



March 10, 2020

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Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

**RE: BZA Appeal No. 20221
Property Owner's Motion for Partial Dismissal**

Chairperson Hill and Honorable Members of the Board:

Intervenor Dorchester Associates, LLC (“Owner”) hereby moves to dismiss one of the four arguments raised by Appellant Chain Bridge Road/ University terrace Preservation Committee (the “Preservation Committee”) concerning tree protections in the R-21 zone. A motion to dismiss is attached at **Tab A**. The Zoning Administrator has made no written decision on tree protection regulations in connection with the challenged subdivision (the “Subdivision”) and, therefore, the issue is not ripe for consideration by the Board. Respondent DCRA consents to the filing of this Motion.

In general, a zoning appeal “may only be taken from the first writing that reflects the administrative decision complained of...” (emphasis added) *See* Subtitle Y § 302.5. If there is no decision by the Zoning Administrator, then the matter is not ripe for review by the Board. It is long-standing judicial precedent that the ripeness doctrine exists “to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *See Metropolitan Baptist Church v. D.C. Department of Consumer and Regulatory Affairs.*, 718 A.2d 119, 130 (D.C. 1998) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967)). “Ripeness is peculiarly a question of timing, and [the court] should consider whether [it] would benefit from deferring review until the question arises in some more concrete and final form.” *See id.* at 131.

In the subject appeal, there has been no zoning decision on tree protections and, accordingly, the matter is not ripe for review. The Preservation Committee challenges whether the Subdivision complies with “specific tree protection provisions,” but admits the Zoning Administrator’s Determination Letter concerning the Subdivision is “entirely silent on the tree protection issues.” *See* Ex. No. 2, pg. 10. Absent a written decision, there is nothing for the Preservation Committee to challenge as it concerns tree protections.

Indeed, under Subtitle C §401.1 “tree protection standards required by specific zones shall apply” only when:

“constructing a building, accessory building, horizontal building addition or other structure,” or

“causing any land disturbing activity to the lot that could result in disturbance of the existing tree canopy.”

The Owner obtained the Subdivision and created new assessment and taxation lots, but has not sought a building permit and will not otherwise cause any “land disturbing activity.” Thus, there is no requirement that such an issue be reviewed by the Zoning Administrator at this juncture.

As in the *Metropolitan Baptist* case, review of tree protection issues is not ripe because there is no formalized or concrete decision. Therefore, the Preservation Committee’s argument concerning tree protection issues, which appears on page 10 of its Statement of Appeal (Ex. No. 2), should be dismissed. Thank you for your attention to this matter.

Sincerely,

Cozen O’Connor

A handwritten signature in blue ink, appearing to read 'M. Moldenhauer', is written over a horizontal line.

By: Meredith H. Moldenhauer

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2020 a copy of the foregoing Motion for Partial Dismissal was served, via electronic mail, on the following:

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