

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 863
Case No. 97-6
(Text and Map Amendments - Chain Bridge
Road/University Terrace - TSP Overlay District)
June 14, 1999

Pursuant to notice, a public hearing was held by the Zoning Commission (the Commission) for the District of Columbia on May 18, 1998. The Commission considered a petition from the law firm of Robins, Kaplan, Miller & Ciresi LLP, filed on March 17, 1997, on behalf of the Chain Bridge Road/University Terrace Preservation Committee. The petition requests the Commission to amend the Zoning Map by mapping the tree and slope protection (TSP) overlay in the Chain Bridge Road/University Terrace area. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

The stated purposes of the proposed overlay are to protect and preserve the natural topography, mature trees, stream beds, and natural vegetation in the neighborhood and to deter the desecration of a historic cemetery owned by the Union Burial Society. The TSP overlay is also intended to preserve the park-like setting of the area by regulating alterations or disturbances of terrain, destruction of trees, coverage with impervious surfaces, and by providing for widely spaced residences. Additionally, the petition proposed additions and changes to the existing TSP provisions of the Zoning Regulations.

The targeted area for the proposed overlay includes all or parts of Squares 1409, 1411, 1426, and 1427, a contiguous area of approximately 44 acres. This area is generally bounded by Battery Kemble Park on the east, to just north of MacArthur Boulevard on the south, to part way between Dana Place and Chain Bridge Road on the west, and to Garfield (Cathedral Avenue) to Arizona Avenue to Loughboro Road/Nebraska Avenue on the north. Most of the land is zoned R-1-B, with a portion zoned R-1-A.

The R-1-A District permits matter-of-right development of single-family residential uses for detached dwellings with a minimum lot area of 7,500 square feet, a minimum lot width of 75 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet.

The R-1-B District permits matter-of-right development of single-family residential uses for detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet.

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Amendments to the text of the Zoning Regulations and the Zoning Map of the District of Columbia are authorized, pursuant to the Zoning Act (Act of June 20, 1938, 52 Stat. 797, as amended, Section 5-413 et seq., D.C. Code, 1981 Ed.)

Pursuant to 11 DCMR 3011 and by memorandum, dated April 24, 1997, the Office of Zoning (OZ) referred the petition to the Office of Planning (OP) for a preliminary report and recommendation regarding whether the petition has sufficient merit for a public hearing.

By memorandum (preliminary report), dated July 21, 1997, OP analyzed the planning and zoning issues of the TSP. Further, OP considered the Comprehensive Plan policy guidance and the general stability of the subject neighborhood for TSP zoning. OP also reviewed the TSP provisions, vis-a-vis Chain Bridge Road - University Terrace, and the additional development requirements proposed by the petitioner.

OP indicated that the Generalized Land Use Map of the Comprehensive Plan designates the applicable neighborhood low density residential. The existing R-1-A and R-1-B zone districts, as well as the existing development pattern of single-family detached houses are consistent with this designation. The proposed overlay zone would further refine the existing R-1 zoning by adding several restrictions designed to retain major trees, reduce grading, and control the amount of ground coverage with buildings and impervious surfaces in the interests of maintaining the special environmental qualities of the neighborhood.

However, OP noted that restrictions on home construction in the interest of tree and slope protection should not reduce the potential for home construction beyond a reasonable point, and that the general goal of balance between development, environmental conditions and neighborhood character should be maintained.

OP further indicated that as a result of field visits, and a number of meetings, and a walking tour of the neighborhood with petitioners, other residents and property owners, this area has the characteristics for mapping the TSP overlay zone based on the following:

1. The terrain is quite hilly, reflecting the area's history as a high elevation point in Washington suitable for Civil War gunnery at Battery Kemble. Petitioners provided OP with a topographical map showing significant areas with slopes of 25 percent or greater.
2. There are a number of significant stands of mature trees. The neighborhood has a long boundary with Battery Kemble Park, which in it, is an extremely steep sloped park with a stream along its lowest portion.

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3. The neighborhood has a large number of lots or parcels with subdivision and development potential. Most of these are oversized lots improved with houses, but with the potential for additional lots to be provided, while either retaining or demolishing the existing house. The Petition indicates that there are approximately 50 lots that exceed 10,000 s.f. in area (many of them in excess of 20,000 square feet.), and three that are in excess of 100,000 square feet

With regards to the following additional proposed regulations:

1. No building construction within 20 feet of a slope of 25 percent or more;
2. Twelve-foot side yard requirements; and
3. A minimum lot size of 10,000 square feet.

OP responded that the District of Columbia has a performance-based approach to erosion control and storm water management in which the developer must direct net new water runoff into sewers, if available, or otherwise retain and manage storm water runoff on site. Op indicated that the city's existing regulations are more flexible for site planning.

Op argued that a substantial technical justification would be needed to consider these additional rigid restrictions in a public hearing. In addition, other sloping sites and hilltop locations often are highly desired home sites, and can be suitably managed to limit erosion and water runoff subject to the approval of the Storm Water Management Division of the Department of Consumer and Regulatory Affairs (DCRA).

In addition to the proposed rigid site planning standards that unduly limit site-planning flexibility, the imposition of this rule might have widely varying effects on different property owners. It potentially eliminates any possibility of matter-of-right home construction on some large properties, while leaving other properties unaffected or substantially unaffected. This potential "windfall" and "wipeout" impact has not been analyzed or justified. Further, the provision appears to be unnecessary, given the other provisions of the TSP zone which will have some effect in reducing the density of dwellings and the potential for specific damaging effects of future development, such as tree removal and excessive grading (because of the lot occupancy and impervious surface coverage limitations). For the foregoing reasons, OP recommended not to include these additional restrictions in the Notice of Public Hearing.

The OP report concluded by recommending that the Commission schedule a public hearing to consider mapping the tree and slope protection overlay district in the Chain Bridge Road/University Terrace neighborhood, including the text referenced in the report regarding maximum lot occupancy and impervious surface coverage.

At its regular public meeting on August 4, 1997, the Zoning Commission reviewed and considered

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the petition and the OP preliminary report and authorized a public hearing for the case. The Commission also indicated that it would consider the TSP overlay in combination with the existing R-1-A and R-1-B base zoning in the affected area.

In the public hearing notice the Commission indicated that it would consider the request of the petitioners, the alternative proposal of the Office of Planning (OP), any modifications or alternative proposals that are presented and reasonably related to the scope of the proposed amendments set forth in the notice. Additionally, the Commission indicated that it would hear testimony on only one of the petitioner's restrictions and may consider rezoning the R-1-B part of the area to R-1-A.

The law firm of Wilkes, Artis, Hedrick and Lane, representing the owners of a subdivided property at 2960 Chain Bridge Road (Square 1425, Lots 18, 19, 20, 21), in a letter dated September 3, 1997, urged the Commission to reconsider its decision of August 4, 1997, to hold a public hearing for the proposed overlay based on the OP recommendations or the amended petitioner's request instead of the original petition which the Commission set down.

The law firm indicated that its clients bought the property after the previous owner had legally subdivided it into five buildable record lots. The original proposal restricts and prohibits the development of the property as subdivided. Any compromise reached with the petitioners cannot be implemented as a result of the set down of the case and the resultant-vesting rule. The firm added that the petitioners and its clients have agreed for the property to be re-subdivided into four buildable lots instead of five. The petitioner's modified proposal (text and map amendments) as suggested by the petitioning committee in its letter, dated August 28, 1997, reflected the compromise.

At the public hearing session, the Commission considered the proposed TSP overlay and heard the presentation of the petitioners and OP. The Commission also heard the testimony of about 13 witnesses. Ten of the witnesses were in support of the proposal; three witnesses representing some of the residents supported the proposal with modifications. The witnesses included the National Parks Service (NPS), ANCs 3D06, and 3D05. Some of the witnesses submitted only written testimony for the record. There were no witnesses in opposition.

Ms. Ellen McCarthy, an expert witness for the petitioners, testified that the Chain Bridge Road/University Terrace neighborhood meets all the established criteria for the TSP overlay. She stated that the grade change from the high point of the ridge just below Loughboro Road to the base of Chain Bridge Road is 250 feet, and within that distance are a large number of areas in which the slope exceeds 25 percent, as illustrated on the topographic maps. The trees in the area are clearly dense stands of mature trees, not simply the yard or street trees one would find in the normal Washington subdivision. The area is immediately adjacent to Battery Kemble Park, and is also subdivided by a stream, which has been partially channeled, and then diverted into a storm drain under MacArthur Boulevard.

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The entire area is a residential neighborhood characterized by mature trees, steep slopes, streambeds, public open spaces, park-like spaces and several undeveloped lots, all of which could be subject to further development. Most of the area is zoned R-1-B with a small portion zoned R-1-A. The petitioners in part advanced the following rationale and discussion for the proposed overlay:

1. The proposed overlay would protect mature trees and the natural topography to the maximum extent feasible for a residential neighborhood. Section 1514.2 protects any tree over 75 inches in circumference, and prohibits cutting more than three trees of which any individual tree is 38 inches or more in circumference. The overlay also restricts only healthy trees, and that, if any provisions of the Overlay are violated regarding tree removal, no building permit may be issued for a period of seven years from the time the trees are illegally removed.
2. Although these provisions deal most directly with trees, they do provide protection for the natural topography, albeit indirectly. With the exception of one large parcel of land, which has already had substantial grade alteration, most of the remaining parcels with subdivision potential have a correlation between the sloped sections and those with stands of mature trees. While the original CBR version of the overlay contained more protection, which prohibited construction within 25 feet of a 25 percent slope, this provision was removed from the advertised version at the request of the Preservation Committee for a number of reasons.
3. The overlay will mitigate potential adverse impacts on adjacent parkland, stream beds and environmentally sensitive areas. While all the provisions of the overlay are geared toward meeting this objective, the proposal to establish a minimum lot size of 9,500 square feet is aimed most directly at this goal, as well as the fourth purpose listed above, which more explicitly calls for larger lot sizes to avoid overwhelming existing infrastructure capacity. Clearly, any provision, which reduces the density of development, reduces the threat to the character of the area, both to the parkland and to the semi-rural character of the existing neighborhood.
4. The overlay will restrict ground coverage in order to keep new development compatible with the existing character of the neighborhood. Limitations on ground coverage are also important components of dealing with storm water drainage and erosion control. The TSP restricts lot occupancy to 30 percent, and with no more than 50 percent of the lot covered by an impervious surface. The CBR proposal modifies these percentages slightly, since they were originally developed to deal with Woodland Normanstone area, which was zoned entirely R-1-A, and whose lot sizes generally exceed that amount. Thus, on a large lot of at least 7,500 square feet, a 30 percent lot coverage would mean a house with a footprint of 2,250 square feet, and a total impervious surface (house, driveways and walkways, tennis courts and swimming pools) of 3,750 square feet.

By memorandum (hearing report), dated November 10, 1997, and through presentations at the public

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hearing. OP reinforced its preliminary report and recommendation that the area in question is suitable for the TSP Overlay. OP also indicated that the Commission agreed to expunge two special additional restrictive provisions: (a 12 foot side yard requirement and a minimum lot size of 10,000 square feet), but agreed to hear testimony regarding a prohibition on construction within 20 feet of a slope of 25 percent or more.

OP indicated that the TSP overlay was adopted in 1992 in Zoning Commission Order No. 713 for the purpose of protecting the Woodland-Normanstone neighborhood from unsuitable development practices in areas that are forested with a steeply sloping character.

OP testified that the TSP overlay is an appropriate means of maintaining the integrity of neighborhoods that are adjacent to streams and parks. The TSP overlay is also designed for residential neighborhoods that have a significant quantity of steep slopes, have stands of mature trees, are located at the edge of stream beds or public open spaces, and have undeveloped lots and parcels subject to natural terrain alteration and tree removal.

OP stated that the TSP Overlay is not suitable in neighborhoods where nearly all lots are already developed on a rectangular grid system and where existing mature trees are either yard or street trees.

It added that the principal streets in the area are curvilinear, reflecting the topography, rather than being laid out on a rectangular street grid. OP concurs with the petitioners' statement: "As a result of the large wooded lots and the steep slopes, the area has a park-like, semi-rural character which is extremely rare in the District."

In conclusion, OP recommended that the Zoning Commission adopt the advertised Tree and Slope Protection Overlay District in the Chain Bridge Road/University Terrace neighborhood. OP also recommended adopting the advertised rezoning to R-1-A and the text amendments referenced in this report as to lot occupancy, 55 percent impervious surface coverage and the provision regarding building rights of properties formerly zoned R-1-B.

There was no opposition to the objectives of the overlay or the overlay itself. The following is a summary of the testimony presented by those who testified in support of the proposal.

Phil Mendelson, (ANC-3C Commissioner) testified on behalf of the ANC. He stated that the Ward 3 Plan not only supports but also encourages the mapping of the TSP Overlay in hilly areas throughout the Ward. He added that the TSP is consistent with the Ward Plan, which follows the format of the first 11 elements of the Comprehensive Plan. He further testified that the TSP overlay would provide adequate protection for environmentally sensitive areas.

National Park Service (NPS) representatives in supporting the overlay in part, testified as follows:

1. Large extensive tracts of forest are of greater value to breeding birds than are smaller, isolated patches of forest. In small forest patches there are greater numbers of nest predators,

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such as crows, blue jays, chipmunks, and raccoons, or brown-headed cowbirds (nest parasites) that thrive in agricultural and suburban environments. As the overall amount of Tree and forest cover in a region increases, so increase the abundances and nesting success of forest birds in that region.

2. Small forest tracts in urban/suburban environments are especially valuable to migrating Songbirds because they require stopover areas for feeding (refueling) during northward and Southward journeys of 1,000-2,000 miles in distance. Without adequate stopover sites along the way, most migrants would perish on the journey. Some Scientists believe that it is the gradual loss of these stopover sites that poses the greatest threat to migratory birds.
3. The maintenance of higher densities of large native trees in older suburban developments increases the “connectivity” of the landscape. This makes it easier for birds to move through the landscape, either in migration or when young birds are dispersing away from their nesting areas. At both times, birds are extremely vulnerable to predation and require safe habitats through which to move.
4. The proposed overlay will provide a buffer forest for Battery Kemble Park, protect migratory birds and improve on the quality and quantity of water draining into Battery Kemble Creek and the Potomac River.
5. Battery Kemble Park and its stream are part of a much larger matrix of parkland. There has been a 90 percent reduction in breeding pairs of migratory songbirds; and mature stands of timber in an island such as Battery Kemble Park will not ultimately support those songbirds without buffer areas of mature trees.
6. The wood thrush, the official bird of the District, is an endangered songbird in dire straits.

The following is a summary of the testimony of the residents and neighborhood civic associations that participated in the public hearing. Some of the witnesses expressed concern over the exclusion of certain properties with the same topographical park-like and vegetation characteristics.

1. The portion of Maddux Creek from MacArthur Boulevard and Canal Road is Discovery Creek, a special place visited by over 15,000 school children and their families each year. No tree is so large that it takes 18 first-graders, hand in hand, to go all the way around. The health of the creek and the forest are vitally interconnected to the wooded slopes on private residential property surrounding the Headwaters of Battery Kemble.
2. The Redmond property that spurred this initiative is an example of what could happen elsewhere without the overlay. Mature trees have been cut down and it has been subdivided into

Four lots for the development of large houses, the land has been leveled and the result will

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be water washing down onto University Terrace where there is no storm sewer. An Alternative we achieved was for five families to buy an adjacent half-acre lot and covenant not to develop it.

3. John Sullivan of University Terrace testified that he is totally in support, but the heavily wooded and sloped area with a number of vacant lots across the street from him (north of the Western area of the proposed boundary and owned by Gilbert Hahn) should be included in the overlay.
4. Tony Ahuja, a property owner supports the overlay, but is concerned about what will happen when he sells his 1,800 square-foot houses on a 10,000 square foot lot. He argued that the restriction on lot occupancy will reduce the size of the buyer's new house and in turn reduce the price. He indicated that his lot coverage would be reduced to 31 and one-half percent, but the wooded area across the street and out of the overlay area would have a full 40 percent coverage. He suggested that the boundary line should be moved to incorporate that property, making them all equals, or the lot coverage limit be increased.

At the close of the public hearing, the Commission left the record of the case open for 55 days for witnesses to submit additional information or supplemental testimony, addressing some of the issues that arose during the course of the hearing; and 69 days for specific information requested from OP and the petitioners.

By a post hearing submission, dated July 2, 1998, the petitioner expressed its view on major contentious issues to be decided by the Commission when the record closes by stating as follows.

“The advertised CBUT text reflects a number of very significant compromises on the part of the Committee and the Office of Planning. Foremost among these is the absence of strong provisions regarding construction on and around steep slopes. Another provision abandoned prior to advertisement was that which provided for large sideyard setbacks. We also cut back our proposed minimum lot size to 9,500 square feet”.

The Petitioner, in explaining the compromise further stated as follows: “The proposal as advertised already represents very reasonable compromises on our part. We believe that the provisions are defensible, reasonable and appropriate for TSP mapping. The provisions include:

1. A minimum lot size of 9,500 square feet. This goes to the very essence of our purpose: Preservation of the unique character and setting of our neighborhood; and the maximum impervious surface coverage of 50 percent. Given the availability of special exceptions and the large minimum lot size, we feel there is no justification
2. We support compromise language regarding lot occupancy (dwelling coverage) offered at the hearing. This language would provide for phased reductions in maximum lot occupancy from the current 40 percent to 30 percent for lots 10,000 square feet and larger.

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3. With respect to tree removal, we would not have an objection to adoption by the Commission of the full current TSP language contained in section 1514 of the Zoning Regulations.
4. With respect to the borders of the area to be mapped, one of the speakers at the hearing raised an issue regarding the borders of the proposed overlay. Specifically, it was suggested that the Commission consider whether the northern border of the proposed overlay area on the west side of University Terrace, N.W. be moved so as to include additional properties to the north that were appropriate for TSP mapping.
5. Our proposal was a very careful process by which appropriate borders were developed, and reflects the Commission's well-established criteria, as well as our desire for an integral overlay area. However, our Committee has no objection to the Commission's consideration of additional properties for inclusion in the overlay that it determines meet the criteria for TSP mapping."

Woodland-Normanstone Neighborhood Association (WNNA), in a letter dated October 5, 1998, offered a clarification on how trees are determined to be unsafe, or unhealthy as there has been problem with tree cutting under the above circumstance. The WNNA suggested language to amend section 1514 of the Regulations that deal with identification of unhealthy and unsafe trees as follows:

Amendment to Subsection 1514.1(b). Change last sentence to read:

The need for removal of any such tree shall be certified by an arborist certified by the International Society of Arboriculture (hereinafter ISA certified arborist).

Add: Subsection 1514.1(b):

- (b) 1. Permission to remove any tree certified as dead, unhealthy or unsafe within the meaning of 1514.1(b) shall not be granted unless and until abutting property owners (including those across any street or alley), and the ANC have received notice and an opportunity to submit a contrary certification by an ISA certified arborist. Notification shall be by mail.
- (b) 2. Permission to remove any such certified tree shall not be granted where the property owner refuses access to the property by an ISA certified arborist engaged by abutting property owners or the ANC for the purposes of making a certification provided for in subsection 1514.1(b) 1.
- (b) 3. If a contrary certification is submitted within 14 days of receipt of the applicant's Certification of death, poor health or unsafe condition of any protected tree, a public

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hearing shall be held by the Board of Zoning Adjustment (with the conditions Specified in Section 3108 of this title) to determine whether permission to remove any protected tree should be granted.

By memorandum, dated July 20, 1998, and in response to the Commission's request regarding the boundary expansion issues raised at the public hearing, OP compared and contrasted the proposed overlay with the targeted properties that were proposed to be included in the overlay.

OP indicated that the boundaries proposed by the community in its petition reflect both the coming together of the community in an attempt to preserve the special park-like character of the area in which community members live and the specific criteria in the Zoning Regulations for mapping the Tree and Slope Overlay. These property owners publicly recognize the overall value of the overlay to the whole community. It was the strong desire among the petitioners to move forward with the full or general support of all property owners within the overlay boundaries that apparently led to the decision not to include the underdeveloped area northwest of the proposed boundary between University Terrace and Arizona Avenue, especially when the owner of the largest property clearly indicated his lack of support for the proposal, otherwise, the potential expansion area would have been included in the initial proposal.

OP also indicated that the overlay would be strengthened if extended all the way north to Loughboro Road at the termination of Arizona Avenue and University Terrace. An alternative would be to draw the boundary south of the fully developed area adjacent to Loughboro Road, excluding the developed areas along University Terrace and Arizona Avenue.

OP noted many similarities between the properties outside of the proposed overlay and those within the proposed overlay. Given that the primary purposes of the proposed overlay, and given the similarities of the area, OP recommended that the originally advertised boundaries be extended to encompass lots 21, 23, 28, 907, 921, and 947 (now-subdivided into lots 38, 41, 42 and 43) in Square 1426.

OP, by a memorandum (Hearing Summary) dated August 31, 1998, highlighted the points made by the witnesses at the public hearing. The report restated the modifications sought by some of the witnesses and pointed to the over-all support enjoyed by the TSP proposal. It referenced the boundary expansion issue and urged the Commission to base its decision on the objectives of the TSP and the suitability of the area for the TSP overlay.

At its regular monthly meeting on September 14, 1998, the Zoning Commission reviewed and discussed the overlay in the context of the May 18, 1998 public hearing submission in the case. The Commission took proposed action to approve the petitioners proposal with the modifications made thereto as a result of testimony and OP recommendations. Additionally, the Commission deferred discussion on the boundary extension issues.

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The Commission believes that the concerns and views expressed at the public hearing proceedings have been thoroughly discussed, considered, and balanced.

The Commission believes that the Chain Bridge Road/University Terrace area meets all the criteria for a TSP overlay. The Commission further believes that it has accorded ANC-3D the “great weight” to which it is entitled.

A Notice of Proposed Rulemaking was published in the D.C. Register on April 16, 1999. It was also referred to the Office of Corporation Counsel (OCC), the Zoning Administrator and the National Capital Planning Commission (NCPC) for review and comments.

NCPC, by report dated January 7, 1999, indicated that the proposed amendments to the Zoning Regulations and Map of the District of Columbia to create and map the Chain Bridge Road /University Terrace TSP Overlay District and to rezone the R-1-B properties within the overlay boundaries to R-1-A is consistent with the Federal Elements of the Comprehensive Plan for the National Capital.

Additional comments were not received as a result of the publication of the Notice of proposed rulemaking .

The Zoning Commission believes that the proposed overlay (Text and Map amendments to Chapter 15 of the Zoning Regulations) will provide the mechanism to protect the character of the neighborhood and preserve the sensitive topography and park-like nature of the area.

The Commission believes that its decision to approve the overlay as set forth in this order is in the best interests of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations, Zoning Map, and Zoning Act. and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the following amendments to the Zoning Regulations and Map:

A. Title 11 DCMR, Chapter 15, Miscellaneous Overlay District is amended as follows:

1565 **CHAIN BRIDGE ROAD/UNIVERSITY TERRACE OVERLAY DISTRICT (CB/UT).**

1565.1 The Chain Bridge Road/University Terrace (CB/UT) Overlay District is established to preserve and enhance the park-like setting of the Chain Bridge Road/University Terrace area by regulating alteration or disturbance of terrain, destruction of trees, ground coverage of permitted buildings and other impervious surfaces, and by

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providing for widely spaced residences.

1565.2 The purposes of the CB/UT Overlay District shall be as follows:

- (a) To preserve the natural topography and mature trees to the maximum extent feasible in a residential neighborhood;
- (b) To prevent significant adverse impact on adjacent open space, parkland, stream beds, or other environmentally sensitive natural areas;
- (c) To limit permitted ground coverage of new and expanded buildings and other construction, so as to encourage a general compatibility between the siting of new buildings or construction and the existing neighborhood; and
- (d) To limit the minimum size of lots so as to prevent significant adverse impact on existing infrastructure, especially on traffic and pedestrian safety and to achieve the other purposes listed in this subsection.

1565.3 The Chain Bridge Road/University Terrace Overlay District applies to the area north of MacArthur Boulevard on the south, Battery Kemble Park/Chain Bridge Road on the east, Loughboro Road/Nebraska Avenue on the north and west of University Terrace on the west.

1565.4 The properties that are contained within the boundaries of the CB/UT Overlay District, include lots 826, 829, 839-843, 845-847, 849-851 and 853-857 in Square 1409; lots 829 and 830 in Square 1410; lots 803, 806, 807, 829, 830, 832, 840 and 841 in Square 1411; all of Square 1425; lots 11, 15-18, 20, 22, 831, 835, 851, 855, 859, 861, 863, 864, 898, 899, 902-905, 912, 914, 931, 937, 938, 940 and 948-958 in Square 1426; and all of Square 1427.

1565.5 The CB/UT Overlay District is a residential neighborhood that has steep slopes and substantial stands of mature trees, is located at the edge of stream beds and public open spaces, and has undeveloped lots and parcels subject to potential terrain alteration and tree removal.

1566 GENERAL PROVISIONS

1566.1 The CB/UT Overlay District is mapped in combination with the underlying residential zone district and not instead of the underlying district.

1566.2 Where there is a conflict between CB/UT overlay and the underlying zoning, the more restrictive provisions of this title shall govern.

1567 GROUND COVERAGE RESTRICTIONS

1567.1 The principal building and any accessory building on the lot shall not exceed total lot occupancy of thirty percent (30%); Provided that on lots of 6,499 s.f. or less, the maximum permitted lot occupancy shall be forty percent (40%); on lots of 6,500 s.f., to 8,999 s.f. the maximum permitted lot occupancy shall be thirty-five percent (35%) but not less than 2,600 s.f.; and on lots of 9,000 s.f. or more, the maximum permitted lot occupancy shall be thirty percent (30%) but not less than 3,150 s.f.

1567.2 The maximum impervious surface coverage on a lot shall be fifty percent (50%); Provided that the following conditions are met:

- (a) This subsection shall not preclude enlargement of a principal building in existence as of the effective date of this chapter; and
- (b) This subsection shall not create nonconformity of a structure as regulated by chapter 20 of this title.

1568 LIMITATIONS

1568.1 Except as provided in § 1568.2, constructing a building, accessory building, or an addition to a building, or creating any impervious surface area, subdividing any unimproved lot, subdividing any improved lot so as to increase the number of principal structures thereupon shall be permitted as a matter-of-right only if the following tree removal limitations are complied with:

- (a) No tree that has a circumference of seventy-five (75 in.) or more at a height of four and one-half feet (4½') above ground shall be removed, cut down or fatally damaged;
- (b) No more than three (3) trees that have a circumference of more than thirty-eight inches (38) at a height of four and on-half feet (4½') above ground shall be removed, cut down or fatally damaged, and none of these shall be located within twenty-five feet (25') of any building restriction line or lot line abutting a public street
- (c) The total circumference inches of all trees removed or cut down on a lot shall not exceed twenty-five percent (25%) of the total circumference inches; Provided, that this section shall not abrogate the right to remove or cut down up to three (3) trees as provided in paragraph (b); or any tree having a

circumference of twelve inches (12) or less at a height of four and one-half feet (4½') above ground.

- 1568.2 The prohibitions of § 1568.1 shall not apply to the removal or cutting down on any dead or unhealthy tree or a tree that creates an unsafe condition. The need for removal of any tree shall be certified by a tree care professional certified by the International Society of Arboricultural.
- 1568.3 A special exception must be obtained for a building permit for a site on which trees were removed, cut down or fatally damaged prior to the effective date of these regulations, if the removal, cutting, or damage:
- (a) Would have been prohibited by § 1568.1; and
 - (b) Occurred within seven years of the application date.
- 1568.4 The minimum lot size for homes within the CB/UT Overlay district shall be 9,500 s.f. for lots subdivided after the effective date of this provision.

1569 SPECIAL EXCEPTIONS

- 1569.1 Any exception from the requirements of this chapter shall be permitted only as a special exception, if approved by the Board of Zoning Adjustment after public hearing, in accordance with the conditions specified in Section 3108 of this title, and subject to the following requirements:
- (a) Tree removal, grading, and topographical change shall be limited to the maximum extent consistent with construction of a building permitted by the standards of this chapter;
 - (b) The applicant shall demonstrate that there are specific physical characteristics of the lot that justify the exception;
 - (c) The excepted building and overall site plan of the lot shall be generally consistent with the purposes of the CB/UT Overlay District and not adversely affect neighboring property; and
 - (d) The Board may impose requirements as to design, appearance, tree protection practices during construction, buffering, and other requirements as it shall deem necessary to achieve the purposes of this chapter, and may vary side and rear yard requirements in order to achieve the purposes of this chapter.

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1569.2 Before taking final action on an application, the Board shall submit the application to the following agencies for review and written reports:

- (a) The Office of Planning;
- (b) The Department of Public Works, Tree Maintenance Division;
- (c) The Department of Recreation and Parks;
- (d) The Department of Consumer and Regulatory Affairs, Soil Erosion Branch; and
- (e) The National Park Service, U.S. Department of Interior.

1569.3 An applicant for an exception shall submit at least the following materials:

- (a) A site plan for development, including computation and illustration of total lot occupancy and impervious surface ratio, and regulated trees proposed to be removed; and
- (b) A plan and statement indicating how trees to be preserved on the lot will be protected during the construction period, including reference to proposed procedures to guard against long-term damage by such factors as soil compaction.

B. The proposed amendment to the Zoning Map is as follows:

Rezone from R-1-B to CB/UT/R-1-A:

Those lots now zoned R-1-B in squares numbered 1409, 1410, 1411, 1425, 1426 and 1427.

Vote of the Commission taken at a public meeting on September 14, 1998, 5-0: (John G. Parsons, Angel F. Clarens, Anthony J. Hood, Herbert M. Franklin, and Jerrily R. Kress, to approve).

This Order was adopted by the Zoning Commission at its regular public meeting on June 14, 1999, by a vote of 5-0: (John G. Parsons, Angel F. Clarens, Anthony J. Hood, Jerrily R. Kress and Herbert M. Franklin, to approve)

In accordance with the provision of 11 DCMR 3028, this order shall become final and effective upon publication in the D. C. Register that is on JUL 30 1999

Z.C. ORDER NO. 863

CASE NO. 97-6

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A handwritten signature in black ink, appearing to read 'Angel F. Clarens', written over a horizontal line.

ANGEL F. CLARENS

Chairman

Zoning Commission

ZCO863/VCE