
ANC 3F Forest Hills/North Cleveland Park/Tenleytown

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

This Commission has the authority to implement a Forest Hills overlay, if it so chooses. There is no debate on that question. The debate in the Forest Hills community and before this Commission is whether this authority should be exercised. My conclusion and my firm recommendation to you is that you vote down the overlay. Here are my reasons.

1. An overlay by definition is a neighborhood specific regulation. It implements zoning rules that apply to only one neighborhood. Such a regulation should be implemented only when it reflects a consensus within the affected neighborhood. No consensus exists in the Forest Hills neighborhood today.
2. While there is support for the overlay in Forest Hills, there is also strong opposition. By voting to implement an overlay in Forest Hills, the Zoning Commission would be imposing its will on a divided community. This would benefit neither the community nor the Commission.
3. Our system of democracy is based on the concept that government is granted sovereignty by the people. The people can bestow sovereignty on government bodies and can also take it away. This means that public agencies bear the burden of ensuring that policy decisions are connected to the public will. It is clear that there is a sharp division in the public will of the Forest Hills community on the overlay. By stepping into this division the Zoning Commission puts at risk the legitimacy of its decision on this matter and perhaps on other matters as well.
4. The overlay was presented as a way to protect trees and slopes. Yet there is strong evidence to suggest that the real purpose of the overlay is to control development. Before this Commission implements such a regulation, it should address the gap between intent and effect. A rule that is adopted to protect trees and slopes but is, in fact, designed to control development, will not work well for the makers of the rule, the implementors of the rule, or those who must live under the rule.
5. The overlay is built on the false assumption that controlling and constraining owner-residents of relatively small lots will somehow "preserve" Forest Hills. This assumption completely misses the fact that Forest Hills is a mature urban neighborhood with a fully developed system of asphalt and concrete streets and sidewalks. Building this infrastructure and the housing stock supported by it permanently changed the landscape of Forest Hills. Limiting improvements on the small lots of existing homeowners can yield only marginal and insignificant changes in existing conditions when compared with the enormous landscape

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changes that occurred when the neighborhood was built. Placing restrictions on these small landowners may create a sense that a public good is being advanced. But the reality is that few gains are to be realized by restrictions on building a driveway, a walk, or a porch on existing properties.

Finally, I would remind you that about 80 percent of the owners of lots in squares 2239, 2244, 2245, and 2246 petitioned the Commission in June 2002 for an exemption from the overlay. These squares are within my single member district and I request that they be excluded should the Commission decide to proceed with an overlay.