

September 15, 2014

BY ELECTRONIC MAIL

Mr. Lloyd J. Jordan, Esq
Chairperson
Board of Zoning Adjustment
441 4th Street N.W. Suite 210
Washington, D.C. 20001

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

Dear Mr. Jordan and Fellow BZA Members

I am Amir Motlagh, owner of the above property, and Mr. Edwin F. Jacobsen is the Contract Purchaser of the Property,.

In preparation for the Board's meeting, we wanted to provide this additional background information to facilitate the review of this BZA application

The following is an excerpt from a Letter to ANC 3D dated May 7, 2014 from John Patrick Brown of Greenstein, DeLorme & Luchs, which lays out appropriate history of the property, as it pertains to the previously approved BZA No. 15882 and other issues Exhibit A:

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 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.

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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 49th 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.
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.

	<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%

We 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. **StormWater 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.
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
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.

End Excerpt

Now, we wanted to further update the BZA on current status of pending issues associated with the property. The following is an excerpt from a Letter to ANC 3D dated September 8, 2014, which discusses further updates and summary issues. Exhibit B

Mr Godley proceeded to obtain both ANC and BZA approval prior to obtaining approval from the Foxhall Crescents Homeowners Association (FCHOA), and we are following the same path The issues of the FCHOA are outside the purview of the ANC and BZA

Mr Jacobsen, a reputable builder would like to build the proposed home on my lot. We have been in discussions with the FCHOA for over two years It is clear that Mr Godley wanted approval of a home built on the 4509 lot when it suited his purpose, but upon selling the lot, he and other surrounding neighbors have resisted the notion of a home being built on the lot, even if it is the exact home that was

intended to be built on that lot. Thus, our efforts to meet the needs of the FCHOA board, which Mr. Godley chairs, have been difficult, but we believe agreement is possible.

Update on current communications with the FCHOA on major issues

- **Stormwater/Drainage concerns** – The engineering/drainage study presented with BZA 15882 has been updated and reviewed by two engineering firms. In addition, a proposed site grading plan package with infiltration trench and an accompanying letter from the civil engineer were presented to the FCHOA. Both were rejected as "insufficient" with no reason provided. The FCHOA then demanded that only an engineer approved by them be hired.
- **Driveway/Turnaround extension**– FCHOA stated that a driveway turnaround was mandated, even though none was proposed in Approved BZA 15882. Original Master Plan called for a modified driveway turnaround, if more than one lot was served, which is not the case here. DCOZ Office of Planning has preliminarily said that no turnaround is necessary and that saving the existing trees should be done where possible.

House size concerns - FCHOA has asked that house size be same as originally planned for that lot on approved Development plan. Proposed house size is approximately 5,304 sf, which is considerably less than the house proposed and approved in Approved BZA 15882.

In summary, it is asked that the **ANC Commissioners** recognize the following

- **That HOA approval is not a prerequisite for BZA/ANC approval. The HOA issues are outside the purview of the ANC.**
- **We will continue to work with the FCHOA to reach an agreement.**
- **We are asking for approval for a house exactly where it was always planned, both when the neighborhood plans were originally approved and again by the ANC and BZA in 1993-94.**
- **The house being proposed meets or exceeds all the tests and requirements applicable for construction.**
- **Building this home will have no impact on the neighborhood, as it was always intended to be there.**
- **There will be some disruptions during construction, but these can be mitigated, and we are willing to take the measures necessary.**
- **There is no change in circumstances between the ANC and BZA's previous approvals and now.**
- **The arguments being raised here are not well-founded and stem from a desire for the house not to be there at all.**

End Excerpt

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

Very truly yours,

Amir Motlagh

Enclosures