

June 1, 2022

Julienne Bautista
Branch Chief
Department of Energy and Environment

Re: Penguin, LLC BZA Case # 20636

Dear Ms. Bautista,

We are residents of Foxhall Crescents and we have applied for party status in the matter of BZA #20636 – Penguin, LLC’s application for a special exception and variance at 4509 Foxhall Crescents, NW. It appears that on May 13, 2022, the applicant’s agents submitted a storm water management plan to DOEE. The plan was not filed with the BZA until last Friday, May 27, 2022, when it first became available to us. We understand that the plan is under review by you. The hearing before the BZA on the application is currently scheduled for June 15, 2022.

The plan filed with the BZA does not contain any data substantiating the estimates contained in the plan. There are no hydrologic studies, no surface or ground water compliance studies, etc. This property presents a unique situation regarding storm water management because of its unique topography with no storm water facility on the property. Historically, water runoff has been a problem for the adjoining property owners. Attached are several photographs showing the 40-degree slope of the property and the resulting storm water runoff problems. (Photos 4509).

In addition to concern about the potential impact for adjoining property owners, we are concerned about the potential impact on the community’s overall drainage system for which the Foxhall Crescents Homeowners Association bears financial responsibility. We want to be sure that the water runoff from this now essentially cleared lot would not exceed the capacity of the community’s overall drainage system, and thus expose all homeowners in the Association to the risk of significant financial costs for repair or refitting of the system.

It appears from the plan that storm water will not be discharged directly into a storm drainage facility but would be collected in a trench under permeable pavers for a driveway to a garage, with water being discharged into the street in front of the property. The plan states: “Private property stormwater management requirements are anticipated not to be met with bioretention system so undrained stormwater will be collected in an underground storage facility then drained into the storm line on Channing Street.”

The street in front of the property is Foxhall Crescents, NW (Channing Street is located in northeast Washington), and there is one existing storm water inlet near the property on the side of the street which historically has not been able to handle the storm water runoff from the property.

The property has been completely denuded of trees, including a Heritage Tree, substantial regrading will be necessary, including the building of retaining walls around the proposed house with water flowing around the periphery towards the adjoining properties to accommodate a house on the property.

Board of Zoning Adjustment
District of Columbia
CASE NO.20636
EXHIBIT NO.58A

There are currently berms that have existed for at least 30 years that direct water runoff toward the one small storm drain at the entrance to the property and away from the property at 4513 which is at the bottom of the slope on 4509. These berms appear to be removed in the grading plan. We are concerned that any plan not just focus on volume of water, but also the direction of whatever runoff occurs.

Obviously, the provision for adequate storm water management in accordance with the District's regulations for land disturbance over 5,000 square feet is crucial.

The ANC 3D Commissioners did not approve this application, and it recommended to the BZA that it only be approved provided there is strict compliance with the storm water management regulations. The ANC report is attached. (ANC 3D Report). The report specifically addressed the necessity for the provision for an adequate storm water management plan, as follows:

“Should the BZA determine not to withhold approval of the relief requested by the applicant, ANC3D asks that the BZA make the storm water management commitments expressed in the Prehearing Submission of the Applicant a condition of the BZA's Order. The applicant's lot is fairly steep and is located above the rest of the community. Storm water problems have been reported by at least one adjoining property owner in the past. Now that the Applicant has chosen to cut a large number of trees on the lot, thereby disturbing the soil and removing one of the natural barriers to storm water, there is good reason to believe that, if left uncontrolled, the new development could pose storm water danger not only during construction but also afterwards, unless it is managed correctly. However, after consultations between the ANC and the representative of the Applicant, the Applicant and its consultant in its Pre-Hearing Submission of April 27, 2022, freely acknowledge major land-disturbing activity on the site of 5000 square feet or more, thereby triggering the Department of Energy and the Environment's requirement that the applicant submit a Storm Water Management Plan for the Department's approval prior to construction. The applicant also stipulates in paragraph 6 of its Construction Management Plan (Exhibit C of the Prehearing Submission) that “there is no intention to request any special DOEE storm water accommodations on the property, but if such a need should arise, [the applicant] will provide at least 10 days prior notice of such a request to the abutting property owners and ANC3D01.” The importance of this last stipulation is that such notice would allow the abutting property owners and the ANC to intervene with DOEE, if they wish, in order to protest any such special accommodation and submit information relevant to the matter before DOEE makes any determination in the matter. Should the BZA decide to grant the relief requested by the Applicant, ANC3D asks that the BZA especially note this commitment by the applicant and make the Applicant's performance of this commitment in paragraph #6 of Exhibit C a

condition of the zoning relief granted. Such a condition would be entirely consistent with the decision of the BZA in the previous case involving this very same property and the same requested relief (Application # 18708). In that case, the BZA made its approval of the requested relief subject to a user agreement that incorporated even more extensive requirements with relation to storm water and sediment. At the time of that decision by the BZA, only two trees were expected to be cut down on the property, according to Order. Today, this steeply sloped lot is devoid of twenty or more trees that at the time of the BZA's previous order, thereby, increasing substantially the potential for storm water damage if it is not properly managed."

We ask that you consider these matters in your review of the plans submitted by the applicant. In addition, we welcome the opportunity to speak with you at your convenience about the storm water issues on the property and to furnish any additional information that may be helpful in your review of the plan under the regulatory standards.

Thanks for your attention to this.

Yours truly,

Robert and Phoebe Sharkey
4514 Foxhall Crescents, NW

Gene and Patricia Godley
4513 Foxhall Crescents, NW

John and Pamela Kilian Fox
4504 Foxhall Crescents, NW

cc. Chuck Elkins
ANC 3D Commissioner

Matthew Jesick,
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