

Case No. 02-19 (Forest Hills Tree and Slope Overlay District)

POST-HEARING SUBMITTAL OF
BARBARA SIMONS, PAST PRESIDENT,
FOREST HILLS CITIZENS ASSOCIATION

In a continuing and concerted effort to discredit the Forest Hills Citizens Association (and thereby the Forest Hills Tree and Slope Overlay), Mr. Warren Watts, in his testimony on behalf of himself and a small but vocal group of Tree and Slope opponents, has challenged the legitimacy of the Association and its officers.¹

Although the Watts group challenges the entire election procedures of the Forest Hills Citizens Association, all FHCA elections have been conducted in accordance with long-standing tradition and the prevailing law.²

The Watts group additionally challenges the procedures by which the Tree and Slope Overlay was filed. But, as we have previously testified (see Exs. 104, 195), the filing of the Tree and Slope Overlay by the Forest Hills Citizens Association was preceded by months of meetings of the ANC's ad hoc Committee on Tree and Slope Overlays. This Committee was open to all who wished to participate, and information regarding its meetings was disseminated both at ANC meetings and in the Northwest Current. In addition, several sets of materials on the proposed Tree and Slope Overlay were distributed (by hand as well as by mail) to all homes in the Overlay. A number of

¹ The Watts group have previously identified themselves as "an ad hoc group of approximately 30 core members" (Ex. 253); the overlay consists of approximately 650 households. Employing scurrilous charges -- both before this body and in the press -- as a means of defeating Tree & Slope, the Watts group has attempted to intimidate not only members of the Forest Hills Citizens Association, but members of this Commission as well (see testimony before D.C. City Council, Feb. 10, 2003, afternoon session).

² At a July 29, 2004 election of the Association -- notice of which was sent to all dues-paying members with a request for nominations -- no nominations other than the Nominating Committee's slate of candidates were forthcoming, and the slate (including the current President) was elected by acclamation. None of those testifying on July 22 against the current overlay even attended the election.

ZONING COMMISSION
District of Columbia

Case 02-19
379

ZONING COMMISSION
District of Columbia
CASE NO.02-19
EXHIBIT NO.379

-2-

community meetings were also scheduled (again with advance notice and open to all). Unfortunately, none of Mr. Watts' group chose to attend those meetings.³

Tree & Slope and the Ward 3 Plan

As has already been observed (see testimony at the July 22, 2004 hearing, Ex. 361; see also letters of Councilmembers Catania, Mendelson, and Patterson, Exs. 347, 363, and 364), the District government is required by the Ward 3 Comprehensive Plan to "map the Tree and Slope Protection overlay" in Forest Hills.

Section 1403.4 of the Ward 3 Plan states:

"The District government should do the following:

* * *

"Map the Tree and Slope Protection overlay (11 DCMR §1511) in hilly areas throughout the ward in addition to Woodland-Normanstone, particularly in areas adjacent to federal park lands." (See also identical language of Section 1406.12).

Section 1406.5 of the Plan provides:

"(a) Areas in Ward 3 that are environmentally valuable and sensitive to urban development include the following:

* * *

"(6) Neighborhoods developed over hilly terrain or near stream valleys (such as . . . Forest Hills . . .); Urban design should respect and perpetuate the natural features, low density, and usually wooded character of these built areas."

Finally, Section 1409.4(b)(2), after noting that such areas, because of their low density and park-like setting, require land use controls in addition to the requirements of R-1 zoning, concludes:

³ In attempting to draw a contrast with Tree & Slope, the Watts group praises the process by which OP's canopy proposal was developed. The fact is, however, that both the ANC/FHCA and the OP processes were the same, the only difference being that the Watts group chose not to participate in Tree & Slope when it was being formulated.

-3-

"This Tree & Slope Protection overlay should be considered and adopted for . . . park-like, hilly areas such as . . . the portions of the Forest Hills . . . neighborhoods adjacent to Rock Creek Park and its tributary valleys."

As Councilmember Mendelson observes in his July 22 letter (attached):

"The Council knew the extensiveness of the tree and slope protection overlay district when it adopted the Ward 3 element of the Comprehensive Plan. By that time the TSP overlay district had already been adopted and mapped in the Woodland-Normanstone neighborhood. Multiple statements in the Ward 3 element of the Comprehensive Plan call for tree and slope protection in areas such as Forest Hills. Indeed, specific reference to Forest Hills virtually requires that there be an overlay, with the strongest protection for trees."

Moreover, as Councilmember Mendelson further observes, "The current Office of Planning alternative falls short of the requirements of which the Council was aware when it adopted these statements in the Ward 3 element."

Tree & Slope vs. OP Alternative

As Councilmember Mendelson explains, "The OP alternative:

"Does not preserve the natural topography and mature trees to the maximum extent feasible;

"Does not prevent significant adverse impact on adjacent open space, parkland, stream beds, or other environmentally sensitive natural areas; and

"Does not 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 and the existing neighborhood (See 11 DCMR 1511.3)." (Emphasis in original).

Thus, OP's plan, by eviscerating necessary provisions of Tree and Slope, would not protect federal parklands as required by the Ward 3 element. Mr. David Murphy of the National Park Service, testifying in support of Tree & Slope, clearly recognized this. Nor would OP's proposal actually protect or preserve trees. Although OP characterizes its plan as a "tree preservation" plan, it simply defies logic to claim that a plan that

-4-

would permit a reduction in tree canopy in Forest Hills from the 65-75% currently estimated by the National Park Service to the 25% proposed by OP is a plan to "preserve" trees that "would satisfy the preservation goals for tree canopy in Forest Hills" (OP Final Report, p. 4).⁴

Ms. Barbara Deutsch, Senior Director for Programs and Research at the Casey Trees Endowment Fund, also questions the logic of OP's proposal (Ex. 359, pp. 3-4).

"[W]e are concerned about a number of provisions of the proposed new rules.

"First, we believe that permitting a reduction in the average tree canopy cover in the area . . . to 25 percent for lots less than 7,500 square feet in area and 32 percent for lots greater than 7,500 square feet is excessive. As I noted at the outset, the District overall has lost nearly two-thirds of its heavy tree canopy cover over the past quarter century. Further erosion of this canopy will only serve to further reduce the values and benefits of trees to this community. . .

"Related to this, granting the permittee ten years to achieve this minimum tree canopy cover standard is inadequate. Ten years is a long time. I question the ability to adequately and accurately certify that trees planted today will achieve the crown canopy necessary to meet the minimum canopy area required ten years in the future. And, what is the penalty to the permittee or the certifying landscape architect or arborist if the minimums are not met 10 years later? . . .

"In summary, Casey Trees is concerned that the proposed amendments to the Forest Hills Tree and Slope Overlay District are inadequate to maintain and protect the highly valuable tree canopy in the area. The proposed rules would permit a reduction of more than half in the existing tree canopy in the area as determined by the Office of Planning. Given the extensive loss of tree canopy in the District in recent years, we believe that a greater effort should be made to minimize the effects of development on the trees that remain."
(Emphasis supplied).

⁴ This extraordinary result is wholly aside from the deficiencies in OP's data base noted by Mr. Clark in his testimony at the July 22 hearing. Incidentally, the canopy concept, with its recommended percentages, was intended for new subdivisions like those studied by OP, where the recommended percentages are targets to aim for; the concept was not designed for already developed areas with a goal of reducing canopy coverage. Moreover, it is ironic that OP cites the National Association of Homebuilders in support of its proposal. The Homebuilders are notorious for opposing every piece of environmental legislation, as well as compiling a losing track record in court.

-5-

Similarly, Mr. James Urban, expert witness for the Forest Hills Citizens Association, testified that, because of the imprecise and amorphous nature of the standard employed by OP -- with its inherent difficulty of measuring tree canopy as well as requiring predictions ten years into the future -- he believed that OP's proposal would be almost impossible to enforce.⁵

Since the reason this Commission at its March 2003 meeting requested OP to research how the template has worked in other parts of the city (i.e. with respect to enforcement), and since the primary complaint was that DCRA was not doing its job of enforcing the template, it is logical to inquire what the enforcement mechanism will be under OP's plan. The answer is, as OP has candidly admitted (Final Report, p. 9): "The Alternate Proposal relies on the same enforcement mechanism as the current overlay." Thus, if enforcement under OP's plan will be no better -- and perhaps significantly worse for the reasons just alluded to -- there is no advantage to replacing the template with OP's alternate proposal. There are, in contrast, distinct advantages to retaining the template. Since April 2002, when Tree & Slope became effective in Forest Hills, there has not been a single request for BZA relief. To use a worn but wise cliché, "If it isn't broken, why fix it?"

Wherefore, since Tree & Slope appears to be working, and the Forest Hills Survey indicates strong support among the residents, we urge the Zoning Commission to carry out the mandate of the Ward 3 Plan and finally adopt the Forest Hills Tree and Slope Overlay.⁶

⁵ See also Councilmember Mendelson's observation: "I consider the 10 year canopy requirement to be virtually unenforceable. Even when the zoning regulations are clear and present, the city's authorities seem incapable of enforcing [them]. . . [C]alculating canopy compliance in 10 years on Forest Hill's 650 lots will be difficult and unlikely" (Ex. 364, p. 2). Reinforcing that fear is the statement by Ainsley Caldwell, of the Urban Forestry Administration, that his office will not be conducting any tree inspections.

⁶ [See footnote next page]

-6-

Respectfully submitted,

Barbara M. Simons

Barbara M. Simons



COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

Phil Mendelson
Councilmember At-Large

Office: (202) 724-8064
Fax: (202) 724-8099

July 22, 2004

Ms. Carol Mitten, Chairman
D.C. Zoning Commission
441 4th Street, NW Suite 200
Washington DC 20001

RE: Case 02-19 (Forest Hills)

Dear Ms. Mitten:

I am writing to reiterate my support for mapping the tree/slope overlay for Forest Hills, and to suggest that the Zoning Commission reject the alternative being proposed by the Office of Planning.

The purposes of the tree and slope protection overlay district are to preserve and enhance the park-like setting of designated neighborhoods adjacent to streams or parks by regulating alteration or disturbance of terrain, destruction of trees, and ground coverage of permitted buildings and other impervious surfaces. (See 11 DCMR 1511.1) The OP alternative falls short of these purposes.

The Council knew the extensiveness of the tree and slope protection overlay district when it adopted the Ward 3 element of the Comprehensive Plan. By that time the TSP overlay district had already been adopted and mapped in the Woodland-Normanstone neighborhood. Multiple statements in the Ward 3 element of the Comprehensive Plan call for tree and slope protection in areas such as Forest Hills. Indeed, specific reference to Forest Hills virtually requires that there be an overlay, with the strongest protection for trees. For instance:

§ 1406.5(a)(6) 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[.]

§ 1406.12(c) Map the Tree & Slope Protection overlay (11 DCMR § 1511) in hilly areas throughout the ward in addition to Woodland Normanstone, particularly in areas adjacent to federal park lands[.]

§ 1409.4 (b) (2) [The] Tree & Slope 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[.]

The current Office of Planning alternative falls short of the requirements of which the Council was aware when it adopted these statements in the Ward 3 element. The OP alternative:

Ms. Carol Mitten, Chairman
RE: Case 02-19 (Forest Hills)

July 22, 2004
Page Two

- Does *not* preserve the natural topography and mature trees to the maximum extent feasible;
- Does *not* prevent significant adverse impact on adjacent open space, parkland, stream beds, or other environmentally sensitive natural areas; and
- Does *not* 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 and the existing neighborhood. (See 11 DCMR 1511.3)

For example, the OP alternative requires a maximum tree canopy (in 10 years) of 32% of a lot (this is only for the largest lots; the requirement for smaller lots is 25%). Yet the Forest Hills Citizens Association estimates that the current canopy is 40.3%, and the organization American Forests urges that the tree cover should be 50%. (See letters of July 15 and July 19 submitted in this case)

Further, the OP alternative allows any property owner to remove every tree so long as the owner files a certificate promising to be in compliance with the canopy requirements ten years later.

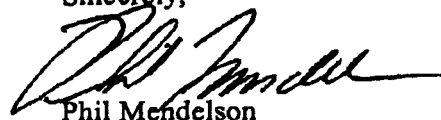
Moreover, the OP alternative is silent as to ground coverage and required perviousness. These are important elements of any regulation intended to preserve natural topography, prevent significant adverse environmental impact, and promote a healthy urban forest.

Finally, I consider the 10-year canopy requirement to be virtually unenforceable. Even when the zoning regulations are clear and present the city's authorities seem incapable of enforcing the zoning regulations – e.g., the Tenley antenna tower, restaurant limitations in the Cleveland Park neighborhood commercial overlay district, PUD violations, and the several appeals which have recently been granted by the Board of Zoning Adjustment. I am confident that the creation of a new regulatory scheme – the certification of a 10-year-hence tree canopy, with a follow-up certification in two or three years – will complicate zoning enforcement. I am also confident that calculating canopy compliance in 10 years on Forest Hill's 650 lots will be difficult and unlikely.

While the Office of Planning's alternative is a retreat in this case, there are aspects of it such as the requirement for a tree plan which are laudable. I also recognize that Advisory Neighborhood Commission 3-F has made recommendations that differ somewhat from that of the Forest Hills Citizens Association. In my view what is important is to craft an overlay for the Forest Hills neighborhood that meets the purposes of the tree and slope protection overlay district.

Thank you for consideration of these views.

Sincerely,



Phil Mendelson
Councilmember At-Large

FAX COVER SHEET

Date: 8/19/04

To: Zoning Commission
Fax No. 727-6072

From: Barbara Simons
Fax No. 244-3732

No. of pages (including this sheet): 9