

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



Office of the Director

MEMORANDUM

TO: Zoning Commission
FROM: *ALS for*
Andrew Altman, Director
DATE: July 12, 2004
SUBJECT: Forest Hills Tree and Slope Overlay District - ZC 02-19
Response to the Zoning Commission – Final Report

BACKGROUND

This report contains the recommendation of the Office of Planning, following the public hearings held by the Zoning Commission on October 28, 2002 and March 3, 2003 and a subsequent public meeting on January 12, 2004. The following is a timeline of activities and reports to date:

2002

- **April 5, 2002:** Forest Hills Citizens Associations filed a request for a Tree and Slope Overlay for Forest Hills (FH/TSO).
- **April 19, 2002:** The Zoning Commission agreed and scheduled a public hearing for June 27.
- **June 27, 2002, September 5, 2002 and September 30, 2002:** Public Hearings Held
- **October 28, 2002:** Zoning Commission made some technical revisions to the FH/TSO,
- **December 13, 2002:** The Commission's new version of the FH/TSO (as revised on Oct. 28) was published in the DC Register.

2003

- **March 3, 2003:** ZC holds a public meeting and instructed the Office of Planning (OP) to research how the template has worked in other areas of DC
- **July 31, 2003:** OP submits report based on findings and suggests another approach: - canopy protection
- **September 8, 2003:** ZC requests OP to seek DCRA's and UFA's support.
- **November 12, 2003:** The Zoning Commission suggested refinements to the December 13, 2002 draft (still in effect) and asked OP to prepare still another draft for public comment and a hearing.

ZONING COMMISSION
District of Columbia

CASE NO. 02-19
EXHIBIT NO. 342

ZONING COMMISSION
District of Columbia
CASE NO.02-19
EXHIBIT NO.342

2004

February 2004

- The alternative was published for public comment, and a new public hearing was set to consider the response by the community to OP's Alternate Proposal.

For more than two years, the Office of Planning has been exploring various options for addressing concerns in the Forest Hills neighborhood regarding the proposed Tree and Slope Protection Overlay as set-down by the Forest Hills Citizen Association and published in the D.C. Register on December 13, 2002 (49 DCR 11309).

The neighborhood has been sharply divided over the appropriate approach to tree protection in their neighborhood. In light of that division, as well as concerns of some Commissioners, about the provisions of the tree and slope overlay template used to devise the Forest Hills Tree and Slope Protection Overlay District, the Commission instructed OP to explore another approach to tree protection that could be potentially adopted city-wide.

Based on researched literature, specifically recommendations for protecting trees on private property from indiscriminate removal and damage, the key elements referenced were:

- Activities subject to regulation (development/land disturbance activities)
- Criteria and standards for approving regulated activities (BZA approval criteria)
- Permit process, including requirements, fees, time limits, and appeals
- Conditions or compensation required to mitigate for adverse impacts (Planting of new trees based on overall canopy cover)
- Monitoring of protected trees and mitigation areas.

OP referenced the American Forests Urban Ecosystem Analysis (1999, 2002) for recommendations, which provided a tree canopy benchmark as a starting point for discussion and goal setting.

What was derived from this research, and based on what could be legally done in the District (based on the Attorney General's advice) OP crafted a version, which looked at tree preservation based on canopy coverage.

In a report to the Commission on July 21, 2003, OP proposed such an approach in an alternate text, the "Forest Hills Tree Protection Overlay" ("Alternate Proposal") that reflected and built on the recently adopted Tree Preservation Act, 2002 (Tree Bill) and best practices from other jurisdictions and recommendations of the urban forestry discipline. OP's Alternate Proposal introduced the following major elements:

- Expands Tree Bill approach
- Tree survey
- Tree management plan
- Urban Forestry Review required for building permit
- Replacement/replanting provision
- Nursery Stock Trees

At this meeting, the Commission requested further information and residents comments regarding the canopy approach. OP then researched methods of obtaining some reference of canopy coverage existing in the Forest Hills neighborhood, including the area under discussion.

OP's GIS team produced a digital image analysis, by a method known as "Heads-up digitizing", using June 19, 2003 aerial photographs. Tree canopy polygons by squares were produced. Street trees were not included. The total area of these polygons were directly determined (by computer analysis) and this was used to calculate the percent canopy cover for the subject area (54%).

Based on the GIS analysis, OP requested a meeting with ANC 3F and the Commissioners of ANC3F convened a special meeting on March 31, 2004, for community input on the Alternate Proposal. The purpose of the meeting was to:

- Present the provisions of the Alternate Proposal to the Forest Hills community,
- Explain the process by which it was developed,
- Answer questions about how it would work, and
- Solicit input and other suggestions for modifications that could be incorporated in this report to the Commission.

Comments from the meeting were recorded¹ and emails were solicited from attendees and the wider community regarding any concerns with the Alternate Proposal.

FINDINGS:

OP undertook a careful process of listening, research and deliberation to prepare this report. Input from many Forest Hills residents interested in the development of protections for the trees in their neighborhood was solicited, received and considered. OP met with independent experts, researched various studies and approaches², and consulted with other District agency officials charged with zoning and tree protection.

The report focuses on changes to the Alternate Proposal which are derived from conversations with Forest Hills residents and their ANC representatives, in an attempt to find workable compromises between sometimes diametrically opposite views about the appropriate approach going forward. The suggested changes therefore represent compromises, which OP believes would satisfy the preservation goals for tree canopy in Forest Hills. In addition, the permitting process envisioned under the Alternate Proposal would be more efficient for limited staff resources of the DCRA and the Urban Forestry Division.

¹ Appendix 1 –Comments from March 31st ANC 3F meeting.

² Swiecki, T. J., Bernhardt, E. A. (2001). Guidelines for Developing and Evaluating Tree Ordinances. <http://phytoisphere.com/record/index.htm>

The following is a summary of the key issues of interest raised by the community, and OP's suggested additions to or revisions of, the Alternate Proposal to address those issues.

The Need for a Tree Plan and Required Canopy Coverage

Section 1517.2

Section 1517.2 of the Alternate Proposal would require that an applicant for a building permit to construct a "building, accessory building, or an addition to a building" produce certification from a certified landscape architect or an ISA certified arborist that specified tree canopy coverage for the affected property would be achieved when construction is completed, or no later than ten years from the application for a building permit.

Some residents expressed concern that relatively minor exterior work, such as roof repairs, or decks off the back of a house, could trigger the need for tree plans and canopy coverage increases. It was also suggested that other building activities should also be included, even small projects, including permits sought to build swimming pools, driveways, tennis courts, pool houses, patios, and garden sheds.

As currently drafted, the building permit threshold reflects the same language used in the TSP template – Section 1514.1. OP believes that the regulations should reflect a balance of the concerns of some that small projects would unfairly trigger the need for a tree plan and canopy coverage with concerns of others that other projects would escape coverage by the overlay provisions.

Therefore, OP recommends a revision of proposed Section 1517.2 to reflect that applicants for building permits for projects that *are not* "buildings," "accessory buildings," or "additions to buildings" would need to meet the requirements of the overlay, only if those projects would have an impact on *existing* canopy coverage within the overlay. Construction of "buildings," "accessory buildings," or "additions to buildings" would remain fully covered even if there were no immediate impact on existing canopy coverage on the lot. Therefore, OP recommends that Section 1517.2 be revised as follows (addition italic):

"Any applicant for the construction of a building, accessory building, or an addition to a building, *or other work that disturbs the soil beneath the existing canopy on the lot*, shall provide certification from a certified landscape architect or an ISA certified arborist that a tree canopy, resulting from trees within the lot lines of the subject property, will cover the following percentages of the lot after construction is completed or no later than ten (10) years after the date of application."...

OP believes this protect existing trees on a lot by assigning credit for maintaining smaller trees that could potentially provide a ten-year canopy to meet the required coverage.

Canopy Coverage Percentages - Justification

Section 1517.2

The community holds widely divergent views on the appropriate percentages that should apply to various lot sizes. Some believe the canopy coverage percentages in Section

1517.2 were excessive (particularly for small lots), or, too low for larger lots. In addition, it was argued that the highest rate (40 percent) would encourage subdivision of large lots to reduce the canopy coverage requirements.

(a) Recommendations of American Forests

American Forests (AF), founded in 1875, is the oldest national nonprofit citizen conservation organization. In February 2002, AF released a report, sponsored by the USDA Forest Service and the Casey Tree Foundation, entitled “Urban Ecosystem Analysis and the Washington DC Area: An Assessment of Existing Conditions and a Resource for Local Action”. AF surveyed tree canopy coverage as of the summer of 2001. AF used high-resolution (4 meter multi-spectral and 1 meter panchromatic) satellite imagery to collect its data and examine 102 metropolitan DC areas. It found, for example, that the tree canopy covers 46 percent of the entire metro area analyzed. Canopy coverage for the District itself is 22 percent; in Ward 1 of the District, 8 percent (the lowest of the wards); Ward 3, 46 percent (the highest of the wards).

AF recommends that local communities set specific tree cover targets for various land use areas. In particular, AF recommends the following canopy coverage “benchmarks as a starting point for local discussion and goal-setting”:

- 40 percent tree canopy overall (for the DC metropolitan region as a whole); 50 percent for suburban residential (e.g., McLean, Virginia);
- 25 percent tree canopy for urban residential (e.g., the residential neighborhoods of the District specifically, such as Forest Hills); and
- 15 percent in the central business district.

The National Capital Planning Commission, U.S. Forest Service, and Casey Trees Endowment Fund sponsored the study, which can be downloaded at www.americanforests.org

According to the National Association of Homebuilders... “Instead of relying on tree sizes or types, still another approach is to require that a minimum percentage of a site be left in trees or replanted or to establish a minimum tree diameter, basal area, or square-inch total that must be met on each site. This approach is more typical and appropriate when the goal of the ordinance is focused on protecting woodlands, or whole blocks of trees, because it allows the flexibility to save or plant trees of various sizes and still meet the standard.” <http://www.nahb.org/generic.aspx?sectionID=630&genericContentID=19086>

OP also examined the required percentage tree canopy coverage of local area jurisdictions including Fairfax City and Alexandria.

(b) Current Canopy Coverage

OP’s GIS survey has been an invaluable tool to objectively determine, the current canopy coverage for each square included in the overlay, and ultimately the coverage for the overlay area as a whole (street trees not included).

The overlay area covers private properties, street trees, U.S. government-owned parkland, District-owned property, embassy-owned properties and special properties such as Hillwood. The GIS analysis determined tree canopy coverage within the overlay

boundaries³ is **54.4%** percent and includes lots and squares not subject to the overlay's requirements such as U.S. Park Service properties. To ensure that canopy coverage is maintained for the overlay *as a whole*, the overlay would need to stipulate canopy coverage requirements for Federal and District land, including street trees.

To determine the canopy coverage rates for specific lots delineated by lot size in the Alternate Proposal, OP attempted to ascertain the current canopy coverage for lots on squares that are privately-owned, residentially-developed, within the overlay. Computer generated analysis produced the current canopy coverage for those squares as a weighted average of 32 percent.

To respond to concerns expressed by the community on March 31, 2004, OP recommends that Section 1517.2 (a) through (c) be replaced with the following (new language in red):

- (a) For a lot less than 7,500 in area, 25 percent square footage of the lot;
- (b) For a lot greater than 7,500, 32% of square footage of the lot
- (c) No tree greater than 24" in circumference shall be removed without certification of compliance with this section.

The revised canopy coverage rates ensure that the overall existing canopy coverage for these lots will be maintained. In addition, the provision includes protection of trees from indiscriminate removal on a lot. Removal must comply with the percentage requirements depending on lot size. Again, there would be incentives to maintain certain smaller trees, which would contribute to canopy requirements with a projected 10-year growth.

OP also tried to address concerns of residents with smaller lots about sunlight on their property. We believe the proposed canopy percentage for the smaller lots balances with the existing conditions and addresses this concern in a fair and equitable manner. Small property owners should be required to contribute to canopy in the neighborhood; where that is not possible, Section 1517.3 provides for a process whereby they can seek an exception from the requirements.

American Forests recommends canopy coverage of 25 percent for urban residential areas and OP's Alternate Proposal exceeds this recommendation for the Forest Hills neighborhood.

(c) Control of Subdivision

OP is sensitive to the concerns that subdivision is a potential problem. The applicant (Forest Hills Citizens Association) refers to "considerable pressures for subdivision" and subdivision activity within the last few years that justify the need for an overlay to restrict future subdivisions. However, in the past, Forest Hills has not experienced widespread subdivision of large lots, according to testimony of current and former Forest Hills ANC Commissioners, Robert Maudlin and Phil Kogan, who detailed the results of research conducted of Forest Hills subdivision records in the DC Office of the Surveyor from

³ The December 13 Proposal and the Alternate Proposal apply to R-1, R-1-B and R-2 residential zones in the squares listed in Section 1516.1.

January 1998 to August 2002.⁴ Records show that during this period four lots were subdivided into six new lots (out of a total of 647 lots).

However, OP tends to agree with both supporters and opponents of the overlay proposal who claim... “in fact, it is the potential development of very large tracts of property in Forest Hills that presents the greatest potential threat to tree canopy.”⁵ Based on submitted information provided by the applicant as part of the record, the following table lists properties in the proposed overlay over 100,00 square feet in area with corresponding canopy coverage:

Table 1

Area (Square Foot)	Square	Canopy Coverage %(by Square)	Address	Property Owner
244,800 (Vacant)	2030	67.8	Broad Branch Terrace	District of Columbia
150,646	2033	23.8	4901 Connecticut Ave	Methodist Home
115,072	2049	31.1	2501 Upton Street	Gov't Kingdom of Netherlands
193,872	2049	31.1	2801 Upton Street	Levine School of Music
854,090	2049	31.1	2900 Van Ness Street	Howard University, Law School
338,435	2232	75.4	2612 Tilden Street	Czech Republic
339,658	2232	75.4	2700 Tilden Street	Republic Indonesia
721,140 (Vacant)	2234	undetermined	Tilden Street	U.S. Government
1,000,649	2245	74.5	4155 Linnean Ave	Foundation of Marj. Merr. Post
943,945	2248	62.9	2800 Albermarle Street	Government of Italy
122,648	2250	45.7	2701 Albermarle Street	Federation of Malaysia
105,970	2263	23.4	3031 Gates Road	Jewish Primary Day
451,804 (Vacant)	2282	93.8	Garrison Street	Gov't. of Peru
285,257	2282	93.8	3001 Garrison Street	Gov't. of Peru
378,489	2282	93.8	Fessenden Street	Gov't of Peru

The above properties represent primarily embassies and government owned parklands. The Marjorie Merriweather Post property (Hillwood) is protected from further development by its deeded preservation status. Any future development of the Howard University property will be controlled by a campus plan. However, should this property be sold, OP believes the provisions of the overlay should govern.

Additionally, current Zoning Regulations including the Planned Unit Development (PUD), and Large Tract Review processes ensure that the development and subdivision of very large lots proceeds with oversight. The area requirements for the PUD process outlined in Section 2401.1 of the Zoning Regulations stipulates a minimum area of two (2) acres or 87,120 square feet for proposed development in any residence zone district (R-1, R-2, R-3, R-4 or R-5-A). In addition, the Large Tract Review process outlined in Section 2300.1 (c) establishes a coordinated interagency review process in the District of Columbia to... “Review requests for subdivisions of tracts and land comprising three (3) to ten (10) acres ...”

⁴ Submission to the Zoning Commission, by FHNRP - Brief prepared by Phil Kogan, ANC3F01- Tab 4, page 4-5. (September 26, 2002)

⁵ *ibid* – page 6

OP believes subdivision is not initiated by a desire to reduce canopy or remove trees from a property, but by a property owner's financial incentive to do so. OP believes that the Alternate Proposal provides a clear guideline to the by-right development requirement with respect to canopy coverage without a burden to the property owner. It also provides a relief process through the BZA process.

Unlike the December 13 Proposal, the Alternate Proposal encourages tree preservation and requires tree replacement, if a property is subdivided or developed to replace trees lost through construction, death or disease. The current proposal permits removal without replanting.

Additional tools for tree preservation exists through **DC Code s 42-201** which allows for the creation of conservation easements on private properties. The Code defines a conservation easement as "a nonpossessory interest of a holder in real property imposing limitations.... of which include retaining or protecting natural, scenic, or open space values of real property, ensuring its availability for, *inter alia* protecting natural resources, maintaining or enhancing air or water quality..." OP believes that this mechanism can be used as an amenity in PUD applications for those larger parcels within the overlay.

Clear Cutting⁶

Also questioned was the prevention of clear cutting of properties by builders who perceive it cheaper to remove all the trees on a lot, build, and then replant trees that would eventually satisfy the required canopy coverage rates. OP notes that neither the December 13 Proposal nor the TSO template prevents clear cutting. Under provisions of the existing template and overlays in effect in the Forest Hills and other neighborhoods, anyone willing to wait seven years can cut down every tree on his/her property.

The Alternate Proposal attempts to address clear cutting on a developed lot in two sections. Section 1517.6 requires that an application for a building permit for a building, addition to a building or accessory building (as now drafted) be accompanied by a certified tree protection plan that identifies, *inter alia*, the location, size and species of all existing trees; and the location, size and species of all trees to be removed.

Section 1517.11 of the Alternate Proposal states that "No person shall remove a tree identified in the tree plan in Section 1517.6 so as to reduce the canopy percentage below the applicable level established in Section 1517.2 unless the tree is determined to be dying, diseased or hazardous by an ISA certified arborist." Thus, to clear-cut all or most of the trees on a lot, would violate Section 1517.11 and a building permit would not be issued.

However, to address the concern about removal of trees without the need for a building permit, or without certification that a tree might be diseased, dead, dying or an undesirable tree as specified on UFA's list, OP believes the suggested amendment

⁶ *Clear-cutting:*

- *The removal of the entire standing crop of trees. [Global Biodiversity Assessment. UNEP, 1995, Annex 6, Glossary. ISBN 0 521 56481 6].*

- *The felling of all trees in a designated area in one operation.*

proposed for Section 1517.2 (e) where “no tree greater than 24” in circumference shall be removed without certification of compliance with this section” also provides protection of trees by limiting or minimizing the chances of clear cutting of property.

Additionally, Section 1517.12 specifically states that the issuance of a tree removal permit by the Department of Transportation- Urban Forestry Administration does not relieve any person from meeting the requirements of the regulations’ provisions.

Therefore, OP believes that the amendment would address tree protection by mitigating the indiscriminate removal of trees. Violations of the provisions of the overlay would result in a denial of future building/development permits on the property until the property is replanted to meet canopy requirements.

Enforcement

(a) Section 1517.8 – Denial of a Building Permit

Several raised concerns about enforcement. The Alternate Proposal relies on the same enforcement mechanism as the current overlay, the December 13 Proposal, and the overlay template: denial of a building permit for violations. None of the existing or proposed subject overlays is in a position to go further than this.

The Office of the Attorney General advises that fines can only be created by the D.C. City Council. The D.C. City Council would need to establish the sanction through a rulemaking proposed by DCRA.⁷ Generally, the only enforcement mechanism permitted for zoning violations is denial of building permits, which triggers fines in some instances, depending on the category of the infraction. In the absence of fines, denial of building permits seems to be the most effective means of enforcement. OP believes that Section 1517.8 of the Alternate Proposal provides for stronger sanctions than the December 13 Proposal.

Firstly, violators would be unable to get building permits for *any* future work on their property, *including* interior work. This sanction would convey with the property in the event of sale and any future construction.⁸ Secondly, the denial of future building permits would last as long as the canopy coverage requirements are not met, whereas under the December 13 Proposal the denial of a building permit lasts seven years. Under the December 13 Proposal, a homeowner can take down trees in violation and wait seven years, get a building permit and undertake construction that would be forbidden under the Alternate Proposal.

The Chain Bridge/University Terrace Overlay states under Section 1568.3 that:

⁷ Civil Infraction fines are proposed by DCRA through a rulemaking, which is also sent to the Council for a passive review period, i.e. if Council takes no action in 60 days, the fines become effective. Attached, is the provision on Civil Infraction Fines: The authority of the Mayor has been delegated to DCRA and Health for the infractions within their areas of enforcement. *OP’s conversation with the Office of the Attorney General, 06-21-04.*

⁸ If a building permit is denied, there is no sanction. Only, if construction begins with a building permit, whoever is the owner becomes subject to the penalty. – Office of the Attorney General, 6-21-04

"A special exception must be obtained for a building permit for a site where trees were removed, cut down or fatally damaged ... (prior to the effective date of these regulations) ... if the removal, cutting, or damage:

- (a) Would have been prohibited by §1568.1; and*
- (b) Occurred within seven years of the application's date."*

Section 1568.1 finds that:

"Except as provided in §1568.2, constructing a building, accessory building, or an addition to a building, or creating any impervious surface area, subdividing any unimproved lot, subdividing any improved lot so as to increase the number of principal structures thereupon shall be permitted as a matter-of-right only if the following tree removal limitations are complied with:..."

If a building is not constructed, impervious surface area created or lot subdivided, the tree protection provisions do not apply (§1568.1). If a building permit is required for a site on which trees were removed (§1568.3), there is no official record on file to demonstrate the lot had trees or trees were removed as prohibited by §1568. This proposal would require a baseline tree survey for each lot, which would then be filed with its plat at DCRA.

However, even with such a survey, trees die of natural causes, and smaller trees would grow large enough over time, which would need to be registered. This would require updating the tree survey every time a property is sold or refinanced.

Therefore, OP believes that the current Alternate Proposal, which would require a tree management plan for any development proposal would accurately reflect the lot's condition at the time of proposed development.

(b) Section 1517.9

Concern was also expressed that Section 1517.9 failed to protect tree canopy after three years. As proposed, Section 1517.9 requires:

"... No later than three years after a building permit is issued, the property owner shall present a certification ... that the applicable tree canopy percentage has been maintained or will be achieved by the date stated on the original certification..."

Residents expressed apprehension that trees, which died after three years would escape notice and the property owner would not be required to replace them. The three-year period actually exceeds similar periods in other jurisdictions. For example, Fairfax City uses a two-year monitoring period. OP's understands from conversations with Fairfax City that this window has been effective in ensuring that replacement trees provide the necessary canopy coverage within their overlays. OP does not believe this provision requires change.

(c) Building Permit Application

Questions were raised regarding DCRA's ability to adequately check building permit applications to determine if a given property would be covered by the overlay and be held to a more involved review process. It was suggested that the applying homeowner should certify that the property is or is not covered by the overlay. Then, if a permit application were erroneously accepted, the homeowner would be liable to civil penalties for submitting a false statement on the permit application.

The premise of this concern is incorrect. DCRA's Zoning Desk checks for special restrictions and filing requirements based on the square and lot number for a given property and determines whether that property is subject to historic preservation, overlay requirements or any other special district requirements. DCRA has expressed to OP that the language and requirements of the current proposal (December 13, 2002) are complex and makes it difficult for DCRA's staff to follow through on the application once the site has been identified as being part of the overlay area.

As a practical matter, requiring every homeowner seeking a building permit application to certify that the property is within an overlay could become a quagmire of records. Furthermore, a property owner may honestly believe the property is not, certify as such, and submit the permit request.

OP prefers DCRA, which maintains records and processes applications, to be the controlling entity and not rely on the applicant. Permit applicants are presently required to certify on the building permit application that the application is correct and in compliance with the applicable codes, therefore this signature is already part of the record. OP believes it would be more efficient to work within the existing system, in concert with the current rules applicable to other areas of the city or to other screening functions, such as historic preservation.

The Office of Planning's Alternate Proposal would enable DCRA to enforce the overlay requirements more efficiently. Creating straightforward requirements for both the homeowner and DCRA would leave minimal room for interpretation while providing a process to replace or increase tree canopy that can be easily monitored and retained as part of a property's record within the overlay.

Other Concerns

Shared Trees

Some inquired how trees that divided a property line would be treated. Section 1517.2 states that canopy coverage is calculated on the basis of "trees within the lot lines of the subject property." Property owners do not have legal control over street trees or trees on their neighbor's property; however, they may benefit from canopy provided by those trees and that canopy may be significant enough that they would have difficulty adding new trees to their property to meet required coverage without pursuing special exceptions or waivers from the BZA.

Shared canopy is likely in Forest Hills, and the number of waivers sought could be large and overwhelm BZA resources. Therefore, OP recommends revision of Section 1517.2 to state that tree canopy coverage be determined by "driplines within the lot lines of the subject property." If trees outside the property lines, which contributed to the coverage requirements of the property die, the property owner would be required to plant new trees to comply with the requirements of the Alternate Proposal subject to Section 1517.9.

List of Replacement Trees

Several in the community requested a list of replacement trees be included in the regulations. There was concern that oaks or other large, slow-growing trees could be replaced with dogwoods and cherry trees that provide canopy, but not the prevailing canopy in Forest Hills today.

The Urban Forestry Administration publishes a tree list of trees deemed suitable for the District of Columbia and it includes those shade trees desired by residents. UFA advised OP that trees may be selected from this list and advised against publication of a separate list to avoid confusion in District regulations. UFA recommended that the published tree list is dynamic and reflects changes or current information affecting a particular species.⁹

OP recommends an amendment to clarify that property owners would be permitted to calculate canopy coverage using all existing trees (shade and under-story) on their property, including those not on the UFA's list. However, if additional trees are required to meet the minimum canopy coverage, UFA's Tree List can be referenced.

Resale of Property:

The question was asked about the responsibility for informing potential or actual buyers of the property that the property was in violation of the overlay, or that the certification mandated in section 1517.9 was outstanding.

OP notes that the disclosure issues between sellers and buyers of property would be the same under the Alternate Proposal as they are under the December 13 Proposal now in effect. The buyer of any property is responsible for being informed about the zoning, or overlay regulations affecting a given property, and can insist in a purchase and sale agreement that the seller makes representations regarding any unusual restrictions on a property. This includes, for example, a leaky basement or termites. It could also include a representation as to special restrictions on building permits or any obligations to file certifications required in Section 1517.9.

⁹ For instance, current information on UFA's website states that "Until further notice, the Urban Forestry Administration is not recommending the planting of red oaks due to the presence of Bacterial Leaf Scorch."

RECOMMENDATION

OP believes that the canopy approach is a “middle of the road alternative” which would bridge the differences that currently divide the community concerning the best approach to address tree preservation in the Forest Hills neighborhood. In comparison to the original proposal, this recommendation:

- * Provides flexibility in meeting tree planting and preservation requirements;
- * Creates an easily enforceable mechanism that incorporates UFA’s review;
- * Reduces impact on the buildable area of lots; and
- * Maintains minimum canopy coverage for Forest Hills.

OP’s July 21, 2003 report proposed an alternate text that reflected and built on the recently adopted Tree Bill and best practices from other jurisdictions.

OP believes the amended alternate text would encourage property owners to maintain and care for existing trees on their property to facilitate any future development, as they would for any other zone regulation. Therefore, based on the above discussion and citizen concerns, OP recommends the following changes to the Alternate Proposal to read as follows:

FOREST HILLS TREE PROTECTION OVERLAY DISTRICT

The Forest Hills Tree Protection (FH/TP) Overlay District is established for Forest Hills, which includes all lots in Squares 2030 through 2033, 2040 through 2043, 2046, 2049 except for lots 804 (Van Ness North), 805 (Van Ness Center), 806 (Van Ness South), 2231, 2232, 2238, 2239, 2241, 2242, 2244 through 2251, 2256, 2258, 2262 through 2270, 2272, 2274 through 2277 and 2282.

The purposes of the FH/TP Overlay District is to preserve the tree canopy of Forest Hills, to preserve wooded areas in Forest Hills, to promote conservation practices appropriate within an urban context, and to encourage the replanting of trees.

1517 GENERAL PROVISIONS (FH/TP)

1517.1 The FH/TP Overlay District is mapped in combination with the underlying zoning district, and not in lieu of the underlying district.

1517.2 Any application for a **building permit** to allow the construction of a building, accessory building, or an addition to a building **or other work that disturbs the soil beneath the existing canopy on a lot** shall provide certification from a certified landscape architect or an ISA certified arborist that a tree canopy, resulting from trees’ **driplines** within the lot lines of the subject property, will cover the following percentages of the lot after construction is completed or no later than ten (10) years after the date of **the issued building permit**:

(a) For a lot less than 7,500 in area, 25 percent;

- (b) For a lot greater than 7,500 square feet, 32 percent of the square footage;
- (c) No tree greater than 24" in circumference shall be removed without certification of compliance with this section.

1517.3 The percentages in § 1517.2 may be reduced by the Board of Zoning Adjustment to avoid one or more of the following:

- (a) Overcrowding of existing trees;
- (b) Planting in areas with a lack of adequate root space; or
- (c) Any other factors that may jeopardize the health of a tree.
- (d) The Board may impose requirements as to design, appearance, and tree protection practices during construction, buffering, and other requirements, as it deems necessary to achieve the purpose of this section, and may vary side and rear yard requirements in order to achieve the purposes of this section.
- (e) An applicant for a special exception shall submit at least the following materials:
 - (i) A site plan for development, including computation and illustration of total lot occupancy, existing and proposed trees for removal, and existing and proposed canopy percentage.
 - (ii) Tree protection plan as specified by Section 1517.6
 - (iii) Photos showing existing site conditions.

1517.4 Any application filed under § 1517.3 shall be referred to the Urban Forestry Administration for compliance with these provisions and recommendations to the Zoning Administrator.

1517.5 Any tree planted to meet the requirement of this section shall be a nursery stock tree of at least a two (2) inch caliper, balled and burlaped, in good health, and shall ~~not~~ be of a species identified in the Urban Forestry Administration's Recommended Tree List for Medium and Large Trees as appropriate by regulations promulgated by the District Department of Transportation pursuant to the Urban Forest Preservation Act of 2002.

1517.6 The certification required by §1517.2 shall be accompanied by a tree protection plan that will show:

- (a) The location, size, and species of all existing trees measured at DBH, i.e. four and one half (4½) feet above the ground;
- (b) The location, size, and species of all trees to be removed;

- (c) The location, number and species of any trees to be planted in replacement;
- (d) Proposed grade changes or other potentially injurious work to be performed adjacent to trees to be retained; and
- (e) Methods to be used to protect existing trees during construction including, but not limited to:
 - (1) Drip line protection, including construction or snow fencing, around all tree preservation areas; and
 - (2) Installation of tree wells, retaining walls or other structures necessary to protect individual trees.
 - (3) Proposed procedures to guard against long-term damage by such factors as soil compaction.

- 1517.7 The Zoning Administrator shall not take final action on a building permit application until a report is received from the Urban Forestry Administration or until **thirty (30) days** have passed since the tree protection plan was submitted to the Urban Forestry Administration, whichever is sooner.
- 1517.8 No building permit shall be granted if a tree protection plan received pursuant to § 1517.6 fails to demonstrate that the tree canopy requirements of this section will be met.
- 1517.9 No earlier than two (2) years and no later than three (3) years after the building permit is issued, the property owner shall present to the Zoning Administrator a certification from an ISA certified arborist or certified landscape architect that the applicable tree canopy percentage has been maintained or will be achieved by the date stated on the original certification. If trees were planted to achieve the canopy requirement, the certification shall also state that the replacement trees met the requirements of §1517.2. Failure to present a certification that meets the requirements of § 1517.9 within the time provided therein shall be a violation of this section pursuant to Section 3201.1
- 1517.10 No further building permits shall be issued for the subject property until the certification required by §1517.9 is received by the Zoning Administrator.
- 1517.11 No person shall remove a tree identified in the tree plan in § 1517.6 so as to reduce the canopy percentage below the applicable level established in § 1517.2 unless the tree is certified by an ISA certified arborist to be dead, dying, diseased or hazardous.

- 1517.12 The issuance of a tree removal permit by the Department of Transportation- Urban Forestry Administration *under the Urban Forestry Preservation Act, 2002* does not relieve any person from meeting the requirements of this section.

The following definitions are proposed:

199 DEFINITIONS

DBH - the diameter of the trunk of a tree, when measured at a height of four feet, six inches (4'6").

Caliper - The diameter of a tree trunk in inches taken at a point six or 12 inches above the ground.

Drip Line - an imaginary line on the ground beneath a tree, which delineates the extent of the tree's canopy.

ISA - International Society of Arboriculture.

ATTACHMENTS:

APPENDIX I: Questions and Comments to March 13, 2004 ANC 3F meeting.

APPENDIX II: Maps

- (a) Forest Hills Study Area
- (b) Forest Hills Zoning
- (c) Forest Hills Properties by Size
- (d) Federal Properties and District Parklands
- (e) Canopy percentages

ANC Meeting March 31, 2004

- Tree and Slope -

Questions and Comments from Attendees

Leslie Bueller

- Is a tree plan always required? What if a roof needs to be repaired?
- What is the replacement process for trees that are cut down?
- Is there anyone who will monitor after three years?
- What is the enforcement?
- Where in the regulations does it state that the canopy must be maintained?
- Are imperviousness and other elements still in effect?
- Building Restriction Line?
- Should have a specific list of trees.
- Where did percentage (%) come from?
- For large undeveloped tracts, if trees are removed, what does it do to the percentage?
- Did the ZC ask that we extend beyond the original overlay bounds?

Michael Jones

- On Percentages:
 - If the lot is small, and all the trees are on one side, and house on the other, how do you get sun? Aren't percentages too high?
 - 2801 Chesterfield – by encouraging more burden on large lots, it encourages subdivision. Have we considered lowering the 40% for large lots?
 - On enforcement timing – Consider no new building permit until 2 years after 1st.

Steven Altschul:- 32nd Street – At what point would new approach replace existing?

Bob Shanks – Albermarle Street –

- Regarding 1519.4, What are the changes to the side yard setback?
- Chesapeake Street – clear cutting – What if it is cut down and then sold?
- Slope/Canopy Provision – Does not address slope

Karen Perry

- Where does the Tree Bill prohibit clear cutting?

Albermarle Street – Why is there a shift in the goals of the overlay? New goals unfairly burdens those doing small things.

Stanley Grant – 29th Street

- A building permit is required for kitchens? Why include this in the process?

Mrs: Clarke:

- Was the Chesapeake Bay Foundation contacted about the percentages?

What if a tree is shared?

Janette Miller – 2841 Tilden Street:

- Concerned with whatever is put through is put into law.
- The impression is that there is no hope for replacement.
- Need better result with whatever regulation.

Jim Casserly – 2831 Tilden Street:

- ANC voted (5-2) to keep what is now in effect. Appalled to see protections abandoned. The special character of the Forest Hills neighborhood and the protections in effect work best. The protections in the setbacks – front, side – work to keep the neighborhood special.

Brendan Heron – 2901 Albermarle Street.

- Best practices published by APA and American Forests not used. For example, the best practice where a certain % is cut down.
- OP said bulk regulations should be in a separate section.
- No real enforcement mechanisms.
- Can Corporation Counsel institute fines? No legal action.
- Unclear if property changes hands who tells the new homeowner.

Dave Swanson – 4629 Linnean Place

- Issues are real how we would like to preserve the character of the neighborhood. Someone can clear cut. Make sure someone can't beat the system.

George Clarke:

- We need something that works and I refer to Dave Swanson's comments.

Michael Suskind – 2 Brandywine Street:

We need protection against clear cutting but need a reasonable approach.