

	ADVISORY NEIGHBORHOOD COMMISSION 3C GOVERNMENT OF THE DISTRICT OF COLUMBIA CATHEDRAL HEIGHTS • CLEVELAND PARK MASSACHUSETTS AVENUE HEIGHTS MCLEAN GARDENS • WOODLEY PARK
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ANC 3C Resolution 2014-014
ANC3C testimony on Zoning Case 08-06A
Applicable to Subtitle D 1704.1, 1704.2, 1704.3
Regulations regarding Removal and Protection of Trees

Chairman Hood and Members of the Commission:

This testimony is based on Advisory Neighborhood Commission 3C's (ANC3C) many years of experience considering all manner of applications seeking special exception zoning permits for residential, institutional, diplomatic and commercial projects that involve the removal of trees or that have a significant impact on special trees. While ANC3C represents an area, which is predominantly residential, zoned R-1-A and R-1-B, it also contains several commercial zones and the Naval Observatory Tree and Slope Protection Overlay and thus reflects the use patterns found in many other parts of the city. A significant number of the applications we have considered have involved tree conflicts over the removal or protection of trees either between a developer and a neighborhood or between neighbors. These conflicts consume a significant amount of administrative, public meeting, and ANC Commissioner time. The Zoning Regulation Rewrite (ZRR) presents the opportunity to improve the process of protecting trees through clearer and more predictable regulations.

ANC3C supports the preservation of the Tree and Slope Protection Overlays. ANC3C also supports maintaining the minimum standard criteria for work to be performed by matter of right without a special exception, which are well described in Subtitle D section 309.1.

However, we are greatly concerned about the special exception process. The current Zoning Regulations relating to tree protection in the special exception process are vague and the proposed regulations are not an improvement. This presents significant dangers to the preservation of the tree canopy and is counter to the goal of the Special Tree Act of 2002.

The lack of clarity and specificity also invites disputes as parties advance different interpretations that must be considered and resolved by the Zoning Administrator.

This problem is exacerbated by the lack of in house expertise. The DCRA has no forestry expert on staff and the Zoning Administrator (ZA) himself has no particular expertise in

arboriculture. The District of Columbia Urban Forestry Administration (UFA) does possess the necessary expertise, but the ZA is currently not required to use it. By providing clarity of criteria and bringing UFA expertise to bear, the ZRR could significantly contribute to the protection of the trees and their long term health and safety and the integrity of the tree canopy which is the goal of the TSPO and the Tree Protection Act.

We would like to recommend the following:

- 1) Zoning Regulations should require a uniform set of standards and definitions that apply to the protection of trees which are consistent with UFA standard and definitions Subtitle D Chapter 17 the UFA to maintain a clear set of standards and definitions to which applicants can refer in preparing their plans and which may be used by the ZA in assessing applications. The International Society of Arboriculture (ISA) and well respected Academic Institutions such as the Mississippi State University among others describe uniform and accepted definitions of such terms as
 - Critical Root Zone which is an area 1.5 feet /inch diameter of tree from the center of the tree which contains the root system critical to the survival of the tree. Tree survival is close to 100% when the entire critical root zone can be protected.
 - Root Plate (That portion of the root zone where damage to any roots is likely to be fatal).
 - Trenching or linear excavation, which can damage the root plate.
 - Grade change
 - Canopy
- 2) Zoning Regulations should clearly state that UFA definitions and standards apply to residential, as well as commercial, diplomatic and institutional projects.
 - Significant confusion exists about whether or not UFA standards or opinion can apply to residential property and this has become the subject of tree conflicts and court cases. The Zoning Regulations should clearly state that UFA definitions, standards and expertise apply to residential as well as commercial, diplomatic and institutional properties.
- 3) UFA standards should apply to construction projects in all zones.
 - A significant portion of the tree canopy is located on private property and is a community asset. The removal of any tree that does not meet the criteria for removal as a matter of right as spelled out in Subtitle D 309.1 should be subjected to the application for special exception under more specific criteria than are currently described in the ZRR.
- 4) Zoning Regulations should contain a clear statement that all standards and guidelines shall apply to trees on neighboring properties, whether private or public lands, whose roots cross the property lines and whose Critical Root Zone (CRZ) will be affected by the construction.
- 5) UFA review of applications per Subtitle D section 1704.2.
 - The UFA should review all plans submitted for permitting and sign off on all final plans before construction begins. Often plans are modified after submission and

requiring UFA sign off on the final plans would ensure that the TPP is appropriate to the project as implemented. UFA review should also be required for any add on applications to a project resulting in an additional application.

- Because DCRA has no arborist on staff or any particular expertise, ZA should be required to rely on the guidance of UFA in assessing relative risk to a tree even if that risk is not quantifiable and the measure of risk is necessarily subjective.

6) Content of Application Subtitle D section 1704.3

- Plans should be required to use a uniform set of definitions that are consistent with those used by UFA and must at a minimum:
- Identify all trees on the property and adjoining properties, either public or private. All standards that apply to trees on the property should also apply to trees on neighboring properties.
- Identify the type of tree because the capacity for a tree to sustain damage from construction will differ by tree and UFA can maintain a list of trees, which may tolerate greater or lesser risk.
- Accurately reflect the diameter at breast height (DBH) and Critical Root Zone (CRZ) of each tree. Frequently ANC reviews plans, which inaccurately depict both the size of the tree and the size of the CRZ. This can be an attempt to minimize apparent danger and be misleading and result in approval of projects, which should be disallowed.
- Accurately reflect all structures and impermeable surfaces, which might affect the CRZ both on the property and on neighboring properties.
- Identify previous construction on the property or adjacent property or loss of critical root zone within the past five years. Trees need several years to regrow their root zones and regain health before being subjected to additional CRZ loss. Depending on the type of tree, any construction within the past five years could have a bearing on whether or not the tree could withstand further damage to the CRZ.
- Accurately depict damage to the canopy of a tree caused by proposed construction. For example, the damage to the canopy of the tree should not exceed 25% in a given year. This could be part of a set of standards maintained by UFA, which could be used to evaluate applications.

7) A Tree Protection Plan (TPP) shall be created by International Society of Arboriculture (ISA) certified arborist and should contain provisions for maintaining the trees for a period of at least three years post construction.

- The Commission should require a Tree Protection Plan that specifies tree protection practices under Subtitle D section 1704.1 not only during the period of construction, but also for a three year period following construction. This three-

year period is critical to the recovery of the tree and its capacity to grow a new root system. Practices to avoid soil compaction and provide adequate watering and pruning should be specified in the Tree Protection Plan.

- The Regulations should require that the TPP be created by an arborist certified by the ISA to ensure the adequacy and appropriateness of the measures. Currently a TPP may be created by an applicant or a landscape architect and may not contain adequate measures. Plans created by certified arborist would place less demand on UFA for review and monitoring.
 - The TPP should contain some provision for intermittent monitoring the construction site to ensure compliance with the TPP
- 8) The period for delay for the granting of a permit following the removal or cutting of trees that would have been prohibited by D\$309.1 should remain seven (7) years.
- The period of delay for the granting of a permit following the prohibited removal or cutting of trees has been reduced from seven (7) to five (5) years without explanation. (Subtitle D section 408.2, 509.3, 608.2) The penalty should remain seven years. Without substantial deterrence there is reduced incentive to abide by the requirements of the Zoning Regulations.
- 9) Zoning Regulations should contain a separate Chapter describing the regulations applicable to trees
- In the ZRR regulations governing trees are spread throughout the regulations. A separate Chapter dedicated to trees (such as Subtitle X Chapter 2 which sets out the requirements for Chancery applications) would reduce the potential for errors in interpretation and make the requirements for applications and TPP more clear and unequivocal.

Attested by



Carl Roller

Chair, on April 21, 2014

This resolution was approved by roll call vote of 7-0 on April 21, 2014 at a scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 5 of 9 commissioners) was present.