



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

July 15, 2004

BY HAND

Alberto P. Bastida, AICP
Secretary
Zoning Commission
441 4th Street, N.W.
Suite 210S
Washington, D.C. 20001

Re: No. 02-19, Forest Hills Tree and Slope Overlay

Dear Mr. Bastida:

Please accept this filing on behalf of the Forest Hills Citizens Association ("FHCA") in conjunction with the hearing in this case now scheduled for July 22, 2004 at 6:30 p.m. FHCA hereby submits its intention to testify. In this letter, FHCA briefly states some of its observations about the proposal of the Office of Planning in its July 12, 2004 Memorandum to the Zoning Commission ("July 12 OP Report"). In addition, at the end of this letter FHCA makes its recommendation on the order and timing of proof at the July 22 hearing.

ZONING COMMISSION
District of Columbia

**The Alternative Proposal in the July 12, 2004 report of the Office of Planning
is seriously flawed in several respects.**

Case 02-19

Exhibit 346

- 1. The Alternative Proposal in the July 12 OP Report would allow all trees in Forest Hills to be removed.**

As was noted by this Commission in its hearing in this matter on November 12, 2003, the previous alternative proposal from OP was inadequate at least because it allowed all trees within the Overlay area to be removed, as long as sufficient small trees were planted to

FOREST HILLS CITIZENS ASSOCIATION
4401-A CONNECTICUT AVE., N.W., #209 WASHINGTON, D.C. 20008
WWW.FORESTHILLSDC.ORG

ZONING COMMISSION
District of Columbia
CASE NO.02-19
EXHIBIT NO.346

provide a replacement canopy within ten years.¹ The new alternative contained in the July 12 OP Report has the same flaw.

OP attempted to correct this flaw by adding new sections 1517.2 (c) and 1517.11. In its report, OP claims that section 1517.2 (c) "includes protection of trees from indiscriminate removal on a lot. Removal must comply with the percentage requirements depending on lot size." July 12 OP Report at 6.

Section 1517.2 (c) says: "No tree greater than 24" in circumference shall be removed without certification of compliance with this section." At first blush, this would appear to try to limit the removal of trees greater than 24 inches in circumference, thus providing, as the July 12 OP Report claims, "incentives to maintain certain smaller trees, which would contribute to canopy requirements with a projected 10-year growth." July 12 OP Report at 6.

But section 1517.2(c) does not have that effect. Under section 1517.2, removal of 24 inch circumference trees is prohibited only if it is done without "certification of compliance with this section." Under section 1517.2, "certification of compliance with this section" is the provision of a tree plan that will provide the requisite percentage of canopy "after construction is completed or no later than ten (10) years after the date of the issued building permit." Section 1517.2.

In other words, a property owner is in compliance even if every tree is taken down, as long as the owner has filed a certificate promising to be in compliance with the canopy requirements ten years later.

OP suggests that section 1517.11 would prevent clear cutting. July 12 OP Report at 8-9. But section 1517.11 does no such thing. Section 1517.11 says: "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." The "applicable level established in § 1517.2" is satisfied by promising to have the requisite level of canopy in ten years. If the owner files a tree plan which states that it will remove all of the current trees and replace them with enough trees to provide the required percentage of canopy within ten years, it has complied with this section.

Section 1517.12, suggested by OP as restricting clear cutting (July 12 OP Report at 9), has no independent restriction on the removal of trees.

¹ See question of Commissioner Parsons at page 16 of the transcript: "The way I read this is you can get permission to cut all the trees down on your property as long as you plant something that in 20 years will get to 20 percent."

2. The neighborhood is not "sharply divided"

An underlying assumption of the July 12 OP Report is that the "neighborhood has been sharply divided over the appropriate approach to tree protection." July 12 OP Report at 2. In order to test this assumption which has been repeated many times by the opponents to the overlay, FHCA commissioned a comprehensive survey of the entire overlay area by a professional pollster. FHCA mailed the survey, consisting of 32 questions, many with multiple subparts, along with a return postage paid envelope, to all of the households within the overlay. Our pollster received 224 completed surveys out of 647 that were originally mailed, and has compiled the results. The margin of error for a sample of this size with the number actually returned is 5.29 percent.²

The survey was taken between June 14 and July 9, 2004. The entire results of the survey will be reported in written form at the July 22 hearing, but a few of its conclusions are noted here.³

After asking some general questions and opinions on the goals of the original overlay (based verbatim on the goals in the regulation itself), the survey asked whether the owner supports or opposes the current Tree in Slope Overlay regulations. Sixty two (62) percent support the current overlay and 23 percent had some opposition (15 percent were not sure or did not answer this question).⁴ Thus the current overlay is supported by a margin of almost 3 to 1.

² Six surveys were returned by the post office as undeliverable. The margin of error is computed based upon 224 of 641 delivered surveys being returned (35%), a very high return rate for this type of survey.

³ FHCA originally hoped that it would have another OP proposal prior to the time that the survey was sent. The survey was mailed on the last day that it could be in order to give overlay residents three weeks to return it, and to provide for sufficient time to compile and analyze the results before the July 22 hearing. OP did not file its new Report until July 12. No survey could have been conducted between that date and the July 22 hearing.

⁴ The question and the percentage responses in each category are set forth below. This was question number 8:

Do you support or oppose the Tree and Slope Overlay regulations overall as they are written right now?

Strongly support	34
Somewhat support	28
Somewhat oppose	4
Strongly oppose	19
Not sure/Refused	15

After a number of other questions concerning the current overlay, the tree bill, and the Office of Planning proposal that was then before the community, the survey asked whether the respondent supports or opposes the proposed canopy regulations. Sixty three (63) percent opposed the then proposed canopy regulations, with 24% in favor. Fifty (50) percent of the respondents “strongly oppose” the canopy approach, while only 12% strongly favor it. ⁵

Seventy six (76) percent of all respondents felt that any canopy proposal should include a requirement that some mature trees be preserved.⁶ The July 12 OP Report makes a proposal that would allow all mature trees to be removed as a matter of right.

⁵ This was question 28:

Thinking back on everything we’ve talked about in this questionnaire, would you say that you support or oppose the Office of Planning’s proposed Canopy Regulations?

Strongly support	12
Somewhat support	12
Somewhat oppose	13
Strongly oppose	50
Not sure/Refused	13

⁶ This was question 17:

As the proposed Canopy Regulations are written now, owners and developers of lots in Forest Hills would be allowed to remove all of the trees on their property, as long as they replaced them with enough small trees to create the required canopy within ten years. Do you think that residents of Forest Hills should be allowed to remove all of their trees as a matter of right, or do you think that there should be a requirement that some mature trees be preserved?

Should be allowed to remove all of their trees	19
Should be a requirement that some mature trees be preserved	76
Not sure/Refused	5

Finally, there is overwhelming support for keeping the canopy level in Forest Hills well above 40 percent. Seventy two (72) percent feel that a reduction in the canopy level to 40 percent is unacceptable. Seventy seven (77) percent feel that a reduction in canopy level to 25 percent is unacceptable.⁷

3. OP has miscalculated the average non-street tree canopy on private land

OP derives the 32 percent canopy coverage in section 1517.2(b) based upon "current canopy coverage for lots on squares that are privately-owned, residentially-developed, within the overlay," and states that that figure is 32 percent. July 12 OP Report at 6. OP has now corrected that figure to be 36 percent. But an examination of OP's spreadsheet shows that the actual number is 40.3 percent.

What OP did was compute an "average of the averages" without regard to how much land is in each square (i.e. the 2.5% canopy of square 2266 with 2808 sq.m. of land counts the same as the 66.1% canopy of square 2246 with 34948.67 sq. m.). FHCA has pointed out the error to OP.⁸

4. Timing and order of proof

Because OP is really the proponent for the alternative proposal, it should proceed first at the hearing, followed by those groups or individuals who are supportive of its approach. After their testimony, those who oppose or who have criticisms of the OP approach should proceed next. FHCA was the applicant for the original overlay. It has not endorsed the alternative approach from the Office of Planning, and has several criticisms of it, although some parts, like the tree plan, are an excellent idea and could be incorporated into the existing overlay.

⁷ The introduction to question 16 explained that OP computes the canopy as being 52 percent (now over 55 percent in the July 12 OP Report) without street trees. This was question 22:

The United States Park Service estimates that the current tree canopy in Forest Hills is 70-75%. Would it be acceptable or unacceptable to you if the proposed Canopy Regulations result in reducing that canopy to:

	<u>Acceptable</u>	<u>Unacceptable</u>	<u>Not Sure/ Refused</u>
A 40% canopy in Forest Hills?	14	72	14
A 30% canopy in Forest Hills?	7	76	17
A 25% canopy in Forest Hills?	7	77	16

⁸ FHCA also notes several errors in the methodology chosen by OP to compute canopy as well as the actual calculation. Those are not the subject of this filing, but will be brought out at the hearing.

Alberto P. Bastida, AICP
July 15, 2004
Page 6 of 6

FHCA requests that it have an amount of time to present its views equal to that given to any group in favor of the proposal. Assuming that the Commission gives 30 minutes in support of the proposal, FHCA requests 30 minutes for its comments and testimony.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. R. Clark". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

George R. Clark
President