

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington, D.C. 20001

Appeal by Chain Bridge Board/University Terrace

BZA Appeal No. 20221

D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS’
PRE-HEARING STATEMENT

The D.C. Department of Consumer and Regulatory Affairs (“DCRA”) respectfully requests that the Board of Zoning Adjustment (“Board”) deny the Appeal and, in support, states as follows:

Appellant, Chain Bridge Board/University Terrace Preservation Committee (“Chain Bridge” or “Appellant”) claims the Zoning Administrator erred by virtue of an Office of Tax and Revenue (“OTR”) Assessment and Taxation Plat (“A&T Plat”). The A&T Plat is in reference to Lots 841-847 in Square 1425, located on Chain Bridge Road, N.W. in an R-2 Zone (the “Property” or “Proposed Development”).¹ To date, no building permits have been approved by the Zoning Administrator.

Appellant raises the following issues for review:

- a) the Proposed Development violates the Lot Frontage Requirements Subtitle C § 303.2 as the lots identified in the A&T Plat are irregularly shaped or pipe stem lots;
- b) the Proposed Development violates the Lot Width Requirements since the lots have an “irregular” configuration;
- c) the Proposed Development violates “specific tree protection provisions” under Subtitle C §§ 400-401;
- d) The Applicant has failed to obtain relief for a Theoretical Lot Subdivision under Subtitle C § 305.²

¹ DCRA has filed a Motion to Dismiss in this Appeal. In filing this Pre-Hearing statement, DCRA does not waive its arguments stated in its Motion to Dismiss.

² BZA Appeal 20221 Exhibit 2 – Appellant’s Statement of Appeal, p. 1.

However, the Appellant’s entire appeal rests on the fact that the proposed lots are “irregularly shaped.” The Appellant’s filing is devoid of any substantive legal support or even a reference to any BZA Order or case law that supports the claim that irregular lot shapes, by themselves, violate the zoning regulations. Though the lots may be asymmetrical, they fully comply with the zoning regulations.

A. Each Proposed Lot Complies with the Lot Frontage Requirements Under Subtitle C § 303.2 and the lots’ “asymmetrical” shapes are irrelevant to the zoning analysis.

The Appellant claims that the A&T Plat violates the “lot frontage” under Subtitle C § 303.2, as that the regulation “was never intended . . . to permit the irregularly shaped and pipe stem lots created by the A&T Plat.”³ However, the Appellant fails to cite to any zoning regulation, BZA Order, or case law to support its argument. On the contrary, the mere fact that the proposed lots are asymmetrical does not lead to the conclusion that they violate Subtitle C § 303.2.

Subtitle C § 303.2 provides that the lot frontage in a zone with a minimum lot width must be at least 75% of the lot width.⁴ Because the lot width in zone R-21 is 75 feet, the minimum lot frontage permitted is 56.25 feet. ($.75 \times 75 = 56.25$). (See, Subtitle D § 1302.1).

Turning to this matter, each lot complies with Subtitle C § 303.2 as follows:

- a. Lot 847 has a lot frontage of 56.45 feet;
- b. Lot 841 has a lot frontage of 56.25 feet;
- c. Lot 846 has a lot frontage of 79.9 feet;
- d. Lot 845 has a lot frontage of 88.03 feet;
- e. Lot 844 has a lot frontage of 102.78 feet;
- f. Lot 842 has a lot frontage of 86.14 feet;
- g. Lot 843 has a lot frontage of 82.72 feet;

(See, DCRA Exhibit 1- A&T Plat and Highway Plan).⁵

³ BZA Appeal 20221 Exhibit 2 – Appellant’s Statement of Appeal, p. 8.

⁴ Subtitle C § 303.2: Where a minimum lot width is required, the length of at least one (1) street lot line shall be at least seventy-five percent (75%) of the required lot width.

⁵ There is a slight deviation between the calculations contained in the A&T Plat (BZA Exhibit 2A) and the “Preliminary Lot Configuration” (of November 5, 2018) (BZA Exhibit 2B1) referenced in the Zoning Administrator’s Letter (dated November 13, 2018) (BZA Exhibit 2B1).

The Appellant agrees that Subtitle C §303.2 requires a minimum lot frontage of 56.25 feet. However, implicitly acknowledging that all seven lots comply with that minimum lot frontage, the Appellant asserts, absent any support, that the asymmetrical lots are “artificial” and “contrived.”⁶ Tellingly, the Appellant does not—and indeed cannot—argue that the lots do not comply with Subtitle C § 303.2. To the extent the Appellant seeks to revise Subtitle C §303.2, it must seek that relief elsewhere. That is not an issue for this Board, and the Appeal must be denied.

B. Each Proposed Lot Complies with the Lot Width Requirements Despite the fact that the lots Have an “Irregular Configuration”

Under Subtitle D § 1302.1, the minimum lot width for lots in the R-21 zone is 75 feet. The Appellant *expressly concedes* that the lot width for all the lots in the Proposed Development meets the 75-foot lot width requirement.⁷ However, the Appellant argues: “Given the contrived and irregular configuration of each lot, and in particular the long narrow pipe stem lots, this yields a result that is wholly at odds with the actual size and width of each lot.”⁸ Appellant asserts that its own purported lot width interpretation is “endorsed” by the D.C. Court of Appeals—yet Appellant fails to identify any case in support.⁹ Again, to the extent the Appellant seeks to revise a particular zoning regulation, it must seek that relief elsewhere.

Here, the zoning regulations specify how to calculate lot width measurements with respect to *interior lots*. Specifically, Subtitle C § 304.1 provides as follows:

Where the lot is an *interior lot*, lot width shall be determined as follows:

- (a) Establish 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;

⁶ BZA Appeal 20221 Exhibit 2 – Appellant’s Statement of Appeal, p. 8.

⁷ BZA Appeal 20221 Exhibit 2 – Appellant’s Statement of Appeal, p. 9. (“ . . . six of the seven lots have the minimum 75 foot lot width and the last lot 77.5 feet.”)

⁸ BZA Appeal 20221 Exhibit 2 – Appellant’s Statement of Appeal, p. 9.

⁹ BZA Appeal 20221 Exhibit 2 – Appellant’s Statement of Appeal, p. 10.

- (b) Measure the distance of a straight line connecting the two points described in paragraph (a) of this subsection; and
- (c) The distance of the straight line connecting the two points described in paragraph (b) of this subsection shall be the “lot width” of the lot.

(See, Subtitle C § 304.1) (emphasis added).

As indicated on the plat, the lot widths of the proposed lots in the A&T Plat, as measured according Subtitle C § 304.1 as described above, are as follows: Lots 841, 842, 843, 845, 846, and 847 have a lot width of 75 feet (approx.) and Lot 844 has a lot width of 77 feet 6 inches (approx.).¹⁰ Therefore, each of the proposed lots conforms with the minimum lot width requirement for the R-21 zone as set forth under Subtitle D § 1302.1, as acknowledged by the Appellant.

C. The Appeal Must be Denied as the A&T Plat does not demonstrate any Violation of Tree Protections under Subtitle C §§ 400-401.

The Appellant fails to state specifically how the Zoning Administrator erred in the application of the regulations with respect to tree protection under Subtitle C §§ 400-401. No plans have been approved, nor have any building permits for the construction of a building been issued. The Appellant merely claims that the “Zoning Determination Letter is entirely silent on the tree protection issues. . .”¹¹ The Appellant’s statement, absent any specific facts, is simply too speculative and unsubstantiated.

In this matter, there is no specific claim or charge by the Appellant that the Zoning Administrator erred in any way. The A&T Plat does not show any trees or vegetation. Nor are there any approved plans or permits, which would enable any construction activity or

¹⁰ There is a slight deviation between the calculations contained in the A&T Plat (BZA Exhibit 2A) and the “Preliminary Lot Configuration” (of November 5, 2018) (BZA Exhibit 2B1) referenced in the Zoning Administrator’s Letter (dated November 13, 2018) (BZA Exhibit 2B).

¹¹ BZA Appeal 20221 Exhibit 2 – Appellant’s Statement of Appeal, p. 10.

disturbance to commence, triggering tree protections. Accordingly, the Appeal must be denied.

D. The Proposed Development Does not Need BZA Relief for a Theoretical Lot Subdivision.

Finally, the Appellant claims that the A&T Plat lot configuration requires BZA special exception review and approval for Theoretical Lot Subdivision, under Subtitle C § 305.¹² The Proposed Development does not require BZA relief as it is exempted from record lot requirements because it is subject to a Highway Plan. The analysis is as follows:

Subtitle C §305.1 provides:

In the R, RF, and RA zones, the Board of Zoning Adjustment may grant, through special exception, a waiver of Subtitle C § 302.1 to allow multiple primary Subtitle C-15 buildings on a **single record lot** provided that, in addition to the general special exception criteria of Subtitle X, Chapter 9, the requirements of this section are met.

Subtitle C §305.1 (emphasis added).

Subtitle C §305.2 provides:

The number of buildings permitted by this section shall not be limited; provided, satisfactory evidence is submitted that all the requirements of this section are met based on a plan of theoretical subdivision where individual theoretical lots serve as boundaries for assessment of compliance with the Zoning Regulations.

Although Subtitle C §§ 305.1 and 305.2 apply to BZA relief for multiple buildings on a single record lot, this is not applicable here because no record lots can be established per the Highway Plan. Further clarity is found in Subtitle A §301.3, when a property is subject to a Highway Plan, as follows:

¹² BZA Appeal 20221 Exhibit 2 – Appellant’s Statement of Appeal, p. 10. 305.1 In the R, RF, and RA zones, the Board of Zoning Adjustment may grant, through special exception, a waiver of Subtitle C § 302.1 to allow multiple primary Subtitle C-15 buildings on a single record lot provided that, in addition to the general special exception criteria of Subtitle X, Chapter 9, the requirements of this section are met.

Except as provided in the building lot control regulations for Residence Districts in Subtitle C and § 5 of An Act to amend an Act of Congress approved March 2, 1893, entitled “An Act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities,” and for other purposes, approved June 28, 1898 (30 Stat. 519, 520, as amended; D.C. Official Code § 9-101.05, a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record. . .
(See, Subtitle A § 301.3) (emphasis added).

The Proposed Development is subject to a Highway Plan (Chain Bridge Road Highway). (See, DCRA Exhibit 1- A&T Plat and Highway Plan). Although a Theoretical Lot Subdivision requires BZA relief under Subtitle C § 305.1, BZA relief is not required when the property cannot be divided into separate lots of record because it is subject to a Highway Plan under Subtitle A § 301.3. (See, DCRA Exhibit 1- A&T Plat and Highway Plan). Moreover, in order to obtain a building permit, the property *must* be divided so that each structure will be on a separate lot of record. Here, as property is subject to the Chain Bridge Road Highway Plan, BZA relief is not required under Subtitle A § 301.3.

It is clear that the A&T Lots are necessary due to the record lot prohibition under Subtitle A § 301.3 and no BZA relief is required. Therefore, the Appeal must be dismissed.

CONCLUSION

For the foregoing reasons, DCRA respectfully requests that the Board deny this appeal.

Respectfully submitted,

/s/ Esther Yong McGraw

ESTHER YONG MCGRAW

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Date: 3/11/20

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CERTIFICATE OF SERVICE

I certify that on March 11, 2020 a copy of the foregoing was served via electronic mail to:

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