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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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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 the sign-up sheet.

The order of procedure will be as follows:
preliminary matters followed by organizations and persons in

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

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

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

21 Please turn off all beepers and cell phones at this
22 time so as not to disturb the proceedings. Now the Commission
23 will consider any preliminary matters. I have several
24 preliminary matters before me. Is there anything I'm not aware
25 of, Mr. Bastida?

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

6 CHAIRPERSON MITTEN: Thank you, Mr. Bastida. The
7 first item is in our previous hearing we had a request by the two
8 ANC commissioners who were the dissenters to have some additional
9 time to present their side of things. We also now have a request
10 as I understand it from the Forest Hill Neighbors for Responsible
11 Preservation that as a group with the dissenting ANC
12 commissioners that they be given equal time to make a
13 presentation, a time equal to that that was given to the
14 commissioners.

15 The concept of equal time in the Zoning Regulations
16 is limited to contest the cases where the applicant has a burden
17 of proof and the opponents are making an effort to counter that
18 case. That is not the case in a rulemaking case. We allow the
19 petitioners some additional time to give us background
20 information and so forth. I would recommend to the Commission
21 that we maintain the time limits as they have been established.
22 Does anyone differ with that? Thank you.

23 There is no opportunity to be heard on this point.

24 The second is we have a series of requests from the
25 Forest Hill Neighbors for Responsible Preservation that relates

1 to the way that we proceed this evening. As I see it, I would
2 like to lay out several alternatives that encompass the request
3 that we've received. I guess the most severe that we can proceed
4 with this is to do as has been requested and dismiss this case
5 and send all the folks home to continue conversations on the
6 subject of the rulemaking.

7 Another would be to amend the setdown to conform
8 more closely to the proposal that is currently before us and
9 rescind the original setdown. We could do that and proceed this
10 evening or we could do that and postpone the hearing this
11 evening. We could also proceed with the rulemaking as it was
12 setdown with allowing the proponents to be heard tonight and at
13 the option of the opponents who now have as has been made clear
14 by our decision that they will not have additional time, if they
15 would like additional time to provide written testimony in
16 advance of giving their oral testimony so that the Commissioners
17 can be well prepared to ask questions after receiving the oral
18 summary, we would allow additional time and continue the hearing
19 if the opponents so desire to have that additional time.

20 Then the final option I suppose would be just to
21 postpone all the rest of the hearing entirely and hear both the
22 proponents and opponents at a later time. Now I would ask the
23 representatives of the Forest Hills Neighbors for Responsible
24 Preservation to come forward and just to respond to whether or
25 not you have a preference for having additional time before the

1 Commissioners to the options that are before us. There would be
2 additional time to provide the written testimony in advance of
3 your limited oral testimony.

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

8 CHAIRPERSON MITTEN: Certainly.

9 MR. KOGAN: I'm not sure I quite understand the
10 option on receiving written testimony prior to the opponents
11 having the opportunity to present oral testimony.

12 CHAIRPERSON MITTEN: One of the disadvantages as I
13 think you would perceive it having a limited amount of time is
14 that we will not fully understand your case while you are before
15 us in order for us to ask intelligent questions. Correct?

16 MR. KOGAN: I would agree with this.

17 CHAIRPERSON MITTEN: The way to counter that is for
18 you to submit detailed written testimony in advance of your
19 opportunity to make summary oral testimony which we would have
20 read and we would then be prepared based on your written
21 submission to ask the kinds of questions that are of importance
22 to us.

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

25 CHAIRPERSON MITTEN: Right. Do you have a

1 preference for that before the Commission decides how they want
2 to proceed? Would you prefer a postponement to give you
3 additional time or just proceed this evening as I assume you are
4 prepared to come forward?

5 MR. KOGAN: I think the consensus here is that we
6 would appreciate and welcome the opportunity to come back and
7 beforehand present you the testimony that we will have prepared
8 and then come back and present that testimony and respond to any
9 questions that you may have.

10 CHAIRPERSON MITTEN: Okay. Thank you. Now we will
11 see how the Commission wants to proceed. You can take your seat.

12 One of the options that would include proceeding with the
13 setdown that had the rulemaking as it had been set down would be
14 to proceed with the proponents this evening and then to continue
15 the hearing giving time in the interim for the opponents to
16 submit additional written testimony. What's the pleasure of the
17 Commission?

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

24 CHAIRPERSON MITTEN: No, I wasn't postponing it
25 indefinitely.

1 (Laughter.)

2 COMMISSIONER PARSONS: What was it then?

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

5 COMMISSIONER PARSONS: Okay.

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

8 COMMISSIONER PARSONS: As I understand it, then you
9 can proceed where I think we're going, I would certainly agree to
10 that we would hear from the proponents who have already expressed
11 an interest in testimony to proceed and then to find a date
12 certain for the opponents. I guess I shouldn't be this
13 pessimistic but if we don't get materials from the opposition,
14 then they are at their own risk.

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

17 COMMISSIONER PARSONS: I think they understand
18 that.

19 CHAIRPERSON MITTEN: Okay.

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

22 CHAIRPERSON MITTEN: Okay, any other thoughts? I
23 would concur with proceeding this evening with the proponents and
24 giving opponents additional time. The date for the continuation
25 would September 30, 2002. Mr. Bastida, when would we need to get

1 the submissions by in order for the Commission to have those in a
2 timely manner?

3 SECRETARY BASTIDA: I think it would be Thursday,
4 September 26 at 12:00 noon. That would be so I can prepare it by
5 Friday and give it to the Commissioners so they would have the
6 weekend to be able to read it prior to the hearing. Thank you.

7 CHAIRPERSON MITTEN: Does that work for the
8 opposition?

9 MR. KOGAN: That works.

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

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

18 CHAIRPERSON MITTEN: Thank you.

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

21 CHAIRPERSON MITTEN: All right. So now we'll ask -
22 -

23 VICE CHAIRMAN HOOD: Madam Chair?

24 CHAIRPERSON MITTEN: Yes.

25 VICE CHAIRMAN HOOD: I guess I don't want to say

1 anything because I don't want to stop progress for the opponent
2 piece because I think it's good to move forward but also I would
3 hope that we wouldn't show back up on the 30th and need to hear
4 from the proponents again so I guess I would like to hear from
5 the proponents and the opponents on the 30th so we can have where
6 we agree and disagree. As far as I'm concerned, we are all over
7 the place. We could try to come to some consensus and then we
8 can move forward. I would hate to show back up on the 30th and
9 have the same hearing that we are having here tonight. I just
10 wanted to put that on the record and also for everyone to hear.
11 Thank you, Madam Chair.

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

16 MR. KOGAN: Madam Chair, Phil Kogan, ANC 3F. In
17 making our request for time for the opponents to address the
18 Commission, we would ask for waiver of the rules so that we would
19 not be limited to the three minutes and five minutes because we
20 feel that there is a substantial amount of information we've
21 already obtained and collected that would be beneficial to the
22 Commission. We understand the rules as you laid them out that
23 this is not a contested hearing. But my understanding is that,
24 this is an information gathering procedure that we are in.

25 CHAIRPERSON MITTEN: Right.

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

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

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

20 CHAIRPERSON MITTEN: I understand that, Mr. Kogan.
21 I believe the sentiment of the Commission was expressed earlier
22 when there was no support for the idea of giving the expanded
23 time. What I'd like to say to you is there is nothing magic
24 about oral testimony versus written testimony. We understand it.
25 If you submit it in writing, we will be absorb the information.

1 We will ask questions based on the information that you put in
2 front of us.

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

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

18 CHAIRPERSON MITTEN: How long is the slide show?

19 MR. KOGAN: Twenty minutes.

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

25 VICE CHAIRMAN HOOD: I would agree with Madam

1 Chair. It's something to look forward to.

2 MR. KOGAN: Thank you. I agree. Thank you, Madam
3 Chair.

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

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

11 CHAIRPERSON MITTEN: Yes.

12 MR. JONES: I thought that you said it was the
13 original thing that was submitted.

14 CHAIRPERSON MITTEN: Yes, sir.

15 MR. JONES: Just now, you mentioned as you were
16 going to talk about that woman's adversity submitted or were you
17 going to talk about it as amended by the proponents. That's a
18 separate thing. I'm just trying to know what game we're playing
19 and the part we're playing in it.

20 CHAIRPERSON MITTEN: Okay, I think that's a very
21 good question. What is officially before the Commission is what
22 was set down. So what happens sometimes is there will be some
23 language set down and then there will be modifications proposed.

24 To the extent that those modifications are less onerous than
25 what has been proposed, we would not have to re-advertise.

1 To the extent that the petitioner, people
2 advocating for something, want less restrictive things imposed,
3 language imposed, we tend to follow the lead on that. So you
4 need to recognize the fact that we have more severe language
5 before us that was been set down but we're very mindful of the
6 fact that the folks that are proposing this have modified it. So
7 it's all out there but the language that has the most support
8 behind it is the modified language.

9 MR. JONES: So therefore the discussion should be
10 about the amended version and not about the original version.

11 CHAIRPERSON MITTEN: Right.

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

14 CHAIRPERSON MITTEN: But if you have some reason
15 why you think the amendment is inferior to the language that was
16 set down, we are interested in knowing that as well.

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

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

21 MR. JONES: Thank you.

22 CHAIRPERSON MITTEN: Thank you. Good question.

23 SECRETARY BASTIDA: Madam Chair, there are Notice
24 of the Hearing that are on the table by the entrance.

25 CHAIRPERSON MITTEN: Okay, so the language that was

1 set down and advertised is available on the table at the door.

2 Do we have the witness list up here yet?

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

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

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

9 CHAIRPERSON MITTEN: Yes.

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

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

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

19 CHAIRPERSON MITTEN: Fine. Thank you. Whoever is
20 testifying for Casey Trees did you sign in? Take a seat at the
21 table and I'll call up some other proponents and we'll have a
22 panel of four. Kenneth Katz, David Swanson, Ms. or Mr. Rachlin.

23 R-A-C-H-L-I-N. Ms. Hogan, why don't you go first since you have
24 a time constraint. You will have five minutes and the other
25 folks will have three minutes. Mr. Bastida, just on the clock,

1 five minutes on the first and then three on the others.

2 MS. HOGAN: Thank you, honorable Commissioners, for
3 taking me first today and I'm glad to be here as a representative
4 of Casey Trees Endowment Fund. I'm Sheila Hogan, Executive
5 Director of that organization. As many of you know, we are new
6 non-profit set up a little over a year ago to restore, enhance
7 and protect the tree canopy cover of the District of Columbia.
8 We are doing this in cooperation with District agencies, Federal
9 agencies and the community at large. Can you hear me okay?

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

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

1 CHAIRPERSON MITTEN: I just want to make sure that
2 your testimony is focused on the text amendment. Is it focused
3 on the text amendment or is it more general?

4 MS. HOGAN: It's more general in favor of the Ward
5 3 trees. Is that right?

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

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

13 CHAIRPERSON MITTEN: Okay.

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

21 For Ward 3, let me just point out some facts. Ward
22 3 has more trees than any other ward in the city. It accounts
23 for approximately 26 percent of the trees of our city. That said
24 that even Ward 3 during that 24 year period lost 52 percent of
25 its forested areas during 1973 to 1997. "Forested" being areas

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

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

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

22 Ward 3 lost 62 percent of its forested area on
23 private lands again between 1973 and 1997. On public lands, they
24 lost only 39 percent of its forested areas. The accusation that
25 the canopy loss is primarily again due to neglect of the street

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1 trees or other public space trees is just wrong.

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

10 (Indication of time up.)

11 CHAIRPERSON MITTEN: You need to summarize now.

12 MS. HOGAN: Okay. This very real public cost that
13 we will all be bearing as residents of the District of Columbia
14 needs to be figured into our zoning code and translope overlay
15 protection such as the one before you as a very important measure
16 for starting that process of incorporating and protecting of
17 those costs.

18 CHAIRPERSON MITTEN: Thank you. Can you wait until
19 the rest of the panel testifies before we ask questions or do you
20 need to go?

21 MS. HOGAN: Yes.

22 MS. RACHLIN: My name is Marjorie Rachlin. I have
23 been a resident of Brandywine Street in Forest Hills for 35
24 years. I was a commissioner in ANC 3F, the same district now
25 represented by Commissioner Baughman, for five years and I was

1 the ANC 3F Chair. We really need the overlay in my opinion and I
2 support the overlay as amended.

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

11 Then we had a subdivision on Albemarle Street that
12 simply just outraged the neighborhood. We organized and worked
13 with several other groups in the city to get the zoning
14 provisions on theoretical sites improved somewhat. This was done
15 before your Commission.

16 But all along, we have had a lot of problems along
17 Broad Branch Road which has a very steep slope going down to the
18 creek. That is a wooded slope. What we have always tried to do
19 is protect the woods and the views as you go along Broad Branch
20 Road because the park is right over there. We have had I would
21 say quite limited success in doing that. We're now facing, I can
22 see, another problem that will coming up in a couple of months on
23 that stretch.

24 When I was on the ANC, we talked about an overlay
25 but other things took priority because we were a very busy ANC

1 which turns out to have been a very unfortunate thing. The loss
2 of our trees affects not only the trees but of course it also
3 affects the Broad Branch Creek and Rock Creek environment. There
4 has been a lot of silting and erosion.

5 Now when you look at Forest Hills, of course we are
6 very desirable and very privy real estate. One reason for that
7 is that we have lots of trees. We have very low lot occupancy
8 and much of it is 15 or 20 percent. We have big setbacks, more
9 than is required and we have a lot of greenery. So people want
10 to live in Forest Hills.

11 Unfortunately many of the people who build
12 particularly in this time just don't care about that. We don't
13 have enough protection for us in that case. Case in point: a
14 builder up the street from me demolished the house, cut down all
15 the trees in the backyard and is slowly killing a 250 year old
16 oak in the front and put up a very large house. Now when he goes
17 to sell that house he is going to tell the buyer look in the
18 backyard, see all the greenery, see the shade, see you have a
19 lovely view. At whose expense? It's the neighbors that have had
20 the trees.

21 CHAIRPERSON MITTEN: You need to summarize.

22 MS. RACHLIN: It's a kind of expropriation in my
23 view. I feel very strongly also about limiting the setbacks or
24 the requirements of setbacks. I certainly hope you will adopt
25 them.

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

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

7 I have two personal things that I want to talk
8 about. The first relates to trees. Our house when we bought it
9 was on a plot mapped in the District in 1890. So we were one of
10 the earliest houses that we know of in the neighborhood. The
11 house had over 200 feet of frontage and there were lots of trees.
12 It was a lot that was cared for extremely well.

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

23 I mention that because it goes along with what
24 Marge was saying and what the K.C. Trees folks were saying is
25 that the trees need space. Development activities when they

1 occur there can be attempts to save trees on a property but many
2 cases at least in the past trees have been lost and we are the
3 losers.

4 The second thing is in our neighborhood we have a
5 very interesting situation. We have large diplomatic properties.
6 We have large homes. We have modest homes. We have small
7 homes. What we see happening in the neighborhood is that there
8 is tremendous economic pressure to convert small homes into big
9 homes. We are losing the basic diversity that we have at Forest
10 Hills. When we moved in, we had little kids. We had teenagers
11 and junior high kids in the neighborhood who we could use as our
12 babysitters, cutting grass and so on. That diversity has
13 disappeared. Ours is becoming a gentrified, very rich
14 neighborhood and I think that my guess is without protection to
15 the overlay, it could very well in 20 years become a high
16 pressured or a gated type of community. I know you probably
17 couldn't let that happen in D.C. but the pressure is there.

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

25 CHAIRPERSON MITTEN: Can you wrap it up now, Mr.

1 Swanson?

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

3 CHAIRPERSON MITTEN: Thank you. Now Mr. Katz?

4 MR. KATZ: My name is Ken Katz. I live on the 3400
5 block of Fessenden Street. That is the block of Fessenden Street
6 which is in zone of, as I understand it, R2 district in the
7 proposed overlay. Our inclusion in the overlay was in my opinion
8 similarly rejected by the Office of Planning report and I would
9 like to focus my comments on arguing for our inclusion.

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

24 Finally I would like to point out as the Office of
25 Planning Board report does that our neighborhood indeed as an R2

1 and as it currently exists does function as it's supposed to
2 buffer our adjacent R1 and R1D neighborhoods, the development
3 that they are, there are five developments on our other side. I
4 guess the point I would like to make is that if the overlay were
5 in effect and if our houses were torn down and rebuilt in
6 accordance with the overlay of course that our exact same houses
7 can be built. If our exact same houses already do meet the
8 prescribed function as acting as a buffer for our abutting R1 and
9 R1D neighborhoods, then I do not understand why we therefore
10 should not be included in 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 put up of
13 one of the trees in our neighborhood. Indeed it's a maple tree
14 shared between our house and the neighbor's house. I would just
15 like to emphasize that to whatever degree trees are important to
16 the character of Forest Hills, they are that much more important
17 to the character of our neighborhood. These large trees affect
18 every single neighbor and when for instance one of our neighbors
19 lost 100 year old silver oak --

20 CHAIRPERSON MITTEN: Summarize.

21 MR. KATZ: -- that affected the yards and porches
22 of pretty much half the neighborhood. One could mention the same
23 effect would be on any further destruction of trees. I would
24 just like to emphasize that I see no reason why we should not be
25 included in the overlay. I would strongly be in favor that we

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1 would be and hope that you would reflect that.

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

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

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

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

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

25 COMMISSIONER MAY: I think it's pretty obvious from

1 -- maps whether it appears.

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

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

6 CHAIRPERSON MITTEN: Mr. Parsons.

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

11 MR. KATZ: If you wouldn't mind me walking over, I
12 could put my finger on exactly where we are. If not, I could say
13 we are as you look at the map over there in the upper left hand
14 corner of the map. As you see Connecticut Avenue going in the
15 northwest direction and just about exiting off the map, you will
16 see those green parcels start to appear before they move more
17 northwest, easterly into Broad Creek, the larger section of Broad
18 Creek Park, and indeed abutting one of those green areas is
19 Fessenden Street. That's what I'm talking about.

20 COMMISSIONER PARSONS: And you are speaking about
21 the west side?

22 MR. KATZ: No, the east side.

23 COMMISSIONER PARSONS: Have you entered anything
24 more specific in the record to depict this area to the expansion?

25 MR. KATZ: I'm not proposing an expansion I guess

1 if I did not make that clear. Our neighborhood was included in
2 the original and in the current amended I believe overlay.

3 COMMISSIONER PARSONS: All right.

4 MR. KATZ: It was the Office of Planning that
5 recommended that our neighborhood be excluded from the overlay.

6 COMMISSIONER PARSONS: Because of the 25 percent
7 slope?

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

10 COMMISSIONER PARSONS: Thank you.

11 CHAIRPERSON MITTEN: Anybody else? I just had a
12 question about the summary of the canopy changes from Ms. Hogan.

13 When I look at these percentages, if you look at the Ward 3 just
14 as a reference point, I assume that as areas that are in the 50
15 percent to 100 percent canopy decline, they are picked up in
16 these other categories. Is that right?

17 MS. HOGAN: That's correct. That's why you see
18 increases in the others.

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

23 MS. HOGAN: Yes, I think it is reasonable. I think
24 much of Forest Hills benefits from that kind of canopy cover.
25 Part of that is because of the development practices that were in

1 place back then were perhaps a little bit more tree friendly and
2 a little bit less compacted and tree cutting in practice in the
3 construction industry. Part is that this house has been around
4 for a while and appreciation of trees and such. But I would say
5 that there are several lots where it just takes one very old
6 mature tree which people have testified to to shade over at least
7 one lot and perhaps even two lots.

8 CHAIRPERSON MITTEN: Okay, then Ms. Rachlin, when
9 you were mentioning a couple of cases where the community was
10 able to negotiate with a developer in the past and have the
11 number of dwellings reduced and so forth, was that reduction
12 aimed specifically at protecting trees? Could you turn on your
13 microphone when you respond?

14 MS. RACHLIN: The case that I mentioned in 1986 was
15 aimed at reducing trees and they got the trees reduced and some
16 old trees kept but it was also aimed at the reducing of the
17 houses.

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

24 MS. RACHLIN: Yes.

25 CHAIRPERSON MITTEN: Okay, thank you. Any other

1 questions for this panel? Thank you all.

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

6 COMMISSIONER MAY: Ms. McCarthy left the room.

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

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

10 MS. MCCARTHY: I'm sorry. Could you repeat the
11 question?

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

18 MR. MORDFIN: Initially we excluded the R2 zone
19 when we excluded all the different zones with the exception of
20 the R1-A because we felt that the way the overlay was written
21 that it applied more appropriately to the R1-A. However
22 subsequently we have a more disciplined report which we included
23 the other zones for the tree and slope protections only but not
24 for the other regulations and the bulk regulations having to do
25 with the lot size and lot occupancy and things like that.

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

4 MS. MCCARTHY: We considered, Mr. Parsons,
5 extending our recommendation of the tree preservation and slope
6 preservation aspects of the overlay. Our original report
7 excluded this area because it was zoned R2 and the lots were
8 completing developed and they were considerably much smaller
9 sized lots than originally considered within the overlay.

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

17 COMMISSIONER PARSONS: You are currently
18 contemplating that.

19 MS. MCCARTHY: Yes.

20 COMMISSIONER PARSONS: You haven't filed a report
21 yet.

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

24 CHAIRPERSON MITTEN: Thank you. All right, now we
25 will have Mr. Phil Feola representing the Edmund Burke School,

1 Virginia Worthington, Mark Clark and Joan Benesh. Go ahead, Mr.
2 Feola.

3 MR. FEOLA: Thank you, Madam Chair. For the
4 record, Phil Feola of the law firm of Shaw Pittman on behalf of
5 the Edmund Burke School. Actually the school is neither a
6 proponent or an opponent but there is no block for an "Other"
7 category. What we are hoping to do here today, the school is the
8 owner of four lots at Square 2243. The school is on Upton Street
9 slightly east of its intersection with Connecticut Avenue. The
10 second series of lots are right on Connecticut and Upton Streets.

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

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

1 Commission's attention of what appears to be a mistake in the
2 Notice of Public Hearing.

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

5 (Laughter.)

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

7 CHAIRPERSON MITTEN: Okay.

8 MR. FEOLA: And we like trees.

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

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

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

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1 have in the city.

2 Secondly the overlay protects Rock Creek Park and
3 the smaller parks adjacent to it. These parks provide
4 recreational facilities for all kinds of D.C. residents. Many
5 families live in apartments especially our poorest families and
6 the parks provide a place for these families to barbecue and
7 bicycle and enjoy the outdoors. I'm quite fortunate to have a
8 backyard of my own but for many people, the park is the only
9 thing that they have.

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

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

23 Over the last summer at least four developable
24 properties have come on the market including two vacant lots on
25 Broad Branch Road, bordering Rock Creek Park and a very large

1 property on Upton Street. If some restrictions are not put on
2 development now, the park-like quality of Forest Hills will be
3 gradually eroded away with each new development project. The
4 trees and green spaces are important for the whole city and it
5 would be terrible to see them gradually slip away. In
6 conclusion, I would urge you to approve the overlay with the
7 proposed amendments because it's good for the whole city.

8 CHAIRPERSON MITTEN: Thank you, Ms. Worthington.
9 Mary Clark. Before you start, can you turn on your mike?

10 MS. CLARK: I just want to say one thing. If the
11 Commission would like to see an aerial photograph of the tree
12 canopy.

13 CHAIRPERSON MITTEN: If you would like to submit
14 that for the record.

15 MS. CLARK: If someone wants that, I can give you
16 that. I am Mary Clark. I live at 4525 28th Street within the
17 overlay. I have lived in Forest Hills and this is my second
18 house in Forest Hills for over 24 years. The lot I'm currently
19 living on is almost 19,000 square feet and right now could in
20 fact be subdivided into two lots.

21 I would like to talk about two issues that I see
22 coming up and what I've heard the opponents saying that well
23 trees may have come down but that they planted trees in their
24 place. In the two houses that I lived in the neighborhood, we've
25 lost I think six large trees. Some of them have been from

1 natural causes or beetles or storms. I'm probably the only one
2 we know that has a van that two separate trees went through. But
3 some of them also went down because a neighbor built a swimming
4 pool in the development in a house that went in behind us.

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

9 The other thing I wanted to talk about is that I've
10 been referred to as a community activist. I was a PTA president.

11 I organized the girl's softball. I know a lot of people.
12 Everyone I run into and the majority of the people I see just on
13 a day-to-day basis are in favor of the overlay.

14 I came out of the Metro on Monday and ran into
15 someone passing out campaign literature. I asked her her
16 position on the overlay and she said "I'm sorry, I didn't write a
17 letter. I thought that it had passed. Everyone I know is in
18 favor of it." The people who are live north of Soapstone Valley
19 are in favor of the overlay.

20 Phil Kogan may be my ANC commissioner but I do want
21 the Commission to know that he does not represent me and he
22 doesn't represent my neighbor. The people of Forest Hills want
23 this overlay. Most cities would die for a neighborhood with
24 trees like those in Forest Hills. This overlay is designed to
25 protect those trees. I urge you to support that. Thank you.

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1 CHAIRPERSON MITTEN: Thank you, Ms. Clark. Ms.
2 Benesh.

3 MS. BENESH: My name is Joan Benesh and I live on
4 Linnean Avenue. As a resident of Forest Hills since 1965, I
5 guess maybe I'm one of the oldest residents, I have seen some
6 poorly conceived developments in our area and it continues daily.

7 Therefore I strongly support the Forest Hills Tree and Slope
8 Overlay which I really feel will provide certain safeguards
9 without being burdensome or punitive to present and future
10 landowners and homeowners.

11 In a sense our neighborhood is no longer Forest
12 Hills. We are losing our forest and we're moving our hills. It
13 will be a long time before we will ever see that again because
14 once these are gone, they're gone and there's nothing else to do
15 about it.

16 We did take a few photos, my husband
17 and I. I don't know how effective they are because they just
18 show you some construction. But I have to let you know what this
19 construction right across from Rock Creek Park on Broad Branch
20 was once a very wooded, heavily forested area on a very steep
21 slope. You will see from our pictures that that has changed
22 completely. We've lost a lot and I really look forward to seeing
23 the overlay put into place. Thank you.

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

1 VICE CHAIRMAN HOOD: Very quickly, I want to ask
2 Ms. Clark -- the process of getting of the word about the
3 overlay, would you say it's been a fair process regardless of
4 whether you're a proponent or opponent? Would you it's been a
5 fair process especially as far as disseminating the information
6 out?

7 MS. CLARK: Yes, there have been at least two
8 opportunities. I mean there have been several mailings and every
9 household had flyers delivered to it on at least two different
10 occasions plus all the other notices and public meetings.

11 VICE CHAIRMAN HOOD: Thank you.

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

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

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

23 MR. STEVENS: Thank you very much, Madam Chair.
24 Mr. Bastida is handing out I believe now written copies of my
25 testimony so you can have a chance to look at that later. I live

1 at 3100 Chesapeake Street, NW within the proposed Forest Hills
2 Tree and Slope district. I'm testifying on behalf of myself and
3 the Forest Hills Neighborhood Alliance of the District of
4 Columbia, a nonprofit organization dedicated to the preservation
5 of historic character of the Forest Hills neighborhood and its
6 homes and landscapes of historical and architectural distinction.

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

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

22 First, the Forest Hills Neighborhood Alliance began two years ago
23 when Forest Hills neighbors became concerned over the status of
24 the Owl's Nest, a turn of the century residence designed by
25 Washington architect, Hamilton Clark, situated on over two acres

1 of park like land in the center of Forest Hills. The Owl's Nest
2 is also in the center of the proposed tree and slope overlay.

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

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

1 Secondly I would like to address the issue of the
2 minimum lot size in R-1A districts within the proposed overlay.
3 Here just let me say that the proposed overlay would establish to
4 12,000 square feet as a minimum lot size replacing the current
5 7,500 square feet minimum. According to the Office of Planning
6 report, the average lot size at Forest Hills is 14,044 square
7 feet and the 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 be
10 increased. The 12,000 square foot minimum in proposed overlay is
11 appropriate. It would allow a substantial amount for the
12 subdivision within the neighborhood but still preserve the large
13 open spaces that accommodate the large trees in Forest Hills.

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

25 Finally, I would like to briefly address the issue

1 of community support for the proposed tree and slope overlay
2 district. I have not taken a scientific poll in our neighborhood
3 but I have conferred with all of our Board of Directors and our
4 Executive Committee and they fully support this position as they
5 support the overlay.

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

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

15 MR. FELDMAN: I'm Charles Feldman. I live at 2855
16 Davenport Street. I've lived in the community for 35 years. The
17 issue before this Commission is the relationship between trees
18 and lot size. On a 7500 square foot lot size which is now
19 selling for something like \$400,000, you can't put a small house.

20 You have to put a large house in relationship to the size and
21 price of the lot. But if you put a large house on 7500 square
22 feet and maybe a little swimming pool thrown in, you are going to
23 have to cut down all the trees. The trees you don't cut down are
24 going to die because of the root damage.

25 If you increase the lot to 12,000 square feet,

1 you'll have a lot more room in comparison to the price of the
2 house and the price of the land. So there will be a lot more
3 room for expansion and you'll be saving a lot more trees.

4 The other point I would like to make is about 20
5 years ago the lots were appraised separately from the house. My
6 lot was appraised per square foot a lot more than the lot next to
7 me or my neighbor across the street. When I went to inquire as
8 to why this was, the city said and the assessor said it was because
9 we had a lot more trees. So the city values lots of trees a lot
10 more than they do without trees. I don't know if that point was
11 brought out but it's something worth noting.

12 Also the trees, it hasn't been mentioned but they
13 also filter out the dust and produce oxygen. They also give the
14 community shade which helps to save electricity and for air
15 conditioning. So it's also beneficial to the city and to our
16 community. Thank you.

17 CHAIRPERSON MITTEN: Thank you, Mr. Feldman. Mr.
18 McHale.

19 MR. MCHALE: Thank you very much, Madam Chair and
20 Commissioners. Mr. Hood, I wish I had one of those slide shows
21 to present to everybody but I have to give a statement too and
22 that's what I prepared. My name is Jim McHale. I live at the
23 4900 block of 30th Place for the past 25 years. We've raised our
24 two sons in the house and it's our conclusion and our enjoyment
25 that the Forest Hills neighborhood meets the needs of the

1 families. It has terrific playground, terrific ballfield. We
2 can use the mall, many other desirable features. As you know, we
3 are near public transportation and because of the tree cover,
4 sometimes you would think you were in a rural area.

5 I've given a lot of thought to the overlay proposal
6 and I've concluded it should be adopted for four reasons. First,
7 the beautiful trees not only give Forest Hills its name but also
8 gives it special character. Much of what I can say was already
9 said more eloquently by other people I think by the National Park
10 representative, Mr. Swanson, and others. Let me tell you
11 how I became interested in this subject. About 15 years ago,
12 someone from outside the District attempted to buy the Peruvian
13 Embassy and develop it into townhouses. That's right at the
14 north end of our block. This of course was something that we
15 weren't comfortable with and ultimately the proposal expired.

16 But during that period, I had the privilege of
17 speaking to the Ambassador from Peru and he described the trees
18 in our neighborhood as the mums of Forest Hills. That's a poetic
19 phrase. It stuck in my mind. In the words of my neighbor, Susan
20 Barton, who is sitting in the back row and Mrs. Benesh, the
21 overlay would keep the forest in Forest Hills. It will also
22 provide as Mrs. Worthington said more general public benefits in
23 addition to what the park service representative said.

24 Second, I was particularly interested in what the
25 opponents had to say. I listened to them on a couple of

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1 occasions and their objections boiled down to one basic thought,
2 no more regulation. Well, that's a subject on which public
3 opinion blows hot and cold but it certainly has some elementary
4 appeal. So I tried to understand the opponent's point of view.
5 I attended two meetings, the ANC meeting in June and another
6 meeting that the ANC sponsored just last month to try to bring
7 the opponents and proponents together to see if we could meet on
8 common ground.

9 By the way I have known some of these opponents for
10 the time I lived in Forest Hills. I respect them. I wanted to
11 hear their thoughts. When they were done, I had respected their
12 strong feelings but I couldn't accept their reasoning.

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

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

25 MS. GELLERT: Susie Gellert.

1 CHAIRPERSON MITTEN: Thank you. Gellert.

2 MS. GELLERT: I live at 3101 Chesapeake Street, NW.

3 I moved into the Forest Hills from a part of the northwest
4 approximately 10 years ago. I heard Elton as referred to as a
5 treasure. Well, I think Forest Hills is a treasure. Both the
6 residents and the city have a responsibility to show compliance
7 stewardship over that area.

8 My personal inclination may be shows from an
9 example on my own property. We have a tree which was very old,
10 very large. I don't like it but it's in good health. It drops
11 things all over the yard all year long and you're rolling on the
12 black walnuts and picking up the mess and I couldn't cut it down.

13 Maybe that makes me a tree hugger but I couldn't do it because I
14 knew that it would be 100 years at least before there could be
15 anything there of that size to replace it. It would affect me
16 and the other people in our neighborhood.

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

25 The goal of zoning is not to maximize profit. So I

1 encourage you to adopt the tree and slope overlay. Just for a
2 last statement about what I have heard from the proponents, what
3 I see in both the literature delivered to my home in most of the
4 places and the meetings, I would have the opportunity at this
5 point to receive other things that they may certainly put in the
6 picture but there have been rather vague statements, things that
7 are absolutely inaccurate the way they've interpreted how the
8 trees look, the plan is already laid out and statements that are
9 almost in generating panic among people to get them to oppose the
10 tree and slope overlay. Thank you for your time.

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

15 Mel E-L-P-E-N or something like that. All right. Bob
16 Banks, did you want to testify? Mr. Woodworth from the National
17 Resources Defense Council come forward now. We're going to have
18 a panel of four again. John Eldred. Dennis Blumer. Just for
19 the ease of running the clock, we're going to have Mr. Woodworth
20 from the National Resources Defense Council first. You will have
21 five minutes and then the rest of the panel will have three
22 minutes. So just turn on the mike and state your name for the
23 record.

24 MR. WOODWORTH: Good evening, Madam Chair and the
25 rest of the Commission. My name is James Woodworth, National

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

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

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

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1 are big problems in the Potomac and really big problems in the
2 Anacostia.

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

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

16
17 So urban forestry management forwards us toward
18 meeting a lot of our environmental problems with trees: air,
19 water, community development. For those reasons, we are
20 wholeheartedly supporting this tree and slope overlay. Thank
21 you.

22 CHAIRPERSON MITTEN: Thank you. Mr. Banks.

23 MR. BANKS: Thank you, Madam Chairperson. I think
24 I am the --

25 CHAIRPERSON MITTEN: Would you just state your name

1 for the record?

2 MR. BANKS: Sure, my name is Bob Banks. I live at
3 4838 Broad Branch Road, NW. I am the most senior person who
4 testified evidently at this hearing because I built the house on
5 Board Branch Road when I got out of the Army after five years of
6 serving this great country. I built it on the GI Bill of Rights
7 and of course it's digressing to mention that the mortgage loan
8 was only four percent.

9 But in any case, I do have some things to mention
10 that have not been covered by the previous witnesses. First is
11 the use of dynamite on these trees. There's a very thin cover of
12 earth over much of the slope along Broad Branch Road. Underneath
13 that is very hard rock. I'm not a geologist so I'm not going to
14 describe it. But the fact is that in order to build houses along
15 Broad Branch Road extensive use of dynamite will be required.

16 For example, the folks next to us on the north want
17 to build a house on a unused portion of the lot which is
18 approximately one-quarter of an acre. In order to do that, they
19 will have to dynamite 37 trees. There's a graph or a chart of
20 the trees involved.

21 Of course that matter is exaggerated if you go to
22 the Peruvian Embassy which abuts us still the next property to
23 the north. It's 16 acres. It's a perfect site. It has been
24 mentioned once before that an offer to purchase that site will
25 reoccur. When it does, it's a perfect site for building 200

1 condominiums.

2 That goes to the fact that one thing that has not
3 been mentioned here which is very significant is when we built
4 our house 50 years ago the D.C. Highway Department took from us
5 the title to the last 60 feet. They intend to straighten and
6 widen Broad Branch Road so it can become a miniature interstate
7 highway. Of course that will add to the congestion, the
8 pollution and all the deteriorating factors that have been
9 mentioned here. Thank you very much.

10 CHAIRPERSON MITTEN: Thank you, Mr. Banks. Mr.
11 Eldred.

12 MR. ELDRED: Thank you, Madam Chair and members of
13 the Commission. I appreciate the opportunity to address you
14 tonight. My name is John Eldred. I live at 2939 Albemarle
15 Street. My wife and I have lived there 18 years. We strongly
16 support the proposal that is before you for consideration. We
17 believe that it's essential to prevent further degradation of the
18 character of our neighborhood.

19 We've experienced firsthand what can happen in the
20 absence of the sorts of protections that are in the plan that is
21 before. There's been previous testimony tonight about
22 development on Albemarle Street in the late 1980's in which five
23 or four very large houses were shoehorned into a previously
24 existing lot for a total of five homes. A very steep cut was
25 made to accommodate the driveway, removal of dozens of trees

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1 including 75 year old oaks. We lost one hickory tree on our lot
2 and two others we've had to fight and we spent a good deal of
3 money to try to save it. They tell it's just a matter of time
4 until they go and that's been a dozen years ago. Most of the
5 time, the oaks on our property are down at the end.

6 Over the years, we've continued to see in Forest
7 Hills continued development in particular, the raising of small
8 houses to put up large homes with essentially no yards and no
9 trees in order to maximize the profits. We believe this will
10 continue until this Commission adopts the tree and slope
11 proposal. Developers are still active.

12 Our lot is 121,000 square feet. Most of the houses
13 in the front half of that lot and the back half of that lot is
14 under current law and we're perhaps even assuming that if the
15 tree and slope overlay is subdividable. Indeed just two months
16 ago, I received an unsolicited letter, and I'll provide it to Mr.
17 Bastida and he can give it to you, from a developer who says "We
18 are an established real estate firm that represents several
19 builders and developers in deed land on which to build. If you
20 wish to sell or know of someone who is, please call us
21 immediately for fast results."

22 The tree and slope overlay is going to make our
23 backyard essentially while it still may be subdividable
24 unmarketable. That is an economic price that we are more than
25 glad to pay in order to achieve the protections that will

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1 maintain the character of our neighborhood.

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

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

6 CHAIRPERSON MITTEN: Thank you. Mr. Blumer.

7 MR. BLUMER: Madam Chairman, thank you very much.
8 My name is Dennis Blumer and I live at 2801 Davenport Street in
9 Forest Hills. My house is in a very heavily forested area and it
10 is the last house on the street before you get to Rock Creek
11 Park. My wife and I have lived there for 23 years. In order to
12 preserve what is the character of the neighborhood, we have not
13 cleared the land on our property in any way. It remains wooded
14 as it has been for many years.

15 You may know that this section of Davenport Street
16 is the old Civil War military road. You are probably aware that
17 substantial parts of this area had all the trees removed during
18 the Civil War to build the wooden forts and ramparts that
19 protected the Civil War in Washington. The clearing also
20 permitted clear fields and fire road, forts and batteries. There
21 are some batteries near my houses.

22 This area therefore has not a primeval forest. One
23 can plausibly argue that the area is only now recovering from the
24 clear cutting of the Civil War. One is hard put to find a tree
25 in some of the areas which is over 140 years old because they do

1 not predate the Civil War. But times and economics change. We
2 are clearing the land again at least the land adjacent to Rock
3 Creek.

4 On Monday, our people have testified as to this,
5 The Washington Post reported the tree canopy in Washington
6 declined 24 percent in the years 1972 and 1997. Clearly the
7 regulations are not protecting Washington as a whole as to its
8 tree canopy.

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

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

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

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

6 CHAIRPERSON MITTEN: You need to turn on your mike.

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

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

24 MR. WOODWORTH: Certainly my intention in getting
25 involved in this process was to learn how this overlay process

1 worked and to understand the grass roots efforts involved and the
2 process with your Commission. It is certainly on my agenda to
3 see where we can implement more of these particularly in this
4 part of the areas of the Anacostia.

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

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

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

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1 may need.

2 COMMISSIONER HANNAHAM: Thank you very much.

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

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

18 COMMISSIONER MAY: Can I add one thing to that
19 point?

20 CHAIRPERSON MITTEN: Sure.

21 COMMISSIONER MAY: I think that the input that the
22 Commission would welcome goes beyond just tree and slope overlay
23 aspects. In fact if you look at our upcoming calendar or if you
24 look at the calendar that we had from last year, there are plenty
25 of cases that have come before the Commission where we would have

1 liked to get some input from your organization or others in
2 support of this particular cause.

3 CHAIRPERSON MITTEN: All right. Thank you. I
4 think we have one last panel and then I'll just call for anyone
5 who didn't happen to sign up. Mr. Arendal. Cathy Wiss.
6 Brendan, I can't read your last name.

7 MR. HERRON: Herron.

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

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

14 CHAIRPERSON MITTEN: That's why I didn't go for
15 that one.

16 MR. ARENDAL: Madam Chairman, members of the Zoning
17 Commission, my name is Poul Arendal. I live at 3120 Appleton
18 Street which is within the Forest Hills tree and slope overlay
19 district for the past 20 years. I do strongly support the
20 overlay as it has been amended and encourage you to approve it.
21 My wife and I moved to Forest Hills because of the Anacostia adds
22 beauty and as being integrated into Rock Creek. There are many
23 kinds of trees, the wide varieties of homes that is supposed to
24 be proportionate to the size the lots.

25 Now recently we have seen some of these attributes

1 change for the worse. Lots of infill construction I think it's
2 called goes by subdividing lots and also building in our space
3 but also by destroying current houses and building houses and all
4 this is generally pushing the current zoning limits. Even in
5 some cases they have exceeded it as we have lawsuits trying to
6 scale it back.

7 As there's been clearing of large amounts mature
8 trees on previously undeveloped lots, building structures much
9 larger than the surrounding neighborhood and it's out of portion
10 to the neighborhood. The building are on steep slopes bordering
11 the Rock Creek and these buildings kind of escalate multiple
12 stories down the slope on one side.

13 Our concern is since we are so close to Rock Creek
14 and these very steep slopes if we have any underground water and
15 springs and stuff like that and then you do start, specifically
16 large construction, it will change the flow and we have cases of
17 soil erosion, sink holes at times. Sometimes we get the basement
18 flooded.

19 CHAIRPERSON MITTEN: I'm going to ask you to
20 summarize, Mr. Arendal.

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

25 CHAIRPERSON MITTEN: Thank you. Ms. Wiss.

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

7 After the June hearing, I was curious whether other
8 cities have zone districts requiring lot sizes as large as 12,000
9 square feet. I decided to compare Washington zoning with
10 Baltimore's and Richmond's. These are the closest cities to
11 Washington. They've been developed much the same way. All three
12 are within the Chesapeake Bay Watershed. What I found
13 surprised me. Both Baltimore and Richmond have zones for single
14 family detached housing that require much larger lots than
15 Washington's R-1A zone and far greater than 12,000 square feet.
16 Baltimore even has areas with minimum half acre lots. These
17 neighborhoods are much like Forest Hills. Recognizing them as
18 valuable assets to the city, Baltimore totes them on their
19 website as beautiful, tree lined and great places to live.

20 I then turned to New York City as a benchmark for a
21 very dense urban area. Astonishingly, this city of over eight
22 million people also has a low density zone with a lot size larger
23 than Washington's R-1A zone. But even more interesting is the
24 fact that New York has established a natural area zoning overlay
25 which has a minimum lot size of 12,500 square feet, almost

1 identical to what's proposed here.

2 This research confirms that not only is a 12,000
3 square foot minimum lot size very reasonable for a major city, it
4 is consistent with zoning for environmental protection.
5 Increasing the minimum lot size for new subdivisions in Forest
6 Hills when many developed lots are already larger than 12,000
7 square feet would help preserve a shrinking resource of the
8 District and maintain a healthy environment.

9 The letter I have filed with a full description of
10 my findings is attached. Since 1983, every mayor in the District
11 of Columbia has joined the Governors of Maryland, Virginia and
12 Pennsylvania in signing the Chesapeake Bay Agreement and its
13 directives, pledging to protect and restore the Bay's ecosystem.

14 The Agreement seeks to conserve and restore forests as habitats
15 vial to preserving the watershed and eliminate impervious
16 services near streams.

17 Many neighboring jurisdictions including Baltimore,
18 Richmond and Washington suburbs have designated riparian buffers
19 of a fixed width which most construction is prohibited. In
20 Washington, however more flexible tree and slope protection
21 overlay is a zoning tool used to protect forest and streams. The
22 difference is important. Several new houses now under
23 construction on Davenport Street and Chesterfield Place would not
24 have been permitted in Maryland or Virginia because they are too
25 close to a stream.

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1 CHAIRPERSON MITTEN: You need to summarize.

2 MS. WISS: Okay, the Forest Hills tree and slope
3 protection overlay does achieve the balance between the
4 District's commitment to preserve its natural resources and
5 reasonable development. I urge you to approve it with the
6 proposed modifications. Thank you.

7 CHAIRPERSON MITTEN: Thank you. Mr. Herron.

8 MR. HERRON: My name is Brendan Herron. I live at
9 2901 Albemarle Street. Mr. Bastida is handing out a Powerpoint
10 presentation. The front slide if you look at it is a 30 inch
11 diameter oak tree situated on the property across the street from
12 my house, a typical mature tree in Forest Hills with the average
13 age of approximately 100 years.

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

21 The new lot, the 11,000 square foot lot, had five
22 trees over 30 inches in diameter with approximate ages of 100
23 years old each. Sixty percent of those trees are now gone. One
24 was lost due to them moving a house beyond the existing side yard
25 lot line, the other house's on the street. One was lost due to

1 the size of the new house and one was lost for a new driveway.
2 The similar tree loss has occurred when the other lot was being
3 divided.

4 If you turn the next page, you can see the circled
5 area is one of those trees. If you look in the sky, you can see
6 the big opening as to where that tree used to be. It was exactly
7 the same size as the tree that you see. You can see what we've
8 lost. That's one of the three trees on the 11,000 square foot
9 lot. They are not coming back and this is why a minimum lot size
10 is very important.

11 The tree and slope lot provision would have limited
12 development to only one house on this lot. Space existed on the
13 lot to build a new larger house without impacting on the trees.
14 We would have been able to save in approximate combined diameter
15 of 180 inches or approximately 600 years worth of trees if the
16 tree and slope provision had existed with minimum lot sizes of
17 12,000 and side yard restrictions.

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

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1 just come in and start cutting down trees.

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

9 Thank you.

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

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

21 We now are in compliance with everything of the
22 amended proposals which are now some of the size of side scales
23 for 11 feet on one side and 25 on the other. I can't get my
24 permit out because I am not in compliance with the original
25 setdown. I sent a letter to you a couple of months ago at the

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

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

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

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

24 COMMISSIONER HANNAHAM: Madam Commissioner, I think
25 it was nice that Ms. Wiss doing a comparison of the cities. I

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1 was just curious about New York City. I have been away for a long
2 time but I'm curious as to where these areas are. I assume you
3 are talking about the city.

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

5 COMMISSIONER HANNAHAM: All five boroughs within
6 the city?

7 MS. WISS: That's correct.

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

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

16 COMMISSIONER PARSONS: I'm very impressed with your
17 letter of August 22, your initiative and thoroughness. The point
18 that I want to ask the Office of Planning is if they would
19 contact the Board to better understand this natural area. It
20 seems to be very comparative to what we are talking about. Your
21 letter says that four of these overlays have been established in
22 New York in Queens, Staten Island and Bronx.

23 MS. WISS: That's correct. I do have some of the
24 information on it. They protect more than just trees. New York
25 has a different situation than Washington. It's separate

1 islands. They have some tidal wetlands. They have serpentine
2 hills, deep slopes. Their steep slopes are 15 percent, not 25.
3 They protect different kinds of forests and glacial deposits and
4 things like that. So they are set up for a number of different
5 reasons.

6 COMMISSIONER PARSONS: So you already have copies
7 of this report.

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

10 COMMISSIONER PARSONS: I see.

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

12 COMMISSIONER PARSONS: I would certainly like to
13 look at it. If you could leave it with Staff and I could look at
14 it. Thank you.

15 CHAIRPERSON MITTEN: I have a follow-up question
16 for you too which is just to round out the information that you
17 presented. I would interested in knowing what of the areas that
18 are included in Baltimore whatever you are looking at. I guess
19 the Baltimore City.

20 MS. WISS: I looked at Baltimore City not county.

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

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

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

6 MS. WISS: Okay. Thank you.

7 CHAIRPERSON MITTEN: Thank you. Any other
8 questions for this panel?

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

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

15 VICE CHAIRMAN HOOD: Well, at least you're being
16 honest. I was just trying to figure out whether you were. Thank
17 you.

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

22 MR. MITCHELL: I would.

23 CHAIRPERSON MITTEN: Anybody else? You did or you
24 did not. You did. Sir, are you in favor as well? Come on
25 forward. Did you fill out some cards? All right. Are you just

1 testifying on your own behalf each of you? Mr. Mitchell, you can
2 go first.

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

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

13 I do want to point out that even though the area is
14 currently fully developed there are possibilities for
15 enhancements on the property. An example of that is at a newly
16 owned house in the area she is interested in building a garage.
17 She can do this under the proposed overlay. She will need to do
18 it in a smart way. There is a very large tree on her property
19 that we would like to see protected.

20 In the preparation of my letter, I know that
21 earlier this evening someone wanted to know what the number of
22 people were perhaps represented by Mr. Katz's comments. There
23 are ten properties on Fessenden Street. There are seven
24 properties on Ellicott Street right behind us. We get together
25 in an alley party twice a year. The tree and slope overlay was a

1 topic of discussion at our late June-early July alley party that
2 we had. As people heard accurate descriptions of the overlay,
3 they expressed support for it. In preparing that letter, there
4 was a lot of conversation so that the development of the letter
5 represented the interests of the neighborhood.

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

12 CHAIRPERSON MITTEN: Thank you, Mr. Mitchell. Go
13 ahead, sir.

14 MR. O'HARA: I am Martin O'Hara. I live at 3005
15 Albemarle Street within the area of the proposed overlay. I
16 simply want to say that we've been on this property for seven
17 years and as many of the other people have spoken would hope to
18 spend many years on this property. If there is some financial
19 sacrifice in not being able to subdivide it, so be it because
20 what we would like is to preserve the neighborhood as it now is.

21 I also want to state that contrary to any impression you may
22 have received everybody I've spoken to in our neighborhood is in
23 favor of this overlay. Thank you.

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

25 Any questions for Mr. Mitchell or Mr. O'Hara? All

1 right. Thank you. Any other proponents who would like to speak
2 this evening? Proponent?

3 Now what we said in the beginning was that we would
4 continue this hearing for the opposition only on September 30.
5 We will convene at 6:30 p.m. that evening. We would like any
6 written submissions to be delivered to the Office of Zoning no
7 later than noon on Thursday, September 26 so that the Commission
8 will have adequate time to prepare for the continuation of the
9 hearing.

10 The time constraints will be organizations will
11 have five minutes and individuals will three minutes and the
12 Forest Hills Neighbors for Responsible Preservation will have an
13 additional 20 minutes for the purpose of showing a Powerpoint
14 presentation. Is everyone clear about that? Then we had a
15 question. Does someone have a question? Come forward and state
16 your name for the record. Could you put the mike on and identify
17 yourself?

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

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

25 MR. GLUG: I think I'll speak now because I don't

1 know whether this position has been articulated.

2 CHAIRPERSON MITTEN: Let me ask Mr. Bastida to
3 start the clock.

4 MR. GLUG: I characterize myself as neutral because
5 I would like to see some action to preserve the trees and Rock
6 Creek and the nature of the neighborhood but I do not support the
7 particular position advocated by our Advisory Neighborhood
8 Commission. I am very concerned from a process point of view. I
9 think that it's premature for us as a community to put you on the
10 spot and to have brought you into it before we tried harder to
11 achieve some sort of consensus in the community.

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

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

23 I think there probably is a commonality of purpose
24 and that even though some people who through good faith and put a
25 lot of time and effort into the process thus far, it hasn't

1 achieved the result of being a community initiative. It's an
2 initiative of part of the community. Other parts of the
3 community are very unhappy about it. I think it would be worth
4 our spending more time trying to bring the both positions
5 together before we ask you to deal with both of the positions.

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

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

16 (Audience members saying no.)

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

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

22 CHAIRPERSON MITTEN: Thank you and you're actually
23 a good person to close with because I would like to just note as
24 we end this evening that I understand from someone's testimony
25 tonight that the ANC had some additional meeting or meetings in

1 the intermeeting time since our last hearing. I would encourage
2 continued dialogue in the community to help people understand
3 what's being proposed.

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

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

14 (Whereupon, the above-entitled matter concluded at
15 8:35 p.m.)

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