

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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STATEMENT OF
PARTIES IN OPPOSITION

APPLICANT: AMIR MOTLAGH
BZA CASE NO: 18708

HEARING: SEPTEMBER 30, 2014

PROPERTY: 4509 FOXHALL CRESCENT STREET, NW

PREHEARING STATEMENT OF THE PARTIES IN OPPOSITION

INTRODUCTION

Amir Motlagh (the "Applicant") has applied for a special exception pursuant to 11 DCMR §2516 at 4509 Foxhall Crescent Street, NW, also known as Lot 960 in Square 1397 (the "Property") to allow construction of a single-family detached dwelling on a theoretical lot in an R-1-A District at the Property (the "Application"). The following parties filed applications for party status in opposition on January 27, 2014: Foxhall Crescent Homeowners Association c/o Gene Godley, President ("FCHOA"); Andrew Wong, Resident at 4507 Foxhall Crescent Street, NW; Robert and Phoebe Sharkey, residents at 4514 Foxhall Crescent Street, NW; and Patricia Fry Godley, resident at 4513 Foxhall Crescent Street, NW (collectively referred to herein as the "Party in Opposition" or "Opposition"). See Case Log, Exhibits 26-29. While initially pro se, the FCHOA sought representation of counsel after the Applicant retained counsel. The Party in Opposition does not believe that the Applicant has satisfied his burden of proof and therefore submits that the Board should deny the requested special exception. Furthermore, the Applicant failed to identify all area of relief needed including several variances.

EXHIBITS

Exhibit A Photographs of Flooded Conditions

Exhibit B Communications Between Applicant and Opposition

BACKGROUND INFORMATION REGARDING THE PROPERTY

Foxhall Crescent is a residential neighborhood built in the 1980s. The FCHOA was incorporated in 1981 to provide for the maintenance, preservation, and environmental and architectural control of the sites and homes in Foxhall Crescent, and to promote the health, safety, and welfare of the residents. The Association's Members are the property owners in Foxhall Crescent. All Members are subject to the FCHOA Bylaws, last amended on May 4, 1994. Foxhall Crescent consists of a compact community of twenty-six homes. All homes front on a private road, commonly referred to as Foxhall Crescent Street, which is owned by the Members of the Association and mutually enjoyed pursuant to a recorded easement for ingress and egress.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18708
EXHIBIT NO. 44

The Property is located at the end of Foxhall Crescent Street, a horseshoe-shaped road. The Property has a lot area of 4,950 square feet. The Property has never been improved with a home and is heavily wooded. The lot has a very steep grade that presents runoff and drainage problems for existing Foxhall Crescent homeowners. *See Photographs of Inadequate Stormwater Management. **Preliminary Statement of FCHOA in Opposition at Exhibit 3**; *See also*, Photographs of Flooded Conditions at **Exhibit A**.*

The Applicant has failed to engage in a good faith effort to resolve the concerns of neighboring property owners. While a prior design was considered by the FCHOA, that design was never approved. The FCHOA has made their concerns very clear from the outset of the proposed project; however, much to their dismay, the Applicant has been largely unresponsive to their questions that have been repeated for years and dismissive of their concerns. In fact, the Party in Opposition had similar questions in March 2013 when the FCHOA denied the proposal as they have had throughout the zoning application process and continues to have now. *See Communications Between Applicant and Opposition at **Exhibit B***. The Applicant has repeatedly left emails and phone calls from the parties in opposition unanswered for months and denied requests to provide plans and other documentation. The Applicant, rather than addressing the concerns of the neighboring community members, has stubbornly moved forward without attempting to compromise. Rather than spending the necessary time to resolve the neighbor's concerns, the Applicant has refused to engage with the FCHOA and simply claimed that the proposed project will receive approval because of a prior BZA approval.¹

At the most recent ANC meeting, for example, the Applicant provided updated documents to the ANC, citing a reduced footprint and other changes to the architectural plans, without providing these crucial documents to the Applicant or filing them with the Board of Zoning Adjustment.

NATURE OF THE RELIEF SOUGHT AND STANDARD OF REVIEW

The Board of Zoning Adjustment is authorized under Section 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code §6 641.07(g)(2)(2001)), to grant special exceptions as provided in the Zoning Regulations. The Applicant is seeking a special exception pursuant to §2516 to allow construction of a single-family detached dwelling on a theoretical lot in an R-1-A District at the Property.

¹ The FCHOA acknowledges that BZA Case No. 15882 was previously approved by the BZA in 1993. Thus, the approval expired nearly 20 years ago. During that time, the problems associated with stormwater management and otherwise have been discovered and have worsened over time.

It is well established that the burden of proof is on the Applicant to demonstrate that the request for special exception relief satisfies the requirements of the regulation under which it is sought. *See Dupont Circle Citizens Assn.*, 390 A.2d 1009, 1010 (1978). In *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516 (1973), the Court of Appeals states, “The burden of showing that the proposal meets the prerequisite enumerated in the particular regulation pursuant to which the exception is sought **rests with the applicant.**” *Id* (emphasis added). This burden on the applicant is emphasized in *Dupont Circle Citizens Association*, where the Court of Appeals states that in the context of a special exception the Board must determine “whether the proposed exception satisfies the requirements of the regulation under which it is sought, and the burden of demonstrating this rests with the applicant.” *Id*. With respect to evidence, the Zoning Regulations state that “[i]n all appeals and applications, the burden of proof shall rest with the appellant or applicant. If no evidence is presented in opposition to the case, the appellant or applicant shall not be relieved of this responsibility.” 11 DCMR 3119.2.

The Board may grant a special exception only when, in its judgment, two general tests are met as well as the conditions specific to the special exception relief being requested. With regard to the general tests, the requested special exception relief must first “be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.” 11 DCMR §3104.1. Second, the zoning relief requested must “not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map” 11 DCMR §3104.1. With regard each of the special exception provisions, the Board must find that the Applicant has met its burden of proof with respect to each of the stated criterion, which here it clearly does not.

THE APPLICANT FAILS TO MEET BURDEN OF PROOF FOR SPECIAL EXCEPTION RELIEF

The Applicant fails to meet the burden of proof with respect to the two general tests associated with special exceptional relief and has not demonstrated that each of the special exception provisions have been adequately met. Based on a lack of harmony with the general purposes and intent of the zoning regulations and adverse impact on neighboring property, in tandem with the planning considerations outlined in §2516.10, the Applicant has not demonstrated that the required burden of proof has been met.

Section 11 DCMR §2516.10 requires consideration of the impact of the proposed development on the purpose and intent of the Zoning Regulations and other planning considerations including but not limited to, the following:

(a)(1)Public safety relating to police and fire concerns;(2)The environment, relating to water supply, water pollution, soil erosion, and solid waste management;(3) Public education;(4)Recreation; (5)Parking, loading, and traffic; (6)Urban design; and (7)As appropriate, historic preservation and visual impacts on adjacent parkland.

Of particular relevance here are issues related to public safety; the environment; parking, loading, and traffic; and urban design.

Public Safety. Despite multiple meetings between the opposition and the Applicant's prior counsel, as well as the Applicant directly, the Applicant has failed to articulate how they will address concerns regarding public safety and emergency vehicle access. For the past 20-30 years, Foxhall Crescent homeowners have parked their cars along the narrow 16-foot street leading to the Property, leaving only 7 feet of clearance in some areas. The proposed 16ft-wide ingress and egress, as opposed to the required 25-foot wide ingress and egress, is insufficient and will create adverse impacts on public safety. The proposed plans show no lighting creating an adverse impact on the safety of the surrounding owners. Furthermore the narrow ingress and egress impacts accessibility concerns for emergency and rescue vehicles.

The Environment. Another primary concern of the FCHOA is that the proposed development will negatively impact neighboring property owners as a result of damage from stormwater and surface water runoff at the Property, both during and after the proposed construction. Conditions regarding water runoff and management issues impacting neighboring property owners have become more severe over time. When the area experiences sustained rain fall, the entire surrounding area is flooded. Homes within Foxhall Crescent have recently experienced major issues with the flooding from storm water runoff. There has been a significant increase in surface water runoff from uphill properties visible during heavy rains. In fact, in two instances, the bottom floor of the residence at 4515 Foxhall Crescent was flooded from runoff from uphill properties during heavy rains. The FCHOA has also received complaints from 4517 and 4519 Foxhall Crescent citing increasing erosion and water runoff. Significant runoff from the Applicant's lot at 4509 Foxhall Crescent during heavy rains caused rocks, gravel, dirt and other debris to wash down the street immediately below the lot and into the storm water drainage system below. The debris blocks runoff into one grate that is an access point to the system and causes the runoff to overflow the curb directly in front of the door of 4512 Foxhall Crescent, NW. See Photographs of Flooded Conditions at **Exhibit A**. The Applicant's proposal for removal of a significant number of mature trees and a bare minimum effort to address the stormwater management condition grossly fails to address this adverse impact.

The stormwater management information provided by the Applicant is inadequate. The FCHOA's Preliminary Statement describes in detail the inadequacy of the 1993 geotechnical engineering report prepared for the prior owner, including that is over 20 years old, provides no evaluation of a current geotechnical survey needed to address control of subsurface water, and lacks recommendations for needed controls of surface water drainage from the Property. Moreover, the KJ & Associates feasibility study, dated September 10, 2014, is also deficient and does not address the fundamental questions repeatedly raised by the parties in opposition. First, the hydrology study lacks the methodology and actual metrics used in reaching the conclusions set forth. For instance, in the context of surface water runoff, the adequacy of the stormwater management system is a function of the size of the rainfall event. In other words, a system may be adequate for a 10-year rainfall event but not a 50-year rainfall event. Second, a yet-to-be completed soil filtration test in the future does not provide assurance that the tests will be done properly or the proper measures will be taken to prevent adverse impacts on neighboring property owners. Finally, reliance on the geo-technical report from 20 years ago at the time of the original subdivision plan does not reflect changes in the stormwater patterns over that time and does not take into consideration substantially modified regulations to address major flaws in the industry's prior understanding of how stormwater ought to be properly managed.

Parking, Loading, and Traffic. Without the statutorily required 25 foot ingress and egress and 60 ft turn around, the Applicant has not illustrated how it plans to manage traffic, loading, deliveries and FCHOA community access and potential use of the street. In BZA Order No. 17837, the Board clarified the standard regarding creation of single-family homes on theoretical lots stating that "[t]he first issue is safety, particularly from a police and fire standpoint." Considerations included whether the road was "wide enough for use by emergency and trash vehicles." Additional considerations were parking and traffic and whether the ingress/egress was complete or, as is the case in this Application, an incomplete dead end. See BZA Order No. 17837. The Applicant has yet to provide sufficient information on these issues to allow the Board to determine that the statutory requirements regarding parking, loading, and traffic have been met.

Urban Design. The proposed project represents poor urban design. Exacerbating existing problems regarding stormwater management by approving zoning relief for additional development uphill does not promote good planning. Furthermore, destruction of mature trees and shrubs to allow construction of a large single-family home up a steep slope means that privacy will be replaced by a home that looms over the existing homes. We contend that the proposed project is inappropriate from an urban design perspective.

(b) Considerations of site planning; the size, location, and bearing capacity of driveways; deliveries to be made to the site; side and rear yards; density and open space; and the location, design, and screening of structures.

Section 2516 provides specific site planning considerations which have not been met by the proposed project. Applicant's argument that all considerations of the variance request should be ignored based on the original BZA approval of Foxhall Cresents theoretical lots is misguided. The revision to the zoning regulations, recognizing the need to consider additional impacts on neighboring property owners with specific site planning conditions in mind, was meant to modify an inadequate provision. The planning considerations behind the size of the front yard, the width of the ingress/egress, stormwater management, and others have not been met and should not be ignored for the reasons outlined herein.

(c) Considerations of traffic to be generated and parking spaces to be provided, and their impacts;

Traffic conditions remain unaddressed. The proposed project creates a deadend, with no outlet, on a steep hill. The only alternative in many instances is to back out. Particularly when these issues are compounded with concerns regarding erosion and stormwater runoff, the traffic considerations are especially important. Furthermore, in winter months, the road will be an icy, steep slope presenting dangerous driving conditions.

(d) The impact of the proposed development on neighboring properties; and

The impact of the proposed development on neighboring properties is substantial. The FCHOA is concerned about the narrow width of the ingress and egress and road entering the Property. The FCHOA is also concerned that the project, as proposed, replaced the planned turnaround at the upper end of the Property to accommodate emergency vehicles and other traffic, such as snowplows, delivery trucks, and garbage trucks with an additional house. The FCHOA is also concerned about the additional burden placed on a stormwater management system that has already proven inadequate with the existing number of homes.

(e) The findings, considerations, and recommendations of other District government agencies.

The narrow 16-foot wide entrance to the property presents issues associated with ingress and egress. For these reasons, the Applicant fails to meet the burden of proof with respect to the two general tests associated with special exceptional relief and has not demonstrated that each of the special exception provisions have been adequately met. The Applicant's application is lacking with respect to how impacts regarding access of fire and other emergency vehicles, trash collection,

erosion and water runoff, stormwater management deficiencies, and other potential, adverse impacts on neighboring properties will be addressed.

THE ARCHITECTURAL PLANS FILED WITH THE APPLICATION
REQUIRE ADDITIONAL ZONING RELIEF

The Applicant is seeking a special exception under §2516 to allow construction of a single-family home on a theoretical lot in the R-1-A District at 4509 Foxhall Crescent Street, NW. Under §2516.1, two or more principal buildings or structures may be erected on a single subdivided lot by special exception, subject to several conditions. Those conditions include being in, or within 25 feet of, a residential district; additional filing requirements; use; height; bulk; open space requirements and others.

a. Section 2516.6

One such condition, under §2516.6, is that the BZA shall require that:

- (a) The area of land that forms a covenanted means of ingress or egress shall not be included in the area of any theoretical lot, or in any yard that is required by this title;*
- (b) 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, but need not be paved for its entire width;*
- (c) 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.), and*
- (d) The requirements of paragraphs (b) and (c) of this subsection may be modified if the Board finds that a lesser width or diameter will be compatible with, and will not be likely to have an adverse effect on, the present character and future development of the neighborhood; provided, that the Board shall give specific consideration to the spacing of buildings and the availability of resident, guest, and service parking*

11 DCMR §2516.6(a)

Section 2516.6(a) means that the internal, private access road cannot be part of any of the theoretical lots or their yards. In this instance, the ingress/egress goes straight through all of the theoretical lots, including the proposed lot. Thus **variance relief under §2516.6(a) is required to allow the ingress/egress to go through the theoretical lot.**

11 DCMR §2516.6(b)

2516.6(b) requires that vehicular ingress/egress be 25 feet for its entire length. In this instance, the ingress/egress is roughly 16 feet. Thus 2516.6(b) is not met. Thus **variance relief under §2516.6(b) is required.**

11 DCMR §2516.6(c)

2516.6(c) requires that in an instance where there is only one entrance or exit from the internal Foxhall Crescents private road to roads outside the theoretical subdivision, a turning area of not less than 60 feet in diameter must be provided. In this instance, there is no turning area provided and thus 2516.6(c) is not met. Thus **variance relief under §2516.6(c) is required.**

11 DCMR §2516.6(d)

Section 2516.6(d) states that the requirements of (b) and (c) “may be modified” if the Board finds that a lesser width or diameter will be compatible with, and will not be likely to have an adverse effect on, the present character and future neighborhood . . .” It is not exactly clear whether (d) allows special exception relief from (b) and (c). The Board has granted variance relief, rather than special exception relief from 2516.6(a)-(c), on several occasions. *See* BZA Case No. 15340 (variance relief from §2516.6(a)-(c) to allow a theoretical lot subdivision and construction of 34 single-family detached dwellings). Furthermore, BZA Order 17837 refers to relief from §2516.6(b), for front yards less than the minimum 25 feet, as a *variance* to narrow the private road. BZA Order 17837, p9. That being said, the Board has also granted special exception relief from these provisions in other instances. Thus, while case law is mixed on this issue, we contend that variance relief is required from (b) and (c). The special exception relief requested by the Applicant is therefore insufficient.

b. Section 2516.5

A second condition, under §2516.5, states that in instances where there is not street frontage, open space in front of the entrance shall be required that is equivalent to the rear yard requirement, which in the R-1-A district is 25 feet. A “street” is defined as a public highway designated as a street, avenue, or road on the records of the Surveyor of the District of Columbia. Thus the ingress and egress to the house is not a street because it is private. Under §2516.6(a), the ingress and egress shall not be included in the area of any theoretical lot or required yard. Read together, that means there must be at least a 25 foot open space in front of the house without ingress and egress running through it. *See* BZA Case No. 17429 (requiring a 25-foot front yard). *See also* BZA Case No. 17837 (requiring a 25-foot front yard from the private road). In this instance, what the Applicant has labeled a 45-foot “front yard” (*see* BZA Case No. 18708, Ex. 3, attached hereto) does not meet the

requirements of the section because there is an ingress and egress that runs through it and the distance between the house and the ingress and egress is less than the 25 feet required (*see* BZA Case No. 18708, Ex. 10, attached hereto). Therefore, **variance relief is required from 2516.5.**

c. Section 2516.4 (in reference to 2507)

Section 2516.4 states that the number of buildings permitted under §2516 is not limited provided that the Applicant meets all the requirements of the chapter including limitations on structures on alley lots pursuant to §2507. That §2507 is included, regarding building on alley lots, is an indication that the private ingress and egress is treated as an alley for purposes zoning.

Major use limitations on alleys, including use only as a single family home or artist studio by special exception, are in fact met by the proposed single-family home. However, under §2507.4, the height of a structure erected or constructed on an alley lot shall not exceed the distance from the opposite side of the abutting alley to the outside wall of the structure nearest the alley. The distance from the opposite side of the abutting ingress/egress to the wall facing that ingress/egress is not provided in the documents filed by the Applicant. However, the ingress/egress itself is only roughly 16 feet and the space between the ingress/egress and the proposed house is only about 3 feet. Thus, the house would be limited to just 20 feet in height. The proposed three-story house is 35 feet in height. Therefore, **variance relief is required from §2516.4 as it refers to §2507.**

d. Summary

Based on the above, variance relief is required (1) under §2516.6(a) regarding the private access road being part of a theoretical lot; (2) under §2516.6(b) and (c) regarding street width and turning area; (3) under §2516.5 regarding open space in front of a structure; and (4) under §2516.4 (in reference to §2507) regarding construction on an alley lot. Therefore, the self-certified special exception relief requested is insufficient and plans consistent with those filed in BZA Case No. 18708, even with the special exception approval requested, do not comply with the Zoning Regulations. The FCHOA has notified the Applicant of these deficiencies. FCHOA's counsel has met with both the Office of Planning and Zoning Administrator, and both share the FCHOA's concerns with the insufficiency of the special exception relief requested.

WITNESSES

The following witnesses will appear in opposition:

1. Gene Godley, on behalf of FCHOA;
2. Patricia Godley, resident of 4513 Foxhall Crescent, NW;

- 3 Andrew Wong, resident of 4507 Foxhall Crescent, NW;
- 4 Robert E Sharkey, resident of 4514 Foxhall Crescent, NW,
- 5 Phoebe B Sharkey, resident of 4514 Foxhall Crescent, NW, and
- 6 Reserve the right for additional rebuttal witnesses.

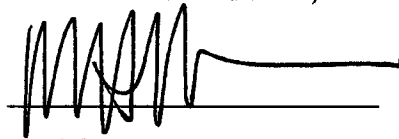
CONCLUSION

In conclusion, for the reasons stated herein, the FCHOA seeks (1) denial of the special exceptional Application and (2) consideration of the proposed project under the area variance standard

Sincerely,

GRIFFIN, MURPHY,
MOLDENHUAER & WIGGINS, LLP

By

A handwritten signature in black ink, appearing to read 'Meredith H. Moldenhauer', written over a horizontal line.

Meridith H. Moldenhauer
Eric M. Daniel
1912 Sunderland Place, NW
Washington, DC 20036
(202) 429-9000

Exhibit A







Exhibit B

FOXHALL CRESCENT HOMEOWNERS ASSOCIATION

March 1, 2013

Sent by Email & Certified Mail*

Mr. Amir Motlagh
201 Berry Street, SE
Vienna, VA 22180

amirmotlagh@hotmail.com

Subject: Proposal to Build on 4509 Foxhall Crescent, Washington, DC 20007

Dear Mr. Motlagh:

At the direction of the Board of the Foxhall Crescents Homeowners Association (the Board), the Foxhall Crescents Homeowners Association Architectural Committee (the Architectural Committee) reviewed your proposal, and at your request presented your proposal to the Board at a meeting on Wednesday, February 13, 2013. As owner of the 4509 lot, your proposal which was comprised of: 1) your January 22, 2013 4-page cover letter and 3-page project schedule, 2) additional email correspondences dated February 7th, February 10th (2 emails), and February 12, 2013, and 3) eight page Arch D size drawings dated January 8, 2013 titled "4509 Foxhall Crescents Drive N.W.". The Architectural Committee also met with you and your builder (Ed Jacobsen) at my house on Wednesday, January 30, 2013 to discuss your proposal. After review by the Board they decided not to accept your proposal as presented and to formally delegate review of any further information to the Architectural Committee for their recommendation to the Board.

The Board further gave guidance to the Architectural Committee that the Board only makes an approval on a complete proposal and does not provide approvals to "preliminary" or "conceptual" proposals as there is a need to evaluate the complete proposal which includes not only house design plans, but supporting engineering technical studies and documentation, financial commitments including performance bonding, qualifications of the builder (including financial statements and Dun & Bradstreet Report), government approvals, etc.

We remain prepared to meet with you to provide guidance, identify and address the concerns that have been raised by other Members of the Foxhall Crescent Homeowners Association (FCHA), and answer any other questions you may have. However please understand that it is totally incumbent upon you as the sponsor and owner of the 4509 lot to provide a complete proposal that addresses the concerns of the FCHA including concerns that have been raised in previous correspondence with you and in our discussions at the Architectural Committee Meetings on January 8, 2013 and an earlier meeting on December 12, 2011.

In order to keep these issues in the proper Architectural Committee and FCHA perspective, the following is a summary of the sequence of events and issues raised:

1. Prior to the December 12, 2011 Architectural Committee meeting with you and Mr. Ed Jacobsen, an email correspondence providing guidance as to the information needs was emailed to you on November 9, 2011.
2. Subsequent to our December 12, 2011 meeting, there were several email exchanges (February 15, 2012 and March 11, 2012) between Mr. Motlagh and the Architectural Committee. The contents included a reminder that no work on 4509 could begin until all the approvals and permits had been granted including the FCHA's approval and that of any other governing jurisdictions including the District of Columbia. The March 11, 2012 email also provided guidance for building the type and size of the "Arthur Cotton Moore" house described in the FCHA By-laws master plan for your lot, which would be similar in design to all other houses in the FHCA.

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* U.S. Postal Service Certified Mail with Return Receipt tracking number 7008-1300-0002-4664-7132
This document does not constitute a contract nor legal agreement between FCHA and Mr. Motlagh.

FOXHALL CRESCENT HOMEOWNERS ASSOCIATION

3. In the January 30, 2013 meeting with the Architectural Committee, I presented additional FCHA guidance to assist with your proposal preparation with respect to the following:

a. FCHA Governance: There is a recognition that there are numerous governing bodies with legal mandates having different roles in governing this project. These governing bodies have unique sets of responsibilities, not necessarily coordinated with each other. In the FCHA case, the primary responsibility of the Board is to enforce the FCHA By-laws consistent with their fiduciary responsibility to all the Members of the FCHA. The 4509 project is on FCHA jurisdictional land and affects the Members and their property rights directly.

b. FCHA Evaluation Process: The Architectural Committee has been formally charged by the Board to perform the evaluation of your proposal and make recommendations to the Board for courses of action.

c. Proposal: The 4509 project is unique in scope and size not seen since the FCHA development was originally built 30 years ago. Since that time FCHA has evolved into a settled community, with FCHA Members making significant personal financial commitments to the well being of their properties and by extension, the FCHA. For a multi-million dollar project of this scope, the FCHA will require a legal contract, with terms and conditions to be negotiated, between the FCHA, the Homeowner/Member (Mr. Motlagh) and the builder. The terms and conditions of the contract will be negotiated after the Architectural Committee and the Board are satisfied with the proposal and qualifications provided. Included in the terms will be project performance bonding with the FCHA as obligee (e.g., surety bond), with terms to be negotiated, to ensure the project is executed as proposed with financial penalties for failure to perform. An assessment fee will also be assessed by the FCHA in order to retain professional expertise for evaluating and advising FCHA on the project.

d. FCHA By-laws - Member Easement Rights: In ARTICLE VIII of the By-Laws, FCHA Members are granted easement of enjoyment rights to certain areas within the FCHA as identified in the FCHA By-laws master plan. Those areas typically are the street and sidewalk in front of Members houses; such areas are technically owned by a Member, even though it may be paved with a street. Members are not allowed to enter onto the side yards and backyards of each lot as this would constitute trespassing in District of Columbia laws.

In the case of 4509, the lot appears to require a road be situated as depicted in the FCHA By-laws master plan with Members having an easement of enjoyment as described in the By-laws.

A part of the road bordering your lot is a portion of a cul-de-sac at the terminus of the road. An amendment to the By-laws may be necessary to address the FCHA Members' easement rights for that portion of the cul-de-sac.

As a member of the Board and Chairman of the Architectural Committee, please contact me if you have any questions about the decision. You may submit another proposal consistent with the terms and conditions set forth above. Our continuing discussions do not constitute approval to re-grade, cut trees or take any other action that requires approval of the Board.

Sincerely,



Andrew Wong
Chairman of the Architectural Committee and FCHA Board Member
Foxhall Crescent Homeowners Association
Washington, DC 20007

From: Godley, Gene <Gene.Godley@bglip.com>
Sent: Wednesday, June 04, 2014 7:03 AM
To: 'John Patrick Brown Jr.'
Cc: Penny Pagano (penny.pagano@verizon.net), Meredith Moldenhauer, Andy Wong (andy.wong2@yahoo.com), Janet Whitman (jpwhitman@aol.com), kperoff@gmail.com, Robert & Phoebe Sharkey (robshrky@aol.com)
Subject: Today's Meeting with Foxhall Crescents HOA Board

Pat

The Board of the Foxhall Crescents Association looks forward to meeting with you this afternoon at 4 pm. Since the last time we met was January 17, the Board thought it would be helpful to concentrate on a few of the most pivotal issues to best utilize our limited time. The Board would like for you to address the following:

- (1) Since the street as it enters and proceeds up the subject property is only 16 feet wide, as opposed to the requisite 25 feet, what is your proposal?
- (2) The regulations and the original Foxhall plans provide for a turnaround at the upper end of the street to accommodate emergency vehicles and other traffic, such as snowplows and garbage trucks. What is your proposal?
- (3) The by laws require Board approval to change drainage, and we continue to be deeply concerned about the potential for increased surface water and storm water runoff from the property and potential damage to other homeowners. What are your further facts and proposals demonstrating this will not happen?
- (4) The restrictive covenants and by laws prohibit a change in grade of more than 6 inches, without restoring to the original grade, what are your thoughts and proposal?

We look forward to discussing these initial issues.

Gene, on behalf of the
Board of Directors of the Foxhall Crescents Homeowners Association

From: Ed Jacobsen [<mailto:jacblids@verizon.net>]
Sent: Tuesday, August 26, 2014 1.32 AM
To: Godley, Gene
Cc: "Amir Motlagh", sharifisean@gmail.com
Subject: August 20 meeting

Mr. Godley,

This email is a follow up to our August 20th meeting at Chatel Real Estate. You began the meeting with what you saw as the three important issues regarding our proposal. If I may summarize, they were as follows: (1) 16 ft road and turn-around, (2) Hydrologist & Hydro-geologist studies; and (3) Change in grade

Regarding the first issue, we will re-submit our proposal to include a 16 ft wide road and turn-around. Also, the new proposal will include a house with the same size footprint as the original approved house.

Regarding the studies, we are in the process of ordering those studies and we will deliver the results to the FCHOA

Regarding the third issue of changing the grade, your attorney suggested it may require a change to the by-laws. It is our understanding that the board has approved other projects with grade changes. We are researching this issue and will follow up with the board about how we intend to address it. In the meantime we want to focus on the first two issues, and leave this item for a later time

Thank you again for taking the time to meet with us and giving us your input.

Best,

Ed Jacobsen