

PROPERTY:

4011 BRADLEY LANE, CHEVY CHASE  
MONTGOMERY COUNTY, MARYLAND 20815

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**DECISION**

TREE ORDINANCE BOARD  
TOWN OF CHEVY CHASE

APPEAL OF JAMES O'BRIEN  
FROM DENIAL OF TREE REMOVAL PERMIT #T-07-37

**SUMMARY OF CASE**

1. James O'Brien, representing Chartwell Builders located at 4415 Stanford Street, Chevy Chase, Maryland, is appealing the denial of a Tree Removal Permit by the Town Manager for the removal of a multi-stemmed Norway Spruce tree on the property at 4011 Bradley Lane, each stem of which exceeds 24 inches in circumference at four and one-half feet above ground.
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 tree 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 January 18, 2007.

10. On January 25, 2007 the Tree Ordinance Board held a public hearing on the Appeal.

### **EVIDENCE PRESENTED**

The applicant, in the person of Mr. O'Brien, submitted a completed application and accompanying letter and addressed the Board at the hearing, requesting permission to remove the subject tree based on the following reasons:

- (a) a new house is to be constructed on the property and the Norway spruce is within the footprint of the house.
- (b) the applicant proposes to replace the tree with other canopy trees in cooperation with the adjacent neighbor, Mr. Donald Farren. (applicant's letter of January 4, 2007.)

Mr. Donald Farren of 4409 Bradley Lane attended the hearing and discussed his desire for screening between the two houses but supported Mr. O'Brien's desire to remove the Norway Spruce, which he said was growing into his yard and had overgrown the site.

No statements were received in opposition to the appeal.

A tree inspection report was received from the Town Arborist, Dr. Tolbert V. Feather, stating that there were no structural defects in the trees. (Feather & Assoc. letter of January 23, 2007) Permission had been given for removal of another Norway Spruce clump whose stems had grown together and constituted a splitting hazard.

## **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. O'Brien states that there is no way to construct the new house without removing the subject tree because it sits within the proposed building footprint. The Board reviewed the site plan and discussed the location of the new building as it related to both the spruce tree and other plantings on the lot.

**Finding:** The spruce tree is situated in such a location that the applicant could not construct the building as shown on the proposal without removing it.

**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. O'Brien proposes to plant two replacement canopy trees, one in the front and one in the back of the new house. The Board reviewed the proposed location of these trees on the site plan.

**Finding:** Replacing this Norway Spruce with two new canopy trees of a more desirable species would be a net gain in future trees for the town.

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

There are no other trees at issue.

**Finding:** N/A

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

No opposition to removing the subject tree was heard from town residents. The adjacent neighbor (Mr. Donald Farren) was primarily concerned with screening between their two houses.

**Finding:** The tree is evidently not of concern to the neighbors.

**Factor 5:** Information provided by the Town Arborist.

The Board and the arborist discussed the nature of the Norway Spruce clump and its role within the Bradley Lane streetscape.

**Finding:** The Norway Spruce clump is an unusual configuration that will continue to expand sideways, rather than in the usual “Christmas tree” form that most single-trunk Norway Spruces in the town have taken. Currently there are two clumps (one being deemed hazardous) in the side yard of the applicant’s property. Both have outgrown their sites.

**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.

The Board discussed the possibility that Mr. O’Brien could alter his site plan to spare the tree, but came to the conclusion that the tree would still be at risk.

**Finding:** Given the location of the tree at the corner of the building site (whether inside or outside the actual excavation) the Board felt that a replacement tree in a different location might be of greater value to the Bradley Lane streetscape.

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

The Board discussed Norway Spruces with the arborist and concluded that this clumping variety was not of special value.

**Finding:** This particular tree is not of a species or size to warrant unusual efforts to save it.

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

Board members observed that the subject spruce clump is not particularly valuable in providing shade or green relief along a rather treeless stretch of Bradley Lane and that a replacement tree nearer the street with a spreading canopy could improve this situation.

**Finding:** Removal of the subject tree will have no effect on the surrounding tree canopy.

## 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 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 tree 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 tree must be removed within 12 months of the date of this approval or this Tree Removal Permit shall become void.
3. The Applicant shall plant two (2) replacement canopy trees, one in the front and one in the rear yard of the property as shown on the site plan presented to the Board. 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 inches in caliper at the time of planting. The Board also agreed that the front yard replacement tree might, at the applicant's discretion, be a 3-inch-caliper Southern Magnolia (*Magnolia grandiflora*) similar to the adjacent neighbor's trees.
4. 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.
5. 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.
6. The provisions of this decision shall be incorporated by reference into the Town Building Permit issued to the Applicant.

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The foregoing Decision was adopted by the Tree Ordinance Board of the Town of Chevy Chase on February 26, 2007, with the following members voting in favor: Melanie Choukas-Bradley, Miriam Daniel, Penny Douglas, David Strom, 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: 2/26/07

  
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Christopher Wright, Chair