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April 19, 2002

VIA HAND DELIVERY

D.C. Zoning Commission
Room 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: Zoning Commission Case No. 02-19
Forest Hills Tree and Slope Overlay District

Dear Members of the Commission:

This office represents Zuckerman Brothers, Inc., the owner of property within the area proposed to be rezoned to include the proposed new Forest Hills Tree and Slope Overlay District. On behalf of Zuckerman Brothers, Inc., we hereby request that the Zoning Commission not act on April 19, 2002, to schedule a public hearing on the proposed overlay. We believe that action at this time would be premature, as neither the Forest Hills Citizens Association nor the Office of Planning have identified the full nature of the impacts of the proposed overlay in a way which would allow the Zoning Commission to determine that a hearing is appropriate.

The proposed Overlay District was filed as a petition with the Zoning Commission on April 5, 2002. No notice of that petition was published or posted by the Office of Zoning in any way that owners of property affected by the proposed Overlay would have any knowledge that it was filed. The first we learned of the petition was two days ago, when we reviewed the agenda for the Zoning Commission's meeting of April 19, 2002.

We note that the Office of Planning's report was filed late, even though OP apparently responded to the petition in a very short period of time. We were not able to see a complete copy of the OP report until yesterday. The OP has asked for a waiver of the rules to allow the report to be filed late. While the rule is there primarily for the convenience of the Commission, it also has the purpose of allowing the public to see, analyze, understand and respond to the position of the Executive Branch, an office to which the Zoning Commission is required to give "great weight."

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COMMISSION
District of Columbia
CASE NO.02-19
EXHIBIT NO.20

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The proposed Overlay is styled after the existing Tree and Slope Protection (TSP) Overlay District, set forth in §1511, et seq. of the Zoning Regulations. The Overlay also includes some elements of the Wesley Heights Overlay as well. Our preliminary review, however, indicates that there are some substantial differences from the existing TSP which, in fact, go in precedent setting directions:

- **Minimum Lot Area** – The Overlay proposes to establish a minimum lot area of 12,000 square feet for lots subdivided after the effective date of the Overlay (proposed §1514.2). Since the Overlay would apply to land now zoned R-1-A (current minimum lot size of 7,500 square feet), R-1-B (current minimum lot size of 5,000 square feet), R-2 (current minimum lot size of 3,000 square feet) and R-5-D (no minimum lot size), this subsection represents a substantial increase in the lot size required to develop a single family dwelling, even considering that R-1-A is the most restrictive zone now in the Regulations.

The increase in minimum lot size has little to do with the stated purposes of tree preservation and erosion or gradient control. It frankly has more of the tone of isolationism or protectionism for the existing residents, without regard to the overall rights of property owners or without considering the District's goals of encouraging more housing in the city and of seeking to retain and increase the number of higher income, tax paying residents.

There is further no analysis or back-up for the 12,000 square foot number, no indication of how many properties it would affect, no explanation of why that number as opposed to some other number, especially when that number bears no relation to any existing regulation. Lastly, there is no analysis of how many lots will become nonconforming, even though the petition suggests that there are many large lots. A quick review of the petitioner's plats shows that there are many lots which are less than 12,000 square feet.

- **Front Yard** – The Overlay also proposes to establish front yard setbacks, including on both streets for a corner lot. This is a concept borrowed from the Wesley Heights Overlay. However, we can find no analysis of the effect of this provision on corner lots in this area: how many lots are affected, how many may still be buildable, how many are rendered practically unbuildable. Furthermore, the copy of the petition we reviewed did not contain any map showing the "Required Front Yard Setbacks," referenced in §1514.3. Without that information, neither we nor you are able to determine the effect of the proposed regulation. Additionally, since the "set-down rule" (§3202.5) make this proposed Overlay applicable to permit applications filed after the case is

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set for hearing, the Zoning Administrator will be unable to determine whether a proposed structure complies with the more restrictive of the present or proposed zone category.

- **Side Yard** – The Overlay imposes a side yard requirement of sixteen feet where a side yard is required (proposed §1514.4). This again is a substantial departure from the existing most restrictive requirement of eight feet for a single family dwelling in R-1-A. There is no showing in the petition and no analysis in the OP report of how this substantial change supports the purposes of the Overlay. There is some reference in the petition to "setbacks comparable to those in the neighborhood," but there is no analysis or support to suggest that the existing eight foot requirement has caused a problem or why sixteen feet is the proper number.
- **Changes in Topography** – The Overlay imposes substantial restrictions on alteration of existing topography (see proposed §1514.5), unlike anything elsewhere in the Regulations, even in the existing TSP. There is reference to erodible soils, as determined by the U.S. Geological Survey soils analysis, but no copy of that document is provided for our guidance or understanding or that of the Zoning Administrator, who must administer these regulations. The aerial photograph purporting to show areas of slope greater than twenty-five percent is at such a scale that it is virtually impossible to determine what areas area being shown, even though it appears that much of the area colored in red is actually existing public parkland.
- **Equal Protection** - The Overlay as proposed raises what we believe may be an equal protection issue. Many of the provisions are worded such that they will apply only to new development, exempting existing houses from compliance with such things as the impervious surface limitation or the slope restrictions. If the true purpose of the overlay is to protect against runoff, erosion and other similarly identified ills, why have the proponents not applied those same limitations to their own houses?

We believe that the mere assertion that the proposed Overlay is not inconsistent with the Comprehensive Plan cannot substitute for a thorough analysis of the impact of the proposed text. We understand that the standard to be set for hearing is lower than the standard for ultimate adoption, and we recognize that the issues we have raised may be viewed as being appropriate for resolution as part of the hearing process. We believe however, that the petitioner and the Office of Planning: (a) have failed to adequately show that the present regulations, the most restrictive existing zone category, are not inconsistent with the Comprehensive Plan; (b) have not

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demonstrated that the present regulations are so defective that they are in need of the substantial "fixes" proposed by the Overlay; and (c) have not proposed well thought out regulations, that are suitable to address the identified problems and capable of administration as set forth. We believe that unless and until the petitioner and OP have remedied these defects, the Commission should not set the case for hearing.

We note that in its cover letter, the petitioner suggests that this Overlay District be considered as an emergency measure. The agenda for your meeting indicates that this case is being considered for hearing action only. We have found nothing in any of the information submitted by the petitioner or the Office of Planning which provides any kind of basis or justification for the Commission to adopt these rules immediately. Acting without notice or hearing is a very unusual act with a very high standard; it is an action not to be exercised lightly or in haste, without demonstration in fact that there is an immediate threat to the public peace, health safety or welfare. We find no evidence of any of that in the information that is before you.

We respectfully ask that the Commission not vote to set case 02-19 for hearing on the basis of the case now before you. Thank you for your consideration of our views on this matter.

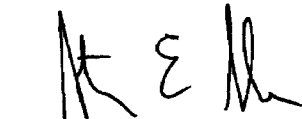
Sincerely,



Whayne S. Quin



Paul J. Kiernan



Steven E. Sher

Director of Zoning and Land Use Services