

BY HAND DELIVERY

June 17, 2002

District of Columbia Zoning Commission
Room 210
441 4th Street, N.W.
Washington, D.C. 20001

RECEIVED
D.C. ZONING COMMISSION
JUN 19 AM 8:44

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

Dear Members of the Commission:

On behalf of homeowners in the area covered by the proposed Forest Hills Tree and Slope Overlay (the "Overlay"), we are writing to express our opposition to the proposed Overlay now before the Commission and also to the modified version recommended by the so-called Ad Hoc Committee in its report dated June 3, 2000 (the "Ad Hoc Report"). We have organized ourselves as the Forest Hills Neighbors for Responsible Preservation. Each of us would be personally affected by the Overlay, but we write not to propose revisions to resolve our own concerns, but to urge the Commission to reject the Overlay proposal and direct the Forest Hills Citizen Association ("FHCA") and the Advisory Neighborhood Commission 3F (the "ANC") to re-think it.

For most of us and our neighbors, our houses and lots are our largest investments. A fixed and understandable Zoning Code has helped to set our expectations and determine our property values. The flexibility left by the Code has enabled us to express our design creativity and adapt our homes and lots to our evolving needs and styles of living. Forest Hills is not an annex of Rock Creek Park. It is a dynamic urban residential neighborhood with attractive homes and trees that give it much of its charm. We have planted thousands of trees in our neighborhood at no public expense and continue to do so.

Any proposal to preserve Forest Hills must take into account the dynamics of the neighborhood's settlement history and allow these dynamics to continue to operate without stifling over-regulation as the current filing proposes. We want to maintain our neighborhood, continue to protect its environment, and allow it to continue to be an inviting and welcoming home for future residents.

We believe this is best done not through an elaborate command and control system as proposed in the current filing, but rather through the individual decisions of our neighbors. Decisions by our neighbors and their predecessors--taken as a matter of right--have made the Forest Hills neighborhood a place that has a high value for its residents today. In general, we have not had to hire experts to plead for exceptions from beleaguered agencies. We have built our neighborhood through the collective vision and good choices of the many settlers and current residents of Forest Hills. The Overlay would change all that.

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Board 73

ZONING COMMISSION
District of Columbia
CASE NO.02-19
EXHIBIT NO.73

The Process Was Flawed. The Overlay before this Commission is fundamentally flawed by the haste with which it was proposed.

The recitals in the Ad Hoc Committee Report imply that the Overlay is well understood in the community. This is simply not true. The vast majority of the affected community is only beginning to understand it. A review of the abbreviated chronology that brought us to this hearing is instructive. The ANC developed a process for considering the possibility of an overlay that included the creation of the Ad Hoc Committee. On April 5, 2002, the FHCA, short-circuiting that process, filed a petition with this Commission without first having circulated it to its board and membership for review and comment.

In its rush to judgment, the FHCA styled this an “emergency” petition in the absence of any emergency. On April 15, 2002, the ANC, by a divided vote of 4-2-1 nevertheless recommended that the Zoning Commission set down the petition for a hearing. The two ANC Commissioners who represent most of the residents of the proposed Overlay district voted in opposition. Only after the Zoning Commission had set down the FHCA petition for a hearing was the text of the Overlay first distributed to the affected community. Subsequent meetings have only begun to uncover the issues that the Overlay presented to us and other homeowners in the Forest Hills neighborhood.

This is not just a technical, procedural objection. As we understand it, the whole concept of and justification for any overlay of this sort is that it grows out of and reflects the considered judgment of the affected community rather than being something imposed by outsiders or government on the community. Clearly, this is not the case in this instance.

The Overlay Itself. Many of the specific provisions of the Overlay do not belong and others need closer examination.

Building Coverage Restrictions. Section 1513.1 of the Overlay and the Revisions would decrease the maximum permitted lot coverage for new buildings from 40% to 30%. Again, in the context of large lots, this will make no practical difference. But many of the homes that give Forest Hills its character cover more than 30 percent of their lots. Perhaps the FHCA and the ANC should examine the effects of a sliding scale. The owners of existing homes will be permitted to add additions up to the 40 percent coverage. There is no reason of policy or fairness to impose tighter restrictions on the owners of vacant lots.

Impervious Surface Coverage. Section 1513.2 of the Overlay would impose a new 50% limit on the percentage of any lot that can be covered with impervious surfaces, including new buildings, patios, driveways, tennis courts, swimming pools and paved pathways (1515.5). In the context of large lots, this limit would likely have no practical significance. On the smaller lots that abound in Forest Hills, it would restrict the ability of current and future homeowners to customize the use of their lots to meet their evolving needs. Such an approach would blatantly discard the very development approach that helped to create the kind of neighborhood Forest Hills is today.

Tree Removal. Section 1514.1 of the proposed Overlay would impose myriad restrictions on the removal of trees, including a complete ban on the removal of trees larger than 75” in circumference (1514.1(c)); removal of any trees greater than 38” in circumference that are

located within 25' of a building restriction line or the lot line (1514.1(d)); removal of more than three trees greater than 38" in circumference from any place on the lot (1514.1(d)); and removal of trees whose circumference in inches exceeds 25% of the circumference in inches of all the trees on the lot (1514.1(e)). These restrictions apply regardless of lot size, regardless of the species of tree, regardless of whether the lot is vacant or has an existing house, and regardless of the impact on the feasibility or design quality of a home.

The provisions specially limiting removal of trees 25 feet from a building restriction line sets up a standard that has no cogent rationale. The Ad Hoc Report concedes that building restriction lines are located 15'-45' from the street and were established at different times for reasons in many cases lost to history. Surely no one expects the District to widen the residential streets in Forest Hills, so the street should serve as the base line for any restriction. If a rule must be imposed, it should extend only to the greater of the building restriction line or 25' from the street.

The Ad Hoc Report also bows in the direction of allowing mitigation as a basis for allowing tree removal. Any mitigation alternative should be designed in a way that is self-administering rather than consuming the time and resources of not only the owner but the BZA and the commenting agencies, most of which are already challenged to do their truly essential work in a timely and high quality fashion.

Minimum Lot Size. Section 1514.2 of the Overlay and the Ad Hoc Report would raise the minimum lot size from 7500 square feet to 12,000 square feet. Much of Forest Hills consists of attractive, moderate-sized homes on 7500 square foot lots. The new 12,000 square foot minimum might be appropriate in square or blocks with homes that size or larger, but we see no reason for a one-size-fits-all approach that will result in disproportionately large lots and, inevitably, disproportionately large houses in the midst of existing homes on 7500 square foot and smaller lots. An estimated 60 percent of the lots now zoned R-1-A would become nonconforming lots.

If the perceived problem is over-sized houses on small lots, then the Commission should explore appropriate and effective tools to fix this problem, possibly including floor area ratio ("FAR") restrictions, to combat that evil. If the perceived problem is the risk of excessive density if large institutional parcels are eventually sold and developed, those problems should also be addressed directly.

Setback. The Zoning Code imposes no setback from the street, although building restriction lines in some parts of Forest Hills have the same effect. Section 1514.3 of the Overlay would require that all new residential buildings be set back from the street at least as much as the average of all other structures on the same side of the street. As presently formulated, the provision will create odd situations and constrain owners even where it has no relevance to any purpose of the Overlay. It may also impose an unfair hardship on certain corner lots. To the extent that the purpose of the Overlay is esthetic rather than environmental, with proper exceptions developed after a further public process, a setback rule may be a constructive way to limit inappropriately overbuilt replacement housing.

Side Yards. Section 1514.4 of the proposed Overlay would increase the minimum side yard setback for new buildings from 8' to 16'. In many, and perhaps most, parts of the Overlay district, existing houses typically have 8' side yards. An increased setback would transform--not

maintain--the character of the neighborhood. On small lots it would likely lead to discordant three-story houses in a largely two-story neighborhood as the owner and architect are forced to achieve the necessary floor space by building up. On many lots, these three-story houses would be no more than 25' wide. Moreover, it is inequitable at best to apply this restriction only to new buildings while allowing the owners of existing homes to reduce their side lots to 8' by building additions.

The Ad Hoc Report recommends a number of revisions that would have the effect of exempting certain relatively narrow lots. We support the revisions, but are still concerned that, in areas that are largely built-up, even the remaining constraints would serve no useful purpose and might be counter-productive.

Slopes. Section 1514.5 of the Overlay would prohibit an owner for altering existing topography. Moreover, if the slope is "highly erodible as determined by the US Geological Survey soils analysis" and the slope is greater than 25% within 20 feet of the proposed footprint, "then no building or terrain alteration will be permitted". Nowhere is the effect of the FHCA's unseemly haste more apparent than in the sweeping and unprecedented slope provision.

Many houses that have established the very character of the neighborhood that we cherish were built on and into slopes greater than 25%. In many cases, building into the slope reduced the scale of the facades and allowed the houses to be set farther back from the street. These homes enhance--not detract from--the neighborhood. On many blocks, most houses have been built into the slope, and forcing a house to be placed 20' from the slope would lead to a house that is out of step with the rest of block and, of course, destroy much of the economic value of the lot.

Neither the USGS nor the Soil Conservation Service (which the Ad Hoc Report now advises is the right agency) has any maps of a scale that would enable an owner of a home or a lot to determine whether the soil is highly erodible, so no owner in the affected district with a 25% slope now knows what impact this requirement would have on his or her lot.

The Ad Hoc Report now recommends dropping the general ban but reinserting it in the special exception process if an owner is forced into that process by some other provision of the Overlay. This would make its application even more discriminatory, since anyone building on a vacant lot will inevitably be thrown into the special exception process because of the tree removal rules.

There are well-established techniques, recognized by regulators, builders and this Commission alike, for controlling erosion and runoff, but it seems evident that erosion control is not the issue here. If the real purpose is to maintain basic land contours on multi-acre sites that might some day be developed on the model of a suburban subdivisions, then its application should be limited to those sites.

No other neighborhood in the District of Columbia is fettered with a slope restriction, and this Commission rejected proposed slope restrictions in connection with the Wesley Heights Overlay (see Commission Order 863, June 14, 1999, page 3). This Commission should likewise reject any such regulation for Forest Hills.

Special Exceptions. Section 1515 establishes a procedure for seeking Special Exceptions from the Board of Zoning Adjustment. The procedures include an application submitted

subject to criminal penalty (1515.5), supporting materials (1514.3), referral to five District of Columbia and federal agencies (1515.2) and a public hearing.

Proponents see the special exception provision as a cure-all for the rigidities of the Overlay, envisioning that everything from tree removal decisions to slope limitations to front, side and back lot setbacks for individuals houses will be handled by the BZA. We see a process that is onerous, time-consuming, expensive, and unpredictable, putting the burden on our citizens to hire a battery of experts ranging from soils engineers to arborists and probably lawyers and expeditors to have a fair chance in the process. The “exception” becomes the rule, and the rule becomes an exercise of discretion.

The Ad Hoc Report goes to some length to spell out various competing considerations, without, however, including the bedrock concept that the owner should be entitled to build an individually designed house or structure or amenity without undue restriction. These various considerations and the BZA’s obligation to take into account the views of multiple agencies after a hearing make the results of the process inherently uncertain. Any land use control system needs safety valves, but the Overlay and the Ad Hoc Report would throw out the system, with predictable effects on our autonomy and property values. Alternatives should, to the maximum extent possible, be self-administering. Only a minimum of very unusual matters should be processed for exemption.

Recommendation. We have noted a handful of provisions that might be improved or made more reasonable. However, we do not intend by our comments to imply that making minor revisions would make the Overlay acceptable. We believe that concepts such as those reflected in the Urban Forest Preservation Act pending before the City Council have much appeal, and we are aware that other jurisdictions have used a number of creative approaches to preserve their character. Most importantly, we know that the majority of our neighbors are still not well-informed about the Overlay, which surfaced in a way that could be understood only after the filing with the Zoning Commission, and we believe that the effect on them, their homes and their neighborhood deserve careful consideration.

The first step is for the affected neighbors to consider and agree on the goals of an overlay, so that it can be designed in a way that achieves these goals rather than imposing collateral damage on all homeowners who have the misfortune of being in its ambit. The recitals in the current draft Overlay about preservation of trees and slopes and protection of parkland ring hollow to the individual owners of homes and lots, even though we share these goals. We believe that the greater concern of many of our neighbors is to avoid the construction or renovation of homes out of character with the neighborhood and for zoning regulators and public officials to have some control over the use of multi-acre parcels. In fact, many of the zoning rules needed to protect our neighborhood are already in place. Lax and ineffective enforcement of the rules by the regulators has enabled developers to construct houses that are out of character and inconsistent with the existing community. With a shared purpose and a commitment to regulate judiciously and enforce vigorously, we believe that the neighborhood can achieve these shared purposes.

To paraphrase Abraham Lincoln, any overlay imposing greater restrictions on a neighborhood than on the city at large, should be an initiative of the neighbors, by the neighbors and for the neighbors. The Overlay and the Ad Hoc Report recommendations satisfy none of those

standards. It should be returned to the FHCA and the ANC for additional consideration of the needs and desires of the residents of the Overlay district.

Respectfully submitted,

FOREST HILLS NEIGHBORS FOR RESPONSIBLE
PRESERVATION

MARK AND LAURA BAUGHMAN, 4835 Linnean
Avenue, NW

SUSAN VALLON AND ANDY BEYER, 4237 Lenore
Lane, NW

DOROTHY AND ROBERT COLL, 2905 Davenport Street,
NW

ROBERTA AND DOUG COLTON, 4209 Linnean Avenue,
NW

JAMES R. AND KAREN FOREIT, 4140 Linnean Avenue,
NW

JOAN NATHAN AND ALLAN GERSON, 4221 Lenore
Lane, NW

GREER AND GERALD GOLDMAN, 4233 Lenore Lane,
NW

JOHN AND GAIL HARMON, 4225 Lenore Lane, NW

MICHAEL AND SUDI JONES, 2605 Tilden Place, NW

WILLIAM AND CYNTHIA KELLY, 4205 Lenore Lane,
NW

MARGARET I. MILLER, 4101 Linnean Avenue, NW

MAURICE AND ANN SISLEN, 4217 Lenore Lane, NW

ANDREW AND JULIA STEVENSON, 2955 Albemarle
Street, NW

By: 
CYNTHIA C. KELLY