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February 14, 2003

VIA HAND DELIVERY

Mr. Alberto Bastida
Office of Zoning
441 4th Street, N.W.
Room 210
Washington, D.C. 20001

RECEIVED
D.C. OFFICE OF ZONING
2003 FEB 14 PM 3:43

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

Dear Mr. Bastida:

On behalf of the Edmund Burke School (“**School**”), we respectfully point out that the Notice of Proposed Rulemaking in the above-referenced case still includes Square 2243 in the proposed Overlay District. This Square was clearly not intended to be included in the proposed Overlay District by the Forest Hills Citizens Association (“**Applicant**”). As the record amply demonstrates, neither the Office of Planning, the Applicant, nor ANC 3F believes that this Square should be part of the overlay. It was apparently included in the original application and the Notice of Public Hearing (and described at the hearing by the Applicant) as a typographical error. This error is also pointed out in ANC 3F’s resolution dated February 10, 2003, a copy of portions of which are attached hereto.

In any event, even if the inclusion of Square 2243 was not a clerical error, the School’s property is not appropriate for inclusion in a Tree and Slope Overlay. As evidenced by its statement, delivered into the record of this case during the public hearing, the School’s properties have virtually no slope and no trees.

Kindly insure that this “typographical” error is corrected when the Commission adopts its Final Rulemaking in this matter.

~~Zoning Commission~~
~~District of Columbia~~
Case 02-19
Exhibit 322

ShawPittman LLP

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If you have any questions or comments please feel free to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'Phil Feola', with a long horizontal flourish extending to the right.

Phil Feola

Attachment

cc: Alan Bergstein, Esquire
Walter Ailes

Document #: 1306333 v.1



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 NOPR 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.

/s/ Cathy Wiss

/s/ David J. Bardin

Cathy Wiss, Chair

David J. Bardin, Secretary

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

Table of Contents

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
- 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
- C. Rationale for inclusion of The Methodist Home (Lot 16, mostly R-1-A, *partly* R-5-D)
- 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
- E. Typographical error: Square 2243 included by mistake

II. Template provisions: Monitoring OP review

III. Non-template provisions

- A. § 1519.2 - minimum lot size
- B. § 1519.3 - minimum front yard setbacks
- C. § 1519.4 - minimum side yards

IV. Corrections of other errors

- A. § 1520.2 (b) - name of DC government agency
- B. § 1520.2 (c) - location of DC government agency

Attachments: Overlay boundary and Squares discussed in these comments
Zoning Map (with Focus Areas)
Generalized Land Use Map with Focus Areas

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