

# **BZA Case No. 20221 - Appeal of Chain Bridge Rd/Univ. Terr. Preservation Committee**

## Introduction:

- Meridith Moldenhauer, Counsel for Owner
- Eric DeBear, Counsel for Owner
- Morton Bender, Owner (Dorchester Associates, LLC)

# Preliminary Matters

- DCRA's Motion to Dismiss Appeal (Ex. 22)
  - Opposed by Appellant & Property Owner
  - Owner requests 15 minutes to argue against motion

# Reasons to Decide Lot Width and Frontage Now

- All necessary parties are present
- Clear written decision by ZA applying Zoning Regulations
- ZA's interpretation codified in final action: approval of A+T Lots (given Zoning Regulations restrict Record Lots)
- Owner went through extensive review and approval of subdivision with ZA
- "Kicking can down the road" – against public policy

## **Board Should Deny Motion to Dismiss**

Subtitle X § 1100.2 - The Board of Zoning Adjustment **shall** hear and decide zoning appeals where it is alleged by the appellant that there is an error in any order, requirement, decision, determination, or refusal made by ***the Zoning Administrator or any administrative officer or body***, including the Mayor, in the administration or enforcement of the Zoning Regulations.

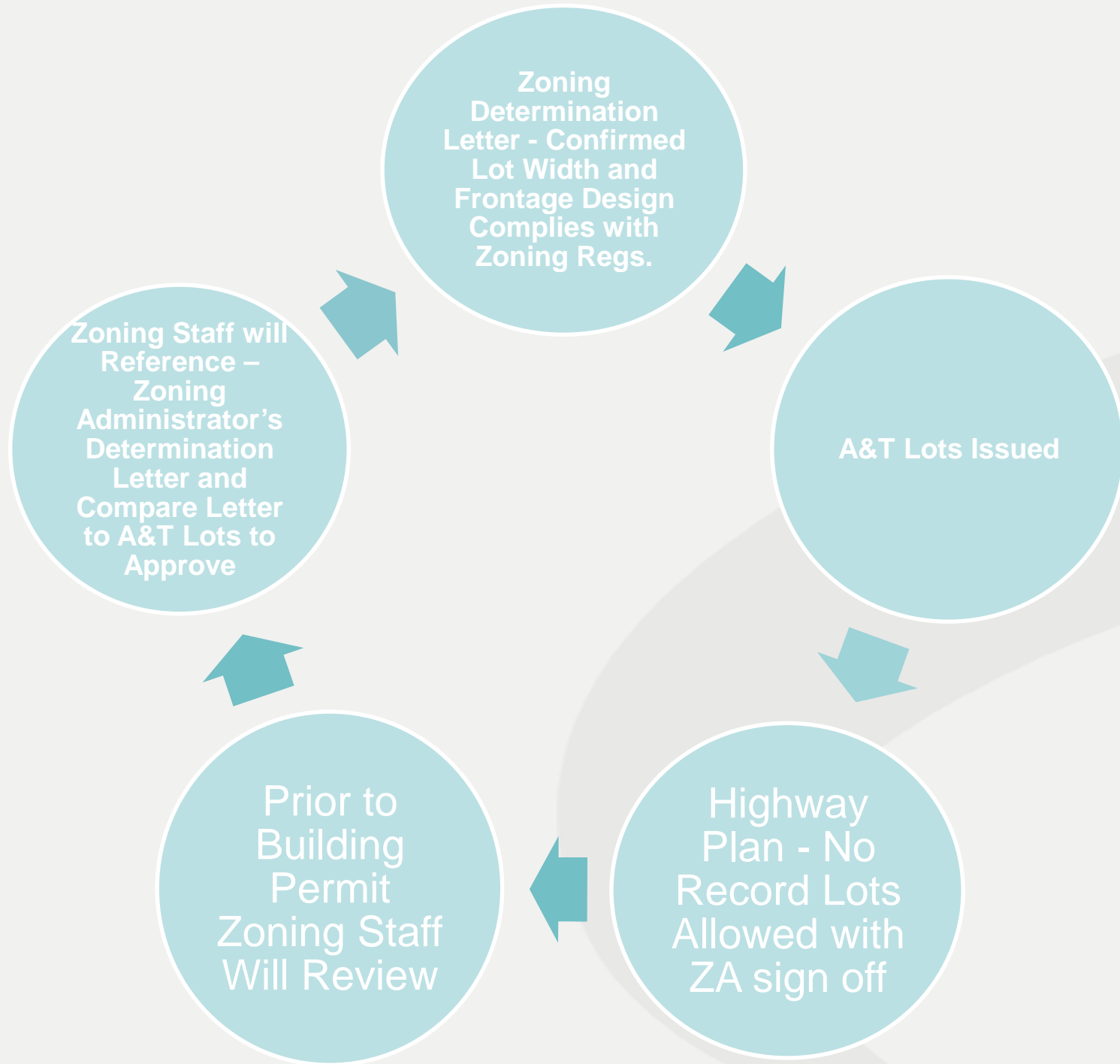
# Board Can Review Plat of Computation

## Standard of Review

- To establish jurisdiction, Board must only find there is a decision or determination made by *an administrative official* **applying** the Zoning Regulations (Subtitle Y § 302.1)
  - Case-by-case factual inquiry
  - No specific type of “notice” or writing is required (Basken v. BZA)
- River Inn Case (BZA Case 19023)
  - Zoning Administrator often has “overlapping” jurisdiction with other agencies
  - Issuance of public space permit “triggered” a zoning decision

## **Board Should Deny Motion to Dismiss & Move to Merits**

1. Plat of Computation reflects a zoning decision on lot width and frontage
2. The Determination Letter and Plat of Computation together create an unambiguous zoning decision that is a final action
3. There is proper notice of the appeal



Zoning  
Determination  
Letter - Confirmed  
Lot Width and  
Frontage Design  
Complies with  
Zoning Regs.

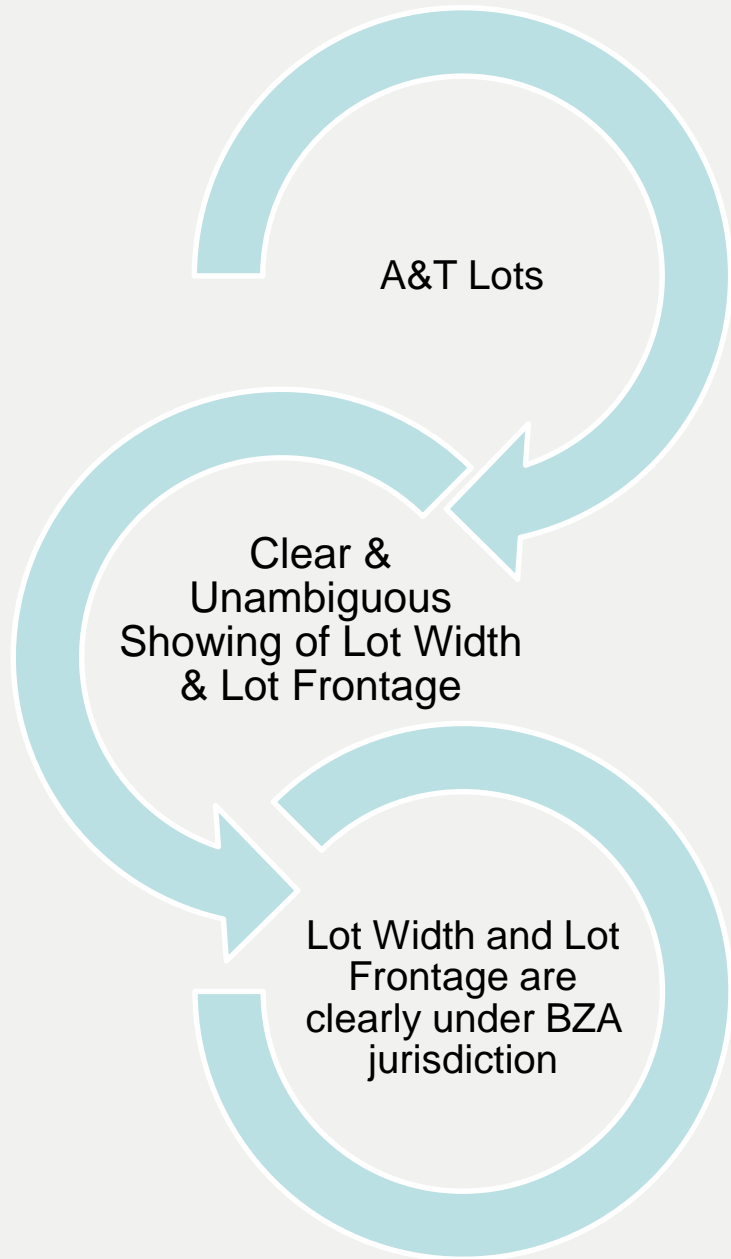
A&T Lots Issued

Highway  
Plan - No  
Record Lots  
Allowed with  
ZA sign off

Prior to  
Building  
Permit  
Zoning Staff  
Will Review

Zoning Staff will  
Reference -  
Zoning  
Administrator's  
Determination  
Letter and  
Compare Letter  
to A&T Lots to  
Approve

# Board Can Review Plat of Computation

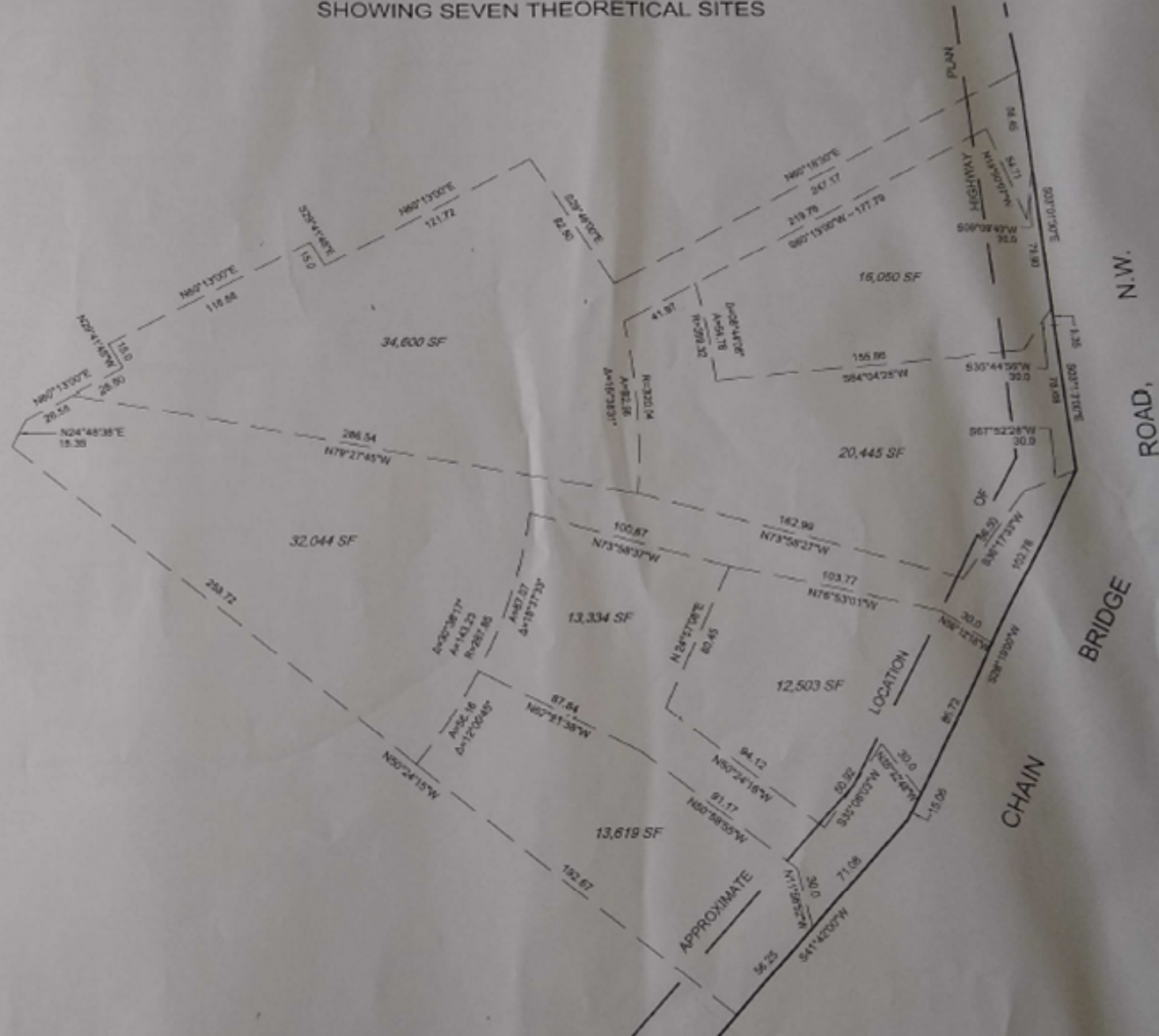


301.3

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; except a building permit may be issued for:

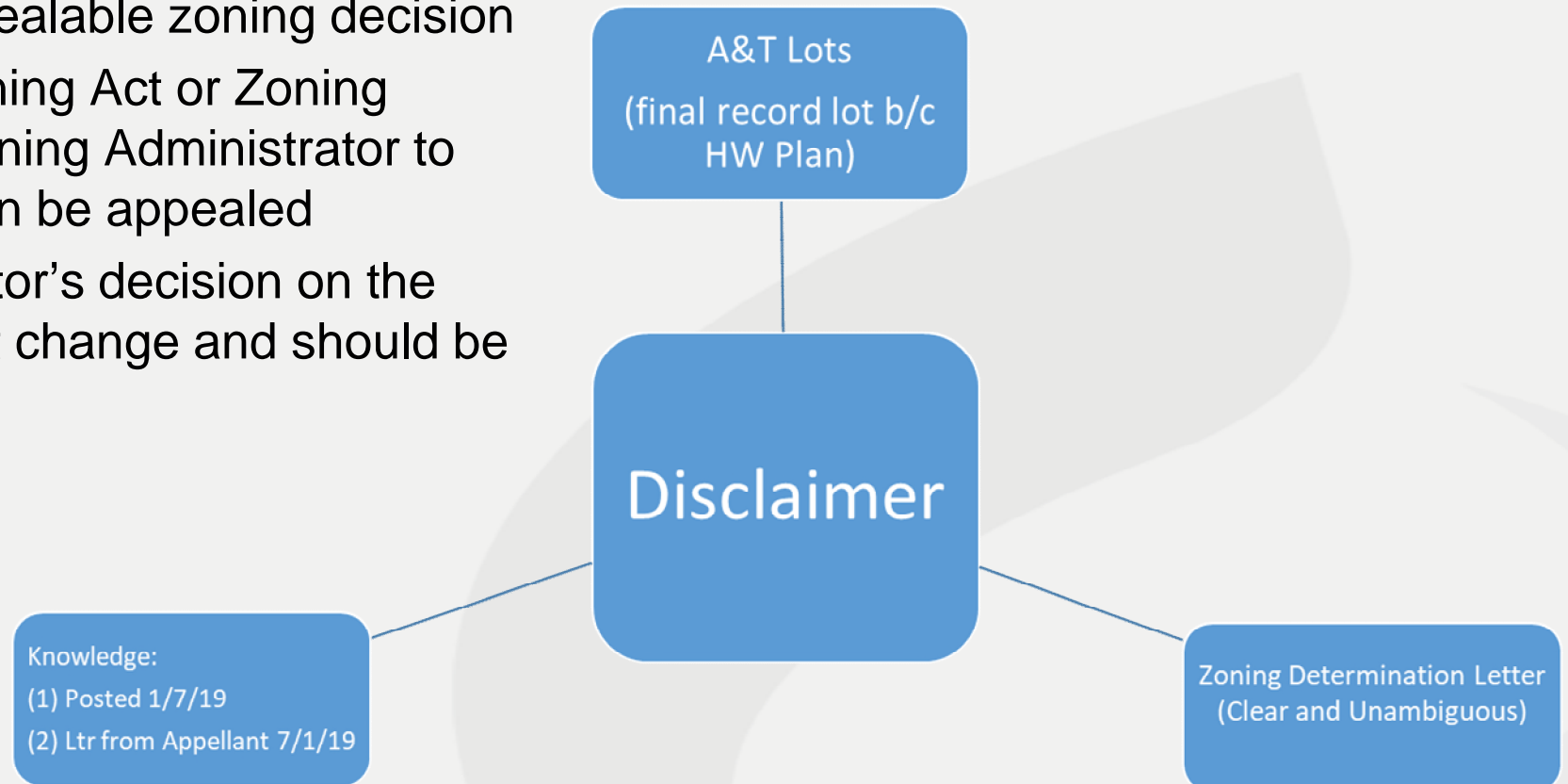


PLAT OF COMPUTATION  
ON LOTS 831 THRU 839, SQUARE 1425  
SHOWING SEVEN THEORETICAL SITES



# Disclaimer on Determination Letter is Not Enforceable

- Board has authority to determine what constitutes an appealable zoning decision
- No authority in Zoning Act or Zoning Regulations for Zoning Administrator to determine what can be appealed
- Zoning Administrator's decision on the subdivision will not change and should be reviewed now



# Timeline

- November 13, 2018 – Determination Letter issued
- January 7, 2019 – Preservation Committee admits knowledge of Determination Letter
- April 8, 2019 – Preservation Committee meets with Zoning Administrator to discuss Determination Letter
- July 1, 2019 – Preservation Committee sends letter to Owner and Zoning Administrator opposing subdivision
- October 23, 2019 – Plat of Computation approved
- December 23, 2019 – Appeal filed

# Public Policy Supports Hearing the Merits

- Owner has been attempting to develop the property for over 15 years
  - In 2005, Owner filed for theoretical lot subdivision (BZA Case 17309)
  - Preservation Committee opposed the application, which was denied by the BZA and affirmed by Court of Appeals
- In 2018/2019, Owner reduced number of lots from 13 to 7 in order to obtain a by-right subdivision
  - Yet, Preservation Committee continues to fight development
- Mayor's goal to build 36,000 housing units by 2025
  - Ward 3 is the least dense Ward in the city



# The Merits

- As to lot width and frontage, Zoning Administrator correctly applied the plain language of the Zoning Regulations
- Under Subtitle C, lot width and frontage regulations provide clear directives on rules of measurement
- Preservation Committee provides no basis in the Zoning Regulations to overturn zoning decision

**Subdivision and creation of 7 new homes in Ward 3 is consistent with intent of Chain Bridge Road / University Terrace Overlay & Zoning Regulations**

# Widely Spaced Residences

The Property = 3.28 Acres

**142,876.8** Square Feet



Lot Number	Lot Width	Lot Frontage	Lot Area	% Larger Than Min. Lot Area (9,500 sq. ft.)
841	75.4'	56.3'	13,620.33 sq. ft.	43%
842	75.1'	85.8'	13,335.18 sq. ft.	40%
843	75.4'	85.7'	12,502.94 sq. ft.	32%
844	77.5'	102.8'	32,046.88 sq. ft.	237%
845	75.03'	88'	20,443.87 sq. ft.	115%
846	75'	79.9'	16,049.22 sq. ft.	69%
847	75.2'	56.5'	34,596.73 sq. ft.	264%

# Lot Frontage

- Subtitle C § 303.2 (Subdivision Regulations)
  - “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.”
  - Street lot line is “a lot line that abuts a street”
- Each proposed lot has a street lot line that is at least 56.25 feet (75% of required width of 75 feet)

# Lot Frontage

- Zoning Administrator must apply the plain language of the Zoning Regulations
- No language in the Zoning Regulations barring “stem lots” or irregularly-shaped lots
- Preservation Committee cites no regulation disputing the Zoning Administrator’s decision

# Lot Width

□ 75 feet in R-21 zone (Subtitle D § 1302.1)

□ Rules of Measurement for Lot Width (Subtitle C § 304.1)

304.1 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;
- (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.

# Lot Width

- Subtitle C § 304.1 directs the Zoning Administrator to apply this method of measurement for lot width of interior lots in all zones
  - “Shall” wording means Zoning Administrator has no authority to override Subtitle C § 304.1
- Definition of “lot width” in Subtitle B is “hold over” from ZR-58
  - Under ZR-58, no separate “rules of measurement” governing lot width.
  - Subtitle C in ZR-16 enacted to provide rules of measurement “applicable to all zones unless otherwise stated in this title.” (Subtitle C § 100.1; Subtitle A § 201.1)
- Definition of “lot width” is not applicable
  - Cites “Irregularly shaped” lots that are not defined by Zoning Regulations

# Theoretical Lot Subdivision

- Argument predicated on subdivision not complying with lot width and frontage requirements
  - Theoretical lot subdivision is only needed for a “waiver of Subtitle C § 302.1 to allow multiple primary buildings on a single record lot.” (Subtitle C § 305.1)
- Issue is moot because subdivision complies with Zoning Regulations and property owner does not need theoretical lot subdivision

