

PROPERTY:

7402 MEADOW LANE, CHEVY CHASE
MONTGOMERY COUNTY, MARYLAND 20815

DECISION

TREE ORDINANCE BOARD
TOWN OF CHEVY CHASE

APPEAL OF FRANCINE RAIZES AND DANIEL KARCHEM
FROM DENIAL OF TREE REMOVAL PERMIT #T-10-23

SUMMARY OF CASE

1. Francine Raizes and Daniel Karchem (the “Applicants”), who reside at 7402 Meadow Lane, Chevy Chase, Maryland 20815 are appealing the denial of a Tree Removal Permit by the Town Manager for the removal of a Hickory tree 93 inches in circumference at four and one-half (4 ½) feet above ground located opposite the front door of the house at 7402 Meadow Lane.
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 in this Appeal was posted at the Town Office and on the property and was mailed to all abutting and confronting property owners on December 3, 2009.
10. On December 10, 2009 the Tree Ordinance Board held a public hearing on the Appeal.

EVIDENCE PRESENTED

The Applicants, Francine Raizes and Daniel Karchem, submitted a completed application with accompanying photos and documentation and Ms. Raizes addressed the Board at the hearing, requesting permission to remove the subject tree because it "is a hazard to the safety of our family, guests and property."

The Applicants' principal argument was that the tree "was not planted a safe distance from the house and driveway," and because of this it was causing damage to their basement, uprooting the front walk, and raining nuts down on their cars.

Ms. Raizes testified that she recognized the Hickory tree was a high-value canopy tree but that its roots had undermined the stones of the front walk making it unsafe for elderly guests and the extended rain of nuts were a constant hazard. "Sweeping [the nuts] once a day for four months seems a lot to ask."

A tree inspection report was received from the Town Arborist, Dr. Tolbert V. Feather, stating that the “tree is healthy and sound.” (Feather & Assoc.- Report dated December 2, 2009). The Hickory tree is one of the tallest trees in the neighborhood. It can be seen from a considerable distance in both directions on Meadow Lane.

Documents submitted with the Appeal or provided by the Town indicate the following steps were taken prior to the submission of the Appeal:

On July 8, 2008, Ms. Raizes received an appraisal of the trees on the newly acquired property at 7402 Meadow Lane under the Town’s Consulting Arborist Program.

On August 14, 2008, Ms. Raizes submitted requests to the Town for permits to remove a Mulberry tree in the rear yard and the Hickory tree opposite the front door. According to Ms. Raizes, the Hickory is “too close to the house. Its root system has pushed in the corner of the basement walls to the left of the front entrance, allowing water to enter.” She concluded, “We are eager to remove these trees so that we can proceed with the design and construction of the front entrance and the carport.” (Letter from Francine Raizes to Tolbert V. Feather, August 14, 2008).

Dr. Feather examined the area adjacent to the basement wall which had been excavated to allow waterproofing of the wall. He did not observe any significant tree roots in the vicinity of the wall. Dr. Feather replied, asking her to “retain a professional engineer to evaluate whether the Hickory tree in front of your house caused water damage to your basement ...[and] whether the Hickory tree will continue to cause structural damage.” (Feather & Assoc.- Letter of August 14, 2008).

On Oct. 1, 2008, Ms. Raizes stated in an email exchange with Dr. Feather that “Our structural engineer declined to opine that the tree roots were the sole reason for our wet basement.” (Email from Francine Raizes to Tolbert V. Feather, Oct 15, 2008 at 5:02 PM). Photographs submitted for the record depict a downspout from the roof that empties in the vicinity of the wall where the Applicants allege water is penetrating.

On November 11, 2009, the Applicants submitted an Application for Tree Removal Permit to the Town which was denied by the Town Manager on November 17 because the Hickory tree did not meet the Town’s criteria for removal.

On November 25, 2009, the Applicants appealed the denial of a tree removal permit.

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.

In testimony before the Board and in the letter accompanying the appeal from the Applicants state the following:

- (a) The tree was not planted a safe distance from the house and driveway. A major leak was traced to damage to the foundation at the entrance to the house caused by the age of the house and pressure from the Hickory tree root system which required repairs costing \$10,000.
- (b) The species of tree should not have been planted at this location. The tree is a tripping hazard caused by the size and large number of nuts that fall during the autumn and the large and extensive root system that runs under the pathway and the front stairs.
- (c) The falling nuts have caused damage to cars parked in the driveway requiring repairs costing \$3,250.

Finding:

- (a) The tree is close to the house but the Applicants were unable to demonstrate that the tree roots were a cause of the basement leak. To the contrary, the record reveals that there are no significant tree roots in the vicinity of the leak. Board members noticed in the submitted pictures that a downspout from the roof empties in the vicinity of the leaking wall.
- (b) Board members agree that this tree is not an ideal species to be located in a high-traffic area next to the house but find that other owners have managed to live with it probably for as long as the house has been there (it was built in 1924) and there are a number of possible methods for accommodating a reconstructed front walk that would not be uplifted by the Hickory tree's roots.
- (c) The Board members were impressed by the repair bills for damage to the cars from falling nuts but find that this damage, as described by the Applicants, was likely the result of a single unusual event, perhaps an overnight storm. Furthermore, there is other adequate driveway space and street parking that can be used for the relatively short period that the tree drops nuts.

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.

The Applicants do not propose to plant replacement trees.

Finding: As discussed below, the subject Hickory tree is a particularly desirable specimen and its removal would be very detrimental to the Town tree canopy, but the Applicants did not propose to attempt to offset the loss with any reforestation.

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

The Applicants were granted permission to remove a Mulberry tree that was not particularly desirable. The Applicants propose to retain the remaining trees.

Finding: The other protected trees on the property would be retained.

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

No other residents attended the hearing or submitted statements in support or in opposition.

Factor 5: Information provided by the Town Arborist.

The tree inspection report by Dr. Feather indicates the Hickory tree is healthy. Correspondence between Dr. Feather and Ms. Raizes contradicts the initial assertion that the tree was causing damage to the basement.

Finding: The Hickory tree is a healthy tree and the Applicants did not meet their burden of proving it is causing damage to their 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.

The Hickory tree is approximately six feet from the front door and slightly to the side, which requires a traditional front walk leading from door to street to deviate around the tree base.

Finding: The Board finds that there are multiple solutions to locating a front walk in a way that it would not be uplifted by tree roots, for example routing it to the driveway instead of the street or bowing it around the tree base.

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

This Hickory tree is one of the tallest trees in the neighborhood and is an outstanding example of the species (Pignut Hickory *Carya glabra*). Hickories, whose nuts are food for wildlife and whose foliage provides brilliant yellow color in the autumn forest, are located throughout the Town. This particular Hickory is thought to be about the same age as the house and by reason of its height, straight trunk and balanced structure is an outstanding example of the species.

Finding: It is desirable to preserve Hickory trees in general because they are almost impossible to transplant and are an important component of the Town's treescape. This particular Hickory tree is a very beautiful and nearly perfect example of its species.

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

Finding: This tree is one of the tallest trees in the neighborhood, can be seen from a considerable distance in both directions on Meadow Lane, and significantly contributes to the tree canopy of the adjacent properties, the neighborhood and the Town. The loss of this tree would leave a large hole in the tree canopy at the highest point on Meadow Lane and would remove a beautiful tree that has graced the top of the hill for nearly a century.

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.

Upon consideration of the factors set forth in Section 29-9 of the Ordinance and based upon the above findings, the Tree Ordinance Board concludes that the granting of a Tree Removal Permit would not be appropriate and would be contrary to the intent and purpose 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 January 12, 2010, with the following members voting in favor: Melanie Choukas-Bradley, Penny Douglas, David Strom, and Christopher Wright. Board Member Miriam Daniel was out of town.

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: January 12, 2010

Christopher Wright, Chair