

PARCEL ID NO.:

07-011-00462264

PROPERTY:

6814 MEADOW LANE, CHEVY CHASE
MONTGOMERY COUNTY, MARYLAND 20815

DECISION

TREE ORDINANCE BOARD
TOWN OF CHEVY CHASE

APPEAL OF DENIAL OF TREE REMOVAL PERMIT #T-11-27
FROM MR. & MRS. MICHAEL O'NEILL

SUMMARY OF CASE

1. Mr. Michael E. O'Neill and Mrs. Margaret R.S. O'Neill (collectively the "Applicants"), owners of the property at 6814 Meadow Lane, Chevy Chase, Maryland, appeal the denial of a permit to remove a Tulip Polar canopy tree measuring thirty-seven (37) inches in circumference at approximately four and one-half (4 ½) feet from the ground located in the side yard 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 Applicants' 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 Applicants' 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 was posted at the Town Offices, on the property and was mailed to all abutting and confronting property owners on November 10, 2010.
10. On November 18, 2010 the Tree Ordinance Board held a public hearing on the request for an extension. Board members present were: Melanie Choukas-Bradley, Penny Douglas, Chris Wright and David Strom (chair).
11. Mr. O'Neill and his architect, Greg Wiedemann, testified at the hearing.

EVIDENCE PRESENTED

At the hearing Mr. O'Neill, testified first followed by his architect, Greg Weidemann. Mr. O'Neill stated that the Tulip Poplar was relatively close to his house, 19'6" from the outer wall, and that it will be 5'6" from a proposed addition to the house. Mr. O'Neill indicated that in the past three years the Applicants have lost two similar Tulip Poplar trees on their property and had limbs from the remaining tulip poplars fall. When one of these trees came down, it heavily damaged the O'Neill's garage, hit their neighbor's back porch and destroyed the common fence with their neighbors. Mr. O'Neill believes that the subject tree is of a similar age as the two Tulip Poplars on his property that have recently come down and that, therefore, this tree similarly may fall and in so doing pose a risk to his home and his neighbor's house.

The O'Neill's neighbors, Carolyn and Michael Michaelis, wrote an e-mail to the O'Neill's requesting that the two Tulip Poplars along the property line between the two families' homes be removed, including the tree which is the subject of this appeal.

The O'Neill's indicate that there are eight canopy trees on their property, six of which are mature. In the front of their lot, two of these trees not only contribute to the Town's tree canopy but also improve the appearance of that section of the street. The O'Neill's further state that they remain committed to maintaining and caring for the canopy trees on their lot. They also indicate that if they are given permission to remove the tree, they will plant as a replacement an American Linden canopy tree.

Mr O'Neill and his architect described the planned addition to the O'Neill home for which architectural drawings have been drawn. That addition is one of right and will conform with the Town's building code. The County has already issued a permit for construction. The excavation for the foundation will come close to the major root system of the Tulip Poplar and threaten its health and stability. According to the town arborist, the damage to the tree's root system from the excavation for the foundation to the addition would make it a hazard if it were not removed and the construction went forward.

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'Neill and his architect used the architectural drawings for the planned addition to the O'Neill home to demonstrate where the new foundation would be located in relation to the Tulip Poplar. The addition conforms to Town building regulations. The general process of excavating for a foundation requires a certain amount of over digging beyond the actual perimeter of the foundation to make room for the concrete forms that will contain the concrete when it is poured.

Finding: The Tulip Poplar tree's primary roots are located so close to the excavation that will be necessary for the planned addition that the tree's root system would be damaged beyond recovery by that excavation.

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.

The Board finds that requiring at least one replacement canopy tree is appropriate. The O'Neill's have consulted with their arborist and offered to plant an American Linden (*Tilia*

Americana) as a replacement canopy tree. The Linden would be located in a spot where it will not be adversely impacted by the planned addition.

Finding: The addition of the American Linden will add a native canopy tree, which is recognized for its natural beauty, to the Town’s urban forest. The Linden is not common in the Town and its addition will contribute to the variety of canopy trees in Chevy Chase.

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

The O’Neill’s have consulted with a qualified arborist and developed a “comprehensive plan” to care for and protect the canopy trees on their property.

Finding: The commitment to preservation of the existing trees on the property and the engagement of a trained arborist to accomplish that goal will benefit the tree canopy in the immediate area. Other existing trees on the property will be retained and protected during the proposed construction.

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

Other than the e-mail message to the O’Neill’s from Carolyn and Michael Michaelis, which supported the removal of the Tulip Poplar that is close to the property line between the two families and is the subject of this hearing, there were no comments from Town residents.

Finding: The concerns expressed by the Michaelis’ regarding the tree did not specifically address the need to remove it to allow for the addition planned by the O’Neill’s. Nonetheless, the Michaelis’ are not opposed to its removal.

Factor 5: Information provided by the Town Arborist.

The arborist’s tree inspection report states that if both this tree is removed and one which is diseased is also removed, there will be an appreciable reduction in the tree canopy at the rear of the house. Offsetting this canopy loss, the Applicants have proposed to plant an American Linden in the general vicinity of where these trees are located.

Finding: The Tulip Polar is a canopy tree which is a native to the area and survives well in this climate. The Town has a significant number of Tulip Poplars that have taken root and grown through the natural forces of nature. Replacing it with an American Linden would provide a native species of tree that is rarely planted locally to the town’s inventory. There is adequate space on the property to plant at least one replacement canopy tree.

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 that the while the Tulip Poplar is a native species that is well suited to the area, and is mature enough to be protected by the Urban Forest Ordinance, it is not otherwise unique and this particular tree has no outstanding qualities.

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.

While the tree is substantial in size, it is in the rear portion of the property and is not particularly visible from the street. Additionally, there are a substantial number of canopy trees in the immediate area and its removal will have little effect on adjacent properties with the reforestation agreed to by the Applicants.

Finding: Given the reforestation agreed to by the Applicants, 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.

Accordingly, the Town Manager is directed to issue the Applicants a Tree Removal Permit subject to the following conditions:

1. Before a permit for removal of the subject tree is issued, the Applicants must have received a building permit from the Town for the proposed addition, according to the specifications depicted on the plan presented at the hearing in this matter. Additionally, the tree shall not be removed until the commencement of construction of the proposed addition.
2. The Applicants shall plant one American Linden replacement tree according to the planting diagram submitted with the application. The replacement tree shall be at least 3" in caliper at the time of planting.
3. The replacement tree shall be planted at the earliest reasonable opportunity, as determined by the Town Arborist, following the conclusion of construction of the proposed addition. The replacement tree shall be planted at an exact location in the yard approved in advance by the Town Arborist.

I HEREBY CERTIFY that on this ____ day of January 2011, before the subscriber, a Notary Public of the State and County aforesaid, personally appeared David Strom, in his capacity as Chair of the Town of Chevy Chase Tree Ordinance Board, and he did acknowledge the foregoing to be his official act.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Belinda B. Wilborn, Notary Public

My commission expires: _____

After recordation, return to:

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