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TO: Secretary of the Zoning Commission **DATE:** September 26, 2002
Office of Zoning
441 4th Street NW, Suite 210 **PROJECT:**
Washington, DC 20001
ATTN: Alberto P. Bastida, AICP **PROJ NO:** 001.00

FROM: Mark Baughman **SENT VIA:** Messenger

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REMARKS:

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Zoning Commission
District of Columbia
Case 02-19
Exhibit 253

Submission to the Zoning Commission
by Forest Hills Neighbors for Responsible Preservation
c/o 4335 Linnean Ave., NW, Washington, DC 20008

Regarding
The Forest Hills Tree and Slope Overlay
Case No 02-19

Contents

Tab 1	Who We Are
Tab 2	Executive Summary of Our Positions and Recommendations for Commission Action
Tab 3	Brief Prepared by William Kelly on behalf of FHNRP
Tab 4	Brief Prepared by Phil Kogan, ANC 3F01
Tab 5	Testimony of Robert Maudlin, ANC 3F03
Tab 6	Testimony of Dr. Karen G. Fleischman Foreit
Tab 7	Testimony of Mark Baughman
Tab 8	Testimony of Dr. James Foreit
Tab 9	Insert to the <i>Northwest Current</i>

ZONING COMMISSION
District of Columbia
Case 02-19
Exhibit 253

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ZONING COMMISSION

Who We Are

This submission to the Zoning Commission has been compiled by the Forest Hills Neighbors for Responsible Preservation (FHNRP). We are an *ad hoc* group of approximately 30 core members; all of us are resident home-owners who would be subject to the overlay. Some of us also belong to other community organizations, including the Forest Hills Citizens Association (FHCA). We are united by our opposition to the proposed overlay and our concern for preserving the character of our neighborhood.

We share the goals of preventing erosion, reducing air pollution and protecting parkland, but we also believe that the greater need of our community is to have appropriate control over future use of multi-acre parcels and to ensure that newly constructed or renovated homes are consistent with the character of the neighborhood.

We have contributed our own time and money to communicate our position to the Zoning Commission and to our neighbors; to date, some 150 households inside the affected area have formally registered their opposition to the FHCA overlay. We have received no contributions from developers or any other outside interests.

Executive Summary of Our Position and Recommendations

The Forest Hills Neighbors for Responsible Preservation thanks the Chair of the Zoning Commission for inviting us to submit a comprehensive presentation of our position, and all of the Commissioners for their consideration of the materials that follow. We appreciate the magnitude of the issue before you and the volume of testimony that you have already reviewed. We hope that consolidating our major testimonies in this way will facilitate your review, and look forward to answering any questions you may have at the open hearing on September 30, 2002.

The enclosed materials clearly demonstrate that, *contrary to the application filed by the Forest Hills Citizens Association*, there is no present subdivision or tree emergency facing Forest Hills. Record-by-record review of the files in the D.C. Surveyor's Office found only four subdivisions in the last four years, for a net gain of six zoned R-1A lots in the entire proposed overlay district – just 1 percent. Similarly, while the Casey Foundation and others have documented an on-going loss of tree canopy in the District of Columbia *as a whole* over the last 25 years, they have neither presented evidence that the problem is especially acute in Forest Hills, nor shown that deforestation in our area has accelerated in recent years. In fact, a walk through the community demonstrates that our neighbors zealously guard their trees, tenaciously preserve old specimens and plant new trees for the days to come when the existing canopy reaches the end of its lifespan.

We do not deny that there is a community “feeling” that an overlay might be needed. The *ad hoc* committee study requested by ANC-3F last year was the proper venue for the development of such an overlay, and many individuals now on both sides of the issue made good-faith efforts to bring together a study and recommendations for community review. Unfortunately, that process was hijacked by the premature filing of the TSO by the FHCA. Because they did not wait for the process to play out to the end, the proposed regulations are seriously flawed:

1. They violate accepted practices of good governance, both in terms of the tactics employed to request the original set-down and filings that disparage and discredit those who oppose the regulations, as well as by imposing an onerous and unnecessary regulatory burden on property owners and city agencies;
2. They deal with problems that don't exist, and ignore problems that do exist.
3. Through faulty analysis, they misrepresent the existing character of the neighborhood and would damage rather than preserve it;
4. The provisions are unworkable, include a questionable enforcement process, and will not accomplish their stated environmental goals.

We ask the Zoning Commission to set aside the proposed regulation and return the matter to the community for an open review process in partnership the Office of Planning. We suggest the following principles guide any future review of new zoning regulations:

1. Respect the diversity of Forest Hills development and the rights of property owners;
2. Ensure that the process is guided by acknowledged experts and that problems are clearly defined so that solutions can be evaluated objectively, and
3. Provide incentives to maintain and improve tree canopy, terrain, run-off and other environmental safeguards;
4. Protect against over-building existing lots, and ensure that future development by subdivisions conforms to the existing character of the neighborhood and protects the environment.

Forest Hills Neighbors for Responsible Preservation

c/o 4835 Linnean Ave., NW, Washington, DC 20008, 202-966-7734

BY HAND DELIVERY

September 26, 2002

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

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

Dear Members of the Commission:

The Forest Hills Neighbors for Responsible Preservation is an ad hoc group of approximately 30 core members who have homes that would be subject to the Forest Hills Tree and Slope Overlay (the "Overlay") proposed by the Forest Hills Citizen Association ("FHCA"). We filed a brief before the Commission on June 17. In accordance with the guidance given by the Chair at the Commission's September 5 hearing, this letter will address the modified version of the Overlay recommended by the FHCA in its letter to the Commission dated August 15, 2002 (the "August 15 Submission"). We are writing to express our continued opposition to the proposed Overlay and to urge the Commission to set it aside and return it to the affected community for an open process led by the Office of Planning.

Our Stake in Forest Hills.

Most of us and our neighbors are heavily invested, both emotionally and financially, in our homes and lots in Forest Hills. A fixed and understandable Zoning Code has helped to set our expectations and determine our property values. The flexibility left by the Code has enabled us to express our design creativity and adapt our homes and lots to our evolving needs and styles of living. Forest Hills residents have planted thousands of trees and continue to do so. Decisions by our neighbors and their predecessors--taken as a matter of right--have made the Forest Hills neighborhood a place that has a high value for its residents today. In general, we have not had to hire experts to plead for exceptions from beleaguered agencies.

Significant Opposition to the Overlay Exists.

Special restrictive legislation or regulation should be imposed on a residential neighborhood only where a consensus of residents supports that imposition. We are told by the Office of Planning that there was 95% community support for the Wesley Heights Overlay, one of the precedents FHCA repeatedly cites.

As should be clear from the letters, petitions and cards filed with this Commission by opponents of this Overlay, there is no such consensus in this case. Prior to the Zoning Commission's September 5, 2002, hearing, 150 households located throughout the Overlay district formally registered their opposition. Contrary to the assertions in the FHCA letter to the Commission dated September 5, 2002 (Exhibit 222), this number counts each address only once

and does not include pink postcards supporting the Overlay. This compares with 105 households that had formally registered their support as of September 5. In an area that includes all or parts of contiguous squares 2239, 2244, 2245 and 2246, 80% of the households have registered their opposition and asked to be exempted. The ANC Commissioners who represent 96% of the homeowners in the proposed Overlay continue to oppose it.

Why is there such widespread opposition? It is not because opponents do not love their neighborhood, respect the environment or value trees. Indeed, these are people who collectively have planted hundreds of trees and in many cases have built or remodeled their own homes. Instead, they are opposed because the Overlay would change rather than preserve the character of our neighborhood, would unnecessarily impinge on the prerogatives of homeowners and would entangle us and multiple agencies in time-consuming and expensive BZA proceedings. If the Overlay had been in place when they were built, the vast majority of our homes could not have been built without BZA approval.

Any proposal to preserve Forest Hills must take into account the dynamics of the neighborhood's settlement history and allow these dynamics to continue to operate without stifling over-regulation of the type the filing proposed. We want to maintain our neighborhood, continue to protect its environment, and allow it to continue to be an inviting and welcoming home for future residents. In our view, an elaborate command and control system as proposed only sets neighbor against neighbor.

Reduction of erosion, storm water run off and air pollution are worthy environmental goals, but they will not be achieved to any measurable extent by bearing down on residents who have not yet built patios or swimming pools or who happen to have undeveloped lots. With respect to storm water runoff, for example, the environmental signature of Forest Hills is in the developed land and land owned by institutions and foreign governments. Of the 14.19 million square feet of land in the overlay that are not owned by the United States or the District of Columbia, only three percent consists of undeveloped land owned by individuals. More trees could be planted and contribute to the long-term canopy on existing private and institutional lots, many of which the owners have kept for decades as large open lawns, than would ever be taken down in the likely course of development of private lots.

From a broader perspective, it is important to bear in mind Forest Hills is not a pristine forest, but an attractive urban residential neighborhood that spans an area from a major commercial artery to a national park. Forest Hills is also located near two Metro stops and various bus lines. It should properly bear its share of the infill development that the Mayor and urban planners believe we need to build our tax base and to reduce the social and environmental effects of long-distance auto commuting.

The Process Was Flawed.

The Overlay before this Commission is fundamentally flawed by the way in which it was developed and proposed and the way the FHCA as petitioner has handled its interaction with the public.

The proposed Overlay covers an area far larger, far more diverse and far more dynamic than the area covered by, for example, the Woodland/Normanstone Terrace Overlay. There is

enormous variation in lot size, home size, and architectural style. Forest Hills has grand lots and small lots, country manors and bungalows, traditional homes and glass and concrete contemporaries. Many large old homes are on lots with multiple canopy trees; others have few or none despite decades in which to plant them. Some newer homes have few trees and others were built around the trees to the extent practicable. Some empty lots are heavily forested and others are not.

In light of this diversity, building a consensus would require broad public exploration of alternatives before any filing was made with this Commission. Instead, a determined group built a bunker and defended it.

A review of the abbreviated chronology that brought us to this point is instructive. In July, 2001, ANC 3F formed what it called the Tree and Slope Overlay Ad Hoc Committee to conduct a study and report back to the ANC. The committee met first in October, 2001. The ANC intended that once the study and report had been completed, the ANC would launch a process of public participation.

Invoking what it called “considerable pressures for subdivision” and “subdivision activity within the last few years,” the FHCA short-circuited that process with its April 5, 2002 filing. There was in fact no “building pressure” for widespread subdivision. Indeed, based on our review of the records of the DC Office of the Surveyor, there have been only four subdivisions within the Overlay district in the last four years, producing a grand total of six additional lots and five homes on a base of more than 600.

The FHCA filed its April 5 petition on association letterhead suggesting that the filing was made on behalf of its 900 members. What it failed to note was that the FHCA President had not consulted those 900 members in making the filing. The FHCA’s Constitution provides that “[n]o vote taken shall be recorded as the will of the Association unless a quorum of the Association membership is present. A quorum shall consist of ten percent of the members [presumably 90 members]”. To our knowledge, no such meeting was ever held. Nor, to the best of our knowledge, in the several months since it filed the petition did the FHCA hold any meeting of the membership to seek such a vote. The FHCA President’s letter to the Commission dated September 5, 2002, brushes aside its lack of mandate from the members by stating that the “FHCA does not routinely take votes of its members before it takes a position.” (Exhibit 144). Maybe, but filing surely implies that the President was reflecting the “will of the Association”.¹

None of this would be of terribly great consequence in connection with social events or the like, but the matter at hand is hardly “routine”. Whether the Overlay would be good or bad public policy, it would undeniably restrict the rights of more of the Association’s members than any other action ever taken by the Association. It is hard to imagine an action that more loudly cries out for submission to the membership.

Of course, this is not litigation about ultra vires actions by an officer of the Association, but a rulemaking proceeding launched by the Association and affecting the substantial rights of

¹ The FHCA’s September 5 letter also represents that the filing of the petition was “ratified by the FHCA Executive Committee” on an unspecified date. At least one member of that Executive Committee was neither informed that a meeting for that purpose was being called nor invited to participate.

its members. Instead, in this context the crucial point is that the first and subsequent filings should not be construed as reflecting the will of the 900 members of the Association or of any other number than those that have registered their support as individuals.

In its rush to judgment, the FHCA styled its filing an “emergency” petition in the absence of any emergency. On April 15, 2002, the ANC, by a divided vote of 4-2-1 nevertheless recommended that the Zoning Commission set down the petition for a hearing. The two ANC Commissioners who, as noted above, represent 96% of the residents of the proposed Overlay district, voted in opposition. FHCA then held an introductory public meeting at the Netherlands Embassy on April 16 without conveying any sense of the impact on the neighbors of what had already been put in place.

Only after the Zoning Commission had set down the FHCA petition for a hearing was the text of the Overlay first distributed to the affected community by a mailing in late April. And it was only upon a reading of that mailing that residents beyond the organizing group began to develop a true understanding of what was being visited upon them in their names.

Once the Commission had set down the Overlay for a hearing, the FHCA--still without any mandate from its membership--had the upper hand as petitioner and would no longer explore broad alternatives. In that respect, it insisted on serving as judge and jury, entertaining only discussion of possible changes in various details. This determination to marginalize criticism was reflected in the belittling August 26, 2002, letter filed by the FHCA (Exhibit 144) opposing our procedural request to make an integrated presentation (no copy was addressed to us, and we learned of the letter only by spotting it in the Commission’s files) and in the even more dismissive letter filed on September 5. (Exhibit 222).

The FHCA apparently cannot come to terms with the fact that many neighbors who have been outsiders from beginning have genuine, good faith concerns that cannot be resolved by tinkering. To say that the affected community is deeply divided strikingly understates the point.

The Overlay Itself.

Many of the specific provisions of the Overlay have no proper place in Forest Hills and others need closer examination in any process of reconsideration.

Building Coverage Restrictions. Section 1513.1 of the Overlay would decrease the maximum permitted lot coverage for new buildings from 40% to 30%. In the context of large lots, this would make no practical difference. But many of the homes that give Forest Hills its character cover more than 30 percent of their lots, and the owners of existing homes are permitted to add additions up to the 40 percent coverage. There is no reason of policy or fairness to impose tighter restrictions on new or replacement homes.

Impervious Surface Coverage. Section 1513.2 of the Overlay would impose a new 50% limit on the percentage of any lot that can be covered with impervious surfaces, including new buildings, patios, driveways, tennis courts, swimming pools and paved pathways (1515.5). Again, in the context of the smaller lots in Forest Hills, this limit would restrict the ability of current and future homeowners to customize the use of their lots to meet their evolving needs. Again, there is an exception for the expansion of existing homes and no fair basis for treating

new or rebuilt homes differently.

Tree Removal. Section 1514.1 of the proposed Overlay would impose myriad restrictions on the removal of trees, including a complete ban on the removal of trees larger than 75” in circumference (1514.1(c)); removal of any trees greater than 38” in circumference that are located within 25’ of a building restriction line or the lot line (1514.1(d)); removal of more than three trees greater than 38” in circumference from any place on the lot (1514.1(d)); and removal of trees whose circumference inches exceed 25% of the circumference inches of all the trees on the lot (1514.1(e)). These restrictions would apply regardless of lot size, regardless of tree species, regardless of whether the lot is vacant or has an existing home, and regardless of the impact on the feasibility or design quality of a home.

The provisions specially limiting removal of trees 25 feet from a building restriction line set up a standard that has no cogent rationale. The FHCA has conceded that building restriction lines are located 15’-45’ from the street and were established at different times for reasons in many cases lost to history. Surely no one expects the District to widen the residential streets in Forest Hills, so the street should serve as the base line for any restriction.

There is no process for determining today whether a tree may be removed unless the owner is now seeking a building permit. The owner is left to guess what will happen if he or she seeks a building permit in the next seven years. It will be a rare case indeed where an owner can build on an undeveloped lot without taking down 25% by circumference of the trees.

Undeveloped lots often have large, old tulip or silver maple trees that will no longer be standing in 20 or 30 years. The denominator for calculating 25% of circumference will vary over time as trees grow or are blown down, die or are removed.

The tree provisions of the Overlay will have the effect of throwing the construction of nearly every new home into the BZA “exception” process.

Minimum Lot Site. Section 1514.2 of the Overlay would raise the minimum lot size from 7500 square feet to 12,000 square feet on R-1-A lots. The Office of Planning has opposed this increase, arguing that such a minimum would replace rather than be “mapped in combination with” the underlying zone and would be “contrary to the neighborhood character”. (Exhibit 102)

Much of Forest Hills consists of attractive, moderate-sized homes on 7500 square foot or smaller lots. Eleven percent of R-1-A lots are already nonconforming because of lot size. An additional 50% of developed lots are between 7500 square feet and the 12,000 square foot minimum that the FHCA continues to advocate. If the Overlay is imposed, then 61% of lots zoned R-1-A would be nonconforming by lot size alone.

If the perceived problem is over-sized houses on small lots, then the community, the Office of Planning and the Commission should explore appropriate and effective tools to fix this problem, possibly including floor area ratio (“FAR”) restrictions, to combat that evil. If the perceived problem is the risk of excessive density if large institutional parcels are eventually sold and developed, those problems should also be addressed directly.

Setback. The Zoning Code imposes no setback from the street, although building

restriction lines in some parts of Forest Hills have the same effect. Section 1514.3 of the Overlay would require that all new residential buildings be set back from the street at least as much as the average of all other structures on the same side of the street. As presently formulated, the provision will constrain owners even where it has no relevance to any purpose of the Overlay. It may also impose an unfair hardship on certain corner lots. To the extent that the purpose of this setback is esthetic rather than environmental, with proper exceptions developed after a further public process, a setback rule may be a constructive way to limit inappropriately sited replacement housing.

Side Yards. Section 1514.4 of the Overlay, as revised by the August 15 Submission, establishes a new minimum side yard for properties wider than 80', using a sliding scale that rises to maximum total of 32 feet for the sum of the two side lots. In many, and perhaps most, parts of the Overlay district, homes are built to the 8' side lot minimum now allowed by the Zoning Code. Again, the Overlay would make a large proportion of the district nonconforming. No rationale is offered as to why owners of undeveloped lots, in some cases adjacent to homes built to the 8' line, should be subjected to a new, more restrictive standard.

Slopes. The August 15 Submission no longer advocates a ban on construction on or near slopes or highly erodible soil, but reinserts slope and soil considerations in the special exception process if an owner is forced into that process by some other provision of the Overlay. This would make its application even more discriminatory, since anyone building on a vacant lot will surely be thrown into the special exception process because of the tree removal rules.

Many homes that have established the very character of the neighborhood that we cherish were built on and into slopes greater than 25% or on highly erodible soil. In many cases, building into the slope reduced the scale of the facades and allowed the houses to be set farther back from the street. These homes enhance--not detract from--the neighborhood and reduce--not increase--erosion. A walk through Rock Creek Park reveals multiple locations where soil on parkland has not been stabilized by the equivalent of home and yard construction and is eroding naturally. This is not to criticize the National Park Service or to suggest construction in the Park, but merely to point out the fallacy of purporting to control erosion by imposing a special requirement that will affect the owners of the few privately owned unbuilt lots in the Overlay.

There are well-established techniques, recognized by regulators, builders and this Commission alike, for controlling erosion and runoff, but it seems evident that erosion control is not the real issue here. If the new professional requirement in Section 1519.5 is really needed and appropriate, it should be added on a city-wide basis. No other neighborhood in the District of Columbia is fettered with a slope restriction, and the Commission rejected proposed slope restrictions in connection with the Wesley Heights Overlay (see Commission Order 863, June 14, 1999, page 3). The Commission should likewise reject any special regulations for Forest Hills, whether as prohibitions, certifications or special considerations in a BZA process.

If the real need is to maintain basic land contours on multi-acre sites that might some day be developed on the model of suburban subdivisions, then appropriate land use regulation should be developed for and limited to those sites.

Special Exceptions. Section 1515 establishes a procedure for seeking Special Exceptions from the Board of Zoning Adjustment. The procedures include an application submitted subject

to criminal penalty (1515.5), supporting materials (1514.3), referral to five District of Columbia and federal agencies (1515.2) and a public hearing.

Proponents see the special exception provision as a cure-all for the rigidities of the Overlay, envisioning that everything from tree removal decisions to front, side and back lot setbacks for individual houses will be handled by the BZA. We see a process that is onerous, time-consuming, expensive, and unpredictable, putting the burden on our citizens to hire a battery of experts ranging from soils engineers to arborists and probably lawyers and expeditors to have a fair chance in the process. The “exception” becomes the rule, and the rule becomes an exercise of discretion. Construction of the vast majority of existing homes in Forest Hills would have been forced into the BZA process.

Moreover, we are a city that struggles to deliver basic services in a timely fashion and that is under financial stress. The City will have to make cuts in important programs this year to balance its budget. In our view, it would be irresponsible to load additional duties onto already stretched agencies.

For example, the Overlay bows in the direction of allowing mitigation as a basis for allowing tree removal. Yet Washington has one arborist--one. Meanwhile, the City has an enormous problem with the ongoing loss and undermaintenance of public trees, in Forest Hills, but also throughout the rest of the City. We have a corresponding opportunity to use Casey Foundation funds wisely. Dealing creatively with these problems and opportunities is more than a full-time job.

Do we really want to impose a new regulatory scheme that will require that single arborist to review on a tree-by-tree basis the plans for development of a vacant single-family lot in Forest Hills or the construction of a pool or patio? Other City agencies are only slightly less stretched, the BZA, the DCRA and the Zoning Administrator among them.

Any mitigation alternatives should be designed in a way that is self-administering rather than consuming the time and resources of not only the owner but the BZA and the commenting agencies, which are already challenged to do their truly essential work in a timely and high quality fashion. Alternatives should, to the maximum extent possible, be self-administering. Only a minimum of very unusual matters should be processed for exemption.

The Overlay goes on at some length to spell out various competing considerations. For example, Section 1520.1(A) states that “tree removal, grading and topographic change shall be limited to the maximum extent consistent with the construction of a building permitted by the standards of this chapter.” [Emphasis added.] Does this mean that an owner has no further recourse if the BZA staff determines that some house can be built on the flat or around the trees? This is the death of a thousand cuts. The Overlay’s standards and the BZA’s obligation to take into account the views of five agencies (and, we suspect, the ANC and the FHCA) after a hearing make the results of the process inherently uncertain and invite litigation challenging the BZA’s application of the standards if any neighbor does not like the result. Any land use control system needs safety valves, but the Overlay would throw out much of the basic zoning system, with predictable effects on our right to build an individually designed homes, structures or amenities without undue restriction.

We have no problem with any of this where the neighbors band together to subject themselves to such a standard. We are deeply troubled when, as in this case, it would be imposed on a divided community.

Recommendation.

We have noted a handful of provisions that might be improved or made more reasonable. However, we do not intend by our comments to imply that making minor revisions would make the Overlay acceptable.

The tree and slope overlay template is not, we believe, the right starting point. In dealing with an area as large and diverse as the Forest Hills Overlay, can't the City and this community be creative enough to develop an approach that is largely self-administering, especially with respect to trees? Does it make sense to pass a general zoning regulation that would make the typical case a "special" exception?

The first step is for the affected neighbors to consider and agree on the goals of an overlay, so that it can be designed in a way that achieves these goals rather than imposing collateral damage on all homeowners who have the misfortune of being in its ambit. Arguments about preventing erosion, reducing air pollution and protecting parkland ring a bit hollow to many resident owners of homes and lots, even though we share these goals. To the extent that the Overlay attempts to achieve these goals through even heavy-handed regulation of incremental building on the privately owned lots in Forest Hills, it will surely fail. We believe that the greater concern of many of our neighbors is to cause newly constructed or renovated homes to be in character with the neighborhood and to have appropriate control over the use of multi-acre parcels that are largely in the hands of foreign governments.

The community needs to understand better which of the large parcels in Forest Hills is at risk of development and what role the PUD process would play in that development. We also need a better understanding of the threat that some of our neighbors see in certain infill developments. And we need to understand the dynamic on Broad Branch, whose adjacency to Rock Creek Park seems to have generated much of the heat that propelled this effort.

Would it make sense to use subdivision as a trigger for more extensive review, so that not every home or lot owner is tangled in the regulatory web? Could we develop mitigation strategies for certain types of properties that are self-administering, making the law predictable, less expensive and less subject to litigation for the vast majority of owners? Could we assure that only a minimum of very unusual matters is processed for special exceptions? How can we avoid making the BZA into the super-architect for homes in Forest Hills? Could economic incentives, rather than disincentives, play a role? Is it possible that the only long-term solution on Broad Branch is for the Park Service to buy or trade for easements to protect the Park?

Many of the zoning rules needed to protect our neighborhood are already in place. Lax and ineffective enforcement of the rules by the regulators has enabled developers to construct houses that are out of character and inconsistent with the existing community. With a common purpose and a commitment to regulate judiciously and enforce vigorously, we believe that the neighborhood can achieve these shared purposes.

The current Overlay goes a long way down the wrong path. We need to start with a different approach, and the members of the Forest Hills Neighbors for Responsible Preservation are more than willing to participate in developing an approach that addresses real, not imagined, problems. With the support the Office of Planning has offered and with access to other experts, the community and the City can clarify and narrow the perceived problems and then develop other approaches to present to the public so that we might build a consensus.

If the Commission determines to proceed with the Overlay, we request that the Commission delete squares 2239, 2244, 2245 and 2246 from the Overlay district in accordance with the wishes of the vast majority of land owners in those contiguous squares.

Respectfully submitted,

William Kelly

for the FOREST HILLS NEIGHBORS FOR
RESPONSIBLE PRESERVATION

ANC 3F Forest Hills/North Cleveland Park/Tenleytown

September 26, 2002

Zoning Commission
Government of the District of Columbia
441 4th Street, N.W.
Room 210
Washington, D.C. 20001

Re: Case Number ZC 02-19, Forest Hills Protective Tree and Slope Overlay

Dear Commissioners:

There are a number of serious problems with the protective tree and slope overlay (TSO) filed by the Forest Hills Citizens Association (FHCA) on April 5, 2002. None of these problems are addressed by the amendments proposed by the applicant and proponents. The major problem with this filing is that it arrived at the Zoning Commission by way of a flawed process and it does not reflect a consensus agreement within the Forest Hills community. In fact, it represents the views of a small group of activists intent upon imposing their personal views on their neighbors. The overlay itself is flawed since it is based on a set of untested, unproved, and unsupported assumptions. Given that these flaws have not been addressed by the applicant or proponents of the overlay, it is strongly recommended that the Commission deny the petition for a Forest Hills overlay.

A Flawed Process

The Forest Hills TSO arrived at the Zoning Commission by way of a flawed process. While there had been discussion within ANC 3F about the possibility of a Forest Hills zoning overlay, the proposal now before the Zoning Commission was filed before there was any general public notification to the citizens of Forest Hills that such an overlay would be filed.

It is important to understand the events that preceded the filing. In July 2001 ANC3F established an Ad Hoc Committee to study and provide a report to ANC3F on the subject of a tree and slope overlay for the Forest Hills area. FHCA was appointed as a member of the Ad Hoc Committee which held its first meeting in October 2001. This was followed by a series of committee meetings and meetings with the Office of Planning staff last year and early this year. By March of 2002 the Ad Hoc Committee began to review various scenarios for a tree and slope overlay but did not reach any conclusions or a consensus on a proposed Forest Hills overlay.

This open and transparent process was derailed on April 5, when the President of the Forest Hills Citizens Association expropriated the documented that reflected the initial work of the Ad Hoc Committee, made several hurried changes to shift the focus from preservation to controlling development, and hurriedly filed a petition for the overlay that is under consideration by the

Zoning Commission. It is important to understand that prior to this filing no report had been made to ANC 3F and there was no general public notification that a Forest Hills overlay would be filed and a set down requested. Further, there is no indication in the petition that the overlay or the filing had been approved by the members of the Forest Hills Citizens Association, the executive committee of the Association, or the officers of the Association. In fact, we are aware of no such approvals. In fact, the full text of the overlay was not distributed to the FHCA membership. Yet the filing was made in the name of the Association. It was not until eleven days *after* the filing, on April 16, that the Forest Hills Citizens Association held its first public meeting to present the overlay to its members and the community. There was no vote at that meeting on the overlay.

Additionally, a number of constituents complained that the notice announcing the April 16 meeting was misleading since it advertised in large bold type that the meeting would provide an opportunity to discuss tree and slope protection and made repeated reference to the need to protect trees and slopes in Forest Hills. Only in fine print did the notice refer to the fact that zoning changes were proposed. A number of residents did not attend the meeting in the belief that the discussion would focus on tree and slope protection and not on a sweeping re-zoning of Forest Hills. Substantial opposition to the overlay was expressed at this meeting.

A second public meeting was held on May 13, and again there was no vote by the members of the Forest Hills Citizens Association on the overlay. Opposition to the overlay intensified during this meeting as Forest Hills citizens recognized the severe constraints the overlay would place on them. As word of the filing and information on the zoning changes in the overlay became available to the community, the division between supporters and opponents sharpened. The filing of the overlay petition was premature and should not have been made until the ANC process was completed and the community had an opportunity to reach a consensus on what should and should not be included. For this reason, the Zoning Commission should vote down the overlay and allow the Forest Hills neighborhood to develop an overlay that reflects a community wide consensus.

Overlay proponents respond to criticism of the manner of the TSO filing by contending that the rules provide that any individual may file a request for a zoning change. This is true. In the case of the TSO filing, however, the Zoning Commission should recognize that the petitioner went to great lengths to convey the impression that the filing was made on behalf of members of a neighborhood citizens' association and not by an individual. FHCA letterhead was used thereby creating the impression of the overlay as the submission of a neighborhood civic association not a single individual. The TSO petition arrived at the Zoning Commission with the imprimatur of community support while, in fact, it was the product of a small group of activists representing their own special interests.

The Forest Hills Community is Sharply Divided

The Zoning Commission need only look at the volume of mail arriving at its own office prior to the September 5, 2002, hearing to understand the degree of opposition to the overlay and the sharp division in Forest Hills. Forest Hills Neighbors for Responsible Preservation (FHNRP), a neighborhood based organization opposed to the overlay, identified 150 addresses within the overlay from which correspondence was sent to the Zoning Commission opposing the overlay while only 105 pieces of correspondence were received from proponents. This points to a sharp division with the weight of opinion clearly shifted in the direction of opponents.

FHCA's September 5, 2002, letter to the Zoning Commission (Exhibit 222) goes to great lengths to attack and undermine FHNRP's numbers. The matter, however, is not as complex as FHCA would have us believe. FHNRP's methodology was simple. The Zoning Commission's overlay file was reviewed and the number of pieces of correspondence received pro and con were counted. Documents with signatures of 150 households were identified as opposing the TSO and documents with signatures of 105 households were identified as supporting the TSO. This count includes only households located in the TSO district. A number of households made more than one filing with the Zoning Commission opposing or supporting TSO and these duplicates are eliminated from the totals. As indicated by FHCA, several pink postcards sent to the Commission stated that they supported the TSO. These cards were included in the count of supporters.

We do not suggest that Commissioners count correspondence to determine how they will vote. But we strongly implore the Zoning Commission to recognize the sharp division that exists in the Forest Hills neighborhood on the overlay. An overlay by definition is a neighborhood specific regulation which implements zoning rules that apply to only one neighborhood. By voting to implement FHCA's overlay, the Zoning Commission would place itself in the position of imposing its will on a divided community. Before it does this, a case must be made that there is an overriding policy objective that demands such action. So far, proponents of the overlay have failed to make this case.

The method of filing is important because the way the filing was done, under the name of a citizens association, conveys the erroneous impression that the filing had broad community support. It did not and it does not. The filing reflected the views of a small group of activists promoting an agenda that opposes developments they do not like. The filing does not represent a broad consensus within the Forest Hills neighborhood and does not represent the views of FHCA based on a vote of its membership. In fact, the Forest Hills neighborhood is sharply divided on the overlay issue. For this reason alone the Zoning Commission should vote down the overlay and allow the neighborhood to determine for itself the kind of special zoning it should have.

The Overlay is Flawed in its Underlying Assumptions

The Forest Hills TSO purports to be about preserving trees and slopes in Forest Hills. In fact, the overlay was developed by a small group of activists as a way to control future development in

Forest Hills. It is important to recall that several weeks before the filing, Forest Hills neighbors became aware that the property at 2900 Albemarle Street, the site of a single family residence, had been subdivided. It also became public knowledge that Zuckerman Brothers Development Corporation planned to file permits that would allow an existing house at this address to be torn down and two new single family homes to be constructed on the subdivided site.

These events alarmed some neighbors, particularly those living closest to the project. There is reason to conclude that one of the initial goals of the filing was to block this project by putting new zoning controls in place that would prevent Zuckerman from proceeding. Zuckerman Brothers, however, filed their permit applications on April 4, one day before the overlay filing and 15 days before the Zoning Commission set down the overlay. As a result their project is not affected by the overlay and work is now able to proceed on construction of two homes at the 2900 Albemarle Street site. In effect, the project that precipitated the filing of the overlay has been unaffected by the filing.

This episode sheds light on a principal rationale for the Forest Hills overlay. Proponents of the overlay, a small group of activists in the Forest Hills community, do not like the way Forest Hills has developed and they want to control future development. These proponents object to the 2900 Albemarle Street development and to other recent developments in the community. They want to position themselves to stop developments they do not like. The overlay would be their principal tool for accomplishing this. The Zoning Commission should not be their partner in such an endeavor.

One need only look at the slide show Ad Hoc Committee Co-Chair George Clark presented at the Commission's June 27 hearing to understand the petitioner's agenda. The slides are replete with examples of developments that Mr. Clark and other proponents personally do not like. The Commission should understand that among these developments are homes that contribute to the ambience of Forest Hills and that are owned and occupied by citizens of Forest Hills. While there is talk of trees and slopes, for many of the small group of activists supporting the overlay, the target is unwanted development. The Zoning Commission should not be a party to this agenda.

Subdivision Data Do Not Support the Need for an Overlay

One need only look at the FHCA filing to understand that it sits on flawed assumptions. The filing states that an "emergency" exists. It refers to "considerable pressures for subdivision" and subdivision activity within "the last few years" that justifies the need for an overlay which will restrict future subdivisions. Commissioner Robert Maudlin and I have represented the Forest Hills district for the past four years and the subdivision picture painted by the filing did not ring familiar. While we had been aware of isolated instances of subdivisions during our term, we observed no widespread pattern of subdivision pushed along by development pressures. We decided to look at the subdivision records in the DC Office of the Surveyor. What we found contradicts the statements in the FHCA filing.

Four lots in Forest Hills have been subdivided during the four and a half year period between January 1998 and August 2002. These subdivisions produced a total of six new lots, or 1.5 new lots per year, in a neighborhood with 647 lots. Five homes currently under construction on the lots that were subdivided will produce a less than one percent increase in the number of homes in Forest Hills. Two of the homes are being built by owner-occupants. Three homes are being built by developers. The subdivision data show that recent subdivision activity in Forest Hills has produced no emergency.

<u>Square</u>	<u>New Lots</u>	<u>Homes Under Construction</u>
2043	1	2
2255	1	0
2258	3	3
2272	<u>1</u>	<u>0</u>
Total	6	5

Commissioner Maudlin and I also looked at FHCA's July 29, 2002, submission of information requested by the Zoning Commission on the history of subdivisions in Forest Hills. FHCA's review of subdivisions over a period of about one hundred years shows clearly that it has been subdivision of very large lots that has had the greatest impact on tree canopy. This information, when combined with the DC Surveyor's records suggests that the real targets of opportunity for zoning protection are very large lots where subdivision and subsequent development could have serious impacts on tree canopy. This conclusion is further reinforced by the lot size analysis conducted by FHNRP's Dr. Karen Foreit which shows that the overlay would cause 61 percent of the homes in Forest Hills to be non-conforming. Dr. Foreit correctly concludes that very large lots present the best targets of opportunity for preserving tree canopy in Forest Hills.

A principal reason for citizen objections to the FHCA overlay is that its broad sweep treats all lots, large and small, as though they have equal importance in preserving Forest Hills. It is highly likely that development of any remaining very large parcels in Forest Hills will be controlled by the Zoning Commission through a PUD or similar instrument of zoning control. This likelihood makes it even more apparent that the FHCA overlay is directed primarily at the resident owners whose homes are located on relatively small parcels in Forest Hills. The overlay's authors understood that the Zoning Commission would control development of large parcels and set their sights on homes on small parcels so that they would be in a position to determine what these homeowners could and could not do with their properties. But none of this changes the fact that tree and slope protection obtained from controls on these small parcels in a highly developed urban neighborhood would be marginal and insignificant in relation to the potential impacts of the few remaining large undeveloped parcels and in relation to the development that has already occurred.

The Overlay Places Unreasonable Burdens on Owner-Residents of Small Parcels

This brings us to the most injurious of the flawed assumptions behind the overlay. This is the assumption that controlling and constraining existing owner-residents from improving their properties will somehow “preserve” Forest Hills. This assumption reveals itself in number of provisions including regulation of tree removal, lot coverage limitations, impervious surface limits, and increased side yard set backs. Inclusion of these provisions shows clearly that the major thrust of the overlay is to constrain and restrict the rights of existing property owners in Forest Hills and to prevent these owners from improving their property in ways that may not be acceptable to overlay proponents. The overlay would do this in spite of the fact that no overriding public interest is served by applying these provisions to small owner occupied lots.

Those familiar with the development of urban neighborhoods understand that the major impact on storm water management comes from the construction of asphalt and concrete streets and sidewalks to handle automobile and foot traffic. Building this infrastructure requires the conversion of large amounts of land from pervious to impervious surfaces. These improvements permanently change the landscape. Further damage is caused by automobile pollutants washing along asphalt and concrete surfaces into the storm water system. In a mature urban neighborhood such as Forest Hills, any gains that could be made by limiting impervious surface coverage on the small lots of existing homeowners are marginal and insignificant in comparison with the major changes that were caused by the construction of streets and sidewalks combined with the use of the automobile. Implementing restrictions on the small landowner may create a sense that a public good is being advanced. But the fact remains that few gains are to be realized in the way of storm water management by restricting a handful of property owners from building a driveway, a walk, a tennis court on their property.

Sheila Hogan of the Casey Tree Foundation testified to the Zoning Commission on September 5, 2002, that most of the tree canopy loss in Washington, DC, over the past 30 years has occurred on private property not on public land. What Ms. Hogan did not say is that most of this loss has been associated with development of very large tracts of private property. Here is yet another instance where the Forest Hills overlay misses the mark. By implementing onerous tree restrictions on existing owners of relatively small parcels, the overlay asks the Zoning Commission to endorse the false assumption that such restrictions will somehow fix problem of loss of tree canopy.

In fact, it is the potential development of very large tracts of property in Forest Hills that presents the greatest potential threat to tree canopy. By aiming “protective” efforts at relatively small owner occupied lots, FHCA not only identifies the wrong target but also runs the risk of distracting attention from the real targets of opportunity, the very large lots whose development could indeed significantly affect tree canopy as well as the character of the Forest Hills neighborhood. If, on the other hand, the goal of FHCA and the small group of activists promoting the overlay is to stop developments they do not like, then the tree provisions become a very powerful and potentially very effective tool in achieving this goal. The Zoning Commission should not be a party to allowing a small group of activists to achieve such a goal.

Just as the overlay's impervious surface restrictions and tree provisions would fall disproportionately on the relatively small lots of owner-residents, the lot occupancy and side yard setbacks are similarly restrictive to this same group of citizens. In each case, overlay proponents have failed to link these restrictions on relatively small lots to any overriding policy objective that could justify their implementation.

The FHCA Overlay Should Be Rejected

The FHCA overlay is seriously flawed and should be rejected by the Zoning Commission. The most serious flaw is that the overlay represents the views of a small group of activists in the Forest Hills community and is not reflective of a broad consensus of neighbors. Since an overlay by definition is a neighborhood specific zoning regulation, the FHCA overlay should be rejected by the Zoning Commission and should not be imposed on neighbors who had no opportunity to participate in its development and who do not agree with its provisions. Even worse, the FHCA has built the overlay on a set of faulty assumptions about impervious surfaces, tree canopy, lot coverage, and setbacks. Implementing this regulation would severely restrict the rights of property owner-residents in Forest Hills without achieving any overriding public benefit. For this reason as well the Zoning Commission should reject the overlay.

In the case of squares 2239, 2244, 2245, and 2246, about 80 percent of owners of lots in these squares petitioned the Commission in June 2002 for an exemption from the overlay. These squares are within my single member district and should be excluded should the Zoning Commission decide to proceed with the overlay.

Sincerely,

A handwritten signature in black ink that reads "Phil Kogan". The signature is written in a cursive, flowing style.

Phil Kogan
Commissioner, ANC 3F01

Robert V. Maudlin
Commissioner - ANC 3F03

Statement
Before the DC Zoning Commission
Text Amendment - Forest Hills Tree and Slope Overlay District
Case No. ZC 02-19
September 30, 2002

Introduction

My name is Robert V. Maudlin and I am ANC Commissioner 3F03. My single member district includes more than half of the households in the Forest Hills Tree and Slope Protection Overlay District (FH/TSPOD).

I am not opposed to the general purpose of the FH/TSPOD to preserve the Forest Hills neighborhoods and I do not believe there is opposition in the community to this purpose. This is a case where the devil is in the details.

I firmly believe that all of the residents of the Forest Hills community should have had the opportunity to review any proposed regulation which affects them before it is presented to the DC government. In cases where a proposal is controversial, a consensus should be reached within the community prior to the filing so that a proposal presented has the support of a significant majority of the community. This did not happen with the FH/TSPOD and it has created a deep division within the community.

Forest Hills is an asset to the city and I have enjoyed living in the community for 45 years. My opposition in this proceeding is to:

1. the method used to get the overlay to the Zoning Commission without public debate,
2. specific provisions of the overlay as filed by the applicant, and
3. the overlay with amendments proposed after the filing.

Recommendation

There is a sharp division in the community regarding the overlay and this division needs to be healed. I recommend that the Zoning Commission send the overlay back to the full community with instruction to reach a consensus on the type and content of the regulation that is needed to preserve the Forest Hills neighborhood.

Background

On July 9, 2001, ANC3F agreed, by consensus, to establish an Ad Hoc Committee to study tree and slope overlays and determine if an overlay would be appropriate in the ANC3F area. The plan was to solicit for people to serve on the Committee and hold a meeting during August 2001 to develop a study plan that would be submitted to the ANC in September. The Committee did not hold its first meeting until October 9, 2001. I served on the Committee from its inception in July 2001. Under the capable leadership of Commissioner Cathy Wiss, Commissioner David Bardin and George Clark the Committee held meetings in October and November 2001 and January, February, and March 2002. These meetings were for the purpose of obtaining information and included meeting with representatives of agencies and groups interested in preserving trees and the staff of the DC Office of Planning.

By early March 2002 the Committee started to review various scenarios for a Forest Hills tree and slope overlay but had not reached any conclusions or a consensus to propose a Forest Hills overlay to ANC3F. Even though there was no defined proposal before the Committee some members started talking about conducting a public meeting on the subject. At that time it began to become apparent that a tree and slope overlay was being developed to not only preserve trees but also to control density.

On March 20, prior to a Committee meeting scheduled for March 25, 2002, Ron Slotkin, a member of the Committee, sent a very insightful e-mail to the members of the Committee outlining his concerns on the change in direction by the Committee. In his general comments Mr. Slotkin said, "Either the group's purposes have shifted or I misunderstand what tree protection is all about." His final comment was prophetic. "This overlay, as proposed, is not good for Forest Hills and will put good people at odds with each other. That is not what community is all about." (Attachment 1) To the best of my knowledge the Committee did not respond to the questions and concerns in Mr. Slotkin's e-mail.

Also in March, information became available to the Committee that a developer had acquired the property at 2900 Albemarle Street, N.W. and was planning to raze the house on the property and construct two new houses. Neighbors of the property were concerned about this and contacted the Committee to see what could be done to stop the proposed subdivision and construction. The Committee, being a committee of ANC3F, did not have authority to take any action on this proposed subdivision and construction.

What went wrong?

The work of the Committee came to a screeching halt when the President of the Forest Hills Citizens Association, a member of the Ad Hoc Committee, hurriedly laid claim to the work the Committee had done on trees. She added to it provisions and numbers in an attempt to control density and cobbled together a so called Forest Hills Tree and Slope Overlay and filed it with the Zoning Commission on April 5, 2002.

The haste with which this cut and paste job was done is reflected in the quality of the document filed. For instance, as to the justification for the 12,000 square foot minimum lot size in the document, Ms. Simons is quote as saying, "We could have picked 17,000." and, "We could have picked 19,000." (The Current, page 27, September 4, 2002)

It is not clear what, if any, action the executive board or members of the Forest Hills Citizens Association took prior to April 5, to authorize the filing of the overlay in the name of the Association. There is no information in the Zoning Commission's files that any action to approve the filing was granted prior to April 5. However, we do know that it was not until eleven days after the filing, on April 16, that the Forest Hills Citizens Association held a meeting to present the overlay to its members and the community. The meeting was held at the Netherlands Embassy which, for security reasons, required advanced reservations to attend. There was no vote at that meeting on the overlay.

A number of residents have complained that the notice announcing the April 16, meeting was misleading since it stated only that the meeting would be for the discussion of a proposal for a tree and slope protection overlay in Forest Hills and made no reference to the fact that it had been filed and included zoning changes in lot size and set backs in the overlay. (Exhibit No. 144)

The community was kept in the dark by the fact that a general distribution of the text of the overlay was not made to the residents of the overlay area until April 29. (Exhibit No. 144)

On May 13, a second public meeting was held, and again there was no vote by the members of Forest Hills Citizens Association on the overlay.

The "mushroom treatment" of the residents of the overlay area could only last so long and when the community discovered after April 29, what was in the overlay, opposition intensified in the area. The Forest Hills Citizens Association heard the opposition at the April 16, and May 13, meetings and realized that they had gotten it wrong in their April 5, filing. The Ad Hoc Committee went to work and tinkered with the overlay in an attempt to quiet the raising objections. But this didn't work because, as they say, "You can't make a silk purse out of a sow's ear." The basic concepts of the overlay were so seriously flawed there was no way to make it a workable regulation.

ANC3F minority's opposition

On June 17, 2002 after receiving a report from its Ad Hoc Committee ANC3F voted 4-2-1 to adopt a resolution supporting the overlay with a series of proposed amendments. Commissioner Phil Kogan and I on June 18, filed an ANC minority report. (Exhibit No. 82) We represent more than 95 percent of the households in the overlay district. Our report included a section by section analysis of the overlay and listed other general concerns and questions we had regarding the overlay.

The following conclusions were reached in our report.

1. The process was fatally flawed. The FHCA petition was filed with the Office of Zoning before it had been made available to the community for review and comment.
2. ANC3F's Ad Hoc Committee and ANC3F found the overlay to be deficient and recommended revision of the overlay.
3. Even with the revisions recommended by the Ad Hoc Committee and ANC3F the provisions of the overlay are grossly defective.
4. Even with the revisions recommended by the Ad Hoc Committee and ANC3F the overlay does not support the stated purpose to preserve the natural topography and mature trees to the maximum extent feasible.
5. The overlay does not provide a framework for the residents of the area to consider ways to protect the assets of the community.
6. There is no consensus by the residents of the overlay area and they are sharply divided on the overlay issue.

Commissioner Kogan and I recommended in our minority report that the DC Zoning Commission reject the Forest Hills Tree and Slope Overlay District and return the issue to the community for consideration. This recommendation still stands.

Community opposition to the overlay

Since the action by ANC3F on the overlay on June 17, 2002, and the availability of more information on the overlay, opposition in the community has grown. The proponents of the overlay appear to be in a state of denial that there is opposition to the overlay even with the proposed amendments. Ms. Simons, President of the Forest Hills Citizens Association, in her August 26, letter to the Zoning Commission stated, "The Forest Hills community is overwhelmingly in favor of the overlay." (Exhibit No. 195) The fact is, that as of September 3, the Zoning Commission files included communications from 150 households in the overlay area that are opposed to the overlay and only 105 households that support the overlay. The names and address of these households are attached. (Attachments 2 and 3)

A number of the residents living in the overlay area have organized themselves into the, Forest Hills Neighbors for Responsible Preservation. Representatives of this group met with Ms. Simons, President of the Forest Hills Citizens Association, and other proponents of the overlay the evening of August 26. This is the same day that she sent the letter mentioned above to the Zoning Commission in which she stated, "As things presently stand, no one knows the identity of

any member of 'FHNRP,' or even whether it actually exists." (Exhibit No. 195)

Tree v. Density overlay

A primary and basic problem with the overlay is the attempt to deal with two separate and distinct issues, trees and density, in one regulation. There is no information in this proceeding to justify that an area to be included in a tree overlay would or should coincide with an area covered by a density overlay. The overlay, even with the proposed amendments, does not do an adequate job in dealing with either trees or density.

The Forest Hills community needs to have the opportunity to decide the issues that should be addressed and draft an overlay that addresses trees or density. If a decision is reached that both issues need to be addressed then two overlays should be drafted for consideration by the Zoning Commission.

Tree issues

Regarding the tree portion of the overlay, Dr. James R. Foreit filed testimony for the September 30, hearing in which he very ably demonstrates that the key tree removal provisions in section 1519.1 are seriously flawed. I am pleased to adopt his analysis and the conclusions in this statement.

A major defect in the tree overlay is its negative approach by providing for only what cannot be done in removing trees. There are no positive provisions for adding to the tree canopy in Forest Hills other than in a subsection in 1520.1(E)1 which provides that a proposal for replacement trees may be included in a request for a special exception. A well-crafted overlay regulation should be self administering and provide for the replacement of trees removed or damaged by construction without filing an application with the Board of Zoning Adjustment (BZA) for a special exception.

Slope issues

It needs to be noted that even though the word "slope" is used in the title of section 1511 of the Zoning Regulations, the section does not include any restrictions or limitations on building on a slope. Z.C. Order No. 863, (Text and Map Amendments - Chain Bridge Road/University Terrace - TSP Overlay District) points out that the Office of Planning argued that a substantial technical justification would be needed to consider additional ridged restrictions on slopes in a public hearing. OP also pointed out that sloping sites and hilltop locations often are highly desired home sites, and can be suitably managed to limit erosion and runoff subject to the approval of the Storm Water Management Division of DCRA. This is true in the Forest Hills area.

There has not been any justification presented in this proceeding, much less substantial technical justification, to support or justify a slope provision. The applicant, in an amendment to section 1519.5, is proposing professional certification for plans pertaining to lots with a slope steeper than 25 percent or with “highly erodible soil” as defined by the Natural Resource Conservation Service of the U. S. Department of Agriculture.

The applicant has not produced a clear definition of “highly erodible soil.” There is an erodibility index and 8 or more is defined as “highly erodible soil.” However, the erodibility of land as defined by the Natural Resources Conservation Service has to do with water and wind erodibility of agriculture lands and long-term productivity of lands and not with the construction of houses in urban areas.

There has been no showing that there is soil in Forest Hills with an erodibility index of 8 or more. However, the clear reading of section 1519.5, with proposed amendments, provides that every building permit application will need to include a certification that the lot does not have “highly erodible soil” or file a professional certification that the plan will follow best geo-technical, structural engineering and arboreal practices. Section 1520.3 states that the certification must be by a geo-technic engineer, structural engineer and civil engineer, each licensed and qualified in the District of Columbia and certified arborist.

Construction on slopes and highly erodible soil, if it exists, is a technical issue that should not be included in a zoning regulation but an issue that should be addressed in the building code and the technical building permit application review process

It should be noted that there are a substantial number of houses in the in the Forest Hills area that are constructed on slopes of 25 percent and greater that have been there for years.

Density issues

The lot size, side yard, and lot coverage provisions of the overlay are failed attempts to control density. If density is the issue then the regulations need to also address building height, FAR and similar restrictions. Dr. Karen G. Fleischman Foreit, in her statement on minimum lot size for the September 30, hearing, demonstrates that any increase in the minimum lot size of zoned R-1-A lots will not protect the existing character of the neighborhood.

Special Exceptions, section 1520 with proposed amendments

This section provides that the BZA review of an application for a special exception must include a public hearing and specifies, in detail, what must be considered and how it is considered by the BZA. Section 1520.1(A) provides, “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.” The drafters of this provision need to explain what it means, why it is

necessary and how it is to be applied by the BZA.

Section 1520.1(D) authorizes the BZA to impose requirements as to “design and appearance.” Does this mean that the BZA is to become the czar of design and appearance in Forest Hills? Does this mean that all design in Forest Hills will now come off the same drawing board? The character of Forest Hills today includes diversity in the architecture, style and size of homes.

Section 1520.1(D) also authorizes “other requirements.” This gives the BZA unlimited authority to control construction including additions by residents in Forest Hills. This is not responsible regulation and certainly does not belong in the zoning regulations. This is not in the interest of Forest Hills or the city.

Where do we go from here?

The premature filing of this proposal with the Zoning Commission has split the community into “proponents” and “opponents.” This is not opponents and proponents to maintaining Forest Hills’ character but opponents and proponents to the overlay as filed and the overlay with proposed amendments. A divided community is the wrong place to implement a zoning regulation.

This issue should to be sent back to the community so that a consensus can be reached on what is needed and the best way to achieve the requirements of the community. These decisions can and should be made by the Forest Hills community with the technical assistance of the Office of Planning.

Attachments

Attachment 1 Ron Slotkin’s March 25, 2002 e-mail to the Ad Hoc Committee.

Attachment 2 List of 150 households filing with the Zoning Commission in opposition to the overlay.

Attachment 3 List of 105 households filing with the Zoning Commission in support of the overlay

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Commissioner, ANC3F03
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phone: 202 363-5204
E-mail: maudlin@alum.mit.edu

Subject: Re: March 25 meeting...my thoughts on the matter.
Date: Wed, 20 Mar 2002 13:35:30 -0500
From: Slotkin.Ron@epamail.epa.gov
To: "Clark, George R." <GClark@ReedSmith.com>
CC: David Bardin <bardind@arentfox.com>, Joan Benesch <benesch22@aol.com>, Matt Berres <berres@potomac.org>, Dennis Blumer <dblumer@gwu.edu>, Emily Baker <elb4@erols.com>, "Clark, George" <GClark@ReedSmith.com>, Guetta Mezzettii <gmezz@bellatlantic.net>, George Clark <grclark@erols.com>, Gary Stevens <gstevens@saltmanandstevens.com>, Robert Maudlin <maudlin@alum.mit.edu>, Ginger Worthington <nutrikin@sprynet.com>, Tansy Blumer <olmdhb@aol.com>, Peter Halle <phalle@morganlewis.com>, Cathy Wiss <schumannwiss@juno.com>, Stephen Stern <stephenstern@earthlink.net>

03.020.02

Note to the Tree and Slope Protection Committee (TSP)

My schedule will prevent me from attending the meeting on the 25th, so I am providing my thoughts in this manner. You have to know that I believe in the values of the TSP committee and applaud the effort to date. I hope that you see my contributions as useful. However I now believe that moving to a public meeting at this time with the draft overlay is premature. As creative and all encompassing as the draft now is, its present construction is a danger to the very purposes for which the committee was created to do.

General Comments

The changes to the city template, to put it bluntly, form an unreasonable collection of prohibitions that limit the viability of new development of any kind on large treed parcels including the building or rebuilding of large(r) houses on smaller lots with trees or not. Either the group's purposes have shifted or I misunderstand what tree protection is all about. In either case, the overlay will not be realized because the many landholders of undeveloped and under-developed parcels will see their return on investment diminished. They will remove themselves quickly from this process, making Swiss cheese out of the overlay. The current effort will have accomplished an unintended purpose, making new champions for the City's Tree Bill in the process.

We had the opportunity during the few months of fact finding to hear knowledgeable individuals,

even the first Tree Bill had lessons to offer as does the current draft but I see none of that knowledge reflected here. The added restrictive provisions are not based on sound scientific principles, fact-finding, ground survey, or even that of good forest management practices. Wanting to protect trees doesn't mean just preventing them from being cut down or pulling numbers out of your hat to cover as many trees as you can. We never identified what trees are worth protecting or what size shouldn't be cut. Or how many trees make Forest Hills look and feel like Forest Hills. Or what to do with tree-clumps (trees growing so close together that the legal taking of one requires the taking of many, just for reasons of aesthetics), or multi-stemmed trees, softwoods or hardwoods, for example. I would bet that the majority of the trees on private property in Forest Hills were planted by the landowners at some time or another. Did we determine that they are all in the best places and that the best species were planted? And regarding the benefits trees may yield or the problem they can cause a simple provision for replanting would be a vast improvement. Such a provision must be added to keep the larger parcel owners in the game, unless the purpose of the overlay is to stop development.

I cannot see City Planning positively sponsoring the current proposa because it is unenforceable and would cause excess administrative burdens on the city. Forget calling it an overlay it's an association covenant and of the worse kind which doesn't belong in its current form overlaying existing development. I've seen worse and have written better. Better would be based on facts other than that a few parcels have been denuded. In at least one on Chesterfield, the owner would have had clear and undeniable hardship. Even if he were told to leave the perimeter trees as part of his special exception, an arborist would have been hard pressed to save the majority of them for a number of reasons. Here again is a perfect case for replanting provisions.

I would vote for the City Tree Bill first, only because it takes a more rational approach to tree protection.

Specific Comments

Here are my other thoughts on the Overlay's construction.

1. Time Element

There appears to be no time element. Does the tree cutting restriction mean forever on that parcel no matter how many times the construction happens on the property or changes ownership? It cannot and the result each time a

permit is construction permit is requested or the land sold more trees can be removed and not replaced. Even within the proposed legal limit, this does not help the purposes of maintaining "Forest" Hills community character.

2. Tree Replacement

Regarding the provision to allow an owner to remove an unhealthy or unsafe tree, why ignore planting replacements? Here the overlay is silent. If what was said at the last meeting, by David and Barbara " the adoption of the overlay would preclude the effect of an adopted City Tree Bill in Forest Hills." then certainly a replanting provision would make great sense. But then some of the proposed restrictions would have to be eased or eliminated.

3. Unsafe Condition and Other Tree Care Professionals

There is too much left for interpretation regarding the term "unsafe condition" and "or other tree care professional." Trees, that are growing on steep slopes with poor, unstable soils are subject to undermining, insulted by lawn care management professionals practices and de-icing salt runoff, would be considered unsafe and unworthy of keeping as compare to another better located and well cared for tree. And how does one keep track of all the trees that an arborist or other tree care professionals deem a necessity to remove? And if the arborist says to the landowner your tree(s), four or five of them, will last another tens years more or less. Is that cause to allow the landowner the right to remove them? Or should the adjacent landowner get a second opinion before reporting his neighbor to the code officer. The overlay does not help here either. Again without a replanting provision the arborist can make a good bit of money either way. And as for those tree care professionals, don't forget about the ones that work for the power or cable company. They are very skilled in removing obstructions.

4. Tree Removal

Item (e) in section 1514 makes no sense as written in the last draft. Even if it was written clearly, item (d) and (e) together set up great confusion as to just how many inches can be cut? I would remove Item (e) because if I read this correctly far more trees can be removed because someone made a mistake in addition or caliper measurement. Here again the issue of compliance is lost to field interpretation. The overlay should also do well to pit neighbor against neighbor on these restrictions alone.

5. Ground Coverage

The ground coverage restriction in and of itself can be useful but rather than lot coverage alone it should also be concerned with grading, erosion control, what is planted, the amount of lawn vs. other runoff restraining groundcover. Coverage restrictions are good but not together with tree cutting limitations. Add a replacement provision together with the coverage restriction and you will accomplish great results.

6. Provision for Non Residential Land Uses

The original overlay as adopted was designed for residential land uses. What happens with other land uses that are allowed by right in residential areas, such as institutional uses? The impervious surface coverage is too restrictive to accommodate uses by right. That is another reason the Planning Department should or likely would refuse support.

7. Lot Size

Larger parcels have the opportunity to detain water runoff, certainly lot coverage and water detention/retention go together, no mention of this in the overlay.

The 10K lot size is acceptable, but what happens if the large parcel holder proposes a PUD (on a former embassy property perhaps), one that uses zero lot line separation and common spaces. Certainly lot coverage would not be an issue but far more than three trees would disappear. The overlay is absent on this one. A PUD would be the best thing for the large parcels. At least here the city would have a greater degree of control and the community can maximize the forest coverage and minimize community impacts.

8. Purpose Statement

The purpose statement "Preserve the natural topography and mature trees to the maximum extent feasible in residential Forest Hills neighborhoods;" is inconsistent with the 4" caliper threshold for tree protection. I know I said that the smaller stock represents the mature trees of tomorrow, but these are also the ones most easily removed and replaced elsewhere with encouragement. I know Barbara would agree with this.

9. Exclusive Development Trigger

Finally, this is all still tied to development. For example, even if I plan no construction, I may just want sunlight to make my grass grow and the trees exposed root systems have made the yard impossible to safely run my lawn mower. So I have seven or more trees removed. Two of them greater than the

magic number, I needed no permit, no permission, and could not be hindered. The reason I cannot be stopped is because I have no plans to build (the same issue exists with the City Tree Bill, except it is place great belief in education and educated action). Five years later, my lawn is beautiful and yes the neighbors complain every so often that the runoff from my property causes problems, I sell for a great price, the new owner has nothing in his way of subdividing and building.

I am sure I have not caught all the holes, but it is a start.

As I mentioned, I will be on travel March 25th for the week and again the end of the following month. I am still hoping to get the enlarged area parcel map before I leave. I will try to catch up when I get back.

I've come to realize that change is good when it is planned and people work together. This overlay, as proposed, is not good for Forest Hills and will put good people at odds with each other. That is not what community is all about.

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LAST_NAME	FIRST_NAME	ADDRESS
Aburdene	E. F.	4615 Linnean Avenue, N.W.
Alisuag	Corazon	4545 28th Street, N. W.
Ansola	Juan Jose F.	4843 Linnean Avenue, N.W.
Aponte	Maria D. C.	4201 Linnean Avenue, N. W.
Axelrod	Robert A.	2610 Tilden Place, N. W.
Barnes	Boisey O. & B. M.	4110 Linnean Avenue, N.W.
Barth	H. J. & M. G.	2800 Upton Street, N.W.
Baughman	Mark	4835 Linnean Avenue, N.W.
Baylinson	Ilene	4717 Linnean Avenue, N.W.
Bell	Robert B. & Susan K.	2945 Albemarle Street, N. W.
Berenson	Michael & C. G.	4812 30th Street, N.W.
Beyer	Andrew R.	4237 Lenore Lane, N. W.
Blake	Anita	5127 33rd Street, N.W.
Blaylock	Dan M. & Joanne J.	4229 Lenore Lane, N. W.
Bradford	Martina L.	4600 Broad Branch Road, N.W.
Brown	Arthur	4831 Linnean Avenue, N.W.
Brown Family Res. Trust		3005 Audubon Terrace, N.W.
Charap	Joshua David	2600 Tilden Place, N.W.
Chetrit	Alain A. & C. C.	2814 Upton Street, N.W.
Clark	Charles W.	2922 Ellicott Terrace, N.W.
Clark	Donald	3010 Ellicott Street, N.W.
Cofer	Paul C.	2827 Ellicott Street, N.W.
Coll	Robert W.	2905 Davenport Street, N.W.
Colton	Roberta & D. J.	4209 Linnean Avenue, N.W.
Corkran, Jr.	Mary & M. Blair	4213 Lenore Lane, N.W.
Dawson	Rhett B. & Mimi W.	4207 Linnean Avenue, N. W.
Deoudes	Katherine G.	3131 Davenport Street, N.W.
DMH Family Trust		3400 Broad Branch Terrace, N.W.
Dosovitz	Ira	4705 29th Place, N.W.
Dugan	Henry & Ann	2936 Brandywine Street, N. W.
Embassy of the Netherlands		2501 Upton Street, N.W.
Embassy of the PRC		2600 Tilden Street, N.W.
Epstein	Karen V.	5195 Linnean Terace, N.W.
Evans	Dorsey	2840 Davenport Street, N.W.
Faizi	Hilda	4535 30th Street, N. W.
Falk	David	4921 Linnean Avenue, N.W.
Feinstein	Barney S. H. & P.	2824 Ellicott Street, N.W.
Feldman	Howard J. & C. R.	4455 29th Street, N.W.
Foer	Albert	2919 Ellicott Street, N.W.
Foreit	Jamea R. & Karen G.	4140 Linnean Avenue, N.W.
Fowler	Richard H.	4536 29th Street, N. W.
Fox	Eric R.	3056 Ellicott Street, N.W.
Frenkel	O.	3054 Davenport Street, N.W.
Friedman	Paul	4909 Linnean Avenue, N.W.
Gerson	Allan & Joan N.	4221 Lenore Lane, N. W.
Gibbon	Kathleen M.	5123 Linnean Avenue, N.W.
Goldman	Gerald & Gree S.	4231 Lenore Lane, N. W.
Goldman	Thomas C.	4120 Linnean Avenue, N. W.
Goldstein	Marjorie K.	4421 Linnean Avenue, N. W.
Gordon	Jared H.	5141 34th Street, N.W.
Gottfried	Philip & M. S.	2899 Audubon Terrace, N. W.
Grand	Stanley & Mabelle	4408 29th Street, N.W.
Green	Susan	3225 Ellicott Street, N.W.
Greenwald	Alan & Lynne	4022 Linnean Avenue, N.W.
Gurenko	Eugene & Katharina	3001 Audubon Terrace, N.W.
Hager	Glen D.	4620 30th Street, N.W.
Harmon	Gail M. & John W.	4225 Lenore Lane, N. W.

LAST NAME	FIRST NAME	ADDRESS
Hillwood Museum Foundation		4155 Linnean Avenue, N. W.
Hirshfeld	Max S. & Nina M.	3100 Brandywine Street, N.W.
Horvitz	Wayne L.	4821 Linnean Avenue, N.W.
Huff	J. R.	2913 Brandywine Street, N.W.
Israel	Gary M. & Rebecca K.	3240 Fessenden Street, N.W.
Jones	Michael A.	2605 Tilden Place, N.W.
Kambhu	Tirachai	2949 Albemarle Street, N. W.
Kaplan	Carol	3044 Davenport Street, N.W.
Keefe	Marilyn	3405 Garrison Street, N.W.
Kelly, Jr.	William C.	4205 Lenore Lane, N. W.
Kempner	Jonathan L.	4545 Linnean Avenue, N. W.
Knight	John	3403 Fessenden Street, N. W.
Kopsidas	John & Marion	2739 Chesapeake Street, N.W.
Koteen	Bernard & Sherley	2604 Tilden Place, N. W.
Krasne	Robert	3245 Ellicott Street, N.W.
Kurstin	William & Sally	2912 Ellicott Terrace, N.W.
Lawson	John B.	2829 Tilden Street, N.W.
Lay	Michael R.	3222 Broad Branch Terrace, N.W.
Lenore Partnership		2610 Tilden Place, N. W.
Levin	Edward R.	3229 Ellicott Street, N.W.
Levy	Irwin A.	3307 Fessenden Street, N.W.
Levy	Arnold	3301 Fessenden Street, N.W.
Lipnick	M. M.	2915 Ellicott Street, N.W.
Lorman	A.	2819 Brandywine Street, N.W.
Ludwig	Steve	3104 Fessenden Street, N.W.
Lyman	Joseph J. & Sylvia	2941 Brandywine Street, N.W.
Magher	G. R.	2901 Ellicott Terrace, N.W.
Mancuso	Joseph J.	4555 Linnean Avenue, N. W.
Maudlin	Robert	2906 Ellicott Terrace, N.W.
McAninch	William T. & D. V.	3010 Albemarle Street, N.W.
Miller	Margaret I.	4101 Linnean Avenue, N.W.
Miller, Jr.	R. L.	4158 Linnean Avenue, N.W.
Montgomery	James L. & Isabella	2744 Brandywine Street, N. W.
Nadler	Seymour I.	4820 Linnean Avenue, N.W.
Naftalin	Micah H.	5213 Linnean Avenue, N.W.
Njoroge	Patrick	4955 Linnean Avenue, N.W.
Nordlinger	Bernard	5129 Linnean Avenue, N.W.
O'Connor	Nicole	5214 Linnean Avenue, N.W.
Osuna	Ramon G.	4627 30th Street, N.W.
Ottinger	Betty Ann	4014 Linnean Avenue, N. W.
Palmer	John S. & D.	4150 Linnean Avenue, N.W.
Patten	Thomas L. & Sherry	4205 Linnean Avenue, N.W.
Penski	Judith	2900 Fessenden Street, N.W.
Radin	Harley W.	2900 Ellicott Terrace, N.W.
Rauh	Carl S.	4500 28th Street, N. W.
Reed	David A.	4845 Linean Avenue, N. W.
Republic Indonesia		2700 Tilden Street, N.W.
Republic Zaire		4001 Linnean Avenue, N.W.
Riley	James P.	4926 30th Street, N.W.
Rosan	Richard M.	2950 Davenport Street, N.W.
Ross	Leslie A.	2747 Brandywine Street, N.W.
Rubenstein	L.	4915 Linnean Avenue, N.W.
Rupp	John P.	3108 Fessenden Street, N.W.
Schildkraut	Marc G.	5151 33rd Street, N.W.
Schmidt	Christine	2965 Albemarle Street, N. W.
Schnaper	Lillyan	5191 Linnean Terrace, N.W.
Schochet	Kenneth Barry	3060 Ellicott Street, N.W.

LAST NAME	FIRST NAME	ADDRESS
Searing	Marjory E.	4012 Linnean Avenue, N.W.
Seeherman	S. Sloame & E.	4508 28th Street, N. W.
Shapiro	Daniel B.	5176 Linnean Terrace, N.W.
Shatz	Paul M. & Deane L.	4243 Lenore Lane, N. W.
Sheldon	Christopher & Ann	4024 Linnean Avenue, N.W.
Sieminski	A. E. & L. H.	2930 Brandywine Street, N. W.
Sieverts	Frank & Suzanne	2908 Brandywine Street, N. W.
Simone	David & Louise P.	2700 Upton Street, N.W.
Sislen	Maurice A. & A. H.	4217 Lenore Lane, N. W.
SLR Group		5148 Linnean Terrace, N.W.
Smith	Larry D.	4808 30th Stret, N.W.
Society of Eucharist		2907 Ellicott Terrace, N.W.
Sonnenreich	Linda B.	4720 Linnean Avenue, N.W.
Stevens	Michael L.	2801 Brandywine Street, N.W.
Stevenson	Andrew	2955 Albemarle Street, N. W.
Stokes	Ralph M.	5124 33rd Street, N.W.
Stuessel	Christine	4614 30th Street, N.W.
Swedarsky	Robert H.	2800 Chesterfield Place, N.W.
Szabo	Robert F.	2828 Upton Street, N.W.
Szente	Daniel & Mona M.	4100 Linnean Avenue, N.W.
Szulc	Marianne L.	4515 29th Street, N. W.
Tiziou	Jacques	5152 Linnean Terrace, N.W.
Tomasko	Robert M.	4601 Linnean Avenue, N.W.
Van der Kemp	Frank	4610 30th Street, N.W.
Vinnik	Jeffrey	4611 29th Place, N.W.
Vivens	Solanges	4928 30th Street, N.W.
Walters	Paul J.	5117 Linnean Avenue, N.W.
Warner	George E.	2809 Chesterfield Place, N.W.
Watts	Warren R.	3054 Harrison Street, N.W.
Williams	Betty A.	5124 Linnean Terrace, N.W.
Wilson	David G.	2510 Upton Street, N.W.
Yergin	Daniel	2959 Davenport Street, N.W.
Young	J.	4530 Linnean Avenue, N. W.
Zax	Leonard & Helen	4511 28th Street, N. W.
Zeigler	Jacob H & J. F.	2936 Albemarle Street, N.W.
Zweber	Don	4010 Linnean Avenue, N.W.

LAST NAME	FIRST NAME	ADDRESS
Abel	Leonard I. & H. S.	2915 Albemarle Street, N. W.
Aburdene	E. F.	4615 Linnean Avenue, N.W.
Ain	Sanford K.	2916 Ellicott Terrace, N.W.
Applebaum	Harvey M. & E. B.	2912 Albemarle Street, N.W.
Arendal	P. S. & R.S.	3120 Appliton Street, N.W.
Ashley	Thomas L.	2815 Albemarle Street, N. W.
Attaway	Paquita H.	3127 Appleton Street, N.W.
Augustin	Gunter J.	4018 Linnean Avenue, N.W.
Bailey	Charles W.	3001 Albemarle Street, N.W.
Baker	D. James & Emily L.	4531 28th Street, N. W.
Banks	Robert & Eslyn	4838 Broad Branch Road, N.W.
Barton	D. M.	4933 30th Place, N.W.
Bassin	Jules	2891 Audubon Terrace, N. W.
Benesch	Joan S.	4444 Linnean Avenue, N. W.
Berendt	R.	4701 32nd Street, N.W.
Berlin	M.	4526 30th Street, N.W.
Bernthal	Frederick M.	4936 30th Place, N.W.
Berry	Nicholas O. & Janet G.	4534 29th Street, N. W.
Blatt	David S. & Lisa S.	2836 Albemarle Street, N. W.
Blumer	Dennis and Alice	2801 Davenport Street, N.W.
Brown	Philip S. & Mary W.	3033 Albemarle Street, N.W.
Buresh	Jan	2753 Brandywine Street, N.W.
Casserly	James L.	2839 Allendale Place, N. W.
Chopra	Ram Kumar & Marie	2860 Albemarle Street, N. W.
Clark	G. R. & M. K.	4525 28th Street, N. W.
Coburn	Leonard & E. B.	2828 Albemarle Street, N. W.
Cohen	D., J.	3209 Broad Branch Terrace, N.W.
Correnty	Patrick	3009 Albemarle Street, N.W.
Councill	Brent J.	2901 Ellicott Street, N.W.
Crudgington	S. M. N.	4501 30th Street, N. W.
de Matons	J. G.	5000 34th Street, N. W.
DeMarco	John F.	4725 Linnean Avenue, N.W.
Elfin	Mel & Margery	4515 30th Street, N. W.
Essex	Michael & Jeeva	2813 Albemarle Street, N. W.
Evans	Dorsey	2840 Davenport Street, N.W.
Feldman	Charles	2855 Davenport Street, N.W.
Finkelstein	Joel	2816 Brandywine Street, N. W.
Fowler	Richard H.	4536 29th Street, N. W.
Gellert	Charles L.	3101 Chesapeake Street, N.W.
Gerken	Egbert A.	2820 Brandywine Street, N. W.
Goldson	Alfred L. & Amy R.	4015 28th Place, N.W.
Gordon	Gene	2825 Albemarle Stret, N. W.
Graff	Robert C.	4435 29th Street, N. W.
Greenberg	Eldon & Emily	4435 Linnean Avenue, N. W.
Grinstead	D. J.	2964 Chesapeake Street, N.W.
Grossberg	Freserick	5105 34th Street, N.W.
Hart	Peter D.	5019 Linnean Avenue, N.W.
Hartman	Sanford L.	2810 Brandywine Street, N. W.
Hathaway	Dale E.	2831 Ellicott Street, N.W.
Heath	Daniel & Jane E. A.	3011 Gates Road, N.W.
Herron, Jr.	J. Brendan & Karen K.	2901 Albemarle Street, N. W.
Hoge	Christopher & S. B.	2911 Albemarle Street, N. W.
Hostetler	James S. & Z. F.	3011 Albemarle Street, N.W.
Jacobsen	John	2938 Albemarle Street, N.W.
Kanakia	Hemant R.	4924 30th Place, N.W.
Katz	Kenneth S.	3411 Fessenden Street, N. W.
Katzow	J.	2820 Upton Street, N.W.

LAST NAME	FIRST NAME	ADDRESS
Khadr	Ali Mahmoud	4427 Linnean Avenue, N. W.
Kronheimm	Tillie S.	3120 Chesapeake Street, N.W.
Krucoff	Neal E. & Ella L.	2870 Upton Street, N.W.
Lardy	Nicholas R. Barbara D.	2811 Albemarle Street, N. W.
Little	George E. & Bethany	2844 Albemarle Street, N. W.
Low	Stephen & Helen C.	2855 Tilden Street, N. W.
Malloy	Hunter E. & C.	4402 29th Street, N.W.
Marcuss	Stanley J.	4616 29th Place, N.W.
Mayer	Arnold	4609 30th Street, N.W.
McCrea	Michael M.	4535 29th Street, N. W.
McGrath, Jr.	Dorn C.	2710 Brandywine Street, N. W.
McHale	James M.	4945 30th Place, N.W.
McManus	Joseph & Judith	4530 29th Street, N. W.
Melmed	Arthur S.	4727 30th Street, N.W.
Miller	Charles A. & Jeanette S.	2841 Tilden Street, N.W.
Mulhauser	Joel	3052 Garrison Street, N.W.
O'Hara	Mary lee & Martin	3005 Albemarle Street, N.W.
Oberdorfer	D.	4630 30th Street, N.W.
Orlin	Andrew	3015 Albemarle Street, N.W.
Paster	Howard G.	4935 Linnean Avenue, N.W.
Pauli	John Eldred & K.	2939 Albemarle Street, N. W.
Perrone	J. F. Baringer & M.	4516 30th Street, N.W.
Petrou	Basil N. & Karen	2853 Allendale Place, N. W.
Rachlin	Jack	2919 Brandywine Street, N.W.
Reese	Mary E.	3201 Broad Branch Terrace, N.W.
Reznek	Daniel & B. M.	2852 Albemarle Street, N. W.
Richards	Cory L.	3409 Fessenden Street, N. W.
Rollins	John	2947 Davenport Street, N.W.
Rosenthal	Barry	3033 Davenport Street, N.W.
Roth	Gilbert L.	2906 Ellicott Street, N.W.
Scheider	Ann I.	3319 Fessenden Street, N.W.
Shadoan	G. W. & ^ J. F.	4445 29th Street, N. W.
Shambaugh, Jr.	Philip	2830 Upton Street, N. W.
Shanks	Margaret M. & R. B.	3002 Albemarle Street, N.W.
Shimberg	Steven J.	4634 30th Street, N.W.
Silverberg	Kiyoe O.	2741 Brandywine Street, N.W.
Simons	Morton L.	5025 Linnean Avenue, N.W.
Smyser	William R.	2730 Chesapeake Street, N.W.
Solomon	Lillian Cohen	2935 Albemarle Stret, N. W.
Stellar	Charles W.	2932 Albemarle Street, N.W.
Stevens	Gary G.	3100 Chesapeake Street, N.W.
Stewart	Bruce	3060 Garrison Street, N.W.
Stoel Jr.	Thomas B. & C. F.	4404 29th Street, N.W.
Swanson	Linda E.	4629 30th Street, N.W.
Swerdlow	Joel	3045 Albemarle Street, N.W.
Walworth	Andrew B. & Alex M.	4420 29th Street, N.W.
Weinberger	Daniel	3116 Davenport Street, N.W.
Zon	Calvin G.	3424 Garrison Street, N. W.

This testimony was prepared by Dr. Karen G. Fleischman Foreit. Dr. Foreit has a Ph.D. in experimental design from the University of Washington and has taught at the undergraduate and graduate levels at Brown University, Brooklyn College of the City University of New York, and the University of Texas at Arlington. Since 1978, she has been working in international development, focusing on strategic planning, program design and evaluation. She has authored more than two dozen papers and monographs in refereed professional journals and provides technical assistance and training to a wide range of counterparts from government ministries to civil society organizations.

Dr. Foreit lives with her husband, Dr. James Foreit, at 4140 Linnean Avenue NW, inside the proposed overlay district. When they purchased the property in 1992, it had never been developed. The lot slopes steeply from the back to the street. At the time of their purchase, it was covered in weeds and poison ivy; despite the undergrowth, run-off drained onto the street after every heavy rain. The Foreits and their architect spent two years designing their home. They reduced its footprint and sited it to preserve the maximum number of trees, and landscaped to eliminate run-off. They used permeable surfaces wherever possible and have planted more than 20 trees including drought-resistant native species such as tupelo, persimmon, witch hazel, and sweet gum.

.....

This testimony supports the Office of Planning's recommendation to "Delete the proposed minimum lot size of 12,000 square feet in §1519.2 and maintain the minimum lot area of the base zone of 7,500 square feet."¹ The testimony will show that the FHCA proposal

1. is based on faulty analysis,
2. will change rather than protect the existing character of the neighborhood, and
3. fails to address the major potential for subdivision.

Zoning changes to developed areas, such as the proposed Tree and Slope Protection (TSP) overlay, are meant to protect the existing character of the neighborhood. There is no dispute that Forest hills is heavily developed. There are 762 registered lots in the proposed overlay district, of which 90 percent are developed²; if we exclude the 24 vacant lots owned by the federal and DC governments, 93 percent of the remaining lots are developed. Put another way: lots in the proposed overlay district which are not government-owned cover 14.19 million square feet (nearly 326 acres), of which 12.93 million square feet or 91 percent is developed. So whether we look at individual lots or at total area, more than 90 percent of the overlay district is already developed.

To determine whether a proposed zoning change would protect or alter the existing character of the neighborhood, we must first define what "existing character" means. Unfortunately, there is no statistical definition in the zoning code.

The definition we propose is based on whether an existing lot would be compliant or non-compliant with the proposed zoning change. While the zoning change would not require tearing down houses which become non-compliant as a result of the change, should the owner of a newly non-compliant lot wish to re-build exactly the same home in the future that he/she occupies now, he/she would be forced to seek an exemption from the BZA to do so.

What percentage of lots should be compliant with the proposed zoning change in order to preserve the existing character of the neighborhood? It seems reasonable to assure that at least half of the existing lots should still be compliant under the new zoning, otherwise the zoning change would alter rather than

¹ Andrew Altman memo from the Office of Planning to the Zoning Commission, dated June 17, 2002, p. 1.

² This and all following analyses are based on the listing compiled by Ms. Ginger Worthington for ANC 3F.

protect the neighborhood's character. How much more than 50 percent of the existing lots should be compliant – 60 percent? 75 percent? 90 percent?

Faulty analysis

The petitioner and their supporters have proffered a variety of analyses attempting to justify increasing the minimum size of zoned R-1A lots from 7,500 to 12,000 square feet. All of these analyses are statistically flawed, and the Office of Planning correctly rejected the proposed lot size increase.

In testimony on June 27, 2002, and again on September 5, the petitioner and proponents of the proposed overlay referred to the median lot size of R-1A lots. It is interesting to note the disagreement among their statements as to what the median lot size is – varying between somewhat over 9,000 to over 10,000 square feet³. The median – that point where 50 percent of the lots are smaller and 50 percent are larger – is less than 12,000 square feet. Furthermore, *adopting the median lot size as the new minimum standard would require that half of all existing lots become non-compliant*. Such a new standard would clearly change, rather than protect, the existing character of the neighborhood.

In her letter to the Zoning Commission dated ---, ANC 3F Commissioner Wiss refers to a mean lot size of R-1A lots of 21,000 square feet as justification for increasing minimum lot size to 12,000 square feet. However, R-1A lots vary greatly in size, from the smallest lot of 4,041 square feet to Hillwood Museum at more than one million square feet. The presence of a very few, very large properties – such as Hillwood – biases the mean, or average, lot size upwards. Comparing the mean to the standard deviation (a measure of variability) allows us to judge whether or not the mean is the appropriate measure to describe the *typical* lot. If the standard deviation is larger than the mean, then the mean does not accurately describe the typical lot. In the case of the proposed overlay, the standard deviation of zoned R-1A lots is 71,000 square feet – more than three times larger than its mean. This makes Commissioner Wiss' analysis irrelevant in determining existing character of the neighborhood.

Finally, ANC 3F Commissioner Bardin attempts a different approach. He analyzes the proposed overlay district by squares rather than lots, and classifies each square by whether the majority of its lots are either large (12,000 square feet or more) or small (less than 12,000 square feet). Excluding government-owned properties, there are 39 squares in the proposed overlay district. The number of lots per square ranges from one (square 2245, Hillwood Museum) to 78 (square 2258). The area per square ranges from 45,000 square feet (square 2269) to 1.2 million square feet (squares 2049, 2282). Even overlooking the obvious fact that there is no uniformity across squares that would support such an analysis, Commissioner Bardin finds that only 14 squares – fewer than half – could be classified as majority large (the letter submitted to the Zoning Commission on --- claims 15 majority-large lots, but lot --- was classified as 11 large and 2 small lots, while in reality it has 11 small and 2 large lots). His finding that most of the squares in the proposed overlay district are majority *small* lots refutes rather than supports increasing minimum lot size.

All of the analyses submitted by the overlay proponents ignore the simple, irrefutable fact that the appropriate unit of analysis is the lot, not the square, and that the appropriate analysis should look at the distribution of lot sizes, not the mean or the median. Looking at the distribution of lot sizes tells quite a different story and clearly shows that ***raising minimum lot size to 12,000 square feet would alter rather than preserve the existing character of the neighborhood***.

³ According to the ANC 3F data base, the median lot size among the 578 developed R-1A lots is 10,499 square feet.

Correct analysis

There are four categories of zoned lots found within the proposed overlay district: R-1A (647 lots), R-1B (101 lots), R-2 (11 lots), and R-5D (3 lots). While the overlay proponents included an unspecified R-5D lot in their calculations, we will follow Office of Planning recommendations and limit our analysis to the zoned R-1A lots.

As presented above, lot size of zoned R-1A lots ranges from 4,041 to over one million square feet. For ease of analysis, we will first group the lots into three categories:

- Less than 7,500 square feet (allowed prior to the zoning change of 1958)
- 7,500-11,999 square feet (current zoning minimum up to proposed new minimum)
- 12,000 square feet and higher (proposed new minimum)

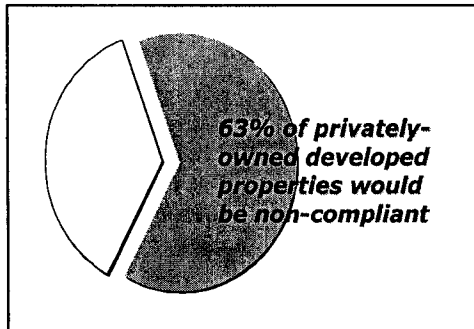
If we examine the distribution of currently developed R-1A lots according to this classification, we find that half of the lots fall into the second category, 7,500-11,999 square feet. This category – lot size less than 12,000 square feet – best describes the existing character of the neighborhood.

Table 1				
Currently developed R-1A lots				
	<7,500	7,500-11,999	12,000+	Total
Number	64	291	223	578
Percent	11.1%	50.3%	38.6%	100%

How much smaller than 12,000 square feet is the typical R-1A lot? To answer this question, we divide the 291 lots in category 2 into smaller categories by 500 square foot increments (7,500-7,999 etc.) and examine the mode. The mode is that category which has the largest number of cases; it is the appropriate statistic to use when neither the mean nor the median accurately describe the typical lot size (as in the case of the proposed overlay district).

The smallest lot size category, 7,500-7,999 square feet, has the largest number of cases: 23 percent of the analyzed lots fall into this category. No other category comes even close. Therefore, we can state with absolute certainty, that ***the typical zoned R-1A lot in the proposed overlay district is less than 12,000 square feet and among the lots smaller than the proposed new norm, the highest proportion are between 7,500 and 8,000 square feet.*** In other words, the proposed new minimum lot size of 12,000 square feet is not in line with the existing character of the neighborhood.

HARM TO THE NEIGHBORHOOD



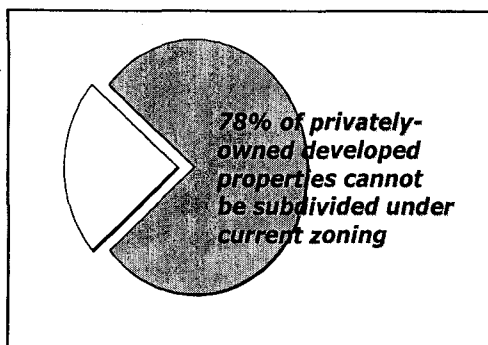
Forest Hills is a predominantly residential neighborhood: 95 percent of developed R-1A lots are privately owned, and the remainder are divided between institutions (e.g., Hillwood, Levine School, Howard University Law, etc.) and foreign governments (e.g., Netherlands, Czech Republic, Indonesia, etc.). What would raising the minimum lot size to 12,000 square feet do to the average home owner?

If we consider the 548 developed R-1A lots that are privately

owned, we see that the proposed new minimum lot size would make 63 percent of existing homes non-compliant. In other words, *the proposed new minimum lot size would force nearly two thirds of homeowners to receive an exemption from BZA, just to re-build exactly the same home they are living in now*. This does not protect the existing character of the neighborhood; the effect of the proposed change would be to alter the character of the neighborhood over time.

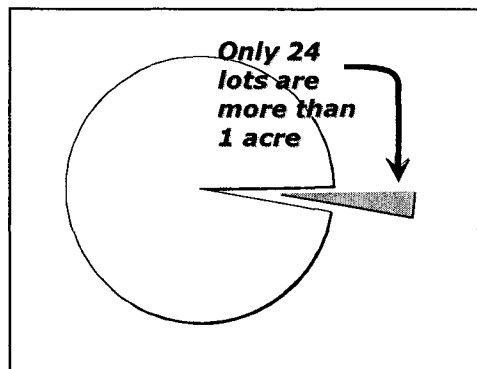
POTENTIAL FOR SUBDIVISION

FHCA and other proponents argue that the current 7,500 minimum lot size does not adequately protect the neighborhood from tear-down, subdivision, and infill. They fail to mention that the prevailing standard in effect protects all lots up to 15,000 square feet from subdivision, subdividing any lot smaller than 15,000 square feet would produce at least one lot smaller than the 7,500 square foot minimum allowed by the current zoning code for R-1A lots. Fifteen thousand square feet is 25 percent larger than the proposed new minimum.



Seventy-eight percent (78%) of developed, privately-owned lots already cannot be subdivided because they are smaller than 15,000 square feet. Raising the minimum lot size to 12,000 square feet would “protect” only 79 additional privately-owned developed lots in the entire designated area from Melvin Hazen Park to Nebraska Avenue, between Connecticut Avenue and Rock Creek Park. The proposed overlay district is more than 2 miles long from north to south. An extra 79 homes would scarcely be noticed, and at the current rate of subdivision (1 lot per year, over the last 4 years) would take well over half a century to come about.

FHCA and proponents correctly point to vacant lots as another potential for subdivision. Using their criteria of lot size greater than 3,000 square feet⁴ and not owned by the government, we find a total of 39 “buildable” lots in the proposed overlay district. Sixty-nine percent (69%) cannot be subdivided because they are smaller than 15,000 square feet. Raising the minimum lot size to 12,000 square feet would “protect” only nine (9) additional vacant lots from future subdivision, again too few to be noticed. Clearly, the danger of potential subdivision does not lie in the R-1A lots smaller than 15,000 square feet.



Forest Hills is fortunate to include a small number of very large properties. Many of them are currently occupied by embassies and diplomatic residences, and others are protected from further development by their historical designation status (e.g., Levine School) or the terms of their foundation (e.g., Hillwood).

There are 24 zoned R-1A lots greater than one acre in the proposed overlay district (excluding Levine School and Hillwood, which are already protected from development); seven of those parcels are larger than five acres apiece. Increasing minimum lot size as proposed would have minimal

⁴ As per documentation provided by Ms. Barbara Simons to the Zoning Commission, dated July 29, 2002.

impact on a one-acre lot (reducing the total number of lots by three – from six to three). On the other hand, careless subdivision and development of a five-acre parcel could have serious consequences for the neighborhood.

Table 2 lists the seven developable, zoned R-1A lots measuring more than 5 acres. They are distributed across five squares, half north and half south of Soapstone Valley. All but one (Howard University Law) are presently owned by foreign governments, and two are undeveloped (vacant). Their combined size measures nearly 3.6 million square feet, or more than 82 acres.

Square	Lot	Address	Owner	Size (s.f.)
2248	805	2800 Albemarle Street, N. W.	Government of Italy	943,945
2049	810	2900 Van Ness Street, N. W.	Howard University School of Law	854,090
2232	818	2700 Tilden Street, N.W.	Republic Indonesia	339,658
2232	809	2612 Tilden Street, N.W.	Czech Republic	338,435
2282	809	3001 Garrison Street, N.W.	Government of the Republic of Peru	285,257
2282	808	vacant - Garrison Street, N.W.	Government of the Republic of Peru	451,804
2282	810	vacant - Fessenden St., N.W.	Government of the Republic of Peru	378,489

Would raising minimum lot size to 12,000 square feet protect the neighborhood from adverse effects of developing these parcels? Probably not. We illustrate with the three adjoining properties owned by the Government of Peru (Square 2282, lots 808-809-810).

The three combined properties cover 1.1 million square feet, more than 25 acres. As described by FHCA, we deduct 18 percent for public utilities, primarily roads. This leaves nearly 915,000 square feet for subdivision. Raising minimum lot size to 12,000 square feet would still permit the construction of 76 new homes, more than enough to have an impact on the character of the surrounding neighborhood. Moreover – and more seriously for the Broad Branch and Rock Creek watersheds, the proposed new zoning would permit 590,000 square feet – over 13 acres – of impervious surfaces⁶. In sum, ***the proposed new zoning would be inadequate to protect the neighborhood from development of the very large parcels should they ever come on the market.***

⁵ As listed in the data base prepared by G. Worthington for ANC 3F. Excludes Foundation of Marjorie Merriwether Post (Hillwood) and Levine School of Music

⁶ We assume that each developed lot would cover the 50% permitted under the proposed overlay and that 67% of the land used by public improvements would be paved.

Conclusions and recommendations

This testimony demonstrates, without exception, the following conclusions:

1. All of the analyses proffered by the petitioner and other proponents are fundamentally flawed and conceal, rather than reveal, the existing character of the proposed overlay district;
2. Raising minimum lot size of zoned R-1A lots from 7,500 to 12,000 would change, rather than protect, the existing character of the neighborhood by making nearly two thirds of privately-owned developed lots non-compliant;
3. Raising minimum lot size is unnecessary to protect the vast majority of existing lots from subdivision, as more than three quarters of privately owned developed lots cannot be subdivided under current zoning; and
4. The minimum lot size provision is inadequate to protect the neighborhood from possible adverse consequences of future development of the few, very large zoned R-1A parcels in the proposed overlay district.

Therefore, we strongly support the recommendation of the Office of Planning, to maintain the current minimum lot size of zoned R-1A properties at 7,500 square feet.

Post-script

We strongly urge the Zoning Commission not to increase minimum lot size of zoned R-1A lots. However, if after consideration of all testimony, the Zoning Commission should decide that some increase in minimum lot size is warranted, we recommend that the new standard be set at a level that reduces the burden on private home owners.

Currently, 11 percent of all privately owned developed R-1A lots are non-conforming with the 7,500 square foot standard, because their homes were built before the 1958 zoning code change. Even a very modest increase of 500 square feet – from 7,500 to 8,000 square feet – would make 24 percent of existing privately-owned developed lots non-compliant, thereby more than doubling the current burden on private homeowners and providing no relief from potential subdivision. Therefore, we are left with the inescapable conclusion that there is no zoning change in minimum lot size of zoned R-1A lots that could be justified to protect the existing character of the neighborhood.

Appendices

Appendix 1 Analysis of developed R-1A lots between 7,500-12,000 square feet		
Size	Number of lots	Percentage
7,500 – 7,999	68	23.4%
8,000 – 8,499	28	9.6%
8,500 – 8,999	33	11.3%
9,000 – 9,499	30	10.3%
9,500 – 9,999	36	12.4%
10,000 – 10,499	30	10.3%
10,500 – 10,999	23	7.9%
11,000 – 11,499	27	9.3%
11,500 – 11,999	16	5.5%
TOTAL	291	100%

**Written Testimony of
Mark L. Baughman, AIA
4835 Linnean Ave., NW, on Behalf of
The Forest Hills Neighbors for Responsible Preservation
Regarding the Forest Hills Tree and Slope Overlay District
Case No. 02-19**

Introduction

Several days after a few individuals petitioned the DC Zoning Commission to set down and consider adopting the Forest Hills Tree & Slope Overlay, a community meeting was held at the Netherlands Embassy for the petitioners to distribute the Overlay for the first time and to explain what the overlay meant.

During that meeting, the community heard from a National Park Service representative who talked about the need to protect trees and how development in Washington was destroying Rock Creek and Soapstone Valley Parks, how the natural habitat of important wildlife was threatened by current zoning and how trees needed significantly more clear space surrounding the trunk to allow roots to perform their function properly.

Two attorneys then proceeded to try to answer questions from the audience, leading the audience to believe they knew a lot about zoning. Many answers fell in one of two categories: "I don't know" or "that would require a special exception." Some audience members pointed out contradictions between the TSO text and some answers. There was a great tension building in the crowd. Well into the meeting and after many pointed questions it was finally revealed that the Overlay had already been set down and could become effective in three days. This was the first time the community was informed that the Overlay could go into effect so fast, it was not offered during the initial presentation by proponents about the Overlay, and it was only given under pointed questioning. Many audience members stood up and expressed dissatisfaction with this process.

At one point Barbara Simons, the head petitioner, stood up to speak. Looking out the large window of the meeting room she pointed across a large lawn to a stand of trees beyond. Wistfully she spoke of how we needed to protect "that." I looked out the window and saw where a large amount of land had been cleared of its trees and regraded to accommodate the new Embassy. Apparently she was looking at the trees across the field. I started to wonder whether or not she could see what she was really looking at. I wondered if the petitioners were seeing my neighborhood in its real form. After several frustrating months of attempting to engage the petitioners only to be met with shrill histrionics, I came to the conclusion that the petitioners have little idea what our neighborhood is made of and what the TSO will and will not do.

The purpose of this testimony is to provide you with a more comprehensive overview of what Forest Hills is made of, the real impact of the TSO, the fallacies

that serve as the foundation of the TSO and the failures of the TSO to meet its objectives.

By way of background, I have practiced architecture in the Washington, DC area for over 20 years. A partner of Spector, Knapp & Baughman Architects, I am an active member of the Society of Architectural Historians, the American Institute of Architects and a past member of the American Planning Association. My practice is primarily corporate and institutional and my design for the Xerox Training Center in Leesburg, Virginia was recognized by the National Arborist Association for our work in protecting and relocating specimen trees all around that building site. For the past five years I have spent much of my time teaching sustainable design practices to architects and engineers in Madagascar and Bangladesh for the buildings I have designed in these countries. It has been over 20 years since I have had a developer as a client. I am testifying on behalf of the Forest Hills Neighbors for Responsible Preservation, of which I am a member, because I have closely examined this Tree and Slope Overlay issue as it relates to my neighborhood and I have found that it is so completely flawed that mere adjustments will not make the TSO right.

The Forest Hills Tree and Slope Overlay is flawed because it is not based on any kind of analysis of facts. There are no specific problems stated, no objective criteria by which one analyzes potential solutions, and few facts by which neighbors can make informed judgements. Furthermore, the TSO completely misses *real* threats to my neighborhood, although many proponents have been led to believe otherwise.

This is not to say that a special zoning overlay is not appropriate. In fact, there could be widespread acceptance of one. This is a neighborhood full of highly educated citizens who want to do what is right for the neighborhood and the region, and are intelligent enough to make good decisions when presented with the full information.

What Defines the Forest Hills Tree Slope Overlay District?

The process leading to the definition of the TSO area in itself is something of a mystery. Forest Hills is bordered by National Park Service land to the east and Connecticut Avenue to the west, Broad Branch Road to the north and the south side of Tilden Street to the south. Soapstone Park cuts across the center of the neighborhood and bisects it into a north and south section. There are 3 major vehicular arteries connecting Beach Drive / Broad Branch Road to Connecticut Avenue: Tilden Street, Brandywine Street and Davenport Street.

There is a swath of privately owned land immediately adjacent to the National Park Service land which for all intents and purposes looks very much like a forested park. The three cross-arteries are heavily wooded near the park but Brandywine and Davenport look like all the other streets of the neighborhood by the time they reach Linnean Avenue, and Tilden is fairly well populated with embassies and medium density housing halfway from Beach Drive to Connecticut Ave. (*Figure 1*)

Some sections of Forest Hills also have mature trees intermixed with private residences, apartment buildings, embassies and churches. Most sections of Forest Hills look identical to the neighborhoods to the north, south and west. I tried to understand what criteria was used to impose the Overlay and what was *not* included. I was surprised to learn that there was hardly any criteria at all. Originally Linnean Ave. was considered as the western border of the Overlay district. Apparently some neighbors – perhaps only one or two in a square – would ask the TSO committee to include their squares and, without a formal voting process, it was done. I was also surprised to learn that the ANC commissioners who have pushed the TSO through the community have managed to keep their residential constituents out of the overlay. (*Figure 2*) In the case of Ellicott Street, ANC Commissioner David Bardin, who has led the proponents, managed to keep all of his constituents out including carving out specific residential properties immediately adjacent to the TSO area, even though there is no substantive difference between these properties and those included by the TSO. (*Figure 3*)

If there is a serious “tree problem” in the TSO area, then it must also exist all through the ANC3F area because most of the ANC3F area looks like the TSO area. By excluding the majority of the ANC3F area under their auspices the petitioners are declaring that there is no unique “tree problem.”

I would concur that there is a sensitive environment zone between Forest Hills and the Park. I cannot see how that justifies a broader Overlay district. It has not been justified by the petitioners.

The “Character” of Forest Hills

Good planning cannot happen without good information. The Forest Hills TSO is built on a series of assertions and assumptions without the careful analytic thought required to make rational zoning decisions.

In terms of architecture and urbanism, Forest Hills is as diverse a neighborhood as exists in Washington. It was originally developed, at least in part, because it was difficult for some to move into other middle class areas of Washington. So these families who wanted to live near downtown Washington began to build individual houses that represented their independence. The end result is a mix of every kind of architecture. There are large Tudors with large lawns, small Tudors on steep inclines, center hall colonials, Italianate duplexes, Renaissance revival villas, shingle style bungalows, post-modern mansions, California platform houses, one story ramblers, Dutch colonials, and modern glass and wood tree houses, and many combinations therein. (*Figures 4 & 5*) This eclectic mix of houses is found throughout the area all the way up to Western Ave. and across to Nebraska Ave. It is the *lack* of uniformity that sets Forest Hills apart from A.U. Park, Wesley Heights, Normanstone and other neighborhoods in Washington.

It has been asserted by some proponents that we can look to other cities for examples to guide us on issues such as minimum lot size. That is probably true.

To do this, one needs to look carefully at all the local conditions – proximity to National Park, proximity to the central business district, physical boundaries of the area being considered, size of the overall city being considered, and so forth. Proponents have used Montgomery County, Richmond and Baltimore as examples that justify a change to the minimum lot size. As urban areas on the northeast coast go, one could hardly find a more diverse collection than Washington, Richmond, Baltimore and Montgomery County. Without citing specific parallels, these assertions are meaningless. There are parallel neighborhoods in other cities such as Cincinnati, Cleveland, St. Louis, Chicago and others. Either the petitioners looked into these and decided that these examples did not suit their purposes or they concluded their study with a few cursory telephone calls. If the latter is the case, by not bothering to investigate these, another opportunity to analyze the problem and offer appropriate solutions was missed. Certainly no serious analysis of these neighborhoods was presented to the Forest Hills community.

There are some commonalities to the houses in Forest Hills. The houses tend to have consistent setbacks from the street, even though not all properties have building restriction lines. The houses tend to be under the allowable maximum height and/or number of floors allowed by the current Zoning Code. The houses tend to build up to existing sideyard setbacks – so much so that the new, set down sideyards makes the vast majority of the housing in the TSO area non-compliant. (*Figure 3*)

If the petitioners were trying to retain the “character of Forest Hills,” it is not clear at all how they planned to do this. The TSO does not deal at all with maximum heights. When alerted of the problem they created with the heavy-handed sideyard restrictions, the petitioners set new sideyard guidelines giving relief to small and narrower lots. By not coupling this with an FAR or bulk height restriction, this action made the potential problem worse.

By not addressing maximum height, bulk or floor area ratio, the TSO still allows extremely large, over scaled houses that have been called “McMansions.” On some streets these will completely destroy any sense of the scale that now exists. Ironically, by decreasing the allowable buildable footprint, homebuilders would be forced to go upward. Many proponents have been led to believe that the TSO will stop this kind of building. In fact, because so much of the housing stock is nearing its end and with the demand for housing within walking distance of Metro and downtown, it is a certainty that it will happen.

Proponents have presented photographic slides of 2 recently constructed houses at ANC and Zoning Commission hearings, trying to explain what “has to stop” happening in our neighborhood.

For many years there was a vacant lot at the northeast corner of 30th and Davenport Streets. The only vegetation was giant shrub and overgrown grass. The site was regularly tagged with “Clean It or Lean It” posters. Decaying

posters apparently made a nice home for a family of rats. A developer purchased the lot and built it to its allowable footprint. (*Figure 6*)

A cursory review of the new house reveals that:

1. The house aligns with front yard setbacks of adjacent houses on both sides of the corner.
2. The house does not fill out to its maximum height or bulk.
3. The house presents the same or less mass and volume to 30th St. as its neighbors directly across the street.
4. The house has not had sufficient time for new trees to grow in the front yard.
5. This house would be allowed under the proposed TSO.

Further up 30th St., at the northeast corner of Brandywine, a new Dutch Colonial has also become a poster child of the TSO cause. (*Figure 7*) This is a replacement house. A cursory review of this house and its surroundings shows:

1. The house aligns with the front yard setbacks of the remainder of the houses on its Brandywine block.
2. The house is almost identical to its neighbor across the street in terms of height, mass, setback and materials.
3. The house has a setback off 30th St. almost identical to its neighbor directly across 30th St.
4. The house has not had sufficient time for trees to grow in the front yard.
5. The house could have been built to a much higher volume and mass.
6. With a minor change to the 30th St. setback, this house would have been allowed under the proposed TSO.

It is clear to me that the process others have described, one that began with research and analysis but was subsequently and abruptly diverted with the premature filing of the TSO ultimately prevented that process from completing the kind of problem-seeking / problem-solving analysis that is necessary for effective planning and zoning. Without a grip on the reality on the neighborhood, the TSO – and the hopes of its proponents – are built on a foundation of sand. The saddest irony of this is that neighborhoods transform over a long period of time and by time the community realizes it misunderstood the threats it will probably be too late and too difficult to make a difference.

Slopes and Soils

After consulting with the City authorities – *after* they had filed the TSO – the petitioners have revised their rigid requirements regarding building on slopes of 25% or greater. The revised language is, unfortunately, not really much relief and is in some ways worse.

First, one has to bear in mind that a 25% slope is *not* steep. Petitioners have shown photographs of slopes well over 75%. Most of Forest Hills is actually built on slopes of 25% or greater – bearing witness to the fact that there is nothing

inherently wrong, unsafe or irresponsible about doing so. (*figure 8*) I am aware of no evidence being presented indicating that there are marine clays or other kinds of unstable soils in this neighborhood. Yet, despite no facts indicating there may be a problem, the new soils provisions imply that in order to get a building permit one must first obtain a geotechnical report certifying that there are no "highly erodable" soils on the site. Since that term does not exist in the USDA Soils Classification System, one must assume that use of this subjective term by a homeowner or builder may be subjected to challenge by opponents of a particular building permit.

In order to obtain a geotechnical report that is relevant to the proposed construction, the building must be designed to sufficient detail for a geotechnical engineer to evaluate the soils borings against the design and make recommendations.

In essence, the provision requires a homeowner to spend thousands of dollars to prove a problem doesn't exist when there was no reason to believe it existed in the first place. Beyond that, the provision refers to "best" engineering practices, which has no professional definition and, again, opens the door for frivolous challenges to construction that homeowners had every right to undertake.

Once again, by not clarifying what, if any, problems exist, the petitioners have saddled the neighborhood with needless expense and cumbersome reviews for no clear reason.

Saving Our Trees

Others have testified to many problems of the tree provisions. I have to ask myself what we're trying to do and after listening to proponents for many weeks now I still don't understand what the goal is here.

If the goal is to save mature trees – as many proponents have testified – why are such small trees (3.8 inch diameter) included? If the goal is maintaining habitat for wildlife or maximum leaf area for air quality, are there are not conflicts between the amount of leaf and home for habitat between different species and ages of trees? Are all trees good? If trees cannot flourish if their canopy extends over construction, how can it be that the neighborhood is completely full of trees that do extend over houses, streets and driveways?

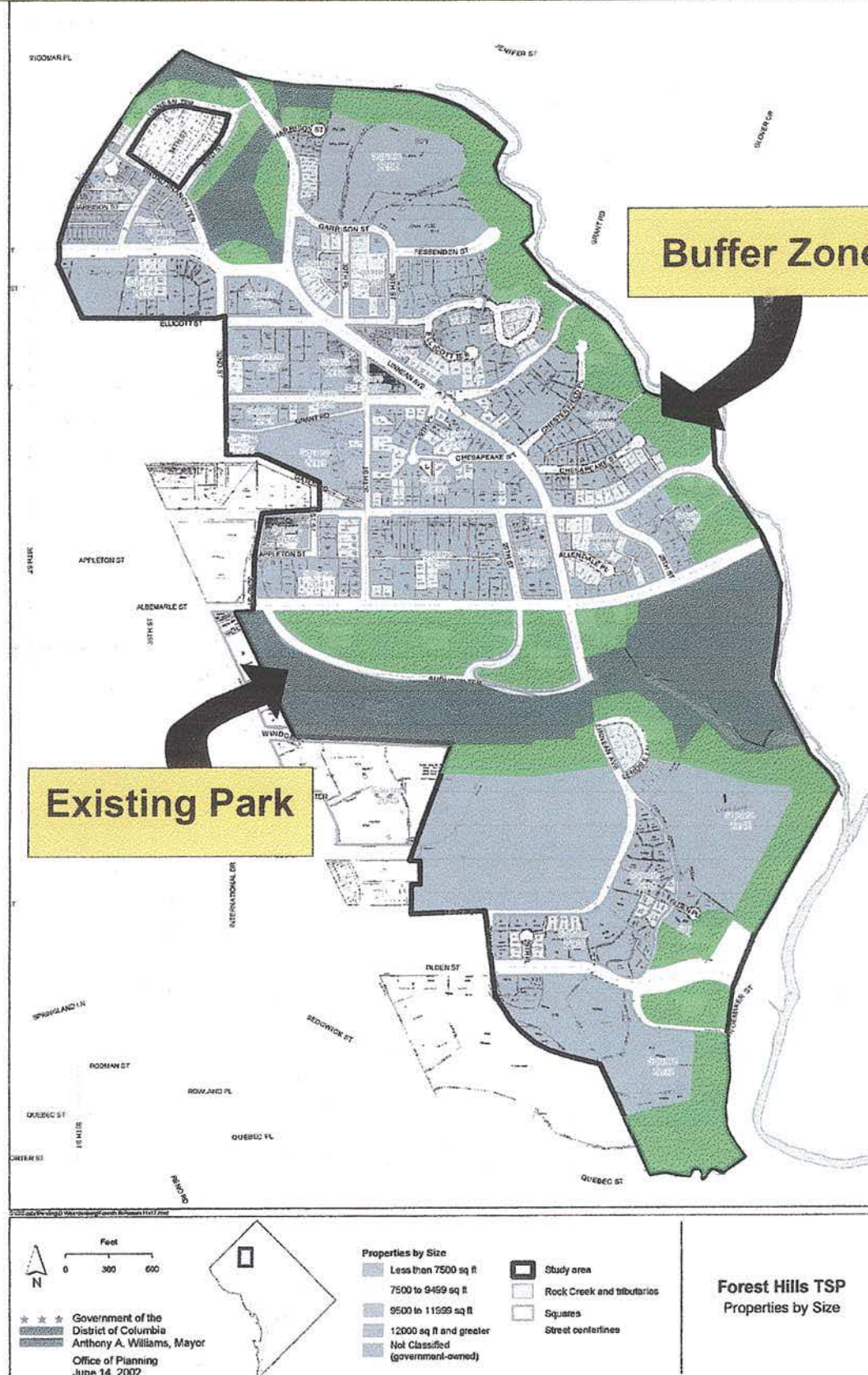
I listened intently to the Park Service and Casey Trees representatives but heard nothing but vague platitudes and "facts" that were clearly contradicted by the existing conditions. I have come away from this tree discussion frustrated that, once again, we are not armed with the information necessary to make informed decisions.

Conclusion

One could reasonably conclude from the history of this process that there are several individuals and/or groups that really want to see all construction in the neighborhood managed on a case-by-case basis. This is a terrible idea for obvious reasons including the tremendous burden placed on property owners on one side of Connecticut Ave. and none placed on property owners on the other side, even with identical properties. Furthermore, there is ample opportunity for corruption in such a process, or simple vindictiveness that could stop a project because of one powerful neighbor. The Zoning Commission has received sufficient letters and heard sufficient testimony from residents involved in this matter to know that this mean-spiritedness, sadly, exists in our community already.

What is saddest of all is that this situation was entirely unnecessary. Had the community been involved, had experts been brought in, had the problems been distilled, there might have been widespread acceptance of the idea of an Overlay. Once the filing happened the petitioners had the upper hand and have used the setting-down of the TSO as a club to force acceptance of their ideas with minimal change and without challenge. Because of this posture, I feel the only way to bring the opposing sides together is to force the petitioners into rethinking their stance, which can only be done by rejecting the current TSO.

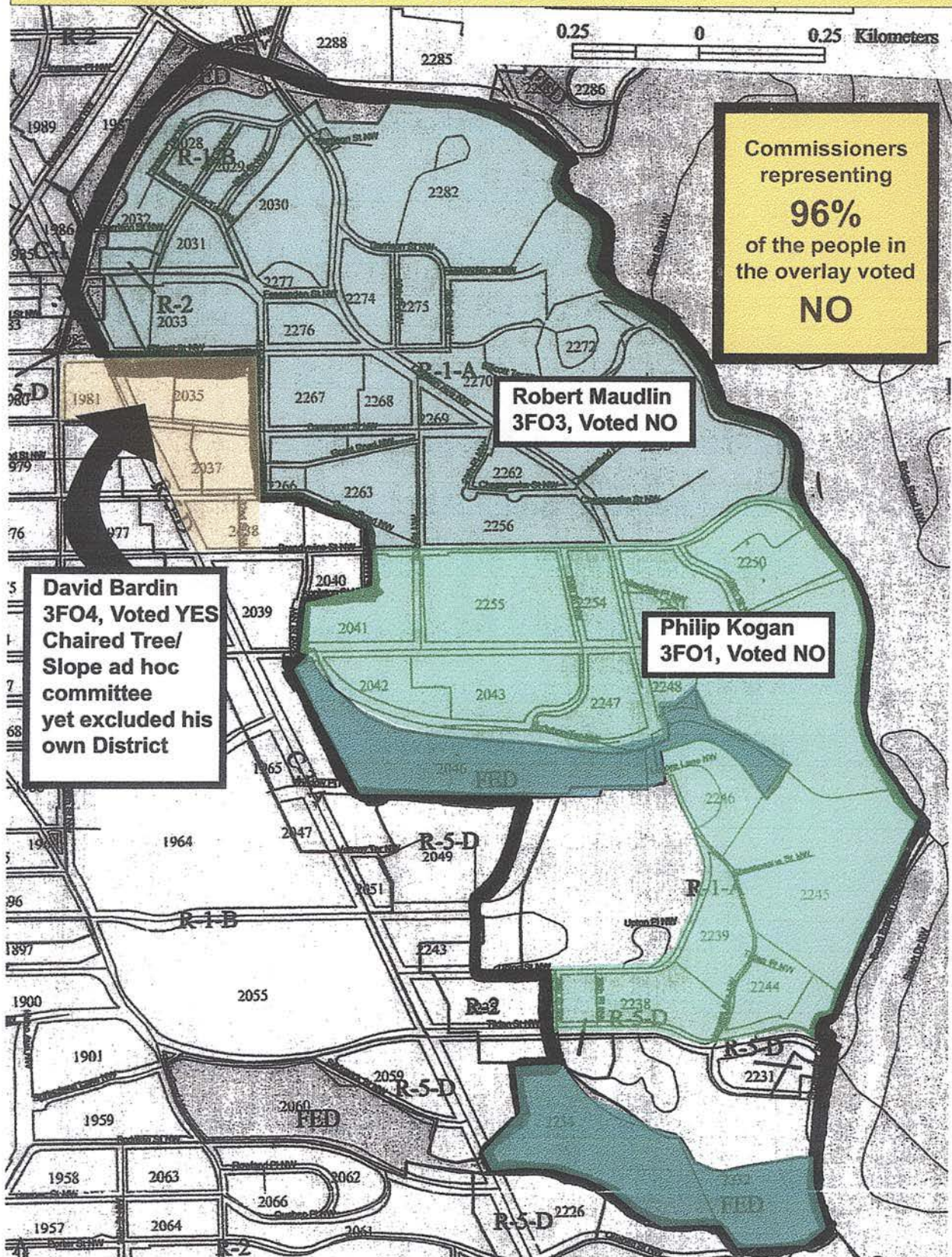
Environmentally Sensitive Buffer Zones in Proposed TSO



Forest Hills Neighbors for Responsible Preservation

Figure 1

ANC REPRESENTATION OF AFFECTED NEIGHBORS

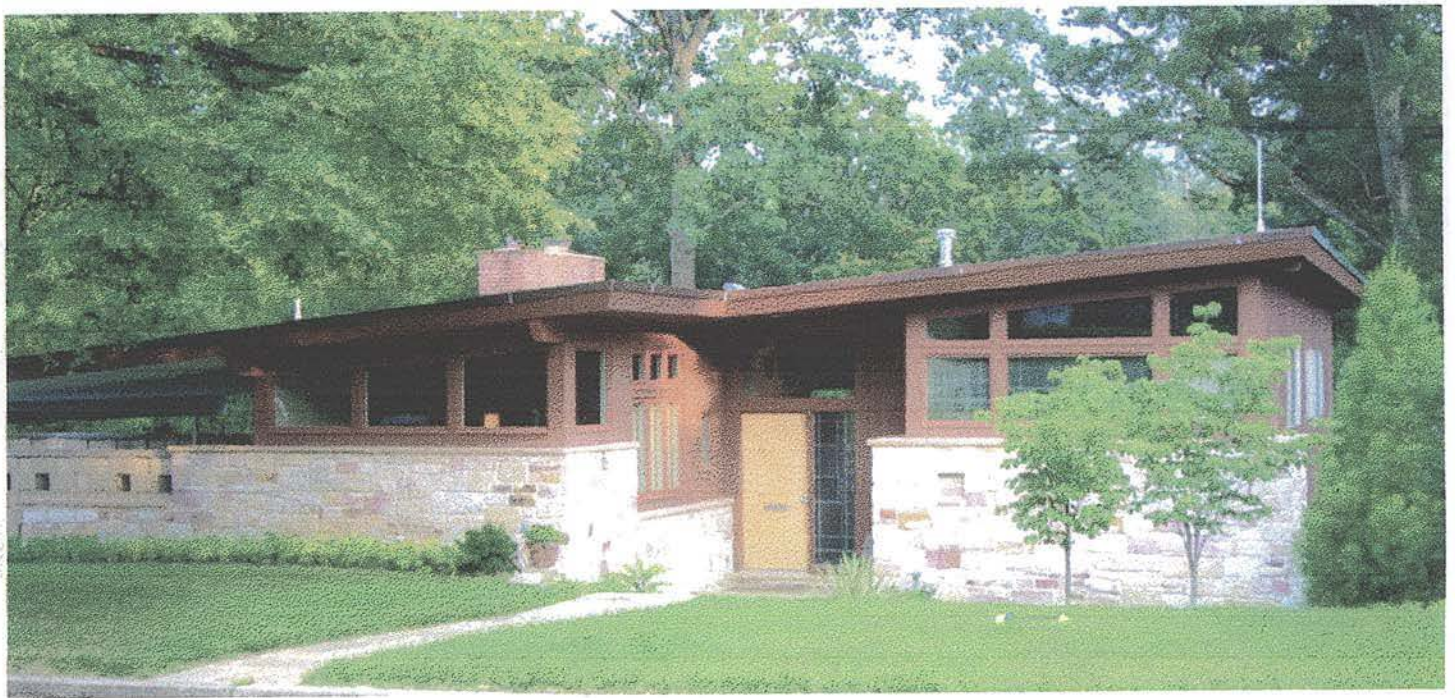


Forest Hills Neighbors for Responsible Preservation

Figure 2



Figure 3 - 3232 & 3242 Ellicot Street
Cut out of TSO by Commissioner Bardine



Exhiibit 4 - Houses in Forest Hills

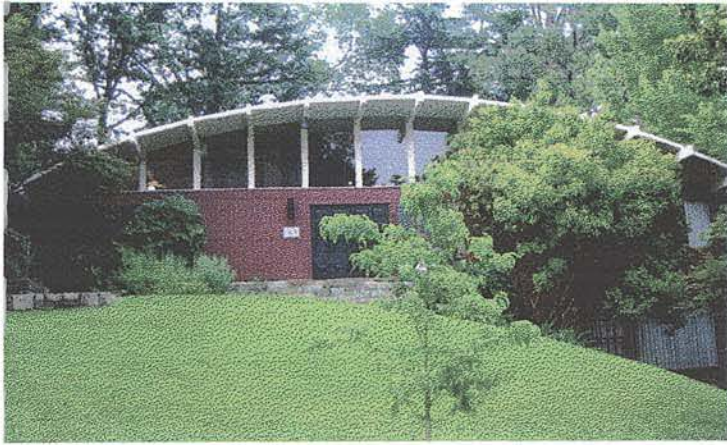


Exhibit 5 - Houses in Forest Hills

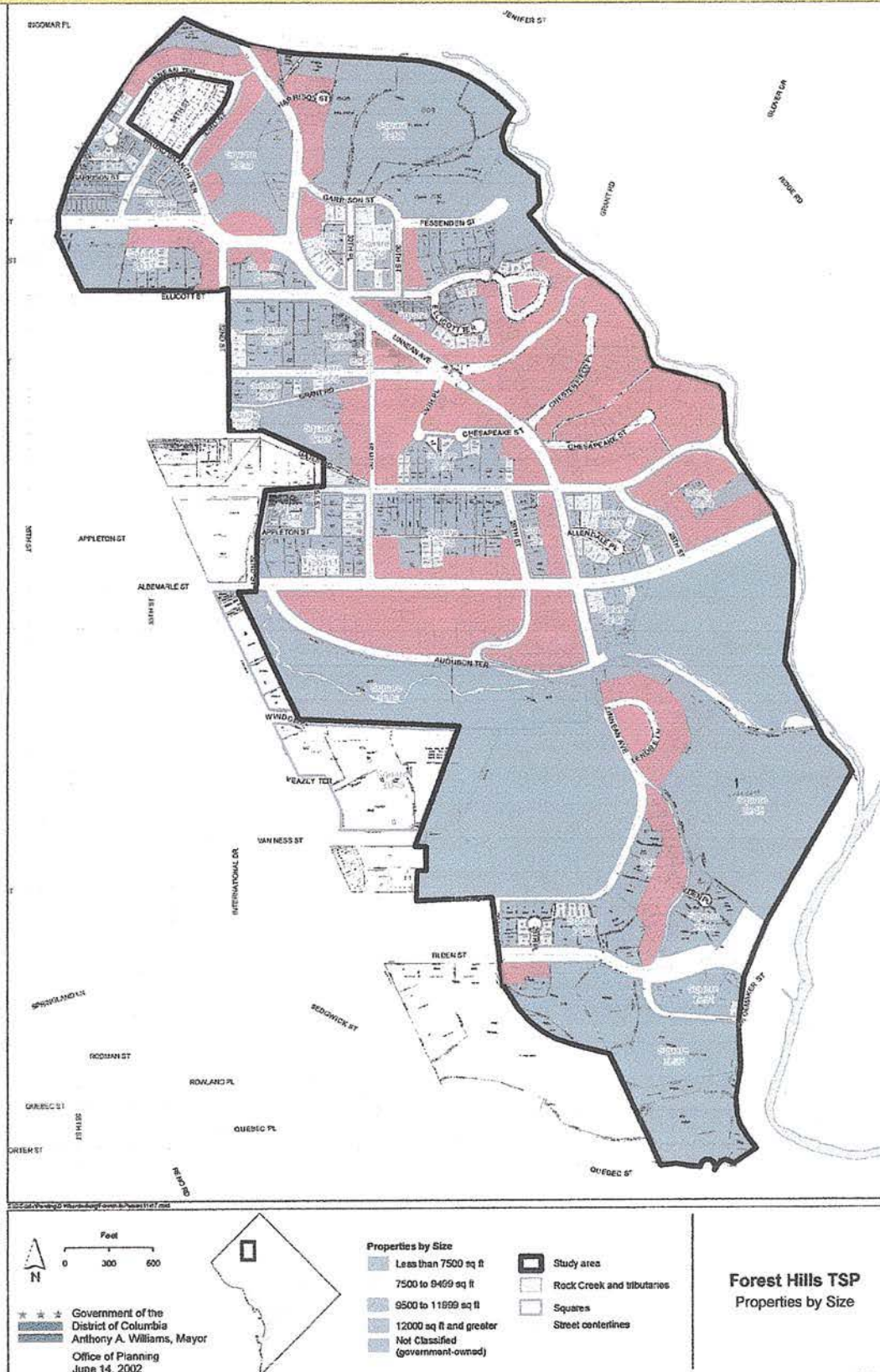


Exhibit 6 - 30th & Davenport



Exhibit 7 - 30th & Brandywine

Existing Houses Prohibited by Proposed 25% Slope Restrictions



Forest Hills Neighbors for Responsible Preservation

Figure 8

**In RE: ZC Case 02-19: Statement Against Proposed Forest Hills Tree and Slope Overlay,
Tree Removal Clause 1519.1
By Dr. James R. Foreit**

My name is Dr. James R. Foreit and I own a home at 4140 Linnean Avenue NW, inside the proposed overlay district. This testimony includes an analysis of the complicated methodology that the homeowner must apply in compliance with Section 1519.1 of the proposed Tree and Slope Overlay (TSO) to determine if tree removal is permissible without an exemption.

The analysis demonstrates that the key tree removal clause of the TSO is seriously flawed and recommends that 1519.1 should not be enacted.

My credentials for performing this analysis include over 20 years experience analyzing the impact of policies, norms and regulations on the effectiveness, efficiency, quality, and costs of health and social programs. I have a Dr. P.H. from Columbia University, and am the author of two books and numerous scientific articles in the area of operations research. My work has been on behalf of governments and non-governmental organizations.

.....

We wish to see Section 1519.1 of the proposed TSO replaced with a workable tree removal clause. The present clause has many undesirable characteristics:

- It requires extremely complicated calculations by homeowners
- It gives no guidance as to when or how often required calculations need to be made
- It does not address the problem of filing and certification of measurements and calculations
- It fails to provide for immediate mitigation
- It creates situations where prime canopy trees can be removed but where less desirable trees cannot be touched.

Proposed Section 1519.1 is presented below in its entirety:

1519.1 CONSTRUCTION OF A BUILDING, AN ACCESSORY BUILDING, OR AN ADDITION TO A BUILDING, OR THE CREATION OF ANY IMPERVIOUS SURFACE AREA, THE SUBDIVISION OF ANY UNIMPROVED LOT, OR THE SUBDIVISION ANY IMPROVED LOT SO AS TO INCREASE THE NUMBER OF PRINCIPAL STRUCTURES THEREUPON 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 HAS 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.

Measurements and calculations required

Extensive measurement and calculation is required of the homeowner before he or she can remove a tree as a matter of right. In attempting to make these calculations on my own property, it was necessary to create the workbook below. The workbook contains all the information and calculations needed by the homeowner to determine if a tree can be removed under Section 1519.1. The number of calculations required by the TSO is 17. The number of different measurements required is equal to the total number of trees on the lot plus an additional measurement for establishing a point 25 feet from the existing building restriction line. In the case of my 11,000 Sq. Ft. lot, the number of measurements required is approximately 47. We were unable to determine the exact number of measurements because we have several multi-trunked trees including maples and a large Japanese Magnolia. The Section provides no guidance

as to which trunk must be measured, or the number of trunks that must be measured on a multi-trunked tree.

The language of the overlay does not describe the step-by-step process by which a homeowner could determine how many and which trees he/she could remove as a matter of right. The following sample workbook lays out the steps that a homeowner might follow and illustrates the complexity of the proposed regulations.

Sample Workbook For Measurement And Calculations Required By Proposed Section 1519.1

To comply with the provisions of section 1519, you will need the following materials:

1. Copy of your plat map from the DC Surveyor's Office. Section 1519 (D) requires that you protect all trees of circumference greater than 38 inches that are located within 25 feet of your building restriction line or your lot line abutting a public street. Building restriction lines are not uniform across Forest Hills. Your plat map will clearly indicate where the line is for your lot.
2. Flexible tape measure with at least one-inch gradations and at least 25 feet long. The measure should be made of a non-stretchable material. You will need to measure back 25 feet from your building restriction line. You will also need to measure the circumference of each tree at a height 4.5 feet above the ground.
3. The attached workbook will walk you through the measurements and calculations you will need to establish your right to remove a healthy tree. Note that there are no restrictions on removing dead or unhealthy trees, or trees that create an unsafe condition. However, you will need certification from a certified arborist that your tree(s) meet the dead/unhealthy/unsafe condition.
4. Failure to comply with the provisions of the Tree and Slope Overlay will mean that for the next seven (7) years you will need a special exception from the Board of Zoning Adjustment (BZA) before obtaining any building permit. Should you sell your lot before seven years transpire, the buyer also will be required to seek special exceptions from the BZA until the seven-year period expires.

Line	Instructions	Result of measurement	Observations
1	Locate the Building Restriction Line (BRL) on your property. Stake a line 25 feet behind the BRL. If your plat map does not show a BRL, stake a line 25 feet away from all public roads abutting your property		
2	Count and measure all of the trees on your property. Measure the circumference of each tree by marking a spot on the trunk 4.5 feet (54 inches) above the ground and passing a flexible tape measure completely around the trunk at that point. Record your measurements below		
2a	Number of trees less than 12 inches in circumference		Any number of these trees can be removed without restriction
		trees	
2b	Trees with circumference 75 inches or more #1: _____ circumference #2: _____ circumference #3: _____ circumference #4: _____ circumference #5: _____ circumference Use a continuation page if more than 5 trees	_____ Total combined circumference of all trees with circumference of 75 inches or more	WARNING: Removing any of these trees will require that you receive a BZA special exception for any building permit for seven years from the date of removal

2c	Trees with circumference 12-38 inches #1: _____ circumference #2: _____ circumference #3: _____ circumference #4: _____ circumference #5: _____ circumference Use a continuation page if more than 5 trees	_____ Total combined circumference of all trees with circumference of 12-38 inches	Removing any of these trees is subject to total circumference of protected trees on your lot (line 3)
2d	Trees with circumference 38-75 inches located within 25 feet of Building Restriction Line #1: _____ circumference #2: _____ circumference #3: _____ circumference #4: _____ circumference #5: _____ circumference Use a continuation page if more than 5 trees	_____ Total combined circumference of all trees with circumference of 38-75 inches located within 25 feet of BRL	WARNING: Removing any of these trees will require that you receive a BZA special exception for any building permit for seven years from the date of removal
2e	Trees with circumference 38-75 inches located more than 25 feet from Building Restriction Line #1: _____ circumference #2: _____ circumference #3: _____ circumference #4: _____ circumference #5: _____ circumference Use a continuation page if more than 5 trees	_____ Total combined circumference of all trees with circumference of 38-75 inches located more than 25 feet from BRL	You are permitted to remove up to 3 of these trees without BZA special exception
3	Total circumference inches. Add up the total combined circumferences in lines 2b, 2c, 2d, and 2e		
4	Multiply line 3 by .25	_____ 	This is the total circumference inches that can be removed without BZA exception

5	Indicate the tree(s) you wish to remove		
5a	Number of trees less than 12 inches in circumference	_____ trees	Any number of these trees can be removed without restriction
5b	Trees with circumference 38-75 inches located more than 25 feet from Building Restriction Line	_____ trees	Only 3 of these trees can be removed without BZA exception
5c		_____ trees	
		Total combined circumference	
5d	Trees with circumference 12-38 inches _____ trees	_____ trees	
		Total combined circumference	
6	Total circumference inches to be removed. Add up the total combined circumferences in lines 5c and 5d		
7	If number of trees in line 5b is three (3) or fewer, all of the trees in line 5b can be removed without BZA exception		
8	If total circumference inches to be removed in line 6 exceeds 25% of total circumference inches in line 4 and number of trees in line 5d is one (1) or more: STOP . Go back and adjust the trees to be removed so that total circumference inches in line 6 is less than or equal to line 4 or number of trees in line 5d is zero		

Lack of a defined baseline (denominator for total circumference inches)

Correctly measuring and calculating as in the above workbook does not mean that the homeowner has an unambiguous answer to the question “can I cut down that tree.” This is because 1519.1 fails to specify a denominator for total circumference inches.

Assuming that the form is filled out the first time a tree is removed, for how long should this baseline remain in effect? How often can I remove 25% of my total circumference inches? Once in the lifetime of the house? Once in my ownership of the house? What happens when I sell? Is the new owner limited because I legitimately cut down a few trees? Trees grow; trees die. Lots change hands. The baseline of total circumference inches is dynamic and must be clearly defined and agreed to by stakeholders.

Filing and certification of calculations

Although Section 1519 requires evidence in the form of measurements and calculations before a tree can be removed, it does not say if these calculations must be filed and certified, and if so where, by whom, how often, and whether or not they need to be presented on a standard form that must be obtained from a regulatory agency. If the measurements and calculations do not need to be filed and certified, how long are we obliged to keep them available in case of a challenge? Must we provide the information to the prospective buyer of our houses?

Obtaining an exemption

As indicated in Section 1520.2 of the proposed TSO, if it becomes necessary to obtain an exemption to remove a tree, the homeowner will have to seek approval from five local and federal agencies, including:

- (A) THE OFFICE OF PLANNING;
- (B) THE DEPARTMENT OF TRANSPORTATION; TREE MAINTENANCE DIVISION;
- (C) THE DEPARTMENT OF RECREATION AND PARKS;
- (D) THE DEPARTMENT OF HEALTH, SOIL EROSION BRANCH; AND
- (E) THE NATIONAL PARK SERVICE, U.S. DEPARTMENT OF INTERIOR.

At the ZC hearing of September 5, 2002, a woman appeared before the Commission to plead with it to intervene on her behalf. She had obtained exemptions from four of the five agencies required, but the fifth was not forthcoming after a period of months. The delay caused her material harm and psychological distress. It is telling that the lot owner's lawyer felt that the only way to get relief was a personal appeal in front of the ZC. The exemption process will make events like the one of September 5 commonplace as desperate homeowners run up against the understaffed, and usually under computerized bureaucracies listed above. Does the ZC really want the city to take on the extra burden of the exemption requests that will be generated by 1519.1?

Anomalies

Several anomalies can occur under Section 1519.1 as written that may cause damage to the tree canopy that the TSO is supposed to protect, and/or result in serious injustice to homeowners. Consider two neighbors with a Building Restriction line of 15 feet from the street.

Neighbor A: 3 mature white oak trees, 70" in circumference each, all located 50 feet from the street. All are prime canopy trees.

Neighbor B: 8 immature silver maples, 15" in circumference each, all located 50 feet from the street.

Under 1519 (D), Neighbor A is entitled to cut down all three of his mature white oak trees. Up to 3 trees greater than 38 inches in circumference can be removed, provided they are located more than 25 feet from the building restriction line.

Under 1519 (E), Neighbor B is entitled to cut down only two of his 8 immature silver maples. Cutting down 3 trees would violate the 25% total circumference rule.

Neighbor A: total circumference loss = 210", permitted as a right.

Neighbor B: total circumference loss = 45", requires BZA special exception for future building permit, including 5 agencies listed in section 1520.2

What we should have instead of the proposed Section 1519.1 of the TSP

We request that Section 1519.1 of the proposed overlay be rejected because it violates criteria for good regulations. If there is indeed community consensus that a tree protection provision is needed for Forest Hills, the tree provisions should meet the following criteria:

- Minimize measurement and calculations and reduce the process to a simple number/size criterion (e.g., total of X trees of certain size)
- Provide for immediate mitigation instead of a draconian 7-year building permit embargo (e.g., payment into tree fund, replacement of tree with new tree of equal value).
- Do not extend tree protection beyond building restriction line (e.g., do not add 25' to BRL)
- Simplify the exemption process. Reduce the number of exemptions that need to be obtained and the number of agencies that are required to concur.

Insert to the Northwest Current

We also include for your information an insert that had hoped would appear in the September 25, 2002, *Northwest Current*. (Apparently, as of this writing, the delivery company delivered papers destined for the 20008 zip code to homes in another zip code.) We then used some extra copies we had made to hand deliver the information to homes in the Overlay district.

We are sufficiently concerned that not all of the homeowners in Forest Hills are aware of the Overlay or understand its significance. Therefore, we undertook the time and expense of preparing this insert in an effort to educate the Forest Hills Community about our concerns, which do not believe have been adequately communicated through the process as it has progressed so far.

We include the insert in this submission as evidence of the seriousness with which we view the Overlay and its deficiencies.

ZONING CHANGE THREATENS FOREST HILLS

Beware of 'green camouflage'

By LAURA BAUGHMAN
4835 Linnean Ave., NW

Last Spring, we all started getting green flyers from the Forest Hills Citizens Association (FHCA) telling us of their proposed plans to save Forest Hills' trees and protect the character of the neighborhood with a "tree and slope overlay." My first reaction was: good idea! Then I learned about the fine print missing from those flyers.

I read that, in the name of preserving the character of the neighborhood, the FHCA wanted to impose a myriad of restrictions on our property rights (detailed in the article by Bill Kelly below). I became all twisted in knots trying to understand its tree provisions and the enforcement mechanism for those provisions (see Jim

Foreit's article). I learned that the "proposal" had in fact been implemented by the Zoning Commission because the FHCA claimed that an "emergency" existed (a builder was applying for a permit; he got it despite the overlay). I learned that even the overlay's advocates agreed that the original overlay, which is in effect, needed repair, and they have a long list of changes they want to make.

I started to talk to neighbors and learned that most had no clue what was in the overlay, and those who had actually read it were as alarmed as I was. After one particularly stormy ANC meeting, those of us with concerns exchanged e-mails, and the Forest Hills Neighbors for Responsible Preservation (FHNRP)

was "born" at a meeting in my husband's and my living room.

Contrary to popular myth, FHNRP's goal is not to rip out all the trees in Forest Hills and pave over the lots. Indeed, we are committed to the environmental quality and aesthetics that make Forest Hills a desirable place to live. We want to develop an overlay, if indeed one is needed, that addresses the real problems in Forest Hills, that is enforceable, and that does not impose onerous and unnecessary burdens on homeowners.

We are sufficiently concerned about the overlay to have gone to the trouble and expense of developing this paper for you. We hope you will read it completely. The issue is important and merits your full consideration.

Next Steps. The overlay and the proposed amendments by its

proponents are being reviewed by the D.C. Zoning Commission. The Commission has already held two hearings. The third is scheduled for September 30. At that hearing, opponents - those who think we can do better - will present our case. If you agree we can do better, or if you simply want to know more about what we think is wrong with the overlay, please join us September 30 at:

Zoning Commission
Suite 210, 441 4th Street, NW,
Washington, DC 20001
(Judiciary Square stop/Red Line)
6:30 p.m.

Alternatively, write the Zoning Commission and refer to Case No. 02-19. Or contact us at the address below. This issue is of critical importance to every homeowner. Do not be deceived by its green camouflage.

Forest Hills 'tree and slope overlay' goes down wrong path

Zoning Commission needs to send it back to the community

By WILLIAM KELLY
4205 Lenore Lane, NW

On April 5, 2002, the Forest Hills Citizens Association filed with the D.C. Zoning Commission a "tree and slope overlay" -- new zoning regulations -- that now affects all properties within specified boundaries. A new version from the Association with many amendments is also before the Zoning Commission, which must decide whether to keep the original overlay, adopt some or all of the proposed amendments, propose its own amendments, or reject the overlay altogether.

The Forest Hills Neighbors for Responsible Preservation (FHNRP), an *ad hoc* group of approximately 30 core members who have homes that would be subject to the overlay, strongly opposes the measure and has been urging the Zoning Commission to set it aside and return it to the affected community for an open review process led by the District's Office of Planning.

FHNRP, of which I am a member, intends to make a number of points at the September 30 meet-

ing. We are heavily invested, both emotionally and financially, in our homes and lots in Forest Hills. A fixed and understandable Zoning Code has helped to set expectations and determine property values. The flexibility left by the Code has enabled us to express

"[W]e oppose the overlay because it would change rather than preserve the character of our neighborhood, unnecessarily impinge on the prerogatives of homeowners and entangle us and multiple agencies in time-consuming and expensive Board of Zoning Adjustment (BZA) proceedings."

our design creativity and adapt our homes and lots to our evolving needs and styles of living. Decisions by our neighbors and their predecessors—taken as a matter of right—have made the Forest Hills neighborhood a place

that has a high value for its residents today.

No Consensus

New restrictive legislation or regulation should be imposed on a residential neighborhood only when a consensus of residents supports that imposition. But consensus is lacking in this case. 150 households throughout the overlay district formally have already registered their opposition to the overlay with the Zoning Commission. This compares with 105 households that had formally registered their support as of September 3. In four specific areas within the overlay, 80% of the households have registered their opposition and asked to be exempted. The ANC Commissioners who represent 96% of the homeowners in the proposed overlay continue to oppose it.

Reasons for Opposition

Why is there such widespread opposition? It is not because opponents do not love their neighborhood, respect the environment or value trees. Indeed, we have

collectively planted hundreds of trees on our properties. Instead, we oppose the overlay because it would change rather than preserve the character of our neighborhood, unnecessarily impinge on the prerogatives of homeowners and entangle us and multiple agencies in time-consuming and expensive Board of Zoning Adjustment (BZA) proceedings. If the overlay had been in place when houses now standing in the neighborhood were first built, the vast majority could not have been built without special BZA approvals.

FHNRP believes many of the specific provisions of the overlay have no proper place in Forest Hills and others need closer examination before being adopted.

How the Overlay Restricts

Lot Coverage. The overlay would decrease the maximum permitted lot coverage for new buildings from 40% to 30%. In the context of large lots, this would make no practical difference. But many of the homes that give Forest Hills its character cover more than 30% of their lots, and the owners of existing homes are permitted to add additions up

to the 40% coverage. This forces homeowners to renovate upward, rather than outward. In addition, ironically, the overlay will not prevent the building of "McMansions" proponents fear because the maximum height and bulk of a house permitted by current zoning is not addressed in the overlay. These misdirected restrictions on new or replacement homes run counter to the goals of the overlay's proponents because they *change*, rather than *maintain*, the current character of the neighborhood.

The overlay also imposes a new 50% limit on the percentage of any lot that can be covered with such impervious surfaces as new buildings, patios, driveways, tennis courts, swimming pools and paved pathways. Again, in the context of the smaller lots in Forest Hills, this limit would restrict the ability of current and future homeowners to customize the use of their lots to meet their evolving needs. There is an exception for the expansion of existing homes but no fair basis for treating new or rebuilt homes differently.

Tree Removal. The overlay imposes a myriad of confusing restrictions on the removal of trees, which are described in detail elsewhere in this insert. These restrictions would apply regardless of lot size, regardless of tree species, regardless of whether the lot is vacant or has an existing house, and regardless of the impact on the feasibility or design quality of a home.

Minimum Lot Size. The overlay raises the minimum lot size from 7,500 square feet to 12,000 square feet on R-1-A lots. The District's Office of Planning opposes this increase, arguing that such a minimum would be "contrary to the neighborhood character." We agree.

Much of Forest Hills consists of attractive, moderate-sized homes on 7,500 square foot or smaller lots. Indeed, 11% of R-1-A lots are already smaller than 7,500 square feet. Another 50% of developed lots are between

7,500 square feet and the 12,000 square foot minimum that the FHCA continues to advocate. If the overlay is imposed, 61% of lots zoned R-1-A would be "non-conforming" by lot size alone. This means that these properties would have to battle their way through the extensive quasi-judicial review process and public hearings of a special exception process.

If the problem overlay proponents hope to fix is over-sized houses on small lots, then the community, the Office of Planning and real experts should ex-

pose also impose an unfair hardship on certain corner lots. The purpose of this clause is esthetic rather than environmental, and it may be a constructive way to limit inappropriately-sited replacement housing. However, it needs further public debate to develop proper exceptions.

Side Yards. The proposed amended overlay establishes a new minimum side yard for properties wider than 80 feet, using a sliding scale that rises to a maximum total of 32 feet for the sum of the two side lots. In many, and

Do You Live In the Overlay District?

The current overlay runs generally between Connecticut Avenue on the west and Rock Creek Park on the east, and from the south side of Tilden Street to Linnean Terrace in the north (see www.anc3f.org for a map).

plore appropriate, effective tools to fix this problem. If the problem is the risk of excessive density if large institutional parcels are eventually sold and devel-

perhaps most, parts of the overlay district, homes are built to the 8 foot side lot minimum now allowed by the Zoning Code. Again, the overlay would make a large proportion of Forest Hills nonconforming.

"We see a process that is onerous, time-consuming, expensive, and unpredictable, putting the burden on our citizens to hire a battery of experts ranging from soils engineers to arborists and probably lawyers and expeditors to have a fair chance in the process."

oped, it should also be addressed directly.

Setbacks. The Zoning Code imposes no setback requirements from the street, although building restriction lines in some parts of Forest Hills have the same effect. The overlay would require that all new residential buildings be set back from the street at least as much as the average of all other structures on the same side of the street. As presently formulated, the provision will constrain owners even where it has no relevance to any purpose of the overlay. It

Slopes. The current overlay prevents building on slopes greater than 25%, and amendments from the proponents would establish instead new hurdles for those who would build on or alter the shape or grade of such slopes. Even as amended, the provision will prove complicated for most of us (25% is not steep), as it will force us to undertake extensive and expensive soils testing, and possibly hire a phalanx of geotechnical consultants and structural engineers to certify that "best practices" were followed.

If instead the real need is to maintain basic land contours on multi-acre sites that might some day be developed on the model of suburban subdivisions, then appropriate land use regulation should be developed for and limited to those sites.

Special Exceptions. The overlay establishes a procedure for seeking Special Exceptions from the BZA. The procedures include

an application submitted subject to criminal penalty, supporting materials, referral to five D.C. and federal agencies and a public hearing.

Proponents see the special exception provision as a cure-all for the rigidities of the overlay, envisioning that everything from tree removal decisions to front, side and back lot setback decisions for individual houses will be handled by the BZA. We see a process that is onerous, time-consuming, expensive, and unpredictable, putting the burden on our citizens to hire a battery of experts ranging from soils engineers to arborists and probably lawyers and expeditors to have a fair chance in the process.

Lost in the Bureaucracy

Moreover, we live in a city that struggles to deliver basic services in a timely fashion and that is under financial stress. Adding to the city's burden guarantees trouble for us.

What To Do?

In short, FHNRP believes the overlay now in effect and even as amended by its advocates is not the right starting point. In dealing with an area as large and diverse as Forest Hills, we must develop an approach that is largely self-administering, especially with respect to trees. **None of us should be forced to seek the approval of up to five agencies for something as simple as a porch addition or a patio regrade.**

The Right Way to Go - And the Wrong Path

The first step is for the affected neighbors to agree on the problem(s) and then the goals of an overlay, so that it can be designed in a way that achieves these goals rather than imposing collateral damage on everyone who has the misfortune of being in its ambit. We share proponents' goals of preventing erosion, reducing air pollution and protecting parkland but their arguments ring a bit hollow to us. Any over-

See KELLY on page 4

“Calculating” the overlay: convoluted and confusing

By DR. JAMES R. FOREIT
4140 Linnean Avenue, NW

The Forest Hills tree and slope overlay contains some truly absurd tree removal provisions that will have your head spinning in no time. As now written, it requires extremely complicated calculations by homeowners; gives no guidance as to when or how often required calculations need to be made, does not address the problem of filing and certification of measurements and calculations; fails to provide for immediate mitigation; and creates situations where prime canopy trees can be removed but where less desirable trees cannot be touched.

Measuring and Calculating

Extensive measurement and calculation will be required of the homeowner before he or she can remove a tree as a matter of right under the overlay. How bad will it be? I tried to make these calculations on my own property. I had to create the worksheet on page 4. The number of calculations required by the TSO is 17. The number of different measurements required is equal to the total number of trees on the lot plus an additional measurement for establishing a point 25 feet from the existing building restriction line (BRL). In the case of my 11,000 square foot lot, the number of measurements required was *approximately* 47. I was unable to determine the *exact* number of measurements because we have several multi-trunked trees. The overlay provides no guidance as to which trunk must be measured, or the number of trunks that must be measured on a multi-trunked tree.

The sample worksheet lays out the steps that a homeowner might follow and illustrates the complexity of the proposed regulations. Correctly measuring and calculating does not mean that the homeowner has a clear answer to the question, “can I cut down that tree?” This is because Section 1519.1 fails to specify a denomi-

nator for total circumference inches.

Unanswered questions abound. If the form is filled out the first time a tree is removed, for how long should this baseline remain in effect? How often can I remove 25% of my total circumference inches? Once in the lifetime of the house? Once in my ownership of the house? What happens when I sell? Is the new owner limited because I legitimately cut down a few trees? Trees grow; trees die. Lots change hands. The baseline of total circumference inches is dynamic and must be clearly defined and agreed to by stakeholders.

“I tried to make these calculations on my own property.”

Filing and Certifying Those Calculations

Although Section 1519 requires evidence in the form of measurements and calculations before a tree can be removed, it does not say if the detailed calculations must be filed and certified, and if so where, by whom, how often, and whether or not they need to be presented on the standard form that must be obtained from a regulatory agency. If the measurements and calculations do not need to be filed and certified, how long are we obliged to keep them available in case of a challenge? Must we provide the information to the prospective buyers of our houses?

Obtaining an Exception

As indicated in Section 1520.2 of the overlay, if it becomes necessary to obtain an exception to remove a tree, the homeowner will have to seek approval from five local and federal agencies, including: the Office of Planning; the Department of Transportation; Tree Maintenance Division; the Department of Parks and Recreation; the Department of Health, Soil Erosion Branch; and the National Park Service, U.S.

Department of Interior. Suffer no illusions that this will be an easy, straightforward, or swift task.

We Can Do Better

If there is indeed community consensus that a tree protection provision is needed for Forest Hills, the tree provisions should meet the following criteria:

- Minimize measurement and calculations and reduce the process to a simple number/size criterion (e.g., total of X trees of certain size);
- Provide for immediate mitigation instead of a draconian 7-year building

permit embargo (e.g., payment into a tree fund, replace the cut tree with new tree of equal value);

- Do not extend tree protection beyond the building restriction line (e.g., do not add 25 feet to the Building Restriction Line);
- Simplify the exception process. Reduce the number of exceptions that need to be obtained and the number of agencies that are required to concur.

Members of FHNRP believe we can, and must, do better. Unenforceable and obtuse tree provisions help no one, not even the trees they purport to save.

3.8-Inch Diameter Triggers Tree Provisions of the Forest Hills Tree and Slope Overlay (Section 1519.1)

“Construction of a building, an accessory building, or an addition to a building, or the creation of any impervious surface area, the subdivision of any improved lot, or the subdivision of any improved lot so as to increase the number of principal structures thereupon 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 12 inches or greater at a height of four and one half feet above ground [see shaded circle for actual size];

“(B) The prohibitions of this section shall not apply to the removal of any dead or unhealthy tree or 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 more than 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 trees that each has a circumference of more than 38 inches at a height of four and one half feet above ground shall be removed, and none of these shall be located within 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 25% of the total circumference inches, provided that this restriction shall not abrogate the right to remove up to three 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.”

[Note: A 12” circumference equals a 3.8” diameter.]

KELLY, from page 2

lay that attempts to achieve its goals through heavy-handed regulation of incremental building on the privately owned lots in Forest Hills will surely fail. We believe that the greater concern of many of our neighbors is to make sure that newly constructed or renovated homes are in character with the neighborhood and to have appropriate control over future use of multi-acre parcels, many of which are currently in the hands of foreign governments.

"We need to start with a different approach, and the members of the FHNRP are ready to participate in developing an approach that addresses real, not imagined, problems."

Many of the zoning rules needed to protect our neighborhood are already in place. The real problem is that lax and ineffective enforcement of these existing rules has enabled developers to construct houses that are out of character with our community. With a common purpose and a commitment to regulate judiciously and enforce vigorously, we believe that the neighborhood can achieve these shared purposes.

The current overlay goes a long way down the wrong path. We need to start with a different approach, and the members of the FHNRP are ready to participate in developing an approach that addresses real, not imagined, problems. With the support the Office of Planning has offered and with access to other experts, we can clarify and narrow the perceived problems and develop other approaches so that we might build a real consensus.

Judge for Yourself!
You can read the text of the overlay that is in effect, and the text of the overlay as amended by its proponents, by logging on to www.anc3f.org.

Sample Worksheet for Measuring and Calculating Tree-Removal Rights under Section 1519.1

To comply with the provisions of Section 1519, you will need the following materials:

1. Copy of your plat map from the D.C. Surveyor's Office.
2. Flexible tape measure with at least one-inch gradations and at least 25 feet long. The measure should be made of a non-stretchable material.

The attached worksheet walks you through the measurements and calculations you will need to establish your right to remove a healthy tree. There are no restrictions on removing dead or unhealthy trees, or trees that create an unsafe condition. However, you will need certification from an arborist that your tree(s) meet these conditions.

Failure to comply with the provisions of the Tree and Slope Overlay will mean that for the next seven years you will need a special exception from the Board of Zoning Adjustment (BZA) before obtaining any building permit. Should you sell your lot before seven years transpire, the buyer also will be required to seek special exceptions from the BZA until the seven-year period expires.

Worksheet for Overlay Tree Provisions

1. Locate the Building Restriction Line (BRL) on your property. Stake a line 25 feet behind the BRL. If your plat map does not show a BRL, stake a line 25 feet away from all public roads abutting your property.

2. Count and measure all of the trees on your property. Measure the circumference of each tree by marking a spot on the trunk 4.5 feet (54 inches) above the ground and passing a flexible tape measure completely around the trunk at that point. Record your measurements below:

2a. Enter number of trees less than 12 inches in circumference: ____ trees. Any number of these trees can be removed without restriction.

2b. Measure trees with circumferences of 75 inches or more:

#1: ____ circumference;

#2: ____ circumference;

#3: ____ circumference (use a continuation page if more than 3 trees).

Total combined circumference of all trees with circumference of 75 inches or more: _____. WARNING: You need a BZA special exception to remove any of these trees if you hope to get a building permit within seven years of the date of removal!

2c. Trees with circumferences of 12-38 inches:

#1: ____ circumference;

#2: ____ circumference;

#3: ____ circumference (use a continuation page if more than 3 trees).

Total combined circumference of all trees with circumferences of 12-38 inches: _____. Removing any of these trees is subject to the total circumference of protected trees on your lot (line 3).

2d. Trees with circumferences of 38-75 inches located within 25 feet of BRL:

#1: ____ circumference;

#2: ____ circumference;

#3: ____ circumference (use a continuation page if more than 3 trees).

Total combined circumference of all trees with circumferences of 38-75 inches located within 25 feet of BRL: _____. WARNING: You need a BZA special exception to remove any of these trees if you hope to get a building permit within seven years of the date of removal!

2e. Trees with circumferences of 38-75 inches located more than 25 feet from BRL:

#1: ____ circumference;

#2: ____ circumference;

#3: ____ circumference (use a continuation page if more than 3 trees).

Total combined circumference of all trees with circumferences of 38-75 inches located more than 25 feet from BRL: _____. You may remove up to 3 of these trees without BZA special exception.

3. Total circumference inches: Add up the total combined circumferences in lines 2b, 2c, 2d, and 2e and write number here: _____

4. Multiply line 3 by 0.25: _____. This is the total circumference inches you can remove without BZA exception.

5. Indicate the number of tree(s) you wish to remove: _____

5a. Number of trees less than 12 inches in circumference: ____ trees. Any number of these trees can be removed without restriction.

5b. Trees with circumferences of 38-75 inches located more than 25 feet from BRL: ____ trees. Only 3 of these trees can be removed without BZA exception.

5c. Total combined circumference: _____

5d. Trees with circumferences of 12-38 inches: ____ trees.

6. Total circumference inches to be removed: add lines 5c and 5d: _____

7. If the number of trees in line 5b is three or fewer, all of them can be removed without BZA exception.

8. If total circumference inches to be removed in line 6 exceeds 25% of total circumference inches in line 4 **and** the number of trees in line 5d is one or more: **STOP**. Go back and adjust the trees to be removed so that total circumference inches in line 6 is less than or equal to line 4 **or** the number of trees in line 5d is zero.