

**TESTIMONY OF ROBERT SUSSMAN, CHAIR, CHAIN BRIDGE
ROAD/UNIVERSITY TERRACE PRESERVATION COMMITTEE, ON
BZA APPLICATION NO. 17309 – July 18, 2006**

Good afternoon Chairman Griffis and members of the Board:

My name is Bob Sussman. My family resides at 2824 Chain Bridge Road, directly adjacent to applicant's property. I'm appearing today as Chair of the Chain Bridge Road/University Terrace Preservation Committee – a non-profit charitable organization dedicated to protecting the unique park-like character of the Chain Bridge Road/University Terrace neighborhood. We have a Board of ten residents and our work is supported by contributions from many members of the community. The Committee was instrumental in creating the 1999 Chain Bridge Road/University Terrace Overlay District. We remain heavily involved in enforcing the Overlay's protections on behalf of the seventy (70) families in the Overlay district.

Special Character of the Overlay District. Our neighborhood is a unique rustic enclave in the District of Columbia and the Overlay was created in recognition of its special character. The neighborhood is heavily wooded and hilly. Its density is low. Historic Chain Bridge Road is a narrow, windy and undulating country lane that dates back to Colonial times. The eastern side of the road is occupied by historic 57-acre Battery Kemble Park owned by the National Park Service. The Park is a popular gathering spot for dog walkers, joggers and hikers from all over the D.C. metropolitan area.

The historical significance of the neighborhood derives not only from the Park, which was the site of a former Civil War Battery, but from the community of freed slaves that settled there after the Civil War. Their presence has resulted in an African-American cemetery at the base of Chain Bridge Road and the African-American schoolhouse on the corner of the

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half-acre lot adjoining the applicant's proposed subdivision. As a result of the Committee's efforts, the schoolhouse has been designated as a DC and a National Register Landmark.

The applicant's proposed subdivision would occupy roughly 3.5 acres. This lot and adjoining schoolhouse lot were in the hands of a single owner – Gabe Murphy – for over fifty years. Its one home (now demolished by the applicant) was hidden from the road. The old Murphy property is the largest undeveloped parcel in the Palisades section of the District.

Topography of the Property. The topography of applicant's property is characterized by distinct north and south plateau areas separated by an abrupt change of grade. Long-standing residents recall that the plateaus were constructed from fill removed from other areas of the property or trucked onto the site. The plateau areas are bordered by steep slopes at on all sides of the property. The slopes along the western and northern boundaries are unstable and poorly retained and have a history of erosion and collapse during heavy storms. Because of the slopes, a large number of abutting homes sit several feet below the applicant's property and are vulnerable to runoff and erosion. In contrast to the plateaus, which are generally treeless, the border areas of the property are heavily wooded.

Among the most prominent features of the site is an allee of large, old and stately beech trees that line the narrow driveway off Chain Bridge Road that formerly served Mr. Murphy's house. This driveway is slightly wider than 12 feet at its entrance and maintains the same width for nearly 200 feet, most of its length. The driveway meets the road along a sharp curve with limited visibility to the North and South.

Applicant's Burden of Proof. Not content with matter-of-right development, the applicant is seeking approval to build several additional houses by persuading the Board to allow him to create a theoretical subdivision. It is Mr. Bender's *burden to justify his proposed*

subdivision under the explicit criteria in the special exception regulations which are designed to assure that the development will not have adverse impacts on adjoining properties and the neighborhood at large. The community strongly believes – and our experts will explain to the Board – that the applicant has woefully failed to meet these criteria because the proposed development will: (i) drastically change the overall character of the neighborhood and destroy its special rustic character, (ii) violate the Tree and Slope Overlay, (iii) create a risk of flood damage to abutting and downstream properties, (iv) create traffic safety hazards, and (v) detract from the use and enjoyment of the Park.

Applicant's Maximalist Approach. As emphasized by ANC 3-D in opposing applicant's plans, they embody *a maximalist approach to development* which severely stresses the site. Applicant's plans call for thirteen large multi-million dollar houses to be squeezed on small lots barely above the Overlay minimum lot size of 9500 square feet. These houses will greatly increase impervious surface to 44 percent of the property, resulting in new hardscape of over 63,000 square feet or more than 1.5 acres. Several of the houses will be built into unstable and steep slopes and fill on the perimeter of the property and will tower above abutting houses to the west and south and the Park to the east.

Despite the claims of applicant's architect, the proposed lot and house sizes represent a drastic departure from the existing density of development on Chain Bridge Road. We have reviewed District records for all the houses on the Road and calculated that (excluding the Bender property) the average size of each single-owner site is 22,778 square feet, approximately half an acre. This is over twice the average size of the Bender lots. On the other hand, the average interior size of existing houses on the Road is 3,991 square feet, or about half the size of

the applicant's houses, which average 7,731 square feet. The ratio of square footage to lot size is 24% for the existing houses but 78% for the applicant's houses. Importantly, our calculations *include* one very large (over 14,000 square feet) mansion-style dwelling recently built over strong opposition of the community.

As one climbs Chain Bridge Road from MacArthur Boulevard toward applicant's property, the houses are modestly proportioned and in some cases very old. In general, the houses are spaced far apart although a few are clustered together. There are 13 houses along the first half mile of the Road or on average one per 203 feet. Most of the houses are designed to the rear to take advantage of large, hilly and wooded back lots. By contrast, the combination of large houses and small lots in applicant's plan will leave virtually no green space, totally changing the character of the neighborhood by altering the relationship between houses and surrounding terrain.

Tree Preservation. The Overlay prohibits removal of any tree over 75" in circumference. It allows removal of only three trees between 38" and 75" and no more than 25 percent by total circumference of trees in the 12-38" category. Additional trees can be removed only if a certified arborist has found that they are hazardous or unhealthy and likely to die.

In total, applicant's plans call for the deliberate removal of 38 trees of the 145 trees on the property larger than 12" in circumference. Of these, 19 are in the 12"-38" category. The remaining 19 are over 38."¹ Contrary to his repeated assertions, applicant has *not justified* removing these trees under the Overlay.

He claims that nine of the trees are "hazardous" but this claim is based on a tree survey

¹ It is not clear how applicant would show that the total circumference inches of trees to be removed do not exceed 25% of the total circumference inches on the property, as required by the Overlay.

conducted four years ago by an arborist who has *not* come forward as an expert in this proceeding to explain the basis for his conclusions. Moreover, five trees in the "hazardous" category (## 3, 12, 20, 38 and 50) receive a "healthy" rating of 50% or higher in applicant's latest submission and *all* of these trees are above 75" in circumference, which means that they cannot be cut down at all.

Applicant has identified an additional 9 trees between 38" and 75" that he proposes to remove because of "construction." This is well over the limit of three trees in this category that may be removed under the Overlay. At the April hearing, applicant's architect made the confusing claim that no more than three trees would be removed from any of the three existing parcels on the property but an examination of tree locations does not support this claim.²

Beyond applicant's failure to justify the deliberate removal of several trees protected by the Overlay is a more basic question -- will the many trees applicant asserts will be "saved" in fact survive the damage they will sustain during the extensive development of the site? The spirit and letter of the Overlay would be violated if protected trees that are not deliberately removed are nonetheless destroyed during the construction process.

In this instance, many of the trees on the site are mature and delicate and will not tolerate significant activity around them. Applicant's tree expert has proposed a series of elaborate and complex "tree preservation" measures to assure the survival of the many protected trees that are at risk. There is substantial question whether these intricate procedures could or would be implemented diligently during the years of heavy construction activity that lie ahead.

² The Overlay also provides that no tree may be removed if it is within 25 feet of a building restriction line or lot line abutting a public street. Applicant has apparently failed to consider this requirement in his showing of Overlay compliance.

But even giving applicant the benefit of the doubt, the tree preservation plan simply ignores the extensive grading, excavation and construction work that will directly impinge on tree root systems as a result of the installation of stormwater management and erosion control systems, digging of foundations, placement of utilities and construction of paved surfaces. As Ed Milhous, the Committee's arborist, concludes in his January 9 report: "it would not be realistic to expect most of the larger trees to survive the construction activities necessary to implement these plans. The result would be simply to burden new homeowners with dying trees and remove valuable tree cover from the community . . . The trees shown to be saved will, in fact, be nonviable if this plan is implemented. This would be in violation of the Tree & Slope Overlay regulations."

The same conclusion was reached in both of the reports submitted to the Board by the Urban Forestry Administration, which find that the Overlay requirements have not been "credibly satisfied. The extent of construction that is proposed will almost assuredly not allow for the preservation of trees called for by the applicable regulations. To allow an exception for this plan . . . would seriously undermine the regulatory authority of the [Overlay]." The Urban Forestry Administration recommends that the Board "not grant a special exception to this proposal in its current state."

Stormwater Management, Erosion and Runoff. Applicant's plan will greatly increase runoff from his property because of the dramatic increase in impervious surface. Runoff cascading down the steep embankments around the perimeter of the property has previously caused flood damage to neighboring properties so it is essential to assure that the additional runoff will not exacerbate the risk of flooding.

Applicant's SWM plan is designed to collect runoff and discharge it off-site through a narrow (18") terra cotta pipe that begins at his property's southern boundary. This pipe passes

under the driveway on Mr. Djabbarzadeh's property, continues underground through additional properties and then resurfaces as a streambed that ultimately flows under MacArthur Boulevard, joins with Maddox Run and empties into the Potomac River. Several of the owners of downstream properties have filed petitions with the Board expressing deep concern that excess runoff discharged through the terra cotta pipe will overflow the streambed, greatly increase the erosion of the stream banks that has occurred because of past flooding and cause additional flood damage on their properties. Significantly, we are unaware of any easement which allows Mr. Bender to discharge water onto neighboring properties. As we understand the District regulations, such an easement must be filed with the Recorder of Deeds before such discharges are permissible. This in itself renders applicant's stormwater management plan unacceptable.

Even apart from this fundamental flaw, Mary Sears, the Committee's stormwater management engineer, will show that there are serious omissions and uncertainties in applicant's SWM plan which preclude any assurance that the plan will in fact prevent runoff, flooding and the resulting damage to property and the environment. Applicant's desperate, last minute attempts to alter his SWM plan to provide additional tree protection only magnify the risk of inadequate stormwater control and further reduce confidence in the overall viability of his proposal.

Traffic Safety. Chain Bridge Road enters a sharp curve at the entrance to applicant's property and applicant's failure to provide adequate visibility for cars exiting from the property or traversing the Road itself will create a serious safety hazard, as Steve Peterson, our traffic expert, will demonstrate. Within the development itself, use of a one-way driveway, twelve feet in width, as the principal means of ingress and egress for residents, guests, tradespeople,

construction equipment and emergency management vehicles will also create safety hazards, not to mention inconvenience and disruption. Although applicant proposes to build a "layby" near the entrance to the property so entering drivers can pull off the driveway and allow existing vehicles to pass, Mr. Peterson's measurements show that there will be inadequate visibility for drivers to avoid a head-on collision. Both these problems will be aggravated by frequent use of Chain Bridge Road for parking by users of the Park. Traffic on the Road is particularly heavy — and visibility correspondingly reduced — during snowstorms, when the Park is a magnet for sledding, and during frequent parties held by residents.

Impacts on Use and Enjoyment of the Park. A final concern to our community is the impact on Park users of the construction of four large houses on the embankment along Chain Bridge Road directly across from the Park. The intrusiveness of these massive structures, placed in an area that is now undeveloped, will detract from the rustic and peaceful surroundings that Park users now enjoy.

One final comment is in order. There are many disturbing uncertainties in applicant's plans. We don't know whether he will develop the proposed subdivision himself or sell the lots to other developers. We don't know whether he will build all thirteen houses simultaneously or one at a time. We don't know whether prospective purchasers will spend \$4-5 million on massive houses on tiny lots even though they may end up living on a construction site for years. We're told that the stormwater management and tree preservation plans will require considerable adjustment on a trial-and-error basis during the construction process but Mr. Bender made the incredible commitment at the April hearing that his plans will not be altered if approved by the Board. We're told that the success of landscaping, tree preservation and stormwater management is greatly dependent on the actions of the homeowners themselves but we've been

given no detail on how the homeowner association will meet its stewardship responsibilities.

And we're told that construction will not damage historic Chain Bridge Road or Battery Kemble Park but no construction management plan has been provided to demonstrate the safeguards to be taken.

Even if applicant's plans were otherwise acceptable, these uncertainties should give the Board serious pause about approving a project with such enormous potential for damage to the community and the environment unless it is carried out with the highest degree of diligence and care – neither of which has been demonstrated by Mr. Bender.