

Furthermore, contrary to the assertions in the ANC3D's letter to the BZA that, even though the BZA approved removal of this exact tree in 2014 over the objections of the Office of Planning, this should have no bearing on the cutting of the tree, in fact the BZA's actions and the DDOT's actions and the grandfather rules in the statute have a strong bearing, both legally and equitably, on this issue.

Third, there should be serious concern on the part of the ANC3D as to how the DDOT has handled this matter. Now that the tree has been cut down, the evidence strongly shows that it was diseased. In fact, it looks exactly like a heritage tree that was on the property located at 4774 Dexter Street (backing onto 4522 and 4524 Foxhall Crescents properties) that the same DC Arborist gave a permit to remove (and was cut down) during the same time period that the arborist was denying Mr. Zumot a permit. It has the same blackening of the wood and the same hole in the stump that goes far underground, as was shown in the pictures that Ms. Westby presented at the May 11 meeting.

Moreover, the tree service person who cut down the heritage tree on Dexter Street also examined the 4509 heritage tree shortly prior to when it was cut down and saw very similar evidence of disease. That day he was prepared to write a statement, but the next day he backed out, saying he was fearful that DDOT would retaliate against him for challenging their position and that would hurt him and his business. This same fear has been expressed by several other arborists.

This is deeply concerning and one would hope that instead of falsely claiming Mr. Zumot has "unclean hands," the ANC3D would be more concerned about the manner in which the DDOT is applying the law and using its power. In fact, one should seriously question Mr. Eustler who claims that they must interpret the law as only allowing them to look at what is on the property now – not its intended purpose – in determining whether a heritage tree is hazardous. This is nonsense; a house is proposed to be built with a heritage tree on a slope leaning over the home, and the lives of the persons at risk in that home should not be considered? When should their lives be considered? When the tree falls?

The ANC3D's position obligates it to seek to have any property owner who is prevented from using their property for its intended purpose due to the city not allowing removal of a heritage tree to be compensated for a taking of their property, or, alternatively, to seek to have the law simply not apply to Ward 3D where the canopy coverage already well exceeds the City's goal for 2032.

Instead, the ANC3D is seeking to have the BZA illegally "deny the applicant's special exception and variance relief ... or at a minimum postpone action on this application until the full Council has acted on the Committee's bill and thereby expresses the will of the Council with regard to persons who willfully cutting down Heritage trees is clear." (In other words, by seeking this postponement, should we assume that the ANC3D is engaged in willful and deliberate efforts to

seek to have this law illegally apply retroactively to Mr. Zumot? How else can one interpret this recommendation to the BZA?)

No convincing evidence of the ANC3D's supposed "unclean" hands policy has ever been provided. In fact, it is contradicted by Mr. Srique's statements just before the vote was taken on this matter about the need to address the "broader issue" of what he viewed as people taking an action and paying a fine as a "cost of doing business." His remarks certainly suggest that the statements in the ANC3D letter that it is the "position" of the ANC3D that "where an applicant seeking relief from the District has, in association with the same property and with the objective of constructing a house that requires a special exception and variance, such an applicant should not be afforded the benefit of the BZA's services and instead should have the requested relief denied" are manufactured at best. Exactly when was the position adopted, where has it been applied in the past and where is it stated on the ANC3D's website.

As Ms. Giordano stated in her testimony, there is no "unclean hands" doctrine codified in the BZA regulations, and they do not have the authority to "punish" the applicant in the manner that the ANC3D is urging them to do.

The law requires Mr. Zumot to pay a fine for cutting down the Heritage Tree without a permit, which he will do if required. However, the law also allows Mr. Zumot to appeal the fine, and that is precisely what he is now doing. Given the clear evidence before it that the Heritage Tree in fact was diseased, this appeal is something the ANC3D should be supporting; instead, the ANC 3D is aiding and encouraging the BZA to take action that as Ms. Giordano has pointed out is clearly illegal.

Lastly, the ANC3D claims in its letter that "storm water problems have been reported by at least one adjoining [sic] property owner in the past." Not only is this hearsay, but as the evidence Ms. Westby provided in her presentation (the key parts of which had been provided to Mr. Elkins in advance of the hearing), the allegations of run off problems from this site are false. In fact, one of the adjacent, opposing neighbors has willfully and intentionally constructed drainage pipes so that the water from his property drains onto 4509. At the end of his presentation, and acknowledging that Mr. Zumot has agreed to submit a Storm Water Plan to the DOEE and obtain its approval as required, Mr. Elkins stated that "storm water management is not an issue."

Irregularities in the Conduct of the May 11 Meeting.

We were repeatedly told by Mr. Elkins that he would not be present at the May 11 ANC3D meeting. He also claimed he had been unable to speak with Mr. Rao. Yet, in fact he was fully present at the meeting, and Mr. Rao made clear that he and Mr. Elkins worked "hand in glove" on this matter. In the interim we had spoken with Chairman Bergmann who had agreed to take Mr. Elkins' place in presenting this matter at the meeting, and to allow Ms. Westby 15 minutes to speak. Yet, Mr. Bergmann not only was totally absent from the meeting, but he never told us

in advance, and it is clear that he had made no effort to let the acting chairperson (Commissioner Sriqui) know of his agreement with us.

Instead, the acting chairperson, Mr. Sriqui, started out by basically stating they would dispose of the Foxhall Crescent matter “pretty swiftly” because they had “heard everything” at the April 6th meeting. In fact, at the April 6 meeting, Ms. Westby was given 2 minutes to speak and efforts to discuss the matter were repeatedly cut off because the matter was to be fully taken up at the May 11 meeting.

We also had what we believed was a productive call with Mr. Szymkowicz on Monday, May 9, which was followed up with his visiting the site and then meeting with Ms. Westby in person. Yet, without advance notice to us, he also missed the ANC meeting to attend another meeting and did not re-appear until long after voting took place. In addition, we attempted to speak with every other ANC3D Commissioner prior to the meeting, including Mr. Rao, and either they did not respond or in Ms. Pemmerl’s case stated that: “I plan to vote in support of the letter currently available on our website (<https://www.anc3d.org>) – the letter urges BZA to deny the applicant’s request for variance relief” [i.e., that the BZA engage in unlawful retaliation for Mr. Zumot having cut down the Heritage Tree].

Lastly, when the discussion was over and votes were taken, there were 5 people who voted in favor of sending Mr. Elkins letter to the BZA, 3 who opposed it, and 2 absent. Taken together with the votes of the 2 people who were not present, Mr. Szymkowicz and Mr. Bergmann, with whom we believed we had had productive discussions, this suggested that there might be 5 members opposed to Mr. Elkins letter. However, later we heard – and have now confirmed from reviewing the recording - that after the vote was taken and we had signed off the call, 2 of the people who had voted against the Elkins letter, “changed” their vote. It turns out those two people were Mr. Rao and Mr. Del Moral. It is hard to believe Mr. Rao did not know what he was voting on at the time – Mr. Elkins letter had been posted for over a week, it was clear members were voting on whether to support his letter to the BZA, Mr. Rao made clear he had been working “hand in glove” with Mr. Elkins, and he clearly knew how Mr. Elkins, who voted first, had voted.

The ANC 3D Bylaws do not allow changing of votes after vote has been recorded. The votes changed leaves disturbing questions as to why these Commissioners changed their vote and why that took place long after when we had finished our presentation. **This is a breach of protocol and good faith, and we believe the original votes should stand as recorded and the BZA be notified of such correction.**

The Members of our Community Value Honesty, Cooperation and Inclusiveness

There is a long history of certain members of the prior FCHOA Board (including the Godleys who previously owned the 4509 lot) engaging in wrongful conduct, including having violated provisions of the DC Nonprofit Corporation Act on conflict of interest and the FCHOA Bylaws,

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to prevent the owner of 4509 to build a house on the property. That conduct was continuing with the prior FCHOA Board's handling of Mr. Zumot's plan to construct a home. At a Board meeting on February 23, 2002, Ms. Westby made a powerful presentation on their conflict of interest and urged them to recuse themselves from further involvement, but they refused, and with the support given them by the prior FCHOA President, a motion to require them to do so failed. When a recording of this meeting was shared with the members of the Community, there was a strong and immediate reaction, which led to the Community holding a Special Meeting on March 27, 2022 to remove those Board members. Instead, at the meeting they resigned, along with the former President, who had been working with them and was responsible for contacting Commissioner Rao and other DC agencies regarding the cutting of the Heritage Tree.


As Vice-President of the FCHOA Board, I, Collette Goodman, can attest that what Ms. Westby did took enormous courage, as it does for anyone who seeks to right serious and discriminatory wrongs. And fortunately, the majority of the Community recognizes and values this.

While the actions of the ANC3D in this matter should be strongly repudiated, given the manner in which it was handled and the irregular changing of votes, we see no point in asking for a re-hearing. We can only say as to any members of the ANC3D who agree with our position, we hope that you will make your views known to the BZA. It is not only in the real interests of our community, but in your self-interest to disassociate yourselves from the patently illegal effort that the ANC3D is currently engaged in.

As for our part, we will ask the BZA to give "no" weight to the views of the ANC3D on this matter.

Yours truly,


Jody R. Westby, President of FCHOA Board


Collette C. Goodman, Vice President of FCHOA Board

cc: J.P. Szymkowicz
C. Elkins
R. Zumot
C. Giordano