

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

**Appeal of the Chain Bridge Road/University Terrace  
Preservation Committee of Assessment and Taxation Plat  
Creating Lots 841-847 in Square 1425**

**ANC 3D05**

**STATEMENT OF APPEAL**

The Appellant, the Chain Bridge Road/University Terrace Preservation Committee (“Preservation Committee”), by and through undersigned counsel, respectfully submits this Appeal to the Board of Zoning Adjustment (“Board” or “BZA”) of the October 23, 2019 Office of Tax and Revenue (“OTR”) Assessment and Taxation Plat (“A&T” Plat”) creating A&T Lots 841-847 (formerly Lots 831-839) in Square 1425 located in the 2700 Block of Chain Bridge Road, N.W. (“Subject Property”). The A&T Plat (Exhibit A) was subsequently filed with the Office of the Surveyor, D.C. within the Department of Consumer and Regulatory Affairs (“DCRA”) for the purpose of obtaining building permits to construct seven (7) single-family detached dwellings (“Proposed Development”) in violation of the Zoning Regulations applicable in the R-21 Zone District (formerly the Chain Bridge Road University Terrace Overlay District), for the numerous reasons set forth below and must be REVOKED for zoning purposes.

**I. SUMMARY OF APPEAL**

- A. The Proposed Development Violates the Lot Frontage Requirements
- B. The Proposed Development Violates the Lot Width Requirements
- C. The Proposed Development Has Not Demonstrated Compliance with the R-21 Overlay
- D. The Proposed Development Must Obtain Approval for a Theoretical Lot Project

## II. SUBJECT PROPERTY

The Subject Property, owned by Dorchester Associates, LLC (“Property Owner”), has an area of approximately 143,190 square feet (3.28 acres). The Subject Property which fronts on the narrowest (approximately 17 feet in paved width) and winding stretch of Chain Bridge Road, N.W. is vacant, heavily wooded with numerous protected “Heritage” and “Special” trees and has a steep, undisturbed natural topography. The Subject Property faces Battery Kemble Park, a 57-acre park maintained by the National Park Service, on the opposite side of Chain Bridge Road.

### A. BZA History

From early 2005 through mid-2009, the Preservation Committee successfully opposed the BZA Application of the Property Owner for a theoretical lot subdivision for thirteen single family detached dwellings on the Subject Property in the 2700 Block of Chain Bridge Road, N.W. in then R-1-A/CBUT zone. In denying the application, the Board found that the proposed project would violate the CBUT Overlay, including specifically fatally damaging protected trees. BZA Order No. 17309 (August 7, 2007), *aff’d*, *Dorchester Associates, LLC v. DC Board of Zoning Adjustment* [Respondent] and *Chain Bridge Road University Terrace Preservation Committee* [Intervenor], 976 A.2d 200 (D.C. 2009). Exhibit B.

### B. Zoning Determination Letter

On November 13, 2018, the Zoning Administrator issued a Zoning Determination Letter for “the subdivision of the [Subject] Property into seven record lots and the zoning requirements would apply to each lot individually” pursuant to Subtitle C-Section 302.1. Exhibit C (Emphasis Added). This Zoning Determination Letter was first posted on DCRA’s website on January 7, 2019. The Zoning Determination Letter expressly, and correctly, stated that it is NOT a “Final Writing” subject to a BZA Appeal.

After discovering the Zoning Determination Letter, the Preservation Committee's undersigned counsel contacted the Zoning Administrator on February 21, 2019 to express objections and requested a meeting to discuss the specific disputed issues. The Preservation Committee and the Zoning Administrator met on April 8, 2019. Although this meeting was beneficial, in the end the parties respectfully agreed to disagree on the substance of the Zoning Determination Letter and defer further action until the Property Owner took official steps to proceed with the proposed subdivision to create the Record lots contemplated.

**C. Preservation Committee Contacts the Property Owner**

By letter dated July 1, 2019, the undersigned counsel for the Preservation Committee contacted the Property Owner's counsel. Exhibit D. The Preservation Committee provided notice that it did not agree with the proposed Record lot configurations utilizing long disfavored pipe stem lots as:

[C]ontrived and unprecedented to artificially meet the applicable street frontage and lot width requirements... and failure to address any of the critical tree and slope provisions of the overlay or erosion, storm water management or traffic issues that are particularly relevant to the Property.

Id.

Despite its strong and well-founded objection to the proposed Record lot subdivision, the Preservation Committee offered to meet and work with the Property owner to initiate a "meaningful discussion for the future development of the Property." Specifically, given the uniqueness of this Property, the Preservation Committee recommended that:

[T]heoretical lot subdivision approval process offers the mechanism to establish a better, more valuable and desirable, and achievable development plan that realizes

the reasonably desired density, faithfully upholds the requirements of the overlay, and minimizes the negative impacts on this unique portion Chain Bridge Road.

Id.

Despite repeated attempts to obtain a response from the Property Owner, the latest on October 31 and December 9, 2019, the Preservation Committee never received any communication. In fact, on October 31, 2019, the Property Owner had just received the new A&T Plat, but provided no notice to the Preservation Committee of that event.

**D. A&T Plat**

The A&T Plat was created by the Office of Tax and Revenue at the request of the Property Owner. The A&T Plat was completed and signed by and/or on behalf of the Chief Assessor on October 23, 2019. Subsequently, the A&T Plat was filed in the records of the “Office of the Surveyor, D.C.” within DCRA (as marked on the face of that document) where the Preservation Committee discovered the document in DCRA’s online records on December 9, 2019. Exhibit A. As of December 20, 2019, the seven A&T lots do not appear on the Official Zoning Map online at the D. C. Office of Zoning website.

Based on the circumstances, the A&T Plat was created for the purpose of obtaining building permits for a single-family detached dwelling on each of the lots. This procedure allowed the Property Owner to bypass the Record Lot Subdivision process which would have been subject to review and approval by the Zoning Administrator and a BZA Appeal by the Preservation Committee.

**III. JURISDICTION**

The Board has jurisdiction for the Appeal pursuant to 11 DCMR Subtitle Y -§ 302.1 (ZR 2016). The Appeal is timely pursuant to Subtitle Y- § 302.2 having been filed within sixty (60) days of the A&T Plat’s creation and its subsequent filing with the D.C. Surveyor at DCRA. The

Preservation Committee first discovered the new A&T Plat on December 9, 2019 by undersigned counsel during a periodic search of OTR and DCRA public online records. A prior search on October 31, 2019 found only records for the former Lots 831-839 in Square 1425.

#### **IV. PRESERVATION COMMITTEE'S STANDING**

The Preservation Committee is a neighborhood 501(c)(3) charitable organization dedicated to the protection and preservation of the unique and special arboreal, topographical and landscaping features in addition to the historic, residential and park-like character of the Chain Bridge Road/University Terrace neighborhood. The Preservation Committee was instrumental in the 1999 creation of the Chain Bridge Road/University Terrace Overlay District and remains dedicated to the enforcement of the overlay on behalf of the more than seventy (70) households it represents.

The Preservation Committee and its members, as the "Aggrieved Party", have standing to file this Appeal and will be adversely and substantially affected by the proposed improvements illegally contemplated by the A&T Plat. Specifically, a number of the Preservation Committee's active members are immediately abutting or adjacent to the Subject Property; including Luther and Marsha Carter at 2722 Chain Bridge Road, Leonard Baxt at 2728 ½ Chain Bridge Road, Rudi Djabarzadeh at 2740 Chain Bridge Road, David and Marsha Webb at 2824 Chain Bridge Road and Arthur Watson at 2828 Chain Bridge Road.

#### **V. THE CBUT OVERLAY**

On March 17, 1997, the Preservation Committee through its then counsel, submitted an application for a Map and Text Amendment to establish the CBUT Overlay in area including approximately forty-four acres. The slated purpose of the proposed overlay was:

To protect and preserve the natural topography, mature trees, stream beds, and natural vegetation in the neighborhood and to deter the desecration of a historic cemetery owned by the Union Burial Society. The TSP overlay is also intended to preserve the park-like setting of the area by regulating alterations or disturbances of terrain, destruction of trees, coverage with impervious surfaces, and by providing for widely spaced residences.

The proposed overlay zone would further refine the existing R-1 zoning by adding several restrictions designed to retain major trees, reduce grading, and control the amount of ground coverage with buildings and impervious surfaces in the interests of maintaining the special environmental qualities of the neighborhood.

Zoning Commission Order No. 863 (Z.C. Case No. 97-6) (“ZC Order 863”).

The Preservation Committee was keenly aware that the “neighborhood has a large number of lots or parcels with subdivision and development potential... and the potential for specific damaging effects of future development, such as tree removal and excessive grading.”

Id.

The Zoning Commission “set down” the application for a public hearing which occurred on May 18, 1998. Numerous parties and persons testified in support of the application, including the National Park Service, Phil Mendelson (then, Chair of ANC 3C), ANC 3D, the Palisades Citizen’s Association, Ellen McCarthy (later Director of the Office of Planning), Judith Lanius an architectural historian, numerous residents of the neighborhood and Preservation Committee members.

Although the proposed overlay focused specific attention on the protection of trees, it was also acknowledged that there was a relationship with maintaining the natural topography. This correlation between the sloped natural topography and the stands of mature trees was an important element of the overlay’s purposes and protections. ZC Order No. 863.

The Office of Planning testified in support of the application and specifically agreed with the Preservation Committee's assessment that "[a]s a result of the large wooded lots and steep slopes, the area has a park-like, semi-rural character which is extremely rare in the District."

No party or person opposed the application to establish the CBUT Overlay. *Id.*

As enacted by the Zoning Commission, the intent and purpose of the CBUT, is clearly stated:

1565.1 The Chain Bridge Road/University Terrace (CB/UT) Overlay District is established to preserve and enhance the park-like setting of the Chain Bridge Road/University Terrace area by regulating alteration or disturbance of terrain, destruction of trees, ground coverage of permitted buildings and other impervious surfaces, and by providing for widely spaced residences.

1565.2 The purposes of the CB/UT Overlay District shall be as follows:

- (a) To preserve the natural topography and mature trees to the maximum extent feasible in a residential neighborhood.

11 DCMR §§1565.1, 1565.2 (1958 Regulations) (Emphasis added).

In the 2016 Zoning Regulations, the original CBUT Overlay was incorporated, strengthened and re-designated as the Chain Bridge Road/University Terrace Residential House Zone-R-21. Subtitle D-§ 1300-1311.

## **VI. PROPOSED DEVELOPMENT**

The Property Owner, based on the A&T Plat, clearly intends to develop the Subject Property with seven (7) single-family detached dwellings. Each dwelling will be three (3) stories plus cellar with a permitted lot occupancy of thirty percent (30%). Each house will require a separate curb cut on the narrowest and winding portion of Chain Bridge Road with limited sight

lines and dangerous blind spots. Given the irregularly shaped and long pipe stem lots created, vehicular access from Chain Bridge Road will require lengthy paved driveways and the construction of massive underground infrastructure for separate utilities which will destroy the natural topography, threaten and/or fatally damage numerous protected Heritage and Special trees and create enormous storm water management and erosion problems in this environmentally sensitive and unique area.

## VII. ZONING VIOLATIONS

The A&T Plat was created to bypass the required Record Lot Subdivision process which the Zoning Determination Letter clearly required in order to obtain building permits for seven (7) single-family detached dwellings in the R-21 zone. The seven extremely irregularly shaped lots are a contrived and artificial attempt to nominally meet the lot frontage and lot width requirements never reasonably contemplated or supported by the Zoning Regulations. Since at least the late 1980's, the creation of irregular pipe stem lots has been disfavored and prohibited giving rise to the Zoning Commission adopting the original Theoretical Lot Regulations and incorporating those restrictions into the 2016 Zoning Regulations. Subtitle C - §305.

### A. The Proposed Development Violates the Lot Frontage Requirements.

The Zoning Regulations require that “[w]here 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.” Subtitle C-§ 303.2. Specifically, in the R-21 zone, the required lot width is seventy-five (75) feet. As a result, the nominal required lot frontage is 56.25 feet. Subtitle D-§ 1302.1.

However, this requirement was never intended and should not be interpreted to permit the irregularly shaped and pipe stem lots created by the A&T Plat. In this case, the lot frontage created, individually and for all the lots, is entirely artificial, contrived and bears no reasonable



relationship to the size, configuration and relationship between the abutting lots. As obvious on its face, each of the lot frontages created was manipulated and configured for the sole purposes of utilizing the limited overall street frontage to maximize the number of lots created. Each and every lot has created a street frontage that is substantially narrower than the overall lot. This is most egregious and unreasonable for the three pipe stem lots (842, 844, and 847), but equally applicable to all seven lots.

**B. The Proposed Development Violates the Lot Width Requirements.**

It is undisputed that each lot is required to have a lot width of 75 feet in the R-21 zone. Subtitle D-§ 1302.1. As measured using the 30 foot side lot line measuring point specified in Subtitle C-Sec. 304.1, six of the seven lots have the minimum 75 foot lot width and the last lot 77.5 feet. 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.

The Zoning Administrator correctly noted in the Zoning Determination Letter that “[i]n the case of an irregularly shaped lot or angular line, the Zoning Regulations provide no specific guidance.” Exhibit C. However, the definition of the Lot Width is instructive, particularly for irregularly shaped lots.

Lot Width: The distance between the side lot lines, measured along the building line; except that in the case of an irregularly shaped lot, the width of lot shall be the average distance between side lot lines. Where the building line is on a skew, the width of lot shall be the distance between side lot lines perpendicular to the axis of the lot taken where either side lot line intersects the building line.

Subtitle B-§ 100.2 (Emphasis added).

Given the highly irregular shape of each lot, compliance with the lot width requirement should properly be calculated using the average lot width method that was endorsed by the DC Court of Appeals and used successfully by the Zoning Administrator for decades. The Property Owner, perhaps intentionally, has not provided average lot width calculations to demonstrate compliance. On its face and based on too many years of experience, the average lot width calculation method will show that at least the three pipe stems lots do not comply with the 75 foot lot width requirement.

**C. The Proposed Development Has Not Demonstrated Compliance with the Chain Bridge Road/University Terrace Residential House Zone- R-21 Restrictions.**

In addition to the standard area restrictions (height, lot dimensions, yards), the R-21 zone imposes critical and specific tree protection provisions that were first established under the original CBUT Overlay and incorporated in 2016 Zoning Regulations. Subtitle C-§ 400-401. The Zoning Determination Letter is entirely silent on the tree protection issues and the Property Owner has offered no information on how the proposed project intends to comply with these critical issues and preserve this unique property.

**D. The Proposed Development Must Obtain Approval for a Theoretical Lot Subdivision.**

Based on the Proposed Development's failure to comply with the applicable lot frontage and lot width requirements, development in accordance with the A&T lot will require BZA special exception review and approval for Theoretical Lot Subdivision. Subtitle C-§ 305. Not only is this required, but as suggested by the Preservation Committee, will allow the thoughtful planning of a better, more sensitive and valuable project that can be embraced by the community and the market place.

**VIII. WITNESSES**

1. Representatives of the Preservation Committee
2. To Be Designated Expert Witnesses in at least Zoning, Arborist, Traffic Engineering and Civil Engineering

**IX. EXHIBITS**

**Exhibit "A":** A&T Plat

**Exhibit "B":** BZA Order No. 17309

**Exhibit "C":** November 13, 2018 Zoning Determination Letter

**Exhibit "D":** July 1, 2019 Preservation Committee Letter to Property Owner

**3. CONCLUSION**

For the foregoing reasons, the A&T Plat was issued by OTR and accepted by DCRA in violation of the Zoning Regulations and this Appeal must be GRANTED and the A&T Plat REVOKED by DCRA for zoning purposes. The Preservation Committee reserves the right to supplement this Statement of Appeal in its authorized prehearing submissions and at the hearing, including the designation of expert witnesses in at least zoning, arborist, traffic engineering and civil engineering, as required.

Date: December 23, 2019

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



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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing BZA Appeal, Statement in Support of Appeal, and supporting documentation was filed electronically with the Office of Zoning and was served by electronic mail, this 23rd day of December 2019, upon the following:

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