

PROPERTY: 4114 ROSEMARY STREET, CHEVY CHASE
MONTGOMERY COUNTY, MARYLAND 20815

DECISION

TREE ORDINANCE BOARD
TOWN OF CHEVY CHASE

APPEAL OF STEVE COHEN
FROM DENIAL OF TREE REMOVAL PERMIT #T-08-02

SUMMARY OF CASE

1. Steve Cohen (the "Applicant"), who is constructing an addition to his residence at 4114 Rosemary Street, Chevy Chase, Maryland 20815 is appealing the denial of a Tree Removal Permit by the Town Manager for the removal of four American Holly trees, each measuring greater than 30 inches in circumference at 4 ½ feet above the ground, that border 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 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 Applicants 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 July 17, 2007.
10. On July 26, 2007, the Tree Ordinance Board held a public hearing on the Appeal.

EVIDENCE PRESENTED

The applicant, Steve Cohen, submitted a completed application accompanied by letters and drawings from his architect, Allison Grobe of Fox Architects, and addressed the Board at the hearing, requesting permission to remove the subject holly trees based on the following reasons:

- (a) the trees were originally planted as a hedge or screen between the two properties and have overgrown their site, encroaching on the applicant's house.
- (b) the architect is concerned for the safety of the trees' root structure during construction.
- (c) the applicant proposes to replace them with two white ash trees and one maple tree to be located at a more suitable location for canopy trees in the rear of the property.

Donna Middlehurst and Jeffrey Schwartz, who reside at 4200 Rosemary Street, immediately to the west of the applicant, sent an e-mail to the Board on July 23, 2007, supporting the Cohen appeal. No statements were received in opposition to the appeal. No members of the public made statements at the hearing.

A tree inspection report was received from the Town Arborist, Dr. Tolbert V. Feather, stating that the hollies appeared healthy though the foliage was sparse next to the house due to shade, and that they were “more significant for screening than canopy.” (Feather & Assoc. letter of July 26, 2007)

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. Cohen and a representative of his architect, Fox Architects of Bethesda, MD, discussed the location of the trees next to the planned addition and their concern that the trees’ roots would be jeopardized by construction and that they were not appropriate to their location less than ten feet from the current house foundation. Mr. Cohen said he did not intend to remove any trees if he could help it but felt he should ask permission to remove them if necessary.

Finding: The trees are very close to the current house and have overgrown their probable original role as a screen or hedge between the two properties.

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. Cohen proposes to plant two white ash trees and one red maple at appropriate locations on the south side (rear) of the property, where they would receive plentiful sunlight and grow into large shade trees.

Finding: Replacing the holly trees with three new canopy trees in a more appropriate site would be a positive addition to the town’s tree canopy over the long run.

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

There is one mature red maple tree in the middle of the back yard that lost its top in a storm and has suffered die-back in recent years, according to Dr. Feather. Mr. Cohen intends to file a tree-protection plan and does not expect this tree to be impacted by construction.

Finding: The red maple will be protected but does not provide the significant canopy potential that newly planted trees should in future years.

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

The neighbor immediately to the west (adjacent to the line of holly trees) sent an email to the Board saying they “completely support the applicants’ request regarding removal of the referenced trees Frankly, the holly trees are a nuisance and it will be wonderful to have them removed.” (email from Middlehurst/Schwartz July 23, 2007)

Finding: The neighbors most immediately affected by the presence of the trees strongly support their removal.

Factor 5: Information provided by the Town Arborist.

The arborist stated that the hollies are healthy although the foliage on the house side is sparse due to shade. (Feather & Assoc. letter of July 26, 2007) At the hearing, Dr. Feather agreed with the applicant that the trees were probably planted as a screening hedge and that they had overgrown their site, though he believed they could withstand the rigors of construction.

Finding: The hollies, though healthy, have outgrown their site and are crowding the house.

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.

In fact, Mr. Cohen told the Board he would like to save at least the one holly nearest the street and was asking permission to cut them only as a last resort and if they were obviously inappropriate to the site once construction had been completed. Mr. Cohen’s architect was less sanguine about their surviving construction and told the Board he did not believe they would be very attractive once limbed up to keep them off the house.

Finding: The construction could be accomplished in a manner so that some of the Holly trees might survive construction. However, the trees’ roots would be damaged and the limbs would be pruned to an extent that they would not make a substantial contribution to the Town tree canopy.

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

Members of the Board have discussed the value of holly trees as wildlife habitat and food for song birds in the past. These particular hollies are not particularly noteworthy examples of the species.

Finding: The desirability of preserving hollies as one of the town’s native tree species does not, in this case, overcome the argument that they have overgrown their site and are located in an inappropriate space.

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

Members of the Board agreed with the arborist's conclusion that these hollies are "more significant for screening than for canopy." While the holly closest to the street is visible, it is not a significant part of the streetscape and does not materially add to the town tree canopy.

Finding: Removal of the subject trees, which are not a critical part of the canopy, will be offset by the planting of three replacement trees in more appropriate locations at the rear of the property.

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 trees must be removed within 12 months of the date of this approval or this Tree Removal Permit shall become void.
2. The Applicant shall plant, in the back yard, three replacement canopy trees. The replacement trees shall be selected from the species listed on the Town of Chevy Chase, Tree Ordinance Board: List of Recommended Replacement Shade Trees and be at least 3 inches in caliper at the time of planting.
3. 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.
4. 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.
5. The provisions of this decision shall be incorporated by reference into the Town Building Permit issued to the Applicant.

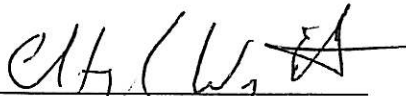
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The foregoing Decision was adopted by the Tree Ordinance Board of the Town of Chevy Chase on August 20, 2007, with the following members voting in favor: Miriam Daniel, Penny Douglas, David Strom, and Christopher Wright.

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: 20 Aug 07



Christopher Wright, Chair