

Testimony of George R. Clark
President, Forest Hills Citizens Association

No. 02-19

July 22, 2004

My name is George Clark, and I am President of the Forest Hills Citizens Association ("FHCA"), the original applicant in this proceeding. I was part of the group that testified in favor of the original overlay for two full evenings in July and September of 2002. Dozens of citizens testified in favor of the overlay, and over 100 wrote letters of support. Many other groups testified or submitted letters in support of the overlay, including ANC3F (which voted 6-1 on July 19 to support the existing overlay if it had to choose between it and the OP proposal), the National Park Service, the Natural Resources Defense Council, the Casey Trees Foundation, the Forest Hills Neighborhood Alliance (with over 400 members), and the Audubon Naturalist Society.

FHCA urges this Commission to reject the alternative offered by the Office of Planning ("OP"). We do this for four principal reasons:

1. The OP alternative would not prevent a single tree from being removed in Forest Hills. Thus it hardly qualifies as a tree protection overlay, and adopting it in its current form would amount to nothing more than a well-meaning, but ineffectual, symbolic gesture.

ZONING COMMISSION
District of Columbia
Case 02-19
Exhibit 361
ZONING COMMISSION
District of Columbia
CASE NO.02-19
EXHIBIT NO.361

2. The Forest Hills community is not evenly divided about the overlay. In June and July of this year FHCA conducted a professionally prepared and compiled survey of every household within the overlay area. We found support for the existing overlay by a margin of almost three to one.

3. The OP Report is based on many flawed assumptions. American Forests says that OP "misrepresented" its recommendations. OP claims that the average canopy in privately owned areas of Forest Hills is 36 percent, while its own figures show at least 40 percent. OP's method of eliminating street trees also resulted in a severe undercount of the Forest Hills canopy. The automatic approval after 30 days would eliminate the right to effective review by the Board of Zoning Adjustment. OP's new Report is dramatically at odds with its conclusions about the need for an overlay and the hilly and densely canopied character of the neighborhood which it presented to this Commission in June 2002. OP's Report is inconsistent with the Comprehensive Plan for Ward 3. It also is inconsistent with this Commission's directions to it in March 2003 to study enforcement. Inexplicably, OP refuses to count street tree canopy for purposes of its goal, but allows a homeowner to count that canopy for compliance purposes.

4. Finally, OP's approach would severely endanger the three national parks that surround three sides of Forest Hills and the fourth national park that runs through it. Virtually every square in the overlay that borders these parks has a canopy in excess of 40 percent. The average canopy of those squares is over 60%. OP would allow

a dramatic reduction in canopy in those squares, down to 36%, thus endangering the trees and the streams in these valuable parks, as well as the canopy of the city as a whole.

Are there improvements that could be made to the existing overlay? Yes there are, and FHCA has offered some in the past, and will suggest others tonight. But OP's "solution" is a severe step backwards that will have profoundly adverse effects on Forest Hills. More importantly, it will have adverse effects on the tree canopy for the entire city and for the adjacent national parks.

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 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.

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."

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.

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

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.

The survey was taken between June 14 and July 10, 2004. 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.

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

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

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

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

Eighty-one (81) percent of respondents thought it was very or fairly important to prevent significant impacts on open space, parkland and other environmentally sensitive areas. Eighty (80) percent thought it was very or fairly important to preserve the natural topography and mature trees to the maximum extent possible in Forest Hills. Sixty-nine (69) percent thought it was very or fairly important to limit ground coverage and encourage compatibility. (All answers from question 4). These questions were direct quotations from the purposes for the current overlay set forth in § 1516.2.

These general attitudes should be kept in mind when evaluating the OP canopy proposal because it does not do any of these things. OP specifically disavows the

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

first and third of these goals. And as we point out earlier, OP's proposal still allows all trees to be taken down on any lot, and thus does not meet OP's stated goal of protecting some mature trees.

Moreover, only 25% percent think that Forest Hills is an appropriate area to conduct an experiment testing whether a canopy approach works better than the current overlay (question 25). And only 25 % think that the potential benefits of a canopy approach outweigh the risks to trees in Forest Hills (question 24).

Very interestingly, 48 percent thought that the need to hire an arborist was not a good reason to oppose the canopy approach and 42 percent thought that a review by the Urban Forestry Administration before trees are cut down were good reasons to support a canopy approach (question 27). FHCA believes that incorporating a tree plan and effective UFA review into the current overlay are appropriate.

Our professional pollster is here to explain the methodology used in the survey and to answer any questions.

3. OP has made a number of mistakes in its report

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 figure to be 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.

The main underpinning for OP's claim that a 25% canopy is appropriate for a neighborhood like Forest Hills is based upon alleged recommendations of American Forests (July 12 OP Report at 5 and 6). American Forests states that its "general recommendations are misrepresented" in the OP Report. See July 19, 2004 letter from American Forests to Alberto Bastida (page 1). American Forests states that it would set a tree canopy goal of 50% percent for Forest Hills instead of the number chosen by OP (page2). American Forests states that OP "does not accurately represent" its views in at least 4 respects (page 2).

OP has also significantly undercounted canopy. A few slides show very large trees which are not included in the OP maps. These trees were included in the maps prepared by the National Park Service that were previously submitted into the record.

The OP proposal is completely inconsistent with the Comprehensive Plan for Ward 3. The Comprehensive Plan for Ward 3 ("DCCPW3") list several zoning requirements for Forest Hills:

1. Use of the existing Tree and Slope Overlay((11 DCMR §1511) in Forest Hills⁸
2. Land Use Controls in excess of R-1⁹
3. Maintain Park like setting with ample building set backs¹⁰
4. Minimize removal of topsoil and vegetation¹¹
5. Minimize impervious surfaces¹²
6. Require new Construction to maintain existing set backs¹³
7. Development in Areas Bordering Rock Creek Park must be low density and eliminate runoff potential and promote a green buffer while avoiding any adverse effect on the Park or the views from the Park¹⁴

8 “The Woodland-Normanstone area has been mapped with the Tree & Slope

Protection overlay (11 DCMR §1511) . . .This Tree & Slope Protection overlay should be considered and adapted for other park-like, hilly areas such as the Potomac palisades and the portions of the Forest Hills and Barnaby Woods neighborhoods adjacent to Rock Creek Park and its tributary valleys;” (*DCCPW3 §14 09.4(b)(2)*)

9 .”“ Several areas in the ward, because of their existing low density and 'parklike' setting, require land use controls in addition to the requirements of R-1 zoning (the most restrictive zone district)” (*DCCPW3 §14 09.4(b)*) Appropriate design solutions include the following:

10 1) Limit density of development adjacent to natural areas, areas with severe building restraints, or stream valleys; maintain park-like settings on streets and lands adjacent to the natural areas and stream valleys; and require ample building set-backs; ” (*DCCPW3 §1605(b)(1)*)

11 “Encourage retention of natural growth and grades; minimize regrading or the removal of topsoil and vegetation; establish new vegetation, especially trees; ” (*DCCPW3 §1605(b)(5)*)

12 “Minimize the construction of impervious surfaces; promote permeable materials for driveways, walkways, parking lots, and the like; ” (*DCCPW3 §1605(b)(6)*)

13 (e) Setback: Maintain the historic facade lines of streetscapes by locating front walls of new construction in the same plane as the facades of adjacent buildings. If exceptions are made, buildings should be set back into the lot rather than closer to the street. If existing setbacks vary, new buildings should conform to historic siting patterns. Avoid violating the existing setback pattern by placing new construction in front of or behind the historic facade line. Avoid placing buildings at odd angles to the street, unless in an area where diverse siting already exists, even if proper setback is maintained; (*DCCPW3 §1406(e)*)

14 “ Stream valleys, which include Rock Creek Park (and its tributaries) and Glover Archbold Park: Development adjacent to these parks must be low density and shall be further restricted where advisable to protect unstable soils, eliminate runoff potential, and promote a green buffer between the built environment and these natural settings. Development of border areas must avoid any adverse effect (known or plausibly suspected) on these stream valley parks, including the water quality, flora, and fauna, and should minimize any intrusion on views from these parks;” (*DCCPW3 §1406.5(a)(5)*)

8. Urban Design should reflect and perpetuate wooded nature of Forest Hills¹⁵
9. Act to eliminate conflicts between zoning and the comprehensive plan.¹⁶

The existing Forest Hills Tree and Slope Overlay accomplishes all of these objectives, while the OP Draft ignores all of these objectives. Thus OP is asking the Zoning Commission to ignore the law.

OP's July 12 Report is remarkable given the direction that it received from the Commission on March 10, 2003 to study issues of enforcement. OP concludes that "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." (Page 11). In other words, having been directed to study inadequate enforcement, OP has concluded that those inadequate enforcement methods should stay in place.

The OP proposal would also allow an automatic special exception if an owner wanted to pave 100 percent of its lot. If a builder presents a plan for a permit that calls for the taking down of every tree and paving every square inch with house, pool, tennis court, patio, etc., under § 1517.3(b) the builder is entitled to a special exception from planting any trees because there will be a "lack of adequate root space."

¹⁵ Neighborhoods developed over hilly terrain or near stream valleys (such as Barnaby Woods, Forest Hills, Hawthorne, Palisades, Spring Valley, and Woodland-Normanstone): Urban design should respect and perpetuate the natural features, low density, and usually wooded character of these built areas; (*DCCPW3 §1406.5(a)(6)*)

¹⁶ (g) Correct or prevent inconsistencies between zoning and land uses designated in the Comprehensive Plan, and between building permit issuances and the Comprehensive Plan; (*DCCPW3 §1409.2(g)*)

FHCA supports the idea of a tree plan, and we would be happy to see that added to the current overlay (and there were other possible changes to the original overlay that we favored that were not originally adopted by the ZC). And we think that any such plan should require a site visit by UFA, or some other method of verification.

But we oppose the automatic approval of a tree plan after 30 days if UFA has not acted, as is contained in OP's section 1517.7. First, if UFA has the ability to do the job within 30 days, actual approval by UFA should be required before a building permit can issue. If UFA won't be able to meet the 30 day standard once its duties under the Tree Bill hit full force, then a longer period is needed, say 45-60 days. Second, approvals by inaction are not the way the DC Zoning regulations generally work, and are not the way good zoning regulations work.

Third, the process proposed by OP would potentially eliminate the right of appeal by anyone objecting to a tree plan. A person adversely affected by a zoning determination can appeal to the BZA only from a decision. If there no decision, there's nothing to appeal. While the Zoning Administrator makes a decision on the building permit, it is based on UFA's recommendation when it comes to the tree plan. If there is no action from UFA, there is still nothing for the BZA to review except inaction, and inaction is allowed under the proposed regulation. Since no one will know about the filing of a tree plan until more than 30 days after it is filed, there will be no chance to object within the 30 day period. One way to solve that problem is to require that a tree plan be submitted to the ANC for its input.

OP also does not explain the inconsistency between its July 12, 2004 Report, and the one it gave to this Commission on June 17, 2002. In the June 2002 Report, OP stated that the proposed area for the overlay "is generally compatible with the established criteria of § 1511." It said that there are "many areas with 'stands of mature trees' (§ 1511.4) in excess of the standard yard and street trees."

Street tree canopy does not count for the percentage of canopy to establish the standard in the regulation, but it does count for meeting the standard. This will lead to anomalous results that are destructive of canopy. Let's say a property has 60% canopy, 50% from private trees, and 10 % from street trees (that have a drip line over the property). Under 1517.2, the owner can reduce that canopy to 36%.

But when you look behind the numbers you see something else. To get to that 36%, if you keep the 10% from street trees (which you must unless you break the law), you need only 26% from private trees. Thus you can reduce the private canopy to 26% from the original 50%. If everyone did this (and street tree canopy is more like 15-20%, but not all of that is over private property), then you end up with 26% private canopy, not the assumed 36%. And if all the street trees die (not an uncommon occurrence) the total canopy is reduced to 26% from 60 (or 50) %. Moreover, UFA has announced on July 4, 2002 and that it will not plant street trees that grow higher than 30 feet if they are on a side of the street with wires. Thus the street tree canopy in Forest Hills will be reduced in the future.

4. OP's approach would endanger the national parks in and around Forest Hills

The overlay area is surrounded by three national parks--Rock Creek Park, Melvin Hazen Park, and Fort Circle Park. It is bisected by Soapstone Valley Park. It contains another large parcel of DC parkland. It has a number of streams, including Broad Branch and Soapstone Creek.

Sixteen squares in the overlay area abut one or more of these national parks. All but two of the squares have a canopy percentage in excess of 40 percent. The average canopy in these squares is 60 percent. Under OP's proposal, the canopy in those squares can be reduced to 36 percent.

This would have been extremely deleterious effect on Forest Hills, and on the city as a whole. Forest Hills is lucky to be surrounded by parks and trees and streams. It provides a buffer for those parks. Others in the city who are not so lucky as to live in Forest Hills, also use those parks. We need to protect those parks for the entire population.

We urge the rejection of the OP proposal, and instead propose that the current overlay be amended to adopt effective tree plan provisions. Tree planting provisions can be added, but as Commissioner Parsons has noted, the BZA can require that already.