

PROPERTY: 3909 THORNAPPLE STREET, CHEVY CHASE
MONTGOMERY COUNTY, MARYLAND 20815

DECISION

TREE ORDINANCE BOARD
TOWN OF CHEVY CHASE

APPEAL OF RICHARD K. REED
FROM DENIAL OF TREE REMOVAL PERMIT #T-01-27

SUMMARY OF CASE

1. Mr. Richard K Reed, who lives at 3905 Thornapple Street and owns the subject property at 3909 Thornapple Street, is appealing the denial of a Tree Removal Permit by the Town Manager for the removal of eight (8) white pines of varying circumferences over 24 inches at four and one-half feet above ground that are located along the property line on the west side of the property.
2. Under the provisions of Section 29-3 of the Town Urban Forest Ordinance (the "Ordinance"), which applies to all trees on private 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 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 because 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. Section 29-9 requires the Tree Ordinance Board to consider eight factors in deciding in a public hearing whether to approve or deny a request for a Tree Removal Permit. These factors are:

- (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.

9. Notice of the hearing in this Appeal was posted at the Town Offices and on the property and was mailed to all abutting and confronting property owners on September 28, 2006.

10. On November 2 and December 7, 2006, the Tree Ordinance Board held public hearings on the Appeal.

EVIDENCE PRESENTED

The applicant submitted a completed application with accompanying letter and drawings on June 6, and addressed the Board at the initial hearing (November 2), requesting permission to remove all the subject trees based on the following reasons:

(a) the line of white pines is "an artificially planted buffer" between properties that has outgrown its space and constitutes a nuisance that blocks the view of oncoming traffic and hangs over the house and property. (applicant's letter of August 22, 2006.)

(b) a new house is to be constructed on the lot and its driveway is to be sited along the west property line, leaving insufficient room for the line of trees.

(c) a line of eight upright English oaks (*Quercus robur* "Fastigiata") and 31 pencil point junipers (*Juniperus communis* "Pencil Point") will be planted as replacement trees.

An email to the Town Office opposing Mr. Reid's appeal was received on October 3 from David and Deborah Shipler of 4005 Thornapple Street. No members of the public made statements at either hearing.

At the initial hearing the Board and Mr. Reid held an extended discussion of the desirability of saving some of the larger white pines. Board members pointed out that the oak and juniper species proposed by Mr. Reid's landscape designer as replacement trees were not canopy trees and that several of the white pines were of such size that they would soon become significant assets to the town's tree canopy. Mr. Reid agreed to reconsider his plan and to work with the Town Arborist to develop a design that would save the most notable white pines and include replacement canopy trees along the property line.

A tree inspection report was received from the Town Arborist, Dr. Tolbert V. Feather, suggesting the retention of two white pines and planting two canopy trees and warning against the new driveway's encroaching on the roots of the saved white pines (Feather & Assoc. letter of October 31, 2006).

On December 7 Mr. Reid appeared again before the Board, this time with a revised drawing that showed two white pines retained and two canopy trees to be added between the west property line and the proposed driveway.

FINDINGS

The eight 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 listed in Section 29-9 of the ordinance.

The Board discussed these factors and made findings as described below:

Factor 1: The reasons cited by the applicant for wanting to remove the tree.

Mr. Reid initially stated that the line of trees created a hazardous "no mans land of sharp branches and poison ivy" that would have to be removed in order for him to construct a driveway alongside the new house. The Board reviewed the site plan and discussed the location of the new building and driveway as they related to the white pines.

Finding: The pines have overgrown their location and need to be thinned and limbed up, but do not constitute a nuisance and, in fact, are in some cases beginning to be mature canopy trees. There appears to be sufficient room for both the driveway and some of the white pines if the driveway were narrowed slightly and the pavement cut out and grates installed over the root area of those pines to be saved.

Factor 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.

Mr. Reid initially proposed to plant trees that would have provided a visual barrier but would not have replaced any of the potential canopy lost by removing the white pines. In his second appearance Mr. Reid proposed adding two deciduous canopy trees along side the white pines to be retained.

Finding: Adding two deciduous canopy trees would be an improvement in the quality of the tree canopy at this location.

Factor 3: The applicant’s intention to retain and protect existing trees.

In his second appearance Mr. Reid proposed to retain the two largest white pines and to construct the driveway in such a manner that the roots would not be damaged.

Finding: Saving the two largest white pines would continue the presence of evergreen conifers in the tree canopy at this location, which adds to the variety of the town’s canopy.

Factor 4: The facts in support or opposition presented by town residents.

One neighbor wrote in opposition, stating that the “wall of pine on the western edge of this property is an unusually attractive asset for the neighborhood, and its removal would constitute a loss for all the neighbors.” (email from David Shipler, October 3, 2006)

Finding: The pines are a noticeable aspect of the neighborhood and, while not yet stately canopy trees, contribute to the streetscape and overall appearance of the block.

Factor 5: Information provided by the Town Arborist.

The arborist tree inspection report proposes saving the two largest white pines and planting two new canopy trees in between the two saved pines. It also cautions: “We are concerned that the new driveway may be installed too close to the saved pine trees. The driveway may have to be narrowed or modified to accomplish the protection of the two trees.” The report specifies that Mr. Reid will have to develop a tree protection plan as part of his building permit process. (Feather Associates letter of October 31, 2006)

Finding: The arborist’s report suggests a reasonable compromise so long as the driveway is constructed with a genuine intention to save the remaining white pines.

Factor 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.

See discussion and Finding under Factor 1. The Board was not convinced that a new driveway would require the destruction of the entire line of white pines.

Factor 7: The desirability of preserving a tree by reason of its age, size or outstanding qualities, including uniqueness, rarity or species.

White pines are not rare in this area, but large white pines are unusual and provide noticeable punctuation to the landscape, especially in winter when their evergreen foliage stands out. Several of the largest pines in this row are beginning to become canopy trees in their own right.

Finding: At least two of these pines should be saved and trimmed with the intention of continuing and enhancing an evergreen presence in the canopy in this neighborhood.

Factor 8: The overall effect on the tree canopy of the adjacent properties, the neighborhood and the Town.

See discussion and Finding under Factor 7.

CONCLUSION

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, terms or restrictions as the Board may deem necessary to accomplish the intent and purpose of Ordinance.

Based upon the above findings, the Tree Ordinance Board believes the granting of a Tree Removal Permit for all but two of the subject trees is appropriate under the requirements of Section 29-9 of the Ordinance. Accordingly, the Town Manager is directed to issue the Applicant a Tree Removal Permit subject to the following conditions:

1. The subject trees shall not be removed until the applicant has obtained all necessary building permits for the construction of the new house substantially in accordance with the site plan submitted to the Board.
2. The subject trees must be removed within 12 months of the date of this approval or this Tree Removal Permit shall become void.
3. The Applicant shall retain the two largest white pines and shall plant two replacement canopy trees as described in the arborist's report and attached revised drawing dated 10/31/06.
4. The driveway shall be constructed with care to protect the roots of the two remaining pines, using cutouts and metal grates as necessary for this purpose. A tree protection plan will be approved in advance by the arborist describing the necessary steps to protect these two trees.

5. The replacement trees shall be selected from the species listed on the Town of Chevy Chase, Tree Ordinance Board: List of Acceptable Replacement Canopy Trees and be at least 3" in caliper at the time of planting.
6. The replacement trees shall be planted within 12 months of the date of this approval and at a time and location in the yard approved by the Town Arborist.
7. The Applicant shall be responsible for the maintenance and replacement of the trees required by this condition for a period of two (2) years from the time of planting (the "Warranty Period"). The Warranty Period for any tree that dies during the two (2) year period shall commence from the date of planting such replacement tree.
8. The provisions of this decision shall be incorporated by reference into the Town Building Permit issued to the Applicant.

* * *

The foregoing Decision was adopted by the Tree Ordinance Board of the Town of Chevy Chase on January 19, 2007, with the following members voting in favor: Melanie Choukas-Bradley, Miriam Daniel, Penny Douglas, Christopher Wright.

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.

TOWN OF CHEVY CHASE
TREE ORDINANCE BOARD

Date: _____

Jan 19 '07



Christopher Wright, Chair