COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D.C 20001

Phil Mendelson
Councilmember-At-Large

Office: (202) 724-8064
Fax: (202) 724-8099

October 9, 2001

Ms. Sheila Cross Reid, Chairman
Board of Zoning Adjustment, D.C.
441 4th Street, N.W. Suite 220
Washington DC 20001

RE: Case No. 16740 (2989 Arizona Ave. NW)

Dear Ms. Reid:

I am writing in support of Advisory Neighborhood Commission 3-D and the residents of the Palisades regarding the special exception application no. 16740 to permit, *ex post facto*, development within the tree/slope overlay district at 2989 Arizona Avenue, N.W. I urge the Board to deny the application.

My position is not simply a matter of supporting an organized, well-informed citizenry. Rather, I have a history with the tree/slope zoning requirements that dates back well before my election to the Council. As an officer of ANC 3-C I participated in the text case 10 years ago that created the tree/slope overlay district and mapped it first for the Woodland-Normanstone area. Four years ago I testified in support of mapping the tree/slope overlay for the Chain Bridge Road/University Terrace area.

The overlay is critical for protecting both the quality of life and the environment in heavily wooded, sloped areas. Its purpose is to regulate the alteration or disturbance of terrain, and the disturbance of trees and other ground coverage. The site subject to this case is a textbook example of what the regulations were designed to protect.

The integrity of the Zoning Regulations means nothing if they are not rigorously enforced. The Zoning Commission was cognizant of this when it crafted the overlay for the Chain Bridge Road/University Terrace area. That is why there is a seven-year no-build penalty for violators of the overlay. As the Office of Planning notes: "if this special exception is approved, it may be seen as setting a precedent for other undeveloped properties to remove trees over the allowed by-right and then seek a similar waiver from the requirements of the overlay district."

The applicant may seek to complicate this case by arguing the government's initial approval of the construction permits. Case law in most jurisdictions holds that as a matter of public policy the integrity of zoning regulations cannot be compromised by a government official's error. In such instances the proper remedy is not to bend the regulations but to adjudicate (in a separate venue) whether compensation is due for the alleged harm to the applicant.

Sincerely,

Phil Mendelson

BZA
Case No. 16740
Exhibit No. 78

Board of Zoning Adjustment
District of Columbia
CASE NO.16740
EXHIBIT NO.78