

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DISTRICT OF COLUMBIA ZONING COMMISSION
PUBLIC HEARING

TEXT AND MAP AMENDMENTS

Petition to adopt and map a
Chain Bridge Road/University Terrace Overlay Case No. 97-6

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

Monday,
May 18, 1998

The above-entitled matter came on for hearing, pursuant to notice, at 7:00 p.m.

BEFORE:

JERRILY R. KRESS Chairperson
ANGEL CLARENS Commissioner
HERBERT M. FRANKLIN Commissioner
ANTHONY HOOD Commissioner
JOHN G. PARSONS Commissioner

On Behalf of the Petitioner

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STAFF PRESENT:

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VINCENT ERONDU Office of Zoning
DAVE COLBY Office of Planning
BILL JOHNSON Office of Planning

I-N-D-E-X

| <u>TESTIMONY BY:</u> | <u>PAGE</u> |
|----------------------|-------------|
| PHIL MENDELSON | 7 |
| RICHARD NETTLER | 12 |
| LEONARD MEEKER | 14 |
| ARTHUR WATSON | 16 |
| JUDITH LANIUS | 24 |
| ROBERT DUEMLING | 36 |
| LUTHER CARTER | 39 |
| ELLEN MCCARTHY | 41 |
| ADRIENNE COLEMAN | 79 |
| DAVE MURPHY | 81 |
| BILL YEAMAN | 89 |
| SUSAN SELIGMAN | 91 |
| MARK SCHLEFER | 93 |
| JOHN SULLIVAN | 96 |
| TONY AHUJA | 100 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
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P-R-O-C-E-E-D-I-N-G-S

CHAIRPERSON KRESS: Good evening, ladies and gentlemen.
Good evening, ladies and gentlemen. I am Jerrily R. Kress, chairperson of the Zoning Commission for the District of Columbia. Joining me this evening are Commissioners Franklin, Hood, Clarens, and Parsons.

I declare this public hearing open.

The case that is the subject of this hearing is Case No. 97-6. Case No. 97-6 is a petition filed by the law firm of Robins, Kaplan, Miller, and Ciresi, LLP on behalf of the Chain Bridge Road/University Terrace Preservation Committee.

The petition requests the Zoning Commission for the District of Columbia to amend the Zoning Regulations and Map by adopting a Tree and Slope Protection (TSP) Overlay in the Chain Bridge Road/University Terrace area.

The stated purposes of the overlay are to protect and preserve the natural topography, mature trees, streambeds, and to deter the desegregation -- desecration of a historic cemetery in the area.

The TSP overlay also is intended to preserve the parklike setting of the area by regulating alterations or disturbances of terrain, destruction of trees, coverage of impervious surfaces, and by providing for widely spaced residences.

The targeted area for the proposed overlay includes all or parts of Squares 1409, 1411, 1426, and 1427, a contiguous area of approximately 44 acres.

The Zoning Commission will consider the advertised proposal, any modification thereto, or alternative proposals that are presented and reasonably related to the scope of the proposed amendments.

The specific proposal to amend the Zoning Regulations is contained in the notice of public hearing for this case. Copies of that notice are available for the public.

1 Notice of today's hearing was published in the D.C. Register on
2 April 10, 1998 and in the Washington Times on April 8, 1998.

3 This hearing will be conducted in accordance with the provisions
4 of 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning.

5 The order of procedure will be as follows:

- 6 1. Preliminary matters
- 7 2. Presentation of Petitioner
- 8 3. Office of Planning
- 9 4. Report of other Agencies
- 10 5. Reports of the Advisory Neighborhood Commissions
- 11 6. Persons in support
- 12 7. Persons in opposition

13 The commission will adhere to this schedule as strictly as
14 possible, and we're allocating for those individuals who wish to testify in support or in
15 opposition five minutes per person. Those presenting testimony should be brief and
16 non-repetitive. If you have a prepared statement, you should give copies to the staff
17 and orally summarize the highlights. Please give us your statements before
18 summarizing.

19 Each individual appearing before the Commission must complete
20 two identification slips and submit them to the reporter at the time you make your
21 statement.

22 If these guidelines are followed, and adequate record can be
23 developed in a reasonable length of time.

24 With that, I will turn it to the first item on the agenda, preliminary
25 matters.

26 MS. PRUITT-WILLIAMS: There are no preliminary matters,
27 Madam Chair.

1 CHAIRPERSON KRESS: Thank you. Second is the
2 presentation of the petitioner. Good evening.

3 MR. NETTLER: Good evening, Ms. Kress and members of the
4 zoning commission. My name is Richard Nettler. I'm with the law firm of Robins,
5 Kaplan, Miller, and Ciresi and we are here today on behalf of the petitioner.

6 I did have one request by a chair of ANC-3C if he could make a
7 brief statement, since he must go to an ANC meeting and we are willing to, if you
8 are, take him out of order.

9 CHAIRPERSON KRESS: We'll make a special exception. It is
10 very important that our ANC members be able to attend their ANC meetings. So,
11 thank you, we will allow, yes.

12 Thank you, Mr. Mendelson. You may begin.

13 MR. MENDELSON: Thank you very much and good evening. I
14 am Phil Mendelson. I am here tonight as an individual, not representing ANC-3C,
15 although I am chair of ANC-3C and a commissioner.

16 I am here as an individual because of two points that I bring
17 uniquely to the case before you. I am the author of the Ward 3 Plan, which gives a
18 legal basis for your consideration of this case, and I am a commissioner of ANC-3C,
19 the ANC which pushed for adoption of the Tree Slope Overlay Text to begin with,
20 and the only ANC within which the Tree Slope overlay is mapped, and the only ANC
21 within which the mapping of a second overlay was rejected.

22 As you know, zoning shall not be inconsistent with the
23 comprehensive plan by law. The Ward plans are part of the comprehensive plan,
24 and the plan for Ward three is unique in its structure.

25 It follows the format of the first 11 elements of the
26 comprehensive plan. "It supplements the plan and, for the most part, interprets the
27 comprehensive plan's more general objectives and policies. The Ward plan

1 attempts to apply the first 11 elements to the Ward."

2 The Ward three plan not only supports, but encourages the
3 mapping of the Tree and Slope overlay district. Recurring themes of the Ward three
4 plan are:

5 One, in-fill development must be carefully controlled.

6 Two, environmental qualities should not just be maintained, but
7 must be improved.

8 And three, map the Tree and Slope protection overlay in hilly
9 areas throughout the ward.

10 The articulation of these themes can be found throughout the
11 subsections of the Ward three plan dealing with housing, environment, urban
12 design, and land use.

13 The fact that references to the tree and slope protection overlay,
14 such as "the tree and slope protection overlay should be considered and adapted for
15 other park-like, hilly areas, such as the Potomac Palisades." The fact that
16 references such as these occur throughout the Ward three plan is no mere
17 coincidence.

18 I wrote these themes into the plan when I was a staff person to
19 Council member Jim Nathanson. And what I wrote was proposed by then-Council
20 member Jim Nathanson and adopted by the City Council because of the positive
21 experience ANC-3C had with the tree and slope overlay map for the Woodland
22 Normanstone area.

23 Two years ago, ANC-3C, my ANC, joined in a petition to the
24 Zoning Commission, to map the tree and slope overlay in an area that was rejected,
25 Springland Lane.

26 That case was quite different than the one before you now. In
27 that case, the bulk of the testimony focused on one development site, and the

1 Zoning Commission concluded that the overlay was not appropriate for such a
2 limited geographic area.

3 The only reason why I bring this up is because, in that case, the
4 zoning commission, in its order, noted several times that there were other
5 environmental controls that existed, other environmental regulations, such as the
6 Environmental Policy Act, which requires an environmental impact statement for
7 projects over a certain value.

8 And it seemed by everybody, including the citizens, that those
9 protections would apply, whether they were adequate or not, whether they were
10 adequate enough or not.

11 What we have found out since then, which is something that I
12 can bring to you today, is that the alternative regulations were not adequate. They
13 were not adequate because the environmental impact statement, which seemed so
14 obvious under the law, was not required.

15 And, in fact, all of the environmental controls that we expected
16 have not been applied.

17 I don't know if you have seen the news accounts, but the
18 development along Springland Lane has been somewhat of an environmental
19 disaster, with major regrading, complete clearance of wooded sites and slopes,
20 problems with mudslides, problems with obliteration, literally, of a stream that ran
21 through one of the development sites.

22 My point is simply this: that if there is the notion that there are
23 alternatives to the zoning controls that are available in the tree and slope overlay,
24 those alternatives, those regulations may, in fact, may not be adequate.

25 In conclusion, the mapping of the tree and slope overlay is not
26 only consistent with, but it is virtually mandated by the Ward three plan of the
27 comprehensive plan.

1 Moreover, the tree and slope overlay provides important
2 environmental protections for which there are no adequate substitutes.

3 Thank you very much.

4 CHAIRPERSON KRESS: Thank you. Questions, colleagues?

5 COMMISSIONER PARSONS: Yes. Is this site within your ANC?

6 MR. MENDELSON: The site before you?

7 COMMISSIONER PARSONS: Yes.

8 MR. MENDELSON: No, it is not. And that's why I'm not
9 representing ANC-3C.

10 COMMISSIONER PARSONS: Thank you.

11 CHAIRPERSON KRESS: Thank you very much for coming to
12 testify, and I'm glad we were able to get you in early with the help of the applicant.

13 MR. MENDELSON: Well, thank you very much.

14 CHAIRPERSON KRESS: Have a good evening.

15 With that we'll move back to the applicant. How much time, I
16 believe an hour was stated. We will then set aside the next hour. It would be really
17 helpful if we could make it less than an hour, but with that, this is now your
18 presentation.

19 MR. NETTLER: We have worked hard to try and do that, so we
20 will neither be repetitious or too long.

21 As you stated in reading the petition, this is on behalf of the
22 Chain Bridge Road/University Terrace Preservation Committee, which executive
23 committee is composed of Richard England, the chairperson, Conrad Caifritz, the
24 co-chairperson, Andrea Mitchell, Louisa Duemling, Arthur Watson, Leonard Meeker,
25 Phil Bernard, and Ivan Zabalayo.

26 You will hear testimony on how the Chain Bridge
27 Road/University Terrace Preservation Committee came together, and I will not go

1 into that.

2 But I do want to, as Mr. Mendelson did, start from the fact that I,
3 too, was here before you, before the Zoning Commission almost eight years ago
4 when the Massachusetts Avenue Heights area, which J. Carter Brown described as
5 a desecration as a result of one project brought before you for tree and slope
6 overlays.

7 This tree and slope overlay was not only mapped by the Zoning
8 Commission and with the intent that it apply to other areas around the city, it has
9 become a part of the comprehensive plan and, in fact, it has become, in some
10 sense, a part of a compact that the District has entered into with the states of
11 Virginia and Maryland to protect the Chesapeake, recognizing that the natural parks
12 in the District of Columbia and the streams that run through them and adjacent to
13 them have an impact beyond the District of Columbia and the Chesapeake itself.

14 We bring to you, I think, an area that has as legitimate a basis for
15 having this overlay as the Massachusetts Avenue Heights area did, and without
16 further ado, I would like to call our first witness, which is Leonard Meeker.

17 CHAIRPERSON KRESS: Thank you.

18 MR. MEEKER: Members of the commission, it was nearly seven
19 years ago that residents of our area began to consider the desirability of applying to
20 this area the provisions of the tree and slope protection overlay district, which was
21 then before the commission and which was adopted in February of 1992.

22 An initial petition for this purpose was filed in 1991, and it was
23 renewed the following year. At that time, the commission agreed with the Office of
24 Planning that our petition needed more work.

25 So we went back to the drawing boards. We had many meetings
26 with the Office of Planning, and revisions were made in our petition, particularly in
27 reducing the geographic scope of it, which the Office of Planning felt was initially too

1 expensive.

2 Over a year ago, a preservation committee for the area was
3 formed by residents in the area. And in March of last year, a petition on the
4 committee's behalf was filed with the commission, and that's the petition now before
5 the commission.

6 The 1992 decision of the commission, which established a new
7 tree and slope protection overlay district, set forth some criteria for the application of
8 this district to, and I quote, "individual overlay zone districts that may be established
9 and mapped from time to time."

10 Those criteria, which are stated in section 1511.4 of the
11 commission's February 1992 decision are four.

12 The areas to be covered are to have a significant quantity of
13 steep slopes.

14 They are to have stands of mature trees.

15 They are to be located at the edge of stream beds or open public
16 spaces.

17 And, finally, they should have undeveloped lots and parcels
18 subject to potential terrain alteration and tree removal.

19 The Chain Bridge Road/University Terrace area, which is
20 addressed by our petition, meets these criteria.

21 There are steep slopes all along the portions of Chain Bridge
22 Road and University Terrace which are covered by the petition.

23 There are stands of mature trees growing throughout the area,
24 including chestnut and other oaks, beeches, locusts, maples, tulip poplars, and one
25 remarkable American chestnut tree, now more than 50 years old.

26 The area addressed by our petition is at the edge of Battery
27 Campbell Park, through which a stream flows southward toward the Potomac River.

1 In the area between Chain Bridge Road and University Terrace,
2 another stream flows in the same general direction, and at the bottom of the hill, it
3 joins the stream in Battery Campbell Park.

4 On both roads, both Chain Bridge Road and University Terrace,
5 there are undeveloped lots and parcels which would definitely be subject to terrain
6 alteration and tree removal in the event of real estate development.

7 We are seeing, today, some of those consequences in the
8 building of houses in the vicinity of 2950 Chain Bridge Road, where two larger
9 parcels have been subdivided into four lots. Two houses are already under
10 construction there, and they have occasioned both alterations of terrain and the
11 cutting of trees.

12 Thus, we submit that the Chain Bridge Road/University Terrace
13 fits exactly the description given by the commission in its 1992 decision and we
14 therefore urge the commission to proceed with adoption of the district that is now
15 proposed.

16 Thank you.

17 CHAIRPERSON KRESS: Thank you. Why don't we go ahead
18 and have your whole presentation and then we'll ask questions.

19 MR. NETTLER: Our next witness is Arthur Watson.

20 MR. WATSON: Good evening, Madam Chair and members of
21 the commission. My name is Arthur Watson. I'm a resident of Chain Bridge Road
22 and a strong supporter of the Chain Bridge Road/University Terrace tree and slope
23 protection overlay.

24 I am a past president of the Palisades Citizen's Association and
25 currently serve as chairman of the Palisade community fund, a non-profit, charitable
26 fund serving the Palisades community.

27 I am speaking tonight in place of Richard England, co-chair of

1 our overlay campaign, who could not be here tonight. More than any other single
2 individual, Dick England has galvanized support in our neighborhood for reasonable
3 and prudent measures to protect it, not from development, but from inappropriate
4 development that is inconsistent with the unique nature and history of this area.

5 I'm proud to join my also, my fellow co-past president of the
6 Palisades Citizens Association, Leonard Meeker, who has described to you the
7 reasons why the overlay is appropriate for our area.

8 We've arranged a short photo tour of the unique area to provide
9 a sense of its unique topographic and environmental attributes. I might say, if I may,
10 that I have prepared a written statement which I hope the commission would accept
11 for the record.

12 CHAIRPERSON KRESS: Absolutely.

13 MR. WATSON: I don't know if the lights will allow a good view
14 here.

15 We'll start at the intersection of Chain Bridge Road and
16 MacArthur Boulevard, which is, on our map, is right here. And as you'll see, the
17 overlay area does not begin precisely at that intersection. The parcel right on the
18 boulevard there is not included.

19 At the southern end of the overlay area is the property of the
20 Washington Burial Society at the lower end of the road. This cemetery was first
21 established as a final resting place for freed men who first came to live in this area
22 after the Civil War. Some of the headstones in this cemetery date back more than
23 100 years.

24 The entire eastern boundary of the proposed overlay area is
25 federal property, known officially as Rock Creek Park, but more familiar to the
26 residents as Battery Kimball Park, because of the Civil War battery located at the top
27 of the hill.

1 Chain Bridge Road generally follows a ridge line, and there are
2 very steep slopes down and away from the road on either side.

3 Now, here's an example of the types of slopes prevalent along
4 the western side of Chain Bridge Road as you proceed north along the eastern
5 boundary of the overlay area.

6 These slopes drain into a seasonal stream that, in turn, drains
7 into Rock Creek Park further south along MacArthur Boulevard.

8 Virtually the entire watershed of the eastern portion of the
9 overlay drains directly or indirectly into federally owned park land.

10 Portions of the road are deeply depressed and indicate its long
11 use, originating as a route down to the river from the higher ground to the north.

12 Continuing northward, Battery-Kimball Park continues on the
13 right, and there is widely spaced residential development on the left. Residential
14 parcels in this area, as in the proposed overlay area generally, range very widely
15 from roughly 5000 square feet to over five acres in size.

16 All of the land on the left of the road is steeply sloped, heavily
17 wooded, and has large, mature trees, as you'll see here.

18 In particular, there is a very large parcel of land in this portion of
19 the overlay area over five acres in size. This parcel now comprises one residence
20 and an additional structure of great historic significance.

21 Every neighbor in this area benefits from the owner's long and
22 careful stewardship of this property.

23 Another view of steep slopes and very large trees.

24 And on the other side of the road are views into Battery-Kimball
25 Park, and there is the view from the top of the park. The view from the battery itself
26 is now largely obscured, but in the 1860s, it was a clear shot from here all the way
27 down across the river to the Virginia approaches to Chain Bridge.

1 We now move over to the western border of the overlay area, in
2 this area here, along University Terrace. And you see here that on the western side,
3 we have older, widely spaced homes on either side of the street, many surrounded
4 by large stands of very mature trees.

5 Several narrow lanes run steeply down from University Terrace
6 to the west, and to Arizona Avenue, the extreme western boundary of the overlay
7 area over here.

8 Some of these areas are pretty rough country, steeply sloped,
9 heavily wooded, with very large and mature trees.

10 In particular, there's one large parcel anchoring the western side
11 of our overlay area. It lies right in here. It runs from University Terrace virtually all
12 the way down to Arizona Avenue on the western side. It's almost five full acres in
13 size. The parcel is steeply sloping, has many large and mature trees, and abundant
14 native vegetation.

15 Again, every neighbor in our area benefits from the owner's
16 careful stewardship of this property. The owners are here this evening and they are
17 strongly committed to our proposal.

18 Continuing south along University Terrace, we come to the
19 intersection of University and Garfield Street, which is right here.

20 And here in this area, smaller properties, such as the one you see
21 here, coexist with larger ones.

22 Here, again, we see the general characteristics of the area.
23 Large trees and generous lots.

24 That concludes our very brief tour.

25 The commission had defined characteristics that make an area
26 appropriate for mapping as a tree and slope protection overlay. As our presentation
27 has and will make clear, this area under consideration qualifies in every respect.

1 In addition, as a result of very extensive outreach efforts and a
2 number of compromises, our proposal enjoys the overwhelming support of our
3 neighborhood.

4 I have here a package I've submitted, that is, a package of
5 letters and signatures from individual residents of the overlay area. Although these
6 were submitted some time ago to the Office of Planning, I ask that they now be
7 included in the record.

8 The package of letters represents the views of over 60
9 households within the proposed area.

10 Our local ANC, ANC-3D, has already expressed its support for
11 the proposal, and that's indicated in the record.

12 However, Commissioner Eleanor Roberts Lewis, within whose
13 single-member district the entire proposed overlay lies, has written an additional
14 letter strongly supporting our proposal and has asked that we convey this letter to
15 the commission, which I have done moments ago, and I ask that that letter be
16 included in the record as well.

17 In addition, the Palisades Citizens Association strongly supports
18 our proposal and passed a second resolution of support only last week. I've
19 submitted that resolution for the record and I hope that it can be included as well.

20 Now, I understand that notwithstanding all of our efforts and
21 compromises, there may be still some objections expressed by a small number of
22 our neighbors.

23 I want to speak for our entire group of supporters when I say
24 that, in advancing our proposal, we have reached out to all of our neighbors. We
25 have considered carefully every view and opinion. We have held numerous public
26 meetings, and we have sought input from everyone.

27 And we have specifically met with every individual who

1 expressed any question or reservation regarding our proposal.

2 We've made, in short, extraordinary efforts to accommodate
3 every concern. And the record shows that we have made a lot of compromises.

4 So I wish the commission to know that, although we may not
5 have been able to satisfy every individual concern, we have conducted an open
6 process with broad outreach, and we have overwhelming neighborhood support.

7 I'd like now to say that I'll be followed by, in my presentation, by
8 Judith Lanius, a property owner within the proposed overlay district, an architectural
9 historian and consultant. Ms. Lanius will provide an overview of the unique historical
10 and aesthetic character of the area, which our proposal is intended to preserve.

11 In closing, Madam Chairperson, let me say that I appreciate very
12 much the commission's interest in our proposal, and we stand ready to respond to
13 any questions that you may have.

14 Thank you very much.

15 CHAIRPERSON KRESS: Thank you.

16 MR. NETTLER: With Ms. Lanius, I have copies of her testimony,
17 and we are also submitting a letter from the Art Deco Society of Washington, which
18 is also supporting the petition.

19 CHAIRPERSON KRESS: And I believe we have that one on our
20 record. We might want to get it again to make sure.

21 MS. LANIUS: Madam Chairperson and members of the
22 committee, of the commission, excuse me. My name is Judith Lanius and I am here
23 to testify on the historical significance of the Chain Bridge Road/University Terrace
24 area.

25 I am an architectural historian as Arthur mentioned. I'm also a
26 consultant in historic interiors and preservationist.

27 I am currently a resident of Georgetown, but will reside on Chain

1 Bridge Road in August of this year.

2 Before I begin the formal part of my testimony, I would like to
3 thank the many people in the neighborhood who have been helpful to me in the
4 research phase of this brief history. I'm especially grateful to Marian Schlefer, who
5 collaborated with me on the architectural survey of the area. Marian Schlefer has
6 also been most generous in sharing her knowledge and thorough understanding of
7 the area, which comes from her professional expertise in 45 years of living on
8 University Terrace.

9 Arthur Watson talked about some very key places, and I'm going
10 to be providing you with the overall context for those places that he mentioned.

11 And, if we can have the lights, I can show the first slide.

12 High above the bluffs of the Potomac River and the C & O Canal
13 is the semi-rural, hilltop community of Chain Bridge Road, University Terrace, and
14 Battery Kimball Park. It is one of the most historic areas of the northwest
15 Washington neighborhood, the Palisades.

16 This hilly, heavily wooded land is today an unusual neighborhood
17 because it looks and feels like rural countryside, but it is located within the confines
18 of a major urban area, the nation's capital.

19 Originally forest and farmland, today the lots are a mix of sizes,
20 some large, half an acre to an acre, and one as large as four acres, others small and
21 irregular.

22 The present park-like appearance and character of this
23 Washington community results from four key historical factors:

24 Existing hilly, heavily wooded topography, which at no time was
25 ever regraded and developed as a planned subdivision;

26 A Civil War battery and its subsequent transformation into a
27 national park;

1 An early African-American settlement, including a schoolhouse
2 and a cemetery;

3 And single family, small and large, individually designed houses
4 of diverse 19th and 20th century architectural styles.

5 The neighborhood is replete with Washington history, from the
6 18th century to the present, with extant evidence in the land, vegetation, and
7 structures.

8 Originally, the land was part of the 3,000 acre colonial land grant
9 made to Colonel John Addison and William Hutchinson. Subsequently, Colonel
10 Addison's daughter and her husband, William Murdoch, inherited the land, in the 18th
11 century, inherited the land between today's Arizona Avenue and Chain Bridge Road.

12 Beginning on their property and winding through it was Chain
13 Bridge Road, which you've heard about. It was a narrow and steep colonial road to
14 the Potomac. Its name, quote "Road to Chain Bridge" unquote, declared its
15 function, which was to provide access from the hills above the river where this
16 community is located to the narrow crossing of the Potomac River below Little Falls.

17 The specifically derives its name from the third bridge structure
18 built on the river site in 1810, a chain suspension bridge. Today, 400 feet at its
19 highest elevation, still steep and narrow without sidewalks, Chain Bridge Road has
20 the qualities of the original country land, as does the adjacent University Terrace,
21 which you see here in the slide.

22 The previously mentioned 18th century Murdoch property remain
23 intact until the Civil War. The last descendant, William D. C. Murdoch, forested and
24 quarried his 713 acres before he went into debt early in 18, early in the 1860s.

25 As a result, around the time of the Civil War, he began selling off
26 parcels of his property.

27 The Civil War had a profound and lasting effect upon the

1 neighborhood, initially because in 1861, the government located Battery Kimball on
2 the east side of Chain Bridge Road.

3 It was one of the strategic military installations on hilltops around
4 Washington designed to protect Chain Bridge and, thereby, prevent Confederate
5 Army access to the city.

6 This is an engraving from Harper's Weekly of 1871 showing the
7 battery.

8 Today, it remains an important Civil War site of 56.88 acres
9 within the National Park system.

10 The second enduring effect of the Civil War was that Battery
11 Kimball attracted emancipated and escaped slaves because of the protection
12 provided by the presence of army troops.

13 Squatters settled around the fort, and on adjacent Murdoch land.
14 Former slaves who could afford to bought three to five acres at about \$80 an acre
15 from William D. C. Murdoch.

16 Battery Kimball and the land around it was isolated, located in
17 rural Washington county, which did not become incorporated into the District until
18 1871. The year before, the population for the entire county was listed at a mere
19 11,117.

20 Battery Kimball remained active militarily until 1880, and in the
21 post-Civil War years, a land-owning community of African-Americans grew up
22 around it.

23 Like the white farmers in the area, they became truck farmers
24 and sold their produce at the old Georgetown market.

25 I think my pointer has -- oh, here it is.

26 The reason I'm showing you, this is an 1894 Popkins map. I
27 realize it's very hard to see anything on it, but you'll have to trust me that it does

1 show property that was owned by the early African-American families. Daniel
2 Cuspert and Richard Edwards were two of the house holders, and near the road that
3 in 19, that in the 1900s would become University Terrace, were the families of Jacob
4 Hayes and John Cephas.

5 The last descendant of slaves to live in the community was Mrs.
6 Clayton C. Bannister, of 2950 Chain Bridge Road. Her husband had been a
7 minister, as well as a teacher in the district public schools.

8 A vital part of the thriving American, African-American
9 community was the one-room school house on Chain Bridge Road started in 1865.

10 This is a very rare historic photograph of that building. It was the
11 alternative school to the Conduit Road school house, which you see here, of 1864,
12 for the white children, located on Conduit Road, today MacArthur Boulevard.

13 There has been an African-American schoolhouse at 2820 Chain
14 Bridge Road since the school's inception. The present schoolhouse was built in
15 1923 to replace the older building, and was used by area children until 1941.

16 The surplus school building was auctioned in 1953 and, since
17 that date, has been owned privately.

18 The second important site that was the center for the 19th and
19 20th century African-American community is the cemetery, which you heard briefly
20 about on Chain Bridge Road.

21 Originally a little over five acres, now two, it was deeded by the
22 federal government in 1875 to the Union Burial Society of Georgetown, which has
23 always maintained the burial ground.

24 Former slaves, as you heard from Arthur, from the immediate
25 area as well as other parts of the city were buried here. Today, the cemetery
26 remains open and the Charles F. Butler family, descendants of the cemetery
27 founders, maintain a caretaker and his cottage on the property.

1 The cemetery and schoolhouse are important Africa-American
2 heritage sights, which identify the history of Washington with the lives of the
3 freedmen and their descendants.

4 The tradition of African-American settlement in the area
5 continues in the 20th century. A second group of African-Americans settled here
6 during the 1940s and 1950s, when the Chain Bridge Road/University Terrace area
7 was a racially mixed neighborhood, and one of the few areas in Washington where
8 African-Americans could own land and build houses.

9 An outstanding example of Washington Art Deco residential
10 architecture is the house built on University Terrace, which you see here, by both an
11 African-American client and engineer.

12 As mentioned earlier, at no time was the Chain Bridge
13 Road/University Terrace area ever developed as a planned subdivision, a rare
14 phenomenon considering the post-Civil War real estate history of the District.

15 Consequently, the approximately 44 hilly acres never have had
16 the traditional urban grid system superimposed on the landscape, along with the
17 necessary grading, which in 1881, Congress had mandated for any new subdivision.

18 The land gradually turned over from farmland owned by whites
19 and African-Americans to residential properties purchased by individuals.

20 The neighborhood also is distinguished by its architecture, and
21 the vast majority of houses, large and small, are individually designed.

22 A survey indicates that of 77 properties on four streets, more
23 than 50% are architect-designed. The area is noted for its eclectic architecture,
24 ranging from late 19th century frame farmhouses, of which you see an example
25 here, another example also from Chain Bridge Road.

26 The area is also the location of a large, what was formerly a
27 large summer house called Longview. There are also brick and stone Revival style

1 houses, colonial and French of the 1920s and 30s. This is a colonial house from
2 Chain Bridge Road. A French-influenced house, also on Chain Bridge Road.

3 And then there's also the outstanding Art Deco example I
4 already mentioned.

5 The area also has a singular group of modern houses designed
6 by Washington architects in the 1950s for middle class families. More recently,
7 post-modern and Victorian revival houses have been constructed.

8 Still rural as late as the 1950s, the Chain Bridge Road/University
9 Terrace area in the post-war years attracted families who wanted to build affordable
10 and modest modern houses, unlike the adjacent areas of Spring Valley and Wesley
11 Heights and many other Washington suburbs, where house designs of colonial and
12 Tudor style were tightly controlled and promoted by the developers.

13 This area provided a rare place for moderate income families to
14 build innovative, non-traditional houses. Many modern and international style
15 houses were designed which, along with houses of the 20s and 1930s, has
16 produced a concentration of significance examples of 20th century architecture.

17 The houses have been sited specifically to meet the
18 requirements of existing hilly-topped topography of each particular site. Their
19 designs take advantage of the dramatic views, light and the natural environment.

20 What further distinguishes the --. Let me just go back a minute.

21 What further distinguishes the houses is their principal
22 orientation is frequently to the rear facade to maximize the vistas and interaction
23 with nature. And there is a good example.

24 Among the many Washington architects, including women and
25 African-Americans, who had important commissions in the neighborhood in the
26 1950s are the following brief selections:

27 Thomas W.D. Wright, who designed

1 J. Peter Trowseau, who designed six houses in the area,
2 designed this house for himself. The fact that you can't see the house very well, I
3 think testifies to the fact that the houses are very, very carefully sited to take
4 advantage of the wooded sites.

5 This is that same house from the rear.

6 Another Trowseau house sitting down in the ravine there on the
7 left.

8 This is a house on Garfield Street designed by the noted
9 Washington architect, Francis D. Leftridge.

10 And then on Chain Bridge Road in the early 1950s, the builder-
11 architect Cushing Daniel designed two houses side by side, one for his brother and
12 one for himself, and this is the house he designed for himself.

13 And then in 1963, the architect Richard Andrews designed this
14 house on University Terrace, which really is sitting in the woods.

15 Then, in addition, internationally and nationally prominent have
16 had commissions in the neighborhood. Among several are Robert S. McMillan of
17 the architects Collaborative, Walter Gropius' firm, who designed in the early 1950s
18 two international style houses for the same family. And they are side by side. This
19 is one of them.

20 Among others, some more recently designed houses are by
21 Hughnew and Jacobson, also on University Terrace, and then Hartman and Cox
22 designed this house on Chain Bridge Road.

23 In summary, the Chain Bridge Road/ University Terrace
24 neighborhood, with its open space, profuse vegetation, variety of slope, and
25 architecturally significant houses designed advantageously to respect natural
26 features, when combined with the defining historic factors, the lack of subdivisions,
27 the lives and heritage sites of the African-American community, the events of the

1 Civil War, presents the key elements making this area worthy of designation as a
2 historic district, which I realize we are n to here for, but it, it is a point I am making so
3 that you can understand the richness of the area.

4 The rich character of this park-like enclave built up over time,
5 with layer upon layer of Washington history, gives the Chain Bridge Road/University
6 Terrace its essential character, which no planned subdivision could ever match or
7 even replicate.

8 Thank you very much.

9 MR. NETTLER: Our next witness is Bob Duemling.

10 MR. DUEMLING: Good evening. Madam Chair, members of the
11 commission. One of my colleagues has said be brief. I will be brief, and I'll also be
12 informal. I'm going to speaking to you from some notes.

13 My name is Robert Duemling and I live with my wife, Louisa, at
14 2950 University Terrace, Northwest.

15 We are new members of this neighborhood. We bought some
16 land there about five years ago and built a new house.

17 And what attracted us to this neighborhood, we had also recently
18 lived in Georgetown before, but what attracted us were primarily the openness, the
19 open space, and the very large, mature trees.

20 Shortly after our initial purchase, it became possible to buy an
21 adjoining property, which the previous owner had planned to, on which the previous
22 owner had planned to build five houses. But we are keeping that land as an open
23 greensward of meadows and trees. Together, our property comprises a little under
24 five acres.

25 To our mind, there are two sides to preserving the quality of a
26 neighborhood like this.

27 One is to enhance its inherent characteristics. To that end, in

1 addition to keeping land open, we have planted over 50 new trees, and worked hard
2 at nourishing and preserving the existing stands of tulip poplars, elms, and
3 evergreens. My wife also happens to be a keen gardener, so we have planted lots
4 of shrubs and flowers.

5 The second, the other side of preservation is what you do not do.
6 To our minds, you do not cut down large trees or build the largest possible house on
7 the available site.

8 As we look at possible new construction in the neighborhood, we
9 are especially concerned about drainage and run-off. There are many ravines and
10 steep slopes in our neighborhood. One is across the street from us, others border
11 us on the north and west.

12 There are no storm drains on University Terrace. Therefore,
13 every bit of new hardscape, whether it's a house, or a driveway, or a swimming pool,
14 or patio, or terrace, every bit of that new hardscape means just that much less open
15 land to absorb rainfall.

16 We already have a serious drainage problem on University
17 Terrace whenever there are heavy rains of the sort that we've had this last spring.

18 The trees are also important for the quality of our air, for the
19 absorption of carbon dioxide, and to diffuse the fallout that comes from the aircraft
20 on the flight path down the Potomac.

21 My wife and I joined with our neighbors in this effort to preserve
22 the historic and natural qualities of this part of our city. I hope that you all will assist
23 our efforts by approving this application for a tree and slope overlay.

24 Thank you very much.

25 MR. NETTLER: Our next witness is Luther Carter.

26 MR. CARTER: Madam Chairperson, members of the
27 commission. I am Luther Carter. I live at 2722 Chain Bridge Road, and I'm here to

1 speak for myself and my wife, Marsha, on behalf of this zoning overlay as now
2 proposed by the Chain Bridge Road/University Terrace Preservation Committee.

3 Since its original inception in early 1997, this zoning overlay has
4 undergone successive revisions to accommodate concerns of some in the
5 neighborhood that it was too restrictive.

6 I myself objected to certain provisions in the overlay as filed with
7 the commission back in March 17, 1997.

8 These provisions had to do with increasing the existing sideyard
9 requirement and prohibiting building on or near 25% slopes.

10 Before a Palisades advisory neighborhood commission meeting
11 April 14 of 97, I noted that these provisions went beyond the tree and slope
12 protection overlay approved by the Zoning Commission for Woodland Normanstone
13 and was recommended by the commission as a model.

14 Now, the zoning overlay now proposed by the preservation
15 committee is free of the restrictions to which I objected a year ago, but retained
16 important and observable restrictions on tree removal and on building footprints, and
17 other impervious surfaces.

18 Although not identical to the Woodland Normanstone overlay,
19 the overlay proposed nevertheless represents an effort to protect the quality of our
20 neighborhood, yet without needlessly narrowing development rights.

21 I also wish to emphasize that underlying the proposed overlay
22 and the very considerable effort our neighborhood committee has made to make it a
23 reality, is a preservationist attitude and philosophy worthy of influencing all future
24 development.

25 Indeed, it is my hope that the preservation committee will not fold
26 its tent, but will, in some fashion, continue. If nothing more, it might usefully bring
27 people in the neighborhood together in a convivial social setting, at least once a

1 year, to renew the consensus expressed here today for protecting the park-like
2 qualities that make the Chain Bridge Road/University Terrace area so very special.

3 Thank you very much.

4 MR. NETTLER: And our last witness is Ellen McCarthy.

5 MS. MCCARTHY: Good evening, Madam Chairperson and
6 members of the commission.

7 My name is Ellen McCarthy. I'm the director of Planning and
8 Land Use Services at Robins, Miller, Kaplan, and Ciresi, with a Master's degree in
9 city planning from Harvard University and 25 years of experience in planning and
10 land use. And tonight, I'm testifying as an expert witness in land planning issues.

11 What I'd like to do in my testimony tonight, briefly, is to focus on
12 the proposed overlay, look at how the provisions of the overlay meet the particular
13 purposes and criteria that are set forth in the, in the generic tree and slope
14 protection overlay. And then talk a little bit about its consistency with the
15 comprehensive plan.

16 As you've heard some references to tonight, just to briefly recap
17 past history. In 1992, in order 713, the commission did adopt this generic tree and
18 slope protection overlay, very analogous, I think, to what the commission did with
19 the neighborhood commercial district overlay, where there, there's a generic overlay
20 which can apply and then be mapped to the particular situations in particular
21 neighborhoods.

22 Since every neighborhood in Washington is unique, although as
23 you've seen from the previous speakers, we meet the basic criteria that were set
24 forth in the overlay and have a lot of common themes with Woodland Normanstone,
25 which was the first place in which the overlay was applied.

26 There are some unique aspects to the, the Chain Bridge
27 Road/University Terrace area, so we have tailored what we are proposing just

1 slightly, and made some slight modifications. But by and large, we are talking about
2 the basic tree and slope protection overlay which the commission itself adopted
3 back in 1992.

4 Larry Meeker already did an excellent job of reviewing the four
5 major criteria that are set forth in the overlay for where it is appropriate to be
6 mapped, so I won't go into those in detail, except that --.

7 I then want to review with you this issue of slopes. It's difficult
8 when you're seeing just those individual slides to get a full sense of what we are
9 talking about in terms of the nature of the slopes, and the drainage issues, and the
10 topography of the area.

11 This is a topographic map, which we are borrowing from the Park
12 Service this evening. And which they sort of borrowed from us.

13 To give you a sense of the kind of grade change that we are
14 talking about, at the uppermost part of Chain Bridge Road, the elevation is, sorry, of
15 Battery Kimball, the elevation is 400 feet.

16 It goes down to 150 feet down here at the base, almost at
17 MacArthur Boulevard. So, in and of itself, that is a 250 foot grade change.

18 Then all of the areas which you see in the darker coloring here
19 on both sides of University Terrace, and here's Chain Bridge Road, all of these,
20 these darker, shaded areas represent areas that have slopes of at least 25%, and in
21 many cases substantially greater than that.

22 So we are talking about an area that is really quite distinctive in
23 Washington in terms of its grade changes and the levels of slopes.

24 And those kinds of grade changes do translate into real fragility
25 in terms of soil erosion, in terms of drainage, and soil stability. So it's important to
26 keep that in mind as a backdrop when we go through the provisions of the overlay.

27 The overlay, I -- as you can see in my testimony on page 2, there

1 are four major purposes to the overlay. Rather than deal with them individually, let
2 me take them as they apply to the particular provisions, the particular provisions of
3 the overlay. But before that, you will also see in my testimony, and in the interest of
4 brevity, I won't repeat them or go into them in detail.

5 There are three pages of extensive citations to the
6 comprehensive plan of the District of Columbia, where there are very clear and
7 strong precedents for what we are proposing, in terms of the protection of natural
8 resources sections, the neighborhood quality sections, and the protection of fragile
9 built environments.

10 So I recommend them to you. They are, they, in some
11 instances, specifically mention the Battery Kimball area as areas where the
12 comprehensive plan recognizes there need to be special efforts or special
13 protections given the environmental fragility.

14 The excerpts from the comprehensive plan point out that
15 preservation of existing, stable neighborhoods is one of the important principles of
16 the plan.

17 The overall decline in real property values in the city has been a
18 major contributor to its financial crisis, resulting in a dramatic decline in property tax
19 revenues.

20 This makes the protection of residential areas especially
21 important given the property, income, and sales tax revenues generated by these
22 types of middle class neighborhoods.

23 While you could argue that subdividing neighborhoods such as
24 this one into a large number of townhouses would bring additional development,
25 and thus tax revenues into the District, I think it's clear that if you do that, you are
26 destroying the unique qualities of neighborhoods like this, and you begin to blur the
27 distinction between the District and its suburbs, between Chain Bridge Road and

1 Rockville, and provide less rationale as to why those with substantial incomes and
2 low demands for services would be willing to remain in the city.

3 A special layer of additional protection is especially appropriate
4 for this neighborhood given its unique historic character, which Ms. Ianius outlined
5 for you, and the unusual level of cohesion in its land use patterns.

6 It's a rare opportunity to understand how our city developed from
7 colonial days to the present, and to preserve for future generations a glimpse of a
8 little known aspect of African-American history in the city.

9 Now let's talk about the specific provisions of the overlay and
10 how they meet the purposes which have been set forth for the overlay.

11 The first purpose, you'll recall, is to protect mature trees and
12 natural topography to the maximum extent feasible for a residential neighborhood.

13 The overlay has several provisions which do that quite explicitly.
14 Section 1514.2 protects, has three major protections. Any tree over 75 inches in
15 circumference may not be cut down. You may not cut more than three trees of
16 which any individual tree is at least 38 inches or more in circumference.

17 And the overlay provides that those protections apply only to
18 healthy trees and, if anyone removes trees which would otherwise be prohibited
19 from removal, then no building permit may be issued for seven years after that time
20 as a way of enforcing and making sure that those tree provisions are followed.

21 Now, the tree and slope overlay as was before you proposed by
22 the petitioners did --. I'm sorry.

23 The tree and slope as originally adopted by the commission did
24 contain a provision which restricts the removal of more than 25% of trees based on
25 measurement by circumference inches for those trees that are twelve inches in
26 circumference or larger.

27 While this provision was not explicitly included in our version, in

1 the Chain Bridge Road version of the overlay, the preservation committee does not
2 object to its inclusion in the Chain Bridge Road overlay itself.

3 And it, it was in the advertised text and was in, was commented
4 upon favorably by the Office of Planning in their report.

5 While these provisions that I've just cited deal most directly with
6 trees, they also provide protection for the natural topography, although indirectly.

7 With the exception of one parcel of land which has already had
8 some substantial grade alteration, most of the remaining parcels with subdivision
9 potential have a correlation between the steeply sloped sections and those with
10 stands of mature trees thus, if you protect the trees, you're also protecting the most
11 steeply sloped sections of those parcels.

12 While the original Chain Bridge Road version of the overlay
13 contained a more direct protection, that Mr. Carter just mentioned, prohibiting
14 construction within 20 feet of a 25% slope, this provision was removed from the
15 advertised version at the request of the preservation committee for a number of
16 reasons. The Office of Planning was concerned about needing more specific back-
17 up for including that in there, more specific information about why that would be
18 difficult or dangerous for the quality of the neighborhood.

19 And also, as Mr. Carter mentioned, several property owners had
20 a problem with the 25% slope prohibition, so we did agree to drop that, that
21 provision.

22 The second purpose of the overlay, that's listed in the overlay, is
23 to reduce the potential adverse impacts on adjacent parklands, stream beds, and
24 environmentally sensitive areas.

25 While all of the provisions of the overlay are really geared toward
26 meeting that objective, the proposal to establish a minimum lot size of 9500 square
27 feet is aimed most directly at that particular goal, as well as the fourth purpose,

1 which is listed above, which is calling for larger lot sizes to avoid overwhelming
2 existing infrastructure capacity.

3 Clearly, any provision which reduces the density of development
4 reduces the threat to the character of the area, both to the parkland across the
5 street, and to the semi-rural carrier, character of the existing neighborhood.

6 Particular concern has been voiced by the residents of this area
7 on the impact of new development in creating pressure to upgrade Chain Bridge
8 Road, which is narrow and winding. It has no sidewalks and virtually no shoulder.

9 As Ms. Lanius mentioned, it seems to have changed little since
10 the days when it apparently served as a colonial post road, and is viewed by most of
11 the residents that that road, it needs to stay that way. It is part of the essential
12 charm and character of the Chain Bridge Road neighborhood.

13 Now, the Office of Planning proposed to rezone the entire area
14 to R-1A, grandfathering in those lots which are less than the 7500 square foot
15 minimum lot size for R-1A so that we could avoid creating any non-conforming lots.

16 The preservation committee's position on that is that that should
17 be the very least. That 7500 square feet is the least minimum lot size that is
18 acceptable.

19 However, given the large number of developable lots and the
20 extreme environmental and traffic safety sensitivity of the area, the committee felt
21 that an additional lot size restriction was justified.

22 The original 10,000 square foot minimum, which we had
23 proposed, was modified in conjunction with a compromise reached with the
24 developers of a site which runs between Chain Bridge Road and University Terrace.
25 So, on that basis, the 9500 square foot minimum lot size was advertised for public
26 hearing.

27 I think an additional explanation is in order regarding the

1 proposal for the larger minimum lot size. An analysis was performed, which you
2 have before you in your testimony as Exhibit B.

3 We tried to look at what was the potential for additional
4 development in the neighborhood. We concluded that if one took those lots that
5 were larger than the 5000 square feet which is the minimum lot size in the R-1B
6 section of the neighborhood, and simply divided them by the minimum lot size, with
7 some adjusting for, for street frontage, but we didn't try to do that in a particularly
8 detailed way.

9 There was the potential for up to 218 additional homes in a
10 neighborhood that now only has around 70, between 70 and 80, depending on,
11 depending on which of the mostly out of date maps, Sandborn maps or based
12 atlases you're using to take a look at development in the area.

13 While the Office of Planning did express doubt that such a high
14 development potential was realistic, they did agree that there was substantial
15 development potential.

16 And I think it's important to note that every new house in this
17 neighborhood, which has been developed in the last ten years, has involved tearing
18 down existing houses and combining lots or tearing down existing houses and
19 subdividing properties.

20 So that the Office of Planning's concern that maybe we had
21 overestimated development potential because so many of these had large houses
22 on them, we feel, given the history of the area, there's a real danger that even, even
23 some of those existing houses which are substantial and which are quite attractive,
24 could be considered to be demolished and the lots on which they are located
25 subdivided.

26 So we think there's a very real threat to the character of the
27 neighborhood and a very real possibility of overdevelopment, or at least

1 development at the level that would be inconsistent given the topography and the
2 character of the area.

3 The third purpose of the overlay is the restrict ground coverage
4 in order to keep new development compatible with the existing character of the area.
5 Limitations on ground coverage are also important in terms of dealing with storm
6 water drainage and erosion control.

7 The existing tree and slope overlay restricts lot occupancy to
8 30% for actual structures built on the site, with no more than 50% of the lot being
9 permitted to be an impervious surfaces, like tennis courts or swimming pools, in
10 addition to your built structure.

11 The Chain Bridge Road overlay that we are proposing tonight
12 modifies those percentages slightly, since they were originally developed to deal
13 with the Woodland Normanstone area, which was zoned entirely R-1A, and whose
14 lot sizes generally were larger than some of the lot sizes in the Chain Bridge Road
15 area.

16 So, under TSP, if you've got a large lot that's at least 7500
17 square feet, a 30% lot coverage would mean a house with a footprint of 2,250
18 square feet and a total impervious surface of 3,750 square feet.

19 The Office of Planning, looking at that issue, the fact that we did
20 have some lot sizes that were smaller than the ones in the Woodland Normanstone
21 area, proposed a sliding scale.

22 And what we have proposed for you tonight, and which is
23 included in Exhibit C, I'm sorry, Exhibit A, is what's before you called the Meeker
24 compromise, which is a slight modification of the sliding scale which the Office of
25 Planning proposed, but which essentially accomplishes the same thing, to keep
26 those properties that are smaller, that are below the 7500 square feet, from being
27 unduly handicapped by that 30% lot occupancy and the 50% impervious surface

1 requirement.

2 And what Mr. Nettler is passing out to you now is the chart which
3 Mr. Zeveliah, from the Preservation Committee, worked out, that shows you a
4 comparison of the Office of Planning formula, the Meeker compromise formula, and
5 the tree and slope formula in terms of what that means in actual impact of footprint,
6 of what you can build on these lot sizes.

7 Since I've, since it's a little confusing in terms of t he mix and
8 match, then I included in my testimony, that you have before you, Exhibit C, which
9 sort of takes all the major elements of the existing tree and slope protection overlay,
10 what we proposed originally, what the Office of Planning proposed in the way of
11 modification, and what our final recommendation is with some modifications for
12 dealing with the, the lot coverage and the impervious surface issue.

13 In conclusion, the Chain Bridge Road/University Terrace
14 neighborhood represents a true jewel in the crown of the District of Columbia, an
15 area of great natural beauty, anchoring the western flank of Battery Kimball park,
16 with substantial historical significance, and largely intact topography, and the
17 presence of numerous stands of tall trees which protect its water quality, its animal
18 life, its drainage, and its soil stability.

19 By restricting the minimum lot size, protecting mature trees from
20 being cleared, and minimizing the amount of lot coverage by buildings and
21 impervious surface, the tree and slope overlay, as originally promulgated and with
22 some minor adjustments, is an appropriate land use tool for safeguarding the
23 neighborhood and accomplishing the objectives called for in the comprehensive
24 plan.

25 Thank you.

26 MR. NETTLER: That concludes the testimony of our witnesses.
27 They are available for questioning, and then I will give you a very, very brief final

1 statement.

2 CHAIRPERSON KRESS: I just want to say you did it in four
3 minutes less than an hour and you are correct, it wasn't repetitive. I found it
4 personally very enlightening and very helpful. Thank you.

5 With that, we will open it up to questions, and I also enjoyed, is it
6 Judith Lanier --.

7 MS. LANIUS: Lanius, yes.

8 CHAIRPERSON KRESS: Historical perspective on the area. I
9 thought that was quite helpful.

10 Questions, colleagues, for the applicant?

11 See what a complete job you did?

12 (laughter)

13 UNIDENTIFIED SPEAKER: Well then let me make some, just a
14 couple of --.

15 COMMISSIONER FRANKLIN: I am very sure that you've had an
16 open process. Nevertheless, we do have a letter from somebody named Ahuja, if I
17 pronounced that correctly, who has asked us to consider incorporating one of two
18 options before granting approval.

19 And I guess it raises the question about the inclusion, within the
20 TSP of the small lots in the uppermost section near the park, on the grounds that
21 those are relatively small lots and they're developed.

22 Do you have a, is this a familiar objection that you've dealt with.

23 MR. NETTLER: Yes.

24 COMMISSIONER FRANKLIN: Could you --.

25 MS. MCCARTHY: We haven't seen the letter, though, but we
26 have spoken with Mr. Ahuja and many members of the preservation committee have
27 met with him and have spoken to him.

1 COMMISSIONER FRANKLIN: Well, perhaps you ought to see
2 the letter and, Madam Chair, if the record's going to be left open it might be useful to
3 get your response to it.

4 MS. MCCARTHY: What we, what I know I have indicated to Mr.
5 Ahuja in the past is that he has maintained because his house is quite modest in
6 comparison to many of his neighbors and would most likely be demolished by
7 somebody who wanted to purchase that lot and would most likely demolish his
8 house and build a new structure, that he was concerned about the lot coverage
9 requirements, that that would unduly restrict the value of his property.

10 And I think that it's, two points that are important to remember
11 are that to the extent that he is correct, that he is in a really unique situation and that
12 it is unlike that which is shared by the other houses around him or incorporated
13 within the overlay, then that means basically that's tailor-made for the Board of
14 Zoning Adjustment.

15 That's why we permit special exceptions to deal with people who
16 are in a unique set of circumstances as the zoning regulations apply to them.

17 And, secondly, I'm not sure that it is necessarily a correct
18 assumption that the value of one's property is going to bear a direct, one for one
19 relationship to the square footage of what can be built in terms of footprint on that
20 house.

21 It's obviously going to, going to have some general relationship
22 to it, but I think quality of the, overall quality of the neighborhood, the character of
23 the site itself, will also factor into how much somebody is willing to pay for that land.

24 So I'm not sure that we entirely agree with all of the assumptions
25 or the underpinnings of his argument.

26 COMMISSIONER FRANKLIN: Does the TSP contemplate a
27 special exception, waiver?

1 MS. MCCARTHY: Yes. We included in our version of the
2 overlay the same special exception protections that are written into the existing TSP.

3 COMMISSIONER FRANKLIN: Okay, you might want to look at
4 the letter and, he's just proposing also the drawing of the line somewhat differently
5 from the boundaries you set forth.

6 MR. NETTLER: I might also add to that, when we looked at the
7 area to be included in here, there are some other small lots that are, whether some
8 in the center, some in other areas and, you know, we were pretty careful in defining
9 the area in terms of how it, how it responded to the issues that you as the Zoning
10 Commission said a tree and slope overlay had to respond to.

11 And that is what would have an impact on the loss of trees in this
12 area. What would have an impact on Battery Kimball Park? What would have an
13 impact on the, both the grading and the run-off?

14 And that's why, as you see here, there are some parcels that
15 have been left out, particularly the one at the bottom of the street, and others that
16 have been put into here, because it was an attempt to deal with the, those parcels
17 that would impact all of them in the same way.

18 Clearly, a five-acre parcel has somewhat of a different impact
19 than others, but certainly a owner of a five acre parcel, other than the Duemlings
20 there is one other parcel that;s of that size, could make a claim in a different fashion
21 in terms of the loss of value to the property in terms of the type of development.

22 But the consensus was of the community that there was a need
23 to deal with those lots that had the greatest impact on the conditions that had to be
24 protected and that's why it was written in the way it was.

25 As I said, I think that leads into what was really a part of the
26 closing remarks that i had wanted to make, which was this was an extremely
27 inclusive process. It started as a, as conceived as a response to a number of

1 developments that were real at the time, and that continue to be real, but for the
2 setting down of this for the hearing would have had a significant change on the
3 environment here.

4 And it evolved into an enormous number of meetings, both on
5 the weekends, at nights, numerous meetings with the Office of Planning.

6 They were very cooperative in coming out to the area and
7 meeting with the community, going through changes to the overlay as we presented
8 it to the Zoning Commission initially and requested you to set it down in somewhat of
9 an altered fashion, in doing an additional study of the area and working with,
10 actually, the Park Service in the presentation that we have here tonight.

11 And I think that that is something that the Zoning Commission, I
12 hope, looks for in terms of overlays, in terms of areas that it believes deserve special
13 protection. And this isn't a situation that impacts an enormous number of areas in
14 the city, but particularly those that are adjacent to our parks, and there are a few
15 more areas, which I hope you will see in the future that will deserve protection like
16 this area does.

17 But this is a special area, it is unique. I think you've heard
18 testimony tonight as to those qualities that we believe are important for protection,
19 and we would ask that you adopt the overlay in the fashion in which we've proposed
20 it, our ultimate proposal for its adoption.

21 CHAIRPERSON KRESS: Thank you. Other questions?
22 Commissioner Parsons.

23 COMMISSIONER PARSONS: I want to congratulate all of you.
24 It was a lot of hard work. This is exactly what the Zoning Commission had in 1992
25 when it passed this special layer of protection and it's, I'm very gratified that you did
26 this.

27 I did want to ask about the number of houses that have been

1 purchased and demolished or altered beyond recognition, which is probably
2 happening as well. Is this a phenomenon that has occurred, or one that is a
3 potential threat?

4 MR. NETTLER: Well, I think it's both. It's, Arthur, do you want to
5 speak to that? I think it's both but.

6 MR. WATSON: Well, certainly the history of the last several
7 years would indicate that the houses contemplated for new development are far
8 larger, and occupy a much larger footprint, than the typical house in the area today.

9 So, generally speaking, I would assume that from an economic
10 standpoint, and from the standpoint of the developer, it often, and certainly history
11 bears, recent experience bears this out, it makes more sense to tear the house
12 down and clean the lot than it does to work with what is already there.

13 I've been asked to point out a couple of examples. Would that
14 be of interest?

15 COMMISSIONER PARSONS: I don't know as we need to know
16 where they are, just wondered whether we're talking two, three, half a dozen, or
17 twenty.

18 MR. WATSON: In terms of quantity, in the area that we have
19 proposed, I would guess in the last ten years, probably on the order of five or six
20 demolitions have occurred.

21 COMMISSIONER PARSONS: Is that what stimulated this
22 petition?

23 MR. WATSON: I would say that it was an accumulation of
24 perceived insults to our neighborhood over the last several years.

25 CHAIRPERSON KRESS: Well stated.

26 COMMISSIONER PARSONS: I wanted to ask you another
27 question, and I'm not sure you have an answer for it, but we have a letter in the

1 record from Larry Auerbach over in Woodley, Woodland Normanstone.

2 They seem to be having some problems over there with experts
3 determining whether a tree is healthy or not.

4 (laughter)

5 And I guess experts is anybody with a chain saw and a pick-up
6 truck, potentially.

7 And there's no provision in our regulation that there be a
8 community hearing on a dead tree, and Larry's asking us to do something about
9 that.

10 I don't know whether you discussed that at all, as to determines
11 health, whether it's a licensed arborist or a public meeting among the community for
12 something of 75 inch caliper or diameter. Did you talk about that at all?

13 MR. WATSON: We did not address the issue of arborists'
14 qualifications or the circumstances under which a certification might be obtained.

15 I think it's fair to say that among us, all of our neighbors grant
16 each other the presumption of truth and fair dealing. And this issue has simply not
17 arisen, but I would take the opportunity to clarify, for the record, that the issue arises
18 or should arise only in conjunction with the seeking of a building permit. Or in our
19 case, with the subdivision of an existing lot.

20 The issue need not and will not arise in any case where an
21 owner simply wants to take down an unsafe or ailing tree, or even in a case where
22 an owner simply wishes to improve their view or let in more light into their
23 landscape.

24 Those situations are not covered by our proposal.

25 MR. NETTLER: Let me, maybe I could respond to that also. I
26 represented Mr. Auerbach in the Woodland Normanstone neighborhood association
27 a year and a half ago on the, probably the incident that caused the situation.

1 And what we found was in the permitting process, zoning office
2 is, requires in that overlay, Woodland Normanstone, that anyone who does want to
3 develop a lot or do new construction on a lot have a landscape plan that
4 accompanies the plans which shows what are healthy trees and what are not
5 healthy trees.

6 And I think the unfortunate thing is, and you, I think you would
7 find this whether it's in Washington, D.C. or any jurisdiction, that there is a necessity
8 on the part of the permitting process to give some type of credence to plans that are
9 presented to it because they can't inspect every representation that's made.

10 And it's difficult. But there was a landscape plan that was filed
11 with the, in that particular instance, with the permitting office of the District. It did
12 note which trees were healthy and which were not, and it became clear to us, my
13 clients in the community, that some of those were not accurate.

14 And so you have something of a self-policing aspect to it, but I
15 think it would be very difficult for you to mandate that the permitting branch inspect
16 every process, or every application, in the same way it would be difficult for them to
17 inspect other issues that they rely upon a certified architect or certified engineer to
18 provide an opinion on.

19 COMMISSIONER PARSONS: So you don't imagine a parallel
20 homeowner's association being established out of this group that would deal with
21 building permits and that kind of thing?

22 MR. NETTLER: Well, I think you've heard some comments on
23 the part of this committee that there's a hope that this committee will continue in
24 existence as the Woodland Normanstone association has, and will, would be willing
25 to do precisely that.

26 COMMISSIONER PARSONS: Okay. Thank you.

27 COMMISSIONER FRANKLIN: Were the demolitions such, that

1 you referred to, that they destroyed a lot of mature trees in the course of the new
2 development?

3 MR. WATSON: To be honest, I cannot say for certain how many
4 trees might have been affected.

5 I will say, however, that because of the nature of the area and
6 the fact that it is heavily wooded, and there are a lot of big trees in the area, it is
7 almost inevitable that some tree will find itself in the way of someone's intentions.

8 And I might say, also, that our observation regarding ongoing
9 development is that in some cases, trees have been saved in name only. That is,
10 that excavations have been done and retaining walls have been built so close to
11 those trees that it is unlikely that they will survive for any significant length of time.

12 COMMISSIONER FRANKLIN: Well, it seems to me you've
13 made a compelling case for the overlay, quite apart from the character of the
14 architecture. It was very interesting to hear about the nature of the architecture, but
15 the purpose of the overlay is really to protect the terrain and if you had lousy
16 architecture or ahistoric architecture, the case would still be compelling.

17 CHAIRPERSON KRESS: Of course, Mr. Franklin's only
18 speaking for himself right now.

19 (laughter)

20 I would like to ask one question myself, and we will be hearing
21 from the Office of Planning. I will be asking this of the Office of Planning as well.
22 Your letter, Mr. Nettler, points out some of the squares and lots that have been left
23 out. Have you worked with Office of Planning? And are these all, or are there more
24 that have been left out or perhaps Ms. McCarthy knows?

25 And perhaps I should wait to ask Office of Planning. I just, since
26 you had written about that, I wanted to make sure that you had an opportunity to
27 address that.

1 MS. MCCARTHY: Well, those are the ones that we are aware
2 of. I had discussed it with Mr. Colby, and I was hoping that he had a more up to
3 date set of maps than the ones that I had been working with.

4 MR. NETTLER: But I believe these lots were in the initial
5 petition.

6 MS. MCCARTHY: Right. They were in the initial petition. They
7 were in the map included with the petition, and they were described in the
8 boundaries as the boundaries were described, but they were not, when it was
9 advertised, some of the lots were inadvertently left off.

10 MR. NETTLER: The map didn't. The map still included them.

11 CHAIRPERSON KRESS: That's the way I read your letter. The
12 map which allows us some legal leeway if the map included them.

13 MR. NETTLER: Yes, it did.

14 CHAIRPERSON KRESS: I just wanted to make sure that, to the
15 best of your knowledge, you had listed all the ones you were aware of.

16 Thank you.

17 COMMISSIONER CLARENS: Yes, I have a question, Mr.
18 Nettler, from one of your witnesses. I don't have a testimony. He did not submit a
19 testimony and he spoke out of notes. I believe he's the gentleman who spoke
20 second or third.

21 Your testimony sitting back there, all I can, I don't know his
22 name. Yes.

23 CHAIRPERSON KRESS: Duemling? Duemling?

24 COMMISSIONER CLARENS: Yes. That's right. Mr. Duemling.

25 CHAIRPERSON KRESS: Mr. Duemling.

26 COMMISSIONER CLARENS: Yes, could you come forward? I
27 have a brief question.

1 I believe your testimony said that you had actually bought a
2 property somewhat recently.

3 MR. DUEMLING: About five years ago.

4 COMMISSIONER CLARENS: About five years ago, and that
5 you built a house in that property. And my question has to do with, in a sense,
6 sensing the feasibility of the regulation as written. I would like to know how many
7 trees were removed in your property as a result of your building project.

8 MR. DUEMLING: We removed no trees as a result of the
9 building trees. We removed two large trees that were diseased and so diagnosed
10 by a licensed arborist, and they were thought to be potentially dangerous. One was
11 a maple and one was a Chinese hemlock.

12 Those were the only two trees that came down.

13 Perhaps I should tell you that we tore down a house and built a
14 new house on virtually the same footprint as the previous house.

15 CHAIRPERSON KRESS: And you planted 50 new trees.

16 MR. DUEMLING: And we planted 50 new trees. That's actually
17 a fairly modest estimate. Does that help?

18 COMMISSIONER CLARENS: That helps, sir. Then I have a
19 follow-up from Ms. McCarthy. And that is in doing the proposal, and I understand
20 that this is a standard overlay which has already been passed by the, by the Zoning
21 Commission, but being new on the commission, I need to understand where these
22 things are coming from and I --.

23 My interest is in knowing the feasibility, on the lots that are
24 developable in this area, for building reasonable development, with the restrictions
25 of the overlay, and if anybody has looked at that.

26 MS. MCCARTHY: We definitely looked at that. It was one of the
27 reasons that people were amenable to dropping the side yard requirement that Mr.

1 Carter mentioned had been raised as a problem.

2 It was pointed out, I think quite correctly, that for some of the,
3 especially some of the R-1B lots that were only, that had only 50 feet of frontage, if
4 you had 12 foot side yards on either side, you are restricting the width of the house,
5 and you were then going to either force the architect to orient the house sideways to
6 the road, or to build something much taller and therefore more obtrusive and not at
7 all in keeping with what the end result was that we had wanted.

8 So, although it seemed like a good idea to increase side yard
9 width, and thus more privacy and the likelihood of keeping more trees that were on,
10 at the edges of the property, we decided that that provision, it made more sense to
11 just stay with the straight eight yard side width that the zoning regulations had.

12 We also had looked pretty extensively at the, at Mr. Murphy's
13 property because it's the five-acre parcel that has the schoolhouse on it and we
14 were, we didn't want to unduly restrict the development capability of the property but,
15 obviously if you have a five acre parcel that could be heavily developed, and that
16 could have been a substantial, I think we estimated 42 houses could have been built
17 there if it were not for street frontage requirements and all that.

18 So, the Office of Planning was very helpful. Mr. Johnson, as a
19 trained architect, looked at what different siting configurations could be to deal with
20 the street frontage issues and that site was less difficult than some other sites
21 maybe might have been because that one was graded partially and because it was
22 cleared there's a very large sort of manor house at the end of the driveway with a
23 basque of trees down the side.

24 So that one could be developed with additional houses, but be
25 done within in concert with the overlay and I think there is a representative from the
26 property here tonight who is speaking, in fact, in support, at least not in opposition.

27 COMMISSIONER CLARENS: Okay. Thank you. I have one

1 last question, and that's basically from the commission and that has to do with a
2 point of clarification as to whether the 75 inches and the 38 inches, that's what the
3 numbers are for the, I believe, it's the circumference that we're talking about, is it 75
4 inch circumference?

5 So that translates into a what, a 20 inch diameter?

6 CHAIRPERSON KRESS: Pi D?

7 (Laughter)

8 COMMISSIONER CLARENS: I mean it's hard to judge a
9 circumference of a tree. I mean, I think that most people see a tree as this or this or
10 that, and it would be helpful if we're talking about diameter, although probably
11 technically, the 30 inch and 75 inch circumference is correct.

12 I just wanted to get an idea of what 75 inches circumference
13 would be. I'll find out.

14 CHAIRPERSON KRESS: Okay. Any further questions?

15 COMMISSIONER PARSONS: Let me clarify why we did that.
16 Although the standard measurement in the trade, if you will, of trees is diameter
17 breast height. And you have these devices which, like calipers, you put on a tree to
18 measure that.

19 A homeowner doesn't have that luxury, so a tape measure
20 wrapped around the tree is pretty easy for people to do without specialized
21 equipment.

22 I can't remember the formula, though, but I'm sure Mr. Colby has
23 it ready at hand.

24 COMMISSIONER CLARENS: Maybe the question then should
25 be addressed to the Office of Planning.

26 Twenty-four inches is 75? Okay.

27 COMMISSIONER HOOD: Madam Chairman, I just wanted to

1 thank the petitioners for making it a lot easier for a new commissioner being able to
2 understand what's taking place, and also from what I'm hearing, I see that the
3 neighborhood and the community, I'm glad to see all the players who were involved,
4 the ANC, the Palisades Citizens Association, and others.

5 Thank you. Job well done.

6 CHAIRPERSON KRESS: Thank you. I would like to ask, so we
7 could plan the rest of our evening, because we haven't heard from Office of Planning
8 yet, or questioned Office of Planning. How many people expect to testify this
9 evening yet?

10 One, two, three, four, five, six. All right. Thank you.

11 With that, we'll move to the report from the Office of Planning.

12 COMMISSIONER CLARENS: Thank you Madam Chairman.

13 First, I'd like to say that, as was pointed out, Mr. Johnson sitting
14 next to me and Nate Gross, who is no longer with the Office of Planning, did the, did
15 a great deal of work on this case and I picked up on it much later.

16 I was party to the first walk through the area with the community,
17 and I would only say tat seeing the slides again reminded me of what a real jewel,
18 what a treasure this area is.

19 For those of us who don't go there very often and you have not
20 too many reasons to drive up Chain Bridge Road, or even University Boulevard
21 unless you know it as a shortcut or live there.

22 But it's really a treasure even if you never go there, it's nice to
23 know that it's there and that it's protected.

24 The, I don't, given the hour, I don't really want to repeat a lot of
25 things that have been said that are in our report and that the petitioners have said.

26 There are some minor differences, and have been, between our
27 proposals and theirs, and I think that in instances where that's been the case, we will

1 react to what they are now proposing and provide you with an evaluation of that
2 when we come back for the summary of this, of the hearing.

3 CHAIRPERSON KRESS: I think that's an excellent idea.

4 DCOMMISSIONER CLARENS: There really are, I mean, the
5 area's have, there's really no disagreement on the trees except that, as their report
6 points out, they had left out one of the provisions contained in the normal tree and
7 slope overlay, and they're not unhappy if it gets back in, which had to do with 25% of
8 the, 25% limit on cutting of all the trees on the property, circumference-wise.

9 I think that's probably difficult to measure, but it was part of the
10 original recommendations and we had proposed that it be in there.

11 There's a difference on the impervious coverage, on impervious
12 surfaces, and I don't know that there's a magic number. The original number of 50%
13 in the tree and slope overlay previously adopted.

14 I think we had come up with a higher percentage and had
15 suggested averaging -- advertising 55 and even 60%.

16 But that was intending, I think, to meet the concerns of the
17 community, and if the community is supporting 50%, why certainly that's a more
18 protective number. And again, we'll react to that more formally.

19 The, on the building footprint, we had suggested a graduated
20 scale. The community is apparently suggesting a refinement on that scale to, as a
21 compromise and we will look at that and again respond to that to the commission.

22 And finally, on the lot size and, I think, along with that comes our
23 proposal that the R-1B area be rezoned R-1A, which would get you part way, it
24 would get you to 7500 square feet as the minimum lot size automatically, with a
25 grandfather provision for sites that have been made non-conforming by that, smaller
26 sites.

27 The applicants are looking for, I mean the petitioners have, are

1 seeking a 9500 square foot. And I don't know, again there's no magic to the
2 numbers. We would, we would look at that. It's simpler just to say it's rezoned to R-
3 1A and it's consistent all the way north and south. There's no line crossing Chain
4 Bride and University Terrace unnecessarily, in terms of zoning.

5 But again, we'll get back to you on that issue.

6 So, and the special exception process, as has been pointed out,
7 exists in the original and it exists here.

8 There was, there is a concern that, there should be a concern
9 that, that if the regulations are too strict and really cut down on normal activity, why
10 everybody will be forced to go to the board.

11 And I don't think we want that. I know they don't want that. On
12 the other hand, if a few people go to the board, why probably the restrictions are
13 doing what they are supposed to be doing, which is regulating development and, in
14 fact, preserving the character of this area.

15 So, with that, I'll answer any questions. You can, Mr. Franklin's
16 already given you the secret formula for circumference to diameter, but anyway, I'll
17 be happy to answer any questions you can, and I would expect to address the
18 issues, the differences in our final report to the commission.

19 CHAIRPERSON KRESS: Thank you. Questions, colleagues,
20 for Office of Planning?

21 Well, I would just like to say thank you to you all as well. It
22 appears you've had a good working relationship and put a lot of hours in working
23 with the community through the development of all of this and I think it shows.

24 DCOMMISSIONER CLARENS: Again, I want to say Bill
25 Johnson did a heck of a job on working with the community and working with the
26 maps and to evaluate what the issues really were in terms of subdivision and so on.

27 CHAIRPERSON KRESS: Thank you.

1 Next on our agenda is the report of other agencies. I believe that
2 we have --.

3 David, let me just ask you, did we have any reports from any
4 other agencies? We didn't, did we?

5 DCOMMISSIONER CLARENS: No, we don't. We didn't.

6 CHAIRPERSON KRESS: And also, I believe I'll ask if anyone is
7 here from any of the ANCs, but we have had and entered into the record in the
8 testimony of Mr. Nettler the ANC's testimony and the individual ANC members.

9 Is there any other ANC person who is here and represented and
10 would like to speak?

11 UNIDENTIFIED SPEAKER: I believe the National Park Service
12 wants to testify.

13 CHAIRPERSON KRESS: Oh, is the National Park Service here
14 to testify?

15 UNIDENTIFIED SPEAKER: I think so.

16 CHAIRPERSON KRESS: You get to be an agency and come
17 next. If you could come forward and identify yourselves for the record, please.

18 I'm sorry. I should have recognized the uniform.

19 Please begin when you're ready.

20 MS. COLEMAN: Good evening, Madam Chairperson, members
21 of the commission.

22 My name is Adrienne Coleman, and I am superintendent of Rock
23 Creek Park. My address is 3545 Williamsburg Lane, Northwest, Washington, D.C.

24 Rock Creek Park encompasses approximately 2800 acres in the
25 District of Columbia, including the Rock Creek Valley and its tributaries, and 99 other
26 reservations across the city.

27 Battery Kimball Park is a part of Rock Creek Park.

1 My National Park Service colleagues and I are here this evening
2 in support of the tree and slope protection overlay zone for the area bounded by
3 Battery Kimball Park.

4 So, why do we support the tree and slope protection overlay
5 district? Quite simply put, because the mission of the National Park Service is to
6 protect and preserve trees. And water. And wildlife. So as to leave them
7 unimpaired for future generations.

8 And it's that mission, and that overarching purpose, that's
9 echoed by the D.C. regulations which established tree and slope protection districts
10 to enhance the park-like setting of neighborhoods adjacent to streams and parks.

11 So we are delighted that the applicants share our vision of
12 protecting trees, and water quality and quantity, and forest species.

13 The tree and slope overlay will provide a buffer forest for Battery
14 Kimball Park which, in turn, will protect forest-dwelling species, such as migratory
15 birds.

16 In addition, it is a function of large trees to control temperature
17 and retain moisture.

18 It is also important to note that the waters within the proposed
19 protection overlay present a significant level of flow in Battery Kimball Creek, also
20 popularly known as Discovery Creek, so named by the Discovery Creek Children's
21 museum, which is a partner organization of the National Park Service that has
22 occupied the Conduit Road schoolhouse on MacArthur Boulevard for the past five
23 years.

24 And the founder and executive director of that organization is
25 here this evening, and I hope that she will speak before you this evening.

26 Discovery Creek is dedicated to the presentation of natural
27 values to hundreds of District of Columbia schoolchildren. And Discovery Creek

1 Children's Museum utilizes the forest and the drainage to Battery Creek -- to Battery
2 Kimball, to teach children about forest ecosystems and the natural environment.

3 We realize that to a very large extent, parkland is preserved by
4 the preservation of the adjacent roads and road shoulder corridors. This prevents
5 parks from becoming islands unto themselves.

6 In other words, we realize that we can't do it alone.

7 Madam Chairman -- Chairperson, at this point I would like to
8 introduce you to Mr. Dave Murphy. Mr. Murphy is a Park Ranger with the National
9 Capitol Region Office of Partnerships and Stewardships. Dave?

10 MR. MURPHY: Thank you, Ms. Coleman.

11 For the record, my name is David Murphy. My address is 1100
12 Ohio Drive, Southwest, Washington, and I represent a regional office of Park
13 Service that, in fact, we provide, our mission is to provide support to the
14 superintendents and to the parks.

15 We have a number of documents that we have received from
16 other agencies, Smithsonian Migratory Bird Center, the Patuxent Wildlife Research
17 Center, and there are a number of articles that they referred to us to, specifically
18 about the ecology and unique nature of a stream valley park, such as Battery
19 Kimball and, in fact, the specific area around what we call Battery Kimball.

20 In addition to that, we have two maps we would like to submit for
21 the record, and I'd like to briefly go through those at this time.

22 CHAIRPERSON KRESS: Certainly.

23 MR. MURPHY: Ms. Coleman did not point out that she actually
24 has juris -- stewardship responsibility for a n extensive part of northwest
25 Washington, including Rock Creek, and all the tributaries and drainages in northwest
26 Washington.

27 The areas in green on this map represent those area that are

1 under the jurisdiction of the National Park Service as part of National Capitol Region
2 and as part of the greater National Park Service system.

3 Rock Creek, formed in the 1870s, and with correspondence an
4 indication and concern about the preservation of the numerous tributaries going into
5 it, and also at the same time, there was discussion about the preservation of
6 Palisades of the Potomac and the tributaries going into that.

7 So basically, Battery Kimball, or what it's actually known on the
8 books as, Palisades Park to American University has a very long history.

9 And fortunately for all of us, it has been preserved.

10 This is an enlargement of the same area, showing Palisades
11 Park to American University, Battery Kimball, a portion of Glover Archibald, and
12 that's this little finger that connects the two parks, and then down to Palisades Park.
13 Palisade Parkway, excuse me. And then Chesapeake and Ohio Canal National
14 Historic Park.

15 So you can see that we're part of a much larger matrix of urban
16 and not quite so urban parkland.

17 The drainage of these areas is rather interesting, as was pointed
18 out. Chain Bridge Road is basically a ridge road, and it divides the drainage that is
19 Maddux Run or Battery Kimball or now Discovery Creek, it goes by many names
20 depending on the era.

21 And that drainage runs down under MacArthur Boulevard and
22 under Canal Road, under the C & O Canal, by Fletcher's boat house, and into the
23 river.

24 The drainage of the lower section of the TSP overlay drains
25 parallel to Chain Bridge or --excuse me, Maddux Run, and then was, it was
26 combined. It was diverted by sewers, storm sewers along MacArthur Boulevard and
27 so the drainage for this drain, the majority of it goes into Maddux Run.

1 There is a vestige of the original drainage, which went along the
2 Chain Bridge corridor and down directly into the Canal. So what drops of water don't
3 go past Fletcher's boat house into the Potomac River end up down into the C & O
4 Canal, just below Chain Bridge itself.

5 So we certainly are the downstream riparian under these two
6 circumstances, and then all the drainage from this upper area drains directly into
7 Battery Kimball, so no matter which way we turn, we are either the beneficiary or
8 we're going to be impacted by any development or any protection and control.

9 Superintendent Coleman pointed out the Conduit Road school,
10 also known as Discovery Creek, which is the center that I think you'll hear later on,
11 but certainly brings to bear the issue that the children of the city using this facility end
12 up with their hands, feet, and probably whatever other parts of their body they can
13 get into it -- because I have a six-year-old that's participated, and I can tell you that
14 they come home a little bit damp.

15 So I can assure you that there's very hands-on contact with that
16 water and, thus, the water quality.

17 CHAIRPERSON KRESS: Interactive.

18 MR. MURPHY: Interactive. Absolutely.

19 There's another piece to this, or an additional piece. Obviously,
20 the human environment is very important. The natural environment is one that
21 sometimes gets short shrift.

22 When I asked the Smithsonian to, what their thought of the tree
23 and slope overlay, they surprised me with their response. They gave me a great
24 deal of documentation on the very problematic situation of migratory birds and
25 habitat that was here and is disappearing rapidly.

26 And I said, well, that's fine, but how do we articulate that? And
27 then they deluged me with more articles.

1 So what I've given you is correspondence from Dr. Lisa Pettit,
2 who regretted not being able to be here today. She's in Ohio on another survey.
3 But he documentation of not only her very broad-based overview of migratory birds
4 and also a Smithsonian Migratory Bird Center travel alert for migratory birds.

5 Very eloquent way of personalizing and identifying the problems
6 that migratory birds from Central America face when they stop here for either
7 midway on a migratory drift north or for breeding purposes.

8 Additionally, the Patuxent Wildlife Research Center, which is
9 charged with, and that is part of the U.S. Geologic Survey, and also a partner with
10 the National Park Service on wildlife preservation. They indicate that Battery
11 Kimball has been the site of noted documentation of unusual and continually more
12 threatened migratory birds.

13 A city-wide breeding bird survey of 1992, and this is Item C. I
14 tagged this with a purple flag because it's interesting to see that map, it's called
15 Total Avian Species Richness, and it was based on a singular inventory of birds of
16 significant species of note.

17 And it's very interesting that in the northwest corner, directly in
18 the area of battery Kimball, more so than Glover Archibald, this is an area that has
19 the highest level of species diversity and, therefore, richness.

20 So, this map is a pretty good mapping of the areas of steep
21 slopes, good quality of water, and tall trees.

22 Further on in that same document is a very daunting inventory of
23 noted species in Washington.

24 There's a simpler solution. The next document, Item D, which is
25 a field checklist taken at Battery Kimball, and I believe this was taken by a tree --
26 bird survey specialist who's been doing this, oh, this man has been doing it for
27 twenty years.

1 That's what's also daunting to me is the number of people
2 who've spent twenty and thirty and forty years watching and being very concerned
3 about the decline of tree -- bird species.

4 The last document is an article in the Scientific American, dated
5 1992, and I just gave you one page. And the article is called "Why American
6 Songbirds are Vanishing."

7 And, lo and behold, on page 100, it's declining species in Rock
8 Creek Park, and it demonstrates the number of, the change from the 1940s to the
9 1980s on, and I believe all of these birds, with the exception of the downy
10 woodpecker, are migratory birds.

11 We're looking at 90% reduction in breeding pairs to 100%. So
12 that it's not an understatement to say that the breeding populations of songbirds is
13 decreasing; that the presence of mature stands of timber as an island in Battery
14 Kimball will not ultimately support those without buffer areas of tall trees and mature
15 trees, which is exactly what we're talking about tonight.

16 Thank you very much.

17 CHAIRPERSON KRESS: Thank you. Any other testimony?

18 MR. MURPHY: I guess I should say that Bill has been, one of the
19 many 20-year experts in the field and has actually aided us in doing an awful lot of
20 field research on this.

21 If you have any questions I will probably call on Bill.

22 CHAIRPERSON KRESS: We've got a lot of good information to
23 read to help us become a little more knowledgeable.

24 Do we have any questions for the representatives from the Park
25 Service?

26 I guess they have no questions. Thank you very much for
27 coming and testifying.

1 MS. COLEMAN: Thank you.

2 MR. YEAMAN: I'm being encouraged. Wonder if, maybe if
3 before I, my name's Bill Yeaman and I work in Rock Creek and done a lot of birding
4 in Battery Kimball.

5 I just had to tape, one of the New York tropical migrants that's --
6 let me sit down somewhere -- that's in dire straits is the wood thrush, which is the
7 official bird of the District, and it's got a beautiful song, some of you may have heard
8 it, if not it's just very melodious and it inhabits the interior woodlands, nests in the
9 interior, and it's in jeopardy, along with some others.

10 But there are wood thrushes that nest in Battery Kimball Park, so
11 I just thought I'd just play real quick the sound of a wood thrush for you.

12 (bird song)

13 CHAIRPERSON KRESS: You can leave that playing the
14 background.

15 (laughter and applause)

16 Those who wish to, who haven't testified, who wish to testify,
17 would you come forward now?

18 I think we have four chairs for however many individuals.

19 Are you all in support, or some in opposition? We're supposed
20 to have those in support go first, but since there's only three of you, I'm not sure
21 that's a problem.

22 Is anyone in support or are you all in opposition.

23 MR. SCHLEFER: I'm in support.

24 CHAIRPERSON KRESS: Well then, you're sitting in the perfect
25 spot to go first. So we will hear from you first, and then we will hear from the two
26 other gentlemen in opposition.

27 UNIDENTIFIED SPEAKER: I'm in support and opposition.

1 CHAIRPERSON KRESS: Okay. We are trying to limit it to five
2 minutes and if possible, and I'm sorry I didn't, are you in support?

3 MS. SELIGMAN: Yes, I am.

4 CHAIRPERSON KRESS: Okay, great. Then you're sitting in the
5 right place as well.

6 Okay, with that we'll start from my left and go to the right and if
7 you'd give us your name for the record and then give us your testimony, and then we
8 will question you, and then go on to the next person. This is just to help us so we
9 don't have all the ups and downs.

10 MS. SELIGMAN: Madam Chairperson, members of the
11 commission, my name is Susan Seligman. I'm president of Discovery Creek
12 Children's Museum. Our address is 5125 MacArthur Boulevard.

13 Thank you very much for the opportunity to testify in support of
14 the tree and slope overlay district because it will benefit our city's children.

15 Deep within the heart of Battery Kimball Park lies the headwaters
16 of a very special creek, which is named, on all the topographic maps, Maddux
17 Creek.

18 It flows through the timbered, hilly terrain next to huge rock
19 outcroppings and continues on under MacArthur Boulevard, next to the little red
20 Conduit Road schoolhouse, which is home to Discovery Creek, through an old
21 forested area, down several cascading waterfalls beneath Canal Road to the canal.

22 The portion of the creek from MacArthur Boulevard to Canal
23 Road is Discovery Creek. I invite you all to visit. This is a special place for more
24 than 15,000 city schoolchildren and their families visit each year.

25 Some of the children visiting Discovery Creek, exploring the
26 creek bed, may not have another experience like this in their lifetime.

27 The forest which surrounds Discovery Creek is one of the most

1 unique stands of old growth trees in the city. One tree on the property takes
2 eighteen first-graders, hand in hand, to go all the way around. That's something
3 about your 2 pi R formula. You'd really have to see it.

4 Why is this initiative important to Discovery Creek and the
5 children who love it and learn to play there? Because the health of the creek and
6 the forest are vitally interconnected to the wooded slopes on private residential
7 property that surrounds the headwaters of Battery Kimball, and, because the best
8 source of erosion control is a stable ecosystem.

9 We hope and encourage you to support this initiative. Discovery
10 Creek is privileged to be within Rock Creek Park, but as a member of a residential
11 urban neighborhood, our fate is inextricably tied to the future of the surrounding
12 parcels.

13 Thank you very much.

14 CHAIRPERSON KRESS: Thank you. Just a second before we
15 go on. I just want to check. Are there any questions from my colleagues.

16 I just want to ask, isn't 2 pi R pi D? Are two Rs D?

17 (Laughter)

18 I just wondered if I had flunked third grade or fourth grade.

19 Well, I'm also old and forget.

20 With that, we'll move on.

21 MR. SCHLEFER: Thank you. My name is Mark P. Schlefer. I
22 live at, my wife and I live at 2911 University Terrace, and we support the proposal.

23 I don't want to repeat in any way what has already been said, but
24 I would like to point out an example of what has not been preserved.

25 You saw pictures, slides of the area that we would like to retain
26 in its present character. There is a property, which we call the Redmond property,
27 which has probably sparked this whole process.

1 It was sold to developers, about two acres. My colleagues could
2 correct my number, but I think it's about that. It runs between Chain Bridge Road
3 and University Terrace, slopes down from Chain Bridge Road.

4 It anciently, more recently actually, had great old trees, which
5 were cut down. The dwelling of one of the earliest black families, the Bannister
6 family, was demolished instead of being preserved. Sharp declivities in the land
7 were leveled and several huge, expensive, foreign houses are now under
8 construction.

9 Water will wash down onto University Terrace where there is no
10 storm sewer. This damage is irreversible and irretrievable.

11 This is the kind of disaster which should not happen elsewhere in
12 this area. It need not have happened there. A good architect could have designed
13 smaller houses, retained the great old trees, built on the slopes without destroying
14 them, saved the old Bannister house, and provided a sensitive treatment for the
15 water run-off.

16 Let me describe briefly an alternative approach that we
17 developed ourselves. Some fifteen years ago, my wife and I bought half an acre of
18 property adjoining our lot. It has very large oak, maple, tulip, and walnut trees.
19 Three houses could have been built on it and a developer was planning to do that at
20 the time.

21 Such a program would have been a planning and environmental
22 disaster. Four neighbors of ours, for various reasons and considerations, joined with
23 us, contributed to the price in exchange for an agreement by us not to build any
24 dwelling on that property unless all of us consented.

25 There was a decision that was clearly in the public, and not in
26 the private interest, although in the end, all of us benefitted.

27 I urge this commission to take that view of the public interest. It

1 is not necessarily the proprietary interest of individual landowners that should
2 control, although it may be and certainly is relevant to the consideration.

3 Thank you, and I hope you decide in favor of our proposal.

4 CHAIRPERSON KRESS: Thank you. Any questions?
5 Commissioner Parsons?

6 COMMISSIONER PARSONS: Is this a covenant you entered
7 into with your neighbors? How did that work?

8 MR. SCHLEFER: Yes. It was a covenant running with the land.
9 I don't know if any of you have ever seen a cartoon by Mr. Thurber showing a picture
10 of a covenant running with the land.

11 (laughter)

12 CHAIRPERSON KRESS: I'd like to see that.

13 MR. SCHLEFER: That's what this is.

14 COMMISSIONER PARSONS: So it's a covenant with you and
15 four neighbors?

16 MR. SCHLEFER: Yes.

17 COMMISSIONER PARSONS: And it goes with the land, no
18 matter who the neighbors are?

19 MR. SCHLEFER: That's correct.

20 COMMISSIONER PARSONS: And they all participated
21 financially as well?

22 MR. SCHLEFER: They did.

23 COMMISSIONER PARSONS: I see.

24 MR. SCHLEFER: Well, each had an interest in them. Two of
25 them were interested in a right of way along a driveway. One had a retaining wall
26 that was encroaching on the property and would have had to be removed, and he
27 had to buy ten feet or fifteen feet on one edge. And another neighbor wanted to

1 have ten feet on one edge.

2 Each contributed in exchange for the mutual covenant.

3 COMMISSIONER PARSONS: Now I understand. Thank you.

4 CHAIRPERSON KRESS: Any other questions? Thank you.

5 With that we'll move on.

6 MR. SULLIVAN: Good evening. My name is John Sullivan. I
7 live at 3033 University Terrace, and I am totally in support of the proposed overlay.
8 However, I have two brief points I want to make.

9 First of all, I don't think the proposed boundaries go far enough.
10 Right across the street from me there is a heavily wooded area that is not included
11 in the proposed overlay. I'm not sure if it's too late to try to --.

12 CHAIRPERSON KRESS: Can you come up and point it out to
13 us and get the mike?

14 MR. SULLIVAN: I think, based on what I've learned at this
15 meeting, that a textbook example of an area that should be included in this overlay
16 are the parcels that lie to the north of the western area of the proposed area of the
17 overlay.

18 I live over in this area right here. To the north of me is my
19 neighbor, Tony Ahuja, and that's the second area I want to talk about.

20 But right across the street, we are at a total loss as to why this
21 area was not included. It is heavily treed and heavily sloped, and it has undeveloped
22 lots.

23 CHAIRPERSON KRESS: Can you name it a little more for us,
24 the name of the street or --?

25 MR. SULLIVAN: Well, I can tell you who owns the property, if
26 that helps. Does that help? No. I believe it's Gilbert Hahn owns the property along
27 with Steven Kufferberg, that's with a K, owns the other parcel.

1 And I think Tony can also bear witness to the, what the lots look
2 like and that. So that's my first point.

3 The second point is that I agree with Mr. Ahuja's point that
4 existing lot owners should not be adversely affected by this proposed overlay,
5 although I agree that there has to be some compromise here, because we do have
6 overwhelming support from the community for this overlay.

7 And I think the proposal is 31 1/2%. The existing usage of the
8 land, I think, is 40% right now, and I think a better compromise would be maybe
9 35%.

10 And the only reason I say this is a somewhat selfish reason
11 because if you limit the size of the footprint, you're just going to get taller houses.

12 And the house I live in is very tall. I didn't build that house, by
13 the way. Someone else built it. A year later I came down, and it's an interesting
14 story.

15 My wife said, you've got to see this area of the city. I think we've
16 just found our dream house. And I'll never forget the first time I drove up University
17 Terrace.

18 No sidewalks, all trees, and then when I drove down Chain
19 Bridge Road, it was incredible that this enclave was within the District of Columbia.

20 So I think there's got to be a little compromise for people who
21 have existing lots and, for no reason, they now will be prohibited from building what
22 they otherwise could build right now in terms of the footprint.

23 CHAIRPERSON KRESS: All right. Thank you. Stay here so we
24 see if we have any questions. Do we have any questions?

25 COMMISSIONER PARSONS: I guess I'd like the petitioners to
26 respond after they're done testifying.

27 CHAIRPERSON KRESS: We'll ask them for a closing

1 statement, I think, and perhaps they can address that in their closing statement.

2 We're also going to be keeping the record open and
3 Commissioner Franklin already had a question, in fact, regarding, I think, the next
4 person who's testifying. And so we had already intended to leave the record open
5 so I believe it can be left open to respond to both of these gentlemen if Mr. Nettler
6 isn't prepared to respond today.

7 COMMISSIONER HOOD: Madam Chairman, I just want to ask -
8 -. Mr. Sullivan, were those the only two concerns that you had, that you opposed to
9 what was going on? Were those the only two concerns that you had?

10 MR. SULLIVAN: Yes, those are the only two.

11 COMMISSIONER HOOD: Other than that, you agree with
12 everything else?

13 MR. SULLIVAN: Absolutely. I'm in support of the proposed
14 overlay.

15 COMMISSIONER HOOD: Okay. Thank you.

16 CHAIRPERSON KRESS: Okay. Thank you.

17 MR. AHUJA: Good evening, Madam Chairman and members of
18 the commission.

19 For the records, my name is not serial rapist. My name is Tony
20 Ahuja. I live at 3045 University Terrace.

21 Let me go on record. I am for the overlay district. I'm not
22 opposed to it at all, but I find myself in a very unique situation.

23 My house is 1800 square feet. I live on a 10,000 square foot lot
24 and it is directly across from the wood lot that Mr. Sullivan referred to just a minute
25 ago.

26 If you adopt the overlay district as proposed and read the reason
27 under it, my lot coverage would be reduced to 31 1/2%. While the person across the

1 street would have a full 40% coverage even though they have a smaller lot.

2 I'm going to have to take the bunt of this in equity. So my
3 suggestion was, I don't understand why the line was drawn right down the middle of
4 University Terrace and then is zigged over. Why did we leave that pocket out? I
5 have not gotten an answer till today.

6 So, just to make you get your attention to this, I recommended or
7 suggested that either we do one of two things.

8 One, we look at the ground coverage of the overlay district. Or
9 we move the district lines to the back of University Terrace property so it separates
10 University Terrace properties from those on Chain Bridge Road.

11 But, you know, the way it sits right now, I am one of the few
12 property owners, I don't know how many there are, with 10,000 square foot lots.
13 And especially with an 1800 square foot house that's about 50 years old.

14 My house has no economic value. It's strictly for the dirt
15 underneath.

16 And I'm going to be impacted by it considerably. And that's why
17 I'm the bad guy of the group, because I'm saying hold it, you guys. You've done a
18 great job.

19 Mr. Meeker must think I'm a real royal pain in the butt because
20 I've argued with him from day one, as I have with Mr. England and many of my
21 members of the committee. They have been very courteous, given me their time. I
22 even picked on the city staff, Mr. Colby, he has been very gracious and taken my
23 phone calls without saying tell him to go away.

24 And I, you know, I just want to bring out this inequity in process.
25 I'm not opposed to the overlay district. I think it's a great idea. I'm all for it.

26 But I would want you to consider what's happening to this unique
27 situation. As reference was made earlier, sure there are special exceptions, but let's

1 face it.

2 Any developer would do anything to stay out of the public
3 domain when they want to go forward and build and develop a property. It's just not
4 financially worth it to them when there's a property directly across the street they can
5 walk over, buy, and start developing the next day with a building permit by right.

6 Why should they take on another public approval process? So
7 while the process is there, in reality it really doesn't work.

8 So, thank you for your consideration.

9 CHAIRPERSON KRESS: Thank you. Questions?

10 COMMISSIONER FRANKLIN: I just want to be sure I
11 understand your point, Mr. Ahuja. You would live with the more severe constraint,
12 provided your neighbor was also so constrained?

13 MR. AHUJA: If the --. The purpose of the whole overlay is to
14 bring the entire community into certain rules and regulations, and if the rules and
15 regulations apply across the board, then the fact is the market tends to balance itself
16 out.

17 What we were saying here, in the same community, we're going
18 to draw a line down the middle of the street and divide you guys. And I don't
19 understand why the pocket was left between Loughboro Road and down to where
20 the red lights you saw to the west.

21 There is no reason for it. There is a buildable lot. There are
22 small homes just like mine that are 30, 40, 50 years old that could be redeveloped.
23 And yet they were excluded and I don't understand what the apparent reason was
24 and there doesn't seem to be any. If there is, I haven't been told why.

25 COMMISSIONER FRANKLIN: are there mature trees on those
26 lots?

27 MR. AHUJA: Yes, sir. And ever since this overlay district came

1 up for discussion, one of the lots has been developed and a lot of the mature trees
2 were removed.

3 COMMISSIONER FRANKLIN: How about the slope condition
4 there?

5 MR. AHUJA: They sit on a slope and so do I, but the way my lot
6 is set is that I could have a walk-out basement and, because I already have a house
7 there.

8 COMMISSIONER FRANKLIN: All right. Your slope condition is
9 more severe than across the street.

10 MR. AHUJA: No, I think we are about the same, except there is
11 undeveloped land, mine has already been developed. There's a front yard which the
12 front of the house would drop into the yard.

13 COMMISSIONER FRANKLIN: Well, of course, I picked up your
14 letter initially and I really would like to learn why there is disparity.

15 CHAIRPERSON KRESS: And we've asked for that response,
16 Commissioner Franklin has.

17 Any other questions? Remember.

18 MR. AHUJA: Thank you.

19 CHAIRPERSON KRESS: Thank you very much. I would like to
20 give Mr. Nettler the chance to either respond tonight or respond in writing if he'd like
21 to make some closing statements.

22 COMMISSIONER CLARENS: Madam Chairperson, we might
23 want to also ask Mr. Nettler to take the opportunity to clarify something that was not
24 part of the testimony, which is the rationale for the edges of the, the boundaries of
25 the district that you are requesting.

26 Shall I --. I'm asking Mr. Nettler to clarify or to present testimony
27 as to the rationale for the boundaries.

1 MS. PRUITT-WILLIAMS: Excuse me, Madam Chair, while
2 they're looking for that, can we do a little procedural thing that we missed earlier,
3 which was to just declare our, to talk about the posting of affidavit. I'm sure it was
4 done, but just for the record, could we have?

5 CHAIRPERSON KRESS: That should have come up in
6 preliminary matters.

7 MR. WATSON: I apologize, Madam Chairperson, I was slow in -
8 -.

9 CHAIRPERSON KRESS: We should have asked. That's fine.

10 MR. WATSON: Could you repeat the question?

11 MS. PRUITT-WILLIAMS: I'm sorry. Earlier, we forgot to ask you
12 about the posting of affidavits. I'm sure it was posted, but I just need for the record.

13 MR. WATSON: The posting of affidavits.

14 MS. PRUITT-WILLIAMS: For the site.

15 MR. WATSON: Yes, I did do, accomplish the placarding on April
16 7. I submitted an affidavit to that effect, a notarized affidavit which is in the record.

17 MS. PRUITT-WILLIAMS: Thank you. That's all I needed for the
18 record. Thank you.

19 MR. NETTLER: Let me ask, let us answer Mr. Clarens'
20 questions first and Ms. McCarthy can do that.

21 MS. MCCARTHY: The basic process that we went through in
22 choosing the boundaries of the overlay was looking first at the overlay and the
23 criteria that it laid out and trying to find places that were steep sloped, mature trees,
24 but had not, still had large areas that were available for development.

25 And, as I recall from that day when the committee was meeting
26 and chose those boundaries, it was their feeling that the area between where the
27 boundary is now north to Loughboro Road was already subdivided into a fairly large

1 number of properties.

2 Or, we were told in the case of Mr. Hahn's property that it was in
3 the process of being subdivided and built upon for, I believe, a house for his
4 daughter, one of his children.

5 So, you know, it, certainly the Zoning Commission has the power
6 to set the boundaries wherever it would like, and could also ask to have those
7 boundaries looked at further to see if it makes sense to expand the overlay.

8 I know when I was first going through the process of working with
9 the neighbors to d the boundaries, I was not nearly as familiar with the neighborhood
10 as I am now, and so I really was not aware of just what was the nature of the
11 development north of that site.

12 I've looked at the information from Lusk's Directory that I have
13 with me about the boundaries of those two parcels that Mr. Ahuja mentioned.

14 Mr. Kufferberg's listed as being 13,000 square feet, and Mr.
15 Hahn's is listed as being 69,000 square feet, but I believe that Mr. Hahn's has
16 subsequently been subdivided beyond the date of that Lusk's Directory which, that I
17 was using which I know is not a current Lusk's, since we started this process it was
18 year and a half ago when we were actually making this decision.

19 CHAIRPERSON KRESS: Well, I believe that we would like to
20 ask you and Office of Planning, since this has come up, to take another look at that
21 and to get back to us in the time period that we leave the record open.

22 MS. MCCARTHY: Our original intention was we were just, we
23 were just staying on the eastern side of Chain bridge Road, and through the
24 participation of the Duemlings we became aware of just how much developable land
25 was in, a lot of that part south of that is the Duemling property.

26 So when we realized, gee, it's not --. Because we were thinking
27 we needed to be adjacent to Chain Bridge, to Battery Kimball because of that

1 section of the overlay, but when we realized just how much property there was, and
2 that it seemed to be very similar in characteristic to that on the other side of
3 University Terrace, we decided to expand the boundaries to encompass that
4 section.

5 COMMISSIONER CLARENS: Well, Ms. McCarthy, but if, it
6 seems to me you started by saying that the rationale was what was mandated in the
7 regulations as the rationale for this type of overlay.

8 But then you started talking about these big properties that are,
9 that can be developed, et cetera, et cetera, which is, is that part of the rationale in
10 the regulation?

11 MS. MCCARTHY: Yes. That's one of the criterias that it has.

12 COMMISSIONER CLARENS: But then I see the boundary and it
13 was presented under testimony that they gray areas represent sloped areas. It is
14 logical to assume, perhaps, being somewhat familiar with the area, that if there are
15 trees on one side of the red line, I'm talking about, especially towards the bottom in
16 the area where the zone becomes the narrowest, that there are actually gray areas
17 both to the west and to the east, and that both are probably treed similarly.

18 So my question to you is why -- I see very clearly the boundary
19 along Battery Kimball Park. I mean that's obviously not very difficult to see. And I
20 see the area on the north. I assume that this area -- it's difficult to say from here
21 without pointing out, but the area sort of south of the spot, thank you.

22 Now the area below that, below that area. All of that area I
23 assume that that's fairly flat area, relatively.

24 MS. MCCARTHY: And heavily subdivided.

25 COMMISSIONER CLARENS: And heavily subdivided.

26 MS. MCCARTHY: The trees are yard trees and street trees.
27 They're not mature trees.

1 COMMISSIONER CLARENS: Okay. So then, and the rationale
2 for -- and along Arizona Avenue, is that what it is?

3 Yes. There it is. Along that area, that's also subdivided and
4 relatively flat?

5 MS. MCCARTHY: Along here it's quite extensively subdivided.
6 See these are, you know, very uniform lots.

7 COMMISSIONER CLARENS: Okay. And the reason why the
8 area above that was excluded was because it's not sloped? The area north of that
9 zone?

10 MS. MCCARTHY: This here?

11 COMMISSIONER CLARENS: Yes.

12 MS. MCCARTHY: This section is along Loughboro Road is
13 subdivided with houses and it was flatter because this, that whole section along
14 Loughboro was flatter, was not as steeply sloped.

15 What I'm not clear of is just --. I can't really tell you for sure
16 where the slopes go in this section because when we had this area mapped by the
17 surveyor, we had by that point in time, already decided on the boundary, so we just
18 asked him to show us where the slopes were within the boundaries that had been
19 articulated.

20 But when, you know, when we originally started out, we started
21 off just with this area because of its proximity to the park, and because that was one
22 of the major criteria for determining where an overlay, where the tree and slope
23 overlay would be mapped.

24 The Duemling's property is here, and they own this area around
25 there, so it was easy, since they were at the table, and it brought information about
26 that parcel. It was easy to add that to the list.

27 I'm not --. As of that time, I wasn't familiar with the characteristics

1 of this area and we, the committee met. We decided on the boundary and we just
2 proceeded with the planning. We didn't go back and revisit those boundaries after
3 that point in time, but we --.

4 MR. NETTLER: Let me say another thing. We looked, there
5 were four criteria for which we needed to look at in terms of mapping this area. And
6 clearly, if you look at, you take into, each of them individually, rather than together,
7 you can end up with an area that's substantially larger than this area and that, then,
8 in my view at least, dilutes the notion of what the notion of the tree and slope overlay
9 was intended to do.

10 I mean, it's the same question whenever you get into rezoning or
11 comprehensive planning in how, where do you draw the line? And you have to try
12 and, in our view, take the criteria that were identified by the zoning commission and
13 say which of these properties that are adjacent to the park have these significant
14 slopes, have these mature trees, aren't subdivided, and in terms of their natural
15 state, are lots and parcels that fit together.

16 As opposed to then start, I hate to say this, a slippery slope in that
17 you open it up to other parcels that don't necessarily fit within there, and I think the
18 University Terrace is very much akin to what the Chain Bridge Road character is.
19 And I'm not sure that you can say exactly the same thing for all the other sites.

20 They may have steep slopes, they may not have some of the
21 other aspects of it, but this area clearly did. And it may very well be, when the Office
22 of Planning comes back in its comments, and maybe one or two other lots do belong
23 in there.

24 But in terms, generally, I think that what Ms. McCarthy said and
25 the time that was spent on this, particularly with the Office of Planning walking the
26 area with us, that we were pretty careful in trying to insure we weren't going into
27 some general rezoning of an area of the city as opposed to an area that was

1 intended to be covered by a tree and slope overlay.

2 COMMISSIONER CLARENS: I don't, I'm not questioning, but I
3 didn't see a presentation dealing with these boundaries and I haven't read one. And
4 I would like to see something that articulates the rationale for establishing the
5 boundaries where they have been established.

6 MR. NETTLER: And I think if you go -- view this map as an
7 exhibit. And I think when you go through the map and you see what is identified as
8 the steep slopes, as the coloring on there. There's larger lots --.

9 CHAIRPERSON KRESS: I think some of the problem was in the
10 slides. We really weren't able to see the topography in the distance and the scale,
11 and I think that would be helpful to have these exhibits and be able to look at them
12 more closely.

13 COMMISSIONER FRANKLIN: Was the horse out of the barn, so
14 to speak, in terms of the subdivision by the time this proposal was advertised?

15 MR. NETTLER: For some, it was.

16 COMMISSIONER FRANKLIN: I mean, I'm talking about the
17 area in question, across the street where we're told that there's been a major
18 subdivision.

19 MR. NETTLER: You know, subdivision is a tricky situation
20 because under the zoning regulations, you're vesting in terms of permitting is
21 different than, necessarily what your subdivision issues are.

22 And if you subdivide, if you have authority to subdivide, you end
23 up in different problem, taking issue, a different type of issue that the district has to
24 confront than you do on a, when you have these existing lots that you haven't gotten
25 building permits for.

26 And I think that was some of, somewhat of a concern about the
27 timing of some of these things that were done.

1 You heard Mr. Schlefer talk about the lot that was, that we tried,
2 that was probably the precipitating event and trying to draw that back without, with a
3 recognition that we already had subdivided lots made it necessary for us to have to
4 deal with it solely from the context of the building permits, as opposed to the
5 subdivision.

6 We couldn't get those lots to be this size and so we came to a
7 compromise with them that we thought would serve the purposes of this overlay, but
8 it's a difficult, it's a difficult timing situation.

9 COMMISSIONER FRANKLIN: Have permits been issued?

10 MR. NETTLER: For those lots?

11 COMMISSIONER FRANKLIN: Yes, for houses on those lots.

12 MR. NETTLER: Right. I think they've already started building.

13 Two of them are built?

14 COMMISSIONER FRANKLIN: And the permits have been
15 issued for the others?

16 MR. NETTLER: I think they have gotten the permits for the
17 others. I think it's now three houses.

18 COMMISSIONER FRANKLIN: So, in other words, that's a fait
19 accompli.

20 MR. NETTLER: Yes. In fact, that why we went to the 9500 lot
21 area because we got caught in between the fact that it was subdivided for 7500
22 square foot lots, and we wanted them at 10,000, and we ended up with a
23 compromise of the 9500.

24 COMMISSIONER FRANKLIN: Thank you.

25 CHAIRPERSON KRESS: All right. Thank you. Any further
26 questions, or are we complete for the evening?

27 Ladies and gentlemen, the other members of the commission

1 and I thank you for your testimony and assistance in this hearing.

2 The record in this case will be kept open until July 6 for the
3 submission of any additional information. Any information or reports specifically
4 requested by the commission should be filed during the period ending on July 20 in
5 the Office of Zoning at 441 Fourth Street, Northwest, suite 210, Washington, D.C.
6 20001.

7 The commission will make a decision on this case at one of its
8 regular monthly meetings following the closing of the record. These meetings are
9 held at 1:30 p.m. on the second Monday of each month, with some exceptions, and
10 are open to the public.

11 If you are interested in following this case further, contact the
12 staff to determine whether it is on the agenda of an upcoming meeting.

13 You should also be aware that if the commission proposes
14 affirmative action, the proposed action must be referred to the National Capital
15 Planning Commission for federal intact review.

16 The Zoning Commission will take final action at a public meeting
17 following the receipt of the National Capital Planning Commission's review, after
18 which a written order will be published.

19 I now declare this hearing closed.

20

21

22 (Whereupon the hearing of the District of Columbia Zoning
23 Commission was concluded at 9:46 p.m.)