

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

IN THE MATTER OF:

A petition from the
Forest Hills Citizens
Association to create
a Forest Hills Tree and
Slope Overlay District

Thursday
September 5, 2002

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 02-19 by the
District of Columbia Zoning Commission convened at 6:30
p.m. in the Office of Zoning Hearing Room at 441 4th Street,
Northwest, Washington, D.C., Carol J. Mitten,
Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
PETER MAY	Commissioner
JAMES HANNAHAM	Commissioner
JOHN PARSONS	Commissioner

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Preliminary Matters	5
Persons and Organizations in Support	
Casey Tree Foundation, Sheila Hogan	19
Majorie Rachlin	23
David Swanson	26
Ken Katz	28
Edmund Burke School, Phil Feola, Esq.	38
Virginia Worthington	40
Mary Clark	42
Joan Benesh	44
Forest Hill Neighborhood Allaince, Gary Stevens ...	45
Charles Feldman	50
Jim McHale	52
Susie Gellert	55
James Woodworth	57
Bob Banks	59
John Eldred	61
Dennis Blumer	63
Poul Arendal	70
Cathy Wiss	71
Brendan Herron	74
Susie Traver	77
doug Mitchell	82
Martin O'Hara	84
James Glug	86

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P-R-O-C-E-E-D-I-N-G-S

6:33 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Thursday, September 5, 2002. My name is Carol Mitten. Joining me this evening are Vice Chairman Anthony Hood and Commissioners Peter May, John Parsons and James Hannaham.

The subject of this evening's hearing is Zoning Commission Case No. 02-19 and is a continuation of the June 27, 2002 hearing. This application is a request by the Forest Hills Citizens Association for a text and map amendment to the District of Columbia Municipal Regulations Title 11 Zoning to create Section 1516 Forest Hill Tree and Slope Overlay District.

Notice of today's hearing was published in the D.C. Register on May 17, 2002 and in The Washington Times on May 15, 2002. This hearing will be conducted in accordance with the provisions 11 DCMR Section 3021 which are the procedures for rulemaking hearings. Copies of today's hearing announcement are available to you and are located near the door. There is also a sign-up sheet.

I would ask that anyone who intends to testify this evening either in favor or in opposition to sign up on

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1 the sign-up sheet.

2 The order of procedure will be as follows:
3 preliminary matters followed by organizations and
4 persons in support and then organizations and persons
5 in opposition. The following time constraints will be
6 maintained in this hearing: organizations will have five
7 minutes and individuals will have three minutes. The
8 Commission intends to maintain these time limits as
9 strictly as possible in order to hear the case in a
10 reasonable period of time. The Commission reserves the
11 right to change the time limits for presentations if
12 necessary and notes that no time shall be ceded.

13 All persons appearing before the Commission
14 are to fill out two witness cards. These cards are
15 located on the table in front of us and also on the table
16 near the door. Upon coming forward to speak to the
17 Commission, please give both cards to the reporter who
18 is sitting to our right.

19 The decision of the Commission in this case
20 must be based on the public record. To avoid any
21 appearance to the contrary, the Commission requests that
22 persons present not engage the members of the Commission
23 in conversation during a recess or at any other time.
24 Staff will be available throughout the hearing to answer
25 any procedural questions you may have. You can direct

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1 those to Mr. Bastida.

2 Please turn off al beepers and cell phones
3 at this time so as not to disturb the proceedings. Now
4 the Commission will consider any preliminary matters.
5 I have several preliminary matters before me. Is there
6 anything I'm not aware of, Mr. Bastida?

7 SECRETARY BASTIDA: No, Madame Chair. I
8 would just like to make clear again that everybody even
9 if they've signed before, if they plan to testify either
10 in support or in opposition, that they sign the sign-in
11 sheet on the table by the door. Thank you.

12 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

13 The first item is in our previous hearing we had a request
14 by the two ANC commissioners who were the dissenters to
15 have some additional time to present their side of things.

16 We also now have a request as I understand it from the
17 Forest Hill Neighbors for Responsible Preservation that
18 as a group with the dissenting ANC commissioners that
19 they be given equal time to make a presentation, a time
20 equal to that that was given to the commissioners.

21 The concept of equal time in the Zoning
22 Regulations is limited to contest the cases where the
23 applicant has a burden of proof and the opponents are
24 making an effort to counter that case. That is not the
25 case in a rulemaking case. We allow the petitioners some

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1 additional time to give us background information and
2 so forth. I would recommend to the Commission that we
3 maintain the time limits as they have been established.

4 Does anyone differ with that? Thank you.

5 There is no opportunity to be heard on this
6 point.

7 The second is we have a series of requests
8 from the Forest Hill Neighbors for Responsible
9 Preservation that relates to the way that we proceed this
10 evening. As I see it, I would like to lay out several
11 alternatives that encompass the request that we've
12 received. I guess the most severe that we can proceed
13 with this is to do as has been requested and dismiss this
14 case and send all the folks home to continue conversations
15 on the subject of the rulemaking.

16 Another would be to amend the setdown to
17 conform more closely to the proposal that is currently
18 before us and rescind the original setdown. We could
19 do that and proceed this evening or we could do that and
20 postpone the hearing this evening. We could also proceed
21 with the rulemaking as it was setdown with allowing the
22 proponents to be heard tonight and at the option of the
23 opponents who now have as has been made clear by our
24 decision that they will not have additional time, if they
25 would like additional time to provide written testimony

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1 in advance of giving their oral testimony so that the
2 Commissioners can be well prepared to ask questions after
3 receiving the oral summary, we would allow additional
4 time and continue the hearing if the opponents so desire
5 to have that additional time.

6 Then the final option I suppose would be just
7 to postpone all the rest of the hearing entirely and hear
8 both the proponents and opponents at a later time. Now
9 I would ask the representatives of the Forest Hills
10 Neighbors for Responsible Preservation to come forward
11 and just to respond to whether or not you have a preference
12 for having additional time before the Commissioners to
13 the options that are before us. There would be additional
14 time to provide the written testimony in advance of your
15 limited oral testimony.

16 MR. KOGAN: Madam Chairperson, my name is
17 Phil Kogan. I'm the ANC Commissioner from ANC 3F. I
18 represent a portion of the District that's proposed for
19 the overlay. I just need some clarification.

20 CHAIRPERSON MITTEN: Certainly.

21 MR. KOGAN: I'm not sure I quite understand
22 the option on receiving written testimony prior to the
23 opponents having the opportunity to present oral
24 testimony.

25 CHAIRPERSON MITTEN: One of the

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1 disadvantages as I think you would perceive it having
2 a limited amount of time is that we will not fully
3 understand your case while you are before us in order
4 for us to ask intelligent questions. Correct?

5 MR. KOGAN: I would agree with this.

6 CHAIRPERSON MITTEN: The way to counter that
7 is for you to submit detailed written testimony in advance
8 of your opportunity to make summary oral testimony which
9 we would have read and we would then be prepared based
10 on your written submission to ask the kinds of questions
11 that are of importance to us.

12 MR. KOGAN: So part of your proposal is to
13 have a continuation hearing at another date in order to
14 do that.

15 CHAIRPERSON MITTEN: Right. Do you have a
16 preference for that before the Commission decides how
17 they want to proceed? Would you prefer a postponement
18 to give you additional time or just proceed this evening
19 as I assume you are prepared to come forward?

20 MR. KOGAN: I think the consensus here is
21 that we would appreciate and welcome the opportunity to
22 come back and beforehand present you the testimony that
23 we will have prepared and then come back and present that
24 testimony and respond to any questions that you may have.

25 CHAIRPERSON MITTEN: Okay. Thank you. Now

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1 we will see how the Commission wants to proceed. You
2 can take your seat. One of the options that would include
3 proceeding with the setdown that had the rulemaking as
4 it had been set down would be to proceed with the
5 proponents this evening and then to continue the hearing
6 giving time in the interim for the opponents to submit
7 additional written testimony. What's the pleasure of
8 the Commission?

9 COMMISSIONER PARSONS: Well, given the
10 response that we just got, it seems like the course is
11 set. If you wanted some discussion on this, I don't think
12 that anything would be served by a dismissal. This is
13 ripe for a hearing. It's been actually for a number of
14 years a debatable subject. It's right for that.
15 Postponing it indefinitely is not acceptable.

16 CHAIRPERSON MITTEN: No, I wasn't postponing
17 it indefinitely.

18 (Laughter.)

19 COMMISSIONER PARSONS: What was it then?

20 CHAIRPERSON MITTEN: That was to postpone
21 to a date certain. I guess I didn't make that clear.

22 COMMISSIONER PARSONS: Okay.

23 CHAIRPERSON MITTEN: I can even tell you what
24 that date might be because I spoke to Mr. Bastida.

25 COMMISSIONER PARSONS: As I understand it,

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1 then you can proceed where I think we're going, I would
2 certainly agree to that we would hear from the proponents
3 who have already expressed an interest in testimony to
4 proceed and then to find a date certain for the opponents.

5 I guess I shouldn't be this pessimistic but if we don't
6 get materials from the opposition, then they are at their
7 own risk.

8 CHAIRPERSON MITTEN: That's right. It's to
9 their disadvantage not to provide us with that.

10 COMMISSIONER PARSONS: I think they
11 understand that.

12 CHAIRPERSON MITTEN: Okay.

13 COMMISSIONER PARSONS: So I would certainly
14 support the concept of proceeding in that direction.

15 CHAIRPERSON MITTEN: Okay, any other
16 thoughts? I would concur with proceeding this evening
17 with the proponents and giving opponents additional time.

18 The date for the continuation would September 30, 2002.

19 Mr. Bastida, when would we need to get the submissions
20 by in order for the Commission to have those in a timely
21 manner?

22 SECRETARY BASTIDA: I think it would be
23 Thursday, September 26 at 12:00 noon. That would be so
24 I can prepare it by Friday and give it to the Commissioners
25 so they would have the weekend to be able to read it prior

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1 to the hearing. Thank you.

2 CHAIRPERSON MITTEN: Does that work for the
3 opposition?

4 MR. KOGAN: That works.

5 CHAIRPERSON MITTEN: All right. The date
6 for the continuation to hear from the opponents, people
7 that are not in favor, will be September 30, 2002. Any
8 submissions that you would like to have the Commission
9 review in advance given that organizations will have five
10 minutes to testify and individuals will have three minutes
11 to testify are due by September 26, 2002.

12 SECRETARY BASTIDA: Thursday, September 26
13 at 12:00 noon.

14 CHAIRPERSON MITTEN: Thank you.

15 SECRETARY BASTIDA: I told them that I need
16 20 copies of each issue. Thank you.

17 CHAIRPERSON MITTEN: All right. So now
18 we'll ask --

19 VICE CHAIRMAN HOOD: Madam Chair?

20 CHAIRPERSON MITTEN: Yes.

21 VICE CHAIRMAN HOOD: I guess I don't want
22 to say anything because I don't want to stop progress
23 for the opponent piece because I think it's good to move
24 forward but also I would hope that we wouldn't show back
25 up on the 30th and need to hear from the proponents again

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1 so I guess I would like to hear from the proponents and
2 the opponents on the 30th so we can have where we agree
3 and disagree. As far as I'm concerned, we are all over
4 the place. We could try to come to some consensus and
5 then we can move forward. I would hate to show back up
6 on the 30th and have the same hearing that we are having
7 here tonight. I just wanted to put that on the record
8 and also for everyone to hear. Thank you, Madam Chair.

9 CHAIRPERSON MITTEN: Thank you, Mr. Hood.
10 In addition, I think what Mr. Hood is asking for is to
11 the extent that there are aspects of the proposal that
12 you agree with we would like to know that. Mr. Kogan.

13 MR. KOGAN: Madam Chair, Phil Kogan, ANC 3F.

14 In making our request for time for the opponents to
15 address the Commission, we would ask for waiver of the
16 rules so that we would not be limited to the three minutes
17 and five minutes because we feel that there is a
18 substantial amount of information we've already obtained
19 and collected that would be beneficial to the Commission.

20 We understand the rules as you laid them out that this
21 is not a contested hearing. But my understanding is that,
22 this is an information gathering procedure that we are
23 in.

24 CHAIRPERSON MITTEN: Right.

25 MR. KOGAN: We feel that we've collected a

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1 good deal of information. We have people who are experts
2 in several fields, in statistics, architecture. We've
3 done some of our own research at the D.C. Office of the
4 Surveyor that we would like to share with the Commission.

5
6 In order to do this effectively for you and
7 in a way that we feel will best represent the information,
8 it is requested that we have the ability to put on a
9 coherent and effectively coordinated presentation rather
10 than being limited to three and five minute segments which
11 give you a very disjointed look at things. So I think
12 it would be beneficial to you and it would be beneficial
13 to us.

14 We have about 25 or 30 neighbors that we've
15 been working with, collecting their ideas, synthesizing
16 their ideas in terms of things that they oppose in the
17 overlay, some of the things that they might agree with
18 the overlay. I think in terms of efficiency of
19 presentation, in terms of economy and organization of
20 presentation, it would be to the advantage of all parties
21 to have that kind of a presentation.

22 CHAIRPERSON MITTEN: I understand that, Mr.
23 Kogan. I believe the sentiment of the Commission was
24 expressed earlier when there was no support for the idea
25 of giving the expanded time. What I'd like to say to

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1 you is there is nothing magic about oral testimony versus
2 written testimony. We understand it. If you submit it
3 in writing, we will be absorb the information. We will
4 ask questions based on the information that you put in
5 front of us.

6 There is nothing magic about us hearing it
7 as opposed to reading it. So I would ask you to make
8 your best effort to limit your presentation and decide
9 who is going to take more time, who is going to take less
10 time and give us the summary points. The Commission may
11 based on their reading of the information keep you up
12 here an hour asking you questions. The questions will
13 be as a result of whatever they feel is lacking in their
14 knowledge.

15 MR. KOGAN: I think a good deal of what we
16 have probably could be boiled down in that way but I
17 think Mr. Baughman has put together a very effective slide
18 show that provides a tour of the neighborhood and provides
19 some very essential visual information about what our
20 neighborhood looks like from the eyes of a resident and
21 an architect. That's not something that gets done in
22 three minutes.

23 CHAIRPERSON MITTEN: How long is the slide
24 show?

25 MR. KOGAN: Twenty minutes.

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1 CHAIRPERSON MITTEN: What's the pleasure of
2 the Commission on this point? I want everyone leaving
3 here today knowing what the time constraints are. I would
4 propose that we allow some latitude for the slide show,
5 20 minutes for that and everyone else is on a limitation.

6 VICE CHAIRMAN HOOD: I would agree with Madam
7 Chair. It's something to look forward to.

8 MR. KOGAN: Thank you. I agree. Thank you,
9 Madam Chair.

10 CHAIRPERSON MITTEN: Okay. Good job
11 hanging in there. Sir, if you have a question, come
12 forward and identify yourself for the record. Turn on
13 the microphone please.

14 MR. JONES: I'm Michael Jones. I have just
15 a question of fact. I don't know what we are talking
16 about in that I thought at the last meeting at the end
17 the lady asked what was the proposal before us.

18 CHAIRPERSON MITTEN: Yes.

19 MR. JONES: I thought that you said it was
20 the original thing that was submitted.

21 CHAIRPERSON MITTEN: Yes, sir.

22 MR. JONES: Just now, you mentioned as you
23 were going to talk about that woman's adversity submitted
24 or were you going to talk about it as amended by the
25 proponents. That's a separate thing. I'm just trying

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1 to know what game we're playing and the part we're playing
2 in it.

3 CHAIRPERSON MITTEN: Okay, I think that's
4 a very good question. What is officially before the
5 Commission is what was set down. So what happens
6 sometimes is there will be some language set down and
7 then there will be modifications proposed. To the extent
8 that those modifications are less onerous than what has
9 been proposed, we would not have to re-advertise.

10 To the extent that the petitioner, people
11 advocating for something, want less restrictive things
12 imposed, language imposed, we tend to follow the lead
13 on that. So you need to recognize the fact that we have
14 more severe language before us that was been set down
15 but we're very mindful of the fact that the folks that
16 are proposing this have modified it. So it's all out
17 there but the language that has the most support behind
18 it is the modified language.

19 MR. JONES: So therefore the discussion
20 should be about the amended version and not about the
21 original version.

22 CHAIRPERSON MITTEN: Right.

23 MR. JONES: It's not what I thought was the
24 case as of the last meeting.

25 CHAIRPERSON MITTEN: But if you have some

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1 reason why you think the amendment is inferior to the
2 language that was set down, we are interested in knowing
3 that as well.

4 MR. JONES: Okay, so we are talking about
5 the amended. All the talk is going to be about the amended
6 version.

7 CHAIRPERSON MITTEN: Unless you like the
8 setdown version better and we would like to know that.

9 MR. JONES: Thank you.

10 CHAIRPERSON MITTEN: Thank you. Good
11 question.

12 SECRETARY BASTIDA: Madam Chair, there are
13 Notice of the Hearing that are on the table by the
14 entrance.

15 CHAIRPERSON MITTEN: Okay, so the language
16 that was set down and advertised is available on the table
17 at the door. Do we have the witness list up here yet?

18 SECRETARY BASTIDA: No, I was waiting to see
19 if everybody signed it before I brought it to you.

20 CHAIRPERSON MITTEN: Okay, thank you. You
21 need to turn on the microphone and identify yourself for
22 the record.

23 MS. SIMONS: I'm Barbara Simons of the Forest
24 Hills Citizens Association, the Petitioner.

25 CHAIRPERSON MITTEN: Yes.

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1 MS. SIMONS: We would like to have our
2 witness from Casey Tree Foundation be the first up because
3 she has to attend to something else. There is an order
4 of witnesses, right?

5 CHAIRPERSON MITTEN: Well, we're done with
6 your case. So she is going to need to testify as an
7 organization in favor. So you are requesting that she
8 goes first.

9 MS. SIMONS: Yes. She was here last time
10 but obviously didn't get a chance. I just wanted to make
11 sure she went first.

12 CHAIRPERSON MITTEN: Fine. Thank you.
13 Whoever is testifying for Casey Trees did you sign in?
14 Take a seat at the table and I'll call up some other
15 proponents and we'll have a panel of four. Kenneth Katz,
16 David Swanson, Ms. or Mr. Rachlin. R-A-C-H-L-I-N. Ms.
17 Hogan, why don't you go first since you have a time
18 constraint. You will have five minutes and the other
19 folks will have three minutes. Mr. Bastida, just on the
20 clock, five minutes on the first and then three on the
21 others.

22 MS. HOGAN: Thank you, honorable
23 Commissioners, for taking me first today and I'm glad
24 to be here as a representative of Casey Trees Endowment
25 Fund. I'm Sheila Hogan, Executive Director of that

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1 organization. As many of you know, we are new non-profit
2 set up a little over a year ago to restore, enhance and
3 protect the tree canopy cover of the District of Columbia.

4 We are doing this in cooperation with District agencies,
5 Federal agencies and the community at large. Can you
6 hear me okay?

7 We were established largely due to these
8 satellite photoanalyses that show that the District of
9 Columbia has lost close to half of its tree canopy cover
10 in the last quarter century, 43 percent between 1973 and
11 1997. We anticipate probably several percentage points
12 after that so that's why we are saying close to 50 percent.

13 Our major project to-date has been to do a
14 comprehensive inventory of all the streets trees of
15 Washington, D.C. which we just completed on August 13
16 we are happy to say. We have also been looking at
17 advancing and putting into more detail on this original
18 analysis that led to our creation via the nonprofit
19 organization called American Force. What I would like
20 to talk today is in little more detail about more detailed
21 analysis that we prepared in conjunction with American
22 Force, basically making this more specific to specific
23 zoning destinations.

24 CHAIRPERSON MITTEN: I just want to make sure
25 that your testimony is focused on the text amendment.

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1 Is it focused on the text amendment or is it more general?

2 MS. HOGAN: It's more general in favor of
3 the Ward 3 trees. Is that right?

4 CHAIRPERSON MITTEN: I think everyone is in
5 favor of the city having trees. So where are you going?

6 MS. HOGAN: Another reason why I'm here is
7 that at the last meeting I think that there were several
8 comments by many commissioners that why wasn't anybody
9 talking more about trees and zoning designations for tree
10 lots. So I'm here to support that.

11 CHAIRPERSON MITTEN: Okay.

12 MS. HOGAN: I'm going to focus my testimony
13 to the analysis of tree canopy laws and Ward 3 in
14 particular although in the attachment to my testimony,
15 there is a breakdown of the tree canopy laws by private
16 and public properties for every ward. So if any of the
17 Commissioners have additional questions about how we
18 conducted this analysis and the breakouts by different
19 wards, I can answer that after my testimony.

20 For Ward 3, let me just point out some facts.

21 Ward 3 has more trees than any other ward in the city.

22 It accounts for approximately 26 percent of the trees
23 of our city. That said that even Ward 3 during that 24
24 year period lost 52 percent of its forested areas during
25 1973 to 1997. "Forested" being areas that are covered

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1 by 50 percent or more of the land in a given area covered
2 by trees so that's considered heavily forested because
3 it's 50 percent or higher. This is from an aerial
4 photography viewpoint.

5 It's considered healthy for residential
6 areas such as Forest Hills to have tree canopy cover in
7 excess of 40 percent and preferably in excess of 50
8 percent. Given that we have lost over 43 percent of our
9 tree canopy cover city-wide and a large amount in Ward
10 3, we think that it is essential to do our best to preserve
11 whatever tree canopy cover we do have left and preserving
12 the tree canopy of Ward 3 is of course of great importance
13 to doing that given the large percentage of the city-wide
14 total canopy.

15 While the causes of canopy loss are varied,
16 what the American Force analysis of the public and private
17 property division confers that most of the stated loss
18 to our tree canopy cover has been on private land and
19 not on public lands. That includes streets. There was
20 a lot of talk I guess around the time of our creation
21 that the neglect of our street trees was a primary
22 contributor to the loss of our overall canopy and what
23 this analysis by American Force confirms that is not the
24 case.

25 Ward 3 lost 62 percent of its forested area

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1 on private lands again between 1973 and 1997. On public
2 lands, they lost only 39 percent of its forested areas.

3 The accusation that the canopy loss is primarily again
4 due to neglect of the street trees or other public space
5 trees is just wrong.

6 It's time that our city takes more seriously
7 the enormous cost associated with the lack of protection
8 of our trees on both private and public property. For
9 example, we estimate that given the \$1.3 billion and
10 growing cost of combined sewer overflow plan at the cost
11 of at least \$10 a cubic foot and growing are increasing
12 from that amount. Our tree canopy loss has cost us over
13 \$300 million or at least a quarter if not close to a third
14 of that total.

15 (Indication of time up.)

16 CHAIRPERSON MITTEN: You need to summarize
17 now.

18 MS. HOGAN: Okay. This very real public
19 cost that we will all be bearing as residents of the
20 District of Columbia needs to be figured into our zoning
21 code and translope overlay protection such as the one
22 before you as a very important measure for starting that
23 process of incorporating and protecting of those costs.

24 CHAIRPERSON MITTEN: Thank you. Can you
25 wait until the rest of the panel testifies before we ask

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1 questions or do you need to go?

2 MS. HOGAN: Yes.

3 MS. RACHLIN: My name is Marjorie Rachlin.

4 I have been a resident of Brandywine Street in Forest
5 Hills for 35 years. I was a commissioner in ANC 3F, the
6 same district now represented by Commissioner Baughman,
7 for five years and I was the ANC 3F Chair. We really
8 need the overlay in my opinion and I support the overlay
9 as amended.

10 Many of the neighbors who are here today
11 have taken part with me and others in the fight that we've
12 had to try to preserve our trees and the character of
13 Forest Hills. One of the early fights was in 1986 when
14 the neighbors had to get together and negotiate with a
15 builder on a theoretical site right next to Broad Branch
16 Road across from the park. What they succeeded in doing
17 is getting a few less trees cut down and houses cut from
18 eight to six.

19 Then we had a subdivision on Albemarle Street
20 that simply just outraged the neighborhood. We organized
21 and worked with several other groups in the city to get
22 the zoning provisions on theoretical sites improved
23 somewhat. This was done before your Commission.

24 But all along, we have had a lot of problems
25 along Broad Branch Road which has a very steep slope going

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1 down to the creek. That is a wooded slope. What we have
2 always tried to do is protect the woods and the views
3 as you go along Broad Branch Road because the park is
4 right over there. We have had I would say quite limited
5 success in doing that. We're now facing, I can see,
6 another problem that will coming up in a couple of months
7 on that stretch.

8 When I was on the ANC, we talked about an
9 overlay but other things took priority because we were
10 a very busy ANC which turns out to have been a very
11 unfortunate thing. The loss of our trees affects not
12 only the trees but of course it also affects the Broad
13 Branch Creek and Rock Creek environment. There has been
14 a lot of silting and erosion.

15 Now when you look at Forest Hills, of course
16 we are very desirable and very privy real estate. One
17 reason for that is that we have lots of trees. We have
18 very low lot occupancy and much of it is 15 or 20 percent.

19 We have big setbacks, more than is required and we have
20 a lot of greenery. So people want to live in Forest Hills.

21
22 Unfortunately many of the people who build
23 particularly in this time just don't care about that.
24 We don't have enough protection for us in that case.
25 Case in point: a builder up the street from me demolished

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1 the house, cut down all the trees in the backyard and
2 is slowly killing a 250 year old oak in the front and
3 put up a very large house. Now when he goes to sell that
4 house he is going to tell the buyer look in the backyard,
5 see all the greenery, see the shade, see you have a lovely
6 view. At whose expense? It's the neighbors that have
7 had the trees.

8 CHAIRPERSON MITTEN: You need to summarize.

9 MS. RACHLIN: It's a kind of expropriation
10 in my view. I feel very strongly also about limiting
11 the setbacks or the requirements of setbacks. I
12 certainly hope you will adopt them.

13 CHAIRPERSON MITTEN: Thank you. I'm going
14 to ask you to turn off your microphone as we go down.

15 MR. SWANSON: Good evening. My name is
16 David Swanson. I'm speaking tonight in support of the
17 overlay. I submitted a statement to Mr. Bastida and I
18 think it's gotten around to you and that you've had a
19 chance to look at it.

20 I have two personal things that I want to
21 talk about. The first relates to trees. Our house when
22 we bought it was on a plot mapped in the District in 1890.

23 So we were one of the earliest houses that we know of
24 in the neighborhood. The house had over 200 feet of
25 frontage and there were lots of trees. It was a lot that

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1 was cared for extremely well.

2 Through a number of circumstances, a piece
3 of property to our north was sold off. It was essentially
4 an illegal lot. The neighbors agreed that it would be
5 okay because the house was already built. When we
6 bought the house, the home was being built next door to
7 us. The driveway was cutting through the back of the
8 garage. We had two large red oaks right in front of the
9 house. They had been there for over 150 years. Those
10 trees were there before our house. When the driveway
11 was cut in, it was cut in about 10 feet or so away from
12 the base of this tree. It took two years for that tree
13 to die.

14 I mention that because it goes along with
15 what Marge was saying and what the K.C. Trees folks were
16 saying is that the trees need space. Development
17 activities when they occur there can be attempts to save
18 trees on a property but many cases at least in the past
19 trees have been lost and we are the losers.

20 The second thing is in our neighborhood we
21 have a very interesting situation. We have large
22 diplomatic properties. We have large homes. We have
23 modest homes. We have small homes. What we see
24 happening in the neighborhood is that there is tremendous
25 economic pressure to convert small homes into big homes.

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1 We are losing the basic diversity that we have at Forest
2 Hills. When we moved in, we had little kids. We had
3 teenagers and junior high kids in the neighborhood who
4 we could use as our babysitters, cutting grass and so
5 on. That diversity has disappeared. Ours is becoming
6 a gentrified, very rich neighborhood and I think that
7 my guess is without protection to the overlay, it could
8 very well in 20 years become a high pressured or a gated
9 type of community. I know you probably couldn't let that
10 happen in D.C. but the pressure is there.

11 Then I want to mention two other things.
12 I put two documents in Mr. Bastida's hands. One is paving
13 the way to water shortages. The point that is made in
14 this study by American Rivers in R.D.C. and Smart Growth
15 America is that there is a terrific amount of water that's
16 lost because of development and needs to be recharged
17 in our groundwater systems. I think it does characterize
18 D.C. against --

19 CHAIRPERSON MITTEN: Can you wrap it up now,
20 Mr. Swanson?

21 MR. SWANSON: I'll stop there. Thank you.

22 CHAIRPERSON MITTEN: Thank you. Now Mr.
23 Katz?

24 MR. KATZ: My name is Ken Katz. I live on
25 the 3400 block of Fessenden Street. That is the block

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1 of Fessenden Street which is in zone of, as I understand
2 it, R2 district in the proposed overlay. Our inclusion
3 in the overlay was in my opinion similarly rejected by
4 the Office of Planning report and I would like to focus
5 my comments on arguing for our inclusion.

6 I would like to make the first point that
7 our neighborhood was included in the original overlay.

8 The reason for that is undoubtedly because our
9 neighborhood in fact abuts Federal Parkway. This indeed
10 is noted in the Office of Planning report. I would also
11 point out that the Federal Park plan we abut, Broad Creek
12 Park, indeed has a creek running down Broad Branch and
13 the Broad Creek Park. The Office of Planning did point
14 out that there are no parcels that slope 25 percent or
15 great which I could not in any way argue against although
16 I recently put up one maintaining wall and I'm about to
17 put up another in my backyard because they are increasing
18 slopes. One thing that was unstated in the Office of
19 Planning report while noting that we did not have those
20 slopes is we had plenty of trees and plenty of -- a point
21 I will come back to in a moment.

22 Finally I would like to point out as the
23 Office of Planning Board report does that our neighborhood
24 indeed as an R2 and as it currently exists does function
25 as it's supposed to buffer our adjacent R1 and R1D

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1 neighborhoods, the development that they are, there are
2 five developments on our other side. I guess the point
3 I would like to make is that if the overlay were in effect
4 and if our houses were torn down and rebuilt in accordance
5 with the overlay of course that our exact same houses
6 can be built. If our exact same houses already do meet
7 the prescribed function as acting as a buffer for our
8 abutting R1 and R1D neighborhoods, then I do not
9 understand why we therefore should not be included in
10 the overlay.

11 I would like to come back to trees in my final
12 comments because at the last hearing there was a slide
13 put up of one of the trees in our neighborhood. Indeed
14 it's a maple tree shared between our house and the
15 neighbor's house. I would just like to emphasize that
16 to whatever degree trees are important to the character
17 of Forest Hills, they are that much more important to
18 the character of our neighborhood. These large trees
19 affect every single neighbor and when for instance one
20 of our neighbors lost 100 year old silver oak --

21 CHAIRPERSON MITTEN: Summarize.

22 MR. KATZ: -- that affected the yards and
23 porches of pretty much half the neighborhood. One could
24 mention the same effect would be on any further
25 destruction of trees. I would just like to emphasize

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1 that I see no reason why we should not be included in
2 the overlay. I would strongly be in favor that we would
3 be and hope that you would reflect that.

4 CHAIRPERSON MITTEN: Thank you. Let's see
5 if the Commission has any questions. Any questions?
6 Mr. May.

7 COMMISSIONER MAY: I just had one question.
8 I guess the principal question that I have has to do
9 with your report or your testimony and your reference
10 to the combined sewer system --do we know for a fact
11 whether this neighborhood does have a combined sewer
12 system or whether it's a separate sewer system?

13 MS. HOGAN: I'm sorry. That comment would
14 have been city-wide basis. I am not aware of. I have
15 asked for -- We do not have a GIS map that was given to
16 us so that we can do that kind of analysis. But even
17 if it is separated, the same argument holds. It just
18 means that the monetary value of building the
19 infrastructure to accommodate that extra storm water is
20 less per cubic foot. But it's still very significant.
21 The numbers are still very high.

22 COMMISSIONER MAY: I understand the point
23 but in the particular case of this neighborhood, it would
24 be interesting to know that. It is my impression that
25 this area does not have a combined sewer system.

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1 MS. HOGAN: I encourage the Office of
2 Planning to go ahead and create a GIS that we and others
3 could use as a tool to make that kind of analysis. We
4 don't have a GIS map.

5 COMMISSIONER MAY: I think it's pretty
6 obvious from -- maps whether it appears.

7 MS. HOGAN: Still we don't have the tools
8 to create a digital map out of the maps that they have.

9 COMMISSIONER MAY: I'm not saying that it's
10 your responsibility. I was just asking a question.
11 Thank you.

12 CHAIRPERSON MITTEN: Mr. Parsons.

13 COMMISSIONER PARSONS: Mr. Katz, in order
14 to assess how many owners you represent, is it just
15 yourself, one property or are you speaking for others?
16 Is there some way of depicting it on a map?

17 MR. KATZ: If you wouldn't mind me walking
18 over, I could put my finger on exactly where we are.
19 If not, I could say we are as you look at the map over
20 there in the upper left hand corner of the map. As you
21 see Connecticut Avenue going in the northwest direction
22 and just about exiting off the map, you will see those
23 green parcels start to appear before they move more
24 northwest, easterly into Broad Creek, the larger section
25 of Broad Creek Park, and indeed abutting one of those

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1 green areas is Fessenden Street. That's what I'm talking
2 about.

3 COMMISSIONER PARSONS: And you are speaking
4 about the west side?

5 MR. KATZ: No, the east side.

6 COMMISSIONER PARSONS: Have you entered
7 anything more specific in the record to depict this area
8 to the expansion?

9 MR. KATZ: I'm not proposing an expansion
10 I guess if I did not make that clear. Our neighborhood
11 was included in the original and in the current amended
12 I believe overlay.

13 COMMISSIONER PARSONS: All right.

14 MR. KATZ: It was the Office of Planning that
15 recommended that our neighborhood be excluded from the
16 overlay.

17 COMMISSIONER PARSONS: Because of the 25
18 percent slope?

19 MR. KATZ: No, I don't think so. In fact,
20 I'm somewhat baffled as to why they recommended that.

21 COMMISSIONER PARSONS: Thank you.

22 CHAIRPERSON MITTEN: Anybody else? I just
23 had a question about the summary of the canopy changes
24 from Ms. Hogan. When I look at these percentages, if
25 you look at the Ward 3 just as a reference point, I assume

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1 that as areas that are in the 50 percent to 100 percent
2 canopy decline, they are picked up in these other
3 categories. Is that right?

4 MS. HOGAN: That's correct. That's why you
5 see increases in the others.

6 CHAIRPERSON MITTEN: Right. Can you tell
7 me whether or not a developed property whether it's
8 practical for a developed property, one that has a
9 dwelling on it or something, to be in the 50 percent to
10 100 percent canopy category?

11 MS. HOGAN: Yes, I think it is reasonable.
12 I think much of Forest Hills benefits from that kind
13 of canopy cover. Part of that is because of the
14 development practices that were in place back then were
15 perhaps a little bit more tree friendly and a little bit
16 less compacted and tree cutting in practice in the
17 construction industry. Part is that this house has been
18 around for a while and appreciation of trees and such.

19 But I would say that there are several lots where it
20 just takes one very old mature tree which people have
21 testified to to shade over at least one lot and perhaps
22 even two lots.

23 CHAIRPERSON MITTEN: Okay, then Ms. Rachlin,
24 when you were mentioning a couple of cases where the
25 community was able to negotiate with a developer in the

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1 past and have the number of dwellings reduced and so forth,
2 was that reduction aimed specifically at protecting
3 trees? Could you turn on your microphone when you
4 respond?

5 MS. RACHLIN: The case that I mentioned in
6 1986 was aimed at reducing trees and they got the trees
7 reduced and some old trees kept but it was also aimed
8 at the reducing of the houses.

9 CHAIRPERSON MITTEN: Okay. So there were
10 two goals. You were trying to decrease the bulk -- I'm
11 going to ask whoever has the electronic device that keeps
12 going off to please turn it off or leave the room. You
13 had two goals in mind. One was to reduce the density.
14 The other was to protect trees. Is that correct?

15 MS. RACHLIN: Yes.

16 CHAIRPERSON MITTEN: Okay, thank you. Any
17 other questions for this panel? Thank you all.

18 COMMISSIONER PARSONS: Madam Chair, I think
19 I would like to ask Mrs. McCarthy if she could respond
20 to Mr. Katz's testimony as to why that area of Fessenden
21 Street is not being included in the overlay.

22 COMMISSIONER MAY: Ms. McCarthy left the
23 room.

24 COMMISSIONER PARSONS: We should have
25 grabbed the opportunity when we had it. She has returned.

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1 CHAIRPERSON MITTEN: Okay, we'll take it up.

2 MS. MCCARTHY: I'm sorry. Could you repeat
3 the question?

4 CHAIRPERSON MITTEN: The question is Mr.
5 Katz had raised the issue that the Office of Planning
6 was not supporting the inclusion of the R2 zone plan along
7 Fessenden Street in the overlay although it was set down
8 to be included. Mr. Parsons wanted a follow-up from you
9 to remind us why you recommended excluding it.

10 MR. MORDFIN: Initially we excluded the R2
11 zone when we excluded all the different zones with the
12 exception of the R1-A because we felt that the way the
13 overlay was written that it applied more appropriately
14 to the R1-A. However subsequently we have a more
15 disciplined report which we included the other zones for
16 the tree and slope protections only but not for the other
17 regulations and the bulk regulations having to do with
18 the lot size and lot occupancy and things like that.

19 COMMISSIONER PARSONS: I'm sure we have it.
20 The one I'm looking at is June 17. That's the one that
21 recommended. Is there something on the report?

22 MS. MCCARTHY: We considered, Mr. Parsons,
23 extending our recommendation of the tree preservation
24 and slope preservation aspects of the overlay. Our
25 original report excluded this area because it was zoned

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1 R2 and the lots were completing developed and they were
2 considerably much smaller sized lots than originally
3 considered within the overlay.

4 I believe that was the northwest corner.
5 They were leveled. They were developed. They were
6 approximately 4,000 square feet a piece. We saw no real
7 applicability as the proposal was set down of the overlay
8 to these particular lots. But we have since revisited
9 the issue and will be considering extending the
10 preservation issues to those areas. But that was our
11 original position.

12 COMMISSIONER PARSONS: You are currently
13 contemplating that.

14 MS. MCCARTHY: Yes.

15 COMMISSIONER PARSONS: You haven't filed a
16 report yet.

17 MS. MCCARTHY: Not at this date, no sir but
18 we are looking at it at the Petitioner's request.

19 CHAIRPERSON MITTEN: Thank you. All right,
20 now we will have Mr. Phil Feola representing the Edmund
21 Burke School, Virginia Worthington, Mark Clark and Joan
22 Benesh. Go ahead, Mr. Feola.

23 MR. FEOLA: Thank you, Madam Chair. For the
24 record, Phil Feola of the law firm of Shaw Pittman on
25 behalf of the Edmund Burke School. Actually the school

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1 is neither a proponent or an opponent but there is no
2 block for an "Other" category. What we are hoping to
3 do here today, the school is the owner of four lots at
4 Square 2243. The school is on Upton Street slightly east
5 of its intersection with Connecticut Avenue. The second
6 series of lots are right on Connecticut and Upton Streets.

7 We're here pretty much to point out what we
8 believe is a mistake in the Notice of Public Hearing.
9 We believe none of the maps of the boundaries of the
10 overlay not proposed by the Applicant but the original
11 application of the Office of Planning in the latest
12 submission by a combination of ANC 3F and Forest Hills
13 Citizen Association with the joint recommendation of the
14 modifications specifically points out, and that's Exhibit
15 177 for the record, that Square 2243 was erroneously
16 included in the application.

17 We just want to insure that when the proposed
18 rules are adopted if they are adopted that this mistake
19 is corrected. The school's properties are either
20 completing development pervious, they are not adjacent
21 to any stream or valley or natural habitat or devoid of
22 trees of the substance offered. So that's what we're
23 really here for is just to bring the Commission's
24 attention of what appears to be a mistake in the Notice
25 of Public Hearing.

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1 CHAIRPERSON MITTEN: Okay, I thought it
2 might too good to be true with the respect that you might
3 be a proponent.

4 (Laughter.)

5 MR. FEOLA: But I'm not an opponent.

6 CHAIRPERSON MITTEN: Okay.

7 MR. FEOLA: And we like trees.

8 CHAIRPERSON MITTEN: Good, I'm glad to hear
9 it. Everyone else will have three minutes on this panel,
10 Mr. Bastida. Ms. Worthington.

11 MS. WORTHINGTON: Yes, I'm Virginia
12 Worthington. I served on ANC 3F's tree and slope overlay
13 committee at the request of ANC Chair Cathy Wiss. I
14 joined the committee because I felt that the overlay would
15 have benefits for people who lived beyond the borders
16 of Forest Hills. I would just like to speak about how
17 the overlay would benefit people outside of our area.

18 First the overlay protects trees and gives
19 them room to grow. These trees provide services to the
20 whole city. You heard about the storm water control.
21 They also remove pollution from the air. All of our
22 residents breathe as far as I know but some of our kids
23 and seniors are having a pretty hard time. Totally
24 eliminating air pollution is beyond the power of anyone
25 in this room but we can at least do what we can to keep

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1 things from getting any worse by protecting the trees
2 that we have in the city.

3 Secondly the overlay protects Rock Creek Park
4 and the smaller parks adjacent to it. These parks provide
5 recreational facilities for all kinds of D.C. residents.

6 Many families live in apartments especially our poorest
7 families and the parks provide a place for these families
8 to barbecue and bicycle and enjoy the outdoors. I'm quite
9 fortunate to have a backyard of my own but for many people,
10 the park is the only thing that they have.

11 Finally it's the large lots below density
12 development Forest Hills that allows room for trees and
13 that buffers the parks. The overlay has many provisions
14 that preserve these aspects of Forest Hills, most notably
15 the larger minimum lot size of the reduced lot occupancy.

16
17 It's been said that Forest Hills was
18 developed with 7500 square foot minimum lot size. The
19 truth is that Forest Hills was developed with much larger
20 lots. More than half of the residential lots are larger
21 than 10,000 square feet and some are very large, 100,000
22 square feet or more. If we are to insure that there will
23 continue to be room for trees and green spaces for
24 protecting our parks, there needs to be a larger minimum
25 lot size that's more in keeping with the reality of the

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1 neighborhood.

2 Over the last summer at least four
3 developable properties have come on the market including
4 two vacant lots on Broad Branch Road, bordering Rock Creek
5 Park and a very large property on Upton Street. If some
6 restrictions are not put on development now, the park-like
7 quality of Forest Hills will be gradually eroded away
8 with each new development project. The trees and green
9 spaces are important for the whole city and it would be
10 terrible to see them gradually slip away. In conclusion,
11 I would urge you to approve the overlay with the proposed
12 amendments because it's good for the whole city.

13 CHAIRPERSON MITTEN: Thank you, Ms.
14 Worthington. Mary Clark. Before you start, can you turn
15 on your mike?

16 MS. CLARK: I just want to say one thing.
17 If the Commission would like to see an aerial photograph
18 of the tree canopy.

19 CHAIRPERSON MITTEN: If you would like to
20 submit that for the record.

21 MS. CLARK: If someone wants that, I can give
22 you that. I am Mary Clark. I live at 4525 28th Street
23 within the overlay. I have lived in Forest Hills and
24 this is my second house in Forest Hills for over 24 years.
25 The lot I'm currently living on is almost 19,000 square

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1 feet and right now could in fact be subdivided into two
2 lots.

3 I would like to talk about two issues that
4 I see coming up and what I've heard the opponents saying
5 that well trees may have come down but that they planted
6 trees in their place. In the two houses that I lived
7 in the neighborhood, we've lost I think six large trees.

8 Some of them have been from natural causes or beetles
9 or storms. I'm probably the only one we know that has
10 a van that two separate trees went through. But some
11 of them also went down because a neighbor built a swimming
12 pool in the development in a house that went in behind
13 us.

14 Now in those 24 years I've also planted dozens
15 of trees. None of them are anywhere close to as large
16 as to what the six that were taken down were. That will
17 take another 100 years before they will come close.

18 The other thing I wanted to talk about is
19 that I've been referred to as a community activist. I
20 was a PTA president. I organized the girl's softball.

21 I know a lot of people. Everyone I run into and the
22 majority of the people I see just on a day-to-day basis
23 are in favor of the overlay.

24 I came out of the Metro on Monday and ran
25 into someone passing out campaign literature. I asked

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1 her her position on the overlay and she said "I'm sorry,
2 I didn't write a letter. I thought that it had passed.

3 Everyone I know is in favor of it." The people who are
4 live north of Soapstone Valley are in favor of the overlay.

5 Phil Kogan may be my ANC commissioner but
6 I do want the Commission to know that he does not represent
7 me and he doesn't represent my neighbor. The people of
8 Forest Hills want this overlay. Most cities would die
9 for a neighborhood with trees like those in Forest Hills.

10 This overlay is designed to protect those trees. I urge
11 you to support that. Thank you.

12 CHAIRPERSON MITTEN: Thank you, Ms. Clark.
13 Ms. Benesh.

14 MS. BENESH: My name is Joan Benesh and I
15 live on Linnean Avenue. As a resident of Forest Hills
16 since 1965, I guess maybe I'm one of the oldest residents,
17 I have seen some poorly conceived developments in our
18 area and it continues daily. Therefore I strongly
19 support the Forest Hills Tree and Slope Overlay which
20 I really feel will provide certain safeguards without
21 being burdensome or punitive to present and future
22 landowners and homeowners.

23 In a sense our neighborhood is no longer
24 Forest Hills. We are losing our forest and we're moving
25 our hills. It will be a long time before we will ever

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1 see that again because once these are gone, they're gone
2 and there's nothing else to do about it. We
3 did take a few photos, my husband and I. I don't know
4 how effective they are because they just show you some
5 construction. But I have to let you know what this
6 construction right across from Rock Creek Park on Broad
7 Branch was once a very wooded, heavily forested area on
8 a very steep slope. You will see from our pictures that
9 that has changed completely. We've lost a lot and I
10 really look forward to seeing the overlay put into place.
11 Thank you.

12 CHAIRPERSON MITTEN: Thank you and if you
13 would like to submit those pictures for the record, you
14 can give them to Mr. Bastida. Any questions for this
15 panel?

16 VICE CHAIRMAN HOOD: Very quickly, I want
17 to ask Ms. Clark -- the process of getting of the word
18 about the overlay, would you say it's been a fair process
19 regardless of whether you're a proponent or opponent?
20 Would you it's been a fair process especially as far as
21 disseminating the information out?

22 MS. CLARK: Yes, there have been at least
23 two opportunities. I mean there have been several
24 mailings and every household had flyers delivered to it
25 on at least two different occasions plus all the other

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1 notices and public meetings.

2 VICE CHAIRMAN HOOD: Thank you.

3 CHAIRPERSON MITTEN: Anyone else? All
4 right. Thank you. C. Feldman, Gary Stevens, Jim McHale
5 and I have Karen Perry down but -- yes, I thought so.
6 Susie Gellert. Come on forward. Let's start with Mr.
7 Stevens who represents the Forest Hills Neighborhood
8 Alliance. Give him five minutes and then the rest of
9 the panel will each have three minutes. So we will have
10 Mr. Stevens go first.

11 MR. STEVENS: Thank you very much, Madam
12 Chair and the Commission. I live at 3100 Chesapeake --

13 CHAIRPERSON MITTEN: Hold on one second.
14 Five minutes. Okay, let's take it from the top.

15 MR. STEVENS: Thank you very much, Madam
16 Chair. Mr. Bastida is handing out I believe now written
17 copies of my testimony so you can have a chance to look
18 at that later. I live at 3100 Chesapeake Street, NW
19 within the proposed Forest Hills Tree and Slope district.

20 I'm testifying on behalf of myself and the Forest Hills
21 Neighborhood Alliance of the District of Columbia, a
22 nonprofit organization dedicated to the preservation of
23 historic character of the Forest Hills neighborhood and
24 its homes and landscapes of historical and architectural
25 distinction.

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1 The Alliance is a grassroots organization
2 which has over 400 supporters in Forest Hills, the vast
3 majority of whom reside in ANC Commissioner Kogan's single
4 member district 3F-01 and ANC Commissioner Maudlin's
5 single member district 3F-03, again the heart of the
6 overlay. I must say that I consider Phil Kogan and Bob
7 Maudlin personal friends and I have the greatest respect
8 for their tireless efforts and public service. To the
9 extent that they oppose this overlay as amended we
10 seriously disagree.

11 As reflected in my letters to the Zoning
12 Commission dated June 11, 2002 which should be in the
13 record, the Alliance including its Board of Directors
14 and its 26 member Executive committee strongly support
15 the proposed overlay as amended by the Applicant and I
16 would like to refer to three points in particular.

17 First, the Forest Hills Neighborhood Alliance began two
18 years ago when Forest Hills neighbors became concerned
19 over the status of the Owl's Nest, a turn of the century
20 residence designed by Washington architect, Hamilton
21 Clark, situated on over two acres of park like land in
22 the center of Forest Hills. The Owl's Nest is also in
23 the center of the proposed tree and slope overlay.

24 Last year, the Alliance was successful in
25 obtaining historic landmark status for the Owl's Nest.

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1 The Owl's Nest has been since nominated for inclusion
2 in The National Register of Historic Places. The Owl's
3 Nest site including its towering trees is a neighborhood
4 treasure. The Alliance estimates that at least 20 of
5 the trees on the Owl's Nest site are ancient oaks well
6 over 100 years old and exceeding 30 inches in diameter
7 with heights well in excess of 120 feet. Another 30 to
8 40 trees on the site average 15 to 30 inches in diameter
9 and appear to be in the 75 to 100 year age class.
10 Altogether we encountered more than 100 trees on the site
11 and the adjacent one-acre lot at 3017 Gates Road. The
12 Owl's Nest itself is at 3031 Gates Road.

13 These majestic trees are prime examples of
14 why our neighborhood is called Forest Hills. Now the
15 Owl's Nest is currently up for sale and I shutter to think
16 what will happen to this irreplaceable landscape if the
17 site is overbuilt. Once the giant oaks have been
18 destroyed, they cannot be replaced in our lifetime perhaps
19 not even in our children's lifetime. For this reason,
20 the Forest Hills Neighborhood Alliance strongly urges
21 the Zoning Commission to keep the Owl's Nest property
22 in the overlay district. The current owner of the Owl's
23 Nest property has written a letter earlier in the record
24 asking that they be removed from the overlay district.

25 Secondly I would like the address the issue

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1 of the minimum lot size in R-1A districts within the
2 proposed overlay. Here just let me say that the proposed
3 overlay would establish to 12,000 square feet as a minimum
4 lot size replacing the current 7,500 square feet minimum.

5 According to the Office of Planning report, the average
6 lot size at Forest Hills is 14,044 square feet and the
7 medium size is 9,810 square feet.

8 If we are to maintain the character of the
9 landscape in Forest Hills, the minimum lot size has to
10 be increased. The 12,000 square foot minimum in proposed
11 overlay is appropriate. It would allow a substantial
12 amount for the subdivision within the neighborhood but
13 still preserve the large open spaces that accommodate
14 the large trees in Forest Hills.

15 However the important thing here is not
16 statistics. It is preserving the essential character
17 of our neighborhood. To appreciate this if you haven't
18 just drive through Forest Hills or better yet walk
19 through. I invite you especially to walk down Chesapeake
20 Street or historic Grant Road on the other side of the
21 Owl's Nest just two blocks off of Connecticut. This is
22 a truly remarkable setting because the open park like
23 character with the beautiful old trees are a great benefit
24 to everyone who lives in Forest Hills and walks down these
25 streets whether they live in Forest Hills in houses or

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1 whether they live in Forest Hills along Connecticut Avenue
2 in apartments.

3 Finally, I would like to briefly address the
4 issue of community support for the proposed tree and slope
5 overlay district. I have not taken a scientific poll
6 in our neighborhood but I have conferred with all of our
7 Board of Directors and our Executive Committee and they
8 fully support this position as they support the overlay.

9
10 In addition, I have spoken with my neighbors.
11 I have gone door-to-door and asked residents of Forest
12 Hills how they feel about this overlay. Their support
13 has been overwhelming. I must say that the people that
14 I have talked to I have literally run into almost no one
15 who doesn't support it. I think it's important that
16 the Commission should know that. Thank you for giving
17 me an opportunity to express this to you.

18 CHAIRPERSON MITTEN: Thank you, Mr. Stevens.
19 Mr. Feldman. You need to turn on your mike there.

20 MR. FELDMAN: I'm Charles Feldman. I live
21 at 2855 Davenport Street. I've lived in the community
22 for 35 years. The issue before this Commission is the
23 relationship between trees and lot size. On a 7500 square
24 foot lot size which is now selling for something like
25 \$400,000, you can't put a small house. You have to put

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1 a large house in relationship to the size and price of
2 the lot. But if you put a large house on 7500 square
3 feet and maybe a little swimming pool thrown in, you are
4 going to have to cut down all the trees. The trees you
5 don't cut down are going to die because of the root
6 damage.

7 If you increase the lot to 12,000 square feet,
8 you'll have a lot more room in comparison to the price
9 of the house and the price of the land. So there will
10 be a lot more room for expansion and you'll be saving
11 a lot more trees.

12 The other point I would like to make is about
13 20 years ago the lots were appraised separately from the
14 house. My lot was appraised per square foot a lot more
15 than the lot next to me or my neighbor across the street.

16 When I went to inquire as to why this was, the city said
17 and the sensor said it was because we had a lot more trees.

18 So the city values lots of trees a lot more than they
19 do without trees. I don't know if that point was brought
20 out but it's something worth noting.

21 Also the trees, it hasn't been mentioned but
22 they also filter out the dust and produce oxygen. They
23 also give the community shade which helps to save
24 electricity and for air conditioning. So it's also
25 beneficial to the city and to our community. Thank you.

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1 CHAIRPERSON MITTEN: Thank you, Mr. Feldman.
2 Mr. McHale.

3 MR. MCHALE: Thank you very much, Madam Chair
4 and Commissioners. Mr. Hood, I wish I had one of those
5 slide shows to present to everybody but I have to give
6 a statement too and that's what I prepared. My name is
7 Jim McHale. I live at the 4900 block of 30th Place for
8 the past 25 years. We've raised our two sons in the house
9 and it's our conclusion and our enjoyment that the Forest
10 Hills neighborhood meets the needs of the families. It
11 has terrific playground, terrific ballfield. We can use
12 the mall, many other desirable features. As you know,
13 we are near public transportation and because of the tree
14 cover, sometimes you would think you were in a rural area.

15 I've given a lot of thought to the overlay
16 proposal and I've concluded it should be adopted for four
17 reasons. First, the beautiful trees not only give Forest
18 Hills its name but also gives it special character. Much
19 of what I can say was already said more eloquently by
20 other people I think by the National Park representative,
21 Mr. Swanson, and others. Let me tell you how
22 I became interested in this subject. About 15 years ago,
23 someone from outside the District attempted to buy the
24 Peruvian Embassy and develop it into townhouses. That's
25 right at the north end of our block. This of course was

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1 something that we weren't comfortable with and ultimately
2 the proposal expired.

3 But during that period, I had the privilege
4 of speaking to the Ambassador from Peru and he described
5 the trees in our neighborhood as the mums of Forest Hills.

6 That's a poetic phrase. It stuck in my mind. In the
7 words of my neighbor, Susan Barton, who is sitting in
8 the back row and Mrs. Benesh, the overlay would keep the
9 forest in Forest Hills. It will also provide as Mrs.
10 Worthington said more general public benefits in addition
11 to what the park service representative said.

12 Second, I was particularly interested in what
13 the opponents had to say. I listened to them on a couple
14 of occasions and their objections boiled down to one basic
15 thought, no more regulation. Well, that's a subject on
16 which public opinion blows hot and cold but it certainly
17 has some elementary appeal. So I tried to understand
18 the opponent's point of view. I attended two meetings,
19 the ANC meeting in June and another meeting that the ANC
20 sponsored just last month to try to bring the opponents
21 and proponents together to see if we could meet on common
22 ground.

23 By the way I have known some of these
24 opponents for the time I lived in Forest Hills. I respect
25 them. I wanted to hear their thoughts. When they were

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1 done, I had respected their strong feelings but I couldn't
2 accept their reasoning.

3 Let me just mention three -- I won't go into
4 it. My written statement covers it but let me go to the
5 final point of the written statement that you'll have
6 in front of you and a letter. The objectors implicitly
7 argue that the Board of Zoning Adjustment would not act
8 fairly if a homeowner can show the need for relief because
9 of hardship or another special circumstance. Frankly
10 having seen this Board and knowing a member of this
11 Commission sits on the BZA, I have complete confidence
12 that the BZA process will work fairly and accommodate
13 hardships where they exist. Thank you.

14 CHAIRPERSON MITTEN: I'm not going to try
15 your name again until I hear you say it.

16 MS. GELLERT: Susie Gellert.

17 CHAIRPERSON MITTEN: Thank you. Gellert.

18 MS. GELLERT: I live at 3101 Chesapeake
19 Street, NW. I moved into the Forest Hills from a part
20 of the northwest approximately 10 years ago. I heard
21 Elton as referred to as a treasure. Well, I think Forest
22 Hills is a treasure. Both the residents and the city
23 have a responsibility to show compliance stewardship
24 over that area.

25 My personal inclination may be shows from

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1 an example on my own property. We have a tree which was
2 very old, very large. I don't like it but it's in good
3 health. It drops things all over the yard all year long
4 and you're rolling on the black walnuts and picking up
5 the mess and I couldn't cut it down. Maybe that makes
6 me a tree hugger but I couldn't do it because I knew that
7 it would be 100 years at least before there could be
8 anything there of that size to replace it. It would
9 affect me and the other people in our neighborhood.

10 An opposite example is the amount of
11 agitation I feel when I drive down Davenport within one
12 block of Broad Branch Road. There are three lots that
13 are continuous where one was completely clear cut. The
14 other two had done some things to help preserve the trees
15 but quite frankly I think a number of those trees
16 disappeared because of the construction activity. It
17 just seems to me a terrible thing that we have not had
18 something in place to make sure there's at least a review
19 of things like that.

20 The goal of zoning is not to maximize profit.

21 So I encourage you to adopt the tree and slope overlay.

22 Just for a last statement about what I have heard from
23 the proponents, what I see in both the literature
24 delivered to my home in most of the places and the
25 meetings, I would have the opportunity at this point to

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1 receive other things that they may certainly put in the
2 picture but there have been rather vague statements,
3 things that are absolutely inaccurate the way they've
4 interpreted how the trees look, the plan is already laid
5 out and statements that are almost in generating panic
6 among people to get them to oppose the tree and slope
7 overlay. Thank you for your time.

8 CHAIRPERSON MITTEN: Thank you, Ms. Gellert.

9 Any questions for this panel? All right. Thank you
10 all. We'll have Susan Martin, David Bardin. Okay. So
11 neither of you wants to testify. All right. It's making
12 my list go faster.

13 Mel E-L-P-E-N or something like that. All right.

14 Bob Banks, did you want to testify? Mr. Woodworth from
15 the National Resources Defense Council come forward now.

16 We're going to have a panel of four again. John Eldred.

17 Dennis Blumer. Just for the ease of running the clock,
18 we're going to have Mr. Woodworth from the National
19 Resources Defense Council first. You will have five
20 minutes and then the rest of the panel will have three
21 minutes. So just turn on the mike and state your name
22 for the record.

23 MR. WOODWORTH: Good evening, Madam Chair
24 and the rest of the Commission. My name is James
25 Woodworth, National Resources Defense Council. I reside

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1 at 2452 Ontario Road, NW, down the stream of the proposed
2 tree and slope overlay. I'm testifying tonight on behalf
3 of NRDC. My work with NRDC involves advocating for sound
4 stormwater management and CSO abatement in the District
5 of Columbia. We feel strongly that the tree and slope
6 overlay is a step in the right direction in terms of
7 managing runoff mitigating downstream impacts for which
8 D.C. is after clients for the Clean Water Act obligations.

9 In a report, Out of the Gutter, which I mailed
10 to the Commission last month, the tree and slope overlay
11 was one of our primary recommendations in terms of
12 managing runoff on a watershed approach with the District
13 of Columbia. All of the other agencies in D.C. that are
14 concerned with storm water management, the Department
15 of Health, WASA, Department of Transportation and the
16 Department of Public Works, are investing a lot of money
17 to meet the obligations of EPA in terms of meeting Clean
18 Water Act requirements.

19 The tree and slope overlay is cost effective
20 in fact an -- analogy to public health, very cost effective
21 in managing our water quality. We are investing millions
22 of dollars, billions of dollars, downstream in part to
23 mitigate loss of forest cover and increase the pervious
24 surface throughout the District. But it is much more
25 cost effective to maintain the existing forest cover that

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1 we do have in terms of managing the -- and solids that
2 wash off, -- settling and loss of soil. These are big
3 problems in the Potomac and really big problems in the
4 Anacostia.

5 So NRDC is advocating to accept the amended
6 tree and slope overlay. We are advocating broadly in
7 D.C. to support grass roots efforts to get tree and slope
8 overlays throughout the watershed in D.C. If I may use
9 a woodshop analogy, this is sort of analogous to measuring
10 twice and cutting once. This is sound land use and sound
11 public policy. There are provisions in there for
12 economic hardship. It's a reasonable balance between
13 land use rights and environmental structure.

14 For those reasons, we think this is a good
15 measure for the community in terms of Clean Water Act
16 obligations, economic development and community
17 development. In addition, we are all aware of benefits
18 from urban forest canopy for Clean Air Act obligations
19 in public health, asthma and that sort of thing.

20 So urban forestry management forwards us
21 toward meeting a lot of our environmental problems with
22 trees: air, water, community development. For those
23 reasons, we are wholeheartedly supporting this tree and
24 slope overlay. Thank you.

25 CHAIRPERSON MITTEN: Thank you. Mr. Banks.

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1 MR. BANKS: Thank you, Madam Chairperson.
2 I think I am the --

3 CHAIRPERSON MITTEN: Would you just state
4 your name for the record?

5 MR. BANKS: Sure, my name is Bob Banks. I
6 live at 4838 Broad Branch Road, NW. I am the most senior
7 person who testified evidently at this hearing because
8 I built the house on Board Branch Road when I got out
9 of the Army after five years of serving this great country.
10 I built it on the GI Bill of Rights and of course it's
11 digressing to mention that the mortgage loan was only
12 four percent.

13 But in any case, I do have some things to
14 mention that have not been covered by the previous
15 witnesses. First is the use of dynamite on these trees.

16 There's a very thin cover of earth over much of the slope
17 along Broad Branch Road. Underneath that is very hard
18 rock. I'm not a geologist so I'm not going to describe
19 it. But the fact is that in order to build houses along
20 Broad Branch Road extensive use of dynamite will be
21 required.

22 For example, the folks next to us on the north
23 want to build a house on a unused portion of the lot which
24 is approximately one-quarter of an acre. In order to
25 do that, they will have to dynamite 37 trees. There's

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1 a graph or a chart of the trees involved.

2 Of course that matter is exaggerated if you
3 go to the Peruvian Embassy which abuts us still the next
4 property to the north. It's 16 acres. It's a perfect
5 site. It has been mentioned once before that an offer
6 to purchase that site will reoccur. When it does, it's
7 a perfect site for building 200 condominiums.

8 That goes to the fact that one thing that
9 has not been mentioned here which is very significant
10 is when we built our house 50 years ago the D.C. Highway
11 Department took from us the title to the last 60 feet.

12 They intend to straighten and widen Broad Branch Road
13 so it can become a miniature interstate highway. Of
14 course that will add to the congestion, the pollution
15 and all the deteriorating factors that have been mentioned
16 here. Thank you very much.

17 CHAIRPERSON MITTEN: Thank you, Mr. Banks.
18 Mr. Eldred.

19 MR. ELDRED: Thank you, Madam Chair and
20 members of the Commission. I appreciate the opportunity
21 to address you tonight. My name is John Eldred. I live
22 at 2939 Albemarle Street. My wife and I have lived there
23 18 years. We strongly support the proposal that is before
24 you for consideration. We believe that it's essential
25 to prevent further degradation of the character of our

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1 neighborhood.

2 We've experienced firsthand what can happen
3 in the absence of the sorts of protections that are in
4 the plan that is before. There's been previous testimony
5 tonight about development on Albemarle Street in the late
6 1980's in which five or four very large houses were
7 shoehorned into a previously existing lot for a total
8 of five homes. A very steep cut was made to accommodate
9 the driveway, removal of dozens of trees including 75
10 year old oaks. We lost one hickory tree on our lot and
11 two others we've had to fight and we spent a good deal
12 of money to try to save it. They tell it's just a matter
13 of time until they go and that's been a dozen years ago.

14 Most of the time, the oaks on our property are down at
15 the end.

16 Over the years, we've continued to see in
17 Forest Hills continued development in particular, the
18 raising of small houses to put up large homes with
19 essentially no yards and no trees in order to maximize
20 the profits. We believe this will continue until this
21 Commission adopts the tree and slope proposal.
22 Developers are still active.

23 Our lot is 121,000 square feet. Most of the
24 houses in the front half of that lot and the back half
25 of that lot is under current law and we're perhaps even

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1 assuming that if the tree and slope overlay is
2 subdividable. Indeed just two months ago, I received
3 an unsolicited letter, and I'll provide it to Mr. Bastida
4 and he can give it to you, from a developer who says "We
5 are an established real estate firm that represents
6 several builders and developers in deed land on which
7 to build. If you wish to sell or know of someone who
8 is, please call us immediately for fast results."

9 The tree and slope overlay is going to make
10 our backyard essentially while it still may be
11 subdividable unmarketable. That is an economic price
12 that we are more than glad to pay in order to achieve
13 the protections that will maintain the character of our
14 neighborhood.

15 CHAIRPERSON MITTEN: Could you summarize
16 now, Mr. Eldred? You're running out of time.

17 MR. ELDRED: I have completed, Madam Chair.
18 Thank you very much for your time.

19 CHAIRPERSON MITTEN: Thank you. Mr.
20 Blumer.

21 MR. BLUMER: Madam Chairman, thank you very
22 much. My name is Dennis Blumer and I live at 2801
23 Davenport Street in Forest Hills. My house is in a very
24 heavily forested area and it is the last house on the
25 street before you get to Rock Creek Park. My wife and

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1 I have lived there for 23 years. In order to preserve
2 what is the character of the neighborhood, we have not
3 cleared the land on our property in any way. It remains
4 wooded as it has been for many years.

5 You may know that this section of Davenport
6 Street is the old Civil War military road. You are
7 probably aware that substantial parts of this area had
8 all the trees removed during the Civil War to build the
9 wooden forts and ramparts that protected the Civil War
10 in Washington. The clearing also permitted clear fields
11 and fire road, forts and batteries. There are some
12 batteries near my houses.

13 This area therefore has not a primeval
14 forest. One can plausibly argue that the area is only
15 now recovering from the clear cutting of the Civil War.

16 One is hard put to find a tree in some of the areas which
17 is over 140 years old because they do not predate the
18 Civil War. But times and economics change. We are
19 clearing the land again at least the land adjacent to
20 Rock Creek.

21 On Monday, our people have testified as to
22 this, The Washington Post reported the tree canopy in
23 Washington declined 24 percent in the years 1972 and 1997.

24 Clearly the regulations are not protecting Washington
25 as a whole as to its tree canopy.

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1 Across the street on my own block,
2 construction for three large houses have killed so many
3 trees that this summer for the first time I can get cell
4 phone reception in my house. That truly is a mixed
5 blessing at best. My wife has witnessed the unintended
6 consequences of all the new construction in our
7 neighborhood. Even the large trees saved by order of
8 the Fine Arts Commission because we are adjacent to Rock
9 Creek Park often fall because they are immediately
10 adjacent to the new construction. Their root systems
11 are compromised or the trees die because they are scorched
12 by the new and immediate access to whole sun.

13 The initiative before you will not address
14 all these problems but it is a modest beginning. I ask
15 that you digest the denuding, the steep and often eroding
16 slopes of Forest Hills by supporting this initiative.
17 Thank you very much.

18 CHAIRPERSON MITTEN: Thank you, Mr. Blumer.
19 Any questions for this panel? Mr. Hannaham.

20 COMMISSIONER HANNAHAM: Mr. Woodworth, I
21 appreciate your -- But did you mention your organization
22 will be advocating houses only going so far and some sort
23 of overlay. I was just wondering whether you would want
24 to beyond just advocating and take a real active position.

25 CHAIRPERSON MITTEN: You need to turn on your

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1 mike.

2 MR. WOODWORTH: As we are aware of these
3 efforts, they are grassroots efforts. These overlays
4 are specific to portions of -- area that are adjacent,
5 Federal property adjacent to waterways. So it would not
6 be appropriate to advocate such an overlay that would
7 cover the entire District but they would be most suited
8 to areas -- in two portions of the Anacostia River and
9 -- Rock Creek. In terms of a broad based sweeping
10 approach, the Urban Forestry Preservation Act Tree Bill
11 is the more appropriate district wide for urban forestry
12 protection. Does that answer your question?

13 COMMISSIONER HANNAHAM: There is so much
14 more that we could do. You touched on some parts of
15 consequences in doing what's right for the consumer
16 health. It covers a whole lot of areas. You can't just
17 remove the trees and not consider the consequences.
18 That's what I was thinking about a broad based effort,
19 public education initiative working with agencies that
20 are already involved in the tributaries.

21 MR. WOODWORTH: Certainly my intention in
22 getting involved in this process was to learn how this
23 overlay process worked and to understand the grass roots
24 efforts involved and the process with your Commission.
25 It is certainly on my agenda to see where we can implement

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1 more of these particularly in this part of the areas of
2 the Anacostia.

3 The two or three zoning overlays that do exist
4 in the District are prominently in the affluent
5 neighborhoods in the northwest. They are strictly in
6 the affluent neighborhoods in the northwest. The areas
7 of D.C. that are perhaps in more need of these types of
8 zoning regulations are in the eastern portion of the city
9 along the Anacostia where there is significant chunks
10 of forest that is still intact that is right for
11 development.

12 Particularly if this administration is
13 looking to redevelop the banks of the Anacostia, we need
14 to do so in a sound way, balance where we can in developing
15 opportunities in land preservation and sensitive
16 environmental developing.

17 So it's very much in my interest to forward
18 this process and to look for other opportunities with
19 other community groups throughout the District that
20 perhaps don't have the political of this community and
21 the expertise of those involved that did allow the
22 groundwork in terms of tailoring this amendment to the
23 particular needs of addressing the concerns of the
24 neighborhood. This neighborhood has a lot of lawyers
25 that live in this neighborhood. Other portions of D.C.

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1 don't have that social and political capital. That's
2 where I look to learn from this experience and support
3 those other endeavors where they may need.

4 COMMISSIONER HANNAHAM: Thank you very much.

5 MR. WOODWARD: I would certainly be happy
6 to talk with you and other members of the Commission on
7 another date to address this issue and issues of the
8 pervious surfaces and recommendations that NEC has for
9 modifying portions of the eco with respect to storm water
10 management.

11 CHAIRPERSON MITTEN: I would also just add
12 that at the first session on the hearing we took a question
13 to the Office of Planning which is if this is a worthy
14 endeavor in Forest Hills, then where else is it worthy
15 in the City just for the reason you described. There
16 aren't advocates necessarily for tree and slope overlays
17 across the city but there are other areas that have issues
18 in common with Forest Hills. So I think joining with
19 the Office of Planning would be probably the most
20 expeditious course and I'm sure they would appreciate
21 your expertise. Thank you. Any other questions?

22 COMMISSIONER MAY: Can I add one thing to
23 that point?

24 CHAIRPERSON MITTEN: Sure.

25 COMMISSIONER MAY: I think that the input

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1 that the Commission would welcome goes beyond just tree
2 and slope overlay aspects. In fact if you look at our
3 upcoming calendar or if you look at the calendar that
4 we had from last year, there are plenty of cases that
5 have come before the Commission where we would have liked
6 to get some input from your organization or others in
7 support of this particular cause.

8 CHAIRPERSON MITTEN: All right. Thank you.

9 I think we have one last panel and then I'll just call
10 for anyone who didn't happen to sign up. Mr. Arendal.
11 Cathy Wiss. Brendan, I can't read your last name.

12 MR. HERRON: Herron.

13 CHAIRPERSON MITTEN: Herron. And Susan
14 Traver. We have already had the report from the ANC so,
15 Ms. Wiss, you are testifying as an individual. Yes, so
16 it's three minutes for everybody. We will start with
17 Mr. Arendal if I said that right.

18 MR. ARENDAL: Yes, it's a difficult name.
19 My first name is even worse.

20 CHAIRPERSON MITTEN: That's why I didn't go
21 for that one.

22 MR. ARENDAL: Madam Chairman, members of the
23 Zoning Commission, my name is Poul Arendal. I live at
24 3120 Appleton Street which is within the Forest Hills
25 tree and slope overlay district for the past 20 years.

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1 I do strongly support the overlay as it has been amended
2 and encourage you to approve it. My wife and I moved
3 to Forest Hills because of the Anacostia adds beauty and
4 as being integrated into Rock Creek. There are many kinds
5 of trees, the wide varieties of homes that is supposed
6 to be proportionate to the size the lots.

7 Now recently we have seen some of these
8 attributes change for the worse. Lots of infill
9 construction I think it's called goes by subdividing lots
10 and also building in our space but also by destroying
11 current houses and building houses and all this is
12 generally pushing the current zoning limits. Even in
13 some cases they have exceeded it as we have lawsuits trying
14 to scale it back.

15 As there's been clearing of large amounts
16 mature trees on previously undeveloped lots, building
17 structures much larger than the surrounding neighborhood
18 and it's out of portion to the neighborhood. The building
19 are on steep slopes bordering the Rock Creek and these
20 buildings kind of escalate multiple stories down the slope
21 on one side.

22 Our concern is since we are so close to Rock
23 Creek and these very steep slopes if we have any
24 underground water and springs and stuff like that and
25 then you do start, specifically large construction, it

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1 will change the flow and we have cases of soil erosion,
2 sink holes at times. Sometimes we get the basement
3 flooded.

4 CHAIRPERSON MITTEN: I'm going to ask you
5 to summarize, Mr. Arendal.

6 MR. ARENDAL: So I fully support the overlay.
7 I understand the opponent's stand but I think that when
8 they develop, we lose exactly what we came to Forest Hills
9 for. Thank you.

10 CHAIRPERSON MITTEN: Thank you. Ms. Wiss.

11 MS. WISS: Good evening. My name is Cathy
12 Wiss. I reside at 3810 Albemarle Street, N.W. I'm the
13 Commissioner ANC 3F as well as its current chair. I would
14 like to share with you why I believe the amendment lot
15 size proposed for this overlay to be eminently reasonable
16 and why this overlay will help the District in its
17 obligations under the Chesapeake Bay Agreement.

18 After the June hearing, I was curious whether
19 other cities have zone districts requiring lot sizes as
20 large as 12,000 square feet. I decided to compare
21 Washington zoning with Baltimore's and Richmond's.
22 These are the closest cities to Washington. They've been
23 developed much the same way. All three are within the
24 Chesapeake Bay Watershed. What I found
25 surprised me. Both Baltimore and Richmond have zones

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1 for single family detached housing that require much
2 larger lots than Washington's R-1A zone and far greater
3 than 12,000 square feet. Baltimore even has areas with
4 minimum half acre lots. These neighborhoods are much
5 like Forest Hills. Recognizing them as valuable assets
6 to the city, Baltimore totes them on their website as
7 beautiful, tree lined and great places to live.

8 I then turned to New York City as a benchmark
9 for a very dense urban area. Astonishingly, this city
10 of over eight million people also has a low density zone
11 with a lot size larger than Washington's R-1A zone. But
12 even more interesting is the fact that New York has
13 established a natural area zoning overlay which has a
14 minimum lot size of 12,500 square feet, almost identical
15 to what's proposed here.

16 This research confirms that not only is a
17 12,000 square foot minimum lot size very reasonable for
18 a major city, it is consistent with zoning for
19 environmental protection. Increasing the minimum lot
20 size for new subdivisions in Forest Hills when many
21 developed lots are already larger than 12,000 square feet
22 would help preserve a shrinking resource of the District
23 and maintain a healthy environment.

24 The letter I have filed with a full
25 description of my findings is attached. Since 1983,

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1 every mayor in the District of Columbia has joined the
2 Governors of Maryland, Virginia and Pennsylvania in
3 signing the Chesapeake Bay Agreement and its directives,
4 pledging to protect and restore the Bay's ecosystem.
5 The Agreement seeks to conserve and restore forests as
6 habitats vital to preserving the watershed and eliminate
7 impervious surfaces near streams.

8 Many neighboring jurisdictions including
9 Baltimore, Richmond and Washington suburbs have
10 designated riparian buffers of a fixed width which most
11 construction is prohibited. In Washington, however more
12 flexible tree and slope protection overlay is a zoning
13 tool used to protect forest and streams. The difference
14 is important. Several new houses now under construction
15 on Davenport Street and Chesterfield Place would not have
16 been permitted in Maryland or Virginia because they are
17 too close to a stream.

18 CHAIRPERSON MITTEN: You need to summarize.

19 MS. WISS: Okay, the Forest Hills tree and
20 slope protection overlay does achieve the balance between
21 the District's commitment to preserve its natural
22 resources and reasonable development. I urge you to
23 approve it with the proposed modifications. Thank you.

24 CHAIRPERSON MITTEN: Thank you. Mr.
25 Herron.

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1 MR. HERRON: My name is Brendan Herron. I
2 live at 2901 Albemarle Street. Mr. Bastida is handing
3 out a Powerpoint presentation. The front slide if you
4 look at it is a 30 inch diameter oak tree situated on
5 the property across the street from my house, a typical
6 mature tree in Forest Hills with the average age of
7 approximately 100 years.

8 The same lot at 2900 Albemarle Street is a
9 20,800 square foot lot and a house built in 1952. The
10 developer has filed plans to subdivide this lot into two
11 lots, a 9,800 square foot and an 11,000 square foot lot
12 building two houses to the maximum size allowed, building
13 for profit, not to live in either house and in fact won't
14 even talk to the neighbors about his construction plans.

15 The new lot, the 11,000 square foot lot, had
16 five trees over 30 inches in diameter with approximate
17 ages of 100 years old each. Sixty percent of those trees
18 are now gone. One was lost due to them moving a house
19 beyond the existing side yard lot line, the other house's
20 on the street. One was lost due to the size of the new
21 house and one was lost for a new driveway. The similar
22 tree loss has occurred when the other lot was being
23 divided.

24 If you turn the next page, you can see the
25 circled area is one of those trees. If you look in the

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1 sky, you can see the big opening as to where that tree
2 used to be. It was exactly the same size as the tree
3 that you see. You can see what we've lost. That's one
4 of the three trees on the 11,000 square foot lot. They
5 are not coming back and this is why a minimum lot size
6 is very important.

7 The tree and slope lot provision would have
8 limited development to only one house on this lot. Space
9 existed on the lot to build a new larger house without
10 impacting on the trees. We would have been able to save
11 in approximate combined diameter of 180 inches or
12 approximately 600 years worth of trees if the tree and
13 slope provision had existed with minimum lot sizes of
14 12,000 and side yard restrictions.

15 Just a couple of other points I'd make is
16 that the current zoning laws don't protect us. As a
17 neighbor who moved into the community about a year ago,
18 I was shocked to find out having lived in Maryland and
19 in New York City that we didn't have protection for
20 Chesapeake Bay and we didn't have protection when someone
21 wanted to build across the street from you. Builders
22 don't even have a reason to talk to the neighbors. In
23 fact they refuse to because there is no protection for
24 the neighbors. They just come in and start cutting down
25 trees.

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1 We moved to Forest Hills from New York City
2 and because we found Forest Hills to be unique. It's
3 a unique area with trees and very close to the city.
4 It's not something you find in a lot of areas. I think
5 it's up to all of us to protect what we have which is
6 very unique. If the trees take 100 years to grow, by
7 allowing them to be cut down now it won't be until our
8 children's children before they have that opportunity
9 again. Thank you.

10 CHAIRPERSON MITTEN: Thank you, Mr. Herron.
11 Ms. Traver.

12 MS. TRAVER: My husband and I bought a lot
13 in February 2000 at 2845 Chesterfield Street in Forest
14 Hills with the pending birth of our third child. We knew
15 we had to get out of the apartment. My problem is that
16 my permit is being held up because of the initial overlay
17 that was set forth had some restrictive side yard
18 requirements. We were in compliance with every other
19 issue regarding the overlay with the exception of the
20 side yard which under the initially proposal which was
21 sixteen feet on both sides.

22 We now are in compliance with everything of
23 the amended proposals which are now some of the size of
24 side scales for 11 feet on one side and 25 on the other.
25 I can't get my permit out because I am not in compliance

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1 with the original setdown. I sent a letter to you a couple
2 of months ago at the suggestion of an attorney whom I
3 had to hire to help get me through this, to re-advertise
4 which I understand is not the proper protocol. So I'm
5 asking for some relief or some way out of this if the
6 methodology is going to take another several months to
7 get us through it.

8 Just as a bit of background, we thought a
9 lot of all the reasons that everyone has explained, the
10 beauty of the area and wanted to build there. We worked
11 closely with the neighbors on both sides. We hired an
12 arborist to look at the trees that we could save. It
13 was a wooded undeveloped lot. We did take down many trees
14 which was unavoidable to build a house there.

15 We saved what we could and worked again
16 closely with both sides to nippen up the yards so that
17 the landscape could look proper and that the slope was
18 maintained. The permits have gone through every phase
19 and it's now stuck in Zoning. I'm appealing for some
20 relief to avoid another four, five or six months of an
21 impasse on the permission of the building permit.

22 CHAIRPERSON MITTEN: Okay, I don't know that
23 we will be able to help you out tonight but we will give
24 some consideration to it and go from there. But we will
25 try to be sensitive to your concern. Any questions for

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1 this panel? Mr. Hannaham.

2 COMMISSIONER HANNAHAM: Madam Commissioner,
3 I think it was nice that Ms. Wiss doing a comparison of
4 the cities. I was just curious about New York City. I
5 have been away for a long time but I'm curious as to where
6 these areas are. I assume you are talking about the city.

7 MS. WISS: I'm talking about all five
8 boroughs.

9 COMMISSIONER HANNAHAM: All five boroughs
10 within the city?

11 MS. WISS: That's correct.

12 COMMISSIONER HANNAHAM: So these larger
13 areas that you're talking about are where?

14 MS. WISS: I have found some in Staten
15 Island. I believe there may be some in Brooklyn as well.
16 I'm talking about their equivalent R-1A which is their
17 R-1-1 which is the 9500 square foot minimum lot size.
18 That's just a regular zone district. Then there are four
19 natural areas in the Bronx, Queens and Staten Island.

20 COMMISSIONER PARSONS: I'm very impressed
21 with your letter of August 22, your initiative and
22 thoroughness. The point that I want to ask the Office
23 of Planning is if they would contact the Board to better
24 understand this natural area. It seems to be very
25 comparative to what we are talking about. Your letter

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1 says that four of these overlays have been established
2 in New York in Queens, Staten Island and Bronx.

3 MS. WISS: That's correct. I do have some
4 of the information on it. They protect more than just
5 trees. New York has a different situation than
6 Washington. It's separate islands. They have some
7 tidal wetlands. They have serpentine hills, deep slopes.

8 Their steep slopes are 15 percent, not 25. They protect
9 different kinds of forests and glacial deposits and things
10 like that. So they are set up for a number of different
11 reasons.

12 COMMISSIONER PARSONS: So you already have
13 copies of this report.

14 MS. WISS: I could. I did print it out.
15 It's very thick. There's fifty some pages.

16 COMMISSIONER PARSONS: I see.

17 MS. WISS: Just that title is about 50 some
18 pages.

19 COMMISSIONER PARSONS: I would certainly
20 like to look at it. If you could leave it with Staff
21 and I could look at it. Thank you.

22 CHAIRPERSON MITTEN: I have a follow-up
23 question for you too which is just to round out the
24 information that you presented. I would interested in
25 knowing what of the areas that are included in Baltimore

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1 whatever you are looking at. I guess the Baltimore City.

2 MS. WISS: I looked at Baltimore City not
3 county.

4 CHAIRPERSON MITTEN: What's the population
5 and what's the land area of each? I'm looking for
6 Baltimore, Richmond, New York relative to Washington,
7 D.C.

8 MS. WISS: I did have all of those figures.
9 I would feel more comfortable submitting it to you later.

10 CHAIRPERSON MITTEN: Absolutely. I'm not
11 asking you to recall it on the spot. Somebody is handing
12 it to me. The Office of Planning handed it to me but
13 let's make sure that this becomes an exhibit so I'll hand
14 to Mr. Bastida and a copy for everybody but we have it.

15 MS. WISS: Okay. Thank you.

16 CHAIRPERSON MITTEN: Thank you. Any other
17 questions for this panel?

18 VICE CHAIRMAN HOOD: Madam Chair, I just
19 wanted to ask Ms. Traver. You up here for the
20 proponents. Are you in support?

21 MS. TRAVER: I was trying to stay neutral.
22 I am in support of the overlay but really I don't care.
23 I just want my permit. Yes.

24 VICE CHAIRMAN HOOD: Well, at least you're
25 being honest. I was just trying to figure out whether

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1 you were. Thank you.

2 CHAIRPERSON MITTEN: Any other questions?
3 All right. Thank you all. Now is there anyone who either
4 his or her name I didn't call or who didn't sign up would
5 like to testify in favor of the overlay on board?

6 MR. MITCHELL: I would.

7 CHAIRPERSON MITTEN: Anybody else? You did
8 or you did not. You did. Sir, are you in favor as well?
9 Come on forward. Did you fill out some cards? All
10 right. Are you just testifying on your own behalf each
11 of you? Mr. Mitchell, you can go first.

12 MR. MITCHELL: Good evening. My name is
13 Doug Mitchell. I'm a resident of the 3400 block of
14 Fessenden Street. Mr. Ken Katz has spoken to you earlier
15 this evening. He is my immediate neighbor. I'm also
16 the advisory neighborhood commissioner for the area
17 serving in my eighth year.

18 Earlier in June, late in June I submitted
19 a letter requesting that our R-2 area be continued as
20 part of the application. I'm very pleased to hear that
21 the Office of Planning is preparing a supplemental report
22 for the protection of the trees and slope.

23 I do want to point out that even though the
24 area is currently fully developed there are possibilities
25 for enhancements on the property. An example of that

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1 is at a newly owned house in the area she is interested
2 in building a garage. She can do this under the proposed
3 overlay. She will need to do it in a smart way. There
4 is a very large tree on her property that we would like
5 to see protected.

6 In the preparation of my letter, I know that
7 earlier this evening someone wanted to know what the
8 number of people were perhaps represented by Mr. Katz's
9 comments. There are ten properties on Fessenden
10 Street. There are seven properties on Ellicott Street
11 right behind us. We get together in an alley party twice
12 a year. The tree and slope overlay was a topic of
13 discussion at our late June-early July alley party that
14 we had. As people heard accurate descriptions of the
15 overlay, they expressed support for it. In preparing
16 that letter, there was a lot of conversation so that the
17 development of the letter represented the interests of
18 the neighborhood.

19 I am speaking in support of the overall
20 overlay and our inclusion of that. I just want to close
21 with saying that while it's a limited area, it is a very
22 important gateway to the Forest Hills community.
23 Fessenden Street has a light so a lot of people do use
24 it to both enter and exit the community. The trees that
25 are there are for the protection. Thank you.

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1 CHAIRPERSON MITTEN: Thank you, Mr.
2 Mitchell. Go ahead, sir.

3 MR. O'HARA: I am Martin O'Hara. I live at
4 3005 Albemarle Street within the area of the proposed
5 overlay. I simply want to say that we've been on this
6 property for seven years and as many of the other people
7 have spoken would hope to spend many years on this
8 property. If there is some financial sacrifice in not
9 being able to subdivide it, so be it because what we would
10 like is to preserve the neighborhood as it now is. I
11 also want to state that contrary to any impression you
12 may have received everybody I've spoken to in our
13 neighborhood is in favor of this overlay. Thank you.

14 CHAIRPERSON MITTEN: Thank you, Mr. O'Hara.

15 Any questions for Mr. Mitchell or Mr. O'Hara?
16 All right. Thank you. Any other proponents who would
17 like to speak this evening? Proponent?

18 Now what we said in the beginning was that
19 we would continue this hearing for the opposition only
20 on September 30. We will convene at 6:30 p.m. that
21 evening. We would like any written submissions to be
22 delivered to the Office of Zoning no later than noon on
23 Thursday, September 26 so that the Commission will have
24 adequate time to prepare for the continuation of the
25 hearing.

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1 The time constraints will be organizations
2 will have five minutes and individuals will three minutes
3 and the Forest Hills Neighbors for Responsible
4 Preservation will have an additional 20 minutes for the
5 purpose of showing a Powerpoint presentation. Is
6 everyone clear about that? Then we had a question. Does
7 someone have a question? Come forward and state your
8 name for the record. Could you put the mike on and
9 identify yourself?

10 MR. GLUG: My name is James Glug. I live
11 on Brandywine Street. I was listed as neither a proponent
12 nor a opponent and was on the list last time. I apologize
13 for being late. I don't know whether you would rather
14 hear me tonight or next time.

15 CHAIRPERSON MITTEN: Well, pick a side and
16 choose your night. Tonight or next time? I'll give you
17 your choice.

18 MR. GLUG: I think I'll speak now because
19 I don't know whether this position has been articulated.

20 CHAIRPERSON MITTEN: Let me ask Mr. Bastida
21 to start the clock.

22 MR. GLUG: I characterize myself as neutral
23 because I would like to see some action to preserve the
24 trees and Rock Creek and the nature of the neighborhood
25 but I do not support the particular position advocated

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1 by our Advisory Neighborhood Commission. I am very
2 concerned from a process point of view. I think that
3 it's premature for us as a community to put you on the
4 spot and to have brought you into it before we tried harder
5 to achieve some sort of consensus in the community.

6 Our ANC is divided down the middle, their
7 own report out of the seven to support its position.
8 It unfortunately has polarized into a very rigid conflict
9 between extremes. Although the ANC proponents have made
10 some changes in other major areas such as the 12,000 foot
11 position, there have been suggestions from the Planning
12 Office.

13 There has been a suggestion from our council
14 member and there has been no sign of coming together.
15 I believe that it is worth the community's making a further
16 effort to try to bring you something that is not as
17 polarized as this and on which there is more of a consensus
18 than what has been brought to you so far.

19 I think there probably is a commonality of
20 purpose and that even though some people who through good
21 faith and put a lot of time and effort into the process
22 thus far, it hasn't achieved the result of being a
23 community initiative. It's an initiative of part of the
24 community. Other parts of the community are very unhappy
25 about it. I think it would be worth our spending more

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1 time trying to bring the both positions together before
2 we ask you to deal with both of the positions.

3 If I were sitting where you are sitting and
4 I saw the two polar positions I would think the burden
5 would be on the proponents. I don't think that burden
6 has been met but I don't think you should be placed in
7 that position. I think you should be presented with
8 something that is more a position that reflects the goals
9 and eases the burdens on the actual property holders.

10 Of course, I'm sure it's been noted before
11 that two elective representatives on the ANC are against
12 it who represent, and I understand but I can't vouch for
13 this, most of the property owners. So we have a deeply
14 divided community.

15 (Audience members saying no.)

16 CHAIRPERSON MITTEN: Let's not have any
17 outbursts.

18 MR. GLUG: Well, I don't vouch for that.
19 If I'm wrong, I apologize. That's the way it's been
20 presented to me. The fact is that the ANC is deeply
21 divided as is the community. I think we should make the
22 effort to come together. Thank you.

23 CHAIRPERSON MITTEN: Thank you and you're
24 actually a good person to close with because I would like
25 to just note as we end this evening that I understand

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1 from someone's testimony tonight that the ANC had some
2 additional meeting or meetings in the intermeeting time
3 since our last hearing. I would encourage continued
4 dialogue in the community to help people understand what's
5 being proposed.

6 To the extent that you can achieve some
7 consensus and as Mr. Hood had asked in the beginning to
8 the extent that there is consensus about certain
9 components about this, we would like to know what those
10 areas of agreement so that we can focus on the areas of
11 disagreement.

12 I don't think I need to repeat the schedule
13 going forward. I would just like to thank you all for
14 your participation this evening and your interest in this
15 matter. It's always nice to see a full hearing room.
16 We'll see you again on September 30 at 6:30 p.m. Off
17 the record.

18 (Whereupon, the above-entitled matter
19 concluded at 8:35 p.m.)
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