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Via Hand Delivery

July 22, 2004

Zoning Commission
C/O Mr. Alberto P. Bastida, AICP
Secretary of the Zoning Commission
Office of Zoning
441 4th Street, NW,
Suite 210
Washington, DC 20001

Re: **Support of the Tree and Slope Overlay (Case No. 02-19 - Text Amendment Forest Hills)**

Dear Commissioners:

Due to the birth of twins and having a 2 year old without any available outside help, I am not able to attend tonight's hearing. I request that the attached be provided to the Zoning Commission and entered into the record in lieu of oral testimony. Thank you for your help in this matter.


J. Brendan Herron Jr.

ZONING COMMISSION
District of Columbia
Case 02-19
352
ZONING COMMISSION
District of Columbia
CASE NO.02-19
EXHIBIT NO.352

OP PROPOSAL ASKS ZONING COMMISSION TO IGNORE THE LAW

DC Code requires *Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital* (DC Code § Section 6-641.02)

The Comprehensive Plan for Ward 3 (“DCCPW3”) list several zoning requirements for Forest Hills:

1. **Use of the existing Tree and Slope Overlay((11 DCMR §1511) in Forest Hillsⁱ**
2. **Land Use Controls in excess of R-1ⁱⁱ**
3. **Maintain Park like setting with ample building set backsⁱⁱⁱ**
4. **Minimize removal of topsoil and vegetation^{iv}**
5. **Minimize impervious surfaces^v**
6. **Require new Construction to maintain existing set backs^{vi}**
7. **Development in Areas Bordering Rock Creek Park must be low density and eliminate runoff potential and promote a green buffer while avoiding any adverse effect on the Park or the views from the Park^{vii}**
8. **Urban Design should reflect and perpetuate wooded nature of Forest Hills^{viii}**
9. **Act to eliminate conflicts between zoning and the comprehensive plan.^{ix}**

The existing Forest Hills Tree and Slope Overlay (“FHTSO”) accomplishes all of these objectives, the proposed Office of Planning (“OP”) Draft ignores all of these objectives. Thus OP is asking the Zoning Commission to ignore the LAW.

OP PROPOSAL ISN'T APPEALABLE OR REQUIRES SIMULTANEOUS APPEALS TO MULTIPLE BOARDS

The OP Proposal allows for no action within 30 days by the Urban Forestry Administration to be considered an approval. Because no action is not a decision under the DC Administrative Procedures Act, there can be no appeal. In addition, because the OP Proposal refers to Urban Forestry Regulations which are not contained in the zoning code, they are not under the jurisdiction of the Board of Zoning Adjustment and thus a second simultaneous appeal to the Board of Appeal and Review will be required.

No where else in the zoning code, is a non action considered approval and there is no precedent for approving zoning actions based on predictions of future events. It is inconceivable that this Commission would allow no action by DCRA for 30 days to count as approval of zoning for a project and that it would allow any one to build something and then have three to ten years to wait before it could be determined whether they complied with the zoning.

Finally, the proposal is unclear as to who is responsible if property changes hands. Is it the current property owner, how are they even going to know that a report is due for something that occurred two years ago. As neighboring citizen have no ability in DC

code to enforce fines, only action is to sue to obtain a report that attempts to predict what will happen years from now.

OP PROPOSAL HAS POTENTIAL TO TURN FOREST HILLS INTO TYSON'S CORNER AND WILL THREATEN ROCKCREEK PARK

American Forest's survey says the tree cover in Tysons Corner is 29%. This is higher than the OP proposal. Does anyone who lives in Forest Hills say that it is ok to take the magnificent trees we have and replace them with a 2" caliper tree. Based on Fairfax County tree estimates, a 2" caliper oak gets credit for 200 sq feet of 10 year coverage. Is that a fair trade off? With the increase in house prices, the economic incentive to subdivide small lots and clear cut exists. Do we want to see Forest Hills clear cut and replanted with 2" trees. Does the Zoning Commission want to see that happen? The Comprehensive Plan clearly says "NO" and so should the Zoning Commission.

Thank you

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ⁱ “The Woodland-Normanstone area has been mapped with the Tree & Slope Protection overlay (11 DCMR §1511) . . . **This Tree & Slope Protection overlay should be considered and adapted for other park-like, hilly areas such as the Potomac palisades and the portions of the Forest Hills and Barnaby Woods neighborhoods adjacent to Rock Creek Park and its tributary valleys;**” (*DCCPW3 §14 09.4(b)(2)*)

ⁱⁱ “**Several areas in the ward, because of their existing low density and “parklike” setting, require land use controls in addition to the requirements of R-1 zoning (the most restrictive zone district)**” (*DCCPW3 §14 09.4(b)*)

ⁱⁱⁱ .” **Appropriate design solutions include the following:**

(1) **Limit density of development adjacent to natural areas, areas with severe building restraints, or stream valleys; maintain park-like settings on streets and lands adjacent to the natural areas and stream valleys; and require ample building set-backs;**” (*DCCPW3 §1605(b)(1)*)

^{iv} “**Encourage retention of natural growth and grades; minimize regrading or the removal of topsoil and vegetation; establish new vegetation, especially trees;**” (*DCCPW3 §1605(b)(5)*)

^v “**Minimize the construction of impervious surfaces; promote permeable materials for driveways, walkways, parking lots, and the like;**” (*DCCPW3 §1605(b)(6)*)

^{vi} (e) **Setback: Maintain the historic facade lines of streetscapes by locating front walls of new construction in the same plane as the facades of adjacent buildings. If exceptions are made, buildings should be set back into the lot rather than closer to the street. If existing setbacks vary, new buildings should conform to historic siting patterns. Avoid violating the existing setback pattern by placing new construction in front of or behind the historic facade line. Avoid placing buildings at odd angles to the street, unless in an area where diverse siting already exists, even if proper setback is maintained;** (*DCCPW3 §1406(e)*)

^{vii} “ **Stream valleys, which include Rock Creek Park (and its tributaries) and Glover Archbold Park: Development adjacent to these parks must be low density and shall be further restricted where advisable to protect unstable soils, eliminate runoff potential, and promote a green buffer between the built environment and these natural settings. Development of border areas must avoid any adverse effect (known or plausibly suspected) on these stream valley parks, including the water quality, flora, and fauna, and should minimize any intrusion on views from these parks;**” (*DCCPW3 §1406.5(a)(5)*)

viii **Neighborhoods developed over hilly terrain or near stream valleys (such as Barnaby Woods, Forest Hills, Hawthorne, Palisades, Spring Valley, and Woodland-Normanstone): Urban design should respect and perpetuate the natural features, low density, and usually wooded character of these built areas;** *(DCCPW3 §1406.5(a)(6))*

ix (g) **Correct or prevent inconsistencies between zoning and land uses designated in the Comprehensive Plan,** and between building permit issuances and the Comprehensive Plan; *(DCCPW3 §1409.2(g))*