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18 August 2004

Zoning Commission of the District of Columbia
441 4th Street, N.W. – Suite 200
Washington, D.C. 20001

RE: Forest Hills Tree and Slope Overlay District – ZC 02-19
Transmittal of recommended text

Dear Zoning Commissioners:

Our recent Memorandum (“Memo”; adopted on July 19 and filed on July 21, 2004) recommended that the Zoning Commission (ZC) combine “several elements of the three existing overlays” [FH/TSP set down (2002); CB/UT (1999); and Template (1992)] with some of the new ideas in OP’s Alternative Proposal (July 12, 2004) – but opposed OP’s proposal to dump the previous ZC products. [Memo p. 2.]

We recommend against using canopy, as would OP, to set uniform standards [Memo pp. 4-6]. As summarized in a separate letter, OP’s estimates of existing canopy coverage in Forest Hills cannot be used to set uniform standards as OP suggested (and clarified) of 25% for lots less than 7,500 sq. ft. and 36% for lots of 7,500 sq. ft. or more.

In light of the ZC’s public hearing on July 22, 2004, and the deadline which the ZC then set, ANC 3F recommends that the FH/TSP now in effect under the ZC’s set down rule is the appropriate point of departure. [Proposed 11 DCMR §§ 1516-20, 49 DCR 11309.]

We recommend the following principal additions, deletions, and clarifications:

Add OP’s recommended Tree Protection Plan, review by the Urban Forestry Administration (UFA), and related provisions whether the final overlay uses a tree-by-tree or a canopy approach (or some hybrid) because they should make for a more efficacious review by the Zoning Administrator (ZA) and a more transparent ZA process (assuming DCRA complies with other laws requiring notice of and access to building permit applications and documents). [§§ 1519.1(g), (h), (i), and (j), 1519A; Memo p. 5.]

Add clarifications that Tree Protection Plan will address potential injury to trees on a subject property, or adjacent to it, by soil disturbance, mobilization of equipment, or stockpiling materials. [§§ 1519.1(g), 1519A.1(a).]

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EXHIBIT NO.371

Add exemption of Forest Hills from zoning regulation which bars use of *permeable* all-weather surfaces. [New § 1518.3; renews ANC's 2002 request.]

Add two flexibility options, that use canopy differently from OP, but retain tree-by-tree protection for the largest, majestic trees, of 75 inches or more circumference. [§ 1519.1(c); Memo p. 4.]

(1) A tree and woodland management program, tied to best practices, which preserves and maintains 60% canopy on a lot. [§§ 1519.1(k), 1519A.1(f); Memo p. 8.] We understand that Hillwood Museum and Gardens so manages the largest lot in Forest Hills.

(2) Preservation of at least 90% of existing canopy, with minimum replanting of native species trees selected by the UFA. [§ 1519.1(l); Memo p. 5.]

Delete extra side yard restrictions (§ 1519.4; Memo p. 8) and limitation on removal from the front 25 feet between any building restriction line and a house of any tree of 38-74 inches circumference (§ 1519.1(d); Memo p. 8).

Make explicit that BZA shall consider variant mitigation proposals if proffered by a landowner. [§ 1520.1(e); cf. Memo p. 2 and note 1.]

Provide that two R-5-D lots adjacent to Rock Creek Park and designated by the DC Generalized Land Use Map for "low density" residential will be subject to the FH/TSP (except for the lot occupancy provision, as to which R-5-D zoning will prevail) and clarify that the FH/TSP will apply to a large, hybrid lot which is 80% R-1-A and 20% R-5-D. [§§ 1517.1, 1518.1, 1520.6; Renews ANC's 2003 request.]

ANC 3F recommends that the ZC adopt the amended the FH/TSP as set down by the ZC in accordance with the attached text.

Sincerely,



Karen Lee Perry, Chair, ANC 3F

Attachment: Set down FH/TSP Overlay with proposed inserts, deletions

DISTRICT OF COLUMBIA REGISTER
Volume 49, No. 50
December 13, 2002

Actions of the Executive Branch and Independent
Agencies
Proposed Rulemaking

Zoning Commission - Amend 11 DCMR, Chapter 15
(Miscellaneous Overlay District),

Sec. 1516: Forest Hills Tree and Slope Protection
Overlay District;

Sec. 1517: General Provisions (FH/TSP);

Sec. 1518: Ground Coverage Restrictions (FH/TSP);

Sec. 1519: Restrictions (FH/TSP);

Sec. 1519A Tree Protection Plan (FH/TSP); and

Sec. 1520: Special Exceptions, Appeals (FH/TSP)
(Case No. 02-19)

ZONING COMMISSION FOR THE DISTRICT OF
COLUMBIA

NOTICE OF PROPOSED RULEMAKING

Case No. 02-19

(Text Amendment - Forest Hills Tree and Slope
Overlay District)

~~October 28, 2002~~

~~The Zoning Commission for the District of Columbia, pursuant to the authority set forth in sections 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code §§ 6-641.01 and 6-641.03) (2002 Ed.), hereby gives notice of its intent to amend Chapter 15 of the Zoning Regulations (11 DCMR), MISCELLANEOUS OVERLAY DISTRICTS, to add a new Tree and Slope Protection overlay in the Forest Hills area of the District of Columbia. Final rulemaking action to adopt this amendment shall be taken in not less than sixty (60) days from the date of publication of this notice in the D.C. Register.~~

~~A notice of public hearing for this case was published on May 17, 2002, 49 DCR 4540. The text being considered below differs slightly from the text published together with the notice of public hearing. Because the previous text is no longer being considered, the text below is to be given effect for the purpose of processing applications for building permits and certificates of occupancy, to the extent provided by 11 DCMR §§ 3202.5(b) and 3203.7(b).~~

~~The following rulemaking action is proposed:~~

Title 11, Chapter 15 of the Zoning Regulations (11 DCMR), MISCELLANEOUS OVERLAY DISTRICTS is amended by adding new sections

1516 through 1520 to read as follows:

1516 FOREST HILLS TREE AND SLOPE
PROTECTION OVERLAY DISTRICT

1516.1 The Forest Hills Tree and Slope Protection (FH/TSP) Overlay District is established to preserve and enhance the park-like setting of the designated neighborhoods between Connecticut Avenue and Thirty-Second Street on the west and Rock Creek Park on the east, south of Fort Circle National Park and Nevada Avenue, N.W., north of Melvin C. Hazen Park and adjacent to streams and parks, by regulating alteration or disturbance of terrain, destruction of trees, and ground coverage of permitted buildings and other impervious surfaces. It includes Soapstone Valley Park as well as Melvin C. Hazen Park.

1516.2 The purposes of the FH/TSP Overlay District are to:

(a) Preserve the natural topography and mature trees to the maximum extent feasible in the Forest Hills neighborhoods;

(b) Prevent significant adverse impact on adjacent open space, parkland, stream beds, or other environmentally sensitive natural areas; and

(c) Limit permitted ground coverage of new and expanded buildings and other construction, so as to encourage a general compatibility between the siting of new buildings or construction and the existing neighborhood.

1516.3 The FH/TSP Overlay District has a significant quantity of steep slopes, has stands of mature trees, is located at the edge of stream beds and public open spaces, and has undeveloped lots and parcels subject to potential terrain alteration and tree removal. Few lots are developed on a rectangular grid system.

1517 GENERAL PROVISIONS (FH/TSP)

1517.1 The FH/TSP Overlay District is mapped in combination with the underlying R-1, R-1-B or R-2 District **(or R-5-D District to the limited extent specified in § 1520.6)** and not in lieu of the underlying district.

1517.2 Where there is a conflict between the FH/TSP Overlay District and an underlying zoning district, the more restrictive provisions of the FH/TSP shall govern.

1518 GROUND COVERAGE RESTRICTIONS

(FH/TSP)

Lot Occupancy

1518.1 The principal building and any accessory building on the lot shall not exceed total lot occupancy of thirty percent (30%), except in a R-5-D zoning district.

{Comment: FH/TSP does not override R-5-D lot occupancy, applicable to a couple of anomalous situations addressed in § 1520.6.}

Impervious Surface

1518.2 The maximum impervious surface coverage on a lot shall be fifty percent (50%); provided this subsection shall not:

(a) Preclude enlargement of a principal building in existence as the effective date of the FH/TSP overlay; or

(b) Create nonconformity of a structure as regulated by chapter 20 of this title.

Permeable, All-Weather Surfaces Allowed

1518.3 All-weather permeable, as well as impervious, surfaces shall be allowed in the FH/TSP Overlay district notwithstanding Section 2117.10 of this Title.

1519 RESTRICTIONS (FH/TSP)

Tree Removal

1519.1 Constructing a building, accessory building, or an addition to a building; creating any impervious surface area; subdividing any unimproved lot; or subdividing any improved lot so as to increase the number of principal structures thereupon shall only be permitted as a matter of right subject to the following tree removal limitations and submission of a Tree Protection Plan conforming to Section 1519A:

(a) The restrictions of this Section against removing, cutting down, or fatally damaging trees apply only to trees having a circumference of twelve inches (12 in) or greater at a height of four and one half feet (4 1/2 ft.) above ground;

(b) The prohibitions of this section do not apply to the removal or cutting down of any dead or unhealthy tree or a tree that creates an unsafe condition to persons or property, or any other tree determined to be a Hazardous Tree pursuant to the Urban Forest Preservation Act of 2002, §103(3). The need for removal of any tree shall be certified by an arborist or other tree care professional;

(c) No tree that has a circumference of seventy-five inches (75 in.) or more at a height of four and one-half feet (4 1/2 ft.) above ground may be removed, cut down, or fatally damaged;

(d) No more than three (3) trees that have a circumference of more than thirty-eight inches (38 in.) at a height of four and a half feet (4 1/2 ft.) above ground may be removed, cut down, or fatally damaged ~~and none of these may be located within twenty-five feet (25 ft.) of any building restriction line or lot line abutting a public street;~~

{Comment: In Forest Hills, building restriction lines vary from nonexistent, to 15 feet, 25 feet, even 45 feet and may change within a single block. Deleted provision complicates implementation.}

(e) The total circumference inches of all trees removed or cut down on a lot may not exceed twenty-five percent (25%) of the total circumference inches of all trees on the lot having a circumference greater than twelve inches (12 in.); provided, that this section does not abrogate the right to remove or cut down up to three (3) trees as provided in paragraph (d) of this subsection; and

(f) Where removal or cutting down or fatally damaging of trees has occurred that would be prohibited by this section if a building permit were contemporaneously applied for, no building permit shall be issued for a period of seven (7) years from such removal or cutting unless a special exception is granted by the Board of Zoning Adjustment (Board).

Certifications, Tree Protection Plan

(g) Any application for a building permit to allow (A) the construction of a building, accessory building, or an addition to a building; or (B) other work that disturbs the soil or mobilizes construction equipment or materials beneath the existing Canopy on a lot or an adjacent lot shall provide certification by a certified landscape architect or an ISA certified arborist of compliance with this Section 1519.1 and a Tree Protection Plan in compliance with Section 1519A.

(h) No building permit shall be granted unless a Tree Protection Plan received pursuant to Section 1519A demonstrates that the applicable tree preservation, maintenance, canopy, and/or replanting requirements of this section will be met.

{Comment: Subsections (g) and (h) based upon OP proposal; double underscored words added.}

Referral to Urban Forestry Administration

(i) Any application under this Section

1519.1 and Tree Protection Plan under Section 1519A shall be referred to the Urban Forestry Administration for compliance with these provisions and recommendations to the Zoning Administrator.

(i) 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 certification and Tree Protection Plan was submitted to the Urban Forestry Administration and it has advised that it will not submit a report, whichever is sooner.

{Comment: Subsections (i) and (j) come from OP proposal with double underscored words added.}

Flexibility Option 1: Tree and Woodland Maintenance Program

(k) In lieu of compliance with subsections (d) and (e), a landowner may elect to preserve and maintain a Canopy of at least 60% over the subject property pursuant to a program developed by a certified landscape architect or ISA-certified arborist in accordance with best practices for tree and woodland preservation and maintenance.

Flexibility Option 2: Limited Reduction of Existing Canopy

(l) In lieu of compliance with subsections (d) and (e), a landowner may elect (A) to preserve at least 90% of the existing Canopy over the subject property and (B) to plant at least two replacement trees meeting the requirements of Section 1519A.2(a) on the subject property for each tree removed, cut down, or fatally damaged.

Definition of "Canopy"

(m) As used in this Section 1519.1, "Canopy" shall mean area inside the subject property within the existing driplines of all trees of a height in excess of 40 feet, as well as of smaller trees of a species which, upon maturity in the environment of the FH/TSP Overlay district may be expected to exceed a height of 50 feet, and includes both trees rooted inside the subject property and inside adjacent properties, whether the latter be privately or publicly owned (including street trees).

{Comment: Draws from and modifies OP proposal.}

Lot Size

1519.2 The minimum lot size for homes within the FH/TSP Overlay district shall be 9,500 S.F. for lots subdivided after April 19, 2002, the effective date of this provision.

{Comment: (a) April 19, 2002, is a proper effective date because it was the original set down date for a more stringent minimum lot size of 12,000 sq. ft., eased to 9,500 sq. ft. by the December 13, 2002, set down. (b) Since the objective is to limit dissections of large lots, an appropriate proviso might permit additions to small lots.}

Front Yard Setback

1519.3 All new residential buildings, accessory buildings, or any additions to 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, counting a dead-end cul-de-sac as a "third side" of the street, in order to provide space for tree plantings. The required set back 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. ~~Where the building is sited on a corner lot, the building shall be set back from each street on which it borders in a amount that is 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. The required setbacks are depicted in the map entitled: "Required Front Yard Setbacks", which is a part of this Overlay District and is located in the Office of Zoning and in the Zoning Division of the Department of Consumer and Regulatory Affairs.~~

Steep Slope Self Certification

~~1519.4 To the extent that any residential district within the overlay requires a side yard, the side yard requirement for all buildings, accessory buildings, or an additions to buildings shall be a minimum of eight (8) feet and a minimum of twenty four (24) feet in the aggregate.~~

{Comment: Leaves side yards to underlying zoning plus Special Exception flexibility discretion.}

~~1519.5~~ To the extent that any person seeks permission for building or terrain alteration on a lot with a slope steeper than twenty-five percent (25%) or with "highly erodible soil" as defined by the Natural Resources Conservation Service of the U.S. Department of Agriculture, that person shall supply to the Zoning Administrator in the Department of Consumer and Regulatory Affairs a professional certification that the plans for alteration and/or construction will follow best geo-technical, structural engineering and arboreal practices.

1519A TREE PROTECTION PLAN (FH/TSP)

Contents of Plan

1519A.1 The certification required by Section 1519.1 shall be accompanied by a Tree Protection Plan that will show:

(a) The location, size (including height), and species of all existing trees, showing circumference measured at breast height, i.e., four and one-half (4 ½) feet above the ground, including, to the extent available, trees adjacent to the subject property which may be affected by potentially injurious work;

(b) The location, size, and species of all trees to be removed;

(c) The location, size, and species of any trees to be planted in replacement;

(d) Proposed grade changes or other potentially injurious work to be performed; and

(e) Methods to be used to protect existing trees during construction including, but not limited to:

(i) Drip line protection, including construction or snow fencing, around all tree preservation areas;

(ii) Installation of tree wells, retaining walls, or other structures necessary to protect individual trees; and

(iii) Proposed procedures to guard against long-term damage by such factors as soil compaction; and

(f) Tree and woodland maintenance plan if applicant relies on Section 1519.1(k).

{Comment: Subsection 1519A.1 comes from OP proposal with double underscored words added.}

Replacement Tree Standards

1519A.2. (a) Any replacement tree planted to meet the requirements of Section 1519.1(l) or Section 1520 shall be

(i) a nursery stock tree of at least two (2) inch caliper, balled and burlaped, in good health, provided that the Urban Forestry Administration may set a different caliper for a given species of tree based on considerations of availability or survivability, and

(ii) of a species either (I) identified by the Urban Forestry Administration (by published list or ad hoc advice) as native to the Piedmont Region, suitable for planting on private properties and local environmental conditions, and able to reach a height at maturity of 50 feet or more, or (II) selected in accordance with a tree and

woodland maintenance program pursuant to Section 1519.1(k) and 1519A(f).

(b) Nothing herein limits the freedom of a landowner to plant additional trees, including understory trees, not identified pursuant to subsection (a).

(c) As used in this Section, "caliper" means diameter of a tree trunk in inches taken at a point six or 12 inches above the ground.

{Comment: Subsection 1519A.2 based upon OP proposal with double underscored words added.}

1520 SPECIAL EXCEPTIONS, APPEALS (FH/TSP)

Special Exceptions

1520.1 Any exception from the requirements of this FH/TSP Overlay, as distinct from the requirements of the underlying zoning district, shall be permitted only as a special exception, if approved by the Board of Zoning Adjustment after public hearing, under § 3104, and subject to the following requirements:

(a) Tree removal, grading, and topographical change shall be limited to the maximum extent possible, consistent with construction of a building permitted by the standards of the FH/TSP overlay;

(b) The applicant shall demonstrate that there are specific physical characteristics of the lot that justify the exception;

(c) The excepted building and overall site plan of the lot shall be generally consistent with the purposes of the FH/TSP Overlay District and not adversely affect neighboring property; and

(d) The Board may impose requirements as to design, appearance, tree protection practices during construction, buffering, and other requirements as it deems necessary to achieve the purposes of this section and may vary side and rear yard requirements in order to achieve the purposes of this section. **The Board may also impose additional or more specific tree planting requirements.**

(e) The Board shall also consider any other mitigation plan that a landowner proposes which includes planting of trees identified pursuant to Section 1519A.2(a) and may take into account tree and woodland changes as such trees approach maturity (recognizing that crowns of preserved trees both grow and die back over the years). Such mitigation plan may provide for temporary as well as "permanent" tree plantings.

1520.2 Before taking final action on an

application, the Board shall submit the application to the following agencies for review and opportunity to submit timely written reports:

- (a) D.C. Office of Planning;
- (b) District Department of Transportation,
~~Tree Maintenance Division~~Urban Forestry Administration;
- (c) ~~D.C. Department of Parks and Recreation~~;
- (d) ~~D.C. Department of Consumer and Regulatory Affairs, Soil Erosion and Storm Management Branch~~; and
- (e) National Park Service, U.S. Department of the Interior.

1520.3 An applicant for a special exception shall submit at least the following materials:

(a) A site plan for development, including computation and illustration of total lot occupancy and impervious surface ratio, and regulated trees proposed to be removed; and

(b) A plan and statement indicating how trees to be preserved on the lot will be protected during the construction period, including reference to proposed procedures to guard against long-term damage by such factors as soil compaction.

Appeals from Action by the Zoning Administrator

1520.4 The owner of a neighboring property, Single-Member District Commissioner, or Advisory Neighborhood Commission may appeal the Zoning Administrator's actions or decisions to the Board.

{Comment: Addresses concern raised by FHCA.}

Prohibitions; Coordination with UFPA of 2002

1520.5. (a) No person shall remove or fatally damage a tree identified in a Tree Protection Plan in violation of Section 1519.1, the Tree Protection Plan, or a Board mitigation condition unless the tree is certified by an ISA certified arborist to be dead, dying, diseased, or hazardous.

{Comment: Based on OP proposal.}

(b) The issuance of a tree removal permit by the Urban Forestry Administration in the Department of Transportation under the Urban Forest Preservation Act of 2002 does not relieve any person from meeting the requirements of this Section.

{Comment: Taken from OP proposal.}

Squares in FH/TSP Overlay District

1520.6 The Forest Hills Tree and Slope Overlay district includes all lots zoned R-1-A, R-1-B, and R-2 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), Square 2231, 2232, 2238, 2239, 2241 through 2251, 2254 through 2256, 2258, 2262 through 2270, 2272, 2274 through 2277, and 2282, as well as to Lot 6 in Square 2231 and Lot 817 in Square 2232 (zoned R-5-D but designated for "low density" residential on the DC Generalized Land Use Map) and the R-5-D fraction of Lot 16 in Square 2033 (mostly zoned R-1-A but one-fifth zoned R-5-D).

{N.B. The R-5-D portion of Square 2049 in the "study area" is correctly excluded.}

~~All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Alberto Bastida, Office of Zoning, 441 4th Street, N.W., Washington D.C. 20001. Comments must be received not later than 60 days after the publication of this notice in the D.C. Register. A copy of this proposal may be obtained, at cost, by writing to the above address.~~

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