

COMMENTS
NOTICE OF PROPOSED RULEMAKING
Case No. 02-19
Text Amendment - Forest Hills Tree and Slope Overlay District

February 11, 2003

Robert V. Maudlin
Commissioner - ANC 3F03

Executive Summary

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ANC 3F03 single member district, which I am privileged to represent, includes more than two thirds of the households in the proposed Forest Hills Tree and Slope Overlay District (FH/TSP). The residents of 3F03 are divided on the overlay proposed in the NOPR with strong feelings on both sides. A zoning overlay of this type should not be forced on a community where there is not substantial percentage of the residents that support the overlay. It is clear from the testimony during the three days of hearings and the filings with the Zoning Commission that there is no consensus in Forest Hills on the FH/TSP and that the community is split right down the middle on the issue. The Zoning Commission needs to return the FH/TSP to the Forest Hills community so that a consensus can be reached on an overlay that is supported by a substantial majority of the residents.

New Developments

Since May 13, 2002, the applicant for the FH/TSP, the Forest Hills Citizens Association, has not sought comments or other input from its members or the community on its proposal nor has the Association provided its members or the community with adequate information on the provisions in the FH/TSP. There have been two major developments since the Zoning Commission approved the issuance of the NOPR on October 28, 2002 that need to be included in the consideration of the NOPR. The two developments are the November election of an ANC3F03 commissioner and the enactment of the Urban Forest Preservation Act of 2002.

ANC 3F03 Election

In August 2002 Poul Arendal announced as a candidate for ANC3F03 commissioner stating his strong support for the FH/TPS. Following the September 30, 2002 hearing on the overlay where a number of residents testified in opposition, Mr. Arendal is quoted in the press saying "The closest you will get to an opinion poll is the election."

In my campaign I urged that the issue be returned to the community for careful study and discussion to reach a consensus on what is needed to meet the needs and the desires of the Forest Hills residents. The positions of Mr. Arendal and myself gave the voters a basis to vote on the FH/TSP.

ZONING COMMISSION
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Case 02-19
Exhibit 308

ZONING COMMISSION
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CASE NO.02-19
EXHIBIT NO.308

It is clear from the election results, 50.37% to 48.58%, that the Forest Hills community is split right down the middle with strong feelings on both sides of the FH/TSP issue.

The vote confirmed the list 105 households supporting and 150 households opposing the overlay that was included in my September 30, 2002 statement to the Zoning Commission. (Exhibit No. 253)

Urban Forest Preservation Act of 2002

The Urban Forest Act of 2002, (Act 14-614) was approved by the DC Council on December 17, 2002 and signed by Mayor Williams on January 22, 2002. The Urban Forest Act (UFA) requires a tree removal permit and community notification prior to the removal or replacement of a "special tree" which is defined as a tree with a circumference of 55 inches or more. The Act also provides for either a payment into a Tree Fund for the removal of a special tree or the planting of trees to replace the removed special tree.

The UFA was designed to provide for the protection of all trees throughout the city whereas the FH/TSP covers only an area within Forest Hills. There is no acknowledgment of, or reference to, the FH/TSP in the UFA and no acknowledgment of or reference to the UFA in the FH/TSP. The provisions of the UFA will apply to trees in the District of Columbia including the trees in the proposed FH/TSP. This double layer of uncoordinated regulation on the residents of the FH/TSP will make it difficult for them to know what requirements they are required to comply with. If additional regulation is needed in the Forest Hills area, it should be crafted to supplement the UFA.

The UFA not only restricts the removal of trees but also provides for the planting trees, which the FH/TSP does not do. The FH/TSP will not add one tree to the Forest Hills area. Under the FH/TSP, trees become a liability rather than an asset to residents. The FH/TSP will encourage residents to remove trees before they reach the size covered by overlay and to remove larger trees now so that they will not be prohibited from expanding their houses in the future.

ANC3F's Minority Report

The conclusions in ANC3F's Minority Report (Exhibit No. 82) on the proposed FH/TSP still stand and apply to the NOPR. The conclusions in the Minority Report were:

A - The process was fatally flawed. The FHCA petition was filed with the Office of Zoning before it had been made available to the Community for review and comment.

B - ANC3F's Ad Hoc Committee found the overlay to be deficient and recommended revision of the overlay.

C - Even with the revisions recommended by the Ad hoc Committee the provisions of the overlay are grossly defective.

D - Even with the revisions recommended by the Ad Hoc Committee the overlay does not support the stated purpose to preserve the natural topography and mature trees to the maximum extent feasible.

E - The overlay does not provide a framework for the residents of the area to consider ways to protect the assets of the community.

F - There is no consensus by the residents of the overlay area and they are sharply divided on the overlay issue.

The only change since that time is that in place of references to ANC3F's Ad Hoc Committee the reference now should be to ANC3F.

October 28, 2002 NOPR

The rulemaking action proposed needs to be divided into two parts, those provisions that are included in the "tree and slope template" of the zoning regulations and those that are not included in the template.

Section 1518.1 - This template provision would limit the principal building and any accessory building occupancy of the lot to thirty percent (30%). More than ten percent of the developed R-1-A lots in the FH/TSP are less than 7,500 square feet, which was allowed prior to the 1958 zoning. This lot occupancy restriction places an unjustified burden on the owners of small lots and could prohibit modest additions to their houses.

Section 1518.2 - This template provision would limit maximum impervious surface on a lot to fifty percent (50%). Again this is an arbitrary, unreasonable, unjustified restrict, particularly on owners of small lots.

Section 1519.1 - The template includes tree restrictions that are similar to those in Section 1519.1 of the NOPR. Dr. James R. Foreit, in testimony presented at the September 30, 2002 hearing, very ably demonstrated that the key tree removal provisions in section 1519.1 are seriously flawed. (Exhibit No. 253) Dr. Foreit included in this testimony a sample workbook for measurement and calculations which demonstrated the extremely complicated calculations required by proposed section 1519.1

A major defect in the tree provisions in the overlay is its negative approach by providing only for what cannot be done in removing trees. There is no positive provision for adding to the tree population in Forest Hills. A well-crafted overlay regulation should be self administering and provide for the replacement of trees removed or damaged by construction.

As note above this Section 104(b)(4) of the Urban Forest Preservation Act provides for planting of trees to replace special trees that are removed.

There is no comparable provision in the template for sections: 1519.2, 1519.3, and 1519.4. These sections would modify or add new regulation of minimum lot size, front yard setback, and side yards.

Section 1519.2 - Dr. Karen G. Fleischman Foreit, in her statement on minimum lot size at the September 30, 2002 hearing, demonstrated that any increase in the minimum lot size of R-A-1 lots will not protect the existing character of Forest Hills. (Exhibit No. 253) The proposed increase in minimum lot size from 7,500 sf. to 9,500 sf. will result in more “McMansions” which are opposed by both supports and opponents of the FH/TSP. The 7,500 sf. minimum has served the community well and should not be changed.

Section 1519.3 - This section includes a special setback for a building sited on a corner lot in that the building must have a front yard setback for both streets. There are numerous corner houses in the overlay area that do not comply with this requirement. In fact there are lots in Forest Hills where construction would be prohibited under this section.

Section 1519.4 - The proposed increase in side yard requirements is unduly restrictive for new buildings and additions on narrow lots. This will force taller buildings in the Forest Hills area which are not wanted or desirable. There is serious concern in the area regarding building height and ANC3F has established an ad hoc committee to study the building height issue.

Section 1519.5 - This section requires the filing of a professional certification by any person seeking permission for building or terrain alteration on a lot with a slope steeper than twenty-five percent (25%) or with “highly erodible soil” as defined by the Natural Resources Conservation Service of the U.S. Department of Agriculture.

It needs to be noted that even though the word “slope” is used in the title of the template in section 1511 of the Zoning Regulations, the section does not include any restrictions or limitations on building on a slope or terrain alteration. Z.C. Order No. 863, (Text and Map Amendments - Chain Bridge Road/University Terrace - TSP Overlay District) points out that the Office of Planning argued that a substantial technical justification would be needed to consider additional restrictions on slopes in a public hearing. There has not been any justification presented in this proceeding, much less substantial technical justification, to support or justify a slope provision. OP also pointed out that sloping sites and hilltop locations often are highly desired home sites, and can be suitably managed to limit erosion and runoff subject to the approval of the Storm Water Management Division of DCRA. This is true in the Forest Hills area.

Section 1519.5 includes the language “a lot with a slope steeper than twenty-five percent.” There is no indication of how slope is measured. Does this mean the slope between

two property lines or does this mean a twenty-five percent slope any place on a lot?

The applicant has not produced a clear definition of “highly erodible soil.” There is an erodibility index and 8 or more is defined as “highly erodible soil.” However, the erodibility of land as defined by the Natural Resources Conservation Service has to do with water and wind erodibility of agriculture lands and long-term productivity of lands and not with the construction of houses in urban areas. There has been no showing that there are soils in Forest Hills with an erodibility index of 8 or more.

Construction on slopes and highly erodible soil, if it exists, is a technical issue that should not be included in the zoning regulations but an issue that should be addressed in the building code and the technical building permit application review process

It should be noted that there are a substantial number of houses in the in the Forest Hills area that are constructed on slopes of 25 percent and greater which add to the character of Forest Hills and have been there for years.

Conclusions

The premature filing of the proposed FH/TSP with the Zoning Commission has split the Forest Hills community into “opponents” and “proponents.” This is not opponents and proponents to maintaining Forest Hills’ character but opponents and proponents to the overlay as filed and the overlay as published in the NOPR. A divided community is the wrong place to implement a zoning overlay regulation.

This onerous proposed overlay should be sent back to the community so that a consensus can be reached on what is needed and the best way to achieve the requirements of the community. These decisions can and should be made by the Forest Hills community.

Respectfully submitted,

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