



March 11, 2020

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

**Re: BZA Case No. 20221  
Property Owner's Prehearing Statement**

Chairperson Hill and Honorable Members of the Board:

On behalf of Dorchester Associates, LLC ("Owner"), the owner of the property that is the subject of this appeal, please find enclosed a Prehearing Statement for this matter. Thank you for your consideration of this statement and we look forward to presenting to the Board on March 18, 2020.

Sincerely,

COZEN O'CONNOR

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

BY: Meridith H. Moldenhauer

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of March, 2020, a copy of the foregoing Prehearing Statement was served, via electronic mail, on the following:

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Meridith H. Moldenhauer

**BEFORE THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**APPEAL OF  
CHAIN BRIDGE ROAD/UNIVERSITY  
TERRACE PRESERVATION COMMITTEE**

**BZA CASE NO. 20221**

**HEARING DATE: MARCH 18, 2020**

**PREHEARING STATEMENT OF DORCHESTER ASSOCIATES, LLC**

Dorchester Associates, LLC (the “Owner”), the owner of the subject property, files this prehearing statement concerning an appeal of a subdivision (the “Subdivision”) of unimproved property on Chain Bridge Road NW in Square 1425 (the “Property”) approved by the D.C. Office of Tax and Revenue (“OTR”) resulting in the creation of assessment and taxation lots 841-847. The Appellant, Chain Bridge Road/University Terrace Preservation Committee (“Preservation Committee”) argues OTR erred because the Subdivision (1) is not compliant with the lot frontage and lot width requirements of the R-21 zone; (2) does not consider tree protections in the R-21 zone; and (3) required a theoretical lot subdivision pursuant to Subtitle C § 305 of the Zoning Regulations.

As to the first argument, the well-vetted Subdivision creates compliant unimproved lots that are consistent with the Zoning Regulations, including as to the lot frontage and lot width requirements of the R-21 zone. The second argument is not ripe because there has been no zoning decision on tree protections in the R-21 zone. Finally, the third argument is moot because a theoretical lot subdivision is not required. Accordingly, the Preservation Committee’s appeal should be dismissed on its merits for the first and third claims.

**FACTUAL BACKGROUND**

**A. The Property and Zoning History**

The Property is located on Chain Bridge Road NW within the R-21 zone district. Prior to the Subdivision, the Property was known as Lots 831-839 in Square 1425. The Property is a large,

triangular-shaped parcel with 143,190 sq. ft. of land area. Although the surrounding neighborhood is generally comprised of single-family homes, the Property is wooded and unimproved. Fort Circle Park is to the east of the Property across Chain Bridge Road. The Property is not within an historic district.

Importantly, the Property is subject to the Highway Plan (the “Highway Plan”). A copy of the approved Plat of Computation reflecting the Property’s location within the Highway Plan is attached at **Tab A**. The Highway Plan, which is codified in D.C. Code § 9-101.01 *et seq.*, was established by an Act of Congress in March 1893.<sup>1</sup> When private property is identified as within the Highway Plan, then “no further subdivision of any land included therein shall be admitted to record in the Office of the Surveyor.” *See* D.C. Code § 9-103.02. The Zoning Regulations recognize this prohibition by carving out an exception to the general rule that a building permit may only be issued for a record lot. *See* Subtitle A § 301.3. As a result of its location within the Highway Plan, the Property cannot be subdivided into record lots.<sup>2</sup>

#### **B. The Determination Letter**

In 2018, the Owner retained undersigned counsel to determine a matter-of-right subdivision option for the Property. It is the goal of the Owner to develop single-family homes on the Property as a matter-of-right.

The Owner’s counsel met with the Zoning Administrator on October 5, 2018 and October 24, 2018 to review the proposed Subdivision. A copy of the Determination Letter is attached at **Tab B**. After two meetings regarding the Subdivision, on November 13, 2018, the Zoning

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<sup>1</sup> Under the Highway Plan, the Mayor of the District of Columbia shall “prepare a plan for the extension of a permanent system of highways over all that portion of said District not included within the limits of the Cities of Washington and Georgetown.” *See* D.C. Code § 9-103.01.

<sup>2</sup> As explained below, the Owner was not aware the Property was within the Highway Plan at the time it reviewed the proposed Subdivision with the Zoning Administrator.

Administrator issued a Determination Letter (the “Determination Letter”) confirming the Subdivision complied with the Zoning Regulations for unimproved lots. *See* **Tab B**. The detailed Determination Letter outlines the Subdivision and reviews each pertinent zoning requirement, including lot frontage, lot width, lot area, front setback, lot occupancy, floor area ratio, rear yard, side yard, courts, pervious surface, parking, access to parking, inclusionary zoning and easement requirements. *See* **Tab B**. The Determination Letter concludes as follows:

Based on the review of the attached plans and exhibits, the Project on the Property complies with the R-21 Zone District requirements, and the Project may be permitted as a matter of right.

Accordingly, when the Subdivision application for the Project is filed, my office will sign off on the plat drawings that are consistent with the lot dimensions so as long as the plat is consistent with the plans attached to this letter at Tab “A”. *See* **Tab B**.

At the time Determination Letter was issued, the Owner was not aware of the Property’s location within the Highway Plan; accordingly, the Owner sought the Zoning Administrator’s review of proposed record lots. After the Owner was able to confirm applicability of the Highway Plan, which does not allow for new record lots, the Owner submitted to OTR for assessment and taxation lots in accordance with a plat of computation. Nonetheless, the creation of assessment and taxation lots at the Property, as opposed to record lots, does not change any zoning aspect of the Subdivision. The proposed subdivision reviewed by the Zoning Administrator and attached to the Determination Letter is substantially similar to the Subdivision approved by OTR. *See* **Tab B**.

### **C. The Appellant Raises Challenges to the Determination Letter**

The Appellant first had knowledge of the zoning decision complained of on January 7, 2019, which is 350 days before the filing of this appeal. The Appellant states it became aware of the Determination Letter when the “Determination Letter was first posted on DCRA’s website on January 7, 2019.” *See* BZA Ex. 2, page 2-3. On February 21, 2019, the Appellant, through counsel,

requested a meeting with the Zoning Administrator to “express objections” to the Determination Letter. *See* BZA Ex. 2, page 3. On April 8, 2019, the Appellant met with the Zoning Administrator to review the Subdivision. *See* BZA Ex. 2, page 3. According to the Appellant, the Zoning Administrator confirmed the Subdivision complied with the Zoning Regulations. *See* BZA Ex. 2, page 3.

Nearly three months later, on July 1, 2019, the Appellant sent a letter to the Owner and the Zoning Administrator detailing the Appellant’s opposition to the proposed Subdivision and the Determination Letter. *See* BZA Ex. 2, page 3; *See* BZA Ex. 2D. In that letter, the Appellant raised the same three objections as this appeal, claiming the Subdivision violates the lot width and lot frontage requirements in the R-21 zone, does not demonstrate compliance with the R-21 zone’s tree protection requirements, and that the Subdivision requires approval from the Board of Zoning Adjustment as a theoretical lot subdivision. *See* BZA Ex. 2D.

To that end, D.C. Court of Appeals case precedent is clear that “if the appeal was not timely filed, the Board was without power to consider” the merits of the case. *See Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 1121-1122, (DC 2001). Under Subtitle Y § 302.2, a zoning appeal must be filed within sixty days of the date the person had notice or knowledge of the zoning decision. Further, a zoning appeal “may only be taken from the first writing that reflects the administrative decision complained of, to which the appellant had actual or constructive notice.” *See* Subtitle Y § 302.5. An appellant can be “chargeable with notice” based on the appellant’s knowledge of plans and correspondence with the zoning administrator. *See Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41, 50 (DC 2003). Based on the Preservation Committee’s clear knowledge of the Determination Letter dating back to January 7, 2019, this appeal was not timely filed and should be dismissed. Yet, after waiting

350 days, the Preservation Committee appealed the District of Columbia's official OTR subdivision approval.

#### **D. Owner's Subdivision Approved by OTR**

After learning the Property is subject to the Highway Plan, the Owner determined it could only obtain assessment and taxation lots. Thus, on September 5, 2019, the Owner filed an application with OTR to create the Subdivision with assessment and taxation lots. On October 23, 2019, OTR approved the Subdivision, which was subsequently filed in the records of DCRA's Office of the Surveyor. *See **Tab B***. On December 23, 2019, the Preservation Committee filed this appeal challenging the Subdivision and the Zoning Administrator's conclusions in the Determination Letter.

### **ARGUMENT**

As confirmed in the Determination Letter, the Subdivision creates unimproved lots that are consistent with the Zoning Regulations, including as to lot frontage and lot width. Further, the Preservation Committee's two alternative arguments are either not ripe or moot. The Zoning Administrator is not required to and has not made a determination concerning tree protections in the R-21 "overlay," and, therefore, this issue is not ripe for the Board's review. The final argument is moot because a theoretical lot subdivision is not needed when the Subdivision otherwise complies with the Zoning Regulations. It follows that the Zoning Administrator did not err in approving zoning compliance of the Subdivision, and the appeal should be denied.

#### **A. The Subdivision Creates Compliant Unimproved Lots, Including as to Lot Frontage and Lot Width**

##### *i. Lot Frontage*

The Preservation Committee admits the Subdivision meets the requirements for lot frontage that "at least one (1) street lot line shall be at least seventy-five percent (75%) of the

required lot width.” *See* BZA Ex. 2, pg. 8-9.<sup>3</sup> The Preservation Committee accurately identifies the minimum lot frontage of 56.25 feet for each lot in the Subdivision, which is based on the required lot width of 75 feet in the R-21 zone.

As set forth in the Determination Letter, each of the seven lots created under the Subdivision meets or exceeds a frontage of 56.25 feet on Chain Bridge Road NW. *See* **Tab B**, pg. 2. Lots 847 and 841 (Lots 1 and 7 in the Determination Letter) have a frontage of 56.25 feet; Lot 846 (Lot 2) has a frontage of 80 feet; Lot 845 (Lot 3) has a frontage of 88 feet; Lot 844 (Lot 4) has a frontage of 101 feet; and Lots 843 and 842 (Lots 5 and 6) have a frontage of 76 feet. *See* **Tab A**, **Tab B**, pg. 2. Accordingly, the Subdivision complies with Subtitle C § 303.2.

Despite acknowledging such compliance, the Preservation Committee baselessly argues the Zoning Regulations were “never intended and should not be interpreted to permit the irregularly shaped and pipe stem lots created” under the Subdivision. *See* Ex. No. 2, pg. 8. The Preservation Committee complains that “each of the lot frontages created was manipulated and configured for the sole purposes of utilizing the limited overall street frontage to maximize the number of lots created.” *See* Ex. No. 2, pg. 9. The Preservation Committee cites no Zoning Regulation or other legal authority for these assertions.

In review of the Subdivision, the Zoning Administrator must apply the plain language of the Zoning Regulations. There is substantial case precedent concerning proper statutory interpretation. The United States Supreme Court has stated “the words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them.” *See Davis v. United States*, 397 A.2d 951, 956 (1979). “The words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of any writing.”

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<sup>3</sup> A “street lot line” is defined as “a lot line that abuts a street.” *See* Subtitle B § 100.2.



*See James Parreco & Son v. D.C. Rental Housing Com.*, 567 A.2d 43, 46 (D.C. 1989). When the meaning of a statute is clear based on the plain language, the statute must be enforced “according to its terms, and ‘there is no need to engage in an analysis of legislative intent.’” *See Citizen’s Ass’n v. D.C. Bd. of Zoning Adjustment*, 642 A.2d 125, 128 (D.C. 1994).

The Zoning Administrator applied the plain language of Subtitle C § 303.2 for establishing lot frontage. This regulation directs the Zoning Administrator to review the length of a street lot line to ensure its length is at least 75% of the required lot width. There is no express or implied language in the Zoning Regulations prohibiting irregularly shaped or stem lots. Accordingly, the Zoning Administrator does not have authority to prohibit an irregularly shaped or stem lot. As referenced in the Determination Letter and depicted in the Subdivision, the Zoning Administrator correctly applied Subtitle C § 303.2 and concluded each lot in the Subdivision exceeds a minimum of 56.25 feet of frontage on a public street. As such, the Subdivision creates unimproved lots that are compliant with the Zoning Regulations.

*ii. Lot Width*

Similarly, the Preservation Committee admits the Subdivision meets the requirements for lot width. *See* Ex. No. 2, pg. 9. All of the lots created by the Subdivision will meet or exceed the minimum required lot width of 75 feet in the R-21 zone under Subtitle D § 1302.1. Lots 841, 842, 843, 845, 846 and 847 (Lots 1, 2, 3, 5, 6, and 7 in the Determination Letter) all have a lot width of 75 feet, and Lot 844 (Lot 4) has a lot width of 77.5 feet. *See* **Tab B**, pg. 2.; *See* **Tab A**.

To calculate lot width, the Zoning Administrator correctly applied Subtitle C § 304, which governs “Rules of Measurement for Lot Width.” *See* **Tab B**, pg. 2. Under Section C § 304.1, “where a lot is an interior lot, lot width shall be determined” by establishing “two points by measuring along each side lot line a distance of thirty feet (30 ft.) from the intersection point of

each side lot line and the street lot line.” (emphasis added) *See* Subtitle C § 304.1(a). The lot width is the distance of a straight line connecting the two points on the side lot lines. *See* Subtitle C § 304.1(b-c).

The Preservation Committee does not dispute that all of the proposed lots in the Subdivision are “interior lots.” Therefore, the Zoning Administrator shall use this method of measurement in determining the width of lots in the Subdivision. Since the Zoning Regulations define the word “shall”<sup>4</sup> to mean “mandatory and not discretionary,” the Zoning Administrator was required to apply Subtitle C § 304.1 and has no authority to choose an alternative method of measurement.

The Determination Letter expressly applies Subtitle C § 304.1 to find the Subdivision meets the lot width requirements in the R-21 zone. The proposed Subdivision attached to the Determination Letter depicts the points on each side lot line that are 30 feet from the street lot line on Chain Bridge Road NW. *See* **Tab B**, pg. 9. For each lot, there is a straight line connecting those points and the corresponding distance of that line. *See* **Tab B**, pg. 9. Accordingly, the Zoning Administrator applied the correct method of measurement and found the width of each lot in the Subdivision meets or exceeds the 75 foot requirement in the R-21 zone.

The Preservation Committee argues the Zoning Administrator should ignore the “Rules of Measurement for Lot Width” under Subtitle C § 304 and instead apply the zoning definition of “lot width” under Subtitle B § 100.2, which references a different method of calculation for “irregularly shaped” lots. Notably, “irregularly shaped” lots are not defined in the Zoning Regulations. Even so, this interpretation is inconsistent with the Zoning Regulations as a whole.

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<sup>4</sup> *See* Subtitle B § 100.1(d).

For context, the definition of “lot width” cited by the Preservation Committee is adopted from ZR-58. Under ZR-58, there were no separate “rules of measurement” governing lot width. To wit, § 401 of ZR-58 prescribes lot dimensions for the “R” zones, but does not offer any method of calculation for lot width.

To fill this gap, the 2016 Zoning Regulations enacted “general rules” under Subtitle C that govern, among other things, rules of measurement for calculating lot width. The “general rules” of Subtitle C create a framework for interpreting all of the land use titles, including the R-21 zone. Subtitle C provides “general regulations applicable to all zones unless otherwise stated in this title.” *See* Subtitle C § 100.1. This point is reiterated in Subtitle A, which states “the general regulations of Subtitle C are to be read in concert with the specific use category regulations of each land use subtitle.” *See* Subtitle A § 201.1.

Subtitle C, Chapter 3 governs “Subdivision” and provides “general rules for measurement and standards that relate to the dimension and shape of lots.” *See* Subtitle C § 300.1(c). Subtitle C § 304 establishes rules of measurement for lot width applicable to three types of subdivided lots: interior lots, through lots, and corner lots. Since the Subdivision is comprised of “interior lots,” the Zoning Administrator shall apply the method of measurement under Subtitle C § 304.1.

Accordingly, the plain language of the Zoning Regulations directs the Zoning Administrator to apply a specific rule of measurement under Subtitle C § 304.1. In review of the Subdivision, the Zoning Administrator applied Subtitle C § 304.1 to find the proposed lots meet the minimum 75-foot lot width in the R-21 zone. Therefore, the Zoning Administrator did not err.

**B. There Is No Zoning Decision Concerning the Tree Protection Provisions in the R-21 Zone**

As set forth in a separate Motion to Strike filed by the Owner, there has been no zoning decision concerning tree protection provisions in the R-21 zone. Accordingly, this issue is not ripe for the Board's review.

**C. A Theoretical Lot Subdivision Is Not Required**

Finally, the Subdivision creates unimproved lots that are compliant with the Zoning Regulations, including as to lot frontage and lot width, and, therefore, a theoretical lot subdivision is not required. Under Subtitle C § 305.1, a theoretical lot subdivision is only needed for a "waiver of Subtitle C § 302.1 to allow multiple primary buildings on a single record lot." In turn, Subtitle C § 302.1 is the general rule that "where a lot is divided, the division shall be effected in a manner that will not violate the provisions of this title." It follows that where a subdivision complies with the Zoning Regulations, a theoretical lot subdivision is not necessary.

In this respect, the Preservation Committee's entire argument is predicated on the Subdivision's non-compliance with lot frontage and lot width requirements. *See* Ex. No. 2, pg. 10. As stated above, the Subdivision fully complies with these requirements. Thus, the Preservation Committee's argument is moot because a theoretical lot subdivision is not required for the Owner's Subdivision.

**CONCLUSION**

The well-vetted Subdivision and Determination Letter should be upheld. In addition to this appeal being untimely filed, the Preservation Committee's arguments do not demonstrate the Zoning Administrator erred. The Zoning Administrator clearly applied the plain language in the Zoning Regulations governing measurements for lot frontage and lot width. Further, there has been no zoning decision as to tree protections in the R-21 zone, and that issue is not ripe for the

Board's review. Finally, the Subdivision was completed as a matter-of-right, as reflected in the Determination Letter, and a theoretical lot subdivision is not required. Therefore, the Owner respectfully requests that the Board deny this appeal.

Respectfully submitted,  
COZEN O'CONNOR



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