



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:	Robert and Phoebe Sharkey		
Address:	4514 Foxhall Crescent, NW		
Phone No(s):	202-393-0797	E Mail:	robshrky@aol.com;psharkey@loyola.edu
I hereby request to appear and participate as a party in Case No.:		20636	
Signature:	<i>Robert E. Sharkey Phoebe D. Sharkey</i>	Date:	5/31/2022
Will you appear as a(n)	<input type="checkbox"/> Proponent	<input checked="" type="checkbox"/> Opponent	Will you appear through legal counsel? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

If yes, please enter the name and address of such legal counsel.

Name:	Andrea Ferster, Esquire		
Address:	2121 Ward Crt NW; Washington, DC 20037		
Phone No(s):	202-974-5142	E Mail:	AFerster@Railstotrails.org

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: **June 15, 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.

June 1, 2022

Board of Zoning Adjustment
4414th Street NW
Suite 200S
Washington DC 20001

Re: Penguin, LLC Application BZA Case #20636
Application for Party Status by Robert and Phoebe Sharkey

PARTY WITNESS INFORMATION

1. We intend to call the following witnesses for the hearing of Case 20636 on June 15, 2022:

- (a) Joe Mehra, President MCV Associates, Inc
Reju Radhakrishnan. MCV Associates, Inc.
Alexandria, Virginia
- (b) Guillermo Rueda, Architect, AIA
Washington, DC
- (c) We wish to hold a place for an as yet unnamed professional Storm Water Management expert who will present an evaluation of the late filed May 27, 2022 newly submitted Storm Water Management Plan and the Sediment and Soil Erosion Plan and the adequacy thereof.
- (d) Robert Sharkey

2. 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.

Three witnesses have qualified as experts before the BZA. Mr. Sharkey is a property owner within 200 feet of the proposed construction.

Mr. Joe Mehra and Mr. Radhakrishnan. will testify as experts re the adequacy of the parking, the congestion, and the alternatives to reduce the negative impact on the neighborhood of the proposed construction project.

Mr. Guillermo Rueda will testify as an expert on the applicable zoning law and regulations, and building codes related to the proposed development. Mr. Rueda is a DC Registered Architect with more than 25 years of practice.

3. We request 1 hour to present our case. We will be sharing our requested one hour of time with the Godleys, who are also requesting party status, and will present a coordinated case with them using the same expert witnesses.

Robert and Phoebe Sharkey
4514 Foxhall Crescents, NW
Washington, DC 20007

May 31, 2022

Board of Zoning Adjustment
4414th Street NW
Suite 200S Washington DC 20001

Re: Penguin, LLC Application BZA Case #20636
Application for Party Status by Robert and Phoebe Sharkey

Members of the BZA Board,

We request party status in this matter pertaining to Penguin, LLC's (Penguin) application for a special exception and variance at 4509 Foxhall Crescents, NW (the Property). The hearing on the application is scheduled before the BZA on June 15, 2022. See below for our responses to Party Status Criteria Form 140. We intend to coordinate our opposition to Penguin's application with Gene and Patricia Godley's opposition, who are also requesting party in opposition status, and we supplement the following with the facts, circumstances and exhibits stated in the Godley Party Status request.

1. How will the property owned by such person be affected by the action requested of the Board?

Storm water run-off. We own our house at 4514 Foxhall Crescents, NW and have lived there for the past 13 years. If the BZA grants the Applicant's request for special exception and variance at the Property, our property would experience the impact of adverse storm water runoff due to lack of provision for sufficient drainage facilities (See Letter to Bautista at DOEE attached) and traffic bottlenecks and parking congestion due to the lack of access to the property via a required 24-foot road. It is notable that the District of Columbia's approval of the original theoretical lot subdivision in 1979, through the large tract review process, expressly made, as a condition of approval, retention of a 30-foot set back of undisturbed green space around the perimeter of the site and to maintain existing trees and/or plant a vegetative buffer in order to mitigate impacts of storm water run off and erosion. See Exhibit (DC Large Tract Review Coordination Report) attached. As noted in the Office of Planning report, the Applicant unlawfully destroyed a heritage tree and has no plans to re-vegetate this area. Instead, the Application will pave over this required green space, in direct violation of the conditions set by the District of Columbia in approving this large tract development.

Traffic and Parking. The property is at the end of a 16-foot wide private street which is owned in fee by owners of properties adjoining the Property, with the right of use in common with the other 26 members of the Foxhall Crescents Homeowners Association (FCHOA). Parking on the Property is currently provided by a two-car garage. The 16-foot width of the access street to the Property, which does not comply with current zoning requirements of 24-foot width, with or without parking by adjoining property owners, makes all vehicular access to the Property, from emergency vehicles to trash haulers, almost impossible.

We purchased our property in reliance on the recorded Bylaws and Covenants of the FCHOA, which contain specific regulations dealing with the design, development, administration and maintenance of the entire community. The relief sought by Penguin is in derogation of our rights under the Bylaws and Covenants, by the type and size of the house and its location on the Property. The elimination of the easement for the street through the Property will reduce available street parking and adversely affect our ability to park and navigate the interior roadways. The failure to comply with the requirement for a 30-foot undisturbed perimeter on both sides of the Property will exacerbate storm water run-off that will adversely affect our property.

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

We own the property where we live, at 4514 Foxhall Crescent NW and we have lived there for 13 years.

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

We live within 200 feet of the construction site diagonally across the street from the property where the House will be built.

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 board is approved?

Our property would experience the impact of adverse storm water runoff as well as traffic bottlenecks and parking congestion. 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 Crescents road, narrowness of the street, and cars parked on the street.

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

The development of the Property is subject to the Bylaws and Covenants of the FCHOA, which require a specific type and size of house in accordance with the original plan of development of the Foxhall Crescents community by Arthur Cotton Moore (ACM). The ACM plan specifies the construction of a "Type VI" with a footprint 24.5' by 53' on a specific portion of the site, preserving a 30-foot undisturbed perimeter on both sides of the Property and preserving the easement granted for the street running through the Property, noted above.

In 2014, Penguin's predecessor in interest, Amir Motlagh applied for a special exception to build a house on the property (see BZA Case #18708). We, along with Gene and Patricia Godley and Andy Wong, objected to the application and we, in addition to the Godleys and Wong, were given Party Status by the BZA. Motlagh's application was reviewed and not approved by the ANC. Motlagh eventually obtained approval of his application by the BZA only after a settlement agreement was made by Motlagh among us and the other objectors which resolved the same issues which are raised in Penguin's current application. The BZA order was subject to the settlement agreement, which required that plans be subject to the ACM design, including the size, footprint and design of the house. Initially Penguin represented to the Board of the FCHOA that it would comply with the prior BZA order and settlement agreement. However, Penguin's application to the BZA in November 2021 was completely at variance with the ACM plan. The Penguin plan is in derogation of our rights under the settlement agreement in BZA Case #18708 and in derogation of our rights and privileges under the FCHOA Bylaws and Covenants. It was for a much larger house, 35' by 54', which is 46% larger than the Type VI House, and it changed the site of the house, such that it eliminated the street easement and impinged on the 30-foot undisturbed perimeter. Subsequent "supplemental" filings by Penguin in April and May 2022 have further significantly increased the square footage of the house to approximately 165% of the original ACM design, as well as its location on the Property.

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,

As property owners and members of the FCHOA we have rights and privileges guaranteed under the recorded Bylaws and Covenants of the FCHOA. Approval of the application would be in derogation of our rights thereunder: namely the requirement that development of the Property be in accordance with the ACM plan regarding the type, size and location of a house and the easement in the street on the Property.

The location of our house less than 200 feet from the Property is directly affected by the non-compliance with the aforementioned Bylaws and Covenants, more significant and distinctively than other FCHOA members. The planned theoretical 24-foot wide street on the Property. Vehicular access by all types, emergency vehicles, trash haulers, delivery trucks, etc., would be nearly impossible via only the current 16-foot street, which must accommodate parking from existing abutting properties, or at the least tremendous bottlenecks would result or the blocking of the street in the immediate area. Our property, due to its proximity to the proposed development, will also be more distinctly and adversely affected by storm water run off to a greater extent than other FCHOA members, that will be exacerbated by the Applicant's failure to comply with the mandated 30-foot undisturbed green space in the perimeter of the site.

We designate Andrea Ferster to act as our legal counsel in this matter. She has the authority to bind us in this matter.

Robert and Phoebe Sharkey
4514 Foxhall Crescent, NW
Washington 20007
