

"Federation Corner" column  
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### **Rights and wrongs in the roadside right-of-way**

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On Monday morning, April 1, the County Council's Transportation, Infrastructure, Energy and Environment (T&E) Committee held a worksession on Bill 41-12, legislation intended to protect roadside trees throughout Montgomery County. Bill 41-12 was introduced on December 11, 2012 by Council members Roger Berliner, who chairs the T&E Committee, and Marc Elrich; and the public hearing on the bill was held by the T&E Committee on January 17 of this year.

Roadside trees (trees that are located in the green space right-of-way adjacent to roads) have a significant positive impact on the environment. Street trees provide habitat for wildlife and, when in leaf, block sunlight from reaching and heating the paved surface of roads, which can reduce the ambient air temperature of a neighborhood microclimate by as much as ten degrees. This, in turns, helps to decrease demand on air conditioners cooling nearby houses in summer, and lowers the electricity bills for those homeowners.

The legislative effort to protect roadside trees faces a number of problems, not the least of which is that most county residents do not understand the status of such trees. By law, trees located in the public right-of-way belong to the people of the State of Maryland; and a permit must be obtained from the state Department of Natural Resources (DNR) to do any pruning or removal of such a tree. But this leads us to the next problem. At the April 1 T&E Committee worksession, Council member Nancy Floreen remarked that most homeowners are not aware their property does not extend all the way to the edge of the paved road in front of their home, rather that land alongside the road is in the public right-of-way.

When subdivisions are laid out, the developer not only draws the boundary lines between home lots but also lays out the roads, designating on the subdivision plat (drawing) the width of each public right-of-way and paved road. For example, the 1939 plat for my neighborhood designates public rights-of-way fifty feet in width with twenty foot wide paved roads; and the remaining thirty feet of right-of-way is divided evenly, with fifteen feet of public "green space" on either side of the paved road. But dimensions of rights-of-way vary from one neighborhood to another.

This means that I don't own the land all the way to the road in front of my home. My property ends fifteen feet from the paved roadway surface. And it is in this fifteen foot wide right-of-way green space that roadside trees are located, trees that I am legally prohibited from pruning or removing without first obtaining a permit from the Maryland DNR. Even PEPCO and the county government must obtain permits from the state prior to do doing any work on roadside trees in the public right-of-way.

A further confusion involves maintenance in the public right-of-way, other than work on trees, which according to county law is the responsibility of the adjacent homeowner to perform. For instance, the homeowner is responsible for cutting the grass in the public right-of-way alongside the road in front of their home. And they are required to rake and remove fallen leaves from the right-of-way green space in front of their homes in the fall. Similarly, county law assigns homeowners the responsibility to clear snow from any public sidewalk in the right-of-way in front of their homes.

By state law, a homeowner is not supposed to plant trees in the public right-of-way without first checking with the county arborist. If, however, a homeowner does plant a tree in the right-of-way green space it no longer belongs to them, but becomes the property of the people of the state of Maryland.

Also by state law, the planting of evergreen trees (or any plants or bushes) is prohibited in the public right-of-way, in an effort to maintain good sight lines for vehicular traffic and to allow use of the green space alongside roads by pedestrians, which is especially useful in areas that do not have public sidewalks. And homeowners are also prohibited under state law from erecting fences in the public right-of-way in front of their homes.

In Montgomery County, if a homeowner would like to install a driveway leading from the road to a parking area or garage on their property they must first obtain a permit from the Department of Permitting Services for "driveway access across public right-of-way." This permit allows for paving of a driveway of a specified width, and permits vehicles to be driven across the right-of-way green space and parked on the homeowner's property.

Roadside trees are also threatened by removal or damage, inflicted intentionally or through carelessness or ignorance, when construction work occurs nearby. In one case in my neighborhood, the builder of a replacement home had the street tree cut down in front of the lot on which they were building, without obtaining permission from state DNR. By the time the area Forest Ranger responded to calls from neighbors and arrived on the scene, the tree was felled. All he did was issue a citation with a \$200 fine and order a new tree with minimum six-inch caliper be planted in the same location as the removed tree. It will be decades before this sapling achieves a size to provide similar environmental and visual benefits to the one that was destroyed.

Sometimes a builder has every intention of leaving a street tree in place near a home they are building, but failure to identify and protect the tree's critical root zone during the construction process could kill it anyway (the critical root zone extends roughly the same distance from the trunk as do a tree's branches). Driving construction equipment or workers' vehicles across the critical root zone can compact the soil and compromise the ability of the tree's roots to absorb water and nutrients, leading to years of decline and eventual death.

The full Council will consider the roadside tree bill in June. We hope they act to protect this important environmental asset.

*The views expressed in this column do not necessarily reflect formal positions adopted by the Federation. To submit an 800-1000 word column for consideration, send as an email attachment to [montgomerycivic@yahoo.com](mailto:montgomerycivic@yahoo.com)*