




MEMORANDUM

Date: June 8, 2023

To: Honorable Mayor and Commissioners as members of the Board of Adjustment

Via: Albert P. Childress 
City Manager

From: Katie P. Halloran
Planning Director

Subject: Granting/Denying the Appeal by the City of Key West, Upholding/Amending/Denying the Tree Commission's Decision Dated February 13, 2023, regarding a Mahogany tree located on City Property at 1701 Von Phister Street.

Introduction

The property owner at 1701 Von Phister Street, Mr. Eric Denhart, requested that the City remove the Mahogany tree located on the Ashby Street right-of-way next to his house due to damage to his property and fear of tree failure onto his house.

The Tree Commission reviewed the application to remove the City owned Mahogany tree at the January 10 and February 13, 2023 Tree Commission meetings and voted 4-0 on February 13, 2023, to deny the request to remove the tree. The property owner requested an appeal of the Tree Commission's decision through the City Manager's office.

Background

In June 2019, Mr. Denhart requested that the City trim the Mahogany tree. In August 2019, the City solicited estimates to trim the tree (reduction pruning over house and road and an evaluation of the canopy). Kenneth King-Golden Bough Tree Service, was awarded the contract by the Tree Commission to trim the tree and the work was done in September 2019.

In September 2020, Mr. Denhart trimmed the roots along the structure/house. On January 26, 2022, and in February 2022, Mr. Denhart requested that the City maintain the tree and requested that the tree be trimmed-major crown reduction, and the trunks cabled. After looking at the tree structure, the City ISA Certified arborist, Karen DeMaria, determined that evidence did not exist for the need of trunk cabling. Cabling is used to help prevent potential failure of canopy trunks where defects exist.

In April 2022, the City trimmed the street side of the tree canopy. Mr. Denhart also requested additional trimming work over the house. Since City staff were not able to safely trim the tree over the house, in June 2022, after requesting estimates from professional tree companies, a request was made to Community Services to contract with Sean Creedon-Treeman, to trim the tree over the house. Once a purchase order was created and approved, the tree was trimmed in August 2022.

On October 25, 2022, Mr. Denhart demanded that the City remove the tree due to damage to his property. An application with supporting documents was then reviewed and signed by the assistant City Manager, Todd Stoughton, on December 20, 2022, listing Eric Denhart, property owner of 1701 Von Phister Street, as the representative for the application and the removal of the tree.

On January 10, 2023, the application was reviewed by the Tree Commission. A decision was made to postpone the decision in order to gather additional information including a statement from the City Chief Building Official and the City Engineer regarding the tree impacts to the structures at 1701 Von Phister Street.

On February 13, 2023, the application was reviewed by the Tree Commission that included a discussion regarding possible alternatives to removal of the tree to include possible root pruning. The Tree Commission denied the request to remove the tree and commented to staff that root pruning should be reviewed as a possible alternative.

During the course of two public meetings, the City ISA Certified Arborist, Karen DeMaria, and two other arborists stated that the tree was in good health and condition. In August 2022, Sean Creedon-Treeman an ISA TRAC certified arborist (International Society of Arboriculture Tree Risk Assessment Certification), after climbing into the tree canopy and trimming over the structure, stated that the tree was in good health. At the February 2023 Tree Commission meeting, Mr. Creedon stated that the tree was a low risk for failure. Kenneth King, ISA Certified arborist, stated at both Tree Commission meetings, that based on his years of experience trimming this tree on behalf of the property owner and the City, the tree was in very good condition and health. Mr. King also said that he thought that root pruning was a viable option and that he would be willing to do the work.

During the Tree Commission commissioner discussions, the alternative of root pruning was discussed as a possible option but more information was needed to determine whether this option was a viable option. It was noted that the tree was a healthy tree in good condition located on the City right of way. The City does routinely root prune the roots from large canopy trees located on the City right of ways including recent sidewalk and road work along Simonton and Southard Streets.

Land Development Regulations: The following land development regulations relate to this tree removal process.

1. Sec. 110-251. Purpose and intent.

The city commission finds that trees on privately and publicly owned property within the city are economic and aesthetic assets to the citizens of the city, because of their important and meaningful contribution to a healthy, beautiful, and safer community, attributable to their carbon dioxide absorption, oxygen production, dust filtration, wind and noise reduction, soil erosion prevention and surface drainage improvement. Therefore, the health and economic welfare of the citizens can be served through protection of the health and growth of the trees and through encouragement of additional tree plantings. The city commission further finds that this public purpose can best be achieved through a city agency having authority and responsibility to accomplish these goals.

2. Sec. 110-327. Approval criteria.

The tree commission shall consider its finding of one or more of the following facts as grounds supporting approval of a tree removal permit application:

- (1) The tree is a hazard to traffic, public utilities, buildings or structures;*
- (2) The tree is injured, diseased or insect infested such that it is a hazard to people, structures or other trees;*
- (3) The tree prevents access to a lot or parcel;*
- (4) The tree will be properly transplanted to another location in the city by the property owner with the consent of the owner of the new location.*
- (5) The tree will be replaced with an equivalent tree planted in a location suitable for healthy growth on the same lot or parcel.*
- (6) The tree will be replaced with an equivalent tree that is:*
 - (a) Donated to a non-profit organization approved by the tree commission; and*
 - (b) Guaranteed by the applicant for a minimum of one year after planting; or*
- (7) Funds equivalent to the cost of a Florida #1 canopy tree or palm, will be donated by the applicant to the city for use as provided by section 110-287.*

3. Sec. 110-328. Findings of disapproval.

The tree commission shall consider its finding of one or more of the following facts as grounds supporting disapproval of a tree removal permit application:

- (1) The species, size, champion tree status, historical importance and/or condition of the tree make it a unique or rare specimen; or*
- (2) The size or location of the tree makes it substantial in and easily accessible to public view.*

4. Sec. 110-332. Disapproval.

If the application for a tree removal permit is disapproved, the applicant may modify and resubmit the application only after six (6) months from the date of denial and in accordance with tree commission regulations.

The Tree Commission denied the request to remove the tree based on the species, size and condition of the tree which made it a unique specimen; in addition, the tree is substantial in and easily accessible to public view. The mahogany tree has a diameter of 55.7 inches which is larger than most of the Mahogany trees located along Simonton and Southard Streets that have been documented as having been planted in 1934 by the WPA project. Therefore, it is estimated that the tree is 89 years old.

To approve the removal of the tree, City code, provided above, states several criteria as grounds for approval. Documentation was submitted to the Tree Commission indicating the pool and the ground level deck were being cracked by tree roots. The property owner at 1701 Von Phister Street, Mr. Denhart, is also concerned about his house and porch foundation due to the tree roots. There are possible construction alternatives that might help to alleviate these issues that have not been fully reviewed including root pruning, placement of bio barrier, and elevation of the structures and deck. If the tree is removed, as per the application evaluation-staff report, 40.6 caliper inches of approved trees must be planted on City property.

Recommendation

The Tree Commission and the Planning Department request that the City Commission deny the appeal by the City of Key West on behalf of Mr. Denhart, upholding the Tree Commission decision dated February 13, 2023, regarding the removal of the mahogany tree located on City property at 1701 Von Phister Street. This large, old tree is an important asset to the citizens of the city and the immediate neighborhood by providing carbon dioxide absorption, oxygen production, dust filtration, wind and noise

reduction, soil erosion, and surface drainage improvements. Three ISA certified arborists have stated the tree is in good health and condition and a low risk for failure and two of those arborists stated that root pruning is a possible viable alternative to avoid further impacts to Mr. Denhart's property.