

**CITY OF TAKOMA PARK, MARYLAND
TREE COMMISSION**

IN THE MATTER OF: *

A Permit Application to Remove *
White Oak Tree at 7018 Poplar Ave.
Takoma Park, Maryland * Case No.: TC 2024-01

Caroline Tess and Thiago Reis *
Applicants *

* * * * *

**MEMORANDUM DECISION
AND ORDER**

I. Introduction.

On March 5, 2024, Caroline Tess and Thiago Reis (“Applicants”) filed a Tree Removal Permit Application¹ (“Application”) with the City of Takoma Park (“City”) seeking a permit to remove one 18.3” diameter-at-breast-height (“DBH”) white oak tree (“White Oak”) from the backyard of their house at 7018 Poplar Avenue, Takoma Park, Maryland (“Property”). A copy of the Application is attached hereto and incorporated herein as Exhibit 1.

The City of Takoma Park Urban Forest Manager, Marty Frye (“UFM” or “Mr. Frye”), preliminarily inspected the tree and approved the Application on March 12, 2024. Ex. 1. P. 5. Abigail Cember (“Appellant” or “Cember”) timely appealed the preliminary approval on March 27, 2024.² *See* Appeal, at P. 2, a copy of which is attached hereto and incorporated herein as Exhibit 2.

¹ The Tree Removal Permit Application is a single PDF file which combines and generates the data entries for the entire tree removal process, including the permit request information submitted by the Applicants, the assessment notes made by the UFM, and the Preliminary Approval Notification from the City. For ease of reference, the entire document will be referred to as the “Application.”

² Appellant initially notified the UFM of her intent to appeal on March 25, 2024. § 12.12.080(B) of the Takoma Park Municipal Code requires that “[a] notice of appeal of a determination made by the City Manager pursuant to subsection (A) of this section must be in writing, state the reasons for the appeal, the name, address, and email address of the appellant and

On May 8, 2024, the City of Takoma Park Tree Commission (“Commission”) conducted a fact-finding hearing via video conference on the appeal of the preliminary approval of the Application. The City of Takoma Park Urban Forest Manager, Applicants, and Appellant testified at the hearing.

For the reasons set forth below, the Tree Commission hereby disapproves the issuance of the Applicants’ Tree Removal Permit.

II. Issues Raised by the Appellant.

Appellant, Abigail Cember, a longtime resident of the City of Takoma Park, brought this appeal as a “concerned citizen seeking to protect the natural ecosystem and desirability and value of Takoma Park.” Ex. 2. P. 2. Appellant expressed concern that removal of the tree is contrary to the City’s goals expressed in the City Code. Ex. 2. P. 2. Specifically, Appellant opposes the removal of the White Oak at the Property because she contends that it is an “exceptional tree” and that its removal would further contribute to the overall loss of canopy that she contends has already been occurring across Takoma Park. Ex. 2. P. 2.

Appellant argued that the Urban Forest Manager’s assessment of the subject tree did not yield facts and observations that meet the criteria for which removal under the City Code was necessary and permitted. *See* Hearing Recording, a copy of which is attached hereto and incorporated herein as Exhibit 3, at 11:15.³ Ms. Cember argued that, in light of the criteria referenced in the Application indicating that the White Oak is healthy, that there were no

the nature of the interest of the appellant.” On March 27, 2024, Appellant filed a notice of appeal in accordance with § 12.12.080(B), which will be discussed, *infra*.

³ In the interest of brevity, citations to the Hearing Recording at Exhibit 3 will hereinafter be abbreviated to “HR” followed by a reference to the approximate time stamp for the testimony or documentary evidence from the time appearing in the lower right-hand corner of the video.

compelling reasons provided by the Applicants or the Urban Forest Manager in favor of the tree's removal. HR at 11:45; *see also* Ex. 1. P. 2.

Appellant further contends that the objectives and considerations aimed at preserving trees and maintaining an Urban Forest, as stated in the Takoma Park Municipal Code, are being ignored. HR at 10:00. Thus, Appellant's issues may be summarized as: 1) lack of factual basis identifying any need for removal of the White Oak; and 2) the issuance of the permit is contrary to the City's goal of preserving the Urban Forest.

III. Summary of Material Facts.

A. Direct Testimony of the Appellant.⁴

Appellant agreed with the Urban Forest Manager's assessment concerning the general health and condition of tree which found that the White Oak is "healthy and vigorous," HR at 12:00, but noted an absence of notes in the Application regarding the location of the tree in relation to targets that may be subject to damage in the event of tree failure (safety) or any utility or permanent structure above or below ground upon which the tree may have an adverse impact at present or in the future (impact on utilities). HR at 13:15; *see also* Ex. 1. P. 2. As such, Appellant did not address the factors concerning safety or impact on utilities in her argument.

Appellant took exception to the Urban Forest Manager's assessment concerning the tree's desirability, HR at 12:30, and contended that the tree was improperly evaluated under this criterion, which requires consideration of the White Oak's age, size, species, or other outstanding qualities. HR at 12:30. The assessment provided by the Urban Forest Manager in the Application merely indicated that "the tree is not outstanding in size." Ex. 1. P 2. Appellant posited that the tree's age, estimated by the Urban Forest Manager to be between fifteen (15) and thirty (30) years old, is

⁴ HR at approximately 9:00.

actually between approximately eighty (80) and ninety-six (96) years old, based on comparisons of the White Oak's diameter to various data sets cited to in her presentation. HR at 14:00. Further, Appellant argued that the White Oak, the State Tree of Maryland, is a keystone species in the region and that "their decline and removal is an existential threat to our ecosystem." HR at 16:15. Appellant further argued that White Oaks in the region are dying and decreasing in population, warranting more stringent protection, and emphasizing the desirability of preserving them. HR at 17:20.

Appellant disputed the assessment of the Urban Forest Manager in the Application concerning the impact of the reduction in tree cover on the property where the tree is located, adjacent properties, and the surrounding neighborhood, and the extent to which said areas would be subject to environmental degradation, which stated that, "[r]emoval of this tree will not have a major impact on the surrounding tree canopy cover, though is the most significant tree in the backyard of this property." Ex. 1. P. 2. Appellant emphasized that the White Oak is the only tree in the backyard of the Property that provides canopy. HR at 13:00. Cember submitted several photographs of the Property and neighboring houses on and around Poplar Street to argue that tree canopy cover has diminished, and that removal of the White Oak would contribute towards that loss. HR at 18:40. A copy of Appellant's Exhibit 011 through 024 is attached hereto and incorporated herein as Exhibit 4. Cember showed that another White Oak from the front of the Property was removed by the Applicants in recent years. HR at 18:50; *see also* Ex. 4 at Applicant's Exhibit 012.

Appellant argued that tree permit removal applications in the City are indiscriminately approved. HR at 22:00. In support of this position, Cember noted that, in the Application, the Urban Forest Manager did not provide any compelling reasons for the removal that the applicant

had demonstrated, including hardship, and whether a reasonable alternative to removal exists. HR at 24:40; *see also* Ex. 1. She also noted that, in the Application, the Urban Forest Manager did not provide reasoning as to the extent to which tree clearing is necessary to achieve the proposed development or land use. HR at 24:40; *see also* Ex. 1.

B. Direct Testimony of the Applicants.⁵

Applicants, Caroline Tess and Thiago Reis, testified on their own behalf. Ms. Tess testified that their reason for removing the White Oak was because their backyard is “not very deep”, and that there are stormwater issues in the backyard that cannot be addressed without the removal of the tree. HR at 29:00. Specifically, Ms. Tess referred to instances of stormwater rushing into their backyard from their neighbor’s yard during heavy rainstorms. HR at 29:30.

Ms. Tess testified that the Applicants initially believed the stormwater was being channeled to their yard via a pipe from the adjacent property to the back of their yard. HR at 30:00. However, after consulting with the City Construction and/or Engineering Manager, the Applicants confirmed that there was not a City pipe present in the backyard. HR at 30:20. Ms. Tess testified that it is the Applicants’ desire to put in a draining system (i.e., French drain) in the backyard of the Property to address stormwater issue. HR at 30:20.

Ms. Tess addressed a comment made by Appellant concerning projects to the house. HR at 30:50. Ms. Tess explained that the tree in the front was removed after extensive collaboration with the City and ultimately at the request of the City Engineer to construct a dry well to capture storm water. HR at 31:00.

Ms. Tess also addressed a comment made by Appellant concerning the number of trees located on the property. HR at 31:30. Ms. Tess testified that there are four (4) other trees on the

⁵ HR at approximately 28:00.

property and/or shared with adjacent properties, including three (3) oak trees and a redbud tree. HR at 31:30.

Ms. Tess and Mr. Reis concluded their testimony by both stating that the primary reason to remove the White Oak is to address stormwater issues. HR at 33:00. As will be explained, *infra*, Applicants do not have specific plans to cure the stormwater problem which would require the removal of the White Oak.

C. Direct Testimony of the Urban Forest Manager.⁶

Marty Frye testified in his capacity as the City of Takoma Park Urban Forest Manager. Mr. Frye clarified the process for applying the Takoma Park Municipal Code in assessing a tree – summarizing the criteria listed in § 12.12.080(A)(1) and stating that a determination is made after balancing those factors against each other. HR at 34:30. Mr. Frye testified that a tree with a DBH around 20-inches is considered an “outstanding” tree and an assessment of said tree will begin with an eye towards a denial of a removal permit; however, the assessment is conducted on a sliding scale that will consider the other factors prescribed by the code (i.e., a permit to remove a tree with a smaller DBH and a very large canopy may be denied or a permit to remove a tree with a much larger DBH may be approved by a showing of compelling reasons from an applicant). HR at 36:00.

The White Oak was measured to have an 18.3-inch DBH. The White Oak has a healthy crown, but not a dense and wide crown relative to other white oaks of similar DBH measurements. HR at 37:10. Mr. Frye determined that the tree is healthy, but not “outstanding” or a key provider of canopy. HR at 38:10. Mr. Frye noted that there are numerous trees in the surrounding yards that

⁶ HR at approximately 34:00.

provide canopy cover for this Property. HR at 38:20. Mr. Frye assessed that the removal of this tree “would not constitute a major or problematic reduction” in tree canopy cover. HR at 38:50.

Mr. Frye noted that the tree has value and that the code recognizes that value through the replacement planting process, which, in this case, requires planting five (5) replacement trees.⁷ HR at 39:10.

Mr. Frye clarified for the Commissioners that trunk size and overall canopy cover are primary factors, as opposed to age, because they are measurable, objective data points. HR at 40:05. Moreover, estimating the age of a tree is a challenging, inexact determination. HR at 40:20. The process to estimate a tree’s age is not linear, as Appellant suggested; the process requires consideration of many factors such as the context of growing conditions, latitude, and additional factors. HR at 41:00.

Mr. Frye testified that other more significant trees in terms of the tree cover canopy provided exist around the Property. HR at 41:30. Mr. Frye also confirmed that a tree from the front yard of the Property (pictured in Appellant’s Exhibit 012) was recently removed in conjunction with a stormwater plan. HR at 41:50. Mr. Frye testified that the tree removed from the front yard had a crown rating of three (3) out of five (5) and would have been considered for denial but for the extenuating circumstances that applicants demonstrated in their removal permit application (i.e., stormwater plan approved by the City’s Engineer and tree’s proximity to retaining wall). HR at 43:00.

⁷ In lieu of planting replacement trees upon the granting of a removal permit, Applicants would have the option to pay \$312.00 per tree (\$1560.00 total) to the Tree Takoma program, which plants trees on private properties in Takoma Park.

D. Material Facts Developed Through Cross Examination and Questions from the Commissioners.⁸

In response to a question from Commissioner Sparrow, Applicants clarified that the City Engineer, regarding a prior home-improvement project at the Property, investigated the causation of stormwater entering the Applicants' backyard from the rear-neighboring property, and it was determined that there is not a pipe present under the Property. HR at 48:20. Mr. Reis testified that stormwater overflows a bioretention wall and flows around their house, filling the sump pump at the property and causing it to work for up to forty-eight (48) hours on some occasions. HR at 49:00.

In response to a question from Commissioner Woodworth, the Applicants testified that they do not have current engineering plans for addressing the stormwater. HR at 49:50.

In response to a question from Commissioner Martin, Ms. Tess testified that Applicants have safety concerns if the tree and/or surrounding area is subjected to excess water, and that removal would alleviate those concerns. HR at 50:10. Further, removal would allow Applicants to install drainage in the back of the property to prevent stormwater from reaching the house. HR at 50:30.

In response to a question from Commissioner Do, Ms. Tess testified that they do not have engineering plans or alternatives to tree removal because, in [Applicants'] experience, engineering around a tree and dealing with stormwater on a hill is challenging. HR at 52:00. Ms. Tess also stated that the tree sits approximately "over the back of [their] house and over [their] bedroom." HR at 53:05. Ms. Tess expressed a desire to address the tree first, and then address the stormwater issue to alleviate safety concerns. HR at 53:20.

⁸ HR at approximately 44:00.

In response to a question from Commissioner Martin, Applicants testified that their entire Property sits downhill from the neighboring property in the back. HR at 54:45.

In response to a question from Commissioner O'Brien, Applicants testified that they have not attempted to address the stormwater issue with the neighbors in the back. HR at 55:55.

In response to a question from Commissioner Woodworth, Ms. Tess testified that she did not indicate that stormwater management was a problem in the Application. HR at 58:20.

In response to a question from Appellant, Mr. Frye testified that he was unaware of stormwater issues and did not factor stormwater issues into his determination. HR at 58:30. In response to a follow-up question from Commissioner Do on the subject, Mr. Frye testified that, despite being unaware of the stormwater issue, he reached the conclusion that preliminary approval was proper due to the canopy cover consideration. HR at 1:01:30. Mr. Frye testified that if he considered the tree to be "outstanding," he would have sought more specific justification from the Applicants concerning their landscaping plans. HR at 1:02:00.

In response to a question from Commissioner Woodworth, Mr. Frye testified that the City Code does not have concrete parameters with respect to tree measurements for denial or approval, and that his determinations are made through application of all factors and continued practice as Urban Forest Manager. HR at 1:05:20. Mr. Frye clarified that 20-inch DBH is not a firm line in determining whether an application will be approved or denied. HR at 1:06:45. Mr. Frye testified that the Tree Code both prioritizes preservation and considers the reasons a property owner may have to remove a tree. HR at 1:08:00.

In response to a question from Commissioner Do, Mr. Frye explained that his first step in evaluating a tree is to determine whether it's hazardous or in terminal decline. HR at 1:12:15. Next, he evaluates canopy cover and determines if the canopy cover passes the threshold of what is

considered to “outstanding.” HR at 1:12:45. Lastly, the Applicants’ reasons for removal will be considered. HR at 1:13:00.

In response to a question from Appellant, Mr. Frye testified that during his evaluation of the White Oak, he determined that the canopy cover provided by the White Oak was not “substantial” or “outstanding” and did not meet the criteria for denial. HR at 1:14:50.

In response to a question from Appellant, Mr. Frye testified that overall canopy cover in the City of Takoma Park, which is gathered every three years and made available to the public, had decreased per the last report. HR at 1:22:30.

IV. Standard of Review.

As noted by the Chair of the Tree Commission at the start of the hearing, the sole issue before the Commission was to review the City’s preliminary approval of the tree removal permit, and to determine whether to approve the Permit, disapprove the permit, or approve the Permit with modifications and/or conditions, based on facts in the record before it.⁹ HR at 4:45.

There is a rebuttable presumption that the decision of the City Manager with respect to a permit application is correct. 12.12.087(A). The Appellant has the burden of demonstrating by a preponderance of the evidence that the preliminary decision should be changed. 12.12.087(C).

As to the sole question before the Tree Commission of whether the Application should be approved, disapproved, or approved with modifications and/or conditions, in consideration of the facts in the record before it, the Tree Commission is tasked with applying those facts in record to the seven (7) factors set forth in § 12.12.080(A)(1) of the City Code. 12.12.087(D).

⁹ Appellant, during argument, proposed removing certain criteria from the Takoma Park City Code § 12.12.080(1) concerning tree removal permits. The Commission did not consider this proposal, as it is beyond its authority to grant and because the hearing exclusively concerned the instant Tree Removal Permit appeal.

Any decision by the Tree Commission to impose conditions upon an applicant or reverse or modify a decision of the City Manager with respect to a permit application must be based on substantial evidence, meaning such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. 12.12.087(A).¹⁰

V. Analysis and Findings.

For the reasons set forth below, the Commission reverses the decision of the City Manager with respect to the preliminary approval to remove the White Oak at 7018 Poplar Avenue, Takoma Park, Maryland. The Commission finds that the testimony and evidence in the record rebuts the presumption that the decision of the City Manager was correct in preliminarily approving the tree removal application. Ultimately, the Commission finds that the record demonstrates, by a preponderance of the evidence, that the Urban Forest Manager improperly and incorrectly applied the factors set forth in § 12.12.080(A)(1) with respect to the White Oak at 7018 Poplar Avenue.

In making his determination to preliminarily approve a permit to remove the White Oak, the Urban Forest Manager did not properly consider whether 1) there were any compelling reasons for the removal that the applicant has demonstrated, including hardship, and whether a reasonable alternative to removal of the tree exists, 12.12.080(A)(1)(f); or 2) the extent to which clearing is necessary to achieve the proposed development or land use, 12.12.080(A)(1)(g). The White Oak, which received an eighteen (18) out of twenty (20) evaluation in the Application, is deemed a desirable tree. Ex. 1. P. 1.

¹⁰ The City Code defines City Manager as “the City Manager of the City of Takoma Park or their designee.” § 12.04.010. The City Manager designates the Urban Forest Manager to make determinations under certain Code provisions, including making the determination on whether to issue a tree removal permit under § 12.12.080. Therefore, the decisions of the Urban Forest Manager in the present matter are those of the City Manager.

Here, the Urban Forest Manager testified that he was not made aware by the Applicants of any stormwater issues prior to his evaluation of the White Oak. HR at 58:30. Further, the Urban Forest Manager testified that he would have reached the conclusion to issue a permit for removal of the tree regardless of the Applicants' showing that the White Oaks removal was necessary. HR at 1:01:30. The Commission finds that UFM's conclusion is inconsistent with the language of the City Code. Absent consideration of any factor(s) justifying the removal of an otherwise healthy and desirable tree, the City Code does not authorize the City Manager or, upon appeal, the Tree Commission to issue a tree removal permit. 12.12.080(A)(1). Therefore, the Commission finds that the Code was improperly applied with respect to the issuance of the tree removal permit at issue.

The Urban Forest Manager provided testimony concerning his evaluation process generally and with respect to the White Oak at issue. During that discussion, the Urban Forest Manager highlighted that the Takoma Park Municipal Code prioritizes preservation while considering the reasons a property owner may have to remove a tree. Therefore, it is the job of the Urban Forest Manager to balance those interests as prescribed by the Takoma Park Municipal Code.

Since the Applicants' interests in addressing stormwater were not considered during the evaluation process, the permit to remove the White Oak should have been denied. The relevant metrics evaluated by the Urban Forest Manager indicate that the tree is healthy, growing, and fits the description of an Urban Forest tree that the City Code seeks to protect.¹¹

¹¹ § 12.12.020(A) defines an Urban Forest Tree as, "a tree in the City that measures 24 inches or more in circumference at four-and-one-half feet above ground level or measures seven and five-eighths inches or more DBH." As discussed, *supra*, the White Oak at issue measures 18.3" DBH, which is approximately 57.5" in circumference.

The Commission is sympathetic to the stormwater and safety concerns that were complained of during the Applicants' testimony, but notes that the Applicants never demonstrated a showing of those concerns in the application process or at any point prior to the hearing, and that they did not have any proposed construction or engineering plans that would demonstrate the necessity to remove the White Oak. Further, the safety concerns indicated by the Applicants are unsubstantiated by any showing that the tree and/or surrounding area is subjected to excess water, leaning, or showing signs of failure, because the tree was deemed to be a completely healthy tree.

In reviewing the factors considered by the Urban Forest Manager in his evaluation of the White Oak, as required by § 12.12.087(D), in conjunction with consideration of the evidence and testimony in the record, the Commission found that certain factors were not adequately evaluated in the City's determination. Therefore, the otherwise generally healthy White Oak at issue should be preserved without a showing of a compelling reason or a showing as to the extent necessary to achieved proposed land development or land use, if any. The Commission evaluated the testimony and evidence concerning each factor, which is discussed *infra*.

The Commission's findings as to each factor are as follows:

A. The general health and condition of the tree. § 12.12.080(A)(1)(a).

This factor weighs in favor of preserving the White Oak. Neither the Appellant nor the Applicants dispute the Urban Forest Manager's assessment that the White Oak is healthy and vigorous, with a few minor dead branches. Therefore, the Commission finds that the Urban Forest Manager's assessment was correct, and the White Oak is generally healthy and vigorous.

B. The desirability of preserving the tree by reason of its age, size, species, or other outstanding quality. § 12.12.080(A)(1)(b).

This factor weighs in favor of preserving the White Oak. The Urban Forest Manager determined that "[t]he tree is not outstanding in size" and that it is "desirable" in the Application.

There was testimony concerning the age of the tree; however, there was no reliable measurement presented to estimate the White Oak's age to a degree of certainty, upon which a reasonable mind might rely as adequate to support a conclusion.

There is no dispute as to the White Oak's 18.3-inch DBH measurement. Additionally, there is no dispute concerning the narrow crown.

There was testimony presented concerning the species. White Oak is a desirable tree species. Ex. 1. P. 1. Additionally, White Oak is the State Tree of Maryland. Md. Gen. Provis. § 7-310. Testimony was presented concerning the widespread removal of White Oaks in the region and it is undisputed that this would be the third oak tree removed from the property within the last year.¹²

The Commission finds that there was no evidence presented as to the size of the tree which would overcome the presumption that the UFM was correct in his determination that removal was justified. Also, there was insufficient evidence presented concerning the tree's age. However, the Commission finds that there was inadequate consideration given to the species or other outstanding qualities of the tree. Specifically, the Commission finds that the White Oak is a desirable species that the City has interest in preserving, it is the most significant tree in the backyard, and further removal of trees from the Property is antithetical to the desired goal of maintaining canopy cover on this Property and its neighbors.

¹² According to Ms. Tess, a white oak tree was removed from the back of the Property at the request of the Applicants' neighbor, following a prior home improvement project by Applicants. HR at 46:00.

C. The impact of the reduction in tree cover on the property where the tree is located, adjacent properties and the surrounding neighborhood and the extent to which said areas would be subject to environmental degradation. § 12.12.080(A)(1)(c).

This factor weighs in favor of removing the White Oak. There was testimony presented that the tree is not the primary provider of canopy on the Property or adjacent properties. There was also testimony that this tree is the most significant tree in the backyard, would be the third oak removed from the Property within the last year, and would contribute to an already declining canopy cover in the City of Takoma Park.

The Commission finds this factor weighs in the Applicants' favor because there was no evidence presented by the Appellant as to the tree canopy cover which would overcome the presumption that the UFM was correct in his determination that removal was justified.

D. The location of the tree in relation to targets (people or property that may be subject to injury or damage due to a tree's failure). § 12.12.080(A)(1)(d).

This factor weighs in favor of preserving the White Oak. There was testimony that the tree is closest in proximity and uphill in relation to the Applicants' bedroom relative to other areas of the house. However, the tree is roughly located in the middle of the backyard, according to the Applicants. Further, there was no evidence in the record that the White Oak's location nor condition presented a risk. There was no evidence of imminent or future tree failure based on the UFM's evaluation.

E. A utility or permanent structure above ground or below ground upon which the tree may have an adverse impact at present or in the future. § 12.12.080(A)(1)(e).

This factor weighs strongly in favor of preserving the White Oak. There was no testimony presented that would identify a utility or permanent structure in existence on the Property upon

which the White Oak may have an adverse impact at present or in the future.¹³ As to any future landscaping plans contemplated by Applicants, there are no construction or engineering plans in the record.

The Tree Commission finds that there are no utilities or permanent structures above or below ground upon which the tree may have an adverse impact at present or in the future.

F. Any compelling reasons for the removal that the applicant has demonstrated, including hardship, and whether a reasonable alternative to removal of the tree exists. § 12.12.080(A)(1)(f).

This factor weighs strongly in favor of preserving the White Oak. There was testimony presented concerning safety and stormwater issues on the Property, which were not disclosed by the Applicants on the Application. The Applicants did not make a showing that removal of the tree would address the stormwater issue and they have not considered alternatives, including addressing the stormwater issue with their neighbor, where the problem originates. There is already a dry well and two bioretention areas on the Property that are designed to handle stormwater, albeit slowly, according to the Applicants.

The Tree Commission finds that there are no compelling reasons for the removal that the applicant has demonstrated and no alternative to removal was presented.

G. The extent to which tree clearing is necessary to achieve the proposed development or land use. § 12.12.080(A)(1)(g).

This factor weighs strongly in favor of preserving the White Oak. For similar reasons as explained concerning factor (f), the Tree Commission finds that the removal of the White Oak is not necessary for the proposed landscaping as noted in the Application. Further, the Tree

¹³ There was testimony concerning stormwater potentially coming from the neighbor's yard via underground pipe, but Applicants testified that the City Engineer confirmed that no such pipes exist on the Property.

Commission finds that it is not necessary to remove the White Oak to address the stormwater drainage issues, which were only addressed during the hearing and not in the Application. The record does not include evidence of construction plans or recommendations of construction activity that would require the removal of the White Oak. The Applicants suggested that they might build a French drain but conceded that there are no plans in place yet to construct a drain.

The Tree Commission finds that the tree's removal is not necessary to achieve the proposed development or land use.

VI. Conclusion and Decision.

The Tree Commission, in consideration of the documentary record and hearing evidence, makes the foregoing findings of fact under the statutory criteria for permit decisions set forth in § 12.12.0808(A)(1) and concludes that the facts of this case support the preservation of the White Oak.

The Tree Commission concludes that factors (a), (e), (f), and (g) weigh strongly in favor of preserving the White Oak, because the White Oak is a healthy tree, and the record is devoid of evidence presenting compelling reasons to remove the tree and/or alternatives to removing the tree.

The Tree Commission concludes that factor (b) and (d) weigh in favor of preserving the White Oak, because the White Oak, while not outstanding in size or age, is located in the roughly middle of the backyard of the property, received a tree condition rating of eighteen (18) out of twenty (20), and is a desirable species.

The Tree Commission concludes that only factor (c) weighs in favor of the tree's removal because, despite being the most significant tree in the backyard of the Property, the impact on tree canopy cover would be minimal.

The Commission notes that the Applicants can reapply for a permit to remove the White Oak by demonstrating a substantial change in circumstances, including specific construction plans which demonstrate that removal is necessary to address stormwater drainage issues.

VII. ORDER

UPON CONSIDERATION of the foregoing, on this 5th day of June 2024, by the City of Takoma Park Tree Commission, it be and hereby is:

ORDERED, that the preliminary determination of the City Manager is **REVERSED**; and it is further

ORDERED, that the Tree Removal Permit Application filed by Applicants Caroline Tess and Thiago Reis for the removal of an 18.3” DBH White Oak tree from the backyard of their property at 7018 Poplar Avenue, Takoma Park, Maryland, is **DENIED**.

For the Tree Commission:¹⁴

/s/
James Woodworth, Ward 2, Commission Chair

/s/
Paul O’Brien, Ward 4, Commission Secretary

/s/
Long Do, Commissioner, Ward 3

/s/
Meipo Martin, Commissioner, Ward 2

¹⁴ Commissioner Xavier Sparrow, Ward 3, participated in the hearing and in the Commission’s deliberations but voted against the majority decision.

NOTICE OF APPEAL RIGHTS

Section 12.12.087(F) of the Takoma Park Municipal Code provides that a person who was a party to the proceedings before the Tree Commission and who is aggrieved by the 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.