

PROPERTY: 7203 OAKRIDGE AVENUE, CHEVY CHASE
MONTGOMERY COUNTY, MARYLAND 20815
PARCEL ID: 07-03496505

DECISION

TREE ORDINANCE BOARD TOWN OF CHEVY CHASE

APPEAL OF 7203 OAKRIDGE DEVELOPMENT LLC FROM DENIAL OF TREE REMOVAL PERMIT

SUMMARY OF CASE

1. 7203 Oakridge Development LLC (the “Applicant”) is the owner of 7203 Oakridge Avenue, 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 a hickory tree that is 66 inches in circumference(the “Subject Tree”).
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 Subject Tree not meeting 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, May 18 and May 31, 2006, the Tree Ordinance Board held public hearings on the Appeal.

9. The reason(s) presented to the Tree Ordinance Board by the Applicant for permission to remove the Subject Tree included the following:

(a) the Subject Tree must be removed to accommodate the construction of a new home on the Subject Property.

(b) the Subject Tree is not within the Forest Conservation Easement Area established by the Montgomery County Planning Board at time of approval of the Preliminary Plan of Subdivision that included the Subject Property.

(c) the Subject Tree might die even if the proposed house were designed around the tree and/or the proposed house was located deeper into the Subject Property and/or other precautions were taken to preserve the Subject Tree during construction of a new house.

10. The Town Arborist testified before the Tree Ordinance Board as to the following about the Subject Tree:

(a) the Subject Tree is a healthy red hickory tree.

(b) the longevity of the red hickory is 100-200 years with the Subject Tree being approximately 40 years in age.

(c) the red hickory does not react well to soil compaction because its roots are only 3"-12" below the soil surface.

(d) the root system extends beyond the drip line.

(e) the roots of the Subject Tree extend approximately 32' away from the tree.

(f) in preserving a tree one is relying upon the portion of the root system not disturbed to survive until the impacted portion comes back.

(g) the Subject Tree is vulnerable on the Subject Property because construction activities will not be limited to only 1 side of the Subject Tree (there will be driveway construction on one side of the tree which will cover the tree's roots on that side and house construction on two other sides of the tree).

(h) it will take approximately 4-6 years after completion of construction to see the effects of construction activity on the Subject Tree.

11. Town residents submitted the following evidence either in support or opposition to the Applicant's appeal:

(a) Louie Bloom on behalf of the Applicant testified as to voluntarily placing portions of the Subject Property's rear yard into a Forest Conservation Easement area as part of the Preliminary Plan of Subdivision process before the Montgomery County Planning Board. He also testified as to his willingness to stabilize the rear yard of the Subject Property and to plant more trees in the rear yard of the Subject Property. He testified that a house designed around the subject tree would not be attractive.

(b) Stephen Sosman, 7208 Maple Avenue, lives directly behind the Subject Property and testified that the rear yard of the Subject Property slopes downward and has an erosion problem. He was concerned as to the effect the removal of the Subject Tree will have on the tree canopy. He was concerned about erosion and flooding due to the slope of the rear yard of the Subject Property.

(c) Howard Benensohn, 7204 Maple Avenue, testified as to lack of tree canopy on the Subject Property and stormwater run-off from the Subject Property due to the lack of ground cover in the back yard. He suggested requiring the planting of more trees with larger caliper and ground cover to address stormwater run-off if the Subject Tree cannot be saved. He urged the Board to consider the provisions of Section 29-9(2) and (7) in its consideration of this Appeal.

(d) Jean Shorett, 7107 Oakridge Lane, resides three (3) houses away from the Subject Property. She testified that more landscaping will not replace the benefits of the Subject Tree. She further represented that the slope of the Subject Property's rear yard is extreme. She urged the Board to consider the provisions of Section 29-9(7) and (8) in its consideration of this Appeal.

(e) Bruce Russell, 7107 Oakridge Lane, resides three (3) houses away from the Subject Property. He testified as to requiring the Applicant to replace all trees removed in the Subject Property by the Applicant or its predecessors with larger caliper trees and to require ground cover planting in the rear yard to stabilize the rear yard.

(f) David Perkins, 7206 Maple Avenue, resides on property adjacent to the rear of the Subject Property. He testified as to requiring the Applicant to replace the trees previously cut down by the prior owner. He believes a new house could be architecturally attractive and still retain the subject trees. He views the subject tree as being part of the Town's tree canopy.

(g) Joe Rubin, resides at 4409 Ridge Street and he testified in support of the removal of the Subject Tree. He testified that any attempt to reconfigure a house plan to accommodate the Subject Tree will result in a structure unsuitable in character to the abutting and confronting neighbors. He further testified that no matter what the siting or configuration of a house and no matter what protections are enforced, the Subject Tree could still die due to normal construction disturbance.

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 Subject Tree is an otherwise healthy Canopy Tree.
- (2) With significant construction activities to occur on three sides of the Subject Tree, including the digging of a basement on two sides and the creation of a driveway on the third side, the Subject Tree is not likely to survive the redevelopment of the Subject Property even with a

redesign of the footprint of any proposed house or moving the foot print of the proposed house deeper into the Subject Property.

(3) In discussion with the Board the Applicant agreed to reforest the property by planting one specimen shade tree such as an oak or maple in the front yard of the property and six small-caliper native trees to replace lost forest screening in the rear of the property.

(4) Requiring the Applicant to plant more replacement trees than the tree being removed would have a better effect on the tree canopy of adjacent properties, the neighborhood and the Town than denying the Appeal and requiring the Subject Tree be retained with the strong likelihood of it not surviving the proposed construction activities even with protective precautions being taken. Additionally, requiring the applicant to plant in the front yard one large 6'-8" caliper hardwood replacement tree will help ensure that the tree canopy in the area is restored more quickly than if a smaller 1-3" caliper tree was planted.

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, its successors or assigns shall plant one (1) specimen shade tree in the front yard of the Subject Property. The specimen shade tree selected shall be 6"-8" in caliper at the time of planting and be selected from a list of approved specimen trees prepared by the Town's Arborist. The specimen shade tree shall be planted within six (6) months of substantial completion of construction of the new home on the Subject Property and at the appropriate time for planting larger trees of that variety..

(2) The Applicant, its successors or assigns shall plant six (6) native forest trees within the existing Forest Conservation Easement Area within the rear yard of Subject Property between the retaining wall and rear property line. The trees shall be 1.5"-2" in caliper at time of planting and shall be selected from a list of trees native to the Town prepared by the Town Manager with the assistance of the Town Arborist. The native forest trees shall be planted within six (6) months of substantial completion of construction of the new home on the Subject Property.

(3) The Applicant, its successors or assigns shall be responsible for the maintenance and replacement of any trees required by (1) and (2) above 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.

(4) To assure that the front yard specimen tree and the rear yard native forest trees that are planted survive and/or are replaced if they die, the Applicant, its successors or assigns shall post a performance bond with the Town Manager in such amount as determined by the Town Manager. Such performance bond shall be posted prior to the release of any Tree Removal Permit and/or any Town Building Permit. The time of planting of such tree(s) shall be certified in writing to the Town Manager by the Applicant, its successors or assigns.

(5) Upon finding a violation of any term or condition of this Opinion, the Town shall have the right to enforce such provisions in accordance with any statutory authority (including, if applicable, the imposition of civil monetary fines or penalties in amounts and by such means as may be promulgated from time to time). The Town may also seek injunctive or other appropriate relief in any court of competent jurisdiction, including the right to recover damages in an amount sufficient to restore the Subject Property to its original natural state, and the Applicant, its successors or assigns agree to pay for court costs and reasonable attorney fees if the Town successfully seeks judicial relief.

(6) This Opinion shall be recorded among the County land records..

(7) This Opinion shall be binding upon the Applicant, its successors and assigns.

