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2839 Allendale Place, NW
Washington, D.C. 20008
August 19, 2004

Alberto P. Bastida, AICP
Secretary
Zoning Commission
441 4th Street, N.W.
Suite 210S
Washington, D.C. 20001

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

We want to thank the Commission for the time it has invested in working on issues relating to Forest Hills and for the seriousness with which you and your staff have approached the matter. Given all the testimony you have heard and read, we know there is no need to reiterate for you the exceptional characteristics of Forest Hills that have attracted many residents who might otherwise have moved their families (and their taxable incomes) to Maryland. Nor do you need to be reminded of how development in Forest Hills jeopardizes adjoining national parks and waterways and affects the Chesapeake Bay.

Instead, we'd like to supplement the record in two respects. The first concerns the standards you ought to apply in considering whether the Tree and Slope Overlay ("Overlay") should be replaced with the Office of Planning's ("OP's") tree canopy approach. The second concerns an additional reason why we question the reason for even considering a change to the existing Overlay.

1. This case presents the curious situation in which those who favor the Tree and Slope Overlay and those who favor the Office of Planning's alternative proposal both claim to have the same objectives. *Both sides say* that they are committed to "preserving the special qualities of Forest Hills" (or "maintaining the character of the neighborhood"). *Both sides say* that they want to "maintain the tree canopy." Taking all of these people at their word, and given that baseline of agreement, it seems clear that your decision about whether to replace the Overlay with the OP proposal becomes much easier. All you need to do is to determine whether the OP proposal will fulfill these agreed-upon objectives.

The evidence is overwhelming that the OP proposal will *not* achieve these objectives. For example:

- The canopy requirements do not come anywhere close to requiring that the current tree canopy be *maintained*.
- The current tree coverage of Forest Hills is well over 50%.
- Obviously that cannot be "preserved" if folks are allowed to cut down the trees and then are required to replace them only to provide coverage of only 25% or 36%.

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- And perversely, the OP proposal creates an incentive to subdivide lots into smaller pieces, because the canopy requirement is 36% for lots over 9000 square feet and only 25% for lots of 7500-9000 square feet.
- The OP proposal equates yet-to-be-planted trees with existing mature trees.
 - A 100-year-old oak or beech tree can be cut down and replaced with a couple of 2" nursery saplings so long as (1) an arborist says they will provide the requisite 25% or 36% coverage within 10 years, and (2) the trees manage to live for three years after planting. If the arborist later proves to have been mistaken (the inherent subjectivity and bias involved in predicting drip lines 10 years into the future was amply discussed at the hearing), or if the trees all die in Year 4 (perhaps because there's no longer anywhere for their roots to grow), the developer has no further obligation, and the neighborhood has no recourse.
 - There is no protection as to the height of the canopy; all that matters is the area within the dripline. Thus, so long as the requisite circumference of coverage is obtained (or promised to be delivered in 10 years), 15-foot tall dogwoods and Japanese maples are considered to be the same as 100-foot-tall oaks and beeches, even though the presence of the latter is an essential part of the character of the neighborhood and an important part of the forest ecosystem. (Just to be clear, we love dogwoods and Japanese maples, but the stated objectives require protecting the other trees as well.)
 - As was discussed at the hearing, OP's approach will promote the use of certain kinds of trees that are suited for street use but do not have the aesthetic and environmental benefits that many of Forest Hill's trees do, and conversely will exclude the use of certain of the majestic trees that characterize Forest Hills today
- Only the Overlay protects pervious surfaces, which are essential for root growth.
 - The only expert testimony on the subject in any of the public hearings showed that limiting the spread of impervious surfaces is essential to maintaining the tree canopy -- and to controlling of flooding.
 - The Overlay limits impervious surface coverage. The OP proposal does not.
 - In fact, under the OP proposal, the more a homeowner builds or paves over his or entire lot, the better his or her ability to argue for being relieved of the obligation to plant new trees.

We urge you to consider these factors, and to judge the OP proposal by the standards its proponents claim it will meet. If you do so, we believe the only possibly conclusion that can reasonably be reached is to *retain the Overlay* and to *reject the OP alternative*.

2. An additional factor that we ask you to consider is the absence of demonstrated problems with the Overlay. The benefits of the Overlay are not in dispute, but there appears to

be some concern about whether it is unduly restrictive. We are aware of no evidence that the Overlay has had anything other than beneficial effects.

The Tree and Slope Overlay in Forest Hills has been in effect for over a year and is essentially the same as two overlays that have been in effect for much longer periods of time. In all of the public meetings that we attended (and we think we attended all of those held by the Citizens' Association, the ANC, and the Zoning Commission), no one ever presented any evidence that the Overlay has interfered with the reasonable plans of a property owner to expand a home, make an improvement, etc. And the only testimony we heard about the two other Overlays suggests that they have worked well to achieve their stated goals without unduly restricting property owners.

At the latest hearing before the Zoning Commission, the opponents of the Overlay spent much time praising the effort of the Office of Planning, and touting the virtues of what they claim (against all evidence) is a "compromise," but they never provided you with any concrete evidence of any real problems that result from the Overlay. We think the real answer lies in statements that we heard at neighborhood meetings, where several of those who now claim to support the OP proposal argued that government should not be able to make rules limiting what property owners can do with their land. One person bluntly stated, in testimony which they were too smart to repeat in your earshot, "Who cares about the birds, etc.? It is my land and I can do with it what I want." Such views, of course, are utterly inconsistent with the social compact that modern society accepts; were such views the norm, ---there would be no need for a Zoning Commission.

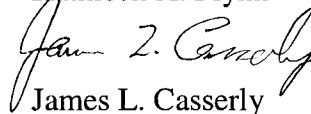
In short, we believe the Overlay has been and will continue to be a success, and that the OP alternative is fraught with deficiencies and uncertainties. We sincerely hope that you will not jettison the protections for our neighborhood and our environment that were adopted via the Tree and Slope Overlay. We urge you to leave the Overlay in place and not to adopt the OP alternative.

Thank you again for your time and attention.

Sincerely,

Handwritten signature of Kathleen A. Flynn in cursive script.

Kathleen A. Flynn

Handwritten signature of James L. Casserly in cursive script.

James L. Casserly