



FOREST HILLS CITIZENS ASSOCIATION

Dedicated to the enhancement, maintenance, protection and promotion of
a positive community spirit in the Forest Hills neighborhood

George R. Clark
President
president@foresthillsdc.org

February 11, 2003

VIA HAND DELIVERY

Mr. Alberto P. Bastida, AICP
Secretary to the Zoning Commission
Office of Zoning
Suite 210
441 4th Street, N.W.
Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2003 FEB 11 PM 2:30

Re: In Re: Forest Hills Tree and Slope Overlay District
Case No. 02-19

Dear Mr. Bastida:

The Forest Hills Citizens Association ("FHCA"), the applicant in this proceeding, hereby submits its comments pursuant to the notice published in the District of Columbia Register on December 13, 2002.

With a few modifications, FHCA supports the Forest Hills Tree and Slope Overlay District ("FHTSO") regulations published by the Commission as 11 DCMR §§ 1516-1520.6. These proposed rules, published after 3 days of hearings by many individuals and groups,¹ and a mountain of written comments, reflect well-considered choices by the

¹ The overlay as proposed has been endorsed by ANC3F, the National Park Service, the Forest Hills Neighborhood Alliance, the Audubon Naturalist Society, the Natural Resources Defense Council, and the Casey Trees Foundation. In addition, the National Capital Planning Commission approved the overlay at its February 6, 2003, meeting. ANC3F voted 6-1 in favor of the overlay on February 10, 2003.

ZONING COMMISSION
District of Columbia
Case 02-19
Deliberate 309

Commission. We also endorse the Commission's indication that it intends to examine the template provisions of the Tree and Slope overlays in the near future. FHCA would play an active role in any such proceeding.

FHCA believes, nevertheless, that three specific sections should be amended, one of them in two ways. We think that two of these changes are to correct what may have been an oversight, a third is because of incorrect data, and the fourth is necessitated by administrative difficulties. We will take these up one by one. The three sections are:

1. § 1519.2 Minimum Lot Size

a. FHCA believes that the minimum lot size increase should apply only to the R-1-A zone. This was discussed during the course of the hearing. In addition, the effective date should be April 19, 2002, the set down date. A provision clarifying that smaller lots do not thereby become non-conforming lots should also be added.

b. All of the data support a minimum lot size of 12,000 square feet, as in the set down notice.

2. § 1519.4 Minimum Side Yard

The minimum side yard provisions should be amended to incorporate a more flexible sliding scale, as was recommended at the hearing.

3. § 1519.3 Front Yard Setback

Because we have been informed that DCRA has a problem implementing the map requirement for the front yard setback, this section should be amended to eliminate the map requirement for the front yard setback and be replaced with language requiring computation at the time of construction.

§ 1519.2 - Minimum Lot Size Should Apply to the R-1-A Zone Only and Be 12,000 Sq. Ft.

FHCA recommends that § 1519.2 should be amended to read as follows:

The minimum lot size for homes within the FH/TSP Overlay district shall be 12,000 S.F. for lots subdivided after April 19, 2003 [the effective date of this provision] in the R-1-A zone. Prior subdivision into smaller lots shall not create non-conformity.

The issue of whether the minimum lot size should apply only in the R-1-A zone was raised during the hearing in discussing R-5-D properties. Also, because the lot sizes for R-

1-B and R-2 are even smaller than the old 7500 sq. ft. number, these properties should not be affected by the new minimum-lot-size provision.

Further ANC3F has proposed that the effective date for subdivision purposes be April 19, 2002, the set down date. This is because the 9,500 figure is lower than the 12,000 in the set down regulation. Thus under vesting concepts the April date should control. FHCA supports this view.

We also recommend language that “prior subdivision into smaller lots shall not create nonconformity.” Even though this is true without this clarification – obviously any lot that was lawfully subdivided remains a perfectly lawful, conforming, buildable one – because of the misinformation that has been spreading in the neighborhood, we recommend this change.

Finally, FHCA continues to support the 12,000 square foot minimum lot size. As was explained in a letter filed by FHCA on October 23, 2002 (Exhibit 290), the Office of Planning's final report of October 7, 2002, contained an incorrect calculation of the median lot size. OP had been using a database that was outdated because it included certain squares (with small lot sizes) that are not within the FHTSO. In addition, the OP calculation included lots under 3,000 sq. ft., including some as small as five sq. ft. These inclusions bias the median number downwards.

As shown in the copy of the October 23, 2002, letter (Exhibit 1), the median figure for all R-1-A developed lots is 10,500 sq. ft. The median figure for all R-1-A houses under 125,000 sq. ft. (the largest private homeowner has 115,000 sq. ft.) is 10,432 sq. ft. All of these figures exclude the institutional properties, the large Embassy residence properties and all R-1-B properties.

FHCA believes that the truest measure for the minimum lot size should be the average R-1-A figure of 14,044 sq. ft., which more than justifies the 12,000 sq. ft. suggested by FHCA and contained in the set down. Creating a smaller minimum lot size will simply increase the pressure for development, resulting in the removal of scores of stately trees in Forest Hills.

§ 1519.4 - The Minimum Side Yard Requirement

Section 1519.4 changes the set down side yard requirement from 16 feet on each side to a total of 24 feet, with a minimum of 8 feet on each side. FHCA continues to support a more flexible side yard requirement than was in the original set down. Nevertheless, we believe that the flexible standard adopted by the Commission is not flexible enough for narrow and irregularly shaped lots in Forest Hills.

Last summer FHCA endorsed a more flexible side yard provision as set out in the footnote.² FHCA now recommends adoption of the following section which would avoid imposing greater side yard restrictions on narrow lots, such as 50 foot wide lots subdivided before 1958, and pie shaped lots that narrow as they approach the street:

To the extent that any residential district within the overlay requires a side yard, the side yard requirement for all buildings, accessory buildings, or any additions to buildings shall be a minimum of eight (8) feet and a minimum of twenty-four (24) feet in the aggregate. Provided that the aggregate requirement shall not apply to lots that are 80 feet wide or less or that measure no more than 80 feet in front. Provided further that the aggregate requirement shall not exceed 20 percent of lot width.

The second sentence makes this provision easier to understand and slightly more generous than the one FHCA proposed last year. This language was endorsed by ANC3F on February 10, 2003.

§ 1519.3 - The Map for Front Yard Setback

The original set down proposal called for a map showing the setback on each street. This was modeled after the Wesley Heights Overlay. During meetings with OP, FHCA learned that DCRA had expressed dissatisfaction with such provisions because of the difficulty of preparing and referring to such maps. OP suggested instead that the front yard setback be a more dynamic concept, and be computed by the builder each time there was new construction. Thus FHCA proposed that § 1519.3 read as follows:

All new residential buildings shall have a front yard setback equal to or greater than the average setback of all structures on the same side of the street in the block where the building in question is located. Where the residential building is sited on a corner lot, the residential building shall be set back from each street on which it borders in an amount that is equal to or greater than the average setback of all structures on the

2 “To the extent that any residential district within the overlay requires a side yard, the side yard requirement for all new residential buildings shall be (a) at least eight (8) feet 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.”

same side of the street in the block where the building in question is located. 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.

The front yard setback requirement is important to the preservation of trees, as well as to the character of the neighborhood. There was much testimony about the need for large areas necessary for tree roots to spread. If houses are placed on a street in a sawtooth fashion they will interfere with the route systems of adjacent properties and trees.

The Need for the Overlay

Some of the opponents continue to insist that there is no need for an overlay, and that concerns about trees are of a recent vintage. But FHCA has been concerned about trees in Forest Hills for over 60 years. In 1987 then FHCA President Shari Barton referred to a quotation from the November 11, 1939, edition of the Washington Post from FHCA's founder, Mrs. Leslie Wright:

With a beautiful, natural setting, forest and hill and many charming homes, the area is one of the choice residential spots in the District. But as I see it, we are just embattled homeowners, forever fighting to keep Connecticut Avenue attractive, and we have to maintain eternal vigilance to keep our trees, to have a say-so about the streets, and to get the promise of a playground. (Emphasis added).

FHCA is mindful of its long history of acting to preserve trees in Forest Hills. Although we have not inundated the Commission with still more letters from proponents of the overlay, support for the overlay remains strong. Certain opponents continue to circulate misinformation about the overlay³ in the hope of gathering signatures opposing it or seeking exemption from it.

Some of those seeking exemption live on lots surrounded by National Park land and large institutional properties covered with trees. These properties are most appropriate for inclusion.

³ See e.g. Exhibit 2 (attached): "The FH/TSP restricts your right to take down any tree with a circumference of 12 inches or more unless you get a 'special exception' (see below) or have an arborist certify that the tree is 'unhealthy or unsafe'." This completely misstates the provisions and is only one of several examples in Exhibit 2.

The Tree Bill

The Urban Forest Preservation Act of 2002 (attached as Exhibit 3) does not preempt the overlay or conflict with it. It is not yet law (while awaiting the Congressional approval process), and in any event applies City-wide and only to trees greater than 55 inches in circumference ("Special Trees"). It does not limit the ability to remove Special Trees – they can be removed by paying a fee or replanting saplings. The overlay directly addresses the question of trying to preserve trees that are part of the dwindling tree canopy.

Conclusion

Washington's tree canopy is one of its treasures. The canopy in Forest Hills is almost a unique resource in D.C. But that canopy is in severe danger, as is shown from many public sources. As Dr. Seuss wrote in "The Lorax" when the Truffula tree was cut down:

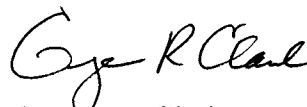
"Mister!" he said with a sawdusty sneeze,
"I am the Lorax. I speak for the trees.
I speak for the trees, for the trees have no tongues.
And I'm asking you, sir, at the top of my lungs"--
he was very upset as he shouted and puffed--
"What's that THING you've made out of my Truffula tuft?"
"Look, Lorax," I said. "There's no cause for alarm.
I chopped just one tree. I am doing no harm.
I'm being quit useful.

...

I laughed at the Lorax, "You poor stupid guy!
You never can tell what some people will buy."
"I repeat," cried the Lorax,
"I speak for the trees!"
"I'm busy," I told him.
"Shut up, if you please."

Someone needs to speak for the trees. This Commission has honorably done so. We urge it to continue to do so in its final implementation of the overlay.

Respectfully submitted,



George R. Clark
President



Forest Hills Citizens Association

Dedicated to the enhancement, maintenance, protection, and promotion of
a positive community spirit in the Forest Hills neighborhood.

October 23, 2002

VIA HAND DELIVERY

Mr. Alberto P. Bastida, AICP
Secretary of the Zoning Commission
441 4th Street, NW, Suite 210
Washington, DC 20001

Re: Case No. 02-19 (Forest Hills Tree and Slope Overlay District)

Dear Mr. Bastida and Zoning Commissioners:

The purpose of this letter is to call attention to an error in median lot size figures appearing in the Office of Planning's Final Report dated October 7, 2002. Because we obviously had no opportunity to review the Report prior to its being filed, we attempted thereafter (see attached e-mail) to reach a resolution with the Office of Planning concerning its figures, especially since OP was using the data base that we had developed and supplied to them. Unfortunately, the matter has still not been resolved. (You will recall that at the June 27 hearing the Commission asked FHCA and OP to reconcile their differences; FHCA provided the correct information to OP in August and we thought the matter was resolved.)

In any event, while we continue to believe that the determination of an appropriate minimum lot size for R-1-A properties in Forest Hills should be based on average lot size (ranging from 14,000 to 21,000 square feet but compromised at 12,000 square feet according to the testimony), and not on median lot size, the correct median lot size figure for R-1-A lots within the overlay should be 10,500 square feet (see attachments hereto).

Respectfully submitted,

FOREST HILLS CITIZENS
ASSOCIATION

By Barbara M. Simons
Barbara M. Simons
President

ZONING COMMISSION
District of Columbia

Case 02-19
Exhibit 290

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Lot Size Statistics for Forest Hills Overlay				
Category	Description	No. of properties	Average (sq ft)	Median (sq ft)
All properties	All developed & vacant in all zones; no vacant lots <3,000 sq ft No government owned	692	20,223	9,998
All developed	All developed lots in all zones	652	19,542	10,000
R-1-A developed	Developed lots zoned R-1-A	578	21,023	10,500
R-1-A Houses	Includes Polish R-5-D residence. Excludes institutions: Hilwood, Howard, Levine School of Music, Adventist Church, Methodist Home, and Netherlands Chancery. Also excludes R-5-D Hungarian Chancery and all R-1-B developed properties.	573	17,275	10,478
R-1-A Houses <125,000 sq. ft.	Includes Polish R-5-D residence. Excludes institutions above plus Indonesian, Czech, Peruvian and Italian Residences. Natural break in data – next property is more than twice as large at ~285,000 sq ft. Also largest private homeowner has ~115,000 sq ft	569	14,044	10,432
R-1-A Houses <35,000 sq. ft.	All R-1-A houses with lots smaller than 35,000 sq ft.	549	12,218	10,257
Vacant Lots	Vacant lots > 3,000 sq ft. No govt. owned or sliver lots. Includes 1 R-1-B lot.	40	24,261	9,697

Errors in Statistics in the OP Supplemental Report

1. The median lot size numbers include data for 2 squares that are not in the overlay (squares 2028 & 2029). OP was first informed that these squares are not included on May 24, 2002 (See the attached emails). These squares are zoned R-1-B and have small lots.
2. The median lot size numbers include the whole overlay area. Subdivision is not an issue in the R-1-B and R-2 portions of the overlay since these areas are already developed with small lots. The relevant area of concern is the portion of the overlay zoned R-1-A, which contains many properties large enough to be subdivided. Appropriate median statistics should include only the R-1-A area.
3. The median lot size for undeveloped property includes government owned parkland.
4. The median lot size for undeveloped property includes very small lots under 3,000 square feet in size. The data base used for these calculations was constructed from tax and revenue data. Some lots are split by utilities right-of-ways and thus receive two tax bills. Some of these splits resulted in very small lots in sizes such as 5 square feet, 200 square feet etc. Including these lots in calculations biases the resulting statistics. It is reasonable to exclude very small lots that are an artifact of the tax system.

Clark, George R.

From: Clark, George R.
Sent: Thursday, October 10, 2002 11:48 AM
To: 'Ellen McCarthy'; 'Jennifer Steingasser'; 'Karen Thomas'; 'Stephen Mordfin'
Cc: 'NutriKinetics'
Subject: OP 2d Supplemental Report/Forest Hills

Ellen, Jennifer, Karen and Stephen,

In looking at the supplemental report on minimum lot size (and we're happy that you recommended an increase, even though we still think it should be larger), we noticed that the report uses old figures on the median lot sizes, both for developed and undeveloped lots. You'll recall that the Commission asked us on June 27 to reconcile the different numbers we were using at that hearing.

Our numbers guru, Ginger Worthington was able to figure out where and why we differed, and sent that info on (I've attached her e-mails on this subject). As Ginger's e-mail of August 2 shows (after explaining why the numbers are different), these are the figures:

R-1-A developed Mean: 21,023 Median: 10,500
R-1-A vacant Mean: 32,043 Median: 9,699
R-1-A all Mean: 21,720 Median: 10,478

As her e-mail explained, we used R-1-A only because there was agreement that there would be no change to lot size in the other districts, even assuming they were included (as you have now recommended). I'm also attaching the statistics FHCA presented at the June 27 hearing.

Maybe I'm missing something in all this, but thought you should have it so that the most accurate data is available. Please let me or Ginger know if you have any questions.

George

George R. Clark
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202-414-9215
202-414-9299 (fax)
gclark@reedsmith.com



Errors in Statistics
in the OP...



Statistics for Forest
Hills Ov...

From: "NutriKinetics" <nutrikin@sprynet.com>
To: <Karen.Thomas@dc.gov>
Cc: "David Bardin" <bardind@arentfox.com>; "George Clark" <grclark@erols.com>; <DavidBardin@aol.com>;
"Clark, George R." <GClark@ReedSmith.com>
Sent: Friday, May 24, 2002 9:19 AM
Attach: TSP_NO2028_2029.xls
Subject: Update database for Tree & Slope Overlay

Karen,

The tree and slope committee discovered that squares 2028 and 2029 were not in the overlay area that was set down by the zoning commission.

Attached is an updated version of the database of properties with squares 2028 and 2029 deleted.

Sincerely,

Ginger Worthington

From: <karen.thomas@dc.gov>
To: "NutriKinetics" <nutrikin@sprynet.com>
Cc: <stephen.mordfin@dc.gov>
Sent: Sunday, May 26, 2002 4:07 PM
Attach: reply.txt
Subject: Re: Update database for Tree & Slope Overlay
Thank You, Ginger. We will amke the necessary adjustments
>
>

From: "Steingasser, Jennifer (OP)" <Jennifer.Steingasser@dc.gov>
To: <nutrikin@sprynet.com>
Sent: Monday, July 29, 2002 11:53 AM
Attach: Lot sizes.xls

Ginger, attached is a copy of the data we have used for all our median figures. I worked off of table one, which has all the lots provided to us.

Jennifer

From: "NutriKinetics" <nutrikin@sprynet.com>
To: "Steingasser, Jennifer (OP)"
Sent: Tuesday, July 30, 2002 12:53 PM
Subject: Re:
Thanks. Ginger

From: "NutriKinetics" <nutrikin@sprynet.com>
To: "Steingasser, Jennifer (OP)" <Jennifer.Steingasser@dc.gov>
Cc: "David Bardin" <bardind@arentfox.com>
Sent: Friday, August 02, 2002 10:43 PM
Attach: Lot sizes.xls
Subject: Forest Hills Tree & Slope Data base

Jennifer,

There has been a mix-up. Shortly before Karen Thomas's illness, we sent her a new version of the data base. We discovered that Squares 2028 and 2029 had been left out of the petition to the Zoning Commission, and so they were not in the overlay. The new data base (TSP_NO2028_2029) is the same as the one you were working from except squares 2028 and 2029 were deleted. These squares are in the northern part of the overlay and are all R-1-B.

Since there is agreement that any minimum lot size should apply to only R-1-A areas, it seems that statistics for the R-1-A portion of the overlay are what is relevant now. I am returning your spreadsheet with the very small vacant lots and the government owned park land separated into separate sections (in case you want to consider excluding either of these). Means and medians excluding parkland and the very small lots (half of them are less than 500 sq ft) are shown on sheet one starting at line 650 or so. These numbers are:

R-1-A developed Mean: 21,023 Median: 10,500

R-1-A vacant Mean: 32,043 Median: 9,699

R-1-A all Mean: 21,720 Median: 10,478

Could you let us know which set of numbers you are going to give to the Zoning Commission so we are all on the same page at the hearing.

Thanks.

Sincerely,

Ginger Worthington

ERROR IN OP REPORT

The following numbers on p. 7 of the OP report are incorrect:

1. 17,275 sq ft used as average of all developed properties should be either 19,542 for all developed or 21,023 for all R-1-A developed.
2. 9,810 sq ft as median of all developed properties should be either 10,000 for all developed or 10,500 for R-1-A developed.
3. 9,415 sq ft as median of all vacant lots. This number includes sliver lots and government owned park land. Should be 9,697 sq ft.

Forest Hills Tree and Slope Overlay: What It Means to You

After three evenings of testimony, the Zoning Commission issued a revised version of the Forest Hills Tree and Slope Provision (FH/TSP) overlay in the *DC Register* on December 13, 2002. It is in effect. Comments to the Commission are due by 3:00 p.m. February 10, 2003. The Commission may make changes as a result of comments. **The following restrictions now apply not only to large undeveloped parcels but also to your personal property.**

Tree Provisions of FH/TSP

The FH/TSP restricts your right to take down any tree with a circumference of 12 inches or more unless you get a "special exception" (see below) or have an arborist certify that the tree is "unhealthy or unsafe."

- You cannot take down any tree that is 75 inches or more in circumference.
- You cannot cut down more than three trees with circumferences of 38-75 inches within 25 feet of your building restriction line (BRL), which itself could be 15 feet from the street. If you don't have a BRL, the protected zone is 25 feet from the public street.
- You cannot take down more than 25 percent of the total circumference inches of all trees on your lot having a circumference greater than 12 inches.
- The FH/TSP places no time limit on these restrictions. In other words, if you cut down all of the trees permitted by the overlay, you and presumably any future owner of your property cannot cut down any more without going through a "special exception process."

What happens if you ignore these rules? Planting new trees will not help you out.

- You cannot get a building permit for seven years.
- If you sell your property before then, you will need to tell the buyer that he/she cannot get a building permit until the seven year clock is up.
- You will need to tell the future purchaser of your property what you have done and whether your property's quota on tree cutting has filled or is close to filling.

How is this enforced? There are no specific enforcement provisions. Enforcement seems to depend on neighbors turning in other neighbors who appear to violate the FH/TSP to the "tree police." What will this do to community spirit?

DC has special building requirements for tree and slope overlay districts. If you live inside the FH/TSP, to get a building permit for work (even a retaining wall), you must **certify** that the proposed construction will cause no disturbance (undefined) within the drip line (outer perimeter of the crown) of any tree greater than 12 inches in diameter (whether or not that tree is on your property). On a "Tree and Slope Information Form," you will need to submit a **notarized affidavit**, along with two topographic site plans showing contour lines, number and location of regulated trees, and total lot occupancy and impervious surface ratio. Mistakes in certification could lead to prosecution.

The form states in bold: "FAILURE TO NOTIFY THE ZONING OFFICE OF THIS INFORMATION MAY RESULT IN A FINANCIAL PENALTY AND/OR PERMIT DENIAL."

Renovation/Building Provisions of FH/TSP

The tree and slope overlay idea was presented to the Forest Hills community as an initiative to protect trees and slopes. In fact, it also restricts personal property development in the neighborhood irrespective of any impact on trees.

Lot occupancy: In the past, your house could cover up to 40% of your lot. Now, unless you get a "special exception," your house (and new addition) cannot occupy more than 30% of the area of the lot, *even if not a single tree would be affected by greater coverage*. In addition, the structure plus any "impervious surface" (e.g., paved driveway, patio, pool) cannot exceed 50% of the area of the lot, *even if going higher would not affect a single tree on the lot*; however, the 50%

impervious surface limit cannot prevent you from enlarging a house that existed on December 13, 2002.

Front yard setback: All new residential buildings, accessory buildings (like garages), or additions to buildings must now have a front yard setback equal to or greater than the average setback of all structures on the same side of your block. To build on a corner lot, your setback on each street must be equal to or greater than the average setback of all structures on the same side of that street.

Side yard setback: Before the tree and slope overlay was "set down," you needed an 8-foot side yard on each side. This has been increased to a total of 24 feet for the two sides combined, irrespective of the size or width of your lot, with a minimum of 8 feet on one side. It applies to additions to your house and new construction, whether or not any trees would be affected. Most of us have houses with 5-8 foot side yards now.

Slopes: If your lot slopes more than 25 percent (rises more than 2.5 feet every 10 feet) or has soil that the U.S. Department of Agriculture would classify as "highly erodible," you will need professional certification that your building plans will follow "best geo-technical, structural engineering and arboreal practices" (undefined). You must submit this certification to the Zoning Administrator in the Department of Consumer and Regulatory Affairs.

Special Exceptions of FH/TSP

Want to get a "special exception" from any of these provisions? You will need to ask the Board of Zoning Adjustment (BZA) for a public hearing on your request. (A hearing often takes 3-4 months to schedule.) The FH/TSP instructs the BZA to limit "to the maximum extent possible" tree removal, grading and topographical change and allows the BZA to impose other requirements not included in the tree and slope overlay "as it deems necessary."

- You will need to demonstrate that there are specific physical characteristics of the lot that justify the exception you seek and that your building will not adversely affect your neighbors.
- You will need to submit a site plan with details of the changes you want to make.
- You will need to submit a statement indicating how you will protect the remaining trees on the lot during construction.
- Your request will need to be reviewed by five (5!) city and federal agencies: DC Office of Planning; DC Department of Transportation (Tree Maintenance Division); DC Department of Parks and Recreation; DC Department of Consumer and Regulatory Affairs (Soil Erosion and Storm Management Branch), and the National Park Service.

The FH/TSP sets no time limit for the agencies to review and report on your application.

Don't take our word for it. Read the FH/TSP for yourself. You will find it on the ANC web site at www.anc3f.org. If you have ideas or particular concerns, please feel free to contact us at the above address, phone or fax number, or by e-mail.

We encourage you to sign the petition below, which we will deliver to the Commission when we file comments: use the address or fax number above.

PETITION TO THE ZONING COMMISSION

I reside within the proposed Forest Hills Tree and Slope Protection (FH/TSP) Overlay District. I do NOT support the proposed FH/TSP as published in the December 13, 2002 D.C. Register. The proposed FH/TSP should be returned to the community so that Forest Hills residents can participate in developing a revised plan that addresses unanswered critical issues.

NAME (PLEASE PRINT CLEARLY)	ADDRESS	SIGNATURE
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NAME (PLEASE PRINT CLEARLY)	ADDRESS	SIGNATURE
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AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

2003 Supp.

West Group
Publisher

To establish an urban forest preservation program; to require a Special Tree removal permit and community notification prior to the removal or replacement of a tree with a circumference of 55 inches or more, to establish a Tree Fund to be used to plant trees and defray costs associated with the implementation of this act; to amend An Act For the preservation of the public peace and the protection of property within the District of Columbia to revise penalties for injuring trees on public space and private property; and to repeal section 847 of An Act To establish a code of law for the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Urban Forest Preservation Act of 2002".

TITLE I. URBAN FOREST PRESERVATION.

Sec. 101. Findings.

(a) The urban forest of the District of Columbia, growing on both public and private land, is one of the District's great natural resources.

(b) A healthy, vibrant urban forest provides numerous environmental benefits, including:

- (1) Heat island effect mitigation and reduced energy use;
- (2) Better air quality and reduced water pollution; and
- (3) Quieter and more beautiful neighborhoods.

(c) The trees comprising the urban forest have significant aesthetic value, which enhances property values and the quality of life in neighborhoods throughout the District.

Sec. 102. Definitions.

For the purposes of this title, the term:

(1) "Circumference" means the linear distance around the trunk of a tree, when measured at a height of 4½ feet.

(2) "Director" means the Director of the Department of Transportation.

(3) "Hazardous tree" means a tree that, in the opinion of a certified arborist, is defective, diseased, dying, or dead and should be removed; poses a high risk of failure or

fracture with the potential to cause injury to people or damage to property and should be removed; or is causing damage to property or structures that cannot be mitigated in any manner other than removal of the tree. In any case, the Mayor shall have the authority to determine that a tree is not hazardous.

(4) "Public parking" means that area of public space devoted to open space, greenery, parks, or parking that lies between the property line, which may or may not coincide with the building restriction line, and the edge of the actual or planned sidewalk that is nearer to the property line, as the property line and sidewalk are shown on the records of the District.

(5) "Special Tree" means a tree with a circumference of 55 inches or more.

(6) "Top" means, as defined by the latest edition of the ANSI-A300 pruning standards, the unacceptable act of tree pruning resulting in the indiscriminate reduction of the tree's crown leading to disfigurement or death of the tree.

(7) "Tree Fund" means the Tree Fund established pursuant to section 107.

Sec. 103. Urban Forest Preservation Program.

(a)(1) There is hereby established an Urban Forest Preservation Program for the District of Columbia which shall be administered by the Mayor. The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall promulgate standards and regulations governing the administration of this program and the protection of trees.

(2) The regulations shall allow public utility companies regulated by the Public Service Commission to conduct utility construction, line maintenance, and emergency work within the District's rights-of-way without a Special Tree removal permit otherwise required by this title.

(b) The Mayor shall transmit the regulations prescribed in subsection (a) of this section to the Council no later than 270 calendar days following the effective date of this act for approval or disapproval, by resolution. These regulations and each revision of these regulations shall be transmitted to the Council for a 45-day review period, excluding Saturdays, Sundays, holidays and periods of Council recess, and deemed disapproved in the absence of Council action within the 45-day review period.

(c) The Mayor shall be responsible for preparing and annually updating a 5-year urban forest report and master plan.

Sec. 104. Preservation of Special Trees; permits; penalties.

(a) It shall be unlawful for any person or nongovernmental entity, without a Special Tree removal permit issued by the Mayor, to Top, cut down, remove, girdle, break, or destroy any Special Tree.

(b) The Mayor shall issue a Special Tree removal permit under this section where the applicant has:

(1) Shown that the Special Tree in question is a Hazardous Tree;

(2) Shown that the Special Tree in question is of a species that has been identified, by regulation, as appropriate for removal;

(3) Paid into the Tree Fund an amount equal to \$35 for each inch of the circumference of the Special Tree in question; or

(4) Averred in a signed Special Tree removal permit application that the applicant will plant, in compliance with the applicable regulations, a quantity of saplings whose aggregated circumference equals or exceeds the circumference of the Special Tree in question.

(c) The showings required by subsection (b) of this section may be satisfied by a combination of payments and plantings pursuant to subsection (b)(3) and (b)(4) of this section.

(d) A violation of subsection (a) of this section, or a failure to comply with the conditions contained in a Special Tree removal permit, shall constitute a violation subject to a fine of not less than \$100 per each inch of the circumference of the Special Tree in question.

Sec. 105. Notification requirements for removal of trees on public space.

(a) Unless the tree is a Hazardous Tree, before removing a tree on public space, the Director shall provide not less than 15 days written notice to the affected Advisory Neighborhood Commission, and shall set forth the reason for the proposed removal.

(b) Public utility companies shall provide not less than 20 days written notice to the Director or his or her designee prior to performing any work which affects trees on public space, except for permitted utility construction or emergency work conducted by a public utility company regulated by the Public Service Commission, as provided in section 103(a).

Sec. 106. Hazardous Trees

(a) Nothing in this title shall prohibit the Mayor or a property owner from immediately removing a Hazardous Tree.

(b) No property owner shall permit a tree or tree part, dead or alive, to stand on his or her property, including the public parking area associated with that property if it is a hazard to the public at-large, or endangers any public improvement or other public facility.

(c) If the Mayor identifies a tree hazard as described in subsection (b) of this section, the Mayor shall notify the property owner of the hazardous situation, and shall give the property owner not less than 10 days written notice, excluding Saturdays, Sundays, and legal holidays, to eliminate the hazard.

(d) Where the District has notified a property owner of a hazard and no action is taken by the property owner to eliminate the hazard, the Mayor may take corrective action to abate the hazard. The Mayor shall then send the property owner a bill for the cost of the abatement action including any administrative costs incurred by the District. If the bill remains unpaid after 60-days, it shall become a tax lien against the property.

Sec. 107. Tree Fund.

(a) There shall be established a fund designated as the Tree Fund, which shall be a sub-fund of the Local Road Construction and Maintenance Fund and separate from the General Fund of the District of Columbia. Monies deposited into the Tree Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this pursuant to an act of Congress. Donations, fees and penalties collected pursuant to this act or any rules established to implement this act shall be deposited into the Tree Fund. All receipts shall be deposited as soon as practicable. The Director shall maintain the fund in coordination with the Chief Financial Officer of the District of Columbia.

(b) The Fund shall be used to plant trees and for any associated costs incurred by the District in administering this title, and may include providing income contingent subsidies that assist District residents with the removal costs of hazardous trees in accordance with regulations provided for in section 103.

(c) The Chief Financial Officer shall submit to the Mayor and to the Council an annual statement of all receipts and disbursements for the Fund.

(d) Private voluntary donations to the Fund shall be tax deductible for purposes of District income and franchise taxes.

Sec. 108. Enforcement.

Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this title, or any regulations issued under the authority of this title, pursuant to Titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 2-1801.01 *et seq.*) ("Civil Infractions Act").

TITLE II. PROTECTION OF TREES AS PROPERTY.

Sec. 201. Section 13 of An Act For the preservation of the public peace and the protection of property within the District of Columbia, approved July 29, 1892 (27 Stat. 324; D.C. Official Code § 22-3310), is amended to read as follows:

Amend
§ 22-3310

"Sec. 13. It shall be unlawful for any person willfully to top, cut down, remove, girdle, break, wound, destroy, or in any manner injure any vine, bush, shrub, or tree not owned by that person, or any of the boxes, stakes or any other protection thereof, under a penalty not to exceed, for each and every such offense:

(a) In the case of any tree 55 inches or greater in circumference when measured at a height of four and one half feet, \$15,000 or imprisonment for not more than 90 days, or both, or

(b) For vines, bushes, shrubs, and smaller trees, \$5,000 or imprisonment for not more than 30 days, or both."

ENROLLED ORIGINAL

Sec. 202. Section 847 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1327; D.C. Official Code § 22-3308) is repealed.

**Repeal
§ 22-3308**

TITLE III. FISCAL IMPACT STATEMENT, EFFECTIVE DATE.

Sec. 301. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 302. Effective Date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia