



GREENSTEIN DELORME & LUCHS, PC

1820 L STREET, N.W., SUITE 800  
WASHINGTON, D.C. 20036-5605  
tel (202) 452-1400 fax (202) 452-1410

[www.gdlaw.com](http://www.gdlaw.com)

May 7, 2014

**BY ELECTRONIC MAIL**

Ms. Gayle Trotter, Chair  
Ms. Penny Pagano, SMD06  
Advisory Neighborhood Commission 3D  
P.O. Box 40846 Palisades Station  
Washington, D.C. 20016

Re: BZA Application No. 18708  
4509 Foxhall Crescents Drive, N.W.  
(Lot 1397, Square 960) ("Property")

BOARD OF ZONING ADJUSTMENT  
District of Columbia  
CASE NO. 18708  
EXHIBIT NO. 42

RECEIVED  
J.C. OFFICE OF ZONING  
2014 SEP 16 AM 8:47

Dear Ms. Trotter, Ms. Pagano and Fellow ANC 3D Commissioners:

This firm is counsel for the Property owner, Mr. Amir Motlagh, and the Contract Purchaser of the Property, Mr. Edwin F. Jacobsen.

In preparation for the Commission's meeting, I wanted to provide this additional background information to facilitate the preliminary review of this BZA application.

Mr. Motlagh purchased the Property as a vacant lot in 2002 with the specific plan to build his personal residence on the site. When he purchased the Property, Mr. Motlagh knew that the construction of a single-family house on the Property had previously been approved by the Board of Zoning Adjustment with the support of ANC 3D and approved by the Foxhall Crescents Homeowner's Association ("FCHOA"). However, as a result of an unforeseen change in family circumstances, Mr. Motlagh decided to sell the vacant lot in 2009. In late 2010, Mr. Jacobsen entered into a Contract to purchase the Property. Since 2002, Mr. Motlagh has paid FCHOA assessments and attended its homeowner meetings.

The current proposed plan to improve the Property with a single-family detached dwelling is part of the long-established development plan for this phase of the Foxhall Crescents project. In the late 1970's and early 1980's, the Foxhall Crescents development project was established as a result of negotiation, and detailed plans between the then developer and the community ("Master Plan"). Exhibit A. The Master Plan called for more than one-hundred single-family homes to be built as a matter-of-right on theoretical lots in a series of crescents or

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phases. The Property is located in the first phase of the project accessed from Foxhall Road which was planned to include twenty eight (28) Arthur Cotton Moore designed limestone and brick single-family houses along the crescent shaped private streets.

Throughout the 1980's construction of the first phase continued until all but two of the planned houses had been constructed. The unconstructed house lots included the Property and the adjacent lot which was subsequently purchased and excluded from the project.

In 1988, the Zoning Regulations were amended to impose new restrictions on theoretical lot subdivisions, including the requirement for obtaining special exception approval from the BZA. As a result, the final undeveloped phases and individual unconstructed lots that were part of the original Master Plan were required to obtain BZA approval. In August 1990, BZA Application No. 15340 of the new developer (N.V. Limited Partnership) was approved for a theoretical lot subdivision and construction of thirty-four single-family detached dwellings in the 2500 Block of 49<sup>th</sup> Street, N.W. in Square 1397 based on the original development project under the Master Plan. ANC 3D supported this Application and a 1991 modification of the original approval to allow phased construction of 3-4 houses per year over an extended period. Both BZA Orders are attached as Exhibit B.

In January 1994, the BZA approved Application No. 15882 of Gene and Patricia Godley on behalf of a contract purchaser for a special exception to allow construction of a detached single-family dwelling on the Property. BZA Order No. 15882, attached as Exhibit C. The approved single-family dwelling had four bedrooms and a 3-car garage with approximately 7,040 square feet of living area. The Board made the following findings of fact:

1. There are no restrictive covenants on the lot that prohibit construction of a single-family dwelling on the lot.
2. The applicants meet all of the substantive requirements of section 2516 of the Zoning Regulations.
3. The proposed single-family project meets and exceeds all zoning requirements for lot area, lot width, lot occupancy, parking space, front yard, rear yard and side yard.
4. The applicants, by commissioning engineering studies, have made reasonable efforts to ensure that ground water seepage, water runoff and soil erosion resulting from the hilly terrain of the area will not adversely impact adjacent homes.

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5. The project will not impair public safety or the urban design of the area.
6. In the absence of documentary evidence of a restrictive covenant, depriving the applicants the right to develop on this lot may constitute a taking.

The Board's approval was specifically subject to the following conditions:

1. The proposed residence shall be constructed in a manner that shall control stormwater runoff and ground water seepage during and after construction.
2. The hours of construction shall be between 7:00 a.m. and 6:00 p.m. Monday through Friday.
3. Construction shall not be performed on Sunday, except in an emergency.
4. All equipment, materials and receptacles associated with the construction shall be located on the premises, unless written consent is obtained from the Homeowners' Association or those surrounding property owners.

The single-family house approved in BZA Order No. 15882 was never constructed, the BZA approval expired and the purchaser of the lot eventually sold it to Mr. Motlagh in 2002.

The single-family dwelling proposed in this application is fully consistent with the original Master Plan for the Property in this phase of the Foxhall Crescents project. The Contract Purchaser is proposing a house design which is similar to the "Type 6" house originally planned with an architectural design that follows the limestone and brick Author Cotton Moore appearance that is unique to the original crescent. The following comparison will assist the Commission:

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	<u>APPROVED BZA 15882</u>	<u>PROPOSED BZA 18708</u>
Lot Area	13,516 sf	13,516 sf
Configuration	2-Story with Basement 4 Bedroom 3 Car Garage	2-Story with Basement 4 Bedroom 4.5 Bathroom 2 Car Garage
Lot Occupancy (40% maximum)	13%	13%
Impervious Surface	33%	25%

Messrs. Motlagh and Jacobsen understand that this proposal is subject to review and approval by both the BZA and Architecture Review Committee of the FCHOA. The nature and scope of these approvals are similar, but not identical and involve different decision-makers and decision-making criteria and timing.

However, the following list of proposed development conditions are in keeping with the previous BZA approval, questions raised by FCHOA, within the proper jurisdiction of the Commission and BZA and reasonable to the current circumstances. These conditions are offered as preliminary and subject to further discussion between the parties.

1. **Communication:** There will be an established point of contact for construction who be responsible for providing an updated schedule and timetable for the project, weekly updates and notice of any significant events. The contact will be available by cell phone and electronic mail and will respond promptly to any inquiries and complaints.
2. **Storm Water Management:** DDOE approved system, including non-required infiltration trench; utilization of existing SWM system; coordination with 4507 Foxhall Crescents' storm water discharge pipe onto Property.

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3. **Landscaping Plan:** Implement approved Landscaping Plan, including tree removal and new plantings.
4. **Erosion and Sediment Control:** During construction, implement DDOE required erosion and sediment control methods.
5. **Staged/Escorted Heavy Construction Traffic:** Excavation and large/heavy construction vehicles and deliveries will be staged and escorted to the Property to avoid blocking the roadway.
6. **Limits on Construction Vehicles:** Monday – Friday, 8–5 p.m.
7. **Hours of Construction:** Excavation, Site Work and Shell to Under Roof: Monday – Friday, 8–5 p.m. Interior Build Out: Monday – Friday 7a.m.–7 p.m.
8. **Construction Vehicles:** Maintained on Property; No Standing or Parking on private streets, except during actual operation, delivery.
9. **Construction Equipment and Vehicles:** All construction equipment and vehicles will be stored and maintained on the Property.
10. **No Dumpster:** No Dumpster will be located or maintained on the private streets.
11. **No Construction Parking:** Construction workers, suppliers or other construction related personnel and vehicles shall be prohibited from parking, standing, waiting or idling in the private streets . All parking will be on the Property or off-site.
12. **Road Repairs:** Responsible for the prompt repair and replacement of any cuts or damage to the private roadway surfaces as a result of construction activities (exclusive of normal wear and tear and general public use of the streets).
13. **Cleanliness:** Required to maintain a clean work-site and surrounding private streets, including removal of trash, dirt and mud and other debris from construction at the end of each work day. No construction related trash or materials will be deposited in the private trash cans belonging to adjoining properties.



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14. **Additional Insureds:** The FCHOA and the owners of 4507 and 4513 Foxhall Crescents will be named as additional insureds on all liability and construction insurance policies for the Property and project.

Thank you for your patience and continued participation in this Application.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

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John Patrick Brown, Jr.

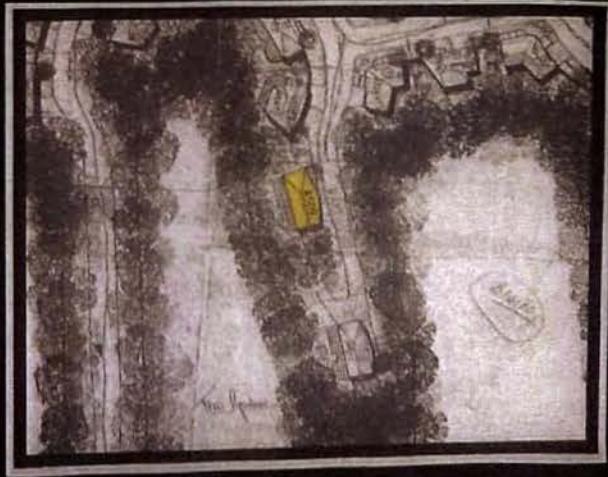
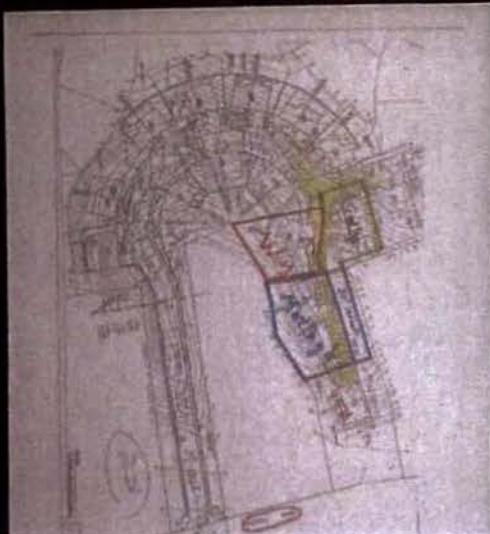
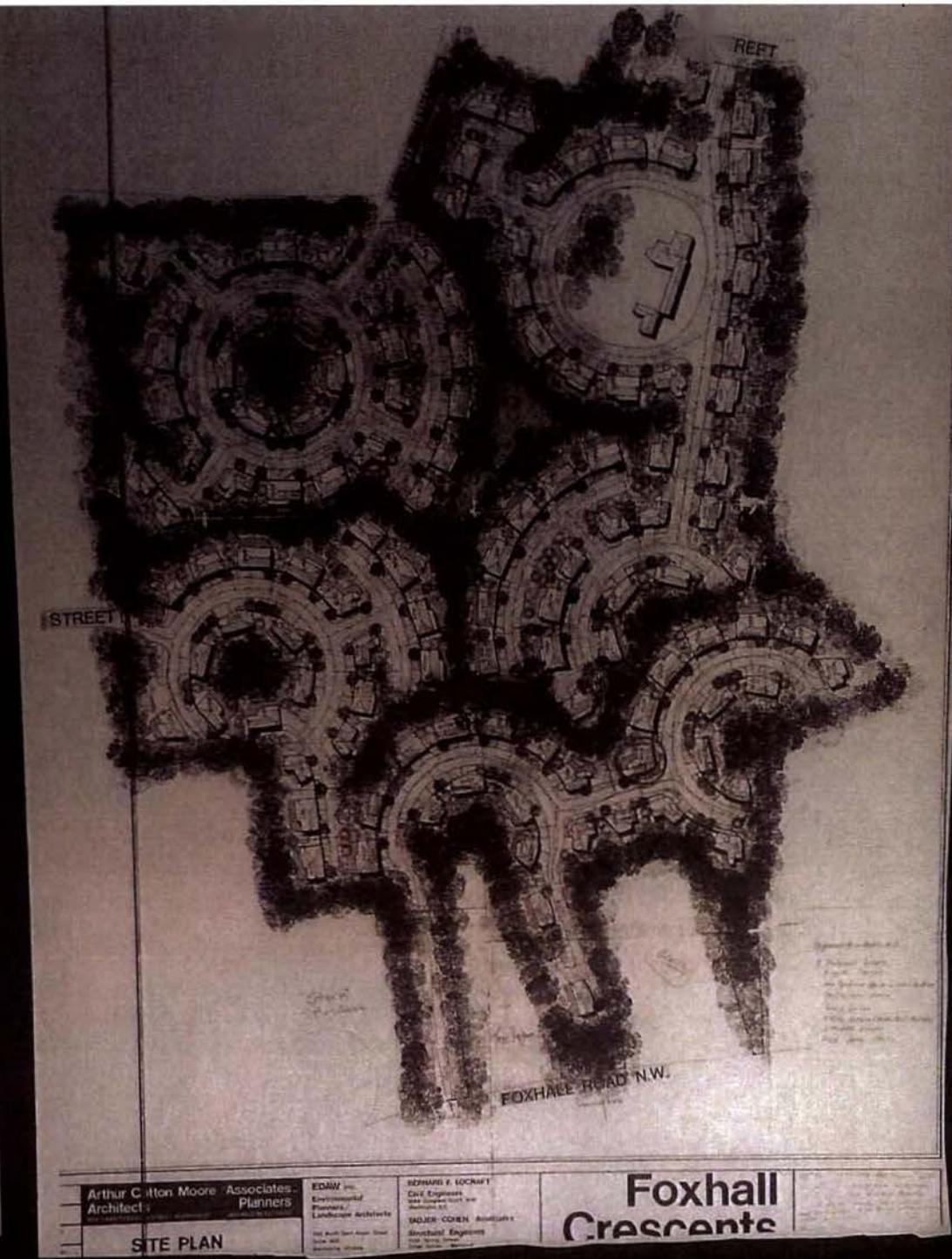
Enclosures:

Via Electronic Mail

cc: Gene E. Godley, President, Foxhall Crescents Homeowner's Association  
Andrew Wong, Foxhall Crescents Homeowner's Association  
Matthew Jessick, Office of Planning

# **EXHIBIT A**

Original Foxhall  
Crescents  
Development Plan



# **EXHIBIT B**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15340 of N.V. Homes Ltd. Partnership, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 2516 to allow two or more buildings on a subdivided lot, a variance to allow open space in front of the entrance to each principal building to be less than the required rear yard [Paragraph 2516.5(b)], a variance from the provision that ingress or egress shall not be included in the area of any theoretical lot, or in any yard [Paragraph 2516.6(a)], a variance from the provision that each means of vehicular ingress or egress to any principal building shall be twenty-five feet in width [Paragraph 2516.6(b)], a variance from the provision that a turning area shall be provided with a diameter of not less than sixty feet [Paragraph 2516.6(c)], a variance from the side yard requirements (Sub-section 405.9), a variance from the rear yard requirements (Sub-section 404.1), a variance from the lot width requirements (Sub-section 401.3) for a theoretical lot subdivision and construction of thirty-four single-family detached dwellings in an R-1-A District at premises in the 2500 Block of 49th Street, N.W., (Square 1397, Lots 888, 889, 892-917 and 968-992).

HEARING DATE: July 25, 1990  
DECISION DATE: July 25, 1990 (Bench Decision)

SUMMARY ORDER

The site of the application is located in Advisory Neighborhood Commission (ANC) 3D. ANC 3D, which is automatically a party to the application, filed a written statement in support of the application.

The Board duly provided timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to ANC 3D and to owners of property within 200 feet of the site.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR 2516. Additionally, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR 2516.5(b), 2516.6(a), 2516.6(b), 2516.6(c), 405.9, 404.1 and 401.3. No person or entity appeared at the

hearing or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

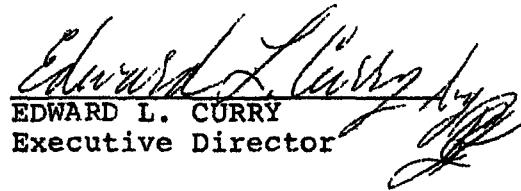
Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108, and that granting the special exception relief will be in harmony with the general purpose and intent of the Zoning Regulations and maps and will not adversely affect the use of neighboring property in accordance with the Regulations and Maps. The Board further concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107, and that granting the requested variance 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 Maps. It is therefore ORDERED that the application is GRANTED.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the Order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: 4-0 (John G. Parsons, Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to grant; Paula L. Jewell not present, not voting).

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

ATTESTED BY:

  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: AUG 17 1990

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15340order/LJP63

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



APPLICATION/APPEAL No. 15340

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order in this case, dated AUG 1, 1990 has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

John P. Brown, Jr., Esquire  
Wilkes, Artis, Hedrick & Lane  
1666 K St., N.W., Suite 1100  
Wash, D.C. 20007

Geoffrey P. Gitner  
1800 K St., N.W. Ste.600  
Wash, D.C. 20006

Frederick W. Kunkle  
6835 McLean Province Circle  
Falls Church, VA 22043

Peter Rinek  
8381 Old Courthouse Road  
Vienna, VA 22180

Joseph D. Murphy, Chairperson  
Advisory Neighborhood Commission 3-D  
P.O. Box 40846, Palisades Station  
Washington, D. C. 20016

Leslie Briggs  
2501 49th Street, N.W.  
Wash, D.C. 20007

Edward L. Curry  
EDWARD L. CURRY  
Executive Director

DATE: AUG 17 1990

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15340 of N.V. Ltd. Partnership pursuant to 11 DCMR 3108 and 3107.2, for a special exception under Section 2516 to allow two or more buildings on a subdivided lot, a variance to allow open space in front of the entrance to each principal building to be less than the required rear yard [Paragraph 2516.5(b)], a variance from the provision that ingress or egress shall not be included in the area of any theoretical lot, or in any yard [Paragraph 2516.6(a)], a variance from the provision that each means of vehicular ingress or egress to any principal building shall be twenty-five feet in width [Paragraph 2516.6(b)], a variance from the provision that a turning area shall be provided with a diameter of not less than sixty feet [Paragraph 2516.6(c)], a variance from the side yard requirements (Sub-section 405.9), a variance from the rear yard requirements (Sub-section 404.1), a variance from the lot width requirements (Sub-section 401.3) for a theoretical lot subdivision and construction of thirty-four single-family detached dwellings in an R-1-A District at premises in the 2500 Block of 49th Street, N.W., (Square 1397, Lots 888, 889, 892-917 and 968-992).

HEARING DATE: July 25, 1990

DECISION DATE: July 25, 1990 (Bench Decision)

DISPOSITION: The Board GRANTED the application by a vote of 4-0 (John G. Parsons, Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to grant; Paula L. Jewell not present, not voting).

FINAL DATE OF ORDER: August 17, 1990

ORDER

The Board granted the application by its Order dated August 17, 1990. By letter dated February 19, 1990, counsel for the applicant filed a timely request for modification. The requested modification would result in the permitted flexibility of the applicant to phase the development of the project over a period of up to ten years. There would be no change in the configuration of the project as originally approved by the Board. The applicant proposes to construct a model home at this time and to construct the remaining approved dwellings as individual purchase contracts are executed. It is not economically feasible, given the current real estate market, to construct all the approved dwellings at one time. The requested modification will allow the applicant to sell and construct approximately three or four dwellings per year in accordance with the pace of actual market absorption. There was no opposition to the proposed modification.

Upon consideration of the request for modification, the record in the case, and its final order, the Board concludes that the proposed modification does not alter the nature, size, shape and configuration of the project as initially approved by the Board. No additional zoning relief is required. The material facts relied upon by the Board in approving the application are still relevant. There was no opposition to the request for modification. Accordingly it is hereby ORDERED that the proposed MODIFICATION is APPROVED, SUBJECT to the CONDITION that construction of the project may be phased over a period of TEN YEARS. In all other respects the Order of the Board dated August 17, 1990 shall remain in full force and effect.

DECISION DATE: March 6, 1991

VOTE: 3-0 (Charles R. Norris, Carrie L. Thornhill and John G. Parsons to approve; Paula L. Jewell and Sheri M. Pruitt not voting, not having heard the case).

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

ATTESTED BY:

  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: APR 19 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15340Order/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15340

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 19 1991 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Cynthia A. Giordano  
Linowes & Blocher  
Techworld Plaza  
800 K Street, N.W.  
Suite 800  
Washington, D.C. 20001

John Patrick Brown, Jr. Esquire  
Wilkes Artis Hedrick & Lane  
1666 K Street, N.W.  
Suite 1100  
Washington, D.C. 20006

Frederick W. Kunkle  
6835 McLean Province Circle  
Falls Church, Virginia 22043

Leslie Briggs  
2501 - 49th Street, N.W.  
Washington, D.C. 20007

Joyce Waid, Chairperson  
Advisory Neighborhood Commission 3-D  
P.O. Box 40846  
Washington, D.C. 20016

Geoffrey P. Gitner  
1800 K Street, N.W.  
Suite 600  
Washington, D.C. 20006

Peter Rinkek  
8381 Old Courthouse Road  
Vienna, Virginia 22180

  
EDWARD L. CURRY  
Executive Director

DATE: APR 19 1991

15340Att/bhs

# **EXHIBIT C**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15882 of Gene and Patricia Godley, pursuant to 11 DCMR 3108.1, for a special exception under Section 2516 to allow construction of a detached single-family dwelling on a theoretical lot in an R-1-A District at premises 4509 Foxhall Crescents Drive, N.W. (Square 1397, Lot 960).

HEARING DATE: December 12, 1993  
DECISION DATE: January 5, 1994

ORDER

SUMMARY OF EVIDENCE:

1. The property which is the subject of this application is located in the northeast neighborhood of Foxhall, at 4509 Foxhall Crescents Drive, N.W.

2. The site is a theoretical lot and measures about 13,629 square feet. The lot is bounded by Foxhall Road to the east, Calvert Street to the south, 49th Street to the west and Dexter Street to the north.

3. The Foxhall Crescents is a residential subdivision of single-family detached dwellings constructed in the early 1980s. The surrounding land in the vicinity of the site consists of steep slopes with scenic views. Also located in the area are Battery Kemble and Wesley Heights parks. The nearby parklands provide a significant amount of open space that is close to the site. Neighborhood oriented commercial uses are located on the southern end of the community along MacArthur Boulevard.

4. The subject property is in the R-1-A District, which permits matter of right development of single-family residential uses for detached dwellings with a minimum lot area of 7,500 square feet, a minimum lot width of 75 feet, a maximum lot occupancy of 40 percent and a maximum height of three stories/40 feet.

5. The applicants are proposing to sell the 13,629 square feet property to two contract-purchasers who want to develop the property. The purchase and development of the property is conditioned upon the Board's approval of a special exception.

6. The applicants are requesting the special exception to develop the site with a three-story, detached single-family dwelling. The gross floor area of the structure would be approximately 7,040 square feet, and would accommodate four bedrooms as well as other living space. A three-car garage would also be constructed.

7. At the public hearing, the applicants testified that they bought their current residence at 4513 Foxhall Crescents Drive and the theoretical lot which is the subject of this application as a package from a bank. Buying their home required that they buy the lot, even though they did not need the lot. Since they did not need the lot, they examined the deed and documents of record to determine whether there are restrictions on the lot that would interfere with future resale of the lot and/or its development. There were no restrictive covenants on the lot hence they bought the package with the understanding that they would resale or develop the lot in the future.

8. The applicants stated that they have contracted to sell the lot for the construction of a single-family residence. They indicated that the contract to sell the lot is contingent upon the approval of the Board, since the property is classified as a theoretical lot.

9. The applicants presented the original layout plan for the Foxhall Crescents No. 1, to indicate that houses were originally planned for this area and that every house constructed on Foxhall Crescents is built on theoretical lots. Nevertheless, at the time, the original development was done, there was no requirement for Board approval of construction on theoretical lots. This is the first property in this area to come before the Board for approval.

10. The applicants pointed out that the house that the contract purchasers propose to build is their own residence. It meets and exceeds all zoning requirements for lot area, lot width, height, lot occupancy, parking space, front yard, rear yard and side yard. The house will be similar to other Foxhall Crescent homes. It will be constructed of limestone and brick and will be similar in size, scale, and details to the other Foxhall Crescent houses.

11. The applicants stated that the Foxhall Homeowners Association must approve the final plans of the contract purchasers' proposed house under the bylaws of the homeowners association to ensure that all requirements of the association are met and that the house will ultimately be in keeping with the character of the neighborhood. The applicants stated that their house and the house at 4507 Foxhall Crescents Drive are most affected by the construction because both of these properties abut parts of the property to be developed.

The applicants stated that the site is quite hilly, and because of the hilly terrain they and their neighbors at 4507 Foxhall Crescents Drive are very concerned about potential soil erosion and water seepage problems on their properties which are located downhill from the proposed site. To address these concerns, the contract purchaser contracted a licensed engineer to

study the surface water, conducted an analysis and made recommendations that would alleviate any problems that might arise. The details of that report can be found in the record as Exhibit No. 23.

12. In addressing the concerns raised by the Board about the preservation of the natural appearance of the area with regard to plants and trees, the applicants asserted that the contract purchasers are interested in maintaining the character and view of the area. The house has been designed to suit the topography of the land and also placed on the lot to save every tree possible. The applicants further testified about a landscaping plan prepared by a registered landscape architect firm. They added that a plan is in place to plant additional trees and plants that will add to the beauty of the property and reinforce the area's natural looking environment.

13. Furthermore, the applicants indicated that Advisory Neighborhood Commission (ANC) 3B supported and approved the proposal as submitted to them. They contended that the evidence presented at the hearing supports the fact that there will be no adverse impact to either the property itself or to the adjacent property caused by soil erosion or groundwater runoff.

14. By report dated December 15, 1993, and through testimony presented at the public hearing, the Office of Planning (OP) recommended conditional approval of the application. The OP indicated that the construction of a single-family dwelling on the site will be in harmony with the general purpose and intent of the Zoning Regulations and Maps. The OP recommendation for approval was subject to the following conditions to ensure that the proposed project does not adversely affect the use of neighboring properties:

- a. The applicants shall explore all reasonable options, and provide documentation to the Board, to ensure that the proposed project will not create a water problem for adjoining neighbors.
- b. The hours of construction shall be between 7:00 a.m. and 6:00 p.m., Monday through Saturday.
- c. Construction shall not be performed on Sunday, except in an emergency.
- d. All equipment, materials and receptacles associated with the construction shall be located on the premises, unless written consent is obtained from the Homeowners Association, or those surrounding property owners affected.

OP also noted that there are no indications of building restrictions on the site and that the building would be in keeping with the overall purpose and intent of the Zoning Regulations and Map, as well as the existing Foxhall Crescents development. The project meets and exceeds all zoning requirements for lot area, lot width, lot occupancy, parking space, front yard, rear yard, and side yard.

OP stated that, because of the site's hilly terrain, there are concerns about drainage, water runoff and ground water seepage. However, the OP relied on the analysis of the project's engineer and the finding that there would be no adverse water runoff impact on the adjacent lot. In addition, the proposed dwelling unit would occupy only 13 percent of the site (40 percent permitted); reducing the likelihood of water runoff and erosion.

The OP pointed out that based on the information submitted to the record of the case, the dwelling would be constructed of limestone and brick. It would also be similar in size, scale and details to other dwelling units in the Foxhall Crescents development. In addition, the Foxhall Crescents Homeowners Association will review the project's detailed architectural drawings, once they are developed. In the opinion of the OP the proposed project will not affect public safety in the area of the site.

15. The Office of Planning referred this application to the Department of Public Works (DPW) for review and comments. By memorandum dated December 16, 1993, DPW noted that the proposed use of the site will have no adverse impact on the local transportation system, and stated that it has no objection to the proposal.

16. No representative of Advisory Neighborhood Commission (ANC) 3D testified at the public hearing, but a letter from the ANC was read into the record of the case. The letter indicated that ANC-3D in meetings held on September 8, 1993 and October 12, 1993 voted 3 to 2 in support of the application. There were no other parties or persons in support of the application.

17. The neighbor who resides at 4507 Foxhall Crescents Drive adjacent to the site, was represented by her son who testified on her behalf in opposition to the application. The opposing neighbor stated that the site is a theoretical lot that has remained undisturbed since the completion of Foxhall Crescents in 1983 and should continue to remain undisturbed.

The opposition stressed the environmental fragility of the area and testified that an agreement was drawn up in 1979 between Rozansky and Kay Construction Company and the community. The agreement was to ensure that some areas would be set aside that are free of development and would be designated internal areas that are

to be left undisturbed. The opposition contended that the theoretical lot in question is in an area reserved for no development.

The opposition also testified that water seepage and soil erosion are of great concern because her home abuts the project site. The opposing neighbor pointed out that building the single-family home will result in serious water damage and soil erosion into her home. The opposition added that a number of existing homes in Foxhall Crescents have experienced and continued to experience serious water damage caused by construction of other homes built at higher elevations and in relatively close proximity to the affected homes. The opposing neighbor indicated that the proposed development is at a higher elevation than her home.

The opposition noted that water seepage and soil erosion have been a persistent problem in the area in spite of the extensive engineering analysis done before the development of Foxhall, and despite assurances, based on the developers engineers' assessment and efforts, that no water seepage or water damage would occur to homes located at the lower elevations.

The opposition also noted that construction of the dwelling will disrupt their neighborhood, which for 10 years has been a settled community, closed to construction vehicles.

18. At the close of the public hearing, the Board left the record open for the parties to address the issues that arose in the course of the hearing. The opposition was requested to submit a copy of the agreement between the Developer of Foxhall Crescents, Rozansky and Kay Construction Company and the Coalition for Planned Environmental Development, Inc., a copy of the restrictive covenants referred to in the opposition's testimony, information on drainage problems in the area, and evidence of actual water damage to individual properties in the Foxhall Crescents area.

19. By letter dated December 24, 1994, the opposition submitted the Agreement for Development of Rockefeller Estate, dated June 15, 1978, and a Supplemental Agreement for the development of the Rockefeller Estate, dated June 7, 1993. The letter also indicated that the allotment of six calendar days during Christmas season is inadequate time to gather data on expenses caused by water damage.

20. In a post-hearing submission dated December 30, 1993, the applicants responded that the opposition has produced no agreement stating that a house would not be built on the subject property. To the contrary, the agreement produced indicated that a house was intended to be built on the site.

The applicants contended that there is no evidence of any agreement recorded or otherwise that would prohibit the construction of a single-family residence on the subject lot. The documents that comprise the recorded covenants, conditions and restrictions on the property specifically show that a house was to be built on the lot in accordance with the terms and conditions set forth in the Bylaws.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. There are no restrictive covenants on the lot that prohibit construction of a single-family dwelling on the lot.
2. The applicants meet all of the substantive requirements of section 2516 of the Zoning Regulations.
3. The proposed single-family project meets and exceeds all zoning requirements for lot area, lot width, lot occupancy, parking space, front yard, rear yard and side yard.
4. The applicants, by commissioning engineering studies, have made reasonable efforts to ensure that ground water seepage, water runoff and soil erosion resulting from the hilly terrain of the area will not adversely impact adjacent homes.
5. The project will not impair public safety or the urban design of the area.
6. In the absence of documentary evidence of a restrictive covenant, depriving the applicants the right to develop on this lot may constitute a taking.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record, the Board concludes that the applicants are seeking a special exception to construct a three-story, detached, single-family dwelling on a theoretical lot in the R-1-A District. The granting of a special exception requires a showing through substantial evidence that the relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations, and that it will not adversely affect the use of neighboring property. The applicants must also meet the requirements of 11 DCMR 2516 regulating the development of theoretical lots.

The Board concludes that the applicants have met the burden of proof, and has complied with the requirements for special exception relief.

The Board concludes that the applicants' plans for the construction of the single-family residence meet the provisions of 11 DCMR Section 2516, and is in conformity with the character of the neighborhood.

The Board is of the opinion that the application is in harmony with the general purpose and intent of the Zoning Regulations and that the use is typical of the uses in the surrounding neighborhood.

The Board noted that the project will not create objectionable traffic or noisy conditions or other unsafe conditions that will adversely impact the neighborhood.

The Board further concludes that it has accorded ANC-3B the "great weight" to which it is entitled. In light of the foregoing, the Board hereby ORDERS that the application is GRANTED, SUBJECT to the following CONDITIONS:

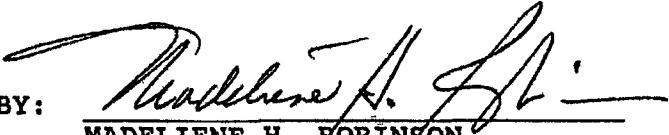
1. The proposed residence shall be constructed in a manner that shall control stormwater runoff and ground water seepage during and after construction.
2. The hours of construction shall be between 7:00 a.m. and 6:00 p.m. Monday through Friday.
3. Construction shall not be performed on Sunday, except in an emergency.
4. All equipment, materials and receptacles associated with the construction shall be located on the premises, unless written consent is obtained from the Homeowners' Association or those surrounding property owners.

VOTE: 4-0 (Craig Ellis, Angel F. Clarens and Laura M. Richards to grant; John G. Parsons to grant by absentee vote; George Evans not voting, not having heard the case).

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

ATTESTED BY:

  
MADELIENE H. ROBINSON  
Director

FINAL DATE OF ORDER: JUN 30 1995

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15882ord/VCE/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15882

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUN 30 1995 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

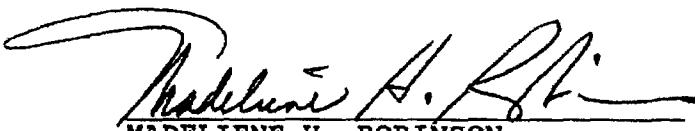
Mr. Teymour Kooros  
4507 Foxhall Crescents, N.W.  
Washington, D.C. 20007

Marion Guggenheim, Chairperson  
Advisory Neighborhood Commission 3D  
P.O. Box 40846  
Palisades Station  
Washington, D.C. 20016

Dr. Hind Sadek  
4507 Foxhall Crescents, N.W.  
Washington, D.C. 20007

Gene and Patricia Godley  
4513 Foxhall Crescents, N.W.  
Washington, D.C. 20007

Tim Ward  
1530 Hubbard Avenue  
Batavia, Illinois 60510-1488



MADELIENE H. ROBINSON  
Director

JUN 30 1995  
DATE: \_\_\_\_\_.