COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

KATHY PATTERSON
COUNCILMEMBER, WARD 3

CHAIRPERSON
COMMITTEE ON THE JUDICIARY

OFFICE: (202) 724-8062
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October 8, 2003

Mr. Geoffrey H. Griffis, Chairperson
Board of Zoning Adjustment
441 Fourth Street, NW
Suite 210
Washington, DC 20001

D.C. OFFICE OF PLANNING
RECEIVED
2003 OCT 16 PM 3:13

RE: BZA Case #17054

Dear Mr. Griffis:

I am writing you at the request of my constituents who will be appearing before the BZA on October 21 concerning construction of a new single-family residence at 3101 Chain Bridge Road, NW.

It is my understanding that the neighbors are concerned about whether proper permits were issued by DCRA for development of this property. There are also questions about whether provisions of the Chain Bridge Road/University Terrace Overlay were properly addressed by DCRA.

At its Oct. 1, 2003 meeting, ANC3D considered this issue and passed a resolution which should be afforded "great weight" by law.

Sincerely yours,

Kathy Patterson

BZA
Case No. 17054
Exhibit No. 26

Board of Zoning Adjustment
District of Columbia
CASE NO. 17054
EXHIBIT NO. 26

2003 OCT 16 PM 3:13
D.C. ZONING COMMISSION

October 3, 2003

Ms. Jerrily R. Kress
Director, Office of Zoning
Suite 201 441 4th Street NW
Washington DC 20001

Re: BZA # 17054 – 3101 Chain Bridge Road NW. Neighbors are appealing this permit because of a number of violations they see in the issuance of the permit and the subsequent construction by the builder.

Dear Ms. Kress:

Advisory Neighborhood Commission 3D held its regularly scheduled monthly meeting on Wednesday, October 1, 2003 at Sibley Memorial Hospital's Ernst Auditorium. Proper notice was given of this meeting through the newspaper, on our website and by posting notices around the neighborhoods. A quorum (4) was present at all times.

One of the items on the agenda was a protest by neighbors regarding the construction of a new house at 3101 Chain Bridge Road and whether the construction involves violations of either the zoning code or the Chain Bridge Road/University Terrace Overlay. The Commission spent considerable time on this matter.

Despite at least three personal invitations from the Commission chair, the builder, Brian Logan, declined to attend the hearing, nor did he send legal representative. Thus by default, the Commission was dependent upon the testimony of protesting residents of Chain Bridge Road, led by Henry P. Sailer and Steven S. Wolf.

After listening to the testimony and raising questions, the Commission, by a 6-0-0 vote, adopted the following resolution to be presented to the BZA on this case:

RESOLUTION

"The Commission finds that the residents of Chain Bridge Road made a persuasive, convincing case that either the zoning code and/or the Chain Bridge Road/University Terrace Overlay have been violated in several regards by DCRA's Zoning Administrator in issuing the building permit and by the builder during construction. The commission urges, therefore, that BZA give serious, favorable consideration to the complaints filed by a group of Chain Bridge Roads residents. Should BZA agree that there have been violations of the zoning code or the overlay plan, the commission urges a severe reprimand of the office of zoning administrator in DCRA and punitive action against the builder."
The commission urges that this adopted resolution be given "great weight" by the BZA, as specified in D.C. law.

Sincerely,

John W. Finney
Chair, ANC3D

Pagano, Penny (COUNCIL)

From: steven.wolf@starpower.net
Sent: Friday, October 03, 2003 4:49 PM
To: ppagano@dccouncil.us
Cc: Judith Lanius
Subject: summary of our BZA appeal

ANC HANDOUT 10.1.03.doc

Penny,
I have attached the summary we passed out at the ANC3D meeting. It's 5 pgs and a figure. The Tree & Slope Overlay violations are the heart of our case (the destruction not only of one big tree, but of virtually all trees on the property; the gross excess of impervious coverage). The myriad other violations simply stem from the TSP violations (trying to fit too much on too little space). See the color figure at the end.

Our Appeal will be heard before the BZA on October 21 at 1 pm, Case #17054.

Thanks so much for hearing me out.

Steve Wolf
3117 Chain Bridge Rd, NW
Washington, DC 20016
Tel (202) 966-7399 (H)
Tel (202 645-5737 (O)

1/3

To the Members of ANC3D and the Community

The attached memorandum relates to a matter involving a lot at 3101 Chain Bridge Road which will be heard by the Board of Zoning Adjustment on October 21. A developer, Brian Logan, is in the process of turning the property into an approximately 14,000 square foot mansion and accessory building, which when completed will dominate the landscape above Battery Kemble Park.

We are Logan's neighbors. We are not represented by counsel, although one of our number happens to be a retired lawyer. We believe that there are a number of important zoning violations in these construction activities, and think it important not only to us but to the neighborhood in which we live that they be adequately aired. Most of these violations stem, we believe, from an attempt to squeeze 14,000 square feet of living space and associated structures onto a 15,547 square foot lot.

In order to adequately explain our position, we have prepared the attached summary of violations, which in an expanded form will constitute part of our presentation to the Board. As you read this summary, we hope you will keep in mind the "big picture" that the Chain Bridge Road/University Terrace Overlay District was established to:

(a) Preserve the natural topography and mature trees to the maximum extent feasible in a residential neighborhood;

(b) Prevent significant adverse impact on adjacent open space, parkland, stream beds, or other environmentally sensitive natural areas;

(c) Limit permitted ground coverage of new and expanded buildings and other construction, so as to encourage a general compatibility between the siting of new buildings or construction and the existing neighborhood... (11DCMR, §1565.2)

We think you will agree after reading this summary that the activities at 3101 Chain Bridge Road violate both the letter of the law and the spirit in which these regulations were created.

Henry P. Sailer, Esq.	3111 Chain Bridge Rd.
Lisa S. Kelly and Steven S. Wolf	3117 Chain Bridge Rd.
Veronique Lagrange and Benoit Blarel	3106 Chain Bridge Rd.
Veronica and Bruce Steinwald	3115 Chain Bridge Rd.
Arthur Levi	3045 Chain Bridge Rd.

Violation of the Chain Bridge Road/University Terrace Overlay tree protection clause:

Under the Chain Bridge Road/University Terrace Overlay (11DCMR, §1568.2) no property owner may destroy a tree greater than a certain size on his property unless the tree is dead, unhealthy or hazardous, and is certified to be so by an arborist.

In January 2001, Logan obtained from an arborist a letter about a large tree on the border between his property and that of an appellant. The letter states that the tree's condition, because some of its roots had allegedly been recently cut on the neighboring property, made it hazardous both to Logan and his neighbor. Neither that neighbor nor any other appellant was informed of these alleged facts, and none of us knew any of this until the tree, after being felled more than two years later in February 2003, had been reduced to wood chips. This tree was certified to Logan as "hazardous," yet he took no action whatever for more than two years - when he was ready to begin construction.

The issue here is the veracity of Logan's arborist's letter, which was the sole material on which he relied in having the tree felled. The arborist never saw a single cut root. Rather, his charges are based on his guess that when the neighbor "construct[ed] a new driveway" the roots were cut. In fact there was no "construction of a new driveway." The existing driveway was repaved (a very different proposition). Two expert witnesses will testify before the Board that it is perfectly clear that the roots were <u>not</u> cut. One of these witnesses appears to be the only expert witness who ever saw the roots with his own eyes, after the tree was bulldozed over and uprooted. The intact roots were photographed at that time. It is worth noting, in this regard, that the felling of the tree simultaneously uprooted a portion of the neighbor's driveway, sufficient to make the driveway impassable, hardly a testimonial to the alleged cutting of the roots beneath the driveway by the neighbor.

The only additional ground relied upon by Logan's arborist relates to a condition called Bacterial Leaf Scorch. All three experts on both sides appear to agree that this condition can be established unequivocally only by laboratory tests. Logan's arborist states in his January 2001 letter that he has sent a sample of twigs for this purpose (which was still pending at the time the letter was submitted for permitting). Remarkably, we have been advised that no testing ever took place -- that it was canceled by the property owner. There is thus no evidence supporting Logan's arborist's tentative opinion on this score.

We think it appropriate and desirable to bring forward one final point. In the last few weeks Logan, while presumably preparing to defend his tree felling because of alleged root cutting on a neighboring property, has without any notice caused the digging of deep trenches right on his boundary line with one of us. This activity has systematically and intentionally cut the roots of several substantial trees standing barely on the other side of that line on our property. We have been advised by a consulting arborist that most, if not all, of these trees will not survive in an acceptable state of health. The owner is considering how best to seek redress, but in the meantime cannot resist bringing this astonishing action to the Board's attention.

* * *

Violation of the accessory building/private garage regulations:

Logan is in the process of building a two-story structure in his lower yard bordering immediately on his swimming pool. It is directly in the sight line of several of the appellants, towering above the neighboring grassy slopes and National Park Service land of Battery Kemble Park.

The regulations state that such a two-story structure may not be constructed unless the lower story is a garage and the upper story is entirely living quarters for domestic staff (§2500.5). Logan of necessity claims that the structure meets these criteria. This claim is not supported by the facts.

In seeking his original permit, Logan identified this two-story structure as a "two story accessory building, garage/studio." An accompanying memo to the Zoning technical reviewers identified the second floor as domestics' quarters. In fact, the permit drawings were missing a requirement for every garage in the District of Columbia - a driveway. This glaring omission was missed by the technical reviewers. The core definition of a garage in the District of Columbia is that it must contain parking for one or more motor vehicles. This is difficult to achieve without a driveway. Logan's plan for this structure was not as a garage, as he later told two of the appellants (see next paragraph). The "garage" directly abuts the swimming pool and has three sets of french doors opening onto the pool terrace: it is nothing other than a two-story poolhouse and guest cottage. Unlike garages and domestics' quarters, poolhouses are customarily sited next to pools for obvious reasons. It made no sense, in retrospect, that he would have forsaken a poolhouse in order to have a garage that he has made abundantly clear he does not want or need and a domestics' quarters oddly situated directly overlooking his pool.

Our attempts to arrange a meeting with Logan to discuss this "garage" fell on deaf ears, until we sent him a letter pointing out the absent driveway. He rapidly agreed to meet with two of the appellants. He showed us his construction documents and confirmed that the accessory building was not a garage. He explained that the garage was within the main building. However, he said that he could meet the requirements for calling his two-story structure a garage: he would do this by substantially raising the grade to the lower end of his property in order to get a permittable driveway down to the structure. In the process, he would raise the height of the two-story accessory structure even further in relation to neighboring properties. He would also build retaining walls along the sides of the property. He noted that all of this would be very unattractive to the neighbors, with which we of course agreed. And then, he stated, he could park a motorcycle somewhere inside to meet the criteria to call it a garage. He was unwilling to entertain our simple suggestion to reduce the building to a one-story structure - the allowed height of an accessory building when it is not a garage. He has kept his word. He quickly revised his drawings and permit and went to work building his "garage." One could not find a better example of an attempt to meet the most shallow interpretation of the regulations while circumventing their intent - which is to allow a property owners the right to append secondary uses to their garage, while maintaining its principal use as a structure for vehicular parking.

If Logan is successful in his endeavor, he will have established a precedent for construction of ersatz two-story "garage/domestics quarters" throughout the ANC3D community.

* * *

Violation of driveway width requirements:

Logan's single driveway serves as both ingress and egress to two parking spaces in the main house (one required by regulation), an open "drive court," and an additional required space in the accessory building (accepting his assertion that it is a garage). The driveway is shown on Logan's plans as never more than 8 feet wide. This is greatly insufficient according to the zoning regulations governing off-street parking.

A single driveway serving both ingress and egress for required parking places in two different locations is ipso facto targeted for two-way circulation, and must be 14 feet wide [§2117.8 (c) (2)]. Even if designed only for one-way circulation, it would have to be 12 feet wide. Logan is vastly deficient on this score. Moreover, he left no room to correct this deficiency because the distance between his principal structure and the property line is only wide enough to accommodate an 8 foot driveway and nothing more.

* * *

Violation of the impervious surface limits:

Rather than attempting to work within the regulations of our Tree and Slope Protection Overlay District, which emphasize preservation of natural topography, greenery and open spaces, Logan has instead covered much of his property with large buildings, a pool, driveways, drive courts, stairs, overhead walkways, and other impervious structures and surfaces. He has constructed so extensively on his property that he has taken the initiative to reclassify some of the above items as pervious (permeable to water) in order to stay under the regulatory limits on impervious coverage. He has done this without a Special Exception from the Board of Zoning Adjustment.

Our calculations, made from Logan's current plans, show that even if we tabulate only what he designates as impervious, he is in violation of the requirement that his property's surfaces may be no more than 50% impervious (§1567.2; exceptions not here relevant). Please see Figure 1.

Logan's plans establish, as we shall show in subsequent paragraphs, that he classifies as pervious a considerable amount of surface required by the regulations to be impervious and thus to count against the 50% limit imposed on impervious surfaces. When the necessary corrections are made (see below), it appears that no less than 61% of Logan's surfaces are required to be impervious, a gross violation of the pertinent regulations. Please see Figure 2.

* * *

Improper categorization of "Drive Court" as pervious:

There is a substantial space on Logan's plans denominated a "Drive Court," which is designated as pervious coverage. In fact, a motor vehicle way – be it a ramp, driveway, or "Drive Court" – must be impervious (§§2117.4; §2117.10). It is impossible to drive from the street to Logan's main garage without driving on the Drive Court as part of the journey, and the surface upon which that driving is done is ipso facto a driveway. Unless Logan properly paves this area in compliance with the off-street parking regulations, he may not proceed with his construction. And if he does pave it, he will be in gross violation of the 50% maximum on impervious coverage of his lot, and again may not proceed.

The intended use of the remainder of the Drive Court, one must assume from its location and from its name, is as an open parking area or a vehicle driveway. If so, it must be impervious (§2117.10). Logan will perhaps suggest a different use, and we will leave it to the Board to question him.

* * *

Violation of the impervious driveway requirement:

In amending his permit to include a driveway to his auxiliary garage, Logan labeled the driveway on the revised plat as pervious. If this driveway is truly meant to convey vehicles, as it must if he is genuinely building a garage to house a motor vehicle, then the driveway must be reclassified as impervious (§2117.4).

His plans further circumvent the impervious driveway requirement by showing that the main driveway consists not of an impervious surface but of two parallel strips of impervious material with pervious gravel between, over the entirety of which automobiles will pass. This might at best be called a "half impervious" driveway, a category with which neither we nor the regulations are familiar. It is simply not the impervious driveway that the law requires.

When the above driveway surfaces are properly reclassified, they further increase Logan's already clear violation of the 50% impervious rule.

* * *

Violation of the side yard requirements:

Logan's site plan shows a set of stairs descending from the "drive court" to the North side yard, only 4 feet from the border with one of the appellants. Side yards must be 8 feet in width (§405.9) and must be open and devoid of structures with few exceptions. Logan's stairs do not in any measure meet the criteria for the only relevant exceptions. §2503.2 allows structures no greater than 4 feet above the grade at any point within required yards. Logan's stairs are 7 feet above grade, descending from the elevated "drive court" to the side yard. §2503.4 allows stairs in a required yard but only if the stairs lead to the ground from a door located on the story on which the principal entrance is located. The stairs in Logan's project lead from the "drive court," whereas the principal entrance is one story above this.

* * *

Violation of the 25 foot rear yard setback requirement:

Logan has designed a swimming pool near the rear property line. Surface water from the pool cascades into a large concrete "catch basin." Measurements from Logan's site plan confirm that this catch basin encroaches to within 18 feet of the rear property line, which adjoins National Park Service land. This is not a trivial encroachment into the required rear yard, but a 7 feet violation. The regulations provide that a pool, like any other structure, shall be no closer than 25 feet to the rear property line and that rear yards must be unoccupied (§§199.1, 404.1).

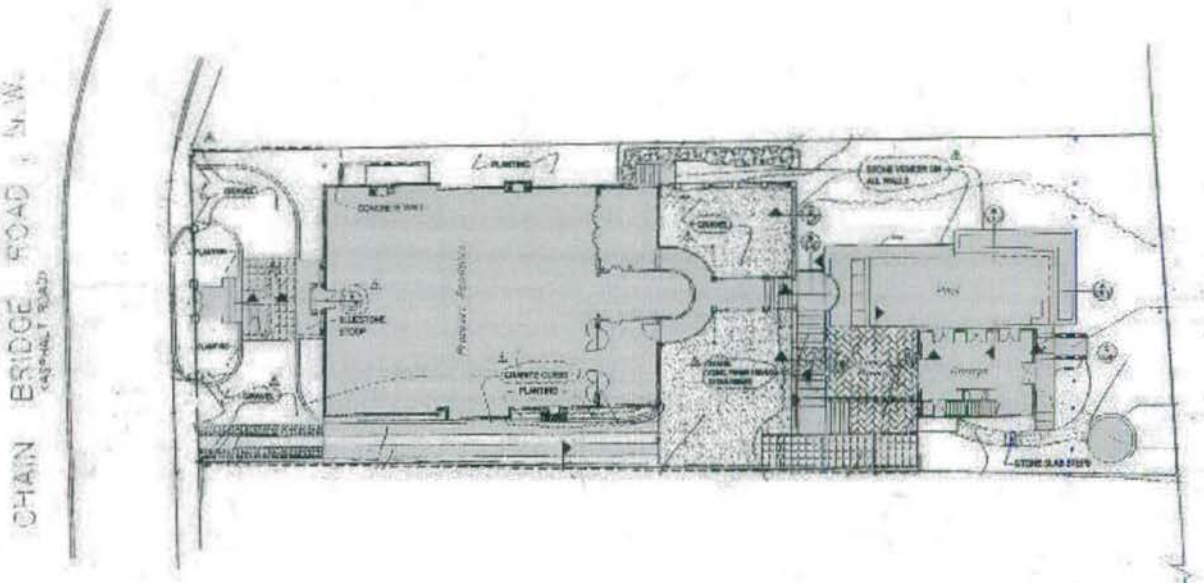


Figure 1: Declared Impervious Surfaces (yellow)

44%

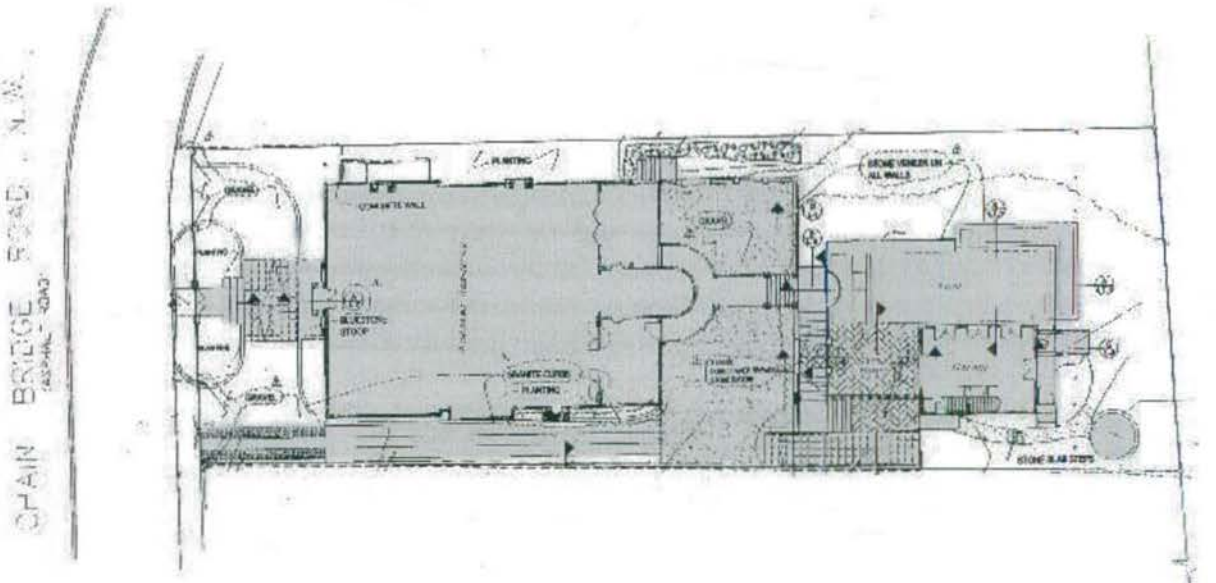


Figure 2: Required Impervious Surfaces (yellow)

61%