

FOXHALL CRESCENTS HOMEOWNERS ASSOCIATION, INC.

January 28, 2014

Lloyd J. Jordan, Esq.
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

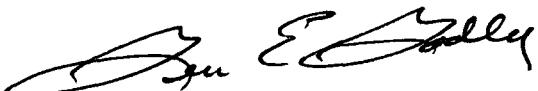
RECEIVED
BZC OFFICE OF ZONING
2014 JAN 28 PM 1:40

**Re: BZA Application No. 18708
4509 Foxhall Crescent Drive, N.W.
Lot 960, Square 1397**

Dear Chairperson Jordan:

Please accept for filing in the above-referenced matter the attached Preliminary Statement of the Foxhall Crescents Homeowners Association, Inc. in Opposition to Application No. 18708 for Special Exception, filed with the Board of Zoning Adjustment by Mr. Amir Motlagh on November 22, 2013.

Very truly yours,



Foxhall Crescents Homeowners Association, Inc.
c/o Gene E. Godley, President
4513 Foxhall Crescents, NW
Washington, D.C. 20007
H: (202) 965-2195
M: (202) 460-4088

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18708
EXHIBIT NO. 31

cc: Ms. Jennifer Steingasser, Deputy Director, Office of Planning
Mr. Matthew R. Jesick, Development Review Specialist, Office of Planning
Ms. Penny Pagano, Chair, ANC 3D
John Patrick Brown, Jr., Esq., Greenstein, DeLorme & Luchs, P.C.

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

CASE No. 18708

**PRELIMINARY STATEMENT OF THE
FOXHALL CRESCENTS HOMEOWNERS ASSOCIATION, INC.
IN OPPOSITION TO APPLICATION NO. 18708 FOR SPECIAL EXCEPTION**

I. INTRODUCTION

Foxhall Crescents I is a residential neighborhood built in the 1980s (“Foxhall Crescents”). The Foxhall Crescents Homeowners Association, Inc. (“Association”) was incorporated in 1981 to provide for the maintenance, preservation, and environmental and architectural control of the sites and homes in Foxhall Crescents, and to promote the health, safety, and welfare of the residents. The Association’s Members are the owners of record of the properties in Foxhall Crescents. All Members, including the Applicant in this matter, are subject to the Declaration of Covenants, Conditions and Restrictions and Bylaws of the Foxhall Crescents Homeowners Association, Inc. Bylaws, as last amended on May 4, 1994 (“Covenants and Bylaws”)¹

¹ April 13, 1981 Declaration of Covenants, Conditions and Restrictions, recorded among the Land Records of the District of Columbia on April 21, 1981 as Instrument No. 12786 (including the duly adopted Articles of Incorporation and Bylaws of the Association); July 21, 1981 First Amendment to Declaration of Covenants, Conditions and Restrictions and Bylaws of Foxhall Crescents Homeowners Association, Inc., recorded among the Land Records of the District of Columbia on April 21, 1981, as Instrument No. 12786; April 24, 1984 Second Amendment to Declaration of Covenants, Conditions and Restrictions and Bylaws of the Foxhall Crescents Owners Association, Inc, recorded among the Land Records of the District of Columbia on April 25, 1984, as Instrument No. 33000000408; May 4, 1994 Third Amendment to Declaration of Covenants, Conditions and Restrictions and Bylaws of Foxhall Crescents Home Owners Association, recorded among the Land Records of the District of Columbia on August 4, 1994, as Instrument No. 940000063226.

Foxhall Crescents is a compact community of twenty-six homes. All of the homes front on a private street, commonly referred to as “Foxhall Crescents Drive,” which is owned by the Members of the Association. (A copy of a diagram illustrating the general layout of Foxhall Crescents is appended hereto as Attachment 1).

On November 27, 2013, Mr. Amir Motlagh (“Applicant”) filed an application pursuant to 11 DCMR § 3104.1 for a special exception under DCMR § 2516 to allow the construction of a single-family detached house on a theoretical lot at 4509 Foxhall Crescent Drive (“Application”). The lot is the last undeveloped lot in Foxhall Crescents. The lot has a very steep grade that creates significant storm water runoff and drainage, and is heavily wooded by trees (some with diameters of more than 40 inches), dense underbrush, and other vegetation..

The Association opposes the construction project as proposed in the Application and asks the Board to deny the special exception requested. In order to meet the requirements of a special exception under DCMR § 3104, the Applicant has the burden of proving that the proposed construction “will not tend to affect adversely, the use of neighboring property” The Applicant fails to meet this burden of proof, because the Application:

- Fails to demonstrate that storm water drainage and surface water runoff from the Property during and after construction will not cause damage to existing Foxhall Crescents residences, as well as other residences located in downhill neighboring communities
- Fails to comply with the ingress and egress requirements specified in D.C. Zoning Regulations at 11 DCMR §§ 2516(b) & (c)
- Fails to protect the interests and safety of Foxhall Crescents residents and their property during construction.
- Fails to provide for compensation for the adverse effects suffered by Association Members if Applicant abandoned construction of the house before completion.

- Fails to comply with Association Covenants and Bylaws applicable to all Foxhall Crescents owners and their successors, including Applicant.

For these reasons, the Association opposes the Application.

II. REASONS FOR OPPOSITION

A. **Applicant Fails To Demonstrate That Storm Water Drainage and Surface Water Runoff from the Property During and After Construction Will Not Cause Damage to Existing Foxhall Crescents Residences, as well as Other Residences Located in Downhill Neighboring Communities.**

The Application provides no evidence that existing Foxhall Crescents homeowners and neighboring communities will be protected from damage from storm water and surface water runoff from the Property, both during and after the proposed construction. The Application includes three CADD drawings titled “Site and Grading Plan,” “Erosion and Sediment Control Plan” and “Erosion and Sediment Control Details.” *See Record Exh. No. 24.* However, the Application includes no verifiable engineering surveys of surface water run off (including expert analyses of such issues as drainage patterns, volume, and flow of water across the Property), current studies of subsurface water conditions needed to address issues related to control of subsurface water, or any other analysis of the steeply sloped terrain of the site needed to evaluate the adequacy of Applicant’s plans to control drainage from the Property

In fact, the only study submitted by the Applicant is a December 18, 1993 geotechnical engineering report prepared for Mr. Timothy J. Ward, the prior owner of the Property, by Mr. Gerald Davit of Professional Consulting Services. *See Record Exh. No. 24.* The report as submitted by the Applicant, however, omits page 1 of the report, in which Mr. Davit expressly states: “Services with respect to environmental, storm water management, pavement or foundation design, wetlands, forestry, erosion control, cost or quantity estimates, construction plans, surveying, and testing or services not outlined in this report were not provided.” (A copy

of the missing first page of the report is appended hereto as Attachment 2). Mr. Davit's report thus includes no analysis or recommendations for needed controls of surface water drainage from the Property, either during or after the construction proposed by Applicant.

Further, Mr. Davit's report was prepared over 20 years ago, and provides no current evaluation or geotechnical soil survey needed to address issues related to control of subsurface water, or the potential impact that construction of the house may have on subsurface water conditions adjacent to the property. That report was based on soil conditions in existence at the time it was prepared, as well as the structure and location of the residence as proposed by Mr. Ward, not Applicant's planned project. Applicant's submission of Mr. Davit's 20-year-old report does not provide any evidence supporting the Application.

Examination of other evidence submitted with the Application further illustrates the inadequacy of the Application to meet the requirements for a Special Exception under Section 3104. For example, Applicant's evidence does not include "existing and preliminary landscaping . . . plans" as contemplated in 11 DCMR § 2516.3(a), which would show both the number and size of trees that Applicant plans to remove from the Property during construction (thus contributing to destabilization of the soil), and new plantings Applicant plans to install to inhibit erosion.

Applicant's evidence in Record Exhibit No. 24 also includes a December 13, 2013, one-page letter addressed to Mr. Edwin Jacobsen from Mr. Kayvan Jaboori, P.E., who is the owner of KJ & Associates, the firm that prepared the three CADD drawings included with the Application. In the letter, Mr. Kayvan explains that, under his plans, post-construction drainage originating from both the Property and off-site sources "will be controlled by way of sheet flow and will be collected by the existing storm sewer inlet at the lot entrance." In support of his plans, Mr.

Jaboori asserts “This inlet was originally designed to adequately collect run-off from Lot 960 and it’s [sic] upstream off-site land. There is no change in-onsite or off-site drainage patterns.”

In other words, Applicant’s drainage control plan after construction is simply to funnel all runoff from his 13,518 sq. ft. lot into the existing 2’x 3’ storm water system inlet drain located on Foxhall Crescents Drive at the foot of the Property (Two photographs of the drain are appended hereto as Attachment 3) The Application, however, includes no evidence that this inlet into the Association’s storm water management system, or the system immediately downstream from the inlet, would be sufficient to handle all of the runoff from the Property

Further, Mr. Jaboori’s unsupported assertion that onsite and offsite drainage patterns “have remained unchanged” for over thirty years is simply not credible. In fact, recent developments have increased homeowners’ concerns over water runoff and its effects in Foxhall Crescents. For example, the house at 4515 Foxhall Crescents, which shares the same watershed as the Applicant’s Property, has suffered flooding of its lower floor twice in the last year. Last summer, drainage and erosion from the Property left significant gravel, rocks and sediment on the portion of Foxhall Crescents Drive adjacent to the Property. Also, in the last few years, a drain was installed along the front of the garage at 4510 Foxhall Crescent Drive to prevent water runoff from seeping into their garage. Changes in topography also have occurred in recent years uphill from Foxhall Crescents. For example, two large residences were recently built on Foxhall Road uphill from Foxhall Crescents, and curbs and a sidewalk have been constructed alongside of Foxhall Road. Mr. Davit’s 20-year-old report therefore provides no evaluation of the current conditions onsite or uphill of the Property affecting water drainage from the Property. Such evaluation is necessary to assess the adequacy of Applicants’ plans to control water drainage from the Property.

In sum, neither Mr. Jaboori's letter nor any other evidence provided in the Application supports Mr. Jaboori's conclusion that "construction of the proposed single family residence will not have any adverse effect on the adjacent lots." Applicant thus fails to satisfy his burden of proving that water drainage from the site during and after construction will not adversely affect neighboring properties. The Association therefore respectfully requests that the Board deny the Special Exception as requested by Applicant.

B. Construction of the House as Proposed by Applicant Would Adversely Affect the Use of Neighboring Properties and Violate D.C. Zoning Regulations at 11 DCMR §§ 2516.5.

Contrary to the requirement of DCMR § 3104.1, the construction proposed by the Application would adversely affect the use of neighboring properties. In fact, the proposal would violate Sections 2516.5(b) and (c) of the zoning regulations.

Section 2516 provides: "If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building," as is the case in Foxhall Crescents, then "the following provisions shall apply . . ." Section 2516.6(b) provides: "Notwithstanding any other provision of this title, each means of vehicular ingress or egress to any principal building shall be twenty-five feet (25 ft.) in width . . ." However, contrary to this requirement, the sole means of vehicular ingress and egress to the Property is a 16-foot-wide portion of Foxhall Crescents Drive that terminates at the edge of the Property. The Application also violates the requirement of 11 DCMR § 2516.6(c), which provides "If there are not at least two (2) entrances or exits from the means of ingress or egress, a turning area shall be provided with a diameter of not less than sixty feet (60 ft.) . . ." No such turning area is proposed in the Application.

Two houses front on the 16-foot wide portion of Foxhall Crescents Drive that ends at the edge of the Property: 4507 and 4513. The residents of these homes and their guests have parked in front of their homes without incident for nearly two decades. Because of the narrowness of this portion of the street, it would be difficult, if not impossible, for large construction vehicles safely to navigate around parked cars to enter and leave the Property during construction. Similarly, after construction, it would be difficult for garbage collection trucks or snow plows contracted by the Association to service the Property, not to mention the ability of emergency vehicles like ambulances and fire trucks, to access the Property, creating personal and property safety issues for the Property and neighboring residents.

This 16-foot wide means of ingress and egress from the Property thus would not be “compatible with,” and would be “likely to have an adverse effect on, the present character of the neighborhood,” particularly when the Board gives “specific consideration” to the “availability of resident, guest, and service parking.” *See* 11 DCMR § 2516.6(d). The Application therefore violates the requirements of 11 DCMR §§ 2516.6(a) and (b) of the zoning regulations. In addition, it does not qualify for a Special Exception under Section 3104 of the regulations, because the project as proposed will “affect adversely the use of neighboring property.”

C. The Application Fails to Protect Homeowners and Their Properties During Construction.

The Application makes no effective provision for protecting Homeowners from the adverse impacts of heavy construction on a 30-year-old established, compact community. Such impacts would include, for example, traffic of heavy construction and contractors’ vehicles on Foxhall Crescents Drive. For example, based on Applicant’s representation on the CADD drawing labeled “Erosion and Sediment Control Plan” included in Record Exhibit No. 24, the

Applicant's plans would result in a disturbed area of 4,950 sq. ft., a cut of 560 cubic yards, and fill of 10 cubic yards. Assuming a dump truck carries 12-18 cubic yards of soil per truck, that means that an estimated 30-45 dump trucks will travel into and out of Foxhall Crescents Drive during construction – passing in front of all of the residences located on Foxhall Crescents Drive between Foxhall Road and the Property, where the residents and their guests park their cars, walk their dogs, and children play. In fact, because all Foxhall Crescents homeowners access their homes through the same single entrance from Foxhall Road into Foxhall Crescents Drive, all residents will experience the inevitable dirt, mud, and other construction-related refuse deposited by heavy construction traffic on Foxhall Crescents Drive during construction of the Property.

The Application, however, proposes no accommodation or protection for existing homeowners during construction, such as limiting hours of construction, limiting the parking of construction and contractors' vehicles only on the Property during construction, or measures to protect the safety of children and other pedestrians and vehicles parked along Foxhall Crescents Drive. Nor is any provision made for compensation to the Members of the Association for damage to Foxhall Crescents Drive or other Association facilities during construction. These adverse impacts resulting from the Application are more than inconveniences to Association homeowners; they also are concerns for the safety and protection of homeowners and their property.

D. Applicant Fails to Provide for Compensation to Association Members for Damages Incurred If Applicant Abandoned Construction Of The House Before Completion.

Applicant apparently proposes to construct the house as a speculative investment, in an arrangement with a general contractor. Applicant has not represented that he intends to live in

the house or become a resident in Foxhall Crescents. The Application, however, provides no protection for Association Members against the prospect of Applicant's abandonment of a partially completed structure in the event he, or any other person invested in the financing and construction of the project, determines that a return on his investment in the project is commercially unviable. Without protection from this eventuality, which is not unlikely, its occurrence would severely adversely affect Association Members financially.

E. Applicant Fails To Comply With Association Covenants and Bylaws.

Every Member of the Association is required to comply with the Association's Covenants and Bylaws, which were recorded among the land records of the District of Columbia, thus imposing on, burdening, and benefitting the property ownership rights of each Member of the Association, including Applicant.² The Applicant and the project proposed in the Application fail to comply with several provisions of the Covenants and Bylaws.

As an initial matter, the Bylaws require Applicant to obtain the prior approval of the Association's Board of Directors before the construction of any structure or the alteration of a site within Foxhall Crescents.³ On December 13, 2013, the Applicant submitted his proposed construction plans to the Board. The Board, however, declined to approve the plans after a special meeting of Members of the Association regarding the proposal. The Board's action was based on the failure of the Applicant to respond to numerous concerns and requests for information made by the Board's Architectural Committee over many months of discussions

² See note 1 *supra*.

³ Article IX § 1 of the Bylaws provides: "No Member shall make any additions or alterations of his Home or his Site . . . nor shall any Member construct any structure without the consent of the Board of Directors "

with the Applicant relating to the impact of the proposed construction on existing Foxhall Crescents Members and their properties.

In particular, the Foxhall Crescents neighborhood was constructed on sloping terrain that required the original builders to include a significant storm water management system to control water runoff in the community. The Bylaws require the Association and each Member of the Association not to permit any construction, erection of structures, or excavation which will impair the continued performance of that system.⁴ As discussed above, however, the Application does not provide any current analyses or studies required to allow the Board to evaluate the adequacy of his plans to control water drainage from the Property, much less to determine whether the proposed construction will impair the continued performance of the Association's storm management system, as expressly required by the Bylaws.

The Application as submitted also is inconsistent with other provisions of the Association's Covenants and Bylaws. For example, the Bylaws require the Board of Directors to maintain Common Properties such as Foxhall Crescent Drive and sidewalks, underground water mains and lines, other utility lines, and sewer and drainage lines on Association property⁵. Based

⁴ Article V § 7(e) of the Bylaws provides: "The Association and all of its Members hereby covenant on behalf of themselves, their lessees, and the heirs, executors, administrators, and successors in interest or assigns of each of them and as a covenant running with the land, that they shall keep and maintain the storm water management system, in good working order and repair so that such system functions at maximum design levels; and that they shall not permit any construction, erection or placement of structures, excavation, fill or vegetation which will impair the continued performance of the storm water management system "

⁵ Article V § 5 of the Bylaws provides: "The Board of Directors shall be responsible for the maintenance, repair and replacement of all Common Properties in the Crescent . . . including the following . . . : (ii) all underground water mains and lines, electrical, gas and other utility lines . . . ; (iii) all sewer and drainage lines and equipment; . . . (v) all street lights, poles and similar equipment . . . "

on “utilities visible from the ground surface,” as noted on Applicant’s CADD drawing labeled “Site & Grading Plan,” Applicant identifies the approximate location of two existing utility lines extending across the Property. a 1 ½” copper water line and an 8” sanitary line. The Board, however, has no confirmation of the existence of those lines, or the availability of a water source to provide control of construction dust and mud, or any other activities on the site requiring water and sewage lines during and after construction. Applicant’s plans also provide no detail sufficient to show the location and interconnection of any existing lines and facilities maintained by the Association, or proposed interconnections between existing and new facilities on the Property. Without these details, the Board of Directors cannot evaluate the maintenance and oversight activities of common facilities that the proposed plans would require the Association to undertake, or ways ameliorate any potential adverse impact of the proposed facilities on other homeowners.

The purpose of the Association is to “provide for maintenance, preservation and environmental and architectural control of the Sites and Homes constructed (or to be constructed) in Foxhall Crescents, and to “promote the health, safety and welfare of the residents within Foxhall Crescents.”⁶ The examples of Applicant’s failure to comply with the Association’s Covenants Bylaws noted above further illustrate the insufficiency of the Application to provide the analysis, information, and detail necessary for a full evaluation of the severity of the adverse impacts on the Foxhall Crescents neighborhood that will result from the

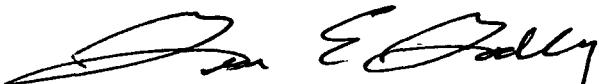
⁶ Articles of Incorporation of Foxhall Crescents Homeowners Association, Inc., p 1, as incorporated in the April 13, 1981 Declaration of Covenants, Conditions and Restrictions, recorded among the Land Records of the District of Columbia on April 21, 1981 as Instrument No 12786.

proposed project. The Association's Board of Directors therefore is unable to approve the project as proposed by the Applicant, and the Association asks the Board of Zoning Adjustment similarly to deny the Application.

III. CONCLUSION

For the reasons stated above, Applicant fails to meet the burden of proof required for the Board of Zoning Adjustment to grant a special exception under 11 DCMR § 3104. The Application provides no verifiable information or evidence showing that the proposed project "will not tend to affect adversely, the use of neighboring property" during or after construction. The Foxhall Crescents Homeowners Association, Inc. therefore asks the Board to deny the Application for Special Exception as submitted in Case No. 18708.

Respectfully submitted.



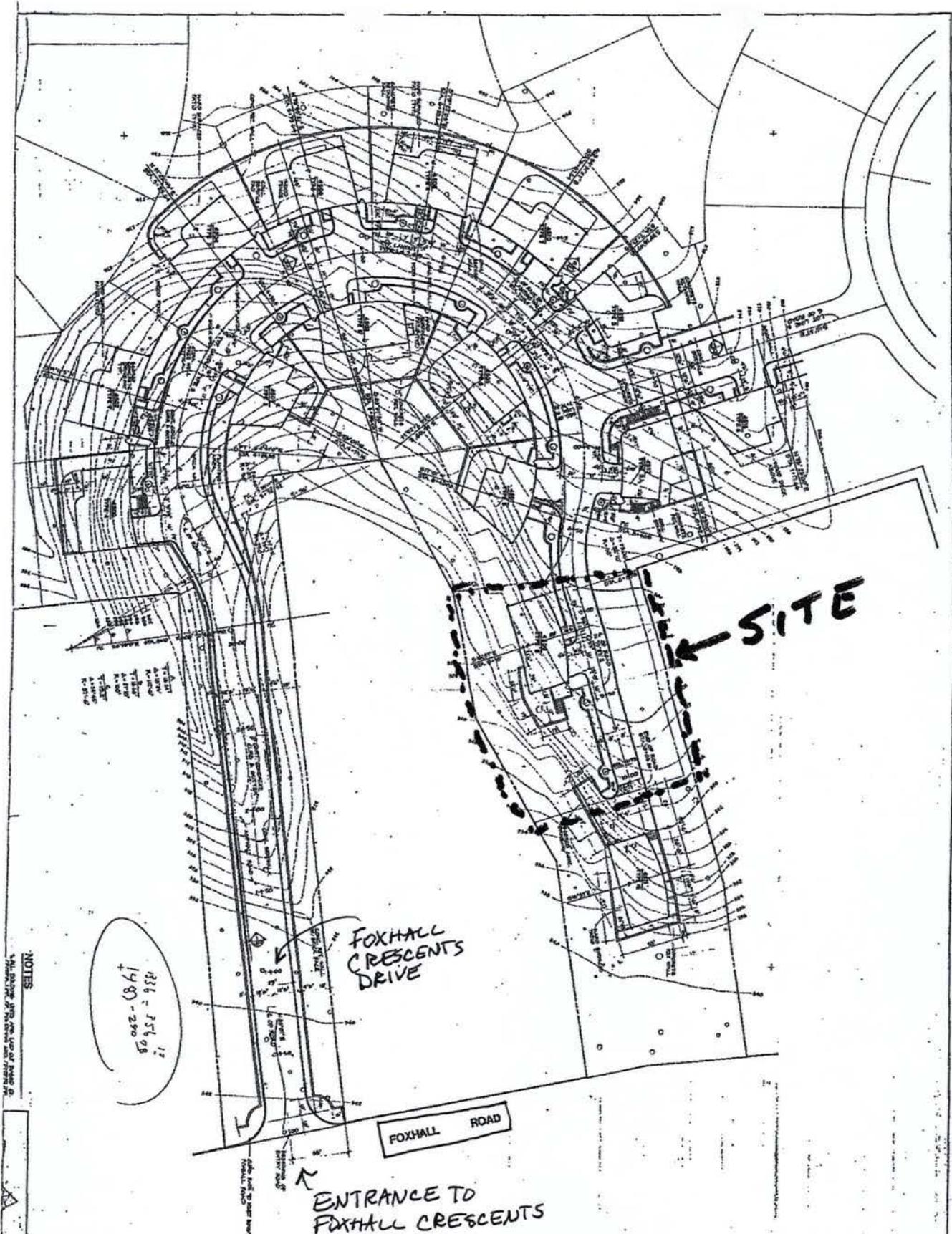
Foxhall Crescents Homeowners Association, Inc.
c/o Gene E. Godley, President

January 28, 2014

ATTACHMENT 1

**Preliminary Statement of the Foxhall Crescents Homeowners Association,
Inc. in Opposition to Application No. 18708**

**DIAGRAM ILLUSTRATING GENERAL LAYOUT
OF FOXHALL CRESCENTS I**



Arthur Cotton Moore/Associates
Architects
Planners

LAYOUT PLAN
CRESCENT 1

EDAW Inc.
Environmental
Planners/
Landscape Architects

120 North Saint Asaph Street
Suite 400
Montreal, Quebec

BERNARD F. LOCRRAFT
Civil Engineers
1219 Congress Court, NW
Washington, D.C.

TADJER-COHEN Associates
Structural Engineers
1000 University Street
Seattle, Washington

Foxhall
Crescents

ATTACHMENT 2

**Preliminary Statement of the Foxhall Crescents Homeowners Association,
Inc. in Opposition to Application No. 18708**

**COPY OF PAGE 1 OF PROFESSIONAL CONSULTING SERVICE REPORT, WHICH
WAS OMITTED FROM APPLICANT'S FILING IN RECORD EXH. NO. 24**

PC PROFESSIONAL CONSULTING SERVICES
GEOTECHNICAL • ENVIRONMENTAL • TOXICOLOGY • GEOLOGY • HYDROGEOLOGY

Partners:
Gerald C. Davit, P.E.
James T. Kirkland, Ph.D., C.P.G.
Barbara M. Davit, Ph.D., Chemist

December 18, 1993

Mr. Timothy J. Ward
5505 Seminary Road
Falls Church, Virginia 22041

Subject: Subsurface Exploration, Soil Laboratory Testing, and
Geotechnical Engineering Services,
Proposed Residence, 4509 Foxhall Crescents Drive, N.W.
Washington D.C. (PCS Project #931107)

Gentlemen:

Our report is submitted herewith.

SCOPE OF SERVICES

Services provided include the following:

- a) Two (2) test borings in the area of the proposed building.
- b) Laboratory testing to include Natural Moisture Content, Liquid and Plastic Limits and Gradation Testing on representative samples.
- c) Prepare this Geotechnical Engineering Report to include: (1) test boring logs with visual Unified Soil Classifications and descriptions prepared by a Professional Engineer, results of standard penetration and laboratory testing, and water observations, (2) generalized description of subsurface conditions anticipated, (3) geotechnical engineering recommendations for use in design of foundations and walls below grade, and support of the lower floor slab.

Services with respect to environmental, stormwater management, pavement or foundation design, wetlands, forestry, erosion control, cost or quantity estimates, construction plans, surveying, and testing or services not outlined in this report were not provided.

ATTACHMENT 3

**Preliminary Statement of the Foxhall Crescents Homeowners Association,
Inc. in Opposition to Application No. 18708**

PHOTOGRAPHS OF 2'X3' INLET INTO THE ASSOCIATION'S STORM WATER MANAGEMENT SYSTEM IDENTIFIED IN THE APPLICATION AS ADEQUATE TO HANDLE ALL WATER RUNOFF FROM THE PROPERTY FROM APPLICANT'S 13,518 SQ. FT. LOT.



