

ORIGINAL

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

In re:

Application of Dorchester Associates, LLC

Case Number 17309

OPPOSITION OF WILLIAM M. AND KATHRYN A. BARNARD

We are the owners of Lot 1409, Square 838, which is located at 2700 Chain Bridge Road, N.W. 2700 is about 150 yards south of the Applicant's property, which is at 2762 Chain Bridge Road.

We oppose this Application, in part, because Applicant seeks the Board's authorization to, in perpetuity, discharge runoff from the Applicant's property into a spring fed stream located on and near our property, which will adversely affect our property and the property rights of other downstream property holders without their consent. We also support the oppositions of The Chain Bridge Road University Terrace Preservation Committee, ANC-3D and the Palisades Citizens Association, which includes a detailed objection to the Applicant's stormwater management plan.

FACTS

We purchased 2700 in 1985. The property is approximately one half acre in size, and the house is sited on the northern border of the property on Chain Bridge Road. See Attachment 1 which is the D.C. Surveyor's plot of the property, with an approximation of the house site. We understand the house was constructed in the 1860's as a simple frame farmhouse. While we have updated and added to the house, the 1860's farmhouse is intact. A similar house is located next door, at 2710.¹ The property to the south of our property containing three houses on acre lots was once part of the historic African American cemetery at the bottom of Chain Bridge Road at Mac Arthur Boulevard.

At the rear of our property and the adjoining downhill properties is a natural deep valley that terminates in a narrow stream which flows down to a culvert under Mac Arthur Boulevard and then into the Potomac. All of the homes on Chain Bridge Road downhill from the Applicant's property are built on the Road, and there is no development near the stream.² On the opposite side of the valley, houses are located well

¹ See letter to the Board from Andrea Mitchell, the property owner, which was entered in this record as part of the testimony of William Spencer, President of the Palisades Citizens Association.

² The testimony of the Applicant's architect, Stan Andrulis, at the April 11th hearing, mischaracterized the density of properties downhill from the Applicant's property. At page 196 he stated that the 13 site plan achieve[s] a density consistent with or below the properties neighbors." How that squares with the fact that there are 10 properties on Chain Bridge Road downhill from the Applicant's property and 7 of them are on half acre or larger lots is not apparent. Chairman Griffis appeared to get it. See Transcript, p. 209.

uphill from the stream and there is no development on or near the stream bed. Thus, the valley is in its natural state, but for erosion caused by runoff from the Applicant's property that is piped into the valley.

The stream that runs down the valley was, in its natural state, fed by a spring. We recall that when we bought our property, aside from natural runoff occurring in the valley, there was a constant trickle of clear spring water. There was no significant erosion on the sides of the stream.

Sometime in the past 25 years a four house development was constructed over the stream as it emerged from Applicant's property, and the spring water now flows out of a culvert constructed under a roadway to these houses. Although we didn't know it at the time, a pipe from a discharge pit on the Applicant's property was tunneled under the development, and was channeled into the culvert from which the stream now discharges. The stream and runoff from the Applicant's property is discharged from the culvert onto the property of Chain Bridge Road Corporation ("Corporation"), a cooperative of 15 houses located across the valley from and adjoining our property. See letter from the Corporation to the Board. For convenience a copy of that letter is attached hereto. The runoff has caused serious erosion on that property. We own the next downstream property. See attached plat.

The result has been surges of runoff water after rains that has changed the nature of the stream from being a spring fed stream with no impact from runoff in the valley, into a raging torrent on occasion that has caused substantial erosion. We estimate that the erosion has deepened the stream by 10 to 12 feet, and increased the width of the stream banks by 15 to 20 feet, since the pipe was installed. This seems to us to be the most practical predictor of the nature and extent of future erosion if additional drainage should occur.

The Applicant seeks to compound the problem by channeling significant runoff from 13 large roofs and other impervious surfaces into the stream. We were provided a transcript of the April 11, 2006 Hearing on this matter. Beginning at page 228 of the transcript, Commissioner Parsons questioned the Applicant's engineer, Mr. Afful. It turns out that the Applicant is relying on an extensive and elaborate system of dams and other holding devices, but the outflow would go into a so-called "terra cotta pipe" which is the existing pipe from the Applicant's property that now flows into the stream. See Transcript pages 231-232. Mr. Parsons (Transcript page 231) inquired:

"What I meant was is this an easement of some kind that goes across the property and I know you're not a land use lawyer, but it's a strange circumstance that apparently you're relying on a drainage system on private property adjacent to yours."

Mr. Afful responded:

“Yes. We are aware of that. We don’t know who put that in, but that pipe has been there for quite awhile and has served the property and so we believe that by the requirement of D.C., we are not supposed to let more than what is flowing out there now.”

While we don’t know to what “requirement of D.C.” Mr. Afful is referring, the response and the plan itself are, simply put, disingenuous. First, the existing outflow point from Applicant’s property is an approximately 4 feet by 3 feet, and 2 foot deep brick lined pit from which the pipe flows. The only apparent source for water to this pit is a narrow hillside area which may (or may not) drain into the existing pit. What the Applicant proposes is that overflow water from all over the property be channeled into the pipe from its various catchment devices, and then into the stream. It is simply not credible that 13 large roofs and other impervious surfaces can be contained without a plan that is well established, provable and not subject to change. Applicant’s plan is none of those.

Cross examination of the Applicant’s engineer at the April 11th hearing showed that the Applicant’s supposed storm management plan is highly theoretical, not fully disclosed in the plans (see transcript, pages 225-226), and partially developed. As noted by another neighbor, Luther J. Carter, who has filed a “Petition” opposing the plan:

“The uncertainties arise in part from the difficulty the project is having in designing and placing the various components of the storm – water management system – the swales, dry wells, ‘bay-saver’ holding tanks, the connecting piping, and the like – without encroaching on critical root zones of the numerous protected trees. Some piping is to be placed by actually boring beneath root systems.”

Even the Applicant’s engineer conceded that the part of the plan intended to deal with trees that must be protected is ‘very conceptual’. See transcript, at 228.”

The problem is that what the Applicant proposes is forever. Will it work? Will it work forever? Can the Board have absolute confidence that such a plan will work now and forever? The applicant won’t be around. It proposes that successors will be responsible for maintaining this incredibly complex system. Has anyone asked us whether we object to such an arrangement? No.

We believe the plan proposed is unworkable, and that no construction (save for a single family dwelling that replicates the present drainage), without the informed consent

of downstream property holders should be allowed. In any event, the proposal threatens our property interests. The private gain of the Applicant is certainly not a superior public interest consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'William M. Barnard', written over a horizontal line.

William M. Barnard

A handwritten signature in black ink, appearing to read 'Kathryn A. Barnard', written over a horizontal line.

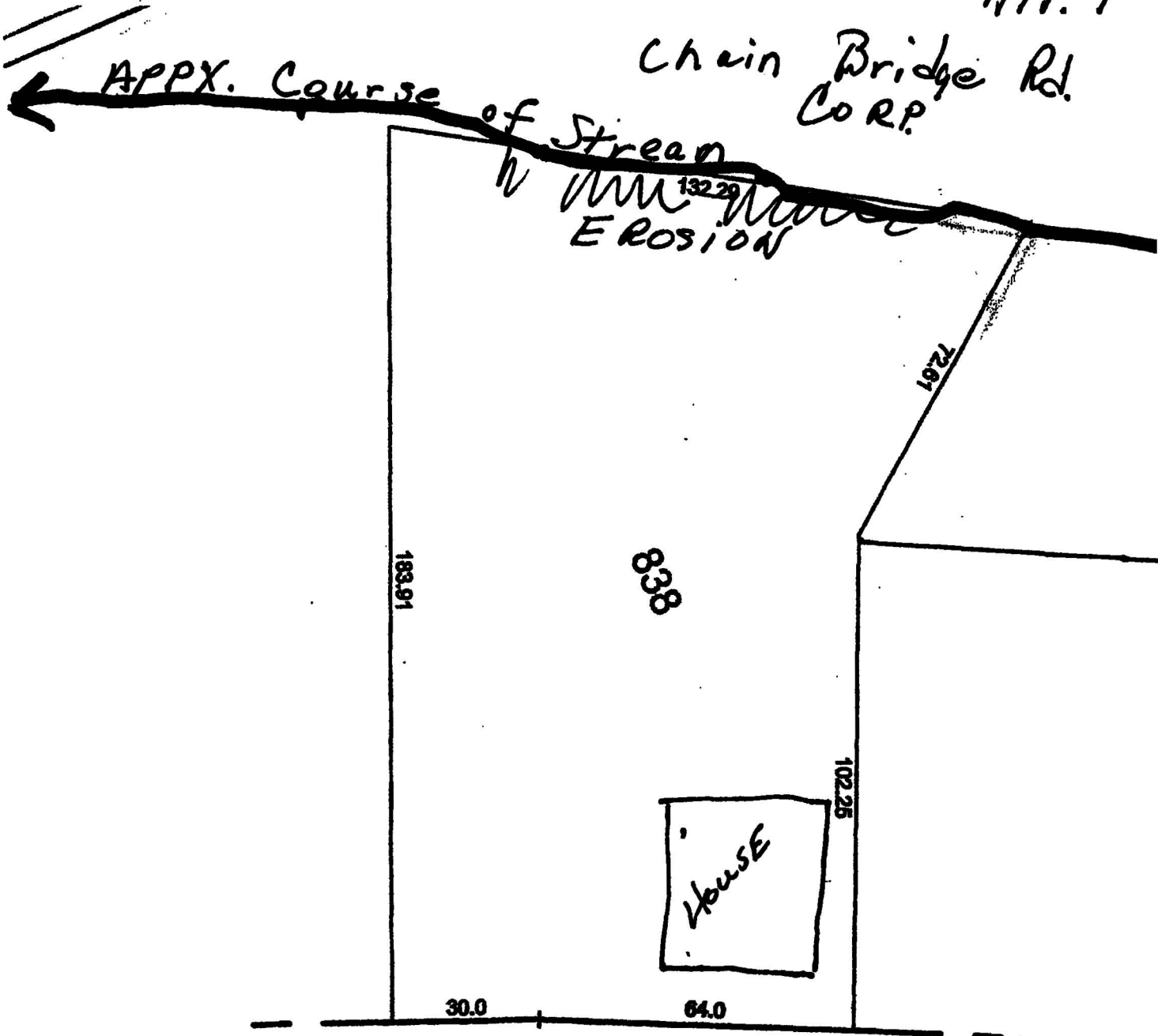
Kathryn A. Barnard

2700 Chain Bridge Road, N.W.
Washington, D.C. 20016

July 7, 2006

ATT. 1

Chain Bridge Rd.
Co R.P.



2700 CHAIN BRIDGE ROAD

CHAIN BRIDGE ROAD CORPORATION
2803 Battery Place NW
Washington DC 20016

Karla Bousquet, President
Ray Sternfeld, Treasurer
Dugan Romano, Secretary
Joan Richter, Director
Virginia Sloan, Director

June 14, 2006

Mr. Geoffrey Griffis
BZA Chairman
1 Judiciary Square
441 4th Street NW, 2nd Floor
Washington DC 20001-2714

Dear Mr. Griffis:

RE: Dorchester Associates (BZA Application No. 17309)

I am writing to you as the President of the Board of Directors of the Chain Bridge Road Corporation, a co-operative of 15, free-standing homes on Battery Place, Northwest, Washington, DC 20016. Our co-operative's property is parallel to Chain Bridge Road and shares the stream in the valley that separates Battery Place and Chain Bridge Road.

The proposal of the developer, Morton Bender, to construct 13 large homes at 2762 Chain Bridge Road, Northwest has the potential to severely impact our co-operative's property and our homes. The loss of trees and the re-grading of Mr. Bender's 3/12 acres of steep terrain to accommodate the construction of 13 large houses and driveways, will create severe problems of drainage and storm water run-off into the stream, eroding our land, during construction, as well as post construction.

For these reasons we are opposed to the approval of Mr. Bender's request for a special exception to DC zoning laws to accommodate the construction of 13 houses, as he has proposed. I will attend the BZA hearing, scheduled for 1 pm on July 18, and am prepared to enter this letter as an oral statement.

Respectfully,



Karla Bousquet
President Chain Bridge Road Corporation

Cc: CBRC Homeowners

Judith Lanius, Robert Sussman, William Banard, Luther Carter