

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

**Appeal of the Chain Bridge Road/University Terrace  
Preservation Committee**

**BZA Appeal No. 20221  
Hearing: June 10, 2020  
ANC 3D05**

**APPELLANT'S REPLY TO PROPERTY OWNER'S OPPOSITION TO  
DCRA'S MOTIONS TO DISMISS**

The Appellant, the Chain Bridge Road/University Terrace Preservation Committee (“Preservation Committee”), by and through undersigned counsel, respectfully submits this Reply to the Property Owner’s Opposition to DCRA’s Motions to Dismiss.

On March 23, 2020, after the original hearing date, the Property Owner made its filing. Although nominally replying to DCRA’s Motion to Dismiss, the Property Owner more significantly included a new Motion to Dismiss this Appeal for untimeliness claiming that notwithstanding the clear “**NOT** a “final writing” and “nor a final decision of the Zoning Administrator that may be appealed” disclaimer, the Zoning Determination Letter was an appealable event.

The Property Owner argues simultaneously that:

1. The Zoning Determination Letter and the A&T Plat Together Create an Unambiguous Zoning Decision; and
2. The Zoning Determination Letter is a Appealable First Writing and this Appeal Was Untimely.

The Property Owner’s arguments are entirely inconsistent. The clear language of the Disclaimer and common sense must prevail. If no appealable event occurred until the Property Owner had both obtained the Zoning Determination Letter and then later complied with the guidance provided to complete the A&T Plat, the Zoning Determination Letter standing alone cannot properly be an appealable event. By the very nature of the process for obtaining the

Zoning Determination Letter, the Preservation Committee was not aware of the requested “advisory” guidance, did not attend the October 5 and October 24, 2018 meetings with the Zoning Administrator, provided no input prior to issuance of the determination, did not receive notice or a copy of the letter, and only discovered its existence by chance three months later on DCRA’s website. This Appeal was timely having been filed on December 23, 2019 within sixty days of the October 23, 2019 A&T Plat that was subsequently filed with the Office of the Surveyor, D.C. at DCRA.

The Property Owner cannot have it both ways!

**1. The Property Owner Requested and Accepted the Zoning Determination Letter Subject to the Disclaimer**

The Property Owner, represented by experienced land use counsel, requested the Zoning Determination Letter knowing that the now standard Disclaimer would be applicable and accepted the guidance provided subject to the specific limitations set forth.

The Zoning Administrator’s Disclaimer is clear, unambiguous and dispositive.

DISCLAIMER: This letter is issued in reliance upon, and therefore limited to, the questions asked, and the documents submitted in support of the request for a determination. The determinations reached in this letter are made based on the information supplied, and the laws, regulations, and policy in effect as of the date of this letter. Changes in the applicable laws, regulations, or policy, or new information or evidence, may result in a different determination. This letter is **NOT** a “final writing”, as used in Section Y-302.5 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), nor a final decision of the Zoning Administrator that may be appealed under Section Y-302.1 of the Zoning Regulations, but instead is an advisory statement of how the Zoning Administrator would rule on an application if reviewed as of the date of this letter based on the information submitted for the Zoning Administrator's review. Therefore this letter does **NOT** vest an application for zoning or other DCRA approval process (including any vesting provisions established under the Zoning Regulations unless specified otherwise therein), which may only occur as part of the review of an application submitted to DCRA.

Zoning Determination Letter, Page 6 (“Disclaimer”) (Emphasis Added Highlighted).

The formal Zoning Determination Letter is a long-standing practice used by land use practitioners, property owners and other interested parties to obtain “advisory” guidance from the Zoning Administrator before proceeding with the time and expense of seeking specific zoning approvals required for a proposed project, including building permits, subdivisions, certificates of occupancy, etc. No Zoning Determination Letter requires the recipient to proceed with the official and final zoning approval process.

The Zoning Administrator has faithfully issued requested Zoning Determination Letters for many years and more recently posted those letters on the DCRA website dating back to October 2014. <https://dcra.dc.gov/newsroom> (Zoning Determination Letters). Beginning in April 2018, all Zoning Determination Letters were issued subject to the specific Disclaimer, set forth above. *Id.* Since this Zoning Determination Letter was issued in November 2018, more than one-hundred thirty (130) such determination letters have been posted online. *Id.* The undersigned can find no record of any BZA appeal having been filed based solely on a Zoning Determination Letter with the uniform Disclaimer.

**2. The Zoning Determination Letter Was “Advisory” and Conditional on Subsequent Events**

The Disclaimer clearly stated that the Zoning Determination Letter is “**NOT** a ‘final writing’ ... nor a final decision... but instead is an advisory statement of how the Zoning Administrator would rule on an application if reviewed as of the date of this letter based on the information submitted for the Zoning Administrator’s review.” Both explicitly and implicitly, the Zoning Determination Letter was conditional on future acts and circumstances to complete the process as expressed in the Disclaimer. First, the Property Owner has to affirmatively proceed with this project as proposed. In real estate development, there are many factors that determine whether a project moves forward, including timing, market conditions, limited

finances, and other opportunities. Until the project is advanced to the formal approval process, it is purely hypothetical or speculative.

Second, the Property Owner was required to prepare and submit a subdivision application to the D.C. Surveyor for creation of a proposed Subdivision Plat consistent with the reviewed proposal and then subject to final review and approval by the Zoning Administrator. Here, it is acknowledged that no subdivision plat was ever created or submitted to the Zoning Administrator. Instead, it took the Property Owner approximately eleven (11) months to bypass the subdivision process and finalize the A&T Plat without the anticipated final zoning review and approval. Notwithstanding the absence of a Zoning Administrator approved Subdivision Plat, the A&T Plat allows the Property Owner to seek building permits for the seven lots without further zoning review.

Third, the validity of the Zoning Determination Letter was always conditioned on there being no change in the applicable regulations or other superseding events, including subsequent interpretations of the Zoning Regulations by the Zoning Administrator, Board and/or Zoning Commission.

Fourth, the Zoning Determination Letter is specifically contingent on the future occurrence of a “final writing” or “final decision” by the Zoning Administrator.

3. **The Zoning Administrator’s Disclaimer is Clear and Must be Honored by the Board**

The Zoning Determination Letter was issued based on the specific information provided and preliminary guidance requested by the Property Owner, subject to the Zoning Administrator’s very specific and unambiguous Disclaimer. The Property Owner argues that the Board should accept the substance of the determination but disregard the Disclaimer which

specifically defined and limited the scope and efficacy of the Zoning Administrator's "advisory" guidance. Again, the Property Owner cannot have it both ways!

Further, under these very specific circumstances, there is no reasonable claim that the Zoning Determination Letter constitutes a "first writing" and/or "final decision" that would trigger the obligation to file an appeal. Although the Property Owner, at great length cites numerous cases and circumstances, for a "first writing" or "final decision", none are applicable in this situation for several reasons. Specifically, none involve a formal Zoning Determination Letter similar to the one at issue here. And more importantly, none disregard or over-rule the Zoning Administrator's specific Disclaimer. If the Property Owner wanted to challenge the Disclaimer, the time to do so would have been at the time the Zoning Determination Letter was issued. Finally, if the Zoning Administrator's Disclaimer were disregarded, there would be at least two immediate, related and negative impacts. First, every Zoning Determination Letter would immediately become an appealable event upon issuance opening a floodgate of unnecessary and premature BZA appeals. Second, the Zoning Administrator, as a matter of self-preservation, would cease to issue any zoning determination letters.

#### **4. Conclusion**

For the foregoing reasons and earlier submissions by the Appellant, the various Motions to Dismiss by DCRA and the Property Owner must be DENIED.

Date: June 3, 2020

Respectfully submitted,  
GREENSTEIN DELORME & LUCHS, P.C.



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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Appellant's Reply to Property Owner's Opposition to DCRA's Motions to Dismiss was filed electronically with the Office of Zoning and was served by electronic mail, this 3rd day of June 2020, upon the following:

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