

ORDINANCE NO. 2021-03

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF FOREST HILLS

WHEREAS, the City of Forest Hills Planning Commission and City of Forest Hills Board of Commissioners have determined, after experience with the Zoning Ordinance, that adjustments are needed to achieve the desired objectives of the City of Forest Hills; and

WHEREAS, the City of Forest Hills Planning Commission has reviewed and recommended the adoption of this Amendment to the Zoning Ordinance; and

WHEREAS, public notice has been given and a public hearing on this Amendment to the Zoning Ordinance has been held in accordance with T.C.A. §§ 13-7-203 and 204.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FOREST HILLS, TENNESSEE that the Zoning Ordinance for the City of Forest Hills, as codified in Title 14, Chapter 2 of the Municipal Code of the City of Forest Hills is hereby amended as follows:

Article II, Section 2.04 Open Space Subdivision Zoning District

Section 2.04(a) shall be amended to read as follows:

Section 2.04(a)(v) Specific Regulations.

- (1) The total number of residential units allowable within an open space development shall not exceed the number of units that would otherwise be allowed in the existing zoning district using conventional development. In the event the area falls into more than one existing zoning district, the most restrictive zoning district standards shall apply.
- (2) The minimum lot width, front yard setback, rear yard setback, and side yard setback shall be determined by approval of the site Concept Plan.
- (3) The minimum lot area shall be one (1) acre.
- (4) The maximum height shall be thirty-five (35) feet.
- (5) The maximum building cover shall be twelve percent (12%).
- (6) The maximum impervious surface ratio shall be fifty percent (50%).

Section 2.04(a)(vi) Open spaces. Each open space subdivision shall provide a minimum of thirty percent (30%) of its total acreage to be designated as Open Space and preserved in perpetuity in a natural state. Natural state shall be defined as the topography and vegetation of an area that is unaltered by clearing and grading during construction and protected in perpetuity. The Open Space shall be designated as such on the final recorded plat. Preservation, maintenance, and ownership of required open spaces within the development shall be accomplished by either:

Section 2.04(a)(vi)(2) Vesting title to said private open space in a homeowner's association, established with articles of association and bylaws, which are satisfactory to the Board of Commissioners.

The conservation easement shall, at a minimum, protect open space from future development and environmental damage by restricting the area from any future building and from the removal of soil, trees, and other natural features;

provided that residents have access to the open space at all times; and dictate whether open space is for the benefit of its residents only or may be open to residents of Forest Hills.

The following activities or land uses may not be counted as a part of designated open space:

- (1) Land considered unbuildable. Unbuildable land shall be defined as the area of a site that includes wetlands and submerged areas, slopes of 20 percent or more, elevation of 800' or greater, slippage soils, sink holes, karst formations, and the 100-year floodplain. The 100-year floodplain is the area of land adjacent to a stream that is subject to inundation during a storm event that has a recurrence interval of 100 years.
- (2) Existing rights-of-way and utility easements
- (3) Areas located within the setbacks

Section 2.04(b)(i) Creation of Open Space Subdivision shall be amended to read as follows:

2.04(b)(i) Rezoning Required. Open Space Subdivision is not a by-right form of development and shall require approval. No new Open Space Subdivision shall be created unless a request to rezone the property to Open Space Subdivision is recommended by the Planning Commission and approved by the majority vote of the Board of Commissioners. In the event that the Planning Commission does not recommend the creation of an Open Space Subdivision, then the Board of Commissioners may approve the application, provided that such application is approved by a 2/3 majority vote of the Board of Commissioners.

Section 2.06 Hillside Protection Overlay District (HP) shall be amended to read as follows:

Section 2.06(a) **Established**. The Hillside Protection overlay district (“**HP District**”) is hereby established to meet the challenges of development in the higher elevation areas of the City. The district shall include all lots or parcels within the corporate limits of the City where any portion of the lot or parcel (i) is at an elevation of 800 feet or greater, or (ii) contains Steep Slopes. The district shall generally be depicted on the maps of the HP District maintained in the City offices; provided, however, that the provisions set forth in this Section shall apply to all lots or parcels having portions with elevations or grades identified in this Section, regardless of whether such areas are correctly depicted on maps. As an “overlay” district, any development or land disturbance within this district shall comply with the technical and development standards in this Section in addition to the requirements associated with the primary zoning district. In cases where the technical and development standards and requirements may conflict between the primary and overlay district, the more stringent standards and requirements shall apply.

Section 2.06(b) **Intent**. It is the intent of the HP district to encourage prudent land disturbance and development activities that maintain the natural, topographic character of the land. The technical and development standards within the primary zoning district alone are inadequate to preserve and protect the natural environment and scenic beauty of the City’s steep hillside areas. The additional standards set forth in this Section serve to protect the health, safety, quality of life and general welfare of the community. These standards are directed at minimizing the impact of building construction and land disturbance activities in this district including, but not limited to, unsafe geologic disturbance, soil erosion and surface water runoff from excessive removal of trees and other vegetative cover, severe cutting, physical scarring, and visual modification of the natural terrain.

Section 2.06(c)(iii) Prohibition on Increasing the Exemptions for Expansion of Existing Structures, Construction of Accessory Structures, or Performance of Land Disturbance Activity Through Multiple Permits shall be amended to read as follows:

The limits applicable to the exemptions on the expansion of Existing Structures in accordance with (ii)(1) above, the size of Accessory Structures constructed in accordance with (ii)(2), and the performance of land disturbance activities that due to size do not require a permit pursuant to the Storm Water Management Ordinance, shall not be increased through the issuance of multiple permits, whether issued concurrently or consecutively. The total expansion of Existing Structures under all permits issued in a period of twenty four (24) months shall not exceed, when combined, the lesser of twenty-five percent (25%) in the total Impervious Surface area or 1,500 square feet of Finished Floor Space, the total size of all Accessory Structure(s) constructed under all permits issued in a period of twenty four (24) months, when combined, shall not exceed 650 square feet, and the total area of land disturbance activity performed under all permits issued in a period of twenty four (24) months, when combined, shall not exceed 2,500 square feet. These limitations of this paragraph shall apply regardless of a change in the title to the subject property. Upon the passage of twenty-four (24) months after the final completion of the last project for which a permit was issued for expansion of Existing Structures, the construction of Accessory Structures, or the performance of land disturbance activity on the subject property, and the issuance of the certificate of occupancy where applicable, an application may be made for a permit for a project based on the above exemptions. All applications that do not qualify for an exemption must be reviewed, and approved, by the Board of Zoning Appeals.

Section 2.06(c)(iv) Nonconforming lots and structures. Within the HP District, any Lot established on an unexpired, approved preliminary plat or executed final plat and/or any existing Structure that was lawfully constructed prior to the Controlling Date may be developed, improved or continued in use; provided, however, when such property is developed or when an existing structure is enlarged by more than a twenty-five percent (25%) expansion in total Impervious Surface area or 1,500 square feet of finishable Floor space, whichever is less, the Lot shall be brought into conformance with the standards of this Section to the greatest extent feasible. Exceptions to the standards may be approved by the Board of Zoning Appeals if it determines that the proposed plan will more adequately achieve the intent of this Section and/or full compliance will pose an undue burden on the property owner.

Article IV Bulk Standards and other performance requirements

Section 4.05 Accessory Use and Structure Bulk Standards shall be amended to read as follows:

Section 4.05 Floor Area Ratio of Accessory Structure shall be amended as follows:

Section 4.05(b) Floor Area Ratio. The total Floor Area Ratio of all Accessory Structures and uses combined shall not exceed 1% of the square footage of the entire parcel.

Section 4.07 Driveways, Carports, and Garages shall be amended to read as follows:

Section 4.07(a)(ii) It is the policy of the City that each Lot having frontage on a public street, a private street, or a private access easement, have its own driveway(s) to the street or easement, and that such driveway(s) be located on the Lot being served without encroaching on adjoining Lots or properties. In the case of existing driveways that encroach on adjoining Lots or properties, or existing shared driveways serving two adjacent Lots having frontage on a public street, a private street, or a private access easement, the City will permit the repair and replacement of such driveways in their existing locations. Requests to construct a new driveway or requests to relocate an existing driveway that encroaches on adjoining Lots or properties (other than to remove the encroachment in the case of existing driveways), or an existing shared driveway serving two adjacent Lots having frontage on a public street, a private street, or a private easement, to a new location including, entirely or partially, on a different Lot, may only be approved by the Board of Zoning Appeals upon a request for a variance.

Section 4.07(a)(iii)(a) Driveways, parking areas, sidewalks, and steps leading to and from same including those with walls no higher than 3' in height, are allowed in front setbacks.

Section 4.07(a)(iii)(b) Driveways necessary to access garages and associated parking areas, or parking areas where the home has no garage, are allowed to encroach into side and rear setbacks to include steps and sidewalks provided (1) they do not have walls or other vertical structures associated or attached to them and (2) the construction of the driveway and associated parking areas does not result in grade changes of material significance to the property or in relation to adjacent properties.

Section 4.07(a)(iii through vii) to be renumbered following above corrections.

Section 4.08 Walls, Fences, Gatehouses, Entry Monuments, and Gates shall be amended to read as follows:

Section 4.08(c)(ii)(2) A Fence not more than five (5) feet in height may only be located in the Rear Yard.

Section 4.08(d) **Gates, Gatehouses and Entranceways.** All gates, gatehouses, and entranceways to any Lot, Lots or development exceeding five (5) feet in height shall require review and approval by the Board of Zoning Appeals. The BZA shall make their determination based upon considerations of:

Section 4.10(a) Signs shall be amended to read as follows:

Add New:

Section 4.10(a)(iv) The number of signs allowed per street frontage is set forth in Table 4.10(b) and Table 4.10(c). Political Signs are limited to one sign per candidate or issue per street frontage.

Section 4.10(a)(iv) change to Section 4.10(a)(v), then renumber the in sequence through (vii)

Article V. Section 5.03 Landscaping requirements shall be amended to read as follows:

Section 5.03 Landscaping Plan Requirements

(a) A Landscape Plan shall be required for the issuance of a permit to construct a new Dwelling where a previous Dwelling has been demolished.

(b) Prior to any full demolition, the applicant shall submit a tree count, along with information and a description of existing landscaping. The Landscaping Plan for the new construction shall provide for tree retention and replacement in accordance with Section 6.05 of this ordinance.

(c) A Landscaping Plan shall not be required for interior renovations in a Dwelling or structure that stays within the footprint of the existing Dwelling or structure.

(d) Clearcutting shall not be permitted on any lot.

(e) Requests to the Board of Zoning Appeals. All applications to the Board of Zoning Appeals for variances, special exceptions, conditional uses, or other relief from the Zoning Ordinance shall be accompanied by a Landscaping Plan to be reviewed and approved by the Board of Zoning Appeals. Said Landscaping Plan must minimize the loss of grasses, shrubbery, and landscaping and provide screening of adjacent properties.

(f) Tree Replacement and Grading Permits. When a property owner must replace trees pursuant to Section 6.05 of this ordinance or applies for a grading permit pursuant to the Storm Water Management Ordinance, the applicant shall submit a Landscaping Plan together with all other materials required for the applicable permit. The Landscaping Plan shall be reviewed and approved by the City Manager, or his designee, to ensure that the proposed landscaping will minimize the loss of trees, grasses, shrubbery, and landscaping pursuant to the grant of the permit.

Article VI Resource Protection Standards shall be amended to read as follows:

Section 6.02 (b) Floodways and Floodplains Technical Standards

Section 6.02(b)(i) Water Quality Buffer Areas:

(1) The buffer shall measure 30 feet perpendicular from the top of bank on each side of a Floodway, Floodplain, Wet Weather Conveyance, and any Surface Water that serves as a channel or conduit of water; and 60 feet around the perimeter of a pond or lake.

Section 6.02(b)(ii) Floodways and Floodplains:

(1) Generally. A Water Quality Buffer Area shall be established, protected, and maintained along the edges of all Floodways and Floodplains. The Water Quality Buffer Area shall measure thirty (30) feet perpendicular from each edge of the Floodway or Floodplain.

Section 6.02(b)(iii) Surface Waters and Wet Weather Conveyances. A Water Quality Buffer Area shall be established, protected, and maintained along the edges of all Surface Waters and Wet Weather Conveyances. The Water Quality Buffer Area shall measure thirty (30) feet perpendicular from the top of bank on each side of a Wet Weather Conveyance and any Surface Water that serves as a channel or conduit of water; and fifty (60) feet around the perimeter of a pond or lake.

Section 6.05 Woodland and Tree Protection shall be amended to read as follows:

Section 6.05(a)(i) Applicability: The standards of this Section shall apply to (i) the approval of any newly platted lot, (ii) the construction or erection of any new residential Dwelling (iii) any land disturbance activity requiring a permit pursuant to the Storm Water Management Ordinance, (iv) removal of specimen tree(s) from any Lot, and (v) timber harvesting and/or clearcutting activities unless exempted in accordance with Section 6.05(a)(ii).

Section 6.05(b) Clearcutting shall be amended to read as follows:

Section 6.05(b)(i) Clearcutting and/or timber harvesting is strictly prohibited

Section 6.05(b)(ii) There shall be a three (3) year suspension of all development approvals (as defined by this section), rezoning requests, and land disturbance permits for any property upon which clearcutting has taken place.

Section 6.05(b)(iii) The suspension period shall begin at the time the clearcutting occurs.

Section 6.05(c) Specimen Trees shall be amended to read as follows:

Section 6.05(c)(i) Any tree in fair or better condition which equals or exceeds the following diameter sizes:

- (1) 30" DBH Large hardwoods
- (2) 36" DBH Large softwoods

Section 6.05(c)(ii) A tree in fair or better condition must meet the following minimum standards:

- (1) A life expectancy of greater than 15 years
- (2) A structurally sound trunk
- (3) No major insect or pathological problem

Section 6.05(c)(iii) A lesser sized tree can be considered a specimen tree if it meets any of the following criteria

- (1) Is of historical significance, including but not limited to, trees listed on the state Landmark and Historic Tree Registry.

Section 6.05(d) Technical Standards

Section 6.05(d)(i) Existing Tree Retention Standards. Table 6.05(b) establishes the percentage of tree canopy on a Lot that shall be retained and protected, based on the percentage of the Lot covered by trees. The minimum percentage of existing trees that shall be retained (as a percent of the total tree canopy cover) is subject to a two (2) year lookback period. If any trees have been removed from the Lot, within the last two (2) years but were not replaced with an eight (8) inch DBH or greater tree, regardless of whether the removal was permitted, those trees must be included in the existing tree inventory.

Section 6.05(d)(ii) Tree Replacement. If an applicant is unable to retain the trees required pursuant to Table 6.05(b), as a condition of receiving a permit, the applicant shall be obligated to replace the lost trees in a manner sufficient that when the replacement trees reach full maturity, the Lot shall be in compliance with this Section.

Section 6.05(d)(ii)(1) Tree Replacement Plan: A Tree Replacement Plan is required in order to demonstrate compliance with Table 6.05(b). The Tree Replacement Plan shall include planting schedules with proposed tree names, quantity, size, spacing and any special planting notes.

Section 6.05(d)(iii) Any trees that die or are severely injured within a two (2) year period after replacement, original replacement, or any subsequent replacement shall be replaced with equivalent species and sized.

Old Section 6.05(d)(iii) becomes New Section 6.05(d)(iv)

Section 6.05(f) Removal of Protected Trees. In cases where tree clearing or removal, development work, land disturbance as part of construction, or intentional damage to trees occurs in violation of the standards of this Section, the following shall apply:

Section 6.05(e)(i) Retention of Existing Trees (I) Tree-Survey Required for New Dwellings: Prior to beginning any tree clearing or removal, development work, or land disturbance activity in excess of 2500 square feet, the applicant shall prepare and submit a survey of all trees on the Lot, subject to the following requirements:

Section 6.05(f)(i) Any person, company, or contractor in violation of any Section of the Tree Ordinance shall be subject to a \$50 per day fine for each violation until the violation has been remedied.

Section 6.05(f)(ii) Replanting shall be required at a rate of 80 trees for each acre disturbed in excess of the tree retention standards defined herein or an inch-by-inch caliper replacement.

Section 6.05(f)(iii) Replacement trees shall have a minimum DBH of two inches at the time planted.

Section 6.05(f)(iv) Replacement trees shall be maintained through an establishment period of at least three years. If the replacement trees do not survive the establishment period, the applicant shall purchase and install new replacement trees, and the establishment period shall reset.

Section 6.05(g) Permit Procedures

Section 6.05(g)(i) Prior to approval of any regulated activity of this ordinance to which this section applies, or the issuance of any Tree Removal Permit all applicable documents determined by the City Manager as necessary to demonstrate compliance with this ordinance must be submitted to and reviewed by the City Manager and/or City Arborist.

Section 6.05(g)(ii) All applicable plans and related documentation shall be reviewed by the City Manager and/or City Arborist for conformance to the provision of this ordinance. Based on this review, the City Manager will approve, return for revision, or deny the application. If denied, the reasons for denial shall be annotated on the plans or otherwise stated in writing.

Section 6.05(g)(iii) No tree removal permit shall be issued until it has been determined that the proposed activity is in conformance with the Ordinance.

Section 6.05(h) Inspection

Section 6.05(h)(i) Following the receipt of each required component of the completed tree removal application and supporting documents, the City Building Inspector and/or Arborist may schedule and conduct an inspection of the proposed development site. The applicant or designee shall be advised as to the date and time of the inspection and given the opportunity to participate.

Section 6.05(h)(ii) After completion of the approval process, the Building Inspector and/or Arborist will be charged with the responsibility of inspecting the site to ensure that trees are adequately protected during the permitted or approved activity.

Section 6.05(h)(iii) After completion of the activity, the Building Inspector and/or City Arborist will conduct an on-site inspection of the site to ensure compliance with the Tree Management Plan.

Section 6.05(i) Fees Each applicant requesting a permit under the provisions of this ordinance shall deposit a nonrefundable fee with the City of Forest Hills as per the most recent City of Forest Hills Municipal Fee Schedule.

Section 6.05(j) Natural Disaster or Emergency In the event of a natural disaster or other emergency, the City Manager may suspend the provisions of this ordinance if the provisions would in any way prevent, hinder, or delay necessary action in coping with the disaster or emergency.

Article X. Section 10.3 Definitions shall be amended to read as follows:

Section 10.03 Definitions

Arborist: An agent for the City of Forest Hills assisting in administering the provision of the Ordinance under the direction of the City Manager or an independent Certified Arborist.

Building Height: The vertical height measured from the existing grade plane to the average height of the highest roof surface of the building. For purposes of this definition, "grade plane" is the average of the elevations of the existing grade at each end of the front of the

Caliper (Tree): A forest standard of tree trunk diameter measurement. For purposes of this ordinance, caliper shall be the standard diameter measurement of replacement trees and shall be taken at six (6) inches above the ground.

Clearcutting: Most or all of the trees on the lot(s) are cut down.

Development Approval: For the purposes of this ordinance, an official authorization issued by the Planning Commission, including, but not limited to, approvals of subdivisions, and residential developments.

Hardwood Trees: Any tree botanically classified as an angiosperm

Land Disturbance Activity: Activity on property requiring a permit that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land-disturbance activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling, and excavation.

Revegetation: The replacement of trees and landscape materials into the minimum required landscape areas, as determined by the Zoning Ordinance, conditions of zoning approval, or the provisions of this ordinance.

Softwood Tree: Any tree botanically classified as a gymnosperm.

Specimen Tree: Any tree which qualifies for special consideration for preservation as noted in 6.05(c).

Tree: Any self-supporting, woody perennial plant which normally attains a single trunk diameter of five (5) inches or more and which normally attains a mature height of a minimum of fifteen (15) feet.

Tree Management Plan: a to-scale map or site plan showing a detailed plan designed to protect and preserve trees before, during and for a period of two (2) years after construction.

Tree Removal Permit: A formal letter or permit issued by the City of Forest Hills allowing for the removal of said tree(s) on a property.

Tree Survey: A to-scale map or site plan noting the location of all specimen trees plus all other trees including those to be removed and those to be retained and counted toward meeting the tree retention standards.



Lanson Hyde III / Mayor

ATTEST:



Charlotte Hunter / City Recorder

Passage:
Planning Commission Recommendation: Dec 16, 2021
Passed Board of Commissioners (1st): Jan 20, 2022
Passed Board of Commissioners (Final): Feb 17, 2022