

## ***FOREST HILLS NEIGHBORHOOD ALLIANCE***

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June 11, 2002

Albert P. Bastida, AICP  
Secretary of the Zoning Commission  
Office of Zoning  
Suite 210  
441 4<sup>th</sup> Street, N.W.  
Washington, D.C. 20001

RE: Case No. 02-19 (Text Amendment – Forest Hills Tree and Slope Overlay District)

Dear Mr. Bastida:

I am writing on behalf of the Forest Hills Neighborhood Alliance and individually as a resident of Forest Hills to support adoption of the above-referenced tree and slope overlay district.

The Alliance is a District of Columbia non-profit corporation with over 400 supporters in Forest Hills. The Board of the Alliance and its 26 member Executive Committee overwhelmingly support the proposed overlay, including the proposed amendments to the overlay reflected in the report to ANC 3F from the Ad Hoc Committee on Tree and Slope Protection Overlays dated June 3, 2002. These amendments will retain the essential protective features of the overlay but substantially reduce any undue burden on current Forest Hills residents. (A copy of the report is attached as an exhibit hereto.)

As a resident of Forest Hills within the proposed overlay district and on behalf of the many Alliance members who live within the overlay district, I would like to address two points in more detail.

Last year the Forest Hills Neighborhood Alliance was successful in obtaining D.C. historic landmark status for the Owl's Nest property at 3031 Gates Road, N.W. This historic house and property is located in the heart of the proposed overlay district. It is one of the highest points in the district with drainage directly into Soapstone Valley. The site not only contains one of the two historic landmark buildings within the overlay district but also many of the largest and oldest trees in the district. I estimate that at least 20 of the trees on the Owl's Nest site are ancient oaks well over a 100 years old, exceeding 30" in diameter with heights well in excess of 120'. Another 30-40 trees on the same site average 15-30" in diameter and certainly are in the 75-100 year age class. Altogether I have counted more than 100 trees of significant size on the

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Owl's Nest property and the adjacent lot, 3017 Gates Road, N.W. These magnificent specimens obviously cannot be replaced in our lifetime. For this reason the Forest Hills Neighborhood Alliance strongly urges the D.C. Zoning Commission to keep the Owl's Nest property in the overlay district and ensure that this unique historic site retains its special character and ancient trees.

Secondly, I want to address the proposed increase in minimum lot size for future subdivisions from the current 7,500 square foot minimum for R-1-A zoning districts to 12,000 square feet. As an owner of a 16,000 square foot lot with a dozen large trees (15-25" in diameter), I strongly support the increase to the 12,000 square foot minimum lot size for future subdivisions even though it would restrict my own ability to subdivide my property. I am willing to restrict myself in this way because it is important to maintain the park-like atmosphere in Forest Hills for the mutual benefit of all Forest Hills residents. In addition, several of my immediate neighbors have lots in excess of 15,000 square feet and therefore subdividable lots under the current 7,500 square foot minimum lot size. If we all agree to restrict the subdivision of our lots, I believe we will all benefit immensely from the enhanced quality of life in Forest Hills, and all of our property values will be higher. If we all subdivide into 7,500 square foot parcels, the character of our neighborhood will change forever and individual property values will be reduced. A substantial number of Alliance members within the overlay district have lots like mine that currently can be subdivided one or more times. They, like me, nevertheless support the proposed overlay because individually and collectively we all stand to benefit more with the overlay than without it.

Thank you for your consideration of this letter. Please do not hesitate to contact me if I can provide you with any further information.

Sincerely yours,



Gary G. Stevens  
President, Forest Hills Neighborhood Alliance

Enclosure

cc(w/o encl. via email):     ANC 3F  
                                         ANC 3F Commissioners  
                                         George Clark

cc(w/o encl. via facsimile):   Barbara Simons

cc(w/encl. via U.S. mail):     Ellen McCarthy, D.C. Office of Planning

**REPORT TO ANC 3F FROM THE  
Ad Hoc COMMITTEE ON TREE AND SLOPE PROTECTION OVERLAYS  
3 June 2002**

George Clark, *Co-Chair*  
David J. Bardin, *Co-Chair*

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## REPORT OF *Ad Hoc* COMMITTEE ON TREE AND SLOPE PROTECTION OVERLAYS TO ANC 3F

### X. Introduction

A. The *Ad Hoc* Committee. ANC 3F established this Committee on July 9, 2001. Commissioner Robert V. Maudlin served as the first Chair of the Committee, with Commissioner Cathy Wiss as Vice-Chair, followed by Co-Chairs George Clark and Commissioner Cathy Wiss and now by Co-Chairs George Clark and Commissioner David J. Bardin. Membership in the Committee has been open, with members joining and leaving the Committee. Active members are residents or representatives of property owners in ANC 3F. This Committee has made brief oral update reports at some ANC meetings and provided a brief written report distributed as an addendum to each month's ANC agenda for the ANC and Community.

1. Meetings. The Committee has met over a dozen times since October 2001. The Committee has sought and received information regarding other overlays in the District and similar programs in other jurisdictions and has also heard from other groups interested in tree canopy preservation, including the Natural Resources Defense Council. The National Park Service (NPS) has attended several Committee meetings and both of the public meetings on the the overlay and strongly supports the overlay effort. The Committee visited the Chain Bridge Road/-University Terrace overlay district. In addition, Committee members have met twice with the Office of Planning (OP) and once with the District's Chief Arborist, who heads the Urban Forestry Administration. The Committee has met with a D.C. Extension Agent and saw and heard a presentation by architects planning a new residence in the Overlay district who expect to ask the Board of Zoning Adjustment (BZA) for a Special Exception from some aspects of the Overlay.

2. Committee data base. Bob Maudlin and Ginger Worthington have developed a data base (starting with D.C. Tax and Revenue data) used by the Committee and shared with OP. It includes 652 occupied and 40 vacant lots of over 3,000 square feet (s.f.) in the R-1-A, R-1-B and R-2 zoning districts of which 573 are lots in the R-1-A district occupied by residences (in contrast to schools, churches and other institutions).<sup>1/</sup>

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<sup>1/</sup> The smallest developed lot in the data base measures 3,776 s.f. There are also 14 lots of 3,000 s.f. or less in the data base -- not counting condominiums in Van Ness East in the R-5-D zoning district. Twelve of the 14 lots (all in the R-1-A zoning district) belong to adjacent homeowners and range from 2,526 down to 5 s.f. The other two lots measure 436 s.f. (R-1-A) and 842 s.f. (R-1-3), respectively.

B. **This report.** Given the self-selection criteria for Committee membership, this report reflects consensus (or virtual consensus) expressed by Committee members where it exists and identifies issues that any member of the Committee asked to have brought to the ANC's attention. We understand that the ANC plans to consider this report at its June 17 business meeting.

C. **FHCA petition to ZC and its "set down" order.** On April 5, 2002, the Forest Hills Citizens Association (FHCA) petitioned the District of Columbia Zoning Commission (ZC) to establish a Forest Hills Tree and Slope Protection Overlay. On April 19, 2002, the ZC set the proposed Overlay (its Case No. 02-19) for public hearing after modifying the original proposal, at the request of the FHCA as conveyed by the District of Columbia Office of Planning (OP). Such a "set down" order makes the Overlay temporarily effective pending the ZC's hearing and decision. The Overlay text, as "set down," appears in the May 17, 2002, D.C. Register at pages 4540-46. The ZC public hearing is set for Thursday, June 27, 2002, beginning at 6:30 pm.

D. **Community: outreach and input.**

1. The FHCA held a Community Meeting on April 16, 2002, at the Netherlands Embassy to discuss the proposed Overlay. Notice of that meeting was given to all property owners in the overlay, both by postcard and a hand-delivered, green flyer. Presenters included Ellen McCarthy, Deputy Director of OP, David Murphy, National Park Service (NPS), Sheila Hogan, Executive Director, Casey Trees Foundation, George Clark, David Bardin and Barbara Simons, President of the FHCA. Some 160 people attended. Comments at that meeting led to amendments of the Overlay proposal to add Square 2040 to the area covered and limit the side yard and front yard proposals to "new" residential buildings. The overwhelming sentiment in the room favored an overlay.

2. The FHCA held a second Town Hall meeting on May 13, 2002, co-sponsored by ANC 3F. Presenters at the meeting included David Murphy of the NPS, Stephen Gresham, AIA, George Clark and David Bardin. Some 60 people attended. The letter of invitation to the May 13 meeting, mailed to each resident (or property owner), enclosed the text of the proposed Overlay as amended and set for hearing by the ZC.

3. In addition, several Committee members have visited particular properties, discussed Overlay provisions with several individuals, and received suggestions for Overlay changes.

4. The Northwest CURRENT reported the ZC's ordering of a public hearing as well as the May 13 Town Hall meeting in front-page stories on April 24 and May 15, 2002.

5. ANC 3F's web site [[www.anc3f.org](http://www.anc3f.org)] has regularly posted Overlay developments.

E. **Description of area of proposed Overlay district**

Appendix A summarizes pertinent history, geography, topography, historic landmarks, population, public transit service, stormwater drainage and sanitary sewage facilities. The proposed Overlay district includes some or all of 37 D.C. land squares: All of 35 squares (2030, 2031, 2032, 2033, 2040, 2041, 2042, 2043, 2231, 2232, 2238, 2239, 2244, 2245, 2246, 2247, 2248, 2250, 2251, 2254, 2255, 2256, 2258, 2263, 2266, 2267, 2268, 2269, 2270, 2272, 2274, 2275, 2276, 2277, 2282) and parts of two squares (2046 and 2049). It does not include squares 2028, 2029 and 2234.

## II. Rationale for this Overlay

The purposes of the Overlay district are to:

A. preserve the natural topography and mature trees to the maximum extent feasible in 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 constructions, so as to encourage a general compatibility between the siting of new buildings and the existing neighborhood.

## XI. Brief Summary of Overlay as Set for Hearing by the ZC

The Overlay (a) limits construction and subdivision *as of right* (i.e., without any need for a Special Exception) and (b) establishes criteria governing decisions on applications for Special Exception (which may be approved only *after* notice and hearing with public participation).

- An Overlay *adds* restrictions to the underlying zoning (almost all R-1-A, but with some R-1-B, R-2 or R-5-D); but that underlying zoning must *also* remain in effect.
- The more stringent provision -- of underlying zoning or Overlay -- governs.

### A. Limitations

- **Trees:** *A property owner may remove any tree, as of right, for any reason, without any permit. If a building permit is applied for within seven years of removing certain size trees, other rules apply.*
- **This Overlay limits rights to remove, cut down or fatally damage healthy, non-hazardous trees of certain sizes as of right (i.e., without having to seek a Special Exception), as set forth in the table on the next page, in the event a building permit**

is applied for. These provisions are identical to those in the two previous Tree & Slope overlays adopted in D.C.

*Without an Overlay*, development that subdivides a large lot, builds on one vacant lot, tears down and replaces a house, or enlarges a building may remove *all* trees as of right.

Current zoning regulations allow a developer to cut down trees on a heavily wooded lot (as recently happened at 2807 and 2845 Chesterfield Place, 2949 Chesapeake Street, 3883 Connecticut Avenue, and 2900 and 3901 Albemarle Street).

**Sick and hazardous trees:** The Overlay imposes *no* limits on removing sick or hazardous trees, no matter how large or how numerous.

**Tree pruning:** The Overlay does not limit occasional or annual pruning of trees based on the landowner's criteria (such as professional pruning to stunt tree growth).

| Tree condition or circumference<br>(at 4.5 feet, "breast height") | What trees would this proposed Overlay<br><i>allow</i> to be removed, cut down or fatally damaged<br>by development <i>as of right</i> (i.e., without a Special Exception)?                          |
|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Unhealthy or hazardous, <i>any</i> size                           | Any and all, as of right                                                                                                                                                                             |
| < 12 inches, <i>any</i> condition                                 | Any and all, as of right                                                                                                                                                                             |
| > 75 inches                                                       | None (without Special Exception) if building permit sought                                                                                                                                           |
| 38 inches - 75 inches                                             | Up to 3 trees (none being within 25 feet of front property line or building restriction line [BRL] <sup>1/</sup> ) as of right                                                                       |
| > 12 inches - 75 inches                                           | Trees that account for 25% of the total circumference-inches of all trees larger than 12 inches in circumference on the lot (but no more than 3 trees in the 38-75 inch range, as spelled out above) |

<sup>2/</sup>

See page 7, below, for discussion of BRLs and how they differ from yard restriction lines.

**Lot occupancy by buildings, impervious surfaces:** Forest Hills' predominant R-1-A zoning today allows development to occupy no more than 40 percent of a lot with buildings and sets no restriction on *total* impervious surfaces. The Overlay would limit building occupancy to 30 percent of lot area and total impervious surfaces to 50 percent.

**Minimum lot size** in our R-1-A zoning district is 7,500 square feet. That means a developer who purchases a much larger lot may subdivide it today into lots of 7,500 square feet and build a house on each of those subdivided lots, as a matter of right. Under the proposed Overlay, minimum lot size would go up to 12,000 square feet for *future* subdivisions (but stay at 7,500 square feet for existing R-1-A lots).<sup>1/</sup>

**Side yards:** Current zoning provides for eight-foot minimum side yards, which the proposed Overlay would have increased to 16 feet for all *new* residential buildings. But the FHCA has already announced, at the May 13 meeting, that it is planning further changes. Those changes would provide for a sum of the side yards to equal a number of feet (up to 32) on a sliding scale depending on the width of the lot.

**Front yards, corner lots:** Current zoning has no provision for maintaining the character of deep, front-yard setbacks (but some lots have building restriction lines). The proposed Overlay (drawing on the ZC's Wesley Heights Overlay as a model) would establish for all new residential buildings each block's average front-yard setback on any lot in that block (and for *both* street sides in the case of corner lots). The proposal calls for filing a controlling front yard set back map with the Office of Zoning and the Zoning Division of DCRA, but after consultation with the OP we recommend removing a map requirement.

**Steep slopes:** Current zoning does not restrict construction on steep slopes. The proposed Overlay would prohibit construction on highly erodible soils (as defined by the U.S. Geological Service<sup>1/</sup>) where the slope is 25% or more within 20 feet of a

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<sup>1/</sup> Minimum lot size in the R-1-B district is 5,000 s.f. There is one R-1-B property in the Overlay district, measuring 17,341 s.f., which could have been torn down and subdivided into three lots under that underlying zoning, and there are five more R-1-B lots that could have been torn down and subdivided into two lots.

<sup>2/</sup> The Committee notes that the U.S. Geological Service and other agencies in the Interior Department, such as the NPS, rely on work of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS, formerly Soil Conservation Service) as the primary source for data on erodible soils and severe slopes. The NRCS "HIGHLY ERODIBLE LAND CLASSIFICATION REPORT: District of Columbia: Detailed Soil Map Legend" classifies soils

**proposed building's footprint. The Committee proposes to modify this, as set forth in Section V.I..**

**Enforcement: The Overlay regulations (a) bar DCRA's issuance of building permits or subdivision of lots where construction or subdivision would exceed limits and (b) postpone any development (including issuance of any building permits) for seven years if trees are destroyed in violation of the Overlay (but have no sanctions if permits are sought later). The prohibition runs with the land, and sale to another owner does not remove it.**

#### **B. Special Exception criteria**

If a Special Exception is sought for a particular lot, the Board of Zoning Adjustment (BZA) would give notice to the ANC and community and hold a hearing at which neighbors could express their views. The Overlay regulation (following ZC precedents) would guide the BZA as follows:

- The BZA is to limit tree removal, grading and topographical change "to the maximum extent consistent with" the overlay standards of Chapter 15 of the Zoning Regulations;
- Specific, demonstrated characteristics of the lot should justify the particular exception;
- The building and site plan for an Exception should (a) be generally consistent with the purposes of the Overlay and (b) not adversely affect neighboring property;
- The BZA may impose requirements as to design, appearance, tree protection practices during construction, and buffering;
- The BZA may vary side yard and rear yard requirements.

#### **IV. Issues Presented for ANC Consideration**

The Committee consensus is that adoption of an Overlay would be in the best interests of the Forest Hills neighborhood and the District of Columbia as a whole, and the Committee recommends that the ANC so advise the ZC. The question remains whether the particular provisions

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as "highly erodible" or "potentially highly erodible" or "not highly erodible."

of this Overlay should be adopted or altered. The Committee recognizes that the final decision rests with the ZC and that the ANC's responsibilities are advisory only, but that ANC advice is entitled to "great weight" in the ZC's deliberations. The Committee also recognizes that the ZC gives great weight to the final report of the Office of Planning. In addressing issues on which the ANC may make recommendations, the Committee is also mindful of the possibility that the ZC may approve some features of the proposed Overlay but not others. The Committee understands that the ZC may, in this case, under the current public hearing order, amend the proposed provisions to make them *less* intrusive, *less* onerous to a land owner or *less* extensive, but that to do the opposite would call for setting such new Overlay proposal for public hearing.

Issues that have arisen concern

- (a) limitations governing development or subdivision *as of right*;
- (b) the criteria for Special Exceptions by the BZA;
- (c) certain definitions; and
- (d) whether an alternative compliance (or mitigation) mechanism should be added to the Overlay.

These concerns, raised by members of the Forest Hills community, are addressed below.

\* \* \* \* \*

A. **Tree limitations**

The Committee consensus is to leave intact the proposed tree limitations, which come directly from the ZC's original, "template" overlay (11 DCMR 1514.1), but to add several related provisions to the Special Exceptions portion of the proposed Overlay (as explained below) concerning:

- a) certain tree species in certain situations;
- b) whether shade tree canopy or specimens is a principal consideration as to a given lot (or portion of a lot);
- c) front yard trees where there is a Building Restriction Line (BRL), especially a relatively deep BRL.

The Committee notes that BRLs in Forest Hills vary from block to block and, even, within some blocks. BRLs run a gamut from nonexistent, to 15 feet, to as much as 45 feet for several lots.

The Committee also notes that the term "BRL" is not defined in the Zoning Regulations and may

prove confusing.<sup>17</sup> The Committee therefore recommends addition of the following explanation:

EXPLANATION:

BRLs are set by Act of Congress, D.C. Law or deed covenant – not by the Zoning Commission (ZC). BRLs legally restrict the building of any house within the boundaries of private property. In contrast to side yard and rear yard restrictions, BRLs may not be waived by the (ZC, or by the BZA which derives its jurisdiction from ZC regulations). Side yard restrictions are *not* BRLs. BRLs normally parallel the front of a property and the public right of way outside that property.

B. **Ground coverage restrictions: Building footprint occupancy of a lot**

The Committee consensus is that the building footprint limit of 30 percent of lot area be retained intact, as proposed, for both new and existing houses. This limit comes directly from the ZC's original, "template" overlay. 11 DCMR 1513.1. The Committee believes that examination of house footprints and property boundaries, as shown in the Sanborn Maps appended to the FHCA petition for the Overlay, indicates that 30 percent is also in harmony with the character of the neighborhood, as well as desirable in terms of tree canopy preservation and maintenance.

C. **Ground coverage restrictions: Total impervious surface of a lot**

The Committee consensus is that the impervious surface limit of 50 percent of lot area be retained intact, as proposed, for both new and existing houses -- including the *exception*, by way of proviso, for cases of *enlarging existing* houses. Both this limit and the exception come directly from the ZC's original, "template" overlay. 11 DCMR 1513.2. The Committee believes that the 50 percent standard for all impervious surfaces (roofs plus driveways, parking spaces, patios,

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<sup>17</sup> The Zoning Regulations define "line, building" as follows (11 DCMR §199.1): "a line beyond which property owners have no legal or vested right to extend a building or any part of the building without special permission and approval of the proper authorities, *ordinarily* a line of demarcation between public and private property, *but also applied to building restriction lines, when recorded on the records of the Surveyor of the District of Columbia.*" [Emphases added.]

swimming pools, etc.) would also be in harmony with the character of the neighborhood, as well as desirable in terms of tree canopy preservation and maintenance.

The Committee consensus also favors recommending to the ZC that it relieve land owners in the Overlay district from any requirement that driveways, parking spaces, etc. be built of *impervious* materials. (See 11 DCMR 2117.10.<sup>6</sup>) In the Overlay district (at least) landowners should be free to use permeable pavement, pavers, gravel and other techniques not forbidden by the construction codes as a way to keep impervious surfaces on their land to a minimum. The Committee notes that the Ward 3 Element of the Comprehensive Plan, Section 1403.10(b) calls on the ZC to: "Encourage the use of permeable surfaces for parking lots, driveways, etc."

#### D. Minimum lot size

The Overlay would increase minimum lot size for future subdivisions to 12,000 s.f. (as compared to 7,500 for the R-1-A zoning district). The Committee considered whether 12,000 s.f. is characteristic of existing residential development in this predominant part of Forest Forest Hills is park-like because of a combination of circumstances, including presence of some very large, wooded lots and distribution of large lots throughout the neighborhood. Therefore, we analyzed several aspects of the R-1-A portions of the proposed Overlay district:

- 1. Average lot size is greater than 17,000 s.f. (17,275) for all R-1-A residences
- over 14,000 s.f. (14,044) for occupied lots less than 125,000 s.f. and

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<sup>6</sup> Section 2117.10 reads: "All open parking spaces, including access aisles, driveways, and ramp areas shall be paved and maintained with bituminous, concrete or brick materials, or a combination of these materials or other materials approved by the District of Columbia Department of Public Works as structurally equivalent or better, *which form an all-weather impervious surface*, and which is at least four inches (4 in.) in thickness." [Emphasis added.]

- over 12,000 s.f. (12,218) for occupied lots under 35,000 s.f.<sup>1/</sup>
2. Out of 573 lots in the R-1-A district with homes on them, about 40 percent are larger than 12,000 s.f.<sup>1/</sup> In contrast, only 12 percent (68 lots) are between 7,500 and 7,999 s.f.<sup>1/</sup>
  3. Every square in the R-1-A zoning district has at least one lot larger than 12,000 s.f. and 20 out of 34 squares have at least four or more lots larger than 12,000 s.f. (14 have at least seven such lots).

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<sup>1/</sup> The foregoing all (a) exclude non-residential, institutional occupancies (e.g., schools, church, Hillwood Museum and Gardens, embassy/chancery offices) as well as government parkland and vacant private lots and (b) include occupied lots as small as 3,000 s.f. Of the 39 R-1-A vacant lots in our data base, at least 14 are larger than 12,000 s.f., 18 are between 7,500 and 12,000 s.f. and eight are smaller than 7,500 s.f. Many vacant lots have the same owner as an adjacent, occupied lot and sometimes the two (or even three) lots are landscaped as a single property.

<sup>2/</sup> We refer to 218 lots, but have not attempted to add in any of the small, vacant "sliver" lots under common ownership with adjacent, occupied lots. If we did so, the number of "lots" would be smaller and the percentage at 12,000 s.f. or more tend to increase.

<sup>3/</sup> Only 64 of those 573 lots are smaller than 7,500 s.f. (including pre-1958 lots which were "grand fathered" when the Zoning Commission raised the R-1-A minimum lot size from 5,000 to 7,500 s.f.).

4. Review of the 159 lots that are large enough to subdivide using the R-1-A minimum of 7,500 s.f. found that 43 percent of the lots – and 49 percent of the area of the 159 lots – could be subdivided as of right into 587 lots using a 12,000 s.f. standard (for future subdivisions) in contrast to 1,151 subdivided lots with a 7,500 s.f. standard.<sup>19</sup>

The foregoing data support a conclusion that a 12,000 s.f. minimum for future subdivisions would be consistent with the present character of the predominant R-1-A portions of the neighborhood. It is the consensus of the Committee that the proposed minimum lot size be adopted intact.

E. **Definition of "new"**

Certain provisions of the proposed Overlay (concerning side yards and front yards) apply only to "new" residential buildings. The Committee favors the following definitions and interpretation to be added to the Overlay regulation:

**DEFINITIONS:**

**For purposes of §§ 1519.3 and 1519.4, "new residential building" means a residential building on a lot in the Forest Hills Tree and Slope Overlay district if**

- (1) no residential building existed on that lot on April 19, 2002 (the date of the ZC's "set down"), or**
- (2) any proposed replacement, extension or addition would be to a "torn down" residential building.**

**' Torn down" means that the previous residential building has been or would be**

- (a) removed in its entirety; or**
- (b) removed except for the foundation of that building; or**
- (c) have its entire roof and supporting walls removed; or**
- (d) have more than 75 percent of the previous residential building removed.**

**INTERPRETATION: A "new residential building" and a "torn down" residential building are not a "one-family dwelling or flat" within the meaning of § 223 ("ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS R-1.")**

F. **Side yards of new residential buildings**

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<sup>19</sup> Of the six R-1-B lots (all now occupied) that are large enough to subdivide using a 5,000 s.f. standard, none could be subdivided (after tear down) using a 12,000 s.f. standard.

The underlying zoning for the R-1-A, R-1-B and R-2 districts requires that each side yard be at least 8 feet wide (so that the sum of the two side yards is at least 16 feet). Many of the existing side yards in the neighborhood exceed 8 feet. Some do not. (A few pre-1958 lots have a grandfathered right to five-foot side yards, which the proposed Overlay would not affect.) The side yard provision of the proposed Overlay would affect only "new" residential buildings. By definition it does not affect additions to existing buildings. OP staff recommended making the side yard provision more flexible, along the lines we propose here.

1. The Committee consensus favors altering the proposed Overlay to make it more flexible by setting a new standard for the *sum of the two side yards*.
2. The Committee consensus favors making the proposed Overlay less intrusive by eliminating any additional side yard requirements for lots that are equal to or narrower than 80 feet on the average (the minimum lot width in the R-1-A district is 75 feet) *or* narrower than 80 feet along the front property line.
3. Where a lot *exceeds both* minimum widths (i.e., along the front property line *and* the average width), the Committee consensus is that the Overlay add a *sliding-scale* limitation governing the *sum* of the two side yards (leaving the lot owner/developer free to distribute the extra side yard width all to one side, all to the other or part to one side and part to the other). The extra side yard width is computed as 25 percent of the excess of lot width over and above 80 feet (with the option to use lot frontage width rather than average width, if advantageous). This is 2½ feet for every additional 10 feet of lot width over 80 feet. This sliding scale would go up to a maximum requirement of 32 feet for the sum of the side yards on large lots (i.e., 144 feet wide or wider). The Committee believes that the resulting sliding scale will be fair and workable and preferable to a one-step jump (as originally proposed) from 16 feet to 32 feet as the sum of the side yards. One immediate benefit of this approach is the flexibility to site houses in order to minimize the number of trees that may need to be removed in a project.

G. **Front yard set backs for new residential buildings**

The Committee consensus favors adoption of the Overlay proposal that the average set back for each block be set as a minimum for future "new" residential building construction in that block, with the following change (as suggested by the OP to the Committee):

- Eliminate the provision for a control map on file with the Office of Zoning and the Zoning Division of DCRA. Instead of a map, the developer of an empty lot or a tear-down lot would determine the average front yard set backs at the time of seeking build-

ing permits.<sup>11</sup>

#### H. Corner lots

Three of the 40 vacant lots in the data base are corner lots. One of these lots is too small (3,604 s.f.) to be buildable even without the Overlay. Another is a lot larger than 8 acres, which is a candidate for PUD in any event. The third, which has two corners, is a large (13,630 s.f.), irregular-shaped, lot (extending for 280+ feet along all of 32<sup>nd</sup> Street between Albemarle and Appleton); it is in common ownership with the adjacent, even larger, occupied lot and landscaped with it as a single property. If the owner ever elects to develop this vacant lot some day, a Special Exception review would appear appropriate to apply the corner lot provision to whatever plans might be proposed. The Committee has no reason to expect corner lot issues involving tear-down redevelopment that might require Special Exceptions to be more common than the proportion of the vacant lots in the data base (one out of 40) or to occur frequently. The Committee consensus is that the corner lot provision should remain intact.

#### I. Steep slopes

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<sup>11</sup> Average set backs will change if owners of existing houses build front yard additions. So a control map prepared in 2002 would freeze neighborhood character as of that year, instead of allowing for evolution.

The Committee consensus is to require developers to identify steep slopes and erodible soils in particular projects and to guarantee the use of best management practices in planning, implementing and supervising a project so as to minimize harm to trees and other environmental features<sup>12</sup> – but *not* to use these factors as a trigger which automatically (and by itself) requires special exception review. On the other hand, if a developer seeks a Special Exception for other reasons, steepness of slope and erodibility of soils would be proper subjects for consideration by the BZA.

J. **Amendments to Special Exception standards**

The Committee consensus is that the Overlay Special Exception provision should be amended as follows (capitalized terms are defined in Section IV.K., below):

1. A property owner seeking Special Relief may elect to proffer a mitigation plan which may include any combination of the following:
  - A tree canopy maintenance conservation easement;
  - A plan to preserve and protect an Endangered Tree (or Trees)
  - A plan to preserve and protect a Jointly Owned Tree (or Trees)
  - A plan to address Hazardous Tree issues
  - A preservation and planting plan including provisions for Replacement Trees (which, as appropriate in the circumstances, may follow the ISA or the Circumference Replacement formula)
  - An Exceptional Tree preservation and protection plan

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<sup>12</sup> The Committee recommends that applications to DCRA Zoning Division for permits to build in the Overlay district identify whether the building impacts highly erodible soils or steep slopes and certify use, as appropriate, of professional, licensed Geotechnical Consultants, Structural Engineers and Civil Engineers (and a Certified Arborist, if preservation of trees is an issue in the soil or slope area). The Committee notes that provisions of the Building Code and of District of Columbia law as to storm water already impose a part of these requirements, without explicit reference to tree survival issues.

- A plan to coordinate preservation and protection of trees on the lot with programs addressing the Urban Forest as a whole and portions of the Urban Forest on lots adjacent to and/or near the particular lot.
- 2. In order to reach a reasonable balance between architectural and arboreal considerations in weighing a request for a Special Exception from Trees Limitations, the BZA shall receive from applicant and weigh a report and/or testimony by a Certified Arborist [i.e., a tree care professional certified by the International Society of Arboriculture], specific as to the lot, lots, or portion of a lot in question, as to:
  - a. Significance of tree species in the particular setting (e.g., does a tree represent an undesirable species in the particular circumstances?);
  - b. Significance of a given tree as a specimen and significance of a group of trees as providing (or contributing to) tree canopy;
  - c. Analysis of mitigation proposals proffered or considered, including tree replacements, and both short-term and long-term significance of each.

If an applicant's proffer raises tree health and safety factors in a Special Exception context, the proffer shall attempt to predict the ensuing 10 years.

- 3. In considering issues concerning steep slopes and erodible soils, the BZA shall require reports and/or testimony by a Geo-Technic Engineer, Structural Engineer and Civil Engineer (licensed and qualified in the District of Columbia), as appropriate, and by a Certified Arborist (unless there are no trees on those slopes or soils).
- 4. In considering trees having a circumference of 38 - 75 inches located less than 25 feet from a Building Restriction Line (BRL) that is more than 15 feet deep, the BZA shall take into account the maximum BRL in the area originally studied by the ZC for purposes of establishing the template overlay.
- 5. In considering the front yard building set back requirement, the BZA may consider whether a BRL set by the subdivider of a unique block which is not part of a traffic artery (e.g., the semi-circular Lenore Lane, which begins and ends at Linnean Avenue) is a more appropriate measure than the average of the front yard set backs.

K. **Additional Definitions and Adding Diameter (as Alternative to Circumference)**

The Committee recommends improving the clarity and utility of the overlay regulation by

- (a) adding definitions (those that follow derive largely from the "Trees Bill" now before the D.C. Council) and
- (b) adding Diameter dimensions in parentheses after each of the Circumference dimensions.

"Breast height" means that point on a tree trunk located 4.5 feet from ground level in accordance with standard forest measurement texts.

"Caliper" means the diameter (or circumference) measurement of the trunk of a nursery stock tree taken at 6 inches above the ground.

"Caliper height" means the height at which the caliper measurement is taken (see "caliper").

"Certified Arborist" means an arborist certified by the International Society of Arboriculture.

"Circumference" means the circumference of a tree measured at breast height (see "Diameter at Breast Height"). Note: Circumference = DBH / 3.14.

"Circumference replacement formula" or "CRF", is a method of valuing trees based on the circumference of a tree measured at breast height divided by the circumference caliper measurement of a balled and burlapped nursery stock tree. For example, a tree measuring 63 inches in circumference would equal the value of 10 nursery stock, balled and burlapped trees, measuring 6.3 inches in circumference at caliper height.

"Construction area" means the area within which construction occurs, including the limits of clearing and grading, any area required for staging, soils or material stockpiling, or any other disturbances associated with construction or demolition activities.

"Critical root zone" or "CRZ" means the area immediately surrounding a tree that extends one foot for each diameter inch measured at breast height; e.g. a 10 inch diameter tree has a CRZ that extends from the trunk of the tree for 10 feet in all directions from that trunk (20 feet across).

"Diameter at Breast Height" or "DBH," means the diameter measurement of a tree taken at 4.5 feet above the ground in accordance with standard forestry measurement texts (see "Circumference" and "Breast Height"). Note: Circumference = DBH x 3.14.

"Endangered Tree" means a tree whose critical root zone, all or in part, is within a construction area. An endangered tree may be located on an adjacent lot, or may be jointly owned (see "jointly owned tree").

“Exceptional Tree” is a tree that is the largest of its species in terms of diameter, height, and crown spread; or, is of some documented historical significance.

“Healthy Tree” means a tree that, in the opinion of a certified arborist or licensed landscape architect, has a life expectancy of more than 10 years, and is not hazardous.

“Hazardous Tree” means a tree that, in the opinion of a certified arborist, is defective, diseased or dead, and poses a high risk of failure or fracture with the potential to cause injury to people or damage to property.

“ISA trunk formula method” or “ISA-TF” is a method of valuing trees as described by the most recent edition of the publication: The Guide For Plant Appraisal, published by the International Society of Arboriculture.

“Jointly Owned Tree” means a tree whose trunk is divided by one or more property boundaries and is therefore owned by two or more property owners.

“Nursery Stock Tree” means a balled and burlapped, or containerized tree, which meets the standards established by the American Standard for Nursery Stock published by the American Association of Nurserymen (Publication No. ANSI Z60.1-1990 or latest version thereof).

“Replacement Tree” means a tree to be planted as part of a preservation and planting plan. Replacement trees shall generally be 2 inch caliper (diameter) balled and burlapped nursery stock trees of a species type equivalent to that of the tree being removed.

“Topping” as defined by the latest edition of the ANSI-A300 pruning standards, is an unacceptable pruning practice resulting in the indiscriminate reduction of a tree’s crown leading to disfigurement and/or death of the tree.

“Unhealthy tree” means a tree that, in the opinion of a certified arborist or licensed landscape architect, has a life expectancy of 10 years or less

“Urban forest” means all of the trees standing within the boundaries of the District of Columbia, excluding all Federal lands located within those boundaries.

#### **L. Boundary of Overlay district**

The Committee consensus is that the Overlay district boundary be retained intact as set for hearing by the ZC. The ZC may not enlarge the boundary unless it initiates a new public hearing, but it may reduce the size of the Overlay district.

V. Conclusion

Committee members who contributed to the work are:

|                    |                    |                    |                    |
|--------------------|--------------------|--------------------|--------------------|
| David J. Bardin    | ANC 3F04           | Barbara Simons     | Linnean Avenue     |
| Emily Lind Baker   | 28th Street        | Stuart Sloame      | 28th Street        |
| Joan Benesch       | Linnean Avenue     | Ron Slotkin        | Chevy Chase Parkwy |
| Dennis Blumer      | Broad Branch Road  | Stephen Stern      | Lanier Place       |
| Tansy Blumer       | Broad Branch Road  | Gary Stevens       | Gates Road         |
| George Clark       | 28th Street        | Alex Walworth      | 29th Street        |
| Steven Gresham     | Davenport Street   | Cathy Wiss         | ANC 3F06           |
| Peter E. Halle     | Chesterfield Place | Ginger Worthington | Upton Street       |
| Robert V. Maudlin* | ANC 3F03           |                    |                    |

No Committee member has asked (thus far) for any addition to or deletion from the alternatives presented above.

Respectfully submitted by the co-chairs on behalf of the Committee,

*/s/ David J. Bardin*

*/s/ George Clark*

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David J. Bardin

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George Clark

Appendix: Basic Background Information

\* Commissioner Maudlin does not in any way endorse or support this report to the ANC. His position on the overlay was stated in his letter of April 18, 2002 to Chair Mitten of the Zoning Commission.

## Appendix: **BASIC BACKGROUND INFORMATION**

### **Topography of Forest Hills: Hills and Slopes**

Topography slopes rather steeply

(a) from west (Connecticut Avenue) to east (Broad Branch and Rock Creek) and  
(b) north and south, respectively, toward Fort Circle Park, Soapstone Valley Park and Melvin C. Hazen Park.

- High points include the Methodist Home (elevation 340+ feet above m.s.l.), the Owl's Nest (elev.320+), Ellicott Hill (elev. 320+ either side of 30th Place), President's House Hill on Howard West Campus (elev. 320+).
- Streams include Broad Branch, a tributary of Rock Creek, rising in NPS Reservation 515 and flowing eastward and southward to Rock Creek; an unnamed stream flowing along Davenport Street (mostly in culverts today) to Broad Branch a few yards upstream from its confluence with Rock Creek; Soapstone Creek which rises on Woodrow Wilson High School grounds and flows under Connecticut Avenue in a deep culvert to Broad Branch; an unnamed tributary of Soapstone Creek flowing between Howard University and Van Ness East properties; and the Melvin C. Hazen tributary flowing to Rock Creek.
- Sharp drops in elevation are illustrated by the 250-foot drop down to Rock Creek along Tilden Street, starting at 29th Street, and the 230-foot drop down to Broad Branch along Brandywine Street, starting at 32nd Street.

### **History of Forest Hills**

Archaeologists have found evidence dating to 10 A.D. - 500 A.D. for Woodlands Indians in the Soapstone Valley where they quarried steatite, carving stone bowls out of the rock (some being in the Smithsonian collection).

Before the Civil War, the area was one of forests and farms and few roads. Union army soldiers camped in Soapstone Valley in 1862. During the Civil War a ring of Union forts protected the City of Washington (now downtown D.C.) and the army denuded forests to open up fields of fire.

Construction of the trolley line later in the 19th Century, which required extensive grading to overcome deep ravines, opened up the Connecticut Avenue corridor to transit-oriented development. (For example, the ravine, or gorge, of Soapstone Creek was filled with spoils from cutting down Soapstone Hill, west of Connecticut at Albemarle.) Away from Connecticut

Avenue, farms and woods predominated. Until 1890, rural Forest Hills was part of Washington County, far north of the City of Washington. With the trolley line, suburbanization gradually reached out to Forest Hills. Congress passed laws to require suburban developers to conform their subdivisions to stipulations in the Highway Act of 1893 and created the Park Commission which managed Rock Creek Park, the nation's first national park.

### **Historic Landmarks**

Landmarks inside the proposed Overlay district include pre-Civil War:

- Cloverdale (Pierce Shoemaker House), 1810
- Pierce Still House, 1811
- Pierce Spring House, 1801

as well as the Pierce Barn (the Coach House, 1810) and Pierce Mill (1829) just outside the proposed Overlay district, in Rock Creek Park.

Post-Civil War landmarks inside the proposed district include:

- the Owl's Nest (1897), at 3031 Gates Road, and
- the Levine School of Music (Carnegie Institution, Geophysical Laboratory, 1906-07), at 2801 Upton Street

**Development after World War I** brought leaders of the national government to live in Forest Hills, including a Supreme Court Justice, U.S. Senators, and heads of Executive Branch agencies, as well as important figures in the business and cultural community. The Sisters of the Holy Cross of Notre Dame, Indiana, founded the Academy of the Holy Cross in 1910 at 2900 Van Ness Street on part of the old Addition to the Rock of Dumbarton land grant of 1721. It later became Dunbarton College and is now the west campus and Law School of Howard University. The new Methodist Home at 4901 Connecticut was dedicated in 1926 on part of the old Fletchall's Chance land grant of 1715. Hillwood Mansion was constructed in 1926 at 4155 Linnean Avenue and Villa Firenzie in 1927 at 2800 Albemarle. The Forest Hills Citizens Association was founded in 1929 to serve a growing community.

**Development continued after World War II.** The historic, unified Capital Memorial Seventh-Day Adventist Church relocated at 3150 Chesapeake in 1963. Pamela Scott writes that the area became a center for contemporary domestic architecture: "Numerous modern and Postmodern houses clustered around Lenore Lane and adjoining blocks on Linnean Avenue take advantage of natural settings or wide vistas afforded by wooded lots or hilly terrain on the edge of Rock Creek Park." She describes such homes as James Newmyer House at 3003 Audubon Terrace (1967, designed by Hugh Newell Jacobson), Ann and Donald Brown House at 3005 Audubon Terrace (1963, designed by Richard Neutra) and Thomas Patton House at 4205 Linnean Avenue (1985, designed by Joseph E. Wnuk).

**Public Parklands and Recreation Areas** include Rock Creek Park, the first National Park, Soapstone Valley Park, Melvin C. Hazen Park, the Tilden Street median strip and a number of other federal, NPS reservations as well as the Forest Hills playground, ball field and tennis courts

**Population:** Census 2000 data report approximately 1,700 - 2,150 residents in the proposed Overlay district (with the higher figure including an estimated 433 residents in the Van Ness East condominium at 2939 Van Ness Street). Portions of SMDs 3F01, 3F02, 3F03, 3F05 and 3F07 are located in that proposed district. (After redistricting in January 2003, SMDs 3F02, 3F03 3F05, 3F07 and 3C04.)

**Public Transit and Transit-Oriented Development; Automobiles, Bicycles, Pedestrian**

**Access:** There is no public transit within the Overlay district, but there is Metrobus service along Connecticut Avenue and a Metrorail station (Van Ness-UDC) to the west of the district. Many streets do not have sidewalks at all, or sidewalks on only one side of the street. Many streets have no curbs or only asphalt curbs. There are no distinct bicycle paths.

**Sewers and Storm Water Drains:** Municipal water and sanitary sewers serve all houses. Storm drains serve about half the streets.