

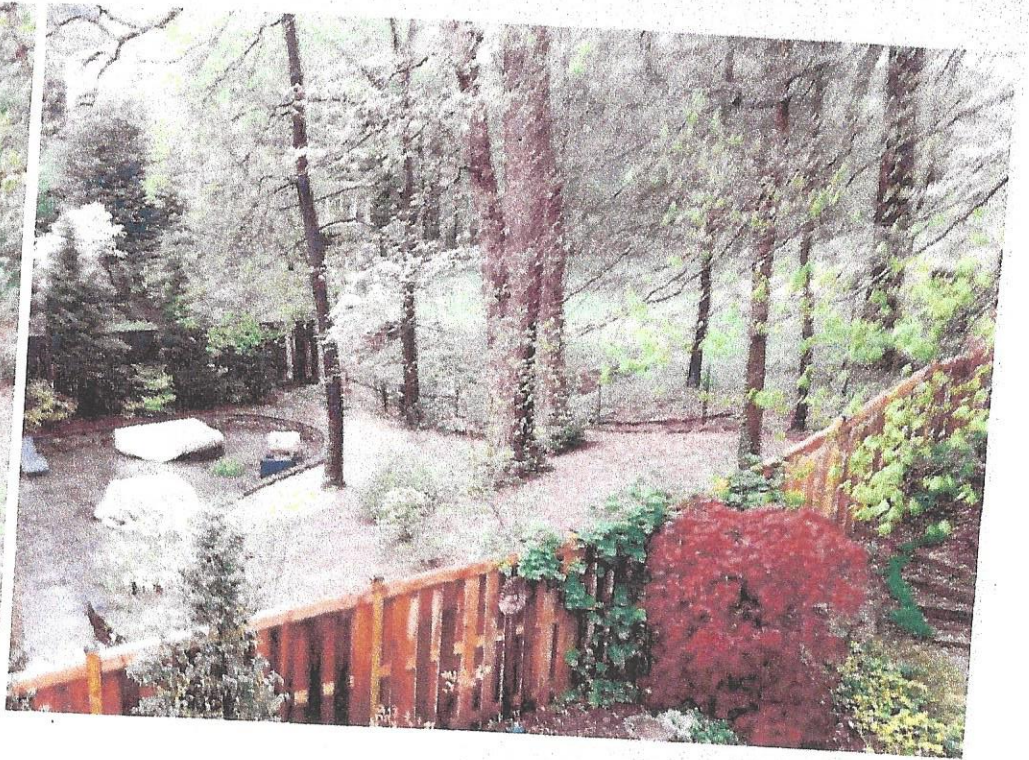
# Exhibit 3











# **Exhibit 4**



**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 18708 of Amir Motlagh**, as amended,<sup>1</sup> pursuant to 11 DCMR § 3104.1 for a special exception under § 2516, and pursuant to 11 DCMR § 3103.2 for area variance relief from the requirements of § 2516.5(b), to allow the construction of a one-family detached dwelling on a theoretical lot under § 2516, in the R-1-A District at premises 4509 Foxhall Crescents Drive, N.W. (Square 1397, Lot 960).

**HEARING DATES:** February 11, 2014, July 8, 2014, September 30, 2014,  
October 28, 2014, and November 5, 2014

**DECISION DATE:** November 5, 2014

**SUMMARY ORDER**

**SELF CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 (original) and 51 (revised).)

The Board of Zoning Adjustment (the “Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 3D, which is automatically a party to this application, and to owners of property within 200 feet of the site. ANC 3D submitted a letter dated September 29, 2014 stating that at its September 10, 2014 meeting, at which a quorum was present, the ANC voted 8-0-1 to take no position on the application. (Exhibit 49.)

The Office of Planning (“OP”) submitted a timely initial report (Exhibit 47) as well as a supplemental report (Exhibit 53) indicating that it could not recommend approval of the application because it wished to have more information regarding alternate footprints for the proposed house for the purpose of saving a 47” diameter tulip poplar tree on the Property. The Board considered and has given great weight to OP’s objection regarding the tulip poplar tree, but the Board was satisfied that the Applicant had done adequate preparation in regard to tree preservation by seeking professional evaluation of the project by a respected certified arborist

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<sup>1</sup> The Applicant amended the application to include variance relief from § 2516.5(b) (Exhibit 51) and this amendment is reflected in the caption.

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and by presenting a tree preservation plan prepared by that arborist. The Board also acknowledged that the tree preservation plan contemplated a net loss of only two trees as a result of the construction of the new house.

The District Department of Transportation filed a timely report dated January 27, 2014 expressing no objection to the application. (Exhibit 30.)

There was one party status application in support of the application from Jody Westby of 4501 Foxhall Crescents Drive, N.W. (Exhibit 36). There were four requests for party status in opposition to the application from the following: Foxhall Crescents Homeowners Association (Exhibit 26); Patricia Godley of 4513 Foxhall Crescents Drive, N.W. (Exhibit 27); Robert & Phoebe Sharkey of 4514 Foxhall Crescents Drive, N.W. (Exhibit 28); and Andrew Wong of 4507 Foxhall Crescents Drive, N.W. (Exhibit 29). The Board granted party status to all opposition party applicants and consolidated the parties into one party under the name "Foxhall Crescents Homeowners Association, Inc." (the "Association"). The Association, represented by counsel, subsequently withdrew its party status subject to a settlement agreement entered into between the Association and the Applicant. (Exhibits 62 (Agreement) and 65 (Appendix A). Other than ANC 3D and the Association, there were no other parties to the proceedings.

A letter from the Embassy of the Federal Republic of Germany, located at 1900 Foxhall Road, N.W., expressed concerns with the proposed application. (Exhibit 54.) A letter in opposition from the resident of 4512 Foxhall Crescents Drive, N.W. was filed in the record. (Exhibit 58.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 2516. The Board also required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for variance relief pursuant to § 3103.2 from the strict application of the front yard requirements under § 2516.5(b).

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking the special exception relief, the Applicant has met the burden of proof pursuant to 11 DCMR §§ 3104.1 and 2516, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board also concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2, for variance relief from § 2516.5(b), that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions



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of law. The waiver will not prejudice the rights of any party, and is not otherwise prohibited by law. It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE USER AGREEMENT AT EXHIBIT 62 AND PLANS AT EXHIBITS 10, 63, 65, AND 66 AND THE FOLLOWING CONDITIONS:**

1. **Communication**: The Applicant shall provide an established point of contact for construction who shall be responsible for providing an updated schedule and timetable for the project, weekly updates and notice of any significant events. The contact shall be available by cell phone and electronic mail and shall respond promptly to any inquiries and complaints.
2. **Storm Water Management (“SWM”)**: The Applicant shall provide a DDOE-approved system, including non-required infiltration trench; utilization of existing SWM system; and provide coordination with 4507 Foxhall Crescents’ storm water discharge pipe on the Property.
3. **Landscaping Plan**: The Applicant shall implement the approved Landscaping Plan as provided in Exhibit 63, including tree removal and new plantings.
4. **Erosion and Sediment Control**: During construction, the Applicant shall implement DDOE-required erosion and sediment control methods.
5. **Staged/Escorted Heavy Construction Traffic**: The Applicant shall ensure that excavation and large/heavy construction vehicles and deliveries shall be staged and escorted to the Property to avoid blocking the roadway.
6. **Limits on Construction Vehicles**: The Applicant shall limit construction vehicles to Monday – Friday, 8:00 a.m. to 5:00 p.m.
7. **Hours of Construction**: The Applicant shall limit the hours of construction for Excavation, Site Work and Shell to Under Roof to Monday – Friday, 8:00 a.m. to 5:00 p.m. and Interior Build Out: Monday – Friday, 7:00 a.m.-7:00 p.m.
8. **Construction Vehicles**: The Applicant shall ensure that construction vehicles are maintained on the Property; there shall not be any Standing or Parking on private streets, except during actual operation or delivery.
9. **Construction Equipment and Vehicles**: All construction equipment and vehicles shall be stored and maintained on the Property.
10. **No Dumpster**: The Applicant shall ensure that no dumpster shall be located or maintained on the private streets.



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11. **No Construction Parking**: Construction workers, suppliers or other construction-related personnel and vehicles shall be prohibited from parking, standing, waiting or idling in the private streets. All parking will on the Property or off-site.
12. **Road Repairs**: The Applicant shall be responsible for the prompt repair and replacement of any cuts or damage to the private roadway surfaces as a result of construction activities (exclusive of normal wear and tear and general public use of the streets).
13. **Cleanliness**: The Applicant shall be required to maintain a clean work-site and surrounding private streets, including removal of trash, dirt and mud and other debris from construction at the end of each work day. No construction related trash or materials will be deposited in the private trash cans belonging to adjoining properties.
14. **Additional Insureds**: The Foxhall Crescents Homeowners Association ("FCHOA") and the owners of 4507 and 4513 Foxhall Crescents shall be named as additional insureds on all liability and construction insurance policies for the Property and project.

**VOTE:**           **3-0-2**           (Lloyd J. Jordan, Marnique Y. Heath, and Michael G. Turnbull to APPROVE; S. Kathryn Allen and Jeffrey L. Hinkle not present, not voting).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**ATTESTED BY:** \_\_\_\_\_

  
**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** February 11, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS



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PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.



**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, NW (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

Board of Zoning Adjustment

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO. 18708

EXHIBIT NO. 62



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            Meredith 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

Sam Sady, President, HOA Nov 5, 2014

HOA, authorized representative

Date

Robert + Phoebe Sharkey 11/05, 2014

Opposition Party

Date

Adrian Wong Nov/5/2014

Opposition Party

Date

Patricia Godley Nov 5, 2014

Opposition Party

Date