

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Matt Jesick, Case Manager
Joel Lawson, Associate Director for Development Review

DATE: May 5, 2022

SUBJECT: BZA #20636 – 4509 Foxhall Crescent, NW – Request for relief to construct a single family dwelling

I. BACKGROUND

The subject property was a wooded site that included, among numerous other trees, a 47-inch diameter tulip poplar (*Liriodendron tulipifera*), classified under District law as a Heritage Tree. Section 104a of the Tree Canopy Protection Act of 2016 (“the Act”) states that “*It shall be unlawful for any person or nongovernmental entity, without a Heritage Tree removal permit issued by the Mayor, to top, cut down, remove, girdle, break, or destroy any Heritage Tree.*” Staff from the Urban Forestry Division at DDOT informed the applicant on multiple occasions about this law and that the tulip poplar, as well as another heritage tree on the site, could not be removed and would need to be protected in accordance with the Act. In addition, they informed the applicant that the proposed location for the house (at that time as shown in the original plans at Exhibit 6) was not possible and that the site plan should be revised to meet the requirements of the Act.

Nevertheless, on or about Thursday, February 24, 2022, the applicant had the tulip poplar and other trees on the property cut down. The District will be issuing fines in accordance with the penalties described in the Act, but the applicant is continuing with this Board of Zoning Adjustment application. After discussions with the Office of Zoning Legal Division (OZLD) it appears, as removing the tree was not a zoning matter, that the zoning process can proceed. Although the Office of Planning disapproves of any violation of District law, and finds the offense in question particularly abhorrent, we must review the application against the relevant criteria and base our assessment on the current, denuded state of the property.

II. RECOMMENDATION

Because of inconsistent information and the lack of information in the record necessary to evaluate the request against the relevant criteria, the Office of Planning (OP) **cannot make a recommendation** regarding the following requested special exception relief:

- C § 305, pursuant to X § 901 – More than one building on a record lot permitted by special exception; New dwelling proposed on existing vacant theoretical lot.

Should the Board consider approval of the above special exception, OP would recommend **approval** of the following area variance relief:

- C § 305.3(b), pursuant to X § 1000 – Vehicular access from 24 ft. wide accessway required; 16 ft. existing.

III. LOCATION AND SITE DESCRIPTION

Applicant	Penguin, LLC
Address	4509 Foxhall Crescent, NW
Legal Description	Square 1397, Lot 960
Ward / ANC	Ward 3, ANC 3D
Zone	R-1-A – Low density single family detached residential
Historic District / Resource	None
Lot Characteristics and Existing Development	Slightly irregular, roughly square-shaped lot; 13,755 square feet in gross land area; Slopes up steeply from west to east; Lot is vacant and was wooded prior to the recent non-lawful removal of trees on the site; A few trees remain around the periphery; Access from existing Foxhall Crescent
Adjacent Properties and Neighborhood Character	Single family residential to the west; Diplomatic / Residential to the east; Neighborhood is characterized by single family residential; Diplomatic properties are also prevalent on Foxhall Road; Also a few institutional uses
Subdivision History	<p>The proposed house would be located in Foxhall Crescents 1, the first phase of the multi-phase Foxhall Crescents development. The development of Foxhall Crescents 1 began in the early 1980s, prior to the adoption, in 1989, of § 2516 of the 1958 Zoning Regulations, the theoretical subdivision provisions, now contained in Subtitle C § 305.</p> <p>At least one subsequent phase of Foxhall Crescents was reviewed under § 2516, as were infill houses not built at the time of initial construction. For example, the Board approved, pursuant to § 2516, construction of a home at 4818 Foxhall Crescent in case number 17697.</p> <p>The subject property was reviewed by the Board in 1993/4, in case number 15882, in which the Board approved the construction of a single family home, but it was never constructed. Similarly, in 2014 the Board approved case 18708 for a single family home on this property which, again, was never constructed.</p>
Proposal	Construct a single family detached house.

IV. ZONING REQUIREMENTS AND RELIEF REQUESTED

Item	Regulation	Existing	Proposed ¹	Relief
Lot Width D 302	75 ft.	112.9 ft.	No change	Conforming
Lot Depth	n/a	approx. 109 ft.	No change	Conforming

¹ Proposed data estimated by OP unless noted otherwise. The updated self certification at Exhibit 27 appears to simply copy the original self certification at Exhibit 13, and does not reflect changes made in the plans at Exhibit 28. The applicant should submit a correct self certification.

Item	Regulation	Existing	Proposed ¹	Relief
Lot Area D 302	7,500 sq.ft.	13,629 sq.ft.	No change	Conforming
Height D 303	40 ft. 3 stories	n/a	36 ft. 8 in. ² 3 stories	Conforming
Lot Occupancy D 304	40%	n/a	15% (as stated in self certification)	Conforming
Rear Yard D 306	25 ft.	n/a	41.25 ft.	Conforming
Pervious Surface D 308	50%	n/a	Not provided	Assumed Conforming
More than one bld. on a record lot C 305	More than one bld. on a record lot permitted by spec. ex.	n/a	One new dwelling on an existing theoretical lot	Requested
Access width C 305.3(b)	24 ft. access width required	16 ft. existing	No change	Requested

V. ANALYSIS

The applicant proposes a new single family home on a theoretical lot, relief that the Board can grant as a special exception subject to the criteria of C § 305. The applicant also requests variance relief from the accessway width requirement of C § 305.3(b). The relevant special exception criteria and the variance test are reviewed below.

Special Exception for More Than One Building on a Record Lot – Subtitle C § 305, pursuant to X § 900

305 THEORETICAL SUBDIVISIONS

305.1 In the R, RF, and RA zones, the Board of Zoning Adjustment may grant, through special exception, a waiver of Subtitle C § 302.1 to allow multiple primary buildings on a single record lot provided that, in addition to the general special exception criteria of Subtitle X, Chapter 9, the requirements of this section are met.

The applicant has applied for relief under this section.

² The height measurement of 36’8” is taken from Exhibit 27A, the self certification. However, the building height indicated on the plans is 37’8” (Exhibit 28A3, Sheet A-10). But that measurement, however, also does not appear to be correct, as it is not taken from grade, as required by C § 305.3(c). The applicant should provide a height measurement that is consistent within the application materials and also consistent with the guidelines of the Zoning Regulations.

305.2 The number of buildings permitted by this section shall not be limited; provided, satisfactory evidence is submitted that all the requirements of this section are met based on a plan of theoretical subdivision where individual theoretical lots serve as boundaries for assessment of compliance with the Zoning Regulations.

In this instance, the theoretical subdivision was approved previously. Relief is required to add one single family dwelling to a vacant lot within that subdivision.

305.3 The following development standards shall apply to theoretical lots:

(a) Side and rear yards of a theoretical lot shall be consistent with the requirements of the zone;

Based on OP's review of the plans at Exhibit 28, the proposed house would appear to meet side and rear yard requirements of the R-1-A zone. No relief was requested in this self-certified application, but the applicant should correct the self certification to accurately reflect the updated plans.

(b) Each means of vehicular ingress and egress to any principal building shall be at least twenty-four feet (24 ft.) in width, exclusive of driveways;

The subject site is accessed by a 16 foot-wide private street, and the applicant has therefore requested variance relief from this section.

(c) The height of a building governed by the provisions of this section shall be measured from the finished grade at the middle of the building façade facing the nearest street lot line; and

The proposed house would appear to be conforming for height. However, the height listed on the self certification does not match the height shown on the plans, and that height does not appear to be measured in conformance with this section. The applicant should supply a height measurement that is consistent within the application materials and that follows the guidelines of the Regulations.

(d) The rule of height measurement in Subtitle C § 305.3(c) shall supersede any other rules of height measurement that apply to a zone, but shall not be followed if it conflicts with the Height Act.

The proposed height would not conflict with the Height Act.

305.4 For a theoretical subdivision application, the following information is required to be submitted to the Board of Zoning Adjustment, in addition to other filing requirements pursuant to Subtitle Y § 300:

(a) Site plans including the following information:

(1) A plat of the record lots proposed for subdivision;

(2) The location of proposed streets and designated fire apparatus roads;

(3) Location of proposed easements;

- (4) *Lot lines of proposed theoretical lots, and the delineation of the lot lines shared by theoretical lots that will serve as private drives or easements;*
- (5) *Existing grading and proposed grading plans;*
- (6) *Existing landscaping and proposed landscaping plans, including the sizes and locations of all trees on or adjacent to the property on public or private lands;*
- (7) *Plans for the location of building footprints on theoretical lots; and*
- (8) *Required yards (rear, side and front) based on the regulations applicable to a zone or any modifications to regulations provided through this section;*

The record appears to contain most of the information required by this subsection, except for proposed grading and landscaping plans, which are critical to the review of this sloping site. “Exhibit E” of Exhibit 28B-E states that the final plans will be submitted “prior to May 18th.” Subtitle Y § 300.8 states that all application materials, including landscaping plans, shall be provided at the time of filing the application. And § 300.15 states that any supplemental information shall be submitted at least 21 days prior to the hearing. As such, and as described further below, the record is insufficient for a complete review.

- (b) *Typical or individual floor plans and elevations for the proposed buildings and structures; and*

The application includes floor plans for the proposed house.

- (c) *A table of zoning information including required and proposed development standards.*

The application includes a new self certification at Exhibit 27A, but that form does not appear to reflect the updated plans in Exhibit 28.

305.5 Before taking final action on an application under this section, the Board of Zoning Adjustment shall refer the application to the Office of Planning for coordination, review, and report, including:

- (a) *The relationship of the proposed development to the overall purpose and intent of the Zoning Regulations, and other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government; provided, that the planning considerations that are addressed shall include, but not be limited to:*
 - (1) *Public safety relating to police and fire concerns including emergency vehicle access;*

This application was referred to FEMS and MPD at Exhibit 20. As of this writing the record does not contain comments from those agencies. OP separately reached out to FEMS and MPD, but as of this writing has not heard back.

(2) *The environment relating to water supply, water pollution, soil erosion, and solid waste management;*

As of this writing, the record does not contain sufficient information to evaluate water pollution and soil erosion. “Exhibit E” of Exhibit 28B-E states that “The final plan set, which will include erosion and sediment control plan, Stormwater management, final grading plan and landscape plan will be submitted prior to May 18th.” As noted above, this proposed submittal schedule would seem to be well beyond the timelines established in Subtitle Y Chapter 3. Any grading, landscaping and stormwater management plans should take into account the slope of the property and the relationship of that slope to the existing adjacent houses, to ensure that neighbors do not experience increased runoff. Landscaping plans should also attempt to protect the hillside from soil erosion.

The subject site retains one heritage tree, and there are heritage trees on adjacent properties. The applicant should submit to the record a tree preservation plan and consult with DDOT’s Urban Forestry Division in its preparation to ensure it meets all guidelines for preservation of remaining trees on the property.

As to water supply and solid waste management, the application was referred to DC Water and DPW at Exhibit 20. No comments from those agencies have yet been entered into the record. But the applicant should explain in the record the water and sewer connections for the project and how trash will be retrieved from the property.

(3) *Public education;*

It is not anticipated that the addition of one single family dwelling would have an unacceptable impact on public school capacity.

(4) *Recreation;*

It is not anticipated that the addition of one single family home would have a detrimental impact to the District’s recreation amenities. There are several parks within one mile of the property.

(5) *Parking, loading, and traffic;*

OP defers to DDOT to assess transportation impacts, but it is not anticipated that the addition of a single dwelling unit would have unacceptable impacts in terms of parking, loading and traffic.

(6) *Urban design; and*

Based on the proposed footprint and elevation drawings, the proposed house would appear to be similar in scale to the existing homes in the neighborhood.

(7) *As appropriate, historic preservation and visual impacts on adjacent parkland;*

The subject property is not in an historic district and is not adjacent to any parkland.

- (b) *Considerations of site planning; the size, location, and bearing capacity of driveways; deliveries to be made to the site; side and rear setbacks; density and open space; and the location, design, and screening of structures;*

The existing burden of proof in the record, Exhibit 8, does not address these criteria. It is not anticipated that an item like the bearing capacity of a driveway would be of concern here, but the applicant should provide information as to how deliveries would be made to the property, especially given the narrow street and the lack of a turn-around area for trucks. Any submitted landscaping plan should address the extent of screening of this property and the proposed house. In terms of density, the proposed development would complement the existing development in the subdivision, and would appear to have front, side and rear yards consistent with other homes in the neighborhood.

- (c) *Considerations of traffic to be generated and parking spaces to be provided, and their impacts;*

OP defers to DDOT for analysis of transportation and parking impacts, but notes that the proposed house would have a two-car garage as well as turn-around space in the driveway.

- (d) *The impact of the proposed development on neighboring properties; and*

As noted above, the applicant, when preparing grading, landscaping and stormwater management plans, should take into account the potential impacts on neighboring properties, and should ensure that they do not experience greater stormwater runoff than before the lot was cleared. This information should have been provided, as required, with the initial application to ensure that neighbors, the ANC and District agencies have adequate time to properly review it. In terms of neighborhood character, the home would seem to match the established character of the community. Given the large setbacks, the house should not have much, if any, impact on light and air available to neighboring properties.

- (e) *The findings, considerations, and recommendations of other District government agencies.*

As of this writing the record does not contain comments from other District agencies.

305.6 The proposed development shall comply with the substantive intent and purpose of this title and shall not be likely to have an adverse effect on the present character and future development of the neighborhood.

Given the lack of relevant information in the record, OP cannot make a complete assessment of the project's impacts and conformance with the intent of the Zoning Regulations.

305.7 The Board of Zoning Adjustment may impose conditions with respect to the size and location of driveways; floor area ratio; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations.

Given the lack of relevant information in the record, OP cannot at this time make a recommendation about possible conditions on the development. “Exhibit C” of Exhibit 28B-E is a list of conditions proposed by the applicant. Some of the conditions refer to information that will be prepared – such as a tree preservation plan and a stormwater management plan – that should be submitted as part of the BZA application.

Variance from Accessway Width – Subtitle C § 305.3(b), pursuant to X § 1000

- i. Extraordinary or Exceptional Situation or Condition Resulting in Peculiar and Exceptional Practical Difficulties To the Property Owner*
 - a. Extraordinary or Exceptional Situation*

The subject property presents an exceptional condition in that the existing private street to access the site is only 16 feet wide.

- b. Exceptional Practical Difficulties*

The exceptional condition results in a practical difficulty in that the street cannot be widened, and therefore the applicant would have no way to meet the letter of the regulation. Widening the accessway would require purchasing portions of, or all of, nearby properties and widening the curb to curb width of the street – an impractical solution, especially given the shallow front yards and driveways on nearby properties.

- ii. No Substantial Detriment to the Public Good*

Granting relief for accessway width should not result in a detriment to the public good. The plan for the original subdivision always anticipated that a house on this lot would be accessed by the 16-foot-wide private street. This application was referred to FEMS and MPD at Exhibit 20, and OP separately reached out to these agencies. As of this writing the record does not contain comments from those agencies. The applicant should describe in the record how deliveries would be made to the site and how trash would be removed from this site.

- iii. No Substantial Impairment to the Intent, Purpose, and Integrity of the Zoning Regulations*

The Regulations intend to provide for adequate access to all homes for, it can be presumed, normal residential access and emergency access. Granting the requested variance should not result in impairment to the intent of the Regulations to provide access to residential properties, provided FEMS and MPD have no objections.

VI. COMMENTS OF OTHER DISTRICT AGENCIES

As of this writing, the record does not contain comments from other District agencies.

VII. ANC COMMENTS

As of this writing the record does not contain comments from the ANC.

VIII. COMMUNITY COMMENTS

There are two party status applications in the record, though neither indicates support or opposition to the application.

IX. VICINITY MAP

