

CITY OF TAKOMA PARK TREE COMMISSION

IN THE MATTER OF:

A Permit Application to Remove a Tree
at 7222 Garland Avenue
Takoma Park, Maryland

Case No. TC 2019-01

John Peperone
Applicant

ORDER

I. BACKGROUND

On October 29, 2018, John Peperone (“Applicant”) filed a Tree Permit Application with the City of Takoma Park seeking a permit to remove two trees in connection with the proposed construction of an addition to the house on his property located at 7222 Garland Avenue, Takoma Park, Maryland (“Property”). The Applicant sought to remove two white oak trees, a 23” diameter-at-breast-height (“DBH”) tree located in the rear-center of his yard and a 28” DBH tree located in the rear-left of his yard.

On January 11, 2019, Jan Van Zutphen, the City of Takoma Park Urban Forest Manager, preliminarily approved the Application as to the 23” DBH white oak and preliminarily denied the Application as to the 28” DBH tree (hereinafter “Tree”). The Applicant timely filed a written appeal of the Urban Forest Manager’s preliminary decision to deny the permit regarding the Tree in accordance with Section 12.12.110(A) of the *Takoma Park Code*. This case was docketed as Tree Commission Case Number 2019-01.

On February 28, 2019, the City of Takoma Park Tree Commission (“Commission”) conducted a fact-finding hearing on the appeal of the preliminary denial. The Urban Forest Manager, the Applicant, and the Applicant’s wife, Irene Ligo, attended the hearing. The Applicant, as the party

appealing the Urban Forest Manager's preliminary decision, has the burden of proof by a preponderance of the evidence. Section 12.12.110(H).

II. EVIDENTIARY SUMMARY.

The Tree is located six or seven feet from the back-left corner of the Applicant's house. R. at 25, 26, and 33. The Urban Forest Manager rated Tree 2 as being in fair condition, deeming it to have a sound and solid trunk with some bark missing, a strong growth rate, a sound structure, moderate pest presence, a full but unbalanced crown, and a life expectancy of five to thirty years, which he testified was closer to thirty years. R. at 3.

The Urban Forest Manager testified that, if the Applicant were permitted to remove the Tree, he would have to plant seven Category 4 deciduous trees or contribute the cost of planting seven trees to the City's Tree Replacement Fund. He testified that the Tree is approximately 55-60 years old and approximately 60-70 feet tall. He testified that one of the other white oaks in the Applicant's yard is in good condition and one is in poor condition, so the area is likely to lose another tree soon.

The Urban Forest Manger testified that white oak is a very desirable species that provides many environmental benefits and has a long-life expectancy.

The Urban Forest Manager testified that he denied the permit because he was unable to determine whether the removal of the Tree was necessary for the Applicant to construct a reasonable addition to his house.

The Applicant's proposed L-shaped addition would extend his house approximately ten feet into the back yard for the length of his house and an additional approximately five feet beyond the back right corner of the house and then wrap around the back right corner and extend the width of the house by approximately five feet on the back half of the right side of the house. R. at 4. He testified that the addition is 300 square feet, that he reduced the size of the planned kitchen to protect the healthy oak tree in his yard, and that his plan for the addition represents the most space efficient and cost effective use of his Property. He testified that it his goal to age in place in his house and that his planned addition would allow for a wheelchair accessible kitchen, bathroom, and

bedroom on the first floor. He testified that the Tree blocks construction access to the back yard necessary to build the addition, as there is a retaining wall on the other side of the house. He testified that he has extensive water problems on his property, that the foundation of the planned addition is designed to reduce water pressure on the back of his house. He submitted photographs of water pooling in his yard and water stains on his basement wall. R. at 103, 105. He testified that there is a drain in the center of his back yard, so redesigning his addition to extend back into his yard instead of keeping it against the existing house so as to protect the Tree would require 10” of regrading between the addition and the Tree. R. at 113.

The Applicant submitted a Tree Report prepared by Consulting Arborist Lew Bloch dated October 19, 2018. Mr. Bloch reported that the Tree is under severe stress, with a weak canopy. He also reported cankers on the Tree’s lower trunk. R. at 10. The Urban Forest Manager contested Mr. Bloch’s assessment of the Tree.

The Applicant submitted a letter from his architect, Eric Saul, stating that a floor plan for the addition that would avoid interfering with the trees on the property would not be efficient or functional. R. at 17.

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 Commission finds that the removal of the Tree is necessary to allow the Applicant to build an addition on the back of his house because the Tree is located approximately six feet from the existing house and within the proposed footprint of the addition, an alternate design of the addition extending the addition away from the house into the back yard would require regrading that

would also likely kill the Tree. In addition, the Tree impedes construction access to the rear of the Property because there is a retaining wall on the right side of the Property. R. at 4, 26, 37.

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 seven deciduous 1 ½” caliper nursery stock trees or contribute \$1,225.00 to the City’s Tree Replacement Fund. The Commission finds that it would take many years before the replacement trees would provide the level of shade and other environmental benefits provided by the Tree.

3. Any hardship the Applicant will suffer from a modification or rejection of the permit application.

The Tree Commission finds that the Applicant will not be able to build a reasonably sized, efficient, and functional addition if the Commission does not permit him to remove 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 (28” DBH, 60’-70’ tall) and old age (55-60 years old).

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 significant environmental degradation if the Tree were removed because of its large size and the environmental benefits it provides. In addition, the removal of the Tree and the other tree already permitted to be removed would eliminate the stabilizing support that the trees’ roots provide and the wind breaking effect that the trees provide for the trees that would remain in the area, thereby increasing the likelihood of further tree loss.

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 inspection of the Urban Forest Manager and the photographs of the Tree, that it is in fair 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 white oak is a desirable native species and is one of the most important native trees for pollinators and many other forms of wildlife.

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 the existing utilities and structures on the Applicant's Property or the current use of the Applicants' Property. The Commission finds that the Tree would interfere with the addition proposed by the Applicant.

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 granting of a permit to remove the Tree.

The record reveals that the proposed addition serves to allow the Applicant to remain in his home in the event that he loses mobility and that an alternate design that allows for the preservation of the Tree is not reasonably feasible. Therefore, the denial of the permit would impose a severe hardship on the Applicant.

Accordingly, the Commission holds that that removal of the Tree is warranted because the hardship the Applicant would suffer because of a denial of a permit outweighs the benefits of preserving the Tree.

V. ORDER.

UPON CONSIDERATION of the foregoing, it is this 31st day of March 2019, by the City of Takoma Park Tree Commission:

ORDERED, that the Tree Removal Permit Application filed by John Peperone for removal of the 28" DBH white oak tree from 7222 Garland Avenue, Takoma Park, Maryland, is APPROVED; and

ORDERED, that the Urban Forest Manager provide the Applicant with a Tree Replacement Agreement within ten days of the date of this order; and

ORDERED, that the Tree Removal Permit granted pursuant to this order shall be conditioned upon the Applicant's execution of the Tree Replacement Agreement and the City's approval of a Tree Protection Plan, and the issuance of a building permit for the Applicant's proposed addition.

CITY OF TAKOMA PARK TREE COMMISSION

Tina Murray/KS
Tina Murray, Commission Chair

Bruce Levine/KS
Bruce Levine, Commissioner

John Barnwell/KS
John Barnwell

Nancy Cohen/KS
Nancy Cohen

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.