

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



**Application No. 20636 of Penguin, LLC**, pursuant to Subtitle X § 901.2, for a special exception under Subtitle C § 305 to allow multiple primary buildings on a single record lot in a theoretical subdivision, and pursuant to Subtitle X § 1002 for an area variance from the vehicular ingress and egress requirements of Subtitle C § 305.3(b) to allow a new three-story detached principal dwelling in the R-1-A zone at premises 4509 Foxhall Crescent, N.W. (Square 1397, Lot 960).<sup>1</sup>

**HEARING DATES:** June 15 and June 29, 2022  
**DECISION DATE:** June 29, 2022

**DECISION AND ORDER**

This self-certified application was filed on November 1, 2021 on behalf of Penguin, LLC, the owner of the property that is the subject of the application (the “Applicant”). Following a public hearing, the Board voted to approve the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and the public hearing by memoranda dated November 12, 2021 or January 27, 2022 to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Office of Advisory Neighborhood Commissions, the Department of Consumer and Regulatory Affairs,<sup>2</sup> the Office of the Attorney General, the Councilmember for Ward 3, as well as the Chairman and three at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 3D, the ANC in which the subject property is located, Single Member District ANC 3D01, the Metropolitan Police Department, the D.C. Fire and Emergency Medical Services Department, D.C. Water, the Department of Public Works (“DPW”), and the owners of all property within 200 feet of the

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<sup>1</sup> Some of the zoning regulations at issue in this proceeding were amended after the application was filed, most recently by order issued August 25, 2023 in Zoning Commission Order No. 19-27. This order reflects the zoning provisions in effect at the time of the Board’s vote at the conclusion of the public hearing.

<sup>2</sup> As of October 1, 2022, the zoning functions formerly performed by the Department of Consumer and Regulatory Affairs were assumed by the new Department of Buildings. *See*, D.C. Official Code § 10-561.01 *et seq.*

subject property.<sup>3</sup> Notice was published in the *District of Columbia Register* on November 19, 2021 (68 DCR 12273) and on the Office of Zoning website.

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 3D were automatically parties in this proceeding. At a public meeting on May 25, 2022, the Board granted a request for party status in support of the application from Jody Westby on behalf of the Foxhall Crescents Homeowners Association (Exhibit 32), denied a request for party status in opposition to the application from John Fox (Exhibit 22), and deemed withdrawn a request for party status from Andrew Wong, who did not attend the meeting (Exhibit 31) (*See*, Subtitle Y § 404.10). On June 15, 2022, the Board denied two untimely requests for party status in opposition to the application submitted by Gene and Patricia Godley and by Phoebe and Robert Sharkey, residents of Foxhall Crescent near the subject property.

Applicant's Case. The Applicant presented evidence and testimony in support of the application, including from Michael Greigg, an architect on the project, and Kyle Oliver, a civil engineer.

OP Report. By memorandum dated May 5, 2022, the Office of Planning declined to make a recommendation on the special exception relief requested, citing insufficient information in the application, but stated that OP would recommend approval of the area variance requested if the Board approved the special exception. (Exhibit 29.) On June 9, 2022, OP filed a supplemental report reiterating this position and elaborating on its reasoning. The Office of Planning cited pending reviews of the Applicant's proposal by the Department of Energy and Environment ("DOEE") and the Department of Transportation's Urban Forestry Division with respect to matters including tree preservation, stormwater management, and erosion and sediment control plans for the property. (Exhibit 61.)

DDOT Report. By memorandum dated February 18, 2022, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 23.)

DPW Report. By comments dated May 18, 2022, the Department of Public Works indicated that approval of the Applicant's proposal would have no impact on DPW's operations. (Exhibit 33.)

ANC Report. By letter dated May 11, 2022, ANC 3D indicated that, at a public meeting on the same date, the ANC voted to request that the Board deny the zoning relief requested by the Applicant. (Exhibit 39.)

Party in support. The Foxhall Crescents Homeowners Association offered testimony and evidence in support of the application.

Persons in Opposition. The Board received letters and testimony in opposition to the application from some residents living near the subject property, who generally raised concerns about adverse

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<sup>3</sup> The hearing was originally scheduled for March 2, 2022 and was postponed twice at the Applicant's request (Exhibits 19A, 34.)

stormwater management at the Applicant's property, the removal of trees from the site, traffic bottlenecks and parking congestion due to the narrow access to the site, and the size and character of the Applicant's proposed dwelling.

**FINDINGS OF FACT**

1. The property that is the subject of this application is an interior lot with an address of 4509 Foxhall Crescent, N.W. (Square 1397, Lot 960).
2. The subject property is a roughly square-shaped lot, approximately 109 feet wide where the minimum required lot width is 75 feet. (Subtitle D § 302.)
3. The lot area is approximately 13,629 square feet, where a minimum of 7,500 square feet is required. (Subtitle D § 302.)
4. The subject property is unimproved and slopes up steeply from west to east.
5. The Applicant proposed to construct a new detached principal dwelling at the subject property.
6. The dwelling will be approximately 39.88 feet and three stories in height, where 40 feet and three stories are permitted. (Subtitle D § 303.)
7. The dwelling will have two side yards, measuring 25 feet on the north and 27 feet on the south, where two side yards of eight feet are required. (Subtitle D § 206.2.)
8. The dwelling will have a rear yard of 28.25 feet, where a minimum of 25 feet is required.<sup>4</sup> (Subtitle D § 306.)
9. The dwelling will have a front setback of 26.5 feet along the west lot line.
10. The Applicant will install a driveway to provide vehicle access to the subject property from the abutting private street. The driveway, which will be 16 feet wide and paved with permeable pavement, will provide an area to accommodate vehicles turning around at the subject property. (Exhibit 69A.)
11. Two vehicle parking spaces will be provided in a grade-level garage accessible from the driveway via an entrance at the front of the dwelling.
12. The new construction will result in a lot occupancy of approximately 15 percent, where a maximum of 40 percent is permitted. (Subtitle D § 304.)

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<sup>4</sup> The rear setback will be 41.25 feet as measured from the rear lot line to the exterior wall of the dwelling, and 28.25 as measured to a retaining wall in the rear yard.

13. The Applicant provided a tree survey and protection plan prepared by a certified arborist (Exhibit 28B) as well as a landscape plan. (Exhibit 54C.) The Applicant submitted both plans to DDOT's Urban Forestry Division for review on April 25, 2022. (Exhibit 54F.)
14. Some trees remain around the periphery of the subject property. The landscape plan identified trees that would be retained or removed in the future due to severe decline, and also indicated new plantings, which will include additional trees and shrubs in front of the dwelling and near the driveway and front walk.
15. The Applicant submitted a stormwater management report prepared by a civil engineer (Exhibit 28E) as well as a stormwater management plan (Exhibit 54D) and a plan addressing sediment and soil erosion (Exhibit 54E.) The Applicant filed both plans with DOEE on May 13, 2022. (Exhibit 54F.)
16. The stormwater management report noted that the Applicant's "project will be required to meet stormwater management regulations as required by DOEE 2020 and 2013 stormwater management guidebook and per [Environmental Protection Agency] guidelines for managing runoff." According to the plan, the existing condition – "all runoff from the property drains to the existing driveway," – "will continue with the new development of the lot as [the Applicant will provide] an infiltration trench under pavers to fully meet the Stormwater management requirements on site." The plan also noted that the Applicant will plant "several trees along lot 850 [the abutting property to the west] and [will install] landscaping...to act as a vegetative buffer between the two properties."
17. The Applicant provided a grading plan for the subject property. (Exhibits 69A, 84A.)
18. The Applicant provided a slope stability report prepared by a civil engineer. The report concluded that "For planned conditions at the locations (Slopes A & B) [that is, "at the western and northern portions of the property" as shown in an attached sketch], the factors of safety are greater than the minimum recommended factor of safety (FOS) of 1.5." (Exhibit 74.)
19. The subject property fronts on Foxhall Crescent, a 16-foot-wide private street that is the only means of vehicle access to the site. The portion of the street in the vicinity of the subject property is a relatively short segment that provides vehicle access to one existing dwelling (at 4507 Crescent Terrace) before dead-ending at the subject property.
20. The subject property is located within an area known as the Foxhall Crescents development, which was constructed in phases beginning in the early 1980s pursuant to a plan devised in 1979. The 1979 plan called for 28 new detached dwellings accessible via a network of crescent-shaped roads ranging from 16 to 25 feet in width. One lot was eventually developed separately, and 26 lots were developed with detached dwellings. The subject property is the only undeveloped lot within the Foxhall Crescents development.

21. The Board previously approved zoning relief needed for the construction of a detached dwelling at the subject property as a theoretical lot. *See*, Application No. 15882 (Gene and Patricia Godley; June 30, 1995) and Application No. 18708 (Amir Motlagh; February 11, 2015). Both applications sought a special exception under the theoretical subdivision provisions of the 1958 Zoning Regulations; the latter also requested an area variance from front yard requirements. In both cases, the applicants proposed to build a new detached dwelling at the subject property, but no dwelling was ever constructed.
22. The Board approved other applications for zoning relief to allow new detached dwellings within the Foxhall Crescents development. *See*, Application No. 15340 (N.V. Homes Ltd. Partnership; August 17, 1990) (zoning relief under the theoretical lot subdivision provisions of the 1958 Zoning Regulations, including a special exception to allow two or more buildings on a subdivided lot and a variance from the requirement that each means of vehicular ingress or egress to any principal building must be at least 25 feet in width, to allow 34 detached dwellings in the 2500 block of 49<sup>th</sup> Street, N.W. (Square 1397, Lots 888, 889, 892-917, and 968-992) and Application No. 17697 (A&S Associates LLC; December 21, 2007) (a special exception to allow two or more principal buildings on a subdivided and vested theoretical lot to construct 34 detached dwellings at 4818 Foxhall Crescents, N.W. (Square 1397, Lot 1008), previously approved in Application No. 15340, which had expired).
23. The subject property was generally wooded and contained numerous trees that included a 47-inch diameter tulip poplar (*Liriodendron tulipifera*) classified as a heritage tree subject to protection under Section 104a of the Tree Canopy Protection Act of 2016 (D.C. Official Code §§ 8-651.01 – 8-651.08). On February 11, 2022, the Applicant removed 20 trees with the approval of the Urban Forestry Division. On February 24, 2022, the Applicant removed the heritage tree without a permit. The Applicant was assessed a fine, and appealed the amount of the fine.
24. Properties abutting the subject property are improved with detached dwellings. The surrounding area primarily contains detached principal dwellings as well as some diplomatic and institutional uses.
25. The subject property is located in a Residential House (“R”) zone, R-1-A.
26. The R zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 100.1.) The provisions of the R zones are intended to provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; allow for limited compatible accessory and non-residential uses; allow for the matter-of-right development of existing lots of record; establish minimum lot area and dimensions for the subdivision and creation

of new lots of record; and discourage multiple dwelling unit development. (Subtitle D § 100.2.)

27. The purpose of the R-1-A zone is to (a) protect quiet residential areas now developed with detached dwellings and adjoining vacant areas likely to be developed for those purposes; and (b) stabilize the residential areas and promote a suitable environment for family life. (Subtitle D §300.1.)
28. The R-1-A zone is intended to provide for areas predominantly developed with detached houses on large lots. (Subtitle D § 300.2.)

### **CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks a special exception under Subtitle C § 305 to allow multiple primary buildings on a single record lot in a theoretical subdivision as well as an area variance from the vehicular ingress and egress requirements of Subtitle C § 305.3(b) to allow a new three-story detached principal dwelling in the R-1-A zone at 4509 Foxhall Crescent, N.W. (Square 1397, Lot 960). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of the neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See*, 11 DCMR Subtitle X § 901.2.)

The Zoning Regulations require that each new primary building must be erected on a separate lot of record in all R zones, except as provided for in the theoretical lot subdivision regulations of Subtitle C § 305.1. (Subtitle C § 302.2.) Pursuant to Subtitle C § 302.1, a subdivision to create a record lot generally must be effected in a manner that will satisfy zoning requirements for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, lot occupancy, parking spaces, and loading berths applicable to the original lot and to the newly created lots. Pursuant to Subtitle C § 305.1, the Board is authorized to grant, as a special exception, a waiver of Subtitle C § 302.1 to allow multiple primary buildings on a single record lot subject to specific requirements.

The number of buildings permitted in a theoretical subdivision is not limited so long as an applicant can demonstrate that specific requirements are met based on a plan of theoretical subdivision where individual theoretical lots serve as boundaries for assessment of compliance with the Zoning Regulations. (Subtitle C § 305.2.) In accordance with Subtitle C § 305.3, the development standards applicable to theoretical lots include that: (a) the side and rear yards must be consistent with the requirements of the zone; and (b) each means of vehicular ingress and egress to any principal building must be at least 24 feet in width, exclusive of driveways.<sup>5</sup>

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<sup>5</sup> Subtitle C § 305.3 also states development standards applicable to theoretical lots governing the measurement of building height that were not at issue in this proceeding.

Based on the findings of fact, and having given great weight to the report of the Office of Planning and to the issues and concerns of ANC 3D, the Board concludes that the application satisfies the requirements for approval of the requested special exception. The Applicant submitted the information required by Subtitle C § 305.4, including site plans for the subject property, floor plans of the planned dwelling, and a table of zoning information reflecting required and proposed development standards, as well as landscaping and grading plans. The application did not propose any new streets or designated fire apparatus roads, or any new easements.

Consistent with Subtitle C § 305.6, the Board concludes that the proposed development will comply with the substantive intent and purpose of the Zoning Regulations and will not be likely to have an adverse effect on the present character and future development of the neighborhood. The Applicant's proposal is consistent with the intent of the R-1-A zone to provide for detached houses on large lots, as well as with the purposes of the R-1-A zone to protect quiet residential areas now developed with detached dwellings and adjoining vacant areas likely to be developed for those purposes and to stabilize residential areas and promote a suitable environment for family life. The planned dwelling will meet the development standards required by the Zoning Regulations, including with respect to lot occupancy, building height, and side and rear yard setbacks. The Board concludes that the new dwelling will not tend to affect adversely the use of neighboring property, or unduly affect the light and air available to neighboring properties. The subject property has sufficient area to provide buffers between the new dwelling and existing dwellings on adjacent properties. Those distances, coupled with new vegetation installed in conformance with the Applicant's landscaping plan, will avoid the creation of any undue privacy impacts or other objectionable conditions affecting other properties.

Approval of the requested special exception will not likely have an adverse effect on the present character and future development of the neighborhood. The Applicant's project will be undertaken pursuant to a previously approved theoretical subdivision. The Board credits the testimony of the Office of Planning that "[i]n terms of density, the proposed development would complement the existing development in the subdivision, and would appear to have front, side and rear yards consistent with other homes in the neighborhood." (Exhibit 61 at 8.) The Office of Planning also commented that the Applicant's dwelling "would seem to match the established character of the community" and that "[g]iven the large setbacks, the house should not have much, if any, impact on light and air available to neighboring properties." (Exhibit 61 at 8.) The Board credits OP's conclusion that "[b]ecause the surrounding subdivision is already developed, construction of this home [is not likely to] impact development within the community or in the broader neighborhood," given that OP "anticipated that eventual approval of the stormwater management, tree preservation and erosion and sediment control plans should result in the impacts from the development being minimized." (Exhibit 61 at 8.) In concluding that the planned detached dwelling will be consistent with the existing Foxhall Crescents development, the Board also credits the testimony of the Foxhall Crescents Homeowners Association that the Applicant's "home...is matching in design and compatible in size with other homes in the neighborhood."<sup>6</sup> (Transcript of June 15, 2022 at 110; Exhibit 85A1.)

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<sup>6</sup> The Board heard testimony from persons in opposition that certain easements and covenants precluded the Board's approval of the application. The Board credits the testimony of the president of the Foxhall Crescents Homeowners

Approval of the requested special exception will not likely have an adverse effect on the future development of the neighborhood due to traffic or parking concerns. The Board credits DDOT's testimony that approval of the application will not have adverse impacts on the surrounding transportation network, in part because the 16-foot width of the portion of Foxhall Crescent required for vehicle access to the subject property "is wide enough for two-way traffic and adequate to serve the two (2) proposed parking spaces" in the new dwelling. (Exhibit 23.)

The Board concludes that approval of the application will not likely have an adverse effect on the present character and future development of the neighborhood due to concerns relating to stormwater management. The Applicant prepared landscape, tree protection, grading, sediment and erosion, and stormwater management plans for the site, and the project is subject to review by DOEE and the Urban Forestry Division for compliance with applicable regulations. The Board credits the testimony of the Applicant that stormwater will be managed on-site as well as the testimony of the Foxhall Crescents Homeowners Association that adequate storm drains (which are maintained by the homeowners association) exist in the vicinity of the subject property to avoid runoff on nearby properties.

Especially in light of the requirements imposed in connection with DOEE review of the Applicant's proposal, the Board was not persuaded by ANC 3D that the planned development would likely create adverse impacts related to "potential storm water damage to the community." The ANC cited the "fairly steep" slope of the subject property and the Applicant's removal of trees, but did not assert that the Applicant's proposal would be unable to manage stormwater runoff from the property. The ANC acknowledged the DOEE "requirement that the applicant submit a Storm Water Management Plan for the Departments' approval prior to construction" and noted the Applicant's commitment, contained "in paragraph 6 of its Construction Management Plan," that the Applicant would provide at least 10 days of notice before requesting "any special DOEE storm water accommodations on the property." (Exhibit 39.) In response to the ANC's request, the Board included the Applicant's commitment (updated to Exhibit 84D) as a condition of approval of the application adopted in this order.

Subtitle X, Chapter 9. For the reasons discussed above, the Board concludes that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, as is required for approval of the application under Subtitle X § 901.2.

Area variance. The Applicant also seeks an area variance pursuant to 11 DCMR Subtitle X, Chapter 10 from the vehicular ingress and egress requirements of Subtitle C § 305.3(b). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (2012 Repl.), to grant variances, where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional

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Association in concluding that the association's bylaws did not assert "any control over trees or grading" and that no roads or easements exist over the subject property. (See, Transcript of June 15, 2022 at 160-161; Exhibit 85A2.)

topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and map. (Subtitle X § 1002.1(a).)

Under Subtitle C § 305.3(b), the development standards applicable to a theoretical lot include that each means of vehicular ingress and egress to any principal building must be at least 24 feet in width, exclusive of driveways. The sole means of vehicle access to the subject property is an existing private street that is 16 feet wide. Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns of ANC 3D, the Board concludes that the application satisfies the requirements for approval of the requested variance.

The subject property exhibits an extraordinary or exceptional condition as the sole undeveloped lot remaining in a previously approved theoretical subdivision that utilizes private streets not meeting the minimum width requirement for vehicular ingress and egress under Subtitle C § 305.3(b). According to the Applicant, the width of the private streets within the Foxhall Crescents development was “essentially a function of the development design, considering the available space and topography, and other land planning concerns.” (Exhibit 8 at 8.)

The strict application of the Zoning Regulations would result in exceptional practical difficulties to the Applicant as the owner of the subject property because the minimum width requirement would effectively preclude development of a new building at the site. The existing width of the private street cannot be increased to meet the 24-foot minimum width requirement without interfering with adjacent properties to reconstruct the private street and sidewalk, which would also increase the amount of impervious surface in the vicinity. The Board concurs with OP that “[w]idening the accessway would require purchasing portions of, or all of, nearby properties and widening the curb to curb width of the street – an impractical solution, especially given the shallow front yards and driveways on nearby properties.” (Exhibit 61 at 8.)

Approval of the requested variance will not cause substantial detriment to the public good. The Board notes DDOT’s lack of objection to the variance based on its conclusion that the proposed 16-foot width will be sufficient for two-way traffic. The existing 16-foot-wide vehicle access was previously approved as part of the theoretical subdivision for the Foxhall Crescents development and has served the existing dwellings near the subject property since they were built. The variance will allow vehicle access to one additional dwelling in the development.

Approval of the requested variance will not substantially impair the intent, purpose, and integrity of the zone plan. The variance relief is consistent with the purpose of the R-1-A zone by facilitating the development of the subject property, the sole unimproved parcel remaining in a previously approved theoretical subdivision, with a new detached dwelling consistent with

applicable development standards. For the same reason, approval of the variance will be consistent with the intent of the Residential zones to provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development.

Great weight. The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) In this case, OP recommended approval of the requested variance if the Board concluded that the requirements of the special exception had been met; OP declined to make a recommendation on the special exception request, citing a lack of reports from the Department of Energy and Environment and the Urban Forestry Division. For the reasons discussed above, the Board concluded that the application satisfied the requirements for approval of both aspects of the zoning relief requested. The Board recognizes that the Applicant is required to obtain a number of approvals for the project. Consistent with its typical practice, the Board considered the application for zoning relief on the basis of the Applicant’s assertion that other required approvals would be obtained before a building permit may be issued for the construction approved in the application.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1974, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)).) In this case, ANC 3D asked the Board to deny the relief requested by the Applicant. (Exhibit 39.) The ANC expressed concerns about stormwater management at the subject property and the Applicant’s removal of a heritage tree on the property without having obtained a permit. The Board has accorded the requisite great weight to the issues and concerns stated by ANC 3D but did not find its advice a persuasive reason to deny the application. For the reasons discussed above, the Board concluded that approval of the application will not likely create objectionable conditions related to stormwater runoff.

The Board did not agree with ANC 3D that the application should be denied because of an alleged lack of “clean hands” by the Applicant in connection with the removal of a heritage tree without a permit. In evaluating a request for a special exception, the Board is limited to a determination of whether the special exception sought by an applicant meets the requirements of the particular regulation on which the application is based. An applicant has the burden of showing that the proposal complies with the regulation, but once that showing has been made, the Board ordinarily must grant the application. *See, e.g., National Cathedral Neighborhood Association v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984 (D.C. 2000).

The Board’s jurisdiction in deliberating on the application in this case did not extend to issues related to the Applicant’s removal of trees at the subject property because the standards for approval of the zoning relief requested, as specified in the Zoning Regulations, did not encompass allegations of non-compliance with other legal requirements, including the regulations applicable to heritage trees. *Compare*, Application No. 18065 (Shomarka Keita; January 18, 2011) (Board does not condone illegal construction undertaken without obtaining necessary permits, but its discretion in reviewing an application for a special exception is limited to a determination of whether the applicant has complied with the specific and general requirements stated in the Zoning

Regulations for approval of that special exception; because those requirements did not address prior illegal acts by an applicant or previous owner of the subject property, the Board lacked the legal authority to dismiss or deny an application for a special exception solely on the ground that construction was undertaken illegally without receiving the necessary zoning approvals and permits); accord, Application No. 18063 (Zachary and Lydia Plotz, et al.; March 4, 2011). The Board's consideration of factors not specified in the Zoning Regulations would in effect constitute an amendment of the Zoning Regulations, which the Board lacks the authority to do.<sup>7</sup>

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof for a special exception under Subtitle C § 305 to allow multiple primary buildings on a single record lot in a theoretical subdivision and for an area variance from the vehicular ingress and egress requirements of Subtitle C § 305.3(b) to allow a new three-story detached principal dwelling in the R-1-A zone at 4509 Foxhall Crescent, N.W. (Square 1397, Lot 960). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans submitted as Exhibit 69B and subject to the following **CONDITIONS**:

1. The Applicant shall install and maintain landscaping substantially consistent with the plan submitted into the record as Exhibit 54C.
2. The Applicant shall implement a stormwater management plan as shown in Exhibit 54D to the extent consistent with other applicable requirements.
3. The Applicant shall implement a sediment and soil erosion plan as shown in Exhibit 54E to the extent consistent with other applicable requirements.
4. The Applicant shall implement the construction management plan substantially in accordance with Exhibit 84D.

**VOTE: 4-0-1** (Frederick L. Hill, Chrishaun S. Smith, Carl H. Blake, and Joseph S. Imamura to APPROVE; Lorna L. John not participating)

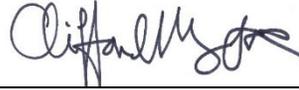
**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

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<sup>7</sup> The Board does not have the power to amend any regulation, including the Zoning Regulations. D.C. Official Code § 6-641.07(e) (2012 Repl.). *See, e.g.*, Application No. 17022 (Edmund Burke School; August 4, 2004) (the scope of the Board's authority is defined by statute such that, where permitted by the Zoning Regulations, the Board may grant a special exception subject to appropriate principles, standards, rules, conditions, and safeguards *set forth in the regulations*; the Board's discretion in reviewing a special exception application is limited to a determination of whether an applicant complied with the requirements enumerated in the Zoning Regulations, and the Board lacks legal authority to deny an application solely on the ground that the applicant failed to comply with a prior grant of zoning approval).

**ATTESTED BY:**



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**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** February 26, 2024

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL

APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.