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Commissioner ANC3F01
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Advisory Neighborhood Commission 3F
North Cleveland Park and Forest Hills
P.O. Box 39290
Washington, D.C. 20016-9290

June 18, 2002

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

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Re: Case No. 02-19 - Emergency Map Amendment
for a Tree and Slope Overlay filed by the
Forest Hills Citizens Association

Dear Mr. Bastida:

On June 17, 2002, ANC3F voted four in favor, two opposed, and one abstention to recommend that the Zoning Commission adopt the changes in the pending Overlay which are recommended by the Ad Hoc Committee Report and complete its proceeding on the Overlay as expeditiously as feasible.

We, the undersigned commissioners of ANC3F, voted in opposition to making such a recommendation to the Zoning Commission because we believe the overlay, even with the revisions recommended by the ANC3F Ad Hoc Committee, does not properly address the stated purpose of the overlay and meet the needs of the Forest Hills Community. Our single member districts include more than 95% of the residents and area of the proposed overlay district.

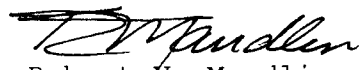
Enclosed is our Minority Report to the DC Zoning Commission in which we recommend and urge the members of the Zoning Commission to reject the Forest Hills Tree and Slope Protection Overlay and return the issue to the community for consideration.

We respectfully request that the minority Commissioners of ANC3F be granted ten minutes at the Zoning Commission hearing on June 27, 2002 to present their views as outlined in the enclosed report.

Very sincerely yours,



Phil Kogan
Commissioner
ANC3F01



Robert V. Maudlin
Commissioner
ANC3F03

enc. ANC3F Minority Report

cc: Andrew Altman, Office of Planning
Commissioners, ANC3F

ZONING COMMISSION
District of Columbia
Case 02-19
ZONING COMMISSION
District of Columbia
EXHIBIT NO. 82

**Minority Report to
Zoning Commission of the District of Columbia**

Case No. 02-19

Text Amendment - Forest Hills Tree and Slope Overlay District

from

**Advisory Neighborhood Commission 3F
North Cleveland Park/Forest Hills**

June 17, 2002

Executive Summary

On April 5, 2002, without community review or knowledge, a petition was filed with the Office of Zoning for a tree and slope overlay in the Forest Hills area under the name of the Forest Hills Citizens Association (FHCA). Information on the contents of the proposed overlay was presented by the FHCA at a public meeting on April 16, eleven days after the filing and three days before the DC Zoning Commission's hearing on the petition.

ANC3F after careful and detailed review of the filing, consideration of a report by an ANC Ad Hoc committee established to study tree and slope overlays and comments from the residents of the area have concluded that the proposed overlay, as outlined in this report, does not meet the needs of the community. This decision is based on the fact that the proposed overlay is grossly defective and does not offer a framework for the residents to consider ways to protect the assets of the community.

For these reasons, the issues outlined in this report, and the division within the community, ANC3F respectfully requests and urges that the DC Zoning Commission reject the Forest Hills Tree and Slope Overlay.

I - Background

ANC3F established an Ad Hoc Tree and Slope Committee on July 9, 2001 to study the need and feasibility of a tree and slope overlay for the Forest Hills area. The Committee held its first meeting on October 9, 2001 and decided to focus initially on the area east of Linnean Avenue and properties surrounding Soapstone Valley. A field trip was made to study the Chain Bridge Road/University Terrace TSP Overlay District.

The Committee continued to meet during November 2001, and January, February and March 2002, obtaining information from people that had been involved in the establishment of TSP overlays, and representatives of the DC Office of Planning, National Park Service, Natural Resources Defense Council and others. The Committee meetings included discussions of the area to be included in a proposed overlay as well as tree and zoning issues that could be addressed in

an overlay. No consensus had been reached by the Ad Hoc Committee on these issues by the end on March 2002.

On April 5, 2002, the Forest Hills Citizens Association (FHCA) filed with the Office of Zoning the subject petition for a proposed tree and slope zoning overlay and request that it be considered for public hearing at the Zoning Commission's meeting on April 19, 2002. The FHCA petition included not only restrictions on tree removal and construction on slopes, as its name implied but also substantial changes in basic zoning including maximum lot occupancy, minimum lot size, restrictions on impervious surface coverage and side yard, front yard and corner side yard dimensions.

The proposed overlay appeared to be a "cut and paste" from Section 1511 of the zoning regulations, the Chain Bridge Road/University Terrace, Wesley Heights and Woodland Normanstone overlays plus other changes in zoning which had been rejected by the Zoning Commission in earlier TSP proceedings.

The petition alleged that "The Forest Hills Citizens Association represents property owners in the Forest Hills section of the District of Columbia who have joined together to petition the Zoning Commission to amend the zoning regulations by adopting the Overlay described herein." Other than this statement there is nothing in the petition to indicate support by the members of the FHCA or the residents of the area covered by the petition.

There is no indication or claim in the filing that the proposed overlay was put out for review and comment by members of the FHCA, the governing board of the FHCA, or the residents of the Forest Hills area. The FHCA did not hold a public meeting on the proposed overlay until April 16, 2002, eleven days after the filing. At the April 16, 2002, meeting a number of residents raised concerns regarding the proposed overlay. There appeared to be general agreement that modification of the proposed overlay was needed.

A second general public meeting sponsored by the FHCA and ANC3F was held on May 13, 2002, where residents of the area described serious problems that had been caused by the overlay which went into effect on April 19, 2002, when it was set down for hearing by the DC Zoning Commission.

II - Analysis of provisions of the Forest Hills Tree and Slope Protection Overlay District

A - Sections 1516.1 and 1520.6 - Area included in the Forest Hills Overlay

These sections describe the area of the overlay by boundary streets and by squares.

Section 1511.4 of the Zoning Regulations states that a TSP Overlay District is "not

suitable for mapping in neighborhoods where nearly all lots are already developed on a rectangular grid system and where the existing mature trees are either yard trees or street trees.” The code recognizes that a TSP overlay is best suited to undeveloped areas and is intended to be applied to such areas. The Forest Hills area is a developed residential area with very few undeveloped lots. Many of the trees, if not most of the trees in the Forest Hills Overlay District are street trees, yard trees and trees on park lands. The area in the western portion on the overlay district is developed on a rectangular grid system. On this basis alone, the proposed overlay area is inappropriate for the Forest Hills neighborhood and should be rejected by the Zoning Commission. Application of the overlay to Forest Hills is inconsistent with the provisions of the zoning code and would put in place such severe restrictions that harm would be caused to present and future property owners.

There has been no inventory or systematic study of the trees in the Forest Hills area to determine the ratio of street trees, yard trees and other trees in the overlay area.

There is no justification for the overlay area provided for in sections 1516.1 and 1520.6 and these sections should be **rejected** by the DC Zoning Commission.

B - Section 1518 - Ground Coverage Restrictions

Section 1518.1 provides for maximum 30% lot occupancy by a principal building and any accessory buildings. This is a 25% reduction from the existing 40% lot occupancy for R-1-A, R-1-B and R-2 zoning and a 60% reduction in the present 75% lot occupancy for R-5-D zoning. The FHCA petition (page 6) states as one of its purposes:

To limit permitted coverage of new and expanded buildings and other construction, so as to encourage a general compatibility between the siting of new buildings and the existing neighborhood.

This language is followed by the statement “The current restrictions on lot occupancy and impervious surface help in meeting this purpose.”

There is no discussion in the FHCA petition as to how the 30% was developed. This is a glaring inconsistency in the proposed overlay. If implemented it would move the Forest Hills away from the kind of development that has made it an attractive, appealing place to live and potentially change the look and feel of the neighborhood in very undesirable and unappealing ways. For one, the proposed new restriction in lot occupancy will encourage higher structures in order for property owners to obtain adequate square footage. The resulting tall narrow homes would be anything but compatible with the existing neighborhood.

Section 1518.2 provides for a 50% limit for impervious surface coverage (footprints of principal and accessory buildings, footprints of patios, driveways, other paved areas, tennis courts, and swimming pools, and any path or walkway that is covered by impervious material).

The present zoning regulations do not include any limit for impervious surface coverage. As noted above the FHCA petition notes that the “current restrictions” on impervious surface help meet the above purpose in Section 1518.1.

However, there is no current restriction on impervious coverage and no justification in the FHCA petition the 50% limitation. This new provision restricts Forest Hills’ residents from exceeding the 50% limit except for the expansion of a principal building in existence as of April 19, 2002.

The proposed new restrictions in Section 1518 on lot occupancy and impervious surface should be **rejected** by the DC Zoning Commission.

C - Section 1519 - Limitations on tree removal

Section 1519.1 provides for restrictions against removing, cutting down, or fatally damaging of trees of various sizes. This section was cut and pasted from the generic tree and slope provisions in Section 1511 of the zoning regulations. There is nothing in the FHCA petition to explain or justify why these generic restrictions should be applied to the Forest Hills area.

The restrictions apply to the removal of trees by size without consideration of the species or the desirability of the trees in the area where they are located. There are no provisions for the replacement of removed trees or the addition of trees to enhance the Forest Hills area.

The FHCA petition does not justify the use of the generic tree categories of 12 inches or less in circumference, 12 to 38 inches in circumference, 38 to 75 inches in circumference, and greater than 75 inches in circumference.

Section 1519.1(D) includes an unexplained restriction on the removal of trees with a circumference between 38 inches and 75 inches “located within twenty-five (25) feet of any building restriction line or lot line abutting a public street.” This more restrictive area of a lot is the area most likely to be used for the construction of a house. Why is a tree in this area more desirable than a tree located in another part of a lot? Why is not a tree a tree where ever it is?

The proposed new restrictions in Section 1519 should be **rejected** by the DC Zoning Commission.

D - Section 1519.2 - Minimum lot size

The FHCA petition provides for an increase in minimum lot sizes of 5,000 sf. and 7,500 sf. to 12,000 sf. This is an increase of 60% for the R-1-A area and a much larger increase for other areas. This proposal, if adopted, would change the character of the Forest Hills area which was developed over many years with minimum lots of 7,500 sf. or less.

More than 60% of the R-1-A lots in the proposed overlay area are less than 12,000 sf. There is no explanation or justification in the FHCA petition on how or why the 12,000 sf. was selected and recommended. Nor is there any explanation of how and why such a standard would contribute to tree and slope preservation. As much as any other provision, the minimum lot size provision reveals the real intent of the proposed overlay. Proponents of the overlay want to place strict limits on the construction and reconstruction of homes in Forest Hills – in effect freeze in place existing development. While the approach set out in the overlay would inhibit construction of new homes, it would also have the undesirable effect of stopping the development and evolution of Forest Hills as a neighborhood. This development and evolution has been occurring over the past one hundred years as generations of settlers have come to the neighborhood and made positive contributions. The purpose of zoning is not to freeze development. Zoning properly applied should provide a balance between stability and change. while land use is regulated it does not stagnate and at the same time allowing and encouraging change.

It should be noted that with the minimum lot size of 7,500 sf., the average lot size in the Forest Hills R-1-A area is more than 12,000 sf. Where is the logic, need or justification for increasing the minimum lot size to the average lot size?

The proposed new restriction is Section 1519.2 should be **rejected** by the DC Zoning Commission.

E - Section 1519.3 - Front yard and corner lot setbacks

The FHCA petition provides for front yard set backs equal to or greater than the average setback of all structures on the same side of the street in the block where the building in question is located. The petition also states that the required setbacks are depicted in the map entitled “Required Front Yard Setbacks.” No map showing the setbacks was filed with the petition.

The FHCA petition also provides that for corner lots the setback from each street will be equal or greater than the front yard setbacks for each street. This appears to be a unique provision in the FHCA petition. However, it does not make for good urban planning or acceptable design. There are a number of corner lots in the Forest Hills area where the existing structure does not comply with the corner lot restriction proposed in the FHCA overlay.

The proposed new restrictions in Section 1519.3 should be **rejected** by the DC Zoning Commission.

F - Section 1519.4 - Side yard requirement

The FHCA petition provides for a 100% increase, from 8 feet to 16 feet, for side yards. There are very few 16 foot side yards in the Forest Hills area. The petition does not include

reason or justification for the increase. The justification for side yard restrictions in zoning is for the protection of a neighbors light and air. An 8-foot side yard will continue to meet this health and safety requirement.

The proposed new restrictions in Section 1519.4 should be **rejected** by the DC Zoning Commission.

G - Section 1519.5 - Twenty-five percent slope restriction

The FHCA petition prohibits the alteration of existing topography, except for placing a foundation. This is not good engineering as the alteration of existing topography can help preserve and protect slopes.

The FHCA petition also prohibits any construction where the slope is 25% or greater, within 20 feet of the footprint of the proposed building. This was lifted from some Montgomery County, Maryland regulation. The provision makes reference to soil which is “highly erodible, as determined by the US Geological Survey soils analysis.” There is nothing in the petition to indicate that such soils on slopes exist in the Forest Hills area. But more important is the fact that, by using proper engineering techniques, structures have been successfully constructed in the Forest Hills area on slopes greater than 25%.

This is not a zoning issue but an issue to be addressed by the technical staff reviewing building permit applications.

The proposed new restriction in Section 1519.5 should be **rejected** by the DC Zoning Commission.

H - Section 1520 - Special Exceptions

The proposed overlay is overly restrictive and would require many, if not most, building permit applicants to apply to the BZA for a special exception. Zoning regulations should recognize the rights of property owners to use their property and only require special exceptions in exceptional cases. The overlay leaves very little to what can be done “as of right”. The special exceptions provisions of Section 1520 provide for a labyrinth that could take months to navigate. On this basis alone the overlay should be **rejected** since it sets up a process where rules can only be set by exception and where the exception becomes the rule. Such an approach defies the intent of the zoning code which is to establish a set of clear and coherent rules governing the use of property.

Section 1520.1 includes unreasonable and unjustified requirements for the applicant as well as for the BZA. Section 1520.1(D) goes so far as giving the BZA the power to impose “requirements as to design, appearance.” Who will be the design czar for Forest Hills and what

will be his or her design philosophy? Forest Hills is a unique community with a blend of architecture styles. This blend of styles contributes significantly to the appeal and charm of a neighborhood which was created by the individual choices of settlers over the past one hundred years. Assigning design choices to a governmental board would take away from Forest Hills one of the elements that has been most important in making it the place it is today.

Section 1520.2 requires that the BZA obtain written reports from six agencies (five DC agencies and one federal agency) before taking final action on an application. How long will it take to get these reports? This is bureaucracy at its worst, uncalled for and unjustified.

Section 1520.3 requires applicants to file “at least” the listed materials. What else will be needed for permission to remove one junk tree with a diameter of 4 inches?

The proposed new restrictions in Section 1520 should be **rejected** by the DC Zoning Commission.

III - Other Issues

A - The overlay is designed to prevent the removal of trees but does not address the addition of trees to the area or incentives for planting trees.

B - Why is there discrimination in the overlay between trees removed not for construction and trees removed for construction?

C - Why is there discrimination between residents of Forest Hills and those who want to locate in Forest Hills?

D - What is the cost/benefit ratio of this regulation?

E - What will be the impact on real estate values in the Forest Hills area?

F -. The protection of trees on private property proposed in the Urban Forest Preservation Act of 2002.

IV - Report to ANC3F from the Ad Hoc Committee on Tree and Slope Protection Overlays

ANC3F's Ad Hoc Committee on Tree and Slope Protection Overlays presented a report on the overlay to ANC3F dated June 3, 2002. The report states that it is the Committee's consensus that adoption of an Overlay would be in the best interest of the Forest Hills neighborhood and the District of Columbia as a whole, and recommended that the ANC so advise the ZC. That said, it was also the consensus of the Committee that certain provisions of the

overlay should be altered. This included the side yard requirements, front yard set backs, slope provisions and special exception standards.

We have carefully reviewed the proposed alterations and find, that if adopted, they would not change our strong objection to the overlay.

The proposed alteration to the side yard requirements is a move in the right direction but it would still require a total of 32 feet of side yard for lots 144 feet and greater in width.

The proposed alteration to the front yard set backs would eliminate the provision for a control map but require that the developer of an empty lot determine the average front yard set backs.

The steep slope provisions in section 1519.5 would be moved to special exceptions in section 1520 and among other things require testimony from geo-technic engineers, structural engineers and/or civil engineers and a certified arborist if trees are an issue.

The proposed amendment goes into great detail as to what and how the BZA will consider in a request for a special exception. These amendments to the special exceptions standards would only make the process more cumbersome and bureaucratic. It is a clear attempt to require that the BZA become an arbitrator of every building permit application that does not meet the draconian tree removal and other requirements of the overlay.

The amendments proposed by the Ad Hoc Committee on Tree and Slope Protection Overlays move the overlay in the wrong direction and should be **rejected** by the DC Zoning Commission.

V - Conclusions

A - The process was fatally flawed. The FHCA petition was filed with the Office of Zoning before it had been made available to the community for review and comment.

B - ANC3F's Ad hoc Committee found the overlay to be deficient and recommended revision of the overlay.

C - Even with the revisions recommended by the Ad Hoc Committee the provisions of the overlay are grossly defective.

D - Even with the revisions recommended by the Ad Hoc Committee the overlay does not support the stated purpose to preserve the natural topography and mature trees to the maximum extent feasible.

E - The overlay does not provide a framework for the residents of the area to consider

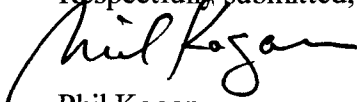
ways to protect the assets of the community.

F - There is no consensus by the residents of the overlay area and they are sharply divided on the overlay issue.

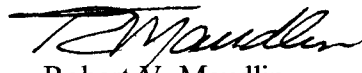
VI - Recommendation

We recommend and urges that the DC Zoning Commission reject the Forest Hills Tree and Slope Protection Overlay [Case No. 02-19 (Text Amendment - Forest Hills Tree and Slope Overlay District)] and return the issue to the community for consideration.

Respectfully submitted,



Phil Kogan
Commissioner
ANC3F01



Robert V. Maudlin
Commissioner
ANC3F03