

14 W. IRVING ST.
CHEVY CHASE

HAWP 35/13-08N



HISTORIC PRESERVATION COMMISSION

Isiah Leggett
County Executive

Jef Fuller
Chairperson

August 14, 2008

Mr. Christopher S. Abell
8 Magnolia Parkway
Chevy Chase, MD 20815

Re: Removal of one 42" Tulip poplar tree and one 43" Tulip poplar tree, 14 West Irving Street
Chevy Chase Historic District

Dear Mr. Abell:

I have received the report prepared by certified and licensed arborist Tony Faoro, dated July 18, 2008, regarding the above referenced trees. At your request, the Historic Preservation Commission reviewed the report, which documents the arborist's assessment that the trees are dead, dying, a hazard, or of questionable health.

Recognizing issues related to the health of the subject trees and potential hazard created, due in part to the trees' proximity to the house at the above referenced property as well as the unique circumstances related to the property, the Historic Preservation Commission authorizes the removal of the trees.

This letter serves as your permission to remove the tree without further review by the HPC. If you have any additional questions, please do not hesitate to contact me at 301-563-3400.

Sincerely,

Scott Whipple, Supervisor
Historic Preservation Section

cc: Geoffrey B. Biddle, Village Manager



Scott Whipple: Staff item

**Christopher S. Abell
8 Magnolia Parkway
Chevy Chase, MD 20815**

Mr. Jef Fuller
Chairman
Montgomery County
Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Case # 35/13-08N

Dear Chairman Fuller,

Based upon the information and opinion given in the attached arborist's report regarding the trees in our yard at 14 West Irving Street in Chevy Chase Village, my wife and I respectfully request that the Commission reconsider our request to remove the trees.

Thank you very much for your time and consideration.

Sincerely,

Christopher S. Abell



Our Business is People
And Their Love for Trees®

The Care of Trees Tel: 301.444.9041
8000 Queenair Drive Fax: 301.444.9049
Gaithersburg, MD 20879 Web: www.thecareoftrees.com

Site: Mr. Chris Abel
14 West Irving Street
Chevy Chase MD 20815

Date of Visit: July 18, 2008

page 1 of 2

Observer: Tony Faoro
ISA Certified Arborist NY-0774A
Maryland Licensed Tree Expert 895

Primary Reason for Visit: Inspection of the two Tulip poplars located in the rear yard in regards to current condition, health and structural integrity. The following observations were made by Tony Faoro, an ISA Certified Arborist.

Observations: The Tulip poplar 42" in diameter located in rear yard – The tree has limited root space considering the size of the tree in relation to the proximity of the house. The tree did not show any visual signs of decay at the base of the tree or on any of the root flares. The canopy appears to be healthy and appears to have been pruned recently to help reduce the canopy. The main trunk appears to have a cavity along the main upper stem at approximately 70' the extent of the decay is uncertain from ground level but the cavity opening looks like it may be 12" in width and height which would lead one to believe that substantial internal decay may be present in this area. This cavity will continue to expand both inward and upward which will jeopardize the structural integrity of the stem. There also appears to be a substantial cavity on a 24" in diameter limb that extends out towards the back of the house. The cavity location on this limb is on the top side of the limb thus reducing the support needed to maintain the limbs integrity. Should this limb fail it would cause severe structural damage to the house and possibly personal injury as well. The remaining scaffolding limbs appear to be free of any visual defects.

The second tree also a large Tulip poplar 43" in diameter, located in the rear yard to the right of the above mentioned tree. Again limited root space is evident due to the close proximity to both houses. The tree is approximately 15' to 18' from the rear of the house and approximately 20' from the rear of the neighbor's house. This tree did not have any visible signs of decay at the base of the main trunk or in any of the exposed root flares. The main trunk up to the first scaffolding limbs appears to be free of any visual defects. The main limbs and the majority of the crown leans toward the rear of the neighboring house. The crown appears to be healthy and free of insect activity.

Recommendations:

The apparent decay in the tree increases the risk for failure. Pruning to remove these large limbs would leave a disfigured canopy devoid of substantial live growth and would also leave large wounds that would be susceptible to future decay. The tree on the right has a lean of approximately 10 to 15 degrees with limited holding capacity due to restricted root space. Health and structure are not always one and the same, even though both trees appear to be healthy, the size, species type, maturity and location as well as the aforementioned defects are concerning factors that would persuade one to remove the trees to prevent future liabilities.

Scott Whipple: Staff item.

**Christopher S. Abell
8 Magnolia Parkway
Chevy Chase, MD 20815**

Mr. Jef Fuller
Chairman
Montgomery County
Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Case # 35/13-08N

Dear Chairman Fuller,

Based upon the information and opinion given in the attached arborist's report regarding the trees in our yard at 14 West Irving Street in Chevy Chase Village, my wife and I respectfully request that the Commission reconsider our request to remove the trees.

Thank you very much for your time and consideration.

Sincerely,

Christopher S. Abell



Our Business is People
And Their Love for Trees[®]

The Care of Trees Tel: 301.444.9041
8000 Queenair Drive Fax: 301.444.9049
Gaithersburg, MD 20879 Web: www.thecareoftrees.com

Site: Mr. Chris Abel
14 West Irving Street
Chevy Chase MD 20815

Date of Visit: July 18, 2008

page 1 of 2

Observer: Tony Faoro
ISA Certified Arborist NY-0774A
Maryland Licensed Tree Expert 895

Primary Reason for Visit: Inspection of the two Tulip poplars located in the rear yard in regards to current condition, health and structural integrity. The following observations were made by Tony Faoro, an ISA Certified Arborist.

Observations: The Tulip poplar 42" in diameter located in rear yard – The tree has limited root space considering the size of the tree in relation to the proximity of the house. The tree did not show any visual signs of decay at the base of the tree or on any of the root flares. The canopy appears to be healthy and appears to have been pruned recently to help reduce the canopy. The main trunk appears to have a cavity along the main upper stem at approximately 70' the extent of the decay is uncertain from ground level but the cavity opening looks like it may be 12" in width and height which would lead one to believe that substantial internal decay may be present in this area. This cavity will continue to expand both inward and upward which will jeopardize the structural integrity of the stem. There also appears to be a substantial cavity on a 24" in diameter limb that extends out towards the back of the house. The cavity location on this limb is on the top side of the limb thus reducing the support needed to maintain the limbs integrity. Should this limb fail it would cause severe structural damage to the house and possibly personal injury as well. The remaining scaffolding limbs appear to be free of any visual defects.

The second tree also a large Tulip poplar 43" in diameter, located in the rear yard to the right of the above mentioned tree. Again limited root space is evident due to the close proximity to both houses. The tree is approximately 15' to 18' from the rear of the house and approximately 20' from the rear of the neighbor's house. This tree did not have any visible signs of decay at the base of the main trunk or in any of the exposed root flares. The main trunk up to the first scaffolding limbs appears to be free of any visual defects. The main limbs and the majority of the crown leans toward the rear of the neighboring house. The crown appears to be healthy and free of insect activity.

Recommendations:

The apparent decay in the tree increases the risk for failure. Pruning to remove these large limbs would leave a disfigured canopy devoid of substantial live growth and would also leave large wounds that would be susceptible to future decay. The tree on the right has a lean of approximately 10 to 15 degrees with limited holding capacity due to restricted root space. Health and structure are not always one and the same, even though both trees appear to be healthy, the size, species type, maturity and location as well as the aforementioned defects are concerning factors that would persuade one to remove the trees to prevent future liabilities.

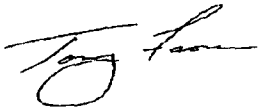
Arborists are tree specialists who use their education, knowledge training and experience to examine trees, recommend measures to enhance their health and beauty and to attempt to reduce the risk of living near trees. Clients may choose to accept or disregard the recommendations of the arborist or to seek additional advice.

Trees and other plant life are living, changing organisms affected by innumerable factors beyond our control. Trees fail in ways and because of conditions we do not fully understand. Arborists cannot detect or anticipate every condition or event that could possibly lead to the structural failure of a tree. All observations were made at ground level, conditions and weaknesses may exist out of sight from the human eye. Conditions are often hidden within the trees and below ground. Arborists cannot guarantee that a tree will be healthy or safe under all circumstances, for any specific period or when a tree or its parts may fail. Further, remedial treatments, as with any treatment or therapy, cannot be guaranteed.

Trees can be managed but not controlled. To live near trees, regardless of their condition, is to accept some degree of risk. The only way to eliminate the risk associated with trees is to eliminate the trees.

If you have any questions, please call me at 301-444-9041. If you would like to move forward with this program, please sign below and return, via fax or mail, to our office (8000 Queenair Drive, Gaithersburg, MD 20879; Fax: 301-444-9049).

Sincerely,



Tony Faoro
ISA Certified Arborist NY-0774A
Maryland Licensed Tree Expert 895



HISTORIC PRESERVATION COMMISSION

Isiah Leggett
County Executive

Jef Fuller
Chairperson

Date: 07/22/08

MEMORANDUM

TO: Carla Reid, Director
Department of Permitting Services

FROM: Anne Fothergill *AF*
Planner Coordinator
Historic Preservation Section-Planning Department
Maryland-National Capital Park & Planning Commission

SUBJECT: Historic Area Work Permit #488086 – Removal of two trees

The Montgomery County Historic Preservation Commission (HPC) has reviewed the attached application for a Historic Area Work Permit (HAWP). This application was denied at the July 9, 2008 meeting. The written Decision and Opinion is attached.

Applicant: Chris and Patricia Abell
Address: 14 West Irving Street, Chevy Chase, MD





RETURN TO: DEPARTMENT OF PERMITTING SERVICES
255 ROCKVILLE PIKE, 2nd FLOOR, ROCKVILLE, MD 20850
240/777-6370

DPS - #8

HISTORIC PRESERVATION COMMISSION
301/563-3400

**APPLICATION FOR
HISTORIC AREA WORK PERMIT**

Contact Person: GEORGE MYERS

Daytime Phone No.: 240.333.2000

Tax Account No.: _____

Name of Property Owner: CHRIS & PATRICIA ABELL Daytime Phone No.: 301.365.2703

Address: 8 MAGNOLIA PARKWAY CHEVY CHASE MD 20815
Street Number City State Zip Code

Contractor: GIBSON BUILDERS Phone No.: _____

Contractor Registration No.: _____

Agent for Owner: GEORGE MYERS Daytime Phone No.: 240.333.2000

LOCATION OF BUILDING/PREMISE

House Number: 14 WEST IRVING Street: _____

Town/City: CHEVY CHASE Nearest Cross Street: MAGNOLIA PARKWAY

Lot: 4ES Block: 27 Subdivision: SECTION 2, CHEVY CHASE VILLAGE

Liber: _____ Folio: _____ Parcel: _____

PART ONE: TYPE OF PERMIT ACTION AND USE

- 1A. CHECK ALL APPLICABLE: APPLICATION FOR TREE REMOVAL
- | | | | | | | | | |
|------------------------------------|----------------------------------|---|--|------------------------------------|--|--|-------------------------------|-------------------------------|
| <input type="checkbox"/> Construct | <input type="checkbox"/> Extend | <input type="checkbox"/> Alter/Renovate | <input type="checkbox"/> A/C | <input type="checkbox"/> Slab | <input type="checkbox"/> Room Addition | <input type="checkbox"/> Porch | <input type="checkbox"/> Deck | <input type="checkbox"/> Shed |
| <input type="checkbox"/> Move | <input type="checkbox"/> Install | <input type="checkbox"/> Wreck/Raze | <input type="checkbox"/> Solar | <input type="checkbox"/> Fireplace | <input type="checkbox"/> Woodburning Stove | <input type="checkbox"/> Single Family | | |
| <input type="checkbox"/> Revision | <input type="checkbox"/> Repair | <input type="checkbox"/> Revocable | <input type="checkbox"/> Fence/Wall (complete Section 4) | | <input type="checkbox"/> Other: _____ | | | |

1B. Construction cost estimate: \$ 900,000

1C. If this is a revision of a previously approved active permit, see Permit # 457348

PART TWO: COMPLETE FOR NEW CONSTRUCTION AND EXTEND/ADDITIONS

2A. Type of sewage disposal: 01 WSSC 02 Septic 03 Other: _____

2B. Type of water supply: 01 WSSC 02 Well 03 Other: _____

PART THREE: COMPLETE ONLY FOR FENCE/RETAINING WALL

3A. Height _____ feet _____ inches

3B. Indicate whether the fence or retaining wall is to be constructed on one of the following locations:

- On party line/property line Entirely on land of owner On public right of way/easement

I hereby certify that I have the authority to make the foregoing application, that the application is correct, and that the construction will comply with plans approved by all agencies listed and I hereby acknowledge and accept this to be a condition for the issuance of this permit.

[Signature] Signature of owner or authorized agent 06/18/08 Date

Approved: _____ For Chairperson, Historic Preservation Commission

Disapproved: X Signature: _____ Date: 7-22-08

Application/Permit No.: 488096 Date Filed: 6/18/08 Date Issued: _____

**THE FOLLOWING ITEMS MUST BE COMPLETED AND THE
REQUIRED DOCUMENTS MUST ACCOMPANY THIS APPLICATION.**

1. WRITTEN DESCRIPTION OF PROJECT

- a. Description of existing structure(s) and environmental setting, including their historical features and significance:

HOUSE ALREADY UNDER RENOVATION PERMIT # FROM HPC 45734B
MONTGOMERY COUNTY PERMIT # 471733

- b. General description of project and its effect on the historic resource(s), the environmental setting, and, where applicable, the historic district:

APPEAL TO REMOVE THE TWO TULIP POPLAR TREES LOCATED
AT REAR OF PROPERTY 14 WEST IRVING ST. THESE ARE CAUSE
FOR CONCERN FOR THE SAFETY OF OUR NEIGHBORS AND THE PROPERTY
IN QUESTION SHOULD THEY OR THEIR LIMBS FALL.

2. SITE PLAN

Site and environmental setting, drawn to scale. You may use your plat. Your site plan must include:

- a. the scale, north arrow, and date;
- b. dimensions of all existing and proposed structures; and
- c. site features such as walkways, driveways, fences, ponds, streams, trash dumpsters, mechanical equipment, and landscaping.

3. PLANS AND ELEVATIONS

You must submit 2 copies of plans and elevations in a format no larger than 11" x 17". Plans on 8 1/2" x 11" paper are preferred.

- a. **Schematic construction plans**, with marked dimensions, indicating location, size and general type of walls, window and door openings, and other fixed features of both the existing resource(s) and the proposed work.
- b. **Elevations (facades)**, with marked dimensions, clearly indicating proposed work in relation to existing construction and, when appropriate, context. All materials and fixtures proposed for the exterior must be noted on the elevations drawings. An existing and a proposed elevation drawing of each facade affected by the proposed work is required.

4. MATERIALS SPECIFICATIONS

General description of materials and manufactured items proposed for incorporation in the work of the project. This information may be included on your design drawings.

5. PHOTOGRAPHS

- a. Clearly labeled photographic prints of each facade of existing resource, including details of the affected portions. All labels should be placed on the front of photographs.
- b. Clearly label photographic prints of the resource as viewed from the public right-of-way and of the adjoining properties. All labels should be placed on the front of photographs.

6. TREE SURVEY

If you are proposing construction adjacent to or within the dripline of any tree 6" or larger in diameter (at approximately 4 feet above the ground), you must file an accurate tree survey identifying the size, location, and species of each tree of at least that dimension.

7. ADDRESSES OF ADJACENT AND CONFRONTING PROPERTY OWNERS

For **ALL** projects, provide an accurate list of adjacent and confronting property owners (not tenants), including names, addresses, and zip codes. This list should include the owners of all lots or parcels which adjoin the parcel in question, as well as the owner(s) of lot(s) or parcel(s) which lie directly across the street/highway from the parcel in question. You can obtain this information from the Department of Assessments and Taxation, 51 Monroe Street, Rockville, (301/279-1355).

PLEASE PRINT (IN BLUE OR BLACK INK) OR TYPE THIS INFORMATION ON THE FOLLOWING PAGE.
PLEASE STAY WITHIN THE GUIDES OF THE TEMPLATE, AS THIS WILL BE PHOTOCOPIED DIRECTLY ONTO MAILING LABELS.

HISTORIC PRESERVATION COMMISSION

of

MONTGOMERY COUNTY

**8787 Georgia Avenue
Silver Spring, Maryland 20910**

301-563-3400

Case No. 35/13-08N Received June 19, 2008

Public Appearance July 9, 2008

Before the Montgomery County Historic Preservation Commission

Application of Chris and Patricia Abell
14 West Irving Street, Chevy Chase

DECISION AND OPINION OF THE COMMISSION

Decision of the Commission: DENY the Applicants' application to remove two trees

Commission Motion: At the July 9, 2008 meeting of the Historic Preservation Commission (HPC), Commissioner Miles presented a motion to deny the application to remove two trees. Commissioner Duffy seconded the motion. Commissioners Fuller, Rotenstein, Alderson, Duffy, and Miles voted in favor of the motion. Commissioner Anahtar voted against the motion and Commissioner Burstyn abstained. Commissioners Jester and Fleming were absent. The motion passed 5-1.

I. BACKGROUND AND CHRONOLOGY

The following terms are defined in Section 24A-2 of the Code:

Appurtenances and environmental setting: The entire parcel, as of the date on which the historic resource is designated on the master plan, and structures thereon, on which is located a historic resource, unless reduced by the District Council or the commission, and to which it relates physically and/or visually. Appurtenances and environmental settings shall include, but not be limited to, walkways and driveways (whether paved or not), vegetation (including trees, gardens, lawns), rocks, pasture, cropland and waterways.

Commission: The Historic Preservation Commission (HPC) of Montgomery County, Maryland.

Director: The director of the Department of Permitting Services of Montgomery County, Maryland or his designee.

Exterior features: The architectural style, design and general arrangement of the exterior of an historic resource, including the color, nature and texture of building materials, and the type and style of all windows, doors, light fixtures, signs or other similar items found on or related to the exterior of an historic resource.

Historic District: A group of historic resources which are significant as a cohesive unit and contribute to the historical, architectural, archeological or cultural values within the Maryland-Washington Regional District and which has been so designated in the master plan for historic preservation.

Historic Resource: A district, site, building, structure or object, including its appurtenances and environmental setting, which is significant in national, state or local history, architecture, archeology or culture.

The *Approved and Adopted Amendment to the Master Plan for Historic Preservation in Montgomery County, Maryland: Chevy Chase Village Historic District – Expansion* provides the following Categories of Significance and Implementation Issues:

Non-Contributing or Out-of-Period Resource: A resource which is [sic] does not directly contribute to the historicity of the district because of its lack of architectural and historical significance and/or because of major alterations that have eliminated most of the resource's original architectural integrity. Or a resource that is a new building, which possibly contributes to the overall streetscape but is out of the district's primary historical and architectural context.

Non-Contributing/Out-of-Period Resources: ...HAWP applications for exterior alterations, changes, and/or additions to [Non-Contributing Resources] should receive the most lenient level of design review. Most alterations and additions to non-contributing/out-of-period resources should be approved as a matter of course. The only exception would be major additions and alterations to the scale and massing of the structure which affect the surrounding streetscape and/or landscape and could impair the character of the historic district as a whole.

The house at 14 West Irving Street was built in 1928. 14 West Irving Street is designated a Non-Contributing Resource in the Chevy Chase Village Historic District, which was added to the *Master Plan for Historic Preservation in Montgomery County* in 1998. The amendment includes historic preservation review guidelines that are intended to guide the Historic Preservation Commission (HPC) in its review of Historic Area Work Permit (HAWP) applications. The HPC's Executive Regulations require that the HPC use Chapter 24A-8, the Secretary of the Interior's *Standards for Rehabilitation*, and pertinent guidance in applicable Master Plans in making decisions on HAWP applications.

In July 2007 the HPC approved a HAWP allowing the applicants to renovate the existing house and construct an addition. The HPC approved the HAWP with the condition that the owners implement a tree protection plan. The house is currently undergoing major renovations.

In March 2008 the Chevy Chase Village arborist denied the applicants' application to remove two healthy tulip poplar trees from the subject property. In April 2008 the applicants filed an appeal with the Village Board of Managers. The Village Tree Committee voted in favor of the tree removal and in June 2008 the Village Board approved the appeal for the tree removal.

On June 18, 2008 Mr. and Mrs. Abell submitted an application for a HAWP to remove two tulip poplar trees (41" and 43" diameter) from the rear yard of the subject property.

II. EVIDENCE IN THE RECORD

The Historic Preservation office received the HAWP application on June 19, 2008. Notice of this application on the HPC meeting agenda was published in the June 25, 2008 Washington Examiner. A written staff recommendation on this proposal was prepared and sent to the Commission on July 2, 2008. At the July 9,

2008 HPC meeting, staff person Anne Fothergill showed digital photos of the site and presented an oral report with staff recommendations. Staff recommended that the HAWP application be denied. Staff entered the Local Advisory Panel comments into the record.

Staff's specific concerns listed in the staff report were:

1. The Chevy Chase Village *Guidelines* state that a "critical characteristic of the proposed historic district is its 'naturalistic landscape,' with numerous and 'massive' mature trees, a 'remarkable park-like setting,' and 'dramatic canopies for the roads and houses.'"
2. The *Guidelines* also state that it is "of paramount importance that the HPC recognize and foster the Village's open, park-like character, which necessitates respect for existing environmental settings, landscaping, and patterns of open space."
3. The *Guidelines* state that the HPC should review whether proposed alterations to a Non-Contributing resource "affect the surrounding streetscape and/or landscape and could impair the character of the district as a whole."
4. The Secretary of the Interior's *Standards for Rehabilitation* state "a property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships."
5. The *Standards* state "the historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided."
6. The *Standards* state "new additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment."
7. Montgomery County Code Chapter 24A-8(a) says that a HAWP should be denied if the Commission finds, based on the evidence and information presented to or before the commission that: "the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter."
8. The practice of the HPC is to rely on the Chevy Chase Village arborist's assessment of a tree's condition. If the arborist finds a tree to be dead, dying, or hazardous, the tree can be removed. The arborist found the two subject trees proposed for removal to be healthy. The arborist subsequently denied the applicants' tree removal application.
9. The Chevy Chase Village Code provides for an appeals process of the Village arborist's decision, which allows the Village Board to permit the removal of a tree if it "will not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties..." The Village Code not require the Village Board to consider historic preservation issues.
10. The removal of two healthy canopy trees located within the Chevy Chase Village historic district does not meet the Chevy Chase Village *Guidelines*, the Secretary of the Interior's *Standards for Rehabilitation*, or Chapter 24A.

At the July 9 HPC meeting, Ms. Elsie Reid, Counsel for the applicant, and Mrs. Patricia Abell, the applicant, explained their concerns about the trees and their appeal to the Village Board of Managers.

Ms. Reid and Mrs. Abell discussed their two main concerns: potential life safety issues posed by the trees' type and close proximity to the subject property as well as neighboring (contributing) properties; and potential financial issues created under the zoning ordinance, which the applicants contend would prevent the reconstruction of a residential structure on this (nonconforming) property. Ms. Abell stated that she has experience with tulip poplars falling on her property, causing extensive damage. Ms. Reid explained that under County law, the applicants would not be able to rebuild on their lot should their house be destroyed by a tree.

Ms. Reid asked the HPC to consider two additional criteria under Chapter 24A that were not in the staff report: whether the proposal is necessary in order that unsafe conditions or health hazards be remedied (Chapter 24A-8(b)(4)) and whether the proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship (Chapter 24A-8(b)(5)).

Ms. Reid stated that the absence of these trees would not have an impact on the overall landscape of Chevy Chase Village. She called the HPC's attention to the Local Advisory Panel's comments supporting the appeal process and the Board's decision to allow the tree removal as it will not impair the purpose and intent of the Urban Forest Ordinance of the Village.

Mrs. Abell said that if a tree were to destroy their house they would be in a tough legal situation. She asked that the HPC consider that the trees should be removed because they are in an inappropriate and possibly dangerous setting. She stated that three abutting neighbors have signed a petition agreeing with the Abells' position that the trees pose a potentially serious hazard.

Commissioner Fuller asked if the 50% economic value test would apply to this property since it is a non-conforming property and Ms. Reid said that it would meet the test but because the house is on two lots that are smaller than a legal lot they could not rebuild. Commissioner Fuller noted that the applicants were able to get a permit for the major renovation they are currently doing, and that they are assuming the tree would completely demolish the entire house.

Commissioner Fuller asked if a tree professional, other than the Village arborist, had evaluated the trees and determined them to be unsafe. Mrs. Abell said no. Ms. Reid said that the Village Board did research and found that tulip poplars are weak and can fall without warning and often drop large limbs from substantial heights. Ms. Reid said the Abells are willing to reforest either on or off site.

Commissioner Fuller asked if the trees were there when the applicants bought the property, and Mrs. Abell confirmed that they were there when they bought the house five years ago. Commissioner Rotenstein stated that it is not uncommon to find tulip poplars in close proximity to houses in Montgomery County.

Commissioner Burstyn asked if they had considered cabling the trees to support their possible weakness and Mrs. Abell said she did not know about that process. Commissioner Alderson recommended that the Abells should have the trees inspected and pruned annually since a tree with a light canopy doesn't usually lose its limbs.

Commissioner Burstyn expressed concern that allowing this tree removal could set a precedent. He said in the future anyone with a healthy tulip poplar tree could apply to remove it, claiming that it was a potential hazard

and that this could have an adverse impact on the Village's historic environmental setting.

Commissioner Miles discussed the legal argument that the applicants submitted regarding whether or not they can rebuild and she wondered if since the legal opinion is not based on legislative history it may be de facto rather than de jure ruling. Ms. Reid stated that they consulted with other attorneys who came to the same conclusion that they could not rebuild.

Commissioner Duffy said that the legal ramifications are not relevant to the HPC review and that the HPC should consider the impact of the proposal on the historic district. He stated that losing two large canopy trees in a historic district would negatively affect the character of the district. He said the HPC should rely on the professional judgment of the Village arborist, who found the trees to be healthy. Commissioner Rotenstein agreed with Commissioner Duffy and stated that the HPC defers to the arborist's opinion. He also stated a concern about setting a precedent.

Mr. George Myers, the applicants' architect, said it would not be precedent-setting because of the unusually small size of the lot.

Mrs. Abell requested that the HPC consider the potential danger to the applicants and their neighbors. Ms. Reid stated that she understood giving deference to the Village arborist but in this case deference should be given to the Tree Committee and Board of Managers who are responsible for the Urban Forest Ordinance.

Commissioner Anahtar said that the LAP recommended approval because of the Board's decision allowing the removal of the trees and, while normally she would not support any tree removal on a historic property, in this case she could support it.

Commissioner Miles made the motion to deny the application to remove the two trees. Commissioner Duffy seconded the motion.

Commissioner Fuller commented that the applicants did not retain their own independent arborist and the only professional opinion that was provided was that the trees were healthy and not hazards so he could not consider the other discussion about the trees being unsafe.

Commissioners Fuller, Rotenstein, Alderson, Duffy, and Miles voted in favor of the motion. Commissioner Anahtar voted against the motion and Commissioner Burstyn abstained. The motion passed 5-1.

III. CRITERIA FOR APPROVAL AND FINDINGS OF THE COMMISSION

When reviewing alterations and new construction within the Chevy Chase Village Historic District several documents are to be utilized as guidelines to assist the Commission in developing their decision. These documents include the historic preservation review guidelines in the approved and adopted amendment for the *Chevy Chase Village Historic District (Guidelines)*, *Montgomery County Code Chapter 24A (Chapter 24A)*, and the *Secretary of the Interior's Standards for Rehabilitation (Standards)*. The pertinent information in these documents is outlined below.

The criteria, which the Commission must evaluate in determining whether to deny a Historic Area Work Permit application, are found in Section 24A-8(a) of the Montgomery County Code, 1984, as amended.

Section 24A-8(a) provides that:

The Commission shall instruct the director to deny a permit if it finds, based on the evidence and information presented to or before the commission that the alteration for

which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter.

In analyzing whether the criteria for issuance of a Historic Area Work Permit have been met, the HPC also evaluates the evidence in the record in light of the guidelines for the historic district that are included as part of the Amendment to the *Approved and Adopted Master Plan for Historic Preservation in Montgomery County Maryland – Chevy Chase Village Historic District--Expansions*. In particular, the following concepts, guidelines and factors are applicable in this case:

[A] critical characteristic of the proposed historic district is its “naturalistic landscape,” with numerous and “massive” mature trees, a “remarkable park-like setting,” and “dramatic canopies for the roads and houses.” This aspect of the Village began with the original plan, has been fostered by the Village Board of Managers through the Village’s Urban Forest Ordinance and the work of the Village arborist and Tree Committee, and is largely responsible for its continued existence as “one of the most intact and important examples of suburban planning and architectural expression built in the region before World War II.” Thus, it is also of paramount importance that the HPC recognize and foster the Village’s open, park-like character, which necessitates respect for existing environmental settings, landscaping, and patterns of open space. For most Village residents, these landscape and scale issues far outweigh questions of architectural style. In addition, this critical characteristic of the proposed historic district requires careful attention by appropriate agencies to nearby developments which could adversely impact the Village’s open, park-like character.

Non-Contributing/Out-of-Period Resources:

Most alterations and additions to non-contributing resources should be approved as a matter of course. The only exceptions would be major additions and alterations to the scale and massing of the structure which affect the surrounding streetscape and/or landscape and could impair the character of the district as a whole.

The Commission also evaluates the evidence in light of generally accepted principles of historic preservation, including the *Secretary of the Interior’s Standards for Rehabilitation*, adopted in the HPC Executive Regulations in November 1997, to the extent that such *Standards* are consistent with the Chevy Chase Village Guidelines. In particular, *Standards* #1, #2, and #9 are applicable in this case.

- Standard 1: A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
- Standard 2: The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
- Standard 9: New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

Based on all the information presented in this case, the Historic Preservation Commission finds that:



1. 14 West Irving Street is a Non-Contributing Resource within the Chevy Chase Village Historic District.
2. The proposed tree removal will adversely impact the naturalistic landscape, mature trees, park-like setting, and tree canopies for the roads and houses of the Chevy Chase Village Historic District.
3. The proposal to remove two large, healthy canopy trees is not in keeping with the Chevy Chase Village *Guidelines* and the Secretary of the Interior's *Standards for Rehabilitation* and constitutes changes to the environmental setting and landscape that will adversely affect the historic district.

IV. CONCLUSION

The Commission was guided in its decision by Chapter 24A, by the Amendment to the *Approved and Adopted Master Plan for Historic Preservation in Montgomery County Maryland – Chevy Chase Village Historic District--Expansion*, and by the *Secretary of the Interior's Standards for Rehabilitation*.

Based on the evidence in the record and the Commission's findings, as required by Section 24A-8(a) of the Montgomery County Code, 1984, as amended, the Commission must **deny** the application of Chris and Patricia Abell for a Historic Area Work Permit (HAWP) to remove two trees at 14 West Irving Street in the Chevy Chase Village Historic District.

If any party is aggrieved by the decision of the Commission, pursuant to Section 24A-70(h) of the Montgomery County Code, an appeal may be filed within thirty (30) days with the Board of Appeals, which will review the Commission's decision de novo. The Board of Appeals has full and exclusive authority to hear and decide all appeals taken from the decision of the Commission. The Board of Appeals has the authority to affirm, modify, or reverse the order or decision of the Commission.

Jef Fuller, Chairman
 Montgomery County
 Historic Preservation Commission

7-22-08

Date

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

----- X

:
HISTORIC AREA WORK PERMIT - : HPC Case No. 35/13-08N
14 West Irving Street :

----- X

:
HISTORIC AREA WORK PERMIT -: HPC Case No. 37/03-08GG
7047 Eastern Avenue :

-----:

X

PRELIMINARY CONSULTATION - :
8 Newlands Street :

----- X

A meeting in the above-entitled matter was held on July 9, 2008, commencing
at 7:30 p.m., in the MRO Auditorium at 8787 Georgia Avenue, Silver Spring, Maryland 20910,
before:

COMMITTEE CHAIRMAN

JEF FULLER

COMMITTEE MEMBERS

Caroline Alderson

Leslie Miles

David Rotenstein

Lee Burstyn

Tim Duffy

Nuray Anahtar

ALSO PRESENT:

Scott Whipple

Anne Fothergill

Joshua Silver

Rachel Kennedy

APPEARANCES

<u>STATEMENT OF:</u>	<u>PAGE</u>
Vincent R. Broderick	7
Patricia Abell	17
George Myers	25
Greg Wiedemann	38
Christine Vaughn	39

TABLE OF CONTENTS

	<u>PAGE</u>
HISTORIC AREA WORK PERMITS	
Case B	4
Case C	4
Case E	5
Case F	4
Case A	5
Case D	10
PRELIMINARY CONSULTATIONS	
Case A	33
2007 TAX CREDITS	44
MINUTES	46
OTHER BUSINESS	
Commission Items	46
Staff Items	47
ADJOURNMENT	63

MR. FULLER: The next case we'll hear this evening is Case D at 14 West Irving Street, Chevy Chase. Is there a staff report?

MS. FOTHERGILL: There is. 14 West Irving is a non-contributing resource in the Chevy Chase Village Historic District. For a bit of background, last year the commission approved an historic area work permit that allowed the applicants to renovate the existing house and construct a side addition. They actually, to back up, they actually had an approved HAWP, I believe, I wasn't the staff person, but they had an approved HAWP for to tear down the house and build a new house and then came back with a revised HAWP. I think that's accurate.

Anyway, they were approved to renovate the existing house and construct a side addition, and the HPC approved it with the condition that there was tree protection as mandated by the Chevy Chase Village arborist. Then in March of this year the applicants applied to remove two Tulip Poplar Trees that are 41 inch and 43 inch in diameter that are behind the house. And the Chevy Chase Village arborist denied the application because the trees were determined to be healthy.

And the next month the applicants filed an appeal with the Village Board of Managers and the Village Tree Committee reviewed the application and voted in favor of the tree removal, and then in June 2008 the Village Board approved the tree removal. You received upstairs in the work session the decision of the Village Board of Managers which was just given to us today for distribution.

And you also received upstairs comments from the local advisory panel, which I will discuss in a minute. The applicants are, they now have the Village approval of their appeal, and they are now applying for a historic area work permit to remove the two Tulip Poplar Trees. They have concerns about their safety and their neighbors safety because the trees are very close to the houses and they're very tall. And they have had past experiences with Tulip Poplars and doing damage on their house and their car.

And this is a unique situation. They have determined that they would not be allowed to

rebuild on their lot should their house be destroyed by a tree, and that was also part of their solution was that this is a unique situation. The applicants submitted a letter of support from owners of three adjacent properties, which are in your staff report. And as part of their application to the Chevy Chase Village Board, they had applied or had proposed to plant two new hardwood trees on the property which wasn't specifically a part of their application, but I think it is intended to be part of their application that there would be some reforestation.

Staff is recommending denial of this application. The Chevy Chase Village Guidelines very specifically talk about that, I'm just going to quote from the Guidelines, a critical characteristic of the proposed historic district is its naturalistic landscape with numerous and massive mature trees, remarkable park like setting and dramatic canopies for the roads and houses, and that it is of paramount importance that the HPC recognize and foster the Village's open park like character which necessitates respect for existing environmental settings, landscaping and patterns of open space.

In terms of a non-contributing resource, the HPC reviews applications to determine whether they will affect the surrounding streetscape and/or landscape and could impair the character of the district as a whole. And generally, when staff has an application regarding trees in Chevy Chase Village, we rely on the Chevy Chase Village arborist assessment, and in this case, the arborist did deny their application.

Our tree policy is that if an arborist determines a tree is dead, dying or hazardous, there is a tree removal waiver. So the applicant doesn't apply for a historic area work permit in that case, but that is not the situation here. This is a unique situation and that is mentioned in the staff report. And, you know, there are two potentially mitigating concerns, the life safety issues and then the fact that they cannot rebuild.

Staff recommended denial based on the Chevy Chase Village Guidelines and the Secretary of Interior Standards, and I will show you some slides so you can see the trees. This actually,

these are aerial photos from (indiscernible), so it's before the construction, but just to give you a sense. And those you can see are the two trees to be removed.

This is again, a few shots before construction, and you can see the trees behind the house. And there you can see them also from across the street. And then this is actually the existing condition. The house is currently under construction. And you can see the trees back there behind the addition. And here you can see them as you're approaching the house from the west coming down the block.

And these are close ups of the trees, and you can see that they are very close to the addition. And, I mentioned that the local advisory panel submitted comments and they said that several members of the LAP felt it was not desirable to remove the Tulip Poplars based on the specific trees, and therefore supported the intent of the staff recommendation, but the majority of the LAP, oh, and they supported the intent of the staff recommending, but the majority of the LAP including those who felt the trees should not be taken down, felt that the tree removal issue had been discussed at the local level and that therefore, the Historic Preservation Commission should give great weight to the decision made by the Village Board of Managers, and that they did not support the denial of this application.

MR. FULLER: Are there questions for staff? Would the applicant like to come forward and make a presentation? Welcome, if you could just state your name for the record, you have seven minutes.

MS. REID: Good evening, my name is Elsie Reid, I'm an attorney with the law firm of Fury, Dolan & Abell in Chevy Chase, Maryland, and I'm accompanied by Mrs. Abell, who, with her husband Chris, are the owners of the property in question and we are here to answer any questions you might have. But I would like to just make a brief statement.

Obviously, we're here to urge your approval of the application to remove these trees. And we feel it's a matter of fierce injustice to the Abells and that it is warranted based upon the unsafe

condition that these trees pose to the house, and the economic hardship that would befall to them if something were to happen to the house as a result of these trees falling, because the county has been firm in telling them that they will not be allowed to rebuild.

Where we differ with staff in Ms. Fothergill's conclusion that taking down these trees would be inconsistent with the naturalistic sense of the Chevy Chase Villages, and we don't think that the existence and presence or absence of these two trees will have any real impact on the overall landscape of Chevy Chase Village, and we think the circumstances are extremely unique here because this is a very small lot. The Abells are doing the best they can to remodel property that they bought some time ago before they knew that they would not be able to build a new home on the property, and to live within those constraints.

But we have two trees that are not along the street. They're not part, forming, you know, lining the street. They're not open in a park like setting or a forested setting, but they are, as the pictures show, very close to the house. The neighbors have had personal experience that have caused them to be very worried about the safety of themselves or the property.

In addition to the criteria the staff cited and is relevant for you to consider in looking at these permits, there are two additional criteria that were not mentioned in the staff report, and under Chapter 24-8(a)(b)(4 and (5) you are entitled to look at whether the proposal is necessary in order of the unsafe conditions or has health hazard be remedied, and also whether the proposal is necessary in order that the owner of the subject property not be deprived of the reasonable use of the property.

And we think under those criteria alone that this is justified to grant this permit. And we just received a copy of the email that came from the Local Advisory Panel, and I call your attention to the, and I hope you have had a chance to read it, particularly the comment from the member, the Chairman of Village Tree Committee summarizing the lengthy and very deliberative process that took place before the Village Board of Managers.

They are the ones that have the responsibility for administering the urban forest ordinance, and they have determined and made a finding, as they were required to do under Section 17-4 of their ordinance, that granting the application could be permitted without substantially impairing the purpose and intent of the chapter, which is the urban forest ordinance for the village. So we would urge that you defer to that and grant this application. And I know Mrs. Abell has a brief statement.

MRS. ABELL: I believe that the record and our attorney have addressed the dreadful legal situation that we would be in should our house be destroyed. That alone is reason enough to allow us to remove these two particular trees. But, before you vote, I would like you to take into consideration two things, as the Board of Managers and the Village Tree Committee recommended, these giant trees should be removed because they are in an inappropriate and possibly dangerous setting. They are meant to be in large open areas such as parks and forests, not in relatively urban densely packed areas.

I know that when these trees were originally planted decades ago, that the landscape was radically different. Now that the houses in the village are built so close to each other, the situation has changed. Our particular situation is highly unusual. I must stress to you that I would love for you to please examine the pictures very carefully before you vote.

Also, in addition to the Chevy Chase Village Board of Managers and the Village Tree Committee, all three abutting neighbors have signed a petition stating that they strongly agree with our position. They feel as we do that these two trees pose a potentially serious hazard.

peid
MS. ABELL: We believe that removal of these trees is a necessary precaution to safeguard to protect the safety of the occupants of the whole, which will be the Abells, their neighbors, and also to protect the reasonable use of their property in the future. Thank you very much. And we'd be happy to answer questions, Mr. Myers the architect is also here if you have questions for the architect.

MR. FULLER: Thank you. Are there questions for the applicant?

MR. ROTENSTEIN: I have a couple. The photographs that we've seen look a lot like my yard and like many yards in Montgomery County. Are you suggesting that all Tulip Poplars that are situated in residential lots in close proximity to houses are a hazard and should be removed?

MS. ABELL: Are they that close?

MR. ROTENSTEIN: Yes.

MS. ABELL: That close?

MR. ROTENSTEIN: Yes.

MS. ABELL: I've never seen anything like this. The backyard, it is incredibly, incredibly tight. We can't get around. There is no backyard. There are those two trees and should they fall in any direction, there is going to be serious trouble. It is incredibly tight. I have never seen (indiscernible).

MS. REID: The lot size is 4600 square feet, so it's not even a legal lot under the 1928 zoning ordinance, and it's also an irregular shape. So it makes it very difficult, and the fact that they had to stay with three walls really limited their ability too.

MR. ROTENSTEIN: I understand that, but what I see is not uncommon in Montgomery County.

MS. REID: But I think what may be uncommon is the fact that they cannot rebuild because of the, just peculiar way in which the subdivision ordinance and the zoning ordinance work together. There are exceptions for most lots, because most are 5,000 square feet or greater. That would allow you to rebuild in the event of a casualty. But we've been told by counsel for both the Planning Commission and the Department of Permitting Services that they would not.

MS. ABELL: Which we did not know when we --

MR. FULLER: Is the test not the same for, I mean, if it's a non-conforming lot, aren't you faced with the same 50 percent of the economic value that you would with any other situations? So

how is the current addition any different than what would happen if a tree fell on the house in terms of the dollar value?

MS. REID: I'm sorry, I'm not sure that I understand your question. The difference here is --

MR. FULLER: In the county ordinance in terms of non-conforming properties and non-conforming buildings, there's an economic test as well as other things like in terms of a renovation versus new construction, and there tends to be an economic test. How does economic test --

MS. REID: We would meet that test, but what we don't meet is the fact that the house as built crosses lot lines. It exists on parts of two previously planned lots, and that's no longer allowed in the county. The problem was that they wouldn't issue a permit and they wouldn't write us a report.

MR. FULLER: You just got a permit for this work, right?

MS. REID: A permit to do the renovation, but not to do a rebuild which is what they originally sought to do and if they had gotten your approval:

MR. FULLER: But the assumption is that the tree would completely demolish the entire house.

MS. REID: Well or substantial (indiscernible).

MR. FULLER: It would take it past the 50 percent economic value.

MRS. ABELL: We also talked about the roots. Apparently the roots of the tree go under the entire house.

MR. FULLER: The other question I wanted to ask is just, you've made several comments about an unsafe condition. Has any professional evaluated this and stipulated that this is an unsafe condition?

MRS. ABELL: No.

MR. FULLER: So, how does that argument?

MS. REID: The evidence is that the Village Board did their own investigation and learned about a number of risks which are recited here in their email. The Tulip Poplar species is the weakest of all the hardwood trees, can fall without warning, frequently drops large limbs from substantial height. And this was discussed before the Village Board.

MRS. ABELL: And this happened to us already in another house in Chevy Chase Village.

MS. REID: The Abells do not make this request lightly, and that's why they've offered to reforest either on or off site, whichever is the preference because they cherish the trees as well. This is what they think is an unfair risk to ask them to take given the fact that the trees are in such close proximity to them, are in their rear yard. They're not along the street frontage, and the fact that they would (a) jeopardy not being able to replace --

MR. FULLER: Were the trees there when they purchased the property?

MRS. ABELL: Yes.

MS. REID: You purchased the property how many years ago?

MRS. ABELL: Five years ago, not knowing that we could not rebuild. That was the intention. Also, again, my last plea is that the village does not lightly take down trees. We've investigated, we have gone round and around, it has taken quite a bit of time, money, trouble for everybody involved, and they themselves have recommended this.

MR. BURSTYN: I was wondering whether in analyzing the trees whether you ever considered cabling the trees to support their possible weakness?

MS. ABELL: I have no idea. Nobody has mentioned that to us. I've not heard of that. That's not been given to us as a possibility.

MR. BURSTYN: It is, of course, done in Montgomery County with historic trees to preserve.

MS. REID: I'm not sure, maybe these are not unique specimens for their species. I'm

not sure how that would be done.

MR. BURSTYN: Also, I believe one of the things we're really concerned with is its impact on the overall look of the Chevy Chase Village Historic District and, of course, you probably don't know what percentage of trees in the district is Tulip Poplar trees, but if there are a large percentage and if you set a precedent, that everybody with healthy poplar trees wanted to take them down because of a potential hazard sometime in the future, certainly you could agree that this could have an adverse impact on the look of the Chevy Chase Historic Village.

MS. ABELL: Again, I think this is a unique situation, and I totally understand that view point. However, given this situation, we have to decide which is more important, you know, we will reforest, but what's important is what could happen to three or four houses versus these two trees changing a local village.

MS. REID: And I do think that this is somewhat unique because it is a very small lot for the Village, and the fact that the trees are between the corner that comes to Magnolia Parkway and Irving Street which is a very confined location. And the fact that they are at risk of losing their investment in this home.

MR. FULLER: Are there additional questions for the applicant or do you want to move deliberations? Let's move into deliberations if there are comments, thoughts.

MS. MILES: I have several comments. I live in a neighborhood that is filled with Tulip Poplars and every other kind of tree, and I have three of trees even larger in my rear yard, and that is to the north of me and if they toppled southward, as would be expected, they would also take out my house. There have been three trees fallen on my street in the last year and none of them are Tulip Poplars.

MS. ABELL: Could you rebuild?

MS. MILES: Well, here's my question for you. I will tell you, I'm a lawyer and I read this

opinion from Stein Sperling, and I frankly don't understand it because to me it essentially amounts to Delvin won't give you a permit. That to me is not a legal opinion that concludes that you are prohibited from getting a permit to rebuild. I have trouble with this part of this.

I also have some trouble based on the Chairman's comments that I don't think that your house would be over 50 percent destroyed if the tree fell upon it. I think that would be pretty shocking thing to happen. I don't know how you could have insurance for your house. I don't know how you could have a mortgage for your house. I don't know how you could be building a house out of wood instead of out of concrete, because any hazard would prohibit you from building.

These trees, I think, are not the greater hazard then the risk of fire or, you know, an electrical short. You know, so many things that could happen. So all of these things concern me. My greatest concern is that we would be as a commission setting, I think, a very dangerous precedent to overturn the view of the arborist that these are healthy trees. I have annual inspections of our trees by the arborist.

I realize that trees can fall whether they're unhealthy or healthy, or appear to be unhealthy or healthy. All of the trees that have fallen in the last year and a half in my neighborhood were known to be diseased and people should have taken them out. It's quite unusual for a truly healthy tree that is truly being examined to just fall over. So I would be very, very skeptical about overturning the opinion of the arborist. These are healthy trees. I think it would set a very dangerous precedent. All of use are surrounded by very large old trees who live in old neighborhoods. We're fortunate to have them. And if the precedent were, if they appear to pose a risk, and given what I think is ambiguous, that you would be unable to rebuild, I think that conclusion is not, I'm not satisfied that that's the conclusion. I think it would be very dangerous for us to set the precedent that the arborist's opinion should be overturned.

MRS. ABELL: May I make a comment?

MR. MYERS: Hi, I'm George Myers. I'm the architect on the job. I can help a little bit with that because initially when we came here we had a new house approved. That was our intent to tear down the house. The problem with the lot is that it's part of two lots. In order to build a new house you would have to combine those lots. The county will not create a lot smaller than 6,000 feet, and it's only 4,600.

MS. MILES: Mr. Myers, I understand. We understand this. I don't mean to cut you off, but I don't know if you heard what I said, my concern is with the conclusion that because the permitting services people have determined that their interpretation is that they would not grant a permit under these circumstances, that therefore the permit, which could not be granted lawfully, I, as a lawyer, as a legal matter don't find that to be the conclusion. I understand about the house lots over 5,000 square feet.

MR. MYERS: It wasn't the Department of Permitting Services, it was the Park and Planning Commission as well. He had meetings here. We didn't believe it either.

MS. REID: And we didn't talk, as Mr. Cohen spoke with the permitting technician, but I spoke with the counsel.

MS. MILES: I see, I read your whole file. I'm referring to the legal opinion upon which everyone is relying, but the legal opinion amounts to there isn't any legislative history. If that which there is appears to suggest that this was not really the intent of this legislation and what amounts to dejury ruling, defacto rather than dejury ruling, is that Mr. Daniels won't give you a permit. That's how I read the legal opinion from Stein Sperling. And that's my concern as a legal matter.

MS. REID: All I can say that it was not one person, it was several and we took it up as high we thought we could take it up un until we have an appealable issue.

MR. DUFFY: I think Commissioner Miles is finished I have some comments. In fact, I'd like to echo some of the comments of Commissioner Miles that I agree with her, and I think when we

talk about the lots and subdivision and demolition construction of the newer building, we're wandering out of the territory that this HAWP deals with. The county would certainly allow damage to this house to be repaired, and just as they permitted the work that we see in the photographs to be constructed, and we're not considering a proposal for demolition of a house in historic district and new construction, and if we were, we'd be looking at it very closely and be very concerned about it.

This is a HAWP proposing to remove two trees, and so I don't think that the legal memo is really relevant to this HAWP. Our charge is to consider the impacts of proposals on historic sites and districts. And losing two large canopy trees in a historic district would negatively affect the character of the district. This commission also, I feel pretty strongly and agree with Commissioner Miles, should rely on the professional judgment of the Village arborist, who has stated that these trees are healthy.

Taking those two facts into consideration, my judgment would be we should deny the HAWP.

MR. ROTENSTEIN: I agree with that position. I find that when we make decisions on historic area work permits in jurisdictions where an arborist is required to review any work that impacts trees, we defer to their opinion. And if we were to, in this instance, approve the work permit and say that we usually defer to the opinion of the professional, but we won't if someone has an alternative view, I think that sets a dangerous precedent, and I fully support what Commissioners Miles and Duffy have stated.

MS. ALDERSON: In support of retaining the trees, there's at least a couple other angles that can be considered in there. One, I'm also of the thought that it's far less likely the house would be destroyed beyond the 50 percent level by a tree. That's much more likely to happen as a result of fire. I've seen lots of trees fall down. I've never seen a house that was considered destroyed by a large tree. I live in Takoma Park, and there's all kinds of trees.

The other thought of having lived with a very large tree that eventually did have to

come down, our recommended method, and this may, I don't know if the arborist brought this up, is to have the tree annually inspected and pruned. I mean usually the tree with a light canopy that is kept very clean of anything potentially problematic is not usually the tree that loses the limbs. My tree that I kept pruned every year never lost a twig. It was a Hollow Tree, and I was asked to take it down eventually, and wasn't happy about it.

But, I think that regular vigilance and looking at the health of the tree to make sure that it doesn't show signs of any stress or disease is probably going to keep you on top of it to keep that risk really minimal. I would guess that the trees that fell probably did have some problems.

MR. FULLER: Are we ready for a motion?

MS. REID: Is it possible for Mrs. Abell, she had something she wanted to.

MRS. ABELL: Well, it sounds clearly which way it's going to go, but I have to say that I understand your concern about the canopy of Chevy Chase. I think you have to weigh what is more important in this particular case. If you saw the site you would understand. What is the most important thing here is forget about the house being torn down. We're talking about danger to everybody in this situation. All of our abutting neighbors.

MS. REID: And my final comment, I understand your deference to the arborist, but this is a case where appeal was made to the Village Board, and I believe the deference that ought to be given here is to the decision of the tree committee and the Board of Managers, which is responsible for administering their urban forest ordinance. And the Historic Preservation Guidelines adopted by the County Council for Chevy Chase Village says that you should decide tree removal issues consistent with the Chevy Chase Village Urban Forest Ordinance, and I think under that guideline, deference ought to be given to the decision of the Board. It wasn't one that they lightly made either. But that would be our position.

MS. ANAHTAR: Well, I had a personal experience with a perfectly healthy looking tree

on a beautiful summer evening falling on our car. We have tall trees behind our house. Every time we have bad weather I move my kids downstairs. Since the Chevy Chase LAP supported the removal of these trees, and I don't see the importance of these trees. I mean, I would not normally support any tree removal on a historic property, but in this case I think I would go for that.

MR. BURSTYN: Counsel for the applicant just made reference to something in the historic village, the Chevy Chase Historic Guidelines regarding trees. Could staff comment on the application of that to this case? Was that covered in the proposed decision?

MS. FOTHERGILL: In your staff report there's reference to the guidelines that were part of the master plan which their attorney referenced, and it talks about the Village's Urban Forest Ordinance, and it's in there. So it was not overlooked.

MR. FULLER: Can we have a motion?

MS. MILES: I move that we adopt the staff report denying the HAWP for 14 West Irving Street.

MR. FULLER: Is there a second?

MR. DUFFY: I second.

MR. FULLER: Is there any further discussion? I do want to point out I concur with the applicant's attorney that we do have two pieces of information, but the professional, and the only professional advice that's been offered is from the arborist. They did not retain their own independent arborist to counter the finding of the trees being unsafe, and yet most of the testimony tonight has been about unsafe trees. And so, from my personal view I cannot take that into consideration tonight. Any further discussion?

MR. BURSTYN: Yeah, I would just like to comment that I find the discussion of what could happen to the trees in the future as to not have credibility. A lot of weight at least because I don't know how old these trees are. But they haven't fallen down yet. So to say that that's going to happen if

you don't take it down, but we're trying to guess the future here, and I have a problem with that.

I also have a problem though that when a local decisionmaking body of a local community, it goes forward for us to review and then is also, that decision is also backed up by the Chevy Chase LAP, that I think we should give strong deference to that. And so, but also, I mean, I think this is a very difficult case because I would not want it to set a precedent that everyone in Chevy Chase or Takoma or anywhere else that decides these trees are too close to their house can say, well, they took them down, why can't we take them down.

And I think it would be very difficult in many cases to distinguish a denial in the future when we've allowed certain applicants to take their trees down. You all could comment on that if you'd like.

peid
MRS. ABELL: Well, I really appreciate your comments, I really do. I do think that setting a precedent, I don't think that's going to happen. I don't think that's part of this discussion. Clearly, it's very difficult to have trees taken down and the fact that the Village recommended this. I don't think this is going to set any kind of precedent at all. I don't think that's part of the argument. It's just not going to happen.

MR. MYERS: The thing that just sets us apart is the size of the lot. There aren't any lots this small in Chevy Chase Village, and there aren't any lots this small that are part of two lots that have had an official legal opinion from the county that says if they were destroyed to more than 50 percent you would not be able to get a new building permit. So that sets this apart from any other situation. Somebody else next door comes by and says that they don't have the same situation. So that's what, why I don't think this should be considered a precedent for anything. This is completely unique in that regard.

MR. FULLER: Thank you. Let's finish this up. There's a motion on the floor that's been seconded, and the motion is in support of the staff report to deny the HAWP application. All in favor?

VOTE.

MR. FULLER: All opposed?

VOTE.

MR. FULLER: And all abstentions?

VOTE.

MR. FULLER: All right, the motion passes with Commissioner Anahtar voting against,
and Commissioner Burstyn abstaining. Thank you.

MS. REID: Thank you.

Manarolla, Kevin

From: Bourke, Tom (Winchester Homes, Inc.)(Tom) [tom.bourke@whihomes.com]
Sent: Wednesday, July 09, 2008 3:19 PM
To: Fothergill, Anne; Manarolla, Kevin; Whipple, Scott; Silver, Joshua
Cc: CCV@montgomerycountymd.gov; Bob Elliott; FeldmanGS@aol.com; abjdoe@gmail.com; r.marshes@verizon.net; Stephens, Betsy; Wellington, P. (ccv)
Subject: LAP comments: 14 W Irv; 5815 Cedar; 8 Newlands consultation

The following are comments by the Chevy Chase Village Local Advisory Panel on cases before the HPC on July 9, 2008:

14 W Irving

Non-contributing resource
Removal of two trees

Several members of the LAP felt that it was not desirable to remove the tulip poplars based on the specific trees and therefore supported the intent of the Staff recommendation. The majority of the LAP, including those who felt that trees should not be taken down, did feel that tree removal issue had been thoroughly discussed at the local level. LAP members cited the fact that the Village Board had addressed and deliberated the issue extensively at two Board meetings. The majority of the LAP recommended approval and felt that very strong deference should be shown to the Village Board of Managers and the local process should have a very substantial bearing on the HPC ruling. A member of the LAP who is also Chairman of the Village Tree Committee offered this specific summary of the local review process:

"Chevy Chase Village probably has the most complete and carefully cared for tree coverage of any neighborhood in this county. Issues concerning trees are almost continuously before the Village Board and advice is frequently received from the Village's and other arborists, the Village's Tree Committee, and many residents. In this case the proposed takedown of two trees was publicly discussed and argued at two successive Board meetings, quotations in writing from various professional books on trees were presented, and the Board insisted on receiving legal advice which confirmed that if the small house on the property is destroyed by the fall of a large tree, it will be barred by law from being rebuilt because of the small size of that lot. The Village Board was reminded that the Tulip Poplar species is the weakest of all the hardwood trees, can fall without any warning, and frequently drops large limbs from a substantial height. For those reasons the Village stopped planting that species on its streets many decades ago. The two trees at issue are perhaps 70 feet tall and stand about 8 feet from each other and a little over 20 feet behind the house. After learning all that and considering the potential risks presented by those mature trees, the Village Board reluctantly granted permission to Mr. & Mrs. Abell to remove those two trees from their small backyard. The HPC staff surely does not have greater understanding of this tree issue than the Chevy Chase Village Board of Managers. The LAP urges the HPC not to override the takedown decision that has already been so carefully made. "

5815 Cedar Parkway

Contributing Resource
Additions, dormers, front walkway and other alterations
Staff recommendation: approval, with condition that the applicant notify HPC of any changes to approved plan
LAP concurs with staff approval

8 Newlands consultation

Contributing Resource
Rear addition, shed construction, other alterations
Staff discussion was generally supportive with the exception of the east side (pages 27, 37). The LAP feels that this elevation has little impact on the overall streetscape and that the alterations are generally an improvement and in character with the rest of the house. One member concurred with the Staff recommendation. The majority of the LAP urges a very lenient review of this elevation.

Submitted on behalf of the LAP by
Tom Bourke
Chair

CASE NO. A-1667
Appeal of Christopher S. and Patricia B. Abell
(Hearings held May 12, 2008 and June 16, 2008)

DECISION OF THE BOARD OF MANAGERS

Summary of Case

This proceeding is an appeal pursuant to Section 17-4 of the Chevy Chase Village Code. Christopher S. and Patricia B. Abell (the "Applicants") request permission to remove two (2) tulip poplar trees, forty-one inches (41.0") and forty-three inches (43.0") in diameter, respectively (collectively, the "Subject Trees"), located in the rear yard of their property. The Village Manager denied the application, finding that none of the conditions described in Section 17-3 of the Village Urban Forest Ordinance apply.

This application is filed pursuant to the provisions of Section 17-4, which provide:

(a) An applicant who is denied a permit by the Village Manager may appeal the Manager's decision to the Board of Managers in writing within ten (10) days of the Village Manager's denial of the application for a permit.

(b) The Board of Managers shall have the authority to permit the removal or destruction of a tree or the undertaking of any action that will substantially impair the health or growth of a tree if, after a public hearing, the Board finds that such removal, destruction or other action will not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties and can be permitted without substantial impairment of the purpose and intent of this Ordinance.

The subject property is known as Parts of Lots 4 and 5, Block 27, in the "Section 2, Chevy Chase" subdivision, also known as 14 W. Irving Street, Chevy Chase, MD 20815 (the "Subject Property"). Notice of the May hearing in this matter was posted at the Village Hall and was mailed to

all abutting property owners on the 1st day of May, 2008. Notice of the June hearing in this matter was posted at the Village Hall and was mailed to all abutting property owners on the 5th day of June, 2008.

Summary of Evidence

As part of their request, the Applicants submitted a tree removal permit application, a site plan showing the location of the Subject Trees, and a statement explaining the basis for the Applicants' request. A tree inspection report, prepared by the Village arborist, was submitted for the record. A letter of support, dated April 6, 2008, was also provided to the Village by the following abutting property owners: Mehee and Richard Gluck of 13 Magnolia Parkway, Honor and Charles Ingersoll of 15 Magnolia Parkway, and Nancy Orvis and Michael Fistere of 12 W. Irving Street. Judy Elliott of 17 W. Irving Street submitted a separate letter, dated June 16, 2008, in support of the Applicants' request. Village Tree Committee members Sam Lawrence of 100 E. Lenox Street and Ralph Stephens of 11 Magnolia Parkway each submitted letters opposing the request. Photographs taken by Village staff to show the appearance and location of the Subject Trees were entered into the record of this matter.

The Applicants' letter in support of the application includes the following statement regarding the Subject Trees.

[W]e are very concerned that the trees are a hazard to our safety and property as well as to our neighbors . . . [W]e are concerned that the trees, because of their proximity to our house and to our neighbors, have grown at such an angle that they could fall directly onto our neighbors' home to the left (12 West Irving), onto the house of our neighbors to the rear (13 Magnolia Parkway), or onto our house. The potential for devastating damage, should the trees or their limbs fall, is enormous. Our tree trimmer, Mark Peyton of Peyton's Tree Service, who has often worked in the Village, warned us of this when he recently pruned the trees.

In their letter, the Applicants state that the "trees simply overwhelm the house and are disproportionate to the lot size." The Applicants indicate that they are concerned about the Subject Trees based on two prior incidents. The Applicants note that during a major 1989 storm, three (3) tulip poplar trees fell onto the Applicants' house, and on a separate occasion following a normal rain event a tulip poplar tree's limb fell onto the Applicants' car. Both events resulted in severe damage to

property owned by the Applicants.

The Applicants assert that in the event one or both of the Subject Trees fall and cause their house to be destroyed, under Montgomery County law they would be unable to rebuild their house. The Applicants submitted a letter from their attorney, Elsie L. Reid, Esq., dated May 28, 2008, stating that the County Code, as currently written, precludes the Applicants from reconstructing their house in the event it is destroyed by an act of God, such as the subject trees falling upon the house. Ms. Reid states that Chapter 50 of the County Code would prohibit a permit from being issued to the Applicants for a replacement house because their house crosses a lot line and the Subject Property is comprised of parts of two previously platted lots (as opposed to a single part of a previously platted lot). Ms. Reid further states that under current County law, the Applicants cannot replat their lot because the lot is only 4,650 square feet, which does not meet the County's 5,000 square foot minimum requirement for replatting. Assistant Village Counsel Adam J. Cohen, Esq. submitted an advisory opinion to the Board, dated May 28, 2008, confirming the Applicants' assertions regarding the County law.

The letter from three (3) abutting property owners supporting the Applicants' request states, "In our opinion, the trees are of disproportionate size for the very modest lot, constitute hazards to the safety of the Abells and to each of us and to our families, and also threaten injury to all of our properties." A separate letter from Ms. Elliott of 17 W. Irving Street expresses support for the Applicants' request and states that her house has been damaged by a falling tulip poplar tree.

The Village arborist states that after a visual inspection of the trunk face and main stem the Subject Trees appear healthy, although he notes that he was unable to inspect a cavity in one tree's upper crown due to the presence of a raccoon.

At the May hearing, the Applicants appeared and Mr. Abell testified that the size of the Subject Trees is disproportionate to the size of the Applicants' rear yard. He reported that the Applicants' tree trimmer has warned that the Subject Trees are angled in a manner that could cause them to fall and

result in substantial damage to the Applicants' house, their neighbors' house, and/or persons in the area. The Applicants proposed a reforestation plan that includes planting two (2) hardwood trees of a species that would achieve a mature height of at least forty-five feet (45').

Bob Elliott, appearing on behalf the Tree Committee, testified that the Tree Committee voted 3 to 2 in favor of the Applicants' request to remove both of the Subject Trees based on the following findings: (1) Michael Dirr, Ph.D., a renowned horticulturalist, notes in his reference book on trees that tulip poplars are generally weak-wooded and not advisable for small properties or locations near streets; and (2) the brittle nature and leaning angle of the Subject Trees constitutes a "risky situation" that has led neighborhood residents to be justifiably "nervous" about the trees' potential collapse. Mr. Elliott suggested that the trunk of one tree could be rotting due to the existence of a number of holes in the tree despite a visual inspection that led the arborist to diagnose the tree as healthy. Mr. Elliott further testified that the Tree Committee recommends that both of the Subject Trees be removed as removal of only one tree would decrease lateral support for the other tree and could result in a dangerous imbalance.

In his dissent to the Tree Committee's vote, Committee member Ralph Stephens, whose property abuts the Subject Property, noted that the Subject Trees constitute part of his property's urban forest canopy and contribute significantly to the Village's treescape. He expressed his belief that the trees are "well rooted," "are about as stable as large trees can get," and "are exactly what the Urban Forest Code was designed to protect." Mr. Stephens also cited the Village arborist's diagnosis of the trees as healthy and the trees' contribution to the Village canopy as reasons for the Board to deny the request. Tree Committee member Sam Lawrence wrote in opposition, "Whereas it is true that two enormous trees on a small lot may seem disproportionate, these trees are an important element of the ecosystem of the entire block in which they are situated. They are highly visible and are important environmental assets." Mr. Lawrence also expressed his belief that the potential for limbs to fall from

the Subject Trees is not any greater than that for any other trees in the Village.

After hearing testimony, the Board expressed its interest in confirming the Applicants' assertion that the County law would prohibit the Applicants from reconstructing their house in the event of its destruction. The Board continued the matter until June in order to allow the Applicants an opportunity to provide supporting documentation of this interpretation of the County law and to provide Village counsel time to confirm its accuracy.

At the June hearing, the Applicants appeared and noted the submission of Ms. Reid's letter, dated May 28, 2008, for the record and reiterated their proposal to reforest their property with two (2) new hardwood trees. No testimony or other evidence in support of or in opposition to the application was received.

Findings of Fact

The Board has considered the factors set forth in Section 17-6 of the Urban Forest Ordinance and makes the following findings.

Sec. 17-6(a). Criteria specified in Section 17-3.

There is no evidence to support the conclusion that the Subject Trees are seriously diseased or dying, although the tree inspection report states that only a visual inspection of the trunk face and main stem of the Subject Trees was conducted and the Village arborist was unable to inspect a cavity in the upper crown of one of the trees because of the presence of a raccoon. The Board finds that the Subject Trees are weak-wooded in nature and have grown at an angle, and the combination of these characteristics increases the possibility that the Subject Trees could fall prematurely and threaten the safety of nearby persons and injury to property.

Sec. 17-6(b). The reasons cited by the Applicants for wanting to remove or destroy the tree.

The Applicants propose to remove the Subject Trees to eliminate what they believe to be an unsafe condition that presents a safety hazard to them, their children and their neighbors, as well as

threatens injury to their and their neighbors' property. The Applicants claim that in the event the trees were to fall and destroy their house, County law would preclude them from reconstructing their house on the Subject Property. The Board finds that, although the Subject Trees currently may be healthy, the Subject Trees' potential collapse could destroy the Applicants' house and effectively render their lot unusable for residential purposes.

Sec. 17-6(c). The reasons, if any, cited by residents who are either in favor of or in opposition to the issuance of the permit.

Based upon the testimony presented, the recommendation of the Village Tree Committee, and the photographs submitted for inclusion in the record, the Board finds that tulip poplar trees are generally weak-wooded by nature and more likely to fall prematurely than other species of trees. Further, the Board finds that the current inclination of these specific tulip poplar trees presents a potentially dangerous condition to the Applicants and abutting property owners, several of whom have expressed their fear of the trees' premature collapse. While the Subject Trees contribute to the Village canopy and provide aesthetic value to the neighborhood, the Board finds that the potential damage and harm the trees' collapse could cause to the Applicants and abutting property owners and the inability of the Applicants to rebuild their house in the event of its destruction by the Subject Trees outweighs the reasons cited for denying the Applicants' request.

Sec. 17-6(d). Whether tree clearing is necessary to achieve proposed development, construction or land use otherwise permitted under the Village Code, and the extent to which there is no reasonable alternative.

The Board finds that removal of the Subject Trees is not necessary to achieve proposed development or construction, but removal may be necessary to maintain the house and residential use of the lot as the trees' collapse onto and destruction of the Applicants' house could leave the Applicants unable to construct a replacement house on the Subject Property under current County law.

There is no evidence that these concerns could be addressed in a manner that would preserve the Subject Trees.

Sec. 17-6(e). Whether the Applicants propose reforestation.

The Applicants propose to reforest with two (2) new hardwood trees on the Subject Property. The Village Tree Committee recommends such reforestation and has agreed to guide the Applicants in the reforestation process. The Board finds that two (2) new hardwood trees could mitigate the effects that the removal of the Subject Trees would have on the Village canopy.

Sec. 17-6(f). Hardship to the Applicants if a permit for the requested action is denied.

Denial of the requested action could result in an undue hardship on the Applicants in the event one or both of the Subject Trees fall and damage the Applicants' house to an extent that reconstruction of the house would be required. In the event the house is destroyed, current Montgomery County law would preclude the Applicants from reconstructing their house and effectively render their lot unusable. The Board finds that the extreme hardship the Applicants would face if the house is destroyed outweighs the counterbalancing benefit of the trees to the public.

Sec. 17-6(g). The desirability of preserving a tree by reason of its age, size or outstanding qualities, including uniqueness, rarity or species specimen.

Although the Subject Trees are mature and large enough in circumference to be protected by the Village Urban Forest ordinance, the evidence reveals that the Subject Trees have grown at an angle and are of a species that is considered weak-wooded, the combination of which makes them a greater threat than other trees to fall prematurely. Although the Board recognizes that the Subject Trees contribute to the Village canopy, the Board finds that the unique circumstances faced by the Applicants in the event their house is destroyed and the characteristics of the Subject Trees which make that possibility less remote, outweigh the desirability of preserving the Subject Trees in this case.

Sec. 17-6(h). Such other relevant matters as will promote fairness and justice in deciding the

particular case.

Taking all of the foregoing findings into consideration, with the reforestation agreed to by the Applicants, the Board finds that the removal of the two mature tulip poplar trees would not materially impair the purposes of the Village Urban Forest Ordinance.

Conclusions

Based upon the testimony and evidence of record, the Board finds that the removal of two (2) tulip poplar trees measuring forty-one inches (41.0") and forty-three inches (43.0") inches in diameter, respectively, would not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties and can be permitted without substantial impairment of the purpose and intent of the Village Urban Forest Ordinance, provided that the Applicants comply with the conditions set forth in the following paragraph.

Accordingly, the request for a permit to remove two tulip poplar trees measuring forty-one inches (41.0") and forty-three inches (43.0") inches in diameter, respectively, is granted, subject to the following conditions:

1. the trees must be removed on or before June 16, 2009, or this permit shall become void;
2. the Applicants must reforest with at least two (2) hardwood trees, which must be at least two and one-half inches (2 ½") in caliper at the time of installation and must be of a species that achieves a mature height of at least forty-five feet (45'); and
3. the installation of the reforestation trees shall be completed on or before June 16, 2009, and such trees shall be considered reforestation trees subject to regulation under the Village Urban Forest Ordinance.

Resolution

The Chevy Chase Village Board of Managers hereby adopts the following Resolution:

BE IT RESOLVED by the Board of Managers of Chevy Chase Village that the Decision stated above be adopted as the decision required by

Section 17-5(b) of the Chevy Chase Village Code, and the Village Manager be and he is hereby authorized and directed to issue a permit for the removal of two tulip poplar trees, measuring forty-one inches (41.0") and forty-three inches (43.0") inches in diameter, upon the conditions, terms and restrictions set forth above.

The foregoing Resolution was adopted by the Chevy Chase Village Board of Managers with the following members voting in favor of the Resolution: Gail Feldman, Robert Jones, Douglas B. Kamerow and Peter Yeo. David L. Winstead was not present for the hearing in this matter, and Betsy Stephens recused herself. Susie Eig abstained. Mr. Winstead and Ms. Stephens did not participate in this Decision.

I HEREBY CERTIFY that the foregoing Decision and Resolution were approved and adopted by the Chevy Chase Village Board of Managers on this _____ day of June, 2008.

Susie Eig, Secretary
Board of Managers

MONTGOMERY COUNTY HISTORIC PRESERVATION COMMISSION
STAFF REPORT

Address:	14 West Irving Street, Chevy Chase	Meeting Date:	7/9/08
Resource:	Non-Contributing Resource Chevy Chase Village Historic District	Report Date:	7/2/08
Applicant:	Chris and Patricia Abell	Public Notice:	6/25/08
Review:	HAWP	Tax Credit:	None
Case Number:	35/13-08N	Staff:	Anne Fothergill
PROPOSAL:	Removal of two trees		

STAFF RECOMMENDATION

Staff recommends that the HPC deny this HAWP application.

ARCHITECTURAL DESCRIPTION

SIGNIFICANCE: Non-Contributing Resource within the Chevy Chase Village Historic District
STYLE: Modern
DATE: 1928

BACKGROUND

In July 2007 the HPC approved a HAWP allowing the applicants to renovate the existing house and construct a side addition. The HAWP was conditionally approved with a tree protection requirement.

In March 2008 the Chevy Chase Village arborist denied the applicants' application to remove two tulip poplar trees. In April 2008 the applicants filed an appeal with the Village Board of Managers. The Village Tree Committee voted in favor of the tree removal and in June 2008 the Village Board approved the tree removal.

PROPOSAL

The applicants are proposing to remove two tulip poplar trees (41" and 43" diameter) in the rear yard of their property. The applicants are concerned that the trees are a hazard to their and their neighbors' safety and property. In 1989 three tulip poplars fell on their house and in 1984 a limb of a tulip poplar fell on their car; both times there was extensive damage. Under County law, the applicants would not be able to rebuild on their lot should their house be destroyed by a tree.

The applicants submitted a letter of support from the owners of three adjacent properties (see applicants' letter to Village Board of Managers in Circles 17-20). While not specifically noted in this HAWP application, the applicants included in their submission to Chevy Chase Village a proposal that they plant two new hardwood trees on their property.

APPLICABLE GUIDELINES

When reviewing alterations and new construction within the Chevy Chase Village Historic District several documents are to be utilized as guidelines to assist the Commission in developing their decision. These documents include the historic preservation review guidelines in the approved and adopted amendment for the *Chevy Chase Village Historic District (Guidelines)*, *Montgomery County Code Chapter 24A (Chapter 24A)*, and the *Secretary of the Interior's Standards for Rehabilitation (Standards)*. The pertinent information in these documents is outlined below.

Chevy Chase Village Historic District

Alterations to Existing Structures:

Another critical characteristic of the proposed historic district is its “naturalistic landscape,” with numerous and “massive” mature trees, a “remarkable park-like setting,” and “dramatic canopies for the roads and houses.” This aspect of the Village began with the original plan, has been fostered by the Village Board of Managers through the Village’s Urban Forest Ordinance and the work of the Village arborist and Tree Committee, and is largely responsible for its continued existence as “one of the most intact and important examples of suburban planning and architectural expression build in the region before Work War II.” Thus, it is also of paramount importance that the HPC recognize and foster the Village’s open, park-like character, which necessitates respect for existing environmental settings, landscaping, and patterns of open space. For most Village residents, these landscape and scale issues far outweigh questions of architectural style. In addition, this critical characteristic of the proposed historic district requires careful attention by appropriate agencies to nearby developments which could adversely impact the Village’s open, park-like character.

Non-Contributing/Out-of-Period Resources:

Non-contributing/out-of-period resources are either buildings that are of little or no architectural and historical significance to the historic district or newer buildings constructed outside the district’s primary period of historical importance. HAWP applications for exterior alterations, changes, and/or additions to these types of resources should receive the most lenient level of design review.

Most alterations and additions to non-contributing resources should be approved as a matter of course. The only exceptions would be major additions and alterations to the scale and massing of the structure which affect the surrounding streetscape and/or landscape and could impair the character of the district as a whole.

Montgomery County Code; Chapter 24A

A HAWP permit should be issued if the Commission finds that:

1. The proposal will not substantially alter the exterior features of a historic site or historic resource within a historic district.
2. The proposal is compatible in character and nature with the historical archaeological, architectural or cultural features of the historic site or the historic district in which a historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter.

In the case of an application for work on a historic resource located within a historic district, the Commission shall be lenient in its judgment of plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value surrounding historic resources or would impair the character of the historic district.

A HAWP should be denied if the Commission finds, based on the evidence and information presented to or before the commission that:

the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter.

Secretary of the Interior's Standards for Rehabilitation:

Standard #1: A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

Standard #2: The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided;

Standard #9: New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

STAFF DISCUSSION

The Commission generally does not support the removal of healthy large canopy trees in a historic district.

The Chevy Chase Village *Guidelines* state that a “critical characteristic of the proposed historic district is its ‘naturalistic landscape,’ with numerous and ‘massive’ mature trees, a ‘remarkable park-like setting,’ and ‘dramatic canopies for the roads and houses.’ The *Guidelines* also state that it is “of paramount importance that the HPC recognize and foster the Village’s open, park-like character, which necessitates respect for existing environmental settings, landscaping, and patterns of open space.” This house is a Non-Contributing resource, and the *Guidelines* state that the HPC should review whether proposed alterations “affect the surrounding streetscape and/or landscape and could impair the character of the district as a whole.”

When Chevy Chase Village residents apply for tree removal, the HPC relies on the Chevy Chase Village Arborist’s assessment of the tree’s condition. If the arborist determines that a tree is dead, dying, or hazardous, a property owner would qualify for a tree removal waiver and would not need to apply for a Historic Area Work Permit to remove the tree.

In this case, the arborist found the two trees to be healthy and subsequently denied the applicants’ tree removal application. The owners appealed this decision and the Chevy Chase Village Tree Committee found in favor of the tree removal and the Board of Managers approved the tree removal. The Village Board’s decision was not available to be included in the staff report, but under Village Code 17-4 (b), the Board can permit the removal of a tree if it “will not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties...” The Code does not require the Board to consider historic preservation issues. (see Circle 21)

The applicants have raised two potentially mitigating concerns: potential life safety issues posed by the trees’ large size, age, type, and their close proximity to the subject property as well as neighboring (contributing) properties; and potential financial issues created under the zoning ordinance, which would prevent the reconstruction of any residential structure on this (nonconforming) property. Staff is sympathetic to both concerns raised in this unique situation.

However, the *Guidelines* state that the Commission should respect, preserve and protect the existing environment and landscape which includes the very large mature trees within the historic district. These trees contribute to the overall character of the district and their removal would impair the historic district. Staff is recommending that the proposed tree removal be denied.

STAFF RECOMMENDATION

Staff recommends that the Commission deny the HAWP application as being consistent with Chapter 24A-8(a):

A HAWP should be denied if the Commission finds, based on the evidence and information presented to or before the Commission that the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter.

and inconsistent with the *Secretary of the Interior's Standards for Rehabilitation*.



RETURN TO: DEPARTMENT OF PERMITTING SERVICES
255 ROCKVILLE PIKE, 2nd FLOOR, ROCKVILLE, MD 20850
240/777-6370

DPS - #8

HISTORIC PRESERVATION COMMISSION
301/563-3400

APPLICATION FOR
HISTORIC AREA WORK PERMIT

Contact Person: GEORGE MYERS

Daytime Phone No.: 240.333.2000

Tax Account No.: _____

Name of Property Owner: CHRIS & PATRICIA ABELL Daytime Phone No.: 301.365.2703

Address: 8 MAGNOLIA PARKWAY CHEVY CHASE MD 20815
Street Number City Street Zip Code

Contractor: GIBSON BUILDERS Phone No.: _____

Contractor Registration No.: _____

Agent for Owner: GEORGE MYERS Daytime Phone No.: 240.333.2000

LOCATION OF BUILDING/PREMISE

House Number: 14 WEST IRVING Street: _____

Town/City: CHEVY CHASE Nearest Cross Street: MAGNOLIA PARKWAY

Lot: HES Block: 27 Subdivision: SECTION 2, CHEVY CHASE VILLAGE

Liber: _____ Folio: _____ Parcel: _____

PART ONE: TYPE OF PERMIT ACTION AND USE

- 1A. CHECK ALL APPLICABLE: APPLICATION FOR TREE REMOVAL CHECK ALL APPLICABLE:
- Construct Extend Alter/Renovate AC Slab Room Addition Porch Deck Shed
- Move Install Wreck/Raze Solar Fireplace Woodburning Stove Single Family
- Revision Repair Revocable Fence/Wall (complete Section 4) Other: _____

1B. Construction cost estimate: \$ 900,000

1C. If this is a revision of a previously approved active permit, see Permit # 457348

PART TWO: COMPLETE FOR NEW CONSTRUCTION AND EXTEND/ADDITIONS

2A. Type of sewage disposal: 01 WSSC 02 Septic 03 Other: _____

2B. Type of water supply: 01 WSSC 02 Well 03 Other: _____

PART THREE: COMPLETE ONLY FOR FENCE/RETAINING WALL

3A. Height _____ feet _____ inches

3B. Indicate whether the fence or retaining wall is to be constructed on one of the following locations:

- On party line/property line Entirely on land of owner On public right of way/easement

I hereby certify that I have the authority to make the foregoing application, that the application is correct, and that the construction will comply with plans approved by all agencies listed and I hereby acknowledge and accept this to be a condition for the issuance of this permit.

[Signature]
Signature of owner or authorized agent

06/18/08
Date

Approved: _____ For Chairperson, Historic Preservation Commission

Disapproved: _____ Signature: _____ Date: _____

Application/Permit No.: 488086 Date Filed: 6/18/08 Date Issued: _____

**THE FOLLOWING ITEMS MUST BE COMPLETED AND THE
REQUIRED DOCUMENTS MUST ACCOMPANY THIS APPLICATION.**

1. **WRITTEN DESCRIPTION OF PROJECT**

a. Description of existing structure(s) and environmental setting, including their historical features and significance:

HOUSE ALREADY UNDER RENOVATION PERMIT # FROM HPC 457348
MONTGOMERY COUNTY PERMIT # 471733

b. General description of project and its effect on the historic resource(s), the environmental setting, and, where applicable, the historic district:

APPEAL TO REMOVE THE TWO TULIP POPLAR TREES LOCATED
AT REAR OF PROPERTY 14 WEST IRVING ST. THESE ARE CAUSE
FOR CONCERN FOR THE SAFETY OF OUR NEIGHBORS AND THE PROPERTY
IN QUESTION SHOULD THEY OR THEIR LIMBS FALL.

2. **SITE PLAN**

Site and environmental setting, drawn to scale. You may use your plat. Your site plan must include:

- a. the scale, north arrow, and date;
- b. dimensions of all existing and proposed structures; and
- c. site features such as walkways, driveways, fences, ponds, streams, trash dumpsters, mechanical equipment, and landscaping.

3. **PLANS AND ELEVATIONS**

You must submit 2 copies of plans and elevations in a format no larger than 11" x 17". Plans on 8 1/2" x 11" paper are preferred.

- a. *Schematic construction plans*, with marked dimensions, indicating location, size and general type of walls, window and door openings, and other fixed features of both the existing resource(s) and the proposed work.
- b. Elevations (facades), with marked dimensions, clearly indicating proposed work in relation to existing construction and, when appropriate, context. All materials and fixtures proposed for the exterior must be noted on the elevations drawings. An existing and a proposed elevation drawing of each facade affected by the proposed work is required.

4. **MATERIALS SPECIFICATIONS**

General description of materials and manufactured items proposed for incorporation in the work of the project. This information may be included on your design drawings.

5. **PHOTOGRAPHS**

- a. Clearly labeled photographic prints of each facade of existing resource, including details of the affected portions. All labels should be placed on the front of photographs.
- b. Clearly label photographic prints of the resource as viewed from the public right-of-way and of the adjoining properties. All labels should be placed on the front of photographs.

6. **TREE SURVEY**

If you are proposing construction adjacent to or within the dripline of any tree 6" or larger in diameter (at approximately 4 feet above the ground), you must file an accurate tree survey identifying the size, location, and species of each tree of at least that dimension.

7. **ADDRESSES OF ADJACENT AND CONFRONTING PROPERTY OWNERS**

For **ALL** projects, provide an accurate list of adjacent and confronting property owners (not tenants), including names, addresses, and zip codes. This list should include the owners of all lots or parcels which adjoin the parcel in question, as well as the owner(s) of lot(s) or parcel(s) which lie directly across the street/highway from the parcel in question. You can obtain this information from the Department of Assessments and Taxation, 51 Monroe Street, Rockville, (301/279-1355).

PLEASE PRINT (IN BLUE OR BLACK INK) OR TYPE THIS INFORMATION ON THE FOLLOWING PAGE.
PLEASE STAY WITHIN THE GUIDES OF THE TEMPLATE. AS THIS WILL BE PHOTOCOPIED DIRECTLY ONTO MAILING LABELS.

6

MAILING LIST FOR APPEAL A-1667

**MR. AND MRS. CHRISTOPHER S. ABELL
14 WEST IRVING STREET
CHEVY CHASE, MARYLAND 20815**

Adjoining and confronting property owners	
Mr. and Mrs. Frederick L. Bissinger Or Current Resident 9 West Irving Street Chevy Chase, MD 20815	Mr. and Mrs. David H. Bralove Or Current Resident 11 West Irving Street Chevy Chase, MD 20815
Mr. Michael S. Fistere Ms. Nancy J. Orvis Or Current Resident 12 West Irving Street Chevy Chase, MD 20815	Mr. and Mrs. Henry A. Dudley, Jr. Or Current Resident 13 West Irving Street Chevy Chase, MD 20815
Mr. Tom Buckwalter Ms. Sue Utterback Or Current Resident 15 West Irving Street Chevy Chase, MD 20815	Mr. and Mrs. Ralph C. Stephens Or Current Resident 11 Magnolia Parkway Chevy Chase, MD 20815
Mr. and Mrs. Richard D. Gluck Or Current Resident 13 Magnolia Parkway Chevy Chase, MD 20815	Mr. Charles Ingersoll Or Current Resident 15 Magnolia Parkway Chevy Chase, MD 20815

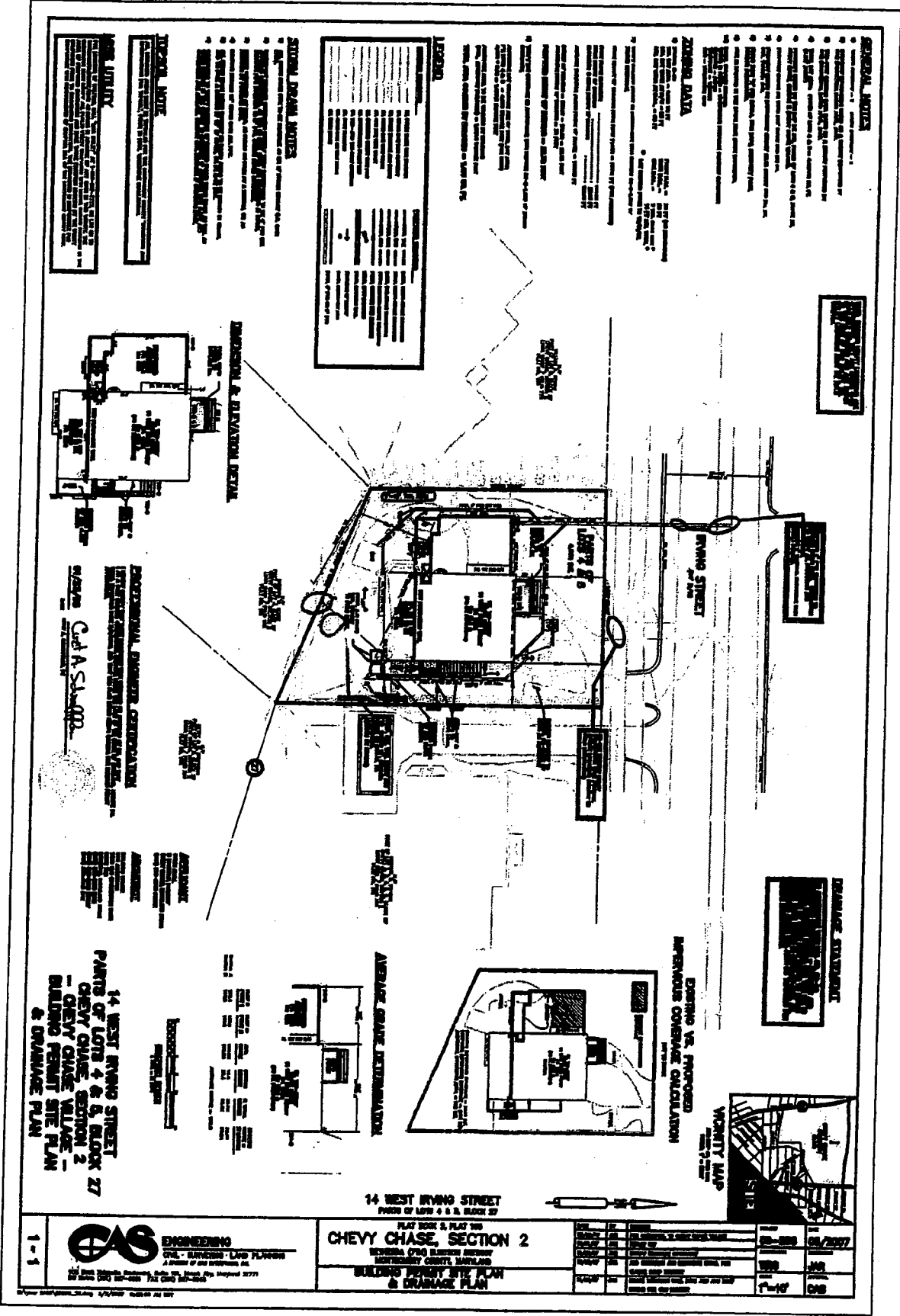
I hereby certify that a public notice was mailed to the aforementioned property owners on the 5th day of June, 2008.

**Doris M. Lyerly
Chevy Chase Village
5906 Connecticut Avenue
Chevy Chase, MD 20815**

8

14 West Irving St.

Scale: 1" = 40'



14 WEST IRVING STREET
 PARTS OF LOTS 4 & 5, BLOCK 27
 CHEVY CHASE, SECTION 2
 BUILDING PERMIT SITE PLAN
 & DRAINAGE PLAN

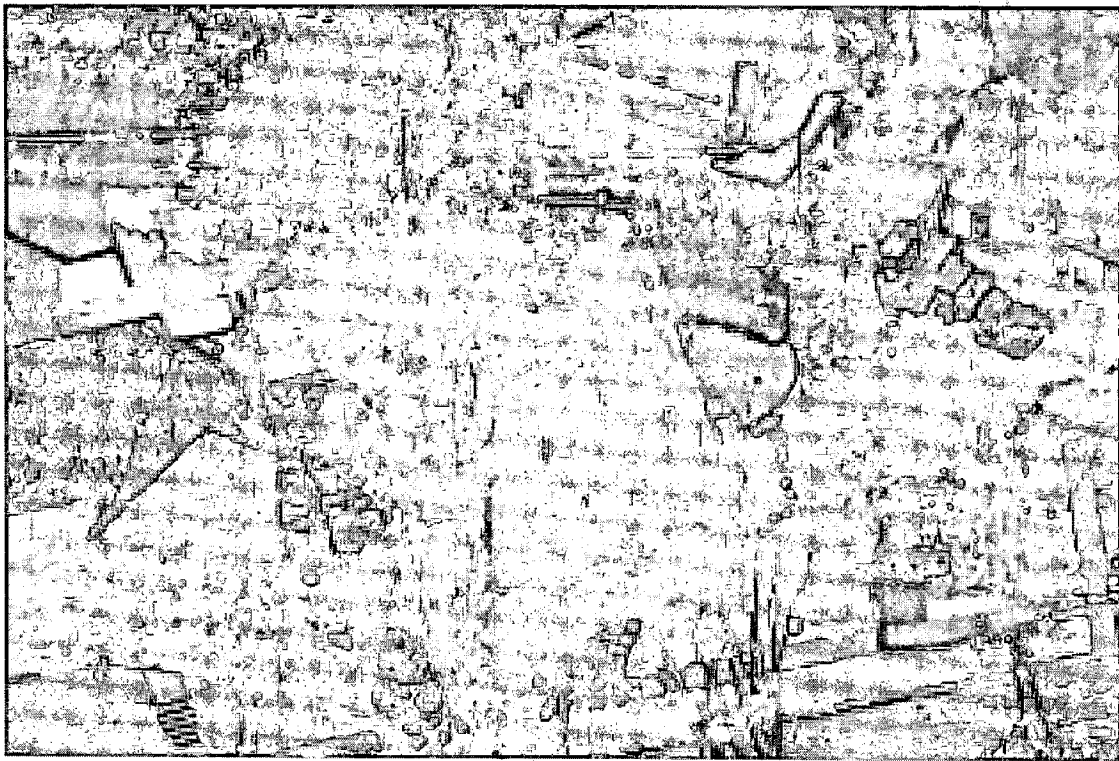
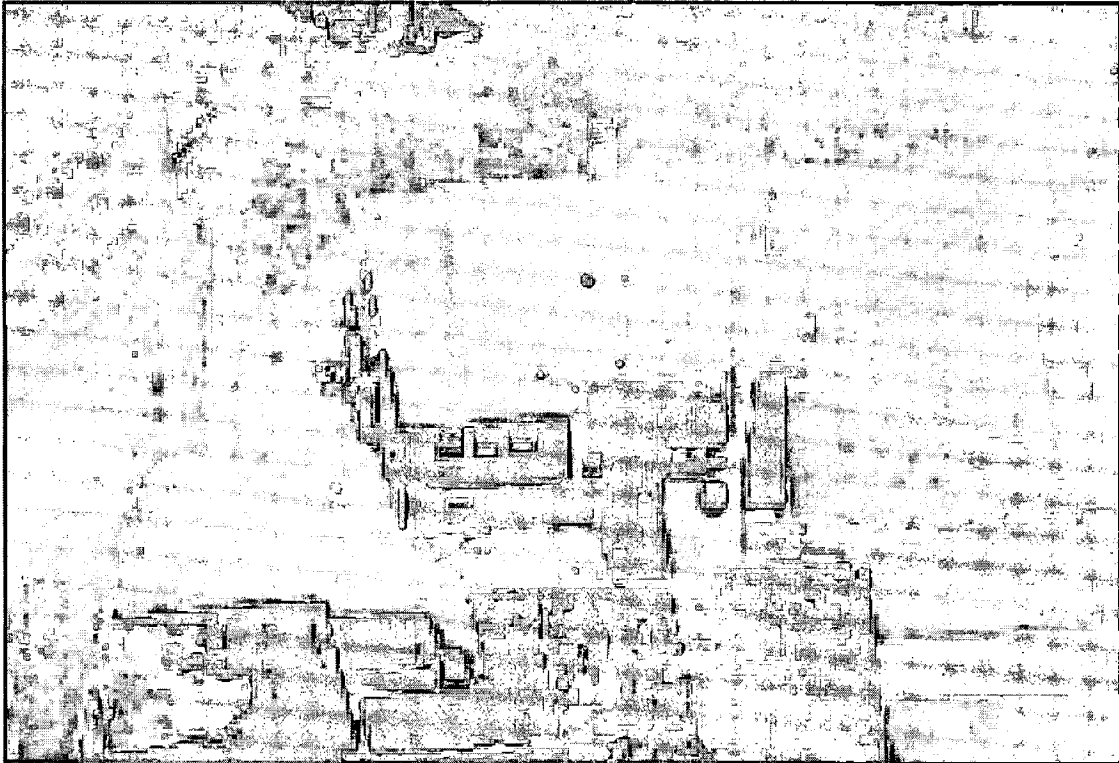
14 WEST IRVING STREET
 PARTS OF LOTS 4 & 5, BLOCK 27
 CHEVY CHASE, SECTION 2
 BUILDING PERMIT SITE PLAN
 & DRAINAGE PLAN

1-1

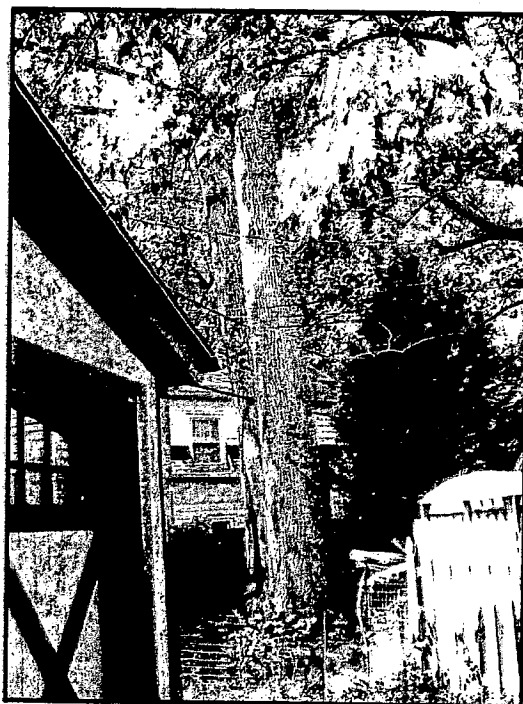
ENGINEERING
 CIVIL - ARCHITECTURAL - LAND PLANNING
 A member of the HOK GROUP

NO.	DESCRIPTION	DATE	BY	CHKD.
1	PRELIMINARY	08/20/27	JAS	ONE
2	REVISED	08/20/27	JAS	ONE
3	REVISED	08/20/27	JAS	ONE
4	REVISED	08/20/27	JAS	ONE
5	REVISED	08/20/27	JAS	ONE
6	REVISED	08/20/27	JAS	ONE
7	REVISED	08/20/27	JAS	ONE
8	REVISED	08/20/27	JAS	ONE
9	REVISED	08/20/27	JAS	ONE
10	REVISED	08/20/27	JAS	ONE

14 W. Image



14 West Irving Street





Site Photo

Able Residence 14 West Irving Street, Chevy Chase Village

155
11

040



G T M
7735 OLD GEORGETOWN ROAD
SUITE 700
BETHESDA, MD 20814
(240)333-2000
(240)333-2001 FAX

21

Site Photo

Able Residence 14 West Irving Street, Chevy Chase Village



7735 OLD GEORGETOWN ROAD
SUITE 700
BETHESDA, MD 20814
(240)333-2000
(240)333-2001 FAX



G T M

0401

Tree Inspection Request

Address 4 West Irving Street

Date MARCH 20, 2008

Resident's Name CHRISTOPHER + PATRICIA ABELL

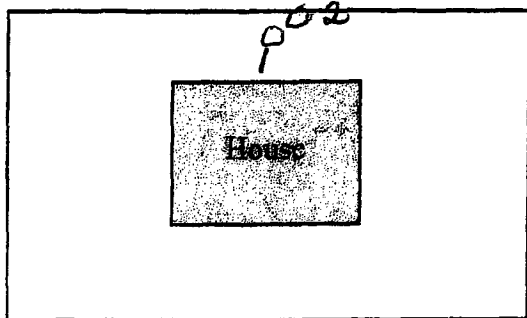
Phone #'s 301-656-1056
301-365-2703

Circle One: Private Property

Village Street/Park Tree _____

Concern(s) TWO LARGE TULIP POPLAR TREES IN REAR YARD CAUSE CONCERN

FOR THE SAFETY OF OUR NEIGHBORS AND OURSELVES AND ALSO THREATEN
INJURY TO OUR PROPERTY SHOULD THEY OR THEIR LIMBS FALL. WE HAVE HAD
BAD EXPERIENCES WITH MATURE TULIP POPLARS DAMAGING OUR HOME AND PROPERTY IN THE



Call taker to indicate location of tree(s) using "plat" and Number designation itemized below.

- #1 _____
- #2 _____
- #3 _____

Street

(Please list no more than three trees per page)

*****To be completed by arborist*****

Tree #1: Type and Diameter Tulip tree

Assessment: Cannot ~~see~~ inspect cavity in upper crown because of racoon. Visual inspection of trunk base and main stem. Tree looks healthy

Tree #2: Type and Diameter Tulip tree

Assessment: Tree looks healthy

Tree #3: Type and Diameter _____

Assessment: _____

If removal requested. –	Approved		Denied		Permit Required?	Y		N	
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tree #1:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tree #2:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tree #3:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Signature [Signature]

Date 3-21-08

CHEVY CHASE VILLAGE
5906 CONNECTICUT AVENUE
CHEVY CHASE, MD 20815
Telephone (301) 654-7300
Fax (301) 907-9721
ccv@montgomerycountymd.gov

GEOFFREY B. BIDDLE
Village Manager
DAVID R. PODOLSKY
Legal Counsel

BOARD OF MANAGERS
DOUGLAS B. KAMEROW
Chair
DAVID L. WINSTEAD
Vice Chair
SUSIE EIG
Secretary
GAIL S. FELDMAN
Treasurer
BETSY STEPHENS
Assistant Treasurer
PETER M. YEO
Board Member
ROBERT L. JONES
Board Member

March 21, 2008

Mr. and Mrs. Christopher S. Abell
8 Magnolia Parkway
Chevy Chase, MD 20815

RE: 14 West Irving Street—Tree Removal Request

Dear Mr. and Mrs. Abell:

The Village arborist, William Dunn, has inspected the two Tulip Poplar trees in the rear yard of the above-referenced property. In his report, Mr. Dunn stated that both trees are healthy and are, therefore, denied for removal. A copy of Mr. Dunn's report is attached for your reference.

In order to appeal the arborist's decision, you may do so by following the procedures set forth in Chapter 17 of the Code of Ordinances, a copy of which I have enclosed. The deadline for the April 14, 2008 (or May 12, 2008) Board Meeting is 5:00 p.m. on Monday, March 31 (or Monday, April 21).

If you have any questions or if we can assist you further, please contact the Village office at (301) 654-7300.

Sincerely,



Shana R. Davis-Cook
Manager of Administration
Chevy Chase Village

Enclosures

Chevy Chase Village Tree Removal Permit Application

Permit Number: A-1667

Date of Application: 4/29/2008

Applicant Name: <u>CHRISTOPHER and PATRICIA ABELL</u>	
Address: <u>41 WEST IRVING STREET</u>	Phone: <u>301-656-1056</u>
Contractor (Required): <u>PEYTON TREE SERVICES</u>	Phone: <u>301-229-7562</u>
Contact Person: <u>MARK PEYTON</u>	MD DNR License No. (Required) <u>182</u>

Chapter 17. Urban Forest §17-1 and 17-2. Permit Required

Chapter 17 applies to trees on private property with trunks that measure at least twenty-four (24) inches in circumference at four and one-half (4 1/2) feet above ground level. § 17-2 reads: "no person shall remove or destroy, or cause the removal or destruction, of a tree or undertake any action that will substantially impair the health or growth of a tree without first obtaining a permit from the Village Manager. No permit shall be required for normal and reasonable trimming or other tree care designed to maintain the health, shape, or balance of a tree."

§17-3 Permit Standards

The Village Manager is authorized to issue a permit only if at least one (1) of the following conditions applies:

- The tree is damaged beyond restoration, insect infected beyond restoration, or injured beyond restoration;
- The tree is dead or dying or in danger of falling;
- The tree constitutes a hazard to the safety of persons;
- The tree constitutes a hazard and threatens the safety of property;
- The tree constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees;
- The tree is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner.

An applicant who is denied a tree removal permit by the Village Manager may appeal the Manager's decision to the Board in writing within ten (10) days of the denial for the application of the permit.

Filing Requirements

- There is a \$50.00 per tree filing fee for a Chevy Chase Village Tree Removal Permit.
- Copy of the findings and recommendations report from either the Village staff or the Chevy Chase Village Consulting arborist.
- A completed Tree Removal Permit Application, including the selected tree contractor's name and phone number, and payment of filing fees.

By signing below, I understand that no work may be performed until the Village permit is issued and posted to be visible from the street.

Applicant's Signature: Christopher S. Abell Date: March 20, 2008
Patricia B. Abell

For use by HPC only:

Historic Area Work Permit required? Yes No _____ (HPC Initials)

Tree Removal Plans (including reforestation plan, if any)	
-	Remove two large tulip poplar trees in rear yard
-	Reforest, with advice from tree committee, two appropriate hardwood trees, one in the rear yard, another in the front yard. If the committee suggests reforestation off of the property, we would do so.

For Use By Village Manager	Approved with the following conditions:

For Use By Village Manager	Denied for the following reasons:
<p style="text-align: center;">D E N I E D</p> <p style="text-align: center;">MAR 21 2008</p> <p style="text-align: center;">Chevy Chase Village Manager</p>	<i>BOTH ARE NEARER TO REALITY</i>
	<i>[Signature]</i>

Billing Fees	Checks Payable to:	Chevy Chase Village 5906 Connecticut Avenue Chevy Chase, MD 20815
Permit Fee: \$100		
Damage Deposit:		
Appeal Fee: \$2500	Date: March 20, 2008	
Total Fees & Deposits:	Staff Signature: <i>[Signature]</i>	
<i>PAID by check</i>		

Christopher and Patricia Abell
8 Magnolia Parkway
Chevy Chase, MD 20815

STATEMENT FOR BASIS OF APPEAL TO
REMOVE TREES AT 14 WEST IRVING STREET

Dear Board of Managers,

We respectfully appeal the Village Manager's denial of our application to remove the two tulip poplar trees located at the rear of our property at 14 West Irving Street. We are currently in the process of renovating the house on that property and expect to move into our new home in eight to ten months.

In addition to enumerating the reasons for our appeal, we also respectfully request that all members of the Board of Managers and the Tree Committee visit the site to view the trees in question both up close and at a distance.

Our appeal is based upon several factors.

First, we are very concerned that the trees are a hazard to our safety and property as well as to our neighbors.

Unfortunately, we have had terrible experiences with mature, healthy tulip poplars in the past, incidents that destroyed our property, damaged our home, and threatened our safety.

From 1979 to 1988, we lived directly behind 14 West Irving Street, at 13 Magnolia Parkway. In the summer of 1984, an enormous limb of a mature and healthy tulip poplar in our front yard fell, with no provocation other than an overnight rain, crushing and destroying our car, which was parked in the driveway. Fortunately the limb fell very early in the morning so that neither our children nor we were injured. Any of us could have been killed. Eventually the Village removed the tree.

For the past twenty years we have lived at 8 Magnolia Parkway (I, Chris Abell, have lived in the Village for 53 years, having been born and raised here). In June of 1989, a terrible storm swept through our neighborhood, knocking down five of our oldest trees -- including three mature and healthy tulip poplars -- onto our house and property, causing immense damage. Again, because our children went to the basement, no one, thank God, was harmed by the trees, which crashed onto and broke through our roof.

Accordingly, while we enjoy the stately trees of Chevy Chase Village, we are very concerned about the fragility of even the healthiest and most mature tulip poplars, in good weather and in bad.

Second, we are concerned that the trees, because of their proximity to our house and to our neighbors, have grown at such an angle that they could fall directly onto our neighbors' home to the left (12 West Irving), onto the house of our neighbors to the rear (13 Magnolia Parkway), or onto our house. The potential for devastating damage, should the trees or their limbs fall, is enormous. Our tree trimmer, Mark Peyton of Peyton's Tree Service, who has often worked in the Village, warned us of this when he recently pruned the trees. In addition, we ask that you please consider our neighbors' concerns as stated in their attached letter of support.

Third, we know that should one or both of the tulip poplars fall onto our home and destroy it (it will be a narrow home), we would not be permitted by Montgomery County to rebuild it. This may seem odd, but it is true. In the course of obtaining building permits for 14 West Irving Street, Montgomery County's planning and permitting personnel informed us in the course of our extensive meeting with them, of the following: because of an apparently little known section of the County Building Code, houses such as ours at 14 West Irving may not be rebuilt if destroyed because they are on lots smaller than 6,000 square feet. The planners admitted to us and to our architect, engineer, and lawyer that while the pertaining section seems unfair, it is in fact the law. In our minds, the two tulip poplar trees present the greatest threat not just to our safety but also to our long-term future at 14 West Irving Street.

Fourth, we do believe that the trees simply overwhelm the house and are disproportionate to the lot size. Certainly we would

reforest should the tulip poplars come down. While we would expect to plant two hardwood trees which would mature to a more proportionate 45 feet -- perhaps one in the back yard and one in the front -- we would welcome the insights of the Tree Committee as to specimens and placements, even if the Committee were to recommend reforestation elsewhere in the Village.

Because of our unfortunate personal experiences with the fragility of healthy and mature tulip poplars; because of the dangers the trees pose to the safety and property of our neighbors' homes and our own; because of the inability to rebuild our home should it be destroyed; and because of our willingness to reforest appropriately, we believe that you, as our responsible Board of Managers, should visit the site and vote favorably for our appeal, allowing us to remove the two tulip poplar trees in question.

We thank you for your consideration.

Respectfully,

Christopher S. Abell
Christopher S. Abell

Patricia B. Abell
Patricia B. Abell

April 7, 2008

**Letter of Support for Christopher and Patricia Abell's
Appeal to Remove Trees at 14 West Irving Street**

Dear Mr. Biddle, the Tree Committee, and Members of the Board of
Managers of Chevy Chase Village,

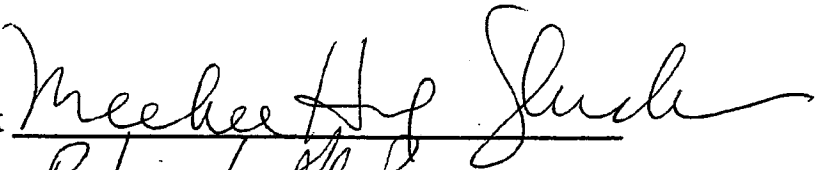
We, the undersigned, who are the adjoining property owners of
the Abell's property at 14 West Irving Street, respectfully request that
the Village Board act favorably upon the Abell's appeal to remove the
two large tulip poplar trees in their rear yard.

In our opinion, the trees are of disproportionate size for the
very modest lot, constitute hazards to the safety of the Abells and to
each of us and to our families, and also threaten injury to all of our
properties.

Thank you for your consideration.

Sincerely,

Mehee Gluck



Richard Gluck



13 Magnolia Parkway

Honor Ingersoll



Charles Ingersoll



15 Magnolia Parkway

Nancy Orvis



Michael Fistere



12 West Irving Street

Dated: April 6, 2008

THE CHEVY CHASE VILLAGE BOARD OF MANAGERS VOTED 4-0 (WITH
2 ABSTENTIONS) IN FAVOR OF REMOVING THE TREES AT THEIR JUNE 16TH
MEETING.

CHEVY CHASE VILLAGE
NOTICE OF PUBLIC HEARING

Please take notice that the Chevy Chase Village Board of Managers will hold a public hearing on the 16th day of June, 2008 at 7:30 p.m. The hearing will be held at the Chevy Chase Village Hall at 5906 Connecticut Avenue in Chevy Chase, Maryland.

APPEAL NUMBER A-1667
MR. AND MRS. CHRISTOPHER S. ABELL
14 WEST IRVING STREET
CHEVY CHASE, MARYLAND 20815

The applicants have filed an appeal pursuant to Section 17-4 (b) of the Chevy Chase Village Urban Forest Code to remove one 41.0-inch and one 43.0-inch diameter Tulip trees located in the rear yard of the property. This matter is being heard at the June 2008 meeting after the Board granted a continuance in the May 12, 2008 hearing.

The Chevy Chase Village Code § 17-4 (b) states:

The Board of Managers shall have the authority to permit the removal or destruction of a tree or the undertaking of any action that will substantially impair the health or growth of a tree if, after a public hearing, the Board finds that such removal, destruction or other action will not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties and can be permitted without substantial impairment of the purpose and intent of this chapter.

Additional information regarding this appeal may be obtained at the Chevy Chase Village Office between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, or you may contact the office for this information to be mailed to you.

This notice was mailed to abutting property owners on the 5th day of June 2008.

Chevy Chase Village Office
5906 Connecticut Avenue
Chevy Chase, Maryland 20815
301-654-7300

21

CHEVY CHASE VILLAGE
5906 CONNECTICUT AVENUE
CHEVY CHASE, MD 20815
Telephone (301) 654-7300
Fax (301) 907-9721
ccv@montgomerycountymd.gov

GEOFFREY B. BIDDLE
Village Manager
DAVID R. PODOLSKY
Legal Counsel

BOARD OF MANAGERS
DOUGLAS B. KAMEROW
Chair
DAVID L. WINSTEAD
Vice Chair
SUSIE EIG
Secretary
GAIL S. FELDMAN
Treasurer
BETSY STEPHENS
Assistant Treasurer
PETER M. YEO
Board Member
ROBERT L. JONES
Board Member

June 17, 2008

Mr. and Mrs. Christopher S. Abell
8 Magnolia Parkway
Chevy Chase, MD 20815

RE: Tree Removal Appeal A-1667, 14 West Irving Street

Dear Mr. and Mrs. Abell:

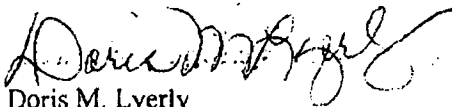
As you are aware, the Chevy Chase Village Board of Managers heard your appeal to remove two Tulip trees located in the rear yard of the above referenced property. The Board directed Counsel to draft a decision approving the request.

Pursuant to the Board's approval, Village Legal Counsel will draft a decision for the Board to review. Once approved and signed by the Board Secretary, a copy of the decision will be mailed to you for your records. The Tree Removal Permit will not be issued until you have obtained a Historic Area Work Permit (HAWP) from the Historic Preservation Commission. The trees are not to be removed until you have received both required permits.

For your reference, enclosed please find a list of acceptable species for the reforestation requirements that will be contained in the Board's decision.

If you have any questions or need further assistance, please contact the Village office at (301) 654-7300.

Sincerely,



Doris M. Lyerly
Permitting & Code Enforcement Specialist
Chevy Chase Village

Enclosure

LAW OFFICES

FUREY, DOOLAN & ABELL, LLP

SUITE 1100

8401 CONNECTICUT AVENUE

CHEVY CHASE, MARYLAND 20815-5819

(301) 652-6880

FAX: (301) 652-8972

www.fdalaw.com

DEVIN JOHN DOOLAN
W. SHEPHERDSON ABELL
ELSIE L. REID
PHILIP L. O'DONOGHUE
MARIANNE RENJILLAN LOMAN
JULIA L. O'BRIEN
MICHAEL A. DYMERSEY*
JAMES G. NOLAN
ROBERT L. BROWNELL
PATRICK F. GREANEY
LILLIAM L. MACHADO
ROBERT E. GRANT

* ALSO ADMITTED IN VA
* ADMITTED IN MD, D.C. AND CA

CHARLES S. ABELL
MICHAEL F. X. DOLAN, JR.
TANYA CALVELLI BERNSTEIN
JEANNETTE OWEN ROEGGE
REBECCA L. BIXLER
L. LAUREL LEA*
SAMUEL S. D. MARSH
HAL WITT
RALPH J. MOORE, JR.*
VINCENT C. BURKE, III
OF COUNSEL

May 30, 2008

VIA HAND DELIVERY

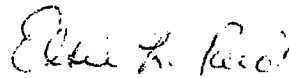
Geoffrey B. Biddle, Manager
Chevy Chase Village
5906 Connecticut Avenue
Chevy Chase, MD 20815

Re: Mr. and Mrs. Christopher S. Abell

Dear Mr. Biddle:

Mr. and Mrs. Abell have asked that I send to you the enclosed memorandum regarding the home they are renovating at 14 West Irving Street. I understand that Board of Managers requested this information for consideration at its upcoming June 16th meeting. I am happy to share this information with the Board of Managers, but I would ask that the confidentiality of this client communication be respected as much as possible.

Sincerely,



Elsie L. Reid

ELR/jts

Enclosure

cc: Mr. and Mrs. Christopher S. Abell
David R. Podolsky, Esquire

FUREY, DOOLAN & ABELL, LLP

SUITE 1100

8401 CONNECTICUT AVENUE

CHEVY CHASE, MARYLAND 20815-5819

(301) 652-6880

FAX: (301) 652-8972

www.fdalaw.com

DEVIN JOHN DOOLAN
W. SHEPHERDSON ABELL
ELSIE L. REID
PHILIP L. O'DONOGHUE
MARIANNE RENJILIAN LOMAN
JULIA L. O'BRIEN
MICHAEL A. DYMERSEY*
JAMES G. NOLAN
ROBERT L. BROWNELL
PATRICK F. GREANEY
LILLIAM L. MACHADO
ROBERT E. GRANT

CHARLES S. ABELL
MICHAEL F. X. DOLAN, JR.
TANYA CALVELLI BERNSTEIN
JEANNETTE OWEN ROEGGE
REBECCA L. BIKLER
L. LAUREL LEA*
SAMUEL S. D. MARSH
HAL WITT
RALPH J. MOORE, JR.*
VINCENT C. BURKE, III
OF COUNSEL

* ALSO ADMITTED IN VA
* ADMITTED IN MD, D.C. AND CA

May 28, 2008

MEMORANDUM

TO: Mr. and Mrs. Christopher S. Abell
FROM: Elsie L. Reid, Esq. *Elsie Reid*
RE: Abell Residence at 14 West Irving Street, Chevy Chase, Maryland

Under Montgomery County laws and regulations, a building permit is required to build a single family residential home. No permit may be issued unless the construction complies with a myriad of development regulations. (County Zoning Code, Sec. 59-A-3.1(b)) Of particular importance here are the requirements in the Subdivision Ordinance that a new home must be located on a record lot and that the home may not be built over or across a lot line. (County Subdivision Regulations, Sec. 50-20 (a), (b)).

For older neighborhoods in the County, where development occurred before the Subdivision Regulations were adopted in 1958, or where homes were built prior to the County's first zoning ordinance, adopted in 1928, compliance with these requirements if an owner desires to build a replacement home or to build on an "old" lot is difficult. Many properties in the greater Chevy Chase Village area today, for example, are a consolidation by deed of two or more, nearly century old record lots or of parts of previously platted lots. Sometimes the deed lot may be an entire record lot plus part of a second lot or the deed lot may represent only a part

of a single record lot. Some homes are built across old lot lines so that they straddle the record lot lines. Some homes are built on land that has never been officially platted. And, of course the development standards for lot size, street frontage, and setbacks have changed over the years.

The application of current zoning and subdivision codes to these properties would render these "old" lots undevelopable. Within the Montgomery County Subdivision Regulations (Chapter 50) and the County Zoning Code (Chapter 59), however, there are some accommodations made to allow development of single family homes on certain of these older lots.

In the Subdivision Ordinance, if a deed parcel has not changed in size or shape since June 1, 1958, *and the parcel has not previously been platted*, then a building permit may issue on certain conditions. (See County Code, Sec. 50-9 (f). Similarly, even though the subdivision regulations prohibit building a dwelling on more than one lot or one which crosses a lot line, a permit may issue for the reconstruction of a dwelling located "*on part of a previously platted lot, recorded by deed before June 1, 1958,*" if the original dwelling has been destroyed by fire or a similar cause. (See County Code, Sec. 50-20 (b) (5).

In the Zoning Ordinance, a permit may, on certain conditions, be issued for a single family home if it is to be located on a record lot recorded before June 1, 1958, or on a lot created by deed before June 1, 1958 "*provided such deed lot does not include parts of previously platted properties.*" (See County Code, Sec. 59-B-5.1). Finally, there is a general exception for one-family dwellings that provides that a home built on a lot legally recorded by plat or by deed before June 1, 1958, is not considered to be non-conforming and "may be

altered, renovated, or enlarged, or replaced” by a new home, *provided, however, that if the lot is recorded by deed or plat before March 15, 1928, it must meet the 1928 Zoning Ordinance standards.* (See County Code, Sec. 59-B-5.3). The 1928 Zoning Ordinance set a minimum lot size of 5,000 square feet for residential lots. (See County Code, Attachment to Sec. 59-B-5.3(a), citing Section III (C) 1 thereof. ¹

None of these cited provisions afford relief for the Abell property at 14 West Irving Street in Chevy Chase. In its current configuration, it is comprised of parts of two previously platted lots, created in 1909, as part of a subdivision plat filed for Section No. 2, Chevy Chase, Maryland, Pl. Bk 2, Plat #106. These parts of two lots were conveyed together, as early as 1919, as one deed lot (the “Abell deed lot”), and neither the size nor shape have changed since 1919 despite the transfer of this property to several different owners. The existing home was built around 1928 according to the tax assessment records, a fact the Abells’ architects confirm to be approximately correct. The home at 14 West Irving straddles the line separating the two parts of the 1909 platted lots. The total area of the Abell deed lot is only 4,650 square feet.

The provision in Sec. 59-B.5.1 of the Zoning Ordinance cited above is inapplicable because the Abell deed lot consists of parts of previously platted lots, which this statutory exception expressly excludes from relief. Similarly, the provision in Sec. 50-9 (f) of the Subdivision Regulations doesn’t apply since the Abell lot has been previously platted. At 4,650 square feet, the Abell deed lot fails to meet even the 1928 zoning standards for a record lot, and so the exception in Sec. 59-B-5.3 of the Zoning Ordinance is unavailing.

¹ In the R-60 zone where the Abell property is located, the current minimum lot area is 6,000 square feet. See County Code, Sec. 59-C-1.32)

Most importantly for the immediate question of whether the home can be rebuilt should it sustain a casualty loss, the provisions of Sec. 50-20 (b) (5) of the Subdivision Regulations are of no help since the Abell deed parcel represents parts of two, not a single, record lot.² The particular statutory language of Sec. 50-20(b) (5), which permits the issuance of a building permit for a single family home in the event the original dwelling is destroyed or seriously damaged by fire, flood or other natural disaster, is limited to situations where the dwelling is located on part of a [single] previously platted lot, recorded by deed prior to June 1, 1958. The County Planning Department's interpretation of this provision is that it allows rebuilding only where the home is on one, but not two previously platted lots. As noted above, the Abell lot is on two previously platted lots. This provision had, prior to 2007, read in pertinent part, "on parts of previously platted lots." The legislative deletion of the plural is indicative, the Planning Department staff maintain, that the Abell deed lot does not qualify for relief.

In sum, none of the exceptions in the zoning and subdivision regulations that allow a new single family home to be built on old deed lots, or on a part of a single, previously recorded lot, apply. As a non-conforming lot, any replacement dwelling on the Abell property would have to meet current zoning, subdivision and building codes, which would be impossible to do here because of the small lot size. (See County Code, Sec. 59-G-4.12.)

² The Abell deed lot also is ineligible for re-subdivision to create a new record lot (whether by a regular or a minor subdivision process) because it is too small to meet even the minimum area requirements of the 1928 Zoning Ordinance. Whether the Planning Board would grant a waiver of this zoning development standard in a re-subdivision application is doubtful; staff members were reluctant to recommend a waiver and felt it would be denied. Similarly, it is doubtful whether the Board of Appeals would grant a variance of the zoning development standards upon denial of a building permit by the Department of Permitting Services. Variances are rarely granted, especially where the hardship is of a regulatory nature and derives in part from the siting of the home over a lot line.

In investigating this matter, on the Abell's behalf, we met with several County officials, including the Asst. County Attorney for the Department of Permitting Services, Malcolm Spicer, the then Associate General Counsel Tariq El-Baba for the County Planning Board, the Subdivision Coordinators for the Planning Department, Cathy Conlon and Richard Weaver, and Councilmember Roger Berliner. All of these individuals were sympathetic to the Abell lot situation; in the end they each concluded there was no administrative interpretation that would support issuance of a permit to build a new, replacement home on this deed lot.

It was during these discussions that County officials also opined that, in the event of a major casualty loss to the home, the County would not allow the Abells to rebuild the home, absent a change in the law,—for the same reasons noted above--that the property consists of two, not just one, previously platted lots, that the land area is too small a lot to be re-subdivided, and the home straddles a lot line that traverses the deed lot.

cc: David Podolsky Esq.,
Counsel for Village of Chevy Chase

STEIN, SPERLING, BENNETT, DE JONG, DRISCOLL & GREENFEIG, P.C.

ATTORNEYS AT LAW
25 WEST MIDDLE LANE
ROCKVILLE, MARYLAND 20850-2204

www.steinsperling.com

TELEPHONE (301) 340-2020

WRITER'S DIRECT DIAL:
(301) 838-3324

WRITER'S DIRECT FAX:
(301) 354-8324

WRITER'S E-MAIL ADDRESS:
acohen@steinsperling.com

FRED A. BALKIN*
MILLARD S. BENNETT*
ALEXIA KENT BOURGERIE*
DAVID S. DE JONG*
JOLIE S. DEUTSCHMAN*
DAVID C. DRISCOLL, JR.*
STUART S. GREENFEIG*
MONICA G. HARMS*
ANN G. JAKABCIN*
DARLA J. MCCLURE*
JEFFREY M. SCHWABER*
KAREN N. SHAPIRO*
DARCY A. SHOOP*
DONALD N. SPERLING*
PAUL T. STEIN*

MD., DC., VA., NY., CA.*
MD., DC., VA., NY., FL.*
MD., DC., VA., NY.*
MD., DC., PA., NJ.*
MD., DC., MA.*
MD., DC., NY.*
MD., DC., VA.*
MD., VA., NC.*
MD., DC.*
MD. ONLY*

RONALD M. BOLT*
ADAM J. COHEN*
E. ANDREW COLE*
JAMES W. DAWSON, JR.*
BRIAN R. DELLA ROCCA*
FRANK W. DUNHAM, III*
WILLIAM C. DUNLAP*
ROBERT J. GARAGIOLA*
MELIHA PÉREZ HALPERN*
LOUIS M. LEIBDWITZ*
JONATHAN F. LIEBERMAN*
IVONNE C. LINDLEY*
MARY CRAINE LOMBARDO*
NEVEEN H. MCLEOD*
ASAF NAGLER*
DIEGO J. ROJAS*
ANDREW L. SCHWARTZ*
SOLOMON M. STERENBERG*
ALISON C. WEINBERG*

OF COUNSEL:
KEVIN P. FAY*
BETH McINTOSH IRVING*
ALAN S. KERXTON*
DEANNA L. PETERS*
DAVID R. PODOLSKY*
WILLIAM J. SCOTT*

OUR FILE NUMBER
2060051.2

May 28, 2008

Dr. Douglas Kamerow, Chairman
Chevy Chase Village Board of Managers
5906 Connecticut Avenue
Chevy Chase, Maryland 20815

RE: Case A-1667, Abell Tree Removal Appeal Hearing
14 West Irving Street

Dear Chairman Kamerow:

At its May 13, 2008 regular meeting, the Board of Managers requested that we investigate Mr. and Mrs. Christopher Abell's (the "Applicants") assertion that they could not reconstruct their house in the event it is destroyed or seriously damaged by an act of God, such as the subject tree(s) falling on their house.

Section 50-20 of the Montgomery County Code provides, in relevant part:

Sec. 50-20. Limits on issuance of building permits.

(b) A building permit must not be approved for the construction of a dwelling or other structure, except a dwelling or structure strictly for agricultural use, which is located on more than one lot, which crosses a lot line, which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot, except a building permit:

Dr. Douglas Kamerow
May 28, 2008
Page 2

(5) for the reconstruction of a one-family dwelling that is located on part of a previously platted lot, recorded by deed before June 1, 1958, if the dwelling is destroyed or seriously damaged by fire, flood or other natural disaster[.]

Ms. Elsie Reid, counsel to the Applicants in this matter, submitted the following statement for the record:

[Section 50-20(b)(5)] which addresses reconstruction if the dwelling is destroyed or seriously damaged by fire, etc., as the [Montgomery County] Planning Board staff suggested, can be read to say that the [Applicants'] home can only be reconstructed if it had been located *on part of one previously platted lot*, not on parts of two. The plural "parts" of previously platted lots was changed to singular sometime in the last couple of years, making the argument that your home would not qualify.

Without a change in law or its administration by [the Department of Permitting Services] and Planning Department, reconstruction of your house in event of casualty loss is not allowed. It would require a variance in the subdivision regulations or a law change.

We have now had an opportunity to review Section 50-20(b)(5), as well as Montgomery County Ordinance No. 15-67, which was adopted March 21, 2006. The County Council did convert the word "parts" to the singular "part"; however, the primary purpose of County Ordinance No. 15-67 was to clarify and repeal certain aspects of Chapter 50 relating to Planning Board findings of adequate public facilities, with no stated purpose for effecting other substantive changes like the change suggested by Ms. Reid. The bill's purpose in addition to addressing public facilities was "to update obsolete language and make corrective and stylistic changes." The view that this was a mere stylistic change that was not intended to make the substantive change the Applicants assert is reinforced by the absence of any discussion over the changed provisions in the transcript of two public hearings. We must note that a committee work session was also held for which we have been unable to locate a transcript or minutes. Section 1-301(6) of the County Code, which applies to the entire County Code, provides that the "singular includes the plural and the plural includes the singular." Given the stated purpose of the ordinance, legislative staff with whom we spoke conceded that the change from the plural "parts" to the singular "part" may have been made to improve consistency in Chapter 50. Ordinance No. 15-67's author is presently out of the office through mid-June and unable to confirm this at this time.

If the change from the plural "parts" to the singular "part" was, in fact, intended to limit the ability of property owners like the Applicants to rebuild following destruction, we would concur with Ms. Reid's assertion that the Applicants' house does not fit any of the exceptions, as written, that would allow the Applicants to secure a building permit. The subject property consists of parts of two previously platted lots and the Applicants' house crosses a lot line. A building permit may not be issued under Section 50-20 for such a lot, and because the property contains two parts of previously platted lots – not one – the Applicants do not fit within the applicable exception. Further, the 14 West Irving Street lot is only 4,650 square feet. Unless a variance from the subdivision regulations is obtained, the Applicants cannot re-plat the property to be a single lot because it is less than 5,000 square feet.

STEIN, SPERLING, BENNETT, DE JONG, DRISCOLL & GREENFEIG, P.C.

Dr. Douglas Kamerow
May 28, 2008
Page 3

Delvin Daniels of the Department of Permitting Services and Wayne Cornelius of the Subdivision section of the Planning Department adopt the interpretation that Section 50-20(b)(5) would not allow the Applicants' house to be reconstructed if destroyed. Mr. Daniels and Mr. Cornelius each cite the use of the singular "part", as well as the fact that the house is currently built across a lot line. Accordingly, they do not believe that the Applicants' house fits within the Section 50-20(b)(5) exception. Even though it is our belief that the legislative change was stylistic and not intended to have this effect, those who review building permit applications would not issue a permit for the reconstruction of the Applicants' house in the absence of a variance or successful appeal of the interpretation to the County Board of Appeals or the Circuit Court. Unless new information is obtained that clarifies the legislative intent behind the changes made to Section 50-20, Ms. Reid's assertion appears to be correct that the County officials' interpretation of Section 50-20(b)(5) would prevent the Applicants from reconstructing their house in the event it is destroyed or seriously damaged by an act of God, such as the subject tree(s) falling on their house.

Please do not hesitate to contact me with any questions regarding this matter at (301) 838-3324.
Thank you.

Sincerely,



Adam J. Cohen

TREE COMMITTEE VOTED 3-2 IN FAVOR
OF REMOVING TREES

Younes, Michael

From: Samandpol@aol.com
Sent: Thursday, May 08, 2008 12:12 PM
To: bstephens@attglobal.net; bobelliottcc@comcast.net; r.marshes@verizon.net; kinterg@verizon.net; Samandpol@aol.com; susieeig@hotmail.com
Cc: Biddle, Geoff; Younes, Michael
Subject: tree removal appeal: 14 W. Irving

After visiting the Abel property and reviewing both recent surveys of resident opinion and the text of the Village tree ordinance, I join Ralph Stephens in recommending that this take down appeal not be approved.

From both the Winter Company's work and the 2006 resident survey it is clear that the Village's trees are highly valued by its residents and indeed are one of the defining features of this community. The tree ordinance, adopted some 20 years ago, gives expression to this priority and is an important component of the regulatory structure that has been put in place to protect this unique community.

The tree ordinance's preamble declares it to be "in the best interests of Chevy Chase Village to protect, preserve, and promote the Village's urban forest" and cites the very real positive outcomes of maintaining a robust tree canopy. The ordinance also recognizes that trees, especially when diseased, can be a hazard and empowers the Village Manager, who as a matter of practice relies on the advice of our arborist, to authorize take down of a tree which either "constitutes a significant hazard to the safety of persons or . . . threatens injury to property." In this case, despite the concerns cited by the appellants and several of their neighbors, our arborist's advice is that the trees are healthy and do not meet these criteria for removal.

The ordinance also does provide the Board discretion to deal with unique circumstances and to consider any special reasons cited by the applicant for wanting to remove or destroy a tree as well as the particular desirability of preserving a tree by reason of its age, size, or outstanding qualities. In this case, we have on the one hand the Abel's unfortunate past experience with tulip poplars and on the other the outstanding character of these very mature and healthy specimens.

Like many, perhaps most other Villagers, we reside in a house that is situated directly beneath the canopy of several very large trees. We accept that there is risk in this circumstance. We also accept our responsibility to be stewards of a vital resource. Indeed, we are of the general opinion that each of us in choosing to reside in the Village also is choosing to assume this stewardship.

I am aware that tulip trees are thought to be brittle. I am not aware of any systematic data to support a conclusion that the tulip tree is more vulnerable than other species to falling limbs. In the absence of data to the contrary, I believe that Mr. Dunn's conclusion that the trees do not meet the Village code criteria for take down should be respected.

Whereas it is true that two enormous trees on a small lot may seem disproportionate, these trees are an important element of the ecosystem of the entire block in which they are situated. They are highly visible and are important environmental assets. Ralph Stephen's calculation that Villagers would need to install 6000 CFL light bulbs to offset the negative effect on the Village carbon footprint which would result from removal of these two trees is startling - and I believe should be an important factor in the Board's assessment of this appeal.

In summary, I recognize that there are conflicting interests here that the Board must consider but believe that these trees have been a contributing element of the Village environment for a long long time, and should be allowed to remain so as long as they remain healthy and are not professionally assessed to have become an unacceptable risk.

Tree committee member, Sam Lawrence

Wondering what's for Dinner Tonight? [Get new twists on family favorites at AOL Food.](#)

Davis-Cook, Shana

From: Biddle, Geoff
Sent: Thursday, May 08, 2008 11:45 AM
To: Davis-Cook, Shana
Subject: FW: Request for a variance by Mr. and Mrs. Abel/Board Meeting Preparation Notebook

For the Board book.

-----Original Message-----

From: Betsy & Ralph Stephens [mailto:bstephens@attglobal.net]
Sent: Thursday, May 08, 2008 10:35 AM
To: Biddle, Geoff
Subject: Request for a variance by Mr. and Mrs. Abel/Board Meeting Preparation Notebook

Geoff—Would you please include in the loose-leaf notebook that you are preparing for the Board meeting of Monday, May 12th, the following short letter that I have written to the Board members, and the email message that I sent to the other members of the Tree Committee which I appended below the letter. Many thanks. Regards/ Ralph Stephens

11

Magnolia Parkway

Chevy Chase, MD 20815
Phone: 301-656-6132
E-mail: RCSTEPH@ATTGLOBAL.NET

May 8, 2008

Chevy Chase Village Board of Managers
5906 Connecticut Avenue
Chevy Chase, MD 20815

Dear Members of the Board:

Re: Request by Mr. and Mrs. Christopher Abel for a variance to permit them to take down two Tulip poplars in their back garden.

Unfortunately, I find that I will be unable to attend the Board meeting scheduled for Monday, May 12th. I had planned to speak as an “adjoining and confronting property owner” and as a member of the Tree Committee, in strong opposition to the Abel’s request.

In lieu of being able to make an oral presentation to the Board, I append below the email that I sent to my Tree Committee colleagues in which I explain why I oppose granting the Abel’s request.

Regards/Ralph Stephens

To the Tree Committee:

Betsy and I live at 11 Magnolia Parkway, a little to the south of 14 West Irving Street, and I have had a look at the two Tulip poplars that the Abels wish to cut down. Indeed, I have been looking at them for the past 28 years as they are about fifty feet or so due north from the north west fence in my side garden and as such they are an important part of the urban forest canopy that my wife and I enjoy when we are out of doors.

These trees are exactly what the Urban Forest Code was designed to protect. They are tall, stately, specimen trees with broad summer leaf coverage. You can see them from a great distance and they add significantly to our tree scape. Were they to be removed there would be an enormous hole on the horizon. Furthermore, Tulip poplars are native to the Eastern Forest and therefore have symbiotic relationships with both migrating and resident song birds. The insects to which they are host are food sources for the bird life whose survival we in the Village should wish to support, and the common evolutionary history of the Tulip poplars and many bird species has meant that they are preferred roosting and nesting habitats. With many bird species, particularly neo tropical migrants, under threat of extinction because of habitat loss, it is important that we consider this as we look at take down proposals. Intriguingly, Tulip poplars are also host to the larvae of the tiger swallowtail butterfly—one of the more common and attractive butterflies that grace our summer gardens.

The Abels have written that they are uneasy in the presence of Tulip poplars and that they have had unpleasant experiences with them. They fear that the Tulip poplars at 14 West Irving Street are dangerous by their very nature and that they are likely to fall on their house. Without in any way wishing to diminish the seriousness of the property damage that the Abels have suffered from falling Tulip poplars, or of the unease that this damage would cause to their view of the species in general, I would suggest that they have been the victims of chance. During the storm of 1989, for example, when the Abels lost three Tulip poplars, well over 100 large Village trees came down and all known species were represented. The Tulip poplars that did fall did not fall because of any inherent weakness that is unique to the species. Both large and small trees of all species were knocked down by the wind. The storm was a wind shear, a freak of nature, and the odds of it recurring are very small. We cannot protect ourselves from the damage that such a storm could cause unless we eliminate all of our large trees. In many respects, Tulip trees are actually quite hardy. They are known to resist boring insects and blight. For example, when the Eastern Forest lost its Chestnut trees to blight, Tulip poplars dominated the succession species.

According to the Village arborist, the trees that Abels wish to remove are healthy; and by my observation they are well rooted. They are located in the back garden of 14 West Irving Street, a situation that has given the roots space to grow (into the neighbor's gardens) as the feeder roots expand beyond the drip line delineated by the canopy. These trees, whose roots are comfortable in the acidic clay soil that is under us all, are about as stable as large trees can get. They obviously were not shaken during the storm of 1989, or by any storm before or since. The trees show signs of having been pruned; which, I believe, has been a contributor to their stability. I gather from the Abel's letter to the Board that they were responsible for having this done. Obviously, continued pruning will help the trees to remain stable for a long time to come.

I would further add that past windstorms, serious or not, mostly came from the north when they reached the Village. Were one or both of the Tulip poplars to fall during a storm, they would fall to the south—as did most of the trees that fell during the storm of 1989. Should this be the case, the trees would hit my house, specifically my upstairs bathroom, and possibly Mr. Fistere's garage. It would be unlikely that they would land on the Abel's house, or the Gluck's house or the Fistere's house or the Ingersoll's house. I hope that the contents of this email have made clear that I am not worried about the prospect of their falling on my house.

Here is an afterthought:

Environmental awareness has reached a serious level in the Village as witnessed by the formation of a Village Environmental Committee. I think that this committee should become involved in tree removal decisions.

For example, the Environmental Committee is encouraging Village residents to use compact fluorescent light bulbs instead of the more common incandescent ones because the former use much less electricity for an equal amount of illumination.

Purveyors of these bulbs note that the electricity saved by switching to compact fluorescent bulbs translates into an average of about two pounds of CO₂ per bulb per year when power is generated by burning coal—as is our power.

Foresters reckon that two mature, deciduous trees about the size of the ones that the Abels wish to remove, between them, each year, while they are in leaf as a result of their photosynthesis, capture about six tons of CO₂, and release about two tons of oxygen into the atmosphere.

If the Abels were to cut down their two Tulip Popular trees, then, by these reckonings, they would negate the carbon dioxide savings of six thousand newly installed compact fluorescent bulbs. This doesn't count the lost oxygen that the trees would have added to the somewhat less than pure Village air supply.

Caveat: These numbers get constantly revised; and reforestation would mitigate some of the effects of deforestation. However, a great big, mature tree is a substantially larger carbon trap than a smaller, growing one. We all know that deforestation is a major contributor to global warming.

Regards/Ralph Stephens

June 16, 2008

To The Board of Managers
Chevy Chase Village

Re: The Abell tree take-down request
14 W. Irving Street

Please grant the take-down request for the two Tulip Poplar Trees at 14 W. Irving St.

Patricia and Christopher Abell bought a tiny house on a tiny piece of property that over the years, a parade of people bought, then sold when they realized how small the living space really was. In our years here, it was empty, then rented time and time again.

The Abells have gone through all the processes needed to turn that unhappy little house into a truly charming, livable home that will be a lovely addition to our street. It wasn't easy, took considerable time and no doubt money. They have gone to great trouble to let their neighbors see their plans, meet their builder and have easy access to him with any problems the construction might cause. The building site has been amazingly quiet and totally tidy. We have not been disturbed in any way.

Chris told you he has lived in the Village 50 odd years. We were delighted to get to know his parents a short block away from us and have been delighted that Trish and Chris have been either across the street from us on Magnolia Pkwy or a couple of houses down since we came here in the mid-seventies. We are so glad they will be staying near us at #14. They are wonderful neighbors who have made the Village better for their presence. They understand the Village better than many of us could.

They do not ask for things lightly. They told the Board about not being able to rebuild the house if one of those close-by Tulip Poplar trees fell on it. That is cause for concern. Of even more concern is knowing if people are in that house when a tree fell on it, they can't be replaced.

Sincerely,

Judy Elliott
17 W. Irving St.

P.S. Trees do fall down. We have had three trees fall on our house, one from each of our three rear neighbors. The worst damage was caused by a Tulip Poplar. It took a full year to repair our house. Michael Dirr, the undisputed expert in North American trees, is not to be dismissed. You have heard this before, but I'd like to repeat his words about Tulip Poplars. Under Landscape Value he says, "Not a tree for the small residential property or streets; should be restricted to large areas and this type of situation only..."

36

To: Chevy Chase Village
From: Chris Abell
Re: Appeal for tree removals at 14 West Irving Street/May 12 hearing

Dear Shana and Village Staff,

Would you please include this email memorandum from our lawyer (Elsie Reid of Furey, Doolan and Abell) as part of the supporting documents for our appeal hearing on Monday?

Thank you.

Chris Abell

From: Elsie Reid
Sent: Monday, May 05, 2008 11:33 AM
To: 'Christopher Abell'
Subject: RE: Status of 14 West Irving Street reconstruction

Your new home property is difficult because it consists of two previously platted lots, and the house crosses a lot line for those two lots. Zoning and subdivision codes require building on record lots and forbid building across lot lines. And, your lot is too small to qualify for replatting.

So, we were not able to take advantage of the provisions in the building code that would have allowed a new single family residence to be built either on an "old" lot even though today's development standards make the old lot non-conforming, or on a lot created by deed prior to June 1958, which yours was, because the deed lot contained parts of previously platted lots. Separate provisions that allow for building a home on an older lot also require compliance with the 1928 zoning standards for lots, and your land area was too small to do that.

Under the subdivision ordinance there are some additional exceptions that allow renovations to an existing home on lots that are not recorded as a single lot. Section 50-20 (b) (6) allows an addition to an existing single family dwelling if a home is located on part of a previously platted lot, and you have been able to get permits to do just that; however, subsection (5) of that section which addresses reconstruction if the dwelling is destroyed or seriously damaged by fire, etc., as the Planning Board staff suggested, can be read to say that the home can only be reconstructed if it had been located *on part of one previously platted lot*, not on parts of two. Sec. 50-20 (b)(5). The plural "parts" of previously platted lots was changed to singular sometime in last couple of years, making the argument that your home would not qualify.

Without a change in law or its administration by DPS and Planning Dept, reconstruction of your house in event of casualty loss is not allowed. It would require a variance in the subdivision regs or a law change.

Elsie

Language of 50-20(b)(5) reads:

(b) A building permit may not be approved for the construction of a dwelling or other structure, except those strictly for agricultural use, which is located on more than one (1) lot, which crosses a lot line, which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot, except as follows:

(5) A building permit may be approved for the reconstruction of a one-family dwelling that is located on part of a previously platted lot, recorded by deed prior to June 1, 1958, in the event that the dwelling is destroyed or seriously damaged by fire, flood or other natural disaster.

14 West Irving Street

