

DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT  
441 4<sup>th</sup> 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’  
REPLY IN SUPPORT OF ITS OPPOSED MOTION TO DISMISS**

The D.C. Department of Consumer and Regulatory Affairs (“DCRA”) for its Reply in Support of its Opposed Motion to Dismiss, states as follows:

Appellant, Chain Bridge Board/University Terrace Preservation Committee (“Chain Bridge” or “Appellant”) and the property Owner, Dorchester Associates, LLC (“Owner”), filed oppositions to DCRA’s Motion to Dismiss (“DCRA’s Motion”).<sup>1</sup>

However, the parties’ oppositions offer no substantive legal challenges to DCRA’s Motion. In short, this appeal is an impermissible attempt to expand the “first writing” rule to attribute error to the Zoning Administrator, by virtue of an A&T Tax Plat drafted by the Office of Tax and Revenue (“OTR”).<sup>2</sup> The A&T Plat cannot be used as a “first writing” and the parties have failed to provide any relevant case law to support their positions. Therefore, the Board of Zoning Adjustment (“BZA” or the “Board”) must dismiss this appeal.

**A. Appellant Fails to Cite to Any BZA Order or Relevant Case Law To Support Its Claims regarding the A&T Tax Plat.**

Appellant erroneously claims that “The A&T Plat creating the seven lots is the functional and actual equivalent of the establishment by Subdivision of seven Record Lots.”<sup>3</sup> The Appellant

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<sup>1</sup> BZA Appeal 20221 Exhibit.26 - Appellant’s Opposition to Motions to Dismiss (“App. Opp.”); Exhibit 27, Owner’s Opposition to DCRA’s Motion to Dismiss (“Owner’s Opp.”).

<sup>2</sup> The Owner makes reference to a “January 7, 2019 (‘Determination Letter’)”. See, Exhibit 27, Owner’s Opp. p. 3. However, the only determination letter in the record is dated **November 13, 2018**. See, Exhibit 2B.

<sup>3</sup> BZA Appeal 20221 Exhibit.26 - App. Opp., p. 2.

states that this is “well established.”<sup>4</sup> However, the Appellant fails to cite to *any* Court Order, BZA Ruling, or zoning regulation to support this conclusion. Appellant’s argument rests solely on its own rhetoric. The Appellant has not provided any genuine legal authority holding that an A&T Plat is an appealable final decision by the Zoning Administrator. On this basis alone, the Appeal must be dismissed.

**B. The Property Owner’s Reliance on the BZA Decision in Appeal 19023-the Appeal of ANC 2A Is Misplaced.**

In its Opposition, the Owner relies on the BZA’s Order in Appeal 19023 - the Appeal of ANC 2A (“*River Run*”).<sup>5</sup> However, the Owner twists *River Run* to suit its own arguments. Contrary to the Owner, the *River Run* case is factually and legally distinct from this matter.

First, the case of *River Run* dealt with an the appeal that was based on the Zoning Administrator’s determination letter—not an A&T Tax Plat. (“The decision at issue in this case is whether the LeGrant Zoning Determination Letter . . . complied with the Zoning Regulations.”).<sup>6</sup> *River Run* considered a *timely* appealed determination letter *issued by the Zoning Administrator*, not an A&T Tax Plat drafted by the OTR, a separate and distinct agency of the District government. The Board in *River Run* was not asked, nor did it decide, the purported zoning compliance of an A&T Tax Plat. Moreover, with respect to the zoning determination letter in the instant matter, the Appellant expressly *concedes* that it is not appealable: “There is no dispute that the original Zoning Determination Letter was not a “final decision” appealable under Y § 302.1”.<sup>7</sup> Thus, *River Run* is therefore irrelevant to DCRA’s Motion.

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<sup>4</sup> BZA Appeal 20221 Exhibit.26 - App. Opp., p. 2

<sup>5</sup> BZA Appeal 19023 - Order and Decision, p.1.

<sup>6</sup> BZA Appeal 19023 - Order and Decision, p.7.

<sup>7</sup> BZA Appeal 20221 Exhibit 26 -App. Opp., p.1.

Second, none of the issues raised by DCRA in its pending Motion were decided by the BZA in *River Run*. In *River Run*, BZA found that: “. . . the Zoning Regulations at issue are not regulating the public space, but the extent to which a hotel use may be expanded.”<sup>8</sup> Turning to this matter, this appeal is not about a public space determination, or BZA’s authority with respect to zoning in public spaces; but rather, this appeal attempts to attribute error to the Zoning Administrator solely by virtue of A&T Tax Plat. The instant appeal is factually distinct from *River Run*. The Owner’s misplaced reliance on *River Run* is a means to avoid having to “wait” for a genuine appealable decision.

Assuming *arguendo* that Owner’s overly broad interpretation of *River Run* is valid—which it is not—a zoning appeal rests on two critical presuppositions: 1) that the *zoning decision* is clear and unambiguous, and 2) that the appeal is timely (Subtitle Y § 302.2). The A&T Tax Plat is not a zoning decision by the Zoning Administrator; therefore, they cannot use the A&T Tax Plat as a means to sustain this flawed appeal.

## CONCLUSION

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

Respectfully submitted,

/s/ Esther Yong McGraw

ESTHER YONG MCGRAW

General Counsel

Department of Consumer and Regulatory Affairs

/s/ Melanie Konstantopoulos

MELANIE KONSTANTOPOULOS

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<sup>8</sup> BZA Appeal 19023 - Order and Decision, p.11.

Date: June 3, 2020

*/s/ Hugh J. Green*

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**CERTIFICATE OF SERVICE**

I certify that on June 3, 2020 a copy of the foregoing was served via electronic mail to:

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