



BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 140 - PARTY STATUS REQUEST

Before completing this form, please go to www.dcoz.dc.gov > IZIS > Participating in an Existing Case > Party Status Request for instructions. Print or type all information unless otherwise indicated. All information must be completely filled out.

PLEASE NOTE: YOU ARE NOT REQUIRED TO COMPLETE THIS FORM IF YOU SIMPLY WISH TO TESTIFY AT THE HEARING. COMPLETE THIS FORM ONLY IF YOU WISH TO BE A PARTY IN THIS CASE.

Pursuant to 11 DCMR Subtitle Y § 404.1 or Subtitle Z § 404.1, a request is hereby made, the details of which are as follows:

Name:	Andrew Wong		
Address:	4507 Foxhall Crescent NW, Washington, DC 20007		
Phone No(s):	202-674-3637	E Mail:	andy.wong2@yahoo.com

I hereby request to appear and participate as a party in Case No.:	20636
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Signature:	<i>Andrew Wong</i>	Date:	Feb. 7, 2022
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Will you appear as a(n)	<input type="checkbox"/> Proponent	<input type="checkbox"/> Opponent	Will you appear through legal counsel?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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If yes, please enter the name and address of such legal counsel.

Name:			
Address:			
Phone No(s):		E Mail:	

ADVANCED PARTY STATUS CONSIDERATION PURSUANT TO: Subtitle Y § 404.3/Subtitle Z § 404.3:

I hereby request advance Party Status consideration at the public meetings scheduled for:	Wednesday, March 2, 2022 @ 9:30 a.m.
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PARTY WITNESS INFORMATION:

On a separate piece of paper, please provide the following witness information:

1. A list of witnesses who will testify on the party's behalf;
2. A summary of the testimony of each witness;
3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts; and
4. The total amount of time being requested to present your case.

PARTY STATUS CRITERIA:

Please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?
2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)
3. What is the distance between the person's property and the property that is the subject of the application before the Commission/Board? (Preferably no farther than 200 ft.)
4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?
5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.
6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.

Form 140 – Party Status Request for Andrew Wong, 4507 Foxhall Crescent, NW

**District of Columbia Board of Zoning Adjustment: Application Case Number 20636 –
Theoretical Lot 960 (4509 Foxhall Crescent) Owner Rajai Zumot and Penguin LLC**

PARTY WITNESS INFORMATION:

1. A list of witnesses who will testify on the party's behalf; Andrew Wong
2. A summary of the testimony of each witness (*Zoning Commission only*);

I NEITHER SUPPORT NOR OPPOSE THE ZONING APPLICATION FOR THEORETICAL LOT 960
(4509).

I do not have the expertise nor authority which resides with the DC government agencies.

I place the responsibility for this decision with the government of the District of Columbia and the DC agencies responsible; including BZA, DCRA, Office of Planning, DDOT, Fire, Police, EMT and other responsible DC agencies.

A key issue is **Public Safety**. We have recently seen unimaginable, unforeseen catastrophic real estate related disasters (such as the 2021 Fort Lauderdale FL Surfside Condominium Collapse or 2018 Santa Barbara/Montecito CA mudslide) with loss of numerous citizens' lives and multi-billion dollar damage claims. A standard procedure after these tragedies is the commissioning of a follow-on government investigation. The purpose of the government investigation is to identify the linkages, chain of events, violation of government regulations and procedures, etc. that lead to the tragedy with possible criminal indictments, and large civil damage lawsuits, in part due to failure to fully apply the applicable regulations and laws.

The previous two BZA approvals in 1994 and 2014 were granted when public sentiment to public safety and environmental protection had not evolved to where we are today. In 2016, DC Council ended regulatory waivers for streets less than 24 feet wide in the District of Columbia. Also in 2016, DC Council passed the Tree Canopy Act protecting Heritage Trees. Regulatory oversight of stormwater management has become more stringent.

How is this relevant in the Case Application - 20636?

There are numerous legal and regulatory issues in this case that should be brought to the attention of the BZA during the hearing and adjudicated. These issues may even lead the BZA to conclude the theoretical lot 960 (4509) is "not developable" as stated by DDOT government official in a report on developing lot 960 (See Attachment 1)

These issues include:

A. Binding multi-party (five parties) commitments that includes the previous owner of Lot 960 (4509) negotiated and agreed to in the prior BZA application Motlagh 18708 ("**Agreement Regarding Case NO. 18708 before the Board of Zoning Adjustment of the District of Columbia**"). This legally enforceable agreement includes an agreement on the exact location and footprint of the proposed 4509 house (Lot 960). This is a separate agreement that continues to this day, not withstanding the expiration of BZA Approval Case NO. 18708. (See Attachment 2)

B. Mr. Zumot, the owner of 4509 (Penguin LLC) has written to the President of the Foxhall Home Owners Association (FCHOA), John Fox, that Zumot is considering moving the location of the house. This would be in violation of the "Agreement Regarding Case NO. 18708 before the BZA". In order to move the house location, at a minimum, it would require all five parties in the Motlagh 18708 Agreement to agree to amend the prior agreement. There have been no such actions to date.

Moving the location would make the current plan before the BZA incomplete, inaccurate and possibly misleading. (See Attachments 3)

In addition, the FCHOA Bylaws have restrictions on building within 30 feet of the external boundary of 4509 with a neighboring property on 2440 Foxhall Road (FCHOA Bylaws: Article 1 – Section 4 Definitions (k) Undisturbed Perimeter, page 3). (See Attachment 4)

C. Mr. Zumot Penguin LLC has NOT recorded the **Agreement Regarding Case NO. 18708 before the BZA as a Memorandum of Understanding** against the Property in the District of Columbia Recorder of Deeds at the time of transfer, as stipulated in Paragraph 10 of the Agreement for a "subsequent owner". (See Attachment 2, Page 3 – Paragraph 10)

D. While the initial meeting with the FCHOA Board and Mr. Zumot took place about five and a half months ago (on August 11, 2021), NO approvals have been granted from the Board of Directors for anything related with the project at this time (See Attachment 5).

E. The president of FCHOA, John Fox, has reported that Mr. Zumot - Penguin LLC has informed him that he or his representatives, met with representatives from DC's Mayor's Office within the past few weeks. Mr. Zumot was told by the Mayor's representatives that under NO circumstances would the live two Heritage Trees in question be removed. Without removal of one of the heritage trees, the location of the proposed 4509 house site would be in violation of the DC Tree Canopy Protection Act stipulating that a structure cannot be within 25 feet radius of a Heritage Tree. (See Attachment 3)

F. What has changed since the 1994 and 2014 BZA approvals for Theoretical Lot 960?

District of Columbia City Council enacted laws pertaining to; a) greater Public Safety including minimum size of the width of a street, b) more stringent laws for Environmental Protection (Clean Water Act), DDOE Storm Water Management, Impervious Surface Water Runoff and c) Tree Canopy Protection Act of DC's Heritage Trees. Many of these new regulations did not exist in 1994 or even in 2014 when the previous BZA application was filed.

First Example, Public Safety. Starting in 2016 DC would not provide waivers for street widths less than 24 feet wide. Previously, including the 2014 approval of the Motlagh 18708 Application, this waiver was granted. Due to heightened concerns for Public Safety, the DC Council eliminated the waiver in 2016. Access in emergencies by Fire, Ambulance and Police may not be possible, especially during the winter with snow on the street, given the steep incline of the grade of the Foxhall Crescent's road, narrowness of the street, and cars parked on the street. (See Attachment 6)

Second Example, Preservation of Heritage Trees.

There have been a recent report of developers and owners cutting down Heritage Trees By ignoring and violating the law. The offending party pays a fine. Whether DC enacted the law as a tax revenue generating activity or is sincerely interested in protecting Heritage Trees will be in focus in Case 20636. (See Attachment 7 - Developers cutting Heritage Trees and paying fines).

In the case cited in the attached article, the neighborhood citizenry outrage demonstrated a failure by regulatory authorities to effectively enforce the DC Heritage Tree law.

DC DDOE arborist employee handling the Heritage Tree removal permit application has written in their report (in the DDOE Permitting Review System – Tracking Number 88440) that “This site does not seem developable based on site visit with applicant. Applicant also does not necessarily seem qualified to put together advanced TPP for the 2 heritage trees on site” (DDOE Permitting Review System - Internal Notes). The DDOE employee also adds in the Notes For Applicant, “ ... Will need advanced TPP for the 2 heritage trees on site before approving.” ... In all honesty, site is highly technical because of the 2 heritage non-hazardous trees, the slope, the confines of the entrance, etc. – and may simply not be developable at this time.” (See Attachment 1 - DDOE Report)

Here would be a clear case where if there was a genuine interest in enforcing the Tree Canopy Protection Act, BZA could make a condition of BZA approval be contingent on Mr. Zumot guaranteeing the safe guarding of the Heritage Tree in question or all DC government approvals would immediately become null and void.

In conclusion, the purpose of these comments was to bring to the attention of the BZA and other responsible relevant DC agencies, the existence of legally enforceable agreements and Bylaws currently in place, and shed light on some of the complex public safety issues raised with respect to Application 20636.

I request these comments be submitted to the record.

All these issues should be fully addressed. If not, should an unimaginable catastrophe with loss of human life unfortunately occur, the investigators could reasonably ask whether DC Government agencies with regulatory responsibilities for the project had a clearly defined plan for re-solving all these outstanding issues with assurances/guarantees before granting approval in order to protect and safe guard DC citizens.

3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts (*Zoning Commission only*); and

4. The total amount of time being requested to present your case (*Zoning Commission only*). - 20 minutes

PARTY STATUS CRITERIA:

Please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?

Mr. Zumot/Penguin LLC (the Applicant) and I share a common property line running 56 feet.

2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)

I am owner of 4507 Foxhall Crescent, NW, Washington, DC 20007 I do not have any legal interest in Application 20636 Theoretical Lot 960 (4509) Penguin LLC.

Per my property survey and consistent with Foxhall Crescent HOA (FCHOA) Bylaws, one-half of the street in front of my house is MY PROPERTY, as it is with most of the twenty-seven other FCHOA members, with two significant exceptions (4500 and 4509).

All HOA Members have a limited Easements of Enjoyment Right to use the street and sidewalks (FCHOA Bylaws: Article 1 – Section 4 Definitions of Common Properties, page 2, and Article VIII – Section 1, Members’ Easements of Enjoyment, page 27). (See Attachment 8)

3. What is the distance between the person's property and the property that is the subject of the application before the Commission/Board? (Preferably no farther than 200 ft.)

My property 4507 is adjoining Lot 960 (4509) with a 56 feet common property line.

4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?

Environmental Impact:

Public Safety and Parking –

As the owner of the adjoining property (4507), I NEITHER SUPPORT NOR OPPOSE THE ZONING APPLICATION FOR THEORETICAL LOT 960 (4509).

I do not have the expertise nor authority which resides with the DC government agencies including BZA, DCRA, DC Planning, Fire, Ambulance, Police, EMT, DDOT, et cetera.

Access in emergencies by Fire, Ambulance and Police may not be possible, especially during the winter with snow on the street, given the steep the incline of the grade of the Foxhall Crescent's road, narrowness of the street, and cars parked on the street. See attached pictures of the width of the street with one of my cars parked in front of my house (See Attachment 6).

5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.

6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.

BZA

CASE NO. 20636

ANDREW WONG

Party Status Request

Attachments / thru 8

Feb. 7, 2022



District of Columbia
Transportation Online Permitting System
Internal Site for Permit Office and Reviewing Agencies



Welcome Yasha Magarik
You are logged in as Agency Review Admin, UFA

[Back To Search Result](#)

Application Summary

Tracking #:	88440	Permit #:		Event Name:	Special Tree Removal Permit	Issue Date:	N/A
Assigned Arborist:	Yasha Magarik <i>No re-assignment history found</i>	Last Update Date:	10/29/2021 12:40:13 PM	Last Updated By:	Yasha Magarik		
Application Creation Date:	10/26/2021 9:22:42 AM	Effective Date:	N/A	Expiration Date:	N/A		
Status:	Documents Pending View History	Applicant Info:	Gladys Sera 4300 Georgia Ave NW, Washington, DC 20011 Day Phone: 2024176559 Email Address: gladys@seraengineered.com	Owner Info:	Penguin LLC 1356 Beverly Rd, McLean, VA 22101 Phone: 2025164910 Email Address:		
Location	4509 FOXHALL CRESCENT NW			View Location Info		View Map	
Location Description:	Trees located throughout property.						
	Change Status						

Special Tree Detail

Total Number of Special/Heritage Trees: 9

ISA Arborist:

ISA Certification Number:

Tree Removal Summary

Number of Hazardous Trees: 1

Number of Non Hazardous Trees: 6

Attachment 1
4 Pages

Number of Exempted Trees:	0	Number of below 44in circumference Trees:	0
Number of Heritage Trees - Hazardous:	0	Number of Heritage Trees - Non Hazardous:	0
Non-Hazardous Circumference Removed: 315.73			

Tree Preservation/Relocation Summary

Number of Special Trees - Preservation:	0
Number of Heritage Trees - Preservation:	2
Number of Special Trees - Relocation:	0
Number of Heritage Trees - Relocation:	0

List of Special/Heritage Trees

Requested Action	Species	DBH	Circumference	Live Crown Percent	Total Risk Rating	Hazardous Status	Decision	Decision Date	Reviewer	ISA Arborist Comment	UFA Arborist Comment
Preserve	Liriodendron tulipifera	50.00	157.08	80.00	3	Heritage Tree - Non Hazardous (over 100")	Denied	10/28/2021	ymagarik		No TRA form uploaded, clearly non-hazardous. Tree #5366
Preserve	Quercus alba	32.20	101.16	80.00	3	Heritage Tree - Non Hazardous (over 100")	Denied	10/28/2021	ymagarik		Tree #5374
Removal	Quercus montana	22.70	71.31	80.00	3	Non-Hazardous	Approved	10/28/2021	ymagarik		Tree #5371
Removal	Fagus grandifolia	30.90	97.08	70.00	3	Non-Hazardous	Approved	10/28/2021	ymagarik		Tree #5375
Removal	Robinia pseudoacacia	15.00	47.12	80.00	3	Non-Hazardous	Approved	10/28/2021	ymagarik		Tree #5359
Removal	Carya	15.30	48.07	70.00	3	Non-	Approved	10/28/2021	ymagarik		Tree

Attachment 1
4 pages

Removal	tomentosa Robinia pseudoacacia	16.30	51.21	0.00	3	Hazardous	Approved	10/28/2021	ymagarik	#5361 Tree #5362. Dead
Removal	Quercus montana	21.10	66.29	70.00	3	Non-Hazardous	Denied	10/28/2021	ymagarik	No tag; near fence with foxhall rd property
Removal	Quercus sp.	16.60	52.15	90.00	3	Non-Hazardous	Approved	10/28/2021	ymagarik	Tree #5365

Tree Fund Information

Tree Fund Summary

Tree Fund Amount = non-hazardous tree circumference total inches * \$55 per inch circumference ?

Circumference of non-hazardous trees to be removed (in): 315.73

Circumference of trees to be paid for (in): 315.73

Tree fund amount: \$17,365.15

Document Information

[View Documents](#)

STP Photos

1. 4509FoxhallCrescents-PROPOSEDSITEPLAN.pdf application/pdf 214541 **Upload Date:** 10/29/2021 12:30:14 PM

STP Site Plan

1. 4509FoxhallCrescent(2021.09.06).pdf application/pdf 168402 **Upload Date:** 10/29/2021 8:45:16 AM

2. ExTreeExhibit(2021.09.06)(1).pdf application/pdf 176504 **Upload Date:** 10/29/2021 8:45:28 AM

Attachment 1
4 Pages

Internal Notes

10/28/2021: This site does not seem developable based on site visit with applicant. Applicant also does not necessarily seem qualified to put

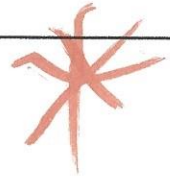
together advanced TPP for the 2 heritage non-hazardous trees on site.

Yasha Magarik

Notes For Applicant

The status appears to have been changed back to "Assigned" because a site plan was uploaded. The site plan does not constitute an advanced TPP. Will need advanced TPP for the 2 heritage non-hazardous trees on site before approving. Please send to Yasha.magarik@dc.gov. In all honesty, site is highly technical because of the 2 heritage non-hazardous trees, the slope, the confines of the entrance, etc.—and may simply not be developable at this time.

Yasha Magarik



Attachment 1
4 pages

**AGREEMENT REGARDING CASE NO. 18708 BEFORE
THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

This Agreement, dated effective November 5, 2014, is between Mr. Amir Motlagh (the "Applicant") and the Foxhall Crescents Homeowners Association and related combined opposition parties including Godley, Sharkey, and Wong individually and collectively (the "Opposition Parties"), wherein:

(1) The Applicant agrees that the proposed one-family detached dwelling he proposes to build at 4509 Foxhall Crescents Drive, N.W. (the "Site") will have a footprint no larger than that of the house originally designed by Arthur Cotton Moore to be built on that site in conformity with the Foxhall Crescent 1 development, more specifically, a "Type 6" design including window and door locations, as shown on the original Arthur Cotton Moore Site Plan attached hereto as Appendix A. The Applicant shall submit the reduced house plan, pursuant to the above, to the BZA as part of the Application prior to the issuance of the BZA Order.

(2) The Applicant agrees to subject the Site / Property to and comply with all DDOE standards for soil disturbance over 5,000 square feet, as stated in the 2013 Stormwater Management Rule and Guidebook and Soil erosion and Sediment Control Regulations, also known 21 DCMR §§ 516-534 and 21 DCMR §§ 540-547 (the "DDOE Requirements") and Bylaws of Foxhall Crescent Homeowners Association, Inc., Article V Section 7(e). Any updates to the plans required to comply with the modified obligations shall be submitted to the BZA as part of the record prior to a BZA Order being issued. The Applicant also agrees to request that the BZA adopt these requirements as a condition of approval in the Order.

(3) (a) In addition, the Opposition Party shall have an independent civil engineer, to be identified by the Opposition Party at a later date ("FCHOA Engineer"), conduct a review of the Applicant's current proposal. Within sixty (60) days after the Applicant has provided to the Opposition Party the applicable stormwater management permit application plans (the "Plans"), the FCHOA Engineer shall provide to the Applicant a report opining on the compliance of those plans with the DDOE Requirements and Bylaws of Foxhall Crescent Homeowners Association, Inc., Article V Section 7(e). If the FCHOA Engineer is of the opinion that the Plans are not in compliance with the DDOE Requirements and Bylaws of Foxhall Crescent Homeowners Association, Inc., Article V Section 7(e), then the FCHOA Engineer shall provide specific comments within his or her report detailing the reason for such noncompliance and actions which the Applicant should undertake to obtain such level of compliance, including, if applicable, any recommended alternative measures needed to obtain compliance with the DDOE Requirements and Bylaws of Foxhall Crescent Homeowners Association, Inc., Article V Section 7(e).

(b) If the FCHOA Engineer determines that the Plans are not in compliance with the DDOE Requirements and Bylaws of Foxhall Crescent Homeowners Association, Inc., Article V Section 7(e), then the Applicant's civil engineer will respond in writing within

twenty (20) days to each itemized point, accepting the recommendation or challenging the recommendation. All accepted items shall be memorialized in updated or revised plans within fifteen (15) days of the Applicant's response letter. Those items which the Applicant challenges shall be done so with an explanation in writing, and the Applicant and the Opposition Parties shall then engage in good faith discussions to attempt to resolve any remaining discrepancies.

(c) If the Applicant and the Opposition Parties cannot come to agreement on remaining discrepancies, the Applicant and the Opposition Parties shall, within fifteen days after the Applicant's response letter, jointly engage a mutually agreeable third-party engineer ("Engineer"), at Applicant's expense, to examine the Applicant's challenged items. The third Engineer shall review the Plans, conduct a site visit, review reports and studies and make final and binding decision on the challenged items and whether or not the Plans comply with the DDOE Requirements and Bylaws of Foxhall Crescent Homeowners Association, Inc., Article V Section 7(e) and if not, what revisions are necessary to bring the Plans into such compliance.

(d) The Engineer's final decision shall be submitted in writing and provided to all parties within 45 days from the Applicant's response letter. If the Engineer fails to submit this report within the 45 days, then it shall be deemed to be an approval of the Applicant's position. The Applicant and Opposition Parties will be obligated to accept all decisions of the Engineer as final and the Applicant shall make the required modifications to the plans or conduct the required tests within 20 days.

(4) The Opposition Parties agree to withdraw their opposition to Mr. Motlagh's application filed with the Board of Zoning Adjustment ("BZA"), District of Columbia, in Case No. 18708, conditioned upon satisfaction of the terms and conditions of this Agreement. Accordingly, the Applicant and Opposition Parties respectfully request that any order issued by the BZA on the Applicant's application be conditioned upon the parties' satisfaction of the terms and conditions of this Agreement.

(5) Any notice required or permitted to be given under this Agreement shall be in writing and shall be hand-delivered, delivered by overnight courier (with receipt acknowledged), or telecopies (and promptly confirmed in writing hand-delivered or delivered by overnight courier) to the parties at their respective addresses set forth below, or at such other addresses of which either party shall notify the other party in accordance with this Section, and shall be deemed given as of the time of receipt or refusal of receipt:

If to Amir Motlagh:

Amir Motlagh
201 Berry Street, SE
Vienna, VA 22180

w/ copy to counsel

Marty Sullivan
Sullivan and Barros

1990 M Street NW, Suite 200
Washington, DC 20036
msullivan@sullivanbarros.com

If to Opposition Parties: Foxhall Crescent Homeowners Association
c/o Gene Godley
4513 Foxhall Crescent
Washington, DC 20007

w/ copy to counsel Meridith H. Moldenhauer
Griffin, Murphy, Moldenhauer & Wiggins, LLP
1912 Sunderland Place, NW
Washington, DC 20036
mmoldenhauer@washlaw.com

(6) Any disputes between Applicant and Opposition Parties, concerning the subject matter of this Agreement that are incapable of informal resolution shall be submitted to binding arbitration before three (3) arbitrators chosen by mutual agreement of the parties. Any such arbitration shall be conducted in accordance with the applicable rules and procedures of the American Arbitration Association, subject to any special modifications thereof to which the parties shall mutually agree. As part of any award resulting from such arbitration, the prevailing party shall be entitled to receive the payment of its costs and reasonable attorneys' fees from the non-prevailing party.

(7) This Agreement may be executed in one or more counterparts, by original or facsimile signature, and when executed by all parties shall constitute one and the same instrument.

(8) This Agreement constitutes the entire agreement and understanding between the parties and supersedes any and all prior agreements and understandings relating to the subject matter of this Agreement. The parties acknowledge that this agreement does not address or waive any rights the HOA may have to review and approve the project in accordance with the Foxhall Crescent Bylaws and Covenants.

(9) Time is of the essence in connection with this Agreement.

(10) This Agreement shall inure to the benefit and obligation of, and be binding on, Applicant's successors and assigns, including but not limited to Mr. Edward Jacobsen. If and when the Applicant transfers the Property to another owner, that subsequent owner shall be bound by this agreement and shall record this agreement as a Memorandum of Understanding against the Property in the District of Columbia Recorder of Deeds at the time of transfer.

(11) Modification, waivers and consents regarding this Agreement shall only be binding if in writing and signed by the party against whom such modification, waiver or consent is sought to be enforced.

Amir Motlagh 11/5/14

Amir Motlagh

Date

[Signature], President, HOA Nov 5, 2014

HOA, authorized representative

Date

[Signature] Nov 5, 2014

Opposition Party

Date

[Signature] Nov 5, 2014

Opposition Party

Date

[Signature] Nov 5, 2014

Opposition Party

Date

Attachment 3
4 Pages

Update from Rajai — tree cannot be removed.

From: John Fox (foxyjd@gmail.com)

To: andy.wong2@yahoo.com; gene.godley@bracewelllaw.com; westby@globalcyberrisk.com; cgoodman@goodwinlaw.com

Cc: rzumot@zumot.net; contempollcva@gmail.com

Date: Tuesday, February 1, 2022, 11:49 AM EST

Rajai just called to say that the Mayor has absolutely refused allowing him to cut down the tree and that means he will send to me (electronically) a new plan that will require the Board's agreement to variance on set back requirements. This will take about a week. His BZA hearing will be postponed until he gets FCHOA approval on the necessary variance regarding set back requirements. He hopes Gene will abstain on voting regarding the set back variance.

I am copying Rajai and Tamara on this to be sure I got correctly what Rajai told me.

John

4504 Foxhall Crescents NW
Washington, DC 20007
+1 301-908-2509

4504 Foxhall Crescents NW
Washington, DC 20007
+1 301-908-2509

Attachment 3
4 Pages

Re: Board meeting on 4509

From: Contempo, LLC (contempollcva@gmail.com)

To: foxyjd@gmail.com

Cc: andy.wong2@yahoo.com; gene.godley@bracewelllaw.com; westby@globalcyberrisk.com; cgoodman@goodwinlaw.com; rzumot@zumot.net

Date: Monday, February 7, 2022, 04:43 PM EST

Dear John,

As agreed, I have attached the two options of site plans without the Yellow Tulip Poplar Heritage tree of 50".in diameter. Once we receive your approval for one of the sites we will immediately send a copy of the approved plan along with the Board's recommendation to have the Heritage tree removed, to the Mayor's office. We had advised the Mayor's office that we will give them the documents by no later than the end of this week, hopefully that you will be able to hold the zoom meeting by then and be able to advise us of your decision.

In the event the Mayor refuses to grant us approval for the heritage tree removal, we have gone ahead and submitted copies of two site plans (with both heritage trees) to Mr. Yasha, DDOT's Arborist. If the site plans meet DDOT's requirement, we will be granted a tentative approval to be finalized when we submit the site plans with the complete TPP report prepared by our Arborist is also approved.

Once we have received a positive response from DDOT in regards to this matter, we will then submit the two site plans for your approval too

We are looking forward to cooperation and hope to hear from you at your earliest convenience.

Best regards

Tamara

On Wed, Feb 2, 2022 at 2:27 PM John Fox <foxyjd@gmail.com> wrote:

In another call with Rajai today, this time a three-way call including Jody, he clarified that his meeting yesterday was with the Deputy Mayor rather than the Mayor herself. He believes that, despite the rejection he got from the Deputy Mayor, he possibly (no guarantees) could still get the Mayor herself to approve removal of the tree if the Board would indicate its approval for removal of the tree in order to build the same house designed for 4509 as planned by Arthur Cotton Moore (ACM) in the same location and with the same footprint. This would be Rajai's preference, and I think easier/quicker for the Board and Association to decide upon. If he cannot succeed in getting the Mayor's approval, he alternatively would submit for Board approval plans for a house looking the same as the original ACM house but, even with a cantilevered [?] foundation to protect the tree, it would have to be moved farther from the tree and this would require encroachment on current setback requirements from property lines.

I would like to have a Board meeting to review the overall situation regarding 4509 and, specifically, to decide if we could recommend to the Mayor removal of the Heritage tree in order to build the same house designed for 4509 by Arthur Cotton Moore in the same location with the same footprint, subject to approval of a Stormwater management plan and a construction management agreement. Without expecting that the Board would be ready at this meeting to decide on the alternative house plan, I think it would be useful for the Board to have the plan in hand when it considers a recommendation about removal of the tree. Rajai expects that the alternative house plan should be available in a matter of days.

Once I receive the alternative house plan from Rajai, I will propose a date and time for a Board meeting via Zoom.

Once again, I am copying Rajai and Tamara with this message to be sure I have correctly stated what Rajai said to me.

John

4504 Foxhall Crescents NW
Washington, DC 20007
+1 301-908-2509

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Attachment # 3
4 Pages



NOTE: PROPOSED BUILDING FOOTPRINT IS 54'-0" WIDE BY 35'-0" DEEP FROM CORNER TO CORNER. CURVATURE ALONG FRONT FACADE PROTRUDES AN ADDITIONAL 4'-0" FORWARD AT DEEPEST POINT.

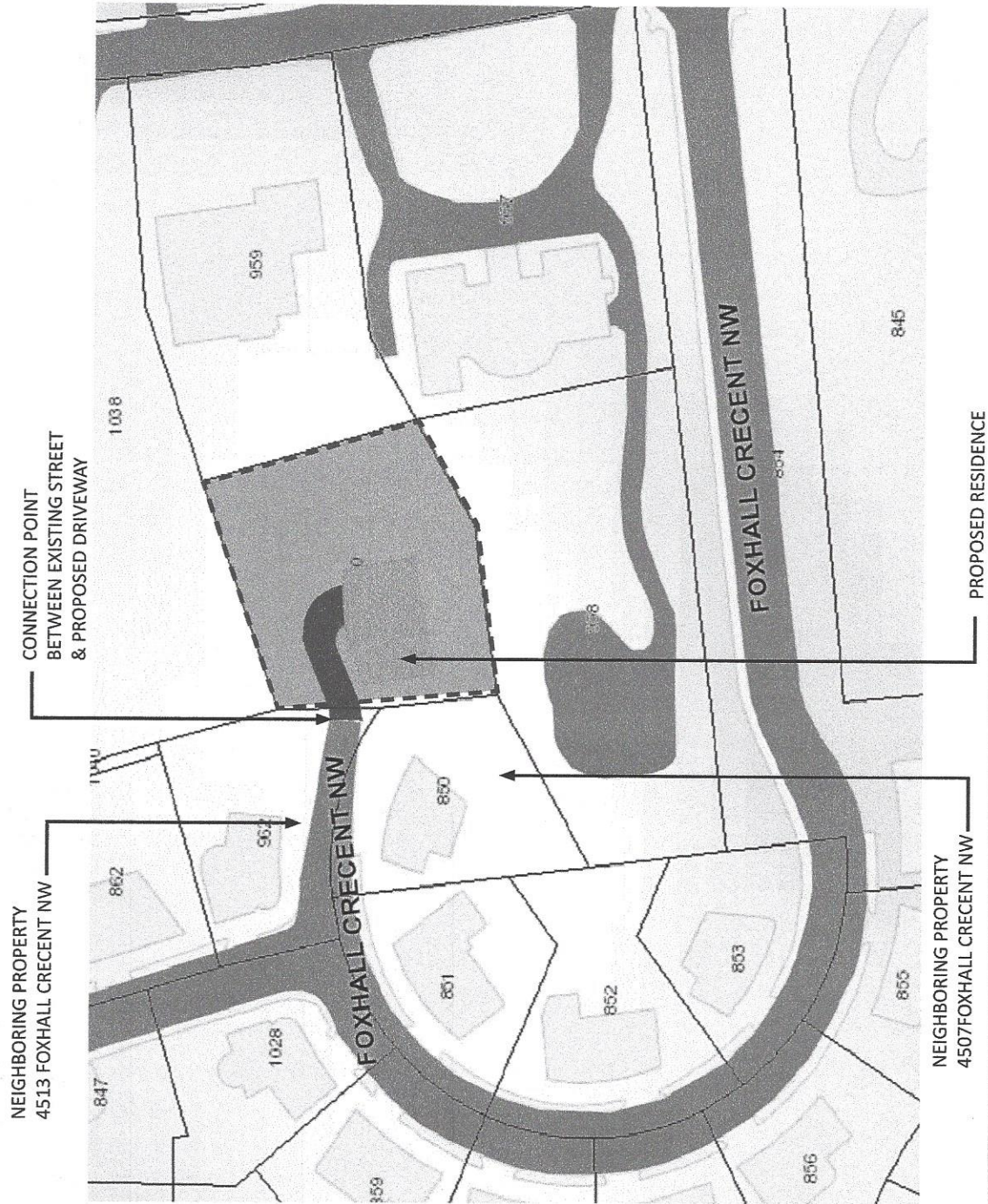
**PROPOSED ARCHITECTURAL
SITE PLAN**

A-5
10/06/2021

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Attachment 3
4 Pages

- EXISTING STREETS
- EXISTING BUILDINGS
- EXISTING NEIGHBORING PROPERTIES
- PROJECT PROPERTY
- PROPOSED DRIVEWAY
- PROPOSED RESIDENCE



(k) "Undisturbed Perimeter" shall mean that area of Foxhall Crescents within thirty (30) feet of the exterior boundary of Foxhall Crescents (except for certain areas specifically excluded for vehicular or other access and seven (7) additional exceptions), all as more particularly shown on Exhibit B.

House on 2440 Foxhall Road - Exterior Boundary

ARTICLE II

HOMEOWNERS ASSOCIATIONS

Section 1. COMPOSITION. The only members of the Association shall be Members as defined in Article I, Section 4(g). Membership shall be appurtenant to and may not be separated from ownership of any Home and/or Site in Foxhall Crescents. The Members of the Association, acting as a group in accordance with these Bylaws, shall constitute the Association, which shall have the responsibility of administering and arranging for the management of the Crescents. The Association shall establish the means and methods of collecting the contributions to the Common Expenses and perform all of the other acts that may be required to be performed by the Association by these Bylaws. Except as to those matters which these Bylaws specifically require to be performed by the vote of the Members, the administration of the foregoing responsibilities shall be performed by the Board of Directors or the Officers, as more particularly set forth in Articles III and IV.

Section 2. ANNUAL MEETINGS. The annual meetings of the Association shall be held on a date specified by the Board of Directors approximately one year from the date of the preceding annual meeting. At such annual meetings the Board of Directors shall be elected by ballot of the Members in accordance with the requirements of Sections 2 and 3 of Article III of these Bylaws.

Section 3. SPECIAL MEETINGS. Special meetings of the Association may be called by the President, a majority of the Board of Directors, or by Members holding at least twenty percent (20%) of the votes. The notice of any special meeting shall state the time, place and purpose of such meeting. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. PLACE OF MEETING. The party at whose request a meeting is called pursuant to Sections 2 or 3 above shall designate a location within the District of Columbia as the place for the annual meeting or special meeting so called.

Section 5. NOTICE OF MEETINGS. Written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be mailed or delivered not less than ten (10) or more than

Comments on message from Rajai Zumot regarding his plans for 4509

From: John Fox (foxyjd@gmail.com)

To: foxyjd@gmail.com

Date: Thursday, December 23, 2021, 11:46 AM EST

Yesterday Rajai Zumot, the new owner of the 4509 lot, sent a message to FCHOA Members requesting support for his plans to build a house on that vacant lot. Toward this end, he attached a draft letter to the Advisory Neighborhood Commissioners to be signed by each of the Association Members indicating their support for his "request for theoretical subdivision and area variance relief" and their belief "that the proposed home will be in character with the rest of the Foxhall Crescents neighborhood."

As indicated in the Fall Newsletter and as discussed at the Annual Meeting, the Board of Directors has been in communication with Rajai Zumot about his plans for 4509, beginning with a meeting in August. At that meeting, he indicated his plans to build the same house previously proposed to the Board of Zoning Adjustment (BZA) by the former owner of 4509, Mr Montlagh, including the design, footprint, location and size as shown on Arthur Cotton Moore's plan for Foxhall Crescents with the only possible deviation being redesign of some of the interior and additional windows for light. It was agreed that this deviation would be discussed later.

More recently, two Heritage trees (a tree with a circumference of 100 inches or more) have been identified on the lot and DDOT has denied approval for removal of these trees, as required by current law, because they have been determined to be non-hazardous. Construction of the house at the initially planned site would require removal of the larger tree because it would be too close to that tree. This is a problem that Mr Montlagh did not face because the law regarding the preservation of Heritage trees has been changed since Mr. Montlagh submitted his application.

In recent weeks, Rajai requested that the Board send a letter indicating support for removal of the larger Heritage tree in order to allow construction of the house as initially planned. The Board as been unwilling to send such a letter because calling for removal of the tree would be contrary to current DC law and the Bylaws require all Association Members to comply with all District of Columbia laws and regulations (Article IX, Section 10). More importantly, the Board has authority to "approve the removal of only such [i.e., unhealthy] trees which, because of ill health, threaten to fall or spread disease" (Article V, Section 7(a)). After inspection by the DDOT Arborist (see report attached), the tree has been determined to be healthy and thus non-hazardous. We understand that Rajai is seeking to have this determination changed, a matter for review by qualified experts. We have let him know that, were the tree to be declared unhealthy and thus hazardous, then we would be prepared to consider his request for removal of it.

The letter that Rajai has asked Association Members to send to the ANZ would have Members indicate support for building a home on the lot without Members knowing the design and location of the home and other related factors such as the Storm Water Management plan, a matter of great importance to the community, and a construction management agreement to assure the safety of the neighborhood, the avoidance of unnecessary inconvenience for community members, and protection for our street from the wear and tear resulting from all of the large equipment that would be required preparing the land and constructing the house.

I urge that Members give careful consideration to whether or not they would want to send such a letter at this time. While there may well be good reason to believe that the community would benefit from construction of a house on the long vacant lot, we must be able to see the full picture of what will be involved before we can responsibly indicate the support requested by Rajai. We need to see a copy of the application submitted to the BZA (the Board has been shown a copy but has been told it now is out of date), * the architectural plans, the Storm Water Management plan, the final arborist report and a landscaping plan. With all of this in hand, then we can negotiate a construction management plan to serve the purposes noted above. Please let me if there is additional information that Members believe it would be useful to see considering approval for construction of a home on the 4509 lot. I am sure we all would like to work with Rajai to solve together the problems he is facing.

John Fox

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