



**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: | Jody R. Westby (representing Foxhall Crescents Homeowners Assn.) | | |
| Address: | 4501 Foxhall Cres NW | | |
| Phone No(s): | 202-255-2700 | E Mail: | westby@globalcyberrisk.com |
| I hereby request to appear and participate as a party in Case No.: | 20636 | | |
| Signature: |  | Date: | 4-26-2022 |
| Will you appear as a(n) | <input checked="" type="checkbox"/> Proponent | <input type="checkbox"/> Opponent | Will you appear through legal counsel? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

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: **May 18, 2022**

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.

FOXHALL CRESCENTS HOMEOWNERS ASSOCIATION
4500-4527 Foxhall Crescents NW
Washington, DC 20007

April 26, 2022

Chairperson Frederick L. Hill
Board of Zoning Adjustment
441 4th Street NW
Suite 200S
Washington, DC 20001

Re: BZA Case No. 20636

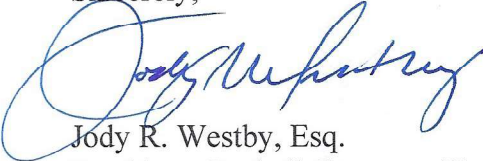
Dear Chairperson Hill:

This letter serves to inform you that I was elected president of the Foxhall Crescents Homeowners Association ("FCHOA") by its board of directors on March 29, 2022 and, in that capacity, am authorized by the board to represent the FCHOA in the BZA hearing regarding Case No. 20636.

Please let me know if you have any questions or desire additional information. My email is westby@mindspring.com and my cell number is 202-255-2700.

Thank you.

Sincerely,



Jody R. Westby, Esq.
President, Foxhall Crescents Homeowners Assn.

Party Status Request: Jody R. Westby on behalf of Foxhall Crescents Homeowners Association (FCIOA)

Supplement to Form 140

BZA Case No. 20636

PARTY WITNESS INFORMATION

1. A list of witnesses who will testify on the party's behalf:

- Jody R. Westby, Resident and President, Foxhall Crescents Homeowners Association
- Collette Goodman, Vice President, Foxhall Crescents Homeowners Association
- Melanie Stern, Member, Foxhall Crescents Homeowners Association

2. A summary of the testimony of each witness.

Jody Westby: Summary of testimony

Foxhall Crescents was designed by Arthur Cotton Moore, a sixth-generation Washingtonian, who has achieved national and international recognition for his contributions to Architecture and Master Planning. He modeled Foxhall Crescents after the Royal Crescents, a row of 30 terraced houses laid out in a sweeping crescent in the city of Bath, England. Each of the three Foxhall Crescents in DC has its own HOA. Our association is the one encompassing addresses 4500 to 4527 Foxhall Crescents and our entrance is off Foxhall Road. We are a private property community of 27 properties: 26 homes and the undeveloped lot at 4509. We maintain our own roads and infrastructure and manage our own trash collection.

As a homeowner and board member of the Foxhall Crescents Homeowners Association, I have been involved in the development plans for theoretical lot 4509 lot since 2013. The lot is within 200 feet of my back property line, and the new home will be only four houses from mine. The lot has an ugly history.

This lot was previously owned by Gene and Patricia Godley of 4513 Foxhall Crescents NW. They sought and obtained ANC and BZA for approval to build a 7,000 square foot home on the lot with a three car garage that looked nothing like our homes. The Godley's submitted two civil engineering reports to the BZA and declared in a letter to the then Chairman of the BZA, "these reports – together with other evidence submitted for the record – provide uncontroverted evidence that the construction of the single family residence on the subject lot as proposed will not tend to affect adversely the use of neighboring property." The BZA Order notes that the Godley's, "contended that the evidence presented at the [ANC] 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." The ANC approved the application and the BZA granted approval of the Godley's application was January 5, 1994, and the date of the Order was June 30, 1995. The Godley's sold the lot and have opposed every plan for development of the lot since.

In 2012, Amir Motlagh, the new owner of this property, applied to the ANC and BZA for approval to build the home Arthur Cotton Moore designed for the lot. His efforts were thwarted by the Godley's, another neighbor adjoining the 4509 lot (Andy Wong), and a third neighbor (the Sharkey's) who live in the neighborhood relatively close to the property. All three members of this group also served as FCHOA board members at the time the Motlagh application was considered, with one in the role of President and another as head of the Architectural Review committee. All three registered as opposing parties to the development along with the wives of Mr. Godley and Mr. Sharkey. Mr. Godley was president and hired an attorney, Meridith Moldenhauer, to personally represent him and Mrs. Godley in the matter. Just prior to the ANC meeting, Ms. Moldenhauer entered an appearance on behalf of the FCHOA and filed documents with the ANC and BZA opposing the development. The FCHOA homeowners were unaware of these actions.

Nevertheless, despite opposition from these FCHOA board members, the ANC voted in an 8-0-1 vote to not take a position on the 2014 application of Mr. Motlagh. The BZA approved the Motlagh application # 18708 on November 5, 2014, and the Summary Order was issued on February 11, 2015. At the final BZA hearing on the matter, the BZA urged the applicant and the FCHOA to reach an agreement. Mr. Motlagh was pressured into signing an agreement between him and the FCHOA (the "2014 Agreement") in order for them to withdraw their objection to his BZA application. He believed this 2014 Agreement would enable him to build the house he had planned. Even though he had BZA approval, however, the FCHOA board prevented him from building the home by rejecting every stormwater management plan his engineer developed. He finally gave up plans to develop the lot and sold it in 2021 to Mr. Rajai Zumot. Many FCHOA homeowners were upset when they found out about the actions of the FCHOA board and felt there had been self-dealing and a conflict of interest among the board members opposing the application.

The 2014 Agreement referenced above was deemed to be a voidable conflict of interest transaction by the current FCHOA board and legal counsel, and it was voided at its March 29, 2022 board meeting.

When Mr. Zumot began his plans to develop the lot, the same board members Godley and Wong began opposing the development in the same manner. The neighborhood had had enough. A majority of the homeowners called a Special Meeting to remove the two board members. They resigned prior to the vote to remove them.

The FCHOA neighborhood is supportive of this home being built. They strongly believe that Mr. Zumot owns the property, has a right to build a home on it, and so long as it is "architecturally compatible" with other houses in the neighborhood (which the proposed plan is) and he complies with DC law (including obtaining BZA approval and other required agency approvals and permits), the FCHOA and the community should not stand in his way – but instead should welcome him and the prospect of having a new house that will enhance the entire neighborhood.

Furthermore, it should be noted and emphasized that, contrary to what these prior board members have conveyed to the ANC and BZA regarding the #20636 application, there has *never* been a water runoff or stormwater management problem associated with lot 4509.

The footprint of the home is slightly larger than what was planned by Arthur Cotton Moore, but the house will be of the same design. The neighborhood is fine with the larger footprint, as others in the neighborhood have been given approval to enlarge their homes, with one now exceeding 5,000 square feet of living space. The planned house for 4509 is also now sited facing the community road to the site. The neighborhood is also fine with this change, as the original plan for the neighborhood included a site for another house (4511) further up the hill. However, the 4511 site was removed from the neighborhood over 40 years ago, and thus the original siting for this house no longer is considered necessary or appropriate.

The final issue that I will raise has to do with the removal of 20 trees, which had the approval of DDOT. In addition, one Heritage Tree was cut down, which did not have DDOT approval, but it was located in a hazardous position on a slope leaning toward the home to be built. Once cut down, the tree clearly has evidence of being diseased. The BZA approved removal of this tree in its 2015 Order in the Motlagh application, so the neighborhood had accepted the tree would not stay. The tree was a tulip poplar. Two other tulip poplars have fallen on Foxhall Crescent homes in the recent past, and placed human lives at risk. One was a heritage tree that the city refused to give approval to be removed. After it fell, it was obvious the tree was diseased and a hazard. The D.C. arborist admitted that this species of tree can be difficult to determine whether it is diseased and the one that fell was simply "one that we missed."

The FCHOA neighborhood requests the ANC and BZA approve the plans proposed in case 20636.

Collette Goodman, Summary of testimony

There are strong legal, equitable and policy arguments to support the removal of the Heritage Tree that Mr. Zumot cut down and for which (subject to any appeal rights) he currently faces a potential fine. These arguments include:

1. The proper interpretation of Section 8-651.02(3) of the D.C. Code relating to the definition of a "hazardous" tree that properly takes into account the specific, intended purpose of the property in question;
2. The prior actions in 2014 of the BZA in approving the site plan calling for removal of the Heritage Tree over the objections of the Office of Planning as effectively "grandfathering" the removal of this tree from the changes in the law that were enacted later in 2016;
3. The dangers (and costly damage) that identical heritage trees have caused to other homes and individuals in the Foxhall Crescents neighborhood and evidence that, like those trees, the Heritage Tree Mr. Zumot cut down in fact was "hazardous;"
4. Mr. Zumot's landscaping plans that provide for planting several new trees on the 4509 Site, along with the fact that the Canopy coverage in Ward 3 where the 4509 Property is located is already between 40%-60%, which is well in excess of the City's goal of 40%

canopy coverage by 2032, greatly mitigate concerns over the removal of the Heritage Tree;

5. According to US Census Bureau data, the District of Columbia's population dropped by 2.9 percent over the 2020-2021 period, which was the largest percentage drop in population of any state in the nation, according to the data; as a policy matter, given all of the foregoing considerations, any decision should weigh in favor of, not against, encouraging people to live in DC; and
6. In honor of Arthur Cotton Moore's longtime roots, unique dedication to, and major contributions to the architecture and planning of the City, as well as the foregoing reasons, approval of this BZA application should be granted so that the final touch can be put on Arthur Cotton Moore's plan for this special Foxhall Crescents community.

Melanie Stern, Summary of testimony

I live at 4510 Foxhall Crescents NW and support the construction of the proposed home at 4509 Foxhall Crescents. I moved into the Foxhall Crescents neighborhood in 2005. For the past 17 years, I have lived directly below the 4509 lot, and can state that I never experienced any water runoff from that lot. The water drainage problems in the neighborhood that I have experienced were due to improperly configured drains and road contour. In 2017, the FCHOA invested a large amount of funds in the construction in a new large drain and a deep curb to address this issue to ensure proper drainage in the community. The HOA also adjusted other curbs in the community to insure the proper of flow water into the drains.

PARTY STATUS CRITERIA

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?

I own a home at 4501 Foxhall Crescents, NW and am president of the FCHOA, a community of 26 homes, with the pending application being the final and 27th home in the neighborhood, as planned by Arthur Cotton Moore. My home is the first home on the right as one enters the neighborhood. The subject home of the BZA matter will be the 4th house around the corner from my residence. There is only one road in and out of the neighborhood. Therefore, all traffic coming and going passes by my home. I do not believe the construction of the home will create traffic problems for myself or the neighborhood. The homes in the neighborhood are older now and many homeowners are undertaking renovations, so we are accustomed to workers in the neighborhood on a regular basis.

The FCHOA believes that the construction of the home as planned by the applicant in this matter will improve property values in the neighborhood, and the new home will beautify an area that has been closed off by a large double-gate fence for the past 20+ years.

2. What legal interest does the person have in the property?

I do not have a legal interest in the property, but I am president of the FCHOA and the Bylaws grants common rights to all members.

3. What is the distance between the person's property and the property that is the subject of the application before the Commission/Board?

My back property line is within 200 feet of the back property line of 4509 Foxhall Crescents. The case before the BZA requests approval of a home that would be the 4th house around the corner from my home. I receive notices from the BZA regarding this action. I can also speak on behalf of the majority of neighbors whose opinions the Board has sought and obtained and who support this BZA application.

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?

If approved, the environmental impact will be positive and improve water drainage and erosion; the presence of a newly built home in the neighborhood will help raise property values; and the neighbors welcome the new owner and do not see negative social impacts from their becoming a part of our community. Any disruption during construction will be short-lived and can be mitigated. The neighborhood will benefit from a new home where a vacant lot sits now.

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?

If the requested action of the Board is denied, the community will be deeply disappointed, as the interests of our community in fairness and inclusiveness will be have lost out, and the property values in the neighborhood will suffer.

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.

The Foxhall Crescents neighborhood is private property, thus the FCHOA homeowners are directly affected by the zoning action, whereas the general public is not. The general public does not have access to our neighborhood, their tax dollars do not support our infrastructure or waste removal. We pay for city water and the city benefits from the impervious and stormwater charges paid by our community, which are significant.

Although the former board members and neighbors who have opposed the development raised storm water management issues, it is a red herring. There has never been any evidence of water runoff issues associated with this lot, and certainly none that would impact the general public. The National Park Service has written to the FCHOA and stated that they have no role with respect to proposals for homes to be built on non-federal properties.