the window well.

B. Oak Tree

The Oak is located in the Applicants’ back yard approximately 34 inches from the back of the house, Exhibit 15, and is near the corner of the house where the Applicants must install a pillar to support the back porch of the house.

The Urban Forest Manager rated the Oak as being in fair condition. Exhibit 1. He determined that it has a sound and solid trunk, high annual growth rate, sound structure, normal pest presence, a full but unbalanced crown, and a life expectancy of 5-30 years. Exhibit 2. He testified that he did not observe any signs of root heaving on the Oak. The Oak leans over the Applicants’ house and its trunk is a few inches from the Applicants’ gutter. Exhibit 14.

The Urban Forest Manager testified regarding the application of the Tree Permit criteria to the Oak. He testified that he is unable to determine the need for removal of the Oak based on the planned construction because the Applicants did not submit a construction plan. He testified that the Applicant would be required to plant or pay the cost of planting six replacement trees if the

Commission were to grant the permit to remove the Oak. He testified that the Oak did not show signs of possible failure. He estimated that the Oak is 50-55 years old but did not indicate that it has any outstanding qualities. He testified that the Oak provides many environmental benefits and that the removal of the tree would have a negative environmental impact because of its large size. He testified that Oak is a very desirable species. He testified that the Oak is very close to and leans over the Applicants' house.

Mr. Sfekas stated that he and Ms. Marcus had obtained two estimates to have the support for the back porch of their home shored up and that both contractors had advised them they would not proceed with the work if the Oak remained in place. Exhibit 5. He testified that he does not want to remove the Oak but that the repair work must be done to save the house. He testified that preserving the back porch was important because it is a significant part of the house and that the plan is to keep the same footprint of the foundation and lower it and install the pillars to support the porch. He testified that he was willing to plant replacement trees on the Property. He stated that the Oak also blocked drainage from the window well on the right side of the property and caused standing water in the window well. Exhibit 5.

The Applicant submitted a letter from Arborist Ilie Pintilie regarding the Oak that stated that he observed "dieback, excessive leaning with foliage on one side only (above the house), wrong trimming (currently – lion's tail effect), elevated soil on the opposite side of leaning (uprooting)." Exhibit 6. He further stated that "[b]ecause a major exaction [sic] will take place near the tree removing 90% root system [sic]," he recommended immediate removal of the Oak. Exhibit 6.

The Urban Forest Manager testified in response to the letter from Mr. Pintilie. He testified that there were no cavities in the Oak, no dieback in its crown, and no heaving of the roots, citing Exhibits 33 and 35, which clearly show no heaving.

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.

The Tree Commission finds that the Applicants failed to prove that the removal of the Beech is necessary to address stormwater drainage issues on their Property or make the planned repairs to their house. The Applicants' engineer's Memorandum of Field Visit indicates that trees on the Property overhang the roof of the house and may cause debris to clog the drainage from the roof, but the Commission finds that this issue can be addressed by methods other than removing the Beech, including covering the gutters or regular cleaning of the gutters. The record does not include evidence of construction plans or even recommendations of construction activity that would require the removal of the Beech.

The Tree Commission finds that the removal of the Oak is necessary to address the stormwater drainage issues on the Applicants' Property and to make necessary repairs to their house. The Oak is located approximately 34" from a support post that must be replaced to ensure the structural integrity of the back porch and impedes drainage from the window well on the north side of the House.

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 Beech with five 1 ½" caliper nursery stock trees or contribute \$875.00 to the City's Tree Fund and replace the Oak with 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.

If the denial of the permit to remove the Beech is affirmed, the Commission finds that the Applicants will have to remove debris from the Beech from their gutters and downspouts or prevent such debris from entering their gutters and downspouts.

If the denial of the permit to remove the Oak is affirmed, the Commission finds that the Applicants will be unable to install a new pillar necessary to render their back porch structurally sound and that it will continue to interfere with drainage from the north side of their house.

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 Beech because of its large size (22" DBH) and old age (~40-50 years) but that it does not have any outstanding qualities.

The Tree Commission finds that it is desirable to preserve the Oak because of its large size (26" DBH) and old age (~50-55 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 Beech were removed because of its relatively small canopy.

The Tree Commission finds that there would be significant environmental degradation if the Oak were removed because of its large size.

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 that the Beech and Oak are in fair condition.

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

The Tree Commission finds that beech is a desirable slow-growing native species that is rare in Takoma Park.

The Tree Commission finds that 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 Beech Tree is two feet from the Applicants' window well retaining wall but does not interfere with utilities, structures, or the use of the Applicants' property, except that its branches extend over the roof of their house and causes debris to fall in their gutters.

The Tree Commission finds that the Oak tree is 34 inches from the slab under the Applicants' back porch and a few inches from the gutter on the back edge of their roof and in front of the opening of the Applicants' window well on the northwest corner of 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 preservation of the 22" DBH beech and the removal of the 26" DBH oak.

The Tree Commission's decision regarding the Beech is based on its fair condition and 20-30 year predicted lifespan and the absence of evidence that removal of the Beech is necessary for the Applicants to perform structural repairs to their house or improve stormwater drainage on their property. The Commission notes that the Applicants can reapply for a permit to remove the Beech if a Level 3 Tree Risk Assessment demonstrates the condition of the Beech warrants removal or if specific construction plans demonstrate that removal is necessary to address stormwater drainage issues.

The Tree Commission's decision regarding the Oak is based on the evidence of need to remove it to facilitate the repair of the Applicants' back porch and allow drainage from the Applicants' window well and the proximity of its trunk to the Applicant's rear gutter.

V. ORDER.

UPON CONSIDERATION of the foregoing, it is this 1st day of February 2019, by the City of Takoma Park Tree Commission:

ORDERED that the Tree Removal Permit Application filed by Andrew Sfekas and Ellen Marcus for removal of a 22" DBH beech tree from the right side of their property at 7316 Flower Ave., Takoma Park, Maryland, is DENIED; and

ORDERED that the Tree Removal Permit Application filed by Andrew Sfekas and Ellen Marcus for removal of a 26" DBH oak tree from the back yard of their property at 7316 Flower Ave., Takoma Park, Maryland, is GRANTED;

ORDERED that the Tree Permit to remove the Oak 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, Commission Chair

Bruce Levine/KS

Bruce Levine, Commissioner

Carol Hotton/KS

Carol Hotton, 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.