

**MARIEMONT PLANNING COMMISSION**  
**REGULAR MEETING HELD**  
**NOVEMBER 20, 2017**

The Mariemont Planning Commission met Monday November 20, 2017. Mayor Policastro called the meeting to order at 5:35 p.m. Present were Mr. Brown, Mr. DeBlasio, Mrs. Garber, Ms. Reed, Mr. Rich and Mr. Vianello. Also in attendance was the Building Commissioner Don Keyes.

The first request from Mark Schoeny, of 6979 Cambridge LLC, 5356 Cloverleaf Lane, Cincinnati, Ohio 45239, to remove hazardous tree, which is blocking the driveway.

*Finding of the Building Commissioner:* Heritage trees, which are trees over 25 inches diameter, require a reason for removal. The existing tree is somewhat hazardous in that most of the limbs have been trimmed or broken from the street side and the tree is leaning toward the house. The tree is blocking the driveway as a result of size and original placement. The two driveways together would normally allow the tree to be circumvented during entry and exit, however, cars in the neighboring driveway often block entry.

Mr. Doug Wilson, 6981 Cambridge, said he is the resident with the shared driveway. He said there is a family of Red Winged Hawks that live in the tree and nest every spring. In the past they have allowed the other property owner to use their driveway. Cambridge Avenue is known for its beautiful trees. He does not believe there is anything wrong with this tree and does not believe it is leaning. It is a healthy tree. Taking the tree down will not allow more access to the driveway than he has now.

Mrs. Garber said Mr. Schoeny indicated that Mr. Wilson was fixing cars in the driveway. Mr. Schoeny said that Mr. Wilson is running a business out of his driveway. Mrs. Garber asked if Mr. Wilson blocks the driveway. Mr. Wilson said no and that they park their cars in the back by the door. The neighbors have always had access.

Mr. Schoeny said the property line is 139 ½' from center line of Grove Avenue as documented on CAGIS. As shown on the pictures provided the property line is 4' beyond the tree. He owns the tree and an additional 4' which puts his property at the center of the driveway. The tree is blocking his side of the driveway. There are a number of problems with the tree. It has been sheared on one side and is listing over his house. He is concerned that the house will fall on the house should there be a heavy wind storm. There is a large trip hazard on the sidewalk that has been modified by the Village. He presented photos of cars parked on the driveway in the front blocking access for him to use the driveway. Parking is a concern given that the property is across from the Barn which holds many events which make parking more challenging. The tree is too big for the area. While the tree may be healthy the safety of those in the parking lot and the house is much more important. When he purchased the property several months ago the tree was in its present condition but he was not aware of the traffic that would be coming and going and the inflexible attitude he has gotten from the neighbor.

Mr. Brown asked if Mr. Schoeny checked to see if there was an easement of record that would allow Mr. Shoney to get around the drive. Mr. Schoeny said there is no easement of record. He was told by the attorney that sold the property that it was difficult to obtain one.

Mayor Policastro asked if the driveway is split down the middle. Mr. Schoeny said yes. Mr. Wilson said no. Ms. Reed asked if a survey had been done.

Mr. Rich asked both property owners if they agreed that two cars cannot park side by side at the entrance to the driveway. Both property owners agreed.

Mrs. Garber said the Planning Commission is being asked to make a decision based on what each property owner believes without any factual documentation to support it. Mr. Schoeny said the numbers are verified by CAGIS. Mr. Rich said CAGIS is considered an accurate tool. Mayor Policastro said we had a problem with CAGIS at Spring Hill. It can be useful but not 100% correct. We had to go to ODOT to get correct figures.

Mr. Vianello said he believes we are getting off subject – the topic is removing a heritage tree. We are not going to solve neighbor to neighbor problems.

Mr. DeBlasio agreed and said if that was his house and the tree was in the way of the driveway – the tree would have to go.

Mr. Schoeny said what he did not know when he purchased the home was that the Village had a Heritage Tree program and it would be a problem to take the tree down. He bought the home with the intent to take it down. He had it scheduled to take down in January. It has grown so wide that it blocks the driveway.

Mrs. Garber asked if the Wilson's would be agreeable to entering into an agreement to allow Mr. Schoeny access to the driveway via their property.

Ms. Gayle Wilson, 6981 Cambridge, said she has lived there for 38 years and never had a problem until Mr. Schoeny bought the house. When they had the discussion regarding the property line on the driveway the conversation turned to taking the tree down. The tree is part of the charm of the street. To take down a beautiful tree to gain three feet is ludicrous.

Mayor Policastro asked if there was a prescriptive easement already in place since it has been used. If so it would need to be in writing.

Mr. Brown suggested using the other side of his property to make a parking area. Mr. Rich said that would be extraordinary and the property owner should be able to use his property.

Mr. John McCarthy, 4002 Grove, said first there should be an accurate measurement of where the property line is. If it is possible and they are willing Mr. Schoeny should purchase a permanent easement. In regards to putting a driveway on the other side of the property there is a drain in front of the house. Red Tail Hawks are a beneficial bird to have as they catch rats and snakes.

Mr. Kevin Beckman, 6972 Cambridge Avenue, said in the event that the tree does come down he asked that the hawks be taken in any way possible and that this tree, along with the two other heritage trees that have been taken down, be replaced with better or equal trees. Mayor Policastro said the Village would demand that Mr. Schoeny put up two trees. Mr. Rich and Mr. Vianello said it is a Village tree. Mayor Policastro said yes but we are not the one asking for it to be taken down. We can put it in the motion that he is to replace the tree. Mr. Rich said two trees may be too much.

Ms. Reed suggested getting an easement for the property in order to allow for Mr. Schoeny to park. Mr. Schoeny said it would still be an issue with the tree and if someone is parked there it would be a constant "Can you please move your car".

Mrs. Garber said she would like to move to table the matter until there is full testimony that is not contradictory to each other. She would like to see more factual information presented by Mr. Schoeny and have it signed by both property owners as being factual. She would also like to see both property owners come to an agreement, if they can, on the use of ingress and egress. She also asked to have an arborist look at the tree and submit an opinion.

Mr. Rich said he does not believe the applicant is questioning the health of the tree is what is in question. Mr. Schoeny cannot gain access to his property. If the property line is down the middle of the driveway it is still difficult to get two cars side by side. He is not sure we should extend everyone's time but is of the opinion that Mr. Schoeny should be able to use his property. He made a motion to allow the applicant to take the tree down with the stipulation that the tree be replaced with a like tree.

Ms. Gayle Wilson, 6981 Cambridge Avenue, said she has lived there for 38 years and has lived in the Village since 1950. She has never had a problem with the next door neighbor. Always they have been

able to work out the parking. She never has had a problem in her neighborhood until Mr. Schoeny bought the property and it is all because he wants three more feet for his driveway and he wants to take down a beautiful 80 year old tree that is part of the charm of the street. It is a gorgeous tree that is a home to a hawk family and it is not causing anybody any trouble. The sidewalk can be fixed – to take down a tree cannot be fixed. She does not believe it will improve the value of Mr. Schoeny's home.

Mr. Vianello said if he was the homeowner he would do what he could in his power to come to an agreement so the tree would not have to come down. He would have a deal in writing so Mr. Schoeny feels comfortable getting his car in and out of his property. At the end of the day he believes the property owner should have access to his property. Mr. Rich cautioned about the easement and the legalities in the future.

Mr. Brown said the easement could be contingent upon the tree – once the tree is no longer the easement would no longer be in effect. He would ordinarily be in agreement to take the tree down but this is not an ordinary tree. It is a magnificent heritage tree of which he believes is a healthy tree. As a compromise, he would like to see the property owners strike an arrangement on paper so Mr. Schoeny has comfortable access around the tree – he believes it is a reasonable way to save the tree.

Mr. Schoeny said an easement will devalue both properties when you have to ask your neighbor for permission. He does not believe there is a sensible compromise. The tree is too big and he is concerned for safety.

Ms. Reed said Mr. Schoeny bought the house without doing due diligence.

Mrs. Garber moved, seconded by Mr. Brown to table the matter for further discussion with factual information and/or a compromise is reached between property owners. On roll call; Two ayes (Mr. Brown and Mrs. Garber) five nays (Mr. DeBlasio, Ms. Reed, Mr. Rich, Mr. Vianello and Mayor Policastro).

Mr. Rich moved, seconded by Mr. DeBlasio to allow the property owner to take down the tree at his cost and replace with two similar species trees (3" caliber minimum 10' tall) with the planting to take place no later than May 2018. On Roll Call; Four ayes ( Mr. DeBlasio, Ms. Reed, Mr. Rich and Mr. Vianello) Two nays (Mr. Brown and Mayor Policastro) One Abstain (Mrs. Garber).

Mr. Brown moved, seconded by Mr. DeBlasio to accept the minutes as written for August 16, 2017. On roll call; seven ayes, no nays.

The meeting adjourned at 6:20 p.m.

Respectfully Submitted,

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Ms. Shelly Reed, Secretary  
Secretary

