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March 18, 2020

BY IZIS

Mr. Frederick L. Hill
Chairperson
Board of Zoning Adjustment
One Judiciary Square
441 4th Street, N.W.
Suite 210 - South
Washington, D.C. 20001

Re: Appellant's Opposition to Motions to Dismiss
BZA Appeal No. 20221

For the Board's convenience, the Appellant, the Chain Bridge Road/University Terrace Preservation Committee ("Preservation Committee"), by and through undersigned counsel, respectfully submits this consolidated Opposition to the Motions to Dismiss filed by DCRA and the Property Owner. Under the circumstances, only this brief response is warranted.

In its Motion to Dismiss, DCRA has raised four (4) grounds for dismissal set forth below. In each instance, the basis for dismissal has not been established.

A. The Appeal Must be Dismissed as Notice Was Not Given to the Office and Tax and Revenue as Required under Subtitle Y §500.4(c) and §504.1(c).

The Preservation Committee disagrees that the Office of Tax and Revenue ("OTR") was required to be provided notice. More importantly, DCRA correctly notes that it was the sole responsibility of the Director of the Office of Zoning to provide the required notice, not the Preservation Committee. Y §500.4(b) and §504.1(c). If the Board determines that OTR should have been given notice, then the appropriate remedy is not dismissal. The simple and appropriate response would be for the Office of Zoning to provide any required notice to OTR. To penalize the Preservation Committee for the Office of Zoning's failure to fulfill its exclusive administrative responsibility to provide any required notice would be unwarranted and unjust.

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B. The Appeal Must be Dismissed as the Board Lacks Jurisdiction to Review the A&T Plat as it Does Not Constitute and Order, Requirement, Decision, Determination, or Refusal Made by The Zoning Administrator.

There is no dispute that the original Zoning Determination Letter was not a “final decision” appealable under Y § 302.1. However, the Zoning Determination Letter was specifically premised on the future “subdivision of the Property into seven record lots.” Zoning Determination Letter at page 1 (BZA Exhibit 2B). It is also well established that a Subdivision plat requiring specific review and approval by the Zoning Administrator and then recorded in the records of the D.C. Surveyor would be an appealable final decision.

The Property Owner has correctly stated that the Property is encumbered by the Highway Plan and “[a]s a result of its location within the Highway Plan, the Property cannot be subdivided into record lots.” (Emphasis in original). D.C. Code § 9-103.02. Property Owner’s Prehearing Statement at page 4 (BZA Exhibit 21). In this unique situation, the general rule that a Record Lot is required for obtaining a building permit is not applicable under Subtitle A § 301.3. Id. Having been able to bypass the Subdivision Record Lot creation process, the A&T Plat creating the seven lots is the functional and actual equivalent of the establishment by Subdivision of seven Record Lots. Based on the A&T Plat, the Property owner is now fully entitled to submit and obtain building permits for each of the lots without further zoning review of the lots created.

C. The Appeal Must be Dismissed as the A&T Plat is Ambiguous and Not a “First Writing” under Subtitle Y §305.1.

The A&T Plat, as the functional and actual substitute for a Subdivision creating Zoning Administrator approved Record Lots, is the first writing embodying the Zoning Administrator’s earlier non-appealable Zoning Determination Letter. Further, there is nothing ambiguous in the A&T Plat and its actual acceptance into the official records of the D.C. Surveyor at DCRA in the same manner and with the same zoning significance as a Record Lot Subdivision. The A&T Plat arose directly from and is entirely consistent with the initial Zoning Determination Letter. If the Preservation Committee had not filed its timely appeal of the A&T Plat, any future appeal would have been lost under the “First Writing” rule.

D. The Appeal Must be Dismissed as the Appellant’s Requested Relief is not Mandated by Any Zoning Regulations.

The A&T Plat, as a recognized substitute under the Zoning Regulations for a Record Lot Subdivision, can and must be revoked by the Board based on its determination that one or more of the lots created does not comply with the applicable Zoning Regulations.



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Finally, the Property Owner has filed a very limited Motion to Dismiss of the tree protection allegations in the Appeal. For simplicity and to preserve the Board's scarce resources, the Preservation Committee respectfully WITHDRAWS this one element of its appeal without prejudice to raise this issue in a future appeal, including but not limited to, issuance of building permits for the Property.

Thank you for your attention to this matter. Stay Well.

Sincerely,

GREENSTEIN DELORME & LUCHS, P.C.

John Patrick Brown, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellant's Consolidated Opposition to Motions to Dismiss letter and its enclosures was filed electronically with the Office of Zoning and was served by electronic mail, this 18th day of March 2020, upon the following:

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