

PROPERTY:

4409 RIDGE STREET, CHEVY CHASE
MONTGOMERY COUNTY, MARYLAND 20815

DECISION

TREE ORDINANCE BOARD
TOWN OF CHEVY CHASE

APPEAL OF MR. JOSEPH RUBIN
FROM DENIAL OF TREE REMOVAL PERMIT #T-07-84

SUMMARY OF CASE

1. Mr. Joseph Rubin, owner and developer of the property at 4409 Ridge Street, Chevy Chase, Maryland, is appealing the denial of a Tree Removal Permit by the Town Manager for the removal of a Kwanzan cherry tree 41 inches in circumference at four and one-half feet above ground located in the front yard of the existing house at 4409 Ridge Street.
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 July 2, 2007.

10. On July 9, 2007, the Tree Ordinance Board held a public hearing on the Appeal.

EVIDENCE PRESENTED

The applicant, in the person of Mr. Rubin, 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) The tree is only 15-20 feet tall and does not materially contribute to the canopy.
- (b) The tree is wide, bushy and low to the ground. It dominates the front yard in a way that obscures the house from the street and will complicate the construction of a new house that Mr. Rubin intends to construct on the site.
- (c) The applicant proposes to replace the tree with a significant canopy tree, such as a willow oak or red maple.
- (d) The immediate surrounding area has recently suffered the loss of several large canopy trees, including a maple tree next door and a Norway maple across the street;

consequently, replacing the cherry tree with a tree which when mature will produce a significant amount of shade will help restore the canopy on that segment of Ridge Ave.

An e-mail to the Town Office supporting Mr. Rubin's appeal was received from **the residents of** the adjacent home to the east, Nick and Natalie Vamos of 4411 Ridge Street. Mr. and Mrs. Vamos stated that , "the cherry tree in question dominates the front yard without providing any shade or other benefit to the property or the sidewalk or the adjacent properties." 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, confirming that the canopy value of the tree was "not significant". Dr. Feather observed that "flowering cherry trees (such as the instant tree) are short-lived trees." Additionally, he stated that "as flowering cherries mature they are more susceptible to pest infestation and disease infection." (Feather & Assoc. report of July 5, 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. Rubin stated that the subject cherry tree is low to the ground, produces little shade, or other related benefits of large canopy trees. The Board discussed the general characteristics of the Kwanza Cherry, noting its natural beauty and flowers, but recognized that even in maturity, these trees, unlike certain other varieties in the cherry family, rarely exceed 30-40 feet in height. The Board noted the features of this particular tree and its location on the lot.

Finding: The cherry tree does not contribute to the canopy of the front yard or the immediate neighborhood. Additionally, its location and individual features obstruct access to a significant portion of the front yard.

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. Rubin proposes to plant a large replacement canopy tree, in the front yard on the west side of the lot. The Board reviewed the proposed location of this tree on the site plan to ensure that there were no obstacles to the proposed location such as a gas or water line.

Finding: Replacing this Kwanza Cherry tree with a new canopy tree of a more desirable species would be a net gain for the town's urban forest.

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

As there are no other trees on the subject property, this factor is only applicable to the extent that the new home construction by Mr. Rubin does not harm or damage trees on adjacent lots.

Finding: Mr. Rubin is advised that Section 28-12(a) of the town's tree ordinance requires a tree protection plan that delineates tree root protection areas and other measures that will be taken for all trees at risk on the subject *and adjoining* properties. In this connection, it should be noted that there is a maple tree in the front yard of 7211 Ridge St that could be at risk as a result of the planned construction on the site.

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

One comment was received in support of the application.

Finding: The tree is of little aesthetic or shade value and the immediate neighbors to the east favor its removal and the "installation of a true canopy tree."

Factor 5: Information provided by the Town Arborist.

The arborist tree inspection report states that the Kwanza Cherry is not a significant canopy tree and that it is short-lived, 20-40 years, and when mature prone to pest infestation and disease infection. (Feather Associates report of July 5, 2007)

Finding: The Kwanza Cherry tree is of low value as a canopy tree and could be replaced with more desirable tree that would be of more benefit to the canopy in the long run.

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.

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 agreed with the town arborist's conclusion that Kwanza Cherry trees are not particularly desirable as canopy trees because of their low height, relatively short life and susceptibility to disease and infestation.

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 from the street the tree is only 15-20 feet high and not particularly attractive in shape or foliage. While Kwanza Cherry trees are beautiful when they are in bloom, the loss of this small tree would not appreciably detract from the present or future tree canopy.

Finding: Removal of the subject tree will have almost 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 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 one (1) replacement canopy tree in the front yard of the property as shown on the site plan presented to the Board. The replacement tree 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.
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 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.
5. To assure that the one replacement canopy tree survives and/or is replaced if it dies, the Applicant shall post a performance bond with the Town Manager in such amount as determined by the Town Manager. Such performance bond shall be posted at the time construction is

completed and the tree is planted. The time of planting of such tree(s) shall be certified in writing to the Town Manager by the Applicant, its successors or assigns.

6. 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 July 26 , 2007, with the following members voting in favor: Melanie Choukas-Bradley, 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: _____

Christopher Wright, Chair