FOREST HILLS CITIZENS ASSOCIATION

Dedicated to the enhancement, maintenance, protection and promotion of a positive community spirit in the Forest Hills neighborhood

George R. Clark
President
president@foresthillsdc.org

March 31, 2003

D.C. OFFICE OF ZONING
2003 MAR 31 PM 2:15

VIA HAND DELIVERY

Mr. Alberto P. Bastida, AICP
Secretary to the Zoning Commission
Office of Zoning
Suite 210
441 4th Street, N.W.
Washington, DC 20001

Re: Text Amendment – Definition of Building Height
Case No. 02-35

Dear Mr. Bastida:

Pursuant to the request of the Zoning Commission at the hearing in this case on March 17, 2003, enclosed are 20 copies of my written testimony on behalf of the Forest Hills Citizens Association. Please contact me if you have any questions.

Respectfully submitted,

George R. Clark
President

GRC/lae
Enclosure(s)

ZONING COMMISSION
District of Columbia
Case 02-35
Exhibit 29

ZONING COMMISSION
District of Columbia
CASE NO.02-35
EXHIBIT NO.29

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2003 MAR 17 PM 2:15

Prepared Testimony
of George R. Clark, President,
Forest Hills Citizens Association,
Before the Zoning Commission
March 17, 2003

Case No. 02-35 (Text Amendment – Definition of Building Height)

My name is George Clark and I am here to testify as President of the Forest Hills Citizens Association. The Forest Hills Citizens Association (FHCA) will be 75 years old next year, and, as its Constitution says, is devoted to securing adequate laws and regulations for the advancement, care, protection, and welfare of the Forest Hills area and to advancing and promoting all public interest within the District of Columbia.

With respect to the specific zoning change that is before you tonight, FHCA supports that proposal as it has been amended by the Office of Planning. But we think that this Commission needs to make a broader examination of the building height issue, especially in the residential zones. We have a particular interest in this subject in Forest Hills.

Forest Hills has had two building height cases in front of the Board of Zoning Adjustment within the last three years. Both of these cases resulted from uncertainty as to the

meaning and application of regulations, as well as from the efforts of DCRA to go beyond trying to help builders comply with the law, with DCRA instead trying to help them to evade it.

The first of these cases is the so-called four story house house in a three story zone, with which the Chair of this Commission is familiar from having sat on the BZA appeal. Likewise, I am personally familiar with this case because I was one of the appellants, and presented the case to the BZA on behalf of the appellants. This case concerned issues both of what was a story, and what is the measuring point for determining height in stories. The second case, involving a house a short distance away from the first, concerned determining compliance with the 40 foot height limitation, in which the measuring point was the critical issue.

We also have two other examples of houses currently being built in Forest Hills in which height is an issue, but which are apparently lawful under the current regulations. In one of these, the measuring point chosen shows compliance with the three story requirement, although the principal angle from which the house is viewed makes it appear to be four or even five stories. In the other, the corner location leads to a house which towers over its nearby neighbor, but which meets the three story limitation on the street on which it fronts.

My written testimony includes some photographs to demonstrate these points. The four story house in the three story zone case concerned 4512 28th Street NW in BZA Appeal No. 16533. Exhibit 1 shows the house that was originally constructed from the tear down of a small ranch house by a builder on "speculation." The lowest level was a "basement" within the meaning of 11 DCMR §199 because the ceiling was more than four feet above the finished grade (an undefined term). Therefore this was a four story house in a three story zone.

DCRA recommended that this problem could be solved by raising the finished grade with an earthen berm so that fewer than four feet of the lowest floor were exposed, turning that lowest level into a cellar that would not count as a story. In DCRA's view, this needed to be

done only at the single measuring point for height, in the middle of the front of the house, although in fact it was done over a larger area.

Fortunately, the BZA agreed at its public meeting on April 18, 2000 that artificially raising the grade could not remove a story, and that the house was illegally high. The builder then removed much of the top floor, which converted it into a mezzanine that does not count as a story, changing it into a three story house. The house as it exists today, now occupied by a wonderful family, is shown as Exhibit 2 (Exhibits 1 and 2 are both taken from my driveway).

4512 shows two problems with the current regulations. First, a developer should not be allowed to raise the grade so as to try to eliminate a story for measuring purposes. Second, the determination of the measuring point needs some examination in order to avoid having a house comply with the height requirement at a single point only. That problem is amply demonstrated by the second recent BZA height case in Forest Hills.

Appeal of Darrel J. Grinstead, No. 16764 concerned a property at 2944 Chesapeake Street NW. The Chair of this Commission also sat on this BZA appeal. This house was not a tear down, but rather was the construction of a new house on a small, irregularly shaped lot. A picture of the house is shown as Exhibit 3.

When height was measured from the middle of the front of the house as required by the regulaton, the building height was 43 feet, 8 inches to the ceiling of the top story, exceeding the 40 foot limitation in the R-1-A zone. The developer argued that an L-shaped wing some 34 feet to the rear of the front facade should be included as part of the front of the house, thus moving the measuring point to a location where the height would be measured as only slightly more than 37 feet (but more than 40 feet if the measurement was to the peak of the roof). Thus whether the house was illegally high depended solely on from where the measurement was taken.

Its written decision of May 22, 2002, the BZA decided that the rear wing, which did not abut or front on a property line abutting the street, was not part of the front of the building for purposes of determining the measuring point. Thus the house was illegally high.

2944 Chesapeake demonstrates the opposite problem from the building of a berm at 4512 28th. At 2944 the builder lowered the grade in the front of the house, thus adding to the height and making it illegally tall. Thus we believe that any regulation concerning height that is proposed should take into account that a builder may lower the grade as well as raise it. Therefore the definition of natural grade proposed in No. 02-35 would not have helped in this case. Perhaps this means that the measuring point should be from either the lower of what is called the "natural grade" in this proceeding, or the actual "finished grade" (a term which must be defined). On the other hand, perhaps there are other ways to take that measurement that will not allow the height limitations to be easily evaded. A new rulemaking should explore those possibilities.

Two other examples of height issues in Forest Hills are at 2800 Davenport Street NW and 2900 Albemarle NW. 2800 Davenport Street is a new house on a lot bordering Rock Creek Park, thus requiring approval from the Commission of Fine Arts. This house, shown in Exhibit 4 as seen from Broad Branch Road along the Park, apparently complies with both the three story and 40 foot height limitations if measured along Davenport Street. As Exhibit 4 shows, when viewed from Broad Branch Road in the Park, the house appears to be either 4 or 5 stories and to be more than 40 feet in height. Even when viewed from Davenport Street (Exhibit 5), the house appears to be four stories in the "back" but only three at the "front" (the bottom portion is a garage).

While this house appears to be perfectly legal in height, it does present a number of issues which we believe that this Commission should address in a new rulemaking concerning height in the residential zones. These include determining whether height should be measured

from the street which gives the lower overall height when a property faces more than one street (see the Proposal of ANC3D). It also raises the question of whether height should be measured to the highest point along the measuring side, even if that maximum height point occurs well behind the side. In other words, could the height limitation be evaded by building a house that is three stories high at the front, but then halfway back along the depth of the house has an additional two stories?

Another example of height measurement issues is shown at 2900 Albemarle Street NW. This is a corner property, and along Albemarle Street the house is in compliance with the three story and 40 foot limitations. When you look along 29th Street (Exhibit 6), you see that the house towers over its neighbor. This is another example of height problems on properties that front on more than one street.

So what should be done? This Commission should set down for hearing the proposals to clarify and change how height is measured in the residential zones. As ANC3D has recommended, the first thing that should be done is to measure height to the peak of the roof or parapet, as is done in all of the other zones. This anomaly in the residential zones is now leading to abuse as developers are constructing larger and larger homes that stretch the zoning laws as far as possible. This Commission already has a precedent in measuring the 40 foot height to the peak of the roof in a residential zone. In the Naval Observatory Precinct District, 11 DCMR § 1534.2(a), height is measured to the peak of the roof or parapet.

The measuring point presents some potentially difficult questions, but the measuring point should be easily determined and applied. It may -- or may not -- be that the current measuring point is adequate, and that what needs changing is determining from what grade the measuring takes place. In Forest Hills, the measurement is rarely from the curb because most properties are above street level (or below like at my house). There are other parts of the City in which this is also true, so that consideration of any other possibilities (e.g., bulk

plane angle or FAR) should take this into account so that allowable height is not inadvertently increased over the 40 foot maximum.

On the other hand, perhaps an average should be used on sloping lots, such as in various regulations cited by the Office of Planning in its report in this case. We share this Commission's concern that the rules not be too complicated, but we also feel that the current rules are not working as they should. We would note, however, that if the rules do change, it may be appropriate to include diagrams in order to show how they work.

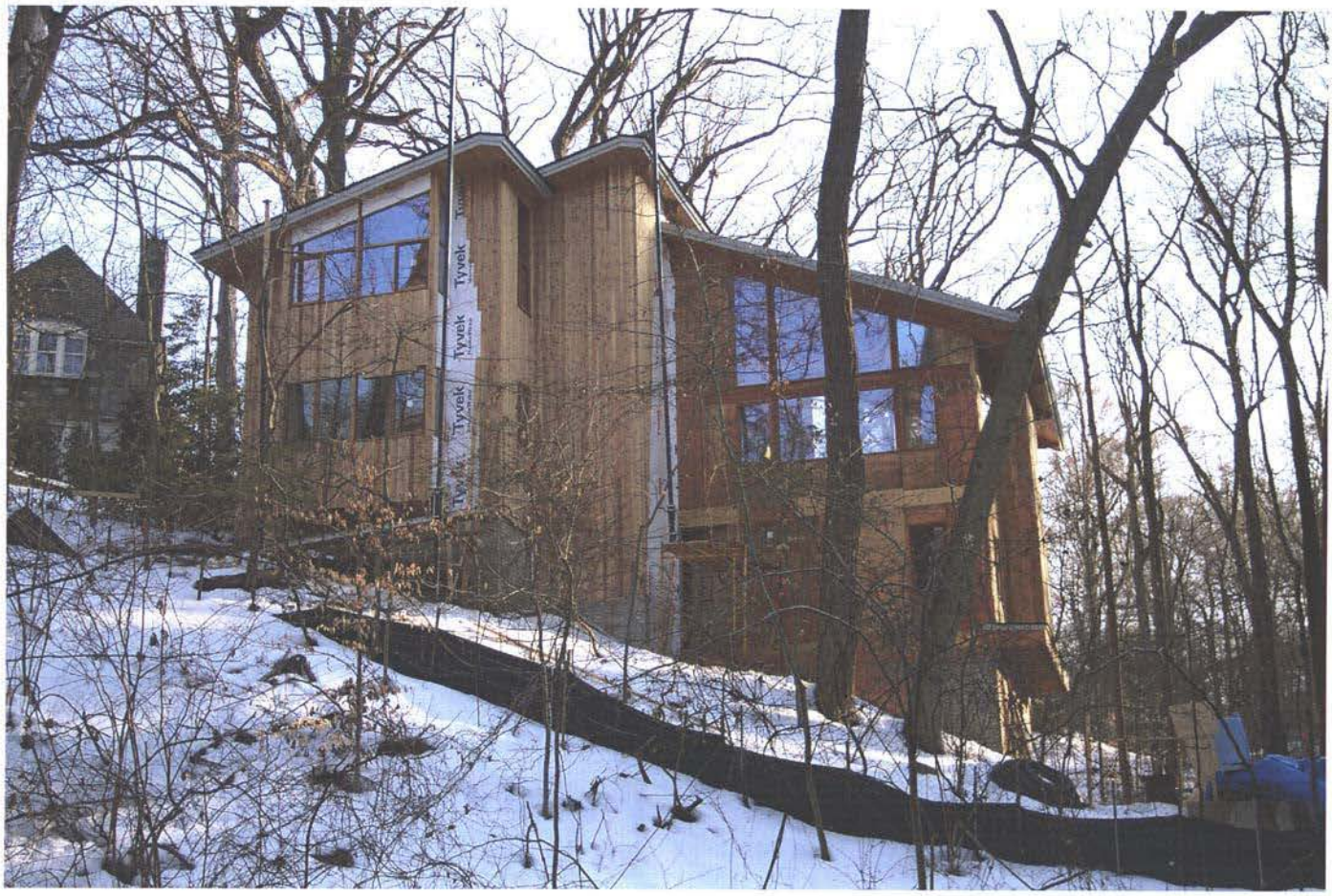
In considering changes, this Commission should also recognize that much of the development in neighborhoods like Forest Hills is now of the "tear down" variety. Developers in this context frequently try to use the maximum amount of buildable space. Thus any changes should anticipate this economic fact, while not unnecessarily impeding real additions and improvements.

I thank you for your time and urge you to issue a new notice of rulemaking for height in the residential zones that is effective and consonant with the purposes of zoning in the District of Columbia.

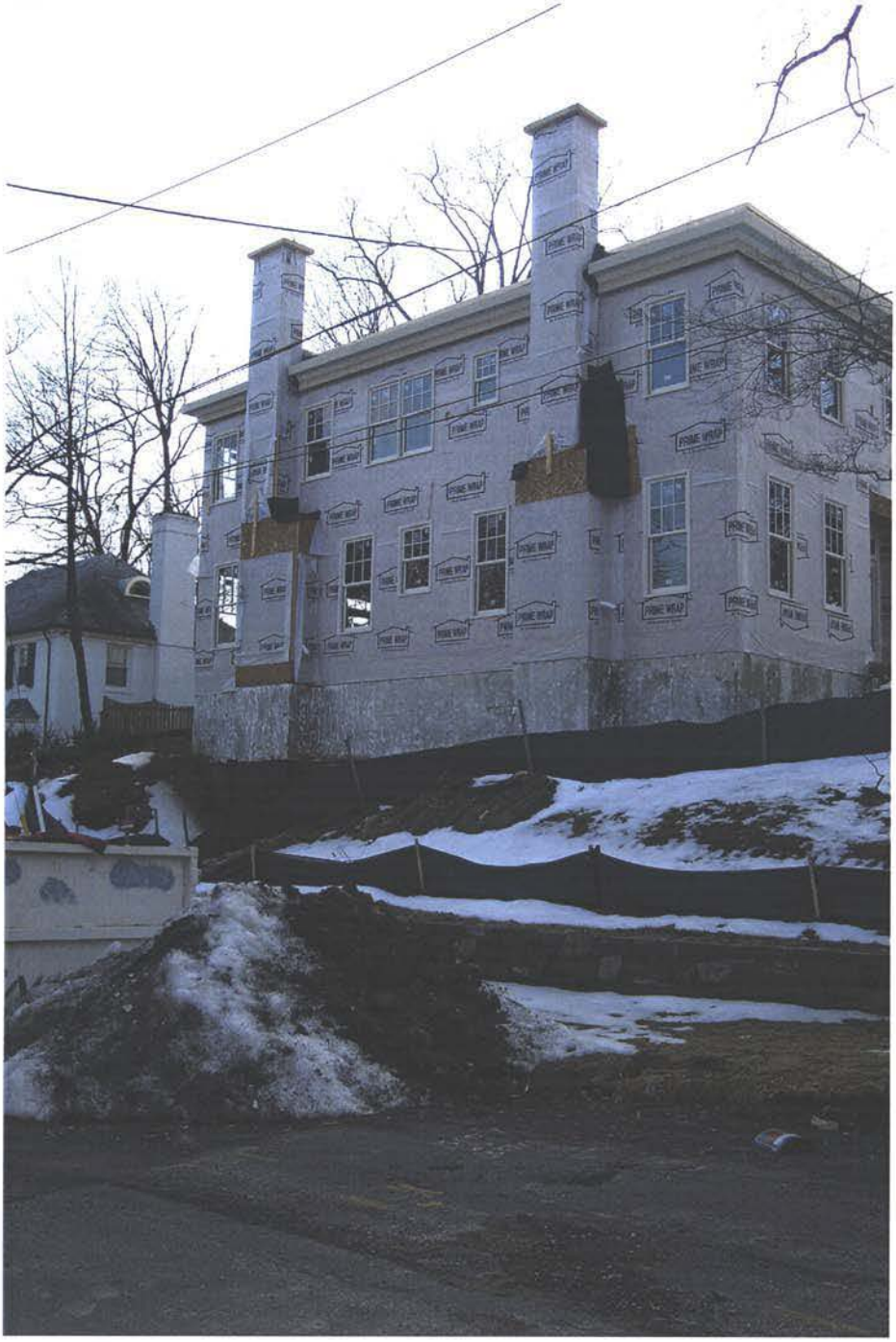





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