

PROPERTY: 7624 LYNN DRIVE, CHEVY CHASE  
MONTGOMERY COUNTY, MARYLAND 20815

PARCEL ID: 07-056-03434888

**DECISION**

TREE ORDINANCE BOARD  
TOWN OF CHEVY CHASE

APPEAL OF CATHRYN WOLF  
FROM DENIAL OF TREE REMOVAL PERMIT No. T-00-00

**SUMMARY OF CASE**

Cathryn Wolf (the “Applicant”) lives at 7622 Lynn Drive and seeks permission to remove a Tulip Poplar tree that is greater than 24” in circumference at four and one half feet above the ground. The tree is located in the public right of way. The Applicant is the owner of an undeveloped lot next to her current home which when developed will have the address of 7624 Lynn Drive. 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 December 8, 2010 and February 14, 2011. On December 16, 2010 and February 22, 2011, the Tree Ordinance Board held a public hearing on the Appeal.

Applicant states that the only “logical and reasonable” access to the lot is by a direct path from Lynn Drive that intersects with the Tulip Poplar tree and, therefore, requires its removal. Applicant indicates that she does not have immediate plans to build on the vacant lot but states that the first step in preparing the property for construction of a house is establishing the access point to Lynn Drive. In advance of the removal of the Tulip Poplar tree, Applicant has offered to plant three canopy trees in the spring of 2011. These trees will be located just to the east of the current tree at the south end of Zimmerman Park. Having explored all reasonable alternatives to save the Tulip Poplar tree, the Board agrees to grant the Applicant’s request subject to the condition that removal of the subject tree only shall take place after the full permitting process has been completed and construction is ready to commence for the house at 7624 Lynn Drive.

**EVIDENCE PRESENTED**

1. The unimproved lot is land locked with no direct access to an improved street. To the west, the lot backs up to improved lots on East West Highway. Accordingly, public access in that direction is not possible. To the southwest, the vacant lot is adjacent to the lot containing Applicant’s home. Access from that direction would require a driveway crossing the current front lawn of Applicant’s property at 7622 Lynn Drive. To the southeast, the property abuts the unimproved portion of the public right of way which is currently filled with shrubs and the Tulip Poplar tree, which is the subject of this decision. Finally, to the east the property is separated from Maple Avenue by a section of Zimmerman Park. The deed conveying Zimmerman Park to

the Town requires that the property be used only as public park land. Therefore, a private access road across the park to the property would not be allowed. The only options left for access to the lot are either through the Applicant's adjacent property or through the public right of way where the subject tree is located.

2. Applicant maintains that the Town is "obligated to provide access to any lot that is buildable." She further contends that she cannot be compelled to provide such access through the lot where her existing home is located because this would require an easement and she should be treated no differently than if a third party owned her existing lot, and as general rule third parties cannot be required to grant easements. This leaves the last option which is access to the lot through the public right of way and removal of the Tulip Poplar tree.

3. At the hearing on December 16, 2010, considerable time was spent addressing the location of the lot with respect to the public right of way, the adjacent lot where Applicant's home is located, and to Zimmerman Park. The shape and location of this lot are in many respects unique. Based on the necessity for the Board to fully understand all the options for access to the lot, the hearing was recessed without a decision so that the Board could carefully examine the site during daylight with the benefit of site maps. The site visit took place the following week on December 22nd with the attendance of the Applicant and her husband.

4. Four town residents submitted written statements in support of Applicant's request:

(a) Judy Van Namen lives across the street from Applicant at 7617 Lynn Drive and states that she supports granting Applicant an opportunity to remove the Tulip Poplar tree and plant a replacement tree.

(b) John Midlen resides at 7618 Lynn Drive and he similarly is not opposed to the removal of the Tulip Poplar tree.

(c) Paul Blutter resides at 7605 Maple Avenue and he states that he believes that the Applicant has analyzed the situation "with care and exhausted the reasonable alternative options" to removal of the subject Tulip Poplar tree.

(d) Alice DeLaune resides at 7616 Lynn Drive and states that she supports the Applicant's plan to remove the Tulip Poplar tree and plant a replacement canopy tree.

5. The hearing was resumed on February 22, 2011. With the benefit of the site visit and a working knowledge of the boundaries of the lot, the Board had the opportunity to explore whether there were any feasible alternatives which would provide access to the property that would not require removal of the Tulip Poplar tree.

## **DISCUSSION**

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, term or restrictions as the Board may deem necessary to accomplish the intent and purpose of the Chapter 29.

The 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 the following:

- (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.

### **FINDINGS**

Based upon the evidence presented, the Tree Ordinance Board makes the following findings of fact:

- (1) The circumstances surrounding this request for removal are unique. Applicant has a legal right to establish access to her property so that it may be developed. The options for such access are limited. A driveway to the lot must either run through the front yard of Applicant's adjoining lot or across the public right of way where the Tulip Poplar is located. Applicant has indicated that she believes access through the public right of way is the preferred route as it creates the least disruption.
- (2) After discussion with the Applicant and consultation with the Town Arborist, Applicant has agreed to purchase three canopy trees to replace the Tulip Poplar. These trees will be an American Beech (*Fagus grandifolia*), a Willow Oak (*Quercus phellos*) and a Red Maple (*Acer*

*rubrum*). These trees will be situated on the border of the public right of way and Zimmerman Park at the South-Western edge. The trees will be planted in the spring of 2011. The trees should measure between 2"-2.5' in diameter at breast height.

(3) Applicant states in her letter to the Board that "the proposed house plan will not involve any other permit to remove trees." The Board finds that the proposed development of the property would not involve the removal of any other existing canopy trees that are protected by the Town Code.

(4) Four town residents submitted written statements supporting Applicant's request to remove the Tulip Poplar tree.

(5) The Town Arborist states that the Tulip Poplar is a healthy canopy tree which significantly contributes to the tree cover in the south east corner of the park and the public right of way.

(6) The Board took a careful look at whether it was possible to provide access to the lot by routing the driveway around the tree and narrowing it so that it did not intrude into Zimmerman Park. This alternative, however, would require applicant to seek a variance from the County's requirement for driveways that are a minimum of 10 feet in width. Since there was no assurance that the County would grant such a variance, the Board decided that pursuit of this option was not practicable.

Another option considered by the Board was whether it was possible to build the driveway using piers so that the roots of the tree would not be damaged. Design and construction of such an elevated driveway would present a considerable cost. Additionally, installation of the piers to support the suspended driveway would cause an undetermined amount of damage to the root structure of the Tulip Poplar. Given the risk of damage to the tree and the significant cost for engineering, design and construction of the driveway, the Board does not believe that this alternative is viable.

(7) & (8) The Tulip poplar is a healthy native tree which by virtue of its height and dimensions set it apart as one of the most significant trees in the immediate area. The Committee believes that many residents probably believe that this tree is located in the park as opposed to its true location in the public right of way. However, the proposed reforestation agreed to by the Applicant would offset the loss to the Town 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 Applicant a Tree Removal Permit subject to the following conditions:

1. Before the tree is removed, the Applicant shall have received a building permit from the Town and County for construction of a house at 7624 Lynn Drive and construction of such permitted house shall have commenced. The conditions of this Decision shall be conditions of the Town building permit.
2. The Applicant shall plant three replacement trees in a location selected by the Town Arborist. The three trees shall be an American Beech (*Fagus grandifolia*), a Willow Oak (*Quercus phellos*) and a Red Maple (*Acer rubrum*). The replacement trees shall be at least 2-2.5" in caliper at the time of planting.
3. The replacement trees shall be planted at the earliest reasonable opportunity, as determined by the Town Arborist in the spring of 2011.
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. A copy of this Decision shall be recorded among the Land Records of Montgomery County, Maryland, at the Town's expense.
6. The terms and conditions of this Decision shall run with the land and be binding upon the Applicant, her successors and assigns.
7. If the Town is required to enforce this Decision, then the Applicant, her successors or assigns, shall reimburse the Town for all costs to enforce this Decision, including, but not limited to, reasonable attorneys' fees.

The foregoing Decision was adopted by the Tree Ordinance Board of the Town of Chevy Chase with the following members voting in favor: Miriam Daniel, Penny Douglas, Melanie Choukas-Bradley and David Strom. Christopher Wright was not able to attend the second hearing and consequently did not vote on the Decision.

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.

