

January 26th, 2016 [Revised February January 28th, 2016]

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Petition for Rulemaking:
Construction of Tree Houses within the District of Columbia
Submitted by Ellen Psychas and Bonding Yee, Owners of 516 Archibald Walk SE

Dear Director Bolling, Director Dormsjo and Deputy Director Steingasser:

Pursuant to § 2-505(b) of the D.C. Administrative Procedure Act,¹ we hereby petition the Department of Consumer and Regulatory Affairs (DCRA), the Department of Transportation (DDOT), and the D.C. Historic Preservation Office (HPO) to commence a joint rulemaking to promulgate regulations to establish a permitting process for the construction of tree houses on single and two-family dwellings within the District of Columbia. At present, no such regulations exist in the Construction Codes Supplement of 2013, Title 12A of the D.C. Municipal Regulations. Therefore, we ask that DCRA, DDOT, and HPO please move to fill this regulatory gap to forestall future controversies surrounding tree house construction within Washington DC, particularly in the Historic Districts, of which there are currently more than 30 districts.

We are filing this petition because the country has seen a tree house building boom in recent years, while the District is experiencing a growth in young families. Hence, it is unlikely that we will be the last young local family to build a substantial tree house in a D.C. Historic District.

As you may be aware, we are the proud builders of a roofless, 28 sq.ft. castle-themed tree house in the back yard of our single-family dwelling at 516 Archibald Walk, S.E.² Archibald Walk is a 200-foot-long “U” shaped public alley. The tree house is a home-grown affair, built by us, friends and relatives for our two young daughters, ages three and five years old. DDOT issued balcony projection permit #PA118910, covering the period Nov. 10 - 20 2015, to cover the 20 inches the tree house projects into public air space over a tree box we maintain.

Unfortunately, we have found the permitting process for tree houses in a D.C. Historic District (or more accurately, the lack thereof) to be difficult for the ordinary citizen to understand and follow. Lack of clarity in the permitting of tree houses in this city has opened the door to calls to have ours torn down. Indeed, opposition to the tree house did not surface until after it had been completed with the original understanding that no permits from DCRA or DDOT were required.

¹ D.C. Code § 2-505(b) (“Any interested person may petition the Mayor or an independent agency requesting the promulgation, amendment, or repeal of any rule.”).

² See photographs in Attachment 1.

Our girls and their local friends have become very attached to the stylish “princess castle” since it was built, motivating us to work hard to preserve it.

The crux of the problem is the lack of specific regulations and guidelines setting forth parameters for tree house building in the District. As we found in July, when we made initial inquiries of DCRA and DDOT, a local tree house builder generally does not need to obtain a building permit prior to commencing construction. DCRA’s position, apparently, is that a small tree house can either be categorized as “playground equipment” or an “accessory shed” under the D.C. Construction Codes Supplement,³ neither of which requires a permit to construct, even in a D.C. Historic District like Capitol Hill. According to a recent press account,⁴ DCRA has indicated that no permit is required for a tree house whose platform area is under 50 sq.ft. While this may be a reasonable interpretation of the Construction Codes Supplement, we find no provision therein clearly spelling this out.

To complicate matters further, due to our desire to minimize the impact on an old American elm tree providing structural support for our proposed tree house, we included a projection into public space of approximately 20 inches on our plan drawings. When we approached DDOT in late July, to alert them to our design, we were told that no public space projection permits are issued where there is no DCRA building permit on which to base a DDOT permit. However, staff within DDOT’s Urban Forestry Administration (UFA) supported, and provided helpful feedback on, our design concept, which necessitated the use of less than two feet of public air space over a wood-enclosed tree box that we maintain.

After we had completed building the tree house, at the end of September, we received a note from a neighbor demanding that we tear the small, open structure down, because it constituted a “public nuisance.” To date, no other neighbor has approached us to object to our tree house project. This is the case although, prior to beginning work in late August, we left notes in the mail boxes of ten neighbors informing them that we were planning to build a tree house, then worked on it in plain sight over five weekends. On Oct. 26, 2015, acting on a complaint that included misinformation in regards to the ownership of the host tree, DDOT issued a Work Site Stop Work Notification. When DDOT officials later performed a follow-up inspection on Nov. 4, 2015, however, they realized that the tree trunk is on our lot, meaning that the host tree is our private property, in accordance with D.C. law. To rectify the Notification, senior DDOT officials decided that the best course of action would be to issue a public space permit to cover the 20-inch projection. Thus, DDOT approved a balcony projection permit on Nov. 9, 2015.

Notwithstanding issuance of the permit, several neighbors began approaching Advisory Neighborhood Commission (ANC) 6B to continue efforts to get our tree house torn down. The neighbors succeeded in placing our public space permit on the agenda for review at two ANC meetings held earlier this month. That, in turn, has led to a controversy attracting considerable local and national media attention. The matter was further considered by DDOT’s Public Space Committee at a hearing held on Jan. 28, 2016. The Committee voted 40-0, with an abstention by the DCRA representative, that the tree house must be removed from public space early this year.

We know that tree houses are still very unusual in the District of Columbia, at least outside Upper NW. However, we believe that D.C. residents should be guided by a city building code

³12A DCMR §105.2

⁴ <http://wjla.com/news/local/residents-upset-over-neighbors-tree-house> (Jan. 14, 2016).

squarely addressing what is and is not allowed in building tree houses, particularly in the Historic Districts. We would like to see DCRA and DDOT create a niche in the code for tree houses, following the lead of North American cities which spell out clear tree house building rules for the consumer. DC could follow suit by making rules respecting the distinctive character of local architecture to promote the creation of more safe and appealing outdoor play spaces for children.

Accordingly, we respectfully request that city permitting agencies commence a joint rulemaking to tackle this issue head-on. We also ask that city permitting agencies consider publishing a brochure to advise tree house builders, spelling out relevant laws, rules and guidelines in clear language. A brochure could lay out step-by-step instructions to help citizen tree house builders erect structures that respect the law and the character and needs of the neighborhood.

We welcome your ideas on how our District community can balance safety, heritage, public space and the need to promote outdoor play for children. We also ask that the public, including professional tree house builders, have an opportunity to submit their views. As a starting point, we would like to offer the following principles, informed by not only by our personal experience, but by a review of tree house regulations and ordinances from municipalities around the country, and in Canada. Our proposal takes into account the city's unique building landscape, including high density residential life, smaller lots for residential properties than in suburban jurisdictions, and the prevalence of historic row houses. The Principles we would ask you to consider are:

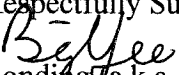
1. The regulation would define a tree house as a structure located wholly within a lot containing a single- or two-family house that requires structural support from a tree on that property, and which is detached from the house.
2. On conforming properties, tree house construction would be allowed in any side or back yard area, without a setback. In a D.C. Historic District, a tree house could only be constructed in a back yard as shown on an official land plat or land survey, and only if the structure could not be seen from any street.
3. Tree houses with a platform area less than 42 sq.ft., with no wall or side higher than 6 feet from the base of the platform, would not require a building permit, and, thus, would not require ANC or HPO response.
4. A larger tree house (42 – 80 sq.ft.), or any tree house with any wall or side exceeding 6 feet in height, would require a building permit from DCRA, necessitating ANC and HPO response. No tree house with a platform area exceeding 80 sq.ft. could be constructed.
5. A tree house platform could not rise more than 12 feet above the finished grade of a home owner's lot. Further, the highest point of a tree house could not rise more than 18 feet above the finished grade.
6. No wall or side of a tree house could rise higher than 8 feet above the platform. Two-story tree houses would not be permitted.
7. A tree house may, but would not be required, to have an enclosed ceiling or full walls.
8. Tree houses in D.C. Historic Districts would be classified as "Minor or Routine Work Requiring Historic Preservation Office Response or Approval Typically within the same

Day.”⁵ A larger tree house in a D.C. Historic District would require ANC review before the builder solicited HPO response. Conforming tree houses would not, however, be subject to review by the D.C. Historic Preservation Review Board.

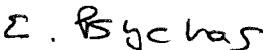
9. Prior to DCRA granting a building permit, the home owner would have to submit either of the following with a permit application (1) a certificate from DDOT UFA or (2) an endorsement from an International Society of Arboriculture (ISA) licensed arborist, indicating that a host tree can safely support the proposed tree house.
10. A DCRA electrical permit would be required if a tree house of any size is proposed to include electrical outlets or other interfaces drawing electricity from a public utility.
11. A tree house of any size would be able to project into public air space over a tree box maintained by the builder if at least two-thirds of the platform area were above the owner’s property, and the platform height were at least 8 feet. A tree house could not project over paved public space. In order to use public air space, the home owner would have to obtain a separate public space permit. DDOT would not issue a projection permit if it finds that the proposed tree house would impede vehicular and/or pedestrian access to alley space, or would be contrary to traffic safety.
12. A tree house permit, once issued by DCRA, would authorize the owner to build and then maintain the tree house for up to 10 years upon issuance. Thus, tree house permits would be granted on a temporary basis, unlike other construction and public space permits.
13. A tree house permit would be transferable to any subsequent purchaser of the single- or two-family dwelling.
14. Upon completion, a tree house would be subject to a post-construction inspection by DCRA inspectors, and then up to once every three years thereafter.
15. A tree house permit would be revocable if the owner is not adequately maintaining the structure, or if the tree house is found to constitute a public nuisance. Once there is a final agency action on revocation of a permit, the owner would have to either cure the defect(s) or tear down the tree house.

We would be happy to discuss the principles outlined above, as well as our first-hand experience in building a tree house in the Capitol Hill Historic District, with appropriate permitting officials at DCRA, DDOT and HPO. We would gladly assist your agencies in drafting balanced, family-friendly, comprehensive urban tree house building rules for public review.

Respectfully Submitted,


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⁵ See D.C. Historic Preservation Office Permits and Design Review, <http://planning.dc.gov/page/permits-and-design-review>.