

ANC 3F



Advisory Neighborhood Commission 3F NORTH CLEVELAND PARK / FOREST HILLS

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3F05 - Doug Mitchell
3F06 - Cathy Wiss
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20 June 2002

Zoning Commissioners
441 4th Street, N.W. – Suite 200
Washington, D.C. 20001

ATTN: Mr. Alberto P. Bastida, AICP, Secretary

RE: Case No. 02-19 [Forest Hills Tree & Slope Overlay District]

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Dear Zoning Commissioners:

ANC 3F Resolution 02-27, filed in this Case on June 18, 2002, referring to the 19-page Report of the ANC's Ad Hoc Committee on Tree and Slope Overlay Protections (dated 3 June 2002; and filed in this Case as an enclosure to Exhibit 64), recommends that the Zoning Commission "adopt the changes in the pending Overlay which are recommended by the Ad Hoc Committee Report, carefully weigh additional amendments that may be proposed, and complete its proceedings on the Overlay as expeditiously as feasible".

The recommended amendments would:

- a) make three substantive changes in limitations of what a property owner may develop as of right, so as to achieve Overlay objectives *and* allow for more flexible compliance *and* reduce intrusion of the Overlay into private property rights, i.e., (i) to ease the side yard provisions, (ii) to eliminate the rigid control map for front yards, and (iii) to eliminate steep slopes with highly erodible soil as an independent trigger for Special Exception review;
- b) add five provisions guiding decisions on any Special Exception applications where development should not proceed as of right, and offering landowners choices of mitigation measures without imposing rigid, one-size-fits-all "cookie cutter" standards; and
- c) define or clarify key terms and allow landowners to use permeable surfacing; and

Attached is proposed amendatory language to implement the ANC 3F recommendations.

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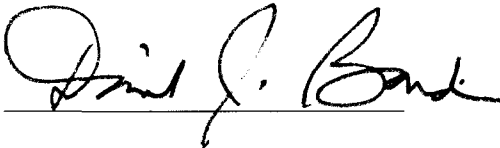
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ZONING COMMISSION
District of Columbia
CASE NO.02-19
EXHIBIT NO.101

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02-19
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District of Columbia

Zoning Commissioners, 20 June 2002
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Respectfully submitted,
On behalf of ANC 3F through its designated commissioners
David J. Bardin
Karen Perry
Todd Strauss

By: 

Attachment

c: All commissioners, ANC 3F
Forest Hills Citizens Association
Office of Planning
Members, Ad Hoc Committee

AMENDMENTS TO THE FOREST HILLS TREE & SLOPE PROTECTION OVERLAY
Proposed by ANC 3F's Ad Hoc Committee on Tree and Slope Overlay Protections
and
Recommended by ANC 3F to the Zoning Commission of the District of Columbia
(ZC Case No. 02-19)

A. Substantive Changes to Limitations

A. Three substantive changes in limitations of what a property owner may develop as of right, so as to achieve Overlay objectives *and* allow for more flexible compliance *and* reduce intrusion of the Overlay into private property rights, i.e.,

- (i) to ease the side yard provisions,
- (ii) to eliminate the rigid control map for front yards, and
- (iii) to eliminate steep slopes with highly erodible soil as an independent trigger for Special Exception review;

Side yards of new residential buildings

Ad Hoc Committee Report (Part IV.F.)

The underlying zoning for the R-1-A, R-1-B and R-2 districts requires that each side yard be at least 8 feet wide (so that the sum of the two side yards is at least 16 feet). Many of the existing side yards in the neighborhood exceed 8 feet. Some do not. (A few pre-1958 lots have a grandfathered right to five-foot side yards, which the proposed Overlay would not affect.) The side yard provision of the proposed Overlay would affect only "new" residential buildings. By definition it does not affect additions to existing buildings. OP staff recommended making the side yard provision more flexible, along the lines we propose here.

1. The Committee consensus favors altering the proposed Overlay to make it more flexible by setting a new standard for the sum of the two side yards.

2. The Committee consensus favors making the proposed Overlay less intrusive by eliminating any additional side yard requirements for lots that are equal to or narrower than 80 feet on the average (the minimum lot width in the R-1-A district is 75 feet) or narrower than 80 feet along the front property line.

3. Where a lot exceeds both minimum widths (i.e., along the front property line and the average width), the Committee consensus is that the Overlay add a sliding-scale limitation governing the sum of the two side yards (leaving the lot owner/developer free to distribute the extra side yard width all to one side, all to the other or part to one side and part to the other). The extra side yard width is computed as 25 percent of the excess of lot width over and above 80 feet (with the option to use lot frontage width rather than average width, if advantageous). This is 2½ feet for every additional 10 feet of lot width over 80 feet. This sliding scale would go up to a maximum requirement of 32

feet for the sum of the side yards on large lots (i.e., 144 feet wide or wider). The Committee believes that the resulting sliding scale will be fair and workable and preferable to a one-step jump (as originally proposed) from 16 feet to 32 feet as the sum of the side yards. One immediate benefit of this approach is the flexibility to site houses in order to minimize the number of trees that may need to be removed in a project.

Side Yards Amendment Proposed for the Overlay

Replace Subsection 1519.4 of the pending Overlay with the following:

"To the extent any residential district within the overlay requires a side yard, the side yards requirement for all new residential buildings within such districts shall be (a) at least eight (8) feet for each side yard and (b) in the case of lots that are more than eighty (80) feet wide, the sum of the two side yards shall be sixteen (16) feet plus one fourth (25 percent) of the excess of lot width over eighty (80) feet, up to a maximum of thirty-two (32) feet. For purposes of this subsection, "lot width" shall mean either average lot width or lot width along the street frontage property line, at the landowner's election."

Front yard set backs for new residential buildings

Ad Hoc Committee Report (Part IV.G.)

The Committee consensus favors adoption of the Overlay proposal that the average set back for each block be set as a minimum for future "new" residential building construction in that block, with the following change (as suggested by the OP to the Committee):

- *Eliminate the provision for a control map on file with the Office of Zoning and the Zoning Division of DCRA. Instead of a map, the developer of an empty lot or a tear-down lot would determine the average front yard set backs at the time of seeking building permits.^{1/}*

Front Yard Set Back Amendment Proposed for the Overlay

In Subsection 1519.3 delete the last sentence and substitute:

^{1/} Average set backs will change if owners of existing houses build front yard additions. So a control map prepared in 2002 would freeze neighborhood character as of that year, instead of allowing for evolution.

"The required setbacks will be determined as of the date of the building permit application by reference to the structures then standing on the same side of the street in the same block."

Steep slopes

Ad Hoc Committee Report (Part IV.I.)

The Committee consensus is to require developers to identify steep slopes and erodible soils in particular projects and to guarantee the use of best management practices in planning, implementing and supervising a project so as to minimize harm to trees and other environmental features² – but not to use these factors as a trigger which automatically (and by itself) requires special exception review. On the other hand, if a developer seeks a Special Exception for other reasons, steepness of slope and erodibility of soils would be proper subjects for consideration by the BZA.

Steep Slopes Amendment Proposed for the Overlay

Replace Subsection 1519.5 with the following:

"To the extent that any person seeks permission for building or terrain alteration on a lot with a slope steeper than 25 percent or with 'highly erodible soil' as defined by the Natural Resources Conservation Service of the U.S. Department of Agriculture, that person shall supply to the Zoning Administrator in the Department of Consumer and Regulatory Affairs professional certification that the plans for alteration and/or construction will follow best geo-technical, structural engineering and arboreal practices."

B. Guides to Decisions on Special Exceptions

B. Five provisions guiding decisions on any Special Exception applications where development should not proceed as of right, and offering landowners choices of mitigation measures without imposing rigid, one-size-fits-all "cookie cutter" standards.

^{2/} The Committee recommends that applications to DCRA Zoning Division for permits to build in the Overlay district identify whether the building impacts highly erodible soils or steep slopes and certify use, as appropriate, of professional, licensed Geotechnical Consultants, Structural Engineers and Civil Engineers (and a Certified Arborist, if preservation of trees is an issue in the soil or slope area). The Committee notes that provisions of the Building Code and of District of Columbia law as to storm water already impose a part of these requirements, without explicit reference to tree survival issues.

Ad Hoc Committee Report (Part IV.J.)

The Committee consensus is that the Overlay Special Exception provision should be amended as follows (capitalized terms are defined in Section IV.K., below):

1. *A property owner seeking Special Relief may elect to proffer a mitigation plan which may include any combination of the following:*
 - *A tree canopy maintenance conservation easement;*
 - *A plan to preserve and protect an Endangered Tree (or Trees)*
 - *A plan to preserve and protect a Jointly Owned Tree (or Trees)*
 - *A plan to address Hazardous Tree issues*
 - *A preservation and planting plan including provisions for Replacement Trees (which, as appropriate in the circumstances, may follow the ISA or the Circumference Replacement formula)*
 - *An Exceptional Tree preservation and protection plan*
 - *A plan to coordinate preservation and protection of trees on the lot with programs addressing the Urban Forest as a whole and portions of the Urban Forest on lots adjacent to and/or near the particular lot.*
2. *In order to reach a reasonable balance between architectural and arboreal considerations in weighing a request for a Special Exception from Trees Limitations, the BZA shall receive from applicant and weigh a report and/or testimony by a Certified Arborist [i.e., a tree care professional certified by the International Society of Arboriculture], specific as to the lot, lots, or portion of a lot in question, as to:*
 - a. *Significance of tree species in the particular setting (e.g., does a tree represent an undesirable species in the particular circumstances?);*
 - b. *Significance of a given tree as a specimen and significance of a group of trees as providing (or contributing to) tree canopy;*
 - c. *Analysis of mitigation proposals proffered or considered, including tree replacements, and both short-term and long-term significance of each.*

If an applicant's proffer raises tree health and safety factors in a Special Exception context, the proffer shall attempt to predict the ensuing 10 years.
3. *In considering issues concerning steep slopes and erodible soils, the BZA shall require reports and/or testimony by a Geo-Technic Engineer, Structural Engineer and Civil Engineer (licensed and qualified in the District of Columbia), as appropriate, and by a Certified Arborist (unless there are no trees on those slopes or soils).*
4. *In considering trees having a circumference of 38 - 75 inches located less than 25 feet from a Building Restriction Line (BRL) that is more than 15 feet deep, the*

BZA shall take into account the maximum BRL in the area originally studied by the ZC for purposes of establishing the template overlay.

5. *In considering the front yard building set back requirement, the BZA may consider whether a BRL set by the subdivider of a unique block which is not part of a traffic artery (e.g., the semi-circular Lenore Lane, which begins and ends at Linnean Avenue) is a more appropriate measure than the average of the front yard set backs.*

Special Exception Guidelines Amendments Proposed for the Overlay

Add to Subsection 1520.1 a new Sub-subsection (E) consisting of the five provisions set forth above, quoted from the Ad Hoc Committee Report.

C. Clarifications

C. Defining or clarifying key terms and allowing landowners to use permeable surfacing.

Ad Hoc Committee Report (Parts IV.C, IV.E and IV.K.)

The Committee consensus also favors recommending to the ZC that it relieve land owners in the Overlay district from any requirement that driveways, parking spaces, etc. be built of impervious materials. (See 11 DCMR 2117.10.^{3/}) In the Overlay district (at least) landowners should be free to use permeable pavement, pavers, gravel and other techniques not forbidden by the construction codes as a way to keep impervious surfaces on their land to a minimum. The Committee notes that the Ward 3 Element of the Comprehensive Plan, Section 1403.10(b) calls on the ZC to: "Encourage the use of permeable surfaces for parking lots, driveways, etc."

Certain provisions of the proposed Overlay (concerning side yards and front yards) apply only to "new" residential buildings. The Committee favors the following definitions and interpretation to be added to the Overlay regulation [set out below].

The Committee recommends improving the clarity and utility of the overlay regulation by

(a) adding [21] definitions (those that follow derive largely from the "Trees Bill" now before the D.C. Council) and

(b) adding Diameter dimensions in parentheses after each of the Circumference dimensions.

^{3/} Section 2117.10 reads: "All open parking spaces, including access aisles, driveways, and ramp areas shall be paved and maintained with bituminous, concrete or brick materials, or a combination of these materials or other materials approved by the District of Columbia Department of Public Works as structurally equivalent or better, *which form an all-weather impervious surface*, and which is at least four inches (4 in.) in thickness." [Emphasis added.]

Clarification Amendments Proposed for the Overlay

Amend Subsection 1518.2 by adding a new sub-subsection (C) to read:

"(C) Notwithstanding any other provision of the Zoning Regulations, land-owners in the Overlay District shall be free to use permeable pavement, pavers, gravel and other techniques not forbidden by the District of Columbia construction codes as a way to keep impervious surfaces on their land to a minimum."

Amend Subsection 1519.1 to add in parentheses after each measure of inches of circumference the equivalent inches of diameter (i.e., using 3.14 as the ratio of circumference to diameter).

Add a new Subsection 1519.4A to read:

"(a) DEFINITIONS:

"For purposes of §§ 1519.3 and 1519.4, 'new residential building' means a residential building on a lot in the Forest Hills Tree and Slope Overlay district if

"(1) no residential building existed on that lot on April 19, 2002 [the date of the 'set down' order], or

"(2) any proposed replacement, extension or addition would be to a 'torn down' residential building.

"'Torn down' means that the previous residential building has been or would be

"(a) removed in its entirety; or

"(b) removed except for the foundation of that building; or

"(c) have its entire roof and supporting walls removed; or

"(d) have more than 75 percent of the previous residential building removed."

"(b) INTERPRETATION: A 'new residential building' and a 'torn down' residential building are not a 'one-family dwelling or flat' within the meaning of § 223 ('ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS R-1.')

Add a new Subsection 1520.5A to read:

"As used in this Chapter 1516, the following terms shall have the meanings stated:

"Breast height" means that point on a tree trunk located 4.5 feet from ground level in accordance with standard forest measurement texts.

"Caliper" means the diameter (or circumference) measurement of the trunk of a nursery stock tree taken at 6 inches above the ground.

“Caliper height” means the height at which the caliper measurement is taken (see “caliper”).

“Certified Arborist” means an arborist certified by the International Society of Arboriculture.

“Circumference” means the circumference of a tree measured at breast height (see “Diameter at Breast Height”). Note: $\text{Circumference} = \text{DBH} \times 3.14$.

“Circumference replacement formula” or “CRF”, is a method of valuing trees based on the circumference of a tree measured at breast height divided by the circumference caliper measurement of a balled and burlapped nursery stock tree. For example, a tree measuring 63 inches in circumference would equal the value of 10 nursery stock, balled and burlapped trees, measuring 6.3 inches in circumference at caliper height.

“Construction area” means the area within which construction occurs, including the limits of clearing and grading, any area required for staging, soils or material stockpiling, or any other disturbances associated with construction or demolition activities.

“Critical root zone” or “CRZ” means the area immediately surrounding a tree that extends one foot for each diameter inch measured at breast height; e.g. a 10 inch diameter tree has a CRZ that extends from the trunk of the tree for 10 feet in all directions from that trunk (20 feet across).

“Diameter at Breast Height” or “DBH,” means the diameter measurement of a tree taken at 4.5 feet above the ground in accordance with standard forestry measurement texts (see “Circumference” and “Breast Height”). Note: $\text{Circumference} = \text{DBH} \times 3.14$.

“Endangered Tree” means a tree whose critical root zone, all or in part, is within a construction area. An endangered tree may be located on an adjacent lot, or may be jointly owned (see “jointly owned tree”).

“Exceptional Tree” is a tree that is the largest of its species in terms of diameter, height, and crown spread; or, is of some documented historical significance.

“Healthy Tree” means a tree that, in the opinion of a certified arborist or licensed landscape architect, has a life expectancy of more than 10 years, and is not hazardous.

“Hazardous Tree” means a tree that, in the opinion of a certified arborist, is defective, diseased or dead, and poses a high risk of failure or fracture with the potential to cause injury to people or damage to property.

“ISA trunk formula method” or “ISA-TF” is a method of valuing trees as described by the most recent edition of the publication: The Guide For Plant Appraisal, published by the International Society of Arboriculture.

“Jointly Owned Tree” means a tree whose trunk is divided by one or more property boundaries and is therefore owned by two or more property owners.

“Nursery Stock Tree” means a balled and burlapped, or containerized tree, which meets the standards established by the American Standard for Nursery Stock published by the American Association of Nurserymen (Publication No. ANSI Z60.1-1990 or latest version thereof).

“Replacement Tree” means a tree to be planted as part of a preservation and planting plan. Replacement trees shall generally be 2 inch caliper (diameter) balled and burlapped nursery stock trees of a species type equivalent to that of the tree being removed.

“Topping” as defined by the latest edition of the ANSI-A300 pruning standards, is an unacceptable pruning practice resulting in the indiscriminate reduction of a tree’s crown leading to disfigurement and/or death of the tree.

“Unhealthy tree” means a tree that, in the opinion of a certified arborist or licensed landscape architect, has a life expectancy of 10 years or less

“Urban forest” means all of the trees standing within the boundaries of the District of Columbia, excluding all Federal lands located within those boundaries.