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Commissioner, ANC 3F06
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Washington, D.C. 20016-1838

October 7, 2002

D.C. Zoning Commission
441 – 4th Street, N.W., Suite 210
Washington, D.C. 20001
Attn: Alberto Bastida

District of Columbia
Case 02-19
Exhibit 282

Re: Zoning Case No. 02-19, Forest Hills Tree and Slope Protection Overlay

Dear Chairman Mitten and Members of the Zoning Commission:

Representations were made at the hearing on September 30 that I had not acted fairly by voting in favor of the Forest Hills Tree and Slope Protection Overlay. I would like to respond by outlining my reasons for supporting it, which I have not heretofore presented to this Commission.

1. The area defined for the Forest Hills overlay meets the characteristics outlined for Tree and Slope Protection Overlays in 11 DCMR § 1511.4:

The TSP Overlay District is designed for residential neighborhoods that have a significant quantity of steep slopes, have stands of mature trees, are located at the edge of stream beds or public open spaces, and have undeveloped lots and parcels subject to potential terrain alteration and tree removal. It is not suitable for mapping in neighborhoods where nearly all lots are already developed on a rectangular grid system and where the existing mature trees are either yard trees or street trees.

Considerable evidence supporting the appropriateness of the area for the overlay has already been submitted: its proximity to several parks; its winding streets; its steep slopes, stream beds, and mature trees providing almost complete canopy cover; its undeveloped lots subject to tree removal and potential terrain alteration. I would like to focus my remarks, though, on Mr. Baughman's suggestion that I was disingenuous in not considering the overlay for two sections of my Single Member District.

I did consider this question three years ago for my neighborhood of Tenleytown when a developer bought a wooded property there. Residents prized the trees on the property, but we were counseled that our neighborhood was not appropriate for an overlay because the only lot with a stand of mature trees was the one in question; most of the surrounding

area has been developed on the grid; and the only trees on many properties are small ornamentals. This point is illustrated by the picture Mr. Baughman showed of my neighbors' house at 3804 Albemarle Street, N.W. The only trees on their property are the small dogwood shown in front of their window and an ailing crabapple in the rear. (The Zoning Commission may remember this case. While we were contemplating the overlay, the developer cut down all the trees on the wooded property, then filed an application for a planned unit development, Zoning Case No. 00-03C. My community is grateful to your Commission for helping preserve trees on publicly-owned lands surrounding the lot through Zoning Order No. 921, even though it was too late to save the trees on the lot itself. The community did take steps to preserve other mature trees indirectly by having the surrounding area declared a Historic District, which will limit development on historically-designated properties.)

Mr. Baughman also asked why the area of Forest Hills west of Connecticut Avenue was not included in the overlay. Although this area does have one or two wooded undeveloped lots, as well as stands of mature trees on several other large lots, this area was not included because it is separated from the rest of Forest Hills and its parklands by the Connecticut Avenue corridor. Perhaps the residents would welcome an overlay. Neighbors of the house shown in Mr. Baughman's picture have applied to the BZA for a special exception to build an addition in a nonconforming side yard so they can save a large tulip poplar growing on the other side of their house. Surrounding property owners approve of their decision. Everyone enjoys this tree.

2. Mapping the Tree and Slope Protection Overlay in Forest Hills is consistent with the Comprehensive Plan and is a specific residential neighborhood objective of the Ward 3 Plan.

Although the Office of Planning in its June 17, 2002, report mentions a number of relevant provisions from the general elements of the Comprehensive Plan, it completely avoids those sections in the Ward 3 Plan relating to the tree and slope protection overlay and to Forest Hills in particular, then misdirects the discussion to inapposite general housing objectives in Ward 3.

The urban design element of the Ward 3 Plan, at 10 DCMR Section 1406.5 (a), describes the following objectives for "[a]reas in Ward 3 that are environmentally valuable and sensitive to urban development":

- (5) Stream valleys, which include Rock Creek Park (and its tributaries) and Glover Archbold Park: Development adjacent to these parks must be low density and shall be further restricted where advisable to protect unstable soils, eliminate runoff potential, and promote a green buffer between the built environment and these natural settings. Development of border areas must avoid any adverse effect (known or plausibly suspected) on these stream valley parks, including the water quality, flora, and fauna, and should minimize any intrusions on views from these parks;

- (6) Neighborhoods developed over hilly terrain or near stream valleys (such as Barnaby Woods, *Forest Hills*, Hawthorne, Palisades, Spring Valley, and Woodland-Normanstone): Urban design should respect and perpetuate the natural features, low density, and usually wooded character of these areas. (emphasis added)

The urban design element continues:

- (b) Appropriate design solutions include the following:
 - (1) Limit density of development adjacent to natural areas, areas with severe building restraints, or stream valleys; maintain park-like settings on streets and lands adjacent to the natural areas and stream valleys; and require ample building set-backs;
 - (5) Encourage retention of natural growth and grades; minimize regrading or the removal of topsoil and vegetation; establish new vegetation, especially trees;
 - (6) Minimize the construction of impervious surfaces; promote permeable materials for driveways, walkways, parking lots, and the like.

Both the environmental and urban design elements of the Ward 3 Plan, at Sections 1403.4 (b) (2) and 1406.12 (c), call for

Map[ping] the Tree & Slope Protection Overlay (11 DCMR §1511) in hilly areas throughout the ward in addition to Woodland-Normanstone, particularly in areas adjacent to federal parklands.

The Ward 3 land use element then specifically directs that

[The] Tree & Slope Protection Overlay should be considered and adapted for other park-like, hilly areas [besides Woodland-Normanstone] such as the Potomac palisades and *the portions of the Forest Hills . . . neighborhood[] adjacent to Rock Creek Park and its tributary valleys*. Section 1409.4 (b)(2). (emphasis added)

The ANC Ad Hoc Tree and Slope Protection Committee was created to respond to this residential neighborhood objective.

3. The text of the overlay is drawn from the District’s own “template” regulation for tree and slope protection overlays at 11 DCMR Sections 1511-1515, the regulation the Zoning Commission adopted ten years ago and has been using since then in two other areas of Ward 3.

This is the text that Ron Slotkin was objecting to in his e-mail of March 20, appended to Commissioner Maudlin’s testimony. David Bardin, as co-chair of the committee, did

respond to Mr. Slotkin's e-mail and informed him that the provisions he objected to were the same as the existing regulation. See attached e-mail from David Bardin. Even though Mr. Slotkin says he could draft a better regulation, he has not attended meetings of the committee or communicated his ideas to the committee or ANC since his e-mail. (Mr. Slotkin was the representative of the Jewish Primary Day School on the Ad Hoc Committee. He does not live in Forest Hills or ANC 3F. The Jewish Primary Day School opposed the overlay, but now has put its Forest Hills property up for sale. It plans to locate its school on 16th Street, outside the overlay, so Mr. Slotkin may no longer have an interest in this matter.)

No one else has put forth a different regulatory scheme. In contrast, residents of the other Tree and Slope Protection Overlays in Ward 3 expressed wholehearted support for their overlays when they met with the Ad Hoc Committee and the ANC. The only problems they noted were enforcement of the overlay when DCRA made errors or when a property owner simply cut down or damaged trees.

If your Commission decides that a different regulatory scheme is warranted for Forest Hills, you should make clear what aspects of the template should be changed. Making fundamental changes to the template for Forest Hills could call into question the other overlays and would certainly make administration of all the overlays more difficult.

4. From my observation, the vast majority of residents within the overlay area support it.

At the April 15 ANC meeting, one of Commissioner Kogan's constituents announced she had already collected over 40 signatures from her immediate neighbors in support of the overlay, with only one objection. The majority of residents who spoke at the April 16 meeting said they too supported it. In fact, several residents at that meeting, whose properties were not within the original overlay boundaries, asked to be included. Others, who reside in David Bardin's Single Member District, have also asked to be in the overlay. See Exhibit 106. (Their properties were not included because they are in the same squares as large apartment buildings that were not considered appropriate for the overlay. Also, these properties are relatively flat.) As commissioner and chair of the ANC I have received a large number of letters, e-mails, and telephone calls from residents of the proposed overlay. Almost all of these have been in favor of the overlay.

5. The ANC, Ad Hoc Committee, and Forest Hills Citizens' Association worked to resolve problems residents perceived with the text as set down by drafting, approving, and submitting amendments.

Like Commissioners Kogan and Maudlin, I would have preferred to have the application filed after the scheduled April 16 community meeting, as originally planned, rather than before it. I supported the ANC's resolution in favor of setting this case down for hearing, though, because I expected it to stimulate more intense discussion within the community. This is exactly what happened. Two large community meetings were held on April 16

and May 13. (I helped distribute flyers door-to-door for the April 16 meeting.) In addition, several smaller meetings were held with individual property owners to learn more about their concerns. As chair of the ANC, I had also called a special ANC meeting during the week of June 10 to elicit comments from anyone who had not yet spoken, but at the May 20 ANC meeting, Commissioner Kogan led a charge to defeat it, saying we had heard enough on this issue already.

In response to comments expressed at these meetings, the Ad Hoc Committee proposed modifications to several provisions of the regulation. Some of these modifications were made to address hardships the Kellys claimed for their investment lot. I was surprised to hear Cindy Kelly say at the Zoning Commission hearing on September 30 that her property is still unbuildable because “there are trees all over the lot.” One can amend the regulation only so far.

6. The proposed modifications will reduce the number of cases that will have to go to the BZA for special exception. I do not believe that going to the BZA is an unreasonable burden.

This regulation strives for a balance between flexibility and need for public review in certain situations. The way the regulation is structured now, most issues will be resolved at DCRA. Only in certain circumstances will property owners have to file for a special exception. This may effect lots with a large number of trees more often, but protection of trees is the basis for the regulation.

A much more burdensome regulatory system is the one used by the Historic Preservation Review Board, which must consider every change to properties that have been landmarked. Yet, my community has opted to be regulated under this system. I should also note that the City Planning Commission in New York likewise reviews all applications for development within its natural areas.

7. Although the overlay places restrictions on property owners, it also gives them protections from the actions of adjacent owners.

To me, this is at the heart of the disagreement within the community over whether to accept the overlay. I believe the protections outweigh the constraints. Let me take for example Hillwood. The museum owns acres of wooded slopes adjacent to Rock Creek Park and Soapstone Valley Park. Tributaries flow from its property to Soapstone Creek and Broad Branch. Surrounding properties, including those on Lenore Lane, enjoy the benefits of its trees. Hillwood does, too. A stated goal of the museum is to preserve the mansion and views from it as they appeared when Marjorie Merryweather Post lived there. Even though Hillwood has requested to be excluded from the overlay because it already must comply with a large number of regulations, it could benefit from the overlay as well. In the event Hillwood had to sell off lots on the periphery of its property at some later date, the overlay would allow control over removal of trees on these lots and thus help protect the views from the mansion. It could also preserve some of the trees neighboring properties now enjoy.

8. There is a strong environmental need for mapping the tree and slope protection overlay in Forest Hills.

The District's environmental laws are surprisingly weak, considerably weaker than other jurisdictions. As a result, trees in Forest Hills shading tributaries of Rock Creek are felled with no repercussions, even though such actions would not be allowed in Maryland or Virginia. The District has lost close to half its tree canopy, mostly on private land. The regulation could help stem this tide. This tree cover helps protect Rock Creek Park, the water quality of the streams that flow into it, and the air we all breath.

I believe the larger minimum lot size, the 30% lot occupancy and 50% impervious surface coverage, and flexible side yard provisions are designed to promote growth and retention of trees. I know from personal experience that it is hard to grow trees of any decent size and number on a small (5,000 square-foot) lot, even when structures and impervious surfaces combined cover less than 30% of the lot. The flexible side yards should allow property owners to build around trees and could also be used by adjacent owners to ask that a house be sited so as to avoid damaging their trees.

9. The overlay would provide protections that a Planned Unit Development by itself would not.

Many large wooded properties in Forest Hills could someday be sold to be developed as planned unit developments. As described above, nothing prevented a developer in my community from clear cutting all the trees on its property before filing its PUD application. If the overlay were in place, though, its standards could serve as a guide to shape a planned unit development.

10. My sense is that the protections of the Tree and Slope Overlay will increase, rather than decrease, the value of property within the overlay and help maintain property values in the event of recession. As a result, it will help maintain and increase the city's tax base.

As trees become more scarce in the District and as the city becomes more and more built up, neighborhoods with trees can only become more valuable. If Forest Hills were developed as fully as Tenleytown, it would lose most of its distinctiveness as a neighborhood and as a supremely attractive place in which to live.

Sincerely,


Cathy Wiss

One Attachment

From: Catherine J Wiss <schumannwiss@juno.com>
To: schumannwiss@juno.com
Date: Mon, 7 Oct 2002 14:00:20 -0400
Subject: Fw: RE: March 25 meeting...my thoughts on the matter.

----- Forwarded message -----

From: "Bardin, David J." <BardinD@arentfox.com>
To: "Slotkin, Ron@epamail.epa.gov" <Slotkin.Ron@epamail.epa.gov>,
"Clark, George R." <GClark@ReedSmith.com>
Cc: "Bardin, David J." <BardinD@arentfox.com>,
"Joan Benesch" <benesch22@aol.com>,
"Matt Berres" <berres@potomac.org>,
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Date: Wed, 20 Mar 2002 17:38:15 -0500
Subject: RE: March 25 meeting...my thoughts on the matter.
Message-ID:
<8D4F94A60C5CD41184BB00508BE388D80AF7A332@wdcexm01.wdc.arentfox.com>

Ron:

Thanks for taking the time to put down your thoughts. I will study them carefully, and am sure other committee members will do the same. At the outset, however, your e-mail starts from a misconception, that I apparently failed to clear up for you at our last meeting. Namely, the draft Overlay Regulation I have prepared for Committee consideration and discussion does not (to the best of my knowledge and intent) contain "changes to the city template" as you write (with the single exception of adding a minimum lot size -- a provision with which you appear to agree). Specifically, the provisions regarding tree sizes, sick trees, opinions of arborists or other professionals, lot occupancy by buildings and total impervious surface cover ALL COME DIRECTLY FROM THE CITY TEMPLATE -- not from our drafting. So, if any of these provisions is objectionable in and of itself or needs clarification, it is, I believe, the CITY TEMPLATE that needs attention.

I will study the specific points you make and hope to go over them with you over the telephone before our March 25 meeting.

David

-----Original Message-----

From: Slotkin, Ron@epamail.epa.gov [mailto:Slotkin.Ron@epamail.epa.gov]