

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 713

Case No. 89-36

(Text & Map Amendment - Tree & Slope Protection)

February 10, 1992

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on June 18 and December 6, 1990. At those hearing sessions, the Zoning Commission considered a petition of the Woodland Normanstone Neighborhood Association, and the District of Columbia Office of Planning, respectively, to amend the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, and the District of Columbia Zoning Map, pursuant to 11 DCMR 102. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

By letter dated December 26, 1989, the president of the Woodland Normanstone Neighborhood Association (petitioners) requested the Zoning Commission to authorize a public hearing and to consider amending the Zoning Regulations and Zoning Map to create and map the proposed Woodland Normanstone Overlay District (WNOD).

The petitioners indicated that the park-like character of the area was threatened by development, some of which was underway and much more of which was contemplated. They further indicated that development would alter terrain and remove trees in order to increase the building density of many of the large wooded lots in the area. The petitioners requested the Zoning Commission to take emergency action on the WNOD because the proposed zoning overlay responded to this threat.

The boundaries of the WNOD begin at the intersection of 36th and Garfield Streets, N.W. and proceed as follows: east on Garfield; southeast on Cleveland Avenue; east on Calvert; southeast on 28th Street, southwest on Rock Creek Drive; northwest on Massachusetts Avenue; and north on 36th Street to the point of origin. Within the boundaries of the WNOD are located R-1-A, R-1-B, and D overlay zone districts.

The R-1-A District permits matter-of-right development of single-family residential uses for detached dwellings with a minimum lot area of 7,500 square feet, a minimum lot width of 75 feet, a maximum lot occupancy of forty percent, and a maximum height of three stories/forty feet.

The R-1-B District permits matter-of-right development of single-family residential uses for detached dwellings with a minimum lot

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The R-1-B District permits matter-of-right development of single-family residential uses for detached dwellings with a minimum lot

area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of forty percent, and a maximum height of three stories/forty feet.

The D (diplomatic overlay) District permits the location of chanceries subject to the disapproval of the Board of Zoning Adjustment (BZA). The district is always mapped in combination with another district, the provisions of both districts apply.

The District of Columbia Generalized Land Use Map of the Comprehensive Plan for the National Capital, as amended, indicates that the area affected by the proposed WNOD is in the low density residential land use as well as the park, recreation and open space land use categories.

On January 8, 1990, at its regular monthly meeting, the Zoning Commission considered the petition of the Woodland Normanstone Neighborhood Association, determined that no emergency had been shown to justify emergency action, but in lieu thereof, authorized a public hearing to consider the proposal.

By letter dated February 5, 1990, the petitioners revised its proposal and limited coverage to apply to unimproved lots and to subdivision or increase in building density of improved lots. They believe that the change would lesson any perceived burden on the Board of Zoning Adjustment (BZA) and will obviate potential problems anticipated in applying its terms to alteration or renovation of existing structures. They also revised their proposal by prohibiting persons who destroy trees that are protected by the overlay from obtaining subdivision, construction or building permits for a period of four years.

The petitioners, through its submissions and testimony presented at the public hearing, indicated that the intent of the WNOD is as follows:

- a. To encourage compatibility with the purposes of P.L. 47 (Chap. 41, p. 197, 61st Cong., 2nd Sess.) as expressed in H.R. 199, 61st Cong., 2nd Sess., Jan. 17, 1910;
- b. To preserve the natural topography and retention of mature trees in the area to the maximum extent feasible;
- c. To prevent significant adverse impact on Normanstone Creek, tributary of Rock Creek; and
- d. To limit the proximity of new buildings to each other and to existing buildings so as to encourage a general compatibility between the siting of new buildings and the existing neighborhood.

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The proposed WNODE affects the subdivision of lots and construction thereon by establishing environmental controls for the removal of trees and regrading existing topography, and by establishing setback, curb cut, and impervious surface restrictions.

The District of Columbia Office of Planning (OP), by memorandum dated June 15, 1990, supported favorable Zoning Commission action on the important issues raised in the case. OP indicated that there is a potential for developing a rule applicable to other park edges and edges of bodies of water (which locations are relatively limited) that could address a key location in the Woodland Normanstone area and also help resolve the primary need for open space controls city-wide.

The Zoning Commission received letters and heard testimony in support of the WNODE from many persons including, but not limited to, Advisory Neighborhood Commissions (ANCs) 3C, 3F and 4A; City Councilmembers Clarke, Nathanson, Kane, and Wilson; the Committee of 100 on the Federal City; the Woodley Park Community Association; the Cleveland Park Historical Society; the Cathedral Heights - Cleveland Park Citizens Association and Friends of Babcock Macomb House; the National Park Service; the Maryland National Capital Park and Planning Commission; the Forest Hills Committee; the Coalition for Planned Environmental Development; and several individuals.

The issues that were raised in support of the WNODE included, but were not limited to:

- a. The retention of the park-like and natural terrain character of the Woodland Normanstone area (Massachusetts Heights) as intended by an Act of Congress in 1910;
- b. The environmental preservation of mature trees and topographical slopes;
- c. Restrictions on areas of impervious surfaces; and
- d. The establishment of setback restrictions;

The Commission also received letters and heard testimony in opposition to the WNODE from several persons and entities including, but not limited to, the Embassy of Australia; Wilkes Artis Hedrick & Lane; Stohlman Beuchert Egan & Smith; Michael Minkoff; Lawrence N. Brandt; and Morton A. Bender.

The issues that were raised in opposition included, but were not limited to:

- a. The exclusion of a property from the WNOD;
- b. Adversely affecting development for which a permit had previously been issued;
- c. Discriminatory legal and technical defects that preclude the proposal from applying to all construction including any additions or alterations to existing homes, and new impervious surfaces;
- d. Lack of authority of the Commission to regulate trees, topography, or curb cuts;
- e. Proposed restrictions being unreasonable, biased, and without basis, and violating side yard and lot occupancy uniformity requirements;
- f. Proposed special exception process being flawed with over-burdensome notice requirements, inappropriate "exceptional economic circumstances test" standard, and improper delegation to the National Park Service (NPS).

On July 9, 1990, at its regular monthly meeting, the Zoning Commission deferred proposed action, determined that the proposal should be considered for additional areas in the city, and requested the OP to restructure a proposed overlay zone district subject to the general policy guidance that the Commission discussed.

On September 13, 1990 at its regular monthly meeting, the Commission considered a memorandum dated August 31, 1990 from OP and authorized a public hearing on the proposal contained therein. The memorandum identified the following substantive aspects of what became known as the "Tree and Slope Protection Overlay District" (TSP):

- a. Provide zoning controls over key factors while simplifying the zone to make it easier to administer and reasonable to put in place expeditiously;
- b. Make the zone generic, so that it can be applied to other comparable locations in the future. These would be residential neighborhoods at the edge of streams and/or public open space, which neighborhoods also have substantial slopes, stands of trees and lots or parcels available for development, typically for low density residential uses. The zone is especially needed where natural open space characteristics extend into an adjacent neighborhood without a definitive boundary such as a public street;

- c. Focus the "Preamble" of the zone on steep slopes, stands of trees, edge of public open space or stream beds;
- d. Make the zone apply to additions as well as to new construction of homes or other permitted buildings, thereby resolving the "uniformity" issue;
- e. Establish a maximum lot occupancy of 30 percent and a maximum impervious surface ratio of 50 percent; and
- f. Make the tree-removal limitation more flexible by allowing up to five trees to be removed for constructing a building before a Board of Zoning Adjustment special exception hearing is triggered.

The Office of Planning, by memorandum received December 4, 1990 and by testimony presented at the public hearing, supported adoption of the advertised TSP proposal. The OP also commented on the potential of restrictions on slopes greater than 25 percent and recommended that the overlay district be applied to improved and unimproved lots in the Woodland Normanstone area. OP also recommended that the portion of the WNOD that is west of 34th Street be excluded from the TSP Overlay District because that area is fully developed in a "grid system" and does not meet the criteria intended for the TSP Overlay District.

The District of Columbia Department of Public Works, by testimony presented at the public hearing, supported the TSP Overlay proposal and recommended that guidelines be established to identify where in the city the TSP Overlay should be mapped.

Advisory Neighborhood Commission (ANC) 3C, by resolution dated December 6, 1990 and by testimony presented at the public hearing, supported the TSP Overlay and urged stricter limits regarding trees that may be cut. The Zoning Commission should also consider tree replacement requirements to prevent total site clearance of wooded lots.

The Woodland Normanstone Neighborhood Association (WNNA), by letter dated December 4, 1990 and by testimony presented at the public hearing, supported the TSP Overlay in the Woodland Normanstone community. The WNNA supported the inclusion of existing improved and unimproved lots in the overlay district, and expressed its preference for the WNNA proposal.

Several letters were received and persons testified at the public hearing in support of the TSP Overlay. Issues that were raised included, but were not limited to:

- a. The permitted removal of unhealthy trees or trees that pose a safety hazard;
- b. The permitted replacement of nonconforming structures or impervious surfaces;
- c. The permitted removal of trees on slopes of 25 percent or more if required to restore or maintain retaining walls;
- d. A procedure to streamline the BZA special exception process for TSP Overlay cases;
- e. The permitted removal of a defined number of mature trees as a matter-of-right and based on a percentage of the total existing trees; and
- f. A need for a different kind of overlay district treatment for other neighborhoods that are near parklands and differ in other ways from the WNNA area.

Some letters were received and persons testified at the public hearing in opposition to the TSP Overlay. Issues that were raised in opposition include, but were not limited to:

- a. The proposal being technically flawed requiring all building permit applications to include expensive drawings and surveys whether an improvement was interior or exterior, or whether the building footprint was affected or not;
- b. The proposal being poorly drafted with reference to the term "impervious surface";
- c. The proposal would create many nonconforming structures because of the 30 percent ground coverage restrictions;
- d. Unreasonable and unfair restrictions on the removal of trees on a slope that exceeds 25 percent;
- e. The creation of an over-burdensome process for the Zoning Administrator's office to review an increasing number of overlay district applications; and
- f. Certain provisions being unlawful and violating due process by precluding any development on some lots.

On February 11, 1991 at its regular monthly meeting, the Zoning Commission considered several post-hearing submissions, including a letter dated December 6, 1990 from the Palisades Citizens Association; a statement from the Coalition for Planned

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Environmental Development; a memorandum dated January 28, 1991 from OP; a letter dated January 28, 1991 from WNNA; and a summary abstract report dated February 7, 1991 from OP.

The Commission concurs with the recommendation of OP and, in part, with the position of ANCs 3C, 3F and 4A, and the petitioners. The Commission does not concur, in large part, with the position of the opponents.

The Commission believes that after considering and balancing all of the issues for and against the proposal, the TSP Overlay is an appropriate means of maintaining the integrity of neighborhoods that are adjacent to streams and parks.

The Commission further believes that the TSP Overlay will help preserve the natural topography and mature trees to the maximum extent feasible in a residential neighborhood, and will prevent significant adverse impact on adjacent open space, parkland, stream beds or other environmentally sensitive natural areas.

The Zoning Commission believes that its proposed decision to approve the Tree and Slope Protection Overlay District is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, as amended.

The proposed decision to approve the TSP Overlay District was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC by report dated October 3, 1991 found that the proposed text and map amendment, dated February 11, 1991, would protect the natural appearance and park-like character of the residential area west of Rock Creek and Potomac Parkway and northeast of the U.S. Naval Observatory adjacent to Normanstone Park; will be supportive of and not adversely affect the Federal interest in the area or other Federal interests in the National Capital; and will not be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission has accorded ANCs 3C, 3F and 4A the "great weight" consideration to which they are entitled.

A notice of proposed rulemaking was published in the District of Columbia Register on August 9, 1991 (38 DCR 5018). As a result of the publication of that notice, comments were received from the Palisades Citizens Association (PCA) dated August 16, 1991.

On February 10, 1992, at its regular monthly meeting, the Zoning Commission considered the comments that were received and took no

action on a request of the PCA to include its neighborhood in the TSP Overlay District.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of amendments to the Zoning Regulations and Map to create and map the Tree and Slope Protection Overlay District (TSP). The specific amendments to the Zoning Regulations and Map are as follows:

1. Adopt new sections to Chapter 15, to read as follows:

1511 TREE AND SLOPE PROTECTION OVERLAY DISTRICT

1511.1 The Tree and Slope Protection (TSP) Overlay District is established 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.

1511.2 The TSP Overlay District includes a number of individual overlay zone districts that may be established and mapped from time to time, consistent with the general provisions of this chapter.

1511.3 The purposes of the TSP Overlay District are to:

- (a) Preserve the natural topography and mature trees to the maximum extent feasible in a residential neighborhood;
- (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 and the existing neighborhood.

1511.4 The TSP Overlay District is designed for residential neighborhoods that have a significant quantity of steep slopes, have stands of mature trees, are located at the edge of stream beds or public open spaces, and have undeveloped lots and parcels subject to potential terrain alteration and tree removal. It is not suitable for mapping in neighborhoods where nearly all lots are

already developed on a rectangular grid system and where the existing mature trees are either yard trees or street trees.

1512 GENERAL PROVISIONS

1512.1 The TSP Overlay District is mapped in combination with the underlying residential zone district and not instead of the underlying district.

1512.2 Where there is a conflict between this chapter and the underlying zoning, the more restrictive provisions of this title shall govern.

1513 GROUND COVERAGE RESTRICTIONS

1513.1 The principal building and any accessory building on the lot shall not exceed a total lot occupancy of thirty percent (30%).

1513.2 The maximum impervious surface coverage on a lot shall be fifty percent (50%); provided, that:

- (a) This subsection shall not preclude enlargement of a principal building in existence as of the effective date of this chapter; and
- (b) This subsection shall not create nonconformity of a structure as regulated by chapter 20 of this title.

1514 TREE REMOVAL LIMITATIONS

1514.1 Construction of a building, an accessory building, or an addition to a building, or the creation of any impervious surface area, shall be permitted as a matter-of-right only if the following tree removal limitations are complied with:

- (a) The restrictions of this section against removing, cutting down, or fatally damaging trees apply only to trees having a circumference of twelve (12) inches or greater at a height of four and one-half feet above ground;
- (b) The prohibitions of this section shall not apply to the removal of any dead or unhealthy tree or a tree that creates an unsafe condition. The need for removal of any such tree shall be certified by an arborist or other tree care professional;

- (c) No tree that has a circumference of seventy-five (75) inches or more at a height of four and one-half feet above ground shall be removed or cut down;
- (d) No more than three (3) trees that each have a circumference of more than thirty-eight (38) inches at a height of four and one-half feet above ground shall be removed, and none of these shall be located within twenty-five (25) feet 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 shall not exceed twenty-five percent (25%) of the total circumference inches, provided that this restriction shall not abrogate the right to remove up to three (3) trees as provided in paragraph (d); 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 years from such removal or cutting unless a special exception is granted by the Board of Zoning Adjustment pursuant to Section 1515.

1515 SPECIAL EXCEPTIONS

1515.1 Any exception from the requirements of this chapter shall be permitted only as a special exception, if approved by the Board of Zoning Adjustment after public hearing, in accordance with the conditions specified in Section 3108 of this title, and subject to the following requirements:

- (a) Tree removal, grading, and topographical change shall be limited to the maximum extent consistent with construction of a building permitted by the standards of this chapter;
- (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 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 shall deem necessary to achieve the purposes of this chapter, and may vary side and rear yard requirements in order to achieve the purposes of this chapter.

1515.2 Before taking final action on an application, the Board shall submit the application to the following agencies for review and written reports:

- (a) The Office of Planning;
- (b) The Department of Public Works, Tree Maintenance Division;
- (c) The Department of Recreation and Parks;
- (d) The Department of Consumer and Regulatory Affairs, Soil Erosion Branch; and
- (e) The National Park Service, U.S. Department of Interior.

1515.3 An applicant for an 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.

2. Add the following definitions to 11 DCMR 199.9:

Impervious Surface Coverage - The percentage of the land area of a lot that is covered by impervious surfaces, which percentage shall be determined by dividing the gross impervious surface area of a lot by the total area of the lot.

Impervious Surface - An area that impedes the percolation of water into the subsoil and impedes plant growth. Impervious surfaces include the footprints of principal

and accessory buildings, footprints of patios, driveways, other paved areas, tennis courts, and swimming pools, and any path or walkway that is covered by impervious material.

3. Amend the zoning map by including the following squares in the tree and slope protection overlay district:

Squares 2119, 2120, 2122, 2124 through 2127, 2139, 2140, 2145, and 2198 through 2200.

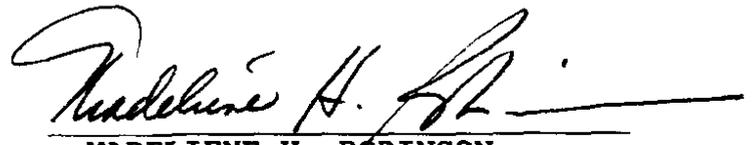
Vote of the Zoning Commission taken at the regular meeting on February 11, 1991: 3-0 (John G. Parsons, Lloyd D. Smith and Tersh Boasberg, to approve, as amended - Maybelle Taylor Bennett and William L. Ensign, not voting not having participated in the case).

This order was adopted by the Zoning Commission at its monthly meeting on February 10, 1992 by a vote of 3-0 (John G. Parsons, Lloyd D. Smith and Tersh Boasberg, to adopt - Maybelle Taylor Bennett and William L. Ensign, not voting not having participated in the case).

In accordance with 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register; that is, on

MAR 20 1992


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. ROBINSON
Acting Director
Office of Zoning