

PROPERTY: 7205 RIDGEWOOD AVENUE, CHEVY CHASE
MONTGOMERY COUNTY, MARYLAND 20815

DECISION

TREE ORDINANCE BOARD
TOWN OF CHEVY CHASE

APPEAL OF DAVID KELLY OF THE KELLY CO.
FROM DENIAL OF TREE REMOVAL PERMIT #T-07-83

SUMMARY OF CASE

1. David Kelly (the “Applicant”), representing The Kelly Company with offices at 5207 Norway Drive, Chevy Chase, Maryland 20815 is appealing the denial of a Tree Removal Permit by the Town Manager for the removal of an American Beech tree 79 inches in circumference at four and one-half (4 ½) feet above ground located on the south side of the existing house on the property at 7205 Ridgewood Avenue.
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, David Kelly, submitted a completed application with accompanying letter and house survey and addressed the Board at the hearing, requesting permission to remove the subject tree based on the following reasons:

- (a) The lot fronts on both Ridgewood Avenue and a public alley.
- (b) The Town of Chevy Chase considers it a corner lot within the town but Montgomery County does not recognize the alley as a basis for designating the lot as a corner lot.

(c) Because of this conflict Mr. Kelly is not able to use the building line he anticipated on the alley side and must construct the planned addition along the south side, bringing the proposed footprint into conflict with the Beech tree.

The board received letters opposing removal of the tree from Pat and Nick Damico of 7203 Ridgewood Avenue and Bridget and Lees Hartman of 7205 Ridgewood Avenue and the town received a phone call from Claire Griffin of 7206 Ridgewood Avenue opposing removal.

Three members of the public attended the meeting: Douglas Murphy of 7401 Ridgewood Avenue, Ernie Kelly of 7300 Oak Lane, and Gary Schlager of 7204 Ridgewood Avenue. All three spoke in varying degrees in opposition to removing the tree.

A tree inspection report was received from the Town Arborist, Dr. Tolbert V. Feather, stating that the tree is of significant canopy value and has no visible structural defects other than a concrete pad that exists over the roots on the north side of the tree. (Feather & Assoc. -- Report dated 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. Kelly stated that he would have preferred to construct the addition along the alley side of the existing house, following its current line, but side lot requirements made this solution impossible. During the public hearing Mr. Schalger suggested that the town could clarify the nature of the alley in such a way that Mr. Kelly could build on both sides of the rear of the existing house and not come into conflict with the tree. Mr. Murphy pointed out that county and town setbacks were established to provide open space, while the tree ordinance was to protect trees. "Don't play setbacks against trees," he said.

Finding: Mr. Kelly will not be able to construct the addition as shown on his drawing if his interpretation of the setback rules is correct and no variance (county or town) is allowed.

Factor 2: The applicants' 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. Kelly proposes to plant screening trees along the east border of the property. The arborist pointed out that plants on that line would be in deep shade and not likely to prosper.

Finding: A line of screening trees would not replace the Beech tree.

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

There is one large canopy oak tree in the front of the property but its protection is not relevant to removal of the Beech tree.

Finding: Although the applicant proposes to retain on canopy tree in the front yard, its retention does not justify removal of the Beech tree. No tree retention/protection is proposed.

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

Eight neighbors (Damico, Hartman, Griffin, Kelly, Murphy, Schlager), representing six households, either wrote, called, or spoke in opposition to removal of the tree. The Damicos and Hartmans noted that at the time of sale the former owners had assured them that the tree would not be jeopardized by subsequent plans for development of the property. They believed the addition could be modified slightly to accommodate the tree. Mr. Murphy and Mr. Kelly objected to the developer's suggestion that the tree's removal was necessitated by a conflict of setback requirements and strongly opposed removing the tree. Schlager suggested that the Town had the power to resolve the setback issue without sacrificing the tree.

Finding: Neighbors who voiced opinions were strongly opposed to permitting the developer to remove the tree in order to construct the proposed addition and objected to his suggestion that changing setback requirements necessitated removal of the tree. The Board agreed that a developer's difficulties with setback requirements did not automatically override the town's intention to preserve the tree canopy whenever possible.

Factor 5: Information provided by the Town Arborist.

A tree inspection report received from the Town Arborist, Dr. Feather, described the Beech tree as healthy and having "significant" value to the town's tree canopy. The report includes the fact that a concrete pad exists over the roots on the north side of the tree. Dr. Feather pointed out that the presence of the pad in close proximity to a healthy tree would suggest that if new construction followed this line it would probably not harm the tree.

Finding: The fact that the tree is healthy despite the concrete pad suggests that there may be design alternatives that would allow the tree to coexist with an addition to 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.

Mr. Kelly told the Board that the side-lot requirements, as he has been able to clarify them, would prevent him from building the addition he has planned without removing the tree. The neighbors believe he has not fully explored the issue of side-lot requirements and has not

considered design modifications that would allow him to build an acceptable addition without removing the tree.

Finding: The Board understands the developer's dilemma in wanting to build the maximum possible addition while being held to different side-lot standards from those he anticipated, but it believes that the matter of side-lot requirements has not been fully explored, nor have different design alternatives that would allow the tree to remain.

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

As pointed out by Board member Melanie Choukas-Bradley, mature American Beech trees make up an important part of the town's tree canopy. This tree is substantial in size and it is an important member of a small grove of trees at the highest point on Ridgewood Avenue. Several trees from this location have been lost in recent years, giving special importance to protecting the remaining ones.

Finding: This particular Beech tree is important because of its location in the canopy and its role as a supporting member of a small grove of trees.

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

Neighbors objected to the loss of this tree because it would remove an important element in the local tree canopy and its removal might jeopardize the health of adjacent remaining trees.

Finding: Removing this Beech tree would leave a visible hole in the tree canopy as seen from both Ridgewood Avenue and from other streets and would further diminish the grove of trees on this high point in the town, making the other trees vulnerable to wind and storm damage.

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 not appropriate under the requirements of Section 29-9 of the Ordinance. Accordingly, the Board affirms the Town Manager's denial of a Tree Removal Permit.

* * *

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, 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: _____

Christopher Wright, Chair