GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

Memorandum

TO: Board of Zoning Adjustments

FROM: Andrew Altman, Director
Office of Planning

DATE: October 5, 2001

SUBJECT: Waiver of Rules for Late Submittal of the Office of Planning Report on BZA #16740

The attached report concerning BZA Application #16740 is being submitted less than 7 days prior to the Board of Zoning Adjustment consideration of the item scheduled for public hearing. The Office of Planning respectfully requests that the Board of Zoning Adjustment waive its rule and accept the report into the record.

Attachment

AA/mbr

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BZA
Case No. 16740
Exhibit No. 77

Board of Zoning Adjustment
District of Columbia
CASE NO.16740
EXHIBIT NO.77

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

Memorandum

TO: Board of Zoning Adjustment

FROM: Andrew Altman, Director
Office of Planning

DATE: October 7, 2001

SUBJECT BZA Application #16740 (Jacobsen Builders, Inc.)
2989 Arizona Avenue, N.W. (Square 1426, Lot 17)

APPLICATION

The application by the Jacobsen Builders, Inc. (Applicant) requests, pursuant to 11 DCMR 3104.1, a special exception under Sections 1568 and 1569 for tree removal activities on the site.

PROPOSAL

The applicant proposes to develop the lot with a single family detached house with approximately 2,784 square feet of space. The applicant also proposes to landscape and replant trees on the property to try and replace vegetation that was removed from the site.

SUMMARY RECOMMENDATION

The Office of Planning is greatly concerned that if this special exception is approved, it may be seen as setting a precedent for other undeveloped properties to remove trees over that allowed by-right and then seek a similar waiver from the requirements of the overlay district and is therefore recommending **DENIAL** of the special exception.

Secondly, of great concern to us is that denial of the special exception will leave the property undeveloped for 7 years in which time the property will not revert to its original condition and in fact, the situation may possibly get worse. The Office of Planning recommends that the applicant and the Chain Bridge Road /University Terrace Preservation Committee and the Palisades Citizens Association meet and try to come to an agreement on mitigation and reforestation measures and the siting of the house on the property. The Office of Planning also recommends the following issues may be considered in the discussions:

1. The Tree Preservation and Planting and Reforestation recommendations or better outlined in the Pitchford and Associates letter should be adopted and committed to by the applicant.

2. Provide a Tree Preservation Plan that details the limits of disturbance, limits and methods of clearing, location and protection of roots and preservation practices to be used during construction.
3. Change the proposed 2" caliper to 3" caliper or where appropriate there may be a mixing of 2" and 3" caliper.
4. Change the 1" understory trees 1-1/2" caliper.
5. Change some clusters of trees to 9'-12' caliper evergreen trees to provide some year round screening.
6. Provide a Landscape Plan.

SITE AND AREA DESCRIPTION

The subject property is located at 2989 Arizona Avenue, N.W. (Square 1426, Lot 17) and is currently undeveloped. The site as well as the surrounding area are generally hilly and slope down toward Arizona Avenue. The area is developed with modest 2-story, single-family detached homes on the west side of Arizona Avenue and up along Cathedral Avenue. On the east side of Arizona Avenue going north and south are larger 2- and 3-story single-family detached homes. There are a few undeveloped lots along this portion of Arizona Avenue that are wooded with large, mature trees.

ZONING REQUIREMENTS

The subject site is in the R-1-A and the Chain Bridge Road/University Terrace Overlay (CU/UT) Districts. The R-1-A District allows matter-of-right development of single-family detached, residential uses with a minimum lot area of 3,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, and a maximum height of 3-stories or 40 feet. The CU/UT Overlay District restricts bulk and lot coverage and excessive tree cutting in wooded areas with steep slopes. This overlay permits maximum lot occupancy of 30% and a maximum impervious surface coverage of 50%. Additionally, tree removal by-right is limited as follows:

1568.1 (a) *No tree that has a circumference of seventy-five (75 in.) or more at a height of four and one-half feet (4%') above ground shall be removed, cut down or fatally damaged;*

(b) *No more than three (3) trees that have a circumference of more than thirty-eight inches (38") at a height of four and on-half feet (4%') above ground shall be removed, cut down or fatally damaged, and none of these shall be located within twenty-five feet (25') of any building restriction line or lot line abutting a public street;*

(c) *The total circumference inches of all trees removed or cut down on a lot shall not exceed twenty-five percent (25%) of the total circumference inches; Provided, that this section shall not abrogate the right to remove or cut down up to three (3) trees as provided in paragraph (b); or any tree having a circumference of twelve inches (12") or less at a height of four and one-half feet (4%') above ground.*

ANALYSIS

In March 1992, the Tree and Slope (TSP) Overlay District was created to preserve the park like setting of designated neighborhoods by regulating the disturbance to the terrain, destruction of trees, and ground coverage of permitted buildings and impervious surfaces. The TSP Overlay District allows for the establishment of other individual overlay zones for particular areas. Under the provisions of the TSP Overlay District, the Chain Bridge Road /University Terrace Preservation Committee and the Palisades Citizens Association petitioned the Zoning Commission for the creation of the Chain Bridge Road/University Terrace Overlay District (CB/UT) that was adopted on June 14, 1999 (Zoning Commission Order 863) to specifically address protection of the Chain Bridge Road/University Terrace neighborhoods. During the review of the proposed CB/UT Overlay District, the community was closely involved and was well represented by a broad cross-section of property owners.

An issue to be considered in this application concerns the fact that the applicant brought the property during the processing of the proposed CB/UT overlay and that the seller was aware that the overlay was vested although the final order for the overlay did not become effective until approximately the same time that applicant took possession of the property. The property was identified as being covered by the Overlay in the realtors multiple listing service property description. To further confuse the situation, a building permit on which the Zoning Administrator's office did not identify the property as being within the CB/UT Overlay District was granted and the applicant started removing trees and altering the topography of the site before being issued a "stop work" order.

This application presents a number of challenges in that there is no independent record of the number of trees and their sizes that were located on the site prior to the bulldozing of the site by the applicant. The applicant has stated in the report by Pitchford and Associates, based on a survey of the site done on September 17, 2001, that 13 trees were removed of which 10 would be covered by the regulations and 6 of the 10 were in the area that the proposed house is located. Some of the neighbors disagree with the tree count. Therefore, the ability of the Board to assess what would have been the best location for the house, and what trees could have been preserved was taken away.

Secondly, of uppermost importance to the Office of Planning is the fact that this is the first proposed construction under the CB/UT Overlay District and is in violation of the regulations. If this application were to be approved, OP is concerned it could set a precedent for other property owners to violate the regulations and then file for a special exception with the expectation that it will be granted. During the review of the proposed text amendment for the CB/UT Overlay District, the Office of Planning was a strong supporter of this amendment and further, strongly supported the prohibition of development for 7 years on any property that violated the requirements of the overlay without an approved special exception.

The CU/UT Overlay District restricts bulk, lot coverage, and excessive tree cutting in wooded areas with steep slopes. This overlay permits a maximum lot occupancy of 30% and a maximum impervious surface coverage of 50% with strong encouragement to respect existing grades. Since the original application, the applicant has revised the Site Plan to show a building with a lot occupancy of approximately 23% and impervious surfaces limited to 25%, with extensive retaining walls and

regarding. Additionally, as indicated above, tree removal by-right is limited. The applicant has stipulated that the 10 trees that would be covered by the regulations were removed but did not identify their category of circumference or their height. The overlay regulations require that if a property owner wants to remove more trees than that stipulated, a special exception must be obtained. In that process, a number of different scenarios on how best to minimize tree removal and disturbance of the existing topography would be assessed and the best scenario chosen based on the requirements of Section 1569.1:

(a) Tree removal, grading, and topographical change shall be limited to the maximum extent consistent with construction of a building permitted by the standards of this chapter;
(b) The applicant shall demonstrate that there are specific physical characteristics of the lot that justify the exception;
(c) The excepted building and overall site plan of the lot shall be generally consistent with the purposes of the CB/UT Overlay District and not adversely affect neighboring property; and
(d) The Board may impose requirements as to design, appearance, tree protection practices during construction, buffering, and other requirements as it shall deem necessary to achieve the purposes of this chapter, and may vary side and rear yard requirements in order to achieve the purposes of this chapter.

By removing the trees, grading, and altering the topography of the property beyond the extent that would have been permitted under the CB/UT Overlay it is impossible to judge if the exception is justifiable since the physical characteristics of the property have been significantly altered without any record of the original characteristics. Therefore, the issue is what mitigation measures have been offered to satisfy the requirements. The applicant has submitted a revised Planting and Reforestation Plan of how to develop the site.

Since the "stop work" order was issued to stop the clearing of the property, the applicant has taken no measures to prohibit the deterioration of the site. The slopes on the site have been exposed and no measure has been taken to shore them up in order to prevent erosion. The Office of Planning is concerned that if this special exception is not approved and the applicant has to wait for 7 years before he is able to build on the property, nothing may be done to stop the erosion that is currently taking place and will defeat the purposes of the overlay district to preserve the natural topography of the site.

Section 3104.1

The standard by which the BZA should approve a special exception is set forth in Section 3104.1 of the Zoning Regulations.

> ***. . . special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.***

Two of the purposes of the overlay zone are to "preserve the natural topography and mature trees to the maximum extent feasible in a residential neighborhood" and also to protect "undeveloped lots and parcels subject to potential terrain alteration and tree removal." The application would not be in harmony with or meet the intent of the Zoning Regulations and Map as the tree removal and terrain alteration activity on the site has already taken place. The proposed remedial actions such as the replanting of trees proposed by the applicant would help to mitigate any additional adverse effect on the neighborhood.

COMMUNITY COMMENTS

ANC-3G reviewed the application at its October 3, 2001 meeting and recommendation denial of the application. The Applicant has met and corresponded with the Chain Bridge Road /University Terrace Preservation Committee and the Palisades Citizens Association on several occasions. However, they have not been able to arrive at an agreement on the reforestation and development of the site.

SUMMARY AND RECOMMENDATION

The Office of Planning is greatly concerned that if this special exception is approved, it may be seen as setting a precedent for other undeveloped properties to remove trees over that allowed by-right and then seek a similar waiver from the requirements of the overlay district. The Office of Planning therefore recommends **DENIAL** of the special exception.

The fact that a building permit was issued seems to have taken some of the burden of knowledge regarding the Zoning Regulations from the applicant and delaying development on the property for 7 years will not bring the property back to its original condition. In fact, the deterioration of the property could continue which would be detrimental to the environment as well as the community. In order to move towards curtailing the deterioration of the property and satisfying the aims of both parties, the Office of Planning recommends that the applicant meet with the Chain Bridge Road /University Terrace Preservation Committee and the Palisades Citizens Association to try and come to an agreement on mitigation and reforestation measures and the siting of the house on the property. The Office of Planning recommends the following issues may be considered in the discussions:

1. The Tree Preservation and Planting and Reforestation recommendations or better outlined in the Pitchford and Associates letter should be adopted and committed to by the applicant.
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ATTACHMENTS:

1. Planting and Reforestation Plan

AA/mbr

EXHIBIT 77

FROM

CASE 16740

IS AN OVERSIZED DOCUMENT

PLEASE SEE AT OFFICE