

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18708 of Amir Motlagh, as amended,¹ pursuant to 11 DCMR § 3104.1 for a special exception under § 2516, and pursuant to 11 DCMR § 3103.2 for area variance relief from the requirements of § 2516.5(b), to allow the construction of a one-family detached dwelling on a theoretical lot under § 2516, in the R-1-A District at premises 4509 Foxhall Crescents Drive, N.W. (Square 1397, Lot 960).

HEARING DATES: February 11, 2014, July 8, 2014, September 30, 2014,
October 28, 2014, and November 5, 2014

DECISION DATE: November 5, 2014

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 (original) and 51 (revised).)

The Board of Zoning Adjustment (the “Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 3D, which is automatically a party to this application, and to owners of property within 200 feet of the site. ANC 3D submitted a letter dated September 29, 2014 stating that at its September 10, 2014 meeting, at which a quorum was present, the ANC voted 8-0-1 to take no position on the application. (Exhibit 49.)

The Office of Planning (“OP”) submitted a timely initial report (Exhibit 47) as well as a supplemental report (Exhibit 53) indicating that it could not recommend approval of the application because it wished to have more information regarding alternate footprints for the proposed house for the purpose of saving a 47” diameter tulip poplar tree on the Property. The Board considered and has given great weight to OP’s objection regarding the tulip poplar tree, but the Board was satisfied that the Applicant had done adequate preparation in regard to tree preservation by seeking professional evaluation of the project by a respected certified arborist

¹ The Applicant amended the application to include variance relief from § 2516.5(b) (Exhibit 51) and this amendment is reflected in the caption.

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and by presenting a tree preservation plan prepared by that arborist. The Board also acknowledged that the tree preservation plan contemplated a net loss of only two trees as a result of the construction of the new house.

The District Department of Transportation filed a timely report dated January 27, 2014 expressing no objection to the application. (Exhibit 30.)

There was one party status application in support of the application from Jody Westby of 4501 Foxhall Crescents Drive, N.W. (Exhibit 36). There were four requests for party status in opposition to the application from the following: Foxhall Crescents Homeowners Association (Exhibit 26); Patricia Godley of 4513 Foxhall Crescents Drive, N.W. (Exhibit 27); Robert & Phoebe Sharkey of 4514 Foxhall Crescents Drive, N.W. (Exhibit 28); and Andrew Wong of 4507 Foxhall Crescents Drive, N.W. (Exhibit 29). The Board granted party status to all opposition party applicants and consolidated the parties into one party under the name "Foxhall Crescents Homeowners Association, Inc." (the "Association"). The Association, represented by counsel, subsequently withdrew its party status subject to a settlement agreement entered into between the Association and the Applicant. (Exhibits 62 (Agreement) and 65 (Appendix A). Other than ANC 3D and the Association, there were no other parties to the proceedings.

A letter from the Embassy of the Federal Republic of Germany, located at 1900 Foxhall Road, N.W., expressed concerns with the proposed application. (Exhibit 54.) A letter in opposition from the resident of 4512 Foxhall Crescents Drive, N.W. was filed in the record. (Exhibit 58.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 2516. The Board also required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for variance relief pursuant to § 3103.2 from the strict application of the front yard requirements under § 2516.5(b).

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking the special exception relief, the Applicant has met the burden of proof pursuant to 11 DCMR §§ 3104.1 and 2516, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board also concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2, for variance relief from § 2516.5(b), that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions

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of law. The waiver will not prejudice the rights of any party, and is not otherwise prohibited by law. It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE USER AGREEMENT AT EXHIBIT 62 AND PLANS AT EXHIBITS 10, 63, 65, AND 66 AND THE FOLLOWING CONDITIONS:**

1. **Communication**: The Applicant shall provide an established point of contact for construction who shall be responsible for providing an updated schedule and timetable for the project, weekly updates and notice of any significant events. The contact shall be available by cell phone and electronic mail and shall respond promptly to any inquiries and complaints.
2. **Storm Water Management (“SWM”)**: The Applicant shall provide a DDOE-approved system, including non-required infiltration trench; utilization of existing SWM system; and provide coordination with 4507 Foxhall Crescents’ storm water discharge pipe on the Property.
3. **Landscaping Plan**: The Applicant shall implement the approved Landscaping Plan as provided in Exhibit 63, including tree removal and new plantings.
4. **Erosion and Sediment Control**: During construction, the Applicant shall implement DDOE-required erosion and sediment control methods.
5. **Staged/Escorted Heavy Construction Traffic**: The Applicant shall ensure that excavation and large/heavy construction vehicles and deliveries shall be staged and escorted to the Property to avoid blocking the roadway.
6. **Limits on Construction Vehicles**: The Applicant shall limit construction vehicles to Monday – Friday, 8:00 a.m. to 5:00 p.m.
7. **Hours of Construction**: The Applicant shall limit the hours of construction for Excavation, Site Work and Shell to Under Roof to Monday – Friday, 8:00 a.m. to 5:00 p.m. and Interior Build Out: Monday – Friday, 7:00 a.m.-7:00 p.m.
8. **Construction Vehicles**: The Applicant shall ensure that construction vehicles are maintained on the Property; there shall not be any Standing or Parking on private streets, except during actual operation or delivery.
9. **Construction Equipment and Vehicles**: All construction equipment and vehicles shall be stored and maintained on the Property.
10. **No Dumpster**: The Applicant shall ensure that no dumpster shall be located or maintained on the private streets.

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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 on the Property or off-site.
12. **Road Repairs:** The Applicant shall be 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:** The Applicant shall be 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 Foxhall Crescents Homeowners Association ("FCHOA") and the owners of 4507 and 4513 Foxhall Crescents shall be named as additional insureds on all liability and construction insurance policies for the Property and project.

VOTE: **3-0-2** (Lloyd J. Jordan, Marnique Y. Heath, and Michael G. Turnbull to APPROVE; S. Kathryn Allen and Jeffrey L. Hinkle not present, not voting).

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

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

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 11, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS

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PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.