

CHAIN BRIDGE ROAD/UNIVERSITY TERRACE PRESERVATION COMMITTEE

May 29, 2003

Ms. Jennifer Steingasser, AICP
Manager, Development Review
Tree and Slope Survey c/o Office Of Planning
801 North Capitol Street N.E., #4000
Washington, D.C. 20002

Re: Case # 02-19

Dear Ms. Steingasser:

Thank you for your letter inquiring about our experience with the Chain Bridge Road/University Terrace Tree and Slope Protection Overlay (hereinafter referred to as the "Overlay" or the "Overlay district"). The Chain Bridge Road/University Terrace Preservation Committee (the "Preservation Committee") is pleased to have the opportunity to respond on behalf of our Overlay resident community.

The Chain Bridge Road/University Terrace Tree and Slope Protection Overlay became effective June 1999. From its inception in a stable neighborhood, the area over the last three years has experienced continuous pressure from developers subdividing lots and demolishing existing structures. We have had extensive experience with the effects of the Overlay on our neighborhood through subdivision, new construction, renovation, violations, stop work orders and appearances before the Advisory Neighborhood Commission ("ANC") and Board of Zoning Adjustments ("BZA"). The last three years have placed extraordinary demands on this community because of the lack of awareness, let alone enforcement, of the TSO regulations by the Department of Consumer and Regulatory Affairs ("DCRA"). In spite of this, we continue to believe that the Overlay, both through its development process and since its adoption by the Zoning Commission, has served to strengthen local awareness of the historical, environmental and residential aspects of our community that it was intended to protect. However, the Overlay has also served as a reminder of the difficulties often encountered by District residents when relying on local zoning laws and their enforcement by the City to obtain legitimate protection against inappropriate development in their local neighborhoods.

The good news is that, since adoption of the Overlay, residents and property owners have become more cognizant of its purposes and restrictions and have found that the unique topographical and landscape features of our neighborhood can be preserved, while new projects that respect the Overlay regulations can be accommodated. Residents of the Overlay district remain totally supportive of the additional local restrictions, over and above those provided for in the City's base zoning code, resulting from the Overlay. While this support is uniform throughout the Overlay District, it is particularly strong in those areas in proximity to the federal park system.

However, without adequate support, awareness and enforcement from the City, implementation of the Overlay regulations has been successful only in those few cases where a

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D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

ZONING COMMISSION
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Exhibit 327

developer/ owner /or architect has worked closely with the Preservation Committee and abutting neighbors to comply with the TSO regulations. In three years there have been eleven properties that have changed hands on four streets within the Overlay District that the Preservation Committee has been involved with directly.* The Preservation Committee's involvement has ranged from limited to extensive with each of these eleven properties where enforcement of the regulations was necessary. On five of these properties, we have worked closely and successfully with the owner, developer, and/or architect. Three examples of successful collaboration are the following: in one project, the developer worked to ensure that a subdivision (from one lot to two lots on University Terrace) and design of two new residences were carried out in scrupulous observance of the Overlay's provisions. In another project, an architect worked on a renovation of a house on Chain Bridge Road and consulted with the Preservation Committee through all stages of the design and construction process on the status of potentially impacted trees and vegetation on the property. In a third project, the owner/architect on Garfield Street provided an inventory and accompany location drawings of every tree on the property verified by an arborist certified by the ISA before beginning design and construction.

Recent tree-related developments, such as the Mendelson tree legislation and the generosity of the Casey Foundation, have undoubtedly combined with the Overlay to heighten citizen awareness of the historical and vital contributions that a healthy and vibrant tree-cover can make to the quality of life throughout the City. Certainly, this is the case in our neighborhood.

Unfortunately, that is only the good news. There is much bad news. The city's support for the Overlay (through the Office of Planning) was vital to its adoption, but unfortunately the City has provided little or no support for the Overlay's implementation since its adoption. Indeed, DCRA's general posture toward the Overlay has ranged from neglect in most cases to the appearance of hostility in others. The range of problems we have encountered at DCRA are enormous but among the most salient are:

----DCRA has failed adequately to record the Overlay on zoning maps, making it next to impossible for city employees and other interested parties to determine Overlay perimeters.

-----DCRA has failed to properly train its employees to review building permit applications for Overlay applicability or compliance.

----Despite repeated promises in meetings, DCRA has failed to adequately enforce the Overlay, in effect washing its hands and leaving that job to local neighbors. At times, the Building and Land Regulations Administration of DCRA, has appeared to work against the concerns of neighbors and Overlay supporters, while advancing the interests of developers.

-----City employees are not trained to evaluate arboreal issues, which form the basis of a Tree and Slope Overlay District. For instance, DCRA does not understand the need for tree inventories and tree conservation plans before any

permits can be issued on a site in an Overlay District where trees are potentially at risk. DCRA inspectors have allowed regulated trees to remain inadequately protected before and during construction so that after construction is completed the protected trees die. It has approved the removal of protected trees without a prior site inspection.

The permitting branch is thus routinely at risk of being misinformed and deliberately manipulated by permit applicants, wrongfully issuing permits that must then be rescinded or placed under stop-work orders. This in turn has required legal action and significant expenditures of time and money by Overlay residents, expenditures that would not have been necessary had DCRA been doing its job.

Three major Overlay infractions between November 2001- February 2003 provide an indication of the problems surrounding the lack of enforcement of the District's regulations. The first occurred in November 2001, at 2989 Arizona Avenue when the owner of the property, Jacobsen Builders, clear-cut a heavily forested lot of mature trees, acting on what it claimed was a valid permit. The city did not review Jacobsen's permit application to determine that it was in the Overlay district and, having failed to determine that the property was within the Overlay, it failed to ask what, if any, trees would be removed. Although Jacobsen was made aware of the restrictions, Jacobsen never informed the city that its project was subject to them and provided no information regarding the many covered trees on the lot, let alone a formal tree inventory. Jacobsen's permit was routinely issued. The community was forced to hire a lawyer and spend thousands of dollars to ensure that Jacobsen was held accountable by opposing his application for a special exception before the BZA. Jacobsen appeared before the BZA and on October 9, 2001, the day of the scheduled hearing, withdrew his application. Over two years later, the stop work order and his permit remain in place, though the Preservation Committee has unsuccessfully petitioned DCRA to rescind the construction permit, so that the site can be secured from further erosion. On October 8, 2002, our attorneys wrote David Clark, Director of DCRA requesting that he revoke the permit, since almost two years had passed without the start of construction. Mr. Clark never responded to this correspondence. In a subsequent meeting on November 11, 2002, also referred to below, Teresa Lewis, Deputy Director of DCRA, agreed it was appropriate to revoke the permit but never did so. Under the auspices of the Office of Planning, the Preservation Committee has asked that Jacobsen undertake and pay for basic geotechnical studies of the site before any development of the site will be considered by the community.

The second violation occurred in August 2002, when the new developer/owner of 2762 & 2800 Chain Bridge Road N.W., ostensibly tying off utility lines to a residence that was subsequently demolished in order to make way for new development, damaged the root system of at least one large tree protected by the Overlay. The developer never informed the City that he was working proximate to two protected large trees, and the city did not verify the accurateness and/or completeness of information provided by the developer. Since the sale of the property in February of 2002, the Preservation Committee had met with and sent written correspondence to DCRA to alert them that the developer needed to provide a tree inventory for the 4-acre property. In addition, the Committee tried repeatedly, without success, to obtain an inventory from the

owner. In the previously mentioned letter of October 8, 2002, our attorneys wrote David Clark about the pressing need for a tree inventory of the property; independent verification of the inventory by DCRA; and of the August violation at the property. After the August 2002 incident at 2762 Chain Bridge Road, a meeting was held on November 11, 2002 at DCRA with Bob Kelly, Zoning Administrator, Denzel Noble, Deputy Administrator, and Teresa Lewis, Deputy Director, during which Ms. Lewis promised to implement corrective actions that included instituting a new procedure within DCRA that no demolition permit of any type, including demolition or construction permits, could be issued without a completed tree inventory. Despite these promises, which were welcomed by the Committee, and notwithstanding follow-up letters and phone calls, Ms. Lewis never followed through in implementing these requirements. As a consequence of this failure, the third violation that recently occurred at 3101 Chain Bridge Road N.W. was not avoided.

At 3101 Chain Bridge Road, the realtor/ developer, Mr. Brian Logan, has demolished a residence and removed several trees – all protected by the Overlay – again without any clear record that the city made any effort to determine that the property in question was within the Overlay, and that protected trees would be knocked and cut down. Most infuriatingly, while neighbors were working to secure a stop-work order, and then to ensure that it remained in place, DCRA was apparently consulting surreptitiously with the developer to remove the stop work order, with no public process or determination that the order was improperly issued. This case is a barometer of the decline in the ability of DCRA to enforce its own regulations. Over two years ago when the Jacobsen violation occurred and the stop work order was in place, immediately a joint meeting was held with the Zoning Administrator, the developer, members of the Preservation Committee and the President and Zoning Chair of the Palisades Citizens Association. On February 12, 2003, we were told by email by former Zoning Administrator, Bob Kelly to Judith H. Lanius, Chair of the Preservation Committee, that:

“ Mr. Logan submitted a tree affidavit and was issued a permit based on the information supplied. With information supplied by you and after an inspection this office issued a stop work order notice. Work will not proceed until the overlay requirements are complied with. Mr. Logan has the right to appeal the decision to stop work, to the Administrator of BLRA. I guess the point I am trying to make is BLRA required Mr. Logan to comply with the overlay, yet the contractor cut down a tree greater that what was approved by the tree affidavit form submitted with the permit application. We will be allowing the site contractor to complete surface water/erosion control measures while the stop work is in place to prevent erosion damage to the National Parks below. [Signed] Bob Kelly.”

We were thwarted in our attempts to meet with Teresa Lewis on this violation. We had arranged for a meeting with Ms. Lewis and Mr. Kelly on March 11, 2003; however, Ms. Lewis, without notice or explanation, failed to attend. This meeting was cut short due to Mr. Kelly's inability to respond to inquiries, other than to say Ms. Lewis should be contacted. Additionally,

Mr. Kelly informed us that he would not share with us his correspondence with the developer regarding 3101 Chain Bridge Road. We subsequently filed a Freedom of Information Request. However, not only has DCRA failed to produce any correspondence from Mr. Kelly to the developer, DCRA failed to produce any evidence that the stop-work order has been lifted. Despite the fact that there is no evidence that the stop-work order has been lifted, construction has recommenced at the property. Lastly, at the March 11 meeting, it was reiterated by Mr. Kelly that the developer was going to file for a zoning variance before the BZA while in reality he was in negotiation with DCRA. To date, no such application has been filed with the BZA.

These three cases of violations are deeply troubling. Our organization has always been proactive in contacting city officials to obtain their support and guidance regarding impending land transactions and residential demolition within the Overlay, its requirements, and its local importance. Our efforts have seen little positive results. We are concerned that the city does not recognize the Overlay as part of the Zoning Code of the District of Columbia. Our neighborhood has raised and expended substantial sums, first to secure adoption of the Overlay and then to seek its enforcement. During the last three years, we feel our direct experience with the Overlay has exposed us to the systemic problems within DCRA which have greatly undermined the effectiveness of regulations put in place to protect our neighborhood and thereby contribute greatly to the enhancement of the entire city.

The Office of Planning's review of the Overlay is timely and important. Despite the many shortcomings to date, we are confident that the Overlay concept is valid and will ultimately be successful. We would like to work with OP to help ensure this result. The following objectives would in our view be both valid and workable:

1. Development and adoption by the Zoning Commission of amendments to the Tree and Slope Protection Overlay "template" that include clear, flexible and workable enforcement provisions. Both the history of Overlay development and our direct experience with implementation suggest that improvements are needed and would be beneficial. Amendments should include requirements that:

- The property owner submits a Tree Inventory as part of the permit application.
- DCRA be responsible for independently corroborating the findings of the tree inventory.
- DCRA conduct a site visit before any permits are issued which require the removal of trees.
- Tree conservation plans be provided as a part of the permit application and that such conservation be approved by DCRA and the Office of Planning, with input from the Preservation Committee.
- Enforcement of the tree conservation plans be built in through inspection.
- Stop work orders remain in place until the violation is remedied, if it is possible to do so to the satisfaction of all parties,

or the statutory seven years goes into effect.

---- The developer pay a percentage of the legal bills incurred by the community defending the Overlay regulations, as well as the imposition of additional fines for violations of the Overlay provisions.

2. Preparation and submission for adoption by the Zoning Commission of a "White Paper" on Overlay Enforcement that would address vital needs in:
 - Education
 - Training
 - Resources and
 - Enforcement
3. Hearings by the City Council and adoption of proactive resolutions that reinforce the Overlay concept and serve to promote greater respect for, and compliance with, these vital zoning tools.

We look forward reward to working closely with the Office of Planning toward these objectives and to ensure that Tree and Slope Protection Overlays are adequately recognized and enforced by our city.

Sincerely,



Judith H. Lanius

Chair

Chain Bridge Road/University Terrace Preservation Committee

cc: Kathy Patterson
Phil Mendelson
Sharon Ambrose
John Finney
Alma A. Gates
Jeannine Rustag Zigner
Richard Nettler
Zoning Commission

* This does not represent the entire real estate transactions for the period.