

Government of the District of Columbia
OFFICE OF ZONING



MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Sharon S. Schellin *SS*
Secretary to the Zoning Commission

DATE: May 25, 2006

SUBJECT: Publication for the Office of Zoning

2006 MAY 25 11:11:38

Office of
Documents and
Administrative
Issuance

Please publish the following in the *D.C. Register* on June 2, 2006:

1. Z.C. Notice of Filing (Case No. 06-23);
2. Z.C. Notice of Filing (Case No. 06-24);
3. Z.C. Corrected & Revised Notice of Proposed Rulemaking (Case No. 02-19); and
4. Z.C. Notice of Final Rulemaking & Order No. 03-09 (Case No. 03-09) – also provided on the attached diskette.

Attachments

ZONING COMMISSION
District of Columbia

CASE NO. 02-19

EXHIBIT NO. 398

RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: ☐ EMERGENCY RULES
☐ FINAL RULES ☒ PROPOSED RULES ☐ COMBINED

DATE AND TIME RECEIVED

Office of Documents use only

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: MS. SHARON SCHELLIN

ADDRESS: 441 4th Street, N.W., Suite 210 South

TELEPHONE: (202) 727-0340

TITLE AND DESCRIPTION OF RULES: Case No. 02 - 19 (TA)
(Text Amendment – Forest Hills Tree and Slope Overlay District - 11 DCMR)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) Sections

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: DCR _____ DATE: _____

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.

DATE: MAY 24, 2006

SIGNED: *Alan Boyle for*

PHONE: (202) 442-9777

X	FINAL		CONDITIONAL
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 NAME: ROBERT J. SPAGNOLETTI TITLE: ATTORNEY GENERAL

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)

Zoning Commission For The District Of Columbia

Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules.

Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OF VOTE:

5/8/06

APPROVAL OF ATTEST:

Sharon J. Schellin
Secretary to the Zoning

TITLE: Commission

PHONE: (202) 727-0340

Office of Documents use only:

THIS NOTICE PUBLISHED AT:

VOL:

DCR:

DATE:

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
CORRECTED AND REVISED NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 02 - 19
(Text Amendment – Forest Hills Tree and Slope Overlay District - 11 DCMR)
May 8, 2006

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code § 6-641.01), hereby gives notice of the intent to adopt an amendment to Chapter 15 of the Zoning Regulations (11 DCMR), MISCELLANEOUS OVERLAY DISTRICTS. The proposed rule would add a new Tree and Slope Protection overlay in the Forest Hills area of the District of Columbia. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* (“DCR”).

This is the third notice of proposed rulemaking for this text amendment. A notice of proposed rulemaking was originally published on December 13, 2002 at 49 DCR 11309. Before the Commission considered final action on the proposed rule, however, it requested that the Office of Planning come up with an alternative approach to accomplish the goals of the proposed overlay district. The Office of Planning submitted a new proposed text, and the Commission published a new notice of public hearing on March 12, 2004 at 51 DCR 2707. The Commission then republished the notice of public hearing on May 21, 2004 at 51 DCR 5207 after it rescheduled the hearing date. The Commission ultimately decided against the alternative approach. Instead, at a decision meeting held March 14, 2005 the Commission decided to apply the provisions of the original proposed rulemaking, but restrict the application of some of its provisions to a limited area within the overlay district.

The Commission published a Notice of Proposed Rulemaking requesting public comments on this approach on March 31, 2006 at 53 DCR 2435. However, that notice inadvertently included a section carried over from the original notice of proposed rulemaking that it intended to delete from the text. At its May 8, 2006 public meeting, the Commission clarified that it did not intend to include the section in the text, and authorized the publication of this corrected notice of proposed rulemaking. In addition, the second page of the proposed notice did not appear as a result of a publication error.

The following text reflects the Commission’s decision at its March 14, 2005 meeting, as clarified by the Commission at its May 8, 2006 meeting, and is to be given effect for the purpose of processing applications for building permits and certificates of occupancy, as provided by 11 DCMR §§ 3202.5(b) and 3203.7(b) (commonly referred to as the “setdown rule”).

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.
- 1516.4 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.
- 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 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)**
- 1518.1 The principal building and any accessory building on the lot shall not exceed total lot occupancy of thirty percent (30%).

- 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.
- 1518.3 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 addition to buildings shall be a minimum of eight (8) feet and a minimum of twenty-four (24) feet in the aggregate.

1519 RESTRICTIONS (FH/TSP)

- 1519.1 The provisions of this section shall only apply to Squares 2042, 2043, 2046, 2049, 2231, 2232, 2238, 2239, 2244 to 2248, 2250, 2258, 2272, and 2282.
- 1519.2 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:
- (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 (4½ 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. 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 (4½ 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 (4½ 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;
 - (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 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.

1519.3 The minimum lot size for homes within the FH/TSP Overlay district shall be 9,500 S.F. for lots subdivided after the effective date of this provision.

1519.4 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.

1520 SPECIAL EXCEPTIONS (FH/TSP)

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.

1520.2 Before taking final action on an application, the Board shall submit the application to the following agencies for review and written reports:

- (a) D.C. Office of Planning;
- (b) District Department of Transportation, Tree Maintenance Division;
- (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.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Sharon S. Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington D.C. 20001. Comments must be received not later than thirty (30) 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.