

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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WEDNESDAY

JUNE 17, 2020

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The Regular Public Meeting convened via Video/Teleconference, pursuant to notice at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Board Member
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.
DANIEL BASSETT, ESQ.

The transcript constitutes the minutes from the Public Meeting held on June 17, 2020.

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Chairperson Hill

Appeal Number 20221 of Chain Bridge Road/ 5
University Terrace Reservation Committee.

Vote to Dismiss Motion to Appeal 10
Approved Four to Zero to One

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

9:37 a.m.

CHAIRPERSON HILL: Good morning, ladies and gentlemen. We're convening and broadcasting this decision meeting by video conference. This is a June 17th, 2020, Public Meeting session of the Board of Zoning Adjustment for the District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Carton Hart, Vice Chairperson and Lorna John, Board Member. And representing the Zoning Commission is Michael Turnbull.

Today's meeting agenda is available to you on the Office of Zoning's website. Please be advised this proceeding is being recorded by a Court Reporter and it is also webcast live via WebEx and YouTube Live.

The video will be available on the Office of Zoning's website after today's hearing session. Accordingly, everyone who is listening on WebEx or by telephone will be muted during the meeting. We do not take any public testimony in our decision meetings unless the Board asks someone to come forward.

If you are experiencing difficulty accessing WebEx or with your telephone call-in I'm going to give you a number to call here if everyone wants to write it down. Then please call our Office of Zoning Hotline number at 202-727-5471.

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1 Once again that's 202-727-5471 to received WebEx login or
2 call-in instructions.

3 At the conclusion of this meeting session I shall
4 in consultation with the Office of Zoning determine whether
5 a full or summary order may be issued. A full order is
6 required when the decision it contains is adverse to a party
7 including an affected ANC. A full order may also be needed
8 if the Board's decision differs from the Office of Planning's
9 recommendation. Although the Board favors the use of
10 summary orders whenever possible. An Applicant may not
11 request the Board to issue such an order.

12 Preliminary matters are those which relate to
13 whether a case will or should be heard today such as a
14 request for a postponement, continuance or withdrawal or
15 whether proper and adequate notice of the meeting has been
16 given.

17 Mr. Secretary, are there any preliminary matters
18 that we need to deal with?

19 MR. MOY: Good morning, Mr. Chairman, Members of
20 the Board. I don't have any outstanding preliminary matters
21 before the Board at this time but we'll have a few but I
22 think it would be appropriate to call those when we go case
23 by case. Thank you.

24 CHAIRPERSON HILL: Okay. Thank you. All right.
25 Mr. Moy, if you could read our first and only decision case,

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1 or meeting case.

2 MR. MOY: Thank you. So, that would be in regards
3 to Appeal Number 20221 of Chain Bridge Road/University
4 Terrace Reservation Committee. And this appeal was
5 advertised as an appeal from the determination made on
6 November 13, 2019, by the Office of the Zoning Administrator,
7 Department of Consumer Regulatory Affairs that the creation
8 of 7 A&T blocks created by the Office of Pacts and Revenue,
9 the proposed subdivision to create seven lots of record on
10 the existing A&T lots for the purposes of obtaining building
11 permits to construct seven detached principal dwelling units
12 did not violate the zoning regulations for the R-21 zone.
13 This is at 2700 block of Chain Bridge Road, Northwest, Square
14 1425, Lots 841 through 847. And this is what's before the
15 Board is the Motion to Dismiss.

16 CHAIRPERSON HILL: Thank you, Mr. Moy. You will
17 recall last week we took testimony primarily just on the
18 Motion to Dismiss. And then we were going to determine that
19 today. And if we decided not to approve the Motion to
20 Dismiss we would go ahead and be hearing the appeal I think
21 next week.

22 I'm kind of getting myself a little bit organized
23 so if you don't mind I'm going to kind of go around the table
24 and, Mr. Hart, if I could start with you first.

25 VICE CHAIR HART: Sure. So, I after listening to

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1 the testimony from last week by the various parties I think
2 and DCRA has made this Motion to Dismiss, lack of
3 jurisdiction because the A&T Plat was issued by the Office
4 of Tax and Revenue and does not constitute either a first
5 writing or a final determination by the Zoning Administrator.
6 So, the DCRA noted that the Board lacks jurisdiction to
7 review the Plat, the A&T Plat which does not constitute an
8 order, requirement, decision, determination made by the ZA.
9 And they had some points that connected why they believed
10 that that was the case.

11 I'll note that the Appellant's representative
12 really did have me thinking somewhat regarding Subtitle X,
13 1100.2 which governs which type of appeal that the BZA is
14 supposed to hear. On its face of that particular regulation
15 it does seem that though the BZA has very broad powers but
16 I will note that no single regulation is read by itself. It
17 has to be read in context with other zoning regulations in
18 that section which is Subtitle X, 1100, which is the
19 introduction to the zoning appeals process.

20 So, in Section 11, excuse me, 1100, 1100.3 we
21 understand that the BZA has, quote unquote, no jurisdiction
22 to hear and decide any appeal or portion of any appeal where
23 the order, requirement, decision, determination or refusal
24 was not based in whole or in part upon any zoning regulation
25 or maps.

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1 I after listening to all of that and reading the
2 record I happen to believe that the decision of the Office
3 of Tax and Revenue is not a Zoning decision or based on
4 zoning in part or in whole so I would be in favor of the
5 Motion of Dismiss.

6 And I think that it's a interesting issue that has
7 been raised by the Appellant and I understand that there may
8 have been some history to this. This didn't just happen.
9 It's been going for a number of years. But I just don't
10 think that that's a BZA -- that this decision is based on a
11 zoning regulation or the zoning map. And so I just don't
12 think that we have the jurisdiction to be able to hear this
13 or change this decision by OTR. So, that's where I stand.

14 CHAIRPERSON HILL: Ms. John?

15 MEMBER JOHN: A few additional thoughts. And so
16 I'll just start here. This is an appeal by Chain Bridge Road
17 of an A&T site issued and supported by the Office of Tax and
18 Revenue. The plat created seven lots to allow the property
19 owner to obtain a building permit to construct seven single
20 family dwellings. The preliminary issue here is whether the
21 BZA has jurisdiction to submit an appeal.

22 In its Motion to Dismiss the appeal DCRA argues
23 among other things that the A&T Plat is not a decision of the
24 Zoning Administrator, therefore, the Board lacks
25 jurisdiction. The property owner and Appellant opposed

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1 DCRA's Motion to Dismiss. The Appellant argues that the A&T
2 Plat is the first writing for the Zoning Administrator as
3 the ZA's earlier determination was not a final decision based
4 on expressed language of that document.

5 The owner argues that the disclaimer is
6 unenforceable and that determination and A&T Plat together
7 constitute a fair Zoning decision. The property owner also
8 argued during the hearing that the A&T Plat issued by OCR is
9 a decision that an administrative body in the administration
10 for enforcement of the regulation.

11 During the hearing the ZA testified that his
12 determination letter was not a final decision and that the
13 customary process is that his office would review the A&T
14 Plat or subdivision at the time of the permit application.

15 In my view, DCRA has the better jurisdictional
16 argument based on the regulations and full record on the
17 motion to dismiss. The zoning regulations allow an appeal
18 of an order, requirement, decision, determination or refusal
19 made by an administrative officer or body in the
20 administration or enforcement of the zoning regulations. And
21 as Mr. Hart suggested, there has to be a Zoning decision.
22 And the regulations also require a final decision.

23 Here the ZA was not involved in the creation and
24 issuance of the A&T Plat by OCR which is a separate body.
25 Further, the A&T Plat or subdivision is one is eventually

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1 issued would be reviewed when the Applicant submits the
2 permit application and that decision would be appealable.

3 So, in a nutshell, the ZA has to make a Zoning
4 decision. OCR's creation of the A&T Plat did not involve the
5 Zoning Administrator because there is no zoning decision
6 because BZA lacks jurisdiction to hear the appeal. And so
7 I would support dismissal of the appeal.

8 CHAIRPERSON HILL: Thank you, Ms. John.

9 Mr. Turnbull?

10 COMMISSIONER TURNBULL: Thank you, Mr. Chairman.

11 I would agree with my colleagues, the Vice Chair
12 and Ms. John and I won't go through repeating a lot of the
13 same arguments but I think that the basic things and
14 repeating some of what they said was that the A&T Plat, they
15 were created by a separate independent Government agency,
16 OTR, and that the plat does not contain any determination by
17 the ZA who was not involved in the creation of the approval
18 of these lots. So, I mean and with all of the arguments that
19 have already been made I would agree with the conclusion of
20 my colleagues. I vote to dismiss the appeal.

21 CHAIRPERSON HILL: Okay. Thank you all very much.

22 I have nothing to add. I think everyone said it
23 all quite well and I would be in agreement with that.

24 So, I guess if somebody wants to turn on their
25 microphone, I'm going to go ahead and make a motion to

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1 approve the Motion to Dismiss as put forth by DCRA and
2 dismiss the appeal of 20221 and ask for a second.

3 COMMISSIONER TURNBULL: Second.

4 MS. HOLLERING: Okay, thank you, Mr. Turnbull.

5 Mr. Moy, the motion has been made and I do believe
6 you understand the motion, correct, and then if you could
7 take a roll call vote.

8 MR. MOY: Yes, thank you, Mr. Chairman.

9 On this roll call vote when I call your name if
10 you would please reply with a yes, no or abstain. This is
11 on the motion made by the Chairman, seconded by Zoning
12 Commissioner Michael Turnbull to approve the Motion to
13 Dismiss.

14 Ms. John?

15 MEMBER JOHN: Yes.

16 MR. MOY: Zoning Commissioner Michael Turnbull?

17 COMMISSIONER TURNBULL: Yes.

18 MR. MOY: Vice Chair Hart?

19 VICE CHAIR HART: Yes.

20 MR. MOY: Chairman Hill?

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: And we have a Board seat taken. The
23 motion carries four to zero to one, Mr. Chairman.

24 CHAIRPERSON HILL: Okay. Great, thank you, Mr.
25 Moy. We're just trying to work on an issue here with the IT.

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1 Okay. All right. Let's see, Mr. Moy. So, I'm going to go
2 ahead and read us into the hearing session.

3 Mr. Turnbull, you're with us for the first two
4 cases and then, I guess, Mr. Shapiro is going to be joining.
5 Mr. Miller is going to be joining us.

6 COMMISSIONER TURNBULL: Yes.

7 CHAIRPERSON HILL: Okay. Great, thank you.

8 (Whereupon, the above-entitled matter went off the
9 record at 9:52 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCBZA

Date: 06-17-20

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

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