

EXHIBIT F

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

**Applicant's Statement of Compliance with
Special Exception Standards**
PENGUIN, LLC 4509 Foxhall Crescent, NW
(Square 1397, Lot 960)

I. INTRODUCTION.

The following is a statement of compliance of the referenced application with the special exception standards. A previous submission and the Office of Planning has already addressed the requested driveway variance so this statement will not go into further detail regarding the variance.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the requested special exception relief requested pursuant to Subtitles X-901 and C-305 for a theoretical subdivision.

III. SPECIAL EXCEPTION STANDARDS AND COMPLIANCE UNDER C § 305.

A. General Special Exception Legal Standards.

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR X § 901.2, the Board is authorized to grant a special exception where it finds the special exception: (1) will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; (2) will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and (3) subject in specific cases to special conditions specified in the Zoning Regulations. 11 DCMR Subtitle X § 901.2.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements

for the relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

1. Previous Heritage Tree Cutting

The previous cutting of a Heritage tree on the Property without a permit is regrettable but not a legal basis for denying the subject special exception. There were extenuating circumstances including the fact that the tree was indeed diseased as indicated by the Applicant’s arborist and borne out by subsequent inspections of the trunk (see photos attached hereto as Attachment 1) and the unwillingness of the previous FCHOA Board (which was dominated by the adjacent property owners who oppose the development of the site) to consider alternative development plans which would retain the tree. The Applicant will, of course, pay the fine assessed by the City which is the legal penalty for cutting the tree down without a permit. Denial of the requested special exception is not in the best interests of the Foxhall Crescents community, as represented by the FCHOA, which supports the development of the site without further delay.

As described herein, this application satisfies the requirements of X § 901.2 and C § 305.

B. The Application Satisfies X § 901.2

The granting of a special exception in this case “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and “will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning

Maps ...” (11 DCMR Subtitle X § 901.2).

The R-1-A Zone provides for areas predominately developed with detached houses on large lots. The Application seeks approval for a detached single-family home on a lot with a land are of 13,629 square feet; close to double the minimum lot area for the R-1-A zone, and significantly larger than most of the other Foxhall Terrace lots. The area is made up of almost exclusively detached single family homes.

The construction of a new detached single-family home and addition of one more is unlikely to adversely affect the use of the neighboring residential properties. The additional single-family home is also unlikely to adversely affect the use of the neighboring dwellings, the Property will beset back from the neighboring properties, and the Project is conforming with all of the development standards of the R-1-A Zone.

The home will meet, and in most instances exceed, all the applicable zoning requirements including building height, lot occupancy, and required yards. As further discussed below, the Applicant will undertake the development of the site in a way that protects the existing special trees on the site and manages storm water and erosion concerns. The Applicant will undertake development in a way that optimizes tree protection and successfully manages storm water and erosion concerns in accordance with DDOT and DOEE requirements..

C. The Application Satisfies C §305

The Applicant meets the specific requirements of C §305, as follows:

C §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 Property is located within the R-1-A zone district, according to the Zoning Map.

C §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.

Development as proposed will add one principal building to this phase of Foxhall Crescents, totaling twenty-seven (27) one-family dwellings. The proposed structure meets the requirements of the Zoning Regulations regarding use, height, bulk, and open spaces.

C §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;

In the R-1-A zone, two (2) eight (8)-foot side yards are required. The proposed project would provide a 25 foot side yard on the west, and a 27 foot side yard on the east. The zone also requires a twenty-five (25) foot rear yard and the proposed project provides a 41.25' foot rear yard (to the exterior rear wall and 28.25' to the retaining wall).

(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 proposed project includes a driveway width of sixteen (16) feet. Variance relief to maintain the sixteen (16) foot driveway width established by the original development is requested.

(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

As measured from the above-referenced measuring point, the proposed project, complies

with the maximum 40 foot, 3 stories height restrictions of the R-1-A zone, with a building height of 35.5' and three stories.

- (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 Property is not subject to the Height Act..

C §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;***

With this supplemental filing, all of the required plans and the plat for the proposed project are submitted in compliance with this section, as applicable. In summary, the theoretical subdivision of the overall development has already occurred and a plat of lot 960 (the subject property) has been submitted. There are no easements on the property. Existing Condition and Site Plans submitted herewith show site grading. A Landscape Plan along with the project Site Plans and Tree Protection Plan show the locations and sizes of all trees on or adjacent to the property. The submitted Site Plans show the location of the proposed house on the subject lot as well as the rear, side and front yards.

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

The submitted architectural plans for the proposed project meet the requirements of this section.

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

Attachment 2 is a table setting forth the applicable zoning and development standards and the project's compliance.

C §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;**
 - (2) The environment relating to water supply, water pollution, soil erosion, and solid waste management;**
 - (3) Public education;**
 - (4) Recreation;**
 - (5) Parking, loading, and traffic;**
 - (6) Urban design; and**
 - (7) As appropriate, historic preservation and visual impacts on adjacent 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 openspace; and the location, design, and screening of structures;**
- (c) Considerations of traffic to be generated and parking spaces to be provided, and their impacts;**
- (d) The impact of the proposed development on neighboring properties; and**

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

The project has been referred to the Office of Planning for review. The Landscape and Tree Protection Plans were submitted to DDOT's Urban Forestry Division for review on April 25, 2022 and the Storm Water Management and Erosion and Sediment Control Plans were filed with DOEE on May 13, 2022.

C §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.

The proposed project will comply with the substantive intent and purpose of the Subtitle C and will not have an adverse effect on the present character or future development of the neighborhood.

C §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.

The Board may want to consider a condition which requires DOEE approval of the Storm Water Management and Sediment and Erosion Control plans prior to building permit issuance.

C §305.8 Any modification to a theoretical subdivision application resulting from an addition to a one (1) dwelling unit building may be reviewed as an expedited review, pursuant to Subtitle Y, Chapter 4.

The proposed project is not an addition to an existing building, and therefore the Applicant is not seeking expedited review.

IV. CONCLUSION

In conclusion, the project meets the special exception requirements and standards and should be approved.

Respectfully submitted,



Cynthia A. Giordano, Esq.
Saul Ewing Arnstein & Lehr LLP
Date: May 25, 2022

ATTACHMENT 1











ATTACHMENT 2

PROJECT INFORMATION

	EXISTING	ALLOWED/REQ'D	PROPOSED
PROPERTY SQUARE FOOTAGE	13,629 SF PER SURVEYED BOUNDARYS		
ZONED DISTRICT		R-1-A	
LAND USE	VACANT LOT	SINGLE-FAMILY	SINGLE-FAMILY
MINIMUM LOT WIDTH	109.1'	75'-0"	109.1'
MINIMUM LOT SQUARE FOOTAGE	13.629 sf.	7,500 sf.	13,629 sf.
LOT OCCUPANCY	N/A	40% {5,451 sf.,}	15% (2.035 sf.)
GROSS SQUARE FOOTAGE	N/A	N/A	6.105 sf.
PERVIOUS SURFACE	100%	50% (6.815 SF)	85% (11.585 sf.)
BUILDING HEIGHT	N/A	40'-0" MAX.	35.5' (BHMP PER CODE)
NUMBER OF STORIES	N/A	3 STORIES MAX.	3 STORIES
FAR	N/A	N/A	N/A
SIDE YARD SETBACK	N/A	8'-0" MIN.	25'west; 27' east
REAR YARD SETBACK	N/A	25'-0" MIN.	41.25'
FRONT YARD SETBACK	N/A	Range of existing	26.50'