

TREE ORDINANCE BOARD

APPEAL OF WILLIAM T. MCCULLOUGH
FROM DENIAL OF TREE REMOVAL PERMIT #T-06-20
FOR 3903 LELAND STREET, CHEVY CHASE

DECISION: APPROVAL OF TREE REMOVAL PERMIT

1. William T. McCullough (the "Applicant") resides at 3903 Leland Street, Chevy Chase, Maryland 20815 (the "Subject Property") and is appealing the denial of a Tree Removal Permit by the Town Manager for the removal of three (3) Leyland Cypress trees, 38", 29" and 31" in circumference at four and on-half (4 ½) feet above ground.
2. Under the provisions of Section 29-3 of the Town Urban Forest Ordinance (the "Ordinance"), the Ordinance applies to all Canopy Trees on private property and public property. A Canopy Tree is defined as a tree with a trunk that measures at least twenty-four (24) inches in circumference at four and one-half (4 ½) feet above ground.
3. Section 29-4 (a) of the Ordinance provides that no person shall remove or destroy, or cause the removal or destruction, of a Canopy Tree, or undertake any action that will substantially impair the health or growth of a Canopy Tree without first obtaining a permit from the town.
4. Section 29-6(a) of the Town Urban Forest Ordinance, provides that the Town Manager is authorized to issue a Tree Removal Permit, if in consultation with the Town Arborist, it is found that any of the following conditions applies to the tree requested to be removed:
 - (i) the tree is dying, dead, or in danger of falling;
 - (ii) the tree constitutes a hazard to the safety of persons or property;
 - (iii) the tree is a nuisance tree on the Town's list of undesirable tree species as adopted by the Town Council.
5. In reviewing the Applicant's permit application, the Town arborist recommended denial based upon the fact that the trees did not meet any of the criteria set forth in Section 29-6(a).

6. The Town Manager denied the Applicant's permit application based upon the recommendation of the Town arborist.
7. Pursuant to the provisions of Section 29-7 of the Ordinance, the Applicant filed a timely appeal of the Town Manager's decision to the Tree Ordinance Board (the "Appeal").
8. On May 4, 2006, the Tree Ordinance Board held a public hearing on the Appeal.
9. The reasons presented to the Tree Ordinance Board by the Applicant for permission to remove the subject trees are the following:
 - (a) the subject trees are at least 75' in height and the Applicant has been advised that he cannot cut the trees to a lower height because such action would kill the trees.
 - (b) all three (3) trees have a small root structure.
 - (c) one of the trees has fallen over and was pulled back by a cable.
 - (d) the applicant is concerned that the trees will fall onto someone or onto adjoining property.
10. The Town Arborist's report indicates the following about the subject trees:
 - (a) the trees were installed in a small planting bed, no more than 6' wide, between a fence and a paved pool apron.
 - (b) both the canopies and roots have over grown the site.
 - (c) the canopies of the subject trees are leaning and overhanging the fence into the alley.
 - (d) the subject trees are subject to breakage from wind and ice and the confined root mass does not provide sufficient support for the trees.
11. No town residents submitted any evidence either in support or opposition to the Applicant's appeal.

DISCUSSION

Pursuant to the provisions of Section 29-8(e) of the Ordinance, the Tree Ordinance Board may affirm the denial of a permit, or may direct the Town Manager to issue a permit upon such conditions, term or restrictions as the Board may deem necessary to accomplish the intent and purpose of the Chapter 29.

The factors to be considered by the Tree Ordinance Board in deciding whether to approve or deny a request for a Tree Removal Permit for a tree that does not qualify for removal under Section 29-6 are the following:

- (1) the reasons cited by the applicant for wanting to remove the tree.

- (2) the applicant's intention to plant replacement trees, with consideration of the number, size and desirability of species, and with a minimum goal of replacing the tree to be removed.
- (3) the applicant's intention to retain and protect existing trees.
- (4) the facts in support or opposition presented by town residents.
- (5) information provided by the Town Arborist.
- (6) the extent to which no alternative to tree removal exists that would allow the proposed development, construction, or land use otherwise permitted under the Town Building Code.
- (7) the desirability of preserving a tree by reason of its age, size or outstanding qualities, including uniqueness, rarity or species.
- (8) the overall effect on the tree canopy of the adjacent properties, the neighborhood and the Town.

FINDINGS

Based upon the evidence presented, the Tree Ordinance Board makes the following findings of fact:

- (1) All three (3) of the subject trees were installed in a small planting bed, not more than 6' wide, between a fence and a paved pool apron.
- (2) Both the tree canopies and tree roots have over grown the site.
- (3) The canopies of the trees lean and overhang the existing fence into the public alley.
- (4) Leyland Cypress can present hazardous conditions when grown in such confined sites.
- (5) The subject trees are subject to breakage from wind and ice and the confined root mass does not provide sufficient support for the trees.

CONCLUSION

Based upon the above findings, the Tree Ordinance Board believes the granting of a Tree Removal Permit is appropriate as the Applicant's testimony and supporting documentation and the recommendation of the Town Arborist satisfy the requirements of Section 29-9 of the Urban Forest Ordinance for the Tree Ordinance Board to direct the Town Manager to issue a Tree Removal Permit as requested.

Accordingly, the Town Manager is directed to issue the Applicant a Tree Removal Permit for the subject three (3) trees.

TREE ORDINANCE BOARD

Date: 5/18/06



Christopher Wright, Chairman

Within 30 days of the date of issuance of a decision of the Tree Ordinance Board any aggrieved party 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.