

Jane L. Halpern & Warren R. Walls
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July 12, 2004

District of Columbia Zoning Commission
Room 210
441 4th Street, N.W.
Washington, D.C. 20001
Alberto Bastida

Re: Forest Hills Tree and Slope Protection Overlay District/Zoning Commission Case No. 02-19

Dear Mr. Bastida:

We are homeowners in Forest Hills and our house lies within the proposed Forest Hills Tree and Slope Overlay (FH/TSP) district. We would like to commend the Zoning Commission for recognizing the deep division the original and amended FH/TSP created in Forest Hills, and for directing the Office of Planning to research the impact and effectiveness of existing overlays in the District of Columbia and suggest viable alternatives. The Office of Planning should be recognized for their due diligence on this directive, and for working with all concerned residents of Forest Hills in an open, forthright manner to arrive at a workable, effective compromise to this issue.

We are in favor of the tree canopy approach as proposed by the Office of Planning. We believe it is a workable and practical solution for Forest Hills that focuses on the conservation of trees without unduly intruding on the property rights of citizens. We are strongly opposed to the original FH/TSP, and have provided testimony to the Zoning Commission to this effect in September 2002.

1. **The plan proposed by the Office of Planning is appropriately focused on the protection and conservation of trees. It does not include additional zoning regulations that have questionable applicability to a tree protection bill.**

The original FH/TSP set down in April 2002 and the amended FH/TSP published in the D.C. register in Dec 2002 contained numerous provisions that addressed front yard setbacks, lot size restrictions and side yard restrictions. It is important to note that none of these provisions are found in the original tree and slope overlay template in Chapter 15 of the Zoning Regulations (11 DCMR Sections 1511 *et seq*) or in the tree and slope overlays presently in effect in DC. A clear rationale for inclusion of these zoning regulations in the FH/TSP has never been provided, and we can only conclude that they represent an effort by proponents of the FH/TSP to limit the size and scope of development in Forest Hills. Or, to quote a known FH/TSP proponent, ANC 3F Commissioner David Bardin, "the whole purpose of the overlay is to make it harder to get a building permit." (ANC 3F meeting, Feb. 10, 2003).

We have no objection to reasonable front yard setbacks but do not believe that changes to zoning regulations belong in a tree protection bill. A review of development practices in Forest Hills is a separate issue that should be addressed elsewhere. The goal of any tree

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preservation effort should be to protect trees, not to restrict the ability of individual homeowners to use and improve their property as they wish without the obstacle of onerous, confusing and potentially costly overlay provisions

- 2. The plan developed by the Office of Planning has been developed with input from the affected neighborhood, and has been presented to the community for input prior to implementation.**

The original FH/TSP that was submitted in April 2002 was never, to our knowledge, presented to or reviewed by Forest Hills residents prior to submission. We believe that there was significant misrepresentation on behalf of the Forest Hills Citizens Association (FHCA) officer who submitted the original FH/TSP. In our knowledge, the FH/TSP was never discussed at a FHCA meeting, and numerous FHCA members, including us, have stated that they were unaware that the FH/TSP was submitted "on their behalf". Requests to FHCA officers by FHCA members to provide an account of the steps that were taken prior to sponsoring the FH/TSP have been rebuffed. Although this behavior may be within the rights of FHCA officers, it demonstrates the lack of openness and community involvement that was associated with the original FH/TSP. (For the record, we are also members of the Forest Hills Neighbors for Responsible Preservation (FHNRP)).

In contrast we believe that the process leading to the alternative FH/TSP developed by the Office of Planning and published for comment on Feb 6, 2004 was open, transparent and inclusive of input from the affected Forest Hills residents.

- 3. The plan proposed by the Office of Planning addresses numerous concerns of Forest Hills residents and provides a fair balance between preservation of trees and the rights of individual homeowners to use their property as they see fit.**

Since publication of the alternative FH/TSP based upon canopy coverage, various concerns have been voiced at public meetings (ANC 3H) and in the press. These concerns include the potential for individuals or development companies to clear-cut lots, questions on enforcement of the overlay, and whether the percentages of tree canopy in the proposal are appropriate. Furthermore, it is and always will be possible for a determined individual to find loopholes or to "beat the system."

In terms of enforcement, the tree canopy proposal relies on the same mechanism as the amended FH/TSP- certifications by certified arborists and/or landscape architects and restrictions on the issuance of building permits.

In regards to clear cutting, neither the draft tree canopy proposal that we have seen nor the original or amended FH/TSP specifically prevent such action. In any event, how likely is it that "clear-cutting" would occur in an area known as "Forest Hills?" How often has clear-cutting occurred in the last five, ten or even twenty years in Forest Hills? Is there a demonstrated economic advantage for a developer to clear-cut trees on any one or more lots in Forest Hills? How realistic is the threat of clear-cutting in an area where seventy-seven percent of all privately owned, developed R-1A lots in the overlay district are already too small to subdivide? To date, those raising these issues have not provided data regarding any of these questions. In theory, clear-cutting could occur, but the realistic chance of this action occurring would appear to be, at best, remote.

The canopy coverage percentage provision has critics on both sides- those that think it is too low, and those that think it is too high. The Office of Planning should be relied upon for

guidance with this issue, with the reasonable assumption a viable recommendation will be determined.

We recognize and can understand several of these concerns. However, as is true for all public policy decisions, we believe that it is not possible to craft one single plan that satisfies everyone or that addresses every possible situation. The alternative FH/TSP based upon canopy coverage, as proposed by the Office of Planning, addresses the majority of situations and concerns in a fair and reasonable manner.

Thank you for the opportunity to provide these comments.

Handwritten signatures of Jane L. Halpern and Warren R. Watts. The signature of Jane L. Halpern is on the left, and the signature of Warren R. Watts is on the right, written in a cursive style.

Jane L. Halpern and Warren R. Watts

TO: Mr. Alberto Bastida, DC Zoning Commis:

FROM: Warren Watts & Jane Halpern
(202) 363-0415; (202) 877-0854 (w)

Subject: Comments on Case # 02-19,
Forest Hills TSO

Date: July 12, 2004.

Pages: 4 including cover sheet

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