

CITY OF TAKOMA PARK TREE COMMISSION

IN THE MATTER OF:

A Permit Application to Remove
a Tree at 7804 Carroll Ave.
Takoma Park, Maryland

Dorothy Jones
Applicant

Case No. TC 2019-02

DECISION AND ORDER

I. INTRODUCTION.

On July 1, 2019, Dorothy Jones filed a Tree Removal Permit Application (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove one dead tree from her front yard and one living dual trunk 13" and 10" diameter-at-breast-height (“DBH”) silver maple tree (“Tree”) from her back yard at 7804 Carroll Ave., Takoma Park, Maryland (“Property”). (Exhibits 1 and 3.)

Jan van Zutphen, the City of Takoma Park Urban Forest Manager, on July 11, 2019, preliminarily denied the Application to remove the Tree, and Ms. Jones appealed the preliminary denial. The Urban Forest Manager granted a waiver authorizing the removal of the dead tree, and the waiver is not a subject of this appeal proceeding.

On November 14, 2019, the City of Takoma Park Tree Commission (“Commission”) conducted a fact-finding hearing on the appeal of the preliminary denial of the Application. Marty Frye, the Acting Urban Forest Manager, Ms. Jones, and Ms. Jones’s husband, Dominic Jones, testified at the hearing.

II. EVIDENTIARY SUMMARY.

The Tree is located on the fence line in Ms. Jones’s back yard. (Exhibits 6-9.) There currently is a chain link fence that intersects the Tree. (Exhibits 6-9.) The Urban Forest Manager inspected the Tree on July 8, 2019, and deemed it to be in fair condition. (Exhibit 3.). He found the

Tree to have sound and solid trunks, a moderate annual growth rate, some dead limbs, normal to moderate presence of insects and diseases, a full but unbalanced crown, and a life expectancy of five to thirty years. (Exhibit 2.)

The Acting Urban Forest Manager testified that it is common for silver maple trees to sprout along fence lines. He testified, based on the Urban Forest Manager's photographs, that the Tree has no significant defects, and that there is approximately 5% dieback in the Tree's crown. He testified that Exhibit 11 shows that most of the canopy has full foliage. He testified that the sprouting shown in Exhibit 12 is common on maple trees and indicates that the Tree is vigorous. He testified that the fence hitting the tree is not a problem and that the Tree can grow for many years with the fence going through it.

The Acting Urban Forest Manager testified that the Tree is not a very valuable part of the urban forest with no special qualities that make it particularly desirable for preservation. He testified that there would not be significant environmental degradation caused by removal of the Tree because the Tree is not maintaining a slope and because silver maple trees do not provide significant benefits to wildlife. He testified that there are other trees in the area that would continue to provide shade. He testified that silver maple is a native species.

Ms. Jones testified that she wishes to remove the Tree because she wants to install a new fence that will provide more privacy and security. She testified that a fencing contractor advised her that a new fence could be installed around the fence but that there would have to be a gap by the Tree, or the Tree would damage the fence. Mr. Jones testified that the Tree attracts mosquitoes and sheds branches and that there is a metal chain stuck in the Tree. Mr. Jones testified that they would be willing to plant at least one replacement tree on their Property.

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 not necessary to install a new fence. The Commission notes that the fence can be built around the Tree using a bump-out or that it can be built in line with the Tree and that sections of the fence can be removed as the Tree grows.

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 approximately four 1 ½" caliper nursery stock trees or contribute \$700.00 to the City's Tree 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 Applicant will have to build a new fence around the Tree, either by building the fence in line with the Tree and removing sections of the fence as the Tree grows to prevent damage to the fence, or by bumping the fence in or out to go around 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 (10" and 13" DBH) 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 some environmental degradation if the Tree 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.

The Tree Commission finds that there would be modest loss of tree cover because of the presence of other large trees in the area.

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

The Tree Commission finds, based on the inspection of the Urban Forest Manager, the testimony of the Acting Urban Forest Manager, and the photographs of the Tree that the Tree is currently in good health and sound structural condition.

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

The Tree Commission finds that silver maple is a modestly 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 interferes with the existing fence and that a new fence would have to be constructed in a manner that avoids interference with the Tree.

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 10" and 13" DBH dual trunk silver maple. The Tree Commission finds that the desirability of preserving the large, healthy, native, and structurally sound silver maple outweighs the Jones's concerns about interference with the construction of a new fence given that the fence easily can be constructed in a manner that accommodates the Tree.

V. ORDER.

UPON CONSIDERATION of the foregoing, it is this 4th day of December 2019, by the City of Takoma Park Tree Commission:

ORDERED, that the Tree Removal Permit Application filed by Dorothy Jones for removal of a 10" and 13" DBH silver maple tree from 7804 Carroll Avenue, Takoma Park, Maryland, is DENIED.

For the Tree Commission:

Carol Hotton

Carol Hotton, Commissioner

Bruce Levine

Bruce Levine, Commissioner

Nancy Cohen, Commissioner¹

Tina Murray

Tina Murray, Commissioner

John Barnwell

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.

¹ Commissioner Cohen abstained from voting on this Decision and Order.