

TREE ORDINANCE BOARD

APPEAL OF MIGUEL COVARRUBIAS
FROM DENIAL OF TREE REMOVAL PERMIT #T-06-23
FOR 7620 LYNN DRIVE, CHEVY CHASE

DECISION: APPROVAL OF TREE REMOVAL PERMIT

1. Miguel Covarrubias (the “Applicant”) resides at 7620Lynn Drive, 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 one Black Walnut tree (*Juglans nigra*) 32” 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 because the tree did not meet any of the criteria set fort 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 June 15 and July 6, 2006, the Tree Ordinance Board held public hearings 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 tree is a black walnut, which has properties that can be harmful to certain plants and animals.
 - (b) the present tree is immature but its mature canopy will overwhelm the applicant's small yard.
 - (c) black walnuts are common trees in the town and this tree is not an important example of this species.
 - (d) removing the tree at this stage will allow the Applicant to use the yard more fully and to allow his family dog to play in the yard without concern for its safety from ingesting toxic nut hulls.
10. The Town Arborist's report indicates the subject tree is covered by the conditions of the Tree Ordinance and does not meet any of the criteria for issuing a tree removal permit.
11. Statements from town residents in support for Mr. Covarrubias' appeal were received from Barbara Estridge, 4216 East West Highway; Robert Van Namen, 7617 Lynn Drive; Cathy Wolf, 7622 Lynn Drive; and John Midlen, 7618 Lynn Drive.

No statements were received in opposition to the 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) The applicant's back yard is a very small area for a potentially large and spreading tree species such as a black walnut.
- (2) The tree in question is at present rather small with a minimal impact on the surrounding tree canopy, being barely visible over the top of the house and surrounded by large trees in neighboring yards.
- (3) Several of the immediate neighbors have written letters in support of the applicant's desire to remove this particular tree and none has opposed this move.
- (4) Black walnuts, being allelopathic, have properties that make it difficult to plant certain shrubs or otherwise use a closely confined space under their canopy.
- (5) The town arborist, while finding the tree to be healthy, has pointed out that there are numerous black walnuts of majestic size in the town and has suggested that there may be more suitable species for a small back yard.
- (6) The applicant has said he is willing to replace this tree with a canopy tree having a more columnar growth pattern such as a tupelo or ginkgo.

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 subject to the following conditions:

(1) The Applicant shall plant one (1) replacement canopy tree in the rear yard of the property. The replacement tree shall be either a tupelo (*Nyssa sylvatica*) or a ginkgo (*Ginkgo biloba*) and be at least 3" in caliper.

(2) The replacement tree 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, who shall report the fulfilling of this condition to the Tree Board.

(3) The Applicant shall be responsible for the maintenance and replacement of the tree 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.

TREE ORDINANCE BOARD

Date: _____

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.