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December 19, 2006

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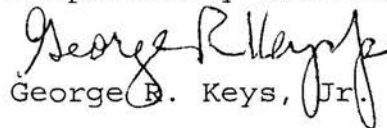
Geoffrey Griffis, Chairman
District of Columbia Board of Zoning Adjustment
441 Fourth Street, N.W. - Room 210 South
Washington, D.C. 20001

Re: BZA Application No. 17309
2600-block, Chain Bridge Road, N.W.

Dear Mr. Griffis:

Pursuant to your instruction at the conclusion of the public hearing in the above-referenced special exception proceeding on October 31, 2006, we enclose for filing on behalf of Dorchester Associates, LLC ten (10) copies of the Applicant's Proposed Findings of Fact and Conclusions of Law.

Respectfully submitted,


George R. Keys, Jr.

Enclosures

cc: Advisory Neighborhood Commission 3D
Maxine Brown Roberts, D.C. Office of Planning
J. Patrick Brown, Esq.
Rudi E. Djabbarzadeh
Mark Brodsky, Esq.
Morton A. Bender

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17309

EXHIBIT NO. 173

Board of Zoning Adjustment
District of Columbia
CASE NO. 17309
EXHIBIT NO. 173

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**APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN BOARD OF ZONING ADJUSTMENT APPLICATION NO. 17309
Dorchester Associates LLC**

Application No. 17309 of Dorchester Associates LLC pursuant to 11 DCMR § 3104.1 for special exception under § 2516 to allow a theoretical lot subdivision for thirteen (13) single family homes and a modification of the requirement of a twenty-five foot (25') roadway under § 2516.6(b) as permitted by § 2516.6(d) in the CB/UT R-1-A Zone District on Chain Bridge Road, N.W. (Square 1425, Lot 827, and Parcels 12/63, 12/293 and 12/294).

HEARING DATES: January 10, 2006, April 11, 2006, April 26, 2006,
July 18, 2006, September 19, 2006 and October 31,
2006

DECISION DATE: January 9, 2007

DECISION AND ORDER

This application was submitted by Dorchester Associates LLC (the "Applicant") the owner of the property that is the subject of this application ("subject property"). The self-certified application requested a special exception under § 2516 to allow a theoretical lot subdivision for thirteen (13) single family homes and a modification of the requirement of a twenty-five foot (25') roadway under § 2516.6(b).

The Board held public hearings on January 10, 2006, April 11, 2006, April 26, 2006, July 18, 2006, September 19, 2006 and October 31, 2006. At the close of the hearings the Board set a decision date of January 9, 2007. At the decision meeting, the Board voted ____-____ to approve the application subject to certain conditions.

PRELIMINARY MATTERS

Requests for Party Status. The subject property is located within the area served by Advisory Neighborhood Commission 3D ("ANC 3D"), which is automatically a party to this Application. In addition, upon proper application the Board granted party status to the following persons or organizations: (i) Rudi E. Djabbarzadeh, who resides at 2740 Chain Bridge Road, N.W. and owns three houses bordering the subject property to the south; (ii) Chain Bridge Road/University Terrace Preservation Committee; (iii) Chain Bridge Road Citizens for Responsible Growth; and (iv) Lewis Mulitz, 2895 University Terrace, N.W.

PUBLIC HEARINGS. Six public hearings on the application were held at which times testimony and evidence were provided by the Applicant and its witnesses, by the Office of Planning, by Urban Forestry Administration of the District Department of Transportation (DDOT/UFA) and by the three party opponents and their witness.

SUMMARY OF TESTIMONY

1. Applicant's Case. The Applicant's case was presented through the drawings, reports and testimony of the project architect, Stan Andrulis, the civil engineer, James Afful, P.E., the traffic engineer, Osborne George, P.E., the arborist, Tom Bonifant, the landscape architect, Lauren Wheeler and the owner's representative, Morton Bender. The Applicant's project was designed with CB/UT Overlay guidelines and objectives in the forefront. In order to retain many of the mature trees on the subject property, the Applicant laid out and oriented the thirteen (13) lots and instructed its architect to design houses for the particular circumstances of each lot, hence the wide range of house sizes, styles and shapes.

Architecture, Site Design and Construction

The Applicant is committed to a minimal disturbance of existing grades, which is essential for the survival of many mature trees on the subject property. Rather than extensive excavation and trenching which would harm tree roots and alter the natural topography of the subject property, the project architect has proposed creative ways of spanning grade changes, most notably in the use of elevated wooden driveways for the houses on Lots B, C and D, but also in the use of concrete piers to raise patios and actual portions of certain of the houses. The Applicant will use directional boring techniques in order to install SWM devices and utilities to avoid disturbance of the tree roots, particularly the stand of American Beech trees flanking either side of the central roadway, by boring tunnels through which pipe and conduit can be pulled well below the 12-18" of top soil in which tree roots are found.

The Applicant also will utilize construction techniques which will reduce the amount of excavation required when installing foundations and basements and which will permit construction work to occur in the close proximity of mature trees that Applicant is committed to save. The Tree Preservation Plan has been closely integrated with the innovative construction plan for SWM and residential structures, evident in Exhibit No. 163 Rebuttal at Tab - Disturbance Area, where the project architect depicted how house

foundations, SWM and utility installation, roadway, walkway and driveway improvements, protection of the Critical Root Zones of mature trees, and paths for movement of construction vehicles all could co-exist.

Landscape Design

In response to BZA and OP reaction, the Applicant substantially revised its approach to landscaping and developed a long-range plan of minimal disturbance, woodland restoration with native species of overstory, understory, shrub and ground cover. A unique landscape was created for each house in its particular topographic setting with secondary objectives of screening the perimeter houses from Chain Bridge Road, N.W. and from each other. In addition, the landscape plan includes "green roofs" for whole roof area of the houses on Lot F and Lot 4.

Storm Water Management

The civil engineer testified to the intentional over-design of the SWM system. Percolation tests were conducted for each house lot and confirmed the well-drained nature of the soil. DOH confirmed to Mr. Afful that infiltration of surface water and storm water run-off is a primary method for the subject property. For design purposes, the civil engineer assumed that the entire storm water run-off from a "pristine" subject property, a flow of 6.07 cfps, is ending up at the southeast corner of the subject property, which neighbors have identified as a critical concern. The DOH standards for SWM design makes the developer responsible for the difference between "pristine" conditions and developed conditions in a the 15-year storm event; in effect, compliance with DOH standards is necessarily an improvement over what currently exists at the subject property. The civil engineer took this caution further by assuming 60% impervious surface area for his design calculation when the actual impervious surface was 44.6%¹ and by sizing SWM devices servicing individual houses with more capacity than required by DOH standards.

Dry wells are placed so that only clean flows, such as roof run-off is received. At DOH's urging these Dry Wells have exfiltration features allowing excess run-off to be directed to large central Detention Facilities in the vicinity of each cul-de-

¹The civil engineer intentionally did not reflect the benefit of two green roofs and the elevated wooden driveways to three houses which would have further reduced the area of impervious surface in the proposed development.

sacs to hold, filter and gradually release any overflow. Other houses will have Storm Filters for those locations where the surface run-off might be contaminated with vehicle fluids and these devices will also be connected to the Detention Facilities. Modified French Drains will be employed where surface flow runs along the grade toward particular houses. A large capacity Rain Storage Tank will be implaced at the lower elevation southeast end of the subject property as a redundant system backing up the detention facilities which permits overflow storage, slow infiltration and retarded storm water discharge off the site. Check dams, French Drains, and concrete baffles are sited in other portions of the subject property's perimeter to control surface flows. A "Bay saver" device would be put in the central roadway to provide water quality and separation of vehicle fluids. The net result of the SWM design was a SWM system which reduced the peak flow off-site by 30%, a positive improvement on current conditions for downstream neighbors.

Traffic Impacts and Safety.

Osborne George, P.E. examined the subject property and the Chain Bridge Road, N.W. environment on several occasions, conducted traffic measurement studies, accompanied DDOT personnel during visits to the area to observe traffic and safety conditions and submitted his conclusions in the form of a report (Exhibit No. 51, Exhibit F).

Tree Preservation and Protection.

Tom Bonifant has submitted a Tree Preservation Plan, dated August 16, 2005, prepared by Bonifant Tree Service, Inc. (Exhibit No. 76) and collaborated with the architect in finding methods of protecting individual trees in close proximity to construction activity. In the report Mr. Bonifant explained the way each mature tree designated for preservation would be protected during construction. In addition, Mr. Bonifant and the architect reviewed in detail the particular circumstances of each mature tree and has confirmed that the disturbance of Critical Root Zones is below that which would give rise to concern about the tree's survival (Exhibit 163, Rebuttal, Tab - "Critical Root Zone"). In Mr. Bonifant's opinion directional boring under tree roots at the depth proposed would have no effect on the trees.

2. Government Reports.

Office of Planning. The Office of Planning (OP) submitted a Memorandum, Dated April 19, 2005, which withheld a recommendation until receipt of further information from the

Applicant, DDOT, the D.C. Department of Health and the National Park Service (NPS). In a Supplemental Report, dated January 3, 2006, OP recommended approval of the application, subject to eight conditions, most of which were conditions the Board should adopt in its order to facilitate construction monitoring and tree preservation. OP found expressly that the proposed development satisfied the requirements of the Zoning Regulations and would not adversely affect the character of the neighborhood.

The three principal conditions urged by OP were (i) the reduction in the number of theoretical lots in the subdivision to twelve (12), thus allowing the Applicant to eliminate Lot F which OP deemed to be located too close to the property line with only an 11-foot slope separation; (ii) using concrete instead of wood for the new retaining wall indicated in the SWM Plan; and (iii) the reduction in height of the house on Lot 3 which is to be located at the one of high points of the subject property.

Department of Health, Environmental Health Administration After conducting site visits and percolation tests on the subject property, DOH, by letter, dated November 7, 2005, approved the Applicant's conceptual storm water management plan, noting that the plan shows a broad range of best management practices intended to treat all the anticipated run-off from the impervious areas of the proposed development.

Fire and Emergency Medical Services Department (FEMS). By letter, dated October 25, 2005, the Fire Marshall approved the Applicant's request for a variance permitting the central roadway to be less than the 20-foot unobstructed width required under 2000 ICC Fire Code.

District Department of Transportation (DDOT). By letter dated May 23, 2005, and reconfirmed on February 6, 2006, DDOT approved the Applicant's request that the central roadway be less than 20-feet wide; provided that the Applicant agree to build two lay-bys at either end of the central roadway to permit vehicle to pass each other.

Urban Forestry Administration, District Department of Transportation (DDOT/UFA) By the testimony of Earl Eutsler, Municipal Arborist, at the July 18, 2006 and October 31, 2006, public hearings and by written submission dated October 25, 2006, DDOT/UFA contended that the tree preservation objectives of the CB/UT Overlay were not being met by the Applicant in two respects: the Applicant did not comply with § 1568.1(b) and the real disturbance to critical root zones of mature trees by SWM

installation and house construction was greater than the Applicant's expert acknowledged.

3. Parties In Opposition

ANC 3D Report. On January 4, 2006, at a public meeting at which a quorum was present, ANC 3D passed a resolution opposing the special exception application. As substantive issues, ANC 3D raised the following: density of the proposed development, protection of parkland, stormwater run-off, protection of tree canopy, protection of slopes, and traffic. In its letter to the Board dated, January 5, 2006, communicating its resolution to oppose, ANC 3D attached a listing of its major concerns.

ANC 3D believes the proposed development is too dense, citing development parameters which indicate that the proposed development is barely above the minimum requirements in the CB/UT Overlay for lot area, lot occupancy and impervious surface area and contains too many houses.

ANC 3D believes that the proposed development has adverse visual impacts on Battery Kemble Park across Chain Bridge Road, N.W. and contends that the houses facing Battery Kemble Park should be reduced in height by 10 feet, or one story.

ANC 3D questions the handling of stormwater run-off from the proposed development citing the absence of information about what happens to the stormwater after capture by the proposed storm water management system (SWM) and the impact on erosion and sediment control.

ANC 3D believes that the CB/UT Overlay permits only three (3) trees (larger than 38" in circumference) to be removed from the subject property and the Applicant proposes the removal of eight such trees. The Applicant does not indicate in its landscaping plan introducing hardwood trees to replace those being removed. ANC 3D is generally concerned about tree protection.

ANC 3D is concerned that wooden retaining walls do not afford slope protection and lack of maintenance plans to prevent for erosion of natural berms "at front of property."

ANC 3D believes that sight-lines up and down Chain Bridge Road are inadequate for vehicles exiting the subject

property and that traffic moves faster past the subject property than the posted speed limit. Anc 3D believes that narrow central roadway is inadequate for fire access by hook and ladder trucks.

Chain Bridge/University Terrace Preservation Committee (the "Committee"). In a submission dated January 10, 2006, the Committee identified specific concerns about the proposed development: violation of the tree protection objectives of CB/UT Overlay, out of character with the neighborhood, adverse impact on adjacent properties including the historic School House and Battery Kemble Park and erosion, stormwater and traffic safety problems. At that time the Committee also submitted the Analysis of Tree Preservation At the Chain Bridge Road Project, dated April 20, 2005, by Edward Milhous, an ISA certified arborist (the "Milhous Report") and a Memorandum, dated April 25, 2005, from Stephen G. Petersen, P.E., a traffic engineer (the "Petersen Memo"). In a Supplemental Pre-Hearing Statement, dated July 12, 2006, the Committee restated its objections to the proposed development and attached the report of Greenhorne & O'Mara, Inc., dated July 11, 2006, prepared by Mary K. Sears, P.E. ("Sears Report") assessing the adequacy of the Applicant's SWM Plan.

Rudi E. Djabbarzadeh. Mr. Djabbarzadeh lives at 2740 Chain Bridge Road, N.W., but also owns 2730 and 2738 Chain Bridge Road, N.W. Mr. Djabbarzadeh contends that the proposed SWM channels all stormwater run-off from the proposed development to the southeast corner of the subject property and will overwhelm the capacity of the 18" pipe adjacent to the property line. This circumstance threatens flooding for neighboring houses to the south who have already experienced floods in 1991 and 2001. Mr. Djabbarzadeh also complains about the proximity of the houses on Lots D and F of the Applicant's plan which set at higher elevations. Lastly, he wants to prevent the Applicant from removing the existing bamboo grove on the slope between the properties and replacing the bamboo with native species of trees.

4. Persons in Opposition. Several members of the Chain Bridge Road Corporation and the Palisades Citizens Association, MPD Officer Anthony McElwee and David Murphy, National Park Service offered testimony in opposition to aspects of the proposed development.

5. Persons in Support.

Chain Bridge Road Citizens for Responsible Growth. Mark Brodsky, Esq. expressed support for the Applicant's plan and ability to carry it through. He also noted that the Committee was

the prime mover in petitioning the Zoning Commission for the CB/UT Overlay in 1999 and now that a project is actually designed to meet the CB/UT Overlay standards, the Committee is seeking to "raise the bar."

6. Motion To Exclude and Strike (Exhibit No. 167). Following the September 19, 2006 public hearing, at which the Applicant introduced additional material for inclusion in the record as part of its rebuttal case, the Committee filed a Motion To Exclude and Strike Applicant's Rebuttal Submission and Testimony. After consideration of the Applicant's opposition to the motion (Exhibit No. 169) and oral argument at the October 31, 2006 public hearing, the Board denied the Committee's motion, finding that the Committee could not point to anything in the submission which constituted new material and could not therefore claim surprise; especially as the Committee had six weeks to consider the Applicant's rebuttal submissions and prepare for the cross-examination of the Applicant's experts at the final public hearing on October 31, 2006.

FINDINGS OF FACT:

The Subject Property

1. The subject property is located on the west side Chain Bridge Road, N.W., lies within the Chain Bridge University Terrace (CB/UT) Overlay District and is zoned R-1-A.

2. The subject property is roughly "pie-shaped" and comprises approximately 143,190 square feet of land area (3.28 acres) with 574' of frontage along Chain Bridge Road, N.W. The subject property, the site of the H. Gabriel Murphy home which was razed in September 2002, is vacant. The subject property is partially wooded with concentrations of major trees (larger than 12" in circumference) along the slopes on western, eastern and southern perimeter of the subject property and along the central interior roadway.

3. The subject property is elevated above Chain Bridge Road, N.W. and contains two distinct plateau areas. The northern portion is level with steep eastern and southern edges and slopes gradually to the southern portion which has steep slopes to the southeast.

The Surrounding Area

4. Chain Bridge Road, N.W. is a one mile long, curved/meandering, narrow two-lane local roadway running between

Loughboro Road, N.W. to the north and MacArthur Boulevard, N.W. to the south. The roadway has no curbs, gutters and sidewalks.

5. The subject property is bordered by Battery Kemble Park (owned by NPS) to the east and by single family detached residences generally to the north, south and west, all lying within the CB/UT R-1-A Zone District. Immediately to the north is the Chain Bridge Road School, which has been designated as a historic structure and is also owned by the Applicant.

The Proposed Project

6. The Applicant is proposing a theoretical lot subdivision of the subject property to divide the property into thirteen (13) assessment and taxation lots and to provide common roadways for circulation within the site and access to Chain Bridge Road.

7. On each of the theoretical lots the Applicant intends to construct a high quality, detached, custom built single family home of individual design. The thirteen (13) lots will range in size from 9,517 square feet to 11,939 square feet, with the average lot size being 9,934 square feet. The remaining 14,053 square feet of the subject property will constitute common space, consisting of: (i) the extension of two existing roadways connecting the interior of the subject property with Chain Bridge Road, N.W, and serving twelve of the theoretical lots and a proposed driveway for a single lot on the southern edge of the subject property.

8. The northern 20' roadway will service three (3) of the proposed lots and crosses the adjoining property of the Chain Bridge Road School by means of an easement. The extension of the existing roadway and the proposed use have been reviewed and approved by the Historic Preservation Review Board. The proposed central roadway varies between 12.5' and 20' in width and is lined by an allee of American Beech trees, a significant natural feature of the subject property which the Applicant intends to retain. Both roadways will terminate in 60-foot (60') cul-de-sacs.

9. Each of the proposed dwellings will have a two-car garage and its own driveway which affords additional off-street parking area.

10. The theoretical lots and the proposed dwellings to be constructed thereon comply with all of the dimensional requirements under §§ 2516, 1567 and the underlying R-1-A Zone District with respect to lot size, lot occupancy, impervious surface coverage, rear yards, side yards, number of stories, height, and ingress and egress.

Storm Water Management

11. The Applicant submitted a comprehensive and complex SWM concept plan for the subject property which currently has no SWM features. The Applicant's civil engineer demonstrated to the Board's satisfaction that the SWM was intentionally oversized and will be built with excess capacity, infiltration and exfiltration devices which will provide quantity and quality control of run-off from impervious surfaces and will reduce the amount of surface water run-off that is discharged at the southeast corner of the subject property. The Board credits the fact that in computing the area of impervious surface of 44.3%, the Applicant's civil engineer did not deduct the benefit of the roof area of houses on Lot F and Lot 4 which will have "green roofs" or the pervious areas beneath the elevated wooden driveways servicing the houses on Lots B, C and D. DOH has approved the Applicant's SWM concept plan and it is not the role of this Board to review the technical judgments of DOH or to oversee construction and installation details of the SWM system.

12. Exhibit 161 in the record confirms that the previously described "wooden retaining wall" at the southwest apex of the subject property has been replaced by "6"-12" Concrete SWM Baffle' in response to ANC 3D and Mr. Djabbardeh's concern.

13. The Applicant's civil engineer testified that a 20+ acre drainage area contributes storm water run-off to the stream running between University Terrace and Chain Bridge Road, N.W. and other opposing witnesses noted that development on other land within the drainage area worsened the stream conditions. The Board credits Mr. Afful's conclusion that the SWM plan will reduce outflows from the subject property by 30%.

14. The overall density of the proposed development is consistent with the existing neighborhood context, both in terms of the number of dwellings per acre and the number of dwellings with frontage along Chain Bridge Road, N.W. The Board finds that the relative size of lots and dwellings in the proposed development are not exceptional and compare favorably with the residential construction along Chain Bridge Road, N.W. since the adoption of the CB/UT Overlay in 1999.

Traffic Impact and Safety.

15. The Board credits the testimony and report of the Applicant's traffic expert, Osborne George, which concludes: (i) that the addition of the proposed development will have no impact of the level of service on Chain Bridge Road, N.W., which is clearly from the data submitted by both traffic experts in this

proceeding a very lightly used roadway;² (ii) that the central roadway into the proposed development, as designed, affords sufficient sight-lines and strategically-located lay-bys to permit safe movement of vehicles along the central roadway; and (iii) on such a low-volume roadway with the majority of vehicles using the roadway being local, the proposed development does not present an unsafe traffic condition.

16. The Board finds persuasive on the question of traffic safety the concurrence of DDOT (after DDOT's site visits and observation of traffic on Chain Bridge Road, N.W.) to the effect that convex mirrors are routinely used in several places on Chain Bridge Road, N.W., along with "hidden driveway" signs and the MPD records do not show any reported accidents on Chain Bridge Road, N.W. for the preceding four years.

17. The Board credits the variance granted by FEMS with respect to the design of the two roadways servicing multiple dwellings in the proposed development as being conclusive on the issue of the adequacy of access by fire and emergency vehicles.

18. The proposed central roadway poses no safety issue in terms of sight lines and the placement of two lay-bys permits vehicles to operate safely in both directions. The Applicant's stated goal of preserving the beech trees on either side of the central roadway makes widening the central roadway (except at the lay-bys) impractical.

Landscape Plan and Visual Impacts

19. The Board credits the testimony of David Murphy, NPS, in which he stated that the largest concern of NPS was not the visual impact on Battery Kemble Park, but the visual impact of the dwelling on Lot 4 as one drove up Chain Bridge Road, N.W. The Board acknowledges that the dwelling on Lot 4 could be built as a matter-of-right.

20. The Board finds that the Landscape Master Plan, dated June 30, 2006, prepared by Lauren Wheeler, Natural Resources Design, Inc., is an effective response to the objectives of § 1565.2(a) to preserve a natural, park-like topography. The Woodland Restoration Plan in its emphasis on the integration of a

²Both traffic engineers found traffic volumes on Chain Bridge Road, N.W. of less than 700 vehicles in a 24-hour period on weekdays and lower on weekends with a 1:30 minute average rush hour gap between vehicles.

variety of native overstory, understory, shrub and ground cover species into the overall landscape effort is commendable. In the opinion of the Board, it is noteworthy that the Landscape Master Plan calls for the placement of large deciduous and coniferous trees along the sensitive perimeters of the subject property, which will serve to screen the dwellings on Lot 3 and Lot 4 from Chain Bridge Road, N.W.

21. In response to OP's concern that because of the elevated plateau the houses on lots E, F and G loomed too high over the neighboring properties to the south, the Applicant has redesigned each of these the houses to reduce the number of stories from three (3) to two (2) and in the case of Lot F to increase the side yard setback from the southern property line from eleven feet (11') to twenty-five feet (25').

22. The OP Supplemental Report's recommendations regarding visual impact on the neighboring properties to the south fail entirely to credit the effect of the Landscape Master Plan and also fail to note the reduction in height of the houses on Lots D, E and F and the increased side yard set back for the house on Lot F.

23. The Board is mindful that Gladden v. D.C. Board of Zoning Adjustment, 659 A.2d 249, 255 (D.C. App. 1995) instructs the Board that in the case of special exceptions, "[t]he Board's discretion is limited to a determination whether the exception sought meets the requirement of the regulation."

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(2) (2001) to grant special exceptions as provided in the Zoning Regulations. The Applicant applied under 11 DCMR §3104.1 for a special exception pursuant to 11 DCMR § 2516 to allow construction of a theoretical lot subdivision for thirteen (13) single family homes in the CB/UT/R-1-A.

The Board can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular special exception are met. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulation and the Zoning Map." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map." 11 DCMR § 3104.1. The Board concurs with OP that the proposed theoretical lot subdivision will not be contrary to the purpose or intent of the Zoning Regulations, as all of the lots are

larger than the minimum lot area and width for the CB/UT Overlay and are compatible with those in the community. OP deems the Applicant's tree preservation and natural landscape measures serve to continue the rural character of the Chain Bridge community "as viewed for [sic] Chain Bridge Road".

Analysis of Tree Preservation Under § 1568.1

The Applicant's plans require the removal for construction under § 1568.1(b) of a total of nine (9) trees between 38-75" in circumference from the subject property.³ Section 1568 limits tree removal in cases of constructing a building, adding to a building, creating impervious surface areas, subdividing an unimproved lot, or subdividing an improved lot so as to increase the number of structures on the lot. In this application, the Applicant is seeking to subdivide four (4) parcels of land which are currently organized into two (2) assessment and taxation lots in order create thirteen (13) theoretical lots which with the common roadway areas will constitute one (1) single lot of record.

Thus, the application squarely presents a question of interpretation in how to apply the language of §§ 1568.1 and 1568.1(b) to the unique circumstances of this case. Which sense of "lot" is the correct one to which to apply the limitation of § 1568.1(b)? The parties urge the Board in several different directions on this basic question.

The subject property is, in one sense, a single piece of land, thus can only comprises one (1) "lot". Under this construct an applicant could only remove three (3) trees between 38-75" in circumference from the subject property and the Applicant's proposed plan would not meet the § 1568.1(b) limitations. This,

³From a review of Exhibit No. 136, Project Drawings (6/30/06) Tab: "All Trees", three (3) of the trees to be removed are located within Parcel 12/293 and six (6) are in Parcel 12/294. The same exhibit viewed in relation to the underlying theoretical lot subdivision discloses that three (3) trees to be removed are located within Lot G, two (2) trees are in Lot D, two (2) trees are in Lot 4, one (1) tree is in Lot 1 and one (1) tree is in the middle of the central roadway. Thus, no more than three (3) trees between 38-75" in circumference are removed from any single "lot".

apparently, is the view of both ANC 3D and Mr. Robert Sussman of the Committee.⁴

Earl Eutsler of DDOT/UFA adopts two alternative positions on the question noting in his October 25, 2006 submission to the Board that: (1) the subject property is recognized by the District of Columbia as consisting of two taxation and assessment lots, Lot 822 and Lot 827; or (2) the subject property is currently configured for identification purposes as four parcels of land: Lot 827, Parcels 12/63, 12/293 and 12/294.⁵ Under the first alternative, the Applicant is allowed to remove six (6) trees between than 38-75" in circumference; but only if three (3) trees are taken from each lot, regardless of the fact that Lot 822 contains 80 times the land area of Lot 827. Under Mr. Eutsler's second alternative, the subject property is four (4) "lots" and twelve (12) trees between than 38-75" in circumference may be removed by the Applicant, again on the condition that only three (3) trees may taken from each "lot".

The Applicant makes two arguments on this question: first, the subject property is made up of four "lots" and therefore, the Applicant may remove for construction as many as twelve (12) trees between 38-75" in circumference, but is, in fact, seeking to remove a total of only nine (9) such trees; or second, the analysis of § 1568.1(b) should be accomplished only with reference to lots which are "buildable lots" and that occurs, in the circumstances of this application, only after the theoretical lot subdivision, in which case there are thirteen (13) theoretical lots, but the Applicant only seeks to remove nine (9) trees between 38-75" in circumference.

⁴ In his testimony at the July 18, 2006 public hearing (Exhibit No. 145, at p. 5, fn. 2) Mr. Sussman added a further analytic nuance by alleging a further violation of § 1568.1(b) by the Applicant who removes trees within 25 feet of a building restriction line or lot line abutting a public street. Unfortunately, Mr. Sussman failed to identify any building restriction lines within the subject property or to locate any such tree designated for removal within 25 feet of the Chain Bridge Road, N.W. perimeter of the subject property.

⁵The subject property is, indeed, comprised for the purposes of legal description and identification of four distinct parcels of land: Lot 827 (1,753 sq. ft), Parcel 12/63 (8,530 sq. ft.), Parcel 12/293 (36,403 sq. ft.) and Parcel 12/294 (96,504 sq. ft.).

The anomaly of the instant application is the arbitrary, pre-development status of the subject property in terms of its current division into legal, descriptive and assessment and taxation units. As noted, Parcel 12/294 is 80 times the area of Lot 827; Parcel 12/294 is more than double the area of all the other parcels combined; Parcel 12/63 and Lot 827, which are both less than 9,500 square feet in area, are too small to constitute legal lots for zoning purposes in the CB/UT Overlay and A&T lot 822 is over 100 times the area of lot 827. Yet, despite the wide variation in land area, some would have us interpret § 1568.1(b) so that an equal number of mature trees can be removed from each designated assemblage of land. The Board does not believe that § 1568.1(b) requires this result in this instance. Equally it is difficult to accept an analysis which holds that the entire 3.28 acres is a single lot and should be held to the same absolute level of mature tree removal as, for example, a vacant lot of 9,500 square feet, the minimum size in the CB/UT Overlay.

The clear purpose of the tree removal limitations of §§ 1568.1(a), 1568.1(b) and 1568.1(c) is to preserve a significant percentage of mature trees and to retain the park-like appearance of the lots within the CB/UT Overlay by ensuring that trees, especially on the perimeters of lots, are protected. The Board believes that the Applicant's proposal for tree preservation accomplishes these purposes effectively and removes fewer trees between 38-75" in circumference than would be allowed under § 1568.1(b), whether the subject property is viewed as four (4) "lots" or thirteen (13) "lots".

The Board is satisfied from an examination of the "All Trees" Tab of Exhibit 136 (Project Drawings) that the removal and retention of mature trees is consistent with the objectives of the CB/UT Overlay and that the Applicant's removal of nine (9) trees between 38-75" in circumference does not exceed allowable § 1568.1(b) limits on any single lot or overall.

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended, now codified at D.C. Code § 1-309.10(d)(3)(A) to give "great weight" to the issues and concerns raised in the affected ANC's written recommendations. To give "great weight" the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns.

The Board concludes that it has accorded ANC 3D the "great weight" to which it is entitled. The record reflects that ANC 3D

opposed the application on several grounds. In Findings of Fact Nos. 11, 12, and 14-20 above and in the Board's analysis of the application of § 1568.1(b), the Board has responded to the claims made by ANC 3D in opposition to this application.

The Board is also required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board agrees, in large part, with OP's advice that the application be approved with conditions.

For the reasons stated above, the Board concludes: (i) that the Applicant has satisfied the burden of proof with respect to the application for a special exception under § 2516 to allow a theoretical lot subdivision for thirteen (13) single family homes and a modification of the requirement of twenty-five foot (25') roadways under § 2516.6(b) as permitted by § 2516.6(d); (ii) the application satisfies the requirements and achieves the objectives of the CB/UT Overlay set forth in § 1565 of the regulations; and (iii) that the requested relief can be granted without adversely affecting the use of neighboring property in accordance with the regulations and the map.

Accordingly, it is ORDERED that this special exception application is GRANTED, SUBJECT to the following **CONDITIONS**:

1. The subject property shall be subdivided into theoretical lots as shown on the plans and documents contained at Exhibit No. 136, Tab - "Plat of Improvements" in the record. Minor adjustments shall be permitted to accommodate tree preservation objectives and installation of SWM devices.

2. A SWM system shall be constructed in accordance with the Storm Water Management Concept Plan, dated June 22, 2006, prepared by AULtec, Inc. contained at Exhibit No. 161 of the record. The Applicant shall provide for the annual maintenance and upkeep of all SWM devices and facilities installed on the subject property and shall provide, upon the written request of ANC 3D, an annual certification as to such inspection and maintenance.

3. Individual lot landscaping shall be as depicted on the Landscape Master Plan, dated June 30, 2006, prepared by Lauren Wheeler, Natural Resources Design, Inc., as shown on the individual landscape lot plans contained at Exhibit No. 136 of the record. Minor adjustments shall be permitted to accommodate installation of new plantings

and substitutions of species based on availability or suitability.

4. A copy of this Decision and Order shall be recorded in the land records at the time of the subdivision of the subject property. In addition to the required provisions set forth in these conditions, the Applicant shall require that the homeowners' association expressly assume the obligations of this Decision and Order.

5. The Applicant shall, prior to the commencement of house construction on the subject property, coordinate with DDOT to arrange for the installation, at Applicant's cost, of convex sight distance mirrors on the east side of Chain Bridge Road, N.W. in such positions as will afford vehicles leaving the subject property by any of its roadways or driveways extended views up and down Chain Bridge Road, N.W. and to modify and/or maintain, in coordination with DDOT, the foliage on the steep slopes on the eastern edge of the subject property owned by the District in a manner that does not impede sight lines of exiting vehicles of approaching Chain Bridge Road traffic.

6. Throughout the period of construction on the subject property, the Applicant shall employ the services of an arborist, who will make periodic visits to supervise construction activity and to preserve the integrity of the Tree Preservation Plan (Exhibit No. 76), as supplemented by Exhibit No. 163, Rebuttal - Tab "Tree Protection" and the Applicant will, upon the written request of ANC 3D, make available copies of the arborist's periodic reports.

7. The Applicant shall be authorized to remove a total of nine (9) trees between 38-75" in circumference from the subject property for construction purposes, more specifically identified on Exhibit No. 136, at Tab - "All Trees" as Tree Nos. 14, 15, 18, 28, 31, 35, 55-57. The Applicant shall, upon the completion of the dwelling to be constructed on each theoretical lot, provide to ANC 3D, if so requested, the written certification of Applicant's arborist identifying all trees between 38-75" in circumference remaining on such lot.

VOTE: __-__-__ (_____, to approve;
_____, to oppose)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member approved the issuance of this order.

FINAL DATE OF ORDER: _____, 2007

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD. PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1, OF THE D.C. CODE. SEE D.C. CODE § 1-2531 (2001). THIS ORDER IS CONDITIONAL UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.