

Forest Hills Neighbors for Responsible Preservation
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BY HAND DELIVERY

August 19, 2004

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

ZONING COMMISSION
District of Columbia

CASE NO. 02-19
EXHIBIT NO. 376

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

Dear Mr. Bastida:

The Forest Hills Neighbors for Responsible Preservation (FHNRP) submits these comments as follow-up to testimony before the July 22, 2004 hearing of the Zoning Commission on the Office of Planning's proposed Forest Hills overlay. Over 160 households signed a petition to the Zoning Commission opposing the original FH/TSP and FHNRP was formed as an ad hoc community organization to give voice to these objections and work to resolve the neighborhood's differences.

We commend the Zoning Commission for recognizing the deep division the original Forest Hills Tree and Slope Overlay (FH/TSP) created in Forest Hills, and for directing the Office of Planning (OP) to research the impact and effectiveness of existing overlays in the District of Columbia, and to suggest viable alternatives. As many of us strongly noted at the hearing, OP should be recognized for its due diligence on this directive, and for working with residents of Forest Hills to arrive at a workable compromise on this issue.

We offer six recommendations responding to key issues raised at the hearing.

- (1) The Zoning Commission should accept the OP alternative, as amended, because it is based on current best practices and community input**

As we noted at the July 22 hearing, FHNRP believes that the OP recommendation for a canopy-based overlay for Forest Hills is an acceptable compromise to the debate that has raged in our neighborhood for more than two years.

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Even our members who believe that no overlay is needed accept the OP alternative in the spirit of moving forward, and as an approach focused on trees preservation.

The canopy approach is recommended by conservation groups including the Casey Tree Foundation, and has been a success in other areas including suburban Maryland and Virginia. Additionally, OP efforts in getting community input have gone a long way to making this compromise workable for Forest Hills.¹

(2) The Commission should reject the FH/TSP because it inappropriately seeks to re-zone Forest Hills

The FH/TSP set down in April 2002 and the amended FH/TSP published in the *D.C. Register* in December 2002 contains numerous provisions that regulate front yard setbacks, lot size, side yard width and impervious surface restrictions. These extremely restrictive zoning regulations are not required to preserve trees, but rather are meant, pure and simple, to limit development in Forest Hills. To quote FH/TSP proponent ANC Commissioner David Bardin at an ANC 3F meeting attended by some of our members on February 10, 2003, "the whole purpose of the overlay is to make it harder to get a building permit."

As FHNRP has noted in previous submissions, we do not believe that changes to zoning regulations belong in a tree protection overlay. A review of development practices in Forest Hills is a separate issue that should be addressed by more appropriate avenues. Forest Hills resident and FHNRP member Mark Baughman testified on July 22 that a District task force is already examining if and how District zoning regulations need to be changed. Proponents of re-zoning Forest Hills can pursue their objectives more appropriately through this task force, rather than through an overlay designed to protect trees.

Furthermore, the Office of Planning's previous reports advised the removal of minimum lot size provisions along with the side yard, impervious surface, and other bulk provisions. The Zoning Commission also agreed in previous meetings that these items be removed. Changes to lot sizes to address issues such as "McMansions" require thorough study city-wide, such as is now under way with community-wide input in Arlington County, for example. Initiatives to change current zoning provisions regarding lot sizes and lot coverage affect the entire city and should not be taken up neighborhood by neighborhood.

¹ The charge by critics that the OP alternative does not prevent clear cutting is a red herring. The FH/TSP does not prevent clear cutting either (under the FH/TSP, anyone willing to wait seven years can cut down every tree on a lot and then get a building permit). Moreover, clear cutting is not a huge problem in Forest Hills. Most lots in Forest Hills are already developed, so renovations or even a complete rebuilding of such lots would not necessitate clear cutting to save construction costs, as the critics charge.

Finally, the ZC requested OP to determine the Chain Bridge community's satisfaction with their overlay that FH/TSO proponents point to as a model for the set-down Forest Hills TSO. As indicated in the OP report to the Commission, there exists a significant amount of dissatisfaction in the Chain Bridge community with their overlay. A dangerously flawed overlay should not be extended to Forest Hills.

(3) The Commission should reject proposed ANC 3F revisions to the OP alternative because they are unworkable and confused

At the July 22 hearing, ANC 3F presented a long list of revisions to the OP alternative that would reinsert the building restrictions that have been removed from the overlay that had been expressly removed because of their dubious legality and lack of widespread community support. There is ample evidence that the ANC commissioners (with the exception of Mr. Maudlin) do not understand the OP proposal, or their own 10-page memorandum to the Commission. ANC Commissioner David Bardin stated at several points during his testimony before the Commission that he did not fully understand the details of the OP proposal. Commissioner Karen Perry stated at the ANC meeting, which adopted the memorandum: "I'm not sure what we're saying in this big, long document" ("Forest Hills Eyes Canopy Compromise," *Northwest Current*, July 21, 2004, p.25, attached). Mr. Bardin also persists in advocating a change in impervious surface zoning requirements despite the testimony of an FHCA tree witness, James Urban, that trees can thrive when surrounded by impervious surfaces (this expert even showed a slide of trees growing out of an Illinois bank building, and also stated that "space is rarely an issue").

OP has repeatedly advised and FHNRP supports the position that issues of imperviousness and slope-related matters are best regulated during the building permit review stage when these matters are addressed by different requirements regulated by the Department of Health's Environmental Health Administration. According to DOH's website, the Watershed Protection Division "has developed and enacted storm water management and sediment and erosion control regulations for construction sites." (21 DCMR Chapters 2 and 5). It further states that its Inspections and Enforcement Branch "inspects Best Management Practices (BMPs) to ensure that they are adequately maintained, and investigates citizen complaints relating to soil erosion and drainage problems and recommends appropriate solutions." FHNRP believes that best practices are dynamic in nature and are better examined by the appropriate agencies as part of the building permit review stage and should not be regulated through the zoning process.

The ANC memorandum also contains many unworkable suggestions such as allowing some property owners to choose the regulations that suit them best. Given the inappropriateness of the suggestions and the confusion of the ANC about the OP plan, the Commission should reject the suggestions offered in the memorandum.

(4) The Commission should accept OP's GIS survey as a sound basis for estimating canopy coverage in Forest Hills

The GIS survey analysis conducted by the Office of Planning applied the commonly accepted method of heads-up digitizing to determine canopy coverage on squares, and then overlaid that map with lot lines obtained from the Department of Tax and Revenue. Various jurisdictions throughout the country and metro area use aerial photography and GIS to determine not only canopy coverage but also other natural resources within their jurisdiction. For example, the City of Fairfax referenced by the Office of Planning as part of its research has used the tree canopy percentage requirement for lot development since 1978. Additionally, Fairfax County is currently conducting an updated GIS survey/analysis of their canopy coverage as part of their Urban Forest Master Plan. The approach permits OP to distinguish between trees on property, street trees, Park Service trees, even shrubs and bushes.

To estimate existing canopy coverage in Forest Hills using the GIS survey, OP correctly focused on areas that define the existing character of Forest Hills: privately-owned, developed, R-1A lots and the squares that include such lots. The most appropriate representation of the canopy coverage of such squares is the median canopy coverage. Using information submitted by the applicant, we can ascertain which squares are predominantly privately-owned, developed, and R-1-A. We also know from that information that the median lot size of those squares is 9,500 square feet. For those squares, OP found that *both the mean and the median* are 34-36 percent canopy coverage. While Mr. Clark is correct that OP calculated its existing canopy coverage rate for Forest Hills by averaging the rates for each of the selected squares, he is incorrect that OP did so inappropriately. *When the mean and the median are the same*, such calculations are accurate. The statisticians among us (and there are several) agree that OP's calculations – which yielded 34-36 percent – are correct.

(5) The Commission should accept the OP alternative because it would allow property owners to plan for the use of their property and easily calculate their canopy

A major problem with the FH/TSP is that it imposes rigid requirements on property owners, relieved only by slow, unpredictable and expensive appeal processes. Moreover, the property owner is saddled with making complicated and obscure calculations. In contrast, the OP alternative allows a property owner to plan the use of the property with reasonable certainty and have confidence in the calculations.

We believe the question of how best to calculate canopy coverage can be answered. Two techniques for easily measuring current and future tree canopy were presented at the hearing. We have no objection to the Commission selecting either of the two methods for measuring canopy (the longest branch or the trunk circumference method) suggested at the Commission hearing by the Urban Forester and the Park Service, respectively. The fact that two techniques exist should not be a reason to reject the OP plan. The Commission would be right to rely on the expertise of

professionals in the field – as it does for architects, surveyors, or real estate appraisers, for example – to “do the job right.” Arborists are qualified to undertake whatever measure is selected.

(6) The Commission can easily develop an appropriate list of trees homeowners can use to meet canopy requirements

Any tree list recommended by the Urban Forester is acceptable to FHNR. We caution the Commission, however, with devising a list that includes only slow-growing trees. It would be inappropriate to have a tree list that does not permit homeowners to meet the 10-year canopy requirement because trees that may be planted grow too slowly. If slow-growing trees are the favored trees, the 10-year deadline would need to be lengthened to 20 years (as it is in other jurisdictions that rely on canopy coverage requirements for tree preservation).

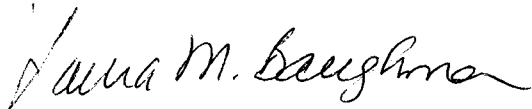
In addition, FHNR agrees that such a tree list is best maintained by the Urban Forestry Administration and not codified in the Zoning Regulation since UFA's list is dynamic and could reflect changes that may occur due to disease.

Conclusion

We ask Commissioners to also remember that much of the forest in Forest Hills is quite old and will die of its own in the not-to-distant future. What we need is an overlay that will require property owners to plant new trees to replace those that die natural deaths: the FH/TSP does not do that. A large number of old trees came down during the most recent hurricane, and they have not been replaced. The OP alternative would require their replacement when property owners sought building permits, which as we have noted happens frequently in a neighborhood with many older homes in need of updating.

For the reasons noted above, we urge the Commission to replace the current FH/TSP immediately with the version most recently suggested by OP at the July 22 hearing, with only minor necessary corrections that may be submitted by OP.

Respectfully Submitted by



Laura M. Baughman

On behalf of

The Forest Hills Neighbors for Responsible Preservation

WEDNESDAY, JULY 21, 2004

Forest Hills A NC eyes canopy compromise

By CHRIS KAIN
Current Staff Writer

The Forest Hills advisory neighborhood commission sought Monday to strike a middle ground on the latest iteration of proposed tree protections in the leafy parkside neighborhood.

Last week, the Office of Planning issued a revised alternative to the tree-and-slope overlay originally proposed by the Forest Hills Citizens Association back in April 2002. Because the case remains open, the original version will stay

in effect until the Zoning Commission takes final action in the case.

Last week's Office of Planning proposal steers away from provisions focused on zoning and development, such as specific setback requirements and lot-coverage limits. Instead, it sets standards for tree-canopy coverage 10 years after a building permit is obtained — 25 percent for lots less than 7,500 square feet and 32 percent for lots greater than 7,500 square feet.

The changes have won backing
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from a coalition of residents who battled the original overlay, as well as opposition from the Forest Hills Citizens Association.

After hearing 15 minutes of testimony from each side, the advisory neighborhood commission voted 6-1 Monday to urge a hybrid of the two approaches. "It seems to me the right answer is somewhere in between," Bardin said.

The resolution, drafted by Bardin in the form of a memorandum to the Zoning Commission, hails the Office of Planning's proposed requirement for tree protection plans, prepared by certified landscape architects or arborists, as part of the building-permit application process.

But the neighborhood commission urged inclusion of provisions of the original overlay request that were dropped in the Office of Planning's alternative.

The most critical, according to Bardin's resolution, is a restriction on the amount of impervious surface permitted as part of a residential project. Previous tree-and-slope overlays adopted in Woodland-Normanstone and the Chain Bridge Road-University Terrace section of the Palisades imposed a 50 percent limit on impervious surface.

"Forest floors are pervious," says Bardin's memorandum. "Trees are forest creatures. Tree roots depend on oxygen and water absorbed by soil through permeable surface. Zoning regulations to preserve or enhance tree cover and a forest-like or park-like ambience that allow up to 100 percent impervious cover, as a matter of right, would fail to do the

job."

The commission also recommended a customized canopy approach geared to preserving most of the existing tree coverage on a given lot. The resolution proposes that the Zoning Commission set a threshold for the percentage of the existing canopy to be preserved — 90 percent is given as an example — as well as a uniform standard for the required canopy coverage of the lot within 10 years — with 32 percent listed as the suggested figure.

Given the level of detail in the 11-page memorandum, commissioners expressed some reluctance in adopting Bardin's resolution.

"I'm not sure what we're saying in this big, long document," said commissioner Karen Perry.

But she and her colleagues chose Bardin's draft over a terse, two-page resolution prepared by commissioner Robert Maudlin in support of the latest Office of Planning proposal.

Maudlin's draft resolution praised flexibility in the plan's tree-planting requirements, the creation of a workable enforcement mechanism, the reduced impact on the buildable area of lots, and maintenance of a minimum canopy coverage in Forest Hills.

The commission's deliberations stood in contrast to statements made earlier in the meeting.

Karen Foreit, a member of the Forest Hills Neighbors for Responsible Preservation and a vocal critic of the earlier overlay proposal, commended the Office of Planning for its hard work in finding a more flexible mechanism to protect the neighborhood's tree coverage. She also praised planners for undertaking a thorough study and meeting with residents on all sides of the issue.

"We wanted an honest broker to work through the issue with us," Foreit said. "This is the way city government should work."

She acknowledged that not all of the group's members like all of the restrictions proposed by the Office of Planning, but she said it provides a good compromise.

But George Clark, president of the Forest Hills Citizens Association, said that the canopy approach will not prevent removal of trees.

"It's not a tree-protection ordinance because it does not prevent one single tree from being taken down," he said. "This is an ineffective ordinance."

Clark also challenged the Office of Planning's numbers. He argued that the planners misstated the views of American Forests by suggesting that the group advocates a 25 percent canopy coverage for neighborhoods like Forest Hills.

Barbara Simons, the citizens association's former president, noted that the Ward 3 section of the city's Comprehensive Plan recommended adoption of a tree-and-slope overlay in hilly neighborhoods adjacent to federal parkland, such as Forest Hills.

In rebuttal, Foreit argued that the original overlay is also ineffective at preventing large-scale removal of trees as long as the property owner is willing to wait seven years for a building permit — the stated penalty.

"It doesn't prevent anybody from cutting any tree on a lot, if you have seven years of patience," said Foreit.

The Zoning Commission will hold a hearing Thursday at 6:30 p.m. to discuss the canopy alternative.