

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

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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.

BOARD OF ZONING ADJUSTMENT  
District of Columbia

Board of Zoning Adjustment

District of Columbia

CASE NO. 18708

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EXHIBIT NO. 9

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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

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BZA APPLICATION NO. 15882  
PAGE NO. 3

2013 NOV 22 PM 2:41

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.

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BZA APPLICATION NO. 15882  
PAGE NO. 4

2013 NOV 22 PM 2:41

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

2013 NOV 22 PM 2:41

BZA APPLICATION NO. 15882  
PAGE NO. 5

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.

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2013 NOV 22 PM 2:41

BZA APPLICATION NO. 15882  
PAGE NO. 6

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.

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BZA APPLICATION NO. 15882  
PAGE NO. 7

2013 NOV 22 PM 2:41

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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BZA APPLICATION NO. 15882  
PAGE NO. 8

2013 NOV 22 PM 2:41

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

ATTESTED BY:

  
MADELIENE H. ROBINSON

Director

JUN 30 1995

FINAL DATE OF ORDER:

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.

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2013 NOV 22 PM 2:41



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:

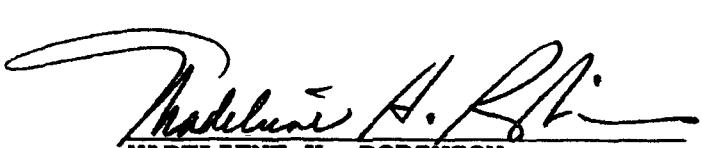
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Director

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DATE: \_\_\_\_\_.