

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



Office of the Director

MEMORANDUM

TO: Zoning Commission
FROM: *ALS for*
Andrew Altman, Director
DATE: July 21, 2003
SUBJECT: Forest Hills Tree and Slope Overlay District
Response to the Zoning Commission – Third Addendum
Case No. ZC 02-19

This addendum contains the recommendation of the Office of Planning, following the public hearings held by the Zoning Commission on October 28, 2002 and March 3, 2003.

DIRECTIVES

At the March 3, 2003 Zoning Commission hearing, the Commission directed the Office of Planning to:

- Solicit comments from those neighborhoods over which Tree and Slope Overlay (TSO) Districts have already been mapped, and
- Consider and address issues the Office of Planning has with the template and proposed Forest Hills Tree and Slope Overlay (FHTSO).

SUMMARY RECOMMENDATION

OP proposes to revise the existing language of the proposed FHSO Overlay to address the following:

- Preserve and improve of the existing canopy of the Forest Hills Overlay District;
- Guide development activity on lots through the preservation of a percentage of tree canopy on a lot;
- Establish tree replacement specifications and the introduction of a tree protection plan for trees on a lot during development;
- Establish coordination with DCRA and the Urban Forestry Administration to develop a more effective means of administering and enforcing the Overlay.

RESPONSES TO REQUEST FOR COMMENTS

The Office of Planning, as directed by the Zoning Commission, surveyed the other neighborhoods currently regulated by a Tree and Slope Overlay District. A letter was sent out requesting information on issues or experiences on the overlay, including:

Case 02-19
Exhibit 328
ZONING COMMISSION
District of Columbia

- Cases before the ANC requesting special exception relief from the overlay;
- Homeowner satisfaction with, confidence in or concerns about the overlay; Homeowner ease or difficulty in working with the TSO in obtaining a building permit; and
- Enforcement issues.

Survey questions were sent to and comments were received from the Chain Bridge Road/University Terrace Preservation Committee, Palisades Citizens Association, the Wesley Heights Citizens Association, ANC 3D 04, ANC 3D 05 and ANC 3C 08.

Main comments were as follows:

- The seven-year waiting period for the issuance of a building permit for any property found to be in violation of the provisions of the overlay district had negative effects on the neighborhood that has to live with the violation for that length of time.
- "Enforcement of the TSO has been a major problem in the opinion of some residents of the TSO...ignorance on the part of the permit officers..."
- "Recommend a cautious policy in approving tree and slope overlays... while their stated purpose...is to protect the topography and trees, we have the impression that in some cases they are sought or invoked to protect the exclusivity of a neighborhood against development ..."
- "The City has provided little or no support for the Overlay's implementation since it's adoption... The permitting branch is routinely at risk of being misinformed and deliberately manipulated... wrongfully issuing permits that must be rescinded or placed under stop work orders. This in turn has required legal action and significant expenditures of time and money by Overlay residents..."

The Office of Planning surmised that the general issues revolve around enforcement of the provisions in each of the overlays. To address this, the Office of Planning has revised the FHTS Overlay as proposed in the Notice of Proposed Rulemaking (NPR), dated December 13, 2002, to address comments and to streamline for consistency and clarity for those governed by the Overlay and those responsible for the enforcement of it.

PROPOSED MODIFICATIONS

The FHTS Overlay District as set down contains regulations regarding:

- ▶ Tree removal,
- ▶ Slopes, and
- ▶ Bulk regulations, including:
 - minimum lot size,
 - maximum lot occupancy,
 - maximum impervious surface coverage and
 - front yard and side yard setbacks, including corner side yard setbacks.

With the exception of impervious surface coverage, each of these is currently addressed by a variety of ordinances, regulations and City agencies, although not necessarily to the extent contained within the FHTS Overlay District. The Office of Planning reviewed the tree provisions of several other local area jurisdictions, including the Town of Chevy Chase, the City of Takoma Park, County of Arlington and the City of Fairfax. Within each of these jurisdictions with the exception of the City of Fairfax, the tree provisions are not contained within the zoning regulations or ordinances, but rather are separate ordinances, regulated county or municipality-wide. Within the City of Fairfax, although the tree provisions are contained within the zone regulations, there are no conflicts with the bulk regulations as there is with the NOPR of the Forest Hills Tree and Slope. The bulk regulations proscribed by the FHTS Overlay District are typically only found within the zone districts. The proposed Forest Hills Tree and Slope Overlay District contains bulk regulations, including minimum lot size, lot occupancy and impervious surface, directly affecting density.

As a result, the Office of Planning recommends removal of the bulk and area regulations from the proposed FHTS Overlay. OP has determined that the more stringent bulk and area requirements of the Forest Hills Overlay District are more appropriate, and could be clearer and more easily enforced as a new zoning district. OP believes that enforcement of the bulk and area provisions should be continued in the same manner in which they are today. By removing the proposed bulk regulations from the Overlay, the conflict that resulted from the attempt to apply those bulk regulations to the different zoning districts within the proposed FHTS Overlay is eliminated.

Tree Provisions

The Urban Forest Preservation Act of 2002, adopted by District Council in January 2003, controls the cutting of trees 55 inches in circumference or greater. It contains provisions for the replacement of lost trees through either replanting or a contribution to the Tree Fund, which was established on July 2, 2003. In order to provide an added layer of protection for the Forest Hills community the Office of Planning recommends, for clarity and consistency, the manner in which trees are protected be revised within the Overlay District. Based on a comparative analysis of local area jurisdictions, the Office of Planning recommends that the Overlay District protect all trees, except hazardous trees 24 inches or greater.

In addition to controlling tree removal, a goal of the Forest Hills Tree and Slope Overlay District, OP proposes a new mechanism be added to the proposed FHTS Overlay to ensure the replacement of trees. This recommendation provides all property owners an alternative and flexible mechanism for compliance with the Overlay should they require the removal of any protected trees during construction or any other type of home or yard improvement. If an applicant cannot comply with any provision of the Overlay, the Board of Zoning Adjustment can grant relief as an area variance, since the tree canopy is now a percentage of lot area.

Enforcement

OP has been advised by the Office of Corporation Counsel that the enforcement of the tree provisions will be verified by a certified arborist for the issuance of a permit and no later than two years after the issuance of a permit an arborist must certify compliance with the tree preservation plan. If they cannot or they do not, then a ticket can issue from DCRA.

Corporation Counsel has suggested that if the Zoning Commission authorizes, Counsel will draft a proposed rulemaking for DCRA to propose an amendment to §3229.1 requesting a Class 1 Civil Infraction for failure to certify that the tree planting. Class 1 Civil Infractions do not currently exist, but could be proposed to exceed the monetary value of existing civil infraction fines. This is intended for DCRA to raise the fines to make this infraction cost prohibitive. Additionally, a bar on all future building permits will be imposed until a certification is received.

Slopes

The Department of Health's (DOH) Soil and Erosion Control Division controls slopes of 15 percent or more. The Forest Hills Tree and Slope Overlay District is proposed to control slopes of 25 percent or more. As DOH already controls slopes of 15 percent with respect to erosion and flooding, among others, the Office of Planning has determined that maintaining the control of slopes within DOH is more logical and consistent. The Department of Health has informed the Office of Planning that they best determine the development and implementation of 'best practices', as they possess the expertise in this field. This will help to ensure that slopes are controlled as required by the District. Currently when applicants propose building on slopes steeper than 15%, their engineers must have a pre-application meeting with DOH, who go on-site to review the impacts that may be caused to neighboring properties. In addition, the building permit process automatically refers submissions to DOH if any ground is to be disturbed. All subdivisions are subjected to storm water management.

THE URBAN FOREST PRESERVATION ACT OF 2002 (Tree Bill)

The Tree Bill has been adopted and supporting regulations are being drafted by the Department of Transportation's Urban Forestry Division for submission to the City Council by mid-September. Adoption may be 30 to 60 days thereafter.

CONCLUSION

Trees are valuable to the Forest Hills community as well as to the City as a whole. The adoption of the Tree Bill is an indication of the City's commitment to trees. The advent of the Tree Bill signals the beginning of a new era of tree preservation in the City.

OP believes that the overall effect of the FHTS Overlay as setdown seems to create a new zoning district with a lower density, increased setbacks and decreased lot occupancy. However, the purpose of the Overlay District is the preservation of trees. In order to protect the treed character of the neighborhood within the proposed FHTS Overlay, OP

recommends a revised proposal that respects the tree canopy and still allows for flexibility by the property owners.

This proposed Overlay attempts to be consistent with the Tree Bill and may be a potentially new template for the existing and future tree protection overlays.

OP proposes to revise the existing language of the proposed FHSO Overlay to address the following:

- Preserve and improve of the existing canopy of the Forest Hills Overlay District;
- Guide development activity on lots through the preservation of a percentage of tree canopy on a lot;
- Establish tree replacement specifications and the introduction of a tree protection plan for trees on a lot during development;
- Establish coordination with DCRA and the Urban Forestry Administration to develop a more effective means of administering and enforcing the Overlay.

OP recognizes that more work is needed to complete the details of the new proposal. If the Commission agrees with the new approach, OP will prepare a supplemental report and further detail the interagency roles and administration of the regulation.

PROPOSED TEXT and EXPLANATION

OP recommends adoption of the revised Overlay District as outlined below:

1516 FOREST HILLS TREE PROTECTION OVERLAY DISTRICT

1516.1 The Forest Hills Tree Protection (FH/TP) Overlay District is established for Forest Hills, which includes all lots in Squares 2030 through 2033, 2040 through 2043, 2046, 2049 except for lots 804 (Van Ness North), 805 (Van Ness Center), 806 (Van Ness South), 2231, 2232, 2238, 2239, 2241 through 2251, 2254 through 2256, 2258, 2262 through 2270, 2272, 2274 through 2277 and 2282.

1516.2 The purposes of the FH/TP Overlay District are to preserve the tree canopy of Forest Hills, to preserve wooded areas in Forest Hills, to promote conservation practices appropriate to an urban context, and to encourage the replanting of trees.

1517 GENERAL PROVISIONS (FH/TPO)

1517.1 The FH/TP Overlay District is mapped in combination with the underlying zoning district, and not in lieu of the underlying district.

1517.2 Any construction of a building, accessory building, or an addition to a building shall provide certification from an arborist or certified landscape architect that a tree canopy, will cover the following percentages of the lot

after construction is completed or no later than ten (10) years after the date of the application:

- (a) For a lot less than 9,500 square feet in size, twenty percent (20%); or
- (b) For a lot 9,500 square feet in size or greater, twenty-five percent (25%).

This provision seeks to preserve trees by requiring minimum tree canopy coverage for lots in the overlay. The number and size of trees required is determined by the percentage of canopy of the trees at 10 year growth equal to twenty percent of the lot area for lots less than 9,500 square feet or twenty five percent of the lot area for lots greater than 9,500 square feet. This provides flexibility in meeting tree planting and preservation requirements, since the requirements can be met by preserving existing trees, or planting a combination of new trees that will meet the coverage goal. Other jurisdictions use similar tree canopy calculations in their ordinances. The impact of the regulation on the buildable area of lots would not be significant. In fact, in most cases the area in required yards will be twice the tree canopy cover requirement. (See attached sketches for illustration of this relationship.)

- 1517.3 Any tree considered or planted in meeting the requirements of this section shall be a minimum size of eight (8) inches in circumference for deciduous trees, or ten (10) feet in height for evergreen trees. A replacement tree shall be a nursery stock tree and may not be of a species that that has been identified as appropriate for removal by regulations promulgated by the District Department of Transportation pursuant to the Urban Forest Preservation Act of 2002.

This would ensure that the trees planted are quality trees.

- 1517.4 The certification required by §1517.2 shall be accompanied by a tree protection plan that will show:
- (a) The location, size, and species of all existing trees measured at four and one half (4½) feet above the ground;
 - (b) The location, size, and species of all trees to be removed;
 - (c) For each tree to be removed, the number and species of trees to be planted in replacement;
 - (d) Proposed grade changes or other potentially injurious work to be performed adjacent to trees to be retained; and
 - (e) Methods to be used to protect existing trees during construction including, but not limited to:

- (1) Drip line protection around all tree preservation areas; and
- (2) Installation of tree wells, retaining walls or other structures necessary to protect individual trees.

This plan is essential in determining requirements and is comparable to other jurisdictions.

- 1517.5 The Zoning Administrator shall not take final action on a building permit application until a report is received from the Urban Forestry Administration or thirty (30) days have passed since the tree protection plan was submitted to the Urban Forestry Administration.
- 1517.6 The [appropriate official] and the Zoning Administrator may agree to lengthen the time period indicated in §1517.5 but in no event shall the review period exceed sixty (60) days.
- 1517.7 The Zoning Administrator shall not grant a building permit if the tree protection report fails to demonstrate that the tree canopy requirements of this section will be met.
- 1517.8 No later than two (2) years after the building permit is issued, the property owner shall present to the Zoning Administrator a certification from an arborist or certified landscape architect that the applicable tree canopy percentage has been maintained or will be achieved by the date stated on the original certification. If trees were planted to achieve the canopy requirement, the certification shall also state that the replacement trees met the requirements of §1517.3.
- 1517.9 Failure to present a certification that meets the requirements of §1517.8 within the time provided therein shall be a violation of this section.
- 1517.10 No further building permits shall be issued until certification required by §1517.8 is received by the Zoning Administrator.
- 1517.11 The issuance of a tree removal permit by the Department of Transportation does not relieve any person from meeting the requirements of this section.

§1517.5 through 1517.11 lay out the administration of the provisions.

199 DEFINITIONS

Circumference - the linear distance around the trunk of a tree, when measured at a height of 4 1/2 feet.

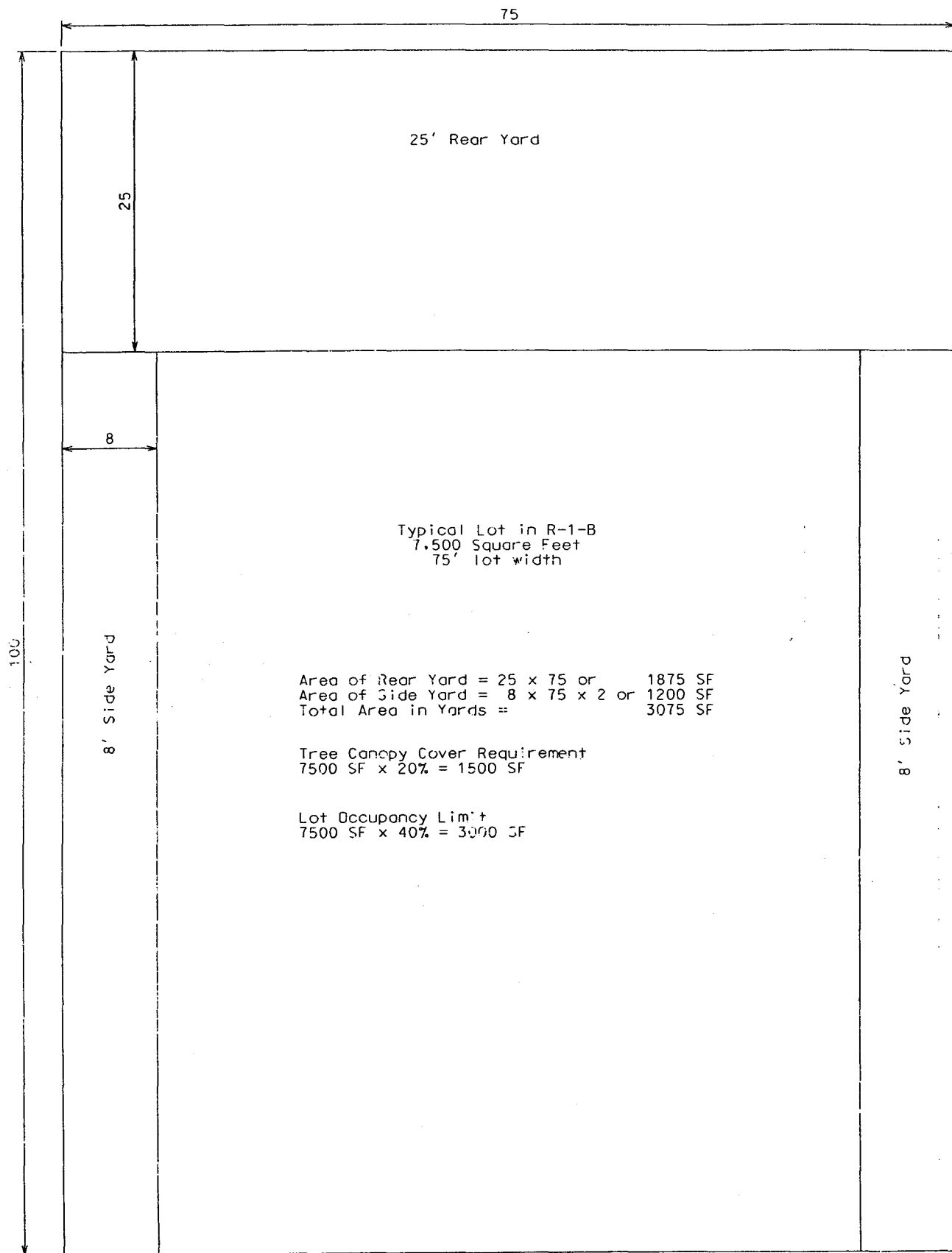
Tree Canopy - the horizontal spread of a tree.

Drip Line - an imaginary line on the ground beneath a tree, which delineates the extent of the tree's canopy.

Arborist – a tree care professional certified by the International Society of Arboriculture.

Attachments

AA/kmt&sjm_{AICP}



Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

June 10, 2003

Jennifer Steingasser, AICP
Manager, Development Review
DC Office of Planning
Tree and Slope Overlay
801 N. Capitol Street NE #4000
Washington DC 20002

Re: Case # 02-19

Dear Ms. Steingasser:

Advisory Neighborhood Commission 3D held its regularly scheduled monthly meeting on June 4, 2003. A quorum (4) was present at all times. The Commissioners reviewed the letter sent to you on May 11th by Chair John Finney, they then amended the letter and approved the amended letter 7-0-0. The amended letter follows;

On point one in your letter, we do not recall any requests coming before our ANC for a special exception from the restrictions of the overlay.

On point two, we think it fair to say that the homeowners in the overlay area have considerable concern about strict observance and enforcement of the overlay restrictions by the zoning office in DCRA in granting permits.

There was one egregious case of the zoning office giving a permit for cutting down trees on an undeveloped plot on Arizona Avenue in contradiction of the conditions of the overlay. That case remains unresolved to this day under the Draconian terms of the TSO that the land must lay fallow for seven years. The result is an eyesore on one of the major streets of the Palisades. Another controversial case has arisen recently with a developer cutting down a tree in a plot being developed on Chain Bridge Road. Whether the developer had a valid permit for cutting down the tree is a matter of dispute between the developer and some residents of the overlay area.

On point three, we do not know of any cases where homeowners in the TSO have had difficulty in obtaining a building permit, but then we do not believe there have been many such requests from homeowners. It is our impression that the difficulty has been mostly with developers seeking to build new structures within the overlay.

It would be helpful, for example, if overlays were clearly marked on maps maintained by the Office of Zoning and if lot numbers covered by a TSO were included in real property base maintained by DCRA.

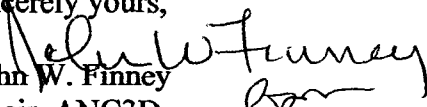
On point four, enforcement of the TSO has been a major problem in the opinion of some residents of the TSO. I think it fair to say that in some cases there has been ignorance (or sloppiness) on the part of permit officers in DCRA about the existence and terms of the TSO. When it comes to enforcement of TSO's or other zoning matters, the Zoning Office in DCRA, is bordering on entropy.

At the same time, we have the impression that some who live in the area are invoking strict terms of the TSO to harass developers and builders seeking to build in the TSO. Some of this friction could be reduced if the permit officers in the zoning office in DCRA were fully briefed on the existence and terms of the TSO.

As a general observation we would recommend the cautious policy in approving tree and slope overlays. While their stated purpose in section 15.113 of the Zoning Code is to protect the topography and trees in a hilly area we have the impression that in some cases they are sought or invoked to protect the exclusivity of a neighborhood against development – sort of a gated community without the gates.

Your request, and that of Chairman Mitten, for the views of the ANC are much appreciated.

Sincerely yours,


John W. Finney
Chair, ANC3D

CC: Mayor Anthony Williams
Councilmember Kathy Patterson
Councilmember Phil Mendelson
Councilmember David Catania
DCRA
Office of Zoning

Steingasser, Jennifer (OP)

From: Alan Z Aiches [aiches@aichesdesign.com]
Sent: Friday, May 23, 2003 9:39 AM
To: Jennifer.Steingasser@dc.gov
Cc: JKress@dcoz.dcgov.org; John Finney; Penny Pagano; Ellen McCarthy; George Watson; Bill Timmons; Arthur Watson; Stu Ross; Kathy Patterson; Phil Mendelson; Sharon Ambrose; Judith Lanius
Subject: Experience with TSO's, Case # 02-19

> May 21, 2003

>
> Ms. Jennifer Steingasser, AICP
> Manager, Development Review
> DC Office of Planning
> 801 North Capitol Street NE
> Washington, DC 20002

>
> Re: Case Number 02-19

>
> Dear Ms. Steingasser:

>
> Your letter of April 14 referencing tree and slope overlays was
> forwarded to me by ANC-3D Chairman John Finney as well as Anne Ourand,
> administrator of the Palisades Citizens Association for a response.

> You may recall that I chair both the ANC-3D's Task Force on Zoning and
> the PCA's Zoning Committee but this letter is written from me as a
> private citizen without representing any organization's point of view.
> I wish to convey my own concerns about the city's ability to enforce
> the overlays already in place. Specifically, I'm referring to the
> Chain Bridge Road / University Terrace Tree and Slope Overlay and the
> Wesley Heights Overlay.

>
> The PCA's zoning committee does not review requests for special
> exceptions from the restrictions of the overlay. While there have
> been some positive results from the existence of the CBR/UT TSO
> itself, I believe it's fair to say, and with a great degree of
> certainty, that on several occasions the city's lack of enforcement of
> the overlay has resulted in a substantial investment of time and money
> by local residents who were essentially doing the city's job. The
> city has demonstrated little, if any concern in this regard, and as a
> consequence, not even a status quo has been achieved in cases where
> enforcement was woefully lacking. The summary facts for two cases
> follow below, but additional cases can be cited.

> In November 2001, Ed Jacobsen of Jacobsen Builders, Inc., with a
> bulldozer, an erroneously issued building permit and previous
> knowledge that the site at 2989 Arizona Ave. was restricted because it
> was within the overlay when he purchased it, proceeded to wipe out a
> stand of at least seven and possibly as many as 10 old growth trees to
> construct a "McMansion" on this steeply slopped site. He had not
> provided a tree inventory nor had he completed any soil engineering
> tests that would have been helpful to erect a house designed for the
> site. The structure he proposed and re-proposed on two subsequent
> occasions would have been appropriate only on a flat site of at least
> one-half acre in the suburbs.

>
> Jacobsen then delayed for over five months before finally applying to
> the BZA for a special exception. When the hearing was finally held
> nearly a year after the violation, his lawyer withdrew the application
> when it became apparent that the BZA would rule against Jacobsen
> because substantial evidence of his previous knowledge, and therefore
> wrongdoing, had been submitted. This egregious case remains

> unresolved while Jacobsen milked a system of tolerance, in which
> the city has appeared complicit by its inaction. A provision of the
> overlay, which went into effect in June 1999, states that when such
> violations occur, a seven year moratorium from development is to be
> imposed. That would be suitable relief IF the city had the
> wherewithal to enforce the overlay, but it seems to lack not only the
> ability but the will. The result is a scarred piece of land along a
> major thoroughfare in our neighborhood.

> As recently as this past February, Brian Logan, a local developer who
> owned the property at 3101 Chain Bridge Road, cut down a live
> [certified by an arborist], protected [anything over 75" in
> circumference] tree [s] on this site where the issuance of a permit
> was suspicious at best. In addition, he was granted permission to
> build an accessory building to the height of 20 feet, a building that
> the site plan clearly demonstrates is not, in any stretch of the
> imagination, a private garage according to the DCMR, because there is
> no driveway leading to it.

> The homeowners within the overlay have been concerned about its
> observance not only for the sake of the environment and the protection
> of this unique area within our city, but more importantly, because of
> the DCRA's total inability to enforce its provisions. For instance,
> where residential construction is concerned both within and beyond the
> boundaries of the overlay in the Palisades, the zoning office has
> repeatedly approved plans that err, erroneously issued building
> permits, then stop work orders, then rescinded the second only to
> reissue the first, allowing construction that is clearly not within
> the code to proceed. And all this with a straight face and to the
> total astonishment of the residents within the overlay and the
> neighborhood at large.

> I am unaware of cases where homeowners have had difficulty in
> obtaining building permits. For example, the normal process that
> takes place in the Palisades is usually that houses are bought by
> developers, demolished and new ones built in their place, or large
> additions are constructed onto existing homes. Rarely is this done by
> a single family.

> Enforcement of the TSO has been a major problem because those in the
> DCRA who review plans or issue permits often are untrained or
> uneducated about the existence of, much less the restrictions and
> terms of, the overlays [and historic structures for that matter].
> Since most properties in either category are not flagged within the
> city's current system, enforcement of the overlays and other zoning
> matters is appallingly lax, if non-existent. Some of this could be
> overcome with adequate training of those in the permit division, which
> I urge the city to undertake. However, most of these problems will be
> overcome only through the proper interpretation and enforcement of the
> zoning regulations, along with amendments to the regulations that
> clarify poorly written sections of the code.

I believe the use of overlays that protect and encourage the increase
of the tree canopy as well as notable architecture in the city go a
long way towards serving the interests of the people of Washington, DC,
and as the nation's capital, the city should provide a benchmark to
other cities across the country that encourage their use. We need to
have a balance between denser development in some areas while
maintaining the quality of life in lower density residential
neighborhoods. But without adequate enforcement by the city, overlays
are rendered meaningless.

Thank you for your favorable consideration of these matters.

> Sincerely yours,

>
Alan Z Aiches

Steingasser, Jennifer (OP)

From: john finney [finneyj@worldnet.att.net]
Sent: Sunday, May 11, 2003 8:45 PM
To: Jennifer.Steingasser@dc.gov
Cc: JKress@dcoz.dcgov.org
Subject: ANC Experience with TSO's, as in case of Chain Bridge/University Terrace. Case # 02-19

5/11/03

Jennifer Steingasser, AICP
Manager, Development Review
DC Office of Planning

Re: Case # 02-19

Dear Ms. Steingasser:

In response to your letter of April 14 inquiring about the experience of ANC3D with the Tree and Slope Overlay for Chain Bridge/University Terrace, I am hopeful of getting a collective answer from ANC3D at its next meeting on June 4. But since that comes after the June 2 deadline for responses set in your letter, permit me to give an individual response, with the hope that other commissioners may independently provide their own reactions.

On point 1 in your letter, I do not recall any requests coming before our ANC for a special exception from the restrictions of the overlay.

On point 2, I think it fair to say that the homeowners in the overlay area have considerable concern about strict observance and enforcement of the overlay restrictions by the zoning office in DCRA in granting permits. There was one egregious case of the zoning office giving a permit for cutting down trees on an undeveloped plot on Arizona Avenue in contradiction of the conditions of the overlay. That case remains unresolved to this day under the Draconian terms of the TRO that the land must lay fallow for seven years. The result is an is an eyesore on one of the major streets of the Palisades. Another controversial case has arisen recently with a developer cutting down a tree in a plot being developed on Chain Bridge Road. Whether the developer had a valid permit for cutting down the tree is a matter of dispute between the developer and some residents of the overlay area.

On point 3, I do not know of any cases where homeowners in the TSO have had difficulty in obtaining a building permit, but then I do not believe there have been many such requests from homeowners. It is my impression that the difficulty has been mostly with developers seeking to build new structures within the overlay.

On point four, enforcement of the TSO has been a major problem in the opinion of some residents of the TSO. I think it fair to say that in some cases there has been ignorance (or sloppiness) on the part of permit officers in DCRA about the existence and terms of the TSO. When it comes to enforcement of TSO's or other zoning matters, the zoning office in DCRA, is bordering on entropy.

At the same time, I have the impression that some who live in the area are invoking strict terms of the TSO to harass developers and builders seeking to build in the TSO. Some of this friction could be reduced if the permit officers in the zoning office in DCRA were fully briefed on the existence and terms of the TSO.

As a general--and strictly personal-- observation, I would recommend a cautious policy in approving Tree and Slope Overlays. While their stated

purpose in Section 1511.3 of the Zoning code is to protect the topography and trees in a hilly area, I have the impression that in some cases they are sought or invoked to protect the exclusivity of a neighborhood against development--sort of a gated community without the gates. But then that dyspeptic view may but reflect my lumpen, populist nature in old age.

I have taken the liberty of asking Arthur Watson, a former President of the Palisades Citizens Association and a highly respected resident on Chain Bridge Road, to write you separately on how his neighbors would respond to your four questions. I would place great faith in his responses.

Your request, and that of Chairman Mitten, for the views of the ANC are much appreciated. When next you talk with her, please inform her that ANC3D anxiously awaits the promised opportunity to explain how the zoning code could be amended to control the height of new homes, and thus protect established neighborhoods, without creating a TRO.

Sincerely yours,

John W. Finney
ANC3D04

5275 Watson St. NW 20016

966-6921

CHAIN BRIDGE ROAD/UNIVERSITY TERRACE PRESERVATION COMMITTEE

May 29, 2003

Ms. Jennifer Steingasser, AICP
Manager, Development Review
Tree and Slope Survey c/o Office Of Planning
801 North Capitol Street N.E., #4000
Washington, D.C. 20002

Re: Case # 02-19

Dear Ms. Steingasser:

Thank you for your letter inquiring about our experience with the Chain Bridge Road/University Terrace Tree and Slope Protection Overlay (hereinafter referred to as the "Overlay" or the "Overlay district"). The Chain Bridge Road/University Terrace Preservation Committee (the "Preservation Committee") is pleased to have the opportunity to respond on behalf of our Overlay resident community.

The Chain Bridge Road/University Terrace Tree and Slope Protection Overlay became effective June 1999. From its inception in a stable neighborhood, the area over the last three years has experienced continuous pressure from developers subdividing lots and demolishing existing structures. We have had extensive experience with the effects of the Overlay on our neighborhood through subdivision, new construction, renovation, violations, stop work orders and appearances before the Advisory Neighborhood Commission ("ANC") and Board of Zoning Adjustments ("BZA"). The last three years have placed extraordinary demands on this community because of the lack of awareness, let alone enforcement, of the TSO regulations by the Department of Consumer and Regulatory Affairs ("DCRA"). In spite of this, we continue to believe that the Overlay, both through its development process and since its adoption by the Zoning Commission, has served to strengthen local awareness of the historical, environmental and residential aspects of our community that it was intended to protect. However, the Overlay has also served as a reminder of the difficulties often encountered by District residents when relying on local zoning laws and their enforcement by the City to obtain legitimate protection against inappropriate development in their local neighborhoods.

The good news is that, since adoption of the Overlay, residents and property owners have become more cognizant of its purposes and restrictions and have found that the unique topographical and landscape features of our neighborhood can be preserved, while new projects that respect the Overlay regulations can be accommodated. Residents of the Overlay district remain totally supportive of the additional local restrictions, over and above those provided for in the City's base zoning code, resulting from the Overlay. While this support is uniform throughout the Overlay District, it is particularly strong in those areas in proximity to the federal park system.

However, without adequate support, awareness and enforcement from the City, implementation of the Overlay regulations has been successful only in those few cases where a

developer/ owner /or architect has worked closely with the Preservation Committee and abutting neighbors to comply with the TSO regulations. In three years there have been eleven properties that have changed hands on four streets within the Overlay District that the Preservation Committee has been involved with directly.* The Preservation Committee's involvement has ranged from limited to extensive with each of these eleven properties where enforcement of the regulations was necessary. On five of these properties, we have worked closely and successfully with the owner, developer, and/or architect. Three examples of successful collaboration are the following: in one project, the developer worked to ensure that a subdivision (from one lot to two lots on University Terrace) and design of two new residences were carried out in scrupulous observance of the Overlay's provisions. In another project, an architect worked on a renovation of a house on Chain Bridge Road and consulted with the Preservation Committee through all stages of the design and construction process on the status of potentially impacted trees and vegetation on the property. In a third project, the owner/architect on Garfield Street provided an inventory and accompany location drawings of every tree on the property verified by an arborist certified by the ISA before beginning design and construction.

Recent tree-related developments, such as the Mendelson tree legislation and the generosity of the Casey Foundation, have undoubtedly combined with the Overlay to heighten citizen awareness of the historical and vital contributions that a healthy and vibrant tree-cover can make to the quality of life throughout the City. Certainly, this is the case in our neighborhood.

Unfortunately, that is only the good news. There is much bad news. The city's support for the Overlay (through the Office of Planning) was vital to its adoption, but unfortunately the City has provided little or no support for the Overlay's implementation since its adoption. Indeed, DCRA's general posture toward the Overlay has ranged from neglect in most cases to the appearance of hostility in others. The range of problems we have encountered at DCRA are enormous but among the most salient are:

----DCRA has failed adequately to record the Overlay on zoning maps, making it next to impossible for city employees and other interested parties to determine Overlay perimeters.

-----DCRA has failed to properly train its employees to review building permit applications for Overlay applicability or compliance.

----Despite repeated promises in meetings, DCRA has failed to adequately enforce the Overlay, in effect washing its hands and leaving that job to local neighbors. At times, the Building and Land Regulations Administration of DCRA, has appeared to work against the concerns of neighbors and Overlay supporters, while advancing the interests of developers.

-----City employees are not trained to evaluate arboreal issues, which form the basis of a Tree and Slope Overlay District. For instance, DCRA does not understand the need for tree inventories and tree conservation plans before any

permits can be issued on a site in an Overlay District where trees are potentially at risk. DCRA inspectors have allowed regulated trees to remain inadequately protected before and during construction so that after construction is completed the protected trees die. It has approved the removal of protected trees without a prior site inspection.

The permitting branch is thus routinely at risk of being misinformed and deliberately manipulated by permit applicants, wrongfully issuing permits that must then be rescinded or placed under stop-work orders. This in turn has required legal action and significant expenditures of time and money by Overlay residents, expenditures that would not have been necessary had DCRA been doing its job.

Three major Overlay infractions between November 2001- February 2003 provide an indication of the problems surrounding the lack of enforcement of the District's regulations. The first occurred in November 2001, at 2989 Arizona Avenue when the owner of the property, Jacobsen Builders, clear-cut a heavily forested lot of mature trees, acting on what it claimed was a valid permit. The city did not review Jacobsen's permit application to determine that it was in the Overlay district and, having failed to determine that the property was within the Overlay, it failed to ask what, if any, trees would be removed. Although Jacobsen was made aware of the restrictions, Jacobsen never informed the city that its project was subject to them and provided no information regarding the many covered trees on the lot, let alone a formal tree inventory. Jacobsen's permit was routinely issued. The community was forced to hire a lawyer and spend thousands of dollars to ensure that Jacobsen was held accountable by opposing his application for a special exception before the BZA. Jacobsen appeared before the BZA and on October 9, 2001, the day of the scheduled hearing, withdrew his application. Over two years later, the stop work order and his permit remain in place, though the Preservation Committee has unsuccessfully petitioned DCRA to rescind the construction permit, so that the site can be secured from further erosion. On October 8, 2002, our attorneys wrote David Clark, Director of DCRA requesting that he revoke the permit, since almost two years had passed without the start of construction. Mr. Clark never responded to this correspondence. In a subsequent meeting on November 11, 2002, also referred to below, Teresa Lewis, Deputy Director of DCRA, agreed it was appropriate to revoke the permit but never did so. Under the auspices of the Office of Planning, the Preservation Committee has asked that Jacobsen undertake and pay for basic geotechnical studies of the site before any development of the site will be considered by the community.

The second violation occurred in August 2002, when the new developer/owner of 2762 & 2800 Chain Bridge Road N.W., ostensibly tying off utility lines to a residence that was subsequently demolished in order to make way for new development, damaged the root system of at least one large tree protected by the Overlay. The developer never informed the City that he was working proximate to two protected large trees, and the city did not verify the accurateness and/or completeness of information provided by the developer. Since the sale of the property in February of 2002, the Preservation Committee had met with and sent written correspondence to DCRA to alert them that the developer needed to provide a tree inventory for the 4-acre property. In addition, the Committee tried repeatedly, without success, to obtain an inventory from the

owner. In the previously mentioned letter of October 8, 2002, our attorneys wrote David Clark about the pressing need for a tree inventory of the property; independent verification of the inventory by DCRA; and of the August violation at the property. After the August 2002 incident at 2762 Chain Bridge Road, a meeting was held on November 11, 2002 at DCRA with Bob Kelly, Zoning Administrator, Denzel Noble, Deputy Administrator, and Teresa Lewis, Deputy Director, during which Ms. Lewis promised to implement corrective actions that included instituting a new procedure within DCRA that no demolition permit of any type, including demolition or construction permits, could be issued without a completed tree inventory. Despite these promises, which were welcomed by the Committee, and notwithstanding follow-up letters and phone calls, Ms. Lewis never followed through in implementing these requirements. As a consequence of this failure, the third violation that recently occurred at 3101 Chain Bridge Road N.W. was not avoided.

At 3101 Chain Bridge Road, the realtor/ developer, Mr. Brian Logan, has demolished a residence and removed several trees – all protected by the Overlay – again without any clear record that the city made any effort to determine that the property in question was within the Overlay, and that protected trees would be knocked and cut down. Most infuriatingly, while neighbors were working to secure a stop-work order, and then to ensure that it remained in place, DCRA was apparently consulting surreptitiously with the developer to remove the stop work order, with no public process or determination that the order was improperly issued. This case is a barometer of the decline in the ability of DCRA to enforce its own regulations. Over two years ago when the Jacobsen violation occurred and the stop work order was in place, immediately a joint meeting was held with the Zoning Administrator, the developer, members of the Preservation Committee and the President and Zoning Chair of the Palisades Citizens Association. On February 12, 2003, we were told by email by former Zoning Administrator, Bob Kelly to Judith H. Lanius, Chair of the Preservation Committee, that:

“ Mr. Logan submitted a tree affidavit and was issued a permit based on the information supplied. With information supplied by you and after an inspection this office issued a stop work order notice. Work will not proceed until the overlay requirements are complied with. Mr. Logan has the right to appeal the decision to stop work, to the Administrator of BLRA.
I guess the point I am trying to make is BLRA required Mr. Logan to comply with the overlay, yet the contractor cut down a tree greater than what was approved by the tree affidavit form submitted with the permit application. We will be allowing the site contractor to complete surface water/erosion control measures while the stop work is in place to prevent erosion damage to the National Parks below. [Signed] Bob Kelly.”

We were thwarted in our attempts to meet with Teresa Lewis on this violation. We had arranged for a meeting with Ms. Lewis and Mr. Kelly on March 11, 2003; however, Ms. Lewis, without notice or explanation, failed to attend. This meeting was cut short due to Mr. Kelly's inability to respond to inquiries, other than to say Ms. Lewis should be contacted. Additionally,

Mr. Kelly informed us that he would not share with us his correspondence with the developer regarding 3101 Chain Bridge Road. We subsequently filed a Freedom of Information Request. However, not only has DCRA failed to produce any correspondence from Mr. Kelly to the developer, DCRA failed to produce any evidence that the stop-work order has been lifted. Despite the fact that there is no evidence that the stop-work order has been lifted, construction has recommenced at the property. Lastly, at the March 11 meeting, it was reiterated by Mr. Kelly that the developer was going to file for a zoning variance before the BZA while in reality he was in negotiation with DCRA. To date, no such application has been filed with the BZA.

These three cases of violations are deeply troubling. Our organization has always been proactive in contacting city officials to obtain their support and guidance regarding impending land transactions and residential demolition within the Overlay, its requirements, and its local importance. Our efforts have seen little positive results. We are concerned that the city does not recognize the Overlay as part of the Zoning Code of the District of Columbia. Our neighborhood has raised and expended substantial sums, first to secure adoption of the Overlay and then to seek its enforcement. During the last three years, we feel our direct experience with the Overlay has exposed us to the systemic problems within DCRA which have greatly undermined the effectiveness of regulations put in place to protect our neighborhood and thereby contribute greatly to the enhancement of the entire city.

The Office of Planning's review of the Overlay is timely and important. Despite the many shortcomings to date, we are confident that the Overlay concept is valid and will ultimately be successful. We would like to work with OP to help ensure this result. The following objectives would in our view be both valid and workable:

1. Development and adoption by the Zoning Commission of amendments to the Tree and Slope Protection Overlay "template" that include clear, flexible and workable enforcement provisions. Both the history of Overlay development and our direct experience with implementation suggest that improvements are needed and would be beneficial. Amendments should include requirements that:
 - The property owner submits a Tree Inventory as part of the permit application.
 - DCRA be responsible for independently corroborating the findings of the tree inventory.
 - DCRA conduct a site visit before any permits are issued which require the removal of trees.
 - Tree conservation plans be provided as a part of the permit application and that such conservation be approved by DCRA and the Office of Planning, with input from the Preservation Committee.
 - Enforcement of the tree conservation plans be built in through inspection.
 - Stop work orders remain in place until the violation is remedied, if it is possible to do so to the satisfaction of all parties,

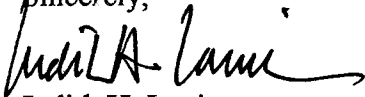
or the statutory seven years goes into effect.

---- The developer pay a percentage of the legal bills incurred by the community defending the Overlay regulations, as well as the imposition of additional fines for violations of the Overlay provisions.

2. Preparation and submission for adoption by the Zoning Commission of a "White Paper" on Overlay Enforcement that would address vital needs in:
 - Education
 - Training
 - Resources and
 - Enforcement
3. Hearings by the City Council and adoption of proactive resolutions that reinforce the Overlay concept and serve to promote greater respect for, and compliance with, these vital zoning tools.

We look forward reward to working closely with the Office of Planning toward these objectives and to ensure that Tree and Slope Protection Overlays are adequately recognized and enforced by our city.

Sincerely,



Judith H. Lanius

Chair

Chain Bridge Road/University Terrace Preservation Committee

cc: Kathy Patterson
Phil Mendelson
Sharon Ambrose
John Finney
Alma A. Gates
Jeannine Rustag Zigner
Richard Nettler
Zoning Commission

* This does not represent the entire real estate transactions for the period.

A. The Office of Planning summarized the comments made by the Zoning Commission at its publicly held meetings on March 3rd, 2003 and October 28th, 2002 in an effort to understand what the Commission requests of the Office of Planning and to provide clarification to the Commission on their areas of concern as identified through the transcripts.

#	Issues	Summarized Comments
March 3rd, 2003		
1	Side Yards and Average Setbacks	May: Some refinement may be necessary in those areas and I would have no difficulty crafting some compromise or accepting some language as it is in those types of areas ...
2	Types of trees	I think the real issue here has to do with the limits on what trees can be cut down and how that should be addressed....
3	Existing Tree and Slope Overlay language	...I guess one of the fundamental flaws I have with the current language and ...the existing tree and slope overlay language in the zoning regulations, is that there is no provision for planting new trees as an alternative...a key ingredient in regs. from other cities.
5	Manageable regulation	...Want to have a mechanism manageable by the people who live there...
6	Template	Mitten: The message we are sending right now is that we have concerns about the template ... We could ask OP to take up whatever issues any of us have with the template either for a potential change or for us to understand better how the template works...address in whatever way you see fit, whether it is making a proposed modification or explaining to us why the existing language is good...which would be specifically the ones I just ticked off as the template provisions... The template as it relates to Forest Hills... e.g. 1518.1 – Ground Coverage Restrictions
7	Another Approach	Parsons: Have OP go and talk to those communities and see if there is another approach that needs to be taken...
8	Existing Tree and Slope Overlay language	Mitten: ...to examine those neighborhoods where the tree and slope provisions are currently in place, and understand how that is working, how effective that is, whether it is an easy process, a difficult process and so forth...concerns about enforceability...
October 28th, 2002		
This discussion culminated in the ZC's NOPR dated December 13, 2002		
9	Enforcement	Mitten: I am concerned about some of the basic provisions of the overlay and their enforceability...because it is not clear to me that some of these things are enforceable...
10	Ground Coverage - 1518.1	Mitten: We had conflicting information from the proponents and opponents...The 40% permitted as a matter-of-right in the R-1-A and R-1-B versus the 30% that would be imposed by the TSP Overlay.... Main argument in opposition was that many of the existing homes already exceed the 30% lot coverage so imposing that on new construction would in fact produce a different sort of character...Although the reason for having a lower building coverage restriction is that it provides a better environment for trees and helps to control water run-off...I don't think there was a compelling case made for not keeping that aspect of the template in place. (Left the same as advertised)
11	Impervious Surface Coverage – 1518.2	...What was argued in favor...it promotes better environment for tree growth and OP is in support. Opposition suggests this would limit ability of property owners to fit their needs and market conditions... why new homes treated differently, which is a question I agree with... I think there is a lot to be said for impervious surface coverage... (Left the same as advertised)
12	Limitations on Tree Removal –1519.1	Mitten: Clearly this is meant to protect existing large trees and the overall tree canopy and OP supports this. In opposition, there was concern raised that there was no differentiation by lot size, tree species, whether the lot is vacant or improved and the impact on development feasibility. There was a question raised regarding the fairness of or the propriety of using the building restriction line as a point of reference... There is no definition of total circumference inches in 1519.1 (e)... Also concern for people to cut down smaller trees before they could get big enough to come under the controls of 1519.1...Left as advertised but OP needs to examine the enforceability as a matter of concern for the template... What does total circumference inches mean...
13	Minimum Lot size – 1519.2	Mitten... Modified from the 12,00 square foot minimum to 9,500 square foot. Left the same – no conflicts in discussion

#	Issues	Summarized Comments
14	Front Yard Setback – 1519.3	Mitten: This again is focused on new construction. Emphasis was on creating a more uniform appearance in the neighborhood, it was not focused on trees.... This is one of those provisions that is more appropriately considered ...in some other kind of development control...and I don't think that the proponents have made a compelling case that it should be and OP supports the deletion as well... So 1519.3 will be deleted ... (All agreed) However, this section appears again in the December 13, 2002 NOPR????
15	Side Yard Setback - 1519.4	Mitten: 1519.4 would be modified to ... incorporate the recommendation from OP for 24 feet aggregate minimum... Reflected in the NOPR date stamped December 13
16	Slope Control – 1519.5	Mitten: ...what was advertised was for no construction within 20 feet of steep slopes...and the current proposal is to use best practices...if steep slopes were present ...that was being considered as part of a larger special exception then there is a whole series of submittals that are required... OP supports the best practices alternative... Opponents suggest that 25% slopes are not unusual and that construction on steep slopes can actually reduce erosion ...rejected for the Wesley Heights overlay and they suggest that this be treated as a building code issue rather than as a zoning code issue...why are you going to address steep slopes one way in a special exception process when you are not going to address it as a matter of course because the way you would get into the special exception doesn't have anything to do with the slopes, per se. It has to do with other things. And I think there is a potential for redundancy...is the BZA, is it their area of expertise to address handling steep slopes when it is being handled as a building code issue. However, in the end Ms. Mitten states that it is modified to the best practices language of the proponents. OP discussed this issue with the DOH's Soil Erosion Control and they contend that they are the "monitors" of best practices and they would object to additional regulations that may conflict or confuse clients. Already when applicants propose building on slopes steeper than 15%, their engineers must have a pre-application meeting with DOH and they go on-site to review the impacts that may be caused to neighboring property with respect to erosion, flooding, etc...(DOH: Mr. Abdi Musse - 4/25/03) §5.21 DCMR.
17		Parsons: I am at a loss to say it is a building code issue...what we are looking for is a Board review of impacts on steep slopes...a conscience public debate about these... OP contends that this "public debate" is best conducted by qualified engineers (DOH) and not by the BZA.
19		Mitten: I think there is a slight difference of opinion, which is best practice is not always the same as meeting the minimum requirements. I think it is a higher standard.... So best practices are prevailing at this point...At this point this provision was left in.
20	Guidelines and Required Submissions for SE - 1520.1 –1520.3	Mitten: ...so you are in favor of leaving 1520.1 through 1520.3...the guidelines for the special exceptions and submissions....All right... As advertised...
21	Crim. Penalties – 1520.4	Mitten: ...I think that's probably redundant, because you are required to sign those documents as it is... All agreed to delete it
22	Definitions – 1520.5	Mitten: ...These are existing definitions; they are not new definitions, so I think that just confuses people... I would propose deleting 1520.5 as being redundant. All agreed. Delete.
23	Included Squares- 1520.6	Mitten: 1520.6 outlines the squares to be included and those squares encompass R1A, R1B, R2 and R5D zones... We had a request from 80% of owners in squares 2239,2244,2245,2246 have asked to be excluded.. JPDS requested there property be removed and the Edmund Burke School....Edmund Burke had been included as a typographical error... Okay what about R-5-D..
24		Mitten: We can delete R-5-D or we can just apply the two provisions, the slope protection and the tree removal and not encumber them with the rest...
25		Hood: ...Lets just go ahead and delete ... I would be in favor of deleting R-5-D
26		Parsons: ... Yes, knowing that we will hear from the community and maybe we will change our mind..
27		Mitten: ...1520.6 will be modified to exclude those squares or portions of squares that are zoned R-5-D.. so I would move approval of what I just articulated.... (All

#	Issues	Summarized Comments
		Approved)
28	Front Yard Setback – 1519.3	Mitten: ...We are going to take this up separately and I'd just like to hear your final thoughts on...the front yard setback.
29		Parsons: ...Why don't we take it out because...this really doesn't have anything to do with trees. It has to do with preservation of this neighborhood's setbacks...
30		Mitten: I would move that we keep in the language of the front yard setback, as advertised.. (All agreed... Comment period of 60 days given)

The resulting language was published in the DC Register on December 13, 2002. (Attached)

- B. Based on the comments made by the ZC members, OP forwarded a survey (April 14, 2003) to those ANC's that are already governed by the TSP overlay, including the Chainbridge Road/University Terrace Preservation Committee, the Palisades Citizen Association, the Wesley Heights Citizens Association and ANC3D. The survey requested comments on issues such as:

- o Cases before the ANC requesting special exception relief from the overlay
- o Homeowner satisfaction with, confidence in, or concerns about the overlay
- o Homeowner ease or difficulty in working with the TSO in obtaining a building permit
- o Enforcement issues

OP expects those comments no later than June 2nd, 2003. In addition, OP requested the organized opposition's comments to the overlay, which was presented to the ZC by the Forest Hills Neighbors for Responsible Preservation (FHNRP).