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Government of the District of Columbia
Advisory Neighborhood Commission 3F
North Cleveland Park ■ Forest Hills ■ Tenleytown

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3F03 Robert V. Maudlin
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11 February 2003

Chair Carol Mitten and Members of the Zoning Commission
Zoning Commission of the District of Columbia
441 4th Street, NW – Suite 200
Washington, DC 20001

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

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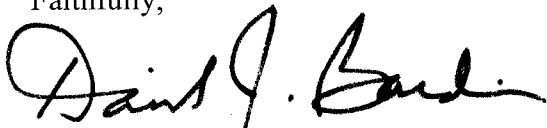
Dear Zoning Commissioners:

Attached please find the resolution adopted last night by ANC 3F by a vote of 6-1-0 at a duly notice regular business meeting with a quorum present regarding the Notice of Proposed Rule-making (NOPR Overlay) published in the December 13, 2002, DC Register.

The resolution recommends that the Zoning Commission:

- A) amend the NOPR Overlay in each of the respects set forth; and
- B) adopt an amended tree and slope protection overlay for Forest Hills.

Faithfully,


David J. Bardin, Secretary

Attachment

ZONING COMMISSION
District of Columbia
Case 02-19
Exhibit 310

ZONING COMMISSION
District of Columbia
CASE NO.02-19
EXHIBIT NO.310

Res 03-04

2-10-2003

**ANC 3F RESOLUTION REGARDING
FOREST HILLS TREE & SLOPE PROTECTION OVERLAY [Case No. 02-19]**

Advisory Neighborhood Commission 3F
North Cleveland Park, Forest Hills & Tenleytown
4401-A Connecticut Avenue NW # 244
Washington, DC 20008-2322

WHEREAS, the Zoning Commission of the District of Columbia (ZC) has published a Notice of Proposed Rulemaking (NPR) to adopt a Forest Hills Tree and Slope Protection Overlay (NPR Overlay) in the DC Register on December 13, 2002 (49 DCR 11309) with written comments due 60 days later (February 11, 2003); and

WHEREAS, the ZC on April 19, 2002, had set down for public hearing an earlier form of this overlay (Set Down Overlay); and

WHEREAS, prior to the set down, ANC 3F had established an *Ad Hoc* Committee on Tree and Slope Overlays (*Ad Hoc* Committee), composed of commissioners and residents; and this committee collected information from other neighborhoods for which such overlays are in effect, met with residents of Forest Hills, and obtained counsel from the Office of Planning (OP) and other experts as to overlay features; and

WHEREAS, ANC 3F has provided information about the proposed overlay to property owners and residents through postings on the ANC web site; and

WHEREAS, ANC Commissioners heard from many residents at two neighborhood meetings, on April 16 and May 13, 2002, at which features of the proposed overlay were extensively discussed and analyzed, and received correspondence, studied documents, and met with property owners in this neighborhood to discuss features of the proposal further; and

WHEREAS, on June 17, 2002, after hearing views of residents once more, ANC 3F adopted and submitted to the ZC Resolution 02-27 recommending certain amendments based on a June 3, 2002, report to this ANC by its *Ad Hoc* Committee (which was also submitted to the ZC), and Commissioners Perry and Bardin (two of the commissioners designated by ANC 3F) testified before the ZC on June 27, 2002, on ANC 3F's behalf; and

WHEREAS, ANC Commissioners Mitchell (3F05) and Wiss (3F06), supporting ANC 3F's proposed amendments and the overlay, testified before the ZC on September 5, 2002, as individual commissioners; and

WHEREAS, ANC Commissioners Kogan (3F01) and Maudlin (3F03), opposing ANC 3F's proposed amendments and the overlay, testified before the ZC on September 30, 2002, as individual commissioners; and

WHEREAS, the ZC discussed the overlay at its public meeting on October 28, 2002, and voted to publish the NPR Overlay with 60 days for further written comment; and

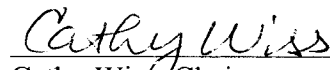
WHEREAS, pending final rulemaking, the NOPR Overlay is now in effect;

NOW, THEREFORE, ANC 3F resolves and recommends that the ZC:

A) amend the NOPR Overlay in each of the respects set forth in the Appendix, below;
and

B) adopt an amended tree and slope protection overlay for Forest Hills.

Adopted on February 10 , 2003, by a vote of 6-1-0 at a duly-noticed public meeting with a quorum present.


Cathy Wiss, Chair


David J. Bardin, Secretary

APPENDIX:
ANC 3F'S SPECIFIC RECOMMENDATIONS TO AMEND NOPR OVERLAY

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Zoning Map (with Focus Areas)
Generalized Land Use Map with Focus Areas

ANC 3F'S SPECIFIC RECOMMENDATIONS TO AMEND NOPR OVERLAY

I. Squares, Lots, and Parts of Lots to Be Included in the Overlay

A. Proposed revisions of § 1517.1 and § 1520.6 and refinement of rationale as to R-5-D

ANC 3F recommends amending § 1517.1 to conform to the Template, as follows:

§ 1517.1 **The FH/TSP Overlay District is mapped in combination with the underlying ~~R-1~~ *[sic]*, ~~R-1-B~~ or ~~R-2~~ residential Zoning District and not in lieu of the underlying district.**

ANC 3F recommends amending § 1520.6 as follows to carry out the basic objectives more perfectly or more clearly:

§ 1520.6 **The Forest Hills Tree and Slope Overlay district includes all lots zoned ~~R-1-A, R-1-B, and R-2~~ in squares 2030 through 2033, 2040 through 2043, 2046 (except for lots or portions of lots zoned C-3-A), 2049 except for lots or portions of lots zoned R-5-D or C-3-A 804 (Van Ness North), 805 (Van Ness Center), 806 (Van Ness South), Square 2231, 2232, 2238, 2239, 2241 through 2251 (except for square 2243), 2254 through 2256, 2258, 2262 through 2270, 2272, 2274 through 2277, and 2282.**

These changes will

- (a) include in the overlay two lots south of Tilden Street, which the D.C. Generalized Land Use Map dictates be "low density" residential (even though zoned R-5-D);
- (b) include all of hybrid Lot 16 (which is mainly R-1-A but partly R-5-D) in Square 2033;
- (c) exclude from overlay coverage in squares 2046 and 2049 all but the R-1-A and R-2 portions of lots -- while including all of the unnamed creek in the R-2 portion of hybrid Record Lot 6 of Square 2049 (even though most of that Lot is excluded); and
- (d) exclude from overlay coverage all of square 2243 (which was inadvertently listed, because of a typographical error).

At the same time, these changes will put off any sweeping, generic or universal theory that R-5-D and tree and slope protection are inherently at odds.

See attached maps: Overlay boundary and squares discussed in these comments;
 Zoning Map (with Focus Areas).

The Template Overlay is available in "residential" zoning districts, without exceptions. But the NOPR Overlay would amend the Template to restrict coverage to R-1-A, R-1-B, and R-2 zoning districts.

- Such a departure from the Template would violate the ZC's general approach (selected at the October 28, 2002, decisional public meeting) of "using the template that we have"

(Tr. 113) and deferring revisions of the Template, if any, until after the OP reviews those provisions later this year.

- Moreover, the proposal to exclude all R-5-D areas from this overlay rested on the erroneous impression that the R-5-D zone that's mapped in Forest Hills is – *in every case* – "dictated by the land use map" (Tr. 122). Those R-5-D properties that are at issue in these comments are *not* dictated by the D.C. Generalized Land Use Map. Indeed, that Map designates two of the three identified R-5-D lots (the two south of Tilden Street) as part of the "low density residential land use category"; and it designates the third as "institutional" in a hybrid situation, where most of the lot is R-1-A and only a fractional strip is R-5-D.
- On the other hand, these comments accept exclusion from this overlay of other land as to which the Land Use Map does dictate R-5-D zoning. But we do not accept the reasoning that R-5-D zoning is *inherently* incompatible with a tree and slope overlay in principle (because the 30% ground coverage limitation would prevent the high density intended for that zone district) *in every case*. Asserted incompatibility *in principle* needs testing (for reasons partially set forth in the margin^{1/}); but that should best be done in a different context because in Forest Hills there is no vital need to include most of the R-5-D areas in this overlay – although there are vital reasons to include a few, exceptional R-5-D areas.
- The following discussion of R-5-D land in four properties that are on the edge of the overlay district but adjacent to park land casts doubt on any proposal to exclude R-5-D *generically* from all tree and slope overlays.

B. Rationale for inclusion of two lots designated "low density" residential on DC Generalized Land Use Map but zoned R-5-D on the zoning map

Two large lots south of Tilden Street are each zoned R-5-D in their entirety, although designated for "low density" residential land use categories on the Land Use Map (see attached map: Generalized Land Use with Focus Areas):

^{1/} High density zones may be compatible with tree and slope overlays because the greater building heights available in high density zones, coupled with the flexibility afforded by measuring density by FAR, would still allow substantial density even at 30% lot occupancy, albeit reduced from the maximum allowed by the underlying zone. Essentially, a tree and slope overlay in a R-5-D district would encourage development of tall, thin buildings surrounded by much land, rather than shorter, large ones that take up the entire property. For example, the R-5-D zone allows buildings up to 90 feet in height and an FAR of 3.5. A 90-foot-tall building with ten floors occupying 30% of the lot would have an FAR of 3.0. A 90-foot-tall building with nine floors occupying 30% of the lot would have an FAR of 2.7. The buildings could provide density, but trees could be preserved, and because buildings would be removed from the lot lines, residents would have better views from their windows, a particularly desirable quality near parks. Therefore, OP's careful evaluation of R-5-D districts throughout the City may lead to the same test for whether to apply the tree and slope overlay for any residential zone district: whether there is a significant enough need to preserve trees and other natural features to apply additional zoning restrictions (which is what happens when the ZC reduces low density zones from 40% to 30% lot occupancy).

- Square 2231, Lot 6 (2950 Linnean Avenue, 38,749 s.f. across Shoemaker Street from Rock Creek Park) and
- Square 2232, Lot 817 (2900 Tilden Street, 71,235 s.f.).

These two lots are clearly appropriate for overlay protection by any reckoning.

- As the ANC showed with slides at the hearings, Lot 817 is beautifully wooded, on a steep slope leading to Melvin C. Hazen Park. It also faces the Tilden Street median strip, a National Park Service property. A few attached dwellings stand there.
- Lot 6 adjoins both Melvin C. Hazen Park and Rock Creek Park, and its L-shape also presses up to a R-1-A lot at the SE corner of Square 2231. A small chancery/embassy/office building stands on Lot 6.
- Because these properties are isolated from other high density properties, building them to the maximum density and height allowed under the R-5-D zone would create unpleasant anomalies for adjacent properties. The zoning map shows every other lot in each of these two Squares as being zoned R-1-A, so these two lots stand out as seeming cases of "spot zoning."^{2/}
- The R-5-D zoning conflicts with the transportation policy of the Ward 3 Plan at Section 1404.3 (a)(1)(B), which states that "Medium and high density residential uses (where designated in the Land Use element) should be limited to the major arterials well-served be either Metrorail or Metrobus." Neither of these properties is on a major arterial.
- These lots are adjacent to stream valley parks: Rock Creek Park and Melvin Hazen Park, but the Ward 3 Plan at Section 1406.5 (a)(5) specifies that "Development adjacent to [stream valley] 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 intrusion on views from these parks."

Therefore, the NOPR Overlay should be amended to include all lots in the squares south of Tilden Street, even if zoned R-5-D.

C. Rationale for inclusion of The Methodist Home (Lot 16, mostly R-1-A, *partly* R-5-D)

Two other, even larger lots, to the north, are only *partly* R-5-D. The NOPR Overlay does not clearly state whether it excludes or includes such hybrid lots.

^{2/} In the early 1970s, the ZC approved a planned unit development (PUD) for 18 acres south of Tilden Street and north of Melvin C. Hazen Park. Order Nos. 70 (preliminary approval, Oct. 26, 1973) and 106 (final approval, Dec. 30, 1974). These Orders appear to have authorized re-zoning of the entire 18 acres from R-1-A to R-5-C, but that seems not to have actually happened except for the two lots at either end. The PUD Orders limited construction and forbade any "change in the wooded character or topography of the area." Order No. 106, page 10, ¶4, and page 11, ¶10.

ANC 3F favors inclusion *in its entirety* of Lot 16 of Square 2033 (4901 Connecticut Avenue, The Methodist Home, 150,646 s.f.). Lot 16 is zoned mostly R-1-A and only fractionally R-5-D.

- The DC Generalized Land Use Map marks all of the Lot in the "institutional" land use category. [See attached Generalized Land Use with Focus Areas.]
- The R-5-D fraction of Lot 16 is a strip 100 feet deep (minus 10,182 s.f. of Federal park land at the northwest corner of the Lot) along Connecticut Avenue. (Lot 16 is 497 feet deep along Fessenden Street and 255 feet deep along Ellicott Street.)
- Portions of Fort Circle National Park adjoin Lot 16's *R-5-D strip* – both in Square 2033 at the NE corner, across 36th Street to the east, across Fessenden Street to the north – and catty-corner to the NW corner of Fessenden and 36th Streets. So to exclude the R-5-D *portion* of Lot 16 from the overlay would exclude *whatever adjoins parkland!*
- All the rest of Square 2033, east of Lot 16, is also zoned R-1-A.
- The present institutional building is located mainly on R-1-A land to the east (under a Special Exception from the Board of Zoning Adjustment), whereas park-like front lawn and large, graceful trees stand on R-5-D land, along Connecticut Avenue (facing and adjoining National Park Service lands).

Protecting that open space and trees, abutting the National Park, merits overlay coverage. The NOPR Overlay should be clarified to include *all* of Lot 16, both R-1-A and R-5-D portions. In the circumstances described, it would be arbitrary to exclude the R-5-D portion from the overlay.

D. Rationale for exclusion of all R-5-D and C-3-A portions of lots in Square 2049 (as well as C-3-A lots in Square 2046) but inclusion of all R-2 and R-1-A portions of lots

Square 2049 is large and complex. The portions nearest Connecticut Avenue do not belong in the overlay and were not proposed for inclusion. The Set Down Overlay did include, however, the Van Ness East Condominiums (2939 Van Ness Street). These are hundreds of *tax lots* but the land comprises only one part of *Record Lot 6*. Commissioner Perry, who represents the condominium, testified to her constituents' desire to have the condominium land included in the overlay.

- Part of the Van Ness East land in Lot 6 is zoned R-2; most of it is zoned R-5-D.
- The R-5-D portion is already built up with building, driveway, loading dock, parking.
- The open space that the proposed overlay tries to address is in the R-2 portion of the lot.
- The R-2 portion of Lot 6 abuts a national park, Soapstone Valley Park.
- The R-2 portion of Lot 6 includes open space preserved in gardens, lawns, and – most sensitively – wilderness, including an unnamed, north-flowing tributary of Soapstone Creek at the foot of a steep slope split between Van Ness East and the Howard University West Campus (which is in the R-1-A portion of Square 2049).

- Headwaters of this unnamed stream are on Howard University's side of the property line, also in the R-2 portion of the Square, but on a different lot which is clearly in the NOPR Overlay (and should remain included).
- It is vital to include *all* R-2 property in the Square because of the stream bed and slopes on either side, including R-2 land belonging to the Van Ness East owners in hybrid record Lot 6 (as well as the Howard University's land, both R-2 and R-1-A, outside Lot 6).
- But the way the NOPR Overlay was drafted, it is not clear whether the R-2 portion of hybrid Lot 6 is included.

In view of the ZC discussion at its October 28, 2002, public meeting, ANC 3F proposes the following solution:

- It is *not* vital to include the R-5-D portions of the Van Ness East land, because they are already developed (as are any C-3-A portions of Record Lot 6). But it is best to exclude the R-5-D and C-3-A portions of this Square 2049 alone.
- It *is* vital to include all the R-2 portions of Square 2049, as well as all R-1-A portions.
- The NOPR Overlay should be clarified to include all of the R-2 portion of Record Lot 6 (even though there is no reason to include the fully-developed R-5-D portion in this case).

ANC 3F proposes to express that result unmistakably by including in the overlay all of Square 2049 with the stated exceptions of land zoned R-5-D or C-3-A.

In the case of Square 2046, most of the land is zoned R-1-A but a strip along Connecticut Avenue is zoned C-3-A. Two commercial lots, at the northern and southern ends of that strip, have some undeveloped, steep, wooded land at their eastern extremities adjoining Soapstone Valley Park. ANC 3F presented testimony in favor of including them in the overlay. However, in light of the Template's being addressed only to "residential" zones in its present formulation, ANC 3F will leave issues regarding these parts of two C-3-A lots until some other day.

E. Typographical error: Square 2243 included by mistake

In § 1520.6, ANC 3F recommends deleting Square "2243" which was identified in the record as a typographical error – inadvertently included in the original petition of the Forest Hills Citizens Association (FHCA) for rulemaking and in the Set Down Overlay. See Tr. 162 of Oct. 28, 2002. (This Square, including the Burke School, is immediately east of Connecticut Avenue, between Upton and Van Ness Streets and is partly zoned R-2 and partly R-5-D. *None* of this square was intended by FHCA, the ANC or OP to be included in the overlay.)

II. Template provisions: Monitoring OP review

ANC 3F recommends that the ZC monitor OP's workplan for 2003 which will review (beginning in the Fall of 2003, ANC 3F has learned from OP) "Template" provisions previously adopted and in effect in three neighborhoods (Normanstone Drive, Chain Bridge Road, and Forest Hills). These "Template" provisions include restrictions on removing trees of 11 DCMR §1519.1 (including the restriction of § 1519.1(d) as to trees within 25 feet of a building restric-

tion line at the front of a property) and standards for special exceptions cases before the Board of Zoning Adjustment (BZA) of 11 DCMR § 1520. They also include consideration of some or all of the proviso provisions of 11 DCMR § 1567.1 concerning building lot occupancy of small lots.

III. Non-template provisions

A. § 1519.2 - minimum lot size

The Overlay NOPR sets a minimum lot size of 9,500 s.f. for new subdivisions in preference to the 12,000 s.f. minimum of the Set Down Overlay. ANC recommends two amendments, as shown below:

The minimum lot size for homes within the FH/TSP Overlay district shall be 9,500 S.F. for lots subdivided after April 19, 2002 the effective date of this provision. Prior subdivision into smaller lots shall not create non-conformity.

Since the 9,500 s.f. under the NOPR Overlay is *less stringent* than the 12,000 s.f. under the Set Down Overlay, the *earlier* set down date should mark the effectiveness under vesting concepts, rather than December 13, 2002.

ANC 3F also recommends clarifying that lawful pre-existing lots smaller than the minimum for *new* subdivisions will remain perfectly lawful, conforming, buildable lots (just like small lots subdivided before the 1958 zoning amendments). Although that would be the case even without clarification, clarifying language (comparable to § 1518.2(b), in the Template provision as to impervious surface lot coverage newly imposed by a tree and slope overlay on lots that already have more than that maximum) could forestall misinformation.

B. § 1519.3 - minimum front yard setbacks

ANC 3F recommends (as it did last year) modifying the minimum front yard setbacks to be based on the average for the block *at the time an application is made* for a building permit (i.e., a dynamic line) rather than a *rigid, unchanging line on a map* to be made in 2003 (which map does not now exist).

ANC 3F renews last year's recommendation to amend the subsection as shown below and respectfully requests that the ZC discuss its merits and afford it "great weight."

All residential buildings, accessory buildings, or an additions to buildings shall have a front yard setback equal to or greater than the average setback of all structures on the same side of the street in the block where the building in question is located. Where the building is sited on a corner lot, the building shall be set back from each street on which it borders in an amount that is equal to or greater than the average setback of all structures on the same side of the street in the block where the building in question is located. The required setbacks will be determined as of the date of the building permit application by reference to the structures then standing on the same side of the street in the same block. The required setbacks are depicted in the map entitled: "~~Required Front Yard Setbacks~~", which is a part of this Overlay District

and is located in the Office of Zoning and in the Zoning Division of the Department of Consumer and Regulatory Affairs.

C. § 1519.4 - minimum side yards

The Set Down Overlay raised the minimum yard on *each side* from 8 feet (per the underlying zoning) to 16 feet.

The NOPR Overlay changed that to raise the minimum *sum* of the two side yards from 16 (= 2 times 8) to 24 feet.

A requirement in the form of a extra *sum* of the side yards is more flexible (and desirable) than the Set Down Overlay version. But it is not enough of a change because the NOPR Overlay adopts a 24-foot maximum sum of the side yards for every lot, no matter how narrow or how configured.

ANC 3F continues to support a *sum* of the side yards provision, which the ZC discussed and adopted at its October 28, 2002, decisional meeting as *more flexible* than the earlier version.

But ANC 3F also recommends an appropriate *sliding scale*, as it did last year, because it is *less intrusive* in the case of narrower lots.^{3/} ANC 3F now recommends adoption, at the least, of a simplified version so that the subsection would read:

To the extent that any residential district within the overlay requires a side yard, the side yard requirement for all buildings, accessory buildings, or any additions to buildings shall be a minimum of eight (8) feet and a minimum of twenty-four (24) feet in the aggregate. Provided that the aggregate requirement shall not apply to lots that are 80 feet wide or less or that measure no more than 80 feet in front.

The foregoing amendment would avoid imposing greater side yard restrictions on narrow lots (such as pre-1958 R-1-A lots that are only 50 feet wide) and on pie-shaped lots that narrow as they approach the street.

In addition, ANC 3F suggests a second, sliding-scale Proviso to read:

Provided further that the aggregate requirement shall not exceed 20 percent of lot width.

This version of a sliding scale is more generous than the NOPR Overlay for lots narrower than 120 feet. It is simpler to understand and only slightly more generous than the version proposed last year by ANC 3F.

^{3/} Last year, ANC 3F proposed: "To the extent that any residential district within the overlay requires a side yard, the side yard requirement for all new residential buildings shall be (a) at least eight (8) feet and (b) in the case of lots that are more than eighty (80) feet wide, the sum of the two side yards shall be sixteen (16) feet plus one fourth (25 percent) of the excess of lot width over eighty (80) feet, up to a maximum of thirty-two (32) feet. For purposes of this subsection, 'lot width' shall mean either average lot width or lot width along the street frontage property line, at the landowner's election."

IV. The following errors should be corrected:

§ 1520.2 (b) - correction as to name of DC Government agency

"Tree Maintenance Division" was renamed "Urban Forestry Administration".

§ 1520.2 (c) - correction as to location of DC Government agency

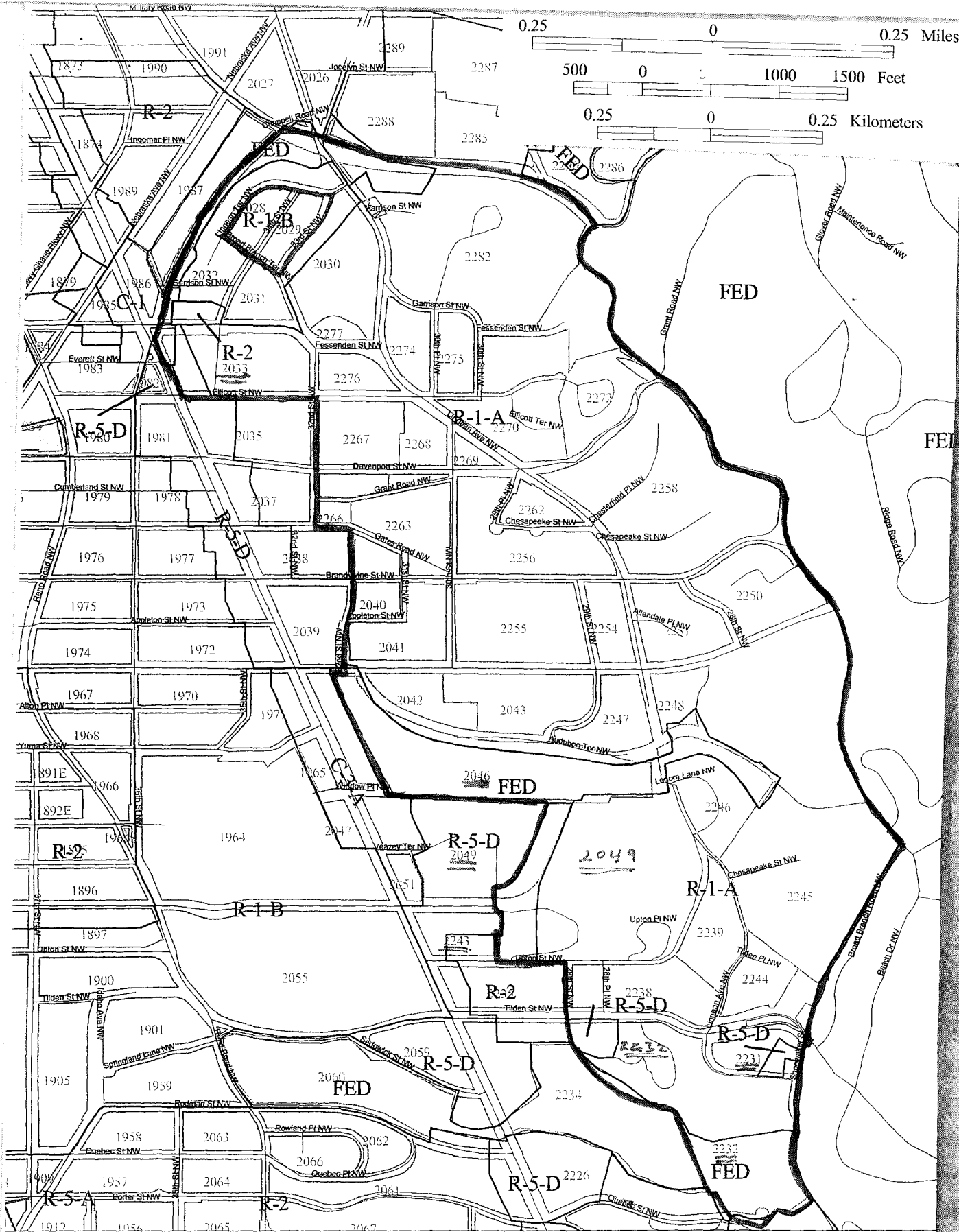
Reflect shift of Soil Erosion and Storm Management Branch from DCRA to Environmental Health Administration of the Department of Health.

CONCLUSION

ANC 3F respectfully requests that the ZC give great weight to the foregoing recommendations, and that it:

A) amend the NOPR Overlay in each of the respects set forth; and

B) adopt a tree and slope protection overlay for Forest Hills as so amended to be codified as 11 DCMR § 1516 *et seq.*



District of Columbia

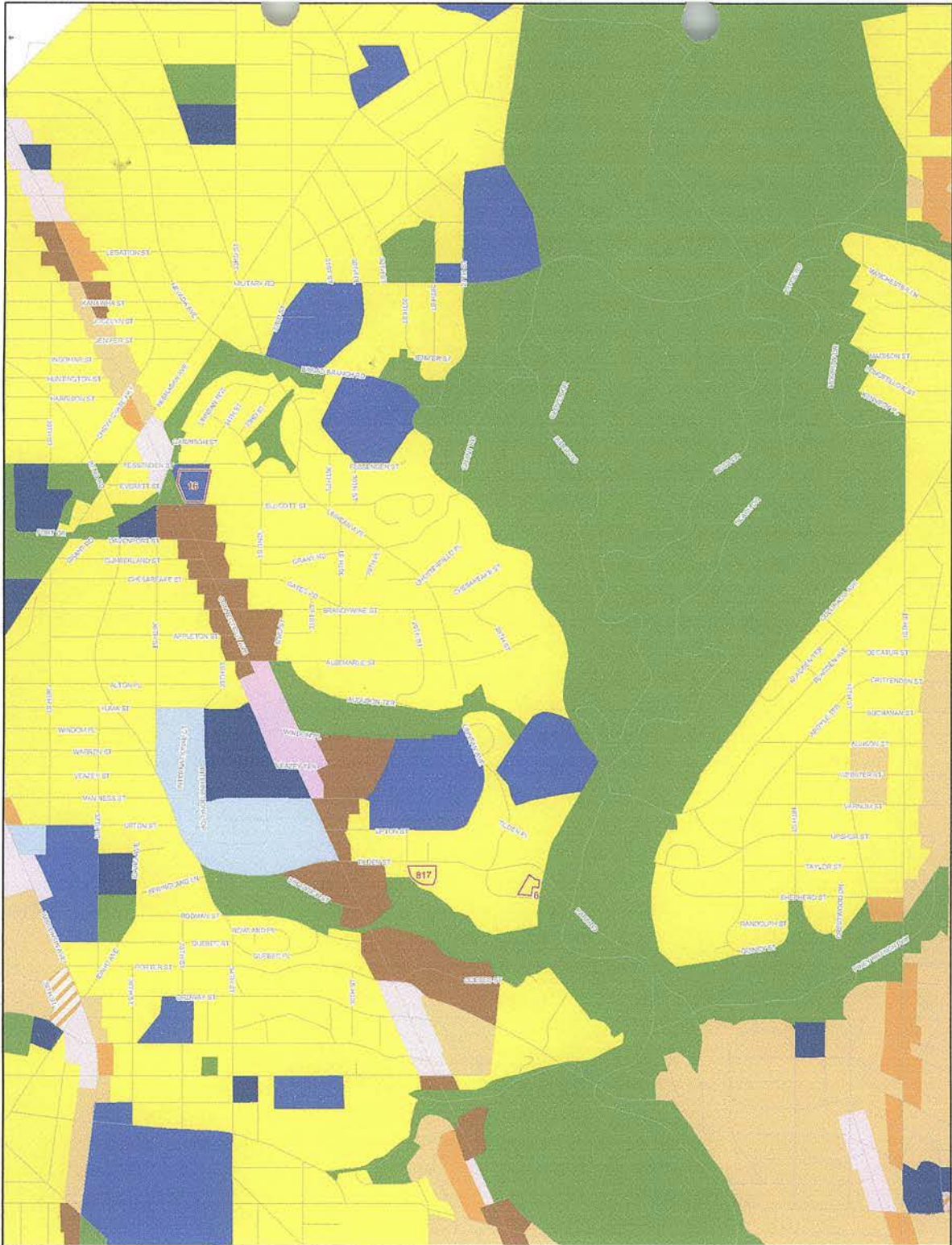
Focus Area

Feb. 2003



FH TSP0 Boundary
Squares discussed in
ANC 3F comments





Generalized Land Use with Focus Areas



Government of the
District of Columbia
Anthony A. Williams, Mayor
Office of Planning - January 28, 2003

This map was created for planning
purposes from a variety of sources.
It is neither a survey nor a legal document.
Information provided by other agencies
should be verified with them where appropriate.

Generalized Land Use codes

- Residential - Low Density
- Residential - Moderate Density
- Residential - Medium Density
- Residential - High Density
- Commercial - Low Density
- Commercial - Moderate Density

- Commercial - Medium Density
- Commercial - Medium-High Density
- Commercial - High Density
- Federal
- Local Public Facilities
- Institutional
- Parks, Recreation, and Open Space
- Production and Technical Employment
- Mixed Uses*
- Focus Areas

* Areas zoned for mixed uses are
represented by combinations of symbols.

